

Bill of Rights
FILE



Pennsylvania Association for Retarded Citizens

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MEMO TO:

Officers

PARC Residential Services Committee

All Regional Residential Services Committees

DATE: July 11, 1975**FROM:**

Diane J. Phillips, Research Associate

RE:

Recent litigation

Attached, for your information and review, are several summaries of recent court cases which affect residents living in Pennsylvania facilities.

1. Vecchione v. Wohlgemuth: ensures that no resident of a state hospital shall be deprived of any property unless and until he has been determined incompetent and a court authorizes such an undertaking.

2. Downs v. Pennsylvania DPW: outlines the plan which DPW shall implement to prevent peonage in residential facilities.

3. Mental Patients Civil Liberties Project v. DPW: assures residents in mental hospitals the right to free communication and the right to organize.

4. In re Zeiler: involves the commitment of a 13-year-old girl to the County MH/MR Program rather than Western State School. Furthermore, the court affirmed DPW's financial responsibility for the child.

cc: Gilhool

Bazelon

Haggerty

Cohen

Polloni

Inlander

Sell

Roth

Nastav

MENTAL HEALTH LAW

✓ Pennsylvania Welfare Department Ordered to Repay to Past and Present Patients All Sums Wrongfully Withheld and Applied to Costs of Their Maintenance

9674. Vecchione v. Wohlgemuth, No. 73-162 (E.D. Pa., April 4, 1975). Plaintiffs and Plaintiff-Intervenors represented by Joel Brewer, Jonathan Stein, Community Legal Services, Inc., Juniper & Locust Sts., Philadelphia, Pa. 19107; David Ferleger, Mental Patient Civil Liberties Project, 1427 Walnut St., Philadelphia, Pa. 19102. [Here reported: 9674J Complaint in Intervention (17pp.); 9674K Memo in Support (3pp.); 9674L Supp. Memo in Support (3pp.); 9674M Order (3pp.); 9674N Regulations (8pp.). Previously reported at 8 CLEARINGHOUSE REV. 382 (Sept. 1974).]

The court has granted a motion to intervene and has ordered the Pennsylvania Department of Public Welfare to adopt immediately regulations ensuring that no patient at a state hospital shall be deprived of any property unless and until he is determined incompetent and a court authorizes such a taking. In addition, defendants were ordered to pay \$1253 to the named plaintiff in repayment of the sum wrongfully withheld, to arrange repayment to intervenor, and to prepare a report within 60 days of all present and former patients who have had sums withdrawn from their personal funds and applied to costs of their maintenance since the date of the court's order holding the seizure statute unconstitutional. Within 90 days, defendants must have paid back such sums including interest.

✓ Court Adopts Plan Which Is Designed to Eliminate Peonage in State Mental Institutions

10,658. Downs v. Pennsylvania Department of Public Welfare, No. 73-1246 (E.D. Pa., April 16, 1975). Plaintiffs represented by David Ferleger, Mental Patient Civil Liberties Project, 1427 Walnut St., Philadelphia, Pa. 19102, (215) 735-8409. [Here reported: 10,658G Defendants' Final Plan (5pp.); 10,658H Comments and Objections to Plan (4pp.); 10,658I Order (1p.). Previously reported at 8 CLEARINGHOUSE REV. 747 (Feb. 1975).]

In an attempt to eliminate peonage in state mental health facilities, the court has approved the public welfare department's plan which prohibits defendants from (1) forcing or coercing, directly or indirectly, patients to perform any labor or work; (2) punishing patients for declining or refusing to work; and (3) conditioning privileges or release from the institution upon the performance of labor or work. Work or labor does not include personal housekeeping chores such as making one's bed or assisting in the cleanup of immediate work or recreational areas.

Voluntary work by the patient is permitted until August 1, 1975 if it is not detrimental to the individual's habilitation or treatment needs, and payment for such labor shall be in accordance with the guidelines of the "Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages." After August 1, 1975, all labor will be renumerated according to the Fair Labor Standards Act.

The plan also provides that patients are limited to working in the areas of dietary, housekeeping, laundry and patient care, and all patients are to be paid according to their productive capacities. A patient may not work more than 15 hours per week. Incidental work which is nonproductive and interpersonal and is occasional, irregular and nonassigned is excluded from coverage.

✓ Mental Patient Rights Project Wins Access to Hospital and Right to Organize

10,659. Mental Patient Civil Liberties Project v. Dep't of Public Welfare, No. 73-1512 (E.D. Pa., April 14, 1975). Plaintiffs represented by David Ferleger, Mental Patient Civil Liberties Project, 1427 Walnut St., Philadelphia, Pa. 19102, (215) 735-8409. [Here reported: 10,659D Consent Decree (3pp.). Previously reported at 7 CLEARINGHOUSE REV. 302 (Sept. 1973).]

The court has approved an agreement filed by the parties in a lawsuit which was filed by a legal assistance project and several patients and ex-patients as a result of Haverford State Hospital's ouster of the project after a year in which numerous lawsuits had been filed against the hospital on behalf of its patients. An in-hospital "Patients' Rights Organization" had been formed by Haverford patients and was also a plaintiff in the lawsuit.

The agreement provides substantial guarantees in department policy, assuring to all state mental patients: the right to communicate freely and in private with persons inside and outside the institution; the right to peaceful assembly; the right to organize a patient/resident government; the right to receive visitors of their own choosing daily, including civil rights group representatives; and the right to retain and see an attorney at any time. The hospital has also agreed to allow the project to renew its group meetings with patients and to allow patients to receive an illustrated patients' rights booklet called *Patients Rights—You Mean We Have Some?*

Amicus Curiae Urges New Jersey Supreme Court to Find Constitutional Right to Counsel in All Involuntary Civil Commitments

12,822. In re Geraghty, No. M-527 (N.J. Sup. Ct., filed April 4, 1975). Amicus Curiae represented by Michael Perlin, Laura LeWinn, Div. of Mental Health Advocacy, Dep't of the Public Advocate, 214 S. Broad St., Trenton, N.J. 08625, (609) 292-1745. [Here reported: 12,822A Order (Spp.); 12,822B Amicus Curiae Petition (10pp.); 12,822C Brief and Appendix of Amicus Curiae (40pp.).]

The Department of the Public Advocate of the New Jersey Division of Mental Health Advocacy has filed an amicus brief in the New Jersey Supreme Court following the county's appeal from an order (1) declaring an involuntary commitment order null and void for failure to hold a hearing as to mental illness, (2) establishing a procedure to be filed in future involuntary civil commitment hearings, and (3) making the appointment of independent counsel mandatory in all such hearings and providing for appointed counsel to

indigents. Amicus argues that the New Jersey Supreme Court should find that there is a constitutional as well as statutory right to counsel; and argues that counsel plays a critical role in the proceedings, and that an organized counsel service is preferable to assigned counsel because "organized counsel has proven to be more economical, more efficient, and more protective of constitutional rights than had been assigned counsel." Amicus argues that since the state legislature has established the Division of Mental Health Advocacy to provide "such legal representation and medical consultation as the director deems appropriate for any indigent mental hospital admittee in any proceeding concerning the admittee's admission to, retention in, or release from confinement in" a mental institution, it is the appropriate agency to provide representation in all involuntary commitment proceedings should the court find a constitutional right to counsel.

Court Orders State Department of Welfare to Pay the Per Diem Expenses for Severely Retarded Child Placed in a Foster Home

13,770. In re Zeiler, No. 2035-69 (Pa. CP., Allegheny County, March 31, 1975). Respondent represented by Dennis Revak, Neighborhood Legal Services Ass'n, 729 Braddock Ave., Braddock, Pa. 15104, (412) 271-7876. (Here reported: 13,770F Opinion (18pp.). Previously reported at 8 CLEARINGHOUSE REV. 573 (Dec. 1974).)

In a previous order, the court found that the only institution within the state capable of caring for a severely retarded 13-year-old girl was so grossly overcrowded and understaffed that such placement would be detrimental to the child, who had a constitutional right to treatment, and ordered the county Child Welfare Services Department and the county Mental Health/Mental Retardation Unit to cooperate in finding a foster home for the child. These departments found a suitable foster home for the child, but a disagreement arose between the county Child Services Department and the state welfare department as to who should pay the per diem costs paid to the foster parents. The court found that under the state Mental Health and Mental Retardation Act, the state welfare department is obligated to provide for citizens with mental disabilities and thus has the financial responsibility to meet the physical needs of the child. This includes any psychiatric and psychological work, rehabilitative training, shelter workshop services, transportation for the child to and from the location of such services, those drugs prescribed specifically for a mental disorder and general medical care, prosthetic appliances, special equipment and clothing. The court also found that the county Child Services Department and the county Mental Health/Mental Retardation Program have the joint responsibility of providing caseworker services for the child and the foster parents.

Filing Dates Needed on Documents

In order to report documents submitted to the *Clearinghouse Review* as accurately as possible, please include the filing date on the document itself or on the cover letter.

Second Circuit Holds That Former Mental Patient Does Not Have the Constitutional Right to Access to Her Hospital Records

14,066. Gotkin v. Miller, No. 74-2138 (2nd Cir., April 17, 1975). Appellant represented by Christopher Hansen, Mental Health Law Project, New York, N.Y. On the Brief, Bruce Ennis, New York Civil Liberties Union and Mental Health Law Project, New York, N.Y. [Here reported: 14,066A Opinion (10pp.).]

Appellant, a former mental patient who had contracted to write a book about her experiences, contacted three hospitals at which she had been a patient asking them to send her copies of her records so that she could verify her recollections of various incidents. The hospitals refused her request. Appellant claimed that this denial violated her first, fourth, ninth and fourteenth amendment rights. The lower court, granting defendants' motion for summary judgment, held that former mental patients have no first amendment right to receive information contained in their hospital records; that the fourth amendment prohibition of unreasonable searches and seizures is inapplicable; that plaintiff enjoyed no right to privacy entitling her to her records for purposes of publishing a book; and that plaintiff had not been deprived of "liberty" or "property" protected by the due process clause of the fourteenth amendment.

The Second Circuit, affirming the lower court's decision, found that existing case law regarding hospital records indicates that although patients have certain rights in their records, this right does not include an absolute property right with unrestricted access. Furthermore, New York statutory law establishes that while patients may exercise a considerable degree of control over their records, they do not have the right to demand direct access to them. As to appellant's deprivation of liberty argument, the court found that appellant was not being stigmatized by the defendants and that no one had branded her as mentally ill or otherwise incompetent.

Post-Trial Brief Seeks Implementation of Minimum Treatment Standards or Closure of Ohio Mental Hospital

15,075. Davis v. Baylor, No. C73-205 (N.D. Ohio, filed April 10, 1975). Plaintiffs represented by Gerald Lackey, 330 Spitzer Bldg., Toledo, Ohio 43604; R. Frank, Joseph Vargyas, C. McCarter, Kathleen Jolly, John Lamb, Advocates for Basic Legal Equality, 740 Spitzer Bldg., Toledo, Ohio 43604, (419) 255-0814; David Little, 311 E. Market St., Lima, Ohio 45801. [Here reported: 15,075A Plaintiffs' Post-Trial Brief (174pp.).]

In a comprehensive post-trial brief, plaintiffs seek to establish standards that will create a viable, therapeutic atmosphere at Lima State Hospital in Ohio so that minimally adequate and effective treatment will become a reality. Their brief covers all facets of patient life at the hospital, from diagnostic services to numbers and qualification of staff to payments to inmates for work performed. Plaintiffs request the court either to order the closing of the hospital or to order the implementation of the minimum treatment standards which they have discussed in the brief.

Developmentally Disabled Residents of Intermediate Care Facilities Sue for Access to Day Care Services

15,190. **Haney v. Parham**, No. C 75-584A (N.D. Ga., filed March 28, 1975). Plaintiffs represented by Thomas Affleck, 1706 Ellis St., Brunswick, Ga. 31530; Wayne Pressel, John Cromartie, Georgia Legal Services Programs, 15 Peachtree St., Atlanta, Ga. 30303, (404) 656-6021. [Here reported: 15,190A Complaint (17pp.).]

This is a class suit for declaratory and injunctive relief on behalf of developmentally disabled individuals who reside in intermediate care facilities in Georgia and are recipients of Medicaid benefits. Plaintiffs claim that they are entitled to social services, including day care services, and they challenge the state defendants' policy of denying them access to and continued participation at state training centers in day care services, which are not furnishable in defendants' intermediate care facilities, but were previously furnished through inter-agency agreement. Further, they challenge the federal defendants' policy of denying reimbursement for individuals in need of such services not furnishable in the resident intermediate care facilities who are either seeking entry into the day care services programs or are participating currently in such services. They claim that this denial of funds violates the federal defendants' obligations to participate financially in the services outlined in 45 C.F.R. §§222.55-60.

Seventh Circuit Orders Convening of Three-Judge Court to Determine Constitutionality of Portion of the Illinois Mental Health Code Which Requires Children of Indigent Patients to Pay for Their Parents' Support

15,277. **Wojcik v. Levitt**, No. 74-1661 (7th Cir., April 9, 1975). Plaintiff represented by Thomas Grippando, Chicago Legal Aid Bureau, 64 E. Jackson Blvd., Chicago, Ill. 60604, (312) 922-5625; Chester Lizak, 7 S. Dearborn St., Chicago, Ill. [Here reported: 15,277A Opinion (8pp.).]

Plaintiff brought this action challenging Section 12-12 of the Illinois Mental Health Code which provides that children of indigent parents who are receiving treatment from the Department of Mental Health must pay up to \$50 per month for the support of such parent. He argues that the requirement that children of public assistance recipients make contributions to their parent's support was abolished in 1967 and that to single out only the children of indigent mental patients as legally responsible relatives is a denial of equal protection. The district court dismissed plaintiff's complaint, concluding that plaintiff's attacks on the constitutionality of Section 12-12 were "obviously without merit."

The Seventh Circuit reversed the lower court's decision and found that plaintiff's challenge cannot be termed "wholly insubstantial" or "obviously frivolous." Although the court stated that it did not wish to suggest that a rational explanation for the apparent discrimination does not exist, it noted that no explanation is clear upon the face of the statutes involved, and defendant's counsel did not provide one. The court found that at least one of plaintiff's constitutional arguments has sufficient substance to meet the standards set forth in *Goosby v. Osser*, 409 U.S. 512, and that therefore,

the lower court erred in not convening a three-judge court pursuant to 28 U.S.C. §2281.

MIGRANT LAW

Attorney Arrested for Consulting With Clients at Migrant Labor Camp Awarded \$6,000 Damages; Court Enjoins Defendants from Denying Access to Counsel

6163. **Fox v. Klundt**, No. 2738 (E.D. Wash., Dec. 11, 1974). Plaintiff represented by Jan Peterson, 2500 Smith Tower, Seattle, Wash. 98104, (206) 624-6800. [Here reported: 6163C Consent Decree and Judgment (3pp.).]

In a suit for declaratory and injunctive relief by plaintiff, an attorney for migrants who was arrested by defendant sheriff as he spoke with clients at defendant corporation's labor camp, the court has approved a consent decree and entered a judgment enjoining defendants from interfering with plaintiff's first amendment rights by denying plaintiff and other licensed attorneys reasonable access to defendant corporation's labor camps provided that such attorneys identify themselves and inform any authorized corporation representative that they have matters to discuss with any camp resident.

The court adjudged defendants severally and jointly liable for \$6000 damages to plaintiff, with the proportion to be determined by defendants. The judgment will serve as satisfaction of all plaintiff's claims, with violations of the injunction punishable by contempt proceedings.

PRISON LAW

Closing of Institution and Transfer of Inmates Does Not Bar Grant of Relief or Change in Constitutional Standards to Be Applied: Court Makes Findings as to Adequacy of Conditions

11,297. **Rhem v. Malcolm**, 389 F.Supp. 964 (S.D. N.Y. 1975). Plaintiffs represented by William Hellerstein, Joel Berger, Steven Herman, The Legal Aid Society, 119 Fifth Ave., New York, N.Y. 10003, (212) 677-4224. [Here reported: 11,297E Opinion (Spp.). Previously reported at 8 CLEARINGHOUSE REV. 640 (Jan. 1975).]

The court found no merit to the argument of the City of New York that, since it has closed the Manhattan House of Detention (The Tombs), the court has no power to grant relief to the plaintiffs who were originally housed there but have been relocated to the Rikers Island House of Detention for Men, or that a trial de novo must be held. It noted that the Second Circuit had affirmed its earlier decision, which not only made findings of fact as to conditions at the Tombs but also determined the standards of protection to which detainees are entitled. Further, the Second Circuit, although probably not contemplating the closing of the Tombs, stated that, given the tortuous history of the litigation, "the district judge should not allow another trial on the merits of plaintiffs' claim or countenance any significant delay in fashioning