

# Memorandum

U.S. v. Tennessee



MR-TN-003-001



AEP:BPS:SGB:eh  
DJ 168-72-30

<b>Subject</b> Justification for Proceeding on a Fast Track in the S. 10 Investigation of the Arlington Developmental Center	<b>Date</b>  JUN 18 1990
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**To** John R. Dunne  
Assistant Attorney General  
Civil Rights Division

**From** Arthur E. Peabody, Jr. *AP*  
Chief  
Special Litigation Section *8/1990*

Attached is our recommendation for initiating an investigation into the conditions of confinement at Arlington Developmental Center (Arlington), Arlington, Tennessee, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997 et seq. Arlington is a residential facility for the mentally retarded operated by the Tennessee Department of Mental Health and Mental Retardation. As set forth in this memorandum and the attached recommendation, we have received information that some State officials are involved in an attempt to cover up conditions at Arlington and that there may be destruction or modification of records and/or retaliation against employees once the Governor receives notice of our proposed investigation.

We were informed by the United States Attorney for the Western District of Tennessee, W. Hickman Ewing, Jr., that Tennessee State Representative David Shirley had requested his assistance concerning possible mistreatment and abuse of residents at Arlington. Representative Shirley related that he had received a number of complaints from employees and parents of residents alleging such mistreatment and abuse. He initially responded to those complaints by requesting a meeting with the Commissioner of Mental Health and Mental Retardation, Eric Taylor. In July 1989, Representative Shirley and a number of employees met with Mr. Taylor to discuss conditions at Arlington that, the employees alleged, included physical abuse of residents by developmental technicians (DTs), health violations, and retaliation against those who reported such conditions. Representative Shirley related that Mr. Taylor was displeased that the employees had complained to the legislature and did not provide any assurances that he would follow up on the issues brought to his attention. Because further meetings with Mr. Taylor did not appear fruitful, Representative Shirley arranged for a meeting with Governor Ned McWherter. On September 26, 1989, the Representative, a number of employees, and one parent met with the Governor concerning the allegations.

Representative Shirley reported that Governor McWherter stated that he would not get involved and made other comments suggesting efforts to inappropriately keep the matter quiet and outside public purview. United States Attorney Ewing has counseled us to proceed quickly in a manner which would preclude destruction of records and any actions by institutional officials to "gag" the employees or frustrate the investigation.

Because of these allegations, we have modified the notice letter to the Governor and State officials to include a reference to the CRIPA provision prohibiting retaliation, 42 U.S.C. §1997d, and have requested the Governor's cooperation in preserving facility records. Additionally, we would like to place this case on a fast track for investigation and to tour the facility as soon as is statutorily permissible, *i.e.*, arrange for a tour immediately following the expiration of the seven day notice requirement. 42 U.S.C. §1997b(a)(2). In order to proceed in this manner, we suggest delaying the issuance of the letter until we have arranged for all experts to be available for the estimated five day tour within that timeframe. This procedure will permit us to organize tours and other investigatory activities to commence as soon as statutory requirements permit.

It is possible that we will meet with some resistance from the State concerning this approach and that there will be an attempt to deny us access to the facility within such a short timeframe. Therefore, before sending the notice letter, we intend to prepare pleadings requesting the district court to direct the State to grant us immediate access to the facility in order that we may fulfill our statutory obligations and conduct our investigation. We would like your approval to file the access suit if access is denied. We have filed two such actions in the past, with favorable results. See, e.g., United States v. County of Los Angeles, 635 F.Supp. 588 (C.D.Cal. 1986).

The alleged facts regarding Arlington are among the most flagrant and egregious we have received in recent years. As such, the steps outlined here are merited.

Please advise.

Attachments

Approved: 

Disapproved: \_\_\_\_\_

Comments: