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Mentally retarded state residents

Lawyers want 713 released

Associated Press

TYLER — Attorneys representing mentally retarded Texans living in state schools plan to ask a federal judge Monday to order at least 713 residents released.

The attorneys contend the Texas Department of Mental Health and Mental Retardation is not complying with a settlement to a 1974 lawsuit calling for sweeping reforms in the care of the mentally retarded.

The July 1983 settlement granting retarded people the right to the "least restrictive living conditions possible" and calls for many state school residents to be moved to community centers.

The request has the support of Linda O'Neill, a Florida sociologist appointed by U.S. District Judge William Wayne Justice of Tyler to monitor the reforms.

She said she will ask the judge to find TDMHMR in contempt of court for not living up to the terms of the settlement. Also, she will ask the department be ordered to reas-

sign a number of mentally retarded clients to the community centers.

The mental health agency has asked the state Legislature to provide \$24 million so it can reduce the 13 state schools' population by 600 residents by 1987. State schools currently house more than 9,000 mentally retarded people.

O'Neill, however, said she is skeptical of the department's plan.

While Justice considers the request to release some of the residents of state schools, the debate over the benefits of large institutions continues.

John Leslz of Galveston, the father of one of the original plaintiffs in the suit, said his mentally retarded son's condition began to deteriorate after he was placed in the Austin State School in 1963.

"Within two weeks he was seriously ill and out of control," said Leslz, whose 32-year-old son spent 22 years in the school but now lives at home. "He was denied the opportunity to do what he had been taught."

The elder Leslz said he and his wife, Ruth, are trying "to take the institution" out of his son.

"The institution has lessened John's potential," Leslz said. "We're trying to build that back."

But Rix Rutland, a San Antonio attorney and father of an adult retarded son, said he thinks state schools in Texas provided excellent care.

Rutland, whose son lives in the San Antonio State School, is head of the 3,000-member Parents' Association for the Retarded of Texas.

He said he believes community centers are dangerous and he has collected clips of mentally ill clients who died in fires at group homes across the country.

However, Carmen Quesada, director of the Association for Retarded Citizens of Texas, said community homes help the mentally retarded develop better relationships with others because they house smaller groups.

Stalled cases let death row inmates avoid execution

Associated Press

HOUSTON — An East Texas district attorney says he favors the death penalty. But his frustration in trying to get Harvey Ervin put to death for a 1976 slaying has persuaded him that a life sentence without parole — if there really were such a thing — would be better.

Ervin killed 75-year-old Ertis Brock during a robbery at a Lufkin service station on Dec. 7, 1976. But although he has been on Texas' death row for 7½ years, he has never faced an execution date, the Houston Post reported.

"The death penalty, as it exists today, is a joke." — Gerald Goodwin, the Angelina County district attorney.

He was convicted again, sentenced to death again, and the Texas Court of Criminal Appeals got his case again. Oral arguments were held July 18, 1979. Court officials will not reveal which judge has the case or how close it is to being decided, the Post said.

Bird, while refusing an interview, did respond with a letter, the newspaper said.

Bird wrote that he does not write the judges "or bother them in any way, as the longer they take to do anything the better it may be for me and I ask all not to bother them either. I hope that you get my point!!!"

found he was a continuing threat to society. Ervin was remorseless, cocky, joked about his crime and while in jail, set fire to one man's older man and struck another according to testimony.

The Texas Court of Criminal Appeals affirmed his conviction Jan. 10, 1979. On Oct. 15, 1979, the U.S. Supreme Court declined to review the case. On Nov. 13, 1979, Justice Lewis Powell issued an order suspending the court action. On Dec. 1, 1979, the court again declined to view the case.

"The death penalty, as it exists today, is a joke," said Gerald Goodwin, the Angelina County district attorney.

Goodwin said he feels that way because the process takes so long and costs so much and courts bounce cases back and forth like a pingpong ball as lawyers play "constitutional games."

Defense attorneys weren't eager to talk, either.

"I don't really want to get this damn thing stirred," Douglas Tinker, Bird's attorney, told the Post.

Ervin's attorney, Don Duran, said he wondered what had happened with his client's case, but never asked. Did he fear an inquiry would get the execution effort started? "Maybe ... probably," Duran replied.

That put responsibility for pressing the case on Goodwin since in Texas, the local district attorney is responsible for handling capital cases in state courts and the Texas attorney general's office is responsible for handling federal actions.

However, both Goodwin and the Angelina County district clerk said they do not have anything in the files about the last action by the Supreme Court.

Another death row inmate whom the Post said no execution date has been set is John Charles Zimmerman, convicted in October 1977 of killing his niece, Ramona Abner.

The Post also detailed the cases of several other men who have never had execution dates set or whose appeals have languished for years with no apparent activity.

The newspaper said it asked for interviews with death row inmates whose cases appear to have "fallen through the cracks," but that all declined.

Among them was Jerry Joe Bird, one of five men on death row when he got there 10½ years ago and now one of 197. The Texas Court of Criminal Appeals got his case, for the second time, in 1979. It's still there, the Post said.

Bird was convicted of murdering a Harlingen area gun collector during a Jan. 12, 1974 robbery. The victim trial was burned. However, a new trial was ordered because a prosecutor commented about the failure of Bird to testify.

Ervin was just 19 when he was convicted in Lufkin. Though he had no previous convictions, the jury

A new trial was ordered after relations that Zimmerman had been tortured into confessing by Jackson City officers. He received a new trial — and another death sentence — in October 1979. No execution date has ever been set.

Zimmerman's appeal was not submitted to the Court of Criminal Appeals until January, when oral arguments were held. The reason for the delay? Exhibits in the trial could not be found for several years, his attorney said.

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