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# Implementing the Right to Treatment for Involuntarily Confined Mental Patients: Wyatt v. Stickney

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# IMPLEMENTING THE RIGHT TO TREATMENT FOR INVOLUNTARILY CONFINED MENTAL PATIENTS: WYATT v. STICKNEY

In *Wyatt v. Stickney*[1] a federal district court has ordered an Alabama mental hospital to implement detailed minimum treatment standards for civilly committed mental patients, standards set forth by the court as required under the Due Process Clause of the Fourteenth Amendment.

The decision may indicate a trend with important consequences for states such as New Mexico which at present require adequate treatment only to the extent that facilities and staff are available.[2]

Federal courts face difficult, but not insurmountable problems in enforcing a right to treatment. Where state legislatures refuse to appropriate funds required to meet federally imposed standards, serious federal-state tensions might arise. But if state legislatures take the initiative by establishing administrative machinery to enforce the right to treatment, such problems can be minimized. The states will have a much greater voice in determining the specific details of adequate treatment than they would if such standards were imposed by federal courts.

## BACKGROUND OF THE RIGHT TO TREATMENT DOCTRINE[3]

In 1960 Morton Birnbaum argued[4] that an involuntarily confined mental patient has a right to receive adequate treatment under the Due Process Clause of the Fourteenth Amendment. He suggested that confinement without adequate treatment amounts to imprisonment, and is therefore a denial of substantive due process, since the inmate has committed no crime.

Such a right to treatment has not been generally recognized in

1. 344 Supp. 373 (M.D. Ala. 1972). Two earlier decisions in the same case are Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971) and Wyatt v. Stickney, 334 F. Supp. 1341 (M.D. Ala. 1971). These will be referred to respectively as *Wyatt* I, II and III.

2. N.M. Stat. Ann. §34-2-13 (1953) requires high quality medical treatment "to the extent that facilities, equipment and personnel are available."

3. *See, generally*, Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499 (1960); Katz, *The Right to Treatment—An Enchanting Legal Fiction*, 36 U. Chi. L. Rev. 755 (1969); Bazelon, *Implementing the Right to Treatment*, 36 U. Chi. L. Rev. 742 (1969); *Guaranteeing Treatment for the Committed Mental Patient: The Troubled Enforcement of an Elusive Right*, 32 Md. L. Rev. 42 (1972); Drake, *Enforcing the Right to Treatment: Wyatt v. Stickney*, 10 Am. Crim. L. Rev. 587 (1972).

4. *Id.*

American law. It has usually been held that a state merely has a duty to use reasonable care to protect a mental patient from injury.[5]

Judicial support for the right to treatment doctrine stems from the opinion of the District of Columbia Circuit Court of Appeals in the 1966 case of *Rouse v. Cameron*.[6] Rouse had been acquitted of a criminal charge on grounds of insanity, and was then involuntarily committed to a mental hospital for an indefinite period. Later he filed a habeas corpus petition, claiming that he was receiving no psychiatric treatment. The district court dismissed the petition, holding that it had no jurisdiction to consider whether his treatment was adequate, but only whether he had recovered his sanity.

In an opinion by Judge Bazelon, the court of appeals reversed, holding that since the purpose of such confinement is treatment, the patient has a right to treatment. The court said that failure to provide treatment may violate due process, and held that a bona fide effort must be made to provide treatment adequate to the patient's particular needs, in light of present medical knowledge.[7]

The constitutional nature of the holding was obscured somewhat, since the decision was rendered under the District of Columbia Hospitalization of the Mentally Ill Act, which provides that a patient "shall . . . be entitled to medical and psychiatric care and treatment."[8] But the court did suggest that even without such a statute, confinement without treatment might violate the Due Process Clause.[9] The court also said that such confinement might violate the Eighth Amendment prohibition of cruel and unusual punishment, or the Equal Protection Clause (by denial of the procedural safeguards afforded criminal defendants).[10]

The court in *Rouse* also held that failure to provide adequate treatment cannot be justified by lack of necessary staff or facilities.[11] This holding would appear to be based on the constitutional requirement of adequate treatment. If the adequate treatment requirement is merely statutory, the fact that the legislature fails to provide adequate funds might provide the hospital some defense, since the statutory treatment requirement has no greater force than the appropriations act. But if the right to treatment is based on the

5. 44 C.J.S. Insane Persons §171 (1945). It is generally held that release of a patient may be ordered only on grounds of improper commitment, or of restoration of sanity. 41 Am. Jur. 2d Incompetent Persons §44 (1968). Denial of treatment is not recognized as a ground for release.

6. 373 F.2d 451 (D.C. Cir. 1966).

7. *Id.* at 456–57.

8. *Id.* at 453.

9. *Id.*

10. *Id.*

11. 373 F.2d at 456–457 (D.C. Cir. 1966).

Constitution, such a defense is of no avail. In a civil rights case, *Watson v. City of Memphis,*[12] the Supreme Court clearly rejected the notion that implementation of constitutional rights can be limited by budgetary considerations:

> . . . it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them.[13]

In 1969 the District of Columbia Circuit extended the right to treatment doctrine, holding in *Covington v. Harris*[14] that the hospital must choose the medically suitable form of treatment which is least restrictive of the patient's personal liberties.

Judge Bazelon has subsequently defended his constitutional argument in *Rouse* by arguing that society may not deprive persons of liberty for the humane purpose of treatment unless treatment is in fact provided:

> If society confines a man for the benevolent purpose of helping him—"for his own good," in the standard phrase—then its right to so withhold his freedom depends entirely on whether help is in fact provided.[15]

Support for a constitutional right to treatment can also be found in dicta in a 1968 Massachusetts case, *Nason v. Superintendent of Bridgewater State Hospital,*[16] in which the Court stated:

> confinement of mentally ill persons, not found guilty of a crime, without affording them reasonable treatment also raises serious questions of deprivation of liberty without due process of law.[17]

The constitutional argument for a right to treatment is strengthened by the fact that confinement without adequate treatment has demonstrably harmful effects. As one observer noted, there is considerable evidence that ". . . prolonged confinement is an institution providing only custodial confinement . . . may itself cause serious psychological harm or exacerbate any pre-existing condition."[18] It has been widely noted that patients involuntarily confined in custodial "warehouses" tend to lose all hope for recovery, and there is evidence that this loss of hope has harmful psychological and

12. 373 U.S. 526 (1963).
13. *Id.* at 537.
14. 419 F.2d 617 (D.C. Cir. 1969). See also Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966).
15. Bazelon, *Implementing the Right to Treatment,* 36 U. Chi. L. Rev. 742, 748 (1969).
16. 233 N.E. 2d 908 (1968).
17. *Id.* at 913.
18. 32 Md. L. Rev. 42, 51 (1972); *see also,* U.S. ex rel Schuster v. Herold, 410 F.2d 1071, 1079 (2d Cir. 1969).

physical effects. The overall death rate among involuntary mental patients in the United States is approximately ten times that of the general population.[19]

Increasing awareness of the frequently harmful effects of confinement may lead to more stringent requirements for involuntary commitment. Since confinement without adequate treatment amounts to imprisonment, why shouldn't the prospective mental patient have the procedural safeguards that would be available to him were he accused of a crime?

The courts seem to be moving toward the position that a patient may not be committed to a mental hospital for an indefinite period without first being given the procedural safeguards afforded criminal defendants. In *Lessard v. Schmidt*,[20] a suit was filed under 42 U.S.C. §1983 challenging the constitutionality of the Wisconsin Civil Commitment Statute, which allowed involuntary commitment for up to 145 days. The court held that the statute was unconstitutional for failure to afford the patient safeguards of the type given criminal defendants, including a right to counsel from the outset of the commitment proceedings, and a right to a Miranda type warning that statements made to a psychiatrist might be used as a basis for commitment.

The state argued that because the patient has a constitutional right to treatment, less stringent commitment procedures could be followed than those applied in criminal cases. It reasoned that by involving the right to treatment, patients may insure that their confinement will not amount to imprisonment; therefore the criminal law analogy should not be applied. The argument was rejected because of the difficulties in enforcing the right to treatment.[21]

Noting the frequently harmful effects of commitment, including the death statistics cited above, the court concluded:

> The interests in avoiding civil commitment are at least as high as those of persons accused of criminal offenses. The resulting burden on the state to justify civil commitment must be correspondingly high.[22]

Support for the *Lessard* holding is provided by a recent Supreme Court decision on a related issue. In *Jackson v. Indiana*[23] the court struck down an Indiana statute which allowed indefinite commitment of a criminal defendant who is incompetent to stand trial. The court

19. *See* Lessard v. Schmidt, 349 F. Supp. 1078, 1089 (E.D. Wis. 1972).
20. *Id.*
21. *Id.* at 1086–1087.
22. *Id.* at 1090.
23. 406 U.S. 715 (1972).

held that the statute violated the Equal Protection Clause by failing to give the defendant at least the safeguards and opportunities for release provided under the ordinary civil commitment procedures for persons not charged with crimes.[24] The court also held that indefinite commitment solely on account of incapacity to stand trial violates due process, and that the state must either institute ordinary civil commitment proceedings or else release the defendant.[25]

Since the Supreme Court has held that the criminal defendant found incompetent to stand trial is entitled to the same protections provided mental patients not charged with crimes, it would not seem unlikely that the court might extend such reasoning and hold that mental patients generally are entitled to at least the procedural protections provided for criminal defendants.

There is a common thread running through the right to treatment decisions and decisions like *Lessard* on commitment procedures. First there is an awareness that mental hospitals without adequate treatment are essentially prisons, and that the law must do something to correct the situation. Here a basic choice is presented as to what the law may do:

> 1. Recognize that mental hospitals are prisons, by instituting commitment procedures modeled after criminal procedures. *Lessard, supra. or,*
>
> 2. Make mental hospitals be hospitals instead of prisons, by enforcing a right to adequate treatment. *Rouse, Wyatt.*

There are at least two major difficulties with the first choice. First, it strongly implies that present inadequate treatment will be allowed to continue. Second, it is simply not possible to effectively implement criminal procedure safeguards in commitment proceedings. How can an insane person effectively cooperate with counsel, or knowingly and intelligently waive his right to remain silent in the psychiatric interview, *Lessard, supra*? If we are really to apply the criminal analogy as *Lessard* suggests, does not the commitment proceeding become a trial? Isn't the patient incompetent to stand trial if his mental condition is such that he should be committed? If an incompetent person were charged with assault, the patient would not be tried on the criminal charge while incompetent. Yet a *Lessard* type commitment hearing could send him to a "mental prison" for an indefinite period. Has he really been given the safeguards afforded criminal defendants?

For these reasons it is suggested that the second choice, implemen-

24. *Id.* at 723–731.
25. *Id.* at 731–739.

tation of the right to adequate treatment, is the more rational and humane alternative.

## THE CONSTITUTIONAL ISSUE SQUARELY FACED: WYATT I

The first holding that involuntary mental patients have a right to adequate treatment on purely constitutional grounds came in 1971 in *Wyatt I.*[26] (Subsequent decisions in the same case will be referred to as *Wyatt II and III.)* In a class action suit filed by patients in Alabama's Bryce Hospital, the district court found that treatment conditions at Bryce did not measure up to any known standards of medical care. The court then held as follows:

> To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process.[27]

The rationale of the holding was explained by Jack Drake, counsel for the plaintiffs, as follows:

> [W]hen a patient is involuntarily committed through non-criminal procedures without the constitutional protections afforded to defendants in criminal actions, he has a constitutional right to receive individual treatment designed to cure or improve his mental condition. If he does not receive such treatment, his confinement becomes an indefinite imprisonment without a criminal conviction.[28]

*Wyatt I* followed *Rouse, supra,* in holding also that failure to provide adequate treatment could not be justified by lack of staff or facilities.[29] This holding appears inescapable in view of the Supreme Court's general position on the issue as set forth in *Watson, supra,* that constitutional rights may not be denied on budgetary grounds.

The right to treatment upheld in *Wyatt I* is purely constitutional since the decision was reached in a state which does not provide a right to treatment by statute. The Alabama statute allowed involuntary commitment for *either* treatment *or* "safekeeping."[30] The term "safekeeping" refers to the fact that under present case law the state has a duty merely to protect the patient from physical injury.

Many states, including New Mexico, also fail to provide a statutory right to treatment. The New Mexico statute[31] is taken from the Draft

26. 325 F. Supp. 781 (M.D. Ala. 1971).
27. *Id.* at 785.
28. Drake, *Enforcing the Right to Treatment: Wyatt v. Stickney,* 10 Am. Crim. L. Rev. 587 (1972).
29. 325 F. Supp. 781, 785 (M.D. Ala. 1971).
30. Comment, 51 Boston U. L. Rev. 530, 532 (1971).
31. *See* note 2 *supra.*

Act of the National Institute of Mental Health, which requires treatment only to the extent that facilities are available.[32] The Draft Act may be unconstitutional if *Wyatt I* is correct.[33]

## WHAT KIND OF TREATMENT IS ADEQUATE?

Assuming that a constitutional right to treatment does exist, a number of questions immediately arise as to the *standard* of adequate treatment and how the standard should be determined and applied in particular situations.

Must the required treatment be tailored to the specific needs of the individual patient, or is the proper criterion the general level of care received by the average patient? In *Rouse, supra,* the court held that the treatment must be adequate for the particular needs of the individual patient, in light of present medical knowledge.[34] This is the position the court took in *Wyatt I,* saying that an adequate treatment program would ". . . give *each* of the treatable patients . . . a realistic opportunity to be cured or improve his or her mental condition . . ."[35] (Emphasis added.) In *Wyatt III,*[36] discussed in detail below, the court emphasized that one of three fundamental deficiencies of the Bryce Hospital treatment program was failure to provide *individualized* treatment programs.[37]

But in a Maryland case, *Director of Patuxent Institution v. Daniels,*[38] the court held that the *general* level of post commitment treatment is a sufficient consideration in determining adequacy of treatment. The Fourth Circuit Court of Appeals adopted this position in another Maryland case, *Tippett v. State of Maryland,*[39] and held that the commitment act was constitutional as applied. The court noted, however, that the treatment program at the institution in question was substantially funded, with increasing appropriations and evidence of continuing improvement. Dissenting in part, Judge Subeloff argued that the court should have considered "not only the general treatment program, but whether the particular prisoner before the court is receiving the benefits of the program."[40]

32. National Institute of Mental Health & Office of General Counsel, Public Health Service Publication No. 51, Draft Act Governing Hospitalization of the Mentally Ill 14–15 (rev. Sept. 1952).

33. 32 Md. L. Rev. 42, 65 (1972).

34. 373 F.2d at 456–457.

35. 325 F. Supp. 781, 785 (M.D. Ala. 1971).

36. 344 F. Supp. 373 (M.D. Ala. 1972).

37. *Id.* at 375.

38. 243 Md. 16, 221 A.2d 397 (1966).

39. 436 F.2d 1153 (4th Cir. 1971), *cert. granted* 92 S. Ct. 567 (1971), writ of certiorari dismissed as improvidently granted, 407 U.S. 355, 92 S. Ct. 2091, 32 L. Ed. 2d 791 (1972).

40. 436 F.2d 1153 (4th Cir. 1971).

In oral argument before the Supreme Court[41] the state pursued the general level of treatment approach, arguing that the treatment program was adequate on the basis that there is a much lower recidivism rate among those released from Patuxent than among convicts released from prisons in the state. But the Supreme Court did not reach the issue, instead dismissing the writ of certiorari as improvidently granted, in view of the continuing substantial revision of the Maryland civil commitment statutes.[42]

The *Daniels-Tippett* general treatment or average patient approach has been criticized as "neglecting totally the most crucial aspects of the right to treatment—the duty imposed on the institution to afford *each* patient appropriate therapy."[43] The *Rouse-Wyatt* individual patient approach seems to be constitutionally a sounder one. It is difficult to see how a given patient's constitutional right to adequate treatment is satisfied by treatment which helps the average patient, but fails to help the particular patient whose rights are before the court.

But if the particular needs approach of *Rouse* and *Wyatt* is followed, what about the patient who is believed to be dangerous, but for whom no treatment is presently known, or the patient who refuses treatment? Of course it should be noted that 90% of patients in American mental hospitals are believed to be harmless to others,[44] and untreatable patients in this category could be ordered released. As to the dangerous untreatable patient, it can be argued that as long as society makes a continuing effort to find a new method of treatment, the confinement can be justified as necessary for the protection of others. But continuing evaluation of such a patient should be required, so that he could be released if it is determined that he is no longer dangerous to others. As to the patient who refuses treatment, it can be argued that continual confinement is justified if necessary to protect society, particularly since there is always a chance the patient will change his mind and accept treatment.

The general versus particular treatment issue is one of the crucial problems which the courts must resolve in implementing the right to treatment. Another important question is whether courts will enforce detailed compliance with judicially proclaimed standards, or whether an administrative law approach will be followed, resulting in much less judicial intervention in the operation of mental hospitals.

41. 40 U.S.L.W. 3477 (April 4, 1972).

42. Murel v. Baltimore City Criminal Court, 407 U.S. 355, 92 S. Ct. 2091, 32 L. Ed. 2d 791 (1972).

43. 32 Md. L. Rev. 42, 52 (1972).

44. Position Statement on the Question of Adequacy of Treatment, 123 Am. J. Psychiatry 1458, 1459 (1967).

## A FEDERAL COURT DECREES DETAILED STANDARDS OF MINIMUM TREATMENT: WYATT III

In *Wyatt I* the court gave the hospital 6 months to implement an adequate treatment program.[45] In *Wyatt II*,[46] the court found that the hospital had not met the deadline, but found that the hospital officials were acting in good faith, and therefore allowed more time for compliance.

In *Wyatt III*,[47] the district court formulated highly specific, detailed minimum treatment standards which it held to be constitutionally required. These were based on three main requisites of a constitutionally adequate program:

> (1) a humane psychological and physical environment;
> (2) qualified staff in numbers sufficient to administer adequate treatment; and
> (3) individualized treatment plans.[48]

The court held that a suitable environment must include the least restrictive form of treatment consistent with the goals of treatment,[49] thus following the rule of the District of Columbia Circuit in *Covington v. Harris, supra.*

To aid it in fashioning detailed standards, the court held a hearing at which testimony was presented by leading authorities on mental health from all over the United States.[50] On the basis of the expert testimony and supporting briefs the court formulated standards which it held to be constitutional minimums.

Specific requirements for adequate treatment imposed in *Wyatt III* include the following:[51]

> (1) A limit of six patients per room, with at least 80 square feet of space per patient. There will be at least one toilet for each eight patients and one tub or shower for each 15 patients.
> (2) Patients to be placed in isolation only upon written order by a member of the professional staff, and such orders shall be effective for only 24 hours.
> (3) A minimum of 2 psychiatrists, 4 medical doctors and 12 registered nurses for each 250 patients.
> (4) In order that patients be free of unnecessary medication, all medication must be by written order of a physician, and all prescriptions shall terminate in not more than 30 days.

45. 325 F. Supp. 781, 785 (M.D. Ala. 1971).
46. 334 F. Supp. 1341 (M.D. Ala. 1971).
47. 344 F. Supp 373 (M.D. Ala. 1972).
48. *Id.* at 375.
49. *Id.* at 379.
50. *Id.* at 375–376.
51. *Id.* at 379–386.

(5) Patients have a right to be outdoors at frequent intervals, and a right to physical exercise several times a week.

(6) Patients shall engage in hospital maintenance work only on a voluntary basis, and only if paid the minimum wage.

(7) Patients shall have the same visitation rights as patients at other hospitals, except where a member of the professional staff imposes a limitation, by written order, based upon treatment requirements of the individual patient.

(8) Each patient shall have a detailed individual treatment plan prepared by the professional staff.

(9) Complete records shall be kept for each patient, including a detailed weekly summary of each patient's progress.

(10) Educational opportunities shall be provided for patients who are children or young adults, suitable to the educational needs of the individual patients.

(11) A patient's individual treatment plan must be prepared and initiated within fifteen days of admission; otherwise the patient must be released.

In addition a number of other less significant requirements were outlined. The court appointed a human rights committee as its agent to supervise implementation of the standards. It also reiterated its earlier holding that lack of funds would not justify failure to comply with the standards, and appealed to the Alabama Legislature to provide the needed funds.[52]

*Wyatt III* has proposed a detailed constitutional standard of adequate treatment which obviously would have far reaching impact if the decision becomes generally accepted. But the specific requirements may be unrealistic. A knowledgeable staff member of the Bernalillo County New Mexico Mental Health Center has informed the author that in his opinion no state mental hospital can meet the *Wyatt* standards, particularly the staffing requirements, without a large increase in operating funds.

*Wyatt* is also subject to criticism and its precedential value weakened by the lack of adversary process in the development of the case. In *Wyatt I* the existence of a constitutional right to treatment was admitted by defense counsel in their pre-trial brief.[53] And the court's description of the testimony from which its standards were developed suggests that the experts who testified more or less agreed to support standards of the type which resulted. The history of the case suggests that the defendants were eager to lose, hoping for a court order to improve hospital conditions, and thereby secure a lever for obtaining needed funds from the legislature. It is at least

52. *Id.* at 378.

53. 10 Am. Crim. Law Rev. 587, 596 n. 30 (1972).

questionable whether a decision of such far reaching implications will be sustained in view of the collusive development of the issues. Professor Wright has observed, however, that some of the most famous constitutional cases have been decided in circumstances suggesting collusion, although the rule against collusive cases is supposedly of general application.[54]

## POTENTIALLY BETTER APPROACH THROUGH ADMINISTRATIVE LAW

Enforcement of *Wyatt* type standards by the federal courts could lead to serious tensions in the federal system particularly if state legislatures are reluctant to appropriate the needed funds. This is shown by the further remedies requested by plaintiffs in *Wyatt*, remedies on which the Court reserved action in *Wyatt III:*

> (1) Appointment of a federal master and advisory committee to take over operation of the hospital. The Court warned that this would be done if the defendants did not comply with its treatment standards.[55]
>
> (2) Injunction against further admissions.[56]
>
> (3) Injunction against non essential state expenditures.
>
> (4) An order that the Mental Health Board sell or encumber portions of its land holdings to raise needed funds.[57]

These are extreme measures, which federal courts would obviously resort to with great reluctance, and only when required for the protection of federal constitutional rights.

Such problems may be avoided to some extent if state legislatures will take the initiative by establishing administrative procedures to protect the right to treatment. A promising approach was presented in a right to treatment bill introduced in the Pennsylvania Legislature in 1968.[58] Although the bill did not pass, its thoughtful approach to the problem may be indicative of future legislative developments.

The bill proposed creation of a Mental Treatment Standards Committee, charged with drafting objective minimum treatment standards, including minimum personnel/patient ratios, professional personnel qualifications, and minimum frequency of consultation and examination. A Patient Treatment Review Board, consisting of two psychiatrists, two medical doctors and one lawyer, would hear individual patient complaints regarding deficiencies in treatment.

54. Wright, Law of Federal Courts 36 (1963).
55. 344 F. Supp. 373, 377 (M.D. Ala. 1972).
56. *Id.* at 378.
57. *Id.* at 377.
58. S.B. 1274 & H.B. 2118, Pa. Gen. Assembly, 1968 Sess., discussed in Comment, 15 Vill. L. Rev. 951, at 967 (1970).

The decisions of this administrative agency would be subject to judicial review.

The enactment of such legislation could of course make the job of the courts far easier. In view of the deference generally shown by courts toward administrative decisions, it seems unlikely that treatment standards fashioned by a state in this manner would be overturned by federal courts, unless the procedure used were a mere sham in an effort to preserve grossly inadequate conditions of treatment.

States which follow the administrative law approach may be strongly influenced by federal administrative standards. The Social Security Administration has promulgated standards for "active treatment" for hospitals eligible to receive Medicare payments. These require an individualized treatment plan or diagnostic plan, reasonably expected to improve or help diagnose the patient's condition; supervision and evaluation by a physician is also required.[59] Hopefully states will not jeopardize federal funding by setting standards which do not meet federal requirements, or which conflict with them.

## THE ULTIMATE SANCTION: RELEASE OF PATIENTS DENIED THE RIGHT TO TREATMENT

Where a court is forced to act without the cooperation of the legislature, there seems to be no reason why release may not be ordered as a last resort, at least for patients not believed to be dangerous (which include the great majority).[60] The *Wyatt III* standards in fact require release where an individual treatment plan has not been initiated within fifteen days of admission.[61]

Release might be ordered for a single patient under habeas corpus. No state case has been found in which a patient was actually ordered released, but two recent federal cases have ordered the release of persons held in federal custody. In *United States v. Jackson*,[62] the defendant was indicted on federal charges of bank robbery. After being found mentally incompetent to stand trial, he had been confined in a federal hospital. The court held that because he was still mentally incompetent, and because Congress had not provided a program which offered a realistic opportunity for improvement of his condition, he must be released. The same result was reached in a similar fact situation in *United States v. Walker*.[63] But in both these

59. 20 C.F.R. §§405.1036–1038 (1969).
60. 32 Md. L. Rev. 42, 58 (1972).
61. 344 F. Supp. 373, 386 (M.D. Ala. 1972).
62. 306 F. Supp. 4 (1969).
63. 335 F. Supp. 705 (1971).

cases the defendants were charged with offenses which were also state crimes and were released to the custody of state officials.

Jack Drake has pointed out that habeas corpus is a poor vehicle for reform of mental hospitals, since even successful litigation may result only in relief for one patient, while the hospital continues to function basically unchanged.[64] For this reason it seems likely that *Wyatt* type suits will continue to be brought as class actions.

## CONCLUSIONS

In *Wyatt v. Stickney* a federal court has decisively proclaimed the existence of a constitutional right to adequate treatment, based on the Due Process Clause of the Fourteenth Amendment. The court has supported its ruling by establishing detailed minimum standards of care formulated with the aid of expert testimony. The *Wyatt* standards will have considerable impact on mental health programs throughout the country if they become generally accepted.

However, if state legislatures take the initiative by establishing administrative procedures to enforce the right to treatment, the states may retain much greater discretion in the area of treatment standards. Serious federal-state confrontations may thus be avoided.

The existence of a constitutional right to adequate treatment is as yet highly speculative. *Wyatt* is the only reported case to date which has upheld the right on purely constitutional grounds. The author has learned of two as yet unreported federal district court decisions, one supporting *Wyatt* and one holding that there is no constitutional right to treatment.[65]

It is at least arguable that even if there is a constitutional right to *some* treatment, there is no enforceable right to *adequate* treatment. In *McInnis v. Shapiro*[66] a three-judge federal court rejected a challenge to the Illinois school funding system, a suit in which the plaintiffs argued that educational expenditures in each district must be based solely on educational needs, without regard to the available property tax revenues in the district. The court held that the concept of educational needs was so vague that the issue was non-justiciable.[67] The United States Supreme Court affirmed without a written opinion. If adequacy of educational programs is a non-justiciable issue, it would seem that adequacy of mental treatment may also be non-justiciable, since it is at least questionable whether there are "discoverable and manageable standards" by which a court can

64. 10 Am. Crim. L. Rev. 587, 595 (1972).

65. Henry Weihofen, private communication. The cases are Donaldson v. O'Connor (N.D. Fla., Nov. 28, 1972), following *Wyatt*, and Burnham v. Georgia (N.D. Georgia, 1972), *contra*.

66. 293 F. Supp. 327 (1968), *affd. mem. sub. nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

67. *Id.* at 335. *See also id.* at 329 n. 4.

determine when the Constitution is satisfied and when it is violated.[68]

If adequacy of mental treatment is non-justiciable, the right to treatment may be recognized only as a right to some treatment, a reasonable level of treatment in light of available resources. Certainly it would be far easier for a court to decide whether or not a patient is receiving some treatment than to decide whether the treatment is adequate.

Clearly the courts must explore these issues more thoroughly before definitive answers to these questions can emerge.

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68. Reynolds v. Simms, 377 U.S. 533, 557 (1964).