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September 8, 198 0

Hon. Earl R. Larson
United States Senior District Judge
United States District Court
United States Courthouse
Minneapolis, Minnesota 55401

Re: Welsch v. Noot et al
No. 4-72 Civil 451
Objections to Proposed Consent Decree

Dear Judge Larson:

I am the father of Janice M. Heckt, age 28, who is now and has been for many years a resident of the Faribault State Hospital.

I am a past-president of the Minneapolis Minnesota Associations for Retarded Citizens, a past regional vice-president and secretary of the National Association for Retarded Citizens, a past member of the President's Committee on Mental Retardation, the immediate past-chairman of the Faribault State Hospital Advisory Board, the Chairman of the National Association for Retarded Citizens Legal Advocacy Committee, and presently a member of the Board of Directors of the Minneapolis Association for Retarded Citizens.

I am enclosing herewith copy of my letter, dated June 26, 1980, to Luther Granquist, which contained my strong objections to certain parts of the Proposed Relief Drafts of the plaintiffs dated 5-20-80 and 6-13-80. Although the Proposed Consent Decree differs from the prior Proposed Drafts, and although I strongly favor a settlement of this particular lawsuit, I am of the opinion that the Proposed Consent Decree does not cure my objections with respect to admissions, quota reduction, and monitoring as set forth in my said letter of June 26.

I am of the opinion that the Proposed Consent Decree will:

1. Deny mentally retarded citizens the right to treatment and necessary residential and programatic services.
2. Deny mentally retarded citizens and/or their parents and legal guardians the right to choose the state institutions as the least restrictive alternative

and as the best treatment and program.

3. Substitute the judgment of a court appointed monitor and the court for the judgment of parent, retarded person, guardian, relative, county social workers and relevant professional staff of the state institution working as a team in the making of placement decisions.

With respect to the section entitled "Population Reduction Requirements," I am of the opinion that it is absolutely essential for there to be added (1) an escape clause with respect to meeting the quota discharge or reduction requirements, and (2) a guarantee of return to the state institution in the event the community placement is not appropriate or in the event there is no alternative.

Reasons for escape clause:

1. I am satisfied that neither the plaintiffs nor the defendant have an accurate data base with respect to the demand for additional residential and programatic services for mentally retarded citizens presently living with their parents in the community.

2. There has been no accurate assessment or data base concerning those mentally retarded citizens presently living within state institutions as to how many would choose a community placement during the years July 1, 1981 through July 1, 1987.

3. If the defendants and plaintiffs have over estimated the supply of community residential services and programs and under estimated the demand for such services from those living in the communities and over estimated the demand for such services by those living in the state institutions, the court would find itself discriminating in favor of those living within the institutions against those mentally retarded citizens living within the communities and at the same time forcing those living within the institutions to live in a "community placement" against their wishes. Thus, denial and dumping would almost be guaranteed.

Reasons for guarantee of return clause:

1. If parents, guardians and relatives do not have some guarantee that their son or daughter can return to the institution in the event the community placement is inappropriate, or in the event there is no other alternative available after the community placement is found to be inappropriate, there will be less cooperation on behalf of parents or guardians and more litigation and expense incurred.

2. Without a guarantee there can certainly result a denial of the right to treatment and necessary residential and programatic services for mentally retarded citizens.

With respect to the section on Admissions" found in Paragraphs 16 through 20, on pages 4, 5 and 6, I I object to that portion of Paragraph 16 which states the county has responsibility for '* * * insuring that such placement is developed", for the reason that I do not know anyone who favors the counties owning and operating residential facilities and programs, and I don't know how the counties can insure such placement be developed in the absence of same. Also Paragraph 16 does not protect the right of a mentally retarded person,or his parent or legal guardian, to be admitted to a state hospital in the cases where the retarded citizens and/or his parents or guardians determine that the best treatment would be in the state institution even though there were some appropriate community placement available. Although I believe the plaintiffs wish to insure that counties make a reasonable effort to either find an appropriate community placement or to encourage the development of community residential facilities and prevent the counties from just automatically placing people in the state institutions, there must be more protection and assurance for those people who need the treatment and service that the counties will not decide that inappropriate community placements are appropriate or stall and delay admissions on the grounds that they are in the process of developing such placements.

With respect to the section entitled "Special Procedures Regarding Admission of Children", although I wholeheartedly agree that the vast majority of mentally retarded children should be maintained within the community, there is no question in my mind that there will be a certain small percentage of children who will be able to receive much better treatment in the state institutions than in their respective communities; that parents must have the right to make this decision for their minor children;.

that the decree—proposed decree—states "the child shall be placed in that community approved program as soon as possible" and this would remove the parental authority to decide whether or not the placement was most appropriate, or least appropriate, for their respective child.

I also believe that there will be instances when more than one year's period will be appropriate and I would be concerned that if the county forgot to give the appropriate notice the child might be denied service in the state institution.

With respect to the section on "Assessments", on page 6, I have the following objections:

1. The first sentence in Paragraph 21 as worded implies that plan shall be made for the discharge of all residents of our institutions. This is not my understanding of the intent of the Proposed Order. Also, it seems to me this would present a very difficult burden for DPW to meet in that it fails 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 to 20 to 30 years, the present plans would be outdated and inappropriate.

With respect to the section entitled "Discharge Plans", Paragraphs 22 and 23, I object to the fact that the parents, relatives or legal guardians, are not involved in the decision as to the appropriateness of the community program and are not even apparently entitled to receive from the county social worker the county social worker's written assessment of the appropriateness of the program and services being provided.

With respect to the section entitled "Appointment and Responsibilitie of a Monitor", it is very important that the court appoint a monitor that does not have strong bias or prejudice in favor of community residential facilities and opposed to state institutional residential programatic services, or vice versa. It is also important that parents of residents of our state institutions be informed of not only the work of a monitor and the monitor's proposals or recommendations, but that in the future parents, relatives and guardians should also receive notice of plaintiff's counsel's proposed action and proposed relief being sought on behalf of our sons and daughters.

I hope that the above may be of some assistance to the court.

Very truly yours,

Melvin D. Heckt