



JI-PA-001-001

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUANN BRUNNER, on her own : CIVIL ACTION  
 behalf and on behalf of all :  
 others similarly situated :  
 V. :  
 MRS. FRANCES C. CARTER, ET AL. :  
 : NO. 77-4286

PLAINTIFFS' AND DEFENDANTS' JOINT  
MEMORANDUM OF LAW IN SUPPORT OF PROPOSED  
SETTLEMENT

I. INTRODUCTION

This class action lawsuit was filed in December 1977, on behalf of all past, present, and future residents of the Montgomery County Youth Center, a juvenile detention facility located in Montgomery County, Pennsylvania. Defendants included the Youth Center Board of Managers and the Youth Center Executive Director (the "County" defendants), and the Pennsylvania Department of Public Welfare (the "State" defendants). The thrust of plaintiffs' complaint was that certain acts and practices of the defendants, including inter alia the use of punitive isolation, the lack of an adequate disciplinary grievance procedure, mail censorship, and the failure to provide education to isolated residents, violated certain of plaintiffs' constitutional and statutory rights.

Defendants' Motion to Dismiss the complaint was denied by

this Court on June 21, 1978, and on that same date, the action was certified as a class action. Since that time, plaintiffs' and defendants' counsel have been actively involved in settlement negotiations to achieve an amicable resolution of this lawsuit. As a result of those negotiations, plaintiffs entered into a Voluntary Stipulation of Dismissal with the State defendants in March 1980, and a Consent Decree with the County defendants in February 1981. Plaintiffs and defendants, through their counsel, now jointly urge this Court to approve and accept the proposed settlement documents.

## II. ARGUMENT

### A. CRITERIA FOR APPROVAL

When a proposed settlement of a class action is obtained, the Federals Rule of Civil Procedure require that the settlement be submitted to the Court for approval. Rule 23(e), Fed. R. Civ. Proc., provides:

A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

In In re Brown Company Securities Litigation, 355 F.Supp. 574 (SDNY 1973), the duties of the court with regard to settlement were described as follows:

The duties of the court with respect to a proposed settlement require it first to reach 'an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated' and 'form an educated estimate of the complexity,

expense, and likely duration of such litigation. . . and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.'

Id. at 576.

More generally, the court's duty may simply be phrased as the duty to determine whether the settlement is fair, reasonable, and adequate. Lewis v. Newman, 59 F.R.D. 525, 527, 528 (SDNY 1973). See also, Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975); Young v. Katz, 447 F.2d 431 (5th Cir. 1971).

In determining whether a settlement is fair, reasonable, and adequate, the court may consider such factors as the likelihood of recovery, the recommendation and experience of counsel, the amount and the nature of discovery, and the number of objectors. See NEWBERG ON CLASS ACTIONS, Vol. 3, §5610, p.496 (Shepard's, Inc. 1977). The proposed settlement will now be analyzed in light of these factors.

#### 1. Likelihood of Recovery

The likelihood of recovery involves the weighing of the strength of the plaintiffs' case on the merits, against the terms of the settlement and the potential for recovery. Cannon v. Texas Gulf Sulphur Co., 55 FRD 308, 315 (SDNY 1972).

Under the terms of the proposed settlement, the state defendants have adopted new statewide detention center service regulations which severely limit the use of isolation, prohibit

mail censorship, require every detention center to develop a disciplinary grievance procedure, protect residents' rights to privacy and guarantees their rights to an education. The County defendants, in entering into a consent decree with plaintiffs, have agreed to abide by and enforce all of the above regulations. Insofar as the state regulations address each of plaintiffs' concerns as set forth in their original complaint, plaintiffs' counsel believes that the settlement adequately and fairly protects the interests of the class.

Moreover, the new state regulations reflect, for the most part, the current state of the law on many of these issues, and therefore represent the limits of recovery which plaintiffs could reasonably expect should this matter go to trial. The regulations proscribing the use of isolation except in emergency circumstances are consistent with the case law in this area recognizing the particularly harmful effects which isolation can have on children and youth. See, e.g., Lollis v. New York Department of Social Services, 322 F.Supp. 473, 328 F.Supp. 1115 (S.D.N.Y. 1971); Inmates of Boys' Training School v. Affleck, 346 F.Supp. 1354 (D.R.I. 1972); Pena v. New York State Division for Youth, 419 F.Supp. 203 (SDNY 1976); Thompson v. Montemuro, 383 F.Supp. 1200 (E.D.Pa. 1974). The requirement that detention centers provide certain minimal due process safeguards prior to the imposition of disciplinary sanctions is likewise required by existing case law. See, e.g., Wolff v. McDonnell, 418 U.S. 563 (1974).

The remaining provisions of the settlement, prohibiting the reading of residents' mail (but permitting its inspection, upon probable cause, for contraband) and guaranteeing residents' rights to an education are also consistent with existing case law or statutory law.

In Procunier v. Martinez, 416 U.S. 396 (1974), the Supreme Court held, in considering the permissible limits of prison mail censorship, that infringements of First Amendment rights can only be justified by an "important or substantial governmental interest unrelated to the suppression of expression. . . [T]he limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of. . . the governmental interest involved." 416 U.S. at 413. Thus, the Supreme Court recognized that censorship of the correspondence between inmates and others impinges on the free speech rights of both parties by impairing the sending and receipt of mail.

As far as plaintiffs' rights to education are concerned, these rights are statutory rights which may not be interrupted or infringed merely because of their placement in a juvenile detention center. See 22 Pa. Code Chap. 13, §13.1, 13.2.

## 2. Amount and Nature of Discovery

While there is no precise formula for determining what constitutes enough discovery or evidence to enable the court to evaluate the terms of the proposed settlement, it is clear that the court must possess sufficient evidence to raise its decision

above mere conjecture. Wainwright v. Kraftco Corp., 58 F.R.D. 9 (NDGa 1973).

In the case at bar, depositions of both the named plaintiff and of the Youth Center Executive Director have been taken. These depositions' provide the Court with sufficient evidence by which to evaluate the plaintiffs' right to recovery, and the adequacy of the proposed terms of settlement.

3. The Recommendation And Experience of Counsel

The weight accorded to the recommendation of counsel typically depends upon a variety of factors, including the length of their involvement in the litigation, their competence and experience in the particular type of litigation, and the amount of discovery undertaken. In re International House of Pancakes Franchise Litigation, 1973-2 Trade Cases ¶74,616 (W.D.Mo 1973), aff'd. 487 F.2d 303 (8th Cir. 1973). Usually, a consideration of these criteria leads the court to the conclusion that the recommendation of counsel is entitled to great weight. Cannon v. Texas Gulf Sulphur Co., 55 FRD 308 (SDNY 1972).

In the case herein, counsel for both plaintiffs and defendants jointly urge this Court to accept the proposed settlement. Counsel have been negotiating the settlement for over two years, and have all been involved in this litigation for over three years. All counsel are experienced in litigating institutional lawsuits of this nature, and may be considered experts in the areas of law raised by this litigation. Under these

circumstances, their recommendation to this Court that the settlement be approved should have an important bearing on this Court's ultimate decision. See Feder v. Harrington, 58 FRD 171 (SDNY 1972); Lyons v. Marrud, 1972-73 Transfer Binder Fed. Sec. L. Rep. ¶73,525 (SDNY 1972); Levin v. Mississippi River Corp., 59 FRD 353, 366 (SDNY 1973), aff'd. sub. nom Wesson v. Mississippi River Corp., 486 F.2d 1398 (2d Cir.), cert. den. 414 U.S. 1112 (1973).

#### 4. Number of Objectors

As plaintiffs' counsel indicated at oral argument, 1325 class notices were sent out by first class mail, to all past residents of the Youth Center since the filing of the lawsuit, up to February 23, 1981; of these, 308 were returned for insufficient or incorrect address, or expiration of a forwarding order. The method of notice was that prescribed by this Court, and the form and content of the notice was also approved by this Court.

At the hearing before this Court on March 23, 1981, no class members appeared to express their objections to the settlement, nor, apparently, did any class members correspond with the Court directly to raise any objections.

While the absence of objectors should not be considered conclusive on the fairness or adequacy of the settlement, it is certainly a factor which should be taken into consideration. See Cannon v. Texas Gulf Sulphur Co., supra, 55 FRD at 317;

Feder v. Harrington, supra. Admittedly, plaintiffs are minors who may lack the sophistication to understand or appreciate their right to express their opinions about the settlement. Nevertheless, counsel believe that the class notice was drafted in such a way as to maximize their understanding of the litigation and their rights in the litigation. As such, the complete absence of any objectors should signify an overall approval of the terms of the settlement by the class members.

III. CONCLUSION

For all of the above reasons, counsel for plaintiffs and defendants respectfully urge this Court to approve the proposed settlement.

Respectfully submitted,



Marsha Levick  
Juvenile Law Center of  
Philadelphia  
1411 Walnut St., Suite 604  
Philadelphia, PA 19102  
(215) 563-1933  
Counsel For Plaintiffs

Stan Slipakoff  
John McAllister  
John Gallagher

Counsel For Defendants

Dated: March 25, 1981