Mr Curry

States Upheld In Defining Care For Retarded

By Ruth Hochberger

In a case affecting treatment for millions of mentally retarded persons, the Supreme Court of the United States ruled yesterday that a Federal funding statute does not require states to individually tailor treatment for patients and place them in the "least restrictive setting."

A 6-3 decision in *Pennhurst State School and Hospital v. Halderman*, reversed a holding by the U.S. Court of Appeals for the Third Circuit that would have required states to individually evaluate and prescribe courses of treatment for all disabled people in facilities receiving funding under a 1975 Federal funding statute.

'Encourage' Not 'Mandate'

"The legislative history [of the Developmentally Disabled Assistance and Bill of Rights Act] buttresses our conclusion that Congress intended to encourage, rather than mandate, the provision of better services to the developmentally disabled," Justice William H. Rehnquist wrote for the majority.

"Far from requiring the states to fund newly declared individual rights, the Act has a systematic focus, seeking to improve care to individuals by encouraging better state planning, coordination and demonstration projects."

The case began in 1974 as a class-action challenge by a resident of a Pennsylvania institution for care of the retarded on constitutional and state-law grounds. The U.S. District Court for the Eastern District of Pennsylvania rejected the prayer for damages, but held that an institution such as the Pennhurst School and Hospital was an unconstitutional mode of providing treatment to the retarded and ordered the institution closed.

A three-judge panel of the U.S. Court of Appeals for the Third Circuit could not reach a majority decision in the case, so it was referred to an *en banc* panel which held that the Federal funding statute provided a bill of rights for patients.

The *en banc* panel concluded that the mentally retarded had a right to treatment funded by the states, that individuals had a right to sue to enforce that right, and that the Federal funding law provided that such treatment must be provided individuals in the "least restrictive alternative." Presumably, the court desired that those residents who could be placed in community living arrangements — a means of treatment which has created resistance in some residential communities — be given such an opportunity.

The case drew an array of *amici curiae* briefs from facilities, cities and states — including New York — urging reversal of the Third Circuit on the argument that to individually tailor modes of treatment and provide community living arrangements for everyone who could be treated in that way would be an unbearable fiscal burden for the states to assume.

Dissenting Justices Byron R. White, William J. Brennan Jr. and Thurgood Marshall argued that the Federal law was aimed at providing more than merely a "suggestion" to states as to how they must treat patients under the Act.

Barricading Streets

In an important civil-rights ruling, the justices found, 6-3, that a decision by the city of Memphis, Tenn. to close off a street which separated a white neighborhood from a predominantly black neighborhood did not constitute race discrimination because no discriminatory intent was proven.

The U.S. Court of Appeals for the Sixth Circuit had ruled, in *City of Memphis v. Greene*, 79-1176, that the street closing was tantamount to a "badge of slavery" under the Thirteenth Amendment, and as such violated the black residents' constitutional rights.

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