DOCALIEU FEB 2 8 2002

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JEFFERY HARGETT; KIM A. OVERLIN; JIMMIE SMITH; LOREN K. WALKER; on behalf of themselves and all others similarly situated,

Plaintiffs.

v.

LINDA R. BAKER, Secretary of the Illinois Department of Human Services, MARY BASS, Head Facility Administrator for the Illinois Department of Human Services, TIMOTHY BUDZ, Facility Director of the Sexually Violent Persons Unit at the Joliet Correctional Center, RAYMOND WOODS, Clinical Director, and TRAVIS HINZE, Associate Clinical Director,

JUDGE KENNELLY

020 1456

No.

MAGISTRATE JUDGE GERALDINE SOAT BROWN

027EB 27 PH 4:1

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs, JEFFERY HARGETT, KIM A. OVERLIN, JIMMIE SMITH and LOREN K. WALKER, on behalf of themselves and all others similarly situated, by their undersigned counsel, state as follows for their Class Action Complaint:

INTRODUCTION

1. This complaint asserts a civil rights action pursuant to Title 42 of the United States Code, § 1983 for declaratory and injunctive relief to redress violations of the United States Constitution in connection with the complete and utter failure of the Defendants or those acting under their control or direction to provide adequate and meaningful mental health treatment to the named Plaintiffs and all others similarly situated that have been involuntarily detained by the Illinois

-1

Department of Human Services ("DHS") pursuant to the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et al. (the "SVP Act"). The avowed purposed of the SVP Act is to provide mental health treatment and care to individuals in the custody of DHS in the least restrictive manner consistent with the person's needs and in accordance with the court's commitment order. The treatment and care provided by the Defendants to the Plaintiffs and all others similarly situated is punitive and Constitutionally inadequate.

JURISDICTION

2. The Court has jurisdiction over this action under Title 28 of the United States Code, § 1331 and § 1343.

PARTIES

- 3. Plaintiff Jeffery Hargett was involuntarily civilly committed pursuant to the Act in or about March, 2000 by the Circuit Court of Iroquois County, Illinois. Mr. Hargett has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Hargett has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systemic deficiencies in the SVP program described below, Mr. Hargett has never received adequate treatment or treatment that might yield a realistic chance for his release.
- 4. Plaintiff Kim A. Overlin ("Overlin") was involuntarily civilly committed pursuant to the Act in or about June, 1998 by the Circuit Court of Macon County, Illinois. Mr. Overlin has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Overlin has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systemic deficiencies in the SVP program described below, Mr. Overlin has never

received adequate treatment or treatment that would lead to a realistic chance for his release.

- 5. Plaintiff Jimmie Smith ("Smith") was involuntarily civilly committed pursuant to the Act in or about October, 2000 by the Circuit Court of Macoupin County, Illinois. Mr. Smith has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Smith has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systematic deficiencies in the SVP program described below, Mr. Smith has been denied adequate treatment or treatment that would lead to a realistic chance for his release.
- 6. Plaintiff Loren K. Walker ("Walker") was involuntarily civilly committed pursuant to the Act in or about September, 1998 by the Circuit Court of Madison County, Illinois. Mr. Walker has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Walker has never refused treatment or to participate in any test administered by the Defendants. Nonetheless, due to the systemic deficiencies in the SVP program described below, Mr. Walker has been denied adequate treatment or treatment that would lead to a realistic chance for his release.
- 7. Defendant Linda R. Baker ("Baker"), is the Secretary of the Illinois Department of Human Services ("DHS") and the chief administrative officer of the DHS. Defendant Baker is sued herein in her official capacity. At all relevant times, she was acting under the color of state law.
- 8. Defendant Mary Bass ("Bass") is the Head Facility Administrator of DHS. She is sued herein in her official capacity. At all relevant times, she was acting under the color of state law.

- 9. Defendant Timothy Budz ("Budz") is the Facility Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.
- 10. Defendant Raymond Woods ("Woods") is the Clinical Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.
- 11. Defendant Travis Hinze ("Hinze") is the Associate Clinical Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.
- 12. Baker, Bass, Budz, Woods and Hinze (the "Defendants"), pursuant to authority vested in them by the State of Illinois (the "State"), are the individuals primarily responsible for the care, custody, treatment and control of the Plaintiffs and all others similarly situated. The Defendants knowingly and with deliberate indifference established and maintained the treatment policies, procedures and regime that are challenged in this action.

BACKGROUND

- DHS of persons that: (a) have been convicted, or acquitted by reason of insanity, of certain sexual offenses; and (b) have been found to have a mental disorder that creates a substantial possibility that they will engage in future acts of sexual violence. Persons may be detained by DHS pursuant to the SVP Act prior to a civil commitment proceeding if there is probable cause to believe that conditions (a) and (b) above are met.
- 14. Although the SVP Act's stated purpose is not to punish, but instead is to provide for the segregation and treatment of persons with a dangerous

mental disorder, Plaintiffs in fact have not received adequate treatment and have been confined in punitive conditions that are not rationally related to the purposes of the SVP Act.

15. This action challenges under the Due Process Clause of the Fourteenth Amendment the punitive conditions and the inadequate treatment received by the Plaintiffs and all others similarly situated. Specifically, this action challenges the decision of the Defendants to warehouse and put out of sight the Plaintiffs and all others similarly situated in an attempt to hold them indefinitely and to punish, rather than treat their perceived mental disabilities.

CLASS ALLEGATIONS

- This case is brought on behalf of a class that consists of all 16. persons who have been, are or will be committed under the SVP Act and placed in the custody of DHS.
- The class is so numerous that joinder of all members is 17. impracticable. The population in the custody of DHS exceeds 150 individuals and is constantly growing larger as new persons are detained and civilly committed under the SVP Act.
- There are questions of law and fact common to the members of the 18. class, and these questions predominate over those affecting only individual class members. The predominate common question is whether the mental health treatment and care provided by the Defendants or those acting under their control or direction comports with the requirements of the Due Process Clause of the United States Constitution.

- 19. Plaintiffs' claims are typical of the claims of the class members.

 All are based on the same factual and legal theories in that they have all suffered as a result of the unconstitutional practices alleged in this Complaint.
- 20. Plaintiffs will fairly and adequately represent the members of the class. They have no interests antagonistic to the class, and they are represented by counsel who are competent and experienced in civil rights litigation.
- 21. A class action is superior for the fair and efficient adjudication of this matter, in that the Defendants, by creating and maintaining the practices alleged in this complaint, have acted on grounds generally applicable to the class, and, as a result, declaratory and injunctive relief with respect to the entire class is appropriate.

DUE PROCESS VIOLATIONS

- 22. Defendants, in their official capacities, are collectively responsible for the policies and procedures controlling the manner and method of Plaintiffs' confinement and manner and method of their mental health treatment.
- 23. The Fourteenth Amendment Due Process Clause requires states to provide civilly committed persons with access to mental health treatment that is at least minimally adequate and gives them a realistic opportunity for their conditions to improve so that they can be released. Further, because the Plaintiffs and others similarly situated are not prisoners, they are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.
- 24. The Plaintiffs and all others similarly situated are being denied meaningful mental health care treatment that gives them a realistic opportunity for their conditions materially to improve because, among other things, the Defendants have failed:

- (a) To properly train staff regarding the treatment of sexual deviance;
- (b) To provide a coherent and meaningful individualized treatment program for each detainee with understandable goals and a road map showing steps necessary for improvement and release;
- (c) To make adequate provisions for the participation of detainees' family members in rehabilitation efforts, including permitting family visits with reasonable frequency and allowing prompt telephone access to detainees in cases of family emergency;
- (d) To draft and implement fair and reasonable grievance procedures and behavior management plans;
- (e) To afford reasonable opportunities to all residents for educational, religious, vocational and recreational activities;
- (f) To cease requiring, as a precondition to participation in all but the most basic treatment offered by DHS, and therefore, as a predicate to release, that the Plaintiffs and all other similarly situated detainees to admit to a laundry list of real and imagined crimes for which they were not convicted, and thereby place themselves in jeopardy of future criminal prosecution for other crimes in violation of the Plaintiffs' Fifth right against self-incrimination applied to the states by the Fourteenth Amendment; and
- (g) To institute a procedure to guarantee appropriate therapist/patient confidentiality.
- 25. The aforesaid failure to provide constitutionally adequate treatment is a substantial departure from accepted professional judgment, practice or standards and demonstrates that the Defendants did not base their decisions on such professional judgment.
- 26. Instead of providing treatment and conditions that are rationally related to the purposes of Plaintiffs' confinement, Defendants are using the SVP program as a means of warehousing and punishing those in the SVP program. Since this program was initiated over four years ago, no more than a handful of detainees have been permitted to successfully complete the Defendants' treatment program to

the point where the Defendants recommended their discharge to the courts. Defendants erect one arbitrary barrier after another to prevent Plaintiffs from progressing to the point where the SVP program will recommend their release, including requiring participants in the program to confess to crimes which they did not commit.

- 27. The Plaintiffs and all others similarly situated are being held in conditions that are more restrictive than the conditions under which the Plaintiffs were confined when they were incarcerated as criminals prior to their civil commitment under the Act. These conditions are unrelated to the security or treatment needs of the SVP population and are purely punitive in nature. Further, the Plaintiffs and all others similarly situated are arbitrarily confined in conditions that are more restrictive than the conditions under which most convicted felons are confined by the Illinois Department of Corrections in that, among other things, the Plaintiffs:
 - (a) Are routinely stripped searched before and after every visit, including visits with attorneys;
 - (b) Are routinely shackled with restraints normally used for the transportation of prisoners housed in "super-max" facilities;
 - (c) Are subjected to intrusive cell searches, often with little or no justification, with greater frequency than those of prisoners;
 - (d) Have their freedom of movement restricted in a variety of arbitrary ways; for example, they are not allowed to go to the commissary by themselves;
 - (e) Are not allowed to purchase their own razor, stapler, nail clippers, aspirins or other similar over-the-counter medication, vitamins or eye drops; and
 - (f) Are constantly surveilled by DHS as a result of the installation of intercom systems in the Plaintiffs' cells.

CLAIM FOR RELIEF

- 28. The aforesaid conditions are not rationally connected to furthering the constitutionally legitimate purpose of the Act, which is to provide for the segregation and treatment of the Plaintiffs because of their alleged mental disorder, and are excessive in relation to that purpose, in violation of the Due Process Clause of the Fourteenth Amendment.
- 29. As a direct and proximate result of the conduct of the Defendants, the Plaintiffs have suffered and continue to suffer distress, humiliation, pain and a loss of liberty. The Defendants' practices and policies described above violate Plaintiffs' rights to reasonable mental health care and constitute punishment in violation of the Due Process Clause of the Fourteenth Amendment. Plaintiffs have been and continue to be irreparably harmed by these injuries and they have no adequate remedy at law for the Defendants' unlawful conduct.

WHEREFORE, JEFFERY HARGETT, KIM A. OVERLIN, JIMMIE SMITH and LOREN K. WALKER, on behalf of themselves and all others similarly situated, respectfully request that this Court:

- (1) Issue a Declaratory Judgment that the conduct, conditions and mental health treatment described in this complaint violates the Fourteenth Amendment to the United States Constitution;
- (2) Issue a Permanent Injunction against the Defendants, their officers, agents, servants, employees and attorneys, and upon all those persons in active concert or participation with them who receive actual notice of the Injunction by personal service or otherwise requiring them to submit and implement a plan correcting the constitutional deficiencies alleged in this complaint;
- (3) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

- (4) Expressly reserve the right of all class members to bring subsequent lawsuits for damages; and
- (5) Enter such other and further relief as this Court deems just and equitable.

DATED: February 27, 2002

JEFFERY HARGETT, KIM A. OVERLIN, JIMMIE SMITH and LOREN K. WALKER, on behalf of themselves and all others similarly situated

By

One of Their Attorneys

Everett J. Cygal Schiff Hardin & Waite 6600 Sears Tower Chicago, Illinois 60606 (312) 258-5783 Benjamin S. Wolf Roger Baldwin Foundation of the ACLU, Inc. 180 North Michigan Avenue Suite 2300 Chicago, Illinois 60601 (312) 201-9740

JS 44 (Rev. 3/99)



CIVIL COVER SHEET

FEB 2 8 2002

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
Jeffery Hargett; Kim A. Overlin; Jimmie **DEFENDANTS**

Smith; Loren K. Walker; on behalf of themselves and all others similarly situated

Will (EXCEPT IN U.S. PLAINTIFF WILLY
MAGISTRATE JUDGE (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(C) OFFORNEYS (FIRM NAME: ADDRESS, AND TELEPHONE NUMBER) Everett J. Cygal

Schiff Hardin & Waite

312-258-5783

66

Linda R. Baker, Secretary of the Illi Department of Human Services, Mary Ba Head Facility Administrator for the Illinois Department of Human Services COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY) IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.



600	Sears	Tower,	Chicago,	ΙL	60606	·						11	_
II. B	ASIS OF JU	RISDICTIO	ON (PLACEAN *X	'IN ONE	BOX ONLY)		NSHIP OF I		PAL		ONE BOX FOR DEF		
							•	PTF	DEF			PTF	DEF
pı U	lS. Governmen Plaintiff	t 🔏 3	Federal Question (U.S. Governmen	nt Not a	Party)	Citizer	of This State	D 1	1	incorporated of of Business (r Principal Place In This State	□ 4	a 4
☐ 2 U.S. Government ☐ Defendant		t □4	☐ 4 Diversity (Indicate Citizenship of Parties			Citizen	of Another Sta	te 🗆 2	□ s		nd Principal Plac n Another State	₽ 🗆 5	□ 5
			in Item (II)				or Subject o	ofa⊡s	□ 3	Foreign Nation		□ 6	□ 6

	in Item (II)	·	Citizen or Subject of a 🗆 3 🗀 3 Foreign Nation 🗀 6 🗅 Foreign Country					
IV. NATURE OF SUI	T (PLACE AN "X" IN ONE	E BOX ONLY)						
CONTRACT	CONTRACT TORTS			FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable instrument	PERSONAL INJURY 1316 Airplane 1315 Airplane Product Usability	PERSONAL IN 362 Personal Inju Med, Malpre 365 Personal Inju Product Usb	actice	C) 610 Agriculture 520 Other Food & Drug 625 Drug Related Seizure 627 Property 21 USC 881	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157	400 State Reapportionment 410 Antinust 410 Banks and Banking 450 Commerce/ICC Rates/etc.		
150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 162 Recovery of Defaulted Student Loars (Excl. Veterans)	320 Assault, Libel & Stander 330 Federal Employers' Uability 340 Marine 345 Marine Product Uability	388 Asbestos Per Injury Product PERSONAL PROI	reconal ct Liability	☐ 630 L/quor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 650 Cocupational Satety/Health ☐ 690 Other	PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark	☐ 460 Deportation ☐ 470 Racksteer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange		
183 Recovery of Overpayment of Veteran's Benefits 190 Stockholders' Suits 190 Other Contract 196 Contract Product Dability	☐ 350 Mater Vehicle ☐ 355 Motor Vehicle Product Lieblity ☐ 360 Other Personal Injury	371 Truth In Lend 300 Other Person Property Dar Bate Property Dar Product Uab	nal maga maga	LABOR 710 Fair Labor Standards Act	SOCIAL SECURITY 861 HiA (1395ff) 862 Black lung (923)	☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters		
REAL PROPERTY 1 210 Land Condemnation	CIVIL RIGHTS 441 Voting 442 Employment At Semployment At Housing/ Accommodations 440 Wiltare 440 Other Civil Rights	PRISONER PETITIONS D 510 Motions to Vacate		720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting 8 Diaclosure Act	☐ 963 DIWC/DIWW (405(g)) ☐ 964 SSID Title XVI ☐ 966 RSI (405(g))	☐ 894 Energy Allocation Act ☐ #95 Freedom of Information Act ☐ 900 Appeal of Fee Determination		
220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property		Sentence HABEAS CORPUS: 536 General 536 Ocath Penalty 640 Mandamus & O 560 Civil Rights 555 Prison Condition	ty 3. Otther	☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS 876 Taxes (U.S. Plaintiff or Defendant) 871 IRS — Third Party 26 USC 7609	Under Equal Access to Justice 1950 Constitutionality of State Statutes 1950 Other Statutory Actions		
V. ORIGIN		(PLACE A	או "צ" א	ONE BOX ONLY) Transferre	ad from	Appeal to District Judge from		

☐ 220 Foredosure ☐ 230 Rent Lesse & Eje ☐ 240 Torts to Land ☐ 245 Tort Product Liab ☐ 290 All Other Real Pri	Accommodations		HABEAS 530 Gen 535 Dear 640 Man 550 Civil	Settember HABEAS CORPUS: 530 General 535 Death Pendity 540 Mandamus & Other 550 Civil Rights 555 Prison Condition		☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ref. Inc. Security Act		S Plaintiff	Under Equal Access to Just 1 \$50 Constitutionality of State Statutes 1 \$50 Other Statutory Actions	
V. ORIGIN				(PL	ACE AN "X" IN	ONE BOX ONL	r) Transferre	nd from		Appeal to Distr Judge from
1:Original Proceeding		emoved ate Cou		nanded from pellate Court	g 4 Reinst Reope		s another d (specify)		Multidistrict Litigation	Magistrate Judgment
VI. CAUSE OF	АСТІ	ON «	OTE THE U.S. CIVIL S				BRIEF STATEME	NT OF CAUSE,		
Title 42	of '	the	United 8	States	Code,	Section	1983,	Class	Action	on behalf

ΟÏ	civil detain	nees for	due p	rocess	vi	olations.				
VII.	REQUESTED IN COMPLAINT:	CHECK IF THIS	S IS A CL P. 23	ASS ACTION		DEMAND \$	JURY DE CHECK YE	•	emanded in o	complaint:
VIII	RELATED CASE(S)	(See instructions):	# IDGE	Harry	D	Leinenweher	OOCKET NUMBER	99 (C 2861	

IF ANY DATE

SIGNATURE OF ATTORNEY OF RECORD

2/27/02

FOR OFFICE USE ONLY

APPLYING IFP RECEIPT # __ _ AMOUNT _ JUDGE MAG. JUDGE

U'TED STATES DISTRICT CC RT NORTHERN DISTRICT OF ILLINOIS KENNELLY

In the Matter of

Eastern Division

Jeffery Hargett; Kim A. Overlin; Jimmie Smith; Loren K. Walker; on behalf of themselves and all others similarly situated, Plaintiffs,

MAGISTRATE JUDGE GERALDINE SOAT BROWN Case Number:

v. Linda R. Baker, et al., Defendants.

FEB 2 8 2002

1450

APPEARANCES ARE HEREBY FILED BY THE UNDI	ERSIGNED AS ATTORNEY(S) FOR:
Plaintiffs	
	(B) 18 27 17 W
SIGNATURE (A)	SIGNIATURE (TOTAL)
A M	
Everett J. Cygal	WANNE STATE OF THE
Schiff Hardi & Waite	FIRM
street address 6600 Sears Tower	STREET ADDRESS
City/state/zip Chicago, IL 60606	CITY/STATE/ZIP
TELEPHONE NUMBER (312) 258-5783	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6215930	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES NO	MEMBER OF TRIAL BAR? YES NO
TRIAL ATTORNEY? YES NO NO	TRIAL ATTORNEY? YES NO
	DESIGNATED AS LOCAL COUNSEL? YES NO
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES NO	MEMBER OF TRIAL BAR? YES NO
TRIAL ATTORNEY? YES NO	TRIAL ATTORNEY? YES NO
DESIGNATED AS LOCAL COUNSEL? YES NO	DESIGNATED AS LOCAL COUNSEL? YES NO