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# Supreme Court Decisions: The Rights and Responsibility of Paternity

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and determined that an "emission standard" is intended to be a quantitative limit on emissions, not a "work practice" standard. Unfortunately, Justice Rehnquist disregarded the fact that asbestos emissions are impossible to measure quantitatively. The history of the regulation demonstrates that the work practice standard was chosen by the Administrator after it became clear that he could not prohibit all visible emissions of asbestos without destroying an entire industry. Furthermore, while numerical standards are preferred by Congress, the statute contains no express requirement that standards always be framed in numerical terms; nor has Congress expressed an overriding interest in using such terms when a less drastic control technique is available.

The majority also relied on the rule that "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." *United States v. Bass*, 404 U.S. 336,348 (1971). But in *Udall v. Tallman*, 380 U.S.1,16, (1965) the Court held that "[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the application of the statutory term [as applied by the agency], we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'"

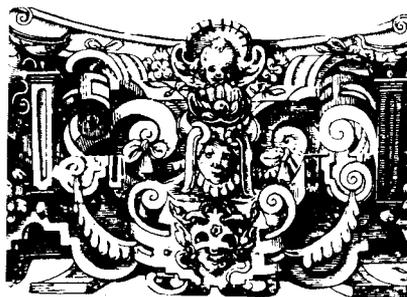
Looking again to the statutory scheme, Justice Rehnquist believed that the Government was not relieved of its duty to prove that the allegedly violated regulation is an "emission standard" even though § 307(b)(2) precludes judicial review of the validity of emission standards. Under §307(b)(1), though, this regulation could have been reviewed only in the Court of Appeals for the District of Columbia, and because of this express language, *Adamo* should have been barred from raising the issue before any other court.

The majority distinguishes *Yakus v. United States*, 321 U.S. 414 (1944), where the Court held that in the context

of criminal proceedings, Congress has the power to require that the validity of a regulatory action be challenged in a particular court at a particular time, or not at all. However, Justice Rehnquist views the statutory provisions of the Emergency Price Control Act considered under *Yakus* as a "relatively simple statutory scheme" in contrast with the Clean Air Act's "far more complex inter-relationships between the imposition of criminal sanctions and judicial review of the Administrator's actions." There is nothing ambiguous, vague or difficult in § 307(b). Its intent that a petition for review of an action of the Administrator in promulgating any emission standard may be filed only in the United States Court of Appeals for the District of Columbia Circuit could hardly be more obvious. Congress has clearly expressed that "any review of such actions" be controlled by the provisions of § 307(b).<sup>4</sup> Additionally, the *Adamo* opinion fails to adequately express the alleged inequities which would arise as a result of adherence to the Act's venue requirements in the current "complex" situation.

The majority's interpretation of an "emission standard" denies the Administrator the authority to effectively regulate the emission of asbestos, a poisonous substance which poses an especially grave threat to human health. Their interpretation of the plain statutory language of § 307(b) frustrates the intent of Congress to establish a unified and expedient system of judicial review under the Clean Air Act. In the words of Justice Stewart, who dissented along with Justices Brennan, Blackmun and Stevens, "the Court today has allowed the camel's nose into the tent, and I fear that the rest of the camel is almost certain to follow."

<sup>4</sup> S. Rep. No. 91-1196, p.41 (1970)



## The Rights and Responsibility of Paternity

by Roxane Nass Sokolove

On January 10, 1978, the Supreme Court, in a unanimous decision, ruled that an unwed father's substantive due process rights were not violated by a Georgia statute which denied him the authority to prevent the adoption of his illegitimate child. Nor was the Equal Protection Clause of the 14th Amendment violated by the distinction made in the Georgia statute between the rights of fathers of legitimate children and the rights of fathers of illegitimate children.

Although the unwed father may have as great a personal interest in his child as a married father has in his child, the unwed father must establish that interest in law by either marrying the mother of his children and recognizing the offspring of the illicit relationship, or legitimizing the children as provided by statute. The authority to then bar the adoption of the children stems from this legally established interest.

In *Quilloin v. Walcott*, 98 S. Ct. 549 (1978), therefore, the absence of such legal status, and the Court's application of the "best interests of the child" standard and recognition of the state's interest in child rearing by a family unit were the vehicles used to defeat the asserted constitutional rights of an unwed father.

In December, 1964, a child was born from the illicit relationship of Ardell Williams, appellee, and Leon Webster Quilloin, appellant. The child's mother and natural father never married nor lived together as a family. In September, 1967, Ardell Williams married Randall Walcott, appellee. The following March, Randall Walcott, with the consent of the child's mother, filed a petition to adopt the child.

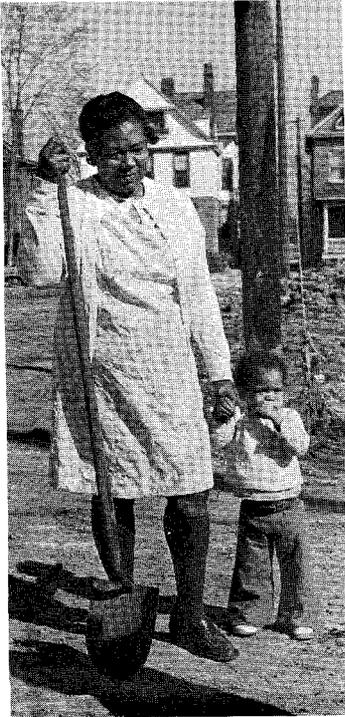


photo by John Clark Mayden

Prior to the time Randall Walcott filed his petition for adoption, Leon Quilloin, the natural father, had never attempted to legitimize the child by marrying Ardell, recognize the child as his and file a petition for legitimation, or obtain visitation rights, all of which are prescribed methods of legitimization under Ga. Code Ann. §§ 74-101, 74-103. It was not until the stepfather filed the adoption petition that Leon Quilloin, in attempting to block the adoption tried to secure visitation rights. It is also significant that at no time did

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Quilloin seek custody or object to the child's continuing to live with appellees.

In opposing the adoption and attempting to gain visitation rights and legitimize the child, Quilloin argued that Ga. Code Ann. § 74-203, placing all parental power in the mother of an illegitimate child, and Ga. Code Ann. § 74-403(3), requiring only her consent for an illegitimate child's adoption, are unconstitutional.

The trial court, in granting Walcott's petition for adoption and denying Quilloin's petition for legitimation and visitation rights, based its decision on the "best interest of the child" standard. The factors used in determining whether or not the standard was met included:

1. Quilloin's failure to provide support for the child on a regular basis;
2. Ardell's custody of the child for the child's entire life;
3. The marriage of Randall Walcott and Ardell Williams Walcott;
4. The disruptive effect of Quilloin's erratic contacts with the child on both the child and on Walcott's entire family;
5. The child's expression of desire to be adopted by Walcott and take on Walcott's name.

98 S.Ct. at 552-553.

The "best interest of the child" standard has been applied in custody cases of both legitimate and illegitimate children. ("The cardinal principle that the welfare of the child should determine its custody is applicable to legitimate as well as illegitimate children." 10 Am.Jur.2d. Bastards § 60.) In 1879, a Michigan Court in *Corrie v. Corrie*, 42 Mich. 509, 510, 4 N.W. 213, 214, declared: "neither of the parties has any rights that can be allowed to seriously militate against the welfare of the child. The paramount consideration is what is really demanded by its best interests." Since that time, courts have recognized this standard as a guideline in exercising judicial discretion as to who shall gain custody of a child. By way of example, see *Montgomery County v. Sanders*, 38 Md. App. 406, 407, 381 A.2d 1154, 1156 (1978).

In denying Quilloin's claim that Ga. Code Ann §§ 74-203, 74-403(3) are unconstitutional, the lower court concluded that Quilloin lacked standing to object to

the adoption because he had failed to obtain a court order granting legitimation which would have authorized him to contest the adoption. Ga. Code Ann. § 74-103

Appealing to the Supreme Court of Georgia, Quilloin argued that §§ 74-203, 74-403(3), as applied by the trial court to his case, violated the Equal Protection and Due Process Clause of the 14th Amendment.

Under Georgia law, the consent of both parents, whether married or divorced, is necessary to permit the adoption of a legitimate child §74-703. However, as to illegitimate children only the consent of the unwed mother is needed. Quilloin claimed that the exclusion of an unwed father from the list of those whose consent is required for adoption, is a violation of the Equal Protection Clause. However, according to the Supreme Court of Georgia, "[T]he Equal Protection Clause of the 14th Amendment requires that all persons be treated alike under similar circumstances and conditions. [However, it] does not prevent classification if the distinction is based on valid state interests." *Quilloin v. Walcott*, 238 Ga. 230, 232, S.E.2d 246, 248 (1977). Thus, the majority of the Georgia Supreme Court affirmed the lower court's decision on the grounds of the "state's interest" in rearing children in a family setting. Placing full parental power in the mother evidences the state's interest in favoring marriage and the family because the father can choose to join the family at any time. Ga. Code Ann. §§74-101, 74-103; 238 Ga. at 232, 232 S.E.2d at 248. "Accordingly, the court placed great credence in the fact that adoption was sought by the child's stepfather who was a part of the family unit in which the child was living" 46 U.S.L.W. at 4057. The valid state interest in rearing children outweighed the exclusion of an unwed father as one who must consent to the adoption of the child. Therefore, classification was a proper exercise by the Georgia lawmakers.

Quilloin also contended that the Georgia statutes took away his parental rights without due process of law. He relied upon the United States Supreme Court decision of *Stanley v. Illinois* 405

U.S. 645 (1971). In that case an Illinois statutory scheme, which required a hearing and proof of unfitness before the state assumed custody of a child of married or divorced parents or unmarried mothers, yet required no such showing before separating a child from an unwed father, was held unconstitutional. The Georgia Supreme Court distinguished *Quilloin v. Walcott* from *Stanley v. Illinois*. Stanley was denied a hearing on his fitness as a parent before his children were taken from him merely because he had never legitimized them. He had, however, lived with the mother of his illegitimate children and his children for almost 18 years before the mother died. Upon the mother's death, the children were placed with guardians. For all practical purposes, the court, in finding the Illinois statutes unconstitutional was protecting a family unit; Stanley and his children whom he had supported and lived with for 18 years. Further, had Stanley lived in Georgia, which recognizes common law marriages, he would have been more than a de facto member of the family unit and the case would never have arisen. *Quilloin v. Walcott* at 238 Ga. 233-234, 232 S.E.2d at 249. In essence, *Stanley* involved deprivation and change of custody rather than an initial award of custody as in *Quilloin*.

The Georgia Supreme Court found *Stanley* not controlling and §§74-203 and 74-403(3) as not having violated the Equal Protection and Due Process Clause of the 14th Amendment. However, a strong dissent claimed that the majority misconstrued *Stanley v. Illinois*. They said that the Court in *Stanley* intended to recognize the Due Process rights of all fathers, not merely those who live with their families. 238 Ga. at 234, 232 S.E.2d at 249. Consequently, the dissent said, "because an unwed father has due process rights in his children, it is a denial of equal protection to treat them differently from other parents." *Id.*, at 235, 232 S.E.2d at 249.

Quilloin appealed to the Supreme Court of the United States pursuant to 28 U.S.C. §1257(2) challenging the constitutionality of Sections 74-203 and 74-403(3) of the Georgia Code. Focusing

on the "disparate statutory treatment of his case and that of a married father," he claimed he was entitled as a matter of due process and equal protection to an absolute veto over adoption of his child, absent a finding of unfitness. The issue before the Court was thus whether Georgia's adoption laws, by denying unwed fathers the right to prevent adoption of their illegitimate children, deprive them of due process under the 14th Amendment and equal protection of the law.

The Supreme Court concluded that §§ 74-203 and 74-403(3) did not deprive the appellant of his rights under the 14th Amendment. The "best interest of the child" standard would have offended appellant's due process right only if the state had broken up a family unit of which appellant was a part, without granting appellant a hearing and showing his unfitness. However, the appellant was never a part of the family unit nor did he ever desire to be. Conversely, the adoption by appellee would result in legal recognition of a family unit already in existence. In affirming the Georgia Supreme Court, a unanimous U.S. Supreme Court found that the "best interest of the child" standard was met by the adoption of the child by one who had continuously supported the child, married the child's mother, and was expressly requested by the child to be its father.

The Court's rejection of appellant's claim, that excluding an unwed father from those entitled to veto an adoption constitutes a denial of equal protection, was based upon the existence of a valid state interest. It suggested that the distinction between the interests of an unwed father and those of an unwed mother (or of the parents of legitimate children) vis-a-vis their right to contest an adoption, is valid. Ga. Code Ann. §74-403(3)

It appears that legislative intent influenced the Supreme Court in finding a valid distinction. In Georgia, adoption procedures are strictly statutory in nature. They give little recognition to fathers of illegitimate children. Georgia Code Annotated §74-403(3) specifically provides that "if the child be illegitimate, the consent of the mother [to adoption] shall

suffice." Section 74-203 states that "the mother of an illegitimate child shall be entitled to the possession of the child. . . . Being the only recognized parent, she may exercise all the paternal [sic] power." To be recognized in law as the father of an illegitimate child, one must petition for legitimation or marry the natural mother and recognize the child as his. Ga. Code Ann. §74-101.

Public policy was a further apparent basis for the Court's decision. Other courts have recognized that provisions denying unwed fathers the right to contest an adoption facilitates the work of the welfare agencies in the adoption process. *State ex rel Lewis v. Social Services of Wisconsin and Upper Michigan* 47 Wis.2d 420, 178 N.W.2d 56 (1973) *vacated and remanded on other grounds*, 405 U.S. 1051 (1972). "If the consent of the father were also required, he might refuse without accepting the responsibility of fatherhood, and the state could be required to sever his relationship before the adoption could proceed." *Quilloin v. Walcott*, 238 Ga. at 233, 232 S.E.2d at 248. The majority of the Georgia Supreme Court also recognized the danger of profit seeking by the unwed father in having the adoptive family secure his consent to the adoption.

The state interest in protecting the best interests of the illegitimate child is a further justification for the distinction between the interests of the unwed father and those with authority under the Georgia Code to contest the adoption. The child's interests in this case were best served by granting adoption by appellee and denying appellant's attempt to bar the action. The state's interest in protecting an existing family unit providing for the care and support of the child, is extremely strong. Appellant's interest surfaced only after he received notice of appellee's petition for adoption. Quilloin's failure to provide continuous support, visit regularly or legitimize the child, versus appellee's continuous support of the family unit provides the basis for a valid distinction which serves the best interests of the child and the state.

The Supreme Court has recognized the rights and responsibilities that attach to paternity. No longer can an unwed father,

who offers neither his support nor his name, claim a right in his illegitimate child. Rights and responsibilities of fatherhood are concomitant; an unwed father cannot accept the right and deny the responsibility.

## Coal Strike Brings No 'Peace of Mine(d)'

by Marc Hoffman

On May 31, 1977, the Supreme Court of the United States decided the case of *Ohio Bureau of Employment Services v. Hodory*, 97 S. Ct. 1898, regarding the asserted right of an employee furloughed as a result of a coal strike to receive unemployment benefits. In 1974 Leonard Hodory was employed by United States

Steel Corporation to work in a steel mill in Youngstown, Ohio. The United Mine Workers went out on strike at all coal mines owned by United States Steel Corporation (USS) and by Republic Steel Corporation. These company-owned mines supplied the fuel used in the operation of manufacturing facilities of USS and Republic. As a result of the strike the fuel supply at the Youngstown plant was reduced. The plant eventually was shut down and in November 1974 Hodory was furloughed. Hodory applied to the appellant state agency for unemployment benefits. On January 3, 1975 the appellant disallowed his claim under OHIO REV. Code §4141.29(D)(1)(a) which provides that a worker may not receive unemployment benefits if: "His unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which he is or was last employed; and for so long as his unemployment is due to such labor dispute."

On January 27 Hodory filed a complaint based on 42 U.S.C. §1983 in the United States District Court for the

Northern District of Ohio seeking declaratory and injunctive relief on behalf of himself and "all others similarly situated" who had been or in the future would be denied benefits under §4141.29(D)(1)(a). The court held that the statute as applied to Hodory entitled him to unemployment benefits. The State appealed the decision to the Supreme Court of the United States and in an 8-0 decision (Mr. Justice Rehnquist not participating) the Court reversed the District Court.

The Supreme Court held that (1) the abstention doctrine was not applicable in this case; (2) the Ohio statute was neither in conflict with, nor pre-empted by, the Social Security Act or the Federal Unemployment Tax Act; and (3) the statute had a rational relation to a legitimate state interest and did not violate the Equal Protection or Due Process clauses of the fourteenth amendment.

The Supreme Court's decision as to the abstention doctrine was based upon the fact that the state voluntarily chose to submit to a federal forum and principles of comity do not demand that the federal court force the case back into the State's own system. 97 S.Ct. at 1904.

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