

How lawyers are proving that mental inmates
have a right to treatment

The Constitution v. the snakepit

By Walter Goodman

For most of history, it has been the fate of those whom we now call the "mentally ill" and the "mentally retarded" to be stowed away somewhere, in accord with the adage, out of mind, out of sight. Private hospitals and schools, with comfortable accommodations and attentive treatment, are available to those whose families can afford very large fees. But today, as ever, the less affluent must make do with publicly financed institutions whose main function is to keep their inmates—upwards of half a million people—from getting in the way of a society that has pretty much given up on them.

Some of the residents of most institutions for the mentally ill have come there voluntarily, for help or safe-keeping; others have been involuntarily committed by their families or the civil authorities. Most of the 200,000 institutionalized retarded have gotten where they are on the application of someone else, usually a relative. In the past few years, a band of young lawyers has been waging a forceful attack on the treatment or nontreatment of these so-called "involuntarily institutionalized," especially those people who have been placed in large state "schools" for the mentally retarded. These citizens are being deprived of their rights under the Constitution, maintain the lawyers, and mental health professionals are joining them in an ingenious effort to use legal means to improve, and possibly transform, the care of the mentally handicapped.

There is nothing novel about exposés of Bedlams and snake pits; they explode from time to time, arouse an hour's outrage, and subside, leaving conditions slightly improved, perhaps. But the present sustained attack is truly new. It is directed squarely at breaking down the big state schools and hospitals that serve as custodial shel-

dark through a black neighborhood. He was found to be carrying a loaded pistol and some ammunition. For this offense, Rouse, who had a modest juvenile record, might have gotten a year in jail. Instead, owing to an enlightened penology, he was acquitted by reason of insanity; was declared a "sociopath"—a catchall word for public nuisances, which tells less about the character of the individual so labeled than about the predicament of the labelers—and was awarded an indeterminate sentence at St. Elizabeth's Hospital, the capital's big facility for the mentally ill. There he remained for 4½ years. When his efforts to get free failed in Federal District Court, his Legal Aid attorney appealed and was lucky enough to have the plea heard by Judge David Bazelon, who would here confirm his reputation as an activist jurist. Judge Bazelon sent the case back to the lower court with the injunction that it look into the question of whether Rouse had not in fact been deprived of his "right to treatment."

To represent Rouse, Legal Aid called on Charles Halpern, a freshman member of the classy Washington firm of Arnold & Porter, who had been much impressed with courses on psychiatry and the law at Yale Law School. In his courtroom debut, Halpern elaborated on the right-to-treatment concept. He pointed up the anomaly of keeping somebody confined for years on a misdemeanor with no treatment to speak of, and suggested that constitutional issues were at stake. He was denied the satisfaction or disappointment of a decision on those interesting grounds when an appellate court ordered Rouse's release because his original insanity plea had been interposed over his objection. Still, the point had been made that patients were entitled to be treated; the record had been laid out, and the argument stirred speculation in legal precincts that mental institutions need not be off limits to lawyers.

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Some of the residents of most institutions for the mentally ill have come there voluntarily, for help or safe-keeping; others have been involuntarily committed by their families or the civil authorities. Most of the 200,000 institutionalized retarded have gotten where they are on the application of someone else, usually a relative. In the past few years, a band of young lawyers has been waging a forceful attack on the treatment or nontreatment of these so-called "involuntarily institutionalized," especially those people who have been placed in large state "schools" for the mentally retarded. These citizens are being deprived of their rights under the Constitution, maintain the lawyers, and mental health professionals are joining them in an ingenious effort to use legal means to improve, and possibly transform, the care of the mentally handicapped.

There is nothing novel about exposés of Bedlams and snake pits; they explode from time to time, arouse an hour's outrage, and subside, leaving conditions slightly improved, perhaps. But the present sustained attack is truly new. It is directed squarely at breaking down the big state schools and hospitals that serve as custodial shelters for thousands rather than as treatment centers for individuals. It was only in 1960 that Dr. Morton Birnbaum, an attorney and physician, advanced the thesis in the American Bar Association Journal that persons involuntarily committed to mental institutions have a "right to treatment." His idea was received with interest, but not with action.

The issue came to life a couple of years later when one Charles Rouse, aged 17, attracted the attention of Washington, D. C., policemen, unaccustomed to seeing a white pedestrian walking after

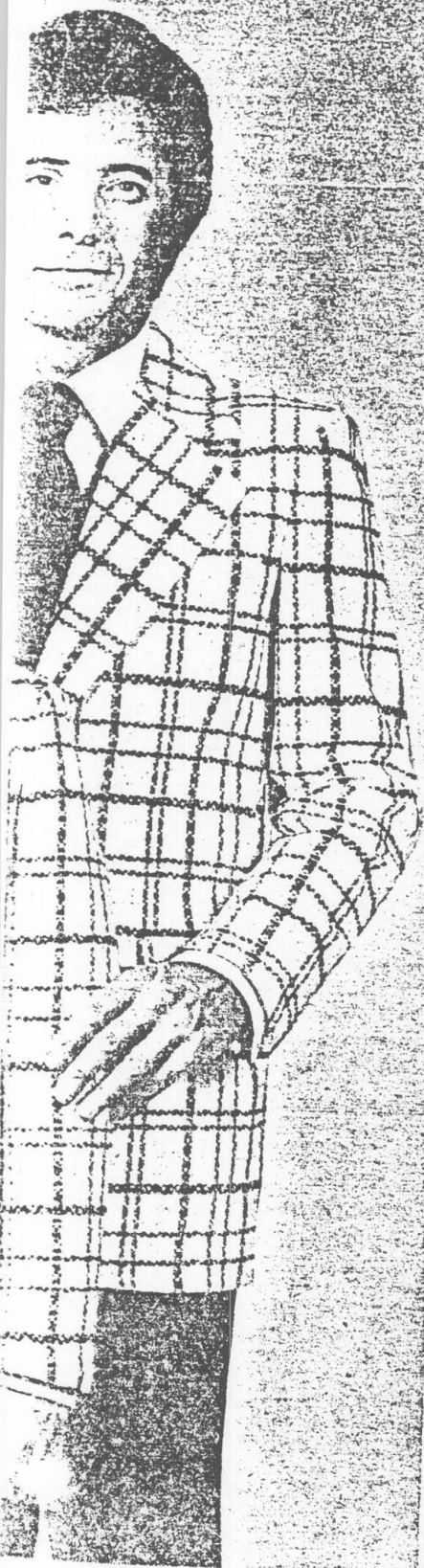
dark through a black neighborhood. He was found to be carrying a loaded pistol and some ammunition. For this offense, Rouse, who had a modest juvenile record, might have gotten a year in jail. Instead, owing to an enlightened penology, he was acquitted by reason of insanity; was declared a "sociopath"—a catchall word for public nuisances, which tells less about the character of the individual so labeled than about the predicament of the labelers—and was awarded an indeterminate sentence at St. Elizabeth's Hospital, the capital's big facility for the mentally ill. There he remained for 4½ years. When his efforts to get free failed in Federal District Court, his Legal Aid attorney appealed and was lucky enough to have the plea heard by Judge David Bazelon, who would here confirm his reputation as an activist jurist. Judge Bazelon sent the case back to the lower court with the injunction that it look into the question of whether Rouse had not in fact been deprived of his "right to treatment."

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Up to this time, there had still not been a "big" case having to do with the mentally handicapped, but in 1970, just such a case began to develop in Alabama. That fall, several score staff members who had been fired from Bryce Hospital in Tuscaloosa, one of the state's two large mental hospitals, were casting about for a lawyer to help them get their jobs back. Incidentally, they also hoped to prevent their state, whose per capita expenditure for the mentally handicapped ranked among the lowest in the nation, from further diminishing its level of care. They were drawn to George Dean, a native Alabaman of middle years, imposing mien and a flamboyant courtroom and extracourtroom manner.

Dean had never heard of Charlie Halpern or Charlie Rouse, but he had (Continued on Page 22)

Walter Goodman, a frequent contributor to this Magazine, is a freelance writer.



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ears. There's a true meeting of minds
ps 'n Twigs sportcoats. Side by side
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A patient at Alabama's Partlow State School and Hospital. After this photo was sent to state legislators, they voted to increase the appropriation for mental health services.

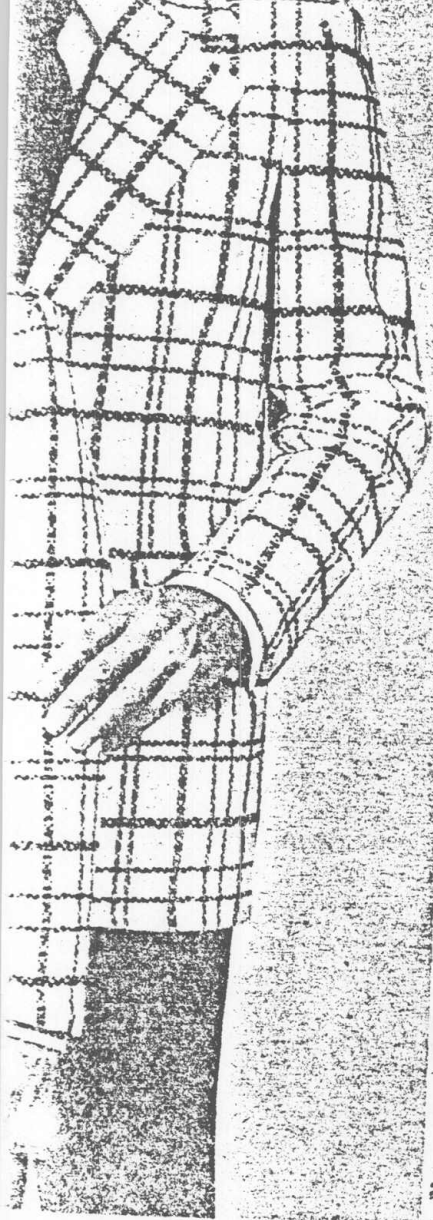
Continued from Page 21

done some reading on the developing theories of the civil rights of prisoners and other wards of the state. As his original clients went off to new jobs, he came up with a right-to-treatment argument on behalf of the inmates of Bryce Hospital, and brought it as a "class action," a favorite technique of civil-rights advocates. Instead of arguing that one individual, such as Rouse, had been deprived of his right to treatment, Dean argued that all the inmates were being deprived of their rights. The case was brought in the name of one Ricky Wyatt (whom Dean has yet to meet) "and for all others similarly situated." So even if Ricky Wyatt were discharged the next day or if his particular course of treatment were vastly improved, the case would still be carried forward to a decision.

Attorney Dean is the first to acknowledge that he does

along a newspaper photographer on his visits, on the assumption that "the judge reads the newspaper." He also liked to ask for records and have his request refused in the presence of a reporter. Most of his information on conditions inside came to him through leaks from the institution staff: "They'll tell on one another something terrible. If you catch them while they're young, before they spoil, they'll tell you anything."

The evidence that Dean collected about life at Bryce—where the lucky patients were merely ignored while the unlucky were abused—was strong enough to persuade District Judge Frank M. Johnson Jr. that the treatment programs for its 5,000 patients, most of them involuntarily committed, were inadequate. Expanding on Judge Bazelon's hint in the Rouse case, he ruled: "To deprive any citizen of his or her liberty upon the altruistic



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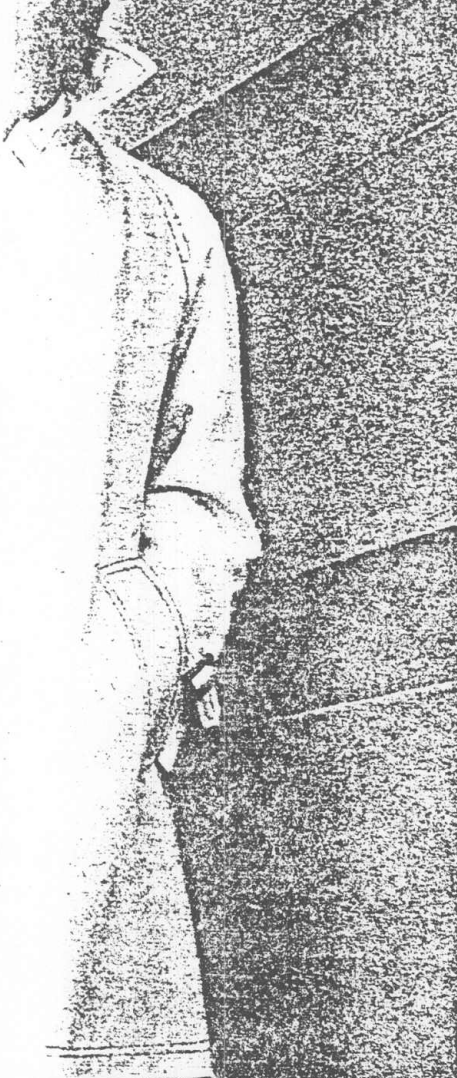
Attorney Dean is the first to acknowledge that he does not carry on his work strictly according to the forms, and his methods of assembling evidence in the Wyatt case took an unorthodox turn. Once he knocked at a hospital director's door at 2 A.M. of a Sunday, to remind the man of his invitation to "drop by any time." Dean explains: "If you give them notice, they'll clean up." It was his custom to take

along a newspaper photographer on his visits, on the assumption that "the judge reads the newspaper." He also liked to ask for records and have his request refused in the presence of a reporter. Most of his information on conditions inside came to him through leaks from the institution staff: "They'll tell one another something terrible. If you catch them while they're young, before they spoil, they'll tell you anything."

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In December, the judge viewed the hospital's respon-

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A patient at Bronx State Hospital, where a recent director "went about doing, as a matter of medical policy, precisely what the lawyers demand be done as a matter of law."

and found it sadly wanting. Here, to use the restrained language of the court rather than the more chilling descriptions of George Dean, was the situation: "... the dormitories are barnlike structures with no privacy for the patients. For most patients there is not even a space provided which he can think of as his own. The toilets in rest rooms seldom have partitions between them. . . . Also contributing to the poor psychological environment are the shoddy wearing apparel furnished the patients, the nontherapeutic work assigned to patients (mostly compulsory, uncompensated housekeeping chores) and the degrading and humiliating admissions procedure which creates in the patient an impression of the hospital as a prison or as a 'crazy house.' . . . The nonprofessional staff is poorly trained; nurses, for example, are required to have only a 10th grade education. . . . The nonprofessionals are spread very thinly; thus, they are overworked, creating not only an inadequate situation for the patients but extreme stresses for individual aides. . . . Bryce's own consultant advises that treatment is geared primarily toward housekeeping functions. . . ." The description fits state hospitals in many places outside Alabama.

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Among the lawyers representing these amici were Charles Halpern, who in 1966 had been instrumental in setting up the Center for Law and Social Policy, designed to give "systematic attention" to subjects that public-interest lawyers were treating on a hit-and-miss basis; Paul Friedman, a Yale Law School graduate whom Halpern had recruited for the center with a view to enhancing its efforts in the mental health field; and Bruce Ennis, a University of Chicago Law School graduate who had left a Wall Street law firm in 1968 to head up a mental health law effort being started by the New York Civil Liberties Union.

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By now the case had grown and attracted attention around the country. The Bryce plaintiffs had been joined by inmates at Alabama's other state institution for the mentally ill, Searcy Hospital, and at the Partlow State School and Hospital, which houses the retarded. Judge Johnson invited the U. S. Justice Department to be *amicus curiae*, friend of the court, and it

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These three young lawyers—Halpern with his estimable black beard, Friedman with his reddish-tinged Afro, Ennis with his friendly mustache—shared more than a generational accord on hair. All had done prestigious service clerking for Federal judges; all were committed to public law, and all were fascinated with the possibilities being opened up by Wyatt. In January, 1972, while they were working on that case, they

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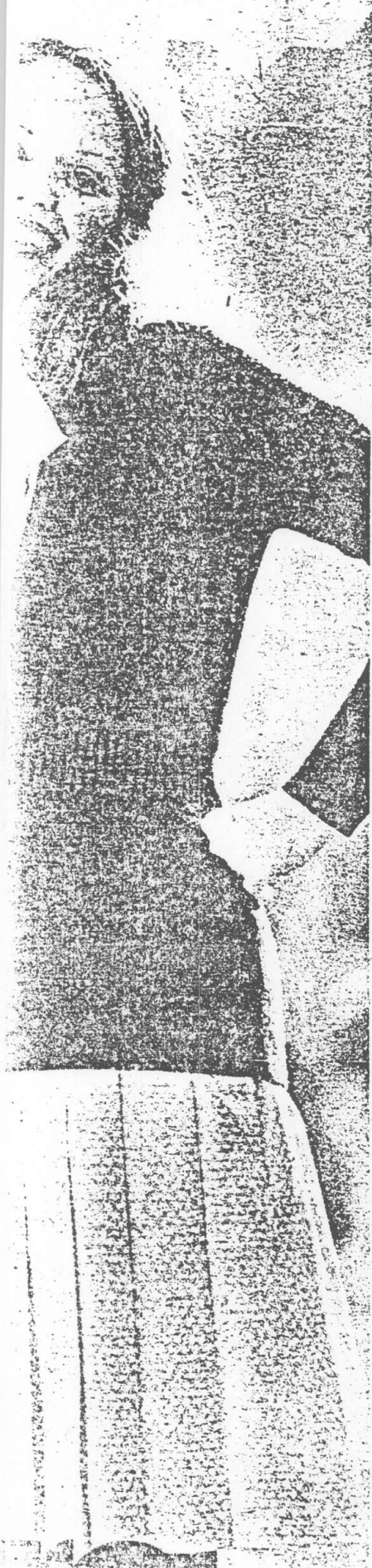
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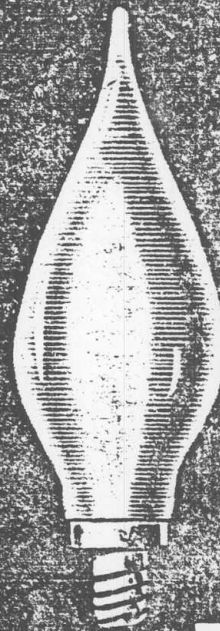
organized the Mental Health Law Project, with the goal of developing a cadre of lawyers to specialize in the field, bring test cases and educate the public, state legislatures and Congressional committees.

Back in Alabama, in February, 1972, the Partlow State School and Hospital came under special scrutiny, and the lawyers' attention turned to the mentally retarded. Dr. Phillip Roos, executive director of the National Association for Retarded Children, paid a visit to Partlow and told the court what he found there. Roos proved to be less troubled by the cockroaches, the broken toilet seats, the "training" that involved cattle prods and the girl who spent her waking hours in a wooden cage than he was by the pervasive belief among the ill-trained attendants that their charges were totally incapable of learning or developing: "The conditions at Partlow today are generally dehumanizing, fostering deviancy, generating self-fulfilling prophecies of parasitism and helplessness. The conditions, I would say, are hazardous to psychological integrity, to health, and in some cases even to life."

In March, Judge Johnson issued an emergency order that the state hire 300 more attendants at Partlow within 30 days, repair the fire hazards, begin a disease immunization program, change the methods of preparing food to avoid "massive contamination," and return as many inmates as possible to their parents and guardians as part of a process of "normalization." In April, he handed down detailed minimum standards for all three institutions, which had been worked out by a group of assembled experts. There proved to be few differences between experts for the state and experts for the plaintiffs as to what constituted minimum adequate treatment—and no one claimed that this existed in any state institution.

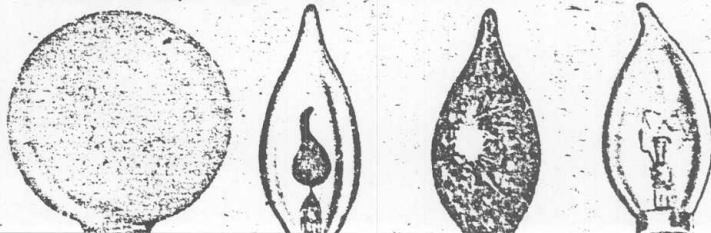
The Alabama Mental Health

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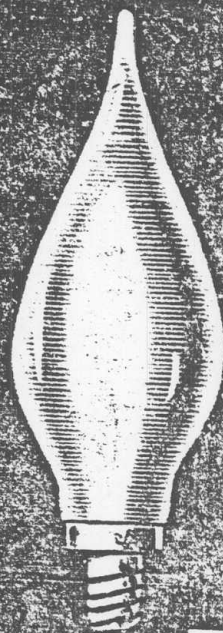


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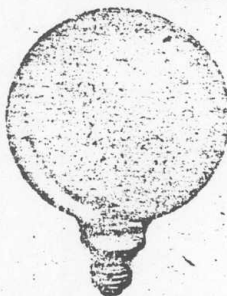
The Alabama Mental Health Board and Gov. George Wallace have appealed Judge Johnson's decision. They argue that no Federal court has the power to tell a state how to allocate its resources. Wyatt has been consolidated with a recent Georgia case, in which a district judge ruled that there is no constitutional right to treatment—thereby putting the issue squarely before the Court of Appeals for the Fifth Circuit. (The three-judge appellate panel sitting

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1. CHOCOLATE-CHEESE
Vandermint, 8 oz. cream cheese,
1/2 lb. (4-1/2 oz.) instant
pudding. Beat smooth. Spoon into
cups. 1-1/4 cup
Vandermint. 1/3 cup soft butter.
Pour 2 oz.
of ice in champagne
glass. **2. ALEXANDERS**
1/2 oz. Gin and
Vandermint. Strain into
glass. **3. VANDERMINT & ICE**
1/2 cup cream into dessert
dish. 5 VANDERMINT
drops. Pour 1 part

6. VANDERMINT PARFAIT: Alternate
Vandermint and scoops of pistachio, chocolate,
coffee ice cream in parfait glass. Top with whipped
cream, splash Vandermint. **7. VANDERMINT-
MOUSSE:** Mix in blender 6 oz. semi-sweet choco-
late pieces, 1/2 cup Vandermint. Blend. Add 1/4 lb.
soft butter (in pieces), 4 egg yolks. Beat. Beat
4 egg whites, 2 Tbsps. confectioners sugar
till stiff. Fold into Vandermint mixture.
Pour into dish lined with Vandermint-
dipped ladyfingers. Chill. **8. VANDERMINT
FONDUE:** Melt 6 oz. semi-sweet
chocolate pieces. Stir in 1 cup sour cream,
1/2 cup Vandermint. Serve warm.

Dip strawberries,
cookies.
**9. DUTCH
COFFEE:**
Pour jigger
of Vander-
mint into
cup. Add
hot coffee.
Top with
whipped
cream.
**10. VAN-
DERMINT
STRAIGHT**



in New Orleans consists of John Minor Wisdom, former Mississippi Gov. James P. Colman, and Griffin Bell. They have been pondering the case for more than a year.)

Although the constitutional issue remains up in the air for the time being, striking changes have already taken place in Alabama as a result of the Wyatt ruling and the follow-up hearings. The state's Commissioner of Mental Health has been replaced. The number of patients at the three institutions has been cut almost in half, from about 10,000 to about 5,000. There are no more straitjackets, no more solitary confinement, much less filth. The annual budget for patients in Alabama's three institutions has more than doubled, bringing the state rapidly up the national list for per-capita expenditures on the mentally disabled. When the state complained that it could not find the cash to pay for the required improvements, George Dean drew public attention to the sums set aside in the state budget for such events as the Junior Miss Pageant and the yearly Swine Show. A day before Alabama's legislators were called on to vote for an increased mental-health appropriation, Dean sent each of them a picture of a girl in a straitjacket, flies visible on her mouth and face. "That's part of our case." The legislators came through.

In addition to its other innovations, Wyatt drew attention to the situation of the institutionalized mentally retarded. Having committed no crime, representing no menace to society, many have for all practical purposes been sentenced to indeterminate confinement in so-called schools where they receive precious little schooling, where they are worked without pay, where they may be subjected to experiments of various sorts. By and large, this has been done with the best of intentions, but as Paul Friedman realized during the hear-

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7. CHOCOLATE-CHEESE

Vandermint, 8 oz. cream cheese
1/2 cup (4-1/2 oz.) instant
potato starch. Spoon into
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8. VANDERMINT ALEXANDER

1 oz. Gin and
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9. VANDERMINT & ICE

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in the back of the bus even
as far as the mentally handi-
capped are concerned."

Dr. Roos emphasizes that
the mentally retarded share
basic human needs for pri-
vacy, affection, dignity that
are hard to come by in the
places where they are stored,
with their assembly line meals,
car-wash showers, and no
privacy whatever. The ar-
rangements work against the

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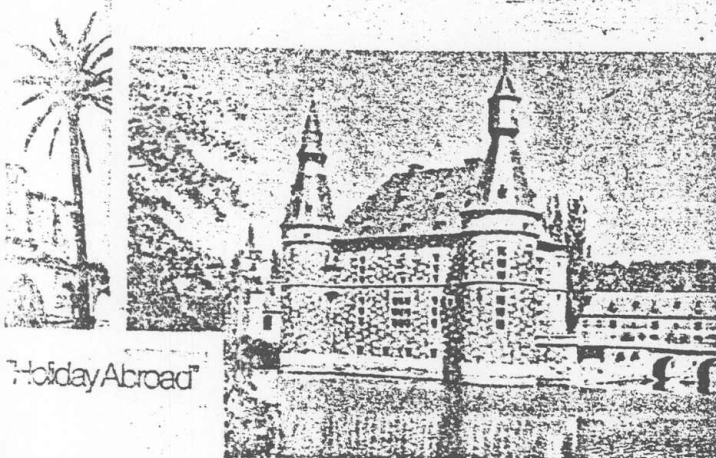
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development of personality and independence and have the effect of dooming the more salvageable to steadily deteriorating lifetimes in the institutional mode.

In March, 1972, as the Wyatt case was moving along, Bruce Ennis and Robert L. Feldt of the Legal Aid Society filed a challenge to the adequacy of care at one of the more infamous warehouses for the mentally retarded, Willowbrook State School on Staten Island. Over the years, Willowbrook has attracted its share of exposés, all shocking, all failing to effect permanent improvements in the crowded, dirty conditions or the haphazard handling of patients. After paying a visit to confirm for himself the testimony he had been hearing about inadequate food, more than adequate filth, neglect by the staff and downright cruelty, Judge Orrin G. Judd ordered Willowbrook to do better, particularly in providing medical care, hiring attendants and fixing the toilets. Although Judd reserved judgment for the time being on the argument that the retarded have a right to treatment, Ennis characterizes this April, 1973, ruling, with no intended play on words, as a sweeping decision. It was to check on its implementation that he paid an unannounced visit to Willowbrook last Thanksgiving Day.

Trailed by his wife, a young colleague from the Civil Liberties Union, and me, Ennis spent three hours doing spot checks—a ward for babies, all stick limbs and bedsores, blindness and deformity; one for disabled children, some molded into incredible yoga-like positions; one for young girls and adolescent boys, a few racing from wall to wall, many scarcely moving, others drifting about in their private worlds. Everywhere the TV was on—baton twirlers and marching bands, young America brimming with energy, bursting with health, going ignored in rooms where other young Americans lay on floors

on his last visit, four months before, there had been no toys in use. Ennis checked the toilets, which had been in bad disrepair his last time around. He flushed them one after the other, and they worked. In only one ward, with stopped-up drains and non-operating sinks, did he have to slosh through urine to do his inspecting. He looked into the rooms that had served for solitary confinements before the court order. Now, there is a notice on all the bulletin boards: SECLUSION, THE PLACING OF A RESIDENT ALONE IN A LOCKED ROOM, SHALL NOT BE USED.

The biggest change since Ennis's last visit was a reduction in numbers. The formerly packed dormitories now seemed almost spacious—although a ward for spastic children was still crowded enough so that in order to spoon medicine to a child in a crib, an attendant had to step over the head of another on a mat on the floor. The patient population at Willowbrook has dropped from over 5,000 to about 3,700 in a matter of months, with about 200 more people due to be moved soon to Kings Park State Hospital in Suffolk County; and the staff has been increased in an effort to meet the court-ordered ratio of one attendant on duty for every nine residents. (An F. B. I. check in November found that more than a third of the wards were still not down to the required ratio.) One supervisor told Ennis that attendants were being hired without real screening—"They're taking anything that walks"—and were bringing into Willowbrook alcoholism and drug addiction along with ordinary incompetence. This informant, who sought repeated assurances of confidentiality, was not impressed by the apparent upgrading—"The answer is to get rid of Willowbrook."

Ennis concurs. Still, he left the place that day ready to report to the court that it seemed to be complying pretty well with the orders regarding cleanliness and so

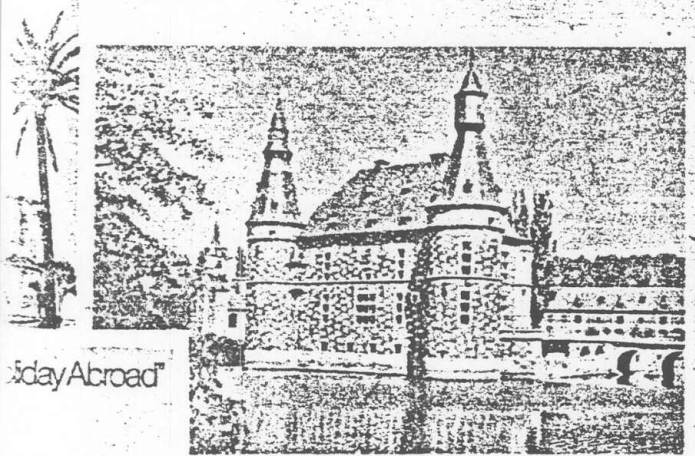
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Everywhere, Ennis asked about ongoing therapy. He was glad to see a few puzzles and sets of blocks and beads being manipulated successfully by some teen-aged girls;

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Ennis concurs. Still, he left the place that day ready to report to the court that it seemed to be complying pretty well with the orders regarding cleanliness and seclusion rooms, and with evidence for the next stage of the case of *The New York State Association for Retarded Children, et al. v. Rockefeller*, when he will be asking for real therapy programs in addition to decent custodial care. With the help of allied experts, he will try to show that the mentally retarded require very different kinds of attention than

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everyone is trying to keep up with us.



that available at places like Willowbrook, even when cleaned up.

In addition to their successes in New York and Alabama, advocates of the rights of the mentally handicapped are heartened by other evidence that the movement seems to be catching on. A few weeks ago, the Civil Rights Division of the Justice Department headed by Assistant Attorney General J. Stanley Pottinger (Halpern calls it "the one source of light in the Justice Department") brought a test case, charging that the Rosewood State Hospital in Maryland is depriving inmates of a variety of constitutional rights. This is the first such case to be brought in the name of the U.S. Government.

Pottinger also took the unusual step of asking the court to admit the Justice Department as *amicus* in the Willowbrook case, with permission to use the F. B. I. to gather and present testimony in behalf of the plaintiffs. Thus, in the trial to come this spring, the weight of the Federal Government will be on the side of the retarded.

The American Bar Association has set up a Commission on the Rights of the Mentally Disabled, adding new respectability to the cause, and the Mental Health Law Project, operating out of a pair of buildings on N Street, N.W., in Washington and an office in New York City, has been generating cases at a vigorous rate, as well as participating in or influencing or just being encouraged by other people's cases.

Project lawyers are able to point to a number of recent court decisions:

■ That indefinite confinement of a mentally retarded person who has been found incompetent to stand trial is

a violation of his right to due process.

■ That an involuntarily hospitalized patient who was not granted treatment could claim damages from the institution where he had been confined—and the damages could be assessed *personally* against hospital officials.

■ That an institutionalized patient's "consent" to experimental brain surgery is not legally valid because of the inherently coercive atmosphere of the institution.

■ That sterilization operations cannot be performed on inmates of a mental institution unless they are safeguarded by "the full panoply of constitutional protections."

■ That a mental patient cannot be forced to accept nonemergency medical treatment if he or she objects on religious grounds.

■ That patient-workers at institutions for the mentally handicapped are entitled to compensation under provisions of the minimum wage law.

■ That retarded children have a right to free public education just like other children.

So the fight is being pressed on several fronts, and the mental-health lawyers intend to keep up the pressure. "Up to now," Paul Friedman says, "we've been huddling together for warmth in a cold world." But as favorable court rulings have come down, the world has been turning less cold. Meetings on legal rights of the mentally handicapped, under auspices of the Project and the Practicing Law Institute, have recently been held around the country. The series reached a thousand lawyers, who, Friedman hopes, will raise the number of court actions from 30 to 300 in a year.

So far, the major cases





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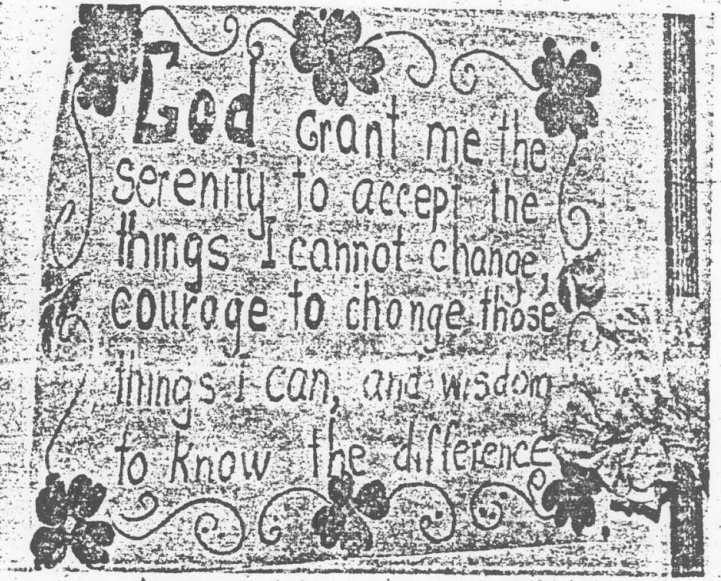
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So far, the major cases



A wall poster at Searcy Hospital in Alabama.



Madeline Cammarato, right, a former Willowbrook resident, now lives with the George Testa family of Staten Island. She remains an outpatient at Willowbrook.

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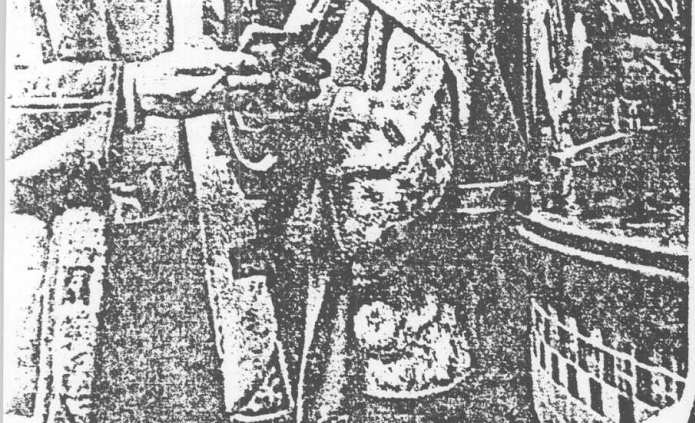


*After all,
if smoking
isn't a pleasure,
why bother?*

have been directed against admittedly inferior institutions, like Willowbrook and Bryce. Better institutions do exist—for example, Bronx State Hospital, whose recent history is instructive. In October, 1966, Dr. Israel Zwerling took over as director of Bronx State with the understanding that he was to change it from a custodial hospital to an active treatment hospital. He went about doing, as a matter of medical policy, precisely what the mental-health lawyers demand be done as a matter of law. Between 1966 and 1972, the number of psychiatrists at Bronx State—which has about 800 inpatients and more than 3,000 outpatients—was increased from 21 to 52; the number of psychologists from 6 to 40; the number of social workers from 13 to 70. Dr. Zwerling, who left Bronx State last fall (the current director is Dr. Hugh F. Bufts) was dedicated to getting patients out of his hospital and back into some sort of real life. The median length of stay for a patient at Bronx State dropped from more than 15 months to about 7 weeks during his tenure. He was sufficiently in tune with the legal attack on custodial institutions to testify for the plaintiffs in the Alabama case. As the presence of the American Psychiatric Association and the American Psychological Association among amici suggests, an interdisciplinary alliance of lawyers and doctors has been created on this issue. One psychiatrist remarks: "I can't imagine anybody disagreeing with the point that for men-

brought recently what they hope will prove a model case against St. Elizabeth's Hospital. Taking note of a study by the National Institute of Mental Health, which concluded that two-thirds of St. Elizabeth's thousand involuntarily confined patients are not dangerous to themselves or to others, the lawyers are arguing that the rights of these people to liberty and care must be met in "the least restrictive setting"—that is, in nursing homes, foster homes and halfway houses. George Dean insists: "The Government must operate with its lightest hand." If that line of argument carries, the day of the big mental institution may be over—a consummation devoutly to be wished, in the view of mental health professionals such as Walter Fox, Arizona's Assistant Commissioner of Mental Health and a favorite expert witness for the plaintiffs: "I'd like to see these big institutions shut up and a lot of little ones set up, with completely new staffs. After 20 years staff people get trapped; some can't even be kind." (In one ward at Willowbrook, we came upon a birthday party for a staff member. About eight attendants were cutting a cake for themselves, as 50 young patients looked silently on.)

Should the mental health lawyers succeed in breaking down the big institutions, we shall be faced with a challenge that no one quite knows how to meet. As the Project's Patricia Wald observes, "All you do in our kind of litigation is break the logjam. What happens then, you can't



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Alive pleasure!



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Lest their efforts be written off as merely ameliorative, just patching up institutions that can only further the debilitation of the people in their custody, the Mental Health Law Project lawyers

brought recently what they hope will prove a model case against St. Elizabeth's Hospital. Taking note of a study by the National Institute of Mental Health, which concluded that two-thirds of St. Elizabeth's thousand involuntarily confined patients are not dangerous to themselves or to others, the lawyers are arguing that the rights of these people to liberty and care must be met in "the least restrictive setting"—that is, in nursing homes, foster homes and halfway houses. George Dean insists: "The Government must operate with its lightest hand." If that line of argument carries, the day of the big mental institution may be over—a consummation devoutly to be wished, in the view of mental health professionals such as Walter Fox, Arizona's Assistant Commissioner of Mental Health and a favorite expert witness for the plaintiffs: "I'd like to see these big institutions shut up and a lot of little ones set up, with completely new staffs. After 20 years staff people get trapped; some can't even be kind." (In one ward at Willowbrook, we came upon a birthday party for a staff member. About eight attendants were cutting a cake for themselves, as 50 young patients looked silently on.)

Should the mental health lawyers succeed in breaking down the big institutions, we shall be faced with a challenge that no one quite knows how to meet. As the Project's Patricia Wald observes, "All you do in our kind of litigation is break the logjam. What happens then, you can't predict. All you can do is hope it goes the right way." The right way, these amici—doctors and lawyers united—agree is to replace the Willowbrooks of the land with many smaller, diverse alternatives. Unfortunately, the

(Continued on Page 37)

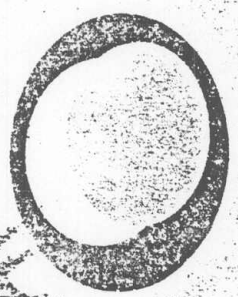
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Continued from Page 34

nursing homes, foster homes and halfway houses that might bring some patients a little closer to some sort of noninstitutional life scarcely exist around the country today. So the legal victories have a dark side; the forced reduction of patient populations in state hospitals means that unprepared people are being dumped onto unprepared communities. The predictable consequences have been profits for operators of inadequate facilities; worries for residents of Queens, Brooklyn and other dumping grounds, and opportunities for politicians to make scare pronouncements. "The snake pits are being transferred from the institutions to the neighborhoods," declared Queens Borough President Donald R. Manes recently. And it may be taken as an omen that the city fathers of Long Beach, L. I., passed an ordinance a few weeks ago banning persons in need of "continuous" psychiatric, medical or nursing care from its hotels and boarding houses; the measure is aimed directly at the hundreds of people who have recently been released from the state's Hoch Psychiatric Hospital in West Brentwood and have no place better to go.

Nevertheless, the movement is on to make the Willowbrooks and St. Elizabeths more like Bronx State or eliminate them altogether. Its final outcome will rest less with the courts than with the citizens who will have to pay for new facilities and perhaps grow accustomed to accepting the mentally handicapped into their towns and neighborhoods. The costs may be high, and there are no guarantees of success; this is a field that contains far more expertise than certain knowledge.

Yet do we have a choice? Dr. Roos accuses us of dismissing the mentally retarded and the mentally ill as somehow less human than ourselves. The big state hospi-





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Yet do we have a choice? Dr. Roos accuses us of dismissing the mentally retarded and the mentally ill as somehow less human than ourselves. The big state hospitals, even where they have not stunted their charges and demoralized their staffs, stand as monuments to our fears of these strange people inside. By hiding them away, attempting to break the connection between us, we deny their humanity and reject our own. The mental-health lawyers are compelling us to find the means to bring as many of them as possible back among us. We have reason to be grateful, for our own sakes. ■



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