

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 *amicus 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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Rights of Contribution

The Court held, in an 8-0 decision, that an employer found liable for back pay to female workers for engaging in illegal sex discrimination is not entitled to any right of contribution from a union which allegedly participated in negotiating the employment practice later found to be discriminatory.

Ruling in *Northwest Airlines, Inc. v. Transport Workers Union*, 79-1066, the justices held that an airline, found liable for more than \$37 million in back pay for historically paying female cabin attendants less than male purasers, could not expect any reimbursement from the employees' union which negotiated the job titles and pay scales.

Products Liability

The Court agreed to review the constitutionality of a New Jersey statute which halts the running of the statute of limitations on suits against out-of-state corporations which have no in-state agents for service of process in New Jersey.

The case before the High Court, *G.D. Searle & Co. v. Cohn*, 80-644, involves a products liability suit against the drug company which manufactured a birth control pill which allegedly caused the plaintiff's stroke, from which she was left permanently paralyzed on her left side.

The suit was brought ten years after the plaintiff's stroke and four years after the link between the Searle product, Enovid, and strokes was disclosed, and New Jersey has a two-year statute of limitations on products-liability cases.

However, New Jersey also has another statute which tolls the statute of limitations when the defendant involved is an out-of-state corporation not amenable to service of process within the state. Searle appealed imposition of the tolling statute against it on the grounds that the statute violated the Due Process and Equal Protection Clauses of the Constitution, as well as the Commerce Clause.

Protecting Witnesses

The justices refused to review a decision of the U.S. Court of Appeals for the Second Circuit involving the rights of a father to know where his children were located after his ex-wife was relocated as part of the Federal witness protection program.

The case, *Leonhard v. U.S.*, 80-1260, on which the recent James Caan film, "Hide in Plain Sight," was based; involved an upstate New York man, Thomas Leonhard, who was divorced from his wife, Rochelle, in 1966. His ex-wife received custody of their three children and subsequently married Pascal Calabrese. Mr. Calabrese, convicted of armed robbery, later testified against several organized crime suspects and was moved in 1968, with his wife and her children, to a new location and given new identities under the Federal relocation program.

Mr. Leonhard tried to locate his former wife and children and sued unsuccessfully to learn their whereabouts. In 1971, he was awarded custody of the children, but since he could not locate them, he never gained actual custody.

In 1975, after he was reunited with his children by a voluntary contact from their mother, he filed suit again seeking damages from the Federal government under the theory that the government's separation of him from his children violated his constitutional rights.