APPENDIX J

Memorandum Decision and Order in
Weiss et.al. v. Alaska
Case No. 4-FA-82-2208 - Civil,
State of Alaska
Superior Court - Fourth Judicial District
April 27, 1988
(The Greene Decision)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARRY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; and ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, and GABRIEL MAYOC; H.L., M.K., and ALASKA ADDICTION REHABILITATION SERVICES,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

MEMORANDUM DECISION AND ORDER

This matter comes before the court to determine the intent of Congress in creating the public trust designed to meet the necessary expenses of the mental health program of Alaska in Section 202 of the Alaska Mental Health Enabling Act, Public Law 84-830 (1956) ["AMHEA"]. The matter before the court is the second stage in the litigation over the mental health lands. In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the State breached its duty as trustee in its treatment of the mental health trust lands. The Court declared invalid legislation which redesignated the mental health lands as

general grant lands and remanded the matter for reconstitution of the trust. Since the remand, a number of advocacy groups have intervened as plaintiffs in the action. Additionally, in 1987, the legislature took significant action relating to the Alaska mental health trust in Chapter 48 of SLA 1987. This matter is before the court in a procedurally complex way. However, fundamentally, each of the parties is requesting a determination by the court that a particular group or groups either is or is not a beneficiary of the mental health trust. Although some of the motions have been framed in terms of redesignation of the class, clearly no one intends that the class be redesignated. What is at issue here is the definition of who is entitled to benefit from the trust. Because of the large number of parties and the disparate positions involved, it is useful to state the positions of the various parties.

Intervening plaintiffs Bosel, Doulin, Goodwin, and Mayoc ["Bosel"], argue that the mentally retarded and mentally defective are among the intended beneficiaries of the AMHEA land trust and that the State of Alaska does not have the authority to delete mentally retarded or defective persons as beneficiaries of the land trust. Through tracing the legislative history of the AMHEA, Bosel argues that Congress intended to benefit the mentally retarded or defective individual. Bosel further argues that based on the law as applied to land grants to the territories and basic trust principles, the State of Alaska cannot modify the

trust provisions of the AMHEA to exclude mentally retarded or defective individuals from the trust.

The State of Alaska argues that the primary intent of Congress in the AMHEA was granting plenary authority to the Territory, now State, over its own mental health program. From this, the State argues that it is within the sound discretion of the State to determine what group or groups are to be served by the mental health program and thus are to benefit from the mental health lands trust. The State further argues that at the present time the legislature has removed the mentally retarded and mentally defective from the State's mental health program.

H.L., M.K., and Alaska Addiction Rehabilitation Services ["AARS"] assert that the Congressional intent was to fund a comprehensive program of integrated mental health services in Alaska, including in-patient, out-patient and preventative care. AARS argues that this comprehensive program was to address, at the very least, the needs of the territory's chronically and acutely mentally ill, chronic alcoholic, mentally defective, retarded and senile. AARS supports its position with legislative history. AARS also argues that the State has no discretion to determine the beneficiaries in that the State must first apply the trust income to a comprehensive mental health program for the benefit of the chronically and acutely mentally ill, chronic alcoholic, retarded, and mentally defective.

Plaintiff intervenors Alaska Mental Health Association, Nanuwak and Martin, take the position that Congress determined the types of individuals to receive benefits under the AMHEA but left to the State the decision of how to meet the needs of those individuals. These plaintiffs argue that Congress deliberately excluded the mentally retarded and mentally defective from receiving benefits under the trust. The primary focus of the Alaska Mental Health Association's argument is that the State may not remove beneficiaries from nor add beneficiaries to those intended by Congress.

Plaintiffs Vern T. Weiss, et al., argue that Congress gave the Territory, now the State, the authority to determine its own mental health program; that under trust law principles, the beneficiary of the mental health trust established by AMHEA is the mental health program itself; and that the legislative history reveals that it was Congress' intent to exclude the mentally retarded and mentally defective from the trust; or alternatively, that even if the mentally retarded and mentally defective were originally included among the beneficiaries, they have been subsequently removed by the State pursuant to a rightful exercise of its delegated authority from Congress.

The Alaska Alliance for the Mentally Ill has filed a brief as amicus curiae. The Alliance opposes the positions taken by the State and by Bosel and supports the position taken by the Alaska Mental Health Association.

In order to answer the question posed in this portion of the litigation, it is necessary to analyze the legislative history of the Alaska Mental Health Enabling Act in some detail. In the Organic Act of Alaska, the act of August 24, 1912, 37 Stat. 512, the territorial legislature was precluded from changing the existing law regarding the commitment of the insane. Under the then-existing law, a person was committed by being charged as if criminally with the offense of being an insane person at large. The issue was necessarily submitted to a jury for the determination of whether the person was sane or insane. There were no procedural safeguards protecting either the rights of the person accused of being insane nor the rights of the public with respect to dangerous individuals. Under this law, if a person was adjudicated insane they would be committed to the custody of the U.S. Marshals for transportation to a mental hospital. Throughout all or most of the time, Morningside Hospital in Portland received the persons from Alaska who had been adjudicated insane. Various reports give differing views as to the adequacy of care received by patients at Morningside. However, it is clear from the documents provided that there was much opposition in the Territory to the placement of patients in the facility at such great distance from friends and family. Thus, as Congress began to address the issues regarding the delivery of mental health services in the Territory of Alaska, there were two primary issues: (1) revision of the commitment

procedures; and (2) the perceived need to treat Alaskan patients in a facility nearer to their homes. As the matters were considered, the corollary issue of funding for a mental health program by the Territory also arose. Prior to the 84th Congress, there had been several unsuccessful attempts to modify the law. See Appendices S, T, U.[1]

H.R. 6376, which ultimately became the Alaska Mental Health Enabling Act, was one of several bills introduced in the 84th Congress dealing with the issues presented by the mental health laws in Alaska. As passed by the House, H.R. 6376 had three main provisions. First, in Section 3 of the bill, the Territory of Alaska was granted the authority "to enact such laws as it may deem appropriate relating to the hospitalization (including commitment), care, and treatment of residents of or persons in Alaska who are mentally ill . . . ." Appendix I at 4. Second, in Title I of the bill, new commitment procedures for the hospitalization of the mentally ill were enacted. Under the authority of Section 2, the territorial legislature was empowered to supercede any of the provisions of Title I. Of particular note to the questions before the court, Section 101(i) defined the term "mentally ill individual" as "an individual having a

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[1]All references to Appendices are to those supplied by Bosel, unless otherwise indicated.

psychiatric or other disease which substantially impairs his mental health or an individual who is mentally defective or mentally retarded." Appendix I at 5. Third, the bill provided grants to the territory to provide monies for the Territory's assumption of financial responsibility for the mentally ill. In Section 201, continuing, decreasing appropriations were made for "an integrated mental health program for the Territory, including the out-patient and in-patient care and treatment of the mentally ill as defined in Title I of the Alaska Mental Health Act," and a grant of $6.5 million was made "to be used in the construction of hospital or other facilities in Alaska needed for the carrying out a comprehensive program for the mentally ill as defined in Title I of the Alaska Mental Health Act. Appendix I at 33 and 36. In Section 202 of the bill, the Territory was granted the right to select land not to exceed one million acres from the public lands in Alaska. Subsection (e) of that section provided, in part:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and the income therefrom shall first be applied to meet the necessary expenses of the program for the hospitalization and care of the mentally ill in Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the legislature of Alaska may provide.

Appendix I at 39-40. Given the usage of the term "mentally ill" in Title II, and particularly in Section 202(e), it is very likely that the House intended the lands trust to benefit the mentally ill as defined in Title I, i.e., people "having a psychiatric or other disease which substantially impairs [their] mental health" and people who are "mentally defective or mentally retarded."

Between the time that H.R. 6376 was passed by the House and its consideration by the Senate, there was a significant uproar from the far right. This uproar, sometimes noted as the "Siberia, U.S.A." discussions, was based on a misinterpretation of H.R. 6376; the detractors viewed H.R. 6376 as an effort to create one million acres in Alaska to be used as a gulag-type detention area for politically "wrong-thinking" people. During the bill's consideration in the Senate committees, there was a great deal of public comment and testimony regarding the much publicized misconception. See Appendix D. At least in part as a result of the "Siberia, U.S.A." discussions, a subcommittee in the Senate rewrote H.R. 6376 in an amendment which "[struck] all of these controversial provisions from the bill [Title I], leaving it up to the people of Alaska to enact their own mental-health program." Appendix P at 1, Senate Committee Report No. 2053.

The legislative history of the Senate's consideration of H.R. 6376 provides some support to each side of this dispute.

After the public hearings were concluded, the Subcommittee on Territories and Insular Affairs of the Committee on Interior and Insular Affairs apparently went through a section-by-section markup. See Appendix D at 244-45; Appendix K; Appendix L; Appendix M; Appendix N; and Appendix O. The various committee prints considered during this time, taken in combination with the existing legislative history, provide some indication as to the thinking of the Senate subcommittee. The first in time of these committee prints is found in Appendix K.[2] This committee print points out recommendations made by the Association of American Physicians and Surgeons[3] and by the Departments of Health, Education and Welfare and Interior. One of the recommendations made by the AAPS was the elimination of the mentally defective and mentally retarded from the definition of mentally ill individual in Section 101(i). Appendix K at 5. The next committee print, Appendix L, added the comments of HEW to the committee print of Appendix K. HEW noted its opposition to the change proposed by AAPS and also stated:

> The change in the definition would have the effect also of excluding the mentally defective

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[2]Although this is the first committee print submitted, it is apparent that the Goldwater substitute was available at least by March 23. See Appendix P at 21.

[3]The source of the Association of American Physicians and Surgeons' recommendations can be found in Appendix D at 258.

> or retarded from provisions for institutional care or the benefits of the programs aided by grants under Title II.

Appendix L at 6.

Appendix M, Committee Print No. 4, April 20, 1956, shows both the Goldwater substitute and HEW proposed amendments.[4] In the original Goldwater substitute bill, Section 202(e) read, in part:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust, and the income therefrom shall first be applied to meet the necessary expenses of the program for the hospitalization and care of the mentally ill in Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide.

Under the HEW suggestion, Section 202(e) would have read:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any distribution thereof, shall be administered by the Territory of Alaska as a public trust, and such

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[4]The HEW comments on this April 20 committee print are probably those which accompanied the letter from HEW's assistant secretary, Roswell Perkins, to Senator Goldwater. Appendix P at 21-22. This letter urged Goldwater to retain the provisions in Title I unless such retention would jeopardize the passage of the bill. Additionally, Perkins provided a staff markup of suggested amendments "so as to make clear beyond doubt that the benefits of the bill could be made available to the mentally retarded and mentally deficient, as well as those who are in a strict sense mentally ill." Appendix P at 22.

> proceeds and income therefrom shall first be applied to meet the necessary expenses of the mental health program of Alaska, including (but not by way of limitation) the out-patient and in-patient care and treatment of the mentally ill, and of the mentally defective and mentally retarded, of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide in part.

Appendix M at 12. Committee Print No. 5, Appendix N, was printed April 26, 1956, a few days after Appendix M. Committee Print No. 5 was a draft of provisions which had been approved in principle by the Subcommittee on Territories. In comparing Committee Print No. 4 with Committee Print No. 5 it is apparent that some but not all of the changes proposed by HEW were accepted by the subcommittee. Committee Print No. 5 has nothing of the original Title I of the bill. Section 202(e) provided in part:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and the income therefrom shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide.

Appendix N at 9. This language was unchanged in Committee Print No. 6, Appendix O. The Goldwater amendment, as amended, was the substitute bill reported out by the committee. Appendix P at 29-34. Section 202(e) as report out was the same as it appeared in Committee Print No. 5.

The Senate Interior Committee Report, Report No. 2053, Appendix P, notes that the committee substitute is the amendment proposed originally by Senator Goldwater, "with certain clarifying changes." Appendix P at 2. The report states:

> Under the House bill, the Territorial Legislature of Alaska could have annulled or amended any of the sections relative to commitment, hospitalization, and care at any time.
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> However, the proposed provisions were misunderstood by many persons in parts of the country other than Alaska. Partly as the result of this misunderstanding, but more because the members of the committee are convinced that the people of Alaska are fully capable of drafting their own laws for a mental health program for Alaska, the committee concluded that authority should be vested in them in this field comparable to that of the States and other Territories.
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> Hence, Senator Goldwater's amendment was adopted, the substance of which is the striking of the commitment procedures in Title I of the House bill. In so doing, the committee wishes to go on record as stating emphatically that its action is in no way a repudiation or disapproval of the provisions approved by the House of Representatives and endorsed by such a large number of qualified experts.

Appendix P at 3. With respect to the land grant of one million acres, the report notes:

> The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.

Id. The report also noted that the purpose of the grant was to "afford revenues to the Territory for support of its mental-health program." There is nothing in the committee report which expressly states what the committee meant by "the mental health program of Alaska," or who the intended beneficiaries of the public trust were.

After the House failed to concur in the Senate amendment, the matter went to conference committee. See Appendix B. The conference committee recommended that the House recede from its disagreement to the amendments of the Senate and agree to the passage of the bill with one further amendment not germane to this issue. In comparing the House and Senate versions of H.R. 6376, the House Managers stated:

> Both versions of Title II of H.R. 6376 are identical in substance but with a minor change in wording. The House-passed bill provided that the monetary returns realized from the land grants would be administered by the Territory of Alaska as a public trust for the hospitalization and care of the mentally ill in Alaska. The Senate-reported bill specifies that these returns shall be applied to meet the necessary expenses of the mental-health program in Alaska. The managers on the part of the House accepted this Senate amendment which broadens the use of the revenues for use of the Alaska mental-health program rather than for the hospitalization and care of the mentally ill in Alaska.

The bill as recommended by the conference committee was finally passed and became the Alaska Mental Health Enabling Act.

The bill as enacted required the Territory to submit a plan for the approval of the Surgeon General before the Territory would receive the yearly grants-in-aid. Appendix X to the Bosel reply memorandum is the report by the Territory to the Surgeon General of May 7, 1957. From this report it is clear that at that time the "integrated mental health program for Alaska" included the mentally deficient. See pp. 7 and 10.

In 1957 the territorial legislature enacted its first "mental health program." 1957 Session Laws of Alaska, ch. 87. In that act, the territorial legislature defined "mentally ill individual" as "an individual having a psychiatric or other disease or senile changes which substantially impair his mental health or who is mentally deficient." ACLA § 51-4-20a(1) (1958 Supp.).

The legislative history and historical events must also be considered in light of the perceived problem which Congress was addressing when it enacted the AMHEA, viz. the treatment of Alaskan individuals who had been adjudicated insane and placed at the Morningside Hospital in Portland. An early impetus to all of the legislation regarding Alaska commitment procedures was the Overholser Report on the Morningside Hospital in 1950. Appendix V. The report was the product of an investigating

committee designated by the Department of the Interior,[5] chaired by Dr. Winfred Overholser. The Overholser Report noted the inadequacy of the mental health program in Alaska and called attention to the archaic commitment procedures which treated the mentally ill as "criminals" who were convicted, committed and transported in custody to Morningside. The investigating committee made several long-term recommendations, including: (1) construction of a modern mental hospital in Alaska to provide treatment for chronic and acute cases; and (2) creation of a 50-bed treatment center at Mt. Edgecumbe to care for acute cases from southeastern. The committee also recommended immediate changes to be accomplished through legislative action, including: (1) development of a comprehensive mental health program under territorial control serving educational purposes; (2) provision for emergency treatment and observation centers in the general hospitals in the territory; (3) revamping of legislation for commitment and voluntary admission for hospitalization; and (4) provision for territorial control of all public mental health services in Alaska.

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[5]Before the enactment of the AMHEA, the Department of Interior was responsible for the care and treatment of persons in Alaska who were adjudicated legally insane. Thus, it was the responsibility of the Department of the Interior to supervise the hospital at which Alaskan patients were placed, Morningside.

It is also important to note that the patients from Alaska who were treated at Morningside were not just individuals suffering from chronic psychiatric illnesses. Many of those who were admitted to Morningside were mental defectives. See Appendix W at 741; Appendix X. Also included among the patients at Morningside were those suffering from alcohol psychoses and the senile. The 1957 study by the Public Health Service done at the direction of Congress after the enactment of the AMHEA found that as of March 22, 1956, of the 379 patients in the hospital, 89 were mentally retarded patients. Appendix Y at 762. That survey concluded:

> There is a need for construction of mental-health facilities in Alaska if the Territory is to conduct an effective mental-health program for its citizens. These facilities should provide for housing in-patient services, out-patient services, and preventive services for the mentally ill and the mentally retarded of all ages and for alcoholic and senile patients.

The questions presented in this portion of the litigation are difficult ones. There is support for the position taken by each of the parties. When considering all of the information available in light of the historical facts, it is the conclusion of the court that Congress intended that the Territory establish a comprehensive mental health program which would provide services to a group consisting of at least those individuals suffering from a psychiatric illness who may require

hospitalization and the mentally defective and retarded.[6] Further, it is the conclusion of the court that Congress intended that the mental health lands public trust benefit the recipients of the services of the comprehensive mental health program, which group must include, at a minimum, the mentally ill who may require hospitalization, and the mentally defective and retarded. The court concludes that it is within the discretion of the State to include other groups as recipients of services by the mental health program but it is not within the discretion of the State to exclude either of those two groups.

Based on the legislative history, it is clear to the court that Congress did not intend to exclude the mentally deficient and mentally retarded as beneficiaries of mental health lands trust. First, there is no question that it was the intention of the House to include the mentally defective and retarded as beneficiaries of the trust. Further, when HEW pointed out to the Subcommittee on Territories that its bill might be interpreted as excluding the mentally defective and retarded from the benefits of the AMHEA, the Subcommittee responded by modifying the language and adopting a portion of the language

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[6]The court does not exclude from this operative definition either chronic alcoholics suffering from psychoses or senile people who as a result of their senility suffer major mental illness.

proposed by HEW. Specifically, HEW proposed the term "the mental health program of Alaska" which was ultimately adopted. Compare Appendix M Section 202(e) with Appendix N Section 202(e). What the Subcommittee failed to include was a very cumbersome "including but not limited to" interpretative phrase. Given that the term "mental health program" is the term used throughout the legislative history and testimony as the broadest term for what was proposed or anticipated, the court concludes that the Subcommittee's use of that term intended a broad-reaching definition. Moreover, the court relies on the statement in the conference committee report that the change in language from the House language in Section 202(e) to the Senate version of Section 202(e) "broadens the use of the revenues for use of the Alaska mental health program rather than for the hospitalization and care of the mentally ill in Alaska." Surely, the House managers recognized that the language of Section 202(e) as adopted by the House provided for the use of the funds to pay for the expenses of the care and hospitalization including the mentally defective and retarded. Had the Senate intended something different, the House managers would not have characterized the change as one which broadened the use of the funds. Moreover, the court is persuaded by the historical facts that Congress did not intend to exclude the mentally defective and retarded from the benefits of the Alaska Mental Health Enabling Act and its grants. First, the Public Health Service in

its 1957 survey reported to Congress on the needs of the mentally defective and retarded. Second, Alaska's integrated mental health plan submitted to the Surgeon General included the treatment of the mentally defective and retarded. The plan was obviously accepted by the Surgeon General without action by the Congress. Finally, Alaska's first mental health program enacted by the territorial legislature clearly included the mentally defective; despite its authority to do so, Congress did not amend the legislature's act.

There is no question that Congress was also concerned with giving the Territory of Alaska the power to solve its own problems in the mental health field. The overall purpose of the grant of lands and the public trust established in Section 202(e) was to provide a financial basis of support for the territory's program. Thus, it is apparent as well that the Congress intended to give the Territory, now the State, discretion in the way the funds were spent. For example, the effect of the Senate's broadened language would permit the spending of funds for out-patient care to those who would not need hospitalization and thus a new group of beneficiaries, those suffering from mental illness not requiring hospitalization, could be added by the legislature in the legitimate exercise of its power.

The legislative history does not support the State's broad view of its discretionary authority. Under the State's view, it has the power to include or exclude any group from the

benefits of its mental health program. The State argues that its discretion would include the power to exclude those suffering from a a traditionally recognized mental illness requiring hospitalization in appropriate circumstances. The court cannot agree that it was Congress' intent to grant such broad discretion to the State. First, it must be recalled that Congress intended the Territory to deal with the Morningside problem. Had the legislature and territorial government not dealt with the individuals who were placed at Morningside but rather had chosen a "mental health program" that merely improved the mental health and disposition of otherwise healthy people, surely Congress would have taken action. The reason that Congress would have taken action is that its intent was not being fulfilled. Congress clearly intended that the patients at Morningside be cared for under the State's mental health program; thus, Congress intended that the funds and lands given to the Territory, now State, be used to benefit those suffering from mental illnesses requiring hospitalization and the seriously mentally defective and retarded. Second, Congress maintained federal control over the disbursement of monies by requiring approval by the Surgeon General of the proposed mental health plan before the money would be distributed. Such provision is inconsistent with the plenary authority argued by the State in this litigation.

Where Congress has created a land trust to be administered by a state for the benefit of certain groups the state owes a duty of loyalty to the beneficiaries. See, e.g., United States v. New Mexico, 536 F.2d 1324 (10th Cir. 1976); County of Skamania v. Washington, 685 P.2d 576 (Wash. 1984). In the administration of this trust, the State must treat all the beneficiaries impartially. See, e.g., Brown v. McLanahan, 148 F.2d 703 (4th Cir. 1945); Estate of Toulmin v. United States, 326 F. Supp. 1028 (S.D. Ohio 1971). As a result of these duties, the State may not remove any group as a beneficiary and must provide for necessary services as "the necessary expenses" of the mental health program from the trust before it may allocate any money for a purpose other than the mental health program.

IT IS SO ORDERED.

DATED at Fairbanks, Alaska this 27th day of April, 1988.

MARY E. GREENE
Superior Court Judge

This page substituted per 4/29/88 order