

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

SOUTHERN DIVISION

Martti Wuori, Carla Lint, Matthew Bram, Rose Swann, Linda Derry, Judith Babb, Fritz Olsen, residents of the Pineland Center, for themselves and on behalf of all others similarly situated,

Plaintiffs

vs.

Margaret Bruns, R.N., Acting Superintendent, Pineland Center; Kevin Baack, Ph.D., Acting Director, Bureau of Mental Retardation, Department of Mental Health and Corrections; Albert Anderson, Ph.D., Acting Director of Business Management, Bureau of Mental Retardation, Department of Mental Health and Corrections, John Rosser, Ed.D., Commissioner, Department of Mental Health and Corrections; Takanori Kimura, M.D., William Lunt, Louis Pelletier, Sc.D., Sherman Hill, Gordon Dubois, Allita Paine, O.T.R., Julie Zimmerman, R.P.T., and Richard Bogh, professional staff heads at Pineland Center; and John O'Toole, Arthur Banister and Frank O'Donnell, unit directors at Pineland Center; in their official capacities,

Defendants

CIVIL 75-80 SD

COMPLAINT

CLASS ACTION

DECLARATORY  
AND INJUNCTIVE  
RELIEF SOUGHT

U. S. DISTRICT COURT  
DISTRICT OF MAINE  
SOUTHERN DIVISION  
RECEIVED AND FILED

JUL 3 1975

EARL S. LINDLAW, CLERK  
BY *E. Bax*  
DEPUTY CLERK

INTRODUCTION

The plaintiffs are full-time residents of Pineland Center, a state institution for the retarded. As such, they have hoped to have their needs for safe and healthful care met, and they have hoped to receive the education and training which would enable them so far as possible to lead normal lives. Although Pineland Center has been in the throes of change for at least the last several years, their hopes are no closer to being realized. Instead, acute boredom, physical deterioration, social regression, psychological debilitation, severe depression and low morale predominate. By this civil rights action, plaintiffs seek to alter that situation.

JURISDICTION

1. This class action suit arises under the First, Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and under 42 U.S.C. §1983. The

pendent jurisdiction of this Court is invoked to decide claims arising under Article VII of the Constitution of Maine and under 20 M.R.S.A. §§911, 1011 et. seq. and 3121 et. seq. and under 34 M.R.S.A. §§2061 and 2095-96. Jurisdiction of this Court is authorized by 28 U.S.C. §§1343 and 1331. Money damages are inadequate to recompense for the harm alleged and therefore injunctive and declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202, and 42 U.S.C. §1983.

#### PARTIES - PLAINTIFFS

2. Martti Wuori is a 23-year-old male and has been a resident of Pineland Center (henceforth, "Pineland") since 1962. He presently resides in Kupelian Hall, Unit IV.

3. Carla Lint is a 15-year-old female and has been a resident of Pineland since age 9. She resides in Kupelian Hall, Unit I.

4. Rose Swann is a 62-year-old female resident of Pineland and has been at the institution for 37 years. She is presently kept in Perry Hayden Hall (formerly, the Infirmary).

5. Matthew Brann is a 23-year-old male and has been at Pineland since January, 1975. He resides in Infirmary II.

6. Linda Derry is a 27-year-old female and lives in Yarmouth Hall, Unit I. She has been at Pineland since she was 5 years old.

7. Judith Babb is a 30-year-old female resident of Pineland. She has been released from Pineland 3 times in the past 6 years but presently resides in Doris Anderson Hall, Unit I.

8. Fritz Olsen is a 25-year-old male resident of Kupelian Hall, Unit I, and has been a resident of Pineland since he was 9 years old.

#### CLASS ACTION ALLEGATIONS

9. This action is brought pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all present and future residents of Pineland whose needs for care, education, training and therapy in a humane and healthful physical and psychological environment are unmet. The class is made up of several subclasses and more specific delineation of the subclasses is made below under each Claim.

10. The claims of each named plaintiff for specific relief are typical and representative of the claims of many other residents of Pineland. There are approximately 500 residents of Pineland, and most or all of them have specific claims for care, education, treatment, habilitation and/or normalization in common with one or more of the named plaintiffs. Questions of law and fact are common to the class and defenses to plaintiffs' claims will be common to the class. Joinder of all those having claims is impracticable. Plaintiffs will adequately represent the interests of the class.

11. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

#### PARTIES - DEFENDANTS

12. Margaret Bruns, R.N., is the Acting Superintendent of Pineland and is responsible for the training, education, treatment and care of all persons received into Pineland. She has direct supervision and control of employees of Pineland, subject to approval of the Department of Mental Health and Corrections.

13. Kevin Baack, Ph.D., is the Acting Director of the Bureau of Mental Retardation within the Department of Mental Health and Corrections and is responsible for planning, promoting and coordinating a complete program for the mentally retarded. He is Ms. Bruns' immediate supervisor.

14. Albert Anderson, Ph.D. is the Acting Director of Business Management within the Bureau of Mental Retardation and is responsible for fiscal planning to meet the budgetary needs of Pineland.

15. John Rosser, Ed.D., is the Commissioner of the Department of Mental Health and Corrections (henceforth, the "Department") and has general supervision and control of planning for the needs of Pineland residents. He has authority to appoint institutional heads to carry out the duties of the Department, and Superintendent Bruns reports directly to him. He is Dr. Baack's immediate supervisor.

16. Takanori Kimura, M.D., is the Acting Director of Medical Services at Pineland. He is responsible for seeing to the medical needs of the residents and is in charge of implementing various support services.

17. William Lunt is the Principal of the Berman School at Pineland and is responsible for assuring that the educational needs of all residents are met.

18. Louis Pelletier, Sc.D., is the Director of Speech and Hearing at Pineland and is responsible for the development of the residents' communication skills.

19. Sherman Hill is the Director of Vocational Training and is responsible for fostering the development of residents' job skills and abilities.

20. Gordon DuBois is the Director of Recreation at Pineland. He is also in charge of the gymnasium and the summer camp.

21. Allita Paine, O.T.R., is the Director of Occupational Therapy, and is responsible for developing the perceptual and motor skills of residents. She is also the Director of the Adult Day Activity Center.

22. Julie Zimmerman, R.P.T., is the Director of Physical Therapy and is primarily concerned with the residents' needs to be or become mobile.

23. Richard Bogh is the Director of Social Services and as such is responsible for admissions and aftercare placements, for the supervision of the Center's Social Workers, and for the implementation of guardianships.

24. John O'Toole, Arthur Banister and Frank O'Donnell are directors of the Adult Community Living Unit, the Child/Adult Unit and the Primary Development Unit, respectively. All residents are assigned to one of the three units for their direct care.

25. Each defendant has acted or refused to act under color of state law.

#### CLAIM I - BASIC INSTITUTIONAL DEFICIENCIES

26. Plaintiff Fritz Olsen (see paragraph 8 above) is a young adult resident of Kupelian Hall I, a residence for profoundly retarded persons who need training in the development of very

basic life skills. He is ambulatory, feeds and clothes himself and is toilet trained. He cannot speak and his non-verbal communication skills are very undeveloped.

27. The quality of his life experience is adversely effected by each of the following, and consequently the prognosis for his future development is poor:

a. His residence hall does not meet state and local fire and safety standards. In case of fire, egress might be impossible. The day room of the Unit where he spends the vast majority of his waking hours is often dirty and usually smells of urine and/or feces. Ventilation is very poor, and on warm days the air is stagnant and oppressive. There are no furnishings in the day room other than institutional chairs which are side by side along three walls of the room. The floor is linoleum on concrete and the walls are bare cinder block; thus, the atmosphere is extremely harsh and austere and the acoustics are terrible. Noise levels are high, hearing of the residents is impaired, and all communication between residents or between staff and residents is made difficult. Only one painted design breaks the utter monotony of the walls. There is virtually no view from the day room.

b. His residence hall is locked to the outdoors.

c. His dormitory is adjacent to the day room but is locked during most of the day. His bed is about three feet away from the other bed in his cubicle and is separated by a four foot partition from other cubicles on each side, thus providing almost no privacy. He is not permitted to keep any personal possessions by his bed and there are no furnishings other than the bed, except curtains over the windows which obstruct any view and reduce ventilation. Toys are virtually unavailable to him.

d. The bathing area is locked off from the dayroom and can be used only when permitted by the direct care workers (henceforth "workers"). Toilets are separated by partitions but have no doors. The shower does not have a curtain and the

resident cannot operate it himself. Instead, a worker directs a stream of water at the resident from a nozzle which is attached to a hose. Toilet paper, soap, towels, grooming and hygienic materials are also unavailable to the residents without the intervention of a worker. Cosmetics do not exist on his ward.

e. Clothing is kept in a separate room which is inaccessible to residents except when a worker is willing to assist the resident obtain clothing. An effort is made to keep the clothing of residents who have their own separated from others, but almost all of the clothing is of poor quality, in poor repair, ill-fitting and drab.

f. Although Pineland policy requires that an individual treatment plan outlining the goals for each resident and the methods of obtaining those goals be prepared and implemented, no adequate or comprehensive plan exists for plaintiff. Even where such plans do exist, the workers are not familiar with the plans or do little or nothing to implement them. Existing plans are not regularly given full review nor are they revised when found to be deficient or unworkable.

g. Plaintiff Olsen receives no regularly-programmed activity. He seldom gets outdoors although he is fully mobile and enjoys going outside. Excluding time taken for meals, all of his weekday waking hours are spent in unprogrammed "dead time". Only rarely does plaintiff enjoy any planned activity during the evening or on weekends.

h. The direct care staff is either insufficient in number or undermotivated to meet more than a miniscule amount of plaintiff's need for education, training and normalcy. The staff has very little contact with the administration or with the providers of professional services and is not fully aware of its responsibilities. Because the staff is not large enough, many must work overtime and consequently nerves are frayed and performance is poor. Little provision is made for staff training and upgrading of skills.

i. As a result of inattention and boredom, many residents become destructive of property or physically aggressive toward others. Other residents, including plaintiff, become seriously self-abusive.

j. Plaintiff has no friends or relatives outside of Pineland concerned with his progress and well-being. Although he has been recommended for public guardianship, the psychological evaluation required for certification under the public guardianship statute, 18 M.R.S.A. §§3621 et. seq., has not been conducted because of the unavailability of psychological examiners.

k. Insufficient effort has been made by social work staff to maintain plaintiff's ties with his home and community and as a consequence his progress at Pineland is impeded, and the possibility of a workable community placement for him in the future is diminished.

l. Irrespective of age, residents are referred to by staff as "children" or "kids" and elderly men and women are called "boys" and "girls". Residents "feed" and "bed down" instead of eating or going to sleep.

28. As a result of the foregoing, plaintiff is grievously injured, physically and psychologically. His hopes for improvement are dashed; only regression is predictable.

29. Plaintiff makes this claim for himself and on behalf of all other residents who unlawfully suffer some or all of the indignities and damages, the depersonalization and failure to meet needs cited here.

30. Plaintiff and the class he represents are denied their rights to a safe and healthful environment and to that kind of care, education and treatment reasonably calculated to bring about their improvement and/or normalization in violation of the Due Process Clause of the Fourteenth Amendment. They are deprived of rights so basic that they are unenumerated by the Constitution, but are guaranteed by the Ninth Amendment. Keeping plaintiffs at Pineland against their will, purportedly to meet their needs for habilitation, but under the conditions alleged here, amounts to

cruel and unusual punishment prohibited by the Eighth Amendment. By denying plaintiffs any meaningful opportunity to develop communication skills or to become more socialized into "normal" modes of human intercourse, they are deprived of First Amendment rights.

#### CLAIM II - COMMUNICATION SKILLS

31. Plaintiff Wuori (see paragraph 2 above) is alert and physically active. He is verbal and able to care for himself and to do productive work. Although he understands much of what others say to him, it is only with very great difficulty that others are able to comprehend him. He is not receiving therapy from Speech and Hearing because resources are unavailable.

32. As a result of his meager communication skills, he is denied any meaningful opportunity to leave Pineland and to begin a productive life on his own. Because of his speech problem, he is often treated as a subnormal person by staff at Pineland, his strongly felt basic needs often go ignored, and his status as a "resident" is further reinforced.

33. He makes this claim for relief on his own behalf and on behalf of all others who could benefit from speech therapy or who need it in order to communicate more effectively, to more nearly realize their life potential or to live lives of greater normalcy, but who are unlawfully deprived of these opportunities.

34. Approximately three times as many residents of Pineland could benefit from speech, language and auditory therapy than receive it. Staff does not exist in sufficient number to meet the needs of those identified as needing speech therapy. Many residents in dire need of speech therapy have not been identified as such since 1969 because there is insufficient staff to deal with the need. Regular evaluations are not being done. Over half of the residents, including plaintiff, could benefit from instruction in gesture language, but no such training is being given.

35. Plaintiff and his class have been denied their right to receive therapy and training reasonably designed to help them overcome barriers to the level of communication they are capable of attaining, and they are deprived of any meaningful opportunity to



become more normal or to enjoy that dignity usually accorded natural persons, all in deprivation of their First and Fourteenth Amendment (due process) rights. They do not enjoy those opportunities for developing speech facility which would be available to them through the Bureau of Vocational Rehabilitation in the Department of Health and Welfare were they residing in the community, in violation of their Fourteenth Amendment right to equal protection. Plaintiffs also assert their Eighth and Ninth Amendment rights as set out in paragraph 26 above.

#### CLAIM III - EDUCATION AND RECREATION

36. Carla Lint is an inquisitive, lively and energetic fifteen-year-old. (See paragraph 3 above.) Were it not for her great energy and need to get outdoors to run, she would not have to be maintained on a locked ward. Other means of providing outlets for her energy do not exist in sufficient quantity.

37. Although of school age, she presently receives only five hours of schooling per week. She receives only one hour of planned recreation per week. She is not involved in any other programs. Most of every day of her life is spent languishing in a day room chair or curled up on the floor although direct care workers spend more time with her than with many other residents on her ward. She is subject to occasional outbursts of self-destructive behavior and sometimes is abusive to others.

38. Plaintiff has regressed in the course of her stay at Pineland. She requires assistance in performing basic self-care tasks she was once able to do herself. At present, she is a custodial charge of the institution and her physical and emotional health stand in jeopardy.

39. She makes this claim for relief on her own behalf and for other school-age children in her situation who receive less education, training or recreation than they need and are lawfully entitled to or than their counterparts in the community receive.

40. All school-age residents of Pineland would benefit from a concentrated program of instruction, training and recreation directed toward their specific needs, but staffing is inadequate

to do even that which the institution regards as essential. Sixty-seven children receive less than five hours of instruction per week; only twenty-five receive more than nine hours of weekly instruction; more than twenty school-age residents receive no instruction; and all could benefit from more instruction. The vast majority of children receive less than one and one-half hours of recreational program per week.

41. Plaintiff and her class are denied their rights to education, special education and physical education as guaranteed them by the Constitution of Maine, Article VIII, Section 1 and by 20 M.R.S.A. §§911, 1011 et. seq. and 3121 et. seq. The state has assumed the burden of providing free public education including physical education, to all, and the denial of said education to plaintiffs violates their Constitutional rights of due process and equal protection under the Fourteenth Amendment. Plaintiffs also assert their Eighth and Ninth Amendment rights as set out in paragraph 23 above.

#### CLAIM IV - PHYSICAL AND OCCUPATIONAL THERAPY

42. Plaintiff Brann is a profoundly retarded young adult male, admitted to Pineland in January of 1975. (See paragraph 5 above.) He came to Pineland from a very sheltered and protective environment and for that reason is in dire need of a variety of intense motor and sensory stimulation.

43. His self-care abilities are very limited. He is not toilet trained and cannot feed himself. Although he is ambulatory, he is apprehensive about walking and chooses to sit most of the time. His coordination is poor.

44. He needs to develop his gross and fine motor control mechanisms and needs visual and other sensory stimulation. He needs a great deal of experience in working with toys. A student who is no longer at Pineland gave him some physical therapy but he is now on a waiting list for such therapy. He is not receiving any occupational therapy.

45. The very reason for plaintiff's commitment to Pineland is being ignored, and he can only regress for complete lack of attention. He is thereby seriously injured, physically and psychologically.

46. Mr. Brann brings this action for himself and for others who are denied the physical and/or occupational therapy that they need and are entitled by law to receive.

47. Defendants have failed to attempt to identify persons in need of physical and/or occupational therapy because there are no openings in these programs. Professional and paraprofessional staffing is grossly inadequate to meet the needs of residents for physical and occupational therapy.

48. Approximately half of Pineland's residents need daily range of motion exercises, but only a few receive such exercise.

49. Plaintiffs' class is unlawfully denied its right to receive that kind of training, therapy and treatment which is reasonably calculated to bring about its improvement and the achievement of maximum potential normalcy and habilitation. The class members are thereby denied their rights to a meaningful program and their Eighth, Ninth and Fourteenth Amendment (due process) rights are abridged.

#### CLAIM V - PHYSICAL AND CHEMICAL RESTRAINT

50. Plaintiff Rose Swann (see paragraph 4 above) is a frail woman in late middle age. She is curious and in need of exercise, and when she is not supervised, she climbs over furniture or tips over chairs, disturbs or harms other residents and sometimes breaks things. She could be diverted from these activities were sufficient staff and facilities available, but they are not.

51. Instead of diversion and motivation in another direction, your plaintiff is forcibly lashed by her waist to a rail in her corner of the dayroom of the Infirmary. She is administered tranquilizing drugs twice daily to maintain her in a passive manner.

52. She is damaged by such measures both physically and psychologically, and she does not learn to control her own behavior or to find other outlets for her energy.

53. Ms. Swann makes this claim for herself and for others who are unlawfully subjected to chemical or physical restraints to avoid disruption or injury when far less drastic alternatives are available for avoiding such difficulties.

54. Defendants simply have neither the staff nor the facilities to deal with the problems posed by persons such as plaintiff or, alternatively, do not utilize existing resources in such a way as to avoid the necessity of physical or chemical restraint.

55. Plaintiff and others are subject to seizures of their persons in contravention of their Fourth Amendment rights and are denied without any procedure whatever of the liberty assured them by the due process clause of the Fourteenth Amendment. For patients retained at Pineland involuntarily or because no other alternative exists, restraint and seclusion amounts to cruel and unusual punishment prohibited by the Eighth Amendment. The right to be free of restraint is so fundamental that the protections of the Ninth Amendment are applicable.

#### CLAIM VI - DENTAL CLAIM

56. Plaintiff Linda Derry (see paragraph 6 above) is a young woman with acute dental needs. She has not had any restorative dental work since at least 1968 although the need for such work has been recognized repeatedly. Her teeth have yellowed, they are encrusted with plaque and her gums are in bad condition. She has not been adequately trained to properly maintain her own teeth and such maintenance is not provided her by Pineland staff.

57. Plaintiff gnashes her teeth to relieve intolerable pain and suffers physically in generalized ways because of the condition of her teeth. She suffers emotionally because of the constant pain and because of oral and facial disfigurement caused by lack of dental attention. Abscesses, gum disease and loss of teeth threaten her health, and perhaps eventually her life.

58. Plaintiff makes this claim for herself and on behalf of all the residents of Pineland whose basic dental needs are unlawfully ignored.

59. Pineland does not have a full-time dentist, and its dental facilities are not adequate to meet even the identified needs of the residents for proper dental care. Several months ago, and in preceeding years, Pineland had only one part-time dentist, and such staffing was sufficient to meet only the most urgent dental needs of the residents. Extraction has been the rule;

restorative dental work has been minimal. Dental hygiene has not been adequate and the cleaning and maintenance of teeth have not been sufficiently provided for in the residents' living units. The teeth of some residents have been extracted to prevent self-abusive biting or the biting of other residents although less drastic means exist for handling such problems.

60. Plaintiff and her class have been denied their right to adequate and humane dental care in deprivation of their Fourteenth Amendment due process rights. Dental care is so fundamental to a resident's need for proper care and treatment that Ninth Amendment rights are violated where it is withheld. Virtually all Pineland residents would qualify for Medicaid were they to be released from the institution into the community and would thereby qualify for free emergency dental care. To deny Pineland residents such care because of their residency at Pineland is violative of their Fourteenth Amendment equal protection rights and amounts to cruel and unusual punishment in violation of their Eighth Amendment rights.

#### CLAIM VII - INSTITUTIONAL LABOR

61. Plaintiff Martti Wuori (see paragraphs 2 and 31 above) has resided at Pineland for the past 13 years. In 1973 and 1974 he enjoyed relatively constant employment in the Pineland laundry. He was terminated from his employment there in June of 1974, immediately following this Court's Order in Jortberg, et. al. v. U.S. Department of Labor, et. al. because funds were not available to pay him.

62. Plaintiff Wuori is seriously desirous of gainful employment at Pineland. He works hard and is conscientious. His efforts are appreciated by his fellow workers and he is thought to be a good worker by his supervisors. Wuori feels strongly that paid labor is the very best therapy currently available to him at Pineland. His self concept improves when he works and he takes pride in being a productive citizen in the society in which he lives.

63. Since plaintiff has been terminated from his job, his day is often void of any meaningful pursuits. He has suffered a marked degree of regression and has been subject to outbreaks of aggressive behavior.

64. His self image has declined, and his value as a constructive, contributing member of society has been undermined, thereby causing him severe emotional harm and some physical deterioration.

65. Plaintiff Wuori makes this claim for himself and for all other residents who want to work, are able to work, and who are not otherwise involved in a full-time program calculated to meet their needs for habilitation or whose habilitation needs can best be met by working but who are unlawfully deprived of the opportunity to work.

66. Defendants refuse to hire Wuori and other residents in his situation.

67. Plaintiff and his class are denied their right to a meaningful, full-time program calculated to meet their needs for habilitation in violation of their Fourteenth Amendment due process rights. To the extent that enforced boredom and lack of meaningful program are the consequences of the denial of job opportunities to plaintiff and others in his situation, their rights to dignity, equality of treatment and freedom from cruel and unusual punishment, as protected by the Fourth, Eighth, Ninth and Fourteenth Amendments, are denied.

#### CLAIM VIII - COMMUNITY PLACEMENT

68. Plaintiff Judith Babb (see paragraph 7 above) is a young woman who is mildly retarded. In most respects she is normal, and capable of meeting her basic health, nutritional, hygienic and clothing needs, of having normal relationships with persons of the opposite sex, of earning money in a sheltered setting, and of living in a relatively unrestricted community environment. She can read and write, and assists others less fortunate in providing for their basic needs.

69. She has resided at Pineland all of her adult life and has been provided only very limited opportunity to experience independence and self sufficiency. She has always shared an open dormitory space with other women, has been permitted to keep few personal belongings and has grown unaccustomed to the privacy needs of others and unaware of the responsibilities and protocols of living outside an institution. She has had only limited

practice in making basic decisions and choices affecting her own life.

70. Since 1969 she has been released from Pineland to community placements on three occasions and has lived in five different boarding homes. At all times her adjustment to community living was to be supervised by an aftercare worker employed by the Bureau of Mental Retardation.

71. Plaintiff Babb was not provided with the amount or kind of supportive structure, supervision and counselling she required to make a successful adjustment to her community placements. She has specific speech and hearing problems, but such problems have been given insufficient attention during her community placements, to her detriment.

72. Ms. Babb has been seriously harmed by the several failures to provide her a stable and supportive environment away from Pineland. Her self-confidence has been seriously eroded, causing her great emotional and physical distress.

73. Plaintiff does not want to reside at Pineland and although she continues to be recommended for community placements, no such placement has been provided her by defendants.

74. Plaintiff makes this claim for herself and for other Pineland residents who are capable of healthful and responsible living outside a full-time institutional setting such as Pineland and who are lawfully entitled to placement in such a setting. She also claims for herself and for others in her situation their lawful right to receive assistance in meeting their needs for adequate care, training, education and treatment in order to adjust to living in a less restrictive setting.

75. Defendants have failed in their obligation to provide plaintiff and her class adequate and humane care, education, training and treatment, in the least restrictive possible setting, in the following ways:

- a. They have not located and secured appropriate community placements in sufficient quantity for Pineland residents needing such placements.

b. They have not prepared comprehensive post-institutionalization treatment plans for residents being released from Pineland indicating the precise medical, psychological, social, vocational and educational needs of the residents.

c. They have not adequately investigated and evaluated the nursing, boarding and foster homes, or the communities, to which residents have been and are being released to insure that the environmental needs of the released residents will be met, that the residents' basic liberties and individual freedom will be fully respected, and that adequate provisions for specific medical, psychological, social, vocational and educational needs of the residents will be assured.

d. They have provided no procedures whereby the resident being released, his or her guardian or a next-friend, might participate in the decision-making process regarding the resident's placement. Specifically, no notice of a proposed placement is required to be given to the resident; no provision for a hearing is made; the neutrality of the decision maker is not assured; and no provision is made for the presence or examination of witnesses, representation by an attorney, a record of hearing or a procedure whereby review may be obtained.

e. They do not make any regular and systematic re-evaluation of the quality of service provided a former Pineland resident by the nursing, boarding or foster home, or the community, in which the resident has been placed, nor are there any standards by which such evaluations might be conducted.

f. They do not make any regular and systematic re-evaluation of a former resident's progress toward interaction in community living. No written standards exist whereby such evaluations might be made, and goal-directed recommendations are not made.

76. Plaintiff and her class have been denied a realistic and meaningful opportunity to live healthfully in a (community) setting less restrictive than that which Pineland provides, in violation of their Fourteenth Amendment rights of substantive due



process. Procedural due process rights are also ignored. Being kept in a full-time institution simply because community resources are not being sufficiently marshalled to meet the needs of residents ready to leave Pineland deprives those residents of the freedom and dignity they are guaranteed by the Eighth and Ninth Amendments. The Bureau of Mental Retardation has not fulfilled its obligation under 34 M.R.S.A. §2061 to develop a complete and integrated state-wide program for the retarded, nor has it assured that adequate standards are made to apply to community based mental retardation services as required by 34 M.R.S.A. §§2095-6.

#### GENERAL ALLEGATIONS

77. The injury to each named plaintiff and to the class(es) they represent is and will continue to be grave. There is no plain, adequate remedy at law to redress the harms alleged herein. Only the most intensive efforts by defendants directed toward plaintiffs' complete habilitation can begin to undo the consequences of past neglect. Money damages cannot adequately compensate them for the care and treatment defendants have denied plaintiffs while at Pineland.

78. Each named plaintiff is indigent and the overwhelming majority of Pineland residents are also indigent.

WHEREFORE Plaintiffs respectfully request that this Court:

1. Permit them to maintain this action in forma pauperis, without the payment of any costs or fees.
2. Permit each of them to make their claims on behalf of the class of persons similarly situated, as more fully appears in paragraphs 29, 33, 39, 46, 53, 58, 65 and 74 above.
3. Declare that plaintiffs have those rights which they assert as theirs in paragraphs 30, 35, 41, 49, 55, 60, 67 and 76 above. Specify the sources of each declared right in accordance with the assertions made in those same paragraphs above. Declare that each such right is a present right, entitled to be respected immediately.
4. Declare that the insufficiency of state and other funding of Pineland is not an excuse for continuing to ignore any of the

rights declared by this Court in accordance with plaintiffs' third prayer for relief.

5. Issue an injunction requiring defendants to take every action necessary to bring about plaintiffs' fullest enjoyment of the rights declared in accordance with plaintiffs' third prayer for relief and further, enjoin defendants to eliminate every harm alleged in the body of this Complaint.

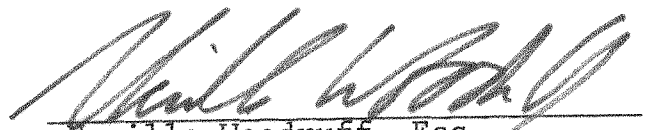
6. Issue an injunction requiring defendants to make the most intensive effort practicable to reverse the effects of past failure to fully recognize the rights declared by this Court in accordance with plaintiffs' third prayer for relief.

7. Maintain continuing jurisdiction over this action until defendants are in full compliance with every order of this Court.

8. Grant plaintiffs their costs, including the costs of discovery, travel, and non-legal assistance.

9. Grant such other relief as appears appropriate and just.

DATED: July 3, 1975

  
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