THE NEW YORK TIMES, TUESDAY, APRIL 21, 1981

Justices Restrict A 'Bill of Rights' For the Retarded

High Court Calls U.S. Law Only Advisory for States

By LINDA GREENHOUSE
Special to The New York Times

WASHINGTON, April 20 — The Supreme Court ruled today that a Federal "bill of rights" for the mentally retarded, enacted six years ago, did not oblige the states to provide any particular level of care or training for retarded people in state institutions.

The 6-to-3 decision reversed key portions of a highly publicized Federal court ruling in Pennsylvania under which the Pennhurst State School was effectively placed under management of the United States Court of Appeals for the Third Circuit.

The Court also ruled, 6 to 3, that the closing of a street through a white Memphis neighborhood did not violate the civil rights of the black residents of an adjoining neighborhood even though the action required the blacks to make a detour around the all-white area. [Page B13.]

Release of Retarded People

In the case involving the retarded, the appeals court had ruled that the 1,200 residents of Pennhurst, a state institution, were being deprived of their right to treatment under the least restrictive setting possible. The court interpreted that right to include a presumption in favor of release from the institution and treatment in small community facilities.

While today's decision left some aspects of the appeals court ruling unresolved, the Supreme Court substantially blunted the 1975 law as a judicial tool for restructuring state care of the retarded.

The decision is likely to affect pending litigation around the country, including separate lawsuits by advocates for the retarded against New York, New Jersey and Connecticut. All three states had joined Pennsylvania in urging the Supreme Court to reverse the Third Circuit decision. The states argued that the Third Circuit's analysis would require them to spend tens of millions of dollars for "deinstitutionalization."

'Findings' in 'Bill of Rights'

The Federal law at issue was the Developmentally Disabled Assistance and Bill of Rights Act of 1975, which last year channeled $65 million to the states for care of the retarded.

The law contains a "bill of rights" section, setting forth as Congressional "findings" the right of a retarded person to "appropriate treatment" in an environment "that is least restrictive of the person's liberty."

The Pennhurst case was brought as a class-action lawsuit by family members of residents of the institution. They did not originally invoke the 1975 law, and they won their case in the United States District Court on other grounds. The appeals court, however, based its affirmation of the trial court's ruling on the "bill of rights" section, concluding that at least as a condition of the receipt of Federal funds states were required to provide the specified rights.

Writing for the majority today, Associate Justice William H. Rehnquist disagreed. The law, he said, "simply does not create substantive rights." Rather, he continued, the "bill of rights" section "does no more than express a Congressional preference for certain kinds of treatment."

Justice Rehnquist said the law "is simply a general statement of 'findings' and, as such, is too thin a reed to support the rights and obligations read into it by the court below."

Associate Justice Byron R. White, in a dissenting opinion joined by Associate Justices William J. Brennan Jr. and Thurgood Marshall, said that the "bill of rights" section "cannot be treated as only wishful thinking on the part of Congress or as playing some fanciful role in the implementation of the act."

"That Congress was deadly serious in stating that the developmentally disabled had entitlements which a state must respect if it were to participate in a program can hardly be doubted," the dissenters continued.

However, the dissenting Justices agreed with the majority that the Third Circuit's judgment should be set aside. "The court should not have assumed the task of managing Pennhurst," they concluded.

The decision in the case, Pennhurst State School v. Halderman, No. 79-1404, instructed the Third Circuit to consider several issues in further proceedings, including whether the 1975 law gives aggrieved parties the right to bring a private lawsuit in the first place and what penalties may be imposed on a state for failing to meet the law's conditions.

Right to Refuse Medication

Meanwhile, the Court today entered a potentially even broader legal controversy over the rights of the mentally impaired. The Justices agreed to hear an appeal by the State of Massachusetts of a Federal court ruling that patients who are involuntarily hospitalized for mental illness have a constitutional right to refuse medication.

The case, Okin v. Rogers, No. 80-1417, grew out of a suit by seven patients at Boston State Hospital. In similar suits around the country, patients have won at least the preliminary right to refuse antipsychotic medication that, while relieving the symptoms of psychosis, also has serious side effects

The Court also agreed to hear an appeal by the State of Ohio from a Federal appeals court ruling that a defendant in a criminal case cannot be made to carry the burden of proving that he acted in self-defense. The case, Engle v. Isaac, No. 80-1430, may also give the Justices a vehicle for deciding when a convicted defendant has the right to seek a new trial.