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Robert Beckett
5610 South Central Avenue
Phoenix, Arizona 85040
Telephone: 268-2200
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF ARIZONA

NATHALIA GRISWOLD, Et. al.)	
)	
Plaintiffs,)	NO. CIV 77-144 PHX-CAM
)	
V.)	
)	
JIM RILEY, Et. al.)	MOTION TO AMEND THE
)	COMPLAINT
Defendants.)	
)	

Pursuant to Rule 15 (a), Federal Rules of Civil Procedure, Plaintiffs, through their attorney, hereby move for permission to file an Amended Complaint (filed herein) on the following grounds:

1. Plaintiffs, in their amended complaint, allege that they are confined in the Arizona Training Program at Coolidge and lack the capacity to voluntarily leave and that there are procedural and factual impediments to their leaving.
2. Plaintiffs provide more detailed allegations of the violation of federal statutes in question and of the receipt of federal monies by the Defendants.
3. Plaintiffs further specify the harm being caused by each of the Defendants to the Plaintiffs.

This motion is filed at such an early stage of the proceedings that no harm or prejudice will be caused to each of the Defendants.

WHEREFORE, Plaintiffs respectfully request this Court, based on the following memorandum, to grant permission to Plaintiffs to file an amended complaint.

Respectfully submitted,
this 25 day of April
1977

Robert Beckett
Robert Beckett

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MEMORANDUM OF POINTS AND AUTHORITIES

"Leave to amend "shall be freely given when justice so requires". (Rule 15 (a). In the circumstances of this case, permission to file an Amended Complaint is appropriate. Housing V. U.S. 48 F2d 1187 (Nineth Circuit, 1973.

Dated this 25 day of April 1977.

Robert Beckett
Robert Beckett
Attorney for Plaintiffs.

A copy of the foregoing and the accompanying Amended Complaint hand delivered this 25 day of April, 1977 to:

Daniel W. Schuman
Assistant Attorney General
Suite 200, State Capitol
Phoenix, AZ 85007

Alan S. Kamin
Assistant Attorney General
Suite 200, State Capitol
Phoenix, AZ 85007

Attorney for Plaintiffs

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Robert Beckett

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(602) 268-2200

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NATHALIA GRISWOLD, an incapacitated person by guardian and mother and next of friend, Doris Griswold; and RICHARD BEASLEY, a severely retarded person, by his next of friend, Nancy Stanley; and ROGER MARK, a minor by his next of friend, Nancy Stanley; and PAUL SKOGAN, a severely retarded person by his next of friend, Nancy Stanley; and VICKI TURNBOW, a severely retarded person by her next of friend, Nancy Stanley; and KENNETH MCKINNEY, a severely retarded person, by his next of friend, Nancy Stanley; and CHARLES ASHENFELTER, a severely retarded person, by his next of friend, Nancy Stanley

Plaintiffs

vs.

JIM RILEY, an individual and in his capacity as Superintendent of the Arizona Training Program at Coolidge, BRIAN LENSINK, individually and in his capacity as Chief of the Bureau of Mental Retardation, JOHN HUERTA, individually and as Director of the Department of Economic Security, and RAUL CASTRO, in his capacity as Governor of Arizona

NO. CIV 77-144
PHX-CAM

AMENDED
COMPLAINT

INTRODUCTION

1. This action involves a class of Plaintiffs comprised of all residents of the Arizona Training Program at Coolidge. The conditions at the Training Program result in harm to, and deterioration of, the physical and mental health of the residents. The lack of care, habilitation, and treatment at the Program violate due process and the equal protection clause of the

Fourteenth Amendment, the Eighth Amendment, and § 504 of the Rehabilitation Act of 1973, and the Developmental Disabled Assistance and the Bill of Rights Act of 1976.

2. The Arizona Training Program at Coolidge must comply with certain minimum constitutional and statutory standards governing the care, habilitation, and treatment of residents. This action asks that minimum constitutional and statutory standards be applied to the Training Program. The Plaintiffs request declaratory and injunctive relief to prevent further harm to and deterioration of, residents.

JURISDICTION

3. This is a civil action authorized by 42 U.S.C. § 1983 for declaratory and injunctive relief to redress the deprivation, under color of state law, of rights secured by the Eighth and Fourteenth Amendments of the United States Constitution, § 504 of the Rehabilitation Act of 1973, and the Developmental Disabled Assistance and the Bill of Rights Act, 42 U.S.C. 6010.

4. This Court has jurisdiction under 28 U.S.C. Sections 1331, 1343, 2201, and 2202. The amount in controversy exceeds ten thousand dollars (\$10,000.00) exclusive of interest and costs.

5. Venue is proper in this action since all plaintiffs and all defendants reside in Arizona, and the claim arose in Arizona. 28 U.S.C. 1391.

PLAINTIFFS

6. Plaintiff, NATHALIA GRISWOLD, is an 18 year old woman, residing in "Cardinal Cottage" at the Arizona Training Program at Coolidge. She was admitted in 1974.

7. Doris Griswold is the mother and guardian of Nathalia Griswold and resides at New River, Box 506, Black Canyon Stage, Arizona 85020. She sues as Nathalia Griswold's guardian and next of friend.

8. Plaintiff, KENNETH MCKINNEY, is a 20 year old male. He was admitted to the Training Program on December 2, 1970. He lives in "Cactus Wren Cottage."

9. Plaintiff, RICHARD BEASLEY, is a 20 year old male currently residing in "Pine Cottage" at the Arizona Training Program at Coolidge. He was admitted August 15, 1972.

10. Plaintiff, PAUL SKOGAN, is a 21 year old male. He was admitted to the Training Program on February 16, 1961. He currently resides in "Aspen Cottage."

11. Plaintiff, VICKI TURNBOW, is a 26 year old female who was admitted to the Training Program on April 24, 1959. She lives in "Cactus Wren Cottage."

12. Plaintiff, CHARLES ASHENFELTER, is a 21 year old male residing in "Pine Cottage" at the Arizona Training Program at Coolidge. He was admitted February 21, 1963.

13. Plaintiff, ROGER MARK, is a 16 year old male who has resided at the Training Program since February 9, 1966. He currently lives in "Pine Cottage."

14. Nancy Stanley, is presently employed as a Field Worker in a Legal Services Project for the Developmentally Disabled. The Project is sponsored by the Arizona Association for Retarded Citizens. Ms. Stanley has worked as a volunteer in classrooms for trainable mentally retarded persons for over 4 years. She has organized training sessions to enable college students to counsel MR persons. She has been a personal advocate and friend for several mentally retarded women. Ms. Stanley is currently the Chairman of the Human Rights and Ethics Committee of the Arizona Training Program at Tucson. Nancy Stanley currently resides at 4415 East Grant, Apt. A144, Tucson, Arizona 85712. She sues on behalf of Kenneth McKinney, Richard Beasley, Paul Skogan, Vicki Turnbow, Charles Ashenfelter, and Roger Mark.

15. Plaintiffs sue on their own behalf and, pursuant to Rule 23, Federal Rules of Civil Procedure, on behalf of all

other persons residing at the Arizona Training Program at Coolidge.

16. The class of plaintiffs is so numerous that a joinder of all members is impracticable. There are questions of law and fact common to the class. Plaintiffs will fairly and adequately protect the interests of the class. The claims of the representative plaintiffs are typical of the claims of the class.

17. In addition, prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with the respect to individual members of the class which would establish incompatible standards of conduct for the defendants opposing the class, and the risk of incompatible adjudications, with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members of the class not parties to the adjudications and would substantially impair and impede the ability of these other members of the class to protect their interests.

18. In addition, defendants have acted and failed to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate to the class as a whole.

DEFENDANTS

19. Defendant, JIM RILEY, is the Superintendent of the Arizona Training Program at Coolidge, As such he is charged with the administrative responsibility for the operation of the Coolidge program.

20. Defendant, BRIAN LENSINK, is the Chief of the Bureau of Mental Retardation, Department of Economic Security, and as such is charged with the administrative responsibility for supervising the activities of the Training Program.

1 27. Nathalia Griswold attends a "recreation" program
2 for two hours a day. This is the current extent of her
3 habilitation program at ATP-C.

4 28. Nathalia Griswold needs a highly structured and
5 closely supervised setting in which she can eliminate bad
6 behavior and also learn basic skills. ATP-C has not provided
7 sufficient staff, facility, or program to meet these needs.
8

9 29. Nathalia Griswold needs help in learning to feed
10 herself properly, dress and undress, and bath. Lack of direct
11 care and habilitation staff prevents such help.

12 30. Nathalia Griswold needs help in developing her
13 speech and other techniques to improve her communication skills.
14 The lack of qualified habilitation staff prevents such help
15 from being given.

16 31. Nathalia Griswold needs help in developing appropriate
17 social behavior. Lack of habilitation and direct care staff
18 prevents such help.

19 32. Nathalia Griswold is locked in a day room with
20 limited access to an enclosed outside yard for most of her
21 days. She is confined with other severely disabled persons.
22

23 33. Nathalia Griswold suffers daily physical and mental
24 harm and deterioration. The massive doses of tranquilizers
25 and other drugs seriously deminishes Miss Griswold's ability
26 to learn basic self help skills and decreases her ability to
27 communicate. Lack of exercise and therapy cause further
28 deterioration to the use of her right leg. Her confinement
29 in a locked ward with other severely disabled persons causes
30 daily regression.

31 34. Plaintiff, KENNETH MCKINNEY, is a 20 year old male.
32

1 He was admitted to the Training Program on December 21, 1970.
2 He is severely disabled, by reason of profound retardation,
3 severe constriction of three limbs, and limited constriction
4 of the left arm. Kenneth lives in "Cactus Wren Cottage."

5 35. The location of relatives of Mr. McKinney is not
6 known and he has no guardian.

7 36. Kenneth McKinney receives only ½ hour of "physical
8 therapy" delivered by ATP-C staff who have received some limited
9 training from a physical therapist. This is the extent of formal
10 regular treatment and habilitation provided to Kenneth McKinney.

11 37. Kenneth McKinney has no wheelchair specifically
12 designed for him. Lack of such wheelchair means that he
13 infrequently leaves his hospital-type bed.

14 38. Kenneth McKinney has extremely limited functional
15 abilities. Kenneth McKinney is being harmed daily by lack
16 of intensive attention needed to exercise his body daily
17 and the need to exercise his one remaining usable arm.
18 Mr. McKinney is harmed daily by his confinement in bed.

19 39. Plaintiff, RICHARD BEASLEY, is a 20 year old male
20 currently residing in "Pine Cottage" at ATP-C. He was
21 admitted to the program on August 15, 1972. Mr. Beasley is
22 a severely disabled individual by reason of profound mental
23 retardation. A pattern of self-abuse has caused medical
24 problems and Richard Beasley does not toilet himself because
25 of this. He has full use of arms and legs and some use of
26 his fingers.

27 40. The location of relatives of Mr. Beasley is not known
28 and he has no guardians.
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1 41. Mr. Beasley goes to a "readiness program" for two
2 hours daily. He receives "training in communication skills"
3 one hour a day. This is the extent of formal training for
4 Richard Beasley.

5 42. Richard Beasley needs habilitation services providing
6 sensori-motor integration, physical dexterity, recreation,
7 speech development, and behavior management. His current
8 habilitation program is grossly inadequate.

9 44. Richard Beasley is confined in a locked cottage with
10 other residents who lack the ability to toilet or dress
11 themselves and who have severe behavior problems. Richard
12 Beasley possesses the ability to toilet and dress himself.
13 He displays only mild behavioral problems. His confinement
14 behind locked doors subjects Mr. Beasley to daily physical
15 harm from other residents, and causes him to regress daily
16 in his abilities to control his own behavior and to learn
17 self-care skills.
18

19 45. Plaintiff, PAUL SKOGAN, is a 21 year old male.
20 He was admitted to the Training Program on February 16, 1961.
21 Mr. Skogan currently resides in "Aspen Cottage." He is
22 severely disabled by reason of profound mental retardation
23 and inability to move his legs and severe inability to use
24 his hands. Mr. Skogan is also-self-abusive at times.
25

26 46. The location of relatives of Mr. Skogan is not
27 known and he has no guardian.
28

29 47. Paul Skogan attends a Sensory Stimulation Program
30 for 1½ hours daily. No additional formal treatment or
31 habilitation is provided for Paul Skogan.
32

1 48. Paul Skogan does not receive adequate care specific
2 to his physical problems or self-abusive behavior. The
3 sensory stimulation program, the only specific care and
4 habilitation given, does not provide critical exercises and
5 therapy to his limbs, nor help eliminate his abusive behavior.
6 Mr. Skogan regresses dialy in his ability to care for himself
7 and to control his behavior.
8

9 49. Plaintiff, VICKI TURNBOW, is a 26 year old female
10 who was admitted to the Training Program on April 24, 1959.
11 She lives in "Cactus Wren Cottage," Vicki Turnbow is a
12 severely disabled individual by reason of profound mental
13 retardation and severe seizure activity, She has full use of
14 her legs and hands but does not toilet herself. She does
15 not speak. Vicki Turnbow is at times aggresive toward others.
16

17 50. The location of relatives of Miss Turnbow is not
18 known and she has no guardian.

19 51. Vicki Turnbow attends a "readiness program" for one
20 hour daily. She is in "adaptive-programming" for another
21 hour a day. No other formal treatment or habilitation is
22 afforded to Vicki Turnbow.

23 52. The absence of adequate toilet facilities and
24 available staff prevents Vicki Turnbow from toileting herself
25 and acquiring other basic skills. She receives no physical
26 therapy or wheel chair mobility training. Vicki Turnbow
27 receives little or no communication skills training.

28 53. Vicki Turnbow possesses abilitities to substantially
29 care for her body, re, toileting, feeding, dressing. She loses
30 more of these basic capacities every day she is neglected by
31 the Defendants. Lack of habilitation program and lack of
32

1 staff attention in the residential cottage prevent Vicki
2 Turnbow from becoming as independent as possible.

3
4 54. Plaintiff, CHARLES ASHENFELTER, is a 21 year old
5 man residing in "Pine Cottage" at the Arizona Training Program
6 at Coolidge. Mr. Ashenfelter is severely disabled by reason
7 of retardation and by self-abusive behavior. Mr. Ashenfelter
8 is able to feed and toilet himself.

9 55. The location of relatives of Mr. Ashenfelter is
10 not known and he has no guardian.

11 56. Mr. Ashenfelter attends a "communications" class
12 one hour a day and attends a "readiness" class 2 hours a
13 day. This is the extent of formal treatment.

14 57. Mr. Ashenfelter needs a highly structured and closely
15 supervised setting and program in which he can learn not to
16 be self-abusive. ATP-C has not provided sufficient staff,
17 facilities, or programs to meet these needs.

18 58. Mr. Ashenfelter is confined in a locked ward for
19 most of the day by the Defendants. The Defendants give him
20 heavy doses of tranquilizing drugs on a daily basis. This
21 physical and medical confinement substitutes for decent care
22 and habilitation by the Defendants.

23
24 59. Mr. Ashenfelter's confinement in a locked ward and
25 the administering of heavy doses of tranquilizing drugs causes
26 daily regression in his ability to live in an acceptable
27 manner with other human beings, and in his ability to use his
28 communication skills. Every day Mr. Ashenfelter's confinement
29 subjects him to actual, or the treat of, physical harm by
30 other residents.

31 60. Plaintiff, ROGER MARK, is a 16 year old male who
32 has resided at the Training Program since February 9, 1966.

1 He currently lives in "Pine Cottage." Mr. Mark is severely
2 disabled by reason of violently self-abusive behavior. This
3 is manifested in frequent head banging and hard slapping
4 of the face.

5 61. The location of relatives of Mr. Mark is not known
6 and he has no guardian.

7 62. Roger Mark attends a "readiness program" for 3
8 hours daily.

9 63. The lack of consistent program efforts to deal
10 with his violently self-abusive behaviors render this program
11 inadequate for Roger Mark.
12

13 64. Roger Mark needs direct care, habilitation, and
14 treatment services which will alleviate his violently self-
15 abusive behavior. Direct care staff to provide a structured
16 behavior modifying program is lacking.

17 65. Roger Mark is confined in a locked cottage in
18 which most residents display aggressive and abusive behavior.
19 Pine Cottage staff lack the training to develop approaches
20 to prevent this behavior. The staff/resident ratio is very
21 high. Under the circumstances behavior modifying programs
22 cannot be implemented. Mr. Mark daily injures himself and
23 others due to these conditions. Mr. Mark daily regresses
24 in basic skills and behavior in this environment.
25

26 66. Each of the above Plaintiffs lacks the capacity
27 to decide to live at the Training Program at Coolidge. All
28 are restricted in fact by rules and regulations and practices
29 by the Defendants. Each is confined to the Training Program.
30 All lack the capacity to request release. Plaintiffs, legally
31 and/or factually, depend entirely on Defendants to determine
32

1 when release is appropriate.

2 FACTS APPLICABLE TO BOTH THE
3 INDIVIDUALS AND CLASS PLAINTIFFS

4 67. The Defendants have failed to provide needed resi-
5 dential care, including lack of adequate supervision of residents,
6 lack of adequate staff to properly toilet, feed, and dress
7 residents. As a result, residents of the ATP-C regress daily
8 in their abilities to take care of themselves, and their
9 abilities to live with other persons in an acceptable manner.

10 68. The Defendants have failed to provide opportunities
11 for exercise and therapy to physically disabled residents. As
12 a result, the ability of residents to use their limbs and
13 bodies deteriorates daily.

14 69. The Defendants have failed to provide sanitary
15 and safe bathroom facilities for residents.

16 70. The Defendants have failed to provide treatment
17 and habilitation programs for residents.

18 71. The Defendants have arbitrarily and without
19 rational justification provided some residents of the ATP-C
20 with treatment and habilitation and have denied other
21 residents similar level of service.

22 72. The Defendants have failed to provide adequate
23 behavior management programs for residents with emotional
24 problems. As a result, every day residents of the Training
25 Program are subject to physical harm by other residents.
26

27 73. The Defendants have consistently, physically and
28 medically restrained many residents of the Training Program
29 at Coolidge because of lack of behavior management programs.
30

31 74. The Defendants have failed to provide appropriate
32

1 placements for residents within the facility and within the
2 Arizona community wherein those residents would be most free,
3 with most protection from harm, and most able to fulfill their
4 capabilities.

5 75. Defendants actions cause daily harm to the residents
6 of the Training Program.

7 76. Residents of the Training Program lack the capacity
8 to decide to live at the Training Program at Coolidge. All
9 are restricted in fact by rules and regulations and practices
10 by the Defendants. Each is confined to the Training Program.
11 Residents lack the capacity to request release.

12 77. The Defendants are receiving monies from the
13 Federal Government for the care, habilitation and treatment of
14 residents of the Training Program at Coolidge. Defendants
15 discriminate on the basis of the residents' handicaps in
16 providing care, habilitation, and treatment.

17 78. Defendants are subject to and receive Federal monies
18 from the Developmentally Disabled Assistance Act and the Bill
19 of Rights Act, 42 U.S. 5010 and Defendants fail to recognize
20 and provide for the federal statutory rights of residents of
21 ATP-C to receive appropriate treatment, services and habilita-
22 tion.
23
24

25
26 CAUSE OF ACTION

27 79. The Fourteenth Amendment of the United States
28 Constitution prohibits the deprivation of any person of life,
29 liberty, or property without due process of law. The
30 Fourteenth Amendment also guarantees to all persons the equal
31 protection of the law. Defendants violate these rights in
32

1 failing to provide minimum level of care to residents at ATP-C,
2 in failing to provide less restrictive appropriate environments
3 to residents, and in failing to provide many residents with the
4 same level of habilitation and treatment provided to other
5 residents.

6 80. The Eighth Amendment to the United States Constitution
7 prohibits cruel and unusual punishment. Defendants inflict
8 cruel and unusual punishment on the residents of ATP-C, through
9 physically and medically restraining many residents, by failing
10 to protect residents from harm, by failing to provide minimum
11 basic care, and by failing to provide minimum sanitary
12 facilities.
13

14 81. The actions of the Defendants are in violation of
15 the Developmental Disabled Assistance and the Bill of Rights
16 Act, 42 U.S.C. 6010, which states that:
17

18 Congress makes the following findings respecting the
19 rights of persons with developmental disabilities:

- 20 (1) Persons with developmental disabilities have a
21 right to appropriate treatment, services and
22 habilitation for such disabilities.
- 23 (2) The treatment, services, and habilitation for
24 a person with developmental disabilities should
25 be designed to maximize the developmental
26 potential of the person and should be provided
27 in the setting that is least restrictive of the
28 person's personal liberty.
- 29 (3) The Federal Government and the States both have
30 an obligation to assure that public funds are not
31 provided to any institutional or other residential
32 program for persons with developmental disabilities
that:
- (A) does not provide treatment, services, and
habilitation which is appropriate to the
needs of such persons; or
- (B) does not meet the following minimum standards:
- (i) Provisions of a nourishing, well-
balances daily diet to the persons
with developmental disabilities
being served by the program.

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- (ii) Provision to such persons of appropriate and sufficient medical and dental service.
- (iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.
- (iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.
- (v) Permission for close relative of such persons to visit them at reasonable hours without prior notice.
- (vi) Compliance with adequate fire and safety standards as may be promulgated by the secretary.

82. The action of the Defendants are in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. 8794 which provides "No otherwise handicapped individual in the United States, shall solely by reason of his handicaps, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance."

IRREPERABLE HARM

The acts of Defendants, and each of them herein, cause members of the Plaintiff class to suffer continuing and irreparable harm.

1. WHEREFORE, PLAINTIFFS PRAY: For declaratory judgement that Defendant's acts, policies, and practices complained of herein violate Plaintiffs rights. and the rights of members of Plaintiffs class secured by the Eighth Amendment, and the due process clauses of the Fourteenth Amendment of the

1 United States Constitution.

2 2. For a declaratory judgement that Defendant actions,
3 policies, and practices complained herein violated Plaintiff's
4 rights, and the rights of members of Plaintiffs class secured
5 by Section 504 of the Rehabilitation Act of 1973, and the
6 Developmentally Disabled Assistance and the Bill of Rights
7 act of 1976.
8

9
10 3. For preliminary injunctive relief sufficient to
11 rectify the unconstitutional and irreparably harmful conditions,
12 policies, and practices alleged herein.

13 4. For an order defining minimum constitutional
14 standards for the care, habilitation, and treatment of residents
15 of the Training Program at Coolidge.

16 5. For an order defining minimum constitutional and
17 statutory standards for assuring that residents of Arizona
18 Training Program are provided residential, treatment, and
19 habilitation services in the most appropriate least restrictive
20 environment.
21

22 6. For an order directing Defendants to prepare a plan
23 to be submitted to the Court by a date certain for the
24 correction of constitutional deficiencies in the administration
25 of the Arizona Training Program at Coolidge, which plan shall
26 comply with the Court's order defining the minimum constitutional
27 standards for the Training Program.
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29 7. For the appointment by the Court of an impartial
30 committee composed of professionally trained citizens, and
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citizens that have a personal interest in the welfare of mentally retarded and developmentally disabled persons, to perform the following functions:

a. Monitor the provision of care, habilitation, treatment to residents of ATP-C.

b. Monitor the transfer or discharge of residents of ATP-C.

c. To consult with governmental officers and agencies to assist in the implementation of Court Orders relating to Training Program conditions.

d. To investigate complaints of non-compliance with the Court Orders and to report to the Court the results of such an investigation.

To secure compliance with the Court's Orders without the necessity of formal hearings.

8. For Plaintiffs costs of suit.

9. For Attorney's Fees.

10. For such other and further relief as the Court sees proper.

Robert Beckett
Attorney for Plaintiffs

Copies of the foregoing hand delivered this 25 day of April, 1977, to:

Alan Kamin
Assistant Attorney General

Robert Beckett
Robert Beckett