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Federal Courts - Doctrine of Abstention

Gary N. Moskovitz

Recent Decisions

FEDERAL COURTS—DOCTRINE OF ABSTENTION—The United States District Court for the Eastern District of Pennsylvania has held that the court need not abstain from approving a consent agreement between the Commonwealth and the Pennsylvania Association for Retarded Children, although the statutes challenged under the equal protection clause and under state law were unclear.

The Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972).

Plaintiffs brought a class action on behalf of mentally retarded persons between the ages of six and twenty-one, alleging that four Pennsylvania statutes violated the due process and equal protection clauses of the fourteenth amendment of the United States Constitution by excluding certain retarded persons from the public school system.[1] It

1. PA. STAT. ANN. tit. 24, § 13-1304 (Supp. 1973) provides:
> . . . [T]he board of school directors may refuse to accept or retain beginners who have not attained a mental age of five years . . . .

Id. § 13-1326 (1962) provides:
> The term "compulsory school age", as hereafter used, shall mean the period of a child's life from the time the child's parents elect to have the child enter school, which shall not be later than the age of eight (8) years, until the age of seventeen (17) years.

Id. § 13-1330 (Supp. 1973) provides:
> The provisions of this act requiring regular attendance shall not apply to any child who . . . (2) Has been examined by an approved mental clinic or by a person certified as a public school psychologist or psychological examiner, and has been found to be unable to profit from further public school attendance, and who has been reported to the board of school directors and excused, in accordance with the regulations prescribed by the State Board of Education.

Id. § 13-1375 provides:
> The State Board of Education shall establish standards for temporary or permanent exclusion from the public schools of children who are found to be uneducable and untrainable in the public schools. Any child who is reported by a person who is certified as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the board of school directors to the Superintendent of Public Instruction and when approved by him, in accordance with the standards of the State Board of Education, shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified, the public schools shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals.

Plaintiffs alleged that sections 1375 and 1304 had constitutional infirmities both on their faces and as applied because they lacked provision for notice and a hearing when a retarded person was excluded from a public education or a change was made in his educational assignment in the system, thereby denying due process. Also, it was asserted that equal protection was denied because the premise that certain retarded persons are uneducable lacked a rational basis in fact. Finally, it was alleged that these two sections arbitrarily and capriciously denied a right to education to retarded children.

was also argued that state law affords a right to a public education to all children.[2] Plaintiffs asked relief in the form of a declaratory judgment stating that the statutes were unconstitutional. Further, a preliminary and permanent injunction against the enforcement of these laws by the defendants, the Commonwealth, and thirteen named school districts was sought pursuant to sections 1343,[3] 1981[4] and 1983[5] of the United States Code.

The parties submitted to the court a consent agreement which eliminated a possible dispute between them in regard to the due process and equal protection issues.[6] In accordance with rule 23(e),[7] a hearing

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It was also contended that sections 1330 and 1326 violated due process as applied to retarded children. Plaintiffs argued that the intent of these sections was to refer to the excusal of parents from criminal penalties and to the obligation of parents to place their children in public schools respectively, not to exclude retarded children from the public schools.

2. PA. CONST. art. 3, § 14 provides:
The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.
PA. STAT. ANN. tit. 24, § 13-1301 (1962) provides:
Every child, being a resident of any school district, between the ages of six (6) and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act. . . .
Id. § 13-1326 provides:
The term "compulsory school age" as hereinafter used, shall mean the period of a child's life from the time the child's parents elect to have the child enter school, which shall not be later than eight (8) years.

3. 28 U.S.C. § 1343(3) (1970) provides:
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . (3) To redress the deprivation, under color of any state law, statute, ordinance or regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

4. 42 U.S.C. § 1981 (1970) provides:
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

5. *Id.* § 1983 provides:
Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

6. The Pennsylvania Ass'n For Retarded Children v. Pennsylvania, 343 F. Supp. 279, 284-88 (E.D. Pa. 1972). The unconstitutionality of the state law was not conceded by the Attorney General, although it was agreed that the statutes would be construed in a manner that would not obstruct the plaintiff class' access to public education.

7. FED. R. CIV. P. 23(e) provides:
A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

was scheduled on any objections to the proposed settlement agreements. Several members of the defendant class objected to the settlement agreement. However, after intensive negotiations between the objectors and the proponents of the settlement only the Lancaster-Lebanon Intermediate Unit (Lancaster-Lebanon) remained as a defendant.[8] All others withdrew their objections as subsequent modifications of the agreement satisfied their complaints. Lancaster-Lebanon, however, sought to destroy the agreements altogether, not by contesting the fairness of the settlement, but by raising the issues of jurisdiction and abstention.

Although no party questioned the quality of the plaintiff's constitutional claims, the court felt obligated to examine the record independently to satisfy itself that the claims raised were substantial.[9] The court relied upon expert testimony[10] and the case of *Wisconsin v. Constantineau*,[11] to hold that the danger of stigma without proper procedural safeguards raised a colorable claim under the due process clause. Likewise, the court found a colorable claim under the equal protection clause relying upon expert opinion that all mentally retarded persons are capable of benefiting from education and training.[12]

The court held that it need not stay its hand until the Pennsylvania courts decide whether the Pennsylvania constitution and laws of the Commonwealth afforded plaintiffs relief. Preliminarily, it was found that rule 23 precluded Lancaster-Lebanon from raising the issue of abstention.[13] However, finding that abstention involves important issues of the relationship of the federal and state judiciaries the court decided to entertain the defendant's contention.

The court reasoned that the doctrine of abstention has a twofold

8. 343 F. Supp. at 289.

9. Bell v. Hood, 327 U.S. 678, 682-83 (1946) (plantiffs claims must not be wholly insubstantial and frivolous).

10. 343 F. Supp. at 293-96. (testimony of Dr. Ignacy Goldberg, summarized by the court). Dr. Goldberg is, *inter alia*, Professor of Education, Department of Special Education, Columbia University; member of the President's Panel on Mental Retardation (1961); consultant to the Children's Bureau, Department of Health, Education and Walfare; Scientific Advisory Board Member of the Kennedy Child Study Center, New York; and author or co-author of almost fifty publications on mental retardation. *Id.* at 285 n.14a.

11. 400 U.S. 433 (1971).

12. 343 F. Supp. at 296 nn.49-54.

13. *Id.* at 298. The court found that since the theory behind class actions assumes that all members are bound by the legal strategy of the class's representatives, if the representation is adequate, a member of the class is precluded from raising the issue of abstention.

Also, the court stated that traditionally at a hearing on the proposed settlement of a class action the issues are limited to the fairness of the proposed settlement or other issues which expressly involve rule 23. *Id.*

purpose: first, to avoid needless constitutional or premature constitutional adjudication, and second, to avoid needless friction between the state and federal governments.[14] It was also found that where state law was not unclear, a federal court could not abstain.[15]

Assuming, for the sake of argument, that no consent agreement was entered into, it was found that the statutes challenged under the due process claim were clear and therefore abstention would not have been required.[16] Thus, the court was left to decide whether it should abstain on the issue of equal protection,[17] having found that the statutes challenged under this clause were unclear.[18] Reasoning that the settlement agreement eliminated the necessity of making a constitutional decision at all and that no risk of federal-state friction was present,[19] the court held that abstention would not be proper and the case was retained.[20] Furthermore, considering the equitable nature of the abstention doctrine, it was concluded that equitable considerations militated against abstaining.[21]

Railroad Commission v. Pullman Co.,[22] is generally recognized as the leading case for the entire abstention doctrine.[23] Prior to that decision, however, the Supreme Court had made several decisions to abstain when a difficult question of state law was presented which was unresolved by the state courts.[24] Nevertheless, the *Pullman* decision laid

14. *Id.*
15. *Id.*
16. *Id.* at 299.
17. *Id.*
18. PA. STAT. ANN. tit. 24, §§ 13-1304, -1375 (Supp. 1973).
19. 343 F. Supp. at 299. The Attorney General, Secretary of Education, and Secretary of Welfare, all affirmatively requested that the court retain jurisdiction. These officers are those responsible for the state's system of education.
20. *Id.*
21. *Id.* at 300. Six hearings were held over the period of a year. International experts in the field of education testified regarding the education of retarded children. Administrative and legal problems were reviewed by local experts. Thus, the court concluded that the consent agreements were drawn by experts in the field and largely by the expertise of the Commonwealth, not a remote federal court.

Also, the court placed weight on the facts that many school districts had begun the task of locating members of the plaintiff class. It also found that much time and energy was expended in pursuance of the plan laid down by the consent agreement. The court felt that with the plan on the way to becoming a reality it would serve no useful purpose to abstain.

22. 312 U.S. 496 (1941). Pullman porters alleged that a state statute requiring all Pullman sleeping cars to be in the charge of an employee having the rank of "Pullman Conductor" was in violation of the fourteenth amendment. At that time, pullman porters were black and pullman conductors were white. Pullman porters were in charge of those trains that carried only one sleeping car prior to the enactment of the statute.
23. Wright, *The Abstention Doctrine Reconsidered*. 37 TEX. L. REV. 816 (1959).
24. Railroad Comm'n v. Rowan & Nichols Oil Co., 310 U.S. 573 (1940) (The Court found that the administration of Texas statutes limiting and prorating the production of oil fields was so complex that it would be presumptous to substitute the Court's view for

the first significant foundation for what is known as the doctrine of abstention.[25] The Supreme Court in *Pullman* held that the issue of unconstitutional discrimination should be withheld pending proceedings in the state court to secure a definitive construction of the state statute in question.[26] The Court reasoned that an unnecessary constitutional adjudication might be avoided by a definitive state ruling that would terminate the controversy,[27] and also reasoned that the court would avoid a decision that would only supply a tentative answer that might be replaced by a state adjudication.[28] Moreover, the Court defined the doctrine of abstention as being an equitable one, subject to the court's discretion.[29] The Court further decided that it would exercise its discretion to avoid needless friction with state policies.[30] As a result of the *Pullman* decision there have been many holdings of the Court requiring abstention when the resolution of unsettled state law by a state court was considered necessary to either eliminate or change the nature of the consideration of a federal question.[31]

In *Burford v. Sun Oil Co.*,[32] it was held that federal courts of equity should exercise their discretionary powers with regard for the independence of state governments in carrying out their policies.[33] The *Burford* opinion highlighted the Court's reluctance to interfere with

that of the administrative tribunal of the state and to find it offensive to the fourteenth amendment); Gilchrest v. Interborough Rapid Transit Co., 279 U.S. 159 (1929) (a federal court action to prevent the state commission from interfering with a fare increase. The Court abstained, deferring to a state court action that was filed to compel compliance with existing fares).

25. The abstention doctrine has been classified into four types: (1) to avoid decision of a federal constitutional question where the case may be disposed of on questions of state law, (2) to avoid needless conflict with the administration by a state of its own affairs, (3) to leave to the states the resolution of unsettled questions of state law, and (4) to ease the congestion of the federal court docket. C. WRIGHT, LAW OF FEDERAL COURTS 196-208 (2d ed. 1970). This note is concerned only with the first three classifications of abstention.

26. 312 U.S. 496.

27. *Id.* at 500.

28. *Id.*

29. *Id.* at 501. In its discussion of the equitable nature of the abstention doctrine and its relationship to our federal system of government, the Court stated that the federal courts "'. . . exercising a wise descretion', restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary." *Id.* It therefore appears that the concept of comity has been incorporated into the doctrine by way of the exercise of the federal courts' equity power.

30. *Id.* at 500.

31. Lake Carriers Ass'n v. MacMullan, 406 U.S. 498 (1972); United Gas Pipe Line Co. v. Ideal Cement Co., 369 U.S. 134 (1962); City of Meridian v. Southern Bell Tel. Co., 358 U.S. 639 (1959); Albertson v. Millard, 345 U.S. 242 (1963); Spector Motor Serv. Inc. v. McLaughlin, 323 U.S. 101 (1944).

32. 319 U.S. 315 (1943) (the Court refused to enjoin an order of the State Railroad Commission of Texas permitting the drilling of oil wells separated by distances less than those generally prescribed, finding that this was a matter for state administration, given the complexity of state regulation upon the matter).

33. *Id.*

administrative policies that are of great importance to the state and, in this respect, broadened the scope of the doctrine of abstention.[34] Thus, as its origins indicate, it is seen that the rationale for the doctrine is founded upon the avoidance of unnecessary or premature constitutional adjudication, the avoidance of unnecessary friction in federal-state relations and that this latter consideration carries much weight where matters of local concern to the states are involved.[35] This rationale finds its basis in the broad concept of comity.[36] Such a rationale recognizes that the United States is a union of separate states and attempts to delineate the functions of the state and federal governments so they may work in their separate ways.[37] This factor plays a strong part in the decision of a federal court when it decides whether or not to abstain.[38]

On the other hand, it has been indicated that abstention is not called for when the state law is clear, even though state courts can competently decide the federal question involved,[39] or when the state law is clear and challenges to the state's paramount interests have been made in the suit.[40] The Supreme Court has also shown a reluctance to ab-

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34. A further example of *Burford* reasoning is found in Alabama Pub. Serv. Comm'n v. Southern Ry., 341 U.S. 341 (1951). The Court found that regulation of intrastate railroad service was a matter to be handled by the appropriate state agency for it has been recognized that such regulation is primarily the concern of the state. Thus, the Court ordered dismissal of the complaint stating that adequate state court review of an administrative order based upon predominantly local factors was available and therefore federal intervention was not needed to protect federal rights.

35. For extensive analysis of the abstention doctrine *see* Comment, *The Abstention Doctrine*, 40 TUL. L. REV. 578 (1966).

36. Mitchum v. Foster, 407 U.S. 225 (1972).

37. Younger v. Harris, 401 U.S. 37 (1971).

38. Comment, *The Abstention Doctrine: Some Recent Developments*, 46 TUL. L. REV. 762 (1972).

39. *See* Gere v. Stanley, 453 F.2d 205 (1971) (held that a Pennsylvania statute authorizing plaintiff's suspension from public school clearly created a federal question concerning the fourteenth amendment, and thus refused to abstain). In Zwickler v. Koota 389 U.S. 241 (1967), the Court refused to abstain, showing concern for the duty of the federal court to respect the suitor's choice of the federal forum in which to bring his federal constitutional claims, and held that it is no reason to abstain merely because state courts are equally responsible for the protection of constitutional rights.

40. *See* King-Smith v. Aaron, 455 F.2d 378 (3d Cir. 1972) (concerning the right of a blind woman to teach in the Pittsburgh public school system—allegations of violation of the due process and equal protection clauses of the fourteenth amendment were made.) The court refused to abstain, finding the statute in question to be clear, although it recognized that the state has a paramount interest in the operation of its educational system. The court reasoned that Epperson v. Arkansas, 393 U.S. 97 (1968), laid down the policy that federal courts should not ". . . intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values," 445 F.2d at 380 n.3. The reasonableness of the school board's decision not to allow the plaintiff to teach in the Pittsburgh public school system in light of the due process and equal protection clauses of the fourteenth amendment was the only issue presented. The court found that federal courts are the primary forum

stain when important federal rights are involved in the litigation.[41] Further, the Court has declined to abstain where the delay inherent in sending a case back to the state court will unduly impair a federal right.[42] However, the Court has abstained when a cause of action has been asserted under the civil rights statutes and the state law is unclear.[43] Recently the Court has retreated from its decision not to abstain

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in which such issues are to be resolved and that the *Epperson* policy by itself was not sufficient to warrant abstention. *Id.*

41. Baggett v. Bullitt, 377 U.S. 360 (1964). A class action was brought by members of the faculty, staff and student body of the University of Washington asking that an oath which was to be taken as a condition of employment be declared unconstitutionally vague in violation of the first and fourteenth amendments. The Court felt that construction of the oath's provisions by the state courts would not alter the constitutional issue for the oath was susceptible to an indefinite number of interpretations. It was also found that abstract construction of the oath in state courts without reference to concrete situations would most likely create other constitutional issues for decision which is a result contrary to the purpose of abstention. The Court also emphasized that it wanted to refrain from lengthy, piecemeal adjudication fearing that ". . . the free dissemination of ideas may be the loser . . . ." which deters conduct that is protected by the Constitution. *Id.* at 375-79.

In *Zwickler,* the appellant sought declaratory and injunctive relief in the federal district court on the ground that a New York statute prohibiting the distribution of certain handbills containing statements in connection with the election of public officers was repugnant to the guarantees of the first amendment of the Constitution. It was found that statutory construction by the state courts would not avoid or modify the constitutional question for the statute was challenged for its overbreadth, and the Court refused to abstain. 389 U.S. at 254. It is noteworthy that during the course of its opinion the Court stated:

> We yet like to believe that wherever the Federal Courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.

Id. at 248.

42. Hostettler v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324 (1964) (held that although the twenty-first amendment grants the state the power to regulate domestic transportation of intoxicants, the commerce clause denies power to the states to prevent federally supervised transactions involving intoxicants for delivery to consumers in foreign nations). Abstention was refused for the fact that the litigation had already been long delayed and that further delay was unwarranted. The Court also found that neither party had requested abstention and that there was no danger of disrupting a state legislative scheme of regulation. *Id.* at 328-29.

In Griffin v. County School Bd., 377 U.S. 218 (1964), the Court felt that the long delay in enforcing the constitutional rights found to be denied in the Court's decision in Brown v. Board of Educ., 349 U.S. 294 (1955), and the additional delay of remanding the case to the state courts would further impair petitioners' rights. 377 U.S. at 229.

In Harman v. Forssenius, 380 U.S. 528 (1965), it was found that a class action attacking the validity of a state statutory scheme as impairing the right vote in violation of the twenty-fourth amendment alleged the infringement of a fundamental right. The motion was heard in the district court eight months before the 1964 general elections, thus the Court held that given the importance and immediacy of the problem and the delay inherent in referring questions of state law to state courts, the district court did not abuse its discretion in deciding not to abstain. *Id.* at 537.

43. *See* Harrison v. NAACP, 360 U.S. 167 (1959) (suit was originally brought in federal district court for a declaratory judgment asking that five state statutes which had never been construed by the state courts be declared unconstitutional and asking that their enforcement be enjoined). Action was predicated upon 42 U.S.C. §§ 1981, 1983 (1970), alleging violations of the fourteeenth amendment. The Court held that the district court should have abstained from deciding the merits of the issues and should have retained

concerning the issuance of injunctive relief when a state criminal prosecution threatens first amendment freedoms.[44]

Considering the above principles and the unique features of the instant case, it is submitted that the district court's decision to reject Lancaster-Lebanon's contention that abstention was appropriate was solidly within the confines of stare decisis and that the court's discretion was prudently exercised.

The traditional reasons for exercising the power to abstain were non-existent in this case. *Pullman* established the notion that abstention is desirable to avoid unnecessary or premature constitutional adjudication. Clearly there was no such danger in the present case for the settlements entered into among the parties eliminated the need to make any constitutional decision. There was also little threat of undue friction between the Commonwealth and the federal judiciary as the officers responsible for the educational system[45] requested that the court retain jurisdiction.

It is important to note that previous Supreme Court decisions have shown that abstention may not be appropriate when: (1) there are fundamental federal rights at stake,[46] and (2) when the delay inherent in sending the case back to state courts for decision may impair such rights.[47] Although the district court did not rely upon these decisions expressly, it is interesting that in its analysis of the equitable considerations against abstaining, the court appeared to recognize the importance of these considerations.

The district court recognized that much time and energy had been expended and that the rudiments of the plan contemplated had been implemented. The court further recognized that such a plan would make possible a life of dignity and meaning for members of the plaintiff class. For these reasons, including the further reason that the in-

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jurisdiction until the Virginia courts had a reasonable opportunity to construe the state's statutes that were alleged to be in violation of the fourteenth amendment. *Id.* at 176-77.

44. Dombrowski v. Pfister, 380 U.S. 479 (1965) (held that the Court would not abstain where statutes are justifiably attacked on their faces as abridging free expression because of the "chilling effect" of threatened prosecutions under state criminal statutes). Younger v. Harris, 401 U.S. 37 (1971), subsequently held that the Court would abstain from issuing an injunction to restrain state action upon a pending prosecution under California statute, although first and fourteenth amendment grounds were the basis of the petitioner's claim. *See* Comment, *The Abstention Doctrine: Some Recent Developments,* 46 TUL. L. REV. 762 (1972).

45. *See* note 19 *supra.*

46. *See* note 40 *supra.*

47. See note 41 *supra.* Generally, when this criterion has been employed, other reasons for abstention have also been present.

terests of comity were served by the Commonwealth's full participation in the consent agreement, it was felt that the use of the court's discretion to abstain would not be appropriate at such an advanced stage of litigation.[48]

Clearly the court was correct in its analysis. All parties to the action were concerned with the welfare of the plaintiff class and even Lancaster-Lebanon did not contest the fairness of the agreement. Therefore, the considerations of undue delay coupled with the Commonwealth's apparent interest in implementing the agreements weighed heavily against remanding the case to the state court for interpretation of the law of the Commonwealth.

Furthermore, the fundamental right of equal opportunity to an education was asserted[49] and the delay inherent in sending the case back to the Commonwealth may have been costly concerning the ability of retarded children to benefit from the educational experience.[50] Such considerations buttress the soundness of the decision not to abstain, particularly in view of the Supreme Court's prior decisions concerning the protection of fundamental rights. This is especially true when other reasons for declining to abstain are also present.

After consideration of all of the above factors, it becomes apparent that the court's decision not to abstain was one that recognized the interests which lie at the roots of the doctrine and that the interests of federalism and comity did not require abstention in the situation that confronted the court.

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48. 343 F. Supp. at 300.

49. Plaintiffs asserted that once the right to public education is granted to all children by the constitution and laws of the Commonwealth the deprivation of that right infringes upon the fundamental right of an equal opportunity to an education and therefore a compelling state interest must be shown in order to exclude retarded children. In support of their proposition, plaintiffs offered Brown v. Board of Educ., 349 U.S. 294 (1955), which declared the principle that racial discrimination in public education is unconstitutional. The district court found it need not decide the issue, for the planitiffs established a colorable claim under the less stringent rational basis test. 343 F. Supp. at 283 n.8.

50. Farrell, *Pre-primary and Primary Special Classes for the Educable Retardate,* in SPECIAL EDUCATION 48 (E. Stark ed. 1969). The pre-primary and primary class for children who are considered educable retardates (I.Q. 50-75) is discussed. Concern is shown for the necessity of obtaining an education at an early level for such a child, so that an opportunity for maturation through self-help may be realized.

Recognition of the fundamental nature of the right of the plaintiff class to an equal opportunity to obtain an education and of the necessity of procuring an education at an early stage so that the opportunity may be fully utilized, it is submitted, compels the conclusion that the delay inherent in abstention would have at least damaged the ability to profit from an education and would thereby dilute the federally protected right.