

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CA 74-1345 (7)

TERRI LEE HALDERMAN, a retarded citizen,
by her mother and guardian, Winifred Halderman;

LARRY TAYLOR, a retarded citizen, by his
parents and guardians, Elmer and Doris Taylor;

KENNY TAYLOR, a minor, a retarded citizen, by
his parents and guardians, Elmer and Doris Taylor;

ROBERT SOBETSKY, a minor, a retarded citizen, by
his parents and guardians, Frank and Angela
Sobetsky;

FILED

JUL 29 1974

THERESA SOBETSKY, a retarded citizen, by her parents
and guardians, Frank and Angela Sobetsky;

JOHN J. HARDING, Clerk

NANCY BETH BOWMAN, a retarded citizen, by her parents
and guardians, Mr. and Ms. Horace Bowman;

Dep. Clerk

LINDA TAUB, a retarded citizen, by her parents and
guardians, Mr. and Ms. Allen Taub;

GEORGE SOROTOS, a minor, a retarded citizen, by his
foster parents, William and Marion Caranfa, all of
the above individually and on behalf of all others similarly
situated;

FIRST
AMENDED
COMPLAINT

THE PARENTS AND FAMILY ASSOCIATION OF PENNHURST,

Plaintiffs

v.

CLASS
ACTION

PENNHURST STATE SCHOOL AND HOSPITAL;

Civil Action
Number

DEPARTMENT OF PUBLIC WELFARE;

HELENE WOHLGEMUTH, Secretary of the Department of Public
Welfare;

C. DUANE YOUNGBERG, Superintendent, Pennhurst State School
and Hospital;

ROBERT SMILOVITZ, Assistant Superintendent, Pennhurst State
School and Hospital;

MARGARET GREEN, BETTY UPHOLD, ALICE BARTON, P.E. KLINK,
DR. PAROCCA, HELEN FRANCIS, employees and agents of Pennhurst
State School and Hospital;

JOHN DOCTOR, JAMES NURSE, JANE AIDE, JILL THERAPIST, RICHARD
ROE, JANE DOE, unknown and unnamed staff, employees and agents
of Pennhurst State School and Hospital, each individual
Defendant sued individually and in his or her official
capacity,

Defendants

I. PRELIMINARY STATEMENT

1. Plaintiffs Terri Lee Halderman, Larry Taylor, Kenny Taylor, Robert Sobetsky, Theresa Sobetsky, Nancy Beth Bowman, George Sorotos, and Linda Taub bring this civil rights action for declaratory and injunctive relief, individually and on behalf of all persons similarly situated, as a result of physical and psychological injuries and deprivations they and their class have suffered and continue to suffer during their confinement within Pennhurst State School and Hospital a state institution for the retarded. Certain of these resident Plaintiffs also sue individually for damages. Joining as a Plaintiff is the Parents and Family Association of Pennhurst, which organization sues on behalf of its members and the institution's residents.

2. Plaintiffs and their class suffer from both a lack of adequate supervision and a lack of meaningful and therapeutic staff/resident interaction. Plaintiffs and their class live in improperly designed and inadequately furnished buildings. Staff are poorly trained and the use of mechanical restraints, unnecessarily and without proper authorization, is commonplace.

3. Residents are often sedated for the convenience of staff rather than for therapeutic purposes. Residents are often ill-clothed and insufficiently trained in self help techniques.

4. Plaintiffs and their class have suffered and continue to suffer physical and emotional injuries and deprivations from deficiencies in education, recreational toys, and indoor and outdoor exercise. Plaintiffs and their class daily suffer the indignity of being forced to eat entire meals with improper eating utensils.

5. Staff incompetence, staff negligence, and intentional physical and verbal abuse of residents by staff is not uncommon.

6. The class of retarded residents at Pennhurst State School and Hospital

are treated as less than second-class citizens by Defendants who are charged with the responsibility and duty of providing proper care and supervision to them. That the conditions which prevail and have prevailed at Pennhurst are allowed to exist in our society is a sad reflection on the way we view those persons whose capabilities differ from the norm.

7. The Plaintiffs and their class suffer, in terms of their general and individual conditions, a deprivation and denial of their constitutional, statutory and common law rights to treatment, and a deprivation and denial of their constitutional right to the least restrictive conditions necessary to achieve the purposes of commitment, right to refuse treatment, right to be free from harm, right to be free from cruel and unusual punishment, right to due process of law and right to equal protection of the laws -- all in violation of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S. §4401, et seq., and the First, Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION

8. Jurisdiction is conferred upon this Court by:

a. 28 U.S.C. §§ 1343(3) and 1343(4) which provide for original jurisdiction in all suits for redress of deprivation, under color of law, of constitutional rights, privileges or immunities under federal law.

b. 28 U.S.C. §§ 1343(1) and 1343(2) which provide for original jurisdiction in suits for damages arising from conspiracies to violate civil rights under 42 U.S.C. §1985 and in suits to recover damages from persons who fail to prevent violations of civil rights.

c. Plaintiffs' action for declaratory and injunctive relief, and for damages, is authorized by 28 U.S.C. §§ 2201, 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure, which relate to declaratory judgments and injunctions, and by 42 U.S.C. §§ 1983, 1985, 1986, and 1988.

d. 28 U.S.C. § 1331 which provides for original federal question jurisdiction. The amount in controversy herein, for each of the named Plaintiffs and for the class, exclusive of interests and costs, exceeds \$10,000.

e. The doctrine of pendent jurisdiction.

9. Each of the Defendants herein, at all times relevant to the matters contained in this complaint, acted under the color of state law.

III. PLAINTIFFS

10. Plaintiff Terri Lee Halderman was born July 29, 1953. She is a retarded citizen. Plaintiff was committed to Pennhurst State School and Hospital on February 15, 1966 by her parents.

11. Plaintiff Larry Taylor, born on February 14, 1956, is a retarded citizen committed to Pennhurst State School and Hospital by his parents in 1961.

12. Plaintiff Kenny Taylor, born on November 13, 1957, is a retarded citizen committed to Pennhurst State School and Hospital by his parents in 1961.

13. Plaintiff Robert Sobetsky was born on November 23, 1956. He is a retarded citizen who was committed by his parents to Pennhurst State School and Hospital.

14. Plaintiff Theresa Sobetsky, a retarded citizen, is more than eighteen years old and was committed to Pennhurst State School and Hospital by her parents.

15. Plaintiff Nancy Beth Bowman is a twenty-three year old retarded citizen who was committed by her parents to Pennhurst State School and Hospital in 1961.

16. Plaintiff Linda Taub, born on May 12, 1951, is a retarded citizen committed by her parents to Pennhurst State School and Hospital in October, 1966,

17. Plaintiff George Sorotos is an eleven year old retarded citizen who was committed to Pennhurst State School and Hospital in 1970 by Catholic Social Services of Philadelphia.

18. All of the above named Plaintiffs were committed to Pennhurst State School and Hospital for treatment and habilitation and for the purpose of providing an environment able to protect their dignity, privacy, rights and capabilities, and a professionally supervised program to deal with the problems of a severely retarded individual.

19. Plaintiff Parents And Family Association Of Pennhurst represents 200 parents of retarded citizens at Pennhurst State School And Hospital. The Parents And Family Association Of Pennhurst was organized in 1967 to protect the rights of retarded citizens at Pennhurst State School And Hospital and all other institutions.

IV. DEFENDANTS

20. Defendant Pennhurst State School and Hospital is a Pennsylvania state mental institution and a "facility" under the state Mental Health and Retardation Act of 1966, 50 P.S. 4101, 4102. Pennhurst State School and Hospital is located in Spring City, Pennsylvania.

21. Defendant Department of Public Welfare supervises and operates all activities of all Pennsylvania mental institutions, including Pennhurst State School and Hospital, and is responsible for such facilities and for the actions of its employees, including those at Pennhurst State School and Hospital.

22. Defendant Helene Wohlgemuth is Secretary of the Defendant Department of Public Welfare, Harrisburg, Pennsylvania. She is charged under 71 P.S. 66 and 50 P.S. 4101, et. seq. with responsibility for exercising the powers and performing the duties vesting in her office and person and the Department of Public Welfare. She is responsible for the actions and decisions of all Department employees. She has had personal knowledge of the matters complained of in this Complaint.

23. Defendant C. Duane Youngberg is the Superintendent of Pennhurst State School and Hospital and is responsible for the day-to-day functioning of the institution and for the general supervision of the treatment of the residents. He had direct knowledge or should have had direct knowledge of the wrongs done to the individual Plaintiffs.

24. Defendant Robert Smilovitz is the Assistant Superintendent of Pennhurst State School and Hospital and has responsibility for the day-to-day functioning of the institution and for the supervision of the treatment of the residents. He had direct knowledge or should have had direct knowledge of the wrongs done to Plaintiff.

25. Defendants Margaret Green, Betty Uphold, Alice Barton, and P.E. Klick are each employees and staff members of Pennhurst State School and Hospital who were involved in the incident described below in which Plaintiff Terri Lee Halderman incurred multiple fractures of her jaw.

26. Defendant Parocca is a physician at Pennhurst State School and Hospital, first name unknown at this time, who has had direct and immediate responsibility for the physical and psychological care of Plaintiff Terri Lee Halderman and has had or should have had direct knowledge of the numerous injuries to Plaintiff Terri Lee Halderman and of the conditions of continuous danger to Plaintiff Terri Lee Halderman's well being. As late as August 1973, Defendant Parocca was not licensed to practice medicine in the United States.

27. Defendant Helen Francis is past director of the hospital unit at Pennhurst State School and Hospital in which Plaintiff Halderman resided. She was responsible for the treatment of Terri Lee Halderman and has had or should have had knowledge of the wrongs done to her.

28. Defendants John Doctor, Jack Nurse, Jack Aide, Jill Therapist, Richard Roe, and Jane Roe are unknown and unnamed employees of Defendant Department of Public Welfare and Defendant Pennhurst State School and Hospital who are or were physic

nurses, child care aides, and other employees.

29. Defendants Department of Public Welfare, Pennhurst State School and Hospital, Wohlgenuth, Youngberg, and Smilovitz are aware of the deplorable and unconscionable conditions at Pennhurst State School and Hospital and of the substandard inadequate and illegal treatment and non-treatment to which Plaintiffs are subjected. They have direct and actual knowledge of these wrongs, do nothing to effectively prevent or halt them, and conspire to continue them.

30. At all times relevant herein, the Defendants, and each of them, knew or should have known of the policies, practices, acts, omissions, and conditions alleged herein.

V. CLASS ACTION ALLEGATIONS

31. For the declaratory and injunctive relief that will affect the operation and maintenance of the institution and will end the illegal and unconstitutional practices there, Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated. The members of the class are all residents at Pennhurst State School and Hospital.

32. This is a proper class action under Rule 23(a) and 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is so numerous as to make joinder of all members impracticable. There are substantial questions of law and fact common to the entire class and the claims of the Plaintiffs are typical of the class and predominate over any questions affecting only individual members. The named Plaintiffs will adequately and fairly represent the interests of the class. The class action is superior to any other available method for the fair and efficient adjudication of the controversy.

33. The questions of law and fact involved are:

- a. Do Defendants act under color of state law?

b. Have Defendants conspired to violate the rights of the Plaintiffs' and those of their class or have they failed to prevent violations of such rights? Have Defendants violated the rights of the Plaintiffs and their class?

c. Are the facts and conditions at Pennhurst State School and Hospital as alleged herein and do they violate the rights of the Plaintiffs and their class, as alleged herein?

VI. FACTUAL ALLEGATIONS

The Totality of the Residents at Pennhurst, including the named Plaintiffs, Live Under Adverse and Dangerous Conditions

34. Pennhurst State School and Hospital (hereafter, "Pennhurst," the "institution," or the "hospital") has a resident enrollment of approximately 1600 persons and a staff which is deficient by a minimum of 146 staff members. Staff/resident ratios are deficient according to all recognized professional standards, including, among others, the Standards for Residential Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals. The Defendants are aware of this and other deficiencies. Every other aspect of resident care at Pennhurst fails to meet all professional standards.

35. In July, 1971, the Defendant Department of Public Welfare Bureau of Construction and Maintenance surveyed Pennhurst and reported:

At the present time, there are approximately 1000 students at Pennhurst living in utter squalor, housed in unsafe, unsanitary buildings, several previously planned for demolition to make room for new student cottages.

This report's comments are an accurate portrayal of the situation which continues to this day.

36. None of the dozens of buildings at Pennhurst meets the federal Life Safety Code requirements. The staff/resident ratio is inadequate to assure each resident's health, safety, comfort, education, training or treatment.

37. Due to poor staffing, poor facilities and inadequate supervision, as well as gross negligence and incompetence, Pennhurst residents often suffer needless and preventable injuries. For example, it is not uncommon in some of the residential buildings for there to be no hot water. As a result, highly contagious localized infections such as boils cannot be properly treated. These infections therefore heal very slowly creating the grave danger of infecting other residents. Wards

at Pennhurst often have epidemics of boils during which many of the ward residents contract these severe infections.

38. Allegedly "accidental" deaths (at least some of which are actually due to acts or omissions of the Defendants) are not unusual. For example, during the first week of July, 1974, two Pennhurst residents drowned in the Schuylkill River which borders part of the hospital grounds.

39. Residents at Pennhurst receive sedative mind-altering drugs which are not necessary for their care and treatment but which are administered solely for management and control and for the convenience of staff. These drugs are often administered over the objections of the residents and/or their parents and guardians.

40. The grossly deteriorated and adverse physical condition of the facilities at the institution, combined with the intense lack of meaningful and therapeutic resident/staff interaction directly causes the level of functioning of residents to deteriorate rather than remain stable or improve.

41. Inadequate facilities and inadequate attention by staff to residents results in neglect of proper hygiene and sanitation. poor bathing and related practices, and needless contraction of communicable and other diseases. Even the basic levels of human decency in these areas are not met.

On many wards at Pennhurst, there is absolutely no toilet paper and no attempt is made to teach residents the self-help skills necessary and proper to deal with toileting. Often hand soap is unavailable in the bathrooms.

Plaintiffs and other residents are not provided with the opportunity to brush their teeth on a daily basis.

Communicable diseases and other infections often needlessly spread and infect large percentages of a ward's population.

42. Clothing provided by Defendants is unpersonalized, ill-fitting, and often improper for the weather. Residents generally cannot choose the clothes they

wear. Time outdoors is not adequately provided and the residents generally suffer from a lack of exercise.

43. Ward rules and procedures are not uniform; they vary depending upon which of the daily work shifts is on duty. This constant many-times-daily change of ward policy results in confusion to the residents and hinders habilitation and treatment and hinders adaptation to the living environment.

44. Straight-jackets, wrist restraints, and shackle belts with metal locks are used unnecessarily and without proper authorization. Restraints used are not always the least restrictive ones available.

45. Gross physical abuse of residents by staff is not unusual. Residents are spanked, slapped, punched or shoved for disobeying often illegitimate staff commands or for disobeying rules or ward policy. Residents are tormented by staff causing great physical and emotional anguish. For example, staff persons have been seen placing ice down the shirt of a sleeping resident and verbally harassing residents who are in bathroom stalls. This is a general pattern and practice at the institution.

46. Staff training is woefully inadequate and does not enable the trainee to understand and cope with the problems of the mentally retarded citizen. Hiring practices for direct resident care personnel are based on Civil Service Examinations which do not test for or determine the ability of prospective employees to work with retarded citizens.

47. The residents' dignity and privacy are largely ignored and violated. It is a common practice to place two or three residents under one shower head simultaneously and thus refuse even individual showers. Many bathroom stalls have no doors and residents are thus forced to use the toilet in full view of other residents and staff. On certain wards it is routine procedure to toilet the residents as a group at a time chosen by the staff, solely for the convenience

of staff.

48. Residents are often forced to lie face down on a bedsheet on the bathroom floor in order to receive an enema. During this time other residents are permitted to walk in and enter the bathroom.

49. Residents are often found wearing clothing soaked with urine or stained with feces. Most residents are given only spoons with which to eat their entire meals. Residents suffer these and other antitherapeutic indignities on a continual and daily basis.

50. Other conditions at Pennhurst are generally oppressive, poor, improper, inadequate, inefficient, and in violation of professional, humane, legal standards for the treatment of the retarded.

51. These conditions are suffered by all residents whether admitted or committed upon court order or application of parents or guardians. Those residents admitted or committed on application of parents or guardians, although nominally "voluntary" are, in actual fact, involuntary commitments as indigency, lack of adequate funds, and the non-existence of any other state facility in the area for the severely retarded, literally renders the applicant without a choice and forces the application.

52. On information and belief, Pennhurst does not now accept residents upon application, but accepts residents only upon a court order.

53. Each of the named Plaintiffs and the members of their class is subject to all of the threats and conditions described in the above paragraphs.

TERRI LEE HALDERMAN

54. Rather than attempting to catalogue the full range of abuses suffered by the class of Pennhurst residents, the tragic and unfortunate details of the named Plaintiffs will be described. The wrongs done to them are similar in kind to

to the wrongs done to their class. The remedies for such wrongs are also similar or, in some aspects, identical.

Incidents Causing Injury To Terri Lee Halderman

55. Since her admission to Pennhurst, Plaintiff has been involved in over forty (40) reported incidents which are as follows (based on hospital records):

- a. 3/2/66 a skinned left knee
- b. 3/2/66 scratch on lower left eye
- c. 3/5/66 discoloration of right leg
- d. 3/10/66 sore on head by hairline
- e. 5/13/66 abrasion on left cheek
- f. 5/15/66 scratches on right wrist and left ear
- g. 5/18/66 scratches to the left side of neck
- h. 12/2/66 laceration of mouth
- i. 3/21/67 tooth knocked out
- j. 11/9/67 cut over left eye
- k. 5/17/68 swelling on right side of head
- l. 5/16/70 overdose of drug mellaril
- m. 6/1/70 laceration on back of head
- n. 5/27/70 bite on arm
- o. 7/20/70 laceration of chin
- p. 9/14/70 laceration of chin
- q. 9/19/70 reopening of the sutured laceration of the chin
- r. 10/21/70 laceration on right side of head
- s. 11/16/70 laceration below the chin
- t. 12/1/70 brush burn over lower left eye
- u. 12/1/70 scratched by another resident.
- v. 12/13/70 scratched back (by another resident)
- w. 1/30/71 Plaintiff bitten on third finger, right hand, Plaintiff bitten on left elbow, both by another resident
- x. 2/17/ 71 soft lump on top of head
- y. 3/1/71 scratches on back

z. 3/21/71 laceration on left side of head
aa. 4/19/71 fracture of proximal phalanges, 2d, 3d, and 4th fingers, and
a fracture of the second metacarpal, proximal end
bb. 6/13/71 small red mark on left cheek
cc. 7/14/71 fall suffered on wet floor
dd. 7/18/71 two sores on right wrist
ee. 8/3/71 scratches on right side of face
ff. 8/22/71 bitten on left wrist by another resident
gg. 9/12/71 bruised left ankle
hh. 10/23/71 sore hands
ii. 10/26/71 multiple (3) fractures of jaw
jj. 2/23/72 bruise on left side of head
kk. 3/21/72 laceration of big toe
ll. 5/9/72 swollen and discolored right foot
mm. 5/28/72 swollen right foot
nn. 6/4/72 laceration of forehead
oo. 6/9/72 brush burn on last two toes
pp. 6/30/72 small laceration on forehead
qq. 2/7/73 infected lesion inside mouth
rr. 6/15/73 fracture of big toe
ss. 11/4/73 laceration on back of head

56. Few or none of the above injuries and incidents would have occurred had Defendants properly supervised Plaintiff Halderman and maintained the institution.

57. A single example will illustrate the lack of supervision. On June 15, 1973, Plaintiff's left toe was fractured. Plaintiff's mother was informed that, at the time, because of a hospital policy on budgetary savings, there was a shortage of shoelaces and Plaintiff Halderman was barefoot because there were no shoelaces for her shoes. Thus an otherwise harmless fall resulted in a painful and frustrating injury.

58. In any case, the hospital's own investigation revealed that there was a lack of supervision at the time that the fall took place. In a "Special Report" dated June 15, 1973 and June 20, 1973, Richard L. Matthew, Assistant Director of Resident Life, stated:

The residents were being supervised in one dayroom by one aide while the other child care aides were involved in the showering, drying, and dressing. The aide from the dayroom was in and out while returning the residents from the shower room door. It was during this process that the accident occurred.

The "Tooth" Incident

59. On October 26, 1971, Terri Lee Halderman suffered multiple fractures of her jaw. In a manner not atypical of the incompetent care given by Defendants, some Defendants decided there was a "tooth" hanging in Terri Lee Halderman's bleeding jaw; it later became apparent that this was not a tooth, but a broken piece of cartilage, part of Plaintiff's broken jaw. Nevertheless, before consulting a doctor or summoning a doctor, the Defendants involved here pulled on the "tooth" causing much pain and suffering to Plaintiff. When the Plaintiff was discovered bleeding, instead of enlisting a doctor's services or advice immediately, the Defendant resident aides attempted to control the bleeding by applying cold compresses. The circumstances surrounding this incident are best described in the words of an investigating team at Pennhurst which reported:

Terri Halderman got out of bed at approximately 4:00 a.m. Her protective helmet was placed on her head at this time. From 4:00 a.m. to 5:00 a.m. she wandered around the dayroom and toilet areas banging her head and screaming. Shortly after 5:00 a.m. Terri began hitting her wrists on the doorknob of the private clothing room. At his (sic) time she was placed in a camisole by Nagle and Green. At approximately 6:05 a.m. Miss Lyttle saw Terri fall backwards and land on her right hip. Terri did not appear to be injured at this time and Lyttle helped her to her feet. At approximately 6:10 a.m. Mrs Nagle found Terri sitting on the floor with her legs crossed at nearly the same location she fell earlier. She was bleeding from the mouth. Mrs. Nagle helped Terri to a bench and notified Miss Lyttle. They applied cold compresses to the injured area. There appeared to be a "right front" tooth missing. At this time Mrs. Green was in another area of the cottage and Mrs. Klick was in the office. It has not yet been determined exactly where Mae Voight (the working resident) was at this time. At approximately 6:15 a.m.

Miss Lyttle called Mrs. Uphold (CCA supervisor) to report the accident. Mrs. Uphold told her to continue the cold compresses. The bleeding subsided to (sic) approximately 6:20 a.m. , but commenced again moments later. At approximately 6:30 a.m. Miss Lyttle called Mrs Uphold again to report that rather heavy bleeding had commenced and that there appeared to be a "tooth handing (sic) by just a little skin" from her upper jaw. Mrs. Uphold called Mrs Shanta R.N. to report the difficulty in controlling the bleeding and the loose tooth. Mrs. Shanta told Mrs. Uphold to have the aides pull the tooth out and continue the cold compresses. Mrs. Uphold called the cottage and relayed the message. When the tooth was removed it was found not to be a tooth but a piece of cartilage-like substance. While applying the compresses at this time, Miss Lyttle "felt her jaw move strangely"--making a grinding like sound. It was was (sic) "bleeding coming from the lower jaw." Miss Lyttle called Mrs. Uphold at approximately 6:35 a.m. and reported this to her. Mrs Uphold said to continue the compresses. Mrs. Uphold called Mrs. Shanta and asked her to come see Terri. Mrs. Uphold arrived on C-3 at approximately 6:40 a.m. and assisted in the administration of first aid. At approximately 6:45 a.m. Mrs. Shanta arrived on the ward and examined Terri. She then phoned Dr. Marshall and Dr. Soroka at his home. Dr. Soroka stated that he would be in to see the resident by 7:30 a.m. The bleeding subsided at approximately 6:50 a.m. Mrs. Uphold returned to her office to finish her regular work. Mrs Shanta left the ward at 7:15 a.m. Dr. Soroka arrived at approximately 7:25 a.m. and had Terri transferred to the Hospital.

The above is quoted from a Pennhurst Accident Investigation Report, a four page, five sheet document signed by Dr. James C.Hirst, Ph.D. and other hospital officials.

60. The investigating committee of Pennhurst concluded that the Pennhurst employees, Defendants herein, acted improperly and that:

1. The time lapse from discovery of the injury to the hospital admission was too long.

2. The nurse should not have advised the "tooth" extraction.

3. The aides should not have attempted the "tooth" extraction.

4. The professionals involved did not respond promptly or thoroughly enough.

5. The practice of permitting residents who are confined in a camisole (i.e. straightjacket) to wander about the cottage cannot be permitted.

61. Although Plaintiff receives no drugs while visiting the home of her parent or while visiting the homes of others, and although she functions well in this non-sedated state, she receives, over the objections of her parent, daily

injections of a sedative drug when in residence at Pennhurst.

62. On May 16, 1970, Plaintiff did in fact receive an overdose of the tranquilizing drug Mellaril, requiring hospitalization and treatment. This overdose is confirmed by the institution's Progress Record entry at that date.

63. Plaintiff Terri Lee Halderman's condition has deteriorated at Pennhurst. While she was once able to express herself verbally, she has been incommunicative during her stay at Pennhurst. Defendants have made no attempts to help or encourage Plaintiff to regain her verbal abilities.

64. Plaintiff's physical appearance graphically illuminates her deterioration. She has lost practically all of her front teeth, has many facial scars, and is pitifully undernourished.

65. Plaintiff Halderman has received limited self-help training only five days per week. For someone in her situation, such an unsustained effort is not a sufficient regimen for a responsible attempt to rehabilitate Plaintiff.

66. Plaintiff's digestive capabilities require that she receive her food in a pureed state. However, Plaintiff has suffered stomach disorders due to the ingestion of non-pureed food.

67. In a progress report in Plaintiff's medical records of May 16, 1970, the doctor indicated that Plaintiff suffered from "poor oral hygiene."

68. Although the dayroom in which Plaintiff spends considerable time has a cold tile floor, she is often allowed to walk about in her bare feet. On occasion, Plaintiff's mother has found her daughter shivering with cold.

69. For years Plaintiff's mother has attempted to remedy and redress the wrongs suffered by her daughter by communicating with various officials and persons in positions of responsibility. Because these pleas have either been ignored or ineffective, it was necessary to initiate this action.

LARRY TAYLOR

70. Plaintiff Larry Taylor is eighteen years old and has been at Pennhurst more than ten years. Plaintiff has a walking disability and due to a lack of needed protective supervision and due also to gross staff neglect, Plaintiff has been repeatedly knocked to the ground by other residents incurring multiple abrasions and bruises.

71. In about 1967, though patient care attendants were on duty at Plaintiff's ward, a strong and violent resident attacked Plaintiff, severely beating him. No staff person came to Plaintiff's aid. Plaintiff suffered large discoloring bruises over a large portion of his body and also received deep wounds of the face and head which required numerous sutures. Plaintiff's injuries were so devastating that he required several weeks of hospitalization.

72. After admission to Pennhurst, Plaintiff was placed on the drug Dilantin, a drug prescribed to control seizures. Pennhurst ward staff informed Mr. and Mrs. Taylor that no one had ever seen Larry have any kind of seizure and that the prescription of Dilantin puzzled them. As a direct result of the continual and repeated ingestion of this drug, Plaintiff's gums have been permanently damaged. His gums are swollen and frequently ooze and bleed. Two of Plaintiff's front teeth have fallen out as a result of this drug induced disease.

73. As of the writing of this amended complaint, Larry Taylor is needlessly, to his detriment, and over his parents strenuous objections, kept heavily sedated. When Plaintiff's parents visit with him and take him off grounds for a day, Plaintiff is extremely sluggish and has a difficult time remaining awake. Plaintiff's school report card states that Plaintiff falls asleep a lot in class. This drug induced grogginess prevents proper habilitation, education, and treatment, and is for the benefit of staff control.

74. In about 1970, Plaintiff was sick with a virus. Mr. and Mrs. Taylor visited with Plaintiff. On first sight of their son it was apparent to Plaintiff's

parents that Plaintiff was dehydrated. Plaintiff's mouth and lips were completely dry and Plaintiff was very weak. Plaintiff's father asked the ward attendant for some juice, which was available on the ward, and Plaintiff immediately consumed more than a quart of fluid. This gross neglect of Plaintiff is indicative of the quality of care that residents at Pennhurst receive.

75. Recently Mrs. Taylor visited with Plaintiff at Pennhurst and the ward staff could not even locate a single washcloth with which to cleanse Plaintiff. Plaintiff and all residents at Pennhurst daily suffer such inhumane and degrading experiences.

KENNY TAYLOR

76. Kenny Taylor is sixteen years old and has been at Pennhurst more than ten years. In 1967 or 1968 while ward staff left the residents completely unsupervised Plaintiff Kenny Taylor had a tooth knocked out as he was violently pushed to the floor by another resident.

77. In about 1968, Mr. and Mrs. Taylor were returning Kenny and Larry to their wards after having spent time with them outside. It was 5:30 p.m. Both of the ward attendants were in the office, obviously highly intoxicated, listening to the radio. Every child on the ward was running excitedly about without any supervision. Mr. and Mrs. Taylor filed a report with Pennhurst officials protesting the employment of such incompetent and callous individuals. Both aides were subsequently dismissed from employment.

78. On numerous occasions on the wards of both Kenny and Larry Taylor, there have been broken chairs and benches with sharp and exposed springs and nails.

79. In 1971 Plaintiff Kenny Taylor was pushed from a swing, landing violently on the ground. He was bleeding from the mouth and his nose was swollen. It was not until two days later that Pennhurst discovered that Plaintiff's nose was fractured.

80. In 1972 Plaintiff was bitten numerous times by other residents sustaining numerous painful wounds and bruises. In the space of four months in 1972, Plaintiff was bitten by the same resident four times. No meaningful attempt was made to protect Plaintiff from this stronger and more aggressive resident.

81. In April of 1972, Plaintiff was pushed by another resident and suffered a deep laceration of the forehead which required sutures. If adequate supervision had existed, such a severe injury would have been prevented.

82. In 1973 and 1974 Plaintiff again was victimized by other residents, receiving bites and scratches. In May, 1974 Plaintiff's face was bitten by another resident inflicting intense pain and persistent discomfort to Plaintiff. These constant attacks could easily have been avoided with adequate and meaningful supervision.

ROBERT SOBETSKY

83. Robert Sobetsky is seventeen years old and has been at Pennhurst since 1972. Since his admission, Plaintiff Robert Sobetsky has suffered numerous injuries on a continual basis.

84. Plaintiff was not at Pennhurst many months before the familiar pattern of preventable resident assaults became noticeable. Plaintiff was often bitten and scratched by other residents.

85. In May, 1973, in the short space of five days, Plaintiff was twice bitten on the throat, suffering intense pain. On one day alone in December, 1973, Plaintiff Robert Sobetsky suffered multiple bites of his upper arms. These injuries occurred less than twenty four hours after Plaintiff was last bitten by another resident.

86. Plaintiff has a walking disability and therefore moves slower than most other residents. He is a prime target for violent and aggressive residents. It is obvious to all Defendants that Plaintiff needs protective supervision, yet, it is just as obvious that Plaintiff does not receive such supervision in any form.

87. In January, 1974 Plaintiff was confined to a wheelchair. Though Defendants knew that Plaintiff needed help in maneuvering his wheelchair, Plaintiff was left completely unsupervised at the top of an open stairway. Pennhurst records report that Plaintiff was next seen falling down the school stairs in his wheelchair. Such staff incompetence and gross negligence creates the terribly dangerous conditions under which Pennhurst residents must constantly live.

88. Typical of the degrading indifference which Pennhurst staff display toward their retarded citizens, is the incident involving Plaintiff on February 11, 1972. It was a cold winter day. Plaintiff was taken home to spend some time with his family. Plaintiff had a deep chest cold, but it was not until the Sobetsky family arrived home that it was discovered that Plaintiff had only an undershirt beneath his coat!

89. Though Plaintiff and all Pennhurst residents need a stable environment in which to properly develop and learn, Plaintiff, for more than two years at Pennhurst did not have an assigned bed in which to sleep. There are more than twenty five beds on Plaintiff's ward.

90. Due to the above-mentioned dangerous, unstable, and anti-therapeutic conditions, Plaintiff has regressed. When Plaintiff was three years old, Plaintiff was able to drink from a water fountain, and this was noted by a social worker in Lansdale, Pennsylvania. Yet, in 1973, an aide at Pennhurst ironically boasted, "I got Robert to drink out of the fountain."

91. Plaintiff has been subjected to dehumanizing, degrading bareheaded haircuts. His ward is constantly engulfed in the intolerable smell of feces and urine. Many residents are dressed only in underwear, while other are permitted to lay naked on the cold tile floors. Plaintiffs and their class are subjected to similar or identical conditions throughout Pennhurst.

THERESA SOBETSKY

92. Plaintiff Theresa Sobetsky has been at Pennhurst less than three years, yet in this short period of time, she has fallen victim to staff inadequacy and negligence many times.

93.. In March, 1972, Theresa was thrown out of her wheelchair by another resident, sustaining lacerations and bruises of the face and head. But, it was not until eleven days later, when Mrs. Sobetsky arrived at Pennhurst to take Theresa home for a weekend, that it was discovered that Theresa also sustained a severely sprained left ankle and left knee and was completely unable to walk.

94. Though Plaintiff Theresa Sobetsky's left ankle and left knee were clearly swollen and bruised, Pennhurst staff never once detected any injury, and Plaintiff remained in pain without treatment for almost two weeks. The swelling and bruises were so prominent that a private orthopedic surgeon, upon seeing Plaintiff on the twelfth day after the fall, immediately ordered X-rays to be taken to determine whether or not Plaintiff had fractured any bones in her left leg or ankle.

95. Due to the severity of Plaintiff's leg and ankle injury, Plaintiff's orthopedic surgeon recommended that Plaintiff wear orthopedic shoes, to prevent any further needless damage. Though Pennhurst received explicit instructions from Plaintiff's physician regarding the correct use of the orthopedic shoes, Pennhurst staff, continually and repeatedly improperly laced the shoes, and often placed the shoes on the wrong feet, inflicting greater damage to Plaintiff's ankles.

96. During a home visit by Plaintiff, it was discovered that Pennhurst staff had labelled Plaintiff's right shoe as the left shoe, and had labelled the left shoe as the right shoe! Such gross incompetence and intolerable negligence occurs daily to Plaintiff and all residents at Pennhurst.

97. Another example of Pennhurst's gross disregard for the welfare of its retarded citizens surrounds Plaintiff's recovery from her leg injuries. In May, 1972, as Plaintiff was recuperating from the knee and ankle impairments, it was advised that Plaintiff should discard her wheelchair and attempt to walk--but only with the aid of a walkette. Pennhurst officials then advised the Sobetsky's by letter that Plaintiff would receive the walkette and begin rehabilitative therapy--only upon receipt of \$20, payment for the walkette. Defendants intentionally made rehabilitation of Plaintiff contingent on her parents ability to buy a walkette, which was already available at Pennhurst.

98. Though well aware of Plaintiff's leg problems, the Defendants, ignoring all reasonable dietary planning, caused Plaintiff to become extremely overweight, creating greater stress and inflicting greater damage to Plaintiff's already weakened knee and ankle.

99. Plaintiff Theresa Sobetsky like her brother, Plaintiff Robert Sobetsky and all other Pennhurst Residents, has received a glaringly inadequate education. In 1972 Plaintiff was attending school only three hours a day and only five days a week. In the spring of 1973, this shamefully diminutive education was reduced to only two and a half hours of school per day, and again only five days per week; a total reduction of 16% of Plaintiff's education!

100. On May 7, 1974, Dr. Nickolas, a Pennhurst employee, negligently extracted Plaintiff's lower left first molar. Dental Supervisor at Pennhurst, Simeon J. Cole Jr. D.D.S., in a memorandum to Defendant Superintendent Youngberg, stated that Plaintiff's post operative examination "revealed a severely traumatized cheek and lip." Though Dr. Cole dismissed the swelling and facial disfigurement as the result of Plaintiff biting her own cheek, a careful examination of Plaintiff's mouth by her parents revealed no bite marks and absolutely no broken tissue. Upon returning their daughter to Pennhurst, Plaintiff's parents

were told by a Pennhurst employee that Plaintiff Theresa Sobetsky received an injection in the lip and that this misplaced injection caused the swelling. Though the extraction was intended to relieve the pain in Plaintiff's jaw, the resulting negligence only served to intensify and prolong Plaintiff's agony.

NANCY BETH BOWMAN

101. Plaintiff Nancy Beth Bowman, twenty three years old, was admitted to Pennhurst in 1961. Pitifully, she typifies the inevitable physical and intellectual deterioration noted in all Pennhurst residents.

102. Upon entering Pennhurst, Plaintiff was clean, healthy, unscarred, and in good physical condition. As of the writing of this complaint, Plaintiff epitomizes the tragic consequences of inadequate, incompetent, and negligent care, treatment, and supervision. Plaintiff's back reveals numerous scars and patches of scar tissue. The same condition exists on Plaintiff's neck and throat area.

103. In 1970, Plaintiff was violently struck by an aide, and the caps for Plaintiff's teeth were dislodged by the blow and never located.

104. Under the constant threat of physical deterioration and abuse, most of Plaintiff's human energies must be directed solely toward basic survival, thereby preventing Plaintiff from even attempting to attain a higher level of human potential and capability. The same is true of the class. Plaintiff and her class suffer from an obvious lack of intellectual and psychological growth and progress.

George Sorotos

105. Plaintiff George Sorotos is only eleven years old and has been at Pennhurst for four years. Though he is only a child, Plaintiff too has suffered physical and psychological neglect and abuse.

106. Like so many other Plaintiffs herein and members of the class, Plaintiff has had teeth knocked out while at Pennhurst. This needless injury could have been prevented with proper supervision.

107. Since his commitment to Pennhurst, Plaintiff has received numerous bruises and lacerations. As of the writing of this complaint, Plaintiff's arms contain numerous scars that did not exist upon his admission to Pennhurst.

108. Plaintiff is usually dressed only in underpants, though the ward floors are made of tile. Occasionally, Plaintiffs foster parents have found him lying naked on the barren ward floor. Plaintiff, while on the ward, is never dressed in shoes and socks. Such constant degradations prevent improvement in Plaintiff's intellectual and emotional condition.

109. On occasion, Plaintiff's foster mother has found Plaintiff, in violation of all standards of human decency and safety, physically tied to a bench. Knowing that a young child was strangled to death in exactly the same manner at Pennhurst in 1972, Plaintiff's foster mother raised vehement protests against such inhuman treatment of her foster child and all other Pennhurst residents.

LINDA TAUB

110. Plaintiff Linda Taub is twenty three years old and has been at Pennhurst since she was thirteen years old. She was committed by her parents.

111. Plaintiff realleges paragraphs 34 to 53 inclusive and is subject to all the conditions therein.

PARENTS AND FAMILY ASSOCIATION OF PENNHURST

112. Plaintiff Parents and Family Association of Pennhurst represents 200 parents of retarded citizens at Pennhurst. The organization represents both voluntarily and involuntarily committed residents. Plaintiff association was organized in

1967 in response to the critical need to protect the neglected rights of retarded citizens at Pennhurst and all other institutions. Plaintiff Parents and Family Association of Pennhurst has for years, through state, local, and institutional administrative channels, attempted to alleviate the pitiful conditions that have existed and continue to exist at Pennhurst State School and Hospital. Encountering no meaningful success, resort to this lawsuit was seen as the only viable method of vindicating the rights of those persons whose mental capabilities differ from the accepted norm.

CAUSES OF ACTION

For Plaintiffs' causes of action, each enumerated below, they reallege paragraphs 1 through 112 above, as if fully set forth herein in each cause of action and further allege:

First Cause of Action

113. Plaintiffs and their class have been denied their Constitutional right to treatment, in violation of the Due Process Clause of the Fourteenth Amendment. It is a fundamental violation of due process to institutionalize or provide institutionalization for a person for the purpose of affording him or her therapeutic treatment and habilitation and then deny him or her such treatment and habilitation.

114. For the retarded, included in the right to treatment is the right to habilitation, proper medical treatment, education, and care, suited to the resident's needs, regardless of age, degree of retardation or handicapping condition. A resident has the right to an habilitation program which will maximize human abilities and enhance the ability to cope with his or her environment.

115. Due to the adverse living conditions and deficient supervision and care, Plaintiffs and their class are denied the right to dignity, privacy, and humane care which underlie the right to treatment and are founded in the First, Ninth, and Fourteenth Amendments to the United States Constitution.

Second Cause of Action

116. Plaintiffs and their class have been denied their Constitutional right to treatment in violation of the Equal Protection Clause of the Fourteenth Amendment. The state law and Defendant officials have classified certain persons as civilly committable for institutionalization at Pennhurst based on their condition and need for treatment. Other persons at other state facilities do receive adequate treatment for similar conditions (e.g. the Woodhaven Institution); persons at Pennhurst do not receive adequate treatment. There is no rational basis for this classification and disparity in treatment. Confinement of the mentally ill or retarded without treatment deprives them of the equal protection of the laws.

Third Cause of Action

117. Plaintiffs and their class have been denied their statutory right to treatment. Pennsylvania state statutes at 50 P.S. 4402(a) and 4403(a) provide that "voluntary admission to a facility" is for "examination, treatment and care." (emphasis added) This provision grants a statutory right to adequate and proper treatment which is not being implemented or respected by Defendants.

Fourth Cause of Action

118. Plaintiffs and their class have a constitutional right to be protected from bodily harm and abuse and conditions which cause them to be in a state of danger and deterioration. Defendants violate this basic right.

Fifth Cause of Action

119. Plaintiffs and their class are subjected to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Sixth Cause of Action

120. Plaintiffs and their class have been denied their constitutional right to the least restrictive conditions necessary to achieve the purposes of commitment in violation of the Due Process Clause of the Fourteenth Amendment.

121. This violation occurs in two ways:

a. Defendants utilize such restraining measures as camisoles (straightjacket), posey wrist restraints and leather straps with steel locks when less restrictive measures (or less time with the more restrictive measures) would suffice.

b. By not providing adequate treatment and habilitation, Plaintiffs and their class do not improve in condition and functioning to the extent possible and to be expected in a proper program. Thus, the institutionalization is needlessly prolonged and use of less restrictive community care facilities is not utilized to the proper extent.

Seventh Cause of Action

122. All of the Defendants have and have had the duty to prevent the above injuries from occurring to Plaintiffs and their class; they failed to do so neglecting their duty in violation of 42 U.S.C. 1986, their common law duties and their medical and professional obligations.

Eighth Cause of Action

123. Plaintiffs have been denied the right to refuse treatment in violation of their First, Eighth, Ninth, and Fourteenth Amendment rights and in violation of their common law rights. They have been denied their right to be let alone and to be free from interference with sensation and to be free from interference with

their bodies and minds in violation of their First, Eighth, Ninth, and Fourteenth Amendment rights.

124. Plaintiffs Terri Lee Halderman and Larry Taylor, despite repeated objections from their parents, continue to be sedated with mind-altering drugs at Pennhurst by Defendants. Plaintiffs are able to function well in a non-sedated state. This treatment is for the purpose of staff convenience and is unnecessary, cruel, barbarous, untherapeutic and interferes with Plaintiffs' habilitation.

Ninth Cause of Action

125. Defendants have been grossly negligent and incompetent in their care and treatment of Plaintiffs, due to callous disregard for their comfort, health and safety and due to deficient staff attention, resources, and programming. They have permitted the above noted incidents of physical injury and abuse to occur despite the fact that they had knowledge or should have had knowledge of the deleterious conditions and improper practices which resulted in such injury and abuse.

126. Defendants have committed assault and battery upon Plaintiffs Terri Lee Halderman, Larry Taylor, Theresa Sobetsky, Nancy Beth Bowman, and George Sorotos, causing them physical harm and severe emotional distress. Defendants are liable at common law for these injuries.

127. Defendants are liable to Plaintiffs for punitive and exemplary damages as a result of their conscious, deliberate, wanton and gross disregard for the life, health, rights, and interests of all Plaintiffs.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Honorable Court to grant the following relief:

1. Assume jurisdiction of this action and set the matter for an expedited hearing and determine it to be a proper class action.
2. Because the above breaches of the substantial rights of all the Plaintiffs and their class are of a continuing nature, and will cause further irreparable harm if not remedied, Plaintiffs seek a mandatory injunction on behalf of themselves and their class to command Defendants to act to provide proper supervision, treatment, and care at Pennhurst which has been denied to Plaintiffs and their class. The Court is asked to determine the minimum constitutional and statutory and common law standards for care. Plaintiffs and their class have no adequate remedy at law.
3. Award Plaintiff Terri Lee Halderman \$250,000 in compensatory damages and \$1,000,000 in punitive damages.
4. Award Plaintiff Larry Taylor \$100,000 in compensatory damages and \$500,000 in punitive damages
5. Award Plaintiff Kenny Taylor \$100,000 in compensatory damages and \$500,000 in punitive damages.
6. Award Plaintiff Robert Sobetsky \$100,000 in compensatory damages and \$500,000 in punitive damages.
7. Award Plaintiff Theresa Sobetsky \$100,000 in compensatory damages and \$500,000 in punitive damages.
8. Award Plaintiff Nancy Beth Bowman \$100,000 in compensatory damages and \$500,000 in punitive damages.
9. Award Plaintiff George Sorotos \$100,000 in compensatory damages and \$500,000 in punitive damages.

10. Award Linda Taub \$25,000 in compensatory damages and \$100,000 in punitive damages.

11. Award costs, attorney's fees, and grant such other relief as may be just, proper, and equitable.

A handwritten signature in cursive script, reading "David Ferleger", is written over a horizontal line.

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