APPENDIX

Narrative Summary of the Record

The record in this case is an extraordinary documentation of every facet of the institution called Pennhurst. Even the detailed summary below cannot begin to tell it all.

Areas considered include an introduction to the institution and the physical environment,[1] injuries and physical abuse,[2] psychological abuse and absence of program,[3] physical restraints, chemical restraints and seclusion,[4] regression,[5] potential for improvement of the institution,[6] and community services.[7]

A. The Institution

The effect of Pennhurst State School and Hospital on its residents, mentally retarded people, is the focal point of this action. Pennhurst was established on the

1. Pages A1-A7.
2. Pages A9-A12.
3. Pages A12-A15.
4. Pages A15-A18.
5. Pages A18-A20.
6. Pages A20-A22.
7. Pages A22-A26.

outskirts of Spring City, Pennsylvania, in 1908 as the Eastern Pennsylvania School for the Feeble-Minded and Epileptic.[8] Its purpose then and its purpose today is to provide training for mentally retarded citizens to enable them to return to our society and function as productive members of it.[9] Throughout its history, Pennhurst has been unable to fulfill this intention.[10] Instead, it has continually visited inexorable physical and psychological damage on those it was established to assist, increasing the helplessness of persons who by virtue of their handicap are least able to resist an inflexible system and most likely to suffer from it.

Retardation is neither a disease nor an illness.[11] It is a handicap which manifests itself in impaired intellectual ability and, in some cases, problems in adaptive be-

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8. Act 424, Laws of Pennsylvania (May 15, 1903); Act 42, Laws of Pennsylvania (April 4, 1907).

9. Mental Health and Mental Retardation Act of 1966, 50 Pa. Stat. Ann. §§4101 *et seq;* "care and training," Act 424; "maintenance and training," Act 42, *supra* note 8; Ex. P-1, P-2, P-6.

10. Pennhurst has been successful in achieving another explicit purpose of state legislation, "segregation" of the retarded at the facility. Act of June 12, 1913, 32 Laws of Pennsylvania 494.

11. Mental retardation and mental illness have no similarity to one another; they are "two entirely different conditions."

> Mental retardation refers primarily to a deficit in intellectual development and social adaptation; whereas mental illness refers to a disorder of thinking, emotions and behavior.
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> Mental retardation occurs usually either prior to, at, or shortly following birth; whereas mental illness can occur at any time in life and often the onset is during adulthood.
>
> Mental retardation is primarily an educational problem; mental illness is primarily a psychiatric problem.
>
> Whereas mental retardation is essentially irreversible, that is, although it can be improved, there is at this stage of our knowledge no cure; mental illness is often reversible and curable.

Tr. 1-87 to 88 Roos; 446 F.Supp. at 1298; 10a; Tr. 2-2 to 2-12 Clements.

havior.[12] While mental retardation cannot be cured in the conventional sense, its effects can be overcome through habilitation, the process by which retarded individuals are aided in acquiring and maintaining those life skills which enable them to cope more effectively with their environments and raise their level of physical, mental, and social efficiency.[13] Habilitation requires normalization of the individual's living situation because where culturally valued means are employed, retarded people are enabled to live valued lives and they respond in a fashion which minimizes the limitations of their conditions.[14] "The principles of normalization have been accepted by the administration of Pennhurst and by the Department of Public Welfare, which is responsible

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12. "Mental retardation is essentially a problem of learning, a defect particularly of the individual's ability to think abstractly, to exercise judgments, to solve problems, and to retain information. Tr. 1-85 Roos; 6-94 to 95 Settle; 446 F.Supp. at 1298; 10a; Tr. 2-13 Clements.

13. Tr. 1-96 to 1-97 Roos; 5-186 Glenn; 446 F.Supp., at 1298; 10a. Habilitation is "A generic term we use to refer to the many specific activities designed to foster maximum development of the individual. Included in the term are various approaches to education, the development of social and intellectual skills, the development of pre-vocational and vocational skills, and related types of activities." Tr. 1-95 to 96 Roos. It is implementation of the developmental model of mental retardation. "By {the developmental model} we mean essentially that retarded individuals should be approached with the assumption that they are capable of growth, of development, of learning; that the environment which we provide for them has a major impact in determination of the rate of this development, indeed, that the human organism is highly plastic and is in continued interchange with our environment. Tr. 1-105 to 106 Roos.

"[W]ith proper habilitation, the level of functioning of every retarded person may be improved" and people "may be removed from the ranks of the retarded." 446 F.Supp. at 1298; 10a, Tr. 2-7 Clements.

14. Tr. 1-106 Roos; 5-88 Girardeau; 5-136 to 187 Glenn; 7-120 Hirst. "Normalization" is a technical word of art which encom-

for the administration of programs in the five county area. . . ." 446 F.Supp. at 1311; 42a (citations to record omitted).

Pennhurst is not providing, nor has it provided, habilitation or a normalized environment to its residents.[15] They have had only the opportunity to learn self-defense and survival techniques necessary to a continued existence in an institution.

B. The Physical Environment at Pennhurst

The District Court found that "the physical environment is hazardous to the residents, both physically and psychologically." 446 F.Supp. at 1308. This finding was not made lightly, but rather was based on consideration of the testimony of eighty witnesses, who included thirteen experts on mental retardation, nine parents of retarded persons who lived at Pennhurst, three former residents of Pennhurst, thirty-nine employees of Pennhurst, and two officials of the Commonwealth of Pennsylvania. Voluminous documentary evidence, including photographs of Pennhurst, were also introduced at the trial before Judge Raymond J. Broderick.

NOTE 14 — *(Continued)*

passes the techniques and goals of habilitation. *See* Wolfensberger, "The Definition of Normalization: Update, Problems, Disagreements, and Misunderstandings," in *Normalization, Social Integration and Community Alternatives* (Flynn & Nitsch eds. 1980). Normalization means that the "environment should be designed to increase the complexity of the behavior of the developing individual to increase his human qualities as these are defined by the world in which we live." * * * [U]nfortunately we have tended to foster and generate deviancy by treating people as if they were different by isolating them and segregating them from society. Tr. 1-106 to 107 Roos.

15. 446 F.Supp. at 1318; 58a. "[F]or the retarded class members as a whole, Pennhurst cannot be an appropriate setting in which to provide habilitation." 612 F.2d at 114; 156a.

Currently, Pennhurst does not meet minimum professional or governmental standards set for such an institution for mentally retarded persons.[16] As the Acting Medical Director of the institution admitted at the trial, Pennhurst's ". . . physical plant itself would not measure up to any standards" Tr. 19-185, Hedson. Many of its buildings have been in use since its founding in 1908 and the deteriorating structures are in constant need of repair.[17] Often the buildings are fire traps.[18]

Concrete and tile are the primary components of the physical environment at Pennhurst.[19] Petitioners' characterization of the living quarters which house the majority of residents as "larger older dormitory settings" distorts the daily living conditions of Pennhurst residents. Brief for Petitioners at 2 n.2. Residents live in "totally intolerable conditions." Tr. 1-175, Roos. The buildings at the institution are subdivided into wards, each ward consisting of, at least, a sleeping area, a dayroom and a bathroom, none of which are constructed or used in a fashion which might be minimally consistent with the common perception of a dormitory.[20]

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16. *E.g.*, 446 F.Supp. at 1302, 1308; 24a, 34a. Tr. 19-185 Hedson; 7-54 Dybwad ("emergency" conditions); 1-172 to 173 Roos ("totally unsuitable buildings"); 1-110 to 115 Roos (professional and governmental "minimum standards" not met).

17. Tr. 8-127 Hirst; 2-159 Taub; Ex. G-42, G-46.

18. The Security Office at Pennhurst is its own fire department from 3:00 p.m. to 7:00 a.m. Ruddick Deposition at 7, 38. Security personnel have extinguished minor fires "numerous times." *Id.* at 38-39. Tr. 9-145 Sobetsky; 6-146 to 150 Settle.

19. *E.g.*, Clements N.T. 2-54, 2-57, U.S. Ex. 48, Photos 21, 26.

20. As one former resident of Pennhurst described his former home, "It looks like a darn big place and it has a gang of boys. They sleep together and all." Tr. 8-5 Troester. Mr. Troester entered Pennhurst at the age of seven. He left the institution for the community at the age of 18, and is now employed. His story is discussed *infra* at 28. Another former resident explained, "It was like one big room with forty in them." Tr. 8-22 Hill.

The mother of two named plaintiffs described their ward as "the most awful place I have ever seen in my life." Tr. 13-19 Taylor. She was asked:

> Q. What did the ward look like physically?
>
> A. Physically, the floors were concrete. They were cracked, full of holes.
>
> The place smelled of urine and feces.
>
> The holes in the concrete were filled with filthy water and the children looked like prisoners.[21]

It is "a stultifying and essentially a dehumanizing environment." Tr. 7-52 Dybwad.

In sleeping areas on the wards at Pennhurst, beds are found row upon row. One ward was described as having three rows of four beds with about three or four feet of space separating them; a five foot high tile wall separates the rows of beds.[22] Sleeping areas are often insufficiently furnished, and generally lack any provisions for individual privacy, much less sufficient pillows, bedspreads or decoration.[23]

Dayrooms at Pennhurst, where the bulk of the residents' time is spent, often have no furniture at all, although some have a few chairs or tables and a television, and the rooms are poorly lighted.[24] The hard surfaces

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21. Tr. 13-19 Taylor. *See* Tr. 12-82 Caranfa (ward of plaintiff Sorotos a "big room with a broken cement floor"); 1-132 Roos ("a very barren place . . . just bare floor and bare wall"); 1-171 Roos describing Photo 54 in Ex. G-48; ("just the bare floor and walls, and that is a resident almost nude lying on the bare floor"); 8-109 Hirst; 7-53 Dybwad ("an ugly place," "inhuman dimensions"); 2-152 Taub ("snakepit" where plaintiff lived); 4-70 Lancaster-Gaye.

22. Nagle Dep. at 16-18.

23. Photos 29, 30, and 56 at Ex. G-48; Tr. 1-149 to 150 Roos; 2-54 to 55, 93 to 94 Clements; 19-46 Pirmann; Smith Dept. at 43-44; Nagle Dep. at 16-18.

24. *E.g.*, Photo 54, 102 and 103 at Ex. G-48; Tr. 1-171 Roos, 6-149 Settle; Smith Dep. at 43-44; Nagle Dep. at 5-10; notes 19-21 *supra*.

and lack of furnishing amplify the continuous "blaring" noise at the institution.[25]

The shower and bathing areas on the wards of Pennhurst are as dehumanizing as the sleeping areas and dayrooms. Consistent with the rest of the ward environment, they are totally bereft of provisions for privacy; like the beds, the toilets are lined row upon row, without doors or partitions to grant even minimal privacy.[26] Toilets lack seats "universally" and toilet paper.[27] The hard surfaces of the bathroom floors, already dangerous because slippery, are made even more so so due to the practice of covering them with wet sheets.[28] Bathing areas have no soap or towels.[29] These are "conditions which violate the very basic rules of hygiene." Tr. 1-158 Roos.

Pervasive filth in all areas of the wards compounds the problems of barren and dehumanizing design and

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25. Tr. 1-150 Roos; 6-149 Settle; 5-98 Girardeau. "Moreover, the noise level is often so high that many residents simply stop speaking. (Clements, N.T. 2-59)." 446 F.Supp. at 1308; 35a.

26. Tr. 1-149, 158, 169 to 170 Roos (no privacy, dirt, "feces on the wall and the floor"); 2-40 Clements; Troester 8-6 to 7; Photos 5, 39, 105, 106 at Ex. G-48; Barton Dept. at 26.

27. Tr. 1-158 Roos; 5-96 Girardeau; Nagle Dep. at 26; 2-160 Taub; 3-142 Lowrie.

28. Photo 39, 42, 43 and 44 in Ex. G-48; Tr. 2-42 to 45 Clements; 446 F.Supp. at 1309; 37a (plaintiff DiNolfi lost an eye after slipping in shower).

29. Photo 7 in Ex. G-48; Tr. 2-41 to 43 Clements; 1-149 Roos. During the mass showering in "wide open" areas, Tr. 8-6 to 7 Troester, residents have been "squirted down with a big hose" while "screaming with fear." Tr. 12-82 to 83 Caranfa (regarding plaintiff Sorotos). For morning washing, a Pennhurst employee explained, "We might take a wet rag across legs and arms." Nagle Dep. at 40. The absence of soap, towels and adequate bathing procedures have serious consequences for treatment. Tr. 2-41 to 43, 45 Clements. In addition, physically dangerous bathing practices are engaged in. Tr. 2-38 Clements (describing photo 1 in Ex. G-48).

non-existence of basic necessities of hygiene. Excrement and urine are often found on the floors of wards; bathrooms contain unflushed toilets, excrement on toilet seats (when seats are available at all), walls and floors.[30] One expert witness "observed excrement, urine, dirty mops strewn about, [and] pools of water on the floor."[31] Urine and feces remain on ward floors, in residents' beds and on bodies for lengthy periods of time.[32]

As might be expected, the ubiquitous filth at Pennhurst causes interminable odor as well as infestation of vermin. Roaches permeate the facility. Smith Dep. at 38, 47. Flies are commonly observed crawling on the bodies of residents. Tr. 18-69 Pool.[33] Residents suffer from epidemics of pinworms and various infectious diseases.[34]

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30. Tr. 1-158, 160, Roos; Smith Dep. at 41; Photo 50 at Ex. G-48. Seclusion rooms have feces on ceilings and walls. Tr. 1-134 Roos; 4-179 to 190 Lowrie; Ex. P-6 (Pennhurst staff committee report).

31. Tr. 1-160 Roos.

32. "There was frequently urine and feces on the floor, under their fingernails, in their hair and still is" Tr. 12-63 Caranfa (re plaintiff Sorotos); 2-161 to 162 (defecation in beds); Smith Dep. at 41 (floors).

33. One witness testified:

> There was one time when there was a baby lying on the floor and the flies were in her mouth and nose and I picked them out and asked the girl who worked at Pennhurst, Dorothy, in charge of the ward, to do something about it.
>
> And she said, "Well, what do you think I can do."
>
> And I came downstairs and complained to Norma Beard and I said they should have the baby in a crib with mosquito netting over the crib.
>
> It was summer and there were a lot of flies drawn by all the urine and feces all over the place.

Tr. 12-80 to 81 Caranfa.

34. Tr. 16-193 Conley; Hedson Dep. at 1222.

C. Injuries and Physical Abuse

Accidents on slippery floors and diseases are far from the only harms inflicted by Pennhurst on its residents. Rather, the catalogue of hazards is as long as it is shocking, as is evidenced by a report of just one month at the institution. In January of 1977, for example, 833 residents of Pennhurst suffered minor injuries and 25 residents suffered major injuries.[35] After reviewing this summary of injuries to residents, one expert characterized the document as a "battlefield report" and concluded that "[i]t appears that it is physically hazardous for the residents to be in the environment."[36] The number of injuries at Pennhurst is "fairly constant," a Pennhurst official testified.[37]

Each named plaintiff sustained serious injury while in the institution. 446 F.Supp. at 1309-1310; 36a-40a. Larry Taylor "was beaten about the head and face so badly he was unrecognizable. You couldn't see eyes, nose and mouth. I mean he was totally beyond recognition." Tr. 13-30 Taylor; letter to superintendent 13-64 to 65. Both Larry and Kenneth Taylors' "heads have been cracked open so often that there are spots on their heads where they will never grow hair." Tr. 13-23 Taylor. Nancy Beth Bowman "was bruised constantly, marked, black eyes" so that she "will be scarred for the rest of her life." Tr. 13-72, 75 to 77, 94 Bowman. Pennhurst classi-

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35. Ex. G-15; Youngberg Dep. at 78-84; Tr. 158, 163, 164 to 169 Roos. Very few bones in residents' bodies have not been broken at one time or another. *See* Tr. 15-130 Girardeau; Ex. G-18 (fingers and toes); Hedson Dep. at 116 (ribs); 1-165 Roos (broken arm not discovered for 24 hours); Hedson Dep. at 101 (arm); 7-137 Hirst (pelvis); Mathew Dep. at 81 (spine). *See* Ex. G-14 (Pennhurst Accidents and Injuries Committee Study of Fracture Records), described at Tr. 7-132 to 137 Hirst.

36. Tr. 1-163 Roos. *See* 1-164 to 169 Roos.

37. Tr. 22-40 to 41 Foster. Experts retained by the defendants agreed that the injuries were preventable. Tr. 13-154 Hersh.

fied serious injuries as "minor,"[38] including many of those observed every week for seven years (except for four occasions) on plaintiff Sorotos.[39]

Terri Lee Halderman sustained one of her forty injuries when, despite staff's knowledge of Ms. Halderman's need for supervision, she was permitted to walk around her living unit at four in the morning in a camisole (straightjacket) and a helmet. She was found lying on the floor two hours later bleeding profusely from the mouth. An aide sought and was granted permission to pull from Halderman's mouth what appeared to be a tooth; the material was later found to be part of the plaintiff's jaw, broken in the fall.[40]

Lack of supervision of residents has often caused injury and death to persons confined at Pennhurst.[41] Residents have drowned, both in bathtubs at Pennhurst and in the Schuylkill River, which flows through the grounds of the institution.[42] Often there are "missing residents" who are off the ward without staff knowledge or supervision. Ruddick Dep. at 28-30.

The design of the living units at Pennhurst exacerbates the inadequacy of staffing, contributing to unsupervised activity and hence the frequency of accidents. One of the factors contributing to Ms. Halderman's jaw fracture was that the nature of the ward design there and on other units provides blind

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38. ". . . a bite, the skin is broken in maybe six or eight places and there are scabs formed and the bruises last two weeks, you couldn't classify it as a minor bite." Tr. 12-89 Caranfa. *Accord*, Tr. 13-29 Taylor.

39. 446 F.Supp. at 1309-1310; 38a. For injuries to other plaintiffs, *see*, *e.g.*, Tr. 9-151 to 153 Sobetsky; Tr. 9-11 Heinsicker.

40. Tr. 8-68 to 72 Hirst. Pennhurst staff were found by a special investigating committee to have acted improperly. *Id.* Recommended policy changes were not implemented. *Id.* at 88-71.

41. Hedson Dep. at 90, 96-98; Ex. G-22, P-62.

42. *Id.*, Tr. 7-164 Roos. After several deaths, a fence was built to prevent access to the river. Residents now simply climb over it. Ruddick Dep. at 33-34.

spots that made it very difficult for the aides to supervise all of the people all of the time.[43]

Abuse of residents by the staff has been an ongoing fact of life at Pennhurst, inevitable in an overcrowded and understaffed institution. Reported incidents of abuse[44] include the eyewitnessed rape of a resident by a direct care worker,[45] beating of residents with sets of keys and shackle belts,[46] and an aide's unprovoked tossing of a small, physically handicapped child across a room. In the last instance, after the child landed on his stomach on the cement floor of his ward, the aide approached him and slapped him across the face.[47] Plaintiff Bowman's family was not told of several incidents of physical abuse by staff of their child. Tr. 13-83 Bowman.[48]

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43. Tr. 8-72, 108 Hirst; 2-60 to 62 Clements. At the time of the jaw fracture, Ms. Halderman was living in a new Pennhurst building, built in the early 1970s, called New Horizons. It was described by one expert as follows: "You would never think of human beings living there. You might store things in such a building." Tr. 7-56 Dybwad. Pennhurst staff felt it was "no place for habilitation, for people to live." Tr. 8-109, 119 Hirst.

44. Abuse is not effectively monitored. Tr. 1-144 to 146 Roos.

45. Ex. G-37; Tr. 1-167 Roos; Ruddick Dep. at 17-23.

46. Ex. G-36, G-25; Tr. 1-167 to 168 Roos; 13-83 Bowman.

47. Tr. 3-113 Ruddick; Ruddick Dep. at 24-27.

48. Former residents of Pennhurst described being "slapped around" and beaten by staff, "some with their fists." Tr. 8-32 Hill; 8-34 Vaughn. On a visit to plaintiff George Sorotos, his foster mother witnessed a child thrown five or six feet through the air:

> While I was feeding Georgie the aide was slapping several different patients about the arms and shoulders and then she took one child by the back of the neck and held open the swinging door with one hand and threw the child through and he landed on all fours in the other room.

Tr. 12-79 Caranfa. More than 3,500 painful electric shocks, causing burns on his buttocks, were administered to a resident in a program approved by the Secretary of Public Welfare. Tr. 5-31 to 5-35 Lowrie; 8-102 to 103 Hirst (the "haphazard activity . . . did not work" to aid the resident); Depositions of Lowrie and Brody. The veteran head of the Psychology Department regarded the treatment as "inhumane and torturous." Tr. 8-103 Hirst.

On his tour of the institution, an expert who testified at the trial witnessed one resident severely beating another while the scene was casually observed by a staff member. "The employee was sitting there watching," because, said the employee, "that's not in my job description." Tr. 2-60 Clements.

D. Psychological Abuse and Absence of Program and Activity

In addition to blatant forms of dehumanization, Pennhurst residents are subjected to an inherently "almost totally impersonal" setting. 446 F.Supp. at 1303. Pennhurst residents live out their lives as a group, engaging in "life maintenance activities" timed for the convenience of staff. Residents are awakened between 5:30 and 6:00 a.m. and are "toileted," showered and dressed, assembly line fashion, in bathrooms containing open rows of toilets and group showers.[49]

Meals are a health hazard for residents. At special risk are those who are fed by staff who use improper feeding techniques, such as feeding individuals while they are lying down or by raking a spoonful of food across the upper teeth, or by feeding people too rapidly. Tr. 1-159 Roos. Thus, the danger of the resident literally inhaling his food is significantly increased and can lead to death by aspiration, asphyxiation, or aspiration pneumonia. *Id.*; Tr. 2-66 Clements. Those able to feed them-

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49. *Supra* notes 26-32; Barton Dep. at 26; Klick Dep. at 140; Tr. 1-149, 160 Roos; 2-40 Clements; 5-96 Girardeau; photos 5, 39, 105, 106 at Ex. C-48. Plaintiffs are often nude, dressed in underwear, or ill-fitting institutional clothes and without shoes or socks. Tr. 1-149 Roos; 12-81 to 83, 115 Caranfa; 13-23 Taylor; 13-80 Bowman. "It was ghastly. Here was this little seven year old boy and all these naked men milling around, screaming, swearing. He was terrified and, of course, I was heartbroken. Tr. 12-61 to 62 Caranfa.

selves are subjected to thefts of food by other residents, making nutritional planning impossible.[50]

Life at Pennhurst is a continuum of inactivity and idleness.[51] An expert said:

> This is what I described as enforced idleness. These individuals are simply vegetating and there seems to be no systematic activity.[52]

Records selected by Pennhurst staff for expert witnesses confirm the inactivity, *e.g.*, tr. 2-77 to 80 Clements, as do government surveys. Tr. 18-83 Pool. Parents of plaintiffs saw

> . . . zombies, people walking around like that in an enclosure, all in straitjackets, and walking with the arms tied up.

Tr. 2-151 Taub. And,

> The toys were in the cage and they weren't allowed to have them out. I never saw a toy played with ever.

Tr. 12-63 Caranfa.

The majority of Pennhurst residents do not receive sufficient programming by minimally acceptable professional standards according to superintendent and his superiors.[53] For example, in one Pennhurst unit residents

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50. Tr. 2-71 to 72 Clements; photos 36 and 37 at Ex. G-48. Lack of nourishment is likely. *E.g.*, Tr. 1-159 Roos. On many wards residents must eat with their fingers or use spoons, the only utensil provided them. Tr. 1-159 Roos.

51. Tr. 1-120 to 122 Roos; 2-57, 77 Clements; 5-98 Girardeau; 6-149 Settle; 14-61 Thurman (expert retained by defendants); photos 8, 14, 21, 23, 26, 31, 33, 52, 55, 56, 103 at Ex. G-48. "The individuals are simply sitting there whiling away their lives."

52. Tr. 1-172 Roos.

53. Tr. 1-119 Roos; 27-72, 77 to 78 Rice; Dep. of Rice at 179, 180.

have no programs to teach them handwashing, self-feeding or toothbrushing although they are in need of these skills.[54] Residents receive only 1½ hours of programmed activities weekdays (none on weekends), including non-beneficial activities such as television. 446 F.Supp. at 1304; 24 a.[55] Programs are "almost nonexistent." Tr. 2-36, 76 Clements; 2-153 Taub (plaintiff Taub); 13-23, 37 to 38 Taylor (plaintiffs Taylor).

Residents in need of specialized programs do not receive them. The head of the Psychology Department testified that "hundreds" of residents needing psychological services were not receiving them, creating "a crippling situation."[56] Long waiting lists exist for every program at the institution.[57] For example, the Speech and Hearing Department accomodates one-sixth of the residents needing such services; physical therapy is given to less than half the people requiring it; most people at Pennhurst receive no recreation or occupational therapy.[58]

The institution encourages the development or increase of behavior problems among the residents; residents engage in self-stimulating behavior ranging from rocking to self-injury and aggressive actions toward others, to relieve the interminable boredom which permeates their lives at Pennhurst.[59] These behavior problems "are symptomatic of the institution." Tr. 8-107 Hirst; 2-83 to 84 Clements; plaintiff Bowman, for example, learned to bite others at Pennhurst. Tr. 13-71 Bowman.

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54. Nagle Dep. at 25, 36, 41.

55. Six hours per day is minimally adequate, Tr. 1-120 Roos, if done in small groups in specific training activities. *Id.* at 1-123.

56. Tr. 7-106, 107 Hirst.

57. Foster Dep. at 42; Tr. 1-153 to 154 Roos.

58. Foster Dep. at 42, 46; Rossi Dep. at 22; 446 F.Supp. at 1304-1305; 24a-26a.

59. *E.g.*, Tr. 1-96 to 98 Roos; 5-112 Girardeau.

There are no programs in use to decrease such behavior.[60]

E. Physical Restraints, Chemical Restraints and Seclusion

While adequate programming could reduce or eliminate these behaviors, note 60 *infra*, Pennhurst's response has been to restrain persons engaging in maladaptive behaviors. Control of residents is maintained through the use (and abuse) of physical restraints, seclusion and chemical restraints.

Physical restraints include such devices as shackles, straightjackets, chest restraints, security belts, face masks, halters, feet restraints, helmets, mittens, muffs and muff shackles.[61] The use of these devices is common at Pennhurst and it is used in lieu of treatment and for punishment.[62]

One expert described seeing residents' hands tied together, persons tied to a wheelchair by their wrists and persons tied to beds by their wrists and ankles.[63] One resident spent 2,041 hours tied to a bed from August to October of 1976.[64] Another spent 123 hours in hand re-

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60. Tr. 4-123 Lowrie; 1-143 Roos; Nagle Dep. at 56, 73-74. Commonly accepted humane teaching methods are available but not used at Pennhurst. *E.g.*, Tr. 1-123 to 130 Girardeau. This is graphically demonstrated by the experience of one school-aged person at Pennhurst. When at Pennhurst, he was kept in arm restraints which deprived him of the ability to bend his arms at the elbows because he would slap himself. When he was in school, where he had a program, restraints were not used. Nagle Dep. at 64-65, 94.

61. Photos 47-49 at Ex. G-48; Mathews Dep. at 62.

62. Tr. 1-133 Roos; 2-83 Clements; 5-125 to 129 Girardeau; 8-11 Troester; photo 18 at Ex. G-48; Ex. G-39, G-40. Restraints cause injury and death. One eleven year old resident of Pennhurst strangled on the restraints used to tie him to a chair. Ex. P-62. *See* Tr. 2-83 to 84, 87 Clements; 7-130 to 131 Hirst.

63. Tr. 1-134 to 135 Roos.

64. Mathews Dep. at 64-66.

straints during one month and still another spent 690 hours in hand and feet restraints in another month.[65] Not only are restraints dangerous in and of themselves, but their use makes residents more subject to the attacks of others.[66] In addition, participation in programming is physically impossible.[67]

Without notice to or permission from their parents, Pennhurst placed minor plaintiffs in physical restraints.[68] Although she could walk, Linda Taub was tied into a wheelchair so staff would know where she was.[69] Plaintiff Sorotos was restrained:

> He would be tied to the bench. Often he would be walking around the floor, on all fours pulling the bench with him.
> Q. I don't understand.
> A. Well, he would try to get up and he'd fall over. The bench was tied to his back, so he would just drag it around.

Tr. 12-84 Caranfa.

Seclusion, the practice of putting residents alone in a locked room, is also common at Pennhurst.[70] Generally seclusion rooms at Pennhurst are dark, hard surfaced, unpadded, dangerous, and devoid of furniture; these rooms are filthy. Tr. 1-136 Roos (observing feces on the ceiling and old clothes on exposed pipes).[71] Seclusion at

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65. *Id.* at 69, 71.
66. Tr. 2-87 Clements; 5-128 Girardeau.
67. *Id.*
68. Tr. 13-31 Taylor; 2-152 to 153 Taub.
69. *Id.* Taub.
70. Tr. 1-133 Roos.
71. 446 F.Supp. at 1306 n.34; photos 97, 98 at Ex. G-48; Tr. 1-132 to 133, 134 Roos. Pennhurst staff surveyed every seclusion room and, in a written report to the administration, found dangerous conditions including sharp edges, exposed wiring, hot radiators, matches, and smeared feces. Ex. P-56; Tr. 4-179 to 190, 5-4 to 5. As the employee testified, "an animal shouldn't even be placed in a room like that." *Id.* at 4-190 Lowrie.

Pennhurst is used as punishment for such things as rules infractions[72] and setting fires.[73]

Often a seclusion order is written PRN[74] — "an open door putting the individual in the seclusion room anytime they see fit." Tr. 1-134 Roos. One resident of Pennhurst, Joseph O., was kept in seclusion for five years running; his room was hosed down to clean it.[75]

The use of seclusion is unacceptable under professional standards for caring for the retarded because it promotes no positive behavior and, in fact, is regarded by residents as a reward for inappropriate behavior.[76] Use of restraints and seclusion is "totally unacceptable" for habilitation and "essentially condemn[s] the individual to a lifetime of confinement."[77]

The use of drugs to control behavior is by far the most prevalent form of restraint at Pennhurst. Drug practices at Pennhurst fall far short of minimum professional standards and include excessive use of psychotropic drugs, polypharmacy, and the administration of drugs on a PRN basis.[78]

At Pennhurst, psychotropic drugs, *i.e.*, major tranquilizers,[79] are used for behavior control, in contravention of Food and Drug Administration standards on prescription and dosage.[80] About twice as many residents

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72. A former Pennhurst resident testified that a resident could spend five days or two weeks in seclusion for breaking rules. Tr. 8-27 Hill.

73. Ruddick Dep. at 41; in this situation, the use of seclusion was approved by a "business administrative officer." Later, a physician validated the decision without seeing the resident. *Id.* at 44-45.

74. Abbreviation for *pro re nata*, "as is necessary."

75. Tr. 19-75, 124 to 125 Pirmann.

76. Tr. 5-119 to 120 Girardeau; 1-135 to 136 Roos.

77. Tr. 1-135 to 136 Roos.

78. Tr. 3-36 to 38, 42 to 46, 55 Sprague. "Polypharmacy" is the simultaneous use of many drugs. For "PRN," see note 74 *supra*.

79. The dangers, nature and effect of these powerful drugs are described at Tr. 3-15 to 22 Sprague.

80. *Id.* at 3-36 to 44.

are receiving psychotropic medication as would normally be expected to require them.[81]

At Pennhurst, medication is used for the convenience of staff and in lieu of habilitation.[82] Often, the use of these drugs prevents residents from benefitting from those few learning experiences available. For example, for many years plaintiff Larry Taylor could not walk and often fell asleep in school as a result of his medication.[83] Pennhurst's polypharmacy policies make it nearly impossible to determine the efficacy of a particular medication.[84] Training of staff in drug use is insufficient and evaluation of practices is improper.[85] Drugs are administered PRN, often by an aide and without a doctor's order.[86] They are also imposed on minor residents without notice to or consent from parents.[87]

Drugs are not a treatment for mental retardation. Pennhurst Acting Medical Director testified, "I don't think that there are any drugs that will change mental retardation." Tr. 19-190 Hedson.

F. Regression

The results of confinement in the institution called Pennhurst are, sadly, predictable. An individual entering

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81. *Id.*; Tr. 2-89 Clements.

82. Tr. 2-88 to 92; 3-53 Sprague.

83. Tr. 13-24, 28, 62 Taylor. Drugs made plaintiff Sorotos "glassy-eyed" and "groggy" at Pennhurst; he was "fine" at home without any drugs. Tr. 12-86 Caranfa. Plaintiff Bowman developed tremors and shakes from drugging at Pennhurst. Tr. 13-86, 87 to 90 Bowman. *See* 446 F.Supp. at 1308, 1310; 32a-33a, 38a, 39a.

84. Tr. 2-90 to 92 Clements; 3-26, 32, 34, 37, 41, 45, 51 Sprague; Hedson Dep. at 59-61.

85. Ex. G-33; Tr. 3-34, 42-46 Sprague. A testifying expert observed and had photographed a resident being forcibly and dangerously drugged on the floor at Pennhurst. Photo 38 at Ex. G-48; 2-136 to 137 Clements.

86. Boyle Dep. at 38; Tr. 16-79 Boyle; 18-71 Pool.

87. *E.g.*, Tr. 13-24 Taylor; 13-72 Bowman.

Pennhurst can only become more handicapped. The conditions at Pennhurst "are likely to foster regression, maladaptive behavior, and curtailment of mental, personal, social and physical development. Among these conditions I would emphasize enforced idleness, mass living and regimentation, an environment which deviates markedly from the normative." Tr. 1-177 Roos.

As the District Court concluded, "the environment at Pennhurst is not only not conducive to learning new skills, but it is so poor that it contributes to losing skills already learned." 446 F.Supp. at 1308; 34a (citations to record and note omitted). *Accord,* Tr. 1-151 to 152 Roos; 58-59 Clements; 4-73 Lancaster-Gaye; 4-34 to 35 Flueck (study of random sample of records); 7-116 to 118 Hirst; 7-65 to 67 Dybwad.

Plaintiff Terri Lee Halderman was known to be "apt to regress."[88] Yet, from the time she entered Pennhurst, Ms. Halderman received no programs to prevent regression.[89] Residents of Pennhurst who, like Ms. Halderman, enter the institution able to speak, cease to do so because the noise level on the wards is so high that individual conversation is impossible.[90] Not only are residents deprived of the ability to learn new skills in the institution, the conditions therein make inevitable the loss of other acquired skills.[91]

The intellectual and behavioral deterioration inflicted by Pennhurst is a common denominator affecting all residents. Those who, in addition to mental retardation, also suffer physical handicaps, are doubly injured by life at Pennhurst.[92] Those residents fortunate enough to have wheelchairs often do not have chairs which are

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88. Ex. P-66 (Halderman records); Tr. 8-75, 128 to 129 Hirst.

89. *Id.* at 8-80.

90. Tr. 9-88 Halderman, 9-40 Hunsicker; 2-59 Clements; 7-126 Hirst. *See* Tr. 2-170 Taub (plaintiff's functioning "went down.")

91. 446 F.Supp. at 1308; 34a; Tr. 1-96, 100, 151 Roos.

92. 446 F.Supp. at 1305; 26a n.28.

appropriately designed for them.[93] Those who do not have wheelchairs are transported in makeshift wheeled tables known as "cripple carts." And those who lack "cripple carts" are confined to their beds, often on "crib wards." With the absence of physical therapy and the lack of needed equipment, physically handicapped residents develop contractures, the freezing and atrophy of unused muscles, which, in some cases, can only be remedied (if at all) by radical surgery.[94]

G. Potential for Improvement of the Institution

The most telling commentary on the facts of life at Pennhurst is that provided by three retardation experts who, the defendants' counsel told the court, were "clearly retained by us to help us in the defense of this litigation." Tr. 13-148 (Deputy Attorney General Watkins). After a vigorous struggle over the admissibility of their testimony, Tr. 12-3 to 15, the experts summarized their three-month study, embodied in a 350 page report, with a 1,000 page appendix, and a separate paragraph-by-paragraph analysis of the complaint.[95]

The defense team attempted to answer four questions:

> First, what is the role of an institution in the service delivery system. Number 2, is an institution an appropriate educational treatment facility; 3 is Pennhurst an adequate setting; and 4 if not, can Pennhurst be made an adequate facility?

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93. 446 F.Supp. at 1304-1305; 25a-26a; Tr. 20-99 to 101 Fekula.

94. Photo 12 at Ex. G-48; Tr. 2-50 to 51, 55-57 Clements, 4-74, 75 Lancaster-Gaye.

95. Tr. 13-125 to 126 Hersh. The $12,000 contract for the "comprehensive, objective evalaution of Pennhurst," *id.* at 13-117, is PARC Ex. 71. The District Court declined to require the defendants to produce the written report.

Tr. 13-119 Hersh.[96] In response to the first question, they concluded that

> the institution has pretty much lost its role, that it is essentially an obsolete way of treating people. It is based on a series of assumptions which are dated. * * * So that the conclusion we came to is that there is no role for an institutional service delivery system in Pennsylvania.

Id. at 13-128 to 129. An institution was found to be an inappropriate educational treatment facility. Tr. 13-129.

On the third question, Pennhurst was found inadequate:

> We found in many ways that the staff of Pennhurst were really fine people, they were hard-working people, they were doing their best. However, we came to the conclusion that because of the essential obsolescence of the total system and because of the complexity of the interpenetration of the various systems — Southeastern Pennsylvania, child-welfare system, mental retardation system, et cetera, et cetera, that having evaluated all the factors that we could put our hands on we came to the conclusion that Pennhurst is not an adequate facility.

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96. For brevity, the testimony of only one witness, Dr. Alexander Hersh, is presented here. One of the others, Dr. Valaida Walker, former Pennsylvania Department of Public Welfare Regional Mental Retardation Commissioner, cited the team's recommendation that, once its residents were provided individualized services elsewhere, "the name of Pennhurst be abolished completely and never be attached to any part of the facility whatsoever for obvious reasons." Tr. 14-7 to 8. The other team member is expert Dr. Kenneth Thurman.

Tr. 13-130. And it cannot be sufficiently improved:

> We came to the conclusion that it could not, that there is no way that Pennhurst could be made into an adequate facility. It is simply too far beyond repair and there are just literally hundreds of reasons why this is the case, not the least of which is the fact that Pennhurst as the whole structure, the whole way of operating out there is simply too far gone.

Tr. 13-131. The views of defendants' experts were shared by every expert for plaintiffs.

The defendants — state and counties alike — have been unable, despite more than fifteen years of planning and effort, and despite the availability of $21,000,000 earmarked for Pennhurst dispersal, to alter the life imposed on plaintiffs.[97]

H. Community Services

There is a world for the retarded outside Pennhurst. The institution's staff, from social worker to superintendent, agree that all its residents can be better served in small facilities in the community, and the Department of Public Welfare agrees;[98] the state, in fact, had slated Pennhurst to be emptied under a five-year plan.[99]

All persons living at Pennhurst, including the most severely mentally and physically disabled, should receive services and habilitation in the community; people

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97. *See* facts at notes 194-196 *infra*; Tr. 14-10 to 24 (former state retardation Commissioner Walker); 6-165 to 166 Settle. After years of effort, the Willowbrook institution remains unfit for human habitation. Tr. 2-108 Clements.

98. Tr. 8-166 to 167 Hindman; 1-185 Roos; 2-111 Clements; 22-171 to 172 Youngberg; 22-77 Foster; 26-22 Rice; Youngberg Dep. at 102; Foster Dep. at 63.

99. Tr. 28-46, 48 Rice; facts at note 195 *infra*; 446 F.Supp. at 1313; 47a-48a.

with identical disabilities — Pennhurst residents' "twins" — in Pennsylvania are receiving such habilitation *now*.[100]

The graphic contrast between life at Pennhurst and life in the community with needed services was best related at trial by individuals who left the institution.

After spending ten years at Pennhurst, Robert Troester now lives in a Doylestown, Pennsylvania, group home with seven other men. He now has his own room, does his own cooking and helps with the shopping. Each day he takes public transportation to his sheltered workshop, where he is employed as a collator. He enjoys going to movies and restaurants in the Doylestown area. Tr. 8-13 to 19 Troester.

After years at Pennhurst, Robert Hill lives in the community, and works in a delicatessen, "five days, except holidays and Saturday and Sunday." Tr. 8-29 Hill. In his leisure time, Mr. Hill enjoys television, walking or fishing, and mystery novels. *Id.* at 8-27 to 31.

Robert Vaughn spent thirteen years at Pennhurst. He now lives in a group home and is employed as a dishwasher in a local department store. To get to his job he must take three different buses. He is an usher in his church. Tr. 8-39 to 42 Vaughn.

These examples are not aberrations, but rather are typical experiences of Pennhurst residents who return to the community.[101] They also are not attributable to a lack of disability or a lack of behavior problems. Grace Auerbach, the mother of Sidney Auerbach, age 51, who was severely retarded and a resident of Pennhurst for 38 years, described the difference in her son. At Pennhurst,

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100. 446 F.Supp., at 1311; 42a-43a; Tr. 1-183, 185, 190 Roos; 2-84, 111, 125 Clements; 5-161 Girardeau; G-25 to 26, 29 to 31, 35 Glenn; 7-68 to 71 Dybwad; 14-21 Walker; 19-69 to 70 Pirmann; 27-101 Rice.

101. *E.g.*, 10-74, 75, 87 Wood; 10-110 Brown; 10-166 to 167 Bolin; 11-72 to 73, 80 to 81 Kulp.

Mr. Auerbach never spoke. Now, his mother testified, he speaks continuously. He now cooks for himself, holds a job, and keeps his own bank account. Tr. 8-44 to 8-62 Auerbach; 446 F.Supp. at 1311 n. 47; 42a. Residents who engaged in assaultive behavior, temper tantrums and soiling themselves, after six months in a community placement, no longer displayed such activity. Tr. 10-166 to 174 Bolin.

Community living embraces the use of a large spectrum of services, some of which are used as a matter of course by non-retarded persons. A "house-type" residential setting is only "one of many different possibilities" for community care; "We know, of course that there are many other models, including foster placement, family placement, and apartment living, independent living." Tr. 1-207 Roos. In some cases, "a small community-based institution" may be necessary to meet the needs of an individual. *Id.* at 1-208. Other existing residential possibilities include subsidized relatives' homes and supervised apartment clusters.[102] The type of arrangement depends on the needs and abilities of the prospective resident.

In addition to, and reducing the need for, residential placement outside the family home, there exists a continum of services designed to serve the retarded person in the community. These services include early intervention and infant stimulation programs, nursery and pre-school programs, public school programs, pre-vocational and vocational training, and independent employment.[103]

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102. *See, e.g.*, note 4 *supra*; Tr. 2-96 to 97 Clements; 6-18 to 20 Glenn; 5-141 to 161 Girardeau; photos 89, 90, 91, 94, 95 at Ex. G-48.

103. *E.g.*, Photos 57, 58, 89, 93 at Ex. G-48; 5-141, 142, 159, 161 Girardeau; 6-6 to 8, 14 Glenn; 6-95 to 98, 172 to 174 Settle; 10-11 to 32, 45, 60, 65; 11-31 Miller.

With 85% of the retarded capable of gainful employment, Tr. 6-95 Settle, and with vocational services operating in the area surrounding Pennhurst, it is no surprise that the typical response of former residents to the provision of vocational services is tremendous progress, including participation in competitive employment.[104]

It is "considerably less costly to provide for mentally retarded persons in the community than in institutions." Tr. 12-20 Conley (expert retardation economist; based on Pennsylvania costs). In 1977, per-resident annual average cost was $20,000 at Pennhurst and $14,000 in the community. *Id* at 12-22, 23, 35; 446 F.Supp. at 1312; 44a (per diem costs: $64 v. $28). For example, for Montgomery County residents in Pennhurst at a $3.3 million annual cost, it would require $1.9 million to provide habilitation outside that facility. Tr. 12-15. State Commissioner Rice acknowledged at trial that the cost of Pennhurst would more than cover the community care cost for all its residents. Tr. 27-39 to 40.

Existing community services for the retarded in Pennsylvania, including those for former Pennhurst residents, are "excellent," "highly developed," "very good."[105] Funds are available for further development of such services. 446 F.Supp at 1312; 43a-44a; notes 194, 195 and 196 *infra*. Both the state and the county defendants are responsible for the monumental and needless incarceration of human beings under Pennhurst's regime.[106]

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104. Photos 57, 58, 93 at Ex. G-48; 8-16 Troester; 8-29 Hill; 8-40 Vaughn; 10-74 to 75 Wood; 10-106, 110 Brown; 10-166 to 167 Bolin; 11-40 to 43 Miller; 11-72 to 73, 80 to 81 Kulp.

105. Tr. 12-26 Conley; 6-50 Glenn; 5-141 to 161 Girardeau. Other states have community services of considerable quality for severely and profoundly retarded persons. Tr. 28-45 Rice; 1-198 to 199 Ross.

106. On direct county involvement, *see* 446 F.Supp. at 1212-1213; 45a-46a; 612 F.2d at 103; 129a-130a.

The crisis that is Pennhurst and its resolution were correctly characterized by its Superintendent, Dr. C. Duane Youngberg:

> As I said a number of times, it is not mental retardation *per se* that requires the institution. It is just the lack of alternative resources . . . I often say that it is not a matter of our people getting ready to return. It is a matter of the community getting ready to take their people back.

Youngberg Dep. at 102.