

# The Burger Court Opinion Writing Database

*Secretary of Public Welfare of  
Pennsylvania v. Institutionalized Juveniles*  
442 U.S. 640 (1979)

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



Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 23 1979

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**1st DRAFT**

## SUPREME COURT OF THE UNITED STATES

No. 77-1715

Secretary of Public Welfare of Pennsylvania et al., Appellants, v. Institutionalized Juveniles et al.)	On Appeal from the United States District Court for the Eastern District of Pennsylvania.
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[May —, 1979]

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

This appeal raises issues similar to those decided in *Parham v. J. R.*, No. 75-1690, *ante*, as to what process is due when the parents or guardian of a child seek state institutional mental health care.

This is the second time we have reviewed a district court's judgment that Pennsylvania's procedures for the voluntary admission of mentally ill and mentally retarded children to a state hospital are unconstitutional. In the earlier suit five children who were between the ages of 15 and 18 challenged the 1966 statute pursuant to which they had been admitted to Haverford State Hospital. Pa. Stat. Ann., tit. 50, §§ 4402 and 4403. After a three-judge District Court, with one judge dissenting, declared the statute unconstitutional, *Bartley v. Kremens*, 402 F. Supp. 1039 (ED Pa. 1975), the Pennsylvania Legislature amended its mental health code with regard to the mentally ill. The amendments placed adolescents over the age of 14 in essentially the same position as an adult for purposes of a voluntary admission. Mental Health Procedures Act of 1976 § 201, Pa. Stat. Ann., tit. 50, § 7201. Under the new statute, the named plaintiffs could obtain their requested releases from the state hospitals independent of the constitu-

2-5, 7-9

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: JUN 11 1979

**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 77-1715

Secretary of Public Welfare of Pennsylvania et al., Appellants, v. Institutionalized Juveniles et al.	}	On Appeal from the United States District Court for the Eastern District of Pennsylvania.
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2, 4-5, 7-8, 10

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

From: The Chief Justice

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Recirculated: JUN 14 1979

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1715

Secretary of Public Welfare of Pennsylvania et al., Appellants, v. Institutionalized Juveniles et al.)	On Appeal from the United States District Court for the Eastern District of Pennsylvania.
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5-7

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

From: The Chief Justice

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4th DRAFT

Recirculated: JUN 18 1979

## SUPREME COURT OF THE UNITED STATES

No. 77-1715

Secretary of Public Welfare of Pennsylvania et al., Appellants, v. Institutionalized Juveniles et al.)	On Appeal from the United States District Court for the Eastern District of Pennsylvania.
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[June —, 1979]

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

This appeal raises issues similar to those decided in *Parham v. J. R.*, No. 75-1690, *ante*, as to what process is due when the parents or guardian of a child seek state institutional mental health care.

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Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Brennan  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 5 JUN 1979

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1715

Secretary of Public Welfare of  
Pennsylvania et al.,  
Appellants,  
v.  
Institutionalized Juveniles et al.

On Appeal from the United  
States District Court for  
the Eastern District of  
Pennsylvania.

[June —, 1979]

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

I agree with the Court that the commitment of juveniles to public or private mental institutions by their parents 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. For the reasons stated in my opinion in *Parham v. J. R.* — U. S. —, — (1979) (BRENNAN, J., concurring in part and dissenting in part) I also agree that Pennsylvania's preadmission psychiatric interview procedures pass constitutional muster. I cannot agree with the Court, however, that Pennsylvania's current juvenile admission procedures measure up to constitutional standards in all respects.

Pennsylvania provides neither representation nor reasonably prompt post admission hearings to mentally retarded children 13 years of age and younger. For the reasons stated in my opinion in *Parham v. J. R.*, *supra*. I believe that this is unconstitutional.

As a practical matter, mentally retarded children over 13 and children confined as mentally ill fare little better. While under current regulations these children must be informed of their right to a hearing and must be given the telephone number of an attorney within 24 hours of admission,

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

CHAMBERS OF  
E POTTER STEWART

May 23, 1979

Re: 77-1715 - Secty. of Pub. Welf. v.  
Institutionalized Juveniles

Dear Chief:

I would appreciate your adding the following  
at the foot of your opinion for the Court in this  
case:

For the reasons stated in his concurring  
opinion in Parham v. J.R., ante, Mr. Justice  
Stewart concurs in the judgment.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies for the Conference

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

CHAMBERS OF  
E BYRON R. WHITE

June 14, 1979

Re: No. 77-1715 - Secretary of Public Welfare of  
Pennsylvania v. Institutionalized Juveniles

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Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cmc

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CHAMBERS OF  
JUDGE THURGOOD MARSHALL

June 6, 1979

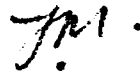
Re: No. 77-1715 - Secretary of Public Welfare of  
Pennsylvania v. Institutionalized  
Juveniles

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Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

CHAMBERS OF  
HARRY A. BLACKMUN

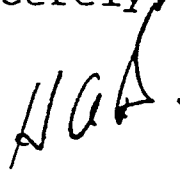
June 11, 1979

Re: No. 77-1715 - Secretary of Public Welfare of  
Pennsylvania v. Institutionalized Juveniles

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

CHAMBERS OF  
LEWIS F. POWELL, JR.

June 8, 1979

77-1715 Secretary v. Institutionalized Juveniles

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

A handwritten signature in cursive script, appearing to read "Lewis".

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CHAMBERS OF

WILLIAM H. REHNQUIST

June 12, 1979

Re: No. 77-1715 - Secretary of Public Welfare v.  
Institutionalized Juveniles

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

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Washington, D. C. 20543

CHAMBERS OF

DE JOHN PAUL STEVENS

June 5, 1979

Re: 77-1715 - Secretary of Public Welfare  
of Pennsylvania v. Institutionalized  
Juveniles

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Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference