Constitutional Law - Due Process Clause - Liberty Interest of Criminal Defendant

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Constitutional Law—Due Process Clause—Liberty Interest of Criminal Defendant—The United States Supreme Court has held that a criminal defendant has a protected liberty interest under the Fourteenth Amendment in freedom from involuntary administration of antipsychotic medication which requires the State to prove both the medical appropriateness and the necessity of the medication in order to continue its administration once the criminal defendant has moved to terminate medication.


David Riggins was arrested for murder and robbery in November 1987. A few days after his arrest, Riggins complained of hearing voices and having problems sleeping, and was prescribed Mellaril, an antipsychotic drug, at a level of 100 milligrams daily. This dosage was gradually increased to 800 milligrams daily in response to Riggins’ continued complaints that he still heard voices and had trouble sleeping.

In January 1988, the Clark County District Court allowed Riggins’ motion for a determination of his competence to stand trial. Examinations were performed by three court-appointed psychiatrists during February and March 1988 while Riggins was receiving 450 milligrams of Mellaril daily. Based on their findings, the district court ruled that Riggins was legally sane and competent to stand trial.

Riggins filed a second motion in the district court in June 1988 to suspend administration of his medication until the conclusion of

1. Riggins v Nevada, US, 112 S Ct 1810, 1812 (1992). Paul Wade was found dead in his Las Vegas apartment in November 1987. Riggins, 112 S Ct at 1812. A later autopsy disclosed that he had died of multiple stab wounds to the head, chest and back. Id. David Riggins was taken into custody in connection with the murder approximately 2 days later. Id.

2. Id. Riggins told Dr. R. Edward Quass, a private psychiatrist who treated patients at the jail in which Riggins was being held, that he had successfully been treated with Mellaril in the past. Id. Mellaril is the trade name for the antipsychotic drug, thioridazine. Id.

3. Id. Riggins also received Dilantin, an antiepileptic drug. Id.

4. Id.

5. Id.

6. Id. Two of the three doctors, Dr. William O’Gorman and Dr. Franklin Master, found that Riggins was competent to stand trial. Id. The third doctor, Dr. Jack Jurasky, concluded that Riggins was not competent to stand trial. Id.
his trial. He in his motion Riggins relied on both the Fourteenth Amendment and the Nevada Constitution to support his argument that continued administration of the drugs would infringe upon his freedom and affect his demeanor at trial such that he would be denied due process. He also argued that his presentation of an insanity defense required that he be able to show the jurors his "true mental state." In its answer to Riggins' motion, the prosecution cited section 178.400 of the Nevada Revised Statutes and stated that the court had authority to require Riggins to take medication necessary to ensure his competence for trial.

In July 1988, the district court held an evidentiary hearing on Riggins' motion. Three court-appointed psychiatrists testified as to their opinions concerning the effect of Mellaril on Riggins and his competency to stand trial. A fourth psychiatrist did not testify, but instead presented a written report to the court stating his views on Riggins' competency. The district court proceeded to deny Riggins' motion without giving any indication of the reasoning behind its decision.

During the trial Riggins put forth an insanity defense and testified on his own behalf. Evidence was presented showing that Riggins had killed Wade by stabbing him thirty-two times with a knife.

7. Id. Riggins wanted to suspend administration of both Mellaril and Dilantin during the trial. Id.
8. Id. The Fourteenth Amendment states, "No State shall... deprive any person of life, liberty, or property, without due process of law..." US Const, Amend XIV, § 1.
9. Riggins, 112 S Ct at 1812.
12. Id at 1813. Dr. Master testified that he "guess[ed]" that ceasing Riggins' medication would neither noticeably affect his behavior nor render him incompetent to stand trial. Id. Dr. Quass agreed that Riggins would be competent to testify without daily dosages of Mellaril but noted that the effects of Mellaril on Riggins would not be noticeable to the jurors were medication to be continued. Id. Dr. O'Gorman said that Mellaril made Riggins calmer and more relaxed and noted that excessive dosages caused drowsiness. Id. Dr. O'Gorman also questioned the high dosage being administered to Riggins yet declined to predict Riggins' behavior if administration of Mellaril was discontinued. Id.
13. Id. In his report, Dr. Jurasky stated that it was his opinion that Riggins was incompetent to stand trial and that without Mellaril, Riggins would "regress to a manifest psychosis" and be difficult to control. Id.
14. Id. The district court denied the motion by issuing a one-page order which neither clarified its position nor gave reasons for its decision. Id. As a result, Riggins received 800 milligrams of Mellaril daily through the duration of his trial until its completion in November 1988. Id.
15. Id.
knife before taking money, drugs and other items from his home.\textsuperscript{16} A jury found Riggins guilty of murder with a deadly weapon and robbery with a deadly weapon and sentenced him to death.\textsuperscript{17}

On his appeal to the Nevada Supreme Court, Riggins contended that the involuntary administration of Mellaril during his trial rendered him unable to assist in his own defense and unjustifiably prejudiced his behavior and presentation during the trial.\textsuperscript{18} Such prejudice was unjustified, Riggins claimed, because the State first failed to demonstrate a need for the drug and then did not explore possible and less intrusive alternatives to administration of 800 milligrams of Mellaril each day.\textsuperscript{19} The Nevada Supreme Court up-

\textsuperscript{16} Id at 1821 (Thomas dissenting).
\textsuperscript{17} Id at 1813. Riggins told the jury that he had been using cocaine on the night of Wade’s death and admitted that the two had been fighting. Id. Riggins claimed that Wade was trying to kill him, and that the voices in his head had told him that killing Wade would be justifiable homicide. Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id. Cases relied upon by Riggins were, among others, United States v Bryant, 670 F Supp 840 (Minn 1987) and Bee v Greaves, 744 F2d 1387 (10th Cir 1984).

In Bryant, the court determined that both substantive and procedural due process questions were embodied within the issue of whether the United States was entitled to an order authorizing forcible administration of antipsychotic drugs to a federal prison inmate who has not been adjudicated incompetent. Bryant, 670 F Supp at 843. In answering the substantive issue of whether Bryant had a constitutional right to refuse antipsychotic medication, the court concluded that a protected liberty interest in refusing treatment with antipsychotic medication did indeed exist. Id at 844. The court then noted that Bryant’s liberty interest was not absolute and, as such, must be balanced against competing governmental interests in maintaining security and protecting inmates and staff from violence to determine whether a violation of his constitutional rights had occurred. Id. In granting the order authorizing the continuation of forcible administration of antipsychotic medication, the court concluded that the procedural requirements of due process were satisfied by the professional evaluations performed of Bryant’s mental state which determined that the treatment was medically appropriate and the fact that less intrusive alternatives were considered and found unsatisfactory before forcible medication with antipsychotic drugs was continued. Id at 844-45.

In Bee, a former pretrial detainee filed an action for damages under the Civil Rights Act of 1866, 42 USC §1983 (1976) claiming that he was forcibly administered antipsychotic medication while detained at the Salt Lake County Jail prior to trial. Bee, 744 F2d at 1389. The court first addressed the issue of whether a pretrial detainee has a constitutional right to refuse treatment with antipsychotic drugs. Id at 1391. After determining that the decision whether to accept treatment with antipsychotic drugs was sufficiently important to be included within the category of privacy interests protected by the Constitution, the court proceeded to balance that interest against the competing obligation of the jail to protect its inmates and staff from a dangerous and violent mentally ill pretrial detainee. Id at 1394-95. In reversing the lower court’s summary judgment in favor of the defendants, the court held that less restrictive alternatives such as segregation or the use of less controversial drugs should have been considered prior to forcibly medicating Bee with antipsychotic drugs. Id at 1396. In addition, the court indicated that a determination should have been made as to whether an emergency existed such that forcible administration of antipsychotic medication was required to allow the jail to meet its obligation to protect its inmates and staff. Id at 1395-96.
held the convictions finding that the expert testimony at trial was sufficient to advise the jury of Mellaril's effects on Riggins' demeanor and testimony.\textsuperscript{20} The court also determined that the district court neither abused its discretion nor violated Riggins' trial rights by denying his motion to terminate administration of Mellaril.\textsuperscript{21}

Riggins appealed to the United States Supreme Court.\textsuperscript{22} Certiorari was granted on the issue of whether rights guaranteed by the Sixth and Fourteenth Amendments are violated when a criminal defendant is involuntarily administered antipsychotic medication during trial.\textsuperscript{23}

Justice O'Connor delivered the majority opinion of the Court\textsuperscript{24} which reversed the convictions on the grounds that the findings of the trial court were insufficient to properly support the involuntary administration of Mellaril to Riggins.\textsuperscript{25} In addressing Riggins' ar-
argument that he was denied a full and fair trial as a result of the forced administration of Mellaril, the Court relied on dictum in Washington v Harper. The Court opined that freedom from involuntary injection of antipsychotic medication was a protected interest under the Fourteenth Amendment. To ensure that this freedom was not offended, the State must prove both the medical appropriateness of the drug being administered and the necessity of that drug once the defendant has moved to terminate its administration.

In controverting a point raised by the dissent, the Court denied that it had adopted strict scrutiny as the standard to be utilized by the trial court in balancing the pretrial detainee's liberty interest in refusing unwanted medication with the concerns of the State in administering that medication. The Court noted that it had no occasion to set forth substantive standards for trial courts to apply

tration of Mellaril to Riggins was medically proper. Id at 1814. The Court also declined to address Riggins' Eighth Amendment claim that he was denied the chance to appear before jurors in his true medical condition because of the administration of Mellaril on the grounds that the argument was neither presented to the Nevada Supreme Court nor in Riggins' petition for certiorari to the United States Supreme Court. Id.

The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." US Const, Amend VIII.

26. 494 US 210 (1990). The defendant in Harper argued that his due process rights had been violated when the State of Washington and other individuals forced him to take antipsychotic drugs, including Mellaril, against his will. Harper, 494 US at 217. The Court determined that the involuntary administration of such drugs was indeed a substantial interference with an individual's liberty, but that due process permits the State to administer antipsychotic drugs to an unwilling mentally ill inmate where it is determined that the treatment is both in the inmate's best interest and the inmate is dangerous to himself or others. Id at 221, 227.

27. Riggins, 112 S Ct at 1814. The Court cited Harper and noted that the interference from antipsychotic drugs is particularly severe in that although the medication is designed to beneficially alter the patient's cognitive processes, it also produces serious side effects, some of which can be fatal. Id. In addition, although Harper related to forced medication of a prison inmate, the Court concluded that a pretrial detainee such as Riggins must be afforded the same right to be free of involuntary administration of antipsychotic drugs as a convicted criminal. Id at 1815.

28. Id. Although noting that it had never had, and still did in fact not have, the occasion to determine substantive standards by which to judge whether forced administration of antipsychotic drugs in trial or pretrial settings had satisfied due process, the Court indicated that district court could have satisfied due process either by finding that the treatment with Mellaril was medically appropriate and, after considering less intrusive alternatives, necessary for Riggins' or others' safety, or by establishing that less intrusive means would not allow proper adjudication of the merits of the case. Id. The Court declined to address the issue of whether a competent criminal defendant may refuse to take the antipsychotic medication necessary to maintain his competency for trial. Id.

29. Id at 1815-16.
because the district court had failed to make any determinations concerning either the need for continued administration of Mellaril or the availability of reasonable alternatives.\(^3\) The Supreme Court also found that the trial court had failed to address Riggins' interest in freedom from involuntary administration of medication.\(^3\) The Court concluded that such failure resulted in error which may have impaired Riggins' constitutionally protected trial rights.\(^3\)

In addition, the Court rejected the conclusion presented by the dissent that the criminal defendant be required to present specific facts proving how administration of Mellaril adversely impacted his trial.\(^3\) The Court ruled that the presentation by the defense of expert testimony on the effects of Mellaril was insufficient to correct the possibility of prejudice by the jury during the trial.\(^3\) The Court also stated that no findings existed to support the possibility that involuntary administration of antipsychotic medication was required to accomplish essential state interests.\(^3\) Thus, the Court reversed the judgment of the Nevada Supreme Court and remanded the case for further proceedings.\(^3\)

In his concurring opinion, Justice Kennedy opined that the Fourteenth Amendment prohibited involuntary administration of antipsychotic drugs to a criminal defendant for the purpose of ensuring his competency to stand trial absent an extraordinary showing by the State.\(^3\) He then stated that he doubted such a showing was possible based on the current understandings of the characteristics and effects of the antipsychotic drugs.\(^3\)

In agreeing with the majority that an individual who received medication against his will for the purpose of standing trial may challenge his conviction on a constitutional basis, Justice Kennedy

\(^3\) 30. Id at 1816. The Court indicated that the only conclusion it could draw as to the reasoning behind the district court's denial of Riggins' motion to terminate medication was that the trial court had used a balancing test to weigh the risk of prejudice to the defense by alterations in Riggins' attitude and demeanor caused by the medication against the possibility of Riggins' subsequent incompetence were he taken off of the medication. Id.

\(^3\) 31. Id.

\(^3\) 32. Id. The side effects of the drug may have affected Riggins' attitude during trial as well as his ability to comprehend and participate in the proceedings to a sufficient extent such that his defense was prejudiced. Id.

\(^3\) 33. Id.

\(^3\) 34. Id.

\(^3\) 35. Id at 1817. The Court noted that essential state policy may sometimes be used to justify possible prejudice, such as cases in which it is necessary to control a disruptive defendant. Id at 1816-17.

\(^3\) 36. Id at 1817.

\(^3\) 37. Id at 1817 (Kennedy concurring).

\(^3\) 38. Id.
rejected the dissent's argument that Riggins' contentions revolved around the admissibility of evidence under Nevada law and thus was not reviewable by the Supreme Court except under limited circumstances.\(^\text{39}\) Instead, Justice Kennedy likened the involuntary administration of antipsychotic medication to manipulation of evidence by the prosecution and, as such, within the purview of the Court's power to review.\(^\text{40}\) Moreover, the State's interest in restoring criminal defendants' competency was legitimate as the majority of rights considered necessary for a full and fair trial depend upon it.\(^\text{41}\)

Justice Kennedy felt that the primary question left unanswered by the Court's opinion was whether the State may be allowed to ensure the competence of the defendant through the involuntary administration of antipsychotic drugs based on its legitimate interest in conducting a proper trial.\(^\text{42}\) In his opinion, competence to stand trial was the basis for those rights which are essential for a fair trial.\(^\text{43}\) Justice Kennedy opined that competence to stand trial was so basic and so important that a general rule permitting waiver of that right would not withstand scrutiny under the Due Process Clause.\(^\text{44}\)

Justice Kennedy's concerns about the use of antipsychotic medication in a trial setting included the possibility of prejudice by the jury because of the defendant's altered demeanor, impairment of the defendant's right to effective assistance of counsel if he cannot cooperate actively with his attorney, and impairment to the de-

\(^{39}\) Id.
\(^{40}\) Id.
\(^{41}\) Id.
\(^{42}\) Id at 1818. Justice Kennedy forgave the Court for not addressing this issue by noting that it was the subject of neither the brief nor the argument before the Court. Id. He then proceeded to analyze it himself in order to express his reservations concerning the propriety of involuntary medication for the purpose of ensuring a criminal defendant's competency to stand trial. Id.

\(^{43}\) Id. Included in those rights are the rights to effective assistance of counsel; to summon, confront and cross-examine witnesses; to testify on one's own behalf; and to remain silent without penalty for doing so. Id. See Drope v Missouri, 420 US 162, 171-72 (1975). "Competency to stand trial" is defined as the capacity required of a criminal defendant to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing his or her defense. Black's Law Dictionary 283-84 (West, 6th ed 1990). Conviction of an incompetent criminal defendant has been determined to violate due process, thus the State cannot put a defendant on trial unless he is competent. Riggins, 112 S Ct at 1817. See Pate v Robinson, 383 US 375 (1966).

\(^{44}\) Riggins, 112 S Ct at 1817. Justice Kennedy noted that the issue of waiver of the right of competence to stand trial was not currently before the Court. Id.
fendant’s right to testify on his own behalf.\textsuperscript{46} As such, he determined that the State must be required in all cases to prove that no significant risk existed that such drugs would materially alter or impair the defendant’s ability either to react to trial testimony or assist counsel in his defense.\textsuperscript{46} If this showing could not be made and the State could not render the defendant competent without utilizing involuntary medication, then civil commitment was required in order to preserve the integrity of the trial process as required by the Constitution.\textsuperscript{47}

The dissent, written by Justice Thomas and joined by Justice Scalia except as to Part II-A, agreed with the Nevada Supreme Court that Riggins received a full and fair trial as required by the Constitution.\textsuperscript{48} He believed that this case revolved around the admissibility of certain types of demeanor evidence into trial under Nevada law rather than the possible deprivation of constitutional rights, and as such, the Court should only have conducted a limited review to determine whether the evidentiary ruling was so unfair as to deny due process to the defendant.\textsuperscript{49} In his opinion, the fact that the trial court refused to allow Riggins to introduce his unmedicated mental condition as evidence did not deny him a full

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\item \textsuperscript{45} Id at 1819-20. Justice Kennedy noted that the right to testify on one’s own behalf is implicit in the Compulsory Process Clause of the Sixth Amendment. Id. The Compulsory Process Clause states, “In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” US Const, Amend VI.
\item \textsuperscript{46} Riggins, 112 S Ct at 1818. Justice Kennedy further underscored his misgivings concerning the ability of the State to make such a showing by delineating the primary and side effects of the antipsychotic drugs. Id. The side effects, in his opinion, were the main concern in that they could result in prejudice to the defendant’s case either by altering his demeanor to affect his reactions and testimony during trial, or by causing him to be unable or unwilling to aid counsel in his defense. Id at 1819. The importance of the defendant’s behavior is manifest in that he is before the trier of fact who is observing and judging his reactions during all stages of the proceedings. Id. The documented side effects of Mellaril, in particular drowsiness, depression and lack of alertness, could result in significant prejudice to the defendant both during the trial and during sentencing, as they inhibit his ability to react and respond to the proceedings. Id.
\item \textsuperscript{47} Id at 1820. “Civil commitment” is defined as a form of confinement order used in the civil context for those who are mentally ill, incompetent, alcoholic, drug addicted, etc. as contrasted with the criminal commitment of a sentence. Black’s Law Dictionary 245 (West, 6th ed 1990).
\item \textsuperscript{48} Riggins, 112 S Ct at 1821 (Thomas dissenting).
\item \textsuperscript{49} Id. Thomas cited Estelle v McGuire, 112 S Ct 475 (1992), in which the Court determined that the Supreme Court could not reverse a state court’s criminal conviction based on the possibility of a trial judge’s improper admission of evidence unless the evidence ruling so infected the trial procedures that the resulting conviction could be a violation of due process. Estelle, 112 S Ct at 482. The Due Process Clause does not allow federal courts to engage in a detailed review into the wisdom of state evidentiary rules. Id.
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and fair trial. Justice Thomas further berated the Court for first raising the constitutional issues and then failing to delineate how Riggins’ trial had been rendered unfair by the effects of the medication.

The trial court allowed Riggins to present testimony concerning his mental state at the time of the crime rather than appear in court in an unmedicated condition. In Justice Thomas’ opinion, the fact the Riggins was allowed to show the effects of the medication on his mental condition by expert testimony alone did not cause his trial to be fundamentally unfair. Justice Thomas concluded that the mere possibility that the drug’s side effects may have impacted Riggins’ trial testimony and assistance to counsel was insufficient to support a conclusion that the trial was not fair. Riggins was specifically found to be competent to stand trial while taking Mellaril, and during trial he failed to present any evidence to the contrary. This competence, Justice Thomas concluded, confirmed that Riggins received a full and fair trial.

Justice Thomas further disagreed with the majority’s opinion that the holding in Harper warranted reversal of Riggins’ conviction. He distinguished the instant facts by noting that Riggins began taking Mellaril voluntarily after complaining about hearing voices and being unable to sleep. He also noted that, although the district court denied Riggins’ motion to order termination of medication, neither did it affirmatively order him to accept the

50. Riggins, 112 S Ct at 1822. Justice Thomas noted that at least one psychiatrist had opined that Riggins’ demeanor would not noticeably change were medication ceased. Id. He then chastised the Court for not explaining why, even if the drug did affect Riggins’ demeanor, those effects caused his trial to be fundamentally unfair. Id.
51. Id at 1822.
52. Id.
53. Id. Several state courts have held that expert testimony is sufficient to explain effects of antipsychotic medication on the attitude and demeanor of a criminal defendant during trial. Id. See State v Law, 270 SC 664, 673, 244 SE2d 302, 306 (1978); and State v Jojola, 89 NM 489, 493, 553 P2d 1296, 1300 (1976).
54. Riggins, 112 S Ct at 1822. Justice Thomas further noted that the trial court had found Riggins to be competent to stand trial under Nev Rev Stat § 178.400 while taking Mellaril, and that Riggins had not contended that due process required a higher standard. Id at 1823.
55. Id at 1822-23. Riggins failed to produce specific facts to support his claim of inability to participate in his defense, to state how he would have directed the conduct of his counsel differently, or to identify testimony or instructions he did not understand. Id at 1823.
56. Id.
57. Id.
58. Id.
Thus he would not have been in violation of a court order had he simply refused to take the medication. Justice Thomas believed that the Court had improperly presumed that the medication was forced on Riggins during the course of the trial. Justice Thomas contended that the Court should not have addressed the issue of Riggins’ deprivation of his liberty interest because that issue was not raised before the Nevada Supreme Court and thus was not within the Court’s power of review. He further distinguished Harper in that the defendant in that case sought only civil remedies such as injunction and damages whereas Riggins’ sought reversal of a criminal conviction. Finally, Justice Thomas concluded that in its majority opinion, the Court adopted a standard of strict scrutiny under which trial courts would forthwith be required to balance the pretrial detainee’s liberty interest against the State’s interests; thus, either changing the reasonableness standard promulgated by Harper or adopting a separate standard for pretrial detainees without explaining its rationale.

As noted by Justice Kennedy in his concurring opinion, the use of antipsychotic drugs to treat mental illness is a relatively recent phenomenon. Introduced in the early 1950’s, these drugs were found to be extremely effective in temporarily reducing or even eliminating overt symptoms of certain forms of mental illness, particularly schizophrenia.

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59. Id at 1824.
60. Id.
61. Id.
62. Id.
63. Id at 1825. The United States Supreme Court traditionally has reversed criminal convictions based on only two kinds of constitutional deprivation: first, when the deprivation occurs during the presentation of the case to the trier of fact and second, when the deprivation results in a structural defect affecting the framework of the trial. Id. See Arizona v Fulminante, 111 S Ct 1246 (1991), rehearing denied 111 S Ct 2067 (1991). Justice Thomas condemned the Court for failing to explain how Riggins’ arguments fell under either of these situations. Riggins, 112 S Ct at 1825. Furthermore, Justice Thomas noted that in Estelle v Williams, 425 US 501 (1976), the Court had followed lower courts’ decisions in finding that actual prejudice, as contrasted with the mere possibility of prejudice, was required for a criminal conviction to be reversed by the Supreme Court on grounds that the defendant did not receive a fair trial. Riggins, 112 S Ct at 1825.
64. Id at 1826.
65. Id at 1817.
66. Linda C. Fentiman, Whose Right Is It Anyway?: Rethinking Competency to Stand Trial in Light of the Synthetically Sane Insanity Defendant, 40 U Miami L Rev 1109, 1110 n 2 (1986). Antipsychotic drugs are broken into five major sub-groups: the phenothiazones, the thioxanthenes, the rauwolfia derivatives, the benzoquinolines, and the butyrophenes. Fentiman, 40 U Miami L Rev at 1110 n 2. While positive effects include the reduction of psychotic symptoms, use of these drugs is accompanied by serious and poten-
The first state courts to deal with use of these drugs struggled with the nature of the effects on the medicated individual's competency to stand trial. In *State v Hampton*, the court found the fact that legal competency was induced by antipsychotic medication to be of no legal consequence, and thus held that the State had no interest in preventing the trial of an artificially competent criminal defendant.

Subsequent state courts opined that the criminal defendant retained only a limited right of freedom from state interference with his mental processes during trial. These courts believed that this right was only violated when the state-administered medication interfered with the defendant's cognitive processes. As such, they categorized the effects of the antipsychotic drugs as diminishing the defendant's comprehension, memory, ability to communicate effectively and to confer with counsel, or ability to function rationally.

Only one state court directly addressed the effects of the drugs on the entire range of the defendant's mental activity. In *Mary-*

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67. See note 43 and accompanying text.
68. 253 La 399, 218 S2d 311 (1969).
69. *Hampton*, 218 S2d at 312. An unfit defendant requested to be allowed to stand trial while being treated with the antipsychotic drug, Thorazine. Id. A state sanity commission determined that she was competent while under treatment and allowed the trial to continue. Id. Thus the proposition was established that the court would look only at existing competency regardless of whether it was synthetically produced by the use of medication. Id.
70. Comment, *Antipsychotic Drugs and Fitness to Stand Trial: The Right of the Unfit Accused to Refuse Treatment*, 52 U Chi L Rev 773, 778 (1985). This right was variously located in the Due Process Clause of the Fourteenth Amendment, see *Jojola*, 553 P2d 1296 (cited in note 53); provisions of state constitutions, see *State v Murphy*, 56 Wash2d 761, 355 P2d 323 (1960); or judicially created, see *Commonwealth v Louraine*, 453 NE2d 437 (Mass 1983); and *State v Hayes*, 118 NH 498, 389 A2d 1379 (1978).
71. Comment, *Antipsychotic Drugs and Fitness to Stand Trial*, 52 U Chi L Rev at 778 (cited in note 70).
72. Id.
73. Id at 779.
ott, the Washington Court of Appeals found that the defendant's right to "exclusive control of his mental processes" during trial was violated because he received medication which made him dull, listless and unwilling to assist in his defense.74

Federal courts first addressed the issues presented by the use of antipsychotic drugs in the landmark case of Rennie v Klein.75 The primary issues confronting the court were (1) whether an involuntarily committed inmate in a state mental institution retained a substantive constitutional right to refuse treatment with antipsychotic drugs, and (2) if such a right did exist, what procedural requirements were necessary to satisfy due process.76 The court determined that such a right did indeed exist and that the informal administrative procedures utilized by the State met the due process requirements.77

In analyzing the first issue, the court divided the question into three inquiries: (1) was a liberty interest created by state law which was infringed by forced administration of antipsychotic medication to involuntarily committed mental patients; (2) if not, was such a liberty interest created by the Constitution; (3) if so, what are the substantive contours of this interest.78 Although answering the first inquiry in the negative, the court did find that
such a liberty interest was created by the United States Constitution. The court stated that an individual's liberty may be diminished upon involuntary civil commitment only to the extent required to allow for confinement by the state to prevent the individual from harming either himself or others. After reviewing the impact of side effects of the drugs on individuals receiving them and determining that the risks created represented diminishments of the individual's confinement conditions, the court held that involuntary administration of antipsychotic drugs represented an unjustified intrusion on the individual's personal security. This intrusion was deemed significant enough to rise to the level of a liberty interest entitled to protection under the Due Process Clause.

In considering the scope of this interest, the Rennie court noted that the right was not absolute, but instead must be considered in light of legitimate governmental concerns and obligations. The court noted that the state's power to confine had been justified under both the state police power and the parens patriae theory, with the two often overlapping. These same sources were also the justification for involuntary administration of medication to these individuals. However, the court stated that the liberty deprivation imposed by the state was limited to that required to provide necessary care or to address legitimate administrative concerns. Thus, the court required that the "least intrusive means" standard be implemented during the balancing analysis. As such, the

79. Id at 843.
80. Id.
81. Id at 843-44.
82. Id at 844.
83. Id at 845.
84. Id. "Police power" is the authority conferred upon the individual states by the Tenth Amendment to the United States Constitution; it is the power of the State to place restraints on personal freedom and individual property rights for the protection of public health, safety and morals or the promotion of public convenience and general prosperity. Black's Law Dictionary 1156 (West, 6th ed 1990). "Parens patriae" refers to the role of state as sovereign and guardian of persons under legal disability; the theory originated from the English common law under which the King had a royal prerogative to act as guardian to individuals with legal disabilities, i.e. infants. Black's Law Dictionary 1114 (West, 6th ed 1990).

The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." US Const, Amend X.
85. Rennie, 653 F2d at 845.
86. Id.
87. Id.
means chosen to promote the state's substantial concerns must be tailored such that minimal infringement of the individual's liberty interests results.  

Finally, the court addressed the second issue concerning whether procedural requirements necessary to satisfy due process had been implemented. In finding that the informal procedures established by the State sufficiently met the procedural requirements of due process and that a judicial hearing was not necessary before a patient could be involuntarily medicated with antipsychotic drugs, the court modified the lower court's order and remanded the case for further proceedings.

On appeal to the United States Supreme Court, the decision was vacated and the case remanded for consideration in light of the Supreme Court decision in Youngberg v Romeo. The Rennie court interpreted the holding in Youngberg to reject the "least intrusive means" standard and adopted the "professional judgment" standard for determining whether the individual's liberty interest had been properly safeguarded. However, the court upheld its

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88. Id at 846. The court further stated that the least intrusive means standard did not prohibit all intrusions, but only required a balancing of the individual's interest in not receiving treatment with those of the state in administering the antipsychotic medication to that individual. Id at 847. A balance must be struck between "efficacy and intrusiveness." Id.

89. Id. The court listed three factors which must be considered in the balancing analysis: (1) the private interest, (2) the risk of erroneous decision through procedures used and the value of any additional or substituted safeguards, and (3) the governmental interest. Id at 848.

90. Id at 851. The New Jersey procedures were as follows:

(1) When the patient initially refuses treatment, the treating doctor must explain the nature of his condition, the rationale for using the particular medication, the risks and benefits of that medication and possible alternate treatments to the patient.

(2) If the patient still refuse treatment, the patient's treatment team convenes a meeting to discuss the situation at which the patient has a right to be present.

(3) If no solution is reached at the meeting, the medical director of the hospital or his designee must examine the patient and his record; medication may be administered if the director agrees with the treating physician's assessment of the situation.

(4) The medical director is authorized but not required to retain an independent psychiatrist to evaluate the patient's need for medication.

(5) The director is required to make weekly evaluations of the treatment program of each patient currently receiving medication involuntarily to determine if the need for forced medication still exists.

(6) In addition, all cases of involuntary medication were being reviewed by a division director or another physician in the Division of Mental Health and Hospitals central office; this last procedure was not required by state statutes. Id at 848-49.


92. Rennie v Klein, 720 F2d 266, 269 (3d Cir 1983). Youngberg dealt with the issue of whether a mentally retarded individual retained constitutional rights to be safe and free
earlier decision and only modified the reasoning behind it. The
court extended the liberty interest identified in Youngberg, that of
freedom from bodily restraints, to support its earlier conclusion
that Rennie retained a liberty interest in freedom from the chemi-
cal restraints of antipsychotic medication. Application of the
"professional judgment" standard resulted in the holding that ant-
ipsychotic drugs may be forcibly administered to an involuntarily
committed mental patient when such an action is deemed neces-
sary based on professional judgment to prevent the patient from
harming himself or others.

After the Third Circuit’s initial decision in Rennie, but prior to
its reconsideration based on Youngberg, Mills v Rogers was de-
cided in the United States Supreme Court. The Court, however,
declined to address the issue of whether involuntarily committed
mental patients have a constitutional right to refuse antipsychotic
medication by stating that it would be inappropriate for the Court
to address possible Constitutional issues when a complete disposi-
tion had not been made concerning the applicability of state law to
the issue. In its analysis though, the Court did recognize that the
drugs were “mind-altering” and that the issue involved both sub-
stantive and procedural aspects. Furthermore, the Court noted
that both parties had conceded the existence of a constitutional
right to refuse administration of antipsychotic medication. The
Court indicated that the substantive issue concerned definition of

from physical restraints after he is involuntarily committed to a mental institution.
Youngberg, 457 US at 309. The Court held that such a liberty interest did exist, and that
the test for determining whether the state had properly safeguarded that interest was
whether professional judgment had been exercised by the medical professionals. Id at 319,
322-24. The Court also determined that the judgment of the medical professionals was to be
considered presumptively valid. Id.

93. Rennie, 720 F2d at 269.
94. Id at 271.
95. Id at 269. The court then found that the procedures provided for adequate pro-
fessional judgment such that the requirements for due process as promulgated by the Su-
preme Court in Youngberg were satisfied. Id at 270.
97. Rogers and six others filed suit against various officials and staff of Boston State
Hospital alleging that the forcible administration of antipsychotic drugs while they were
involuntarily committed patients of the hospital violated their constitutional rights. Rogers,
457 US at 293-94. They sought compensatory and punitive damages as well as injunctive
relief. Id at 294.
98. Id at 293, 305-06.
99. Id at 293 n 1.
100. Id at 299.
101. Id.
that constitutional interest and the competing state interests which might outweigh it, whereas the procedural issue related to the minimum requirements under the Constitution necessary to protect that constitutional interest. Thus, the Supreme Court laid the groundwork for subsequent decisions in the lower federal courts which defined the liberty interest and established procedural guidelines to ensure its protection.

In 1984, the Court of Appeals for the Tenth Circuit expanded the liberty interest to be free from unwanted antipsychotic medication to include pretrial detainees. In *Bee*, the threshold issue before the court was whether a pretrial detainee retained a right under the Constitution to refuse treatment with antipsychotic medication. In holding that the pretrial detainee did have such a right, the Court determined that the right to be free from unwanted medication was grounded in the Due Process Clause of the Fourteenth Amendment, and right of Freedom of Speech in the First Amendment. The court extended this liberty interest to pretrial detainees by beginning its analysis with the recognition

102. Id. Thus the Court addressed the issues and identified the Constitutional right, but determined that reference to state law was required before further consideration could be given under Constitutional guidelines. Id.

103. See, for example, *Project Release v Prevost*, 722 F2d 960 (2d Cir 1983); *Johnson v Silvers*, 742 F2d 823 (4th Cir 1984); *Walters v Western State Hospital*, 864 F2d 695 (10th Cir 1988).

104. *Bee v Greaves*, 744 F2d 1387 (10th Cir 1984), cert denied 469 US 1214 (1985). Four days after *Bee* was arrested, the jail staff at the Salt Lake City Jail referred him to the mental health staff because he was hallucinating. *Bee*, 744 F2d at 1389. *Bee* complained that he was not receiving Thorazine, an antipsychotic drug, and threatened to commit suicide if the medication was not given to him. Id. *Bee* took the Thorazine voluntarily for almost two months, including during a competency hearing at which he was found to be competent to stand trial. Id. The court ordered *Bee* medicated with Thorazine each night. Id. *Bee* began complaining that he was having problems with the drug and finally refused treatment for five days. Id. The jail psychiatrist determined that *Bee*'s condition was deteriorating, and order him to be forcibly medicated if he refused. Id at 1390. *Bee* was given shots of Thorazine rather than the usual oral dosage until he cooperated and took the oral dose without force. Id. The record was unclear as the whether *Bee* was violent or not during the time he was not receiving the Thorazine. Id. It was also unclear whether the order to forcibly medicate was indefinite or for limited duration only. Id. *Bee* filed an action for damages claiming a violation of his constitutional rights to refuse treatment. Id at 1388.

105. Id at 1391.

106. Id at 1393-94. The liberty interest protected under the Due Process Clause was the right to be free from unjustified intrusions on personal security. Id at 1393. In its analysis the court cited *Youngberg*, 457 US at 316. The protected First Amendment right was the protection of the capacity to produce ideas which the court found based in the right to communicate ideas. *Bee*, 744 F2d at 1393-94.

The First Amendment states in pertinent part, "Congress shall make no law . . . abridging the freedom of speech. . . ." US Const, Amend I.
that pretrial detainees, who have not been convicted of any crimes, retain at least those rights enjoyed by convicted prisoners. Included in those rights are certain freedoms under both the First and Fourteenth Amendments.

The court then proceeded to limit these rights by noting that they must be considered in light of substantial state concerns. The court indicated that the jail's duty to protect its inmates and staff from a violent pretrial detainee was a legitimate interest which must be balanced against the constitutional rights of the pretrial detainee. The court applied the "professional judgment" standard pronounced in Youngberg to state that "determining whether an emergency exists sufficient to warrant involuntary administration of antipsychotic medication requires a professional evaluation of all relevant circumstances of the case." After distinguishing Youngberg, the court also brought in the "least intrusive means" standard when it noted that the availability of less restrictive alternatives to the forced medication should also be considered. Finally, the court reversed the lower court's summary judgment in favor of the defendant and remanded the case for further consideration.

The next cases involving the use of antipsychotic drugs addressed the rights of federal prison inmates to refuse the treatment. In United States v Bryant and the consolidated cases of

107. Bee, 744 F2d at 1391.
108. Id. The court cited Bell v Wolfish, 441 US 520, 545 (1979), in support for this analysis. Bee, 744 F2d at 1391.
109. Id at 1394. The court delineated the three concerns argued by the defendants: (1) the obligation of the jail to treat a mentally ill pretrial detainee, (2) the jail's interest in maintaining the pretrial detainee's competency to stand trial, and (3) the jail's obligation to maintain security and prevent injury to the detainee as well as other inmates and staff. Id. The court ruled that the first two interests were not legitimate concerns in this case. Id at 1395.
110. Id.
111. Id at 1396.
112. Id. The court distinguished Youngberg by noting that physical restraints do not have the same potential of long-term effects as "mental restraints." Id. In stating its opinion that the state must consider less restrictive alternatives before forcibly medicating the pretrial detainee, the court phrased the issue to require consideration of whether an emergency exists sufficient to justify the state injecting a potentially dangerous drug into a pretrial detainee who has not been declared mentally incompetent. Id.
113. Id. The lower court was instructed to find whether a sufficient emergency in fact did exist, and whether forcible medication was the proper response. Id.
114. 670 F Supp 840 (Minn 1987). Bryant was an inmate in the federal prison system and had been diagnosed as suffering from paranoid schizophrenia. Bryant, 670 F Supp at 842. He was prescribed Haldol, an antipsychotic drug, by a staff psychiatrist, but refused to take it after suffering certain side effects. Id. He was transferred from the prison to a mental
United States v Watson and United States v Holmes, the courts addressed the issue of whether federal prisoners retain constitutional rights to refuse antipsychotic medication. Both courts analogized the Youngberg decision to the present situation and found that the prisoners retained a liberty interest in freedom from unwanted antipsychotic medication despite the fact that they were convicted federal prisoners. The courts limited this right by applying the "professional judgment" standard to require a determination by prison officials and/or medical professionals on whether medication is necessary to meet substantial state interests, such as the protection of prison inmates and staff. The Watson and Holmes court reversed the order allowing forced medication of Holmes and remanded for a determination of whether he could

health facility where he refused to eat, went into seclusion, threatened a staff member, assaulted an unidentified person, and set fire to his cell. Id. A staff psychiatrist and staff psychologist concluded that Bryant was suffering from paranoid schizophrenia and opined that seclusion and other forms of treatment would not be beneficial without antipsychotic medication. Id. The United States filed a petition pursuant to 18 USC § 4245 to allow forced administration of antipsychotic medication. The magistrate found that Bryant was suffering from mental illness which required care and treatment, but stated that forcible administration of antipsychotic medication was improper absent an emergency or adjudication of incompetency. Id at 841.

Section 4245 provides in pertinent part:

(a) Motion to determine present mental condition of imprisoned person.—If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the government . . . may file a motion . . . for a hearing on the present mental condition of the person. . . .

(d) Determination and disposition.—If, after the hearing, the court finds by a preponderance of the evidence that the person is suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment.

18 USC § 4245 (1982).

115. 893 F2d 970 (8th Cir 1990). The facts in Holmes' case are similar to those in Bryant's case, see note 114 and accompanying text. Holmes was diagnosed as suffering from paranoid schizophrenia and was transferred from prison to a state mental hospital. Watson and Holmes, 893 F2d at 972-73. He refused treatment with antipsychotic medication, although he was not considered violent or disruptive, and the United States filed a petition to determine his mental condition pursuant to 18 USC § 4245. Id. The district court upheld involuntary administration of antipsychotic drugs stating that the decision to do so was neither "arbitrary or capricious." Id at 974.

The fact pattern underlying the Watson case follows the same pattern with the exception that Watson had committed several acts of violence while in prison. Id at 974-75.


117. Bryant, 670 F Supp at 843-44. Watson and Holmes, 893 F2d at 979.

function in the general prison population without the drugs. The same court affirmed the order allowing forcible medication of Watson because prison officials had exercised their judgment and determined that Watson could not function without medication in the general prison population.

The Bryant court found that Bryant was suffering from mental disease or defect which required commitment for proper care and treatment, and granted the order requesting permission for involuntary administration of antipsychotic medication because a professional judgment was made by officials at the state facility that the medication was necessary for effective treatment and the safety of inmates and staff.

The issues concerning antipsychotic medication were finally addressed by the United States Supreme Court in Washington v Harper. The Court spent little time in coming to the conclusion

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119. Watson and Holmes, 893 F2d at 982.
120. Id.
121. Bryant, 670 F Supp 844-45.
that federal prison inmates possess a significant liberty interest in avoiding unwanted treatment with antipsychotic medication under the Due Process Clause. However, the Court recognized the necessity of balancing this liberty interest with those of the state by noting that the extent of the federal prison inmate’s right must be “defined in the context of his confinement.” In concluding that the Policy promulgated by the State met the procedural requirements of the Due Process Clause, the Court established a standard by which such regulations must be reviewed. The Court opined that, when a prison regulation encroaches upon an inmate’s constitutional interests, the regulation is valid only if found to be reasonably related to legitimate prison interests with consideration given to the following factors: (1) whether a valid, rational connection exists between the prison regulation and the legitimate governmental interest put forth as justification, (2) the impact that allowing the constitutional interest to prevail would have on prison inmates, staff, and the allocation of prison resources, and (3) the absence or availability of ready alternatives. The Court established the rule that the Due Process Clause allowed involuntary treatment with antipsychotic medication by the State in cases in which the inmate was dangerous to himself or others and the treatment was medically appropriate. Finally, the Court established that the inmate’s medical and liberty interests may be better served by allowing the above determinations to be made by medical professionals using “traditional, medical investigative techniques” rather than by a judge during a judicial hearing.

Riggins presented the Court with the opportunity to determine first, whether a pretrial detainee retained a protected liberty interest in refusing unwanted antipsychotic medication; second, if such
a liberty interest did exist, the substantive and procedural due process analyses necessary to protect that interest; and third, the effect of a deprivation of that liberty interest on the pretrial detainee’s Sixth Amendment rights to a full and fair trial. After addressing the first issue in some detail and concluding that the liberty interest did indeed exist, the Court declined to address the substantive and procedural due process aspects of the case by stating that those issues were not properly before the Court. However, the fact that the Court held that Riggins did have a liberty interest of which he had been deprived necessitated that the Court determine the circumstances under which such a deprivation was acceptable based upon the dictates of substantive and procedural due process. The Court’s failure to do so makes it necessary for another case to make its way through the legal system utilizing the limited resources of the judiciary to decide these issues at a later date.

In finding that Riggins did retain a liberty interest in freedom from unwanted antipsychotic medication, the Court determined that once Riggins moved to terminate medication, the State became obligated to prove both the need and medical appropriateness of the drug. However, the Court declined to address the standard under substantive due process to be applied in balancing Riggins’ liberty interest with possible legitimate state interests. The Court hypothesized in dicta concerning actions the State might have taken under the circumstances which would have met due process requirements, but did not give any reliable guidance. In doing so, the Court appeared to be adopting the standard of strict scrutiny, but then denied this in the face of an accusation by the dissent. Thus trial courts must choose between applying

129. Substantive due process is defined as the guarantee under the Fifth and Fourteenth Amendments to the United States Constitution that no person shall be arbitrarily deprived of life, liberty of property. Black’s Law Dictionary 1429 (West, 6th ed 1990). Procedural due process encompasses the guarantee of procedural fairness which flows from Fifth and Fourteenth Amendments and requires that the party whose rights are to be affected must receive notice and have an opportunity to be heard. Black’s Law Dictionary 1203 (West, 6th ed 1990).

130. Riggins, 112 S Ct at 1815.

131. Id.

132. Id.

133. Id. See dissent at 1826. As the dissent notes, the Court uses such words as “compelling,” “essential” and “obligated” to describe the state’s interests which must be balanced against Riggins’ liberty interest. Id. Strict scrutiny is the standard by which possible deprivation of an individual’s fundamental rights may be judged and requires the state to establish that it has a compelling interest which justifies the action and that such action is
what seems to be something slightly less than a strict scrutiny standard, or applying the "rational basis" standard upheld in *Harper* in determining whether state action has met the dictates of substantive due process.\(^{134}\) Either way, later cases are destined for appeal until the Supreme Court establishes a definitive standard.

Furthermore, because the Court refused to address the substantive due process issue, review of the procedural due process issue was impossible. In *Harper* the Court held that a judicial hearing was not necessary to satisfy procedural due process requirements.\(^{135}\) The *Riggins* court entirely failed to address what type of notice or hearing might satisfy due process in the context of a pretrial detainee. Trial courts choosing to follow *Harper* will have to assume that the rights retained for a criminal defendant are no more and no less than those for a prison inmate, and thus will be subject to reversal for error. Other trial courts will have to decide for themselves what procedural safeguards are necessary, including whether a pretrial detainee is entitled to a judicial hearing concerning the forced medication. These courts will expend their resources on judicial hearings to avoid the possibility of error. Either way, limited judicial resources, both in terms of time and money, will have to be utilized to determine cases which might have been controlled by *Riggins* had the Court been inclined to establish the necessary guidelines.

Finally, in addressing the third issue presented, the Court again failed to establish guidelines which may be used to determine violation of a criminal defendant's trial rights.\(^{136}\) Instead, the Court relied on "possibilities" and "probabilities" to support its decision that the side effects of the medication administered involuntarily may have resulted in prejudice by the jury.\(^{137}\) No standard was set forth and no reason was given as to why such a risk was sufficient to justify reversal of Riggins' convictions. As a result, trial courts are given less than nothing upon which to rely because not even the strict scrutiny standard for balancing an individual's fundamental rights against a state's interests was upheld with any con-
dence by the Court.

Hopefully when the Court is next faced with these issues, the majority will be able to establish with some clarity the standard and procedures necessary to meet due process requirements under the Due Process Clause. Unfortunately, if the opinion of the dissenting Justice becomes the majority, not only will substantive and procedural due process requirements not be addressed, but the existence of a liberty interest in freedom from unwanted medication will not be sufficient to justify review of the case at all. Instead, rigid application of Supreme Court jurisdictional rules will force the Court to deny certiorari and result in constriction of important liberty interests.\textsuperscript{138}

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\textsuperscript{138} Id at 1821.