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federal relations would have been spared the confines of the strained construction of section 2283 if Congress had evidenced the same confidence in the federal courts.

MARY BROOKE LAMSON

Prisoners' Rights—*Bowring v. Godwin*: The Limited Right of State Prisoners to Psychological and Psychiatric Treatment

According to statistics compiled by the American Correctional Association, between fifteen and twenty percent of the prisoner population in the United States suffers from a diagnosable emotional or mental disturbance, including neuroses, personality and behavioral disorders, and various pre-psychotic and psychotic conditions.¹ And yet, historically, the vast majority of these prisoners have remained untreated due to an inadequacy of staff and facilities,² as well as a general apathy towards the mental health of convicted criminals.³ In *Bowring v. Godwin*,⁴ the United States Court of Appeals for the Fourth Circuit expressly held that in certain narrowly defined situations there is a definite nexus between the constitutional right of a prisoner to be spared from cruel and unusual punishment⁵ and his right to receive psychological and/or psychiatric treatment.⁶ According to the court, however, not

1. AMERICAN CORRECTIONAL ASSOCIATION, MANUAL OF CORRECTIONAL STANDARDS 441 (3d ed. 1966). See also *Newman v. Alabama*, 503 F.2d 1320, 1324 (5th Cir. 1974), cert. denied, 421 U.S. 948 (1975); Alexander, *The Captive Patient: The Treatment of Health Problems in American Prisons*, 6 CLEARINGHOUSE REV. 16 (1972) (persons entering the federal prison system have a 5% chance of severe psychiatric disturbance and 15% chance of serious emotional disability).

2. See, e.g., AMERICAN MEDICAL ASSOCIATION, MEDICAL CARE IN U.S. JAILS (1972), reprinted in ABA COMM. ON CORRECTIONAL FACILITIES AND SERVICES, MEDICAL AND HEALTH CARE IN JAILS, PRISONS, AND OTHER CORRECTIONAL FACILITIES 67 (3d ed. 1974); ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA (1972); SOUTH CAROLINA DEP'T OF CORRECTIONS, SUMMARY OF SYSTEM AND ARRANGEMENTS FOR DELIVERY OF MEDICAL SERVICES IN SOUTH CAROLINA CORRECTIONAL SYSTEM (1974), reprinted in ABA COMM. ON CORRECTIONAL FACILITIES AND SERVICES, supra at 263.

3. See Morris, "Criminality" and the Right to Treatment, 36 U. CHI. L. REV. 784 (1969); Prettyman, *The Indeterminate Sentence and the Right to Treatment*, 11 AM. CRIM. L. REV. 7 (1972). Behavior modification has received the most attention in recent years as a form of treatment. This treatment is intended to conform behavior patterns to a socially acceptable norm, not to discover and combat the root causes of mental illness. See O'Brien, *Tokens and Tiers in Corrections: An Analysis of Legal Issues in Behavior Modification*, 3 NEW ENGLAND J. PRISON L. 15 (1976).

4. 551 F.2d 44 (4th Cir. 1977).

5. U.S. CONST. amend. VIII in pertinent part provides: "[N]or [shall] cruel and unusual punishments [be] inflicted."

6. 551 F.2d at 47-48.

every deprivation of such treatment rises to the level of a constitutional violation.⁷ As a result of this qualification, the role of the federal courts in alleviating the mental health problems among state prisoners remains somewhat limited.⁸

Plaintiff Bowring, an inmate in the Virginia State Prison System, asserted a constitutional right to receive psychological diagnosis and treatment in light of the fact that his application for parole was denied at least partially because of the results of a psychological evaluation indicating that "Bowring would not successfully complete a parole period."⁹ Bowring maintained that the state must provide him with appropriate treatment with the aim that he be cured of the mental aberration that rendered him ineligible for parole. He based this assertion on a claim that the denial of such treatment constituted "cruel and unusual punishment" in violation of the eighth amendment and "a denial of due process of law" in violation of the fourteenth amendment.¹⁰

The district court construed Bowring's petition for relief as an action under 42 U.S.C. § 1983,¹¹ but summarily dismissed the action on the ground that he had failed to allege a denial of any constitutional right.¹² The court of appeals reversed the district court's ruling and remanded the case for an evidentiary hearing to determine whether Bowring's constitutional right to essential medical care had been violated by the prison officials' refusal to grant his request for psychological treatment. The court found no reason for distinguishing "between the right to medical care for physical ills and its psychological or psychiatric counterpart,"¹³ and, accordingly, ruled that the complaint should not have been dismissed without first determining whether Bowring was, in fact, suffering from a "qualified" mental illness and therefore entitled to treatment.¹⁴

Specifically, the court held that every prison inmate is entitled to psychological and/or psychiatric treatment

7. *Id.* at 48; *accord*, Russell v. Sheffer, 528 F.2d 318 (4th Cir. 1975) (per curiam) (mistreatment or nontreatment must be characterized as cruel and unusual punishment in order to raise a constitutional question).

8. See Comment, *The Rights of Prisoners to Medical Care and the Implications for Drug-Dependent Prisoners and Pre-Trial Detainees*, 42 U. CHI. L. REV. 705, 712-18 (1975).

9. 551 F.2d at 46. The exact nature of Bowring's illness is not evident from the record.

10. *Id.*

11. 42 U.S.C. § 1983 (1970) states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

12. 551 F.2d at 46.

13. *Id.* at 47.

14. *Id.* at 49.

if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty (1) that the prisoner's symptoms evidence a serious disease or injury; (2) that such disease or injury is curable or may be substantially alleviated; and (3) that the potential for harm to the prisoner by reason of delay or the denial of care would be substantial.¹⁵

The court went on to hold, however, that the deprivation of appropriate treatment for such a "qualified" mental illness will not always give rise to a complaint actionable under section 1983. First, the denial of treatment will not be actionable unless it is the direct result of deliberate indifference on the part of prison officials.¹⁶ Second, the denial of treatment may be justified in certain situations because of the unreasonable costs involved or the disproportionate amount of time that would be required to complete a particular course of treatment.¹⁷ In addition, the court further limited the scope of the prisoner's right to treatment by expressly disavowing any attempt to "second-guess" the propriety or adequacy of the type of treatment the prison medical officer might choose to prescribe.¹⁸

The court based this limited right to treatment primarily on the eighth amendment's prohibition against cruel and unusual punishment, recognizing that deliberate indifference to the serious medical needs of prisoners results in an unnecessary and wanton infliction of pain and suffering that is totally divorced from any legitimate penal interest.¹⁹ The court also noted that its holding was premised upon the notion that psychological treatment is an integral part of the rehabilitation process.²⁰

Though this standard for invoking the right to psychological and/or psychiatric treatment may seem excessively restrictive, it is for the most part consistent with the standards that have developed in the general area of medical care for prisoners. It is now well established that a prisoner's access to the federal courts for the protection of his constitutional rights is not foreclosed by the mere fact of his incarceration.²¹ Nevertheless, the vestiges of the old "hands-off" doctrine²² are still evident in the efforts of the courts

15. *Id.* at 47.

16. *Id.* at 48.

17. *Id.*

18. *Id.*

19. *Id.* (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

20. *Id.* at 48 n.2 (citing *Pell v. Procunier*, 417 U.S. 817 (1974)). The Court in *Pell* noted that rehabilitation is one of the legitimate penological objectives of the corrections system, the others being deterrence, protection of society and the internal security of the corrections facilities themselves. 417 U.S. at 823.

21. *See, e.g.*, *Bounds v. Smith*, 430 U.S. 817, 821-22 (1977); *Ex parte Hull*, 312 U.S. 546 (1940); *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

22. The "hands off" doctrine refers to the general reluctance of federal courts to intervene in the internal affairs of state prisons. *See, e.g.*, *Banning v. Looney*, 213 F.2d 771 (10th Cir.) (per curiam), *cert. denied*, 348 U.S. 859 (1954).

to limit that accessibility by defining narrowly the circumstances under which a denial of treatment will be considered a constitutional violation. The Supreme Court²³ and all of the circuits²⁴ are in essential agreement that state prison officials possess broad discretion in determining the nature of the medical care afforded inmates²⁵ and that intervention by the federal courts is warranted only when there has been either a deliberate denial of essential treatment for serious illnesses and injuries²⁶ or such drastically insufficient or inappropriate care as to be the equivalent of intentional mistreatment.²⁷ Complaints alleging mere negligence²⁸ or the inefficacy of a particular course of treatment²⁹ do not, by contrast, raise an issue of constitutional dimension and, therefore, are not cognizable under section 1983. In short, if it appears that the prison officials have made a good faith effort to deal with the medical problems of the prisoner, the constitutional requirements have been satisfied.³⁰

The United States Supreme Court's holding in *Estelle v. Gamble*³¹ is representative of the result that ensues when this medical care standard is applied. Plaintiff in *Estelle* filed suit against prison officials after being denied proper medical treatment for a back injury. He had persisted for three months in asking for proper diagnosis and treatment, but during that time the medical personnel refused to prescribe any treatment other than pain pills and muscle relaxants.³² Nevertheless, the Supreme Court affirmed the dismissal of the complaint on the ground that plaintiff had failed to allege a violation of his constitutional rights. The Court emphasized that plaintiff had seen various medical personnel on seventeen occasions during the three-month period and that he had not been denied "treatment" for his ailment.³³ Though acknowledging that plaintiff might have an action in tort for medical

23. *Estelle v. Gamble*, 429 U.S. 97 (1976); see text accompanying notes 31-34 *infra*.

24. See *United States v. Fitzgerald*, 466 F.2d 377, 380 (D.C. Cir. 1972); *Page v. Sharpe*, 487 F.2d 567, 569 (1st Cir. 1973); *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974); *Gittlemacker v. Prasse*, 428 F.2d 1, 6 (3d Cir. 1970); *Russell v. Sheffer*, 528 F.2d 318, 319 (4th Cir. 1975) (per curiam); *Newman v. Alabama*, 503 F.2d 1320 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975); *Westlake v. Lucas*, 537 F.2d 857, 860 (6th Cir. 1976); *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir.), *vacated and remanded*, 419 U.S. 813, *cert. denied*, 419 U.S. 879 (1974); *Wibron v. Hutto*, 509 F.2d 621, 622 (8th Cir. 1975); *Tolbert v. Eyman*, 434 F.2d 625, 626 (9th Cir. 1970); *Dewell v. Lawson*, 489 F.2d 877, 881-82 (10th Cir. 1974).

25. See, e.g., *Ross v. Bounds*, 373 F. Supp. 450, 452-53 (E.D.N.C. 1974).

26. See, e.g., *Stokes v. Hurdle*, 393 F. Supp. 757, 761 (D. Md. 1975).

27. See, e.g., *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir.), *vacated and remanded*, 419 U.S. 813, *cert. denied*, 419 U.S. 879 (1974); *Tolbert v. Eyman*, 434 F.2d 625, 626 (9th Cir. 1970).

28. See, e.g., *Jones v. Lockhart*, 484 F.2d 1192, 1193 (8th Cir. 1973); *Swain v. Garribrant*, 354 F. Supp. 631, 633 (E.D.N.C. 1973).

29. E.g., *Martinez v. Mancusi*, 443 F.2d 921, 923 (2d Cir. 1970).

30. See, e.g., *Corby v. Conboy*, 457 F.2d 251, 254 (2d Cir. 1972).

31. 429 U.S. 97 (1976).

32. *Id.* at 107.

33. See *id.* The Court did not disagree with plaintiff's contention that the seriousness of his back injury may have warranted further diagnosis and treatment. Rather, the Court maintained that this was a question of medical judgment and, therefore, a matter of medical malpractice and not cruel and unusual punishment.

malpractice, the Court refused to classify the treatment provided by prison medical personnel as "deliberate indifference."³⁴

The standards that evolved in the area of medical care have been applied in the past to specific cases involving the alleged denial of psychological and psychiatric treatment.³⁵ For instance, in *Greear v. Loving*,³⁶ plaintiff alleged that he had never been afforded the opportunity to see a psychiatrist to determine if any treatment was available for his emotional problems. The district court ordered a psychiatric evaluation in which it was determined that he was, indeed, suffering from emotional instability, immaturity and impulsivity. The examining psychiatrist concluded, however, that there was no need for any treatment at that time.³⁷ The court then dismissed the complaint on the ground that plaintiff had already been afforded sufficient medical care for his essential needs.³⁸ In *Davis v. Schmidt*,³⁹ plaintiff was examined by a psychiatrist on several occasions, but the only treatment that he received was medication intended to neutralize temporarily the manifested symptoms of the mental illness.⁴⁰ Plaintiff's petition requesting actual psychiatric treatment was denied on the ground that he had alleged only a disagreement with the psychiatrist over the propriety of the medically acceptable course of treatment that had been prescribed for him.⁴¹

Greear and *Davis* are representative of the results that a prisoner requesting treatment for mental health problems might expect. Often, it will be determined that the prisoner's mental or emotional problem is not serious enough to warrant treatment.⁴² In the case of those prisoners whose illnesses cannot be ignored because of the threat posed to the orderly administration of the correctional institution, the treatment prescribed may be intended merely to eliminate the threat by directly combating the symptoms of the mental illness rather than attacking the cause.⁴³

The most significant developments in the field of prisoner health care have occurred in cases in which federal courts have ordered systematic improvements in the conditions under which prisoners are confined.⁴⁴

34. *Id.* at 106.

35. *See, e.g.*, *Flint v. Wainwright*, 433 F.2d 961 (5th Cir. 1970); *Bishop v. Cox*, 320 F. Supp. 1031 (W.D. Va. 1970).

36. 391 F. Supp. 1269 (W.D. Va. 1975).

37. *Id.* at 1271.

38. *Id.*

39. 57 F.R.D. 37 (W.D. Wis. 1972).

40. *Id.* at 40. Tranquilizers were the medication prescribed. Plaintiff was also placed on a waiting list for group therapy.

41. *Id.* at 41; *see* text accompanying notes 29 & 30 *supra*.

42. *See* text accompanying note 26 *supra*.

43. All too frequently the treatment imposed on seriously disturbed inmates is directed at pacification only. For a general overview of the treatment provided for prisoners, *see* *Morris*, *supra* note 3; *Prettyman*, *supra* note 3.

44. *See, e.g.*, *Newman v. Alabama*, 503 F.2d 1320 (5th Cir. 1974), *cert. denied*, 421 U.S.

Though allowing for the necessity that prison officials retain some discretion in the administration of medical resources, these courts have held that an unreasonable deficiency in staff and facilities is tantamount to deliberate indifference to the predictable health care needs of the prisoners.⁴⁵ Yet even these cases have stopped short of setting forth either the degree of care that would satisfy the minimum constitutional requirements or the applicable standards to be followed in determining under what circumstances psychological and/or psychiatric treatment is mandated.⁴⁶ There has been no systematic attempt to provide mental health programs for the general inmate population, even though such programs will assuredly be necessary to deal effectively with a problem that is so prevalent in the prison systems.⁴⁷ In essence, the right to treatment recognized in these cases does very little to remove the obstacles that stand in the way of the individual inmate who desires therapeutic treatment for his mental and emotional problems.⁴⁸

In *Bowring v. Godwin*,⁴⁹ the court declined to extend the right of prisoners to receive psychological and/or psychiatric treatment beyond the generally accepted limits exemplified by *Greear, Davis* and similar cases. If anything, the court in *Bowring* established an even more restrictive standard for invoking the right to treatment. Aside from the typical medical care requirements that a *serious* disease or injury be involved and that the requested treatment be a matter of medical necessity and not merely desirable, the court restricted the right to treatment by excluding those prisoners whose illnesses are incurable or incapable of being substantially alleviated⁵⁰ and by not requiring any treatment that might be considered too costly or too time-consuming.⁵¹

It is indeed reasonable that prison officials should not be charged with

948 (1975) (court ordered hiring of additional medical personnel); *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974) (court ordered hiring of additional medical personnel, compliance with American Correctional Association standards relating to medical services for prisoners and compliance with state licensing requirements for hospital and infirmary); *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971) (court ordered prompt action to protect lives, safety and health of prisoners without dealing specifically with improvements in health care).

45. *E.g.*, *Bishop v. Stoneman*, 508 F.2d 1224, 1226 (2d Cir. 1974).

46. *See, e.g.*, *Newman v. Alabama*, 503 F.2d 1320, 1332 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975). The court found that the medical care available in the Alabama prison system was barbarous and shocking to the conscience. *Id.* at 1330 & n.14. One factor that contributed to this conclusion was the lack of care provided for mentally disturbed inmates. Despite the seriousness of the situation, the state provided the services of only a single part-time clinical psychologist. The court found such inadequate care to be unconstitutional. *Id.* at 1333. The court, however, went no further than to order the prison officials to hire additional medical personnel.

47. *See* Comment, *supra* note 8.

48. *See* text accompanying notes 42 & 43 *supra*.

49. 551 F.2d 44 (4th Cir. 1977).

50. *Id.* at 47.

51. *Id.* at 48. Apparently, these determinations are to be left to the discretion of prison officials.

the obligation of treating the untreatable.⁵² It is, however, certainly not unreasonable to require them to provide such other rudimentary care as may be needed.⁵³ The Supreme Court has recognized that the eighth amendment's prohibition against cruel and unusual punishment is intended to protect prisoners from the unnecessary infliction of pain and suffering.⁵⁴ If such pain and suffering is the result of an untreated medical ailment and can be alleviated in whole or part, it should be irrelevant whether that ailment is ultimately incurable. Moreover, when mental illness is involved, the incurable illness exception to the right to treatment makes it far too easy to discriminate unfairly against disfavored inmates by labeling them "untreatable."⁵⁵ Without some check on this power to arbitrarily refuse to treat, the prisoner's right to mental health care may be converted into a privilege that must be earned by compliance with the regulations of the prison system.

The court's decision limiting the right to treatment on a cost and time basis is inconsistent with better reasoned prior case law. It has become an axiom of constitutional law that constitutional rights cannot be withheld due to a lack of economic resources.⁵⁶ For example, in *Holt v. Sarver*,⁵⁷ the district court rejected the argument that wholesale improvements in prison conditions were impossible until the legislatures appropriate more funds. Instead, it held that the minimum constitutional requirements must be unconditionally satisfied.⁵⁸ It follows, then, that the right to treatment should not be conditioned on the length of time required or the cost involved. As the court in *Bowring* noted, "[T]he essential test is one of medical necessity."⁵⁹ If the illness in question qualifies as a medical necessity, the appropriate treatment should be provided regardless of whether that treatment consists of first-aid or long term chemotherapy. This restriction on the right to treatment is especially critical in the area of mental health care where a substantial amount of time is usually required for any treatment to be effective.

Perhaps the most restrictive aspect of the court's holding is the express refusal to entertain any complaints regarding the adequacy of a particular

52. With the continuing advances being made in medical science, it may be irresponsible to label any mental illness "incurable" or "untreatable."

53. *Hutchens v. Alabama*, 466 F.2d 507 (5th Cir. 1972) (terminally ill inmate alleged a lack of medical attention and medication needed to relieve temporarily his pain and suffering).

54. *Estelle v. Gamble*, 429 U.S. at 104.

55. See *Stokes v. Institutional Bd. of Patuxent*, 357 F. Supp. 701, 705 (D. Md. 1973) (plaintiff returned to the regular prison system after being diagnosed as untreatable).

56. See, e.g., *Watson v. City of Memphis*, 373 U.S. 526, 537 (1963); *Rouse v. Cameron*, 373 F.2d 451, 457-58 (D.C. Cir. 1966); *Martarella v. Kelley*, 359 F. Supp. 478, 481 (S.D.N.Y. 1973).

57. 309 F. Supp. 362 (E.D. Ark. 1970).

58. *Id.* at 379.

59. 551 F.2d at 48. A medical necessity is just that, a necessity. The type of treatment required should not determine whether that necessity will go untreated.

course of treatment.⁶⁰ According to the court, the Constitution requires that only the barest minimums be satisfied.⁶¹ The actual quality of the treatment prescribed is not subject to attack. Only such intentional deprivations as would be shocking to the conscience are unconstitutional.⁶² Under this standard, a prisoner is entitled to *some*, but not the best or even an effective, treatment.⁶³ For all practical purposes, even the most rudimentary medical care facilities will meet the constitutional minimums.⁶⁴ Once again, the net effect of this limitation on the right to treatment may be to allow prison officials to abuse their discretion by treating truly adequate mental health care as a privilege rather than a right.

Admittedly, there are good reasons for limiting access to the federal courts in regard to alleged denials of prisoners' rights to psychological and/or psychiatric treatment. Courts are naturally unwilling to presume that prison officials intentionally mistreat the inmates in their charge. Without some prior indication of bad faith, they are understandably reluctant to undertake the difficult task of examining prisoners' complaints regarding conditions of confinement.⁶⁵ Moreover, the federal courts generally do not wish to intervene in the affairs of a state prison when the only issue involves a difference of opinion between a prisoner and a presumably qualified medical officer.⁶⁶ This reluctance has probably been accentuated by the many frivolous complaints with which the courts have been deluged.⁶⁷ Nevertheless, it must be recognized that the major effect of these limitations is to entrust the prisoners' constitutional right to all types of medical care to the nearly unreviewable discretion of a few prison officials.⁶⁸ Though courts

60. *Id.*

61. *Id.*; *see, e.g.*, *McCray v. Burrell*, 516 F.2d 357, 368 (4th Cir. 1975) (confinement in a primitive isolation cell was insufficient *treatment* for mentally-disturbed inmate); *Newman v. Alabama*, 503 F.2d 1320, 1333 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975) (more than one part-time psychologist is required for a prison population as large as that of Alabama).

62. 551 F.2d at 48; *see, e.g.*, *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir.), *vacated and remanded*, 419 U.S. 813, *cert. denied*, 419 U.S. 879 (1974); *Tolbert v. Eyman*, 434 F.2d 625, 626 (9th Cir. 1970). The treatment must be within the realm of legitimate medical judgment.

63. *See, e.g.*, *Rouse v. Cameron*, 373 F.2d 451, 456 (D.C. Cir. 1966) (hospital need not show that the treatment will cure or even improve involuntarily committed mental patient's condition, but only that there is a bona fide effort to do so); *Stokes v. Institutional Bd. of Patuxent*, 357 F. Supp. 701, 705 (D. Md. 1973).

64. *See Lake v. Lee*, 329 F. Supp. 196 (S.D. Ala. 1971).

65. *See, e.g.*, *Skinner v. Spellman*, 480 F.2d 539 (4th Cir. 1973); *Cates v. Ciccone*, 422 F.2d 926 (8th Cir. 1970).

66. *Russell v. Sheffer*, 528 F.2d 318, 319 (4th Cir. 1975) (*per curiam*) (citing *Shields v. Kunkel*, 442 F.2d 409 (9th Cir. 1971)).

67. *See, e.g.*, *Tolbert v. Eyman*, 434 F.2d 625 (9th Cir. 1970); *United States ex rel. Hyde v. McGinnis*, 429 F.2d 864 (2d Cir. 1970).

68. At least one commentator has suggested that this problem of excessive discretion could be eliminated by court-appointed medical review boards composed of qualified physicians or by permitting inmates to be examined by privately retained physicians. This last suggestion, however, may be subject to criticism as a denial of equal protection insofar as some inmates would not be able to afford private care. *See SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, THE EMERGING RIGHTS OF THE CONFINED* (1972).

may not wish to assume that that discretion is being abused, the incontrovertible fact is that the quality of health care provided in the correctional institutions of this country is "shockingly substandard."⁶⁹

The only effective means of dealing with the various mental and emotional problems that are so widespread among prisoners is to develop a systematic mental health care program within the prison system. Certainly such a program would be consistent with the goal of rehabilitation that served as one of the premises for the *Bowring* court's recognition of the right to treatment.⁷⁰ Given that rehabilitation is one of the avowed purposes of incarceration⁷¹ and that prisoners are constitutionally entitled to essential medical care,⁷² it would seem both logical and practical that they should be entitled to the type of long term psychological and/or psychiatric treatment that may be necessary to help them cope with the pressures of society when they are released from prison.⁷³ Indeed, it is difficult to identify the point at which psychological treatment ceases to be concerned with the limited goal of *curing* a particular mental or emotional disturbance and begins to be concerned with general rehabilitation.⁷⁴ Unfortunately, the federal courts have consistently adhered to the view that the failure of prison officials to provide inmates with rehabilitative programs does not, in itself, constitute cruel and unusual punishment.⁷⁵

Despite the Supreme Court's holding in *Trop v. Dulles*⁷⁶ that the eighth amendment's prohibition against cruel and unusual punishment must be interpreted in light of "the evolving standards of decency that mark the progress of a maturing society,"⁷⁷ it is doubtful that the constitutional standards for mental health care will ever evolve beyond the minimum

69. KRANTZ, *THE LAW OF CORRECTIONS AND PRISONER'S RIGHTS IN A NUTSHELL* 180 (1976). For example, while the warden of North Carolina's Central Prison, Sam P. Garrison, believes that the prison hospital "is one of the finest in a prison in the United States," the prison system's chief of health and food services, Richard A. Keil, acknowledges that the facilities do not come close to meeting the state's own hospital licensing standards. Nichols, *Health Care Behind Bars: A Diagnosis*, Raleigh, N.C., News & Observer, Mar. 20, 1977, § IV, at 1, col. 1.

Efforts are, however, being made to rectify this situation. In November 1977, the Division of Mental Health Services of the North Carolina Department of Human Resources entered into a preliminary agreement with the Department of Corrections to assist in formulating an effective plan for the delivery of mental health care to the inmate population. Memorandum of Understanding Between North Carolina Department of Corrections and North Carolina Department of Human Resources (Nov. 29, 1977) (copy on file in office of *North Carolina Law Review*).

70. 551 F.2d at 48.

71. See, e.g., *Pell v. Procunier*, 417 U.S. 817, 823 (1974); *Williams v. New York*, 337 U.S. 241, 248 (1949); *Taylor v. Sterrett*, 344 F. Supp. 411, 420 (N.D. Tex. 1972).

72. See, e.g., *Estelle v. Gamble*, 429 U.S. 97 (1976).

73. See Comment, *supra* note 8.

74. *Id.* at 720.

75. See, e.g., *Lunsford v. Reynolds*, 376 F. Supp. 526, 528 (W.D. Va. 1974).

76. 356 U.S. 86 (1958).

77. *Id.* at 101.

guidelines enunciated in *Bowring v. Godwin*.⁷⁸ As for now, the best hope of implementing a meaningful right to psychological and/or psychiatric diagnosis and treatment appears to be suits under state administrative procedure acts to compel compliance with the state correctional statutes that recognize, in varying degrees, the general rehabilitative aim of incarceration.⁷⁹ Until such time as some effective means is found to implement such a right to treatment, the general mental health problems of state prisoners are likely to be ignored.⁸⁰

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78. *But see* *James v. Wallace*, 382 F. Supp. 1177, 1179 (M.D. Ala. 1974) (because of this evolving standard of decency from which the eighth amendment draws its meaning, a federal court may rule on whether lack of rehabilitative programs constitutes cruel and unusual punishment even though other courts have previously ruled that it did not); *Holt v. Sarver*, 309 F. Supp. at 379 ("This Court knows that a sociological theory or idea may ripen into constitutional law.").

79. *See* Comment, *A Statutory Right to Treatment for Prisoners: Society's Right of Self-Defense*, 50 NEB. L. REV. 543 (1971). Though most states have enacted legislation defining the general standard of medical care to be provided in the state's prisons, *e.g.*, N.C. GEN. STAT. § 148-36 (Cum. Supp. 1977), the coverage is frequently incomplete and the wording vague.

80. Bazelon, *Implementing the Right to Treatment*, 36 U. CHI. L. REV. 742, 753-54 (1969) ("We may soon realize that the necessities of life are a matter of personal right and societal duty, and not a bounty at all. Mental health is the most basic of these necessities. We owe it to every man.").

