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Placement of Undercover Employee at the
Clover Bottom Developmental Center, a
Facility for Developmentally Disabled,
in Nashville, Tennessee

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We recently met with Al Moskowitz and Tom Perez to discuss our involvement with four centers for developmentally disabled individuals run by the state of Tennessee. Evidence at several of the centers indicates that there has been a pattern of abuse and neglect of residents there, including some criminal activity. We have utilized this evidence in our civil action and investigations, but as we outlined in our meeting, the nature of the centers, including rigid management control over employees, the inter-relationship of the employees, poor or fraudulent documentation, and the mental disabilities of the individual residents suffering the abuse, has limited our ability to uncover some of the more egregious abuse we believe to be occurring.

Years ago, placement of undercover employees in these types of situations proved fruitful. We believe that this type of operation would be useful here, and would be a good place to reinvigorate our cooperation with the Criminal Section in investigating institutions. We recommend that our offices coordinate with the Office of the United States Attorney and the FBI in Nashville to place an individual undercover at the Clover Bottom Developmental Center ("CBDC") in Nashville.

EXECUTIVE SUMMARY

Our investigations of institutions for developmentally disabled citizens in Tennessee began with the Arlington Developmental Center ("ADC") located outside of Memphis. Following a lengthy trial in 1993, the district court issued a stinging rebuke of the facility and its administrators, and a detailed remedial order is now in place. Although we believe that physical abuse (as well as theft of resident property and drug dealing) may be continuing at the ADC, the facility is now under court order, is reviewed by a court monitor pursuant to the order, has hired three investigators and is being investigated by the Tennessee Bureau of Investigation ("TBI"). The local district attorney's office has indicted at least three ADC

cc: Records Chrono Peabody Bowman Weinstein Hughes Jackson Yost Hold

employees for the murder of a resident, and five employees for misdemeanor assaults of residents.

With such involvement by local authorities at this facility, an undercover operation may be directed best at one of the other facilities, which our investigations indicate evidence similar patterns of abuse, management cover-up and petty criminal activity. Of the three other Tennessee centers for developmentally disabled individuals under investigation, we recommend that an undercover person be placed at CBDC, because it is the largest of the three other centers, has a reputation over many years as being worse than ADC, and continues to generate a number of allegations of serious abuse.

BACKGROUND

In 1990, at the request to the United States Attorney in Memphis, we began investigating conditions at the Arlington Developmental Center ("ADC"), in Arlington, Tennessee. Approximately 450 developmentally disabled children and adults resided at the facility. After several tours of the facility by our experts and many months of unsuccessful negotiations, we sued ADC for violating the federal statutory and constitutional rights of the citizens residing there. Allegations of verbal and physical abuse, as well as evidence of unexplained injuries and sham investigations, formed part of the case against the facility and its administrators. However, because of the limited ability of most of the residents to communicate, the tight control of ADC management over employees, the extensive familial ties among employees on the units, and poor or falsified documentation, we had difficulty obtaining specific information on individual incidents (e.g., who did this to the resident, on what day, and witnessed by whom?).

After five weeks of trial, on November 22, 1993, the district court found the facility had failed to provide even minimal care to the residents, ruling in our favor on each count. The opinion and findings of fact are attached. The court found that, inter alia, "[j]ob security of employees is consistently placed above the constitutional rights" of residents, employees were intimidated against reporting problems, and administrators performed no meaningful investigations of possible resident abuse. The court issued a preliminary injunction, and, subsequently, a remedial order. These orders gave specific directives regarding improving conditions at ADC. In addition, the court granted our motion to find the State in contempt of the preliminary injunction, and another contempt motion filed by us demonstrating the State's noncompliance with the remedial order is outstanding.

Within the last six months, the ADC investigators, who were hired by ADC pursuant to the requirements of the remedial order,

have investigated a recent murder and several potential beatings. These matters have been turned over to TBI and the district attorney's office for prosecution.

Throughout our involvement at ADC, we have been told by people knowledgeable of conditions at the various centers in Tennessee that ADC is not the worst of the four centers in the state, and that CBDC has had a long history of resident abuse and mistreatment. In June 1994, we formally notified the Governor of our intent to investigate CBDC, Greene Valley Developmental Center in Greeneville, and Nat Winston Developmental Center in Bolivar. Based upon tours of each facility with experts from various fields, we found that these centers did indeed have as many, if not more, problems than ADC. We informed the Governor and other state officials of our findings in letters which are attached.

CLOVER BOTTOM DEVELOPMENTAL CENTER

CBDC is a residential facility with over 500 developmentally disabled children and adults. The Jordan Center, which is ostensibly a residential forensic facility for developmentally disabled adults, but which also operates as a dumping ground for individuals with behavior disorders from the other centers, is affiliated with CBDC. It houses approximately 34 individuals.

In general, the facility is grossly understaffed. Many of the residents have lived in barren conditions with little stimulation for years. As a result of this and, in some cases, mental illness, a number of residents have behavior problems. For example, residents may be self-abusive, bite themselves or other residents, eat inedible objects or fight with other residents or staff. These behaviors sometimes result in injuries. Unfortunately, in an institution staffed by untrained and overworked direct care workers, these behaviors provide both the reason and cover for physical abuse. That is, staff sometimes resort to beatings and other inappropriate punishment to "control" the residents. In order to cover up this abuse, or other abuse committed without any provocation, staff blame the resident or other residents for the injuries they received.

Listed below are some examples of abuse or suspected abuse that have been discovered at CBDC over the last few years.¹ These examples have been gleaned from documents provided to us recently by CBDC, the Tennessee Protection and Advocacy Agency, and TBI. This list does not include the dozens of examples of unexplained fractures and lacerations that are a weekly occurrence at CBDC. Although a number of the examples below are

¹ In addition, as at ADC, there is some indication that resident moneys and property are stolen by staff.

old, the list evidences an extraordinary amount of serious abuse and a continuing pattern of CBDC investigators or administrators often deflecting blame from the potential abusers to those employees who report the abuse. Moreover, our experience at ADC and other institutions indicates that documented cases of abuse represent only a very small portion of the actual number of abuse cases taking place.

5/23/95 Developmental technician (DT) Reginald Blakey indicted for assaulting 29-year-old male resident.

2/21/95 CBDC reports to TBI that resident may have been beaten with a belt by employee. Discovered at 6am. Further detailed report from TBI forthcoming.

1994 - 1995 Allegations by staff that Superintendent at Jordan Center is using aversive behavior modification techniques in violation of professional practice and state procedures, and has told staff to keep it quiet and not to document this. Anonymous source provided audio tape of meeting wherein Superintendent makes these statements.

7/20/94 Ray Bauker alleges he was sprayed in face with a disinfectant by DT Patricia Chatman. He suffers chemical burns on face and eyes, and is taken to the emergency room. DT denies this, saying that he smeared feces on his own face. Chatman is terminated, though there is no information as to her appeal or whether she was reinstated. Examining physician confirms that it was a chemical burn.

7/94 Protection and Advocacy interviews employee(s) who describe the following ongoing abuse: DT gave lit cigarette to resident and said "watch, he'll eat it" and the resident did; DTs forcing residents to stay in urine-soaked clothes; DTs shoving residents hard enough to make them fall; forcing them to "sit down and shut up"; taking away meals to discipline resident for talking; DTs watched as resident tore up his shirt and ate it.

6/22/94 Tina Mason found with welts resembling shoe tread marks on her buttocks. TBI is investigating.

6/14/94 DT Andrew Henry accused by DT Sheeron Davis of kicking Roy Atwell in his genitals, leaving Hunter Armstrong, Jerry Luck and Gary King on commodes for hours at a time, pushing Mr. Armstrong down, and throwing keys at another resident. CBDC report recommends taking no action against Henry, because Davis, the employee reporting the abuse, is new and has not gone through training! [This represents the same pattern we discovered repeatedly at ADC: abuse only gets reported if a new employee, who has not been indoctrinated into the code of silence, observes it, and then the abuser is not punished, but the new employee is

reprimanded in some fashion or fired if they are still only probationary employees. See similar cases below.]

5/20/94 Harold McGovern struck in the face with towel, resulting in red welts. DT Walter Flowers, a new probationary employee, is suspected and recommended for termination.

5/19/94 DT Donna West reports that on 4/10/94 she observed DT Belinda Shelby strike Rose Ann Toombs with a can of hair spray, causing a laceration to Ms. Toomb's head. No discipline of Shelby, but recommended that West be suspended for a day for failure to report incident in timely manner.

5/14/94 Abuse of Robert Morris: verbally abused, thrown on bed and slapped by DT LaRose; observed by new DT; attempt at cover-up by LaRose and Mr. Simmons; papers suggest LaRose was terminated, but later Department of Social Services claims they could not substantiate the abuse. Final disposition is unknown.

Mark Downey punched in stomach by DT David Bridges on 5/13/94. DT terminated.

Booker T. Washington abused repeatedly (e.g., shoved, beaten, stomped on) at various times in 1992 and 1993, by DT Ronald Austin. Two other DTs report separate instances, but CBDC concludes they have a personality conflict with Austin and were only trying to retaliate against him. CBDC does not discipline Austin, but recommends written reprimands for the two DTs who reported the abuse.

12/8/93 Cindy Somerville found with bruises on inner buttocks and white heavy discharge from her vagina. Sexual abuse is suspected. Medical check at hospital is inconclusive. Male DT Obohanson alleged to have been on unit prior to the discovery that day with another male DT, who was not assigned to the unit. No disciplinary action taken. Investigator only recommends that DTs Obohanson and Ms. Pamela Hobert, who were on duty on the unit, receive additional training on communication and bathing residents. Mother, Kathy Somerville, claims physical and sexual abuse to daughter Cindy. Reported Nashville Banner 7/13/94. Protection and Advocacy investigated (see their report).

11/27/93 Valecia Day found with bruises on vulva and vaginal tear requiring sutures. Sexual abuse suspected, but CBDC investigation concludes that injuries were caused by her being dropped during bath time. Female DT received reprimand for improper bathing techniques.

10/19/93 Frances Walker claims bruises on arms resulted from DT Tuesday Sanders hitting her. Sanders is interim employee and is allowed to resign.

9/16/93 DT Sonya Hawkins reports that DT Dawn Dodd told her that DT Sabrina Barr pulls Anthony Richards around by the nose and sprayed water in his face, making him gag. No disciplinary action taken.

4/6/93 Danny Bryan reports that DT Duane Custard had anal sex with him. Custard admits to this and sex with another resident, James Jaco. He is allowed to resign.

2/24/93 New employee, James King, reports continuing abuse against residents in unit, and states he observed the following: DT Lee Petty threw and kicked John Mason into wall causing laceration on his head; Petty threw lit cigarettes at Mr. Mason who ate them; Petty hit Robert Weaver with hairbrush; Petty sat on Leslie Potter's chest and hit him 5 or 6 times in jaw with his fist; Petty and DT Hilliard force David Romaine to sit for 2 to 3 hours on commode so they don't have to clean him. Petty allowed to resign. No information regarding whether DT Hilliard was disciplined.

Rape of James Barrett on 1/15/93 by DT Joe Jordan: DT caught standing or bending over naked resident who was on his stomach on the bed. DT's pants were down and he had erection. DT fired and criminal charges brought; plead to "sweetheart deal" according to TBI.

Crawthon Bowen found on 1/27/93 with red welts on buttocks and bruising on hips; blamed on new probationary employee, Wayne Stevens, and given his prior history of poor performance, he was terminated.

1/6/93 Ralph Bobbit whipped in face with a coat hanger, perhaps by Doris Dobson. Facility believes it might have been self-inflicted, but TBI determines that it was not. No disciplinary action taken.

1/24/93 Ricky McKinnon communicates that DT David Briggs had sex with him. CBDC concludes there is no evidence, and no action is taken.

1/18/93 Paul Greer discovered with fractured arm. DT reports she observed DT Festus Obasohan handling Greer and other resident roughly, but Obasohan says fracture occurred after Greer fell off the toilet. No disciplinary action taken.

1/10/93 Alonzio Blake tied to a chair by DT Tracey Wilson. One day suspension of Wilson is recommended by CBDC.

2/28/93 DT Bill Foster slapped and shook Hunter Armstrong. Witnessed by Dr. Hensley. No information on discipline.

2/10/93 Kay Knight reports seeing another resident, Rosie Cannon, be struck by DT Alisha Thorpe in mouth, cutting lip.

CONCLUSION

We propose that we meet with relevant members of your section, as well as attorneys from the Office of the United States Attorney in Nashville to discuss our proposal as soon as possible.

Although your Section, the Nashville United States Attorney, and the FBI will know better how to position an undercover person, and more can be discussed on this point later, a few preliminary observations are in order. First, based upon our knowledge of the administrators, we believe it would be most advantageous to place an individual at the facility without their knowledge, if at all possible. Second, most of the cases of abuse or suspected abuse emanate from the units where residents with behavior problems reside. Thus, it would be ideal to get the undercover person assigned to one of these areas. The best way to assure that that happens is to utilize a large male as the undercover operative. Large males are typically assigned to these units to help "control" the residents. It would also be useful to provide him with a work background as a direct care worker for developmentally disabled individuals with behavior problems.

Attachments