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June 26, 1980

Luther Granquist, Esq.
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Re: Welch v. Noot et al

Dear Luther:

I appreciate our recent discussion concerning the proposed relief in the above case and your giving me a copy of Dr. Clement's deposition.

Until very recently, I understood this lawsuit had the same objective as the Cambridge lawsuit, namely, the improvement of the staffing and programatic services and the physical plant of the defendant State Hospitals.

I did not know this lawsuit would seek a court order:

1. Stopping all admissions now or at some specific future date or establishing strict controls of future admissions after a specified date.
2. Establishing quota discharges of present residents (30% in 2 years, or 480 people of 2600).
3. Providing time deadlines for the discharge of all residents and closure of all defendant State Hospitals, and
4. Establishing a Review Panel to determine among other things which residents could stay and which would have to leave until all defendant State Hospitals were closed.

Since almost all of the people whom you are representing in this lawsuit, including my daughter Janice, are profoundly or

severely retarded citizens and unable to understand the relief you seek or its impact upon them, I am most concerned about the lack of input you have secured or received from their parents or relatives or guardians. I am also concerned that most of the members of the board of directors of Minnesota ARC and MARC were not aware of the relief being sought until the State Convention in St. Peter.

However, you have advised that the final draft of proposed relief has not been determined, and I trust that we may continue to work toward the development of a proposed court order which will not result in chaotic dumping or denial of right to treatment and services but will foster continued expansion of qualify community residential and programatic services and at the same time improve such treatment and services for those living in defendant State Hospitals.

My strong objections to certain parts of the proposed relief drafts of 5/20/80 and 6/13/80 are as follows:

I. Admissions. Plaintiffs seek a court order stopping all admissions now or at some specified future date or establishing strict controls of future admissions after a specified date of people who are retarded to the four defendant state hospitals. (FSH, BSH, MLSH and FFSH.)

If the Court were to so order, it would in my opinion:

- A. Deny equal protection and equal opportunity under the law for and deny the right to treatment to those retarded persons who:
1. Have no other alternative,
 2. Are and will be discharged by community residences,
 3. Choose the State Institutions as the least restrictive alternative and as the best treatment and program,
 4. Now live in community residential facilities which are inappropriate and desire to transfer to other community residences and programs which provide more appropriate treatment, more normal living and a less restrictive environment,
 5. Now live at home under emergency conditions which endanger their own or their parents mental and physical health,
 6. Receive no stability by being dumped or tossed from group home to group home to group home or from foster home to foster home, etc.
 7. Would be dumped from their homes into community SNFs or ICFs or other facilities some of which

would be inappropriate or would provide inferior, sub-standard or inhumane treatment by staff who were not trained or experienced in treating people who are retarded,

8. Are dangerous to themselves or others,
9. Are in need of temporary or emergency placement.

- B. Force some parents to keep their sons and daughters at home when not in the best interests of parent or child.
- C. Deny service and promote dumping by not recognizing the present long waiting lists and pressure for many, many more community residential and programatic services for retarded people now living in the community who are completing their education or who are living at home with very old parents.
- D. Fail to recognize the fact that many small and rural communities will never be able to have minimally adequate treatment, care, habilitation and residential services for all of the many and varied types of retarded people.
- E. Fail to recognize the probability that in the future some profit and non-profit residential owners will go out of business due to loss of interest in continuing, mismanagement, cut backs or lack of adequate governmental funding or court orders, all of which would result in the denial of the right to treatment if there were no State Hospitals or other public operated facilities available to provide same.
- F. Substitute the judgment of Court and a Czar-like Review Panel for the judgment of parent, retarded person, guardian, relative, county social worker and relevant professional staff of the State Hospital working as a team **in** the making of such decisions.

II. Quota Discharge and Planning For Closure of Defendant State Hospitals. Plaintiffs seek a court order requiring DPW to develop and implement a plan and to provide community services and small community placements for all persons now residing in FSH, BSH, FFSH and MLSH and as a first requirement discharge 30% of said residents (20 per month for 2 years=240 per year, 480 for 2 years).

If the Court should so order, it would, in my opinion:

- A. Usurp the responsibility of the Legislature to determine

which, if any, of all of the State Hospitals or State Institutions should remain open or be closed.

- B. Provide for Quota discharges of residents from the four defendant State Hospitals, but not from the others.
- C. Dump some retarded people from the four State Hospitals into SNFs, ICFs and other facilities within other communities without there being either adequate funding, programming or experienced and trained staff or professionals to provide as good or better programming and treatment than those residents received in the State Hospitals.
- D. Dump some retarded people into other communities against the will of the people and their parents or relatives or guardians.
- E. Fail to recognize the historical precedent that quota discharging has almost always resulted in the dumping and denial of service to some retarded people.
- F. Fail to recognize that there is now a shortage of Title XX funds to provide DAC, WAC and Sheltered Work Programs for those presently living in the community.
- G. Fail to recognize that CSSA or Block Grant Funding to Counties is now resulting in substantial cut-backs in funding of DAC's and other services for retarded people now living in some communities and no one can now determine what the effect will be throughout the State of Minnesota.
- H. Change the policy of the State of Minnesota and the ARC to support a full range of residential services for mentally retarded persons ranging from independent living in the community to high quality institutional care. (See ARC 1980 Legislative Goals).
- I. Fail to recognize that if DPW is ordered to provide residential services in the communities, it may result in the development of county poor farm types of services previously discarded in most states.
- J. Fail to recognize that quota discharging and closure will deny the right to treatment and appropriate

residential and programmatic service to many profoundly and severely retarded people because of political and economic barriers, shortages of trained and experienced medical, nursing, physical therapists, teachers, DAC instructors, and other professional staff in many communities, and the tremendous problems of coordination required among Congress, the Legislature, the County Boards, the developers of residential and programmatic services, the county social workers et al.

- K. Fail to recognize the vital need for public or governmentally owned and operated residential and treatment centers to provide temporary or permanent treatment and service for those persons whom the ever increasing number of community residential facilities must discharge because said facilities close down or can't cope with or change the behavior of the person so that he or she could live with the others in the group home. For example, last year FSH received 17 people from community group homes.
- L. Fail to recognize that if DPW were to specifically plan now for the discharge to "the community" of all residents in defendant State Hospitals and if they were not discharged for 10 - 20 - or 30 years, the present plans would be outdated and inappropriate.
- M. Reduce the level of care and quality of treatment for those continuing to live in the State Hospitals by demoralizing and losing the best trained and most experienced and able employees.
- N. See also other reasons set forth under I - Admissions.

III. Review Panel. Plaintiffs seek a Court order to appoint a Review Panel to monitor the State's plans and activities to deinstitutionalize the people living in State Hospitals and the individual assessment for community placements, including any determination that a person "must remain" in a State Hospital.

If the Court should so order, it would:

- A. Create an additional unnecessary bureaucracy which would interfere with the day-to-day decision making process of operating the defendant State Hospitals.

- B. Create an additional unnecessary bureaucracy which would interfere with the team approach of person, parent, county social workers and institution staff in making decisions with respect to admissions and discharge and substitute as the decision maker the Court and Review Panel.
- C. Create an unnecessary monitoring bureaucracy when defendants FSH and presumably the other defendants are now monitored by a Review Board which consists of some community people and review admissions, an Advisory Board which monitors and recommends change, a Rule 34 Team, a Quality Assurance team etc.
- D. Create a Review Panel whose costs could be better expended in providing services for retarded persons. For example - Willowbrook expended approximately \$300,000 per year for 5 years - \$1.5 Million Dollars.
- E. Create a Review Panel to determine issues not now a problem. For example: No Minnesota State Hospital for mentally retarded people decides that a person "must remain" therein. That is not the issue. The questions are: What is the best individual program and residence for each? Where is that available? What is the individual's or his/her parents and relatives preference? This review is currently being done at least annually.
- F. Possibly create a Review Panel stacked with Community Residential and Programmatic Service Providers who may not have accurate knowledge of the relative merits of the State -Hospitals versus the communities' programs and treatment, or who may have a bias or prejudice or conflict of interest in favor of community programs which could work to the detriment of some individuals.
- G. Create chaos by creating a Review Panel before accurately surveying and assessing both the defendant State Hospitals population and the communities retarded population as to needs and desires for residential and other programmatic services.
- H. Create unnecessary legal and other administrative expense for parents, guardians and county social service agencies whose decisions differ from the Review Panel of "Experts".

IV. Individual Assessment.

This is being done by FSH and I presume by the other defendants. Any individual assessment should require the input of the person, if possible, the parents, relatives or guardian, the county social worker and other specialists when appropriate.

V. When Commissioner of DPW shall not approve County Social Service Plans.

Plaintiffs seek a Court order requiring the Commissioner to not approve counties' social service plans unless the plan provides community residential and non-residential services for all defendant State Hospital residents for whom the county has financial responsibility following the time line as required in the Deinstitutionalization Relief Section.

If the Court were to so order, it would:

- A. If the county did not comply, result in a denial of treatment and service to both those retarded persons now living in the community and in the State Hospitals.
- B. Place people living in institutions in competition with those retarded people living in the community.
- C. Decide for the State of Minnesota that all State Hospitals should be closed by a certain time. This should not be the function of the court at this time. Rather DPW and the legislature should consider which, if any, should be closed and when.

VI. Elimination of Financial Disincentives to Counties Providing Services in the Community.

I have no objection provided we give the communities the same financial advantages of the State Institutions and do not reduce funding for either the State Institution or Community services.

VII. Commissioner of DPW to Meet Needs of Community Class if Counties Don't.

If the Court were to order same, it would create budgetary chaos for DPW in that the order might encourage counties to

not meet the need in order to pass the financial buck to DPW. Possibly some other language could be used to encourage counties to provide more services.

Luther, I hope you will agree with me that the Court in this case should not determine the policies for the State of Minnesota relating to admission, quota discharging of residents, deinstitutionalization and closure for the four defendant State Hospitals and should not create a Review Panel to monitor the aforesaid.

I am convinced beyond any reasonable doubt that if the Court were to so order, a substantial number of retarded people would be dumped; others would be denied any necessary services, and others remaining would receive a reduced level of care, treatment and service.

I do agree that the Court should order the Commissioner to seek funding in order to provide adequate staffing, programming and physical plant in order that the defendant State Hospitals can meet recognized standards.

I also agree that the Court should order the Commissioner to seek adequate funding to insure the development of DAC's, WAC's, Sheltered Workshops and residential facilities for the communities in order that retarded people will not be denied services and that people rather than government can decide which among a variety of options, including the State Hospitals, may provide the best treatment and the least restrictive alternative and the most normal environment for themselves or for their retarded sons and daughters.

We know that the mental retardation experts cannot agree on the definitions or concepts of deinstitutionalization, least restrictive alternative, normalization or habilitation. I am convinced that some M.R. experts don't even understand that what is least restrictive and most normal for some retarded people is most restrictive and abnormal for others. I am convinced that at this time in our history those "experts" who have jumped on the abolition of all State Institutions' band wagon are as wrong as those "experts" of the past who advocated all should be institutionalized. I am also convinced after reading Dr. Clements' deposition that some "experts" wish to establish such high costly standards that they espouse the philosophy that if we can't offer you cake we won't offer you bread and thereby deny any and all services to people truly in need. For example, if Dr. Clements' standards for profoundly

multiply-handicapped retarded were met practically none of .
our 225 community residential facilities would meet the standard.

In conclusion, Luther, I hope after you have read this letter
we may, at your earliest convenience, continue our discussion of
the proposed relief in the above case.

Very truly yours,

Melvin D. Heckt