

JOHN R. DUNNE
ARTHUR E. PEABODY, JR.
MELLIE H. NELSON
VERLIN HUGHES
ROBINSUE FROMBOESE
U.S. Department of Justice
Civil Rights Division
320 First Street, N.W.
Washington, D.C. 20530
(202) 514-6260

DANIEL BENT
United States Attorney
P.O. Box 50183
Room 6100 PJKK Federal Building
300 Ala Moana Blvd.
Honolulu, HI 96850
(808) 541-2850

Attorneys for the United States
of America

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 07 1991

9 o'clock and 1/2 min. A.M.
WALTER A. Y. H. CHINN, CLERK

U.S. v. Hawaii



MH-HI-001-003

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF HAWAII; JOHN WAIHEE, Governor;
JOHN LEWIN, Director, Department of
Health; HENRY FOLEY, Deputy Director,
Behavioral Health Services of the
Department of Health; NALEEN
N. ANDRADE, Acting Superintendent,
Hawaii State Hospital,

Defendants.

CIVIL NO. 91-37 DAE
COMPLAINT; CERTIFICATE
OF THE ATTORNEY GENERAL;
SUMMONS

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 of 1980, 42 U.S.C. § 1997 et seq., to enjoin the named defendants from depriving persons residing at the Hawaii State Hospital ("HSH"), of rights, privileges or

ATTEST A True Copy
WALTER A. Y. H. CHINN
Clerk United States District
Court District of Hawaii
By Walter A. Y. H. Chinn
Deputy

immunities secured or protected by the Constitution of the United States.

JURISDICTION

2. This Court has jurisdiction over this action under 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 the pre-filing 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 District of Hawaii is proper pursuant to 28 U.S.C. § 1391. All claims set forth in the Complaint arose in said District.

DEFENDANTS

6. Defendant STATE OF HAWAII owns and operates HSH, which is a state mental health facility, located in Kaneohe, Hawaii, with a Children's Unit in Honolulu, Hawaii.

7. Defendant JOHN WAIHEE is the Governor of Hawaii, and, in this capacity, heads the Executive Branch of the State government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Director of the Hawaii Department of Health ("DOH").

8. Defendant JOHN C. LEWIN is the Director of DOH, and, in this capacity, exercises administrative control of, and responsibility for, HSH.

9. Defendant HENRY FOLEY is the Deputy Director of Behavioral Health Services in DOH. He is responsible for administration of the mental health divisions of DOH.

10. Defendant NALEEN N. ANDRADE is the Acting Superintendent of HSH and is responsible for the day-to-day operations of HSH.

11. The individual Defendants named in paragraphs 7, 8, 9, and 10 above are officers of the executive branch of the State of Hawaii and are sued in their official capacities.

12. HSH, a state mental health facility administered and operated by DOH, is an institution as that term is defined in 42 U.S.C. § 1997(1)(A) and (1)(B)(i).

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

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

FACTUAL ALLEGATIONS

15. Defendants have failed and are continuing to fail to provide patients residing at HSH with that level of psychiatric treatment and programming necessary to ensure that patients are free from undue bodily restraint, including chemical restraint, or unreasonable risks to their personal safety.

16. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to

persons confined at HSH pursuant to the exercise of professional judgment by appropriately qualified staff.

17. Defendants have failed and are continuing to fail to ensure that there is an adequate number of sufficiently trained staff, at all levels of HSH operation, to render and implement professional judgments regarding adequate care and treatment of HSH patients and to ensure adequate patient safety.

18. Defendants have failed and are continuing to fail to employ staff and practices needed to maintain professionally based recordkeeping and record review systems to ensure that patient records contain accurate, up-to-date and relevant information as is necessary to enable staff to exercise professional judgment regarding medical and psychiatric treatment and training decisions.

19. Defendants have failed and are continuing to fail to maintain the physical environment of HSH in such a manner that it does not expose persons confined at HSH to unreasonable risks, including fire-safety risks, to their health and safety.

20. Defendants have failed and are continuing to fail to ensure that bodily restraint and seclusion are administered to persons confined at HSH only pursuant to the exercise of professional judgment by appropriately qualified professionals and are not used as punishment, in lieu of treatment, or for the convenience of staff.

21. The acts and omissions alleged in paragraphs 15 through 20 constitute patterns or practices of resistance to the full

enjoyment of rights, privileges or immunities secured or protected by the Constitution of the United States, and deprive patients who reside at HSH of such rights, privileges or immunities.

22. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 15 through 20 that deprive residents of HSH of rights, privileges, or immunities secured or protected by the Constitution of the United States, and cause irreparable harm to HSH residents.

23. The Attorney General is authorized under 42 U.S.C. § 1997 to seek only equitable relief.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at HSH set forth in paragraphs 15 through 20 above, and to require Defendants to take such action as will provide constitutional conditions of care to persons who reside at HSH. The United States further prays that this Court grant

such other and further equitable relief as it may deem just and proper.

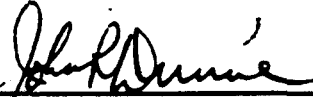
Respectfully submitted,



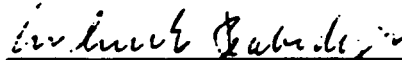
DICK THORNBURGH
Attorney General of
the United States



DANIEL BENT
United States Attorney
District of Hawaii



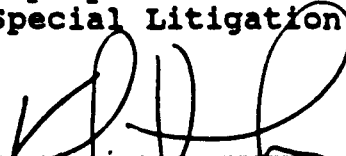
JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division



ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section



MELLIE H. NELSON
Deputy Chief
Special Litigation Section



VERLIN HUGHES
ROBINSUE FROHBOESE
Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
320 First Street, NW
Washington, D.C. 20530
(202) 514-6260
(202) 514-6259

SUMMONS IN A CIVIL ACTION

United States District Court

DISTRICT
Hawaii

DOCKET NO.

UNITED STATES OF AMERICA,

V.

STATE OF HAWAII; JOHN WAIHEE, Governor;
JOHN LEWIN, Director, Department of
Health; HENRY FOLEY, Deputy Director,
Behavioral Health Services of the
Department of Health; NALEEN
~~N. ANDRADE, Acting Superintendent,~~
Hawaii State Hospital

TO: (NAME AND ADDRESS OF DEFENDANT)

All Named Defendants

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

JOHN R. DUNNE
ARTHUR E. PEABODY, JR.
MELLIE H. NELSON
VERLIN HUGHES
ROBINSUE FROHBOESE
U.S. Dept. of Justice
Civil Rights Division
320 First Street, N.W.
Washington, D.C. 20530

and

DANIEL BENT
United States Attorney
P.O. Box 50183
Room 6100 PJKK Fed. Bldg.
300 Ala Moana Blvd.
Honolulu, HI 96850

an answer to the complaint which is herewith served upon you, within 20
days after service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

Walter A.Y.H. Chinn

DEPUTY CLERK

(s) Laila M. Geronimo

DATE

MAR 07 1997



Office of the Attorney General
Washington, D. C. 20530

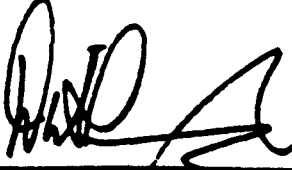
CERTIFICATE OF THE ATTORNEY GENERAL

I, Dick Thornburgh, Attorney General of the United States, certify that with regard to the foregoing Complaint, I have complied with the provisions 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 the "reasonable cause to believe" set forth in 42 U.S.C. § 1997a(a) to initiate this action. I finally certify that all prerequisites to the initiation of suit under 42 U.S.C. §§ 1997a and 1997b 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 4th day of March, 1991,
at Washington, D.C.



DICK THORNBURGH
Attorney General of
the United States