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MEDICAL LAW—UNMEDICATED DEFENDANTS: THE TWO-PRONGED DILEMMA—Commonwealth v. Louraine, 390 Mass. 28, 453 N.E.2d 437 (1983)

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MEDICAL LAW — UNMEDICATED DEFENDANTS: THE TWO-PRONGED DILEMMA — *Commonwealth v. Louraine*, 390 Mass. 28, 453 N.E.2d 437 (1983).

I. INTRODUCTION

On August 23, 1983, the Supreme Judicial Court of Massachusetts held in *Commonwealth v. Louraine*[1] that a mentally ill defendant, who had raised an insanity defense at his trial for murder, could refuse the State's forcible administration of antipsychotic drugs.[2] The court concluded that defendants' right to place before the jury their version of the facts, including their natural demeanor, inhered in the right to a fair trial.[3] The ruling by the motion judge precluding Louraine the opportunity to be unmedicated at trial, therefore, constituted reversible error because it violated sixth and fourteenth amendment protections.[4] Since Louraine's mental functioning was at issue, the Commonwealth should not have forcibly administered antipsychotic drugs, which visibly affected the defendant's demeanor and mental processes.[5]

With its holding, the Supreme Judicial Court of Massachusetts expanded the scope of constitutional protections applicable to defendants who raise the insanity defense. Although Louraine appealed his conviction on various grounds,[6] this note will focus on the involun-

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1. 390 Mass. 28, 453 N.E.2d 437 (1983).

2. *Id.* at 34-37, 453 N.E.2d at 442-44.

3. *Id.* at 34, 453 N.E.2d at 442.

4. *Id.* at 33-38, 453 N.E.2d at 441-44. The *Louraine* court also stated that the right is guaranteed not only by the sixth and fourteenth amendments to the United States Constitution but also by Article 12 of the Massachusetts Declaration of Rights. Article 12 provides that 'every subject shall have a right to produce all proofs, that may be favorable to him.' *Id.* at 34, 453 N.E.2d at 442.

5. *Id.* at 32-33, 453 N.E.2d at 441. State medical personnel characterized Louraine as suffering from chronic paranoid schizophrenia. *Id.* at 32, 453 N.E.2d at 441. The doses of antipsychotic medication were described as "heavy" and were continued throughout the time of trial. *Id.* at 33, 453 N.E.2d at 441. The superior court judge found that the medication reduced Louraine's alertness and ability to concentrate although it did help control the psychotic episodes that Louraine experienced. *Id.*

6. *Id.* at 29, 453 N.E.2d at 439. The defense primarily claimed error on four grounds: First, the ruling of the motion judge deprived defendant of an opportunity to present to the jury his demeanor in an unmedicated condition; second, the trial judge failed to take appropriate steps during the trial to determine the defendant's continued competency; third, the

tary medication issue. It will explore the potential difficulties for the mentally ill defendant who refuses antipsychotic medication[7] in order to present a true demeanor at trial but who as a result may be rendered incompetent to comprehend the trial proceedings. *Louraine* reflects legitimate legal concerns. It does not, however, resolve the dilemma it creates for a defendant who may have to chose one constitutional protection at the expense of another.

II. SOURCES AND MEANING OF THE *LOURAINE* DECISION

On May 26, 1979, two police officers responded to a call from 23-B Van Buren Avenue in Springfield, Massachusetts. Upon arriving, they found Albert Zulucki dead from multiple stab wounds.[8] Peter Louraine appeared at the top of the stairs and stated, "I called the police, I stabbed him."[9] Louraine did not contest the facts of the homicide at his subsequent trial but instead relied on the defense of lack of criminal responsibility.[10] Due to Louraine's long history of psychotic disorders and drug abuse, the Commonwealth did not dispute Louraine's contention that he suffered from paranoid schizophrenia at

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trial judge instructed the jury incorrectly; and last, the trial judge did not appropriately address the voluntariness of specific statements made by the defendant after the crime. *Id.*

7. Antipsychotic medication is the generic term for drugs which mitigate the symptoms of psychotic disorders. It is the most accurate term used although they have also been referred to as psychotropics, neuroleptics and major tranquilizers. The term 'psychotropics' usually refers to all mind-altering drugs. Presently the medical community considers the administration of antipsychotic drugs, commonly known as thorazine, prolixin, haldol, stelazine and navane, as the most efficacious means available for treatment of acute psychosis. Psychosis is a descriptive term denoting a patient's withdrawal from reality or an attempt to reconcile reality with a severely disorganized thinking process. Though not a cure for psychotic disorders, these drugs do facilitate control of psychotic symptoms such as hallucinations (hearing or seeing things not in reality); delusions (irrational and unrealistic perception of reality); and paranoia (unrealistic suspicions or fear). *See* K. BERNHEIM & R. LEWINE, SCHIZOPHREHIA: SYMPTOMS, CAUSES, TREATMENTS 123 (1979); Cole,*Pharmacotherapy of Psychosis*, in PSYCHOPHARMACOLOGY IN THE PRACTICE OF MEDICINE (M. Jarvik ed. 1977); Grinker, *Neurosis, Psychosis, and Borderline States*, in COMPREHENSIVE TEXTBOOK OF PSYCHIATRY/II 415 (A. Freedman, H. Kaplan & B. Saddock 2d ed. 1976).

8. *Louraine*, 390 Mass. at 29, 453 N.E.2d at 439.

9. *Id.*

10. *Id.* at 30, 453 N.E. 2d at 440. Commonwealth v. McHoul, 352 Mass. 544, 549-53, 226 N.E.2d 556, 559-62 (1967), established the Massachusetts standard for lack of criminal responsibility. The rule reflects the approach codified in the American Law Institute Model Penal Code Proposed Official Draft:

> Section 4.01: Mental Disease or Defect Excluding Responsibility (1): A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to either appreciate the criminality of his conduct or conform his conduct to the requirements of law.

MODEL PENAL CODE SEC. 4.01 (PROPOSED OFFICIAL DRAFT 1962).

the time of the crime. Instead, the prosecution questioned the degree of his illness.[11] On a pretrial motion, the defendant requested that if he were found competent that he be permitted to attend trial in an unmedicated state. Louraine had not been taking medication at the time of the homocide.[12] The motion judge denied the motion on the grounds that the "defendant's behavior and his symptoms of mental illness, were being controlled to some extent by medication."[13] At a competency hearing held later, the trial judge concurred that the medication, while not eliminating the psychotic episodes, did enable the defendant to "better control himself and to cope with these episodes."[14] The motion judge agreed that medication was alleviating Louraine's mental symptoms and ruled that in order to present an insanity defense the defendant need not attend trial in an unmedicated condition. The judge reasoned that medical experts could explain to the jury whatever effects the medication had on the defendant's behavior.[15] Louraine, therefore, remained on antipsychotic drugs during the

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11. *Louraine*, 390 Mass. at 30, 453 N.E.2d at 440. The State conceded that Peter Louraine suffered from mental illness from the age of sixteen. *Id.* at 36 n.9, 453 N.E.2d at 442 n.9. Testimony from Louraine's brother, Phillip, other relatives and health care professionals confirmed that the defendant experienced hallucinations, had been committed to mental hospitals, had a history of ingesting drugs (including marihuana, lysergic acid diethylamide and mescaline) and had acted in a strange and violent manner including several suicide attempts. *Id.* at 30-32, 453 N.E.2d at 440-41. For more information on psychotic disorders see generally, Grinker, *Neurosis, Psychosis, and Borderline States* in COMPREHENSIVE TEXTBOOK OF PSYCHIATRY/II 415 (A. Freedman, H. Kaplan and B. Saddock 2d ed. 1976); CHAPMAN, TEXTBOOK OF CLINICAL PSYCHIATRY (2d ed. 1976).

12. *Louraine*, 390 Mass. at 31-32, 453 N.E.2d at 441. When a defendant is taking antipsychotic medication at anytime before committing a crime the importance of presenting an unmedicated demeanor to the jury would not be as relevant. *See* State of N. H. v. Hayes, 118 N.H. 458, 389 A.2d 1379 (1978) The court in *Hayes* held that the jury should view the defendant without medication for as long as he was found to have been without medication at the time of the crime. In *Hayes*, the defendant ceased taking medication only one day before committing the crime. *Id.* at 462, 389 A.2d at 1382.

13. *Louraine*, 390 Mass. at 32-33, 453 N.E.2d at 441. The judge found that without medication Louraine would not be competent to stand trial. *Id.* at 33, 453 N.E.2d at 441.

14. *Id.* at 33, 453 N.E.2d at 441. The defendant did not renew his motion to be unmedicated when before the trial judge. At the pretrial motion hearing, however, he had requested that he be unmedicated for the competency hearing. The court denied his request. *Id.* Testimony at both hearings confirmed that the state was administering heavy dosages of antipsychotic medications to Louraine. prolixin, thorazine, melaril, stelazine and trilafon were among the antipsychotics administered. Elavil and artane, which are not antipsychotic medications, were also administered. *Id.* at 32-33 n.5, 453 N.E.2d at 441 n.5.

15. *Id.* at 33 n.7, 453 N.E.2d at 441 n.7. Although expert medical testimony was presented at the pretrial hearings, no medical testimony was presented during the trial. The supreme judicial court later held that even if such testimony had been offered, it would only have mitigated the unfair prejudice arising from the medication affecting the defendant's demeanor. The court concluded, therefore, that such expert testimony did not adequately compensate for the potential injury to the defendant's case.*Id.* at 33-35, 453 N.E.2d at 442.

trial.

The jury convicted Louraine of murder in the first degree and the judge sentenced him to a term of life imprisonment.[16] Louraine appealed the conviction on the grounds, inter alia, that his constitutional rights to a fair trial had been violated.[17] The Supreme Judicial Court of Massachusetts reversed the judgment of conviction and held that the lack of opportunity to present an unmedicated demeanor at trial constituted a violation of the sixth and fourteenth amendments.[18]

The rights protected by the sixth amendment encompass whatever is "fundamental and essential to a fair trial."[19] The court in *Louraine* affirmed the legal principle that the accused always retains the right to present his/her version of the facts.[20] Additionally, when the defendant's sanity at the time of the crime is in question, an element which must be proven beyond a reasonable doubt, "all conduct which is at all probative of his mental condition"[21] is admissible in evidence. Citing to numerous sources for support, the *Louraine* court emphasized the universally accepted rule that in insanity defense cases, a defendant's demeanor in the courtroom can always be considered by the jury.[22] A problem arises when the State forcibly administers medication, albeit for medical reasons, which significantly alters the defendant's outward appearance, thereby affecting defendant's insanity defense. The supreme judicial court reasoned that expert testimony describing the effect of the medication on the defendant did not suffice to remedy the potential prejudicial impact to his case.[23]

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16. *Id.* at 29, 453 N.E.2d at 439.

17. *See supra* note 6.

18. *Louraine*, 390 Mass. at 29, 453 N.E.2d at 439.

19. Gideon v. Wainwright, 372 U.S. 335, 342 (1963).

20. *Louraine*, 390 Mass. at 33, 453 N.E.2d at 441 (citing Washington v. Texas, 388 U.S. 14, 19 (1967)).

21. *Louraine*, 390 Mass. at 34, 453 N.E.2d at 442 (citing United States v. Hartfield, 513 F.2d 254, 259-60 (9th Cir. 1975)). The Supreme Judicial Court of Massachusetts retains a permissive interpretation of evidence rules in insanity cases, as shown by Commonwealth v. Schulze, 389 Mass. 735, 452 N.E.2d 216 (1983). There the court created a new rule to allow the testimony of a defendant's condition from a general practitioner who had examined the him prior to the crime. The court stated that when criminal responsibility is at issue, the importance of presenting a defendant's entire medical history, conduct, and appearance to the jury warrants the admission of a general practitioner's observation. *Id.* at 740, 452 N.E.2d at 220. Prior Massachusetts' law limited such testimony to specialists. *Id.*

22. *Louraine*, 390 Mass. at 35, 453 N.E.2d at 442 (citing Commonwealth v. Devereaux, 257 Mass. 391, 395, 153 N.E. 881, 882 (1926); United States v. Chandler, 72 F. Supp. 230, 238 (D.Mass. 1947); *In re* Pray, 133 Vt. 253, 257-58, 336 A.2d 174, 177 (1975); State v. Maryott, 6 Wash. App. 96, 101, 492 P.2d 239, 242 (1971); State v. Hayes, 118 N.H. 458, 462, 389 A.2d 1379, 1381-82 (1978).

23. The court expressed concern for the inappropriateness of a state's intrusion into

Additional support for expanding the scope of admissible evidence when insanity is at issue is found within the Model Penal Code definition of criminal responsibility. Massachusetts law follows this standard. The Model Penal Code test warrants consideration of a wide range of evidence, including a defendant's courtroom demeanor.[24] To buttress the argument against State intrusion in the defendant's factual case, the supreme judicial court emphasized the jury's role in assessing the evidence. Broad discretion has always been afforded the jury to evaluate the facts presented on the insanity issue.[25] However, inherent in this principle of broad discretion is the assumption that the defendant has been given a full and fair opportunity to present his version of the facts.[26] The pivotal question facing the *Louraine* court, therefore, was whether precluding a defendant the chance to present an unmedicated demeanor to the jury impermissibly interfered with a defendant's right to a fair trial. Previously, other jurisdictions addressed this exact question. The *Louraine* court referred to these opinions for guidance.[27] In the 1975 Vermont case of *In re Pray*,[28] the mentally ill defendant was heavily medicated during the trial. The Vermont Supreme Court held that because the jury never saw him in an undrugged state his conviction should be reversed.

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defendants' freedom to control their own defense. By administering drugs to the defendants, the State would in essence manipulate what the jury would see and, therefore, would emasculate the jury's power to evaluate the facts. *Louraine*, 390 Mass. at 35, 453 N.E.2d at 442. *See* State v. Maryott, 6 Wash. App. 96, 102, 492 P.2d 239, 242 (1971).

24. *Louraine*, 390 Mass. at 37 n.11, 453 N.E.2d at 444 n.11. Commonwealth v. McHoul, 352 Mass. 544, 226 N.E.2d 556 (1967) set forth the Massachusetts standard for criminal responsibility as well as outlining the applicable evidential approach. *McHoul*, 352 Mass. at 550-51, 226 N.E.2d at 560. The *Louraine* court distinguished a 1978 South Carolina case, State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978). In *Law*, the court held that administration of psychotropic medication did not undermine the insanity defense. *Law*, 270 S.C. at 672-74, 244 S.E.2d at 306-07. South Carolina law, however, judges insanity by the M'Naughten test which weighs the defendant's ability to distinguish right from wrong. *Id.* at 669, 244 S.E.2d at 304. Massachusetts follows a test reflecting the much broader Model Penal Code approach and allows a wide range of evidence on the insanity issue. *Louraine*, 390 Mass. at 37 n.11, 453 N.E.2d at 444 n.11.

25. *Louraine*, 390 Mass. at 35, 453 N.E.2d at 442-43. The *Louraine* court cited to examples where broad discretion is granted to juries in evaluating the insanity defense, such as: a jury may infer that a defendant is sane based upon its members' own common experiences that a great majority of people are sane and that any particular person is sane; and that expert testimony is not necessary to prove a defendant sane beyond a reasonable doubt even if uncontroverted expert testimony is presented that a defendant is insane. *Id.* at 35-36, 453 N.E.2d at 443.

26. *Id.* at 36, 453 N.E.2d at 443.

27. *See supra* note 22.

28. *Louraine*, 390 Mass. at 37, 453 N.E.2d at 443 (citing *In re* Pray, 133 Vt. 253, 336 A.2d 174 (1975).

> [a]t the very least [the jury] should have been informed that he [defendant Pray] was under heavy, sedative medication, that his behavior in their presence was strongly conditioned by drugs administered to him at the direction of the State, and that his defense of insanity was to be applied to a basic behavior pattern that was not the one they were observing. In fact, it may well have been necessary, in view of the critical nature of the issue, to expose the jury to the undrugged, unsedated Gary Pray, at least, insofar as the safety and trial progress might permit.[29]

The issue was not how beneficial the medication was to the defendant, but whether the outward behavior of the heavily sedated Pray prejudiced the jury's evaluation of his sanity.[30] The focus on the legal concerns to the exclusion of the medical questions parallel the approach taken by the *Louraine* court. *State v. Maryott*[31] represents another case where a court stressed protection of a defendant's sixth amendment rights. The *Louraine* court cited to the *Maryott* opinion which argued the State's forcible administration of drugs constituted a serious intrusion into a person's liberty and privacy interests.

> [i]f the state may administer tranquilizers to a defendant who objects, the state is, in effect, permitted to determine what the jury will see or not see of the defendant's case by medically altering the attitude, appearance and demeanor of the defendant, when they are relevant to the jury's consideration of his mental condition.[32]

In *Maryott*, where the defendant was administered heavy tranquilizers to control his violent behavior, the court strongly averred that a defendant must be free from restraints which affect reason.[33]

The New Hampshire court in *State v. Hayes*[34] definitively outlined the conditions by which the State could forcibly administer antipsychotics in the courtroom setting. Though applying a balancing approach on the right to be unmedicated, the *Hayes* opinion in general supported the *Louraine* court's reasoning. The facts of the *Hayes* case revealed that the defendant had refrained from taking his anti-

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29. *Louraine*, 390 Mass. at 37, 453 N.E.2d at 443-44 (quoting *In re* Pray, 133 Vt. at 257-58, 336 A.2d at 177).

30. *In re* Pray, 133 Vt. at 256-57, 336 A.2d at 176-77. The defense counsel expressed fear that without medication, which was in heavy frequent doses, the defendant's behavior might result in exclusion from the courtroom. *Id.* at 256, 336 A.2d at 176-77.

31. 6 Wash. App. 96, 492 P.2d 239 (1971).

32. *Louraine*, 390 Mass. at 35, 453 N.E.2d at 442 (quoting State v. Maryott, 6 Wash. App. 96, 102, 492 P.2d 239, 242 (1971)).

33. *Maryott*, 6 Wash. App. at 100, 492 P.2d at 241-42.

34. 118 N.H. 458, 389 A.2d 1379 (1978).

psychotic medication only one day before he committed a murder.[35] The New Hampshire court held that he may be compelled to receive medication only

> if the jury is instructed about the facts relating to the defendant's use of medication and if at some time during the trial, assuming the defendant so requests, the jury views him without medication for as long as he is found to have been without medication at the time of the crime.[36]

In contrast to the approach of the Supreme Judicial Court of Massachusetts, the New Hampshire court evaluated the defendant's need for antipsychotic drugs and deferred the final decision, which should reflect the legal and medical concerns, to the trial judge's discretion.[37] In addition, the *Hayes* court distinguished the *Maryott* case on the facts that Maryott was administered tranquilizers that were intended to control him rather than alleviate psychotic symptoms.[38] *Louraine* refers to portions of the *Hayes* opinion which refer to the evidentiary justification supporting the defendant's right to offer his demeanor in an unmedicated state. No mention was made of the potential therapeutic value for forcing antipsychotic medication.[39] The only suggestion in the *Louraine* decision that other factors may be considered was the court's caution that each case must be decided on its own facts.[40]

The analysis of the Supreme Judicial Court of Massachusetts in *Louraine* supported by persuasive authority irrefutably underscored a defendant's right to a fair trial. In this case the opportunity to present an unmedicated demeanor to the jury was considered an essential component of a fair trial. When a schizophrenic defendant is taken off

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35. *Id.* at 460, 389 A.2d at 1380.

36. *Id.* at 462, 389 A.2d at 1381-82; *See Louraine*, 390 Mass. at 36-37, 453 N.E.2d at 444.

37. *Hayes*, 118 N.H. at 462-63, 389 A.2d at 1382.

38. *Id.* at 461, 389 A.2d at 1381. *See Maryott*, 6 Wash. App. at 97, 492 P.2d at 240.

39. *Louraine*, 390 Mass. at 34, 36 at 37, 453 N.E.2d at 442-43.

40. *Louraine*, 390 Mass at 37, 453 N.E.2d at 444. The supreme judicial court clearly stated that it was not suggesting that a new trial must be granted where the defendant's appearance is marred by some emotional or physical impairment regardless of its nature or how it was brought about. *Id.* In Commonwealth v. Lombardi, 378 Mass. 612, 616, 393 N.E.2d 346, 349 (1979), the supreme judicial court considered whether a defendant with amnesia could receive a fair trial. In *Lombardi*, factors such as the nature of the crime, the extent to which the prosecution made full disclosures, the likelihood that a defense could be established but for the amnesia and the extent and effect of the amnesia were all relevant considerations. *Id.* Similar factors should be applied to cases involving incompetency and insanity. However, the court went on to distinquish amnesia from insanity cases. The key factor distinguishing the two situations is that in *Louraine* type cases the Commonwealth is taking affirmative steps to bring the defendant to trial in an altered state. *Louraine*, 390 Mass. at 38 n.12, 453 N.E.2d at 444 n.12.

medication, however, it is likely that psychotic symptoms will resurface. The *Louraine* opinion does not address the potential medical and legal dilemmas which face a defendant who attempts to exercise the rights outlined in the *Louraine* holding. In the remainder of this casenote, the consequences of applying the *Louraine* decision are discussed.

III. ANALYSIS

A. *Applying the* Louraine *Decision*

It is now uncontroverted that in Massachusetts, when insanity is raised as an issue, a defendant has a right to appear before the jury in an unmedicated condition if he/she was unmedicated at the time of the crime. Without medication, however, psychotic symptoms will return. Since the ramifications of refusing medication may be a deterioration of the defendant's cognitive functioning, it is likely that he/she will become incompetent to stand trial. A decision to be unmedicated may be a decision to become incompetent. This potentiality then creates a dilemma for the defendant with a psychotic disorder which limits the beneficial impact of the *Louraine* holding.

In *Louraine*, the court did not address the issue of competency, because it had not been raised on appeal.[41] Further judicial guidance is necessary to apply meaningfully the rights acknowledged in Louraine. In footnote 13 the court foreshadowed a possible approach:

> We agree, however, with the New Hampshire Supreme Court that if a defendant wishes to appear at trial in an unmedicated condition, even though medication may be necessary to maintain his mental competency he may be held to have waived his right to be tried while competent.[42]

In support of this reasoning, the New Hampshire Supreme Court, in *State v. Hayes*,[43] has stated that when competency may be waived, it is imperative that the judge be sure that the defendant, while competent, understands: (1) that he/she has a constitutional right not to be tried while legally incompetent: (2) that if he/she refuses medication he/she may become incompetent; and (3) that he/she voluntarily gives up this right if he/she requests to appear at trial unmedicated.[44] It is

41. Louraine, 390 Mass. at 38 n.13, 453 N.E.2d at 444 n.13.
42. *Id.*
43. 118 N.H. 458, 389 A.2d 1379 (1978).
44. *Id.* at 462-63, 389 A.2d at 1381-82; *see also* Illinois v. Allen, 397 U.S. 337 (1970);

questionable whether there has been a voluntary waiver, when the choice is mandated only for defendants who have psychotic disorders.

When dealing with defendants with psychotic disorders both competency and voluntariness issues become of paramount concern. The symptoms of schizophrenia include disordered thought patterns, inappropriate affect, ambivalence, autism, hallucinations and delusions.[45] These characteristics would predictably interfere with a persons ability to make rational, productive decisions. In a legal context, however, the current view is that an individual must be adjudged incompetent through a due process proceeding.[46] Even though the defendant has been institutionalized, an automatic presumption of incompetency does not arise.[47] The standard applied in the courtroom setting is that a person is competent to stand trial if he/she properly understands the nature of the proceedings against him/her and is capable of rationally assisting and conferring with legal counsel.[48] This test for competency protects a defendant's sixth amendment rights.[49] When a schizophrenic defendant chooses to be unmedicated, he/she may become by definition legally incompetent. Experts testifying at Peter Louraine's competency hearing unanimously agreed that Louraine would not be competent to stand trial if he were unmedicated.[50] When the judicial system offers defendants without psychotic disorders the full panoply of sixth amendment protections, how can there be a justification for forcing a mentally ill defendant to choose one protection to the exclusion of another?

In addition to affecting competency, the decision to remain unmedicated may also interfere with defendants' ability to control physi-

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State v. Maryott, 6 Wash. App. 96, 492 P.2d 238 (1971); Winick, *Psychotropic Medication and Competence to Stand Trial*, 1977 AM. B. FOUNDATION RESEARCH J. 769, 797.

45. *See generally* Lehmann, H., Schizophrenia; Clinical Features, COMPREHENSIVE TEXTBOOK OF PSYCHIATRY II (Freedman, A., Kaplan, H., Sadock B. eds. 1975) ; Appelbaum, Gutheil, *Rotting with Their Rights On: Constitutional Theory and Clinical Reality in Drug Refusal by Psychiatric Patients*, 7 BULL. AM. ACAD. PSYCHIATRY & L. 306 (1979).

46. *See* Scott v. Plante, 532 F.2d 939, 946 (3d Cir. 1976)(a mental patient properly committed still required due process adjudication of incompetency before he could be assumed incapable of giving informed consent to drug treatment). Boyd v. Board of Registrars of Voters of Belchertown, 368 Mass. 631, 334 N.E.2d 629 (1975)(mentally retarded persons voluntarily residing at public medical institution but never adjudged incompetent could not be precluded from registering to vote).

47. *See* Rennie v. Klein, 476 F. Supp. 1294 (D.N.J. 1979), *rev'd in part, aff'd in part and rem'd*, 653 F.2d 836 (3d Cir. 1981), *vac. and rem'd*, 458 U.S. 1119 (1983).

48. State v. Maryott, 6 Wash. App. at 102, 492 P.2d at 243 (citing State v. Gwaltney, 77 Wash. 2d 906, 468 P.2d 433 (1970); *See also In re* Dennis, 51 Cal. 2d 666, 335 P.2d 657 (1959).

49. State v. Maryott, 6 Wash. App. at 102-03, 492 P.2d at 242-43.

50. *See supra* note 13 and accompanying text.

cal behavior. In Louraine's case, expert testimony confirmed that he suffered hallucinations and violent episodes, often directed at himself, during the acute phases of his illness.[51] Sensitive to the potential for disruptive behavior when a defendant is unmedicated, the Vermont court in *In re Pray* cautioned that exposing the jury to an undrugged, unsedated defendant was permissible only if it was safe and did not impede the trial's progress.[52] In *Illinois v. Allen*[53] the Supreme Court held that a defendant's fundamental right under the sixth amendment to be present at trial may be limited or lost when his/her conduct makes an orderly trial impossible.[54] The means of control should be imposed with the least interference to defendants' rights.[55] If defendants deliberately induces their own incompetency by choosing to be unmedicated, they risk removal from the courtroom if they become disruptive. The ironic twist for mentally ill defendants, therefore, is that in the attempt to present a full defense by refusing medication they may suffer psychotic symptoms which if disruptive will result in their total exclusion from the court proceedings.

B. *The Dilemma of the* Louraine *Decision; Is There a Solution?*

Historically, the issues raised by the insanity defense are often complex and often controversial. The holding in *Louraine* presents additional considerations for a criminal defense attorney who must advise a client of the best defense strategy. Since psychotic disorders affect mental functioning communication with a mentally ill defendant may be difficult. Additionally, because antipsychotics are relatively new to the scientific field it can not be predicted how a defendant will behave with or without medication.[56] Furthermore, the legal field is not consistent in its approach to the subject and often reflects a myriad of judicial as well as medical opinions.[57] From the legal perspective,

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51. *Louraine*, 390 Mass. at 31, 453 N.E.2d at 440. *See supra* note 9.

52. *See supra* note 29.

53. 397 U.S. 337 (1970).

54. *Id.* at 347.

55. *See Maryott*, 6 Wash. App at 104, 492 P.2d at 243-44.

56. Antipsychotic drugs belong to several classes of chemical compounds; the phenothiazenes (thorazine (chorpromazine), prolixin (thephenazene)), navane (thithexene)) and butyrophenones (haldol (halopendox)). They were first used to treat mental disorders (particularly schizophrenia) in the 1950's. *See* COLE, PSYCHOPHARMACOLOGY IN THE PRACTICE OF MEDICINE (1977).

57. Rennie v. Klein, 476 F. Supp. 1294 (D.N.J. 1979), *rev'd in part, aff'd in part and rem'd*, 653 F.2d 836 (3d Cir. 1981), *vac. and rem'd*, 458 U.S. 1119 (1983). *See generally* Comment, *Judicial Schizophrenia: An Involuntrarily Confined Mental Patient's Right to Refuse Antipsychotic Drugs*, 51 UMKC L. REV. 74 (1982); Comment, *The Scope of the Involuntarily Committed Mental Patient's Right to Refuse Treatment with Psychotropic Drugs:*

the first cases dealing with the rights of the mentally ill involved the right to treatment[58] and the due process procedures necessary to evaluate competence.[59]

The recent cases of *Rennie v. Klein*[60] in New Jersey, *Mills v. Rogers*[61] and *In re Roe*[62] in Massachusetts stand as landmark cases on the right of the mentally ill patient to be unmedicated. Though the focus of these cases is on the patient in a hospital setting, they are reflective of the courts' trend to extend protections which relate to the unique needs of the mentally ill. Massachusetts courts have applied both substantive and procedural constitutional analysis to cases litigating the right to refuse antipsychotic medication.[63]

In *Mills v. Rogers*[64] the supreme judicial court recognized a constitutional right to refuse antipsychotic medication. In addition to defining the substantive right, the court applied the doctrine of substituted judgment to the promulgated procedural safeguards.[65] Following the substituted judgment reasoning, which gives the patient's choice priority, the *Louraine* court acknowledged the defendant's right to choose to be unmedicated at trial.[66] Barring an

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An Analysis of the Least Restrictive Alternative Doctrine, 28 VILL. L. REV. 101 (1982); Appelbaum, Gutheil, *Rotting with Their Rights On; Constitutional Theory and Clinical Reality in Drug Refusal by Psychiatric Patients*, 7 Bull. Am. Acad. Psychiarty & L. 306 (1979); Gutheil, Appelbaum *Mind Control, Synthetic Sanity, Artificial Competence and Genuine Confusion; Legally Relevant Effects of Antipsychotic Medication*, 12 HOFSTRA L. REV. 77 (1983).

58. *See, e.g.* Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974), *vac. and rem'd on other grounds*, 422 U.S. 563 (1975), *on remand*, 519 F.2d 59 (5th Cir. 1975), *vacated sub nom.* Gumanis v. Donaldson, 422 U.S. 1052, *rehearing denied*, 423 U.S. 885 (1975).

59. *See, e.g.*, Scott v. Plante, 532 F.2d 939, 946 (3d Cir. 1976).

60. Rennie, 476 F. Supp. 1294 (O.N.J. 1979), *rev'd in part, aff'd in part and rem'd*, 653 F.2d 836 (3d Cir. 1981), *vac and rem'd*, 458 U.S. 1119 (1983).

61. Rogers v. Okin, 478 F. Supp. 1342 (D.Mass. 1979), *aff'd in part, rev'd in part* 634 F.2d 650 (1st Cir. 1980), *vac. and rem'd sub nom.* Mills v. Rogers, 457 U.S. 291 (1982).

62. *In re* Roe, 383 Mass. 415, 421 N.E.2d 40 (1981).

63. Mills v. Rogers, 457 U.S. 291 (1981). *See also* Superintendent of Belchertown v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977)(incompetent mentally ill patient has a right to refuse life prolonging treatment). *See infra* note 63.

64. *Mills*, 457 U.S. at 2442.

65. *Id.* The substituted judgment standard had its origin over 150 years ago in the area of administration of the estate of incompetents. *Ex parte* Whitbread in re Hinde, a Lunatic, 35 Eng. Rep. 878 (1816). In modern times the doctrine has been used to decide cases where medical treatment is refused based on a determination that the incompetent would not have decided on treatment if he were competent to make the decision. It is important to ascertain if the person had any actual interests or preferences expressed when competent. Consideration of the medical effects, the effect on the family and the present and future incompetency of the individual would be factors entering into a decision making process of a competent person and therefore are relevant to substituted judgment decisions.

66. *Louraine*, 390 Mass. at 32, 453 N.E.2d at 441.

emergency situation, therefore, the defendant has the responsibility of choice. If the defendant makes the decision to refuse medication because a natural demeanor is significant to his/her defense, the State should honor the choice. The *Louraine* court explicitly noted that it was not called upon to decide whether a court should forcibly medicate the defendant to render him/her competent to stand trial.[67] If the supreme judicial court acknowledges the interest of both the mentally ill patient and defendant to decide whether to be medicated, however, then the substituted judgment approach would preclude a judge from deciding at a competency hearing what would be in the best interest of the defendant.

At Peter Louraine's pretrial competency hearing, his lawyers did request that he be evaluated for trial in a drug free condition. The motion was denied.[68] The judge relied on the expert testimony which confirmed that Louraine would be incompetent to stand trial without medication.[69] Although most medical specialists would argue that the best interests of the defendant are served by medication,[70] from a legal perspective once the defendant makes the choice the court should evaluate his/her competency in the condition in which he appears at trial. If he/she is adjudged incompetent the Supreme Court has mandated that the State decide either to dismiss or follow civil commitment proceedings.[71]

> [A] person charged by a State with a criminal offense who has been committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute customary civil commitment proceeding that would be required to comit indefinitely any other citizen, or release the defendant.[72]

In February of 1983, Peter Louraine was to be tried again after his initial conviction was dismissed by the supreme judicial court due to sixth amendment violations.[73] Louraine, however, never went to

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67. *Id.* at 38, 453 N.E.2d at 441.

68. *Id.*

69. *Id.* at 33, 453 N.E.2d at 441.

70. *See* Appelbaum Gutheil, *Rotting with Their Rights On: Constitutional Theory and Clinical Reality in Drug Refusal by Psychiatric Patients*, 7 Bull. Am. Acad. Psychiarty & L. 306 (1979).

71. Jackson v. Indiana, 406 U.S. 715 (1972).

72. *Id.* at 738.

73. Telephone conversation with Attorney Lynda Thompson, attorney for Peter Louraine, on February 1984.

trial. Instead he chose to plead guilty to a lesser charge. He told the judge that if he exercised his right to be seen by the jury in his true demeanor he would never "make" it through trial. He knew without medication he had no hope of remaining sane.[74] Louraine made his decision within the presently restrictive judicial parameters. It is clear he was presented with a dilemma which the supreme judicial court decision did not assist in alleviating.

IV. CONCLUSION

The right of the mentally ill to refuse antipsychotic medication has been a controversial subject, often hotly debated in the legal and medical communities. The Supreme Judicial Court of Massachusetts has been a pioneer in recognizing constitutional protections for the mentally ill in the hospital setting. The 1983 decision of *Commonwealth v. Louraine*, analyzed under sixth amendment protections, now extends the right to refuse medication to the trial setting.

The court's concern is to insure a fair trial. When criminal responsibility is at issue, therefore, all relevant evidence to the defense can be set before the jury. A defendant's demeanor at trial is a significant factor when the insanity defense is raised. For this reason the State's forcible administration of antipsychotic medication impermissibly interferred with Louraine's right to a fair trial. However, as Peter Louraine later concluded, refusing medication may result in the reoccurrence of psychotic symptoms which may render him incompetent. The *Louraine* court gave little guidance for dealing with the competency issue but it did state approval for the New Hampshire court's approach when a defendant who chooses to be unmedicated is deemed to have waived his/her right to be competent at trial. Although the court has recognized the right to make a choice, the options available to defendants such as Louraine do not guarantee full sixth amendment protections.

The *Louraine* decision, which uncontrovertably extends sixth amendment protections never before afforded to the mentally ill, when actually applied is limited its effect. Though the legal arguments averred by the supreme judicial court may appear valid, if the holding does not allow defendants all their constitutional protections, then in reality the protections created in *Louraine* are a delusion.

Robin L. Oaks

74. *Id.*