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Office of the Associate Attorney General

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Washington, D.C. 20530

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MEMORANDUM

TO: James Castello
Deputy Counsel to the President

FROM: Nancy E. McFadden
Principal Deputy Associate Attorney General *NEM*

SUBJECT: *file*
Southbury Training Center (Connecticut)

I am attaching a fact sheet which provides background on a Civil Rights of Institutionalized Persons Act (CRIPA) case involving the Southbury Training Center in Connecticut. This case (though not specifically mentioned) prompted today's New York Times Editorial (also attached) and will be the subject of a "60 Minutes" piece to be broadcast sometime in the fall.

Please let me know if you need any further information.

Thanks.

Attachments

**FACT SHEET
SOUTHBURY TRAINING CENTER**

BACKGROUND

- Southbury is a state institution in Connecticut housing 854 people with mental retardation. It is the eighth largest institution for people with mental retardation in the United States.

- The Justice Department has been concerned about conditions at Southbury for more than a decade. In 1984, the Department began an investigation of Southbury under the Civil Rights of Institutionalized Persons Act.

- In 1986, the Department entered into a court supervised consent decree with the State to correct significant problems at Southbury that violated residents' basic constitutional rights to adequate medical care, training programs, and protection from harm.

- Connecticut has repeatedly violated the terms of the consent decree and the Department has negotiated several additional remedial orders beyond the Consent Decree in an effort to get the State to correct the problems at Southbury.

- In late 1993, the Department's experts again found life-threatening conditions at Southbury. We tried to negotiate with Connecticut officials, but they refused to agree to take necessary steps to address the problems, despite the fact that their own experts and State surveyors found the same deficiencies as the Department's experts. Negotiations were protracted due to the change in Governors and State administration during this time.

CURRENT POSTURE OF THE CASE

- The Department filed a contempt motion against the State on April 15, 1995, because nine years after Connecticut was ordered by the Court to correct problems and the State agreed to correct them, Southbury is still not providing adequate medical care, physical therapy, training programs, and supervision of residents. This has led to serious injury, life-threatening illness, and death.

- The Department's contempt motion seeks to: (1) correct conditions at Southbury which threaten the safety and well-being of residents; (2) appoint a special master to provide close supervision and oversight of needed corrective measures at Southbury; and (3) ensure that residents are evaluated and transferred to the community when a qualified State professional makes the determination that the resident could be better served in the community.

- Judge Ellen Bree Burns (D. Conn.) held a hearing on the contempt motion from August 7-10, 1995. We do not know when she will rule. By August 25, we expect an amicus brief to be filed by the Southbury Parents' Association, a group of concerned parents; responses will be due 10 days later.

- A private, class action lawsuit was filed last year. The lawsuit alleges violations of residents' rights based on the same conditions at Southbury as the Department's case. It also seeks individual professional determinations about whether Southbury residents should be transferred to the community. The Southbury Parents' Association is attempting to intervene in the case to ensure that Southbury does not close.

DEPARTMENT POSITION ON CLOSING THE INSTITUTION AND PARENTS' ROLE

- We are not trying to close Southbury. Our obligation under the law is to ensure that Southbury residents receive adequate care. There is a demonstrated failure by State officials to meet basic constitutional standards at Southbury for nearly a decade. If residents cannot be provided adequate care at Southbury, they need to receive it elsewhere.

- The vast majority of parents in Connecticut and nationwide are strong supporters of community placement. There is a small but vocal minority of parents at Southbury and across the nation (most of whom are elderly) who oppose the national trend of downsizing institutions and transferring residents to the community.

- The Department supports the participation of parents in the placement process. However, the Department does not believe parents of majority-age children should be the exclusive decision-makers, or should necessarily exercise veto authority when professionals believe that residents are better served by transfer from institutions to the community.

- There is consensus among mental retardation professionals and most advocacy groups that community-based services are preferable to institutional care. This trend has been reflected in national policy for the past two decades and the President's Committee on Mental Retardation called for ending segregation and providing inclusionary alternatives to institutionalization as its "first priority" in its 1994 Report to the President.

UNION ISSUES

• No unions are directly involved in the litigation. It is rumored that AFSCME may be supporting a small national organization of pro-institution parents which may be allied with the Southbury Parents' Association. The union also allegedly supported a bill that recently passed the Connecticut state legislature requiring Southbury to remain open. The bill also requires that the residents be evaluated to determine whether they should remain in the institution or be placed in alternative settings.

ADA ISSUES

• The Department has not taken the position that ADA requires closure of institutions. The ADA bars the unnecessary segregation of people with disabilities in the delivery of state services. It is a violation of the ADA for a state to require an individual with a disability to enter or stay in an institution to receive state services, where (1) the state has a community program; (2) the state has found that the most integrated setting appropriate to the needs of the individual is in the community; and (3) it does not place unreasonable burdens on the state.

PRESS COVERAGE

• Recent and anticipated press coverage: three recent New York Times articles (March 13; April 18; August 8, 1995); New York Times editorial (August 17, 1995); 60 Minutes interview with Assistant Attorney General Deval Patrick (to be taped August 21, and run in September). We believe that this matter has generated this amount of press attention in large measure because of the interest of one New York Times Connecticut bureau reporter who is interested in disability issues. There is also some historically interesting local political interest surrounding this matter. Former Governor Weicker (who is a nationally-recognized advocate for people with disabilities and the father of an 18 year old mentally retarded son) wanted to close the institution; current Governor Rowland believes that the facility should be improved, but not closed.

Community Treatment for the Retarded

The Clinton Justice Department has joined the effort to move mentally retarded patients out of large institutions and into community facilities. It is a potentially worthy undertaking, putting the Federal Government, once again, behind a policy carried out in many states and supported by experts and advocates for 20 years. But the department should be wary about closing down institutions unless it gets firm assurances that alternative treatment will be available.

The practice of closing down large mental hospitals, known as deinstitutionalization, gained momentum in the late 1960's and 1970's. It was inspired partly by horror stories of overcrowded, inhumane institutions and partly by new forms of treatment that allowed many patients to function in smaller community facilities or even at home. Since 1967, the population of mentally retarded people housed in institutions has dropped from about 200,000 to less than 70,000.

But in many states, including New York, deinstitutionalization became a cruel hoax, funneling the mentally ill into communities where programs

and facilities did not exist. Patients were left to fend for themselves on the streets. Meanwhile politicians and labor leaders kept some large hospitals open to retain local jobs, and state officials were reluctant to commit funds for community treatment. The Reagan and Bush Administrations also resisted expanding community placements.

The Justice Department now argues against keeping the mentally retarded in "forced segregation and isolation." It suggests that such actions may amount to discrimination under the Americans with Disabilities Act of 1990. It has therefore moved to expand community placements in nine states and the District of Columbia.

But there are pitfalls. It is often difficult to make sweeping judgments about who can function in community facilities. Institutional settings might be better for some severely retarded patients.

Total deinstitutionalization is not realistic. But neither is wholesale incarceration. As long as communities have places for the mentally retarded to go, the Justice Department's new emphasis on community placement is reasonable social policy.