

Finally, he concluded that the extensive prehospitalization delays being seen at the time were due to a lack of beds at the facilities of the BOP and suggested this was a bureaucratic failure to meet the demand and that compliance should not be excused because the BOP could contract with another entity to hospitalize defendants committed to the attorney general's custody.

Discussion

The *Donnelly* court found that the duration of Mr. Donnelly's prehospitalization confinement did not bear a reasonable relationship to statutory purposes of identifying a suitable facility in which to hospitalize him based on his particular rehabilitative needs and arranging for his transportation to that facility. Thus, Mr. Donnelly's rights were violated. The delays in placement were attributable to the lack of available bed space at the handful of facilities the BOP had equipped to conduct competency evaluations under § 4241(d). Congress anticipated this problem and specifically authorized the attorney general to contract with another entity to hospitalize defendants committed to his custody.

This case is important for forensic psychiatrists because it parallels, on the federal level, the challenges many states are facing in providing timely evaluations and restoration services for competence to stand trial. The demand for these services has increased, and the wait times have been found unconstitutional in several jurisdictions. States are struggling to find solutions to this challenge. As the court in *Donnelly* suggested, the government is not absolved of its responsibilities by limited bed availability and must find solutions to meet this need.

## Bodily Restraint for a Nonmedical Purpose

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### Determining Whether the Use of Bodily Restraint on a Civilly Committed Patient for a Nonmedical Purpose Was Justified

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**Key words:** bodily restraints; civil commitment; due process; Fifth Amendment; transportation

In *Harris v. Bowser*, 60 F.4th 699 (D.C. Cir. 2023), Warren Harris, an insanity acquittee, appealed the district court's decision to grant summary judgment to defendant officials on his claim that his Fifth Amendment rights were violated by transporting him from the hospital to his court hearing in bodily restraints. The D.C. Circuit Court of Appeals affirmed the district court, holding that Mr. Harris' constitutional rights were not breached.

#### Facts of the Case

In 2017, the Department of Behavioral Health (DBH) recommended to the D.C. Superior Court that Mr. Harris, an insanity acquittee civilly committed per statutory requirements to St. Elizabeths Hospital, be conditionally released for which the superior court scheduled a hearing. DBH policy was for the Department of Corrections to transport forensic detainees, such as Mr. Harris, in handcuffs, waist chain, and leg restraints from the hospital to court. The Department of Corrections also removed Mr. Harris' belt, forcing court staff to help him hold up his trousers at the hearing.

After the superior court granted Mr. Harris conditional release, he filed a § 1983 suit against an assortment of D.C. officials for compensatory damages caused by the restraints. The district court granted summary judgment for the D.C. officials on the basis that the Fifth Amendment right against bodily restraint will sometimes give way to important government interest. Mr. Harris appealed.

#### Ruling and Reasoning

The D.C. Circuit Court of Appeals held that Mr. Harris' right under the Due Process Clause to be free from unjustified bodily restraint was not violated. Relying on *Youngberg v. Romeo*, 457 U.S. 307 (1982), the court said that liberty from bodily restraints protected by the Due Process Clause is retained when

someone is lawfully confined, but is not absolute, such as in cases when the prevention of violence or elopement may be required.

To decide whether a government intrusion on the right is allowed by the Constitution, the court turned to the balancing tests provided in *Bell v. Wolfish*, 441 U.S. 520 (1979) and *Youngberg*.

In *Bell*, the Supreme Court weighed the rights of pretrial detainees; as persons who have not been convicted, the government may not impose restrictions that are intended to punish. Some restrictions may be reasonable and nonexcessive, for which courts should defer to the “professional expertise of corrections officials” (*Harris*, p 702, citing *Bell*, p 539). In *Youngberg*, the Supreme Court evaluated the rights of civilly committed patients regarding when it was necessary for the government to restrain patients as part of their medical treatment. A decision to restrain a patient is “presumptively valid” if “made by a professional” and not a departure from standard practice.

Here, Mr. Harris had to demonstrate that the policy was not made by a professional and that the policy was a substantial departure from standard practice. Mr. Harris’s expert witness argued that correctional departments should not assert their own restraint practices over a civilly committed patient and that the use of restraints represented a substantial deviation from typical medical practice. Mr. Harris suggested that the correctional officials’ decision to restrain him was not valid because they were not professionals. He then recanted, stating that he was aggrieved by being subjected to restraints without posing a risk of danger or elopement. Nevertheless, it was recognized that the D.C. DBH policy of restraining civilly committed hospital patients during transport to court hearings was a nationwide standard practice based on security concerns that was adopted by the DBH chief nurse executive.

The court in *Harris* determined that the *Bell* criteria were met because the government’s justification had a nonpunitive purpose, was reasonable for maintaining security, was not excessive since it was a common practice among corrections systems nationwide, and was appropriate for the type of trip and the circumstances. The restraints were also justified under *Youngberg* by the exertion of professional judgment from a behavioral official who was

competent by education, training, and experience. Mr. Harris’ claim failed.

#### Discussion

This case highlights the challenge of determining when the right of liberty from bodily restraints of an insanity acquittee can be interrupted by the government in a constitutional frame. The D.C. Circuit recognized the district court’s decision that Mr. Harris, as a civilly committed patient, was protected by Due Process rights based on the Fifth Amendment, but it affirmed precedent that this right will sometimes give way to an important government interest.

Consistent with the cases cited in *Harris*, the U.S. Supreme Court also ruled in *Deck v. Missouri*, 544 U.S. 622 (2005) that the Constitution prohibits the use of physical restraints visible to a jury unless the trial judge determines, based on professional discretion, that restraints are justified by a state interest for the particular case. In addition to security, examples of state interests include risk of elopement and maintaining the decorum of the courtroom.

This case is important for forensic psychiatrists who are involved in decisions regarding transportation and restraints, and those who work with justice-involved individuals. It is important to recognize that, although restraints may be necessary for security or other reasons, the decision may have consequences for how others view the individual and how individuals view themselves. There are several possible negative consequences to wearing restraints in court, including that they may be painful, may affect the person’s mental attention, may compromise the communication between subjects and their attorney; and they may detract from the dignity of the judicial proceeding and create prejudice for jurors. In some cases, the court may order restraints be maintained in a court proceeding but will arrange for the jury’s view of the restraints to be obstructed and make arrangements for the jury to not be present when the restrained person walks to and from the witness chair. To balance these interests, courts, like here, may be tasked with weighing the government interests at stake, whether officials follow standard medical practice, and the relevant policies.