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A Call for Minds: The Unknown Extent of Societal Influence on the Legal Rights of Involuntarily and Voluntarily Committed Mental Health Patients

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I. INTRODUCTION

Regrettably, our society stigmatizes mental illness[1] and the law is a profoundly social institution. Thus, the societal bias against mental illness likely infiltrates the minds and decision-making of lawyers, mental health experts, judges, and juries.[2] In other words, justice may not be so blind when weighing the case of a mentally ill person.

As of yet, no one seems to understand the extent to which the social stigma against the mentally ill influences decisions of players in the legal system. In order to understand and make improvements, more empirical research must be done to understand the connection between societal views of mental illness and the legal system. Undoubtedly, societal views and the legal system play off of each other with some measure of feedback, but the amplitude remains uncertain.

This article focuses on one small area of mental health law to demonstrate the need for further research into the behavioral response of legal players to the changing social perceptions of mental illness. Specifically, this article discusses the circumstances under which a voluntarily committed mental health patient deserves the same protections from the State as an involuntarily committed patient pursuant to the Fourteenth Amendment Due Process Clause.[3] Currently, the federal circuit

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1. In response to the common occurrence of discrimination against the mentally ill, the federal government provides resources to the public. *See, e.g.*, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN.'S NAT'L MENTAL HEALTH INFO. NETWORK, RIGHTS AND PROTECTION AND ADVOCACY (2003), http://mentalhealth.samhsa.gov/publications/allpubs/P&A/default.asp.

2. *See* MICHAEL L. PERLIN, THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL 24-25 (2000).

3. U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law.").

courts disagree about whether *all* mentally ill patients committed to institutions deserve the same constitutional protections.[4] Part II provides a condensed background about commitment to mental institutions and societal reaction. Part III describes the disagreement among the federal circuits and explains that the inconsistencies rest in large part upon malleability of factors and the influence of popular sentiment on the legal process. Part IV asserts the need for empirical evidence in order to uncover the connection between popular views of mental illness and the abrogation of rights endowed to the mentally ill.

II. BACKGROUND

In order to understand what protections the State may owe to individuals committed to mental institutions, some background about commitment must be imparted. For instance, one must appreciate the role mental institutions play in society and how people are institutionalized. Certainly as social values change over time, the role that mental institutions play in society changes to fit those new conceptions.

A. The Basics of Commitment

During any given year, about twenty percent of the adult American population experiences mental illness.[5] Mental institutions serve an important social purpose when operated as intended. When out-patient treatments are insufficient to temper episodes of serious mental illness, mental institutions both treat a person's mental illness and ensure the safety of that person and society at large.[6] These two goals match up with two related powers of the State: parens patriae and police powers.[7] Parens patriae is the State's power to protect individuals while the State's police power allows the State to enforce civility by restraining individuals disrupting the peace.[8]

There are two ways to enter a mental institution: voluntarily or involuntarily. On the surface, there appears to be a clear dichotomy—either a person enters an institution according to his or her will or against it—but the distinction is not always so clear.[9] Voluntariness of commitment exists

4. *See infra* Part II.

5. U.S. DEP'T. OF HEALTH & HUMAN SERVICES, *The Fundamentals of Mental Health and Mental Illness*, *in* MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL (1999) *available at* http://www.surgeongeneral.gov/library/mentalhealth/home.html (last visited Mar. 16, 2009).

6. *See* RALPH REISNER ET. AL., LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS 676-78 (4th ed. 2004).

7. *See generally id.*

8. *Id.*

9. However, one commentator identifies eight types of commitment to mental health

as a continuum with involuntary at one pole and voluntary at the other. Signing an informed consent waiver does not necessarily mean that a person freely decided to admit himself for treatment.[10] Third party commitment by a legal guardian, which commonly occurs for minors, further complicates the differentiation between involuntary and voluntary commitment.[11] Additionally, the degree of voluntariness may change as circumstances evolve over time.[12] Even those individuals who arguably choose to enter a hospital or mental institution are often coerced to stay longer than they wish or to undergo treatment procedures without consent, thus creating situations of involuntary commitment.[13] As well, a voluntarily admitted patient who wishes to leave earlier than the facility administrators think prudent may be held temporarily in anticipation of involuntary commitment.[14] Therefore, a person may start out voluntarily committed, become involuntarily committed, or be in a situation that equates to involuntary commitment.[15]

B. Involuntary Commitment Procedure

State law governs civil commitment proceedings and each state defines the law in its own way. Illinois law defines mental illness as "a mental or emotional disorder that substantially impairs a person's thoughts,

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institutions: informal commitment (the only truly voluntary type), voluntary commitment, third party commitment, short-term-commitment, extended commitment, outpatient commitment, criminal commitment, and recommitment. John Parry, *Involuntary Civil Commitment in the 90s: A Constitutional Perspective*, 18 MENTAL & PHYSICAL DISABILITY L. REP. 320, 321-22 (1994).

10. *See* Zinermon v. Burch, 494 U.S. 113, 136 (1990) ("It is hardly unforeseeable that a person requesting treatment for mental illness might be incapable of informed consent, and that state officials with the power to admit patients might take their apparent willingness to be admitted at face value and not initiate involuntary placement procedures.").

11. *See, e.g.*, 2 N.J. PRAC., COURT RULES ANNOTATED R 4:74-7A (2009) (allowing a parent to consent to the admission of a minor as long as an independent medical authority agrees; but if the minor disagrees then the court will appoint a guardian ad litem for civil commitment proceedings).

12. *Cf.* Monahan v. Dorchester Counseling Ctr., 961 F.2d 987, 992 (1st Cir. 1992) (differentiating an involuntary state bar against leaving a facility from a person's inability to leave because of an impairing mental condition).

13. *See* 1 Michael L. Perlin, *Mental Disability Law* § 2C-7.2 at 482-83 (2d ed. 1998).

14. *See* Sarah C. Kellogg, Note, *The Due Process Right to a Safe and Humane Environment for Patients in State Custody: The Voluntary/Involuntary Distinction*, 23 AM J.L. & MED. 339, 342 (1997). *See also* 50 PA. STAT. ANN. § 7206(a) (West 2002).

15. *See* United States v. Pennsylvania, 832 F. Supp. 122, 124 (E.D. Pa. 1993) (explaining how a voluntary commitment may become involuntary through state action to restrain liberty through the use of restraints on a patient). The lack of autonomy affiliated with situational involuntary commitment is analogous to nursing home residents who may, with their physician's permission, be physically or chemically restrained "to ensure the physical safety of the resident or other residents." 42 U.S.C.A. § 1396r(c)(1)(A)(ii) (West 2006).

perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life."[16] The definition of mental illness, however, excludes "developmental disability, dementia or Alzheimer's disease absent psychosis, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct."[17]

The process of involuntary civil commitment for mental illness usually begins with a petition to the state court filed by a family member or mental health professional. Often, the defendant in the case already resides in a treatment facility for temporary observation or for a prior episode of involuntary commitment.[18] After the proper notice is given to the defendant, the court conducts a hearing.[19]

As articulated by the U.S. Supreme Court in the 1970s and continuing to this day, the states have the power to commit a mentally ill individual on the basis of "dangerousness to self, dangerousness to others, and the need for care of treatment and training."[20] However, no steadfast definition of dangerousness exists to guide the courts.[21] Usually, the courts find the need for civil commitment if an "imminent danger" exists.[22] Naturally, courts rely upon mental health experts for predictions about when dangerousness might erupt in a person.[23] At least one mental health professional testifies at

16. 405 ILL. COMP. STAT. ANN. 5/1-129 (LexisNexis 2009).

17. *Id.*

18. *See* 405 ILL. COMP. STAT. ANN. 5/3-704(a) (LexisNexis 2009).

19. *See, e.g.,* 405 ILL. COMP. STAT. ANN. 5/3-706.

20. Jackson v. Indiana, 406 U.S. 715, 727-30 (1972) (applying due process principles to civil commitment); O'Connor v. Donaldson, 422 U.S. 563, 573-76 (1975) (prohibiting state confinement for mental illness without a component of dangerousness).

21. For some perspective, an Illinois court may impose involuntary admission to a treatment institution if the defendant is a "[p]erson subject to involuntary admission," which refers to:

> (1) A person with mental illness and who because of his or her illness is reasonably expected to inflict serious physical harm upon himself or another in the near future which may be threatening behavior or conduct that places another individual in reasonable expectation of being of being harmed; or
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> (2) A person with mental illness and who because of his or her illness is unable to provide for his basic physical needs so as to guard himself or herself from serious harm without the assistance of family or outside help.
>
> (3) A person with mental illness who, because of the nature of his or her illness, is unable to understand his or her need for treatment and who, if not treated, is reasonably expected to suffer or continue to suffer from mental deterioration or emotional deterioration, or both, to the point that the person is reasonably expected to engage in dangerous conduct.
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> 405 ILL. COMP. STAT. ANN. 5/1-119 (LexisNexis 2009). In reaching a decision, "the court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness." *Id.*

22. *See* Richard I. Simon, *The Myth of "Imminent" Violence in Psychiatry and the Law*, 75 U. CIN. L. REV. 631, 635 (2006).

23. *Id.* at 635-36.

the hearing to share his or her expert opinion.[24] The expert testifies, based on a professional evaluation of the respondent's past actions and expressions, that the defendant should be placed in a mental institution as a result of acute mental illness.[25] Yet even the experts know that predicting behavior is far from an exact science.[26] Regardless of this doubt, the testimony provided by medical experts usually demonstrates a "clear and convincing" need for commitment that is sufficient for a judge to impose involuntary treatment.[27]

Unlike criminal proceedings, in which the Sixth Amendment Confrontation Clause applies, the defendant in a civil commitment proceeding lacks the right to face his accusers.[28] This makes sense because, in the balance of interests, the individual's interest in an adversarial hearing does not outweigh the State's financial burden of administration.[29] In reality, civil commitment hearings have almost entirely lost their adversarial quality.[30] Indeed, some scholars argue that mediation should replace courtroom hearings in order to promote the therapeutic goals of the patient and the protective nature of commitment.[31]

After ruling in favor of civil commitment, the court must fashion the parameters of the commitment based on the alternative treatments available.[32] Typically, "state statutes require the committing authority to consider dispositions other than hospitalization in a mental institution."[33] The requirement became known as the least restrictive alternative test

24. *See, e.g.*, 405 ILL. COMP. STAT. ANN. 5/3-807 (LexisNexis 2009) ("No respondent may be found subject to involuntary admission unless at least one psychiatrist, clinical social worker, or clinical psychologist who has examined him testifies in person at the hearing. The respondent may waive the requirement of the testimony subject to the approval of the court.").

25. *Id.*

26. Simon, *supra* note 22, at 640 (drawing an analogy between psychiatry and weather forecasting).

27. *See* Addington v. Texas, 441 U.S. 418, 431-33 (1979).

28. Youngberg v. Romeo, 457 U.S. 307, 321 (1982).

29. *Id.*

30. Joseph Frueh, Note, *The Anders Brief in Appeals from Civil Commitment*, 118 YALE L.J. 272, 300-15 (2008) (suggesting stricter standards of accountability in order to combat laziness by civil commitment defense attorneys).

31. *See* John Ensminger & Thomas Liguori, *The Therapeutic Significance of the Civil Commitment Hearing: An Unexplored Potential*, 6 J. PSYCHIATRY & L. 5, 21 (1978); Joel Haycock, David Finkelman, & Helene Presskreischer, *Mediating the Gap: Thinking About Alternatives to the Current Practice of Civil Commitment*, 20 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 265, 279-82 (1994); Bruce J. Winick, *Therapeutic Jurisprudence and the Civil Commitment Hearing*, 10 J. CONTEMP. LEGAL ISSUES 37, 52-53 (1999).

32. *See, e.g.*, 405 ILL. COMP. STAT. ANN. 5/3-810 (LexisNexis 2009).

33. RALPH REISNER ET AL., LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS 746 (4th ed. 2004).

(LRA) and is thought to infringe the least upon due process rights.[34] Despite the alternatives to institutional commitment, many states have loosened their laws regarding civil commitment in order to make inpatient, rather than outpatient, treatment more common.[35]

A great deal has been said about how far the State should go with its power to commit mentally ill individuals to institutions. However, little attention has been paid to the duty that the State owes to individuals committed to mental institutions.

C. Conflicting Perceptions of Mental Illness

Rare and sensational events such as the Virginia Tech Massacre[36] or the shooting on the campus of Northern Illinois University[37] can overshadow the true nature of mental illness in the United States.[38] These events feed into the stereotype that the mentally ill are dangerous.[39] Society's negative misconceptions ostracize the mentally ill as inferior "others" undeserving of empathy.[40] Left unchecked, the negative stereotypes turn into a self-prophesying stereotype.[41]

No matter how uncommon the occurrence, "publicly salient events such as a heinous murder of an innocent victim at the hands of a discharged mental health patient. . .may have the effect of increasing the rate of commitments."[42] Indeed, the law in Virginia loosened its criteria for civil

34. *See id. But see* Alison Pfeffer, *"Imminent Danger" and Inconsistency: The Need for National Reform of the "Imminent Danger" Standard for Involuntary Civil Commitment in the Wake of the Virginia Tech Tragedy*, 30 CARDOZO L. REV. 277, 301-03 (2008) (opposing the least restrictive alternative test because it would allow dangerous, mentally ill people, like Seung-Hui Cho, to live in society).

35. *See* TREATMENT ADVOCACY CTR., STATE STANDARDS FOR ASSISTED TREATMENT: STATE BY STATE CHART 2-8 (2008), http://www.treatmentadvocacycenter.org/storage/tac/documents/new_the_updated_state_standards_chart.pdf (charting each state's civil commitment statutes for mental illness).

36. As a testament to the poignancy of the event, a Westlaw search of ["Virginia Tech" and "Seung-Hui Cho"] within "All News" under the news database before February 14, 2009 resulted in 5773 hits.

37. Shortly following such occurrences, the media usually presents mortifying stories from survivors and heart-wrenching descriptions of the innocent people harmed. *See, e.g.*, Susan Saulny & Jeff Bailey, *Grief and Questions after Deadly Shootings*, N.Y. TIMES, Feb. 16, 2008, at A13 (detailing witness reactions to the shooting at Northern Illinois University by a University of Illinois-Urbana graduate student).

38. U.S. DEP'T. OF HEALTH & HUMAN SERVS., *Introduction and Themes*, *in* MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 3, 8 (1999) *available at* http://www.surgeongeneral.gov/library/mentalhealth/home.html (last visited Mar. 16, 2009).

39. *Id.* at 7 (comparing surveys from 1950 and 1996 that show an increased ability to recognize mental illness but also an increased stigma of violence attached to mental illness).

40. *See* PERLIN, *supra* note 2, at 21-23.

41. *Id.* at 8.

42. R. Michael Bagby & Leslie Atkinson, *The Effects of Legislative Reform on Civil Commitment Admission Rates: A Critical Analysis*, 6 BEHAV. SCI. & L. 45, 46 (1988).

commitment after the Virginia Tech Massacre.[43] While the courts are considered more tempered in their reaction than the legislature, the legal system is made of human beings who are subject to social pressures just like anybody else. Lawyers, mental health experts, and even judges are not immune to the influence of popular sentiment.[44] Anecdotally, commitments in Washington increased by nearly 100% after an individual denied admission to a state hospital perpetrated a double homicide.[45]

Dealing with mental illness is unlike most conflicts solved through the justice system because civil commitment procedures are not intended to assign moral blame and punishment but to determine need for mental treatment and rehabilitation. However, civil commitment does force individuals to lengthy confinement.

D. Rights of the Involuntarily Committed Defined by Youngberg and DeShaney

Upon admission to a state mental health institution, the State owes a minimal duty of care to an involuntarily committed person.[46] If an agent of the State breaches the duty of care owed to the institutionalized patient, then the individual may be entitled to a legal or equitable remedy under 42 U.S.C. § 1983.[47] Section 1983 is a federal law that allows a person to bring a civil action for a deprivation of his rights, including the Fourteenth Amendment right to substantive due process.[48] State health facilities are subject to Section 1983 because they are state actors.[49]

After the civil rights movement of the 1960s and 1970s, the 1980s and 1990s showcased "a general 'chilling' of America resulting in less interest in protecting or assisting the troubled or disadvantaged."[50] The cases of

43. Following the Virginia Tech massacre in 2007, Governor Timothy M. Kaine signed a new state law to "relax the standard for involuntary commitment to a mental health facility" plus "extend the time a person can be detained for observation." Associated Press, *Virginia: Campus Security Laws*, N.Y. TIMES, Apr. 10, 2008, at A23.

44. *See* PERLIN, *supra* note 2, at 21-22.

45. William H. Fisher et al., *How Flexible Are Our Civil Commitment Statutes?*, 39 HOSP. & COMMUNITY PSYCHIATRY 711, 712 (1988).

46. Youngberg v. Romeo, 457 U.S. 307, 324 (1982).

47. *See* 42 U.S.C. § 1983 (1994) (providing a cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws").

48. *See id.*

49. *See id.* (Section 1983 applies to "(e)very person who, under color of any statute, ordinance, regulation, custom, or usage of any State. . ." deprives an individual of any rights under the Constitution).

50. Thomas L. Hafemeister and John Petrila, *Treating the Mentally Disordered Offender: Society's Uncertain, Conflicted, and Changing Views*, 21 FLA. ST. U. L. REV. 731, 742-43 (1994) (contributing the "chilling," in part, to a deluge of newly appointed conservative federal judges).

Youngberg v. Romeo[51] and *DeShaney v. Winnebago County Department of Social Services*[52] reflect decisions from that colder era. After slightly opening the door in *Youngberg*,[53] the Supreme Court reigned in expansion of affirmative state protections to individuals in *DeShaney*.[54]

1. The Youngberg Substantive Due Process Protections

In *Youngberg*, the Supreme Court considered "for the first time the substantive rights of involuntarily committed mentally retarded persons under the Fourteenth Amendment to the Constitution."[55] The Court found that involuntary commitment, though producing confinement, did not extinguish all of a person's liberties.[56] In addition to a State's duty to provide "adequate food, shelter, clothing, and medical care,"[57] involuntarily committed mental health patients are entitled to "safe conditions" and "freedom from bodily restraint"[58] and the protection of such rights through some minimal level of training provided to the individual by the State.[59]

Although the involuntarily committed are entitled to safe conditions and freedom of restraint, those rights are not boundless and may very well become inhibited by the nature of the institution and the desire to keep individuals safe from themselves and one another.[60] Because those committed sometimes pose a threat to themselves and others in the institution, "[t]he 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."[61] Hence, the court must

51. *See generally Youngberg*, 457 U.S. 307 (1982).

52. *See generally* DeShaney v. Winnebago County Dep't. of Soc. Servs., 489 U.S. 189 (1989).

53. *See Youngberg*, 457 U.S. at 324 (holding that under the Fourteenth Amendment's Due Process Clause, the State has a duty to provide institutionalized individuals with reasonable care and safety, reasonable nonrestrictive confinement conditions, and adequate training to ensure such care and safety and conditions).

54. *See DeShaney*, 489 U.S. at 201-02 (holding that the State has no duty under the Fourteenth Amendment to protect a child from harm inflicted by a parent while in the parent's custody, even though the state may have had knowledge of the potential danger to the child).

55. *Youngberg*, 457 U.S. at 314.

56. *Id.* at 315.

57. *Id.* at 324. By setting out the state's affirmative duties, some have used *Youngberg* to promote an argument for furthering educational initiatives. *See, e.g.*, Note, *A Right to Learn?: Improving Educational Outcomes Through Substantive Due Process*, 120 HARV. L. REV. 1323 (2007) (using *Youngberg's* decision on Due Process to argue in favor of a positive governmental duty to improve the educational system).

58. *Youngberg*, 457 U.S. at 315-16.

59. *Id.* at 319.

60. *Id.* at 319-20.

61. *Id.* at 320.

balance the interests of the individual against those of the institution before coming to the conclusion that there has, or has not, been a substantive due process violation against the individual.[62] Notably, "the courts must show deference to the judgment exercised by a qualified professional" as long as the professional's decisions did not amount to "a substantial departure from accepted professional judgment, practice, or standards."[63] However, a professional is afforded qualified immunity for an inability to maintain the usual professional standard of care as the result of "budgetary constraints."[64]

Succinctly, *Youngberg* protection refers to the State's "affirmative obligation to confine the individual under 'conditions of reasonable care and safety' that are 'reasonably nonrestrictive' and to provide the individual with 'such training as may be required by these interests.'"[65]

2. Narrowly Defining Application in DeShaney

Following *Youngberg*, the Supreme Court further delineated in its *DeShaney* decision when special Fourteenth Amendment protections arise.[66] In *DeShaney*, the Court determined that "when the State takes a person into his custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being."[67] There are two important aspects to this statement. For one, the word "some" reemphasizes the point made in *Youngberg* that even though the State has a duty, "the State 'has considerable discretion in determining the nature and scope of its responsibilities.'"[68] Additionally, the State's affirmative duty only arises if the State has the person in "custody and holds him there against his will."[69] In other words, the State does not have an affirmative duty to protect an individual unless the individual fits into a narrow category of people unable to leave the State's control.[70]

In conjunction, the *Youngberg* and *DeShaney* decisions demonstrate the Court's hesitation to impose an affirmative duty upon the State to protect the safety of individuals unless the State designates itself as the individual's sole protector. In the wake of these two decisions, the federal circuit courts

62. *Id.*
63. *Id.* at 322-23.
64. *Youngberg*, 457 U.S. at 323.
65. Torisky v. Schweiker, 446 F.3d 438, 443 (3d Cir. 2006) (quoting Youngberg v. Romeo, 457 U.S. 307, 324 (1982)).
66. *See DeShaney*, 489 U.S. at 199-200.
67. *Id.* (citing *Youngberg*, 457 U.S. at 317).
68. *Id.* at 200 n.7 (quoting *Youngberg*, 457 U.S. at 317).
69. *Id.* at 196, 199-200.
70. *Id.*

remain split over whether or not the State owes special duties of safety and protection to the voluntarily committed who reside in state mental health institutions.

III. ANALYSIS

The federal circuit courts have reached disparate conclusions when applying the *Youngberg* and *DeShaney* decisions to cases involving a voluntarily admitted mental health patient harmed while institutionalized at a state facility. Objectively, *Youngberg* instructs that the State owes Fourteenth Amendment substantive due process protection to those individuals *involuntarily* committed in state mental institutions. Similarly, *DeShaney* highlights the need for more than a mere "special" relationship with the State in order to trigger extraordinary Fourteenth Amendment protections for an individual. In an admittedly broad simplification, the subsequent federal circuit court decisions fall into one of two categories: strict adherence and relaxed adherence. Generally, the loosening of adherence developed over time as society again became more sympathetic towards people with mental illness.

A. Strict Adherence: No Fourteenth Amendment Protection for the Voluntarily Committed in Public Institutions

The federal circuit courts that strictly adhere to *Youngberg* and *DeShaney* stringently limit the extension of constitutional protections except in rare instances of near complete state control over the individual's life. The First Circuit clearly follows this approach in *Monahan v. Dorchester Counseling Center, Inc.*[71] Essentially, the *Monahan* court refused to extend Fourteenth Amendment protections to a voluntarily committed patient in a state institution because to do so would lead to a slippery slope of finding a violation of constitutional rights for every tort attributable to a state actor.[72]

For more than a decade, Monahan received episodic hospitalization for mental illness.[73] The problem arose when Monahan required transportation between his group home and the state mental health center where he received outpatient treatment.[74] Presumably because Monahan had a history of jumping out of vehicles, the campus police for the state treatment facility were called upon to transport Monahan between the two locations.[75] One

71. *See generally* Monahan v. Dorchester Counseling Ctr., 961 F.2d 987 (1st Cir. 1992).

72. *Id.* at 993-94.

73. *Id.* at 988.

74. *Id.*

75. *Id.* (showing the need for the mental health center's campus police to drive Monahan because he had "twice jumped out of the vehicle" when a worker at the group home attempted to drive him).

day, Monahan expressed a desire to end his life, so he was transported to the treatment center, where he was prescribed the incorrect dose of his medication and "refused admission."[76] Subsequently, Monahan's agitation failed to subside and he was forced to return to the group home.[77] During the ride back to the group home, Monahan jumped out of the vehicle and the driver left him wandering about a highway exit ramp.[78] By the time anyone came back for Monahan, he had been "struck by a car and severely injured."[79]

The court refused to find that the State owed Monahan any duty of protection because the State did not hold Monahan in custody against his will.[80] Instead of state-imposed confinement, "it was Monahan's own mental condition alone that impinged upon his freedom to leave, it was not the state that deprived him of that freedom."[81] In other words, the State could not unduly restrain a person by failing to restrain him.[82] As opposed to a violation of constitutional rights, Monahan's injury may have been caused by the negligence of his transporter to restrain him properly despite awareness of his "propensity to jump out of automobiles."[83] Therefore, "Monahan's remedies, like those of most others in similar situations, lie in the arena of tort, not constitutional law."[84] In essence, the *Monahan* court wished to uphold the reasoning of *DeShaney* in order to avoid the slippery slope of "convert[ing] most torts by state actors into constitutional violations."[85]

Admittedly, a line should be drawn to prevent all torts by state actors from becoming constitutional violations, but the court fails to provide a persuasive reason for drawing the line where it does. *Monahan* claims to delimit constitutional boundaries according to *DeShaney*, but the *DeShaney* opinion specifically noted that "institutionalization [would] give rise to an affirmative duty."[86] Monahan's attorney argued as much and failed because the court read "institutionalization" narrowly to mean that the State involuntarily "removed" or "placed" the individual into a state facility rather than admitted the individual to a state facility.[87] The court may have

76. *Id.* at 989.
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 990.
81. *Id.* at 992.
82. *Id.*
83. *Id.* at 992-93.
84. *Id.* at 991.
85. *Id.* at 993.
86. *Id.* at 992 (quoting DeShaney v. Winnebago County Dep't. of Soc. Servs., 489 U.S. 189, 201 n.9 (1989)).
87. *Id.*

preferred this strict reading because the *DeShaney* court explicitly denied finding that the State owed a child any extraordinary constitutional protections despite the particularly disheartening circumstances.[88]

However, it could be that the court, perhaps entirely unwittingly, ruled against Monahan due to its underlying beliefs about the mentally ill. At first glance, the *Monahan* court seems to say that the mentally ill are ordinary people; like anybody else, they have the capacity to communicate their needs and the freedom to make their own decisions. Alternatively, the court ruled against Monahan because it fell for the myth that the mentally ill are merely too lazy to control their base instincts.[89] Relying on this heuristic, the court would feel entirely justified in denying Monahan's claim because a lazy person deserves little sympathy, and, by extension, no special legal safeguards.[90] Of course, this is not to say that judges are easily duped or inconsiderate. To the contrary, judges are highly educated people with active minds and a strong desire to foster justice in society. Even so, judges are members of society and cannot resist the endless barrage of popular sentiment, including messages that relate negative misconceptions of the mentally ill.

Although cited[91] and followed[92] in many subsequent cases, the *Monahan* ruling has also been distinguished.[93] For example, in *Davis v. Rennie*, the court distinguishes *Monahan* because the opinion "made no evaluation of the patients' competency at the time of... admissions, and gave no consideration to the potential effect of incompetency on a determination of

88. *DeShaney*, 489 U.S. at 192-93. Despite repeated hospitalizations for suspicious injuries, the county Department for Social Services continued to allow four year-old Joshua to live with his father until the father beat Joshua so severely in the head "that he is expected to spend the rest of his life in an institution for the profoundly retarded." *Id.*

89. *See* PERLIN, *supra* note 2, at 43-47 (discussing sanist myths regarding the mentally ill).

90. *See id.* at 44-46 (2000) (discussing myth that persons with mental illnesses are incompetent and lazy). *See also*, Mental Health America, *Factsheet: Stigma: Building Awareness and Understanding*, http://www.mentalhealthamerica.net/go/action/stigma-watch (last visited Oct. 31, 2009) (setting out some of the same myths as well as others).

91. *See, e.g.*, *Torisky*, 446 F.3d at 446-47 (citing to *Monahan* for proposition that valid consent to enter a facility means there is no deprivation of liberty); Wilson v. Formigoni, 832 F. Supp. 1152, 1156 (N.D. Ill. 1992), *rev'd on other grounds*, 42 F.3d 1060 (7th Cir. 1994) (citing *Monahan* for proposition that "involuntarily committed patients have due process rights to reasonable care and safety while voluntarily committed patients generally do not").

92. *See, e.g.*, Walton v. Alexander, 44 F.3d 1297, 1299 (5th Cir. 1995) (drawing same conclusion without reference to *Monahan*); Estate of Emmons v. Peet, 950 F. Supp. 15, 19 (D. Me. 1996) (following *Monahan*); Ridlen v. Four County Counseling Ctr., 809 F. Supp 1343, 1356-57 (N.D. Ind. 1992) (following *Monahan* in case of suicide after release from institution).

93. *See* Estate of Cassara by Cassara v. Illinois, 853 F. Supp. 273, 279-80 (N.D. Ill. 1994) (distinguishing *Monahan* on the basis that plaintiff in *Cassara* "is not merely alleging that defendants created a dangerous condition.").

voluntariness."[94]

B. Relaxed Adherence: Blurring the Distinction Between Involuntary and Voluntary Commitment

As *DeShaney* became more distant in time and ideological relevance, the federal circuits found ways to extend *Youngberg* protections to voluntarily committed mental health patients. The Third, Sixth, and Seventh Circuits express a societal desire to hold state mental health facilities more accountable for the harm imposed upon patients regardless of the supposed involuntary/voluntary distinction.

Through *Torisky v. Schweiker*, the Third Circuit allows the extension of Fourteenth Amendment protections to any committed mental health patient—regardless of initial admission conditions—whose harm resulted from the insufficient protections provided by a state actor in a situation that resembled involuntary commitment.[95] Specifically, the *Torisky* court addressed "the issue of whether a state's affirmative duty under the Due Process Clause to care for and protect a mental health patient in state custody depends upon the individual's custody being involuntary."[96] First of all, the *Torisky* court acknowledged that even though "[some] residents of state institutions. . .do not qualify. . .for protection under *Youngberg* [because of their circumstances,] [they] nevertheless possess other substantive due process rights to be free of certain state interference in their lives."[97] While the *Torisky* court maintained that *Youngberg* rights are reserved for people involuntarily committed, the court stipulated that certain circumstances may change the status of an individual from voluntary to involuntary, and in those situations, the State owes the individual the Fourteenth Amendment Due Process protections discussed in *Youngberg*.[98] In *Torisky*, the court found that it would be possible for a voluntarily committed individual to prove that her transfer between facilities—while in state custody—created a situation implicating *Youngberg* protections.[99]

94. Davis v. Rennie, 997 F. Supp. 137, 140 (Mass. Dist. Ct. 1998).

95. *Torisky*, 446 F.3d at 441.

96. *Id.*

97. *Id.* at 443 (citing Bounds v. Smith, 430 U.S. 817 (1977); Harper v. Va. State Bd. of Elections, 383 U.S. 663 (1966); Loving v. Virginia, 388 U.S. 1 (1967)) ("Clearly, voluntarily committed persons have substantive due process rights to be free from unjustified or unauthorized government interference with their fundamental rights, such as the right to court access, to vote, and to marry.").

98. *Torisky*, 446 F.3d at 446-47 (citing Kennedy v. Schafer, 71 F. 3d 292, 295 (8th Cir. 1995) (reversing defendant's summary judgment because the voluntarily admitted patient may have taken on the status of involuntary commitment at the time of her suicide); United States v. Pennsylvania, 832 F. Supp. 122, 124 (E.D. Pa. 1993) ("[A] voluntary commitment may, over time, take on the character of an involuntary one")).

99. *Torisky*, 446 F.3d at 447-48.

Breaking from its previously held position, the Third Circuit addressed the blurry distinction between voluntary and involuntary commitment.[100] Prior to *Torisky*, the Third Circuit concluded in *Fialkowski v. Greenwich Home for Children, Inc.* that *Youngberg* protections only arose if the State affirmatively acted to place the individual into the institution.[101] In fact, *Monahan* relied on *Fialkowski* in its opinion.[102] Without openly distinguishing *Fialkowski* or *Monahan*, the Third Circuit recognized in *Torisky* that commitment status could change from voluntary to involuntary when the State deprives the individual of the ability to leave, as through "physical or chemical restraints."[103]

The language of the *Torisky* opinion demonstrates the court's interest in becoming more sensitive to the struggles facing the mentally ill. In fact, the court cites to academics including Michael Perlin, a renowned proponent of expansive rights for the mentally ill.[104] Perhaps events in the years between *Monahan* and *Torisky* involved a shift in popular perception that made the judges more compassionate towards persons with mental illnesses.

Similarly, the Seventh Circuit more flexibly defined *Youngberg's* requirement of "involuntary commitment" and distinguished *DeShaney* by finding that confinement to a state mental institution creates a *de facto* special relationship with the State.[105] This notion of a special relationship harkens back to pre-*DeShaney* reasoning and posits that attempts to draw any meaningful line between involuntary and voluntary commitment would lead to too much variation in decisions.

In the recent case of *Lanman v. Hinson*, the Sixth Circuit found that when a patient signs a consent waiver he or she does not sign away the right to be safe from harm.[106] Instead of narrowly reading the Supreme Court decisions, the *Lanman* court referred to the pre-*DeShaney* case of *Society for Good Will to Retarded Children, Inc. v. Cuomo* for a more realistic approach given the circumstances of commitment generally.[107] In *Society for Good Will*, the Second Circuit refused the technical distinction between voluntary and involuntary because (1) "there is a due process right to freedom from governmentally imposed undue bodily restraint for anyone at

100. *Id.* at 446-47.

101. Fialkowski v. Greenwich Home for Children, Inc., 921 F.2d 459, 466 (3d Cir. 1990).

102. *Monahan*, 961 F.2d at 991.

103. *Torisky*, 446 F.3d at 446.

104. *Id.* at 446-47.

105. *See* Lojuk v. Quandt, 706 F.2d 1456, 1466 (7th Cir. 1983) (citing Doe v. Public Health Trust, 696 F.2d 901, 905 (11th Cir. 1983) (reasoning that "though technically a 'voluntary patient, [the plaintiff] was a 'de facto involuntary patient' because of his incompetence.")).

106. Lanman v. Hinson, 529 F.3d 673, 683 (6th Cir. 2008).

107. *Id.* at 688- 89.

any time"[108] and (2) "anyone in a state institution has a right to safe conditions."[109] Consequently, the *Lanman* court reasoned for the collapse of voluntary commitment status into involuntary commitment status because the "voluntary/involuntary distinction, while perhaps relevant to whether the State has the duty to protect patients from third-party harm, is irrelevant to the right of individuals, whatever their status, to be free from physical abuse at the hands of the State."[110]

Unlike the approach of strict adherence that relies on semantics, relaxed adherence takes into account the purpose of mental health institutions, the complexity of mental illness and civil commitment, and the undercurrent of discrimination against the mentally ill in society.

IV. RESOLUTION

Notably, the *Youngberg* and *DeShaney* decisions came down in the early 1980s, during the proclaimed era of reduced empathy.[111] *DeShaney* especially characterized the era. Shortly thereafter, the federal circuit courts followed suit with decisions like *Monahan*. Slowly, the adherence to *Youngberg* and *DeShaney* went from strict to more sympathetic towards the injured victim with a mental health disorder, as demonstrated by *Torisky* and, most recently, *Lanman*. At least, this is what appears to have transpired.

As with mental illness generally, the courts increasingly appreciate that there is a continuum of voluntariness despite the inflexibility of language, namely through the terms "involuntary commitment" and "voluntary commitment." Casting aside a strict reading of *Youngberg* and *DeShaney*, most circuit courts have moderately established that only people involuntarily committed to state mental institutions have claims against state actors who violate their Fourteenth Amendment Due Process rights. However, voluntarily committed individuals may transform status into involuntarily committed at any time, especially when being mistreated.

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108. Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239, 1245-46 (2d Cir. 1984), *rev'd on other grounds*, 902 F.2d 1085 (2d Dist. 1985) (citing Ingraham v. Wright, 430 U.S. 651, 673-74 (1977); Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Parham v. J.R., 442 U.S. 584, 601 (1979)).

109. *Society for Good Will*, 737 F.2d at 1246 (citing Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982)).

110. *Lanman*, 529 F.3d at 688-89 (citing *Society for Good Will*, 737 F. 2d at 1245-46). The *Lanman* court attempted to avoid analysis of contradictory precedent by simply finding that Lanman's "status as voluntary or involuntary is irrelevant as to his constitutional right to be free from the State depriving him of liberty without due process." *Lanman*, 529 F.3d. at 682 n.1.

111. Thomas L. Hafemeister & John Petrila, *Treating the Mentally Disordered Offender: Society's Uncertain, Conflicted, and Changing Views*, 21 FLA. ST. U. L. REV. 729, 742-43 (1994).

Undeniably, every patient in a mental institution, no matter if committed voluntarily or involuntarily, lacks the ability to leave whenever he or she pleases. No patient is allowed to leave of his or her own free will without having first received the okay by a medical professional. Therefore, both involuntarily and voluntarily committed individuals may be entitled to Fourteenth Amendment protections when in the custody of a state actor.

The court's line for determining dependency upon the State will probably rise and fall with changes in the popular perception of the mentally ill. After poignant stories of mental patients harming themselves and others, popular sentiment—which is often laden with stigma—has pushed lawmakers, enforcers, and interpreters to increase government involvement in the lives of the mentally ill.

Remarkably, the discussion of court decisions regarding mental illness lacks reference to methodical research, which is possible with tools such as economic theory. While economics may be incapable of explaining how mentally ill individuals will act, it may be able to make sense of how their families and legal players may act in response. Empirical data about the connection between media scares over mental illness and changes in law would likely produce interesting results.

V. CONCLUSION

The legal system struggles to effectively deal with mental illness, especially in the non-criminal setting. Commitment to a mental institution inherently involves coercion upon an individual who already battles against his or her own mind. Popular sentiment, often exacerbated by media coverage, unquestionably sways the decisions of legal players. In ways not fully comprehended, this nation's various legal outcomes regarding mental illness over the past century reflect changes in societal perceptions and misconceptions of mental illness. However, the dynamics of the relationship remain uncertain without empirical research to answer the question.