

The Burger Court Opinion Writing Database

Mills v. Rogers

457 U.S. 291 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

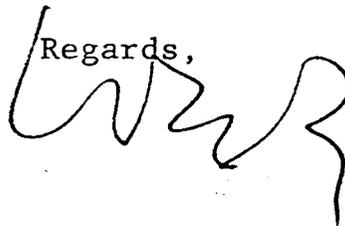
June 4, 1982

Re: No. 80-1417 - Mills v. Rogers

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1982

RE: No. 80-1417 Mills v. Rogers

Dear Lewis:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "G. Powell", is written over the typed name.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1982

Re: 80-1417 - Mills v. Rogers

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

.85 MAY 18 1982

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: No. 80-1417 - Mills v. Rogers

Dear Lewis: [unclear]

Please join me. [unclear]

Sincerely, [unclear]

T.M.
TM.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 10, 1982

Re: No. 80-1417 - Mills v. Rogers

Dear Lewis:

I am somewhat uneasy about this one. We really are not deciding anything despite the fact that after Roe III there is no controversy, under Massachusetts law, that an involuntarily committed person is not incompetent to make a treatment decision until he is actually adjudged incompetent. On this issue, nothing is to be accomplished by the remand. I do not feel strongly enough, however, to write separately and thus shall give you one of Charlie Whittaker's "graveyard dissents."

Rennie v. Klein, which you cite on page 7, is a hold for this case on a pending cert. I suppose, but of course do not know, that we shall grant it and start all over again. It, at least, is not encumbered by any issue of Massachusetts law.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

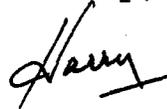
June 15, 1982

Dear Lewis:

Re: No. 80-1417 - Mills v. Rogers

I did not mean to be "funny," but my "graveyard dissent" in my note of June 10 was a reluctant joinder. At least, that is what I have assumed for some years to be the definition.

Sincerely,



Mr. Justice Powell

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

From: **Justice Powell**

Circulated: MAY 10 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1417

MARK J. MILLS, ET AL., PETITIONERS *v.*
 RUBIE ROGERS ET AL.

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

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The Court granted certiorari in this case to determine whether involuntarily committed mental patients have a constitutional right to refuse treatment with antipsychotic drugs.

I

This litigation began on April 27, 1975, when respondent Rubie Rogers and six other persons filed suit against various officials and staff of the May and Austin Units of the Boston State Hospital. The plaintiffs all were present or former mental patients at the institution. During their period of institutionalization all had been forced to accept unwanted treatment with antipsychotic drugs.¹ Alleging that forcible

¹As used in this litigation, the term "antipsychotic drugs" refers to medications such as Thorazine, Mellaril, Prolixin and Haldol that are used in treating psychoses, especially schizophrenia. See *Rogers v. Okin*, 478 F. Supp. 1342, 1359-1360 (D. Mass. 1979), aff'd in part and reversed in part, 634 F. 2d 650, 653 (CA1 1980). Sometimes called "major tranquilizers," these compounds were introduced into psychiatry in the early 1950s. See Cole & Davis, *Antipsychotic Drugs*, in 2 A. Freeman, H. Kaplan, and B. Sadock, *Comprehensive Textbook of Psychiatry II*, at 1921-1922 (2d ed. 1975). It is not disputed that such drugs are "mind-altering." Their effectiveness resides in their capacity to achieve such effects. Citing authorities, petitioners assert that such drugs are essential not only to the

P. 7

Stylistic Changes Throughout

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

From: **Justice Powell**

Circulated: _____

MAY 20 1982

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1417

MARK J. MILLS ET AL., PETITIONERS *v.*
RUBIE ROGERS ET AL.

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SUPREME COURT, U.S.
JUSTICE MARSHALL
MAY 20 11:34 AM '82

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 16, 1982

Memorandum to the Conference

No. 80-1417, Mills v. Rogers

As this case will "come down" on the same date as No. 80-1429, Youngberg v. Romeo, I think it desirable for there to be some cross-citation between the cases. I now propose to cite Youngberg on pages 7 and 12 of my most recent (second) draft in this case. The attached xerox copies have been marked to reflect the added citations.

L. F. P.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 28, 1982

No. 80-5534, Rennie v. Klein,
Heretofore held for No. 80-1417, Mills v. Rogers

MEMORANDUM TO THE CONFERENCE:

No. 80-5534, Rennie v. Klein, is a case decided by an en banc CA3 and reported at 653 F.2d 836 (1981). It presents essentially the same issue that we granted Mills to decide: whether the Constitution provides substantive and procedural protections to involuntary mental patients who wish to refuse treatment with antipsychotic drugs. The suit in this case was initially brought by the petitioner Rennie in 1977 and certified as a class action in 1979. Following certification the District Court (D.N.J., Brotman) entered a preliminary injunction compelling substantial revision of the applicable (New Jersey) procedures. CA3 modified the decree and remanded for further action consistent with its opinion.

The Court of Appeals began its analysis by inquiring into state law. Parsing the pertinent statutes and regulations, it concluded that New Jersey law provided involuntary patients with no substantive right to refuse medication. 653 F.2d, at 842. Thus obliged to reach the constitutional question, CA3 found that all patients have a Fourteenth Amendment liberty interest in resisting treatment with dangerous drugs. The court also held, however, that the State had competing parens patriae and police power interests in providing treatment and in maintaining institutional order. Balancing the state and individual interests, a majority of CA3 concluded that the State's interest would predominate only where drug therapy afforded the "least restrictive" means of attaining legitimate state ends. See 653 F.2d, at 846-847.

CA3 then turned to the "procedural" question: whether New Jersey procedures ensured fair application of the "least restrictive" standard. The court concluded that they did, relying especially on a "Bulletin" issued by the New Jersey Commissioner of Human Resources. As reported by CA3, the Bulletin prescribes that the treating physician initially

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1982

Re: No. 80-1417 Mills v. Rogers

Dear Lewis:

Please join me.

Sincerely,

11/2/82

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

104 2-11-82 Sh

June 2, 1982

Re: 80-1417 - Mills v. Rogers

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 18, 1982

No. 80-1417 Mills v. Rogers

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference