

A



MR-VA-002-005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED
MAR 4 1996
CLERK U.S. DISTRICT COURT
ALEXANDRIA, VA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COMMONWEALTH OF VIRGINIA;)
 GEORGE ALLEN, Governor of)
 the Commonwealth of Virginia;)
 ROBERT METCALF, Acting Secretary,)
 Department of Health and)
 Human Resources; DR. TIMOTHY)
 KELLY, Commissioner, Department of)
 Mental Health, Mental Retardation)
 and Substance Abuse Services;)
 JANET HILL, Director, Office of)
 Mental Retardation, DMHMRSAS;)
 DAVID H. LAWSON, Director,)
 Northern Virginia Training Center,)
)
 Defendants.)

Civil Action No. 96-283-A
COMPLAINT
Civil Rights

THE UNITED STATES OF AMERICA alleges:

1. This action is brought by the Attorney General, on behalf of the United States, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq., to enjoin the named Defendants from depriving persons residing at the Northern Virginia Training Center (hereinafter "NVTC") in Fairfax, Virginia, of their rights, privileges and immunities secured and protected by the laws and Constitution of the United States. The purpose of this lawsuit is to ensure that the needs

of each resident of NVTC are fully met consistent with legal and professional standards, to require essential care, treatment and training for all residents, to safeguard their liberty interests, and to ensure that they are free from unreasonable bodily restraint and are otherwise protected from harm. In addition, residents have the right to an adequate evaluation by qualified professionals to determine the appropriateness of their placement at NVTC, to ensure that their services are being provided in the least separate, most integrated setting necessary to meet their needs, and that for those residents professionals have determined are in need of alternate placement in a community-based facility, that those judgments are implemented in a reasonable manner. The goal of this case is to protect the rights of residents; it is not the goal of this case to close the facility.

JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all prefiling requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the Eastern District of Virginia is proper pursuant to 28 U.S.C. § 1391. All claims set forth in the Complaint arose in said District.

DEFENDANTS

6. Defendant COMMONWEALTH OF VIRGINIA owns and operates the Northern Virginia Training Center, a state facility located in Fairfax, Virginia, for individuals with mental retardation or other developmental disabilities. Some of these individuals are also elderly and mentally ill.

7. Defendant GEORGE ALLEN is the Governor of Virginia and, in this capacity, heads the Executive Branch of the Commonwealth's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Secretary of the Department of Health and Human Resources ("DHHR").

8. Defendant ROBERT METCALF is the Acting Secretary of the Department of Health and Human Resources and, in this capacity, exercises administrative control of, and responsibility for, the NVTC.

9. Defendant DR. TIMOTHY KELLY is the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services ("DMHMRSAS") and, in this capacity, exercises administrative control of, and responsibility for, the NVTC.

10. Defendant JANET HILL is the Director of the Office of Mental Retardation, DMHMRSAS, who, along with Defendants METCALF and KELLY, is responsible for the administration of the NVTC.

11. Defendant DAVID W. LAWSON is Director of the Northern Virginia Training Center and is responsible for the day-to-day operations of the NVTC.

12. The individual Defendants named in paragraphs 7, 8, 9, 10 and 11 above are officers of the Executive Branch of the Commonwealth of Virginia and are sued in their official capacities.

13. Northern Virginia Training Center is an institution within the meaning of 42 U.S.C. § 1997(1).

14. Persons residing at NVTC are individuals with special needs, including persons with mental retardation or other developmental disabilities. Persons residing at NVTC are "qualified individual[s] with a disability" pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, 12131.

15. The Commonwealth of Virginia and the Department of Health and Human Resources, DMHMRSAS, and NVTC are "public entities" pursuant to Title II of the ADA, 42 U.S.C. § 12131.

16. Defendants are legally responsible, in whole or in part, for the operation of and conditions at NVTC, as well as for the care and treatment of persons residing at that institution.

17. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

18. Defendants have failed and are continuing to fail to provide the residents of NVTC with that level of training necessary to protect the residents' liberty interests, including their right to training sufficient to ensure safety and freedom from undue restraint.

19. Defendants have failed and are continuing to fail to provide residents of NVTC with adequate medical care and related services, including nursing services and physical and occupational therapy.

20. Defendants have failed and are continuing to fail to provide reasonably safe conditions at NVTC and to ensure the reasonable safety and personal security of NVTC residents.

21. Defendants have failed and are continuing to fail to ensure that residents of NVTC are free of unreasonable restraints and that restraints are used safely, are utilized consistent with accepted professional standards and are not used as punishment, in lieu of treatment, or for the convenience of staff.

22. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to residents of NVTC by appropriately qualified professionals consistent with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

23. Defendants have failed and are continuing to fail to maintain professionally appropriate recordkeeping and record review systems at NVTC to ensure that resident records contain accurate, up-to-date and relevant information as is necessary to enable staff to render appropriate medical, treatment, and training decisions.

24. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff at NVTC

to render essential care, treatment, and training to residents.

25. Defendants have failed and are continuing to fail to ensure that residents of NVTC are adequately evaluated for community placement, that those individual residents whom professionals determine should be placed in community programs are placed in such programs, and that all residents are served in the most integrated setting appropriate to each resident's individual needs.

26. Defendants have failed and are continuing to fail to meet the requirements of the ADA, 42 U.S.C. § 12101 et seq., and the regulations promulgated pursuant thereto, by excluding the NVTC residents, by reason of their disability, from participation in or by denying them the benefits of the services, programs, or activities, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs.

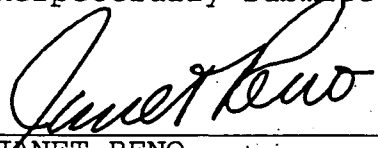
VIOLATIONS ALLEGED

27. The acts and omissions alleged in paragraphs 18 through 26 violate the rights, privileges and immunities of residents of NVTC secured or protected by the laws and Constitution of the United States and deprive residents of such rights, privileges and immunities.


28. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 18 through 26 that deprive residents of NVTC of their rights, privileges or immunities secured and protected by the

constitutional and federal statutory rights. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

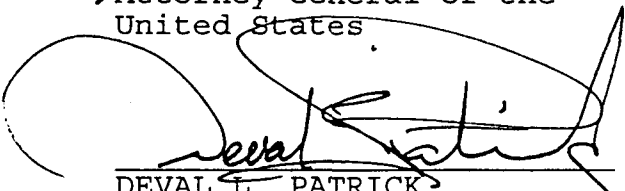
Respectfully submitted,




JANET RENO
Attorney General of the
United States



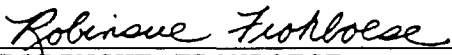
HELEN F. FAHEY
United States Attorney
Eastern District of
Virginia




DEVAL L. PATRICK
Assistant Attorney General
Civil Rights Division



ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section



ROBINSUE FROHBOESE
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Washington, D. C. 20530

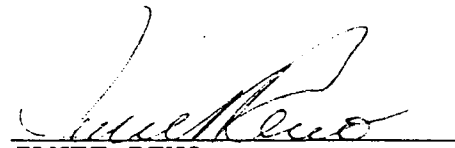
CERTIFICATE OF THE ATTORNEY GENERAL

I, Janet Reno, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. Commonwealth of Virginia, et al., I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution of the United States.

I further certify that I have "reasonable cause to believe" set forth in 42 U.S.C. § 1997a to initiate this action. Finally, I certify that all prerequisites to the initiation of suit under 42 U.S.C. § 1997 et seq., have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 12 day of December, 1995
at Washington, D.C.



JANET RENO
Attorney General
of the United States

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

United States of America

DEFENDANTS

Commonwealth of Virginia, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Richard Parker, AUSA
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3742

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

42 U.S.C. § 1997 et seq.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosing Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 4 March 96

SIGNATURE OF ATTORNEY OF RECORD



U.S. Department of Justice

United States Attorney

Eastern District of Virginia

Richard Parker
Assistant United States Attorney
Deputy Chief, Civil Division
2100 Jamieson Road
Alexandria, Virginia 22314

(703) 299-3742
FAX (703) 299-2583

March 5, 1996

William H. Hurd, Esq.
Deputy Attorney General
Commonwealth of Virginia
900 East Main Street
Richmond, Virginia 23219

Re: *United States of America v. Commonwealth of Virginia, et. al.*, Civil Action Nos. 96-283 and 96-284 (E.D. Va) (Unlitigated)

Dear Mr. Hurd:

Thank you for agreeing to accept service of process on behalf of the State defendants in the above-mentioned cases.

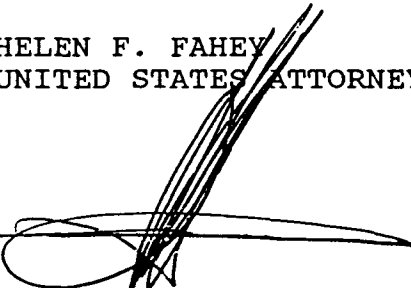
Pursuant to your agreement in this regard, please find enclosed herewith omnibus summonses addressed to you as well as Clerk-stamped copies of the complaints.

I will serve as local counsel in these matters. Copies of my entries of appearance are enclosed for your files. Thank you for your collegiality in this matter.

Very truly yours,

HELEN F. FAHEY
UNITED STATES ATTORNEY

by:


Richard Parker
Assistant United States Attorney

RP/trp
Encl. (6)
cc:

David Deutsch, Esq.
Mark Masling, Esq.



U.S. Department of Justice

United States Attorney

Eastern District of Virginia

Richard Parker
Assistant United States Attorney
Deputy Chief, Civil Division
2100 Jamieson Road
Alexandria, Virginia 22314

(703) 299-3742
FAX (703) 299-2583

March 5, 1996

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Deputy Attorney General
Commonwealth of Virginia
900 East Main Street
Richmond, Virginia 23219

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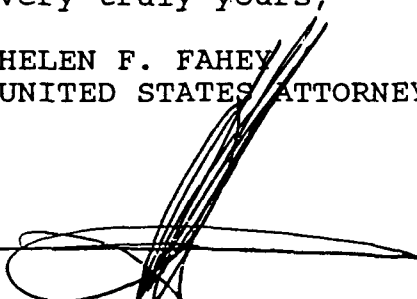
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by:


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RP/trp
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cc:

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