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## Constitutional Law - Fourteenth Amendment - Due Process - Deprivation of Children's Rights - Civil Commitment

Zelda Curtiss

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CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS  
—DEPRIVATION OF CHILDREN'S RIGHTS—CIVIL COMMITMENT—The  
United States District Court for the Eastern District of Pennsyl-  
vania has held that a juvenile is entitled to procedural due process  
protection, including a probable cause hearing and a post-com-  
mitment hearing, when his parents commit him to an institution.

*Bartley v. Kremens*, 402 F. Supp. 1039 (E.D. Pa. 1975), *vacated and remanded*, 45 U.S.L.W. 4451 (U.S. May 16, 1977).

Plaintiffs, juveniles<sup>1</sup> who had been committed under voluntary<sup>2</sup> admission or voluntary commitment provisions of the Pennsylvania Mental Health and Mental Retardation Act,<sup>3</sup> brought a class action<sup>4</sup> to have these provisions declared unconstitutional and to enjoin their enforcement. The plaintiffs contended that by following the statutory provisions, state officials<sup>5</sup> violated their due process and equal protection<sup>6</sup> rights under the fourteenth amendment because

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1. Plaintiffs, who were children 18 years old or younger, alleged constitutional deprivations under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1970). *Bartley v. Kremens*, 402 F. Supp. 1039, 1042 (E.D. Pa. 1975), *vacated and remanded*, 45 U.S.L.W. 4451 (U.S. May 16, 1977).

2. An admission of a minor is considered voluntary since the legislature has given his parent the legal right to act in the minor's behalf. AMERICAN BAR FOUNDATION, THE MENTALLY DISABLED AND THE LAW 19 (S. BRAKEL & R. ROCK eds., rev. ed. 1971). One commentator, however, has defined *involuntary* hospitalization as the "removal of a person judged to be mentally ill from normal surroundings to a hospital authorized to detain him." *Id.* at 35.

3. PA. STAT. ANN. tit. 50, §§ 4101-704 (1966). The challenged sections were *id.* §§ 4402-03. Section 4402 provides that application for a voluntary admission may be made by any person over 18, or by the parent or guardian of a younger individual. Upon application to the director of the facility, an independent examination is made and the individual is admitted if care is needed. Those individuals age 18 or older may withdraw from the institution freely, whereas only the adult applicant requesting the admission of a younger individual may request his withdrawal. Section 4403 provides for a 30-day commitment if temporary care is deemed warranted. Under this section, a procedure is available should an individual desire to leave the facility following his commitment. *See* 402 F. Supp. at 1041-42 n.2.

4. Federal jurisdiction in this civil action was sought under 28 U.S.C. §§ 1331, 1343(3) (1970). 402 F. Supp. at 1041-42. Plaintiffs' counsel was appointed guardian ad litem since the class could not sue in its own behalf in federal court under FED. R. CIV. P. 17(c). *See* 2 NATIONAL JUVENILE LAW CENTER, LEGAL CHALLENGES TO THE "VOLUNTARY" ADMISSION OF CHILDREN TO MENTAL INSTITUTIONS 6 (1975) [hereinafter cited as LEGAL CHALLENGES].

5. Defendants included the hospital director of Haverford State Hospital, the Secretary of Public Welfare of the Commonwealth of Pennsylvania and the Deputy Secretary for Mental Health and Mental Retardation of the Department of Welfare. 402 F. Supp. at 1044.

6. The court said it had no occasion to address the arguments aimed at disparate treatment of adults and children under the statutory provisions since no plaintiff had alleged any attempt to voluntarily commit himself. Thus, the court found that the plaintiffs lacked

the procedures did not adequately guard against the erroneous commitment of children who are not mentally ill.<sup>7</sup> Subsequent to the filing of the action, the Department of Public Welfare adopted regulations providing for additional procedural protections.<sup>8</sup> The plaintiffs argued that the Pennsylvania statute and its attendant regulations were still deficient since they did not provide for a pre-commitment hearing or specify a time in which a post-commitment hearing should be held.<sup>9</sup>

A divided three-judge district court declared the challenged provisions unconstitutional.<sup>10</sup> The court asserted that a juvenile's interest in avoiding an erroneous deprivation of liberty was protected by the fourteenth amendment.<sup>11</sup> While it found that the plaintiffs were not entitled to a pre-commitment hearing<sup>12</sup> or trial

standing to argue that the statute did not afford children equal protection although those over 18 could voluntarily commit themselves while those younger could not. *Id.* at 1054 n.27.

7. Plaintiffs had compiled data detailing the reasons for confinement of Pennsylvania residents. See LEGAL CHALLENGES, *supra* note 4, at 247A-73A. The court relied on this data and a summary of 10 commitment cases provided by the defendants. 402 F. Supp. at 1043-44. Reasons offered for commitment included: drug overdose by the child; participation in a gas station robbery; arson; deteriorating health of other family members, often the mother; opportunity for the rest of the family to vacation; difficulties between the mother and child; and fear that another child would be led to an early marriage to escape the troublesome family situation. *Id.* See also note 28 *infra*.

8. 402 F. Supp. at 1042-43 nn. 5 & 6. The regulations required referral from a community mental health unit before a juvenile could be admitted to a mental health facility. Retarded juveniles could be referred by a physician or psychologist. Juveniles ages 13 to 18, admitted following an independent examination by the institution, had to be given written notice informing them of their right to call an attorney. If the juvenile objected to hospitalization, the facility had 48 hours to discharge him or to institute an involuntary commitment proceeding under PA. STAT. ANN. tit. 50, § 4406 (1966). See 3 PA. BULL. 1840 (1973) for the text of the regulations.

9. 402 F. Supp. at 1042. The regulations did not allow children under 13 to question their confinement. See notes 3 & 8 *supra*.

10. 402 F. Supp. at 1053-54. Since the enforcement of a state statute was challenged, a three-judge district court was convened pursuant to 28 U.S.C. § 2281 (1970) (repealed and reenacted in part, Act of Aug. 12, 1976, Pub. L. No. 94-381, 90 Stat. 1119 (codified at 28 U.S.C.A. § 2284 (Supp. 1977))). Pending its appeal, the state applied to the district court for a stay which was denied. It then appealed to Justice Brennan, sitting as Circuit Justice, who again denied the stay. The state resubmitted its request to Justice Rehnquist, who offered the matter for review by the entire Supreme Court. The Pennsylvania Supreme Court telegraphed the United States Supreme Court that full implementation of *Bartley*, requiring the release and recommitment of all juveniles presently confined, would overwhelm the state courts. On December 15, 1975, the Supreme Court, without explanation, granted a stay. LEGAL CHALLENGES, *supra* note 4, at 16.

11. 402 F. Supp. at 1046-47.

12. *Id.* at 1049. In *Lessard v. Schmidt*, 349 F. Supp. 1078, 1091 (E.D. Wis. 1972), *vacated and remanded on other grounds*, 414 U.S. 473 (1974), a state procedure permitting emergency detention after an *ex parte* hearing, without providing for procedural safeguards shortly

by jury,<sup>13</sup> the court determined that a child has a right to be present at a hearing conducted shortly after his admission,<sup>14</sup> to retain counsel, to offer testimony, and to cross-examine witnesses in order to challenge his commitment.<sup>15</sup> Balancing the state's interests in protecting the child and maintaining the family unit with that of the individual child's "liberty," the *Bartley* court ordered that all children admitted for commitment receive notice of a probable cause hearing to be held within 72 hours, followed by a post-commitment hearing within two weeks.<sup>16</sup>

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thereafter, was held to be constitutionally defective. *Lessard* suggests that an argument could be made for not allowing a significant deprivation of liberty without a prior hearing. *Bartley*, however, denied a pre-commitment hearing in order that parents would not be unreasonably deterred from institutionalizing a child who may endanger his own safety or the safety of the community. 402 F. Supp. at 1049. Recently, the Supreme Court held that a state cannot institutionalize a nondangerous person who can live outside an institution by himself or with the assistance of others. *O'Connor v. Donaldson*, 422 U.S. 563 (1975). See also *Jackson v. Indiana*, 406 U.S. 715 (1972) (interpreting statute authorizing detention as requiring an individual to be dangerous); *Humphrey v. Cady*, 405 U.S. 504 (1972) (potential for harming oneself or others has to be great enough to justify massive curtailment of liberty); *Dixon v. Attorney Gen.*, 325 F. Supp. 966 (M.D. Pa. 1971) (finding of present threat of serious physical harm to individual or others required before commitment).

13. 402 F. Supp. at 1051. *Accord*, *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971) (jury trial unnecessary in delinquency proceeding). *But see* *Lynch v. Baxley*, 386 F. Supp. 378, 394-95 (M.D. Ala. 1974) (adult emergency detention and ex parte involuntary commitment provisions held unconstitutional). *Lynch* determined a jury trial to be desirable before a civil commitment because of the social and legal judgments which are involved in the decision to commit an individual.

14. An individual's presence at his hearing could be waived by him or by his counsel if the individual is so ill he cannot attend. 402 F. Supp. at 1051.

15. The court felt that the impact of an adversarial proceeding was insignificant when compared to the trauma of erroneous commitment. 402 F. Supp. at 1050-53. The right to counsel in delinquency and commitment proceedings is commonly recognized. See *In re Gault*, 387 U.S. 1 (1967); *Sarzen v. Gaughan*, 489 F.2d 1076 (1st Cir. 1973) (counsel must be afforded before day of final commitment); *In re Barnard*, 455 F.2d 1370 (D.C. Cir. 1971) (counsel necessary at a hearing following emergency commitment); *Heryford v. Parker*, 396 F.2d 393 (10th Cir. 1968) (counsel afforded in the commitment of a retarded child); *Lynch v. Baxley*, 386 F. Supp. 378 (M.D. Ala. 1974) (right to counsel in emergency and involuntary detentions); *Dixon v. Attorney Gen.*, 325 F. Supp. 966 (M.D. Pa. 1971) (counsel afforded in involuntary commitment).

The right to offer evidence in one's behalf is also commonly recognized. See *Specht v. Patterson*, 386 U.S. 605 (1967) (petitioner convicted of indecent liberties under criminal statute, but sentenced under a different statute without notice or full hearing, has a right to offer evidence); *In re Gault*, 387 U.S. 1 (1967) (juvenile in a delinquency hearing may offer evidence in his behalf).

16. 402 F. Supp. at 1049. See also *Lynch v. Baxley*, 386 F. Supp. 378, 388 (M.D. Ala. 1974) (probable cause hearing within 7 days); *Lessard v. Schmidt*, 349 F. Supp. 1078, 1091 (E.D. Wis. 1972) (probable cause hearing within 48 hours).

The *Bartley* court first acknowledged that due process requires that a state provide substantial procedural safeguards before it curtails the liberty of an individual either for benevolent or punitive reasons.<sup>17</sup> It rejected the defendants' argument that substantial due process safeguards are not required in a civil procedure<sup>18</sup> where the state, acting as *parens patriae*, is undertaking treatment of a juvenile.<sup>19</sup> According to the majority, the defendants' attempt to label the proceeding "civil" failed to take account of the child's involuntary removal from his home, and ignored the social stigma which often accompanies civil commitment because society misunderstands mental illness and views it with fear and disdain.<sup>20</sup> The court concluded that a child is clearly entitled to some procedural protection from the possibility of an erroneous denial of his liberty for an indeterminate time through involuntary confinement.<sup>21</sup>

The district court next addressed the "difficult and unique"<sup>22</sup> issue of whether parents could waive their child's constitutional rights by deciding for the child that commitment was necessary. Waiver presented the problem of reconciling a child's right to procedural protection with a parent's consistently recognized authority to rear his child.<sup>23</sup> The court acknowledged that *Ginsberg v. New York*<sup>24</sup> and *Wisconsin v. Yoder*<sup>25</sup> affirmed the traditional concept of parental authority. In the more recent case, *Yoder*, the Supreme

17. 402 F. Supp. at 1045-46.

18. This argument is frequently raised and rejected in delinquency and commitment proceedings. See, e.g., *In re Winship*, 397 U.S. 358 (1970); *In re Ballay*, 482 F.2d 648 (D.C. Cir. 1973) (adult commitment proceeding).

19. *Parens patriae* is one justification for state laws which protect the well-being of members of the community by establishing guardianships protecting minors and detaining mentally ill persons. For a discussion of *parens patriae* in the context of civil commitment see *Developments in the Law—Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190, 1207-22 (1974).

20. 402 F. Supp. at 1046. See *In re Ballay*, 482 F.2d 648, 651-52 (D.C. Cir. 1973). While his commitment stands on the record, an individual is denied the right to vote, the right to serve on a federal jury, access to a driver's license, and access to a gun license; he is also presumed incompetent. See *Pennsylvania Ass'n for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972) (retarded children sought education and training in public schools); *Hearings on the Constitutional Rights of the Mentally Ill Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 91st Cong., 1st & 2d Sess. 1 (1969-70); K. DONALDSON, *INSANITY INSIDE OUT* (1976).

21. 402 F. Supp. at 1048.

22. *Id.* at 1047.

23. *Id.*

24. 390 U.S. 629 (1968).

25. 406 U.S. 205 (1972). See 402 F. Supp. at 1047.

Court had acknowledged the primary role of parents in a child's upbringing when it held compulsory education beyond eighth grade interfered with the free exercise of the Amish religion. The Supreme Court had expressly stated, however, that it was not considering the problem of competing religious interests of parent and child since it was not in issue.<sup>26</sup> The *Bartley* majority, however, regarded the commitment of a child as presenting a conflict of interests between the child and his parent.<sup>27</sup> It recognized that a parent's decision to commit a child may be based on parental desire to avoid the responsibility of caring for a difficult child or a parent's inability to cope with complex family problems, rather than on the child's mental illness. Therefore, the court was unwilling to permit parental waiver of the child's constitutional rights absent evidence that the child's best interests had been fully considered.<sup>28</sup>

In a detailed dissent, Judge Broderick stated that the court improperly balanced the interests of the child against the traditional state interest in preserving family integrity. In his view, the statutory procedures generally provided sufficient protection against

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26. 406 U.S. at 230.

27. The court recognized this direct conflict as one aspect of *Bartley* that set it apart from other cases. 402 F. Supp. at 1047-48, citing *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, 357 F. Supp. 752, 762 (E.D.N.Y. 1973) (conflict in interests arises when a parent does not want to care for an abnormal child). Expert witnesses testifying before the court pointed out that juveniles committed to institutions often come from homes torn by discord and disruption. See *LEGAL CHALLENGES*, *supra* note 4, at 140A, 237. See also *Saville v. Treadway*, 404 F. Supp. 430, 432 (M.D. Tenn. 1974) (requiring extensive procedural safeguards in view of the possible conflict of interest between mentally retarded child and parent); *Horacek v. Exon*, 357 F. Supp. 71, 74 (D. Neb. 1973) (recognizing the possibility that parents' desires concerning treatment may conflict with children's interests). See generally *Murdock, Civil Rights of the Mentally Retarded: Some Critical Issues*, 48 *NOTRE DAME LAW.* 133, 136-43 (1972) [hereinafter cited as *Murdock*], which discusses the problems of guardianship and conflict of interest between a parent and a retarded child.

28. 402 F. Supp. at 1047, citing *Kent v. United States*, 401 F.2d 408, 416 n.4 (D.C. Cir. 1968) (Burger, J., dissenting). See *Ellis, Volunteering Children: Parental Commitment of Minors to Mental Institutions*, 62 *CALIF. L. REV.* 840, 851 (1974) [hereinafter cited as *Ellis*], citing *B. ENNIS & L. SIEGEL, THE RIGHTS OF MENTAL PATIENTS* 38 (1973). Ennis and Siegel describe the troubled reaction of some parents to the emergence in recent years of a counter-lifestyle among young people, and thereby lend support to the suggestion that parents might commit their children when they disapprove of their behavior. See *Murdock, supra* note 27, at 139. Some parental motives for institutionalizing retarded children offered by *Murdock* include: interest in well-being of other children; mental and physical frustration at home; economic strain; and advice of doctors who are unaware of other possibilities. Institutionalizing a child may also provide an outlet for tensions at home caused by a breakdown in family relationships. *Szasz, Civil Liberties and the Mentally Ill*, 9 *CLEV.-MAR. L. REV.* 399, 414 (1960).

wrongful commitment while they permitted a parent to seek necessary treatment for a sick child. Requiring all commitments to turn on an adversary proceeding would increase the trauma of institutionalization without affording any further significant protection for the child.<sup>29</sup>

*Bartley* extends the safeguards of procedural due process previously recognized in criminal cases, adult civil commitment cases, and juvenile delinquency proceedings to children facing civil commitment. Only within the last ten years has the Supreme Court granted procedural due process guarantees to civilly committed adults.<sup>30</sup> Although most of these commitment cases have arisen in the criminal context, their rationale provides support for safeguards in civil commitment proceedings to insure that the nature and duration of the commitment bear a reasonable relationship to the purpose of the commitment. Moreover, due process protections have been afforded to children in the context of juvenile delinquency proceedings.<sup>31</sup> *In re Gault*,<sup>32</sup> the seminal Supreme Court decision

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29. 402 F. Supp. at 1054-58 (dissenting opinion). *Accord, In re Winship*, 397 U.S. 358, 376 (1970) (Burger, C.J., Stewart, J., dissenting) (juvenile court system needs flexibility in order to survive).

30. See *O'Connor v. Donaldson*, 422 U.S. 563 (1975) (state cannot confine nondangerous individual who can survive with supportive help); *McNeil v. Director, Patuxent Institution*, 407 U.S. 245 (1972) (indefinite confinement cannot rest on procedures designed to authorize a brief observation); *Jackson v. Indiana*, 406 U.S. 715 (1972) (indefinite confinement due to lack of capacity to stand trial violates due process); *Humphrey v. Cady*, 405 U.S. 504 (1972) (there must be procedure for commitment and commitment renewal following conviction for violation of Sex Crimes Act); *Specht v. Patterson*, 386 U.S. 605 (1967) (violation of criminal statute with sentencing under Sex Offenders Act without notice or full hearing violates due process); *Baxstrom v. Herold*, 383 U.S. 107 (1966) (jury review available to those civilly committed also extends to civil commitment following a prison term).

Safeguards have also been granted by lower federal courts to individuals civilly committed. *E.g., In re Ballay*, 482 F.2d 648 (D.C. Cir. 1973) (standard for commitment is beyond a reasonable doubt); *Kendall v. True*, 391 F. Supp. 413 (W.D. Ky. 1975) (notice, probable cause hearing, and final hearing within 21 days required); *Lynch v. Baxley*, 386 F. Supp. 378 (M.D. Ala. 1974) (notice, probable cause hearing within 7 days, right to counsel, and final hearing required within 21 days); *Bell v. Wayne County*, 384 F. Supp. 1085 (E.D. Mich. 1974) (notice, prompt preliminary hearing, counsel and jury trial required); *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972) (right to counsel and full hearing within 2 weeks after commitment required); *Dixon v. Attorney Gen.*, 325 F. Supp. 966 (M.D. Pa. 1971) (hearing, counsel, right to offer evidence, confrontation and cross-examination permitted).

31. See, *e.g., In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541 (1966) (waiver of jurisdiction over proceeding by juvenile court to criminal court without "full investigation," including hearing, access to records, and statement of reasons for court's decision, is invalid); *Haley v. Ohio*, 332 U.S. 596 (1948) (confession of 15 year-old, obtained by using methods violating his due process, is inadmissible). *Cf. Heryford v. Parker*, 396 F.2d

regarding the rights of children, declared that the hearing in a delinquency proceeding must meet the essentials of due process, including notice, the right to counsel, and the right to confront and cross-examine witnesses.<sup>33</sup> *Gault* expressly rejected calling the juvenile proceeding "civil" in order to obviate the need for criminal due process safeguards.<sup>34</sup>

Prior to *Bartley*, other lower federal courts had extended procedural safeguards to mentally ill and mentally retarded minors facing commitment.<sup>35</sup> In *Heryford v. Parker*,<sup>36</sup> the Tenth Circuit adopted *Gault*'s reasoning that incarceration itself demands observance of constitutional safeguards when it held that a child committed to a training school for the feeble-minded and epileptic was entitled to due process protection. In *Saville v. Treadway*,<sup>37</sup> which also determined that procedural safeguards should precede a loss of liberty, the federal district court mandated the establishment of an admissions review board to give notice and advice to proposed residents and to provide further testing or evaluation prior to commitment when requested by the candidate. The *Bartley* court found the reasoning supporting the decisions in these commitment and delinquency cases to be persuasive. It was unwilling to accept the argument that since the child is receiving treatment for his illness at the request of a parent, his liberty need not be protected. Instead, it focused on the possibility of erroneous commitment ensuing from strain and frustration within the home, and the potentially harmful effects on the youth of an unwarranted commitment.<sup>38</sup>

That some protections should exist to insulate a child from erro-

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393 (10th Cir. 1968) (*Gault* due process requirements extended to commitment of feeble-minded child).

32. 387 U.S. 1 (1967).

33. *Id.* at 31-57.

34. *Id.* at 17.

35. See, e.g., *Heryford v. Parker*, 396 F.2d 393 (10th Cir. 1968); *Kidd v. Schmidt*, 399 F. Supp. 301 (E.D. Wis. 1975); *Saville v. Treadway*, 404 F. Supp. 430 (N.D. Tenn. 1974).

36. 396 F.2d 393 (10th Cir. 1968).

37. 404 F. Supp. 430, 439 (M.D. Tenn. 1974). The district court fashioned safeguards for the commitment of retarded juveniles including admission only in accordance with orders and adjudication by a court; consent of "mildly retarded" or "borderline" juveniles 16 years or older; signed consent of juveniles older than 16 who have capacity to understand the proceeding; representation at the hearing by counsel or Citizens Advocacy Council; candidate's access to documents; and right to confrontation and cross-examination of witnesses. *Id.* at 437-39.

38. See notes 7 & 20 and accompanying text *supra*.

neous commitment to an institution may seem self-evident. Traditionally, parents have had the right, however, to make decisions concerning their child's welfare without state interference.<sup>39</sup> In *Meyer v. Nebraska*,<sup>40</sup> the Supreme Court invalidated a state statute prohibiting the teaching of a foreign language before the ninth grade since, among other things, it infringed on parental freedom to educate their children. In a subsequent decision, *Pierce v. Society of Sisters*,<sup>41</sup> the Court ruled that a state law requiring all children to attend public school constituted an unreasonable interference with the liberty of a parent to direct the upbringing of his child. *Yoder* further emphasized that the primary role of parents in child-rearing has been established as an enduring American tradition.<sup>42</sup> Significantly, in these cases the Supreme Court considered the interests of child and parent as allied; situations where their interests might conflict were not squarely confronted.<sup>43</sup> Conceivably, the concept of parental authority which has been articulated by the Supreme Court could apply to decisions involving medical treatment of children, including the decision to institutionalize a mentally ill child.<sup>44</sup> *Bartley*, however, explicitly recognized that the interests of parents and children need not be allied, particularly where the child objected to his institutionalization.<sup>45</sup> The decision, therefore, may represent an enlightened view, since it recognized that disparate interests of parent and child may be involved in juvenile commitments and announced that the state was obligated to establish reasonable

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39. See generally Note, *State Intrusion into Family Affairs: Justification and Limitations*, 26 STAN. L. REV. 1383 (1974) [hereinafter cited as *State Intrusion*], which discusses the origins of parental liberty within the concept of "natural rights."

40. 262 U.S. 390, 400 (1923).

41. 268 U.S. 510, 534 (1925).

42. *Yoder v. Wisconsin*, 406 U.S. 205, 232 (1972).

43. But see *id.* at 241-45 (Douglas, J., dissenting) (mature child should be able to express a conflicting interest, and not seeking out his views would be an invasion of his rights). Justice Douglas stated: "We have in the past analyzed similar conflicts between parent and State with little regard for the views of the child." *Id.* at 243 (dissenting opinion). Cf. *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969). In *Tinker*, at issue was the fundamental right of students' free speech. School children wore armbands to protest the war in Vietnam. The Supreme Court, recognizing the state's obligation to protect the rights of children as well as adults, held that a student's right of expression does not disappear at the school door, although the right existed only as long as the students were not disruptive.

44. Guidelines to accommodate the opposing interests of children and parents when the state intervenes in behalf of the child are offered in *State Intrusion*, *supra* note 39, at 1392-401.

45. 402 F. Supp. at 1047-48.

safeguards to prevent the child's interests from being ignored in the process.

Once it recognized that the interests of parent and child may not be coextensive in a commitment proceeding, the court was presented with a difficult task of fashioning a remedy that would substantially preserve the traditional authority of parents, while it protected those children whose parents may not act in their best interests. Although it is questionable whether the Pennsylvania statute and regulations under which plaintiffs were committed did afford sufficient safeguards against unwarranted commitment, the grim picture of mistaken commitments which plaintiffs presented to the court may have persuaded it to conclude that the statute and regulations were procedurally defective without an adequate evaluation of the existing safeguards.<sup>46</sup> Moreover, whereas the court recognized precedent supporting parental authority, it appeared to raise the plaintiffs' interests above traditional authority because of the potentially grievous harm resulting from erroneous commitment.

Although the court's concern for a child's well-being where commitment may be wrongfully requested is commendable, the decision would have been more persuasive had the court more critically considered the evolving concept of parental authority itself. Indeed, cases recognizing parental authority provide room for argument that the interests of children in certain circumstances should be protected over the authority of their parents. *Meyer* and *Pierce*, cases frequently relied upon for their rejection of state interference with parental authority, were concerned with the education of children, an area where conflict between the interests of parent and child arguably may not be too inimical to the child's well-being, or destructive of his individual rights, if resolved in favor of the parent. *Prince v. Massachusetts*,<sup>47</sup> a later Supreme Court case upholding state regulation of child labor, limited the possible breadth of *Pierce*<sup>48</sup> by upholding the state's interest in protecting a child's

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46. The opinion details the reasons these juveniles were committed. The court heard testimony from nine psychiatrists; yet, it focused only on the reasons the individuals were institutionalized, ignoring the testimony of expert witnesses and neglecting to evaluate the statutory provisions. See notes 3 & 8 *supra*. The majority opinion gives no specific explanation as to why the *Bartley* court rejected the statute. Perhaps the questionable basis upon which some of the commitments were founded overly influenced the court. For the dissenter's evaluation of the statutory procedures see 402 F. Supp. at 1054-58 (Broderick, J., dissenting).

47. 321 U.S. 158 (1944).

48. *Id.* at 166.

health and welfare over parental autonomy. The broad scope of parental authority established in *Meyer* was also somewhat limited by *Ginsberg*. There, the Supreme Court distinguished the learning of a foreign language in *Meyer*, which it found not to be harmful to the child's well-being<sup>49</sup> and thus not warranting state protection, from the access to obscene literature, which it found to be potentially harmful to the child. The *Ginsberg* Court approved state regulation of the sale of obscene materials to minors as a necessary state intrusion for the protection of a child's welfare.<sup>50</sup> More recently, *Yoder* acknowledged that parental authority can be circumscribed if the health or safety of a child will be jeopardized, or if a parent's decision has the potential effect of imposing significant "social burdens."<sup>51</sup> In short, these Supreme Court decisions suggest that while the state has a strong interest in fostering the concept of parental authority and intrudes on parental control with reluctance,<sup>52</sup> it has a significant interest in protecting the child whose mental or physical health may be seriously endangered by his parents' decisions.<sup>53</sup> The *Bartley* court recognized that erroneous commitment creates

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49. *Ginsberg v. New York*, 390 U.S. 629, 641 (1968).

50. *Id.* at 639-43.

51. *See* 406 U.S. 205, 234 (1972).

52. *See* Ellis, *supra* note 28, at 854-55, where the author examines the traditional, noninterventionist policy of the state in family decisions, including the requirement of parental consent for medical treatment of a minor and the parental tort immunity doctrine.

In *Planned Parenthood v. Danforth*, 96 S. Ct. 2831 (1976), the state's support of parental authority was in direct conflict with the interest of a minor seeking an abortion against the wishes of her family. After reviewing *Meyer*, *Pierce*, and *Yoder*, and recognizing the need to protect parental authority from unwarranted state interference, the Supreme Court found the family unit would not be strengthened by overriding the decision of the minor in favor of parental discretion. *Id.* at 2844. The significant interest of the minor recognized in *Danforth* was the right to privacy. Like the *Bartley* plaintiffs' interest in freedom from unwarranted curtailment of liberty, in *Danforth* the minor's right of privacy was held to be protected by the fourteenth amendment. Deemphasizing the constitutional rights of the minors in either case would not have furthered the state's interest in enhancing the family. Indeed, in *Danforth* the Supreme Court determined that the minor's interest in her privacy is at least as worthy of protection as the parents' interest in the termination of the child's pregnancy. *Id.*

53. *See In re Henry G.*, 28 Cal. App. 3d 276, 104 Cal. Rptr. 585 (1972) (counsel should be granted to minor in incorrigibility proceeding to enable him to show that family breakdown was caused by parent's problems rather than by child's behavior). *See also* *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769, *cert. denied*, 344 U.S. 824 (1952) (child provided with transfusion against religious wishes of parents); *Marsden v. Commonwealth*, 352 Mass. 564, 227 N.E.2d 1 (1967) (parent and wayward child afforded separate counsel); *Carpenter v. Commonwealth*, 186 Va. 851, 44 S.E.2d 419 (1947) (excessive punishment may render parent or one *in loco parentis* criminally liable).

social problems and may be injurious to the development of the juvenile. Thus, consistent with Supreme Court decisions, it determined that limitations on parental authority are appropriate where a child may be detained indefinitely.

The *Bartley* decision must be viewed not only as extending constitutional rights to juveniles, but also as a judicial recognition and strong response to the abuse and tragedy which present commitment procedures may permit. That this recognition warranted the striking down of Pennsylvania commitment statutes and regulations, however, is questionable. The existing procedures afforded sufficient protection to many juveniles, while they permitted parents who have carefully considered what is best for their children to institutionalize them without administrative delay. Indeed, what procedures are necessary when parents have clearly acted in the best interests of their children and who will make that determination were questions left unanswered by the court in *Bartley*. The Supreme Court has heard the arguments in this case on appeal.<sup>54</sup> The adequacy of the existing Pennsylvania procedures in protecting the interests of plaintiffs while allowing parents to exercise control over their children may well be an issue on which the two courts disagree.<sup>55</sup>

*Zelda Curtiss*

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54. See 45 U.S.L.W. 3405-07 (U.S. Dec. 7, 1976).

55. In a 7-2 decision, the Supreme Court refused to rule on the merits and vacated and remanded the case to the district court to redefine the class of plaintiffs. 45 U.S.L.W. 4451 (U.S. May 16, 1977). The Court concluded that the claims of the named plaintiffs, mentally ill individuals between 15 and 18 years old, were mooted by the Mental Health Procedures Act of 1976 which allowed juveniles between 14 and 18 to voluntarily admit themselves or withdraw upon written notice. In addition, the Court found the remaining plaintiffs, mentally retarded youths of all ages and mentally ill children 13 years and younger, had "live" claims, but the mootness of named plaintiffs' claims fragmented the subclasses so as to no longer be a properly certified class under FED. R. Civ. P. 23(a). 45 U.S.L.W. at 4453-55.

