

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MARTHA NACHEMA

Appellant

APPEAL NO. 97-6577

R.C., by his next friend, the Alabama
Disabilities Advocacy Program, on behalf of
of himself and those similarly situated

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

CASE NO. CV 88-D-1170-N

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MARTHA NACHMAN,

)

)

Appellant,

)

)

v.

)

APPEAL NO. 97-6577

)

R.C., *et al.*

)

)

Appellees.

)

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT OF
PLAINTIFFS/APPELLEES

The following persons and entities may have an interest in this

litigation:

Alabama Department of Human Resources

American Civil Liberties Union of Alabama, attorney for appellees

Bazon (Judge, David L.) Center for Mental Health Law, attorney for

appellees

Brasfield, Kathy P., attorney for appellant

Brown, Kathleen A., attorney for appellant

Burnim, Ira A., attorney for appellees

Cohen, Richard, attorney for appellees

Coody, Judge Charles S., Magistrate Judge in the United States

District Court for the Middle District of Alabama, Northern
Division

DeMent, Judge Ira, District Court Judge in the United States District

Court for the Middle District of Alabama, Northern Division

Dubina, Judge Joel, former District Court Judge in the United States

District Court for the Middle District of Alabama, Northern
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Nachman, Martha S., appellant and Commissioner of Alabama

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Park, John J. Jr., attorney for appellant

Pryor, William H. Jr., Attorney General of Alabama, attorney for
appellant

R.C., individually and as the representative of the plaintiff' class

defined as follows in the consent decree:

The "plaintiff class" is all children who are now, or in the future will be, children in foster care and/or DHR custody who have emotional or behavioral disorders. The class consists of the following children: *

a. Children with severe emotional or behavioral problems who are in foster care and/or DHR custody, and who are at imminent risk of placement into foster care and/or DHR custody. DHR shall promulgate a definition, acceptable to the parties, of "severe emotional or behavior problems." The definition shall be within the "parameters" that have been formulated by the CASSP program of the National Institute of Mental Health.

b. Children with moderate or mild emotional or behavioral problems who are in foster care and/or DHR custody, or who are at imminent risk of placement into foster care and/or DHR custody. Children who meet any of the descriptions in paragraphs 1-6 of the Supplemental Recommendation of the Magistrate Concerning Class Certification, filed May 15, 1990, and who do not have severe emotional or behavioral problems, shall be considered "children with

moderate or mild emotional or behavioral problems.”

c. Children who are at high risk of developing emotional or behavioral problems and who are at imminent risk of placement into foster care and/or DHR custody. Defendant shall develop a definition, acceptable to the parties, of which children at imminent risk of placement are “at high risk of developing emotional or behavioral problems.” While the defendant shall have broad discretion to develop and modify the definition, approximately 35% of all children at imminent risk of placement shall be deemed to be “at high risk of developing emotional or behavioral problems.” Defendant shall consider including in the definition of those “at high risk” children who have previously been admitted to foster care and/or DHR custody (footnotes omitted).

Reynolds, Patrick J., attorney for appellees

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Sessions, Senator Jeff, former Attorney General for the State of

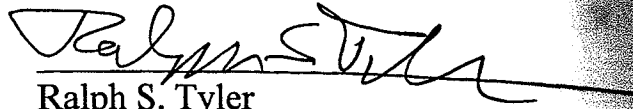
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Southern Poverty Law Center, attorney for appellees

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Tyler, Ralph S., attorney for appellees

Vercelli, Charles E., former attorney for appellant


Ralph S. Tyler

STATEMENT REGARDING ORAL ARGUMENT

The Court has scheduled this case for oral argument on November 21, 1997.

CERTIFICATE OF TYPE SIZE AND STYLE

This brief has been printed in 14 point Times New Roman and is proportionally spaced.

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review this appeal challenging the denial of a motion to vacate or modify a consent decree under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether the district court properly declined to modify a consent decree entered in 1991 based upon the State's motion filed in 1996 claiming that the then four year old decision of the Supreme Court in *Suter v. Artist M.*, 503 U.S. 347 (1992), required such modification when no provision of the decree violated the law as declared in *Suter* and, as the district court found, the decree was based on federal claims in addition to those addressed in *Suter*.

2. Whether the district court properly rejected the State's post-judgment challenge to the standing of members of the plaintiff class based upon (a) the State's undisputed delay in raising this challenge, and (b) the allegations of "injury in fact" in plaintiffs' complaint, and (c) the overwhelming and undisputed evidence of harm to plaintiffs in the record as of the time of settlement, and (d) the State's decision to settle the case by way of a consent decree and thereby avoid a trial at which overwhelming additional devastating evidence of "injury in fact" to all members of the plaintiff class would have been presented.

STATEMENT OF THE CASE

A. Course of proceedings below

This appeal involves a challenge to a decision of the United States District Court for the Middle District of Alabama (DeMent, J.) declining to vacate or modify a consent decree. (R5 - 400 - 1-53.) ^{1/} The consent decree was entered in 1991 to reform the State of Alabama's child welfare system. (R3 - 235 - 1-40.) In 1996, the State moved to vacate the decree. (R5 - 339 - 1-50.) The district court properly denied the State's motion.

In 1991, on the eve of trial and after nearly three years of intense litigation followed by protracted settlement negotiations, the parties to this case, a plaintiff class of children and the defendant Commissioner of the Alabama Department of Human Resources ("State" or "DHR") presented a proposed consent decree to the district court (Hobbs, J.). (R3 - 235 - 1-40.) The court conditionally approved the decree, subject to notice to the class and others and a hearing on any objections. (R3 - 236 - 1.) The district held a "fairness hearing"

^{1/} Citations in the form "R__-__-__" are to the volume number, docket number, and page of the cited document in the district court record.

and thereafter, on December 18, 1991, entered an order giving final approval to the decree. (R3 - 251 - 1-2; R3 - 252 - 1.)

Between 1991 and 1996, progress was made in improving Alabama's child protection and welfare system within the framework of the decree. In 1996, however, contemporaneous with a change in the administration of Alabama's state government, this progress ended and was replaced by DHR's resistance to the decree. Then, on July 29, 1996, the State moved to vacate the decree in its entirety or, alternatively, to modify it so substantially as to effectively terminate the decree. (R5 - 339 - 1-50.) The State's motion did not assert that the goals, objectives, and deadlines of the decree had been satisfied. *See* district court's opinion denying motion ("Defendant freely admits that it has not lived up to its end of the bargain but nevertheless asks that it be relieved of its obligations.") (R5 - 400 - 12) (footnote omitted). Rather, the State's principal argument was the quite extraordinary one that the decree was void *ab initio* as, allegedly, the decree was the product of fraud and collusion between the parties. *See* state's motion to vacate (R5 - 339 - 1) (the settlement "was the product of collusion by former state officials"; *id.* at 12 ("the parties collusively presented an agreement to this Court").

The plaintiff class opposed the State's motion. (R5 - 345 - 1-43.)

Plaintiffs argued, among other things, that the claim of fraud was refuted by the parties' hotly contested litigation of this case in the district court, including the State's seeking dismissal of the case (R1 - 37 - 1-23) and extensive litigation over class certification issues. (R1 - 53 - 1-16; R2 - 73 - 1-2; R2 - 115 - 1-3; R2 - 124 - 1-3; R2 - 130 - 1-2.) In addition, the State's collusion argument was refuted by its own internal documents. The State attached to its motion a candid memorandum prepared in 1991 by the State's lead attorney advising that the State faced certain defeat at trial because pretrial discovery had revealed "a system in crisis." (R5 - 339, attachment to Ex. A at 5.)

The district court (DeMent, J.) held a hearing on the State's motion and thereafter issued a 53-page opinion rejecting all of the State's arguments. (R5 - 400 - 1-53.) The present appeal followed.

B. Statement of facts

Plaintiff R.C. brought this case in 1988 against the Commissioner of the Alabama Department of Human Resources. Plaintiff's complaint set forth injuries he had suffered as a result of DHR's unlawful conduct. R.C. alleged, for example, that before DHR sought custody of him DHR "failed to adequately investigate the [unfounded] allegations that R.C. was being neglected in his

father's home"; "DHR made no efforts to provide R.C. or his father with in-home services to enable R.C. to remain in his home"; R.C. was improperly placed in an institutional setting and he did not receive proper care in that setting; R. C. was inappropriately and unnecessarily institutionalized in a psychiatric facility where he was excessively medicated. (R1 - 1 - 3-6.) R.C. alleged that he had been "deprived of his constitutional right to family integrity and to appropriate care while in state custody and of rights under the federal statutory scheme that governs the administration of Alabama's foster care system." (*Id.* at 2.) 2/

The State moved to dismiss or for summary judgment arguing, *inter alia*, that the constitutional rights asserted by plaintiff — the rights to appropriate care while in state custody and to freedom from unwarranted governmental interference with family integrity — did not exist and that plaintiff had no cause of action under the federal Adoption Assistance Act and Child Welfare Act ("Child Welfare Act"). (R1 - 6 - 1-26.) The district court (Dubina, J.) denied the State's motion, ruling that plaintiff "R.C. has suffered and is continuing to suffer serious emotional problems and other injuries because he has been allegedly denied

2/ R.C. subsequently amended his complaint to assert claims on behalf of a class of similarly situated persons. (R1 - 22 - 1-2.)

appropriate care and treatment by the Alabama Department of Human Resources.” (R1 - 37 - 4.) The court held that R.C. had stated cognizable constitutional claims to be free of unwarranted governmental interference with one’s family and to adequate care and treatment while in state custody. (*Id.* at 10-13.) The court also held that plaintiff’s complaint stated a claim under the Child Welfare Act, 42 U.S.C. §§ 601 *et seq.* (*Id.* at 13-20.) Plaintiffs subsequently amended their complaint to add an additional statutory claim, this one under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. (R2 - 118 - 4-6.)

Following denial of the State’s motion, this case proceeded into discovery. The district court docket entries reflect occasional discovery issues which required judicial resolution and several rounds of intense litigation over the issue of class certification. Over the course of the litigation involving class certification, the class definition changed and expanded as discovery broadened and deepened plaintiffs’ and the court’s understanding of the horrendous risks to families and children caused by the State’s non-system for family preservation and child protection. *See* district court opinion denying motion to vacate (court initially certified a class on July 26, 1989, and then “refined the class definition” on July 12, 1990) (R5 - 400 - 3).

At hearings on class certification, plaintiffs submitted proof of extraordinary injury and risk of injury to class members. The initial opinion of the court on class certification (Coody, Magistrate Judge) details the evidence presented by plaintiffs. This evidence included an affidavit describing “a consistent and pervasive pattern of DHR failing to provide children who are emotionally disturbed or behaviorally disordered appropriate care, treatment, and services” (R1 - 53 - 5-6) (quoting affidavit of Genie Wehling), and deposition testimony of a DHR official that DHR’s Division of Family and Children Services “is not adequately staffed to immediately investigate serious allegations of abuse and neglect.” (*Id.* at 6.) The court also had before it the report of the Governor’s Special Commission on Child Welfare Services which found, as the court noted, that “the State of Alabama has failed on a long-term basis to fulfill its legal and moral obligations to its abused and neglected children.” (*Id.* at 7.)

After about three years of pretrial proceedings and with a trial date fast approaching, serious settlement discussions began. The State’s grim assessment of its prospects at trial is not now a matter of speculation. With its motion to vacate, the State filed a copy of the breathtakingly candid case analysis memorandum prepared in 1991 by its lead trial counsel. The memorandum identifies points “won by DHR” and “lost by plaintiff” in the event of settlement.

Counsel was unequivocal about the outcome in the event of a trial: "This case poses a clear victory for the plaintiffs. The facts developed through discovery show a system in crisis. The Governor's Special Commission Report on the Foster Care System identifies many of the problems with the system, but the facts displayed at trial would be far more devastating than even that document depicts. The settlement obviously forecloses this loss." (R5 - 339 - Ex. A - 5.) (Emphasis added.)

The State's contemporaneous memorandum also noted the crucial settlement points "won by DHR" as including "DHR maintains control of the Foster Care System"; DHR retains "great authority in the planning process"; "the new system will operate less expensively in 1999 than the present system would have operated in the same year"; and "[t]he trial of this case would be a public relations nightmare for DHR and the administration because of the nature of the evidence that would come out at trial." Thus, the State's judgment in 1991 was that the proposed settlement was not only preferable to the option of certain defeat at trial, but also created the opportunity to build a better and less expensive system. (*Id.* at 5-7.)

The parties settlement negotiations resulted in a consent decree which was conditionally approved by the court (Hobbs, J.) on June 11, 1991. (R3 - 236 -

1.) After a fairness hearing on September 30, 1991, the decree received final approval on December 18, 1991. (R3 - 251 - 1-2.) The decree recites that “[b]oth the plaintiffs and the defendant have made concessions that they believed were unnecessary in light of prevailing law and the facts of this case.” (R3 - 235 - 1; *accord id.* at n. 1.) Paragraph 7 of the decree contains the class definition, including ¶ 7(c) the portion in dispute in this appeal:

Children who are at high risk of developing emotional or behavioral problems and who are at imminent risk of placement into foster care and/or DHR custody. Defendant shall promulgate a definition, acceptable to the parties, of which children at imminent risk of placement are “at high risk of developing emotional or behavioral problems.”

(*Id.* at 5-7.) DHR has yet to comply with the above quoted decree requirement. That is, DHR has not “promulgate[d] a definition, acceptable to the parties, of which children at imminent risk of placement are ‘at high risk of developing emotional or behavioral problems.’”

Following entry of the consent decree, progress was made in reforming Alabama’s child welfare system. That progress slowed dramatically starting in early 1996. On July 29, 1996, the State moved to vacate or modify the decree. (R5 - 339 - 1-50.) Following a hearing on May 6, 1997, the court

(DeMent, J.) denied the State's motion in its entirety on June 16, 1997. (R5 - 400 -1-53.) 3/

C. Standard of review

This appeal involves a review of the district court's denial of the State's Fed. R. Civ. P. 60(b) motion for relief from judgment; therefore, the decision below is reviewable only for abuse of discretion. *See Browder v. Director, Department of Corrections*, 434 U.S. 257, 263 n.7 (1978).

SUMMARY OF ARGUMENT

The court below strongly rejected the State's argument that the consent decree was the result of a fraud on the court perpetrated by the most senior officials in Alabama state government and plaintiffs' counsel. (R5 - 400 - 14-19.) The State has largely, if not entirely, abandoned this argument as to which it devoted "a significant portion of its brief" in the district court. (*Id.* at 14.) The State's principal argument in this Court is that there has been a change in law

3/ While the motion to vacate was pending, plaintiffs filed a motion for an order to show cause why the defendant DHR Commissioner should not be held in contempt for violating the decree (R5 - 378). No hearing has been held on that motion and it is still pending in the district court.

which requires that the decree be vacated or modified very substantially.

Alternatively, the State, which settled this case in large measure because it could not face the evidence at trial of its child welfare "system in crisis," asserts that most members of the plaintiff class lack standing to sue.

The State's "change of law" argument rests on a broad and incorrect reading of the Supreme Court's decision in *Suter v. Artist M.*, 503 U.S. 347 (1992). The State's argument is fatally flawed because (1) post-*Suter*, Congress expressly indicated its disapproval of the *Suter* analysis of the Child Welfare Act; (2) plaintiffs' complaint and the consent decree were based on substantial federal claims in addition to those under the Child Welfare Act, thereby making the *Suter* analysis irrelevant as a matter of law; (3) even after *Suter*, no provision of the decree violates federal law; and (4) the State's belated invocation of *Suter* is highly suspect because the State settled this case with full knowledge that there was uncertainty as to any claim based upon the "reasonable efforts" clause of the Child Welfare Act.

The State's standing challenge is totally without merit. While standing is an Article III jurisdictional prerequisite to suit, that does not mean -- and no federal court has ever held -- that a party can proceed as the State proposes to do. That is, a defendant cannot litigate a case to the eve of trial, settle the case

child welfare system was in crisis; and plaintiffs were and are the victims of the crisis in child protection and family preservation in the State of Alabama. The Court should reject the State's standing challenge.

CONCLUSION

For the reasons stated, the June 16, 1997 judgment of the district court denying the State's motion to vacate or modify the consent decree should be affirmed.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

<u>R.C.</u> , by his next friend,)	
the ALABAMA DISABILITIES)	
ADVOCACY PROGRAM, on behalf)	
of himself and those)	
similarly situated,)	
)	Civil Action
Plaintiffs,)	No. 88-H-1170-N
vs.)	
)	
CHARLES G. CLEVELAND,)	
Commissioner of the)	
Alabama Department of)	
Human Resources,)	
)	
Defendant.)	

AFFIDAVIT OF DR. MARGARET BEYER

1. I have a doctorate degree in clinical psychology. My experience in the areas of child welfare, juvenile justice and mental health, and as a trainer of judges, attorneys and case workers, is summarized in the attached resume.

2. I served as an expert witness for the plaintiffs in R.C. v. Hornsby, concentrating on evaluating whether class members received appropriate services for their emotional and family needs. As an expert witness for the R.C. plaintiffs, I visited Alabama facilities in which class members are placed and interviewed class members and facility staff. I talked with foster parents and Juvenile Court judges, I observed sessions of Juvenile Court, I examined DHR and facility records of class members, and I reviewed cases of children in Alabama psychiatric hospitals. I also reviewed the findings of other experts in the case. And I assisted the plaintiffs in negotiating the proposed consent decree.

3. After the proposed settlement was entered into, I was asked by the Department of Human Resources (DHR) to be one of the principal consultants assisting DHR to implement the R.C. consent decree.

4. In my opinion, the R.C. settlement is fair, adequate and reasonable. I strongly urge this Court to approve it.

5. The settlement addresses the key problems I observed in DHR's provision of pre-placement services, reunification services and proper care. Based on my visits, interviews and reviews, I found that:

a. DHR fails to make reasonable efforts to prevent class members' removal from their families. In many cases, the child's and family's needs are not assessed. Often, the agency fails to develop a needs-based service plan. Intensive efforts are rare. Pre-placement service plans are not regularly monitored or adjusted when the services provided prove ineffective.

b. DHR fails to make reasonable efforts to reunite class members with their families after they have been removed from home. Many of the children whose records I reviewed had a caseplan goal of "return home," but the services DHR provided did not match the child's or the family's needs or advance this caseplan goal. Caseplans do not identify the services that would make reunification possible. Class members are not placed in close proximity to their families, visitation between class members and their families is irregular, and family treatment almost never occurs while the child is in placement. DHR fails

to prepare families for their child's return home or support them once the child comes home.

c. DHR fails to provide proper care to class members in out-of-home-care. Class members' needs are not adequately assessed. Therefore, needs-based service plans are not developed. Class members are not placed in normalized settings. In many cases, the child's behavior does not improve; this lack of improvement should result in a change in the services being provided, but such modifications rarely occur. Sexually abused and educationally handicapped children receive inadequate services. Foster parents do not receive sufficient support and are therefore unable to provide proper care to class members. Class members do not have permanent placements -- the children whose cases I reviewed in-depth had an average of seven placements each. Class members suffer as a result of multiple placements; because these children are rejected by both their natural parents and by subsequent placements, they experience depression, withdrawal and a lack of trust in others.

d. DHR's limited services for emotionally disturbed and behavior disordered children result in excessive use of psychiatric hospitalization. In my review of psychiatric hospitalization data, I was especially troubled by the fact that nearly a third of the foster children in these hospitals were age 11 or younger.

e. DHR places class members in residential programs that are ineffective in meeting their mental health needs. The residential programs I visited described the majority of children

in their facilities as emotionally disturbed, but these programs lack sufficient staff to provide the services class members need. Many of the class members in these facilities have been sexually abused, but staff in the programs I visited reported a lack of services throughout Alabama for sexually abused children.

f. DHR places class members in residential programs that are often ineffective in helping their families. The programs I visited viewed family treatment during and after residential care as the most crucial element of reunification. These programs reported, however, that family treatment was the most lacking service in the state. Because class members are often placed in residential facilities that are far from their families, residential programs themselves generally do not provide family treatment. In addition, I found that DHR does not provide or secure effective treatment for most families of class members in out-of-home care.

g. DHR places class members in residential programs that are ineffective in meeting their educational needs. All the residential programs I visited reported that public school special educational and vocational services do not meet the needs of class members. In many cases, emotionally disturbed children are attending regular classes in public school and their educational needs are not being met. Although aware of these problems, DHR rarely advocates for class members' special education needs.

6. The settlement, if implemented, will remedy these problems. Successful implementation will require adherence to

the settlement's emphasis on individualized planning and service delivery, placement prevention and early intervention, family reunification, home-based and community-based services, and treating children and parents as partners. When fully implemented, among other things:

a. The "new" system of care mandated by the decree will develop and implement case plans based on children's needs, not on the availability of services. It will protect class members from abuse and neglect, while keeping class members in their homes and with their families whenever possible.

b. The system will assess class members' needs and provide assistance to class members in all critical service domains. The system will monitor whether a class member's service plan is working and will modify the plan as necessary to ensure its success. The system will train, support and regulate foster parents and other residential providers to ensure that class members are properly cared for in conformity with the principles of the decree.

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7. Implementation of the decree will require DHR to expand programs that have proven effective in assisting children in or at risk of being placed in foster care or DHR custody, including

expanding its intensive, home-based placement prevention program; ensuring that residential care providers diversify so that their services will be better integrated into the agency's long-term goals for class members; and developing or contracting for non-residential services that are not currently available or are not available in sufficient quantity, including home-based services to parents, educational support services to children, and respite care.

8. In my opinion, the settlement is fair, adequate and reasonable despite the fact that it will be implemented over an eight-year-period. Remedial decrees, such as the one proposed in this case, which seek to change both the philosophy and the mechanics of service delivery in a statewide system, take many years to implement. I agree that it is unfortunate that the entire R.C. system cannot be brought on-line quickly. However, I believe that the pace of implementation provided for in the decree is reasonable, given the formidable task before DHR, and I believe that class members will be better served by realistic timelines than by an overly ambitious implementation schedule with which DHR could not possibly comply.

9. The extended implementation schedule will allow DHR to concentrate its resources in the early phases of implementation on placement prevention and early intervention. An early concentration of resources on preventing class members from entering state custody and developing serious emotional and behavioral disorders is in the long-term interests of the class (and will help DHR gain control over the escalating problems of

the child welfare system). There is an emerging national consensus that a strategy of targeting new resources on placement prevention and early intervention holds the best hope of transforming child welfare systems like Alabama's from ones that injure children into ones that meets their needs.

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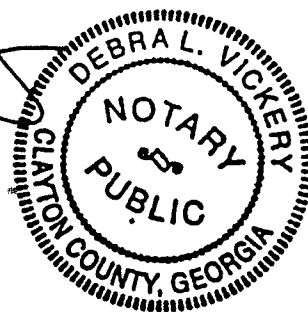
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Sworn under the pains of perjury this 26th day of
September, 1991.

Margaret Beyer
Margaret Beyer, (Ph.D.)

Debra L. Vickery

Notary Public, Clayton County, Georgia
My Commission Expires June 1, 1993



MARGARET BEYER, Ph.D.
8700 OVERLOOK ROAD
McLEAN, VIRGINIA 22102
703-893-6387

EDUCATION Ph.D. in Clinical/ Community Psychology. Yale University. 1974.
B.A. with Honors in Psychology. Vassar College. 1970.

**CURRENT
ACTIVITIES** Consultant

Terry D. Panel - Appointed by the Federal Court to develop a plan for a continuum of services for delinquents, dependents, and children in need of treatment in a class action lawsuit in Oklahoma.

Monitoring Team, Bobby M. - Assessing Florida's compliance with a court order to develop community-based youth services.

R.C. litigation regarding emotionally disturbed children in the child welfare system in Alabama. Mental Health Law Project.

Jerry M. Panel - Appointed by D.C. Superior Court to develop a plan for community-based alternatives for delinquents and to monitor a court order in a class action lawsuit in the District of Columbia.

Lisa L. litigation regarding psychiatric hospitalization of children in Maryland. Maryland Disability Law Center.

Group counseling for delinquents. Business Enterprise.

Innovative Training for Family Courts Project, funded by State Justice Institute; trainer/curriculum co-author. Youth Law Center.

I Have a Dream Foundation - Clinical consultation; Washington, D.C.

Dispositional planning for delinquents at the request of attorneys.

Training and consultation on juvenile justice, child welfare, and mental health services in various states.

Therapist

Small private practice with adults and adolescents. Licensed clinical psychologist, District of Columbia and Virginia.

**YOUTH-
RELATED
WORK**

Council for Court Excellence - Judicial and interagency training and research on neglect and delinquency, 1984-1989.

D.C. Permanency Task Force - Developing school-based family services and a parenting handbook through the National Council of Juvenile and Family Court Judges, 1986-1988.

D.C. Department of Human Services - Designing and assessing services for delinquents. June, 1983-July, 1986.

Environments for Human Services - Staff training & support, therapeutic foster care program, Virginia & Washington, D.C. 1982-1985.

Maryland Department of Health and Mental Hygiene - Studies of juvenile institution overcrowding and alternatives for delinquents. 1985.

Latin American Youth Center - Training and staff support. 1985-89. Study of Hispanic youth in the D.C. juvenile justice system. 1984.

Director, D.C. Coalition for Youth. 1978-82. Advocacy to improve youth services, including youth employment, special education, and mental health programs. Training for hundreds of public and private agency staff. Compiled a monthly newsletter for 900 youth workers.

Assistant Director for Research, National Youth Work Alliance. 1977-78. Published reports on follow-up care by runaway programs; teenage prostitution; early adolescence; runaway programs as emerging mental health centers; and abused adolescents.

Consultant, D.C. Office of Criminal Justice Plans and Analysis. 1976.

Consultant, Carnegie Council on Children. 1975

Consultant on national programs for runaway youth, HHS. 1974.

White House Conference for Youth. 1971.

WORK WITH ADOLESCENTS

Director, Peer Counseling Program, Washington Streetwork Project, 1977-79.

Psychologist, Receiving Home for Children, Washington, D.C. 1974-76.

Individual, group, and family counseling for youth in detention.

Consultant, Lee High School, New Haven, Connecticut. 1971-3.

Clinical internships, Ansonia, Connecticut junior high school (1971-2);
Number Nine (teen crisis center), New Haven, Connecticut (1970-2);
School for Boys, Meridan, Connecticut (1972).

Counselor, Urban League, Rochester, N.Y. 1967-8.

OTHER EXPERIENCE

Adjunct Faculty, Antioch New England (psychology doctoral program).

Supervised individual and family treatment at the Connecticut Mental Health Center, Yale University Psycho-Educational Clinic, and Yale-New Haven Hospital Emergency Room. 1971-73.

Consultant, Drug Dependence Institute group relations conferences, Yale Psychiatry Department. 1972-3.

Center for Community Planning; HHS. Summers, 1969 and 1970.

PUBLICATIONS

Doctoral dissertation: Psychosocial Problems of Adolescent Runaways. 1974.

"The Staff of a Youth Crisis Center: Personality and Ideology." 1972.

It's Me Again: An Aftercare Manual for Youth Workers. 1978.

"Runaways and Homeless Youth," Journal of Current Adolescent Medicine.
Co-authored with Richard Jones, M.D. and Robert Shearin, M.D. 1979.

"What's Got You Running?," Teen Times (National FHA). 1979.

"Community and School Partnership: Youth Rights and the Role of Advocates,"
Disruptive Youth in School, Council for Exceptional Children. 1980.

"Continuing Care for Runaways," Journal of Family Issues. 1980.

Reaching Troubled Youth. Co-authored with James Gordon, M.D. 1981.

"Not Getting Away with Murder: Serious Juvenile Offenders in D.C.," Juvenile Justice Myths and Realities, Institute for Educational Leadership. 1983.

"Put My Future on Hold," Teen Times (National FHA). 1983.

"The Wages of Aquarius," Vassar Quarterly. 1983.

- "Futures in Jeopardy: High-Risk Children in D.C.," Council for Court Excellence. 1984.
- "Helping Troubled Families," Interagency Youth Project. 1985.
- "Permanent Families for Children and Youth," Council for Court Excellence. 1985.
- "Emotional Problems of Neglected Children." Adoption Resources for Mental Health Professionals, Mental Health Adoption Therapy Project. 1986.
- An Emerging Judicial Role in Family Court. Co-authored with Honorable Ricardo Urbina. American Bar Association, 1986.
- "Helping Children in Care Overcome Emotional Obstacles to Independence;" "Helping Children in Care Improve their Self-Esteem;" "Helping Children in Care Make Peace with the Past." American Foster Care Resources, Inc. 1986.
- "Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence," Co-authored with Wallace Mlyniec, Esq. Family Law Quarterly, XX, 2, Summer 1986.
- "Delay in the Processing of Juvenile Delinquency Cases in the District of Columbia," Council for Court Excellence, September, 1986.
- "Overcoming Emotional Obstacles to Independence," Children Today, Fall 1986.
- Baby Blues: Preparation for Parenthood. Unpublished manuscript, 1987.
- "The Use of Evaluations in Family Court," ABA Juvenile & Child Welfare Law Reporter, February, 1987.
- "Benefits of Field Experience for Students," Co-authored with Rosi Dagit and Bruce Rinker. National Association of Environmental Educators, October, 1987.
- "Treating the Educational Problems of Delinquent and Neglected Children," Co-authored with Nancy Opalack and Patricia Puritz, Esq. Children's Legal Rights Journal, Spring, 1988.
- "Juvenile Drug Offenders in the District of Columbia," Council for Court Excellence, September, 1988.
- "Born Dead," Children and the Law. ABA. September, 1988.
- Basic Parenting: A Workbook for Teaching Single Parents. Co-authored with Earl T. Braxton, Ph.D. National Council of Juvenile and Family Court Judges, 1988.
- "Children in Maryland Psychiatric Hospitals," prepared for the Maryland Disability Law Center, 1989.
- "First You Find a Wizard," Future Choices, Youth Policy Institute, Spring, 1990. Also published in Corrections Today, April, 1991.
- Preparing for Independence. Co-authored with Barbara Jaklitsch. National Resource Center for Youth Services, 1990.
- "Families Under Intolerable Stress," Putting Children First: A Progressive Family Policy for the 1990s. Progressive Policy Institute, September, 1990.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

R.C., by his next friend,
the ALABAMA DISABILITIES
ADVOCACY PROGRAM, on behalf
of himself and those
similarly situated,

Plaintiffs,

vs.

CHARLES G. CLEVELAND,
Commissioner of the
Alabama Department of
Human Resources,

Defendant.

Civil Action
No. 88-H-1170-N

AFFIDAVIT OF GEORGE E. TAYLOR. JR.

1. I am the assistant director for programs at Brewer-Porch Children's Center in Tuscaloosa, a 30-bed child care facility licensed by the Alabama Department of Human Resources (DHR) and operated by the University of Alabama. Brewer-Porch serves children from throughout the state of Alabama. Many children who reside at Brewer-Porch are in DHR custody and emotionally disturbed or behavior disordered within the meaning of the class definition in R.C. The children to whom Brewer-Porch provides services are often among the most seriously emotionally disturbed R.C. plaintiffs. Many of these children have been victims of sexual

abuse; many are educationally handicapped and many have experienced multiple placements prior to coming to Brewer-Porch. Some children at Brewer-Porch have extremely aggressive and violent behaviors; some have a history of suicidal and self-injurious behavior.

2. I have held my current position at Brewer-Porch since 1973, and have been involved in providing services to children since 1969. I have a Master's Degree in Psychology from the University of Alabama. I have also served on various committees and task forces convened by DHR, including the Child Welfare Planning Committee, which advised DHR about the quality of its child welfare services.

3. I am currently the president of the Alabama Residential Child Care Association (ARCCA). ARCCA is a non-profit association of public and private agencies committed to providing quality care for children and youth. One of the stated goals of the association is to promote better standards of service to children, youth and families in Alabama. ARCCA's involvement in this case included submitting a position paper to DHR and to the plaintiffs' attorneys regarding the R.C. settlement, and filing comments to the Court regarding the consent decree. ARCCA also plans to be involved in the implementation of the consent decree.

4. Since September, 1990, I have served without pay as an expert witness for the R.C. plaintiffs. In this capacity, I provided information to the plaintiffs regarding the mental health services needed by class members and changes needed in the DHR

system to allow providers to deliver appropriate care to class members. I also advised the plaintiffs during the settlement negotiation process that led to the consent decree.

5. I believe that the settlement in this case is fair, adequate and reasonable, and I strongly urge this Court to approve it.

6. I believe that the settlement is designed to address the principal inadequacies I have observed regarding the current system's provision of services to class members.

7. DHR's child welfare system fails to provide necessary services and care for R.C. class members.

a. DHR fails to provide necessary services to prevent class members from being removed from their families. As a result, many class members enter the foster care system unnecessarily and suffer as a result of their separation from their families. With the provision of adequate, timely services, most children could be safely maintained in their own homes or, at least, in their own communities. Often, these services would be both more effective and less costly than removing the child. At least one-third to one-half of children currently being removed could safely and efficiently receive the services they need at home.

b. DHR fails to provide class members who are removed from their homes with placements that can meet their needs. DHR does not adequately assess class members' needs; therefore, children are placed without sufficient consideration as to whether

a placement can meet their needs. DHR has often referred the same class member to treatment facilities such as Brewer-Porch, to small, less restrictive group homes and to foster homes that lack supportive services. Each of these placements is designed to serve very different children; therefore, it is impossible that all three placements could have been appropriate for the same child. This failure to match children with the residential placements they need leads to multiple placements, which are very damaging to children.

c. DHR fails to make appropriate efforts to reunify children in out-of-home care with their families. Many children in residential facilities such as Brewer-Porch live so far from their families that visitation between the child and the family cannot occur on a regular basis. It is nearly impossible for residential placements to provide critical services, such as family therapy, which strive to support the child and family as an integral unit. DHR does not place a priority on finding residential treatment that is in or near the child's home; therefore, many class members who are placed in residential facilities lose their ties to their families and their home communities. While residential facilities may be able to help children address the problems that led to separation from their families, their families usually receive little or no assistance while the child is in care. Class members are seriously harmed when, due to these systemic inadequacies,

reunification with their families is made more difficult or even impossible.

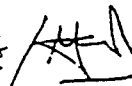
d. DHR virtually abandons many class members once they are placed in residential care. Most class members in residential facilities rarely see or speak with their DHR workers.

Overburdened and undertrained DHR workers are often inadequately involved in decisions about the services provided to class members in residential care, often becoming involved only when a crisis or emergency occurs. Class members have little sense that one aspect of the worker's role is to serve as their advocate. Class members have little or no information about DHR's plans for them.

e. DHR does not provide necessary services for class members who need to leave residential care. For this reason, residential providers often needlessly prolong a child's stay in care. When the child does return home, reunification often fails because DHR does not provide the supportive services that are needed to make reunification work.

f. Class members who "age out" of the DHR system without needed planning and services frequently wind up in the juvenile or adult corrections systems or in the adult mental health system. With appropriate services, class members can become productive and independent citizens.

8. The settlement, if implemented, will remedy these problems. Successful implementation will require adherence to the settlement's emphasis on individualized planning and service

delivery, placement prevention and early intervention, family reunification, home-based and community-based services, and treating children and parents as partners. These services are an absolutely essential part of an adequate system of care and are currently grossly underdeveloped. Many of these services can be developed by agencies currently providing residential care. Agencies, especially those with existing ties to community resources such as churches or those with staff skilled in family support services, can diversify the services they offer as ^{FUNDING} ~~support~~  for preventive and early intervention services becomes available.

9. Other key aspects of the settlement include requirements that DHR workers be adequately trained and have lower caseloads, and that the system assess the needs of class members and their families, provide services to match those needs and monitor and revise services to ensure that class members' needs are met.

10. In my opinion, the settlement is fair, adequate and reasonable despite the fact that it will be implemented over an eight year period. In fact, I believe that a short-term, fixed settlement would very likely be both ineffective and expensive. The problems in DHR's current system are extensive and complex, and can only be solved over a matter of years. If the goals, principles and standards set out in the consent decree are to be met, the "new" R.C. system of care must be gradually implemented and continually re-evaluated. Any more rapid effort to improve DHR's child welfare system would be less thorough in examining and

eradicating long-standing systemic problems, and would offer class members ~~few~~ ^{FEWER/HIS} benefits.

11. In my opinion, the settlement was the result of arms-length, good faith bargaining between the parties. I advised the plaintiffs throughout the settlement negotiations by, among other things, reviewing and commenting on each proposed draft of the consent decree. I believe that each party aggressively advocated for their interests throughout the negotiations, while making necessary and reasonable concessions in order to reach an agreement.

Sworn under the pains of perjury this 27th day of September, 1991.

George E. Taylor, Jr.
George E. Taylor, Jr.

STATE OF ALABAMA

TUSCALOOSA COUNTY

ACKNOWLEDGMENT

Sworn to and subscribed before me this 27th day of September, 1991.

Melba E. Cooper
Notary Public

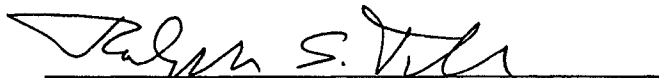
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of the foregoing brief of appellees by placing a copy in the United States Mail, first-class postage prepaid and properly addressed, this 13th day of October, 1997 to:

Attorney General Bill Pryor
11 South Union Street
Montgomery, AL 36130

In addition, a copy of same was sent *via* overnight mail (Federal Express) to the following:

Mark G. Montiel, Esquire
Suite 230, Park Place Center
8650 Minnie Brown Road
Montgomery, AL 36117


Ralph S. Tyler

child welfare system was in crisis; and plaintiffs were and are the victims of the crisis in child protection and family preservation in the State of Alabama. The Court should reject the State's standing challenge.

CONCLUSION

For the reasons stated, the June 16, 1997 judgment of the district court denying the State's motion to vacate or modify the consent decree should be affirmed.

Respectfully submitted,

Ira A. Burnim
Mary Giliberti
Bazelon Center for Mental Health Law
1101 15th Street, N.W.
Washington, DC 20005-5002
(202) 467-5730

Ralph S. Tyler
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Richard Cohen
Southern Poverty Law Center
P. O. Box 2087
Montgomery, AL 36102-2087
(334) 264-0286

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

<u>R.C.</u> , by his next friend,)	
the ALABAMA DISABILITIES)	
ADVOCACY PROGRAM, on behalf)	
of himself and those)	
similarly situated,)	
)	
Plaintiffs,)	Civil Action
vs.)	No. 88-H-1170-N
)	
CHARLES G. CLEVELAND,)	
Commissioner of the)	
Alabama Department of)	
Human Resources,)	
)	
Defendant.)	

AFFIDAVIT OF DR. MARGARET BEYER

1. I have a doctorate degree in clinical psychology. My experience in the areas of child welfare, juvenile justice and mental health, and as a trainer of judges, attorneys and case workers, is summarized in the attached resume.

2. I served as an expert witness for the plaintiffs in R.C. v. Hornsby, concentrating on evaluating whether class members received appropriate services for their emotional and family needs. As an expert witness for the R.C. plaintiffs, I visited Alabama facilities in which class members are placed and interviewed class members and facility staff. I talked with foster parents and Juvenile Court judges, I observed sessions of Juvenile Court, I examined DHR and facility records of class members, and I reviewed cases of children in Alabama psychiatric hospitals. I also reviewed the findings of other experts in the case. And I assisted the plaintiffs in negotiating the proposed consent decree.

3. After the proposed settlement was entered into, I was asked by the Department of Human Resources (DHR) to be one of the principal consultants assisting DHR to implement the R.C. consent decree.

4. In my opinion, the R.C. settlement is fair, adequate and reasonable. I strongly urge this Court to approve it.

5. The settlement addresses the key problems I observed in DHR's provision of pre-placement services, reunification services and proper care. Based on my visits, interviews and reviews, I found that:

a. DHR fails to make reasonable efforts to prevent class members' removal from their families. In many cases, the child's and family's needs are not assessed. Often, the agency fails to develop a needs-based service plan. Intensive efforts are rare. Pre-placement service plans are not regularly monitored or adjusted when the services provided prove ineffective.

b. DHR fails to make reasonable efforts to reunite class members with their families after they have been removed from home. Many of the children whose records I reviewed had a caseplan goal of "return home," but the services DHR provided did not match the child's or the family's needs or advance this caseplan goal. Caseplans do not identify the services that would make reunification possible. Class members are not placed in close proximity to their families, visitation between class members and their families is irregular, and family treatment almost never occurs while the child is in placement. DHR fails

to prepare families for their child's return home or support them once the child comes home.

c. DHR fails to provide proper care to class members in out-of-home-care. Class members' needs are not adequately assessed. Therefore, needs-based service plans are not developed. Class members are not placed in normalized settings. In many cases, the child's behavior does not improve; this lack of improvement should result in a change in the services being provided, but such modifications rarely occur. Sexually abused and educationally handicapped children receive inadequate services. Foster parents do not receive sufficient support and are therefore unable to provide proper care to class members. Class members do not have permanent placements -- the children whose cases I reviewed in-depth had an average of seven placements each. Class members suffer as a result of multiple placements; because these children are rejected by both their natural parents and by subsequent placements, they experience depression, withdrawal and a lack of trust in others.

d. DHR's limited services for emotionally disturbed and behavior disordered children result in excessive use of psychiatric hospitalization. In my review of psychiatric hospitalization data, I was especially troubled by the fact that nearly a third of the foster children in these hospitals were age 11 or younger.

e. DHR places class members in residential programs that are ineffective in meeting their mental health needs. The residential programs I visited described the majority of children

in their facilities as emotionally disturbed, but these programs lack sufficient staff to provide the services class members need. Many of the class members in these facilities have been sexually abused, but staff in the programs I visited reported a lack of services throughout Alabama for sexually abused children.

f. DHR places class members in residential programs that are often ineffective in helping their families. The programs I visited viewed family treatment during and after residential care as the most crucial element of reunification. These programs reported, however, that family treatment was the most lacking service in the state. Because class members are often placed in residential facilities that are far from their families, residential programs themselves generally do not provide family treatment. In addition, I found that DHR does not provide or secure effective treatment for most families of class members in out-of-home care.

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7. Implementation of the decree will require DHR to expand programs that have proven effective in assisting children in or at risk of being placed in foster care or DHR custody, including

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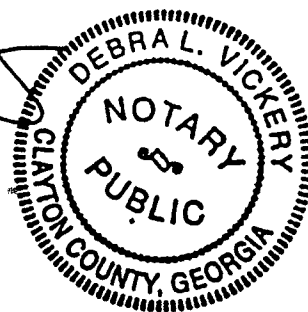
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Sworn under the pains of perjury this 26th day of
September, 1991.

Margaret Beyer
Margaret Beyer, (Ph.D.)

Debra L. Vickery

Notary Public, Clayton County, Georgia
My Commission Expires June 1, 1993



MARGARET BEYER, Ph.D.
8700 OVERLOOK ROAD
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703-893-6387

EDUCATION Ph.D. in Clinical/ Community Psychology. Yale University. 1974.
B.A. with Honors in Psychology. Vassar College. 1970.

**CURRENT
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Terry D. Panel - Appointed by the Federal Court to develop a plan for a continuum of services for delinquents, dependents, and children in need of treatment in a class action lawsuit in Oklahoma.

Monitoring Team, Bobby M. - Assessing Florida's compliance with a court order to develop community-based youth services.

R.C. litigation regarding emotionally disturbed children in the child welfare system in Alabama. Mental Health Law Project.

Jerry M. Panel - Appointed by D.C. Superior Court to develop a plan for community-based alternatives for delinquents and to monitor a court order in a class action lawsuit in the District of Columbia.

Lisa L. litigation regarding psychiatric hospitalization of children in Maryland. Maryland Disability Law Center.

Group counseling for delinquents. Business Enterprise.

Innovative Training for Family Courts Project, funded by State Justice Institute; trainer/curriculum co-author. Youth Law Center.

I Have a Dream Foundation - Clinical consultation; Washington, D.C.

Dispositional planning for delinquents at the request of attorneys.

Training and consultation on juvenile justice, child welfare, and mental health services in various states.

Therapist

Small private practice with adults and adolescents. Licensed clinical psychologist, District of Columbia and Virginia.

**YOUTH-
RELATED
WORK**

Council for Court Excellence - Judicial and interagency training and research on neglect and delinquency, 1984-1989.

D.C. Permanency Task Force - Developing school-based family services and a parenting handbook through the National Council of Juvenile and Family Court Judges, 1986-1988.

D.C. Department of Human Services - Designing and assessing services for delinquents. June, 1983-July, 1986.

Environments for Human Services - Staff training & support, therapeutic foster care program, Virginia & Washington, D.C. 1982-1985.

Maryland Department of Health and Mental Hygiene - Studies of juvenile institution overcrowding and alternatives for delinquents. 1985.

Latin American Youth Center - Training and staff support. 1985-89. Study of Hispanic youth in the D.C. juvenile justice system. 1984.

Director, D.C. Coalition for Youth. 1978-82. Advocacy to improve youth services, including youth employment, special education, and mental health programs. Training for hundreds of public and private agency staff. Compiled a monthly newsletter for 900 youth workers.

Assistant Director for Research, National Youth Work Alliance. 1977-78. Published reports on follow-up care by runaway programs; teenage prostitution; early adolescence; runaway programs as emerging mental health centers; and abused adolescents.

Consultant, D.C. Office of Criminal Justice Plans and Analysis. 1976.

Consultant, Carnegie Council on Children. 1975

Consultant on national programs for runaway youth, HHS. 1974.

White House Conference for Youth. 1971.

WORK WITH ADOLESCENTS

Director, Peer Counseling Program, Washington Streetwork Project, 1977-79.

Psychologist, Receiving Home for Children, Washington, D.C. 1974-76.

Individual, group, and family counseling for youth in detention.

Consultant, Lee High School, New Haven, Connecticut. 1971-3.

Clinical internships, Ansonia, Connecticut junior high school (1971-2); Number Nine (teen crisis center), New Haven, Connecticut (1970-2); School for Boys, Meridan, Connecticut (1972).

Counselor, Urban League, Rochester, N.Y. 1967-8.

OTHER EXPERIENCE

Adjunct Faculty, Antioch New England (psychology doctoral program).

Supervised individual and family treatment at the Connecticut Mental Health Center, Yale University Psycho-Educational Clinic, and Yale-New Haven Hospital Emergency Room. 1971-73.

Consultant, Drug Dependence Institute group relations conferences, Yale Psychiatry Department. 1972-3.

Center for Community Planning; HHS. Summers, 1969 and 1970.

PUBLICATIONS

Doctoral dissertation: Psychosocial Problems of Adolescent Runaways. 1974.

"The Staff of a Youth Crisis Center: Personality and Ideology." 1972.

It's Me Again: An Aftercare Manual for Youth Workers. 1978.

"Runaways and Homeless Youth," Journal of Current Adolescent Medicine. Co-authored with Richard Jones, M.D. and Robert Shearin, M.D. 1979.

"What's Got You Running?," Teen Times (National FHA). 1979.

"Community and School Partnership: Youth Rights and the Role of Advocates," Disruptive Youth in School, Council for Exceptional Children. 1980.

"Continuing Care for Runaways," Journal of Family Issues. 1980.

Reaching Troubled Youth. Co-authored with James Gordon, M.D. 1981.

"Not Getting Away with Murder: Serious Juvenile Offenders in D.C.," Juvenile Justice Myths and Realities, Institute for Educational Leadership. 1983.

"Put My Future on Hold," Teen Times (National FHA). 1983.

"The Wages of Aquarius," Vassar Quarterly. 1983.

- "Futures in Jeopardy: High-Risk Children in D.C.," Council for Court Excellence. 1984.
- "Helping Troubled Families," Interagency Youth Project. 1985.
- "Permanent Families for Children and Youth," Council for Court Excellence. 1985.
- "Emotional Problems of Neglected Children." Adoption Resources for Mental Health Professionals, Mental Health Adoption Therapy Project. 1986.
- An Emerging Judicial Role in Family Court. Co-authored with Honorable Ricardo Urbina. American Bar Association, 1986.
- "Helping Children in Care Overcome Emotional Obstacles to Independence;" "Helping Children in Care Improve their Self-Esteem;" "Helping Children in Care Make Peace with the Past." American Foster Care Resources, Inc. 1986.
- "Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence," Co-authored with Wallace Mlyniec, Esq. Family Law Quarterly, XX, 2, Summer 1986.
- "Delay in the Processing of Juvenile Delinquency Cases in the District of Columbia," Council for Court Excellence, September, 1986.
- "Overcoming Emotional Obstacles to Independence," Children Today, Fall 1986.
- Baby Blues: Preparation for Parenthood. Unpublished manuscript, 1987.
- "The Use of Evaluations in Family Court," ABA Juvenile & Child Welfare Law Reporter, February, 1987.
- "Benefits of Field Experience for Students," Co-authored with Rosi Dagit and Bruce Rinker. National Association of Environmental Educators, October, 1987.
- "Treating the Educational Problems of Delinquent and Neglected Children," Co-authored with Nancy Opalack and Patricia Puritz, Esq. Children's Legal Rights Journal, Spring, 1988.
- "Juvenile Drug Offenders in the District of Columbia," Council for Court Excellence, September, 1988.
- "Born Dead," Children and the Law. ABA. September, 1988.
- Basic Parenting: A Workbook for Teaching Single Parents. Co-authored with Earl T. Braxton, Ph.D. National Council of Juvenile and Family Court Judges, 1988.
- "Children in Maryland Psychiatric Hospitals," prepared for the Maryland Disability Law Center, 1989.
- "First You Find a Wizard," Future Choices, Youth Policy Institute, Spring, 1990. Also published in Corrections Today, April, 1991.
- Preparing for Independence. Co-authored with Barbara Jaklitsch. National Resource Center for Youth Services, 1990.
- "Families Under Intolerable Stress," Putting Children First: A Progressive Family Policy for the 1990s. Progressive Policy Institute, September, 1990.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

R.C., by his next friend,
the ALABAMA DISABILITIES
ADVOCACY PROGRAM, on behalf
of himself and those
similarly situated,

Plaintiffs,

vs.

CHARLES G. CLEVELAND,
Commissioner of the
Alabama Department of
Human Resources,

Defendant.

Civil Action
No. 88-H-1170-N

AFFIDAVIT OF GEORGE E. TAYLOR. JR.

1. I am the assistant director for programs at Brewer-Porch Children's Center in Tuscaloosa, a 30-bed child care facility licensed by the Alabama Department of Human Resources (DHR) and operated by the University of Alabama. Brewer-Porch serves children from throughout the state of Alabama. Many children who reside at Brewer-Porch are in DHR custody and emotionally disturbed or behavior disordered within the meaning of the class definition in R.C. The children to whom Brewer-Porch provides services are often among the most seriously emotionally disturbed R.C. plaintiffs. Many of these children have been victims of sexual

abuse; many are educationally handicapped and many have experienced multiple placements prior to coming to Brewer-Porch. Some children at Brewer-Porch have extremely aggressive and violent behaviors; some have a history of suicidal and self-injurious behavior.

2. I have held my current position at Brewer-Porch since 1973, and have been involved in providing services to children since 1969. I have a Master's Degree in Psychology from the University of Alabama. I have also served on various committees and task forces convened by DHR, including the Child Welfare Planning Committee, which advised DHR about the quality of its child welfare services.

3. I am currently the president of the Alabama Residential Child Care Association (ARCCA). ARCCA is a non-profit association of public and private agencies committed to providing quality care for children and youth. One of the stated goals of the association is to promote better standards of service to children, youth and families in Alabama. ARCCA's involvement in this case included submitting a position paper to DHR and to the plaintiffs' attorneys regarding the R.C. settlement, and filing comments to the Court regarding the consent decree. ARCCA also plans to be involved in the implementation of the consent decree.

4. Since September, 1990, I have served without pay as an expert witness for the R.C. plaintiffs. In this capacity, I provided information to the plaintiffs regarding the mental health services needed by class members and changes needed in the DHR

system to allow providers to deliver appropriate care to class members. I also advised the plaintiffs during the settlement negotiation process that led to the consent decree.

5. I believe that the settlement in this case is fair, adequate and reasonable, and I strongly urge this Court to approve it.

6. I believe that the settlement is designed to address the principal inadequacies I have observed regarding the current system's provision of services to class members.

7. DHR's child welfare system fails to provide necessary services and care for R.C. class members.

a. DHR fails to provide necessary services to prevent class members from being removed from their families. As a result, many class members enter the foster care system unnecessarily and suffer as a result of their separation from their families. With the provision of adequate, timely services, most children could be safely maintained in their own homes or, at least, in their own communities. Often, these services would be both more effective and less costly than removing the child. At least one-third to one-half of children currently being removed could safely and efficiently receive the services they need at home.

b. DHR fails to provide class members who are removed from their homes with placements that can meet their needs. DHR does not adequately assess class members' needs; therefore, children are placed without sufficient consideration as to whether

a placement can meet their needs. DHR has often referred the same class member to treatment facilities such as Brewer-Porch, to small, less restrictive group homes and to foster homes that lack supportive services. Each of these placements is designed to serve very different children; therefore, it is impossible that all three placements could have been appropriate for the same child. This failure to match children with the residential placements they need leads to multiple placements, which are very damaging to children.

c. DHR fails to make appropriate efforts to reunify children in out-of-home care with their families. Many children in residential facilities such as Brewer-Porch live so far from their families that visitation between the child and the family cannot occur on a regular basis. It is nearly impossible for residential placements to provide critical services, such as family therapy, which strive to support the child and family as an integral unit. DHR does not place a priority on finding residential treatment that is in or near the child's home; therefore, many class members who are placed in residential facilities lose their ties to their families and their home communities. While residential facilities may be able to help children address the problems that led to separation from their families, their families usually receive little or no assistance while the child is in care. Class members are seriously harmed when, due to these systemic inadequacies,

reunification with their families is made more difficult or even impossible.

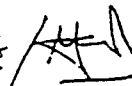
d. DHR virtually abandons many class members once they are placed in residential care. Most class members in residential facilities rarely see or speak with their DHR workers.

Overburdened and undertrained DHR workers are often inadequately involved in decisions about the services provided to class members in residential care, often becoming involved only when a crisis or emergency occurs. Class members have little sense that one aspect of the worker's role is to serve as their advocate. Class members have little or no information about DHR's plans for them.

e. DHR does not provide necessary services for class members who need to leave residential care. For this reason, residential providers often needlessly prolong a child's stay in care. When the child does return home, reunification often fails because DHR does not provide the supportive services that are needed to make reunification work.

f. Class members who "age out" of the DHR system without needed planning and services frequently wind up in the juvenile or adult corrections systems or in the adult mental health system. With appropriate services, class members can become productive and independent citizens.

8. The settlement, if implemented, will remedy these problems. Successful implementation will require adherence to the settlement's emphasis on individualized planning and service

delivery, placement prevention and early intervention, family reunification, home-based and community-based services, and treating children and parents as partners. These services are an absolutely essential part of an adequate system of care and are currently grossly underdeveloped. Many of these services can be developed by agencies currently providing residential care. Agencies, especially those with existing ties to community resources such as churches or those with staff skilled in family support services, can diversify the services they offer as ^{FUNDING} ~~support~~  for preventive and early intervention services becomes available.

9. Other key aspects of the settlement include requirements that DHR workers be adequately trained and have lower caseloads, and that the system assess the needs of class members and their families, provide services to match those needs and monitor and revise services to ensure that class members' needs are met.

10. In my opinion, the settlement is fair, adequate and reasonable despite the fact that it will be implemented over an eight year period. In fact, I believe that a short-term, fixed settlement would very likely be both ineffective and expensive. The problems in DHR's current system are extensive and complex, and can only be solved over a matter of years. If the goals, principles and standards set out in the consent decree are to be met, the "new" R.C. system of care must be gradually implemented and continually re-evaluated. Any more rapid effort to improve DHR's child welfare system would be less thorough in examining and

eradicating long-standing systemic problems, and would offer class members ^{FEWER / ~~AS~~} ~~few~~ benefits.

11. In my opinion, the settlement was the result of arms-length, good faith bargaining between the parties. I advised the plaintiffs throughout the settlement negotiations by, among other things, reviewing and commenting on each proposed draft of the consent decree. I believe that each party aggressively advocated for their interests throughout the negotiations, while making necessary and reasonable concessions in order to reach an agreement.

Sworn under the pains of perjury this 27th day of September, 1991.

George E. Taylor, Jr.
George E. Taylor, Jr.

STATE OF ALABAMA

TUSCALOOSA COUNTY

ACKNOWLEDGMENT

Sworn to and subscribed before me this 27th day of September, 1991.

Melba E. Cooper
Notary Public

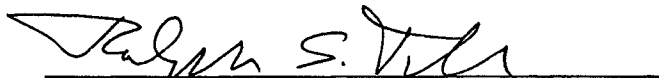
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of the foregoing brief of appellees by placing a copy in the United States Mail, first-class postage prepaid and properly addressed, this 13th day of October, 1997 to:

Attorney General Bill Pryor
11 South Union Street
Montgomery, AL 36130

In addition, a copy of same was sent *via* overnight mail (Federal Express) to the following:

Mark G. Montiel, Esquire
Suite 230, Park Place Center
8650 Minnie Brown Road
Montgomery, AL 36117


Ralph S. Tyler