Civil Rights of Institutionalized Persons Act: hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, Ninety-eighth Congress, first and second sessions ... December 7, 1983, and February 8, 1984.

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U.S. Department of Justice

Civil Rights Division

APPENDIX 3(g)(iii)

Office of the Assistant Attorney General — Washington, D.C. 20530

November 23, 1982

MEMORANDUM

TO: J. Harvie Wilkinson III
Deputy Assistant Attorney General
Civil Rights Division

Arthur E. Peabody, Jr.
Acting Chief
Special Litigation Section

FROM: Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

SUBJECT: St. Louis State School - Proposed S.10 Intervention

The described living conditions at State School leave little doubt that constitutional standards are not being fully satisfied with respect to the residents' basic health and safety needs for adequate "food, clothing, shelter and medical care," as required by Youngberg v. Romeo, 102 S. Ct. 2452, 2458 (1982). The offensive conditions have, however, been brought to the attention of the federal court in an action brought on behalf of those residents by very capable counsel.

That pending litigation appears to raise all the issues that would be advanced by our intervention. It has focused the State's attention on the deplorable conditions to a sufficient degree to prompt corrective measures. There are apparently practical difficulties working against a quick solution to the current staff-to-resident imbalance, but the State seems to be seeking ways to deal better with this, as well as the other, problems.

My clear sense is that, in these circumstances, federal intervention in the lawsuit is neither compelled nor recommended. The limited resources of the Special Litigation Section counsel against intervening in ongoing lawsuits where plaintiffs are adequately represented and have properly framed their

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litigation to raise the relevant constitutional issues. Not only is that the case here, but the State appears to have commenced steps in response to the lawsuit that promise improved conditions at State School. We should, therefore, turn our attention to other facilities not yet in litigation that are more in need of our assistance.

In so concluding, I have not ignored the discussion in Art's memorandum that highlights differences between the parties as to the proper use of community placement as a possible corrective measure. That controversy surfaces in most "mental institution" cases and has received considerable commentary on both sides of the issue. As one of several available remedial techniques, community placement is, in my view, certainly worthy of the court's consideration. I do not, however, see that the federal government has any particular interest in intervening in the lawsuit to join that debate.

In this connection, I repeat yet again that, upon the finding of a constitutional violation, the remedy fashioned by the court must be designed to redress the unlawful conditions, but not be so intrusive as to displace the State's fundamental responsibility to manage and operate the mental facilities. This suggests that considerable latitude be given to the State to devise appropriate relief that will effectively correct the constitutional wrongs. Whether or not that relief includes community placement -- and, if so, to what degree -- is a matter best left to the professional judgment of those State officials most experienced in such matters.

Here, the State is arguing for more community placement, while plaintiffs are arguing for less. That dispute will undoubtedly be fully aired in court, and the proper balance will presumably be struck on the basis of the unconstitutional conditions found to exist and the remedial needs suggested in order to cure the situation. Nothing has yet been brought to my attention to indicate that the judicial process will be unable to make that determination properly without federal input.

Accordingly, I decline the invitation to authorize intervention in the St. Louis State School litigation. Our energies can be more productively directed at other facilities where we will not be playing a largely duplicative role, but will rather be taking the initiative on our own to redress unconstitutional conditions.