

Memorandum



AEP:MHN:PKC:MM:CA:plh
DJ 168-62-18

Subject

Press Release and Information
Regarding Settlement in United
States, et al. v. Pennsylvania,
et al., C.A. No. 92 CV 2094 (E.D. Pa.)

Date

SEP 19 1994

To Pamela K. Chen *PKC*
Trial Attorney
Special Litigation Section
Civil Rights Division

From Myron Marlin
Public Relations
Civil Rights Division

Attached are the materials I discussed with Lee Douglass last week relating to the settlement reached in United States, et al. v. Commonwealth of Pennsylvania, et al., C.A. No. 92 CV 2094 (E.D. Pa.). As you will see, I have included: a) a draft press release; b) copies of the internal memoranda between our office and the front office describing the agreement; c) a copy of the agreement; and d) two newspaper articles that came out a day or two after the agreement was signed by all parties.

You should be aware that although Mark Masling, the other trial attorney in this case from our office, and I had signed the agreement by September 13, 1994, we did not received final approval on it from Assistant Attorney General Patrick until September 15, 1994. Therefore, we did not feel that we could respond to any inquiries from the media until that time. In addition, at the time of signing, we agreed not to speak to the media about the settlement for 48 hours, in order to allow the State to be the first to notify the state employees' union of the intended facility closure.

As it turns out, the story (including a copy of the actual agreement) was somehow leaked to the media, which prompted the almost immediate coverage of the agreement. Given these events, I do not think we will receive much attention on any press release we issue. If you have any questions, please give me a call at Extension 4-6261. Thank you for all of your assistance.

DRAFT

September 19, 1994

FOR IMMEDIATE RELEASE
September __, 1994

EMBREEVILLE CENTER TO BE CLOSED UNDER SETTLEMENT
REACHED IN DEPARTMENT OF JUSTICE LAWSUIT

On September 12, 1994, only days before trial was to begin, the Commonwealth of Pennsylvania signed a historic agreement with the Department of Justice resolving civil rights claims brought by the Department regarding the care and treatment being provided to individuals residing at the Embreeville Center, a state residential facility for individuals with developmental disabilities outside of Philadelphia, Pennsylvania. In the agreement, the Commonwealth agreed on a plan to place all of the individuals currently residing at Embreeville Center into community homes and to close the facility by September 1997. This agreement, which represents an unprecedented collaboration between the United States and parent and public advocacy groups, also requires the Commonwealth to make substantial improvements at Embreeville during the three-year period prior to its planned closure.

In its complaint filed last April in this case, the Department alleged that the Commonwealth was failing to provide Embreeville's approximately 200 residents with adequate programming, medical care and therapy services and that they were subjecting residents to undue risks of harm and unreasonable restraint. At trial, which was scheduled to begin on September

14, 1994 before Federal District Court Judge Clarence C. Newcomer, the United States and their co-counsel from the parent and public advocacy groups were prepared to present the testimony of at least 20 expert and lay witnesses and over 200 exhibits supporting their claims as to the unconstitutional conditions at the facility. The trial was expected to last six weeks.

Regarding the resolution of the lawsuit, Assistant Attorney General of the Civil Rights Division, Deval L. Patrick, said that "the agreement reflects the Department's policy on the need for states to turn away from the traditional practice of institutionalizing of individuals with developmental disabilities and to develop community alternatives. The agreement reached by the United States and the Commonwealth of Pennsylvania represents a significant vindication of the rights of individuals with developmental disabilities to receive appropriate habilitation and care and not to be confined to state institutions. It is the Department's hope that this agreement will have an impact beyond this lawsuit and this institution."

Within the coming weeks, the parties will be asking Judge Newcomer to enter the agreement as an order of the Court and to retain jurisdiction over the agreement to ensure its enforcement. The agreement will remain in effect for at least one year after the last resident leaves Embreeville, after which time the Commonwealth may petition the Court for termination of the agreement based on a finding of compliance with the terms of the agreement.

EXPEDITE

Date: September 15, 1994

ROUTING AND TRANSMITTAL SLIP

	Initials	Date
TO:		
1. Deval L. Patrick	DLP	9/15/94
2.		
3.		

RE: Recommended approval of Consent Decree in United States v. Pennsylvania, a CRIPA lawsuit. Decree must be filed with court by Sept. 21, 1994

I recommend that you approve and authorize the filing of the attached consent decree from the Special Litigation Section.

I have reviewed the consent decree and discussed it with Art Peabody. It provides comprehensive relief for the alleged constitutional violations of institutionalized persons with mental retardation confined at the Embreeville Center.

In summary, the decree provides for an extensive and thorough medical, physical and psychological examination of each resident and the provision of appropriate treatment by independent professionals; the training of staff; the hiring of additional staffpersons so that the ratio of staff to residents will be no greater than 1:4 during the daytime and 1:8 at night;

The decree also provides for the closing of the facility by October 1997, and the community of placement of all current residents. In combination with the community placement, each resident will be placed on a personal program to ensure proper treatment after community placement.

All of the relief will be observed and enforced by a Monitor whose expenses will be paid by the defendants. Although the decree will terminate 12 months after the placement of the last resident, a grievance process will be put in place to allow residents and their families to take any aspect of the resident's community placement or treatment after the termination of the decree to an independent arbitrator. Defendants will be bound by the arbitrator's decision.

FROM: Loretta King
LK Deputy Assistant Attorney General, Voting Section

THE PHILADELPHIA INQUIRER

road
3 casethat any pollution
court disagreed.

counsel for the former Penn. He added that the company decided whether to make its appeal of the ruling to the Supreme Court.

it may be a few days left to The company must appeal 30 days of the ruling, which is Aug. 23. Olson said that is not the effective date of the

case was heard by a special judge federal court set up to matters related to the demise Penn Central in 1976 and the of Conrail, originally a quasi-company created by Congress freight operations considered

federal government negoti- or years with Penn Central fair price for the sprawling d. In arguing that it shouldn't o pay for the Paoli cleanup, Central said the government to a price for the railroad ty and now wants the seller to back and make improvements.

the court said the sale price othing to do with Penn Cen- liability for pollution during me it owned the yard.

ten Penn Central owned and ted these yards for profit ... Ce became primarily re- at pollution," said the residing Judge John

TA, Conrail and Amtrak are not sarily off the hook completely. though they aren't responsible olution before 1976, a future could rule that all past and nt tenants and owners of the yard must share responsibility use pollution may have taken

Notorious center for retarded
to be phased out under accord

Embreeville residents are to move into community settings. Thus ends a fight over mistreatment.

By Julia C. Martinez
INQUIRER STAFF WRITER

A long and miserable saga of abuse and neglect of mentally retarded residents at the Embreeville Center came to an end yesterday when state officials announced that the Coatesville facility would be closed in three years.

The closure settles a lawsuit by the U.S. Department of Justice against the Commonwealth of Pennsylvania over operation of the center.

Under the settlement, residents will be moved into community settings where treatment and services will be scrutinized by court-appointed monitors and panels of psychiatrists and other experts.

In the meantime, the quality of care at Embreeville will be vastly upgraded until the last patient checks out by the target date of Sept. 30, 1997, lawyers involved in the settlement said.

The settlement, which is subject to federal court approval, would end the gut-wrenching chronicle of mistreatment of retarded residents by Embreeville employees and by criminals once housed at the facility.

Embreeville Center was opened in 1933 as a hospital for people with mental illness and was converted to a center for people with mental retardation in 1972.

In recent years, residents had been reported beaten, raped and assaulted. Some allegedly had bones broken. Many had been drugged by center staff to keep them quiet and

out of the way.

Federal and state investigations substantiated many of the reports. A state inspection in 1990 found "many incidents of frequent falls resulting in bruises, lacerations and fractures," many of which "reflected no 'known cause' for injuries." In 1991, nine employees were fired or suspended for incidents ranging from physical abuse of patients to failure to report suspected abuse and not following center policies.

Last year, the Justice Department sued Pennsylvania, alleging that the state's management of the Chester County facility violated the rights of its 225 residents under the federal Civil Rights of Institutionalized Persons Act of 1980.

The case was scheduled to go to trial today in U.S. District Court in Philadelphia.

Among the accusations leveled by the Justice Department were that Embreeville employees were poorly trained, that residents were not given adequate medical care and that residents were dispensed psychotropic drugs "as a form of chemical restraint in lieu of treatment or for the convenience of the staff."

In a news release yesterday, Karen F. Snider, secretary of the Department of Public Welfare, said the settlement was "in the best interest" of the residents. "We intend to work with each individual to see that the services they receive in the future are equal to or better than their current care," Snider said.

Meanwhile, staff training will be improved, private consultants will be hired and physical and occupational therapists will be added. Medical care and the use of medication will be carefully monitored, the plan said.

Advocates for the mentally retard-

ed hailed the settlement.

"I think this agreement is the best agreement I've ever seen in terms of improving a facility and putting in place mechanisms to make sure the improvements will be good," said Edmond A. Tiryak, the attorney for People Interested in Embreeville Residents, a group consisting of the families of Embreeville residents.

"The very significant thing about this case is that parents, advocates, residents and the U.S. government all sat on one side of the table and were in agreement on what needed to be done," said Liene Shone, a lawyer with the Disabilities Law Project in Philadelphia. She represented Embreeville residents in a companion lawsuit, which is also resolved by the current settlement.

Judith Gran of the Public Interest Law Center of Philadelphia, the lead attorney on the companion lawsuit said that in the long run, the cost housing Embreeville residents in the community is expected to be less than the \$96,000 per year it now costs to house each individual at Embreeville.

The plan will cover more than 200 individuals who have resided at Embreeville center since April 1992, as well as retarded people living in the community who either unserved or underserved Gran said.

Under the agreement, the 162 now living at Embreeville will leave the center during a three-year transition period beginning immediately and move into a group home, an apartment or any number of available settings in their respective communities.

"The agreement will remain in place for a year after the last person is moved and until the panel of experts decides that everyone will be taken care of," Tiryak said.

'Nightmare' institution to phase out by '97

by Jim Smith
and John F. Morrison

Daily News Staff Writers

The "nightmare" is ending for residents of the Embreeville Center and their families.

A last-minute agreement among state and federal officials, families and patient advocacy groups was reached on the very eve of a trial on a suit charging wide-

spread abuse of patients at the Chester County Institution for the retarded.

The agreement calls for phasing out the facility by September 1997 and transferring patients to community housing under the supervision of outside monitors.

The Embreeville Center, outside of Coatesville, has been the focus of complaints about patient abuse, poor care and crumbling

facilities for years. Last year, Norman Baker, president of Philadelphia Advocates for Persons With Mental Retardation, called the institution a "nightmare."

His comments came after the U.S. Justice Department sued the Pennsylvania Welfare Department over operation of the center.

Baker's description of the facility was one of the kinder comments made about the institution in the past dozen or so years, as complaints by families of patients and their advocate groups about the center escalated.

Trial on the latest suit, filed last February by six residents and two patient-advocate groups, was to have started today before U.S. District Judge Clarence C. Newcomer.

The agreement will have to be

approved by Newcomer, who will hold a hearing on the matter at an undetermined date.

Helen W. Shane, of the Disabilities Law Project, who represented residents of the center, said the agreement has three major components:

- Protection of residents during the transition period.
- The movement of patients into residential housing in communities of their choice.
- Protection of patients in those community settings.

"This is really exciting," Shane said. "For the first time, we, the representatives of the residents and families and advocacy groups were sitting on the same side of the table with the United States government, all in agreement on how to solve these problems."

Edmond A. Tiryak, who represented family members in the suit, said, "Embreeville residents and their families can today be assured that there will be a major upgrading of services at the facil-

ity, that their concerns about community placements will be heard, and that community placements will be safe, secure and monitored."

The agreement calls for increased staffing and psychiatric services at the center, increases in the quality of medical care, including more use of outside consultations, with provisions for quick solutions to any future problems that may occur.

Once residents have been placed in the community, the agreement calls for guaranteed lifetime care and security.

Shane noted that "people do best in the kinds of environment that everybody else lives in." Under the agreement, she said, patients might live in their own homes, family homes or in group residences with two or three others.

Services to meet their needs will be provided for them in the homes in which they settle, she said. ■

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Fence gets 5 years in 'smash & grab'

by Jim Smith

Daily News Staff Writer

The jeweler and the nine thieves had little in common, it seemed.

Robert Cott, a merchant on Jewelers' Row in Philadelphia, was groomed and wealthy and well-mannered, and when he purchased the thieves' stolen Rolex

Assistant U.S. Attorneys Robert Goldman and Christopher Hall noted that all but one of the thieves cooperated with authorities after being confronted by FBI agents and were shown some leniency by the judge as a consideration for their willingness to confess and testify.

The longer sentences were reserved for the thieves who had

CAN'T CALL POLICE **CAN CALL POLICE**

 