# THE PLYMOUTH CASE AND DECREE

"... a commitment to the development of a comprehensive system of appropriate, less restrictive habilitation, training, and support services for each member of the Plaintiff class. All mentally retarded individuals can and should live in the more normalized environment of the community and do not require instituticnalization, given the development of necessary habilitation and support services in the community."

**- U.S. District Judge Charles W. Joiner**
**August 30,1979**

arc

Association for
Retarded Citizens/Michigan

# THE PLYMOUTH CASE AND DECREE

MICHIGAN FOR RETARDED CITIZENS, et al.,

Plaintiffs

v.

Civil Action No. 78-70384

DONALD C. SMITH, M.D. . et. al.,

Defendants

The Memorandum Opinion, Order and Decree of

U.S. District Judge Charles Joiner
August 30, 1979

. . . and Related Materials

Published by the Association for Retarded Citizens/ Michigan as a tool for successful implementation of the Court Order in giving full appreciation of .its provisions and significance to parents, guardians, friends, workers and the public who have concern for the residents of the Plymouth Center for Human Development.

Additional Copies $1.00

Send To:

Association for Retarded Citizens/Michigan
313 South Washington Square
Third Floor
Lansing, Michigan 48933
517/487-5426

This publication is dedicated to:

DAVID BENTLEY ANDREW
FOSTER LAURIE E. HEALEY
JOHN JAY HOVEY BUDDY
RAE NELSON CARL JOSEPH
PANICALI MARY SABO
WENDY SAMPSON
CAROLYN SZCZESIUL
CHRISTINE WOJTOWYCZ

**TABLE OF CONTENTS**

# DEVELOPMENTAL MODEL RESOLUTION AND POSITION OF THE ASSOCIATION FOR RETARDED CITIZENS

WHEREAS, the Developmental Model of mental retardation has proven to be a viable and productive concept for delivery of services to mentally retarded persons; and

WHEREAS, research and clinical evidence has already strongly supported the validity of this model; and

WHEREAS, the basic elements of this model have been incorporated in major legislation, and national standards for services and court decisions; and

WHEREAS, the limitation in effectiveness of contemporary technology for training mentally retarded people must be considered as transient in view of today's technological explosion;

THEREFORE, BE IT RESOLVED that the Association for Retarded Citizens reaffirms its strong commitment to the Developmental Model of mental retardation, and particularly to the concept that every mentally retarded individual should be approached with the positive expectation that he/she has the potential to grow, learn and to develop. The premise that some persons should be identified as categorically unable to benefit from training is antithetical to this model, and it endangers the welfare of persons so identified by generating self-fulfilling and self-limiting prophecies. Furthermore, the establishment of essentially custodial services for mentally retarded persons — regardless of euphemistic labels applied to such services — violates the essence of the developmental model. Such services cannot be sanctioned by our Association, which is dedicated to fostering the optimal fulfillment of the individual mentally retarded person.

Adopted:

Association for Retarded Citizens/National

James R. Wilson, Jr.
President

July 21, 1979

# INTRODUCTION

August 30, 1979 is recorded as a benchmark in the ARC movement's long and arduous endeavor to restore freedom through appropriate community services for mentally retarded children and adults segregated in confinement to state institutions.

On that date, U.S. District Judge Charles Joiner entered a court order in the "Plymouth Case" based on a stipulation initiated by attorneys for the Association for Retarded Citizens of Michigan and Plymouth.

Newly appointed Director Dr. Frank Ochberg signed the document indicating Michigan Department of Mental Health agreement and consent to plaintiffs' demands set forth in the court order. The order calls for specific actions, assurances and safeguards leading to services and life opportunities which best meet the needs of citizens and in less restrictive settings than those presently afforded residents of the state-run Plymouth Center for Human Development.

The Plymouth suit and other related efforts have brought us to the verge of great reform in the way our governments and community systems provide for developmentally disabled citizens. The court order sets that reform in significant motion.

It is our objective and conviction that compliance with provisions of the Plymouth court order will have statewide benefit (as well as national implications). Its successful implementation will, of necessity, cause various branches of state and local governments to redefine relationships and embark on a commensurate course of action for the residents of other state operated institutions in Michigan.

The stipulation agreed to by Dr. Ochberg contains court enforceable commitments, which exceed those made by any state, to the community rights of retarded citizens.

In this regard, a careful process was followed in development of the provisions of the court order to assure us that it represents the great gains and promise we believe it to hold for residents of Plymouth and other institutions.

Participating, along with our parents, were figures internationally recognized for their expertise in the field of mental retardation and legal actions of this kind. Several were key witnesses tentatively scheduled to testify on our behalf in a trial now made unnecessary by the Mental Health Department's agreement and commitment. Among these were key figures in each of the other major Federal class action suits of this nature — the right-to-treatment Partlow case in Alabama, the protection-from-harm Willowbrook case in New York and the equal protection Pennhurst case in Pennsylvania.

Among those who took an active part to assist our parents in the case were Dr. Gunnar Dybwad, president of the International League of Societies for the Mentally Handicapped; Dr. Frank Menolascino, of the Nebraska Psychiatric Institute and a past president of the National Association for Retarded Citizens; Dr. Jennifer Howse, the court-appointed "Master" in New York's Willowbrook case; Karl Schmeidler of Washington, D.C., an attorney in the U.S. Department of Justice and chairman of the National ARC Committee on Legal Advocacy; and Dr. Robert Mendelsohn, Chicago based pediatrician serving in a wide range of national posts dealing with delivery of health and other services required by persons with special needs.

Invaluable collaboration was given by Pennhurst attorneys - Frank Laski and Tom Gilhool of the Public Interest Law Center of Philadelphia.

Finally, an essential role continues for our Association for Retarded Citizens. We must lead the private sector and the public-at-large in support of the Department of Mental Health's responsibilities for successful implementation of the court order.

All of us dedicated to this cause are indebted to the courageous Plymouth Association for Retarded Citizens and those "next friend" (kin) named plaintiffs of Plymouth Center residents whose victimization and abuse resulted in events which brought today's historical accomplishment: Mary Finn, Laura Healey, Sue Hickman, Lenore E. Hovey, Joseph G. Johnson, Jimmie N. Nelson, Eileen Panicali, Francis Sabo, Robert J. Sampson, and Emilian Wojtowycz.

We are grateful, as well, tor the skill, sensitivity and dedication brought to the case by our own attorneys, William Campbell, Director of the Michigan Protection and Advocacy Service for Developmentally Disabled Citizens, who managed the suit; Michael Kiley and Brian O'Malley of the P&A Service; and David Verseput, General Counsel of ARC/Michigan.

H. C. Galleher, President

Harvey D. Zuckerberg, Executive Director

Michigan Association for Retarded Citizens

## SUMMARY OF THE COURT ORDER

On August 29th U.S. District Judge Charles Joiner issued a Memorandum Opinion, Order and Decree. The immediate effect will involve the residents of Plymouth Center.

Plaintiffs in the case were the Plymouth Association for Retarded Citizens (PARC), the Michigan Association for Retarded Citizens (MARC) and "individuals named as plaintiffs and a class of plaintiffs consisting of:

a. All persons who resided at PCHD on the date the complaint herein was filed, Feb ruary 21,1978;
b. all persons who have resided at PCHD at any time since the date of the filing of the complaint, February 21, 1978;
c. all persons listed on the patient census filed with the Court who may in the future reside at PCHD provided, however, that such persons do not become members of the class until such time as they are physically residing at PCHD; and
d. all persons transferred to PCHD and meeting the provisions of paragraph eight (8) of this agreement."

The defendants are former and present officials of the Michigan Department of Mental Health and Plymouth Center for Human Development.

The Decree, agreed to by all parties, sets forth the establishment of a "commitment to the development of a comprehensive system of ap - propriate, less restrictive habilitation training, and support services for each member of the Plaintiff class. All mentally retarded individuals can and should live in the more normalized environment of the community and do not require institutionaliza - tion, given the development of necessary habilita - tion and support services in the community."

Although the Decree cancels a Preliminary Injunction to which the parties agreed on March 3, 1978, several of its stipulations are continued in the new agreement:

- A ban on new admissions.
- A staff-to-resident ratio which meets ICF/MR certification standards except in Malloy, Kennedy, Sullivan and Binet Halls where the staff-to-resident ratio must be one direct care staff person for every four residents on the day and afternoon shift and one direct care staff person for every eight residents on the midnight shift. Further more, "such staff shall be physically present on the ward or living unit in sufficient numbers in relation to the residents actually on the ward or living unit to maintain the ratios . . ."

Elements added to the Decree, and not in the Preliminary Injunction, deal primarily with place - ment of Plymouth Center residents in the com - munity and the reduction of the Center's popula - tion.

The Decree calls for a comprehensive system which is composed of three distinct components:

1. "residential environments which are the least restrictive and most normal settings ap propriate for each resident or client;
2. nonresidential habilitation, training, and sup port programs which are geographically separate from community residences and which provide the major daily activity for those clients; and
3. management services to adequately develop, coordinate, administer, monitor, and evalu ate this network of environments and pro grams."

In calling for the least restrictive environment, the Decree declares that Center residents will not be placed in new residences which have more than eight beds. Exceptions to that may be made where there are residents whose cond ition requires nursing home placement.

The Federal Court has ordered a reduction so as to guarantee that Plymouth Center will have no more than 100 residents by March 31, 1983. Certain deadlines must be met in order to accomplish that goal:

| DATE | MAXIMUM PCHD CENSUS |
|---|---|
| March 31, 1980 | 560 |
| September 30, 1980 | **500** |
| March 31, 1981 | **440** |
| September 30, 1981 | 370 |
| March 31, 1982 | **280** |
| September 30, 1982 | 190 |
| March 31, 1983 | 100 |

January 1, 1984: Plymouth Center may not designate any resident who would be likely to re - main at the Center after March 31, 1983. Rather, the Center "will plan for and use their best efforts to seek an appropriate community residence for all residents of PCHD by January 1, 1984.

After March 31, 1983, admissions may occur as long as the residential population does not exceed 100 residents. Only those who are "medically fragile" or exhibit "behaviors which could result

in their being judicially admissable under Section 330.1515 of the Michigan Mental Health Code (is 18 or older, mentally retarded, and can be reasonably expected to intentionally or unintentionally physically injure himself or others) may be admitted to Plymouth Center. Even under those criteria admission will be short term and "allowed until, and only until, appropriate community placements are developed."

Plymouth Center will establish written agreements with the operators of Community residences and nonresidential programs. Those agreements, which will be available for inspection by parents, guardians and advocates, will include the following:

a. that the residence or program comply with the applicable terms of this Decree and with all applicable statutes, rules, and regulations promulgated by the United States, the state of Michigan, and the Department;
b. the right of employees, agents, and contractees of the Department of Mental Health to have reasonable access to the residence or program and to audit its records, to monitor services to its clients, and to cancel the contract, remove the resident or take other remedial action in the event the provider substantially fails to fulfill the terms of the contract.
c. that the facility will have an appropriate representative participate in the Individual Program Plan process for each of its clients;
d. substantial fulfillment of the applicable portions of each client's Individual Program Plan.

Plymouth Center will continue to provide a written Individual Program Plan for each resident after placement in the community. The plan will address the "individual's residential and nonresidential program needs, with particular emphasis on the determination of the least restrictive residential environment and suitable nonresidential treatment, training, and support services appropriate to meet those needs."

In addition it will describe short-term and long-term program goals and include timetables for reaching those goals.

It will be reviewed at least annually by an interdisciplinary team "which includes the person or persons primarily responsible for the daily care and support of the resident." Each resident and his/her guardian, advocate or other representative will be invited to attend the annual review.

Should there be dissatisfaction with the community placement, the resident or his/her representative may request a transfer. The request may only be rejected because "continuation in the current residence offers the individual a better opportunity of personal development" or because another placement is not available.

In order to assure adherence to its provisions, the Decree calls for the appointment of an independent Master. The Master will, in effect, serve as the representative of the Court, monitoring the progress of the community placement effort.

The Master will have the authority to "investigate and evaluate any community program, as well as services at the Plymouth Center for Human Development that relate to the habilitation of residents and placement in the community."

The Master will also submit to the Court, every ninety days, a report on the progress made toward compliance with the Decree.

The Decree expires on December 31, 1984.

# HIGHLIGHTS: QUESTIONS AND ANSWERS

*(Numbers in parentheses refer to paragraphs of the Court Order)*

*Question* - What will the Court Order accomplish?

*Answer* — The Court Order requires the Department of Mental Health to develop a comprehensive system of appropriate and less restrictive living arrangements and other habilitation, training and support services in the community for each resident of the Plymouth Center for Human Development.

*Question* - Who is affected by the Court Order?

*Answer* - The Order defines the responsibility of officials of the Department of Mental Health to all persons who have ever resided at Plymouth Center from the day the suit was filed (February 21, 1978) until the present. Persons listed on the "patient census" of PCHD as of February 21, 1978, are also protected by the Order if at any time they return to PCHD for residence. Further, though the Order prohibits the admission of new residents of Plymouth, it does allow the transfer of persons from other state institutions to PCHD; such persons will be included in the scope of the Order if they reside at PCHD for forty-five (45) days. (1)

*Question* — Do parents, guardians and advocates have the right to participate in the planning and placement process?

*Answer* — Yes. The Order specifically grants parents, guardians and advocates the opportunity to be involved in the placement planning process and in the development of Individual Program Plans (IPP). (28) Parents and guardians are provided the opportunity to object to inappropriate placements and programs and ultimately to have any dispute resolved by the Court-appointed Master. (38, 40)

*Question* — What safeguards are provided to ensure the physical safety of my child or ward and that he or she is receiving the programs and services promised?

*Answer* — The Order requires that the Department of Mental Health provide case management services to all clients. Case managers are responsible for monitoring and evaluating the services and programs being provided to clients. A case manager will have no more than twenty-five (25) clients, (11a, 29)

The Order also requires the Department to identify for the parent, guardian or advocate of each client the specific person who is responsible for monitoring the safety and provision of services for their child or ward. (27, 45)

If at any time the parent or guardian is concerned for the safety of his/her child or ward or with the appropriateness of programs or services and is unable to obtain a satisfactory response from the identified responsible person, these concerns should be brought to the attention of the Master for his intervention and resolution of the problems presented. (38, 40)

*Question* — Many parents have not had confidence in community agencies in the past. What is there in the Order that might lead them to expect that the performance of local agencies will improve in providing the necessary quality services and programs required by their children?

*Answer* — The provisions of the Order require the Department of Mental Health to enforce all of its contracts with local service providers and enhance the Department's ability to take the necessary action to assure the appropriate and safe provision of services and programs. Community agencies, as part of their contracts with the Department, must agree to be bound by all of the safeguards and provisions for appropriate, quality services contained in the Order. In addition, contracts with local service providers will be available for inspection by parents, guardians and advocates, in order to assist them in knowing what is expected of providers serving their children, wards or friends. (25,26)

*Question* — How will the Court and parents know that the Department is complying with all the provisions of the Order?

*Answer* — Under the provisions of the Order, the Judge has appointed a Master who is responsible for overseeing compliance with the Court Order. (36) In order to determine compliance with the Order, the Master has been given access to all persons, programs, records, etc. which the Master considers necessary to fulfill his responsibility. (37, 38) He is required to make periodic reports to the Court, the plaintiffs, and the defendants and may make any special reports he deems necessary. (41, 42) The Master will also be given the staff necessary to enable him to deal with the various problems which are presented to him for resolution. (36)

*Question* — **Who does the Master work for?**

*Answer* — The Master is an employee and officer of the Court and is answerable solely to the Court. (36)

*Question* — **What other responsibilities does the Master have?**

*Answer* — The Master is also given the authority to **resolve** individual disputes and problems which **parents** or others present to him. The Master's decision in such cases is final unless either the plaintiffs (MARC, PARC, etc.) or the defendants (DMH) choose to appeal the Master's decision to the Judge. (40, 41)

*Question* — **Will parents and guardians have access to the Master, and if so, how can he be contacted?**

*Answer* — The Court Order specifically provides that parents, guardians and advocates have access to the Master in order to obtain resolution of any problems which may arise. (40) The Master will be officed at **a** location which is convenient both for the parents whose children are still at Plymouth **and** for those whose children have been placed in a community residence. The Master may be contacted by telephone, by letter or in person.

*Question* — **Do I have to accept substandard residences, services or programs for my child or ward?**

*Answer* — No. The Order specifically requires quality services and programs which are *appropriate* to the individual's *needs.* (11, 12, 15, 24, 27, 28) Parents and guardians should not tolerate or agree to substandard or inappropriate residences, services or programs. Any concerns or problems regarding such services or programs should be brought to the attention of the Master.

*Question* — **I realize that I have the right to object and to appeal to the Master if inappropriate services or programs are being offered or provided. This** seems, however, **to put a** very **heavy burden on parents to monitor. Is anyone else responsible for monitoring the safety and welfare of my child?**

*Answer* — The concern of parents and family of a retarded person for the safety and welfare of that person will always exist and there will always be a need for family and friends to monitor the provision of services and programs. No law, court decree or any amount of good intention of service providers will eliminate that need for monitoring.

There are, however, other people who also have an obligation and responsibility in this regard. Under the Court Order, a case manager with this responsibility is required for each individual. (1 la, 29) The Master must also exercise this responsibility even though a specific complaint has not been made by a parent or guardian. (36) In addition, various state agencies such as the Department of Social Services (protective services and licensing of foster homes) and the Department of Public Health (licensing of nursing homes) have responsibilities and duties which have a direct bearing on the safety and welfare of retarded persons living in community residences. (15)

The ARCs also have an obligation to monitor community services. In addition they must monitor state and local agencies to be sure that those agencies are fulfilling their responsibilities in a manner which will ensure the safety and welfare of retarded people.

*Question* — **Do I have to accept community placement for my child or ward?**

*Answer* — Parents are often told they must make a choice between the institution or "community placement." This is not a meaningful choice unless the specific alternatives are presented. The decision about whether you should accept community placement for your child or ward should not be made until the specific community residence and vocational/educational, training and habilitation programs are visited and provision is made for necessary support services, i.e. medical, dental, etc. Only then are you in a position to make an informed and meaningful decision. The Department of Mental Health is now under order of the Court to demonstrate that the above appropriate alternative services are made available to your child or ward before you are asked to accept placement. Once having exercised their Court ordered rights to participate in assuring the provision of quality alternatives to institutionalization, parents will opt for what is clearly shown to be an improvement in the life situation for their child or ward. If the alternative being offered is not appropriate, parents should object and if necessary, request the intervention of the Master.

*Question* — **Obviously, alternatives for all the people at Plymouth cannot be developed right away. Will necessary services continue to be available to those individuals who are awaiting the development of appropriate community services?**

*Answer* - Yes. The Order requires the Department to continue to provide programs and services to those residents who remain at Plymouth. (9, 10, 27) In addition, the direct care staff to resident ratios required in the Preliminary Injunction are to be maintained. (9)

*Question* - Will there be anyone to assist the parent, guardian or advocate in deciding the appropriateness of the community based services and programs being offered?

*Answer* — ARC/Michigan, PARC and the Protection and Advocacy Service will assist parents in determining the suitability of such programs.

*Question* — I read in the newspaper that one hundred residents will remain at Plymouth after March 31, 1983. Does that mean some of the residents of Plymouth will not be placed in the community?

*Answer* — No. The Order requires that the population of Plymouth be reduced to 100 by March 31, 1983. (19) It also requires, however, that the Department continue to plan and develop placements for the remaining 100 in the same manner as the other residents who have already been placed. This must occur by January 1, 1984. (20, 22) If any of the present residents of Plymouth remain after January 1, 1984, the plaintiffs (ARC/Michigan, PARC, etc.) may object and have the case reviewed by the Master. (22) In addition, after March 31, 1983, the Department may once again open admissions to Plymouth, provided that the number of beds will not exceed 100 and no individual will be admitted on a long term basis. (23)

*Question* — Who is ultimately responsible for the implementation of the Order?

*Answer* — The Director of the Department of Mental Health. (12)

*Question* — What benefit does the Plymouth Court Order have for retarded persons residing in other state institutions and for those retarded persons living in communities who have never been institutionalized?

*Answer* — Because of the Court Order, the long-standing dilemmas and disputes between the Department of Mental Health and its sister state agencies, and the Department of Mental Health and local governments and service providers which have hampered the development of necessary community services and programs must now be resolved. Of necessity, these various governmental bodies and agencies must re-define their relationships and enter into new binding agreements which will permit the provision of quality appropriate services for retarded persons in what has been regarded by many as Michigan's most difficult county — Wayne County. Such benefits will be shared by retarded persons elsewhere in Michigan when the Department of Mental Health, our Associations for Retarded Citizens, service providers, the Legislature and the general public insist on statewide application of those solutions and workable approaches developed and demonstrated for the residents of Plymouth Center. Such insistence must also be applied with regard to equitable distribution of resources. It should be understood by all of us that litigation and a court order of this kind — while far-reaching — does not obtain all solutions. Our Associations for Retarded Citizens must continue to insist through all available means for those solutions and opportunities which will enable every retarded person to live in the more normal environment of the community.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN ASSOCIATION FOR RETARDED CITIZENS, a non-profit Michigan Corporation, PLYMOUTH ASSOCIATION FOR RETARDED CITIZENS, a non-profit Michigan Corporation; DAVID BENTLEY, By his next friend Sue Hickman; ANDREW FOSTER, By his next friend Joseph G. Johnson; LAURIE E. HEALEY, By her next friend Laura Healey; JOHN JAY HOVEY, By his next friend Lenore H. Hovey; BUDDY RAE NELSON, By his next friend Jimmie N. Nelson; CARL JOSEPH PANICALI, By his next friend Eileen Panicali; MARY SABO, By her next friend Francis Sabo; WENDY SAMPSON, By her next friend Robert J. Sampson; CAROLYN SZCZESIUL, By her next friend Mary Finn; CHRISTINE WOJTOWYCZ, By her next friend Emilian Wojtowycz; on their behalf and all other similarly situated,

Plaintiffs,

Civil Action
No. 78-70384

DONALD C. SMITH, M.D., individually and in his former official capacity as Director, Michigan Department of Mental Health; VERNON A. STEHMAN, M.D., individually and in his official capacity as Acting Director, Michigan Department of Mental Health; DON K. WORDEN, Ph.D., individually and in his official capacity as Regional Director, Michigan Department of Mental Health; WILLIAM C. WOMACK, individually and in his former official capacity as Director, Plymouth Center for Human Development; EVELYN PROVITT, R.N., M.S., individually and in her former official capacity as Acting Director, Plymouth Center for Human Development; DAVID ROSEN, individually and in his former official capacity as Acting Director, Plymouth Center for Human Development, ERANELL McINTOSH-WILSON, individually and in her official capacity as Director, Plymouth Center for Human Development; their agent, employees and successors,

Defendants.

On February 21, 1978, the Michigan Association for Retarded Citizens, the Plymouth Association for Retarded Citizens, and twelve individuals brought this suit against various officials in the Michigan Department of Mental Health in an attempt to improve the plight of the mentally retarded persons who were residents of the Plymouth Center for Human Development.

The suit followed a number of charges of abuse of the residents, mismanagement of the institution, and misdirection of the Department of Mental Health in the care and treatment of mentally retarded persons.

On March 3, 1978, this court officially recognized the case as a class action, noting that the named plaintiffs were representatives of all of the residents of the Plymouth Center. Also on March 3, 1978, the court entered a preliminary injunction, the substance of which had been agreed to between the parties. This injunction halted new admissions to the center, compelled compliance with federal standards for staff-to-patient ratios, assured relatives greater access to residents, ordered the separation of aggressive and defenseless residents, ordered the center to set up a system of staff accountability in which each resident would be the direct responsibility of a particular staff member, and guaranteed annual physical and mental examinations for all residents. In addition, the injunction created a group of monitors who have spent a great deal of time observing at the center and who have reported to the court on their observations.

In their seventeen monthly reports, the monitors have convinced the court that enormous progress has been made in the care and treatment of the residents of the center. This progress has been the result of the efforts of the parties to this case, their attorneys, and many other people who have shown an interest in the problems that have existed at the center.

Now, after much investigation and long negotiations, the parties have entered into a stipulation concerning the future of the Plymouth Center. This order, judgment, and decree is entered into in accordance with that stipulation.

**PARTIES, JURISDICTION, AND PURPOSE**

1. Plaintiffs are the Plymouth Association for Retarded Citizens (hereinafter, PARC), the Michigan Association for Retarded Citizens (hereinafter, MARC), individuals named as plaintiffs and a class of plaintiffs consisting of:

a. all persons who resided at PCHD on the date the complaint herein was filed, February 21, 1978;

b. all persons who have resided at PCHD at any time since the date of the filing of the complaint, February 21, 1978;

c. all persons listed on the patient census filed with the Court who may in the future reside at PCHD provided, however, that such persons do not become members of the class until such time as they are physically residing at PCHD; and

d. all persons transferred to PCHD and meeting the provisions of paragraph eight (8) of this agreement.

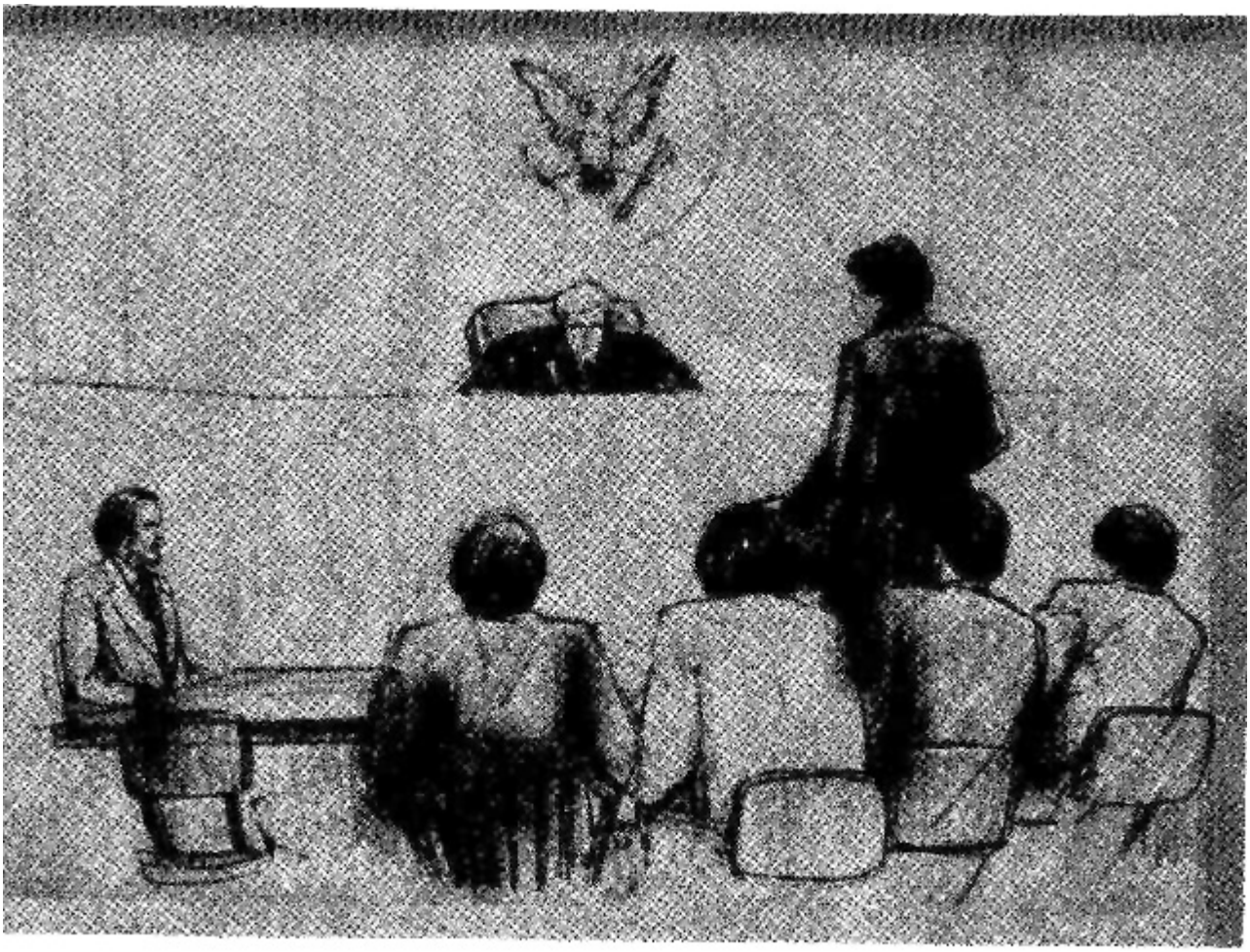
PROVIDED THAT any person who has or in the future is transferred outside of Wayne County at the request of a parent or guardian, who resides outside of Wayne County, shall no longer be considered a member of the plaintiff class. This provision shall not apply to any named plaintiff. They bring this action pursuant to, *inter alia,* 42 USC §1983, claiming violations of the constitutional and statutory rights of persons who are or may be institutionalized at PCHD, and seeking for such persons habilitation of appropriate, less restrictive residential alternatives suitable to their needs. Defendants are the administrative officials with the Michigan Department of Mental Health charged with the responsibility for providing the members of the Plaintiff class with mental health services.

2. This Court has jurisdiction of the subject matter of this class action, pursuant to *inter alia,* 28 USC §1343(3), 42 USC §1983, 42 USC §6010, and the Fourteenth Amendment to the United States Constitution; this class action is appropriately designated as coming within the provisions of Rule 23 (a) and (b) (2) of the Federal Rules of Civil Procedure.

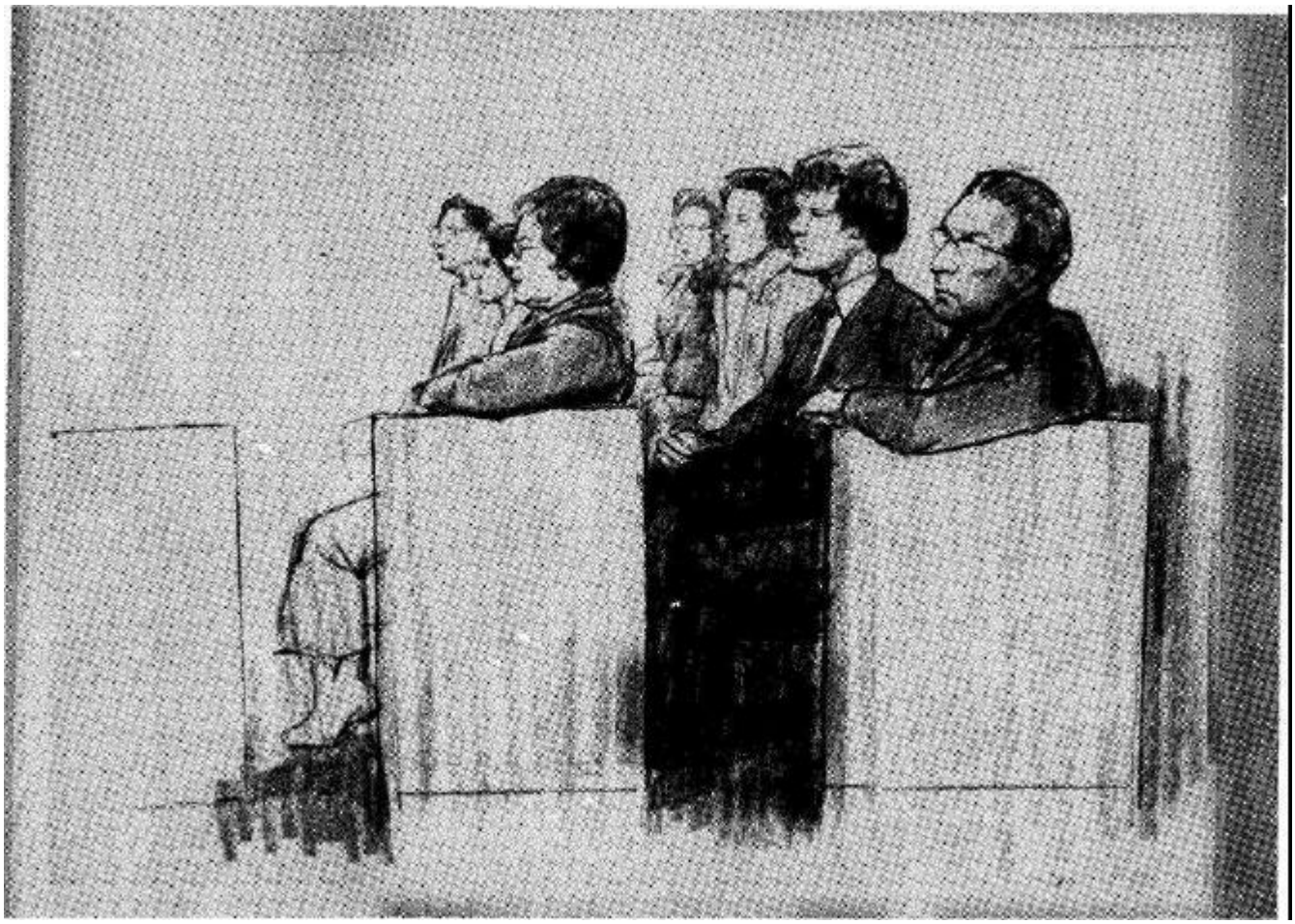
3. Jurisdiction is retained by the Court until this Decree has been fully implemented, to enable any party to apply for such further orders as may be necessary or appropriate for the interpretation, implementation, enforcement, or modification of the terms of this Decree, as provided for by the terms of this Decree.

4. This Decree shall be as binding on the Defendants' successors, officers, agents and employees as on the Defendants themselves. Defendants and their successors will take actions necessary to secure and are responsible for full

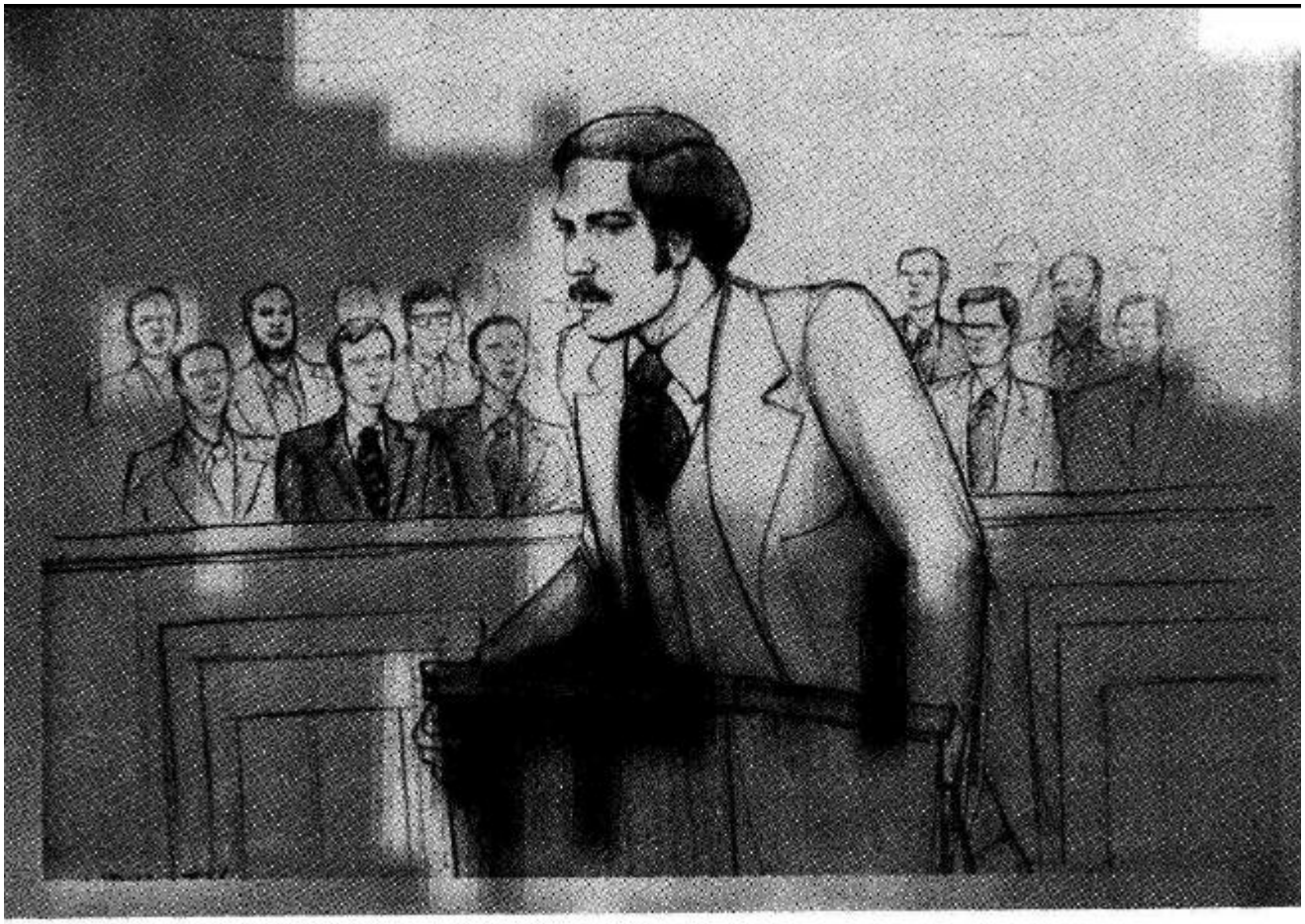
U. S. District Judge Charles W. Joiner



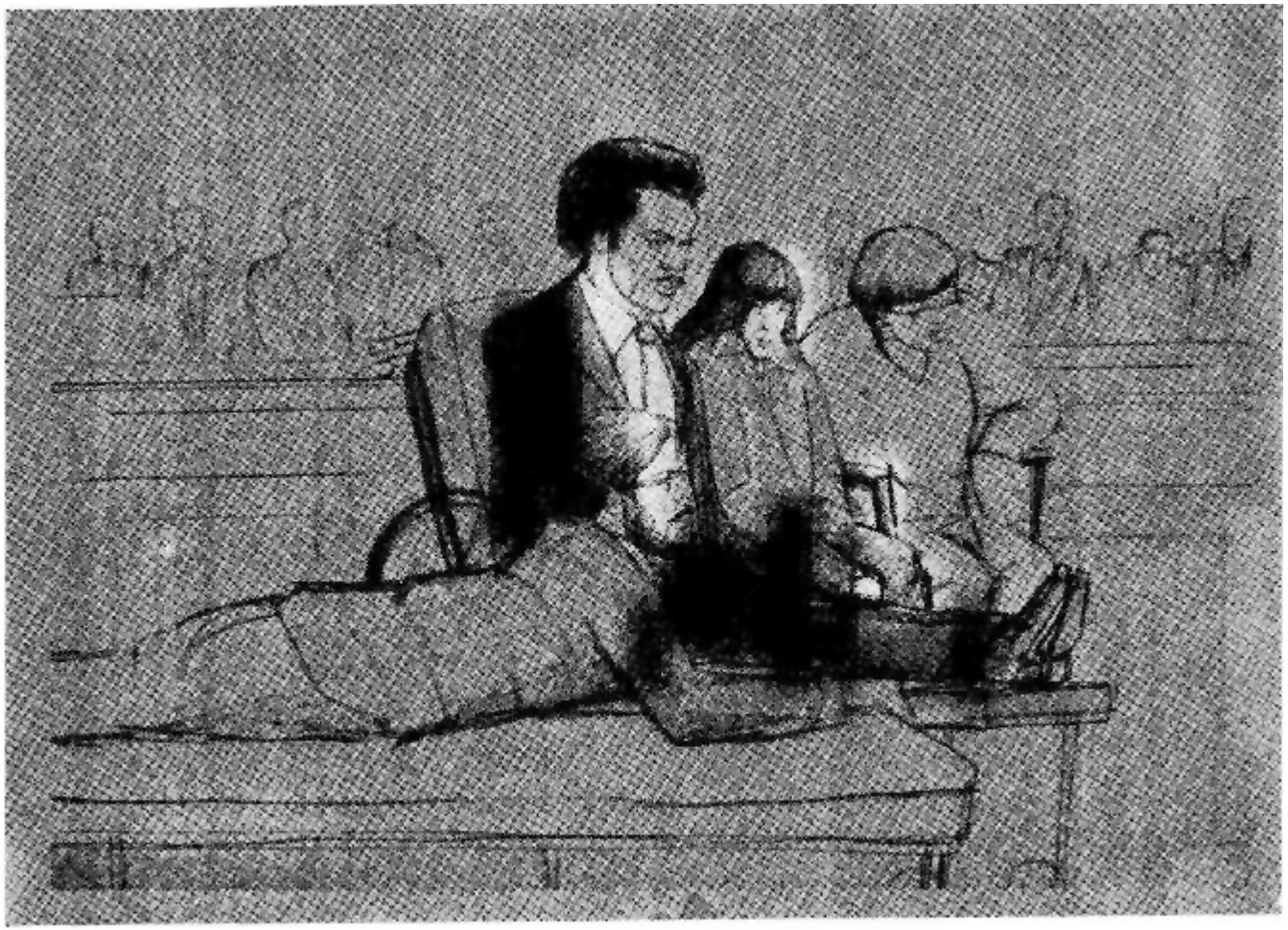
Hearing on Preliminary Injunction



Parents in the Gallery



Presenting the Case



Plymouth Residents Testify

The Detroit News

# Judge's order could close Plymouth Center

BY DON BALL
(tows Staff Writer

A federal judge in Detroit has decreed the virtual closing of the Plymouth Center for Human Development by Jan. 1, 1984, and ordered community placement for retarded residents of the institution.

The state is required to reduce the population of the Center in suburban Northville Township from its present population of about 620 retarded persons to 100 residents by early 1983 under the order issued yesterday by Federal Judge Charles W. Joiner.

"No new residents will be admitted … and (the state) will plan for and use its best efforts to seek an appropriate community residence for all Plymouth Center residents by Jan. 1,1984," Judge Joiner ordered.

Residents of the controversial center, where officials have been accused in the past of mismanaging operations and mistreating patients, will be moved out to foster care homes and group residences in communities near their families under Judge Joiner's decree.

**THE STATE** also is required to "create small scale community residential services of sufficient quality and quantity to allow for the reduction" of the residential population and to provide training programs to make the residents as self-sufficient as possible.

It will be up to the state legislature and governor to finance the sweeping changes ordered by Judge Joiner and failure of Michigan officials to provide sufficient appropriations could bring a direct clash between the state and the federal bench.

"It's a peace treaty and I welcomed the opportunity to sign it as a dedication to a new era of progress in treatment of the mentally retarded," said Dr. Vernon A. Stehman, acting director of the state Mental Health Department.

Henry Zuckerberg, director of the Michigan Association for Retarded Citizens, was equally optimistic.

"**THE (COURT-ORDERED)** plan gives us a great deal of satisfaction as an alternative program for retarded citizens who are inappropriately housed in state instititutions," Zukerberg said.

"It holds a great deal of promise that the state will carry out its long-articulated policies which we have sought for retarded citizens."

The order was worked put by the Michigan Association for Retarded! Citizens, the Plymouth Association for Retarded Citizens and the Michigan Department of Mental Health.

It settles a suit brought by the two associations in February, 1978, charging officials of the state department and the Plymouth Center with mismanaging the institution and permitting abuse of residents.

**IN ADDITION,** the suit alleged, there was a "misdirection of care and treatment of retarded persons by the state mental health department."

To ensure the order settling the case is earned out, Judge Joiner has required appointment of a "master" with a staff to supervise the implemen tation of his decree.

The master, to be nominated by both sides in the lawsuit, will be appointed in October.

**PLYMOUTH CENTER'S** 620 residents range from preschoolers to middle-aged men and women and the instititution now employs a staff of more than 1,600 employes.

Judge Joiner's order requires that each resident will be provided with a individual program of treatment and the program will be reviewed at least once a year.

If a resident is not transferred to community placement, the two associations can object and a final decision will be made by the master.

Judge Joiner also decreed that during the remaining life of Plymouth Center, it must provide one direct care staff member for each four residents during day and afternoon shifts and one direct care staff member for each eight residents during the night shift.

# The Detroit News

By DOUGLAS ILKA
News Staff Writer

Taking mentally handicapped people out of state institutions and putting them in community homes will result in less costly, more humane treatment, the head of the Michigan Association for Retarded Citizens predicts.

Up to now, the state's handling of the retarded has been "gross, crude and rudimentary," said Harvey Zuckerberg, whose organization has fought to improve the lot of the retarded in Michigan.

A better life is in store for all the state's retarded, Zuckerberg predicted Saturday, following a federal judge's decree to virtually close the Plymouth Center for Human Development.

"Residents and clients are entitled to live in the least restrictive, most normal residential alternative," wrote Federal Judge Charles W. Joiner in the order setting a timetable to reduce the population of the center in suburban Plymouth from 620 retarded persons to 100 by early 1983.

The decree ushers in a new "era of cooperation and progress," said Dr. Frank M. Ochberg, head of the Michigan Department of Mental Health.

An opposing point of view was expressed by Michael Cain, a spokesman for the American Federation of State, County and Municipal Employes.

"The decision by Judge Joiner ordering the discharge of several hundred patients from the Plymouth Center to boarding homes, welfare hotels and other community facilities can be regarded as no less than a irresponsible decision," said Cain.

"What the court order does is force an appropriation in response to a need," said Zuckerberg. The policy statements (on community placement) have been there, but there has never been the money to implement them."

Many of the staff members at the Plymouth Center are represented by the federation and there is a question as to whether they will continue to have jobs.

**THESE COMMENTS** came in the wake of a 1978 lawsuit won Thursday by two citizens' groups that charged the state and Plymouth Center officials with mismanaging the institution and permitting abuse of patients.

And the conclusion permanently changes the state's policy on institutionalizing mentally handicapped persons by providing a mandate for funding community placements.

Zuckerberg is not sure how much money it will take the state to fulfill Joiner's order, but he believes it will be less than the cost of running such large institutions as the Plymouth Center.

Gerald Miller, director of the Michigan Department of Management and Budget, said cost studies will be made and "we'll do whatever we have to meet the order."

The Plymouth Center's most recent budget for one year of operations was reported in court to be $24 million.

**WILLIAM CAMPBELL,** an attorney representing the two citizens' groups that filed suit, said it cost the state $120 a day per patient for institutionalized care at the Plymouth Center.

"The most difficult-to-place patients from the Macomb-Oakland Regional Center cost no more than $60 per day when put in a community home housing eight persons," Campbell said.

"I don't expect any problem in getting funding from the state because the court order falls in line with the policy of the state."

That policy — to place the mentally handicapped in community settings rather than institutions — has been evolving since the middle 1960's, said Joseph McCall, public information officer for the state mental health department.

The patient population in state mental institutions increased steadily from the 1890's when the first facility was opened in Lapeer.

At it's peak in 1967, the state was caring for 12,700 mentally retarded or developmentally disabled persons.

**SINCE THEN, the** institution population has gradually declined. McCall said, to the current figure of 5,315 persons housed in a dozen facilities.

McCall said two decisions in recent years accelerated the population decline:

- In 1971, the State Legislature passed the Mandatory Special Education Act for Handicapped Persons. This law required all public school districts to provide mandatory educational services to handicapped persons through their 26th birthday, resulting in more patients remaining in family homes.
- Four years ago, the federal government approved laws and funding allowing many previously institutionalized persons to be cared for in nursing homes.

"All estimates indicate that about 3 percent of the general population is mentally retarded or developmentally disabled in some way," McCall said.

"Michigan has a population of about 9 million, meaning there are 270,000 persons out there with some sort of mental problem.

"With only 5,000 persons currently in institutions, that means there are about 265,000 mentally retarded persons who are already living in communities whether it is in their own home with guardians, in foster-family care homes, in community living residences or, for the most severe cases, in nursing homes."

**PLYMOUTH CENTER'S** 620 residents range from preschoolers to middle-aged men and women. The institution employs a staff of more than 1,600 employes.

Judge Joiner's order sets limits of 500 residents by October, 1980; 440 by April, 1981; 370 by October, 1981; 280 by April, 1982; 190 by October, 1982; 100 by April 1,1983 and possibly none by Jan. 1,1984.

Cain, the union spokesman, called Joiner's ruling "irresponsible" because it "is not in the best interests of the patients."

"Does the court not realize that under the existing community mental health care delivery systems, discharged patients rarely venture into governmental community centers, but instead fall easy prey to private profiteers?" Cain questioned.

"Consequently, former mental patients are forced to live in often unsafe and unsanitary nursing homes, boarding homes and welfare hotels and become victims of fraud-ridden, multibillion-dollar Medicaid, Medicare and supplemental security income programs."

Cain said patients in private facilities are supported by the state, "but without the scrutiny and accountability that exists in a state facility."

**DR. FRANK M. OCHBERG,** head of the state mental health department, disagreed with Cain's criticism, saying he would commit the department's "best talent" to insure Plymouth residents are relocated into "appropriate community settings of high quality."

Detroit Free Press

Friday, September 21, 1979

Section A, Page 3 SECOND FRONT PAGE

# Plymouth Center Court Is Is 'Disastrous,' Told

By PAUL MAGNUSSON
and SUSAN WATSON
Free Press Staff Writers

Court-appointed experts monitoring conditions at the Plymouth Center for Human Development issued a scathing report on the state-run center Thursday, charging that problems there have had "a disastrous impact" on the lives of the 600 mentally retarded residents.

The 10-page report, the final of 18 monthly reports by the five monitors, says the atmosphere at Plymouth Center "is that of a factory where residents, staff, administrator, meals, whole days seem Interchangeable."

The report criticizes the' top administrators of the Plymouth Center, the Department of Mental Health and workers at the center ranging from the nine physicians to the 850 attendants who care for the retarded residents.

The department's leadership has not adequately demonstrated that the mentally retarded person "is a worthy human being who is to be treated with respect and consideration," the report says.

The monitors also wrote that the staff at Plymouth repeatedly told them "about their inability to continue to be employed where human dignity seemed to have so little value."

THE MONITORS were appointed by U.S. District Judge Charles W. Joiner last year in response to a lawsuit filed by the Michigan Association for Retarded Citizens against the Plymouth Center. Their job has been to report back to the Judge on progress in complying with a series of court orders demanding sweeping changes at the center.

Last month, the parties in the case agreed on a plan for changes at the center. The plan requires that the center's population be reduced to 100 by 1983. The remainder will be moved into small group homes in surrounding communities.

Joiner Thursday appointed a former acting director at the center, David Rosen, to act as the court's master to see that the provisions of the agreement are followed. Rosen, 54, now works in the Mental Health Department's Lansing offices as an associate director.

ALTHOUGH Joiner wrote in an August court order that "enormous progress" has been made at the center, Thursday's report by the monitoring committee does not appear to agree.

The report says that the center "lacks a clear states ment of purpose" and that "communications between the professional staffs are minimal."

As an example, the report notes the case of one teenage boy whose vision is so bad that he is unable to see beyond his arm's length without glasses. However, a psychologist who tested the boy noted that he was "unresponsive to the testing materials" without realizing that the boy probably couldn't see them.

The physicians at Plymouth are particularly isolated, the report notes. Although the doctors have offices in each of the center's eight dormitories, "the physicians remain in the administration building" and do not attend conferences with the other staff members.

Communication between the professional staff and the attendants "is often non-existent," the report says.

IT SAYS the selection process used to hire attendants Is "poor," and there is "minimal continued training."

"It is only by accident that (attendants) are able to function as well as they do in caring for persons, on a daily basis, whose physical and psychological needs would present mighty challenges to the very best qualified professional."

Although Joiner ordered a doubling of the attendants at Plymouth last year, the monitors wrote that "even the high staffing ratio could not insure staff interaction with residents or freedom from harm for residents. The mere court order ratio (of attendants to residents) seemed to become the goal, with no real understanding of its meaning besides that of a number."

The center's director, Eranell Mclntosh-Wilson, said Thursday that she had no comment on the report.

The Plymouth Center, located in western Wayne County, was the subject of a series of 10 Free Press articles in February 1978 detailing conditions including neglect, sexual abuse and torture of residents of two of the dormitories.

The Detroit News

—THE DETROIT NEWS—Friday, September 21.1979

# Pair named to close center

**BY DON BALL**
**News Staff**
**Writer**

A federal judge in Detroit has selected a top state mental health official to supervise the court-ordered phasing out of operations at the Plymouth Center for Human Development.

David Rosen, 54-year-old associate director of the State Department of Mental Health, was appointed to the job yesterday by Federal Judge Charles W. Joiner.

Gerald J. Leismer, director of community services development for the Macomb-Oakland Regional Center, was named by Joiner to serve as Rosen's deputy.

The two will supervise Joiner's Aug. 30 order which set a 4V2-year timetable for moving the 620 retarded persons at the Plymouth Center in Northville to foster homes and community group residences.

"No new residents will be admitted ... and (the state) will plan for and use its best efforts to seek an appropriate community residence for all Plymouth Center residents by Jan. 1,1984," Joiner directed in the order.

The center's operations came under the judge's jurisdiction as the result of a civil suit filed in Federal Court, alleging that state and center officials had mismanaged the institution and permitted abuse of residents.

His order was based on a consent agreement worked out between the Michigan Association for Retarded Citizens, the Plymouth Association of Retarded Citizens and the State Mental Health Department.

"The court believes that this team will provide more knowledge about community placement (of retarded persons), more sensitivity to the needs of individual clients, and a greater desire to see the court-ordered system work than could be provided by any two other persons in this country," Joiner said.

implementation of this Decree, including coordinating with other agencies and officials of the state of Michigan and other governmental entities the carrying-out of responsibilities necessary to the implementation of this Decree.

5. The parties and the Court deem this Decree to be pertinent for the final settlement of the case; to the extent current information renders final, substantive settlement of an issue impracticable, the parties agree to collaborate and negotiate and to seek direct judicial resolution only as a last resort, and as provided by the terms of this Decree.

6. The Preliminary Injunction agreed to March 3, 1978, by the parties, is no longer binding and no longer has the force and effect of law.

7. Based upon the record and consideration of submissions by the parties and the Monitoring Committee established by this Court in con junction with this case, this Decree may be entered by the Court and is consented to by the parties for the purpose of establishing a commitment to the development of a comprehensive system ' of appropriate, less restrictive habilitation, training, and support services for each member of the Plaintiff class. All mentally retarded individuals can and should live in the more normalized environment of the community and do not require institutionalization, given the development of necessary habilitation and support services in the community.

**PLYMOUTH CENTER FOR HUMAN DEVELOPMENT**

8. Defendants agree to halt new admission of residents to the PCHD. A new admission is defined as the admission of a person whose name does not appear on the 'patient census' and is not on a leave status from the PCHD as of the date of entry of this Decree. Defendants may transfer residents of other Department of Mental Health institutions for the developmentally disabled to PCHD for purposes of effecting or preparing for a com munity placement in Wayne County, provided that transfers will be made to PCHD only in numbers equivalent to or less than the actual placements into the community of class members. No such transferred resident will be counted in determining Defendants' compliance with paragraph nineteen (19) of this Decree until forty-five (45) days have elapsed from the date of such transfer to the PCHD; similarly, no such person will be considered a member of the Plaintiff class until said forty-five (45) day period has elapsed, and only in the event such person is still a resident of the PCHD.

9. Defendants agree to maintain on all PCHD living units a direct care staff-to-resident ratio which meets the standards of the United States Department of Health, Education and Welfare for certification of an institution as an intermediate care facility for the mentally retarded. Further, with respect to Malloy, Kennedy, Sullivan and Binet Halls, such ratio will be maintained as follows: on the day and afternoon shifts one (1) direct care staff person to four (4) residents, and on the midnight shift one (1) direct care staff to eight (8) residents. The staffing provided for in this paragraph means that such staff shall be physically present on the ward or living unit in sufficient numbers in relation to the residents actually on the ward or living unit to maintain the ratios set forth by this paragraph. In the event residents are transferred from any of the buildings identified above and such transfer is occasioned by reasons other than a change in the resident's condition, such a resident shall continue to benefit from the more favorable staff-to-resident ratio. In the event living units located in the buildings identified above come to be inhabited by residents whose general programmatic needs are dissimilar from those of current residents, such units may employ the more conventional staffing patterns.

10. Defendants are required to provide for the residents of PCHD such adequate habilitation as will afford a reasonable opportunity for them to acquire and maintain such life skills as are necessary to enable them to cope as effectively as their capacities permit. Habilitation programs will be based on Individual Program Plans developed for each member of the Plaintiff class. The Master provided for herein will have access to all information, records, residential environments and PCHD program areas, and will be permitted to interview any person affected by or involved in the implementation of this Decree, to the extent necessary to discharge his/her duties under this Decree.

## CREATION AND MAINTENANCE OF COMMUNITY PROGRAMS

11. The following principles form the basis for creating and maintaining the comprehensive system of community mental health and retardation services suitable to meet the needs of all members of the Plaintiff class:

a. A comprehensive community mental health and retardation system consists of three distinct components: (1) residential environments which are the least restrictive and most normal settings appropriate for each resident or client; (2) nonresidential habilitation, training, and support programs which are geographically separate from community residences and which provide the major daily activity for those clients; and (3) management services to adequately develop, coordinate, administer, monitor, and evaluate this network of environments and programs.

b. Residents and clients are entitled to live in the least restrictive, most normal residential alternative and to receive appropriate habilitation, training, and support suited to then-individual needs.

c. The provision of appropriate habilitation, training, and support services to PCHD residents will not deprive other persons currently receiving mental health or retardation services from the Defendants from continuing to receive such services for as long as they are determined to be necessary, according to professionally accepted standards.

d. The determination of client service needs will occur through an individualized screening, evaluation, and service planning process, including annual reviews of Individual Program Plans.

e. The determination of the appropriate residential and nonresidential placement for each resident and client will be made so as to guarantee that all persons are placed in the least restrictive alternative which will provide them with appropriate habilitation, training and support; smaller residential alternatives are preferred to larger ones. Defendants agree that they will not place members of the class in new residences having more than an eight (8) bed capacity except as provided herein. Such new residence is one not previously utilized for placement by the PCHD or the community mental health board. Members of the class may be placed in new or existing nursing homes exceeding eight (8) beds in lieu of adequate, available alternative where the condition of the resident warrants and subject to prior review by the Master.

f. Community residential and nonresidential services will be offered, to the extent needed and with due regard for each client's dignity and personal autonomy; residents and their parents, guardians, or advocates, will participate in the community placement process and they will be advised of their rights to an administrative appeal when, and only when, they object to a residential placement because the placement is in an inadequate facility or a facility which is too restrictive, or because the proposed placement does not provide appropriate programmatic services.

g. All residential and nonresidential services will be offered by providers of services on a nondiscriminatory basis, without regard to a resident's or client's ability to pay.

h. Community residential alternatives and nonresidential programs will be integrated in the community and operated in the most normal manner appropriate to the needs of their clients.

i. An evaluation process is required to assess a program's quality and effectiveness in meeting the needs of its clients. Defendants will have six (6) months to develop such a process.

j. It is recognized that a small percentage of mentally retarded individuals may require intervention in an inpatient facility due to the unavailability of community alternatives. They include medically fragile individuals requiring constant medical life support monitoring and those individuals who, although not mentally ill, exhibit behavior which could result in their being judicially admissible under §515 of the Mental Health Code.

k. Adequate residential and nonresidential services will be provided in appropriate, less restrictive alternatives to all residents and clients for as long as determined necessary to meet their individual needs, according to professionally acceptable standards. 12. The Defendants, their agents and con-tractees, will create and maintain appropriate community residential alternatives and nonresidential programs, including necessary management services, for all members of the Plaintiff class adequate to meet their individual needs as recommended in their Individual Program Plans. It is recognized by the parties that the community mental health board also has the authority to create and maintain such alternatives and programs, and the Defendants may utilize the resources and programs of the community mental health board, its agencies and contractees, in carrying out the terms of this Decree. The Director of the Department of Mental Health has the ultimate responsibility for carrying out the pro-

visions of this Decree.

13. The Defendants will, subject to paragraph fourteen (14) herein, maintain and continue to fund as appropriated new and existing programs necessary to carry-out this Decree, unless ıe needs of the residents and clients, as determined by their Individual Program Plans, no longer require such programs.

14. The Defendants will use their best efforts to insure the full and timely financing of this Decree, including: submission of appropriate bud get requests; allocation of sufficient funds as appropriated to insure that all existing and new programs necessary to carry-out the provisions of this Decree meet the minimum standards herein; full allocation of funds appropriated for services during the fiscal year; and, allotments of ap propriated funds as needed. In order to finance the obligations of this Decree, the Defendants agree not to transfer funds among accounts in such a way as to reduce the level of services presently being provided to PCHD residents. As used in this paragraph t he word "allocate" means to designate or earmark appropriated funds for specific pur poses, consistent with appropriations acts enacted by the Michigan legislature.

15. The Defendants will not place residents or clients in residential alternatives or nonresidential programs which fail to meet applicable environ mental, care, and programming standards.

16. Within the framework of the provisions of this Decree, the parties agree that the Defendants should have reasonable flexibility in implementing residential and nonresidential programs.

17. The Defendants agree to take all necessary action to insure full and timely compliance with the provisions of this Decree. The parties recognize that there may arise, during the implementation of this Decree, difficulties beyond the control of the Defendants which may inhibit timely accomplish ment of certain of its terms. Whenever one of the parties or the Master, whose role is created herein, determine that such difficulties have arisen and significantly threaten implementation, the prob lem may be brought to the Court's attention, pursuant to the procedure established in paragraph forty-three (43) herein.

18. The time schedule hereafter set forth establishes target dates, and Defendants agree to make every good faith effort to accomplish meeting them during the times specified; De fendants agree to undertake such efforts as are necessary to ameliorate the effects of community and parental resistance to their program for community placement. Plaintiffs MARC and PARC will support Defendants' efforts in this regard.

19. In accordance with paragraph seven (7) herein, the, parties agree that Defendants will create small scale community residential services of sufficient quantity and quality as will allow for reduction in the resident population of the PCHD to a maximum of five-hundred, sixty (560) as of March 31, 1980, and as required to meet the following schedule:

| | Maximum PCHD Census | Residents Placed in the Community |
|---|---|---|
| September 30, 1980 | 500 | 60 |
| March 31, 1981 | 440 | 60 |
| September 30, 1981 | 370 | 70 |
| March 31, 1982 | 280 | 90 |
| September 30, 1982 | 190 | 90 |
| March 31, 1983 | 100 | 90 |

20. After March 31, 1983, the PCHD will not exceed a population of one-hundred (100) devel-opmentally disabled persons. In implementing this Decree, Defendants will not, directly or indirectly, designate any resident of PCHD as likely to remain beyond March 31, 1983, but rather will plan for and use their best efforts to seek an appropriate community residence for all residents of PCHD by January 1, 1984. Continued residency at PCHD of members of the plaintiff class after January 1, 1984 will be subject to review by the Master pursuant to paragraph twenty-one (21) and forty-one (41).

21. In accordance with the philosophy ex pressed in paragraph seven (7) herein, the parties agree that Plaintiffs may object to the continued residency of any resident at the PCHD and may have any case reviewed by a person of their choosing who is familiar with the community placement process. The Master provided for herein will have the final decision-making authority in any disputed case, subject to the provision of paragraph forty (40) herein.

22. When the population of the PCHD reaches one-hundred (100) residents, the Defendants will continue to use their best efforts to place the remaining residents in the community. In the case of some medically fragile residents, who require constant medical life support monitoring, or those residents exhibiting behaviors which could result in their being judicially admissible under §5 15 of the Mental Health Code, appropriate community placements may not be immediately available. De-

fendants may continue to provide care and habilitation to such residents at the PCHD, provided that Plaintiffs may object to the continued residency and may have any case reviewed by a person of their choosing who is familiar with community placement and the available alternatives. The Master will have the final decision-making authority in any disputed case, subject to the provisions of paragraph forty-one (41) herein.

23. After March 31, 1983, the PCHD will not exceed a residential population of one-hundred (100) developmentally disabled persons. None of the remaining PCHD population will be long term residents. Though Defendants may admit those types of persons described in the preceding paragraph when the resident census falls below one-hundred (100), such admissions will be subject to the review of the Master and will be allowed until, and only until, appropriate community placements are developed.

24. Recommendations as to residential and nonresidential program placements will be based on an evaluation of the actual needs of the resident or client rather than on what programs are then currently available. In cases where the services needed by a client are unavailable, the Individual Program Plan will provide an interim program based on available services which meet, as nearly as possible, the actual needs of the client. The number of clients in need of a service or program which is not then currently available and information respecting the types of residential ilternatives or nonresidential programs which they need will be compiled by Defendants in order to plan for the further development of programs.

25. As soon as it is practicable and to the extent not inconsistent with existing contracts, the Defendants will reach a written agreement with the operators of community residences and nonresidential programs to include the following:

a. require the residence or program to comply with the applicable terms of this Decree and with all applicable statutes, rules, and regulations promulgated by the United States, the state of Michigan, and the Department;

b. reserve the right of employees, agents, and contractees of the Department of Mental Health to have reasonable access to the resi dence or program and to audit its records, to monitor services to its clients, and to cancel the contract, remove the resident or take other remedial action in the event the provider substantially fails to fulfill the terms of the contract.

c. require the facility to have an appropriate representative participate in the Individual Program Plan process for each of its clients;

d. require substantial fulfillment of the applicable portions of each client's Individual Program Plan.

Sanctions for failure to comply with the provisional of this Decree will be included in the agreement and will include, but will not be limited to, the termination of the agreement and the removal of the client from the placement. Prior to the renewal of such an agreement, the Defendants or their agents will monitor the service provider's con pliance with the terms of the agreement.

26. Contracts for residences and services will be available for inspection by parents, guardian and advocates of members of the plaintiff class.

27. The Defendants will provide or continue to provide all residents and clients with a written Individual Program Plan which specifies in detail the individual's capabilities and needs for service including the methods to be utilized to provide such services. The Individual Program Plan will address the individual's residential and no residential program needs, with particular emphase on the determination of the least restrictions residential environment and suitable nonresident] treatment, training, and support services a propriate to meet those needs. The individual Program Plan will describe short-term and lor term program goals and timetables for the attainment of these goals. The Individual Program Plan will identify by name the person or person who are primarily responsible for implementing and overseeing implementation of, service goals.

28. The Individual Program Plans will developed under the direction of a qualified professional and will be reviewed at least annually by an interdisciplinary team which is appropriate constituted in accordance with professional acceptable standards and which includes 1 person or persons primarily responsible for the daily care and support of the resident or client, well as the community service coordinator manager responsible for the client. Each resident or client, and the individual's guardian, advocate or other representative will be notified of all invited to participate in the interdisciplinary team meeting, unless the resident or client objects such attendance. Notification of team meeting will be provided as far in advance as practical and in no event less than two (2) weeks prior the meeting. In cases of emergency, such meeting may be held with less than two (2) weeks provided

notice, provided that the resident or client, and the guardian, the advocate or designated representative and the Master are given the best practicable notice under the circumstances and provided further that an emergency shall mean a situation requiring immediate attention because of a change in the client's situation.

29. The resident's or client's community service coordinator or manager will be responsible for reviewing and monitoring the client's progress, for ascertaining that appropriate services are being delivered, and for coordinating the input of other professionals and staff in the Individual Program Plan process. Each such community service coordinator's or case manager's caseload will not exceed twenty-five (25) persons.

30. The resident or client or his/her representative may at any time initiate a request for transfer to a more appropriate setting. The Department of Mental Health will respond within thirty (30) days, either accepting or rejecting the request and stating the reasons for any rejection. A request for such a transfer will be rejected only because continuation in the current residence offers the individual a better opportunity for personal development in a more suitable environment or because a placement is not currently available elsewhere. In this latter situation the resident or client will be transferred as soon as an appropriate placement can be found or developed. A request for transfer which has been denied may not be renewed for six (6) months unless the person requesting the transfer can demonstrate that there has been a material change in the client's circumstances or significant new evidence has been discovered.

## PERSONNEL AND TRAINING

. 31. The Defendants will establish standards for staff of community residential and nonresidential programs which are designed to screen out those applicants for employment who might pose a danger to clients or who fail to work in their best interests. Defendants will have six (6) months to develop the standards. Plaintiffs will be allowed to review the standards developed and to comment on same. Thereafter, adherence to the standards will be required in all new contracts for all new employees.

32. The Defendants will provide all new and present Department of Mental Health employees engaged in carrying-out this Decree with appropriate orientation and training programs to increase their skills and interest in achieving service goals for clients. The Defendants agree to provide staff persons employed in new residential and nonresidential programs with training appropriate to their tasks if adequate training is not otherwise provided.

33. Personnel policies will be designed to maximize use of individual employee skills and to enhance effective services for clients and working conditions for employees. Personnel policies will include provisions, consistent with state law, for suspending or terminating employees whose job performance is determined, after appropriate review, to be substantially unsatisfactory or to violate the rights of clients as set forth in relevant statutes, regulations or the provisions of this Decree.

34. The Defendants agree to use their best efforts to secure federal funds to train and retrain individuals working in community programs. To the extent federal funds are inadequate for this purpose, the Defendants agree to provide by other means and to seek adequate funding for training personnel.

35. The Defendants will include in every future contract requiring an agent or independent contractor to perform duties, standards, and procedures which would otherwise be performed by the Defendants or their employees, a clause requiring the agent or contractor to meet the relevant obligations of this Decree.

## EVALUATION AND ENFORCEMENT

36. By September 15, 1979, an independent Master will be appointed by the Court from a list of proposed candidates jointly prepared by the parties. The Master will be responsible solely to the Court and will serve until the Decree has been fully implemented. The Master will review and report to the Court and the parties on the progress towards implementation of this Decree, in accordance with procedures and schedules to be agreed upon by the parties. The Master's first term of appointment will be for eighteen (18) months, which may be extended by agreement of the parties and the Court. The parties' attorneys will consult with each other prior to the reappointment or replacement of the Master. The Defendants will pay the salary and expenses of the Master and an assistant and will provide necessary clerical support. The Defendants will pay the costs and expenses of those consultants which the Master finds necessary to fulfill his/her responsibilities as set forth in this Decree. The parties will agree in advance on the total budget for the Master

for fiscal year 1979-80. Thereafter, the Master will prepare proposed budgets for his/her salary, the salary of his/her assistant and clerical support and their expenses for each succeeding fiscal year. If the Defendants refuse to approve a budget submission, and there remains disagreement after discussion between the Master and the parties, the Master may apply to the Court for a resolution.

37. The Master will be allowed access to all information, records, residential environments, and program areas, and will be permitted to interview any person affected by or involved in the implementation of this Decree to the extent necessary to discharge the Master's duties under this Decree. To the extent any such information, regardless of form, is disclosed, it will be deemed by the parties to have been disclosed pursuant to Section 748(4)(a) and (d) of the Michigan Mental Health Code, Act 258 of 1974, MCLA 330.1748(4)(a) and (d); any such disclosures will be subject to the provisions of section 748(3) of the Michigan Mental Health Code, Act 258 of 1974;MCLA 330.1748(3).

38. The Master will have authority to investigate and evaluate any community program, as well as services at the PCHD that relate to the habilitation of residents and placement in the community of members of the class, in order to monitor the implementation of this Decree. The Master will, to the extent practicable, make himself or herself available to the parties.

39. The Master may make informal suggestions to the Defendants in whatever form the Master deems appropriate in order to facilitate compliance with the Decree.

40. If an individual complaint or problem is not or cannot be resolved through existing procedures of the Department, any employee or agent of the Defendants, any resident or client, or any guardian, advocate, or other representative of a resident or client, may bring a situation or disagreement related to the provisions of this Decree to the attention of the Master for appropriate action. The Master will provide written notice of such matter to the parties' attorneys. The attorneys will have fifteen (15) days to attempt an informal resolution of the matter. If the matter cannot be resolved, the parties will have an additional seven (7) days to present their positions, in writing, to the Master. The Master's action on individual complaints or problems will be considered final, and inappropriate for review by this Court, except to the extent provided in paragraph forty-one (41) of this Decree.

41. The Master will have the authority to make recommendations with regard to implementation of the Decree if: (1) the Master believes that the Defendants are not in compliance with the Decree; (2) this belief is accompanied by written findings of fact which indicate the source and nature of the evidence upon which each finding is based; and (3) the recommendations are consistent with and can be implemented within the framework of the Decree. Such recommendations will include, where necessary, timetables for implementation of steps or measures necessary to bring the Defendants into compliance.

a. Copies of each recommendation accompanied by the findings of fact required by this paragraph will be filed with the Court and sent to counsel for the parties. AH parties shall be bound by the recommendation unless, within fifteen (15) days of receipt of any such recommendation any party files an objection with the Court and requests a hearing. Objections may be made on the basis that (1) the findings of fact relied upon by the Master are erroneous, (2) the Master's judgment of non-compliance is erroneous, or (3) the Master's recommendations are beyond the provisions of or inconsistent with the Decree.

b. The hearing on the objections will be held at the earliest convenient time after notice to all parties.

42. The Master will submit written reports to the Court and the parties every ninety (90) days on the progress achieved in complying with the provisions of this Decree, including a description of any problems which have arisen, any suggestions which the Master has made to the parties regarding resolution of those problems, and a description of any disputes resolved under the provisions of paragraph forty (40) herein. The reports will include names and addresses of all residents who have exited Plymouth Center during the ninety (90) day period, provided that this list will be physically separable from the rest of the report and will not be available for public inspection. The report shall also contain information relating to persons transferred to the PCHD from other Department of Mental Health facilities during such report period; with respect to each such transferred resident the report shall include his/her name, date of transfer and the name of the institution from which occurred; such information shall be physically separate from the rest of the report and shall not be available for public inspection. Before filing

his/her report the Master will submit a draft thereof to the parties for comment. The parties will have fifteen (15) days to provide any written comments which they have, and these comments shall be submitted to the Court with such report. The Master may submit special reports to the Court and the parties at any time, and may have access to the Court as the Master deems necessary and appropriate without prior consultation with the parties.

43. The parties' counsel may apply to the Court for appropriate relief on matters of signifi cant concern in the implementation of this Decree. The Master shall present his views on any matter so presented to the Court.

44. Defendants will post in each building at the PCHD, and will either post in or send to each community program where members of the Plain tiff class receive services, a notice that the Court has issued a judgment setting forth standards and procedures to be applicable to all the Plaintiffs. The Defendants will insure that a copy of that judgment is available for inspection at Regional Offices of the Department of Mental Health during regular business hours by employees and agents of Defendants, vendors and service providers, resi dents, clients and their parents, relatives, and legal guardians, and all other interested members of the public.

45. Within sixty (60) days of the entry of this Decree Defendants will present to the Court and the Plaintiffs a detailed plan for implementation of this Decree. Plaintiffs will have fifteen (15) days to submit any comments respecting said plan. Said plan shall identify the efforts that will be undertaken to monitor the provision of services needed by members of the Plaintiff class. Said plan shall also indicate efforts that will be undertaken to inform the parent(s), guardian(s) and ad vocated) of each member of the Plaintiff class, of the name of the person accountable for monitor ing the safety and services provided each such member.

46. This Decree will terminate on December 31, 1984, unless a party petitions the Court to continue the effectiveness of the Decree for a further period, so that any remaining unresolved aspects of implementation of this Decree may be finally resolved, and the Court grants such petition.

So ordered.

Dated:

August 30, 1979 CHARLES W. JOINER
Detroit, Michigan United States District Judge

## ORDER APPOINTING MASTER AND ASSISTANT

On August 30, 1979, this court entered a Memorandum Opinion, Order and Decree dealing in a comprehensive way with the management and care provided at the Plymouth Center for Human Development for people resident therein and the state's responsibility to provide alternative services and places of residence in the community for the people there residing. The Memorandum Opinion, Order and Decree provides in detail for the development of a comprehensive community mental health and retardation system for the residents and clients at the Plymouth Center for Human Development. The system, among other things, is to provide as follows:

1. Residential environments which are the least restrictive and most normal settings appropriate for each resident and client — non-residential habilitation, training and support systems which are geographically separate from community resi dences and which provide the major daily activity for those clients, and management services to adequately develop, coordinate, administer, moni tor and evaluate this network of environments and programs.

2. Residents and clients are entitled to live in the least restrictive, most normal residential alternative and to receive appropriate habilitation, training and support suited to their individual needs.

3. Provisions for appropriate habilitation, train ing and support services to Plymouth Center for Human Development residents will not deprive other persons currently receiving mental health or retardation services from the defendants from continuing to receive such services for so long as they are determined to be necessary according to professionally accepted standards.

4. The determination of client service needs will occur through individualized screening, evalua tion and service planning process, including annual reviews of individual program plans.

5. The determination of the appropriate resi dential and nonresidential placements for each resident at the Plymouth Center for Human Development and for each client will be made so as to guarantee that all persons are placed in the least restrictive alternative which will provide them with appropriate habilitation, training and sup port. Smaller residential alternatives are preferred to larger ones. In general, new residents will have

no more than eight bed capacity.

6. Community residential and nonresidential services will be offered to the extent needed with due regard for each client's dignity and personal autonomy. Residents and their parents, guardians or advocates will participate in the community placement process and they will be advised of their rights to administrative appeal when and only when they object to a residential placement because the placement is in an inadequate facility or a facility which is too restrictive or because the proposed placement does not provide appropriate programmatic services.

7. All residential and nonresidential services will be offered by providers of services on a nondiscriminatory basis without regard to a resident's or a client's ability to pay.

8. Community residential alternatives and non-residential programs will be integrated in the community and operated in the most normal man ner appropriate to the needs of their clients.

9. An evaluation process will be established to assess a program's quality and effectiveness in meeting the needs of the clients.

10. A small percentage of mentally retarded individuals may require intervention in an in-patient facility due to the unavailability of community alternatives. This group will include medically fragile individuals requiring constant medical life support monitoring and those in dividuals who, although not mentally ill, exhibit behavior which could result in their being judicial ly admissible under §515 of the Mental Health Code.

11. Adequate residential and nonresidential services will be provided in appropriate, less restrictive alternatives to all residents and clients for as long as determined necessary to meet their individual needs according to professionally acceptable standards.

The Decree specifically provided that the court would appoint a Master and an Assistant Master who will supervise the implementation of the Memorandum Opinion, Order and Decree and will review and report to the court and the parties on the progress toward the implementation of the Decree. This Order is intended to indicate that the court has appointed David Rosen to be the Master under the Decree and that this appointment is for a period of 18 months unless earlier terminated by the court, as provided in the Decree. In addition to this, this court appoints Gerald J. Leismer as the Assistant Master, as provided in the Decree, for a similar period of time. The court believes that this team will provide more knowledge about community placement, more sensitivity to the needs individual clients, and a greater desire to see the the system as outlined in the Order works that could be provided by any two other persons in the country. A copy of the biographical resume each person is attached to this Order.

The duties of the Master and the Assistant *i* outlined in the Memorandum Opinion, Order a: Decree itself. They do not need to be repeated this Order. The court wishes to emphasizing however, that:

1. The Master and the Assistant are the court
employees and that their responsibility is to the
court and not to any of the parties in this case.

2. Their obligation is to see that the Decree carried out in accordance with its terms who
have been agreed to by the parties in this case a within the time frame set out therein.

3. The court directs that in the process supervising the provisions of the Memorandum
Opinion, Order and Decree the Master and Assistant Master must always have in mind that parties, the Master and the court, are dealing with
human beings and their well-being and an effort to
assist these persons to be as normal as possible described in the Memorandum Opinion, Order ; Decree.

4. It is the hope of this court that the par will be able to manage the carrying out of terms of this Decree under the supervision of Master and the Assistant and with the help and assistance that the Master and the Assistant give in such a way that no further action by court will be called for. However, the court c indicate that it stands ready and willing to be such assistance as may be necessary to see that terms of the Memorandum Opinion, Order Decree are carried out.

It is important that the Master and Assistant Master go to work as soon as possible. They are directed to contact the parties in case and to prepare a budget for the fiscal year 1979-80 which will provide adequate staff to c out the duties outlined in the Memorandum Opinion, Order and Decree and to begin with immediately thereafter implementing and such vising the carrying out of the terms of MemorandumOpinion, Order and Decree. So ordered.

Dated:
September 20, 1979
Detroit, Michigan

CHARLES W. JOINER
United States District

# THE COMMUNITY IMPERATIVE:

# A REFUTATION OF ALL ARGUMENTS IN SUPPORT OF INSTITUTIONALIZING ANYBODY BECAUSE OF MENTAL RETARDATION

# THE COMMUNITY IMPERATIVE: A REFUTATION OF ALL ARGUMENTS IN SUPPORT OF INSTITUTIONALIZING ANYBODY BECAUSE OF MENTAL RETARDATION

In the domain of Human Rights:

All people have fundamental moral and constitutional rights. These rights must not be abrogated *merely* because a person has a mental or physical disability. Among these fundamental rights is the right to community living.

In the domain of Educational Programming and Human Service:

All people, as human beings, are inherently valuable.

All people can grow and develop. All people are entitled to conditions which foster their development. Such conditions are optimally provided in community settings.

Therefore:

In fulfillment of fundamental human rights and

In securing optimum developmental opportunities,

All people, regardless of the severity of their disabilities, are entitled to community living.

## A TIME TO TAKE SIDES

Every fundamental social change is accompanied by active, sometimes bitter debate and confrontation. The deinstitutionalization movement fits this mold. Some say deinstitutionalization is moving ahead too quickly. The data, they argue, do not warrant a wholesale abandonment of institutions for the retarded (Balla, 1978; Baumeister, 1978; Begab, 1978; Ellis et al., Memorandum, October 18, 1978, p. 16; Zigler, 1977, p. 52). Another professional research constituency has heralded community residences as morally and empirically preferable to the institutional model (Baker et al., 1977; Biklen, 1979; Blatt, 1973; Dybwad, 1979).

The ENCOR (Nebraska) and the Macomb/Oakland (Michigan) models of community services are two much heralded, notable examples of systems which have received government and community support. Like other efforts to establish community residences, these systems have experienced resistance, too. And in New York State and in the Washington, D.C. metropolitan area, prospective group homes have even been firebombed. But despite the occasional resistance, community residences are being established at a rapid rate.

In every time of profound social change people must take sides. Indecision, the failure to take sides, is tantamount to a political choice. On the institution question, or might we more accurately call it the community integration question, the time has long since come to take a stand.

## THE CONTROVERSY

Pressures and justifications for continued institutionalization of retarded people abound. Despite recognition in most federal agencies that deinstitutionalization is a goal, social programs as frequently as not promote continued institutional services (Comptroller General, GAO, 1977). While the numbers of retarded persons institutionalized in mental retardation facilities have declined, the numbers of retarded people in nursing homes has increased in equal amounts (Conroy, 1977). Specialization of human services has been set forth repeatedly as justification for segregation. Virtually every state's education and developmental disabilities plan includes this reasoning. Institutions are being held out as appropriate placements for severely and profoundly retarded persons. Private and State economic interests make deintstitutionalization fiscally unprofitable, at least as long as there is an absence of conversion plans for the existing institutional facilities (Blatt et al, 1977), something no state has developed. Local zoning ordinances continue to pose threats, albeit less and less effectively, to group living arrangements for retarded people in residentially zoned neighborhoods (City of White Plains v. Ferraioli, 1974). Some experts have seen the future of institutions and institutional abuse as so permanent and unshakeable that they have proposed euthanasia for more severely retarded persons (Heiffetz and Mangel, 1975). This line of reasoning is strikingly like the United States Marine policy of fire bombing Vietnamese villages to save them. And some states have released retarded people from institutions into proprietary homes and onto the streets, without providing any community adjustment services. Such policies seem almost conspiratorial; predictably, in their anger and disillusionment, some local communities have perceived deinstitutionalization as "dumping."

Our own view is that the principal barriers to deinstitutionalization are not technical ones. Federal program incentives can be redirected. Conversion plans can be fashioned. Exclusionary zoning laws can be and are being reshaped in courts and legislatures. And community support services can put an end to the practice of "dumping." But no amount of tinkering with technical planning matters alone can bring about community integration. The real issue, the prerequisite for making any kind of determination about whether or not to support deinstitutionalization, concerns how people view other people and, more specifically, how people classified as retarded are perceived. Policies of forceably segregating groups of labeled people, whether for protection, punishment, or treatment, frequently reflect the possibility that the subject people have been devalued. In our culture, and in many others, institutions have provided the mechanism for large scale devaluation of certain identified groups, including the mentally retarded. As long as retarded people are socially, economically, and politically rejected, the institution will seem acceptable. But, forsake the devalued role and one must abandon a whole host of prejudicial and discriminatory treatments, the institutions among the most obvious of them.

By definition, institutions deny people community living experiences and limit the opportunities of nondisabled people to interact with their disabled peers. This fact exhibits quite clearly that the pivotal issues with respect of deinstitu-

tionalization are moral — the society is richer, community life more rewarding when all people are valued, when people share in each others' lives — and legal — the constitution protects liberty — and not merely ones of differing treatment strategies. Thus, we do nor make a case for community integration on the grounds that community living will always be more enriching or humane, in a clinical sense, than institutional settings, but rather on the grounds that integration is morally correct, that integration is basic to the constitutional notion of liberty, and that community programs inherently have far greater *potential* for success than do institutions.

It is probably fair to hypothesize that some people *believe*, simply as an article of faith, that retarded people should be segregated. That is, some people may hold this belief as a morally sound one, just as we hold the opposite view. Further, we can presume that the rationale for such a belief might be to protect the retarded, to protect "society," or both. At least these arguments have been raised historically, particularly during the eugenics era (Ellis, 1911). Today, arguments for institutional care are made largely on other grounds, mainly clinical ones.

Senior researchers, scholars, social planners, and decision makers have raised seven serious complaints against deinstitutionalization. Critics charge:

* that the allied concepts of deinstitutionaliza tion, normalization, and educational main - streaming are "little more than slogans . . . badly in need of an empirical base;"
* that some people have such profound re tardation that they cannot benefit from educational programming at all and certainly not from community placement. They call for "enriched" custodial care in an institu tional setting;
* that the community is not prepared to accept the profoundly and severely retarded and probably never will be;
* that there is no evidence that retarded persons develop more in non-institutional settings;
* that there can be good and bad institutions and good and bad community settings. They argue that neither form of service is in herently bad or good;
* that institutions are a more efficient and less expensive way to provide services, particular ly to people with severe and profound retardation;
* that current public policy toward deinstitutionalization is part of a historical swinging pendulum. By this line of reasoning, institutions will become fashionable and favored again, after the community thrust has run its course and experienced failure. Interestingly, when we move beyond the ideological, moral, and legal bases for community integration, that is when we examine the sociological, psychological, and economic research on institutions and community services we find that what we consider to be right is also best. The available research supports community integration. Observational data on institutions have revealed shocking evidence of human abuse, in the form of retarded persons forced to live in isolation cells, showers, and barren dayrooms, people washed down with hoses like cattle in a slaughter house, people tied to benches and chairs and constrained in straight jackets, toilets without toilet seats and toilet paper, or stall walls, broken plumbing, cockroaches, unclothed people burned by floor detergent and overheated radiators, people intentionally burned by their supervisors' cigarettes, rooms crowded wall to wall with a sea of beds, children locked in so-called "therapeutic" cages, people forced to eat their meals at breakneck speeds, food provided in unappetizing form (often as mush), and people drugged into quiescence. Observational data repeatedly reveal these and a range of other equally abusive phenomena (Biklen, 1973; Blatt and Kaplan, 1966; Blatt, 1970, 1973; Blatt McNally, and Ozolins, 1978-; DeGrandpre, 1974; Giles, 1971; Holland, 1971; N.Y.A.R.C. et al. v. Rockefeller, 1972; Wooden, 1974; Halderman v. Pennhurst, 1977; and Wyatt v. Hardin, 1971; Taylor, 1977; and Wiseman, 1969). The recent parade of court cases involving issues of institutional life provides another unequivocal source of data devastating to institutional legitimacy (N.Y.A.R.C. et al. v. Rockefeller, 1972; Wyatt v. Hardin, 197 1; Halderman v. Pennhurst, 1977).

Even the most modern institutions have fostered routinization and other forms of institutionalization of residents' lives (Blatt, McNally, and Ozolins, 1978). In fact, routinization, degradation, and human devaluation, though not always of a violent, cruel, or unusual nature, seem to be endemic to institutional environments (Goffman, 1961; Vail, 1966; Dybwad, 1970).

One argument frequently proposed in defense of institutions is that abuses result from insensitive and ill-trained or ineffectual staff. This hypothesis is overwhelmingly refuted by the breadth of data

available on the institutional context as a determinant of staff behavior (Zimbardo, 1973; Goffman, 1961; Taylor, 1977).

Another belief frequently used to buttress the besieged institutions holds that underfinancing creates the circumstances for abusive institutional conditions. Yet, institutions have proven to be the most expensive form of "service" for retarded persons. As the Pennhurst, Plymouth and Willowbrook experiences attest, even those institutions where states are expending between $35,000 and $45,000 per resident annually and which have some of the most favorable staffing ratios do not adequately protect their residents from physical and psychological harm or provide even minimally adequate habilitation to clients (Gilhool, 1978; Ferleger, 1979, MARC et al v. Donald C. Smith, M.D. et al). Higher ratios of professional staff and centralized professional services do not seem to improve the quality of services either (McCormick, Zigler, and Balla, 1975).

What else do we know about institutions? We know that interaction between institutionalized clients and other people, either other clients or treatment staff, drops substantially in the institutional environment (Goffman, 1961; Provence and Lipton, 1962; and Giles, 1971). We know that institutions are more often than not unstimulating environments (Flint, 1966). We know that institutionalized residents are not likely to be cared for by a few "primary" caretakers, but by hundreds of different staff over a two or three year period (Hobbs, 1975). We know that institutionalized children frequently become apathetic and isolated (Hobbs, 1975) or overly anxious to gain recognition and attention (Yarrow, 1962). Within just a few hours of entering an institution, residents tend to become dramatically less normal, both in appearance and in interaction with others (Holland, 1971). We know that institutional life can promote perseveration behavior. We know that the people who seem to benefit most from institutions are those who came from what clinicians have regarded as the worst home situations (Zigler and Balla, 1976). In other words, the institution was a relatively positive experience only in relation to more miserable pre-institutional experiences. And we know that people who have been institutionalized for long periods of time become more imitative and more conforming (Zigler and Balla, 1977). We know too that institutions can help infants learn to be non-ambulatory (DeGrandpre, 1974). Ironically, some critics of total deinstitutionalization have themselves reported an inverse relationship between institutional size and quality of care. Institutions with smaller living units are superior to those with larger ones and most importantly, group home residences of 10 residents or less, in the community, tend to be more resident oriented (Zigler and Balla, 1976; and McCormick, Balla and Zigler, 1975). Furtner, a comparison of severely handicapped children in institutional and small community settings provides substantial evidence of greater skills development among clients in the small community settings (Kushlick, 1976;Tizard, 1969).

While an argument has been made that for severely and profoundly retarded persons the institution is a less expensive mode of service than community residences (Zigler, 1978), data have not been provided to substantiate that claim. In fact, available information indicates that if there is a difference, institutions are a more expensive though less effective mode of service (McCormick, Balla and Zigler, 1975). A study of the cost of services for 362 ex-residents of the Willowbrook Institution found a savings of at least 50% and 68% of the subjects were classified as severely and profoundly retarded (N.Y.S. Department of Mental Hygiene, N.D.). Similarly, Judge Broderick found that it cost $60 per day to keep people in disgraceful conditions at the Pennhurst institution and one third that amount to provide community living arrangements (Halderman v. Pennhurst, 1977). In each of the available studies, it is fair to conclude that there are no "economies of scale" in residential services (Piasecki, et al., 1978; O'Connor and Morris, 1978; Murphy and Datel, 1976; Jones and Jones, 1976 and Mayeda and Wai, 1975). If there are differences to be seen, those can best be described as an inverse economics of scale; s maller is less expensive.

Historically, it has been argued, institutions were developed in 19th century America as a response to the failure of communities to meet the needs of the retarded. This is only partially true. It is true that Dix, Howe, Wilbur, Seguin and others formulated the earliest institutions in response to community failure, but the failure was an absence of programs and services *and not a failure of actual community services.* Shortly thereafter, at the turn of the century, large institutions came into being, and not so much as products of benign motives. The latter institutions and the then emerging institutional model were largely a response to perceived social problems created by urbanization and immigration. Their purpose was to isolate the retarded from society. So there is no objective

truth to the claim that we are witnessing the swing of a pendulum, back to a community service model which once, a century ago, failed us. We have never fully explored the potential of community services.

Another argument frequently used to justify institutions hinges on the claim that some people are so retarded that they cannot benefit from educational programming. This thesis has been used to justify "enriched" custodial care in institutions (Ellis et al, 1978). Yet, only if education is artificially limited to academic training can it be arguea, as some have, that not all people will benefit from it. We know that all people can benefit from educational or habilitative programming. This conclusion has been drawn by major proponents of community integration (Blatt and Garfunkel, 1969; Dybwad and Dybwad, 1977; PARC v. Commonwealth of Pennsylvania, 1971), as well as by some who have advocated a continued institutional role (Baumeister, 1978; Zigler, 1978).

Critics and proponents of deinstitutionalization do agree that there are both "good" and "bad" institutions and "good" and "bad" community residences. That is, those on either side of the controversy can point to abusive institutions, relatively "good" institutions, bad community settings and good community settings. But, therein ends the agreement. As proponents of deinstitutionalization, we reject the view that good and bad settings will occur equally as frequently in communities as in institutions so long as state involvement remains relatively constant. We believe that institutions have a propensity to spawn abuse. We further believe that community settings have inherently greater potential to afford humane, individualized, and appropriate treatment.

Further, we believe that even so-called "good" institutions can be good only in a clinical sense. Residents may receive competent, even imaginative, educational/habilitative programming. But, the very existence of the institution must be viewed as a failure. Here we must refer to the earlier examination of moral and constitutional rights. Institutions, by definition, limit retarded people from interaction with non-disabled people and limit retarded people from community living. That is not to say that we, nor anyone else, can justify "dumping" retarded people into communities. Further, we expect and know that retarded people may have difficulties in adjusting to community life. To this our response should be not to eliminate the problem (by institutionalizing people) but to help people solve those problems.

Data on community programming support the view that whereas abuses in institutions are to be expected, abuses in community programs are more the exception than the rule. First hand accounts, for example, indicate that deinstitutionalized retarded persons generally are happy or happier about their lives in the community (Edgerton and Bercovici, 1977; Bogdan and Taylor, 1976;Gollay et al., 1978). Moreover, when given an option to stay in the community or return to the institution, well over 75% of those placed in foster homes, group homes, and adult homes would stay in the community (Scheerenberger and Felsenthal, 1976). Further, the data on community adjustment, by whatever standards are applied, yield a consistent pattern of moderate though unpredictable success (Bailer, Charles, and Miller, 1966; Edgerton and Bercovici, 1976; Cobb, 1972; Bogdan and Taylor, 1976; Kennedy, 1976; Muelberger, 1972; O'Connor, 1976; and Gollay et al., 1978).

The complement to adjustment is acceptance. Is it fair to say that retarded people, particularly the more severely and profoundly retarded, will not be accepted in communities? No. Despite some instances of violence and other forms of resistance, the history of retarded people in the community is a history of acceptance. In fact, the majority of all retarded people, including the most disabled, have always lived in the community, with their own families and have found considerable acceptance (Saenger, 1957). And charges that the retarded are more likely than others to commit criminal acts are entirely without foundation (Biklen and Mlinarcik, 1978). Even the allegations that property values decline when group homes: and other home-like living arrangements for the retarded are located in residential neighborhoods has been proven false (Thomas, 1973; N.Y. State Office of Mental Retardation and Developmental Disabilities, 1978). Finally, if some retarded people find resistance and hostility in the communities, the fair response is hardly to punish retarded persons (by institutionalizing them) for others' ignorance.

## CONCLUSION

The data on institutions and community programming do not equivocate. Institutions have little with which to defend themselves. Community integration seems, in every respect, preferable. Indeed, we ask, when is it time to express

one's moral beliefs? When is it time to enforce constitutional rights? And when is there enough data to support a fundamental social change? At what point must we cease to ask "does it work?" and instead ask "how can we help make it work?" Even if the data were less clear, even if there were no data to support either side of the controversy, institution vs. community integration, we would support the latter. We make the determination on moral and constitutional grounds.

We believe that all people, however severe their disabilities, must be permitted opportunities to live among their non-disabled peers and vice versa. We believe that people who have been classified as retarded should have available to them the patterns and conditions which characterize the mainstream of society. Indeed, we believe that support services should be available to promote the fullest possible integration of people with disabilities into communities.

To allow for continued segregation of retarded persons into institutions and other forms of residential ghettos can only lend credence to the many fears of, and myths and prejudices against people with disabilities. And no amount of scientific language can mask the fact that segregation benefits no one. We find no reasons, either based in data or moral belief, to support the practice of isolating or segregating retarded persons from the mainstream of communities. If people need services, let them receive them in typical communities. Rational scientific inquiry and moral convictions can support no other conclusion.

The issue of institutionalization, like the issues of slavery and apartheid, strikes at the very core, the very essence of our common humanity. Just as the emergence of Jim Crowism, the Ku Klux Klan, and racist theories of black inferiority do not and cannot justify the conclusion that Black Americans were better off under slavery, neither can neighborhood resistance, exclusionary zoning codes, expert claims that some people cannot learn, or even firebombing of prospective homes combined to justify the conclusion that mentally retarded people are better off in institutions. What is at issue here is fundamental human rights and the quality of the lives of human beings. To claim that some people cannot learn, to place those same people in isolated institutions, and then to suppose that the dignity and well being of those people can be protected, let alone enhanced, is to deny history. And to suggest that some people cannot and should not live amongst their fellow human beings is to deny our shared humanness.

**REFERENCES**


Baker, B.L., Seltzer, G.B., and Seltzer, M.M. *As close as possible*. Boston: Little, Brown and Company, 1977.

Balla, D.A. in Wyatt v. Hardin CA. 3195-N. U.S. District Court, Middle District of Alabama, Deposition of David A. Balla, November 8, 1978. Bailer, W.; Charles, D.; and Miller, E. *Mid-life attainment of the mentally retarded, A longitudinal study*. Lincoln: University of Nebraska Press, 1966.

Baumeister, A.A. in Wyatt v. Hardin CA. 3195-N. U.S. District Court, Middle District of Alabama, Deposition of Alfred A. Baumeister, November 7, 1978. Begab, M.J. in Wyatt v. Hardin CA. 3195-N. U.S. District Court, Middle District of Alabama, Deposition of Dr. Michael J. Begab, August 21, 1978. Biklen, D. Human Report, in Blatt, B. (Ed.). *Souls in extremis.* Boston: Allyn & Bacon, 1973. Biklen, D.P. and Mlinarcik, S. "Criminal justice." in Wortis, J. (Ed.). *Mental retardation and developmental disabilities*, Vol. X, New York: Brunner/Mazel, 1978. Biklen, D. "The case of deinstitutionalization." *Social policy*, May/June, 1979. Blatt, B., Bogdan, R., Biklen, D., & Taylor, S. From institution to community: a conversion model. *Educational programming for the severely and profoundly handicapped.* Reston, Va.: Council for Exceptional Children, 1977. Blatt, B. *Exodus from pandemonium: human abuse and the reformation of public policy*. Boston: Allyn and Bacon, 1970. Blatt, B., & Garfunkel, F. *The educability of intelligence.* Washington, D.C.; Council for Exceptional Children, 1969. Blatt, B. & Kaplan, F. *Christmas in purgatory.* Boston: Allyn and Bacon, 1966. Blatt, B.; McNally, J.; and Ozolins, A. *The family album.* Syracuse: Human Policy Press, 1978. Blatt, B. *Souls in extremis: an anthology on victims and victimizers.* Boston: Allyn and Bacon, 1973. Bogdan, R., & Taylor, S. The judged, not the judges: an insider's view of mental retardation. *American psychologist*, 1976, 31(1), 47-52. Broderick, R.J. (Judge in the Pennhurst Case) Opinion Terri Lee Halderman, et al. v. Pennhurst State School and Hospital et. al., CA No. 74-135 (ED Pa. December 23, 1977). *City of White Plains v. Ferraioli.* 34 N.Y 2d 300 357 N.Y.S., 2d 449 (1974). Cobb, H.V. *The forecase of fulfillment: a review of research on predictive assessment of the adult retarded for social and vocational adjustment.* New York: Teachers' College Press, 1972. Comptroller General. *Report to Congress: returning the mentally disabled to the community: government needs to do more.* Washington: GAO, January 7, 1977. Conroy, J.W. Trends in deinstitutionalization of the mentally retarded. *Mental retardation*, 1977, 15(4). DeGrandpre, B. *The culture of a state school ward.* (Doctoral Dissertation Series 74-17570), Ann Arbor, Michigan: University Microfilm, 1974. Dybwad, G. *A society without institutions: presentation to the residential alternatives symposium.* University of Hartford, December 9, 1978, unpublished. Dybwad, G. and R. Dybwad. Severe mental retardation. *International child welfare review*, 1977, 32:55-86. Dybwad, G. Roadblocks to renewal of residential care in Menolascino, T.J. *Psychiatric approaches to mental retardation.* New York: Basic Books, 1970. Edgerton, R., & Bercovici, S. The cloak of competence — years later. *American journal of mental deficiency*, 1976, 81, 485-497. Ellis, H. *The problem of race regeneration.* London: Cassell. 1911.

Ellis, N.R.; Balla, D.; Esteft, O.; Hollis, J.; Isaacson, R.; Orlando, R.; Polk, B.E.; Warren, S.A.; Siegel, P.S. *Memorandum*. Montgomery, Alabama, October 18, 1978.

Ferleger, D., and Boyd, A. Anti-institutionalization: The Promise of the Pennhurst Case. *Stanford law review*, Vol. 3, April 1979. Flint, B. *The child and the institution.* Toronto: University of Toronto Press, 1966.

Giles, A. Language simulation in state institutions, in Blatt, B. and Garfunkel, F. (Eds.), *Massachusetts study of educational opportunities for handicapped and disadvantaged children.* Boston: Commonwealth of MA, 1971.

Gilhool, T. *Habilitation of developmentally disabled persons in a small group community setting versus a large group institutional setting.* Philadelphia: PILCOP, N.D.

Goffman, E. *Asylums.* Garden City: Anchor/Doubleday, 1961. Gollay, E., Friedman, R., Wyngarden, M., and Kurtz, N. *Coming Back.* Cambridge, MA: Abt Books, 1978.

*Halderman v. Pennhurst*, No. 74-1345 (E.D. Pa. 1977).

Heifetz, M.D. and Mangel, C. *The right to die.* New York: G.P. Putnam's Sons, 1975. Hobbs, N. (Ed.). *Issues in the classification of children.* San Francisco: Jossey-Bass, 1975.

Holland, H. The social experiences of newly committed retarded children. In Blatt, B. and Garfunkel, F. (Eds.), *Massachusetts study of educational opportunities for handicapped and disadvantaged children.* Boston: Commonwealth of MA, 1971.

Jones, P.P. and Jones, K.J. *Costs of Ideal services to the developmentally disabled under varying levels of adequacy.* Waltham, MA: Florence Heller Graduate School for Advanced Studies in Social Welfare, 1976, unpublished paper.

Kennedy, R. *A Connecticut community revisited: a study of the social adjustment of a group of mentally deficient adults in 1948 and 1960.* Hartford: Connecticut State Department of Health, Office of Mental Retardation, 1966.

Kushlick, A. Wessex, England in Kugel, R., and Shearer, A. (Eds.). *Changing patterns in residential services for the mentally retarded,* Washington: GPO, (PCMR), 1976, 297-312.

MARC et al v. Donald C. Smith, M.D. et al., 1978.

Mayeda, T., and Wai, F. *The cost of long term developmental disabilities care.* Pomona, CA: University of California L.A., Neuropsychiatric Institute, July, 1975, unpublished.

McCormick, D., Balla, D.A., Zigler, E. Resident care practices in institutions for retarded persons. *American journal of mental deficiency*, 80, I, 14, 1975, 1-17.

Muehlberger, C. The social-psychological experiences of adult former residents of a state School for Mentally Retarded. *Mental retardation*, 1974, 12(6), 23. Murphy, J. and Datel, W. A cost benefit analysis of community versus institutional living. *Hospital and community psychiatry*, Vol. 27, No. 3, March 1976, 165-70. National Association for Retarded Citizens. *The right to choose.* Arlington, TX: NARC, 1973.

New York State Department of Mental Hygiene. *Cost of services for willowbrook class clients in community placement.* Albany: N.Y. State Department of Mental Hygiene, N.D.

*N.Y.A.R.C. et al. v. Rockefeller* 1972. Also decision, 1973.

N.Y. State Office of Mental Retardation and Developmental Disabilities. *News.* Albany: N.Y. State O.M.R. and D.D., 1978, unpublished.

O'Connor, G. and Morris, L. *A research approach to cost analysis and program budgeting of community residential facilities.* Eugene, Oregon: Rehabilitation Research and Training Center in Mental Retardation, 1978.

O'Connor, G. *Home is a good place: a national perspective of community residential facilities for developmentally disabled persons.* Washington, DC.: American Association on Mental Deficiency, 1976.

Piasecki, J.R.; Pittenger, J.E.; and Rutman, I.D. *Determining the costs of community residential services for the psychosocially disabled.* Rockville, MD: U.S. Department of HEW, National Institute of Mental Health Administration, 1978.

Provence, S. and Lipton, R. *Infants in institutions.* New York: International Universities Press, 1962.

Public Interest Law Center of Philadelphia. *Executive summary* (review of Pennhurst decision). Philadelphia: PILCOP, N.D.

Saenger, G. *The adjustment of severely retarded adults in the community.* New York: New York State Interdepartmental Health Resources Board, 1957.

Taylor, S. *The custodians: attendants and their work at state institutions for the mentally retarded.* Ann Arboy: University Microfilm, 1977.

Thomas, J.K. An overview of Washington state's group homes for developmentally disabled persons. In Sigelman, C.K. (Ed.). *Group homes for the mentally retarded,* (Monograph No. 1). Lubbock, TX: Texas Tech. University, Research and Training Center in Mental Retardation, August, 1973.

Tizard, J. *Community services for the mentally handicapped.* London: Oxford University Press, 1969.

Vail, D. *Dehumanization and the institutional career.* Springfield, IL: Charles C. Thomas, 1967.

Wiseman, F. "Titticut follies." 16mm film. New York: Grove Press, 1969.

Wooden, K. *Weeping in the playtime of others.* New York: McGraw Hill, 1974.

*Wyatt v. Hardin* (CA no. 3195-N), 1971.

Wyatt v. Hardin. Motion for modification. Civil Action No. 3195-N. U.S. District Court, Middle District of Alabama, Northern Division, October 20, 1978.

Yarrow, *Maternal deprivation.* New York, NY: Child Welfare League of America, 1962.

Zigler, E., & Balla, D.A. Impact of institutional experience on the behavior and development of retarded persons. *American journal of mental dificiency*, 1977, 82, 1-11.

Zigler, E., & Balla, D. Motivational factors in the performance of the retarded. In Koch, Rand Dobson, J.G. (Eds.). *The mentally retarded child and his family: a multi-disciplinary handbook.* (2nd ed.) NY: Brunner-Mazel, 1976.

Zigler, E. in Wyatt v. Hardin, CA. 3195-N. U.S. District Court, Middle District of Alabama, Deposition of Dr. Edward Zigler, November 1978.

Zimbardo, P.G. *Stanford prison experiment* (Slide Show). Stanford, CA: Zimbardo Inc., 1973.