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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

NATHALIA GRISWOLD, et. al.)  
Plaintiffs, )  
v. )  
JIM RILEY, et. al. )  
Defendants. )

NO. CIV 77-144 PHX CAM  
PRETRIAL ORDER

Following pretrial proceedings in this cause pursuant to  
Rule 42 of the Court, IT IS ORDERED:

I.

This is an action for certain declaratory and injunctive  
relief based upon alleged violations of the due process and equal  
protection clauses of the Fourteenth Amendment, the Eighth Amend-  
ment, §504 of the Rehabilitation Act of 1973, and the Developmentally  
Disabled Assistance and Bill of Rights Act of 1976.

The action involves six named mentally retarded plaintiffs  
residing at the Arizona Training Program at Coolidge (ATP-C) and a  
proposed plaintiff class of all residents of ATP-C. Plaintiffs  
contend that the conditions at the Training Program result in harm  
to, and deterioration of, the physical and mental health of the  
residents. Plaintiffs contend that defendants fail to provide  
adequate care, habilitation, and treatment to the residents of  
ATP-C. Defendants deny these contentions and contend that the  
complaint fails to state a claim upon which relief can be granted or  
in the alternative, the Court should abstain.

The Plaintiffs are: Nathalia Griswold, Richard Beasley,  
Roger Mark, Kenneth McKinney, Charles Ashenfelter, and Paul Skogan.  
Plaintiffs Motion to Certify the Class consisting of all residents  
of the Arizona Training Program at Coolidge has not yet been ruled  
upon.

The Defendants are: Jim Riley, Brian Lensink, Ed Crowley,  
and Bruce Babbitt.

II.

Statement of Jurisdiction:

Plaintiffs contend that 42 U.S.C. 1983 and 28 U.S.C. §§2201 and 2202 authorize their action for declaratory and injunctive relief to redress deprivation, under color of state law, of alleged rights secured by the Eighth and Fourteenth Amendments to the United States Constitution, by §504 of the Rehabilitation Act of 1973, and by the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6010. Plaintiffs also contend that the amount in controversy exceeds \$10,000 exclusive of interest and costs.

Defendants contend that Plaintiffs have failed to state a claim upon which relief can be granted or, in the alternative that this Court should abstain.

If Plaintiffs' contentions are true, this Court has jurisdiction under 28 U.S.C. §§1331 and 1343.

III.

The following facts are admitted by the parties and require no proof:

A. Most residents of the Arizona Training Program at Coolidge lack the capacity to request release.

1. Of the 624 residents, 250 residents have been adjudicated incapacitated or are minors and thus have no legal capacity to determine their residence nor legal capacity to request release.

2. Most of the remaining residents lack the capacity to request release due to mental retardation and any existing capacity to request release by any particular resident is seriously hindered by his current placement in the Training Program.

1  
2 3. The parents of minor residents and  
3 guardians of residents can request  
4 release of their child or ward.

5 B. Most residents of the Arizona Training Program at  
6 Coolidge are restricted in their choice of living arrangements.

7 1. Most residents, due to mental in-  
8 capacity or legal minority, lack the  
9 capacity to choose where to live.

10 2. Parents of minor residents and guardians  
11 of residents are empowered to choose alterna-  
12 tive living arrangements.

13 3. For those residents who have families,  
14 their families are unwilling or unable to  
15 to have residents live at home with their  
16 families.

17 4. A shortage of alternative community based  
18 services severely restricts the alternatives  
19 available to residents, parents and guardians.  
20

21 C. The physical structures, i.e. buildings, at the Train-  
22 ing Program at Coolidge have a significant effect on the kinds and  
23 levels of services which can be and are provided to the residents.

24 1. Department Regulation No. R6-6-107 lists  
25 the capacity of the Training Program at  
26 Coolidge as 350 people. The present popula-  
27 tion is approximately 625 residents. The  
28 result overcrowding:

29 (a) Affects the behavior of the  
30 residents in a detrimental way.  
31

32 (b) Either increases the possibil-  
ity of physical injury by residents

1 upon other residents or increases  
2 the possibility of physical injury  
3 to residents caused by other resi-  
4 dents or by self-abuse.

5 (c) Causes lack of privacy.

6 (d) Makes certain habilitation  
7 techniques more difficult.

8  
9 2. The sleeping areas for residents typi-  
10 cally consist of large open areas with hard  
11 surface walls. There may be 30 residents in  
12 one room, with their beds three to four feet  
13 apart. The sleeping areas lack decorations,  
14 furniture other than beds, and storage areas  
15 for individual belongings.

16 3. The dayrooms, or living areas, are typi-  
17 cally barren with hard surfaced floors and  
18 ceilings, little furniture and poor lighting.

19 4. The bathroom facilities, despite a long-  
20 term renovation program, are generally unsuit-  
21 able for both ordinary living and habilitation  
22 purposes. The equipment rarely provides for  
23 handicapped residents. Soap and toilet paper  
24 is often not available. Toilet stalls often  
25 lack doors. Privacy is generally unavailable..

26 5. Bathroom facilities in each cottage  
27 do not meet standards involving privacy or  
28 sanitation of the Bureau of Mental Retarda-  
29 tion set forth in the Standards for Services  
30 for Developmentally Disabled Persons, Draft  
31 1, January, 1977, §2.5.1.3.11 through  
32 §2.5.1.3.12.1.

1 6. The Arizona Training Program at Coolidge  
2 lacks sufficient space to conduct program  
3 activities. There is neither enough room nor  
4 enough equipment for proper habilitation.

5 7. There are architectural barriers at the  
6 Training Program which lead to physical restric-  
7 tions of the residents.

8 (a) Some residents are locked in-  
9 side their cottages without access  
10 to the outside.

11 (b) There are improvements necessary  
12 to enable the physically handicapped  
13 residents to move about as freely as  
14 possible.  
15

16 D. There is insufficient staff to provide a level of  
17 habilitation which meets the recognized needs of the residents.  
18 There are insufficient staff to protect residents from physical  
19 injury.

20 1. Defendants recognize the need for  
21 additional direct care staff: Each budget  
22 prepared by ATP-C Management in recent years  
23 has requested an increase in direct care  
24 staff.

25 2. Direct care staff, in addition to  
26 caring for the residents, are responsible  
27 for routine housekeeping chores in the  
28 residential building. Recent employment  
29 of housekeeping personnel through a one-  
30 year federal grant, however, has partially  
31 solved the problem for the day shifts.  
32

1 3. Defendants in interrogatories re-  
2 vealed the following staff/resident ratios  
3 on selected dates: (See attached copies  
4 of answers to interrogatories 15(c) and 15  
5 (d) ). (Attachment "A").

6 4. Minimum standards for staffing of  
7 residential facilities for the mentally  
8 retarded have been established in similar  
9 lawsuits:

10 (a) The court in Wyatt v. Stickney,  
11 344 F. Supp. 387, 390, employed the  
12 standards of the joint commission on  
13 accreditation of hospitals. The  
14 ratios for direct care staff to resi-  
15 dents are as follows:

Mild	1:2.5
Moderate	1:1.25
Severe/Profound	1:1

16  
17  
18 (b) The settlement in New York Associa-  
19 tion for Retarded Citizens v. Rockefeller,  
20 357 F. Supp. 752 (EDNY 1973), 393 F.  
21 Supp. 715 (EDNY 1975), established the  
22 following standards for direct care  
23 staff.

24  
25 1) Each resident at Willowbrook  
26 shall receive appreciable and appro-  
27 priate attention each day from the  
28 direct care staff in his living unit  
29 whose primary responsibility shall be  
30 the care and development of each resi-  
31 dent. To this ends, appropriate pro-  
32 visions shall be made to ensure that  
direct care staff are not required to  
perform routine housekeeping chores,  
except during the 3rd shift (night).

1                   2) Direct care staff shall  
2 participate in the inter-discipli-  
3 nary team decision-making process  
4 and individual care, development  
5 and services programming, as  
6 described in Section D, with the  
7 responsibility for individual  
8 residents set forth in that section.

9                   3) Willowbrook shall employ  
10 and maintain sufficient therapy aides  
11 at the grade 7 and 9 levels to en-  
12 sure that the following number shall  
13 be present and on duty:

14                   a. During the hours of the  
15 day and evening when residents  
16 are awake.

17                   1. One therapy aide  
18 for every four resi-  
19 dents in buildings  
20 primarily for residents  
21 who are children, non-  
22 ambulatory or multiply-  
23 handicapped, and for  
24 those residents receiving  
25 intensive psychiatric  
26 care.

27                   2. One therapy aide for  
28 every sixteen adult resi-  
29 dents presently residing  
30 in buildings 19 and 32.

31                   3. One therapy aide for  
32 every resident receiving an  
intensive behavior modifi-  
cation program.

ROBERT BECKETT, ATTORNEY  
LEGAL SERVICES PROJECT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES  
ARIZONA ASSOCIATION FOR RETARDED CITIZENS, INC.  
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5. Absenteeism among the direct care staff compounds the problem of adequate staffing.

6. Defendants admit that the actual staff/resident ratios are insufficient to minimally protect the physical and mental health of the residents.

(a) The low ratios in certain cottages prevent adequate personal care of the residents. An example is the fact that residents have been observed being fed in a supine position; this technique may have dangerous consequences.

(b) The low staff ratios in certain cottages may lead to regression in the residents' living skills.

(c) The low staff/resident ratios increase the possibility of physical injury to the residents from self or others. During March 1977 and August 1977, residents suffered the following physical injuries:

<u>Injuries to the:</u>	<u>March 1977</u>	<u>August 1977</u>
Head	69	67
Face	95	112
Mouth	35	27
Teeth	1	2
Hands	57	44
Arms	94	94
Feet	39	34
Legs	43	44
Neck	18	24
Chest	14	14
Abdomen	6	8
Back	32	29
Buttocks	8	14
Genitals	2	1



1 (d) A higher staff/resident ratio  
2 would allow many residents to live  
3 in a less restrictive environment.  
4 With additional staff, both the  
5 environment at ATP-C itself could  
6 be made less restrictive and resi-  
7 dents could be taught necessary  
8 skills to live in the community.

9 7. Qualifications for direct care staff  
10 specify no particular training or experience  
11 in mental retardation or health care but,  
12 rather, require only an eighth grade educa-  
13 tion. On the job training is limited and  
14 does not meet, even marginally the training  
15 standards of the Accreditation Council for  
16 Services for Mentally Retarded and Other  
17 Developmentally Disabled Persons (AC/MR-DD),  
18 Standards for Services for Developmentally  
19 Disabled Persons, Draft 1, January, 1977.

20 E. The habilitation programs at ATP-C are inadequate to  
21 meet the recognized needs of the residents.

22 1. The programs offered the named plaintiffs  
23 are examples:

24 (a) Mr. McKinney, who has severe  
25 constriction of all limbs, receives  
26 physical therapy from a para-profes-  
27 sional for ½ hour per day, five days  
28 a week, and this time is shared with  
29 another resident. There is little  
30 record keeping to show any progress  
31 in this program.  
32

1 (b) Mr. McKinney attends sensory  
2 stimulation for 2 hours a day. This  
3 program is conducted by a staff mem-  
4 ber with no professional (including  
5 intensive in-service training) train-  
6 ing in sensory stimulation. The  
7 staff member has a high school educa-  
8 tion. Mr. McKinney is in a class with  
9 four other severely disabled persons.

10 (c) The cottage programming from 7:00  
11 to 8:30 a.m. and 12:00 to 1:00 p.m.  
12 to teach Mr. McKinney self-help skills  
13 (such as eating and dressing) lacks  
14 both sufficient staff to provide  
15 individual attention and recordkeep-  
16 ing to chart progress.

17 (d) The programs for the other  
18 named plaintiffs, including the  
19 readiness, sensory stimulation,  
20 cottage programming, and recreation  
21 programs suffer from the same defects:  
22 insufficient staff, inadequate record-  
23 keeping, lack of trained staff, lack  
24 of sustained, consistent programming.

25 (e) Roger Mark, Charles Ashenfelter,  
26 Richard Beasley and Nathalia Griswold  
27 are in need of structured behavior  
28 management programs with a proper  
29 monitoring system in order to reduce  
30 inappropriate behavior. None of  
31 these plaintiffs receive such program-  
32 ming.

2. There is insufficient physical space and equipment for habilitation programming, particularly for vocational training and training in life skills such as cooking, housekeeping, washing clothes, etc.

F. Physical and chemical restraints are used to control the behavior of some residents.

1. ATP-C uses physical restraining devices to prevent residents from harming themselves or others. These devices include bubble jackets, hand and feet restraints, helmets, mittens and face masks.

(a) The use of such restraints impedes participation in habilitation programs. Individualized treatment plans can be devised to control or eliminate most maladaptive behavior. There are established techniques to deal with such behaviors which interfere less with a residents' freedom of action than do physical restraints.

(b) The use of physical restraints hinder residents from participating in whatever habilitative programs are available.

2. Two hundred fifty-one residents out of six hundred twenty-four regularly receive psychotropic (i.e. phenothiazines or so called "tranquilizers") medication.

(a) The medication practices at ATP-C do not meet the minimum

standards established in the  
AC/MR-DD standards. The standards  
are set forth below:

1.4.6.5\* Medication is not used as punishment, for  
the convenience of staff, as a substitute  
for a program, or in quantities that inter-  
fere with an individual's developmental  
program. (C 2.3.1.11.1-4, R 2.1.8.8)

1.4.6.5.1\* Psychotropic or behavior-modifying  
drugs are used only as an integral  
part of an individual program plan  
that is designed by an interdisci-  
plinary team to lead to a less  
restrictive way of managing, and  
ultimately to the elimination of,  
the behaviors for which the drugs  
are employed. (R 2.1.8.8.1) Each  
program plan utilizing a psychotropic  
drug:

1.4.6.5.1.1\* Specified the behavior to be modi-  
fied, a time-limited ( no more than  
30 days) prescription by a fully  
licensed phsyician, and the data  
that are to be collected in order  
to assess progress toward the  
treatment objective; (R 2.1.8.8.  
1.1 r)

1.4.6.5.1.2\* Documents the fact that any potent-  
tially harmful effects of the drugs  
employed have been carefully weighed  
against the harmful effects of the

behavior for which the drugs  
are given, and that the harm-  
ful effects of the behavior  
clearly outweigh the potential-  
ly harmful effects of the drugs;  
(R 2.1.8.8.1.2)

1.4.6.5.1.3 Includes explicit provision for  
gradual diminishing of dosage  
and ultimate discontinuation of  
the drug. ( R 2.1.8.8.1.3)

1.4.6.5.2 The individual's record contains writ-  
ten authorization for the use of  
psychotropic medication signed by the  
individual, if competent, or by the  
individual's parents or guardian.

1.4.6.5.2.1 Individuals of legal age who are  
mentally competent to understand  
the purpose and nature of the  
treatment participate in the plan  
for psychotropic drug therapy,  
give their permission for such  
treatment, and are allowed to  
discontinue the treatment under  
medical supervision at any time.  
(R 2.1.8.8.3)

1.4.6.5.2.1 The parents and legal guardians  
of an individual for whom psy-  
chotropic medication is proposed  
are informed, both orally (by  
conference, if possible) and in  
writing, of the drugs to be  
administered. Such notification:

1.4.6.5.2.2.1 States in a simple, non-technical, and comprehensible manner the drugs to be administered, their expected benefits, and their possible hazards;

1.4.6.5.2.2.2 Is given in such form as is necessary to communicate the information effectively; notice to persons have perceptual or language impediments is given by a method or in a language that is comprehensible to them.

1.4.6.5.2.3 Individuals or parents and guardians have the right to refuse the outlined course of psychotropic medication, in which event the agency has the right to appeal the matter to a court of competent jurisdiction for adjudication.

(b) Residents on phenothiazines are evaluated at least every three months regarding dosage level. This evaluation includes an examination by the medical doctor of the residents as well as laboratory testing and a review of the patient's needs. There is also daily observation of the residents by the staff.

(c) Psychotropic medications tend to suppress the alertness and, therefore, the learning ability of mentally retarded persons.

1 (d) Hazardous side effects which  
2 can result from the use of psycho-  
3 tropic medication include, but are  
4 not limited to: hypersensitivity to  
5 sunlight; a ataxia (inability to  
6 maintain balance and gait); gingivall  
7 hyperplasia (a gum tissue marked by  
8 inflammation, bleeding and increased  
9 growth); and tradive dyskinesia (a  
10 condition marked by difficulty in  
11 performing voluntary movement,  
12 protrusion of the tongue, puffy cheeks,  
13 and chewing movements; there is no  
14 known treatment and the onset of this  
15 condition is subtle and may be diffi-  
16 cult to recognize, particularly in a  
17 crowded situation with inadequate  
18 staff).

19 G. Every resident at ATP-C could benefit from services  
20 provided in a less restrictive environment than that found at  
21 ATP-C.

22  
23 1. A few cottages are kept locked ( or  
24 were kept locked at the time the suit was  
25 intiated) at all times with the residents  
26 having no access to the outside.

27 2. There is insufficient equipment such  
28 as wheelchairs to allow physically handi-  
29 capped residents mobility and freedom of  
30 movement.

31 3. There are architectural barriers to  
32 the freedom of movement.

1 4. Few ATP-C residents are using community  
2 services. This is due mainly to the  
3 physical isolation of ATP-C and the small  
4 population of surrounding communities.

5 (a) Only two of the minors who  
6 reside at ATP-C attend public  
7 schools.

8 (b) Only eleven residents receive  
9 vocational training outside of  
10 ATP-C.

11 (c) Local community recreation  
12 services are utilized only in a  
13 limited way due to transporta-  
14 tion and staffing problems.

15 (d) Because of their residence in  
16 a public institution, plaintiffs  
17 are not eligible for certain  
18 federal funds such as social  
19 services through Title XX of the  
20 Social Security Act, and Supple-  
21 mental Security Income Benefits.

22 5. If community alternatives were avail-  
23 able, most ATP-C residents could live  
24 outside the institution.

25 (a) Alternative community residential  
26 programs must be developed and ex-  
27 panded. This will take both time and  
28 money.

29 (b) The full range of services neces-  
30 sary to meet the needs of mildly and  
31 moderately retarded person presently  
32



1 is available in Maricopa, Pima,  
2 Santa Cruz, Yuma, Coconino,  
3 Yavapai, Pinal and Gila. Such  
4 programs and facilities have the  
5 capacity to expand. Appropriate  
6 services can be provided for all  
7 retarded persons, including those  
8 who are severely and profoundly  
9 retarded and multiply handicapped.  
10 This will take both time and money.

11 (c) Current plans are to move  
12 approximately half of the current  
13 population of ATP-C into community  
14 alternatives by 1981.

15 VI.  
16 CONTESTED FACTS

17 A. Overcrowding makes habilitation in certain cottages,  
18 including Cardinal and Palo Verde, impossible.

19 B. The inadequate physical environment at the Training  
20 Program has had the following effects on the residents:  
21 regression in the development of skills, psychological and physical  
22 harm, development of aggressive and other maladaptive behaviors,  
23 subjection to excessive dosages of tranquilizing medication, sub-  
24 jection to physical restraining devices for control purposes.  
25 Conditions at ATP-C result in harm to its residents.

26 C. There is no on-cottage programming available during  
27 the evening hours or weekends to teach Kenneth McKinney or other  
28 residents self help skills. Lack of such programming substantially  
29 reduces any effectiveness the programming provided during weekdays  
30 might have.

31 D. The programs provided the named plaintiffs are  
32 ineffective.

1 E. Physical restraints are used as resident management  
2 device in lieu of the development of adequate programs.

3 F. Staff are not trained to observe positive or aversive  
4 affects of the drugs.

5 G. Given adequate resources approximately 300 residents  
6 of the Training Program can be transferred to community based  
7 facilities, including the Training Programs at Phoenix and Tucson  
8 by October 1, 1980.

9 H. The residents of ATP-C are confined in fact by rules,  
10 regulations and practices of the Defendants.

11 Arizona Revised Statutes provide the basic framework  
12 through which the named plaintiffs have been admitted, may be dis-  
13 charged, may be permitted to make visits outside ATP-C, and may be  
14 returned to the ATP-C if their departure is not authorized.  
15 A.R.S. 36-561, 36-565, 36-566, 36-567.

16 While the named plaintiffs live within ATP-C grounds,  
17 defendant Jim Riley and his employees determine the cottage in which  
18 the named plaintiffs will live, determine when and in what fashion  
19 the cottages will be locked, determine whom plaintiffs will live  
20 with, determine what the physical condition of the cottage will be,  
21 determine what property will be available to the named plaintiffs,  
22 determine what visitors will be permitted to see the plaintiffs,  
23 and determine the procedure under which such visitors can see the  
24 plaintiffs (currently all visitors must be identified as authorized  
25 visitor and must receive a pass permitting visits to cottages),  
26 determine what physical, medical, and psychological care is given  
27 to the named plaintiffs, determine what program is offered.  
28 Defendant Riley determines through policy when and how residents  
29 may be physically and/or medically restrained. Defendant Riley and  
30 his employees determine for many residents the time they will rise  
31 in the morning and the time they will sleep at night. In essence,  
32 Defendant Riley and his employees exercise complete control over  
the residents' lives.

1 Plaintiffs are aware that Defendant Riley and his employees  
2 have issued numerous policies concerning the above but are not in  
3 possession of these policies other than one regarding the use of  
4 physical and medical restraints.

5 I. Residents of ATP-C cannot effectuate their own release.  
6 A.R.S. 36-466 requires that a person may be discharged by  
7 the director upon written request signed by "the person, his parents,  
8 guardian, or legal custodian of the mentally retarded person".

9 None of these named plaintiffs are able to exercise their personal  
10 right to request their own release because of mental incapacity for  
11 the reason stated in Plaintiffs Answer to Interrogatory #126.

12 Roger Mark, Vicki Turnbow, Charles Ashenfelter, Kenneth  
13 McKinney, Paul Skogan, and Richard Beasley presently have no  
14 parents or guardian able to exercise the parental or guardian  
15 authority to request release. The next of friend for these plain-  
16 tiffs is currently seeking the appointment of the Public Guardian.  
17 Ms. Doris Griswold is the guardian of Nathalia Griswold.

18 The guardian of Nathalia Griswold and any future guardians  
19 of the other named plaintiffs are not presently able to exercise  
20 the guardian's right to request the release of the plaintiffs  
21 because there are no available alternatives.

22 Plaintiffs can bring this lawsuit because their guardian  
23 and next of friend here can act to enforce the personal, human,  
24 constitutional and statutory rights of the named plaintiffs to  
25 decent humane care and treatment.

26 J. In 1976-77, approximately 233 children resided at  
27 ATP-C. According to defendants' recitals in its budget request for  
28 1978, 47 of these children receive less than 2 hours a day of  
29 educational services, 86 received only 2-4 hours a day while 36  
30 received more than 6 hours (See Attachment "Y"). Without comment  
31 on the quality of the education provided, plaintiffs know that  
32 almost every child in ATP-C needs a full day school program and is  
able to participate in a full day program.

1 Plaintiffs are aware that the discrepancies in prevocational  
2 and vocational programming are similar to those found in educational  
3 programming for children as stated above. These discrepancies are  
4 compounded by the fact that, at the present time, clients who have  
5 personal funds are able to buy needed habilitation and stimulation  
6 (i.e. companions, tutoring, etc.). Residents without such personal  
7 funding, but with similar or greater needs, are not provided a  
8 similar level of service.

9 Defendants offer to some residents of ATP-C the opportunity  
10 to transfer to appropriate living arrangements operated or funded  
11 by the defendants yet deny other residents the same opportunity.

12 K. Defendant, Bruce Babbitt, receives federal funds under  
13 the Developmentally Disabled Assistance and Bill of Rights Act,  
14 42 U.S.C. 6010.  
15  
16  
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1 B. Are the plaintiffs involuntarily confined at ATP-C?

2 Plaintiffs contend that both legally and factually they  
3 are involuntarily confined by the State. They contend that they  
4 lack the capacity to request release under A.R.S. §36-566.

5 Defendants contend that if plaintiffs' allegations are  
6 true they are entitled to discharge under A.R.S. §36-566(A) because  
7 they are no longer benefiting from the care and treatment available  
8 at the Center or, in the alternative, that plaintiffs may request  
9 discharge under subsection (B) of that statute. In answer to  
10 plaintiffs' contention of lack of capacity, defendants would point  
11 out that just as this lawsuit has been filed on behalf of plaintiffs,  
12 request for discharge can be made on behalf of plaintiffs.

13 C. Does the Fourteenth Amendment to the Constitution of  
14 the United States guarantee to residents of a state mental retarda-  
15 tion institution the right to receive care and habilitation in that  
16 setting which is the least restrictive of their personal liberty?

17 Plaintiffs contend that where the state undertakes to  
18 provide care and treatment to these mentally retarded residents,  
19 the least drastic means for achieving the purpose must be utilized.  
20 The least drastic means is that which is least restrictive of these  
21 residents' liberty. Case law supports the rights of these residents  
22 to community based services close to families and friends.

23 Defendants contend that where the state undertakes to  
24 provide care and treatment to the mentally retarded there is no  
25 constitutional right to the least restrictive alternative. In any  
26 case, an institution may in fact be the least restrictive alterna-  
27 tive for some people.

28 D. Whether Plaintiffs' confinement deprive them of equal  
29 protection of the law in violation of the Fourteenth Amendment.

30 Plaintiffs contend that where a person's fundamental  
31 right of liberty is affected by a classification, equal protection  
32 requires that the classification be subject to rigid scrutiny and  
justified by a compelling state interest.

1 Plaintiffs further contend that since the classification  
2 of persons who are confined is based on their need for treatment,  
3 confinement of plaintiffs without treatment deprives them of equal  
4 protection of the laws.

5 Plaintiffs further contend that by withholding from  
6 plaintiffs the normal protections and services which it extends to  
7 its other citizens through exercise of the police power and parens  
8 patriae function, the state deprives plaintiffs of equal protection  
9 of the laws.

10 Defendants contend that there is no fundamental right  
11 involved here since plaintiffs are not confined by state action.

12 Defendants contend that Plaintiffs' argument regarding treat-  
13 ment and equal protection is not comprehensible and thus is invalid.

14 Defendants contend that the State does not withhold from  
15 plaintiffs "the normal protections and services which it extends  
16 to its other citizens through exercise of the police power and  
17 parens patriae function". On the contrary, the State has voluntar-  
18 ily undertaken to provide additional services to plaintiffs above  
19 and beyond the services provided to other citizens. Plaintiffs,  
20 for example, receive medical care provided by the State. Plaintiffs  
21 are not denied equal protection of the law.

22 E. Does the Eighth Amendment to the Constitution of the  
23 United States, through the prohibition against cruel and unusual  
24 punishment, guarantee to plaintiffs the right to be protected from  
25 harm?

26 Plaintiffs contend that the constitutional prohibition  
27 against cruel and unusual punishment includes protection from  
28 physical injuries, access to sanitary bathroom facilities, protec-  
29 tion from neglect and protection from conditions which cause  
30 regression or prevent development of an individual's capabilities.

31 Defendants contend that the prohibition against cruel and  
32 unusual punishment does not apply to plaintiffs' situation, which is  
neither criminal nor quasi-criminal. Defendants also contend that  
none of the plaintiffs is "punished".

1 F. Does §504 of the Rehabilitation Act of 1973, 29 U.S.C.  
2 §794, require defendants not to deny services to the residents of  
3 ATP-C which are equally as effective as those services provided  
4 other citizens in Arizona and which are provided in the most inte-  
5 grated settings appropriate to the residents' needs?

6 §504 of the Rehabilitation Act of 1973 provides in  
7 pertinent part:

8 No otherwise qualified handicapped individual  
9 ...shall, solely by reason of his handicap, be  
10 excluded from the participation in, be denied  
11 the benefits of, or be subjected to discrimina-  
12 tion under any program or activity receiving  
13 federal financial assistance (29 U.S.C. 794).

12 Plaintiffs contend that they are denied many benefits that  
13 the State of Arizona and its political subdivisions offer its  
14 people: residential services including nursing and personal care  
15 homes, and educational, vocational, mental health, counseling,  
16 recreation and physical therapy services.

17 Plaintiffs further contend that the scant services offered  
18 by the Training Program are grossly inadequate and ineffective,  
19 unequal to services offered to other citizens, and not provided in  
20 the least restrictive, most appropriate setting.

21 Plaintiffs contend these allegations constitute a violation  
22 of the Rehabilitation Act of 1973. Plaintiffs contend case law  
23 establishes that §504 supports a private cause of action when  
24 administrative remedies are not effective and have been exhausted  
25 as has occurred in this case.

26 Defendants contend that §504 of the Rehabilitation Act of  
27 1973 provides for no private cause of action, and in any case,  
28 defendants are not discriminating in violation of §504.

29 G. Does the Developmentally Disabled Assistance and Bill  
30 of Rights Act (42 U.S.C. §6010) guarantee the residents of the  
31 Training Program at Coolidge a right to treatment in the least  
32 restrictive setting appropriate to the residents' needs?

1 The Bill of Rights Act explicitly recognizes that:

2 1. Persons with developmental disabilities  
3 have a right to appropriate treatment,  
4 services and habilitation for such disa-  
5 bilities.

6  
7 2. The treatment, services, and habilita-  
8 tion for a person with developmental  
9 disabilities should be designed to maxi-  
10 mize the developmental potential of the  
11 person and should be provided in the set-  
12 ting that is least restrictive of the  
13 person's personal liberty.

14 3. The Federal Government and the State  
15 both have an obligation to assure that  
16 public funds are not provided to any  
17 institutional or other residential  
18 program for persons with developmental  
19 disabilities that:

20  
21 (a) does not provide treatment,  
22 services and habilitation which  
23 is appropriate to the needs of  
24 such person; or

25 (b) does not meet the following  
26 minimum standards;

27 i. Provision of a nourishing,  
28 well-balanced daily diet  
29 to the persons with develop-  
30 mental disabilities being  
31 served by the program.

32 ii. Provision to such persons  
of appropriate and suffi-



1                   cient medical and dental  
2                   services.

3           iii. Prohibition of the use of  
4           physical restraint on such  
5           persons unless absolutely  
6           necessary and prohibition of  
7           the use of such restraint as  
8           punishment or as a substitute  
9           for a habilitation program.

10           iv. Prohibition of the excessive  
11           use of chemical restraints  
12           on such persons and the use  
13           of such restraints as punish-  
14           ment or as a substitute for a  
15           habilitation program or in  
16           quantities that interfere  
17           with services, treatment, or  
18           habilitation for such persons.

19           v. Permission for close relatives  
20           of such persons to visit them  
21           at reasonable hours without  
22           prior notice.

23           vi. Compliance with adequate fire  
24           and safety standards as may be  
25           promulgated by the secretary.

26           Plaintiffs contend in their amended "Complaint" that  
27           defendants fail to provide treatment, services and habilitation  
28           appropriate to the needs of mentally retarded persons. Plaintiffs  
29           further allege defendants excessively use chemical restraints and  
30           fail to provide adequate and sanitary bathroom facilities.  
31  
32

1 Defendants contend that 42 U.S.C. §6010 contains nothing  
2 to suggest that it provides plaintiffs with the standing or right  
3 to compel the provision of increased services by the State. Rather  
4 it is clear from the very words of the statute that if anything can  
5 be characterized as a remedy, it is that:

6 (3) The Federal Government and the States both  
7 have an obligation to assure that public funds  
8 are not provided to any institutional or other  
9 residential program for persons with develop-  
10 mental disabilities that--

11 [fail to meet certain enumerated standards].

12 H. Should the Court Abstain in this matter?

13 Defendants contend that the Court should abstain for two  
14 reasons. First, plaintiffs are entitled to release from ATP-C  
15 under A.R.S. §36-566. If plaintiffs disagree with defendants' in-  
16 terpretation of this state statute, the question should first be  
17 addressed by the Arizona courts, which have never construed the  
18 statute. If it is held to create a right to release, then there  
19 is no involuntary confinement under the facts here alleged. This  
20 in turn obviates the necessity for this Court to address the federal  
21 constitutional claims.

22 Second, the Arizona legislature is currently in session  
23 and two bills have been introduced which, if passed, should eliminate  
24 or at least materially alter plaintiffs' federal constitutional and  
25 statutory claims. The first bill appropriates an additional 1 to  
26 1-1/2 million dollars for the Arizona Training Program at Coolidge.  
27 The second bill is a sweeping revision of the mental retardation  
28 statutes which will provide a state statutory basis for many, if  
29 not most, of plaintiffs' legal assertions. For reasons of federal-  
30 ism and comity the State must be given an opportunity to put into  
31 effect its program.

32 The gravamen of the complaint herein is funding, pure  
and simple. From beginning to the end the pleading alleges in-  
sufficient staff, facilities and programs. Plaintiffs' requested

1 remedy for the alleged insufficiency is more staff, facilities and  
2 programs. The only way for defendants to provide more staff,  
3 facilities and programs is to spend more money--State money.  
4 Plaintiffs ask this Court to order defendants to spend State funds.  
5 Such an order would be in violation of the Eleventh Amendment.

6 Plaintiffs contend that the prerequisite of abstention is  
7 the presence of an issue of state law, the resolution of which may  
8 eliminate or materially alter the federal constitutional question.  
9 Defendants raise no state law issue. Abstention is not applicable.

10 The Eleventh Amendment is not a jurisdictional bar to  
11 the litigation. The courts, in suits seeking to protect the  
12 constitutional rights and the physical well-being of persons, have  
13 consistently found the Eleventh Amendment not to be a bar to actions  
14 directed against individuals who are state officials.

15 Plaintiffs acknowledge the efforts of the defendants to  
16 improve conditions for the residents of ATP-C. Plaintiffs also  
17 know that the named plaintiffs continue to live in conditions  
18 little or no better or worse than the conditions existing on  
19 February 28, 1977, when the suit was initiated.

20  
21 VII.

22 A. The following additional issues of fact are deemed  
23 material by the Plaintiffs:

24 1. NATHALIA GRISWOLD

25 Miss Griswold does not receive special  
26 exercises and/or physical therapy for  
27 her leg. Nor is Miss Griswold provided  
28 any general recreation or exercise  
29 programming.

30 B. The following additional issues of law are deemed  
31 material by the Defendants:

32 2. If this Court holds that plaintiffs  
have a due process right to treatment

1 in the least restrictive setting  
2 suitable to their needs, what standards  
3 of treatment are constitutionally required?

4 Defendants, of course, continue to contend  
5 that there is no constitutional right to  
6 treatment in the least restrictive environ-  
7 ment. Defendants further contend that if  
8 there were such a constitutional right, it  
9 would not be a right to the most ideal  
10 treatment possible. Thus this Court, if it  
11 finds a right, must also set out the  
12 "minimum" constitutional standards for  
13 adequate habilitation of the mentally  
14 retarded. Wyatt v. Stickney, 344 F. Supp.  
15 373, at 395 (M.D. Ala. 1972); see also,  
16 New York State Association for Retarded  
17 Children, Inc. v. Carey, 393 F. Supp.  
18 715, at 718 (E.D.N.Y. 1975).

19 Plaintiffs contend that the issue  
20 defendants now raise is one of remedy  
21 for the plaintiff class. Should the  
22 Court find that the conditions at the  
23 Training Program do not constitute  
24 treatment and the Court finds a right  
25 to treatment, the minimum standards  
26 ordered by the Court will provide  
27 relief to this plaintiff class.

28  
29  
30 3. Are defendants in violation of the  
31 constitutional standards discussed in  
32 the above issue 2?

Defendants, of course, continue to  
contend there is no constitutional

1 right to treatment for plaintiffs. Defend-  
2 ants further contend that if the Court  
3 finds such a right, defendants meet minimum  
4 constitutional standards.

5 Plaintiffs contend this is a fact question.  
6 Plaintiffs contend that the conditions at  
7 the Training Program do not constitute  
8 treatment.

9  
10 4. If this Court holds that the Eighth  
11 Amendment to the Constitution of the United  
12 State guarantees to plaintiffs the right to  
13 be protected from harm, what standards are  
14 to be used to define cruel and unusual  
15 punishment in relation to plaintiffs?

16 Defendants, of course, contend that the  
17 Eighth Amendment does not apply to plain-  
18 tiffs. Further, defendants contend that  
19 even if the prohibition against cruel and  
20 unusual punishment were theoretically to  
21 apply to plaintiffs' non-criminal circum-  
22 stances there have been no factual allega-  
23 tions which even originally give rise to  
24 a cruel and unusual punishment issue.  
25 Any standards set by the Court would be  
26 the most blatant form of dictum.

27  
28 Plaintiffs contend they will show that  
29 conditions at the Training Program at  
30 Coolidge constitute cruel and unusual  
31 punishment in that residents are sub-  
32 ject to physical and mental injury, to  
neglect, to conditions causing regres-  
sion or which prevent development of an

1 individual's capabilities, and are forced  
2 to use bathrooms lacking sanitation and  
3 privacy. If the Court finds the condi-  
4 tion constitutes cruel and unusual  
5 punishment, the Court will develop relief  
6 to correct these conditions. This is a  
7 relief question.

8  
9 5. If the Court finds in plaintiffs' favor  
10 on the Eighth Amendment issue, are defendants  
11 in violation of the constitutional standards  
12 discussed in question 4?

13 Defendants continue to contend the Eighth  
14 Amendment cruel and unusual punishment  
15 provision has no application to the facts  
16 here. Defendants further contend if the  
17 Court finds such an application, defendants  
18 meet minimum standards.

19  
20 Plaintiffs contend this is a fact issue:  
21 Are plaintiffs subject to cruel and  
22 unusual punishment?

23  
24 6. If this Court finds that §504 of the  
25 Rehabilitation Act of 1973 29 U.S.C. §794  
26 provides a private cause of action, what  
27 kinds and levels of services to plaintiffs  
28 are required by the statute?

29 Defendants contend that §504 requires  
30 only what it says: plaintiffs may not  
31 be "excluded from participation in, be  
32 denied the benefits of nor be subjected  
to discrimination under" any federally

1 funded program "solely by reason of his  
2 handicap" (Emphasis added). There is no  
3 requirement of extra services. For  
4 example, if vehicular transportation is  
5 required for anyone who wishes to parti-  
6 cipate in a certain program, a non-  
7 ambulatory person is no more entitled to  
8 free transportation than is an ambulatory  
9 person. Or for example, if certain services  
10 are available only in the large metropol-  
11 itan areas of the State handicapped rural  
12 residents are no more entitled to that  
13 service than are non-handicapped rural  
14 residents.

15  
16 In short, plaintiffs have no more a right  
17 to adequate services than do all other  
18 Arizona residents. Yet plaintiffs appear  
19 to argue that §504 requires the State to  
20 meet their needs whether or not the State  
21 is meeting the needs of the rest of the  
22 State's population.

23  
24 Plaintiffs contend this is an issue of  
25 law as set forth in the Contested Issues  
26 of Law Section VI, F.

27 7. If the Court finds for plaintiffs on  
28 the §504 issue, are defendants in viola-  
29 tion of the standards set by §504?

30  
31 Defendants contend that otherwise  
32 qualified plaintiffs are not, solely  
by reason of their handicaps, excluded

1 from, nor denied the benefits of, nor  
2 subjected to discrimination under any  
3 program or activity receiving federal  
4 financial assistance.

5 Because its resources are finite, the  
6 State must always choose among alter-  
7 natives in offering services.

8 Defendants contend, however, that  
9 they do not illegally discriminate  
10 against plaintiffs in the provision  
11 of benefits.

12 Plaintiffs contend that defendants'  
13 argument here belongs in the §504  
14 issue as set forth in the Contested  
15 Issues of Law Section VI, F.

16  
17 8. If this Court finds that the  
18 Developmentally Disabled Assistance  
19 and Bill of Rights Act, 45 U.S.C.  
20 §5010, grants plaintiffs a right to  
21 treatment in the least restrictive  
22 setting appropriate to the residents'  
23 needs enforceable by a private cause  
24 of action, is there any remedy beyond  
25 a cut-off of federal funds to ATP-C?  
26

27 Defendants contend that paragraph 3  
28 of this Act makes it clear that if any  
29 remedy at all was contemplated, a cut-  
30 off of funds is the remedy. A reading  
31 of the entire act, however, makes it  
32 clear that the section is advisory  
only, an expression of Congressional  
sentiment.



1 Plaintiffs contend that the Act provides  
2 a remedy that as long as defendants receive  
3 federal monies they must provide care and  
4 treatment of plaintiffs in the least  
5 restrictive setting.

6  
7 VIII.

8 The following witnesses will be called by the parties upon  
9 trial:

10 a) On behalf of Plaintiffs:

11 Fred Girardeau  
12 Barney Moore  
13 Helene Kaplan  
14 Molly Stainbrook  
15 Nancy Stanley  
16 Doris Griswold  
17 Gladys Owensby  
18 Richard Sprague  
19 Marshall Abbott  
20 Johnna Miller  
21 Dave Rasey  
22 John Sullivan  
23 Sue Summers  
24 Kathleen Pemberton  
25 Joseph Pensis  
26 Judy Smith  
27 Bernie Ross  
28 Judy Roberts  
29 Brenda Garcia

30  
31 b) On behalf of Defendants:

32 James Boyd, M.D.  
Milton Robinson, M.D.  
Mary Slaughter

1 Brian Lensink

2 Jim Riley

3 Robert Harmon

4 Katie Richards

5 Frank Menolacino, M.D.

6 Ron Barber

7 Jerry Dandoy

8 Sue Elliott

9 Ed Crowley

10 IX.

11 No depositions will be offered.

12 X.

13  
14 The following exhibits are admissable in evidence in this  
15 case and may be marked as evidence by the clerk:

16 (1) Plaintiffs Exhibits:

- 17 a) 1978-79 Budget Request
- 18 b) BMR Preliminary Budget Call 1978-79
- 19 c) Budget Preparation 1978-79
- 20 d) Second Budget Review 1978-79
- 21 e) BMR FY 1978-79 Budget Request (Including
- 22 addendum documents)
- 23 f) 1977-78 ATPC Budget Request
- 24 g) BMR Budget Request 1977-78
- 25 h) ATPC FY 1977-78
- 26 i) ATPP FY 1977-78
- 27 j) ATPT FY 1977-78
- 28 k) 1976-77 ATPC Budget Request
- 29 l) Budget request BMR FY 1976-77
- 30 m) 1975-76 ATPC Budget Request
- 31 n) 1975-76 BMR Budget Request
- 32 o) DES State of Arizona Budget Request,  
Fiscal Year 1975-76 Volume III

- 1 p) ATPC Monthly Incident/Injury Printouts  
2 prepared by Pacific State Hospital for  
3 the month of January 1975 through the  
4 month when marked in evidence by the  
5 clerk.
- 6 q) Letter dated November 9, 1977 to Mr.  
7 Jim Riley, Superintendent, from William  
8 W. Wollender, Deputy State Fire Marshall,  
9 Office of the State Fire Marshall,  
10 Industrial Commission of Arizona.
- 11 r) Letter undated but marked as received  
12 by ATP-C Superintendent's Office,  
13 January 9, 1978 to Mr. Ennis T. Ashbey  
14 from Roy Gregles, Chief, Safety Educa-  
15 tion and Training, Office of Occupa-  
16 tional Safety and Health, Industrial  
17 Commission of Arizona.
- 18 s) Letter dated September 22, 1977 to Jim  
19 Riley, Superintendent, from John H.  
20 Beck, Chief, Bureau of Sanitation,  
21 Division of Environmental Health Services,  
22 Arizona Department of Health Services.
- 23 t) Letter dated January 11, 1978 to Jim  
24 Riley, Superintendent from Robert J.  
25 Ross, State Fire Marshall.
- 26 u) Interrogatories - First and Second  
27 Sets of Plaintiffs' Interrogatories  
28 to Defendants.
- 29 v) Case records of name Plaintiffs.

30 (2) Defendants' Exhibits:

- 31 a) Schedule of reduction of residents.
- 32 b) Plans for residents who are leaving  
ATP-C.
- c) Plans for placement of staff freed  
up by reduction in population.
- d) Plans for utilization of space freed  
up by reduction of residents.
- e) Plans for utilization of new staff.
- f) Plans for renovation and remodeling.
- g) Human Rights Committee policy.