OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-2101

TITLE PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.,
v. Petitioners
TERRI LEE HALDERMAN, ET AL.

PLACE Washington, D. C.

DATE February 22, 1983

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IN THE SUPREME COURT OF THE UNITED STATES

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.,

Petitioners

v. : No. 81-2101

TERRI LEE HALDERMAN, ET AL.

Washington, D.C.

Tuesday, February 22, 1983

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:15 a.m.

APPEARANCES:

H. BARTOW FARR, III, ESQ., Washington, D.C.; on behalf of the Petitioners.

ALLEN C. WARSHAW, ESQ., Harrisburg, Pennsylvania; on behalf of the Petitioners.

DAVID FERLEGER, ESQ., Philadelphia, Pennsylvania; on behalf of the Respondents.

THOMAS K. GILHOOL, ESQ., Philadelphia, Pennsylvania; on behalf of the Respondents.

C O N T E N T S

PROCEEDINGS

CHIEF JUSTICE BURGER: Mr. Farr, I think you may proceed whenever you are ready.

MR. FARR: Thank you, Mr. Chief Justice. May it please the Court:

This case returns to this Court after a two-year absence. As the Court will recall, in 1978, the District Court, relying on federal constitutional, federal statutory, and state statutory grounds, ordered that Pennhurst State School and Hospital, a facility for the mentally retarded, be closed and that all of its residents be moved to community living alternatives known as CLAs.

On appeal, the Third Circuit, relying on the Developmental Disability Act, the federal statute not relied on by the District Court, essentially affirmed the judgment. It did modify the order, however, to allow some residents to remain at Pennhurst.

QUESTION: You will at some point address the question of mootness, possible mootness, will you not?

MR. FARR: The question of mootness, Mr. Chief Justice, goes to the particular issue of the Special Master and Alan Warshaw will discuss that issue. I will discuss it first if you would prefer.

The Third Circuit, on the initial appeal, ordered the District Court to make individual determinations about the

appropriateness of an improved Pennhurst for each resident.

It further ordered the District Court or Master to apply a presumption in favor of placing people in CLA's and said that unless Pennhurst was the only appropriate place for a resident "CLA's must be provided."

This Court reversed, finding that the DD Act did not impose such massive obligations on the states. It then remanded the case to the Third Circuit for consideration of the other issues.

On remand, the Third Circuit issued exactly the same order, this time resting its decision entirely on state law.

The Court rejected our argument that the 11th Amendment barred the order and, furthermore, that in the event the 11th Amendment did not bar it, the principles of Comity should do so.

As a result we believe that the Third Circuit has expanded the power of the federal courts at the expense of state officials, state legislatures, and ultimately, state courts.

Now, as I have explained, Mr. Chief Justice, I will particularly address the 11th Amendment issues on which there is no mootness point, and Allen Warshaw will discuss the other issues.

Before turning to the merits of the 11th Amendment issue, I would like to talk briefly about the relationship between the 11th Amendment and the Doctrine of Pendent Jurisdiction. For the Third Circuit, in rejecting our 11th

Amendment argument, placed considerable weight on the fact that the state law claim, on which all of the relief now rests, was a pendent claim.

Our position on this issue is straightforward. The Doctrine of Pendent Jurisdiction is not sufficient to override a constitutional bar like the 11th Amendment any more than the excerise of diversity jurisdiction or admirality jurisdiction or any other general grant of jurisdiction would be able to do so.

For example, it would be inconceivable if the original claim in Chisholm v. Georgia, the very claim that prompted the passage of the 11th Amendment, could now be brought after the passage of the 11th Amendment in federal court simply by making it a pendent claim rather than a diversity claim as it was in Chisholm.

Without a valid basis of jurisdiction under Article III, of course, the issue of the 11th Amendment is never reached, but once valid jurisdiction under Article III is found, the question still must be answered, is a particular claim barred by the 11th Amendment?

QUESTION: How do you distinguish the holding of this Court about the 11th Amendment in Green v. Louisville Railroad case?

MR. FARR: The decision in Green does not ever address the question specifically, of course, as to whether

the pendent claim has to be examined under the 11th Amendment. I think that holding has been seriously undercut by the holding in Edelman, which the Court decided ten years ago. In Edelman the Court did exactly what we are saying they should do in this case. It first looked to see whether the Court properly excerised pendent jurisdiction, citing Hagans v. Lavine, the leading case.

It then, however, having found that the Court did properly excerise pendent jurisdiction, went on to conclude that the claim was barred by the 11th Amendment.

Now, to the extent that Green is inconsistent with that, we think Edelman is already undercut.

QUESTION: Edelman did involve just a federal statutory claim with what relief was ultimately granted on it, wasn't it? It was not a state claim.

MR. FARR: That is correct. I think it is important though to keep these two issues separately.

Our position here is that the excerise of pendent jurisdiction does not affect whether the claim is barred by the 11th Amendment. If you find that it is barred by the 11th Amendment, then the excerise of pendent jurisdiction doesn't make any difference.

Now, the second part of my argument, of course, is that this claim, although it is not a federal statutory claim, is barred by the 11th Amendment.

QUESTION: And, why it is barred? Because it is

against the state?

MR. FARR: In this particular case, yes. The short answer, and I have a longer answer that I will give, the short answer is that it is a claim against the state and it is not taken outside of the 11th Amendment by the unusual principles of Ex Parte Young that apply only when --

QUESTION: So, you really aren't saying that the 11th Amendment always bars the adjudication in the federal court of a pendent claim where the nominal defendants -- or where the defendants are state officers?

MR. FARR: That is correct.

QUESTION: You don't say -- You are saying it always bars that?

MR. FARR: No. I am saying that it does not always bar it where the defendants are state officials.

Under 11th Amendment law --

QUESTION: The defendants here are state officials?

MR. FARR: The defendants here are state officials and there --

QUESTION: So, you have to get to some more -- You must say something else about the 11th Amendment.

MR. FARR: I have lots more to say about it, yes, Your Honor.

But, the fact is, one of the key principles, which I will discuss, about the 11th Amendment is that the fact that

you make state officials the nominal defendants doesn't mean that it isn't in practice a claim against the state for 11th Amendment purposes.

QUESTION: Let me go back if I may. I am not sure I understood your answer to Justice O'Connor about the two Green cases that Judge Seitz relied upon in the Third Circuit. You said they have been implicitly overruled by Edelman against Jordan, is that your --

MR. FARR: Right. I think to the extent you were talking about the particular part of Green, which it never really discusses -- It never discusses the relationship.

QUESTION: No, the holding is inconsistent with --

MR. FARR: But, the holding, as it goes to state officials, is inconsistent with Edelman.

I would like to point out that Green and Siler, which is the case that the Third Circuit relied on, of course, didn't even discuss the 11th Amendment issue.

But, those cases were decided at a time when the federal intrusion into state affairs was much greater than is now recognized to be permissible. You know, we are talking about a time of substantive due process, Lochner v. New York. Those cases have essentially been legislatively overruled by the Anti-Injunction Acts, therefore, the court really hasn't had a chance to reconsider them.

QUESTION: But, your answer -- I still want to be sure,

your answer is that they have been implicity overruled by Edelman against Jordan.

My next question is how could cases that turn on state law claim be overruled by Edelman against Jordan which did not involve the state law claim?

MR. FARR: Well, Edelman v. Jordan, of course, doesn't discuss the issue of whether -- I mean, does not address the issue of whether the particular claim at issue in Green would be barred by the 11th Amendment, but it does address the issue of whether if a pendent claim is barred by the 11th Amendment and I think there are different reasons for different types of claims. Then, the fact that it is a pendent claim makes no difference. It is barred by the 11th Amendment just as much as if it is a pendent claim as it would be if it was --

QUESTION: And vice versus too.

MR. FARR: Pardon me?

QUESTION: And, equally -- the converse would equally be true.

MR. FARR: If it was not barred by the 11th Amendment, the fact that --

QUESTION: It doesn't become barred simply because it is a pendent claim?

MR. FARR: That is correct.

QUESTION: All right.

MR. FARR: Now, I obviously should get to the 11th

Amendment principles and while the Court has said itself that its decisions in this area are not easy to reconcile, I think there are four principles which are pretty clearly established by now.

First of all, the 11th Amendment does bar suits against a state by its own citizens as well as by citizens of another state. The Court said that in Hans v. Louisiana. It reaffirmed it last term in Treasure Salvors.

Second, that the Amendment also bars suits for injunctive relief --

QUESTION: That is not unanimous.

MR. FARR: Pardon me?

QUESTION: That is not unanimous.

MR. FARR: That is correct, Justice Rehnquist.

The second principle is that the Amendment bars suits, not just for damages, but for injunctive relief as well. The Court reaffirmed that principle last term in Cory v. White and the language of the 11th Amendment referring to any suit in law or equity would leave little doubt.

The third principle, and the one which Justice White was alluding to earlier, the Amendment bars suits against the states, not just in name, but in fact.

Although the Court took awhile to get around to that holding, originally holding that the state had to be named as a defendant, it is now clear, from the cases of this Court, that the Plaintiffs could not get around the 11th Amendment

by naming state officials as the nominal defendants. In such cases, as in this one, the Court must look to the nature of the claim asserted and the nature of the relief granted to determine whether the state is, in fact, the real party in interest.

Now, the fourth principle is the principle of Ex Parte Young which, where applicable, puts a limitation on the second and third principles just discussed.

According to that principle, a federal court may allow injunctive relief against a state official and may do so even if the result is to cause an expenditure of state funds. The reason for this exception, as stated in Young, is that a state has no power to impart to a state official any immunity from responsibility to the supreme authority of the Constitution.

Thus, where there is a conflict with the Constitution or with supreme federal law, it is not necessary to ask, as you do in the normal case, whether the state official is acting within his colorable authority or whether the impact of the order is on the state treasury because it makes no difference. The state cannot confer an immunity from obedience to the Constitution.

Now, while the logic of Ex Parte Young has been questioned, the doctrine of the case has long been thought necessary to the federal system, for without it, the ability of the federal courts to enforce federal rights would be greatly undercut. But, the doctrine has been severely limited to suit that purpose.

For example, the Court has declined to extend Ex Parte Young to allow damages payable from a state treasury even though the claim is a constitutional one and the logic of Ex Parte Young conceivably could be stretched to fit that case.

Here, there is even less reason --

QUESTION: What is the authority for that last proposition?

MR. FARR: Edelman v. Jordan and cases before it.

Here, there is even less reason to extend Ex Parte Young because the claim at issue is not a federal claim at all. It does not involve any conflict with the Constitution or with supreme federal law. It involves only the question whether the defendants are correctly carrying out their responsibilities under state law. That is not the sort of question that has anything to do with the principles of Ex Parte Young.

QUESTION: So you say it must be then considered a suit against the state?

MR. FARR: Well, you have to make the examination to determine whether it is a suit against the state. In this case, I think if you apply the principles that you do in a normal case, it clearly is a suit against the state.

QUESTION: But, if the argument only is whether the officer is properly carrying out his duties, duties which he has the authority to perform --

MR. FARR: Absolutely.

QUESTION: -- then it is a suit against the state.

MR. FARR: That is a suit against the state if that, in fact, is what the claim is and that is what the claim is here, that is a suit against the state. There obviously can be suits against state officials that are outside --

QUESTION: But, what if the court alleged that the state official had no authority whatsoever to do what he is doing? It is just outside the perimeter of his duties.

MR. FARR: The lesson of Larson and Treasure Salvors last year is that there is some range outside of colorable authority where you can't fairly say the official is acting as an official.

QUESTION: But, this state -- This case doesn't get into that ring?

MR. FARR: It certainly doesn't seem to me that it does at all. You are talking here -- There isn't any question that there is a statutory bar of the type suggested in Larson that had to be pleaded in the complaint that limits the power of these officials to make placement decisions regarding institutions or CLA's or any of the professional decisions regarding treatment of the retarded.

The most that the Respondents say is that they are not carrying out their duties in the way that they should. But, the Court in Larson has said that a mere error in the excerise of duties is not enough to override a governmental immunity.

QUESTION: Do you conceive, then, that you have to make this ultra vires colorable action distinction?

MR. FARR: We certainly think that that is one of the distinctions that the Court has to look at in deciding whether the suit is a suit against the state. However, in this case, even if the Court did determine that it was ultra vires, we think the Court would still have to look at the nature of the relief granted here. Because this is -- the relief here obviously is not going to be paid for by the individual defendants. They are not going to create and fund CLA's out of their own pockets. And, the county defendants who are here have only administrative responsibilities. The state will have to pay every cent of the costs required by the Order below. And, therefore, even if it was regarded as outside the colorable authority of the state officials as defendants, the relief ordered would still bring the case back in the class of suits that are cases against the state.

QUESTION: Mr. Farr, you have picked out phrases from Ex Parte Young and about 50 or more other cases. Do we have to agree with every one of your little points in order for you to win?

MR. FARR: I do not think you have to agree with every one of the little points. I think the basic points --

QUESTION: We have to agree with every one of the points --

MR. FARR: I think you basically have to agree with

the point that this is, in fact, a suit against the state under the accepted principles of these decisions.

QUESTION: Do you want us to overrule Ex Parte Young?

MR. FARR: Oh, absolutely not. This case is entirely consistent with Ex Parte Young. Now, what we are saying is that Ex Parte Young is completely authoritative where it applies. And, where it applies is when you have a conflict with the Constitution or supreme federal law. Here we do not have that conflict. All you have is an issue of whether these state officials are carrying out their duties properly under state law, and that is not the kind of claim when any of the immunity that is discussed in Ex Parte Young can be set aside.

QUESTION: May I just ask you a question to be sure I get your theory correctly? Supposing we had before us both the federal claim and the state claim -- either federal statute or federal Constitution, I would not care -- but both asking for precisely the same relief that you are discussing here. Insofar as the claim relied on federal law, in your view, would it be a claim against the state?

MR. FARR: Insofar as the claim relied on federal law, applying the principles of Ex Parte Young, the state could not confer any immunity on the state officials. So, assuming it was a state official that was a named defendant, the claim would be properly brought in state court against the state official under federal law.

QUESTION: That does not answer my question. My question is, insofar as it relied on federal law, would the claim be a claim against the state?

MR FARR: If it is -- under the --

QUESTION: When they ask for precisely the same relief they ask under state law?

MR. FARR: I think the --

QUESTION: I know you are saying they could maintain the claim, but I am asking you as a matter of analysis whether, in your view, it would be a claim against the state?

MR. FARR: As a matter of analysis, the effect is the same as it is in the claim of the state court. But, the logic of Ex Parte Young says it does not make any difference in that case whether it is the state --

QUESTION: You are saying that Ex Parte Young in essence holds, even though it is a claim against the state, it may be maintained notwithstanding the 11th Amendment?

MR. FARR: That is the practical effect of Ex Parte Young, yes.

QUESTION: Yes, but you would say even if this were a federal claim that the relief granted in this case would be barred by the 11th Amendment in a federal court?

MR. FARR: No, we are saying that in this case if the relief were granted on a federal claim, that for those purposes Ex Parte Young would be the controlling case. And, that does

allow prospective relief against state officials.

QUESTION: You mean Edelman v. Jordan would not bar that kind of relief granted in this case?

MR. FARR: Edelman v. Jordan deals with retroactive relief, not prospective relief. That is correct. So, I would think that Edelman v. Jordan would not bar relief, if the relief was on a federal claim, which it is not.

QUESTION: So there is -- so you do say that the 11th Amendment should apply differently to a federal claim and to a state pendent claim?

MR. FARR: Absolutely. I think Ex Parte Young establishes an exception for federal claims that does not apply to state claims precisely.

QUESTION: The practical consequence this is with a mixed claim, it would be the duty, in your view, of the federal court to address the federal claim first?

MR. FARR: Indeed, it would be the duty of the federal court to address only the federal claim, because our argument is that the state claim must be dismissed under the 11th Amendment. Thank you.

QUESTION: I suppose, though, if we decide it as a matter of Comity it should not be entertained we would then avoid the 11th Amendment inquiry?

MR. FARR: That is correct. If -- You would not need to say that the claims are barred under the 11th Amendment if

you applied a Doctrine of Comity. That is correct. Thank you.

ORAL ARGUMENT OF ALLEN C. WARSHAW

ON BEHALF OF THE PETITIONERS

MR. WARSHAW: Mr. Chief Justice, and may it please Court.

If I may I will address the Comity issue first and then the master issue including the mootness issue.

Obviously, if you agree with us that the 11th Amendment bars a decision on the state law issues in this case, you need go no further. However, even if the 11th Amendment permits such claims, principles of Comity do not. Rather, those principles prohibit a decision based solely on state law when the likley result with be a federal court order requiring expenditure of state funds and controlling the operation of state programs solely to implement state laws.

In this regard, essentially three principles apply. First, federal courts must display a strict regard for the independence of state government. Second, they must avoid needless friction with a state's domestic policies. Third, they must be reluctant to interfere with the fiscal operations of a state.

And, in addition, I would note that this Court has recently counseled federal courts to show a substantial deference to the judgments of qualified professionals chosen by a state to operate its mental retardation systems.

Each of these principles was violated in this case

by the Third Circuit as it apparently soley or primarily, for reasons of federal court convenience, sanctioned a massive and ongoing intrusion into Pennsylvania's domestic policies, its fiscal operations and the judgments of its qualified mental retardation professionals.

Specifically, in this case the lower courts have taken a vague right to treatment in the least restrictive environment, and have assumed the power to apply it in over a thousand cases. More importantly, they have taken this supposed right from state cases involving one person where funding was not an issue and have tried to apply it on a state-wide basis where limited resources required difficult choices between competing needs, rights, and priorities. In short, the court has essentially taken control of Pennsylvania's $160,000,000 community program for the mentally retarded.

For example, in July of 1982, well after the Third Circuit had held that its orders were based soley on state law, the District Court roundly condemned Commonwealth officials for their failure to place more plaintiff class members in CLAs. It found wholly unacceptable -- and I quote its word -- the state officials excuse and explanation that they had expended available funds moving the residents of another institution into CLAs. In so doing it apparently found entirely irrelevant uncontroverted evidence, testimony by a number of state officials, that the reason they had given priority to the other institution was that

its conditions were dangerously deteriorating. It was about to lose federal approval, and it was about to lose substantial federal funding.

In contrast, Pennhurst at that time and today has full federal approval, meets all applicable federal standards, and receives substantial federal funding. More recently, the Court has ordered the state to place over 270 class members in CLAs. It has done so despite clear evidence that anticipating funding would not be sufficient to fund those placements.

It also ignored testimony by state officials that there were simply priorities in the mental retardation area that should have been given higher priority. Thus, the District Court has imposed its policy, fiscal and professional judgment on defendants in a way which is given precedence to its decree to the exclusion of all other competing interests in Pennsylvania. Moreover, it has done so without any regard for the many other mentally retarded people in Pennsylvania whose right is presumably identical and whose need was apparently greater.

This already massive intrustion has been exacerbated by the appointment of Masters, who over a five-year period at a cost of over $3,000,000 have monitored and supervised in detail and on a daily basis the operation of Pennsylvania's programs for the mentally retarded.

QUESTION: All right. That has stopped, so what is left of that?

MR WARSHAW: The Hearing Master -- one of the Masters has not stopped, is the first level answer to that. In fact, there is a Hearing Master in place who resolves all disputes concerning community placements.

QUESTION: If the appointment of the Master is not improper, I take it the state could probably recover whatever was paid to the Master.

MR. WARSHAW: That would be our feeling. And, at the very least there is a Contempt citation which is pending before this Court, if money is still at issue.

QUESTION: And, there is some issue about who has to pay for those services rendered?

MR. WARSHAW: By the Master?

QUESTION: Uh-huh.

MR. WARSHAW: There has been no question. We have paid up until the time that the legislature expressed its will and forbade us from paying state monies for that purpose, which is the subject of a Contempt also pending before the Court. I believe it is 81-2363 in a Cert Petition which is pending.

Yes, there have been substantial monies at issue, and at least Judge Garth in the lower court recognized that should we prevail on the Master issue, we would certainly be entitled, in a very real way, to the $300,000 which are still in the custody of the District Court as a result of the Contempt fines.

Moreover, I should note that there are requests

pending in the District Court to reinstate the Master. And, in fact, throughout the course of this litigation, there have been so many disputes over implementation, I cannot imagine that if this case were to be remanded in its present form that the District Court would not be asked on a repeated basis to reinstate the now defunct Special Master. But, I once again would contend, the issues are identical as to the Special Master and the Hearing Master, and we believe they are still alive through the Hearing Master and through the fines which are being held in the District Court.

QUESTION: I probably missed it, but if we did not agree with the Court of Appeals on the 11th Amendment, would the case be over?

MR. WARSHAW: As far as I am concerned, it would be, Your Honor. I do not think you have to reach the Comity issue or the Master issue if the Court should not have based its orders at all on state law.

Now, I would also note in relation to the Master issue that this is something that at best is necessary under extraordinary circumstances. Yet, in this case the Court has utilized these Masters to supervise a community placement program which even Respondents conceeded the last time we were before this Court -- at Page 40 of the transcript and in addition at Page 66 of the Halderman brief -- was a leader in the nation when this case was commenced, and certainly the testimony at trial was

unanimous on that point.

Moreover, as I have noted, any argument -- and this has been made by Respondents in some repsects -- that the Courts were doing that which we wish them to do is belied by the fact that the legislature explicity refused to fund these Masters. Certainly, the Masters at least had nothing to do with the will of Pennsylvania's officials or its legislature.

Now I think it is our point that this kind of constant daily ongoing intrusion into wholly state programs, whether it is accomplished by a court, by itself, or with the assistance of Masters, is the kind of intrustion that should be undertaken only in the most extraordinary circumstances. And, in this regard, I should note that the United States appears to agree with us, insofar as we are talking about the Master. When, as in this case, it is based solely on state law and serves no federal purpose whatsoever, it is an unacceptable use of the federal judicial power. It is a use which this Court should terminate. Thank you for your consideration. I would like to reserve our remaining time for rebuttal.

CHIEF JUSTICE BURGER: Mr. Ferleger.

ORAL ARGUMENT OF DAVID FERLEGER

ON BEHALF OF THE RESPONDENTS

MR. FERLEGER: Mr. Chief Justice, and may it please the Court.

It is the position of the Respondents that this Court

should not rewrite Sovereign Immunity, Pendent Jurisdiction, and Comity Law so that the Petitioners can win in this Court a political battle they lost time and again in the Pennsylvania legislature and in the Pennsylvania courts. The argument of the Petitioners reminds me of what the Attorney General said the first day of the Pennhurst trial. He said, "The Commonwealth, quite simply, is not defending Pennhurst." Certainly the abuse and dangers of Pennhurst are as aggregious. The violations of state law are as clear today as they were then and the denial of habilitation is equally clear. The relief is the issue here, apparently, not the liability. We have not heard a word from Petitioners defending the violations --

QUESTION: Yes, but the issue is whether this suit is maintainable in the federal court on this state ground. Now what allegations are the error claims as to how the state officials are or are not exceeding their authority or making a mistake in application of law?

MR. FERLEGER: Pennsylvania law, Your Honor, forbids unnecessary institutionalization, forbids abuse, and forbids denial of habilitation. Exactly what Pennsylvania law forbids, these defendants have done. In the words of Larson, these defendants are not doing the business that the sovereign has entrusted them.

QUESTION: But they have the authority in general to take care of these patients and if they just make a mistake in the administration of the law or fail to abide by some provision

of law, you think that is automatically enough to --

MR. FERLEGER: No it is not automatically enough. But if they act against the authority of the law -- if they act outside their authority -- it is a very clear and definite, not only violation, but an action of the sovereign that becomes nonsovereign.

QUESTION: Well, do you think the Court of Appeals made it clear that that was their deal?

MR. FERLEGER: I think the Court of Appeals did, Your Honor. These defendants were acting in a way that the sovereign had forbidden them to act. For 16 years Pennsylvania law has been clear. In the 1966 Act, decisions of trial courts, regulations --

QUESTION: What if the Pennsylvania law says you shall not be cruel to patients, and some court says, well, you were cruel. And, the doctor or administrator says, well I wasn't cruel. And, the court says, well, yes you were. Well, he says, I guess I made a mistake --

MR. FERLEGER: If it was a case of mistake, I think it would be a different story. In this case, we have a regime at Pennhurst that is lawless in the extreme under state law. We are not simply talking about one mistake --

QUESTION: You mean there is not two sides to the argument at all?

MR. FERLEGER: On this point, Your Honor, there is not, and the findings of fact, the law, the conditions at Pennhurst have never been challenged. These defendants did not petition

for Certiorari on the state law issue.

QUESTION: There are nonfrivolous arguments on the other side to the effect that these officers were not breaking the law. Of course, it has been held they were. But, if there were non-frivolous arguments on the other side, would you not think that the 11th Amendment would bar this case?

MR. FERLEGER: I do not think so. Let me tell you why. The reason is that our point on this state law issue is that these officials, whatever their bounds of discretion, were acting outside those bounds of discretion, and that that brings this case to that part of --

QUESTION: These officials were just lawless, absolutely knowingly lawless? Any fool should have known?

MR. FERLEGER: Well, with regard to conditions at Pennhurst, I do not think there was a dispute at the trial, and I do not think there is a dispute to this point. These officials were acting in a way that Pennsylvania law absolutely forbids. And, under Larson and under Treasure Salvors, both opinions, this kind of action was totally unjustified under state law.

QUESTION: Well, let's suppose that that was not the case and that it was a colorable state claim here. Then what is your position?

MR. FERLEGER: Well, in that situation, we feel that the federal questions that are involved in this case under Article III make this case an issue -- a case to be decided by the

federal court. The source of the law --

QUESTION: So as far as you are concerned, it does not make any difference?

MR. FERLEGER: That is right. The source of the law makes no difference to the relief that the Court can grant. In Stern v. South --

QUESTION: What is the federal law that is now being violated?

MR. FERLEGER: The federal questions in the case --

QUESTION: What is the federal law, l-a-w, that is being violated as of now, as you see it?

MR. FERLEGER: No federal statute -- the constitutional provisions that are being violated are those provisions against unnecessary institutionalization, Parham and Vitech, those provisions --

QUESTION: What provision in the Constitution are you talking about?

MR. FERLEGER: I am talking about the 14th Amendment to the Constitution.

QUESTION: I never read that in the 14th Amendment.

MR. FERLEGER: Well, Parham v. J.R. and Vitech in this Court have held that unnecessary institutionalization is forbidden under the 14th Amendment. Also, Your Honor --

QUESTION: Well, Mr. Ferleger, did the Court of Appeals hold that there were 14th Amendment violations here?

MR. FERLEGER: No. The Court of Appeals held that there were substantial federal questions involved that gave the court jurisdiction of the case.

QUESTION: Isn't an accurate answer to Justice Marshall's question that there are no federal law violations actually found by the Court of Appeals?

MR. FERLEGER: The Court of Appeals did not reach the actual violation of the federal provisions. That is correct. But, the jurisdiction of the case under Article III, once you have a substantial federal question -- in this case there is no doubt that the federal questions are substantial -- extends to --

QUESTION: Well, then you are saying as of now that there is no federal question left?

MR. FERLEGER: We have substantial federal questions --

QUESTION: Are you saying that?

MR. FERLEGER: We have substantial federal questions in this case.

QUESTION: And that is what I am asking you to tell me as of now what is left federally?

MR. FERLEGER: In terms of the plaintiff's claims against the defendants -- I want to make sure --

QUESTION: You or anybody else.

MR. FERLEGER: Our claims against the defendants as of today -- the substantial federal claims -- are those of our interest, to be free from abuse, to be free from unnecessary

institutionalization, and to receive conditions of confinement that have some reasonable relationship to the purpose, which is habilitation of the confinement. Those are substantial federal questions, which give the Court jurisdiction over the pendent state claims.

QUESTION: And you need the state statute for that?

MR. FERLEGER: We do not need the state statute, but because of the principles announced by this Court, because of the substantial interest in federalism, the federal courts turn first to the state law violations before they need to reach the federal constitutional violations.

We believe that the fact that state law is the grounds upon which the Court of Appeals rested its opinion does not affect the remedy that can be granted. A federal court can grant a remedy against state officials even on state law grounds so long -- and I agree with the Petitioners on this point -- as it is a prospective remedy. The fact that the remedy might cost money under Milliken is no reason to deny jurisdiction entirely. The prospective remedy in this case was a justifiable remedy and not an abusive discretion.

QUESTION: Well, are you suggesting, Mr. Ferleger, that if there were a reversal here, the Third Circuit would then be called upon the address the federal constitutional claims?

MR. FERLEGER: The federal constitutional and the federal statutory issues --

QUESTION: The Third Circuit would be required, then, to address it?

MR. FERLEGER: Yes, and this case would continue. Pennhurst, as the Court is not aware, now has about half the residents it did at the time of the trial -- many more residents -- the defendants are already in the process of planning to move, including Nicholas Romeo, who was a plaintiff before this case before. He has a CLA that is prepared for him. He will be leaving shortly.

But, in this case, we have substantial federal interest. The federal courts avoided imposing its own constitutional views on the state because of 16 years of very clear decision by the state courts leading up to the In Re Schmidt case that adopt normalization principles, that adopt very clearly the right of people to live consistent with their treatment needs in as normal conditions as possible.

QUESTION: Well, suppose we reversed on the 11th Amendment grounds, would you really go forward with the case on federal constitutional grounds?

MR. FERLEGER: We won on that issue in the District Court, and I certainly would go forward. I have --

QUESTION: Well, when your submission is that -- and the Court of Appeals seems to agree with you -- that the Pennsylvania officials are just way out of bounds, and that you could get relief in the state courts on state law grounds,

apparently, you would think from what you say, with very, very little trouble.

MR. FERLEGER: Your Honor, aside --

QUESTION: And yet you would press the Third Circuit on the constitutional grounds?

MR. FERLEGER: I would, Your Honor, for this reason. To begin again in the state courts with the backlogs that that would involve with difficulties of jurisdiction, whether we go to the Pennsylvania Commonwealth Court or to the five county courts, those difficulties -- the delays that would involve -- would require either that we obtain a preliminary injunction from the federal court and proceed in two courts at the same time, which Gibbs' counsel is against, or that we accept the delay and the continued suffering of the 600 people who remain at Pennhurst. And, that is a decision that I would not make.

QUESTION: How far behind is the Third Circuit, or is it up to date?

MR. FERLEGER: The Third Circuit usually takes about three months from time of argument to a decision --

QUESTION: How about reaching --

MR. FERLEGER: They are up to date. They are current.

QUESTION: You have argued the federal issues in that court.

MR. FERLEGER: On remand from this Court we briefed both the constitutional and the state law issues and urged the

court to reach only the state law issues.

Is this Court -- is probably not aware Pennsylvania never had sovereign immunity. Pennsylvania never asserted sovereign immunity to any sort of law suit. It was not until a 1978 statute that for the first time sovereign immunity existed in Pennsylvania. That statute came after the judgment in this case. Federal court immunity in Pennsylvania was not mentioned by statute until 1980. That is the statute cited in the reply brief.

QUESTION: Is this an alternate ground for affirming the Third Circuit? The Third Circuit treated this as just a standard 11th Amendment type case.

MR. FERLEGER: This is an issue not addressed by the Court of Appeals. That is correct.

QUESTION: Well, did you brief it in the Court of Appeals?

MR. FERLEGER: I do not recall that it was briefed in the Court of Appeals.

I want to turn, in my minute or two remaining, to the mootness issue. We believe that the termination of the Master not only moots the Master issue but it affects the rest of the case as well. The Masters have never supervised anything. The August 12, 1982 Opinion by the District Court tries to say what it had said earlier. The Master's job was only to monitor implementation. That was the sole job of the Master. It is

explained in the August 12th opinion that is in the Appendix, and that order appointing the Special Master is now terminated.

As to the Hearing Master who was not appointed until April, 1980, that order was never appealed by any party. It is not before this Court. There is no record before this Court on what the Hearing Master does, or even who he is. So, that the Hearing Master issue certainly is nothing for this Court. And, I want to point out --

QUESTION: Well, sir, about the Special Master -- so long as the propriety of his appointment is being challenged, the fact that he stopped serving would not moot it because I would think there could be recovery of his fees.

MR. FERLEGER: I believe that the United States federal courts would be immune, ironically, from any suit to recover the fees. The fees --

QUESTION: Well, perhaps the federal court could order the return of his fees?

MR. FERLEGER: But, there is no place from which the fees can be returned, is my point.

QUESTION: Well, how about the Masters who were paid?

MR. FERLEGER: The Commonwealth paid money into the federal courts registry. The federal court used the money as ordered by the federal court to pay the Masters.

QUESTION: Well, I presume if the District Court were told by a higher court that it had to refund the money to the

state, the District Court would do so.

MR. FERLEGER: I don't think there is any fund available for the federal courts to do that. There may be, but I don't believe there is.

QUESTION: Well, perhaps the District Court would then call upon the recipients of the fees to reimburse it.

MR. FERLEGER: The recipients are vendors, sales people, stationery stores, employees --

QUESTION: The Masters are vendors and stationery stores?

MR. FERLEGER: No. The money that was paid out by the Master's Office was a budget for an office to employees, to various vendors and sales people.

QUESTION: Well, didn't the Masters themselves receive some sort of compensation?

MR. FERLEGER: They received their weekly salary.

QUESTION: Yes. I presume that could be ordered returned.

MR. FERLEGER: I am not certain that it could because of the immunity --

QUESTION: Well, if a District Court is told by a higher court to order it returned, there is no difficulty with that ministerial act in the District Court, is there?

MR. FERLEGER: If there is a fund for which the money can be returned. I don't believe there is.

The orders appointing the Masters, I should point out, page 218A of the Appendix, are in the process of being revised by the District Court in any event -- the order appointing the Hearing Masters -- so that I believe that the Special Master's termination, the fact that all the orders in this Court are now in the lower court are being revised, justify a finding of both mootness and this Court's decision not to reach the other issues in the case as well.

QUESTION: I am just curious, if the only duty the Special Master was to monitor -- It needed employees and it needed to pay out a lot of things to vendors and things like that?

MR. FERLEGER: Yes. The reason was when the Master was appointed, Your Honor, the state had refused to come forward with any plan to implement the relief that was ordered by the Court. So that until 1982, when the state finally agreed to do certain things, the Federal Court was forced to do the extra monitoring.

QUESTION: So the Special Master at one point had much wider duties than mere monitoring?

MR. FERLEGER: Only monitoring, but the monitoring that the Defendants should have done they didn't agree to do until 1982.

Thank you.

CHIEF JUSTICE BURGER: We will resume at 1:00, Counsel,

without requiring you to split your time.

(Whereupon, at 11:58 o'clock a.m., the hearing was adjourned, to reconvene at 1:00 o'clock p.m., this same day.)

AFTERNOON SESSION

CHIEF JUSTICE BURGER: Mr. Gilhool, you may proceed whenever you are ready.

ORAL ARGUMENT OF THOMAS K. GILHOOL, ESQ.

ON BEHALF OF THE RESPONDENTS

MR. GILHOOL: Mr. Chief Justice, may it please the Court:

This Court's express instruction in its remand in Pennhurst I, the Third Circuit, to consider the state law issue required that the determination of two questions; first, the substantiality of 14th Amendment issues in this case; and, second, the power of the Federal Court to decide a state issue which is pendent to a 14th Amendment claim.

Now, with respect to the substantiality of the 14th Amendment question in this case, the Third Circuit in that was unanimous as to its substantiality. Petitioners asked no Certiorari on the substantiality of the 14th Amendment question here.

To say that the 14th Amendment question here is substantial is to make a severe understatement given this Court's decision last term in Romeo v. Youngberg. That decision -- In that case, the very 14th Amendment violations claimed in this case were found by this Court to violate the 14th Amendment. This is the same institution. Nicholas Romeo is one member of the class here. The continuing grievous injuries and the

agression alleged in Romeo were found in this case to have been imposed upon the class.

Petitioners sought no Certiorari as to the 14th Amendment substantiality. The 14th Amendment question here is not fake and it is not contrived.

Given that then the only question is the power of the court below to proceed as it did. And, with respect to power or jurisdiction, what Petitioners' argument resolves to is the source of the law relied upon, whether federal or state, determines Federal Court jurisdiction.

QUESTION: You wouldn't say that if the Court had the power it had to excerise it, would you?

MR. GILHOOL: No, sir, of course not. Those are the comity questions, but I seek to prove that.

QUESTION: Well, I don't know whether you just call it comity or the option --

MR. GILHOOL: The excerise of equitable discretion as well.

QUESTION: -- the option not to decide a state law question.

MR. GILHOOL: Well, of course, Your Honor, but the first question is power and with respect to it the source of the law argument has been considered and rejected in Gibbs, exactly that argument was made there, that resort to state law deprived the Court in Gibbs of Article III jurisdiction. Gibbs

held that Federal Courts have Article III jurisdiction to decide the whole case including the state law issues by virtue of the presence of a real federal question.

Now, Article III jurisdictional limits are no less sacrosanct than the 11th Amendment.

Once the Court has jurisdiction, this Court -- In fact, Chief Justice Marshall has consistently said the Court has it to decide the whole case including the state issue.

Now, Edelman itself, where state defendants were defendants where the 11th Amendment was raised, dictates the result with respect to jurisdiction here. In Edelman, this Court approved an injunction on pendent grounds requiring state officials to timely decide public assistance claims.

In Edelman, there was a 14th Amendment claim and pendent jurisdiction. The injunction in Edelman, prospective as here, and counsel has conceded there is only prospective relief in this case, the injunction rested upon the pendent federal statute under Hagans.

QUESTION: Well, now, that is a pendent federal claim?

MR. GILHOOL: Exactly, Your Honor.

QUESTION: There was no pendent state claim?

MR. GILHOOL: No, Your Honor. It was a pendent federal statute, but the pendent injunction here is and can be on no basis different from the pendent injunction in Edelman where this Court has never held that a spending-power statute such as

the Social Security Act, in that case itself overrides the 11th Amendment.

In Edelman, jurisdiction to decide the case and to grant an injunction, sourced in the pendent federal statute, had to come -- The power in the face of the 11th Amendment had to come from the presence in the case of a real federal question.

The unanimous and several --

QUESTION: That is a constitutional question.

MR. GILHOOL: 14th Amendment question.

QUESTION: Yes.

MR. GILHOOL: 14th Amendment question for this Court has not held that a spending power statute, for example, by itself would overcome the 11th Amendment. A 14th -- The Young accommodation between the 14th Amendment and the 11th is, of course, what is at stake here and the constitutional claim here is a 14th Amendment claim.

Now, we are, as I hope that made clear -- Not saying that the 11th Amendment is defeated by a state claim but rather by the 14th Amendment federal question jurisdiction; just as in Edelman, the 11th Amendment could not have been defeated by the federal spending power statute, but only by the presence of a 14th Amendment federal question.

And, of course, contrary to what Petitioners suggest in their brief at page three, if you can't get retroactive relief under the 14th Amendment, as this Court holds, may not,

absent express congressional enforcement of the 14th Amendment, you can. Then, you can't, of course, get it under the pendent state claim. That, too, simply reflects the historic accommodation between the 14th Amendment and the 11th.

This Court -- Its unanimous several opinions on this count in Maher v. Gagne holds that same effect, as I have argued the injunction in Edelman which you approved requires us to seek.

Indeed, Petitioners' argument that the source of the law relied upon is the key to the jurisdiction of the Federal Court cannot be accepted unless you choose to cast Gibbs in severe ~~dammum~~ doubt unless Siler and the legion of cases cited by the United States in its brief at pages 22 and 23 are overruled and unless you choose to disapprove Edelman in this regard as well as Townsend and Swenson and King and Smith and such like.

The question then, Justice White, given the power on an entirely independent ground from that argued by my colleague, Mr. Ferleger, the ultra vires matter, given the power, then the question is was the decision to excerise it below, following the instructions of this Court in its remand, an abuse of discretion by the Third Circuit?

The United States suggests in its brief, and we agree and submit to the Court, that the Third Circuit in this case responsibly followed the guidelines long established by

this Court in Gibbs, in Siler and in Ashwander. First, the hoary policy for unitary lawsuits and against splintered cases, partaking of fairness to the parties, of judicial economy, of the effective rule of law, avoiding complex and uncertain questions of the binding effect of factfinding and otherwise that split litigation gives rise to and to which this Court adverted in Patsy.

QUESTION: Mr. Gilhool?

MR. GILHOOL: Yes.

QUESTION: Has the District Court passed on all three of these on both the federal statutory, the state statutory --

MR. GILHOOL: Yes, it did, long ago in 1977.

QUESTION: Did it first reach the state statutory grounds?

MR. GILHOOL: No, Your Honor, it decided the full run of grounds.

QUESTION: Which did it reach first? I would think --

MR. GILHOOL: Your Honor, in its opinion the constitutional issue was first and I believe the federal statutory issue second and the state statutory --

QUESTION: Well, isn't that a departure from what you call the hoary tradition? If you decide a statutory issue, you don't reach the constitutional issue?

MR. GILHOOL: Well, it certainly is not a departure from the hoary tradition against splintered cases, but, yes,

Your Honor, it is a departure from the Ashwander rule which Petitioners would ask this Court to place in serious question in this case.

If the District Court, however, departed from the Ashwander rule that state claims should first be decided, the Third Circuit did not pursuant to this Court's instructions.

QUESTION: Do you think it is necessarily part of the Ashwander rule, not only to decide state issues first but to decline to reach the constitutional issue?

MR. GILHOOL: Yes, it is, exactly, Your Honor. And, if Petitioners had their way, as they said, I believe, in question from you, Justice White, earlier, the Federal Court could only consider the constitutional question. The effect of that, Your Honor, is to cause Plaintiffs to omit state claims and, hence, turning Ashwander upside down to face Federal Courts entirely unnecessarily with the question of state law issues.

Now, the policy in Ashwander, as you suggest, Justice White, really derives from two considerations. One is the policy against -- A constitutional policy like the one against splintered litigation, a policy against the unnecessary decision of constitutional question for its own sake, for the integrity of constitutional judgments, the avoidance of prematurity and so on.

But, there is quite an independent policy of which

Ashwander and Siler, which, of course, is the father to Ashwander, partake and that is federalism itself.

One of the reasons for avoiding constitutional decisions in cases involving state defendants is precisely that they are so intrusive and the constitutional decision binds the state officials forever.

A decision on pendent state law grounds leaves state officials free to try to change state law rather than exercising that freedom. Petitioners --

QUESTION: Application of comity would satisfy all those concerns, however, wouldn't it?

MR. GILHOOL: Well, Your Honor, I would suggest that each of those concerns would require that the application of comity result in the decision by the Federal Court of the state law. Remember, that unlike fair assessment, there is no tax injunction case relative here. Unlike Younger, there is no anti-injunction statute here.

Indeed, in this case, as Gibbs put it, there is especially strong reason for the Federal Court to exercise its power to decide the state law issue. The Gibbs' reason, applicable here, is that the state law issue here is so closely tied to questions of federal policy.

QUESTION: However, against that is the required expenditure of large sums from the state treasury.

MR. GILHOOL: Ah, Your Honor, I think that question

is not here. Indeed, I think Petitioners have conceded here that the relief granted below is less costly than maintaining the wrongs at Pennhurst.

The finding of fact by District Court, unanimously upheld by the Court of Appeals, was to that effect; that the provision of community relief, where it is justified for the individual is less costly than the maintenance of Pennhurst. Again, Petitioners did not seek Certiorari here on that finding of fact.

So, I suggest, Your Honor, that each of those considerations requires that comity be exercised.

If I may, in addition to Pennhurst I, where this Court found a congressionally expressed national policy to improve the care and treatment of the retarded by the use of community facilities --

There is, of course, the statute noted in Patsy, the Civil Rights of Institutionalized Persons Act, expressive of the same policy and in Schweiker v. Wilson, Justice Powell writing in dissent with others noted the same federal policy and traced there to the Social Security Act of 1965 and, indeed, as expressed there, Justice Powell, that policy rests in the Retardation Facilities and Community Mental Health Act of the Congress of 1962, precisely the Act, precisely the federal Act, passed in response to the community initiatives, which invited the state to look at what it was doing with retarded people

and resulted, as the exhibits in the record of this case demonstrate, in this very Pennsylvania statute, the Act of 1966. That is Park Exhibit 18.

If I may return just a moment to the ultra vires argument made by my colleague, Mr. Ferleger, let me suggest that you cannot read the decision of the Pennsylvania Supreme Court in Schmidt or the several opinions unanimous as to the meaning of state law and its violation by state defendants by all of the members of the Third Circuit en banc without concluding that these state defendants placed themselves systematically outside of Pennsylvania law by their conduct with respect to the people at Pennhurst.

Just before I close, let me be clear that the county Petitioners and their officials here do not share whatever 11th Amendment immunity may be here and so that in all events the orders below as to them must be affirmed.

And, finally, Mr. Justice White, let me confess that following the opinions of this Court in Pennhurst I and the opinions of the Court of Appeals, Plaintiffs -- Respondents here find no support for the original order appointing the Special Master and in particular for that part which instructed that Master to direct, organize, and supervise the implementation of relief.

Indeed, the District Court itself, on the first return of the mandate to it after this Court's expression, vacated those

instructions. It also vacated the instructions to assist in the planning of relief, a function, a duty for which the appointment of a Master, I take it, is unexceptional when as here the state defendants twice refused to come forward to the court with a plan for implementation.

In Swann, for example, such a Master was appointed and this Court, of course, affirmed generally there.

Mr. Chief Justice.

CHIEF JUSTICE BURGER: Do you have anything further, Counsel?

MR. FARR: Yes, Mr. Chief Justice, just a few points, please.

CHIEF JUSTICE BURGER: Very well, Mr. Farr.

REBUTTAL ARGUMENT OF H. BARTOW FARR, III, ESQ.

ON BEHALF OF THE PLAINTIFFS

MR. FARR: Counsel seems to argue that the 11th -- the 14th Amendment simply knocks over the 11th Amendment and then the pendent claims can follow in behind it without having been tested against the 11th Amendment and he cites Edelman for that proposition.

Edelman, as we discussed this morning, simply doesn't stand for that proposition. The Court made exactly the inquiry in Edelman that we say should be made here, whether the particular claim at issue was barred by the 11th Amendment. For the prospective relief in Edelman, the Court found that that

claim was not barred by the 11th Amendment under the principles of Ex Parte Young which applied to that claim.

For the claim that dealt with retroactive relief, it found that it was barred by the 11th Amendment because Ex Parte Young does not cover that type of claim.

Our argument, as I said this morning, is that Ex Parte Young does not cover the kind of claim that we have in this case and, therefore, Edelman fully supports our position.

Secondly, counsel has said that state law -- I believe Mr. Ferleger said -- has been clear for 16 years and that this is a lawless effort by the state officials to ignore it.

First of all, we don't think it was clear when the complaint was filed. We don't think it was clear when the District Court said state law required the closing of Pennhurst. We don't think it was clear when the Third Circuit on the first appeal said that state law did not require the creation of CLA's, but only that to the extent that there are facilities being maintained that they provide adequate care and habilitation and frankly we don't think it is clear now because the decisions from the Pennsylvania Court do not deal with the issue of how to provide CLA's where the legislature has not provided funding.

Those issues are not present in the state cases where a single individual is concerned and the issue of whether there is funding for one person is not an issue.

Furthermore, the District Court, in rejecting a claim

for damages, said there was no reason to think that the State Defendants were not carrying out the duties to their best of ability and had no reason to know that they were violating any law or any rights of the Plaintiffs at that time and that is at page 75-A of the original -- of the Appendix of the original Petition for Certiorari --

QUESTION: May I ask you just one question? Precisely at what stage of the proceedings did your clients raise the 11th Amendment objection to the pendent state law claim?

MR. FARR: My understanding is that the 11th Amendment issue was raised certainly on appeal the first time to the Third Circuit if not before.

QUESTION: Had it been raised before we looked at the case two years ago and said -- told the Third Circuit to look at the state law issues?

MR. FARR: It was raised at that time although it was not specifically directed toward the state law issues, because the District Court, of course, had raised --

QUESTION: When was the argument you are making today first raised?

MR. FARR: It was raised in its specifics on the remand to the Third Circuit.

QUESTION: And, how did you -- Just in your brief at that time?

MR. FARR: We raised it in our briefs and, of course,

we argued it before the Third Circuit and the Third Circuit did address it.

QUESTION: I understand that.

MR. FARR: And they rejected it.

QUESTION: But, you never filed a motion to strike the state law claims entirely in the District Court, for example? You never tried to separate those out.

MR. FARR: Well, the case -- As I understood it, those cases, those claims, were before the Third Circuit on appeal at that point so we filed our brief with the Court of Appeals saying that they should not consider it.

I have nothing further. Thank you.

CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

We will hear arguments next Jones against Barnes.

(Whereupon, at 1:19 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL Petitioners v. TERRI LEE HALDERMAN, ET AL. #81-2101

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY Pina Hammond

(REPORTER)