The Burger Court Opinion Writing Database

Parham v. J. R.

442 U.S. 584 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 15, 1977

Re: 75-1690 Parham v. J. L. and J. R., etc.

MEMORANDUM TO THE CONFERENCE

I do not now pass on whether there is a liberty interest in minor children which precludes commitment on the application of a parent. Assuming, arguendo, there is such an interest, I believe the Georgia statute as construed and applied, to provide the inquiry by way of informal information gathering, satisfies due process.

For "lineup" purposes, this places me in the company of Potter, Byron and Bill Rehnquist. If other votes remain as recorded the case is 4-4 and in my view merits re-argument.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 9, 1978

Re: 75-1690 - Parham v. J.L. and J.R., et al.

MEMORANDUM TO THE CONFERENCE:

This case was argued on December 7. As you may recall, after our Conference that week there did not appear to be a clear majority for any position. Accordingly, I propose we discuss the case again at this week's Friday Conference to decide whether it should be set for reargument.

Regards,

WEB

Kremens =

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 6, 1979

Re: 75-1690 - Parham v. J.L. & J.R., Minors

MEMORANDUM TO THE CONFERENCE:

Enclosed is the first draft of the above case. The inordinate length arises because of the murky, inadequate opinion of the District Court. It may be possible to "weed out" some of the material which is useful now to give the whole picture.

Regards,

WEB

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: FEB 6 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[February —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We noted this appeal to resolve the question of what process is constitutionally due a minor child whose parents seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to commitment.

I

The Georgia Statutory Program

Appellee, J. R., a child [1] being treated in a Georgia state mental hospital, was a plaintiff in this class-action [2] suit based

[1] Pending our review one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

[2] The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1. Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: MAY 14 1979

CHANGES THROUGHOUT

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[May —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this appeal is what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment.

I

(a) Appellee, J. R., a child [1] being treated in a Georgia state mental hospital, was a plaintiff in this class-action [2] suit based

[1] Pending our review one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

[2] The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1. Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 15, 1979

Re: 75-1690 - Parham v. J.R.

Dear Lewis:

Thank you for your memorandum of March 10 on this case. Rather than respond to it at the time, I have made changes in an effort to accommodate your views.

We should be pretty much in agreement on parts I-III, which deal with the admission process for children with natural parents. With regard to your concern about post-admission procedures, my review of the record and the District Court's opinion convinces me that this issue is not really before us. I think it is a question that should be dealt with by the District Court on remand. This approach has the advantages of providing us with real findings of fact if the issue should come back up.

I gave considerable thought to your comments about the wards of the State, but ultimately concluded that here, again, we have no basis for declaring the admission procedures unconstitutional. There simply is no evidence to rebut the statutory presumption that the State is acting in the children's best interests. Nor are there any findings that any of the children have been wrongly admitted because of the medical decisions of the admitting physicians.

I think most of the concerns you expressed about the wards are really more relevant to post-admission reviews than to the initial admission. I have attempted to make this point in Part IV of the opinion.

If you have any problems, please let me know.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

PERSONAL

May 17, 1979

Re: 75-1690 - Parham v. J. L. & J. R.

Dear Lewis:

In an effort to meet your points I am losing other votes. (Who's over?)

Unless you join me fully, I will have no choice but to return to my basic position -- which I think is the correct one. I submit that you are underestimating the dangers of "overloading" states with an excess of due process.

By sheer coincidence, a "lady judge" (from Delaware) at today's luncheon came to me and said how pleased she was with Addington because Delaware requires so much due process and "sick" children are being kept out of mental hospitals. She is a Family Court Judge.

Regards,

WEB

Mr. Justice Powell

5, 11, 13, 15-18
24, 25, 27, 30-33
FNS renumbered

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

3rd DRAFT

Recirculated: JUN 7 1979

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[May —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this appeal is what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment.

I

(a) Appellee, J. R., a child [1] being treated in a Georgia state mental hospital, was a plaintiff in this class-action [2] suit based

[1] Pending our review one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

[2] The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1 (1971 rev.). Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.

5, 7, 10, 14-17
21, 22, 30-33

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

4th DRAFT

Recirculated: JUN 14 1979

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[June —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this appeal is what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment.

I

(a) Appellee, J. R., a child [1] being treated in a Georgia state mental hospital, was a plaintiff in this class-action [2] suit based

[1] Pending our review one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

[2] The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1 Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1979

CASES HELD FOR NO. 75-1690 - PARHAM V. J.L.

MEMORANDUM TO THE CONFERENCE:

Two cases have been held for Parham. I will vote to affirm the following case:

I WILL VOTE TO AFFIRM IN:

No. 76-6718 - French v. Blackburn: This is an appeal from a decision of a three-judge d.ct upholding N. Carolina's involuntary civil commitment statute. Appt twice was temporarily committed, but was released both times by a judge after a hearing conducted within 10 days of the commitment. Appt then filed suit to enjoin future enforcement of the statute.

The statutory procedure is relatively complex. It requires a petn accompanied by an affidavit alleging that an individual is mentally ill and dangerous to himself and others. Based on these papers the Superior Ct Clerk is then obligated to determine whether there are reasonable grounds to believe the claims, and if he so finds, he may issue an order to have the individual taken into custody. Within 48 hours the committed individual must be examined by a qualified physician and released unless the physician certifies that in his opinion the individual is both mentally ill and dangerous. The committed individual then must receive a judicial hearing within 10 days after his initial confinement. Again, if the judge finds that the individual is either not mentally ill or not dangerous, he must order his release.

Forty-eight hours prior to the hearing the individual receives notice of its time and place. He also is notified of the purpose of he hearing, his right to counsel, his right to present evidence and that the judge at the hearing will determine whether he should be released or committed for up to ninety days.

At the hearing there is no right to a jury and the judge determines whether commitment is appropriate based on "clear, cogent and convincing" evidence.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 12, 1979

RE: No. 75-1690 Parham v. J.L.& J.R.,Minors

Dear Chief:

I'll be circulating a dissent in due course in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1979

RE: No. 75-1690 Parham v. J.L. & J. R., Minors

Dear John:

Thank you very much for your note of March 6. I am delighted to make the changes you suggest in the fourth, fifth and sixth sentences in the full paragraph on page 7.

Sincerely,

Bill

Mr. Justice Stevens

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, v. J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[March —, 1979]

MR. JUSTICE BRENNAN, concurring in part and dissenting in part.

I agree with the Court that the commitment of juveniles to state mental hospitals by their parents or by state officials acting *in loco parentis* involves state action that impacts upon constitutionally protected interests and therefore must be accomplished through procedures consistent with the constitutional mandate of due process of law. I agree also that the District Court erred in interpreting the Due Process Clause to require preconfinement commitment hearings in all cases in which parents wish to hospitalize their children. I disagree, however, with the Court's conclusion that the present Georgia juvenile commitment scheme is entirely without constitutional defect. In my view the Georgia statute is constitutionally inadequate in two respects. First, the statute fails to accord to juveniles hospitalized by their parents reasonably prompt postadmission commitment hearings. Second, the statute fails to accord preconfinement hearings to juvenile wards of the State committed by the State acting *in loco parentis*.

I

Rights of Children Committed to Mental Institutions

Commitment to a mental institution necessarily entails a

— MINOR CHANGES THROUGHOUT

To: The Chief Justice

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc.	On Appeal from the United States District Court for the Middle District of Georgia.

[March —, 1979]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE STEVENS join, concurring in part and dissenting in part.

I agree with the Court that the commitment of juveniles to state mental hospitals by their parents or by state officials acting *in loco parentis* involves state action that impacts upon constitutionally protected interests and therefore must be accomplished through procedures consistent with the constitutional mandate of due process of law. I agree also that the District Court erred in interpreting the Due Process Clause to require preconfinement commitment hearings in all cases in which parents wish to hospitalize their children. I disagree, however, with the Court's decision to pretermit questions concerning the post-admission procedures due Georgia's institutionalized juveniles. These questions were briefed and argued and should be decided now. This case has been pending in this Court for three years. In my view, it is inappropriate to truncate our constitutional analysis, pretermit these critical issues and thereby prolong this already protracted litigation. I also disagree with the Court's conclusion concerning the procedures due juvenile wards of the State of Georgia. I believe that the Georgia statute is unconstitutional in that it fails to accord pre-confinement hearings to juvenile wards of the State committed by the State acting *in loco parentis*.

Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 8 MAR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, v. J. L. and J. R., Minors, Etc.

On Appeal from the United States District Court for the Middle District of Georgia.

[March —, 1979]

MR. JUSTICE STEWART, concurring in the judgment.

For centuries it has been a canon of the common law that parents speak for their minor children.[1] So deeply imbedded in our traditions is this principle of law that the Constitution

[1] See W. Blackstone, Commentaries *452–453; J. Kent, 2 Commentaries 203–206 (3d ed. 1832); J. Schouler, A Treatise on the Law of Domestic Relations, 335–353 (3d ed. 1882); G. W. Field, The Legal Relations of Infants 63–80 (1888).

"It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince* v. *Massachusetts*, 321 U. S. 158, at 166.

"The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin* v. *Yoder*, 406 U. S. 205, at 232.

"Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent." *Planned Parenthood of Missouri* v. *Danforth*, 428 U. S. 52, 101 (STEVENS, J., concurring in part and dissenting in part).

Cf. *Stump* v. *Sparkman*, 435 U. S. 349, 366 (dissenting opinion).

p. 4

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 14 MAR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, v. J. L. and J. R., Minors, Etc. | On Appeal from the United States District Court for the Middle District of Georgia.

[March —, 1979]

MR. JUSTICE STEWART, concurring in the judgment.

For centuries it has been a canon of the common law that parents speak for their minor children.[1] So deeply imbedded in our traditions is this principle of law that the Constitution

[1] See W. Blackstone, Commentaries *452–453; J. Kent, 2 Commentaries 203–206 (3d ed. 1832); J. Schouler, A Treatise on the Law of Domestic Relations, 335–353 (3d ed. 1882); G. W. Field, The Legal Relations of Infants 63–80 (1888).

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"The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin* v. *Yoder*, 406 U. S. 205, at 232.

"Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent." *Planned Parenthood of Missouri* v. *Danforth*, 428 U. S. 52, 101 (STEVENS, J., concurring in part and dissenting in part).

Cf. *Stump* v. *Sparkman*, 435 U. S. 349, 366 (dissenting opinion).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1979

Re: No. 75-1690 - Parham v. J.L. & J.R., etc.

Dear Chief,

Please join me in your circulation of

June 7, 1979.

Sincerely yours,

The Chief Justice

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 12, 1979

Re: No. 75-1690 - Parham v. J.L. & J.R., Minors

Dear Chief:

I await the dissent.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 6, 1979

Re: 75-1690 - Parham v. J.L. & J.R., Minors

Dear Bill:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1979

Re: No. 75-1690 - Parham v. J. L. and J. R., Minors

Dear Chief:

Please join me.

Sincerely,

HAB

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 10, 1979

75-1690 Parham v. JL and JR

Dear Chief:

As I am sure you anticipated when you unselfishly retained this difficult case (rather than assign it to anyone else), there exists among us a variety of viewpoints as to how to resolve the several questions presented. The three interests implicated - of children, parents and the state - are not easy to reconcile, especially in terms of constitutional analysis. The variables also are infinite, depending upon the ages and histories of the children and - most importantly - the degree of parental responsibility and the nature of the parent-child relationship in particular cases.

This case also is made more difficult by the opinion of the three-judge District Court in which there is more social philosophy than coherent judicial analysis. As you commented to me, your draft opinion was intended primarily to identify and discuss generally the range of possible dispositions of the issues in the case. Your draft has been helpful in this respect, although it is evident already that Bill Brennan and Potter have views that differ rather substantially in certain respects.

As you have the responsibility for the Court opinion, I would like to find common ground if this is possible. I could not join your present draft, although (apart from some of the dicta that no doubt you intend to condense or discard), I hope we are not irreconcilably apart. I therefore have undertaken, in the enclosed memorandum, to state in summary terms the views that I have held for some time as to how these "voluntary child commitment" cases should be analyzed and resolved.

I have thought from the Conference discussion that we were not too far apart on most of the questions, and will await your second draft in the hope that I could join all or some parts of your opinion.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

May 16, 1979

75-1690 Parham v. JL and JR

Dear Chief:

Thank you for your letter.

I have only had an opportunity to skim your revised draft, and - as you suggest - it embodies some of the thoughts I expressed in my memorandum to you. I appreciate this, and certainly I will go as far as I can in joining you.

After weeks of writing and rewriting, including some indecision on some points, I hope to have my memorandum in Bellotti ready for circulation next week. I believe there is some tension between parts of Parham and what I am writing in Bellotti. I cannot be sure about this until I have studied your opinion more carefully, and also am satisfied with a draft of Bellotti.

Sincerely,

The Chief Justice

lfp/ss

June 1, 1979

75-1690 Parham v. J.L.

Dear Chief:

As you know from prior correspondence, I have deferred my decision in this case until I could sort out - and reduce to writing - my views in Bellotti (the Massachusetts abortion case).

I now have circulated a draft of Bellotti, and in light of it I have again reviewed your fine opinion with some care. There still remains some arguable tension in the language - though not in the holdings.

The first full sentence in the first full paragraph on page 18 characterizes the Court's opinion in Danforth as finding that "the family unit had already been severely damaged, if not destroyed, by the conflict between the parents and the child over the specific decision whether to obtain an abortion." Although there are dicta to this effect in Danforth, the primary defect in the Missouri statute, as your opinion correctly notes in footnote 14, was that it provided parents with an absolute veto over the minor's abortion decision. Your emphasis on the "fractured family" argument in Danforth tends to undercut the critical assumption in my Bellotti opinion that parents do have an important role to play in their daughters' abortion decisions. This tension would be resolved if you eliminated this sentence from page 18 and, perhaps, put the substance of footnote 14 into the text.

Your opinion also emphasizes the adverse consequences of a hearing that may pit child against parent. I quite agree. But in some circumstances, a state may choose such a hearing as being, in its judgment, the least objectionable alternative. In Bellotti, for example, Massachusetts has chosen to authorize a child to go to the Superior Court for a determination as to whether an abortion would be in her best interests. It is inevitable that in

hearings on these issues, parents may be the most important participants.

As I do not question Massachusetts' right to authorize this hearing in the Superior Court, there is some tension between your Parham opinion and my draft of Bellotti. This can be avoided by quite modest changes in verbiage, plus the addition of a sentence to a footnote. You address the probable consequences of an adversary hearing on page 24 of your opinion. Two sentences might be modified as follows:

For the second sentence on page 24, substitute the following:

> "An adversary hearing generally would be at odds with the presumption that parents act in the best interests of their child. Supra, pp. ____.

For the last two sentences that begin on page 24, substitute the following:

> "These unfortunate results, especially when the child is suffering some degree of emotional instability, seem likely to occur in the context of an adversary hearing in which the parents may testify. Such a confrontation over personal family relationships often distress normal adults, and could have significant adverse effects on a child."

And, if you want to leave room in Parham for the kind of hearing provided by the Massachusetts statute in Bellotti, it is necessary to say somewhere - perhaps in a footnote added to one of the existing notes on pages 24 or 25 - something along the following lines:

> "There may be situations where a state validly may conclude that there are special reasons for providing for hearings in which parents and child may be at odds."

I have one further observation about your opinion that also is indirectly related to Bellotti. In Part IV (p. 31, et seq.) you deal with the situation where the child is a ward of the state. A central theme in Bellotti, and other decisions involving minors, is that those making decisions on behalf of a child must consider exclusively the child's best

interest. Although your opinion certainly implies this, it would be helpful to include a summary of the applicable standard - perhaps along the following lines:

> "If the state officer or agent with custody of the child has a statutory duty to consider only the child's best interest with respect to such decisions as his admission to a mental hospital, then the state is constitutionally entitled to allow that person to speak for the child in this matter, subject to the same restrictions placed upon natural parents."

I have tried to write Bellotti "down the middle", starting from our prior decision in that case. We indicated there that the Massachusetts statute, providing for recourse by a pregnant minor to a judge, was different from Danforth. We further indicated that if the statute were properly construed by the Supreme Judicial Court of Massachusetts, it could be constitutional. My conclusion in Bellotti is that providing for recourse to a hearing before a judge is valid. But in certain other respects the Massachusetts statute is not in accord with our prior cases.

As your opinion in 77-1715 (the Pennsylvania case) parallels and supports Parham, if we can resolve - by what I perceive to be relatively minor language changes - my concerns about Bellotti, I will be happy to join both of your opinions.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1979

75-1690 Parham v. J.L.

Dear Chief:

The changes you have made in Parham fully accommodate the suggestions I made. I am now happy to join your opinion in this case, as well as in Institutionalized Juveniles. Many thanks.

I suppose I should wait until you recirculate Parham before sending a formal join note.

I hope it will be possible for you to take an early look at my circulation in Bellotti. As I have indicated, I tried to write it in a way compatible with your views, particularly as set forth more fully in Parham, with respect to the role of parents. But in view of prior decisions (particularly Danforth), I believe my draft goes about as far as we can properly go in salvaging a role for parental guidance.

Even Potter is willing to go this far in accommodating a parental role only if his vote will make a Court.

John's letter, circulated this morning, indicates that he reads Danforth as eliminating entirely any parental role. I suppose this will be the view of Bill Brennan and Thurgood. I hope that Harry will accept the middleground that I have tried to identify.

If you are in accord with it, I am sure it would be helpful if you circulated your views fairly soon.

Sincerely,

Lewis

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1979

75-1690 Parham v. J.L.

Dear Chief:

Please join me in your 3rd draft circulated on June 7.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 15, 1979

Re: No. 75-1690 - Parham v. J.L. & J.R.

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1979

Re: No. 75-1690 - Parham v. J.L. and J.R.

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 12, 1979

Re: 75-1690 - Parham v. J.L. & L.R., Minors

Dear Chief:

Like Thurgood, I shall wait for the dissent.

Respectfully,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1979

Re: 75-1690 - Parham v. J.L. & J.R., Minors

Dear Bill:

If you could make one relatively minor revision, I would very much like to join your separate opinion.

Would you consider substituting something like the following for the fourth, fifth, and sixth sentences in the full paragraph on page 7?

> "Indeed, Danforth involved only a potential dispute between parent and child, whereas here a break in family autonomy has actually resulted in the parents' decision to surrender custody of their child to a state mental institution."

On the whole, I think your opinion is excellent.

Respectfully,

Mr. Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1979

Re: 75-1690 - Parham v. J.L. & J.R., Minors

Dear Bill:

Please join me.

Respectfully,

Mr. Justice Brennan

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