SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

HELENE HOLLINGSWORTH, a taxpayer; MATT X., CLIFF Y., and LETYCIA H., formerly children confined in Orange County Juvenile Hall; and MELISSA P. and RUTH T., children currently confined in Orange County Juvenile Hall, by and through their guardian ad litem, NANCY PHELPS, individually and on behalf of all others similarly situated,

PLAINTIFFS,

vs.

ORANGE COUNTY, CALIFORNIA, a local government entity; MICHAEL SCHUMACHER in his official capacity as Orange County Chief Probation Officer; EDWARD M. CLARKE, in his official capacity as Chief Deputy Probation Officer for Institutional Services; and STEPHANIE LEWIS, in her official capacity as Director of the Orange County Juvenile Hall, and DOES 1-50, inclusive,

DEFENDANTS.

CASE NO. 51-08-65

STATEMENT OF DECISION

AND

JUDGMENT

The above-entitled matter came on regularly for trial on April 16, 1990, in Department 16 of the above-entitled court, before the Honorable Linda Hodge McLaughlin, Judge Presiding, sitting without a jury. On October 9, 1987, the Honorable

Harmon G. Scoville, Presiding Judge of the Court, assigned this matter to Judge McLaughlin for all purposes and, on December 22, 1987, Judge Scoville ordered that Judge McLaughlin be designated a Judge of the Juvenile Court for the purpose of hearing all matters related to this case.

The trial proceeded on Plaintiffs' Third Amended Complaint, as amended. Plaintiffs were represented at trial by the Youth Law Center, by Mark I. Soler, Esq., and Susan L. Burrell, attorney at law; and by Richard P. Herman, Esq. Defendants were represented by Capretz & Kasdan, by David G. Epstein, Esq., and Kenneth S. Kasdan, Esq.; and, on one issue only, by the County Counsel by Edward Duran, Esq.

Prior to trial, counsel filed trial briefs. On April 11, 1990, in response to the Court's request, the Plaintiffs filed a Statement identifying which allegations applied to which Defendant institutions. On April 26 and 27, 1990, during the presentation of Plaintiffs' evidence, Plaintiffs withdrew certain allegations. On May 7, 1990, Dr. Michael Schumacher agreed that Defendants would substitute leather cuffs for the soft ties used by Orange County Juvenile Hall (OCJH) staff to tie minors to metal bedframes. (Exhibit 7.1906). At the conclusion of Plaintiffs' case in chief, Defendants moved for judgment pursuant to Section 631.8 of the Code of Civil Procedure. At the hearing on this motion, Plaintiffs withdrew certain allegations; Plaintiffs moved to conform their Third Amended Complaint to proof, which motion was granted; Plaintiffs dismissed and substituted certain parties; and the Court granted the CCP 631.8 motion as to certain allegations, but declined to

render judgment until the close of all the evidence as to the remaining allegations. On May 17, 1990, the Plaintiffs withdrew allegations regarding searches and dismissed certain parties. On May 18, 1990, Plaintiffs further clarified their Third Amended Complaint, as amended. Accordingly, on May 29, 1990, the Plaintiffs filed a restated Third Amended Complaint, as amended, to reflect the above matters. On May 30, 1990, Capretz & Kasden declared a conflict-in-interest regarding representation of Defendants on the "attorney-contact" issue, and the County Counsel by Edward Duran, Esq., substituted in to represent Defendants on this issue.

Oral and documentary evidence, including a tour of the Juvenile Hall, was received. Counsel filed supplemental trial briefs. The case was argued and submitted. The Court now renders its Statement of Decision.

STATEMENT OF DECISION

Parties. This lawsuit was filed on January 2, 1987.[1] The named Plaintiffs are Helene Hollingsworth, a taxpayer, and several minors who appear through their guardian ad litem, Nancy Phelps. On August 13, 1987, the Court certified this lawsuit as a class action comprised of all minors who were, or would be during the pendency of the lawsuit, confined in Orange County Juvenile Hall. On July 21, 1989, the Court appointed Michael D. Pursell, Esq., as guardian ad litem for all unnamed members of the class. The Defendants are the County of Orange and, in their official capacities, Dr. Michael Schumacher, Chief

1 A related action, Matt X. v. Orange County (No. CV86-5693) was filed on August 28, 1986, in the United States District Court for the Central District of California. That Court abstained from taking jurisdiction of the matter.

Probation Officer; Edward M. Clarke, Chief Deputy Probation Officer for Institutional Services; and Stephanie Lewis, Director of OCJH.

Description of Orange County Juvenile Hall.

Orange County Juvenile Hall ("OCJH") is located on twenty (20) acres of land adjacent to the Juvenile Court complex in central Orange County, which has a population of over 2,000,000 people. OCJH is a locked facility which is designed and utilized to confine certain minors under the juvenile delinquency laws. The majority of minors in OCJH range in age from twelve (12) to eighteen (18) years. Approximately ninety percent (90%) of the minors are boys, and ten percent (10%) are girls. The California Youth Authority has determined that the maximum population which OCJH should house is 314 minors at one time. However, OCJH has consistently exceeded this capacity for several years. During the first quarter of 1990, the average daily population at OCJH was 385 minors. There were 6,425 minors admitted to OCJH in 1989.

In addition to OCJH, delinquent minors are housed in three (3) other facilities (Joplin, Youth Guidance Center, and Los Pinos Forestry Camp) in Orange County. However, only OCJH is a fully locked facility. If minors become disruptive or for any reason cannot remain in the other facilities, they are returned to OCJH. Consequently, OCJH is the "end of the line" for minors as to local confinement before removal to the California Youth Authority. The offenses for which minors in OCJH have been charged and adjudicated include a wide range of serious criminal activity, such as, crimes involving drugs, robberies, use of weapons, sex offenses, gang violence and

murder. Pre-adjudicated and post-adjudicated minors represent approximately seventy percent (70%) and thirty percent (30%) of the OCJH population, respectively.

OCJH is divided into fifteen (15) separate, one-story living units, which have a rated capacity of twenty (20) minors each except the Boys' Receiving Unit which has a rated capacity of thirty-six (36) minors. These units separate the minors by several categories, such as, Definite Commitment Program; combined receiving and living units for girls; assessment unit for placement; intake (boys' receiving); pre-adjudication detention units; and one adjustment unit (Unit L) for housing minors who are suicide risks, security risks, and have serious behavior disorders. In addition, the Orange County Department of Education operates a school at OCJH and medical, dental, and mental health services are available.

Dr. Michael Schumacher is the Chief Probation Officer of the County; Edward M. Clarke is the Chief Deputy for Institutional Services (including OCJH); and Stephanie Lewis is the Director of OCJH. Generally, the OCJH staff consists of four assistant directors, three of whom are responsible for supervising several units; one supervising probation counselor for each unit; and deputy and night probation counselors who manage the minors on the living units. OCJH maintains a ratio of one staff member for each ten (10) minors in detention during the day and for each twenty (20) minors at night, which complies with Section 4279 of the Minimum Standards for Juvenile Halls as adopted by the Department of the Youth Authority and which are contained in Subchapter 3 of Chapter 2 of Division 4 of Title 15

of the California Administrative Code ("Youth Authority's Minimum Standards").

Plaintiffs's experts testified that operating a juvenile detention institution in an urban center is the most difficult task in the juvenile justice system. Operating Orange County Juvenile Hall is no exception.

I

PLAINTIFFS' CHALLENGES TO THE PAST WRITTEN PROCEDURES OF ORANGE COUNTY JUVENILE HALL ARE MOOT

The Probation Department Procedures Manual maintained by Defendants includes the written procedures applicable to OCJH. In this lawsuit, Plaintiffs challenged the constitutionality of certain of the written procedures even though, at the time of trial, they had been superseded by revised procedures. The following list itemizes these "past written procedures":

SUBJECT	**PAST WRITTEN PROCEDURE**
Soft-Tie Restraints	3-2-110 (2/3/84 and 1/2/87)
Room Confinement	3-2-027 (1/2/87)
Deescalation Rooms	3-2-111 (1/2/87)
Attorney Contact	3-1-025 (6/29/84 and 1/2/87)
Mail	3-1-024 (12/13/83; 1/2/87 and 7/11/88)
Telephone	3-2-001 (1/2/87)
	3-1-036 (9/2/87)
Visitation	3-2-025 (4/21/87)
Pictures/Reading Material	3-1-041 (3/22/89)
Minor's Rights	3-1-022 (1/2/87 and 11/10/88)

Plaintiffs request the Court to issue an injunction prohibiting Defendants from reinstituting the above past written procedures. California law provides that such equitable relief

will not be granted if the relief is unnecessary because the challenged acts have been discontinued in good faith and are not likely to be repeated. Lee v. Gates, 141 C.A.3d 989. "Where events occur after the filing of the complaint which render an injunction unnecessary, it will ordinarily be refused." Mallon v. City of Long Beach, 164 C.A.2d 178, 190.

In this case, Plaintiffs have presented no evidence whatsoever that Defendants will reinstitute the past written procedures. All the evidence is to the contrary.

First, both Mr. Clarke and Ms. Lewis testified they have no intention to change current written procedures and reinstate the past written procedures. The Court fully credits this testimony.

Second, the evidence showed the Defendants have worked continuously since 1985 to study, update and revise their written procedures. There is no evidence that Defendants intend, or will turn back the clock. When Mr. Clarke became Chief Deputy Probation Officer for Institutional Services in 1985, he instructed Ms. Jan Honadle, Staff Assistant to Probation Management, to prepare an Institutional Liability Study which addressed, among other items, the issues Plaintiffs have challenged. Ms. Honadle completed her report in August, 1985. It became a working tool for many revisions to the written procedures, particularly those adopted in January, 1987.

Third, County Counsel has advised Defendants since before 1985 regarding whether to revise the written procedures.

Fourth, since 1985, Ms. Cullen from the Probation Department has served on the Task Force appointed under the auspices of the Chief Probation Officers of California ("CPOC")

to develop the Model Institutional Standards and Guidelines for juvenile institutions. Ms. Cullen kept Mr. Clarke closely apprised of the progress of the Task Force. By mid-1986, the "gist" of the Task Force's recommendations were written and given to Mr. Clarke for consideration in studying the procedures applicable to OCJH.

Fifth, in 1987, Dr. Schumacher retained Mr. Grossman, a consultant on confinement conditions to evaluate OCJH and make recommendations. Mr. Grossman completed this assignment, and a number of his recommendations were incorporated into revised procedures at OCJH.

In sum, the evidence is substantial and convincing that Defendants (i) have adopted, in good faith, new procedures which superseded the past procedures; (ii) continuously examine and revise, as appropriate, the OCJH written procedures; and (iii) have no intention whatsoever of reinstating the past procedures which Plaintiffs have challenged.

Phipps v. Saddleback Valley ('88) 204 C.A.3D 1110 is distinguishable from Hollingsworth. In Phipps, the Appellate Court affirmed the permanent injunction granted by the trial court and rejected the argument that the issue whether the boy with AIDS should be allowed to attend school was moot. The Court explained that good faith "voluntary" discontinuance of the policy not to allow the boy to attend school was the key; and the school district had admitted the boy to school only under the compulsion of a preliminary injunction ordered by the Court. By contrast, in Hollingsworth, all the evidence supports the conclusion that the Defendants have acted "voluntarily" in

adopting new procedures to Supersede the past written procedures.

Secondly, even under the federal rule (U.S. v. W. T. Grant, 345 U.S. 629), all issues pertaining to the past written procedures are moot. Under the federal rule, if it can be said with assurance that there is no reasonable expectation the past procedures will be reinstated and their validity as procedures have been "completely and irrevocably eradicated", the issues are moot. As explained above, the evidence amply supports this conclusion, and there is no evidence to the contrary. There is no evidence that any controversy remains regarding the past written procedures and, accordingly, any alleged issues are moot. Western Oil and Gas Assn. v. Sonoma County et al., 90 Daily Journal D.A.R. 6447.

Declaratory relief. In light of the evidence discussed above, Plaintiffs have not established that a "case or controversy" exists and is "ripe" for adjudication regarding the past written procedures to justify granting declaratory relief. Plaintiffs have not produced evidence to show a direct and immediate threat of harm from the past written procedures. See Hillbolm v. U.S., Mariana Islands, 90 Daily Journal D.A.R. 2037, and cases cited therein.

II

PLAINTIFFS' CHALLENGES TO THE PAST PRACTICES OF ORANGE COUNTY JUVENILE HALL ARE MOOT

Plaintiffs challenge the constitutionality of certain practices at OCJH which Plaintiffs allege occurred before and during 1987 (the "alleged past practices"). To support these claims, Plaintiffs relied on (i) all of the past written

procedures listed above and added the past written procedure regarding grievances, 3-1-012 (12/8/81); and (ii) the testimony of Cliff, Matt, Kim and Letycia.

First, to the extent alleged past practices correspond to past written procedures, they are moot for all the reasons discussed above.

Secondly, after review and consideration of all the evidence on this issue, the Court concludes either (1) the minor's testimony is not persuasive when weighed against contrary testimony; or (2) the minor's claim is not typical of the class and is merely an individual claim outside the scope of this lawsuit; or (3) if certain alleged past practices did occur, they have been discontinued, in good faith, and will not be repeated, thus mooting the issue.

III

PLAINTIFFS HAVE NOT PROVED DEFENDANTS' CURRENT WRITTEN PROCEDURES (EXCEPT "ATTORNEY CONTACT" AND "RESTRAINTS") ARE UNCONSTITUTIONAL

In this lawsuit, Plaintiffs challenge the constitutionality of certain written procedures currently set forth in the Procedures Manual and implemented at OCJH. The following list itemizes these "current written procedures" (except "attorney contact" and "restraints" which are discussed separately, infra):

SUBJECT	CURRENT WRITTEN PROCEDURE	
Room Confinement	3-1-027	(3/22/89)
Minor's Rights (a) Access to Legal Materials	3-1-022	(3/21/89)
Mail	3-1-024	(3/13/89)
Pictures/Reading Material	3-1-041	(2/1/90)

Telephone (Collect) 3-1-036 (3/8/89)

Visitation 3-2-025 (3/21/89)

Law. Plaintiffs request the Court to issue an injunction to prohibit Defendants from enforcing the above current written procedures. Plaintiffs contend these procedures are unconstitutional and illegal. The Court must test the constitutionality and legality of Defendants current written procedures by the standards discussed below.

1. United States Constitution. The minimum level of protection afforded delinquent wards is established by the Due Process Clause of the Fourteenth Amendment of the United States Constitution, to wit: "...nor shall any State deprive any person of life, liberty, or property, without due process of law..." The Eighth Amendment prohibiting cruel and unusual punishment has been absorbed into the Fourteenth Amendment. Robinson v. California, 370 U.S. 660. The United States Supreme Court has applied the Due Process Clause in condition-confinement cases by balancing the restrictions imposed on constitutional rights against an institution's legitimate governmental purpose in imposing such restriction, that is, the "reasonable relationship" or "rational response" test. Bell v. Wolfish, 441 U.S. 520; Turner v. Sofley, 482 U.S. 78; Washington v. Harper, 58 U.S.L.W. 4249.

2. California Constitution: Article I, section 7(a) of the California Constitution provides "A person may not be deprived of life, liberty, or property without due process of law..." Therefore, the California

Constitution reinforces the application of the Due Process Clause for protecting the rights of delinquent wards confined in California juvenile institutions.

3. California Statutory Law: Under Section 202(b) of the Welfare and Institutions Code, minors in a juvenile institution as a result of delinquent conduct "...shall...receive care, treatment and guidance which is consistent with their best interests, which holds them accountable for their behavior, and which is appropriate for their circumstances." Punishment for retribution is not permitted by California law. The United States Supreme Court has held that punishment of delinquent minors in juvenile institutions is unconstitutional. Schall v. Martin ('84) 467 U.S. 253.

4. Proposition 115 and Independent States Grounds. Proposition 115 was passed by the California voters and became effective June 6, 1990. All sections of Proposition 115 are assumed to be valid and are binding on this Court, even though challenges may be brought in the future .

Proposition 115 amended Article I, Section 24, of the California Constitution to limit the rights of defendants in criminal cases, and minors in juvenile proceedings on criminal causes, to those rights which the Federal Courts determine exist under the United States Constitution. Thus, the California Supreme Court cannot independently expand in these cases the rights afforded by the United States Constitution.

To the extent constitutional rights are restricted

for security purposes, the passage of Proposition 115 directly impacts the applicable law in the Hollingsworth case because now the "reasonable relationship/rational response" test probably applies and not the "necessity" or "least drastic means" test promulgated by the California Supreme Court in In re Arias ('86) 42 C3d 667. The California Supreme Court relied primarily on De Lancie v. Superior Court, 31 C3d 805, as the "guiding principle" [In re Arias, p. 689] for its reasoning and holding in In re Arias. The proponents of Proposition 115 specifically sought by the passage of Proposition 115 to overturn De Lancie. See "Analysis of Crime Victims Justice Reform Act" prepared for the Senate Committee on Judiciary and the Assembly Public Safety Committee, p. 26. Therefore, if De Lancie has been overturned and In re Arias was based on De Lancie, the authority of In re Arias is highly questionable.

Nevertheless, this Court in its review and consideration of Plaintiffs' challenges to Defendants current written procedures tested the procedures on the basis of both the "reasonable relationship" and "necessity" tests.

5. Minimum Standards for Juvenile Halls. Section 210 of the Welfare and Institutions Code provides "The Youth Authority shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." Those standards are set forth in Subchapter 3 of Chapter 2 of Division 4 of Title 15 of the California Administrative Code and have been carefully considered by

this Court and applied to the evidence in this case.

Room Confinement: 3-1-027 (3/22/89). Defendants' current procedure regarding Room Confinement relates only to confinement of a minor to his/her own room and, thus, is to be distinguished from restraining a minor in a rubber/safety room or tie-down room. Defendants' current procedure is thorough and detailed. Further, it requires compliance with disciplinary due process protections for minors set forth in Defendants' current written procedure 3-1-043 (3/23/89). Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current written procedure 3-1-027 is unconstitutional on its face.

Mail: 3-1-024 (3/13/89). Defendants' current written procedure regarding mail is set forth in procedure 3-1-024 (3/13/89), and is reinforced in the minor's rights procedure 3-1-022 (3/21/89). The current procedure complies with Section 2601(b) of the Penal Code. Further, it exceeds the Youth Authority's Minimum Standards as set forth in Section 4290. The California Youth Authority found OCJH in compliance with the mail standard for minors in its 1989 annual inspection of OCJH. Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure 3-1-024 (3/13/89) is unconstitutional on its face.

Pictures/Reading Materials (excluding Legal Materials): 3-1-041 (2/1/90). Defendants' current procedure regarding pictures/reading material is set forth in procedure 3-1-041 (2/1/90), and is reinforced in the minor's rights procedure 3-1-022 (3/21/89). A minor's right to access to legal materials is not covered by the Pictures/Reading Materials procedures, but by

the Minor's Rights procedure. Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure 3-1-041 (2/1/90) is unconstitutional on its face.

Minor's Rights: 3-1-022 (3/21/89). Defendants' current procedure regarding Minor's Rights exceeds the Youth Authority's Minimum Standards as set forth in Section 4295. Further, the California Youth Authority found OCJH in compliance with the minor's rights standard in its 1989 annual inspection of OCJH. Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure 3-1-022 (3/21/89) is unconstitutional on its face.

(a) Legal Materials. One of the minor's rights included in current procedure 3-1-022 is access to legal materials upon request by the minor. Plaintiffs challenge this portion of the Minor's Rights procedure separately.

Access to legal materials implicates the broader constitutional issue of meaningful access to the courts. The issue is particularly relevant to adult inmates who are representing themselves in propria persona. By contrast, minors may not legally represent themselves in juvenile or civil proceedings. They are represented by an attorney, guardian ad litem, or both. Recognizing this difference, Plaintiffs' counsel, during oral argument at trial, narrowed Plaintiffs' claim by indicating it was brought only on behalf of post-disposition minors represented by the public defender. At trial, Mr. Holmes, Chief Deputy Public Defender, testified that the public defenders considered a minor's file closed at disposition, but would represent the minor on post-disposition

matters upon request by the minor.

Plaintiffs' legal authority on this issue was inapposite. Morgan v. Sproat, 432 F. Supp. 1130, involved minors who were committed without attorney assistance. Ahrens v. Thomas, 434 F. Supp. 873, involved a pre-trial detainee. The other cases involved consent decrees.

In OCJH, the minors' rights to meaningful access to the courts are fully protected. Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure of providing access to legal materials is unconstitutional on its face.

Telephone (collect): 3-1-036 (3/8/89). Defendants' current procedure permitting minors use of collect only telephones in their living units includes the following provision which Plaintiffs challenge, to wit: "All calls other than attorney calls are subject to being monitored or terminated for the purpose of institutional safety, security, and enforcing court orders." Plaintiffs contend that minors have the constitutional right to have unmonitored telephone calls with persons other than attorneys.

For analysis, the Court will assume "monitor" is most intrusively interpreted to mean surreptitiously listening-in to a telephone call between a minor and another person. Both In re Grimes, 208 C.A.3d 1175, and People v. Torres, 218 C.A.3d 700, are inapplicable because these cases involve telephone

///

///

///

calls and visits, respectively, with attorneys.[2] Plaintiffs base their legal position on Section 2600 of the Penal Code as interpreted and applied by De Lancie v. Superior Court, 31 C3d 873. However, as discussed above, it appears the passage of Proposition 115 has overturned De Lancie. In any event, even if a California constitutional right to privacy survives De Lancie for minors confined in OCJH, such right may be constitutionally restricted for the purposes set for in Defendants' current procedure 3-1-036.

Accordingly, Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure 3-1-036 (3/8/89) is unconstitutional on its face.

Visitation: 3-2-025 (3/21/89). Defendants' current procedure permits full contact visits between minors and their families on the minors' living units in OCJH. Plaintiffs challenge the portion of the current procedure which provides that OCJH staff supervising visitation will "Monitor all visits for compliance with visiting rules and for pertinent comments that may be useful to custodial staff or the minor's Deputy Probation Officer." Plaintiffs contend that minors have a constitutional right to have unmonitored contact visits with their families.

///

///

---

2 It is interesting to note that In re Grimes purports to follow In re Arias, supra, whereas People v. Torres does not mention In re Arias and states: "The Bell v. Wolfish, supra, 441 U.S. 520, standard has been adopted by California courts for issues relating to security measures in jails and prisons." People v. Torres, at 707.

In light of the evidence, Plaintiffs are construing the words in Defendants current procedure too legalistically and literally. The Court credits the testimony of Ms. Lewis, to wit: With only two staff counselors to supervise twenty minors and their visitors at one time in the day room of the living unit, staff can merely oversee the visiting process. "Monitoring" as written in this sentence of the nine page current procedure simply means overseeing the visiting process and "keeping eyes open"; not a directive to surreptitiously listen-in on individual conversations. The minors and their visitors can see the staff observing visitation. Accordingly, such staff supervision is appropriate so that OCJH's program of full contact visits on the living units can be maintained for the best interests of all the minors confined at OCJH. Plaintiffs have not carried their burden of proof to present evidence or law which establishes that Defendants' current procedure 3-2-025 (3/21/89) is unconstitutional on its face.

IV

PLAINTIFFS HAVE NOT PROVED DEFENDANTS' CURRENT PRACTICES (EXCEPT "ATTORNEY CONTACT" AND "RESTRAINTS") SHOULD BE ENJOINED

Plaintiffs challenge the constitutionality of certain current practices at OCJH in two respects: (1) practices implementing written procedures which plaintiffs contend are unconstitutional; and (2) alleged practices unconstitutionally deviating from written procedures which plaintiffs do not challenge.

Practices implementing written procedures which Plaintiffs contend are unconstitutional. At pages 10 - 18, supra, the Court concluded that Plaintiffs failed to prove the

following current written procedures are unconstitutional, to wit: Room Confinement [3-1-027 (3/22/89)]; Minor's Rights, including Access to Legal Materials [3-1-022 (3/21/89)]; Mail [3-1-024 (3/13/89)]; Pictures/Reading Material [3-1-041 (2/1/90)]; Telephone (Collect) [3-1-036 (3/8/89)]; and Visitation [3-2-025 (3/21/89)]. Accordingly, Plaintiffs have not carried their burden of proof to present evidence or law which entitles Plaintiffs to an injunction enjoining Defendants' current practices implementing these procedures.

Alleged practices unconstitutionally deviating from written procedures which Plaintiffs do not challenge. Recognizing that actual practices may vary from valid written procedures (Milonas v. Williams, 691 F.2d 931) and, if so, a court may enjoin a party from violating its own rules (Pena v. New York State Division for Youth, 419 F. Supp. 203), Plaintiffs contend the following alleged practices at OCJH unconstitutionally violate minor's rights:

(1) Rules of Conduct not explained.

(2) Discipline is arbitrarily imposed without due process.

(3) Discipline is imposed by depriving minors of exercise.

(4) Minors who seek legal counsel and remedies for violation of their civil rights are harassed and intimidated.

(5) OCJH is overcrowded.

(6) Defendants fail to provide minors in OCJH with adequate psychiatric, psychological, or counseling services.

(7) Defendants fail to provide minors in OCJH with adequate access to toilets.

(8) Grievance practices.

The Court has reviewed and considered all of the evidence on each of these issues as follows:

(1) Rules of Conduct are adequately explained.

The Youth Authority's Minimum Standards require OCJH to ensure that its Rules of Conduct are written and/or explained to each minor so that he/she understands the Rules and consequences of misbehavior. The Youth Authority found OCJH was in compliance with the Minimum Standards in its 1989 annual inspection. Plaintiffs' evidence on this issue, such as, some minors do not pay attention when the rules are read and explained, or forget the rules, is unpersuasive when weighed against the evidence of the efforts made by Defendants to explain the Rules of Conduct to the minors. These efforts include giving to each male minor the written forms of Rules of Conduct and Grievance Procedures, showing a video (in English and Spanish) where a probation officer reads each rule, stopping the video to answer questions, having the minors sign the forms at the completion of the explanation, posting the forms on bulletin boards in each living unit, including the forms in the personal possession folder given to each minor, and posting the rules on the doors of minors' rooms. Because only 10% of the minors are girls, and intake is in a different unit, a counselor reads the forms to each girl individually, who then signs the forms. OCJH also provides interpreters to explain the rules to minors who speak languages other than English or Spanish.

Plaintiffs have not presented evidence or law to show they are entitled to equitable relief on this issue.

(2) and (3) Discipline is not arbitrarily imposed without due process, nor by depriving minors of exercise.

Plaintiffs brought this action on behalf of a large class of minors. Plaintiffs allege there exists a "well-defined community of interest" among minors at OCJH who are subjected to Defendants' alleged practices of arbitrarily imposing discipline without due process and disciplining minors by depriving them of exercise.

The only evidence Plaintiffs presented to support these claims was testimony from Ruth and Adam. Ruth testified that one time she was told to get up from the couch and go to her room. She was not given a reason for the direction so she refused to go to her room. Assuming the Court fully credits Ruth's testimony, such evidence establishes merely an individual claim by Ruth. Individual claims are outside the scope of this class action lawsuit.

Adam testified that on one occasion he was disciplined, and he was not sure why he was disciplined. He also testified if the staff was upset, minors would not receive large muscle exercise; and would clean toilets instead. The Court also weighed the following testimony: (i) OCJH staff testified they would not discipline a minor by withholding exercise; (ii) Mr. Grossman testified that in speaking to several minors during his 1989 audit, no minor reported being unfairly disciplined; not all minors were satisfied with the discipline imposed, but provided no specifics to Mr. Grossman.

Further, the Court notes Adam testified he filed several grievances while he was in OCJH and he always received a response from the supervising probation counselor or sometimes from an assistant director. The Court concludes Adam was well aware of utilizing the grievance procedure if he felt discipline had been unfairly imposed on him.

Furthermore, Sections 4295 and 4296 of the Youth Authority's Minimum Standards establishes standards for discipline and exercise. The Youth Authority found OCJH in compliance with these Minimum Standards in its 1989 annual inspection. Thus, after weighing all of the evidence, the Court concludes Adam's testimony, if fully credited, establishes merely an individual claim which is outside the scope of this class action lawsuit.

(4) The Court will hold a separate hearing to resolve allegations of harassment of minors in this lawsuit.

Plaintiffs rely on the testimony of Mr. Pursell to support their claim that minors were harassed and intimidated by Defendants in pursuing their civil rights in this lawsuit.

On July 21, 1989, the Court appointed Mr. Pursell as Guardian ad Litem for all minors constituting unnamed class members in this lawsuit. Mr. Pursell was requested to provide weekly reports to the Court and counsel for Plaintiffs and Defendants regarding his activities. In his report for the week ending February 2, 1990, Mr. Pursell reported about matters relating to Defendants' failure to post notice of this lawsuit in OCJH as previously ordered, tearing down notices, and interference with a minor's communication to Plaintiffs'

counsel. By Memorandum dated February 5, 1990, the Court notified counsel for Plaintiffs and Defendants that the Court would address these matters at trial.

The Court has determined to hold a separate hearing on these matters as they implicate possible violations of Court orders relating to the appointment and duties of the Guardian ad Litem, and posting notice of the pendency of this lawsuit. Counsel were so advised at the close of trial.

Accordingly, the issue regarding harassment of minors pursuing their civil rights in this lawsuit, as based on the testimony of Mr. Pursell, is outside the scope of the trial on Plaintiffs' Third Amended Complaint, as amended, and will be resolved at a separate hearing.

(5) Orange County Juvenile Hall is not too crowded for the proper and safe detention of minors.

The California Youth Authority has established that the current maximum population of OCJH is 314 minors. During the past few years, OCJH has consistently exceeded its maximum population figure. In 1989, the population exceeded 400 minors on eighteen (18) days, reaching a high of 427 minors on one day. The average daily population during the first quarter of 1990 was 385 minors.

The Youth Authority, Juvenile Justice Commission, and Defendants have repeatedly expressed grave concern about the crowded conditions at OCJH. In 1986, Defendants developed a Corrective Action Plan (the "Plan") to reduce crowded conditions, which was accepted by the Youth Authority pursuant to Section 4309 of the Youth Authority's Minimum Standards. The

Youth Authority's annual certification of OCJH remains conditioned on OCJH's compliance with its Plan. Among several elements, the Plan includes the construction of expanded facilities at OCJH, which will add sixty (60) more beds. Construction is currently proceeding with completion scheduled for August, 1991.

In addition to the Youth Authority's annual inspection, OCJH is inspected annually by the Department of Education; the Health Care Agency; the Environmental Management Agency as to building safety; the Fire Marshal; members of the Juvenile Justice Commission on both announced and unannounced visits; the Presiding Judge of the Juvenile Court; and the Grand Jury at regular intervals. OCJH passed inspection by all of these authorities and agencies in 1989.

Plaintiffs' evidence focused on whether Defendants provided cots to minors for sleeping. Melissa testified that one night in October, 1989, she had to sleep on a mattress on the floor and was not provided a cot. Adam testified the longest time he slept on a mattress on the floor was three weeks to a month, but he usually had a cot. By contrast, OCJH staff testified there are enough cots for all minors who want them; and the statistical survey of cots (Exhibit 7.1989) supports the conclusion there is an ample supply of cots for the minors at OCJH.

The Chairman of the Juvenile Justice Commission, Paul Moreau, testified that while overcrowding is a very severe problem, the Juvenile Justice Commission has concluded the basic needs of the minors are being satisfied in spite of such conditions.

After completion of its annual inspection in 1989, the Youth Authority found OCJH was not too crowded for the proper and safe detention of minors, even though it was overcrowded and operating pursuant to a Corrective Action Plan accepted by the Youth Authority.

Plaintiffs have not carried their burden of proof to present evidence or law to overcome the evidence from all of the authorities and agencies inspecting OCJH, the Juvenile Justice Commission and the Youth Authority that OCJH is not too crowded for the proper and safe detention of minors. Accordingly, Plaintiffs have not shown they are entitled to equitable relief on this issue.

(6) Minors in OCJH receive adequate psychiatric, psychological and counseling services (except as to "Restraints" discussed below).

The Court Evaluation and Guidance Unit ("CEGU") operates under the supervision of the Health Care Agency to provide a broad spectrum of mental health services to minors in the juvenile justice system. These mental health services include consultations, evaluations, treatment, crisis intervention, and suicide prevention services. CEGU plays a critical role in evaluating and handling the minors at OCJH. CEGU's staff consists of four psychiatrists, nine psychologists, and four mental health nurses.

Plaintiffs' expert, Dr. Lauer, testified he thought CEGU was too small to provide meaningful service. However, Plaintiffs themselves testified in contradiction to their own claim. Cliff testified he saw CEGU staff once to three times

per week. Adam testified when he was housed at Los Pinos and wished to see CEGU staff, he was brought to OCJH so he could talk with CEGU staff. Ruth testified she knew CEGU staff was available; CEGU staff always came to see her on many occasions; CEGU staff spent time with her, treated her fairly, cared about her, tried to work with and help her. Ruth testified she could not think of anything CEGU staff did not do for her; nor could she recall any of her friends complaining about CEGU staff, nor telling her there were not enough CEGU staff at OCJH.

Additionally, Defendants' witness, Gary Proctor, Esq., testified that he has represented thousands of minors in the past 20 years, including approximately 700 minors in Orange County in 1989. He estimated he has requested CEGU services more than 500 times. The CEGU service has always been provided, and he considered the CEGU programs of very high quality.

Furthermore, Section 4300(e)(11) of the Youth Authority's Minimum Standards establishes that a juvenile hall must maintain procedures for obtaining psychiatric and psychological services. The Youth Authority found OCJH was in compliance with this Minimum Standard in its 1989 annual inspection.

In summary, Plaintiffs have not presented evidence or law to show they are entitled to equitable relief on this issue.

(7) Defendants provide minors with adequate access to toilets.

Plaintiffs relied on the testimony of Ruth and Melissa to support this claim. However, Ruth testified in

contradiction to the claim, that is, Ruth testified she was permitted access to toilets. Melissa testified OCJH staff would not always let her out of her room after she buzzed to go to the toilet; and OCJH staff told her if she continued buzzing, she would be moved to a room with a toilet in the room. This evidence showed a possible problem with Melissa "buzzing" too much, but not denial of access to toilets.

In summary, Plaintiffs have not presented evidence or law to support their claim on this issue.

(8) Defendants' Grievance practices are adequate.

Plaintiffs relied on the testimony of Adam, Melissa and Mr. Grossman to support their claim that Defendants' practices deviated from the written procedure for grievances.

Adam's testimony contradicted Plaintiffs' claim. Adam testified he filed several grievances and always received a response from the supervising probation counselor, and sometimes from an assistant director. Melissa testified she filed a grievance regarding medical care and did not receive a response. The evidence from Dr. Schuckmell and nurse Blair was that Melissa's grievance was carefully reviewed. Mr. Johnson testified based on his conversations with several minors during his 1989 audit of OCJH. He testified the majority of these minors had no complaint with the grievance procedure. Some questioned whether grievances would be fairly settled, but had no specific situations to report. Mr. Grossman also testified based on his conversations with several minors during his 1989 audit of OCJH. The minors told Mr. Grossman that they were aware of the grievance procedure. Approximately half were

satisfied, and half were dissatisfied with the grievance procedure. The latter were dissatisfied because the staff did not rule in their favor. No minor told Mr. Grossman that a grievance was ignored.

Section 4296 of the Youth Authority's Minimum Standards require OCJH to provide a grievance procedure assuring all minors of an opportunity for a fair hearing and resolution of their complaints pertaining to their care at OCJH. The Youth Authority found OCJH was in compliance with this Minimum Standard in its 1989 annual inspection. Further, several members of OCJH staff testified how the grievance procedure operates at OCJH to provide minors with an opportunity for a fair hearing and resolution of their complaints.

In summary, Plaintiffs have not presented evidence or law to support their claim for equitable relief on this issue.

V

DEFENDANTS' CURRENT WRITTEN PROCEDURE AND PRACTICE REGARDING ATTORNEY CONTACT IS UNCONSTITUTIONALLY VAGUE

Plaintiffs challenge Paragraph I(1) of Defendants' current written procedure 3-1-025 (3/21/89) and corresponding practice which require a licensed attorney, who certifies he has no conflict of interest, to obtain "...permission from the minor's Juvenile Court Attorney of Record, if any" before he/she may have access to the minor.

The Due Process Clause is violated if regulations restricting a Constitutional right are so vague and uncertain they cannot be enforced (see discussion of cases in Witkin,

Constitutional Law, Vol. 7, pages 157-159). The evidence received during trial compels this Court to conclude that Paragraph I(1) violates the minimum constitutional guarantee of due process because (i) it is too vague and uncertain to be understood and enforced; and (ii) it permits the possibility of arbitrary and unreviewable discretion of a minor's "Juvenile Court Attorney of Record" to prohibit a licensed attorney from access to his client (see Lane v. Brown, 372 U.S. 477).

The evidence showed the following:

(1) No one knows what "...permission from the minor's Juvenile Court Attorney of Record, if any" means. Judge Lamoreaux testified she instructed that such permission be obtained in late 1986 to curb "soliciting" of minors by attorneys.[3] She also testified if a minor in OCJH were represented by an attorney on a civil matter, that attorney should not have to obtain permission from the minor's Juvenile Court attorney. Mr. Holmes, Chief Deputy Public Defender, testified that, after disposition, the public defender representing a minor closes the file. Mr. Holmes said he understood that the Court considers the public defender relieved from further representation. Government Code section 27706(e) adds support to Mr. Holmes understanding. However, both Gary Proctor, Esq., and Harold LaFlamme, Esq., testified they considered themselves the "Juvenile Court Attorney of Record" even after disposition. Finally, Defendants' counsel, Capretz & Kasdan, may have

3 N.B. The Hollingsworth lawsuit had not been certified as a class action in late 1986 and January, 1987. It was certified in August, 1987. Consequently, Plaintiffs' counsel represented only "named" minors in late 1986 and January, 1987. There was understandable concern that Plaintiffs' counsel might be "soliciting" minors, whom they did not represent, to join this lawsuit.

violated Paragraph I(1) by hiring their expert, Mr. Grossman, and directing him to interview minors in OCJH without securing permission from the minor's Juvenile Court Attorney of Record. The Court does not believe, nor suggest, that Capretz & Kasdan intentionally violated the attorney contact procedure of their own client. However, this ironic situation, which resulted in Capretz & Kasdan declaring a conflict of interest on this issue, convincingly proves how vague and uncertain the attorney contact procedure is.

(2) Mr. Rito Rosa, regional administrator of the Youth Authority testified Paragraph I(1) appears to violate Section 4304 of the Youth Authority's Minimum Standards. Section 4304 provides: "While under juvenile hall supervision, minors shall not be denied access to licensed attorneys."

(3) Dr. Schumacher testified that obtaining permission from the Juvenile Court Attorney of Record was not needed for OCJH security.

(4) Paragraph I(1) of current procedure 3-1-025 (3/21/89) is facially inconsistent with Paragraph I(D)(2)(a)(2) of current procedure 3-2-025 (3/21/89) which refers to "identification" requirements when visitors are attorneys, but omits the requirement of obtaining permission from the Juvenile Court Attorney of Record.

Therefore, the Court determines Plaintiffs have carried their burden of proof to cause this Court to issue an injunction prohibiting Defendants from enforcing or attempting to enforce Paragraph I(1) of current procedure 3-1-025 (3/21/89).

Accordingly, the Court will order Defendants to (1) rewrite Paragraph I(1) of current procedure 3-1-025 (3/21/89) to

comply with the Due Process Clause of the United States and California Constitutions; the Youth Authority's Minimum Standards; and Rule 2-100 of the Rules of Professional Conduct of the State Bar of California; and (2) include this rewritten Paragraph I(1) in the Corrective Action Plan to be submitted to the Court.

VI.

DEFENDANTS' DECISION MAKING PROCESS FOR RESTRAINING AND SUPERVISING THE RESTRAINT OF MINORS IN TIE-DOWN AND RUBBER/SAFETY ROOMS VIOLATES CONSTITUTIONAL DUE PROCESS.

Plaintiffs challenge current procedures 3-2-110 (3/21/89) and 3-2-111 (3/21/89) and corresponding practices relating to tie-downs and rubber/safety rooms. The procedures are essentially identical.

Definitions:

1. "Soft-ties" refer to the ten (10) foot, flannel-type ties and shorter ties which OCJH staff used to tie minors to beds. During trial, Dr. Schumacher agreed to replace the soft-ties with the type of leather cuffs used by the California Youth Authority.

2. "Tie-down" or "restrained to a bed" refers to OCJH staff making the decision to, and physically forcing a minor to lie, face-down, on a metal frame bed which is bolted to the floor and (i) tying wrists and ankles (4 points) to each bed post and possibly tying the waist (5th point) with a soft-tie; or (ii) restraining a minor in the same position by use of leather cuffs attached to the bed posts.

3. "Tie-down rooms" refer to the thirty-seven (37) rooms in OCJH where metal bed frames are bolted to the floor. There are one to three tie-down rooms on each unit, except for Unit L, which has seven (7) tie-down rooms. All of the tie-down rooms are approximately 7 ft. x 10 ft. x 10 ft. in size and have one window to the outside. They are used to house minors when not being used in a tie-down incident.

4. "Rubber/safety rooms" refer to the two (2) rooms in OCJH which are padded with a "hard" rubber-type material. They are lighted and ventilated, but have no windows to the outside. They are completely bare, except for a mattress. They have no toilet. The hole in the floor which minors used to urinate and defecate was sealed over approximately six months ago. There is a window in the door. The rubber/safety rooms are the same size as the tie-down rooms. Defendants are building two additional rubber/safety rooms in the new OCJH facilities. The rubber/safety rooms are not used for any other purpose except to restrain minors.

Law and Issues. The Due Process Clause in the Fourteenth Amendment to the United States Constitution guarantees to every person the right to be free from bodily restraint. Meyer v. Nebraska, 262 U.S. 390. The same protection is guaranteed in sections 7(a) and (b) of Article I of the California Constitution. The Due Process Clause also mandates that states must follow their own laws. The law of the State of California, as set forth in Section 202(b) of the Welfare & Institutions

Code provides that "minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances."[4] (Emphasis added.)

Plaintiffs allege that Defendants impose corporal punishment, and physical and psychological injuries on minors in violation of their constitutional rights by restraining them to a bed or confining them in a rubber/safety room. Plaintiffs contend Defendants should totally eliminate restraining a minor to a bed and/or confining a minor in a rubber/safety room as presently designed.

Plaintiffs and Defendants presented evidence regarding restraint policies in nine (9) California counties. Additionally, Plaintiffs and Defendants presented numerous experts who testified extensively on various behavior and restraint techniques. Within the context of their own education and experience, all of the experts were credible. However, all of this evidence showed that expert opinions are substantially varied and divided. Accordingly, the Court has no legal basis to order Defendants to adopt one technique over another. The Court's obligation is limited to examining the restraint policies of OCJH and testing those policies against Constitutional standards.

4 Penal Code Section 2600 is not applicable because all witnesses testified that bodily restraint of a minor to a bed or in the rubber/safety room was not necessary to the security of OCJH nor public safety.

Facts. In 1989, there were 6,425 minors admitted to OCJH. Approximately one in every two hundred (200) of these minors were tied down to a bed or confined in the rubber/safety room. The evidence was convincing that immediately before a minor was restrained, either the minor, or both the minor and OCJH staff were exposed to significant risk of physical injury. The evidence showed that the following types of behavior occurred immediately before a minor was restrained: minors exhibited extreme emotional outbursts; acute states of anxiety; extreme anger; fright; minors screamed and yelled; put their heads in toilets in their rooms and/or flooded their rooms; banged, pounded and smashed their hands, fists, feet and bodies against doors, walls and windows; thrust their fists through windows; pounded metal doors to their rooms so hard that the doors bowed; fought with, or threatened to fight violently with OCJH staff; tied various items, such as sheets, around their necks in suicidal gestures; cut themselves with objects, such as glass and razors; and placed objects in their mouths.

The evidence was also convincing that during the restraint period, the minors were exposed to significant risk of physical injury. The evidence showed that minors who were restrained in soft-ties suffered swollen and discolored hands and ankles; numbness; cuts from their head hitting the bed frame; and nose bleeding. Dr. Loomis, who has been the Director of CEGU for 15 years, testified that a minor, who is restrained to a bed, is vulnerable to the following significant physical harm: namely, pressure on blood supply; nerve damage; danger from choking on vomit; dehydration; and obstruction to blood circulation. Furthermore, Dr. Loomis, together with Plaintiffs'

experts, agreed that damaging psychological consequences could result from being held in a fixed position. Testimony was also received as to both physical and psychological disturbance if a minor needs to urinate or defecate while restrained to a bed and his needs are not accommodated.

With regard to the rubber/safety room, the evidence showed the minors exhibited the same types of behavior described above immediately before they were confined to a rubber/safety room. Additionally, testimony indicated that minors in the rubber/safety room, because they are not cuffed, could injure themselves physically by flailing and throwing themselves against the walls. The "padding" would not protect against sprains, broken necks, concussions and other physical damage from violent behavior. Testimony was received that a minor tore the rubber from the walls and tried to ingest it. Dr. Loomis, together with Plaintiffs' experts, testified that damaging psychological consequences could result from confining a minor to a rubber/safety room, such as, consequences from sensory deprivation; humiliation; and degradation.

Fortunately, the evidence showed that, at this time, no minor had suffered any permanent physical injury from being tied down to a bed or confined in the rubber/safety room. Also, no minor testified he or she had suffered any permanent psychological damage from being tied down to a bed or confined to a rubber/safety room.

Decision Making Process. Mr. Hallstrom, Director of OCJH for the past five years, testified that the decision to restrain a minor is a "judgment call". Under OCJH's current procedure and practice, that "judgment call" is made by OCJH staff. If

time and availability permit, before a minor is restrained, CEGU is consulted and the approval of a Supervising Probation Counselor, Assistant Director, or Director is secured. If there is no time to make these contacts, the "judgment call" is made by the unit staff which happens to be on duty. The unit staff, Deputy Probation Counselors and Night Probation Counselors, represent the entry level personnel at OCJH. Because they qualify for this job if they are 20 years old, they may be only a few years older than the minors they confront in a crisis restraint episode. The Juvenile Justice Commission in its 1989 report observed "Deputy Probation Counselors appear to be dedicated professionals. However, a high percentage are in their first two years on the job, reflecting high turnover in the facility." The minutes of the June 10, 1988, meeting of OCJH management and supervisors reflect the critical issues in operating OCJH, to wit: "We are currently facing the adverse conditions of staff shortages, a population which exceeds capacity, inexperienced personnel, staff turnover, lawsuit pressures, changing procedures, fiscal constraints and a high degree of visibility." (Emphasis added.) The minutes of the October 5, 1989, meeting of Institutional Services Management report, as to OCJH: "Manpower shortages: It was noted that high institutional populations, combined with significant staff shortages, are requiring the use of exorbitant overtime, including the necessity to use the volunteer services of select SPC's and SPO's. Recruitment and retention of institutional staff remain major challenges." (Emphasis added.)

///

The Court is not criticizing OCJH staff, which is trained to handle institutional concerns. The problem is OCJH staff is not trained and qualified to make decisions when institutional concerns have given way to overriding physical/psychological risks for the safety of the minor. This point was strongly reinforced during trial by Dr. Schumacher, Ms. Lewis, and Mr. Moreau. In February, 1987, Dr. Schumacher wrote to Mr. Uram, Director of the Health Care Agency, as follows: "Juvenile Hall staff are not trained to deal with seriously emotionally disturbed children." During trial, the Court asked Ms. Lewis if she agreed with Dr. Schumacher's statement. She testified that she agreed. Mr. Moreau referred to reports from the Juvenile Justice Commission which express "growing concern for J. H. staffs' ability to care for the specialized needs of severely emotionally disturbed youths." Finally, Section 4280 of the Youth Authority's Minimum Standards requires that "each staff member shall be properly oriented to his or her duties, including (1) the decisions he or she must make." Based on the convincing testimony from Defendants themselves, the Court is compelled to conclude that OCJH staff is not trained nor qualified to make the decision to tie-down a minor or confine a minor to the rubber/safety room.

The Court's conclusion should not surprise the Defendants because they have been on notice for several years that the tie-down procedure should be changed. In 1985, more than one year before this lawsuit was filed, Iryne Black, attorney at law and Deputy County Counsel, rendered a legal opinion to the Probation Department on this subject, wherein she recommended the

following: "We think, therefore, that further restriction [should be] placed on the soft-tie restraints particularly to assure (1) that a professional decision maker is involved...In any challenge that would be brought testing the legality of such measures, it is believed a Court would apply the test of whether the 'treatment' received in custody is within the range of appropriate alternatives." Then, in 1987, Mr. Grossman was hired by Defendants specifically to evaluate procedures at OCJH. Mr. Grossman testified he recommended that medical or mental health staff should have the "final say" in making the decision whether to bodily restrain a minor. Additionally, Diane Fischer, a mental health nurse at CEGU, testified that she had expressed concerns at CEGU meetings about the physical risks from soft-ties, such as the discoloration of hands. Dr. Loomis encouraged her to bring these concerns to the attention of assistant directors at OCJH. Ms. Fischer testified she spoke to two (2) assistant directors who said they had looked into alternative restraints and felt soft-ties was the best restraint to be utilized. Ms. Fischer testified she adamantly disagreed with them.

The Court is impressed that in 1989 the Youth Authority changed its restraint policies and shifted the decision making authority from Youth Authority institutional staff to a medical doctor, psychiatrist or psychologist. The result has been a significant reduction in tie-down incidents.

Finally, the outstanding experts for both Plaintiffs (Mr. Breed) and Defendants (Mr. Grossman and Dr. Soghor) with over 100 years cumulative experience dealing with restraints in

juvenile and correctional facilities, testified they believed that the decision to restrain a minor should only be made and implemented by medical or mental health professionals and not by the custodial staff of an institution.

Change from OCJH staff to psychiatrist: In order to provide the care, treatment and safety constitutionally guaranteed to minors, OCJH must make the same change the Youth Authority made in 1989, to wit: the decision making process for restraining a minor must be shifted from OCJH staff to someone who is trained and qualified to make the decision.

Based on the evidence received in this trial, both the physical and psychological safety of minors are endangered in a restraint episode. A medical doctor may not be sufficiently trained in exercising judgment as to the psychological factors; and a mental health professional will not be trained to exercise judgment as to the physical factors. Therefore, the Court concludes the only single individual who is adequately trained and qualified to exercise judgment which insures both the physical and psychological safety of the minor is a psychiatrist.

Accordingly, the Court will order that the current procedures for soft-ties, now leather cuffs, and rubber/safety rooms be changed to provide that prior to the use of these restraints, the approval of a psychiatrist is required, subject to the clear emergency exception discussed below.

Clear Emergency. In a clear emergency, where neither time nor availability permits OCJH staff to obtain the prior approval of a psychiatrist, OCJH staff must have the authority

to restrain a minor to a bed or confine a minor in a rubber/safety room. The current procedures provide this authority. However, in order to provide the care, treatment and safety constitutionally guaranteed to minors, the Court will order the following change: Only OCJH staff who have been certified by a psychiatrist as trained and qualified to make the decision to restrain a minor in a tie-down or rubber/safety room will have the authority to act in a clear emergency in the absence of prior approval from a psychiatrist. The important quality control criterion is that a psychiatrist has certified such individuals, by name, are trained and qualified to make this decision.

Changes affecting the medical unit: In order to provide the care, treatment and safety constitutionally guaranteed to minors, the Court will order that the following changes be made to the current procedures regarding the duties of the OCJH medical unit. First, a nurse must be summoned immediately to the tie-down room or rubber/safety room as soon as a minor is restrained. The nurse will use professional judgment, depending on the circumstances, on the need for continuous or intermittent monitoring. However, all proper medical procedures must be followed by the nurse including, without limitation, maintaining a medical record of all medical observations made during the restraint period. The current procedure requiring a medical examination after the restraint period should be retained.

Changes requiring critique from psychiatrist: In order to provide the care, treatment and safety constitutionally guaranteed to minors, the Court will order that the following

procedures be added to the current procedures. Within 24 hours, or by the close of the next business day, after the minor is released from restraints in a tie-down or rubber/safety room, all persons required to file Special Incident Reports and Restraint Reports will file an additional copy with the psychiatrist designated by the Director as the Supervising Psychiatrist regarding the particular incident; also, the nurse from the medical unit who monitored the incident will provide copies of the medical records charting the incident. Within five (5) working days of receiving these reports, the Supervising Psychiatrist will submit to the Director a signed approval of all actions taken in connection with the incident; or a signed disapproval with reasons stated; or a signed approval with comments critiquing the steps taken during the incident. The Director and Supervising Psychiatrist will consult with OCJH staff to critique the incident no later than ten (10) working days after the Supervising Psychiatrist submits his written statement to the Director.

Changes to Supervisory Review: In order to provide the care, treatment and safety constitutionally guaranteed to minors, the Court will order that, in addition to the current procedures, the Supervising Probation Counselor, or Assistant Director, or Director, as the case may be, must consult with a psychiatrist at the time limits now indicated in the current procedure; and the approval of a psychiatrist must be obtained in order for the restraint of the minor to be continued. However, under extraordinary circumstances where it is impossible to contact a psychiatrist, the appropriate

Supervising Probation Counselor, Assistant Director, or Director may make the decision.

Corrective Action Plan: Current procedures 3-2-110 and 3-2-111 shall not be changed except as discussed above and as necessary to implement Dr. Schumacher's agreement to substitute leather cuffs for soft-ties.

Based on all of the evidence received, the Court concludes that such changes are within the organizational parameters of Orange County government and its agencies and constitute essentially cost neutral changes.

The Court will order the Defendants to submit to the Court proposed rewritten procedures and a Corrective Action Plan which sets forth the steps to be taken to implement the rewritten procedures; a specific timetable for implementation; and the names of the persons responsible for implementing each step.

VII
PREVAILING PARTY

Plaintiffs sought relief under both federal and state laws. Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988, provides the statutory basis to award attorney's fees under federal law. The standard to determine the "prevailing party" is whether the plaintiff "...succeeded on any significant issue in the litigation which achieves some of the benefit the party sought in bringing the suit." Hensley v. Eckerhart, 461 U.S. 424; Texas State Teachers Assn. v. Garland Independent School Dist., 109 S. Ct. 1486.

Code of Civil Procedure Section 1021.5 provides the statutory basis to award attorney's fees under California law. A

plaintiff must demonstrate a causal connection between the lawsuit and the relief achieved to be awarded attorney's fees under CCP 1021.5. However, a plaintiff may be deemed the successful party even if a defendant's voluntary action results in plaintiff not obtaining a favorable judgment on the theory the lawsuit was a "catalyst" inducing defendant's action. Californians for Responsible Toxics Management v. Kizer, 89 Daily Journal D.A.R. 8333. Therefore, the plaintiffs are successful on the restraint issues even though defendants voluntarily entered into the Interim Agreement and Dr. Schumacher voluntarily agreed to eliminate the use of soft-ties and substitute leather cuffs in the middle of the trial.

The Court finds that Plaintiffs are the prevailing party on their claim that Defendants' use of soft-tie restraints and the rubber/safety room was unconstitutional. This claim was the central issue in the litigation. Although plaintiffs did not obtain complete success on this claim[5], plaintiffs nevertheless obtained a significant degree of the relief they sought on the merits of this claim. Defendants, during trial, agreed to eliminate use of the soft-ties to restrain minors to a bed. Plaintiffs carried their burden of proof for entitlement to an injunction which enjoins the current written procedures and practices regarding tie-down rooms and rubber/safety rooms. The evidence established that Defendants would not have made these changes if Plaintiffs had not brought this lawsuit. Additionally, Plaintiffs are the prevailing party on their claim

5 Plaintiffs sought to have Defendants enjoined from affixing restraints to a stationary object under any and all circumstances. The Court found that the evidence did not support this position.

that Paragraph I(1) of Rule 3-1-025 of Defendants' current written procedures is unconstitutionally vague.

Accordingly, Plaintiffs are the prevailing party and are entitled to such costs, expenses and fees as are permitted by law for efforts expended on the foregoing issues alone. Efforts expended on all other issues in this lawsuit are excluded because such issues are unrelated and disparate from the claims on which plaintiffs were successful.

The calculation and amount of such costs, expenses and fees to which plaintiffs are entitled shall be fixed by the Court on noticed motion.

IT IS ADJUDGED:

I. Except as set forth below, judgment on all issues is awarded to Defendants, plus costs attributable only to said issues.

II. The Defendants, and each of them, and their successors in office, and their officers, agents, employees, representatives, and all other persons acting in concert or participating with them, shall be and they are hereby enjoined and prohibited from enforcing directly or indirectly, by whatever means, the following current written procedures contained in the Probation Department Procedures Manual and related current practices corresponding to these procedures:

1. Current written procedure 3-1-025 (3/21/89) insofar as it requires that a licensed attorney obtain "permission from the minor's Juvenile Court Attorney of Record" before he/she may have access to the minor; and

///

2. Current written procedures 3-2-110 (3/21/89) and 3-2-111 (3/21/89) until said procedures provide for prior approval by a psychiatrist of restraining a minor to a bed or confining a minor in the rubber/safety room; certification by psychiatrist that OCJH staff making a restraint decision in a clear emergency has been trained and is qualified to make this decision; a medical nurse is summoned immediately when a minor is restrained to a bed or confined in a rubber/safety room and maintains medical records of the entire incident; supervisory review includes consultation with a psychiatrist; and a psychiatrist must review and critique all actions taken during a restraint incident, and submit to the Director of OCJH a signed statement of approval, disapproval with reasons or approval with comments regarding the restraint incident.

PROVIDED, HOWEVER, the foregoing injunction is subject to the following conditions: Defendants shall submit to the Court proposed rewritten procedures 3-1-025; 3-2-110; and 3-2-111 which correct the deficiencies and incorporate the changes consistent with this Statement of Decision together with a Corrective Action plan which shall set forth (1) the steps to be taken to implement the rewritten procedures; (2) a detailed timetable for implementing each step; and (3) identification, by name, of each person or persons responsible for implementing each step to be taken in the rewritten procedures.

III. The Court reserves jurisdiction to determine that Defendants have complied with the foregoing injunction and its conditions.

IV. The Court hereby places Defendants on notice that time is of the essence for Defendants to comply with the foregoing injunction and its conditions. Current written procedures 3-1-025; 3-2-110; and 3-2-111 shall remain in effect until the Court approves the rewritten procedures and Corrective Action Plan to implement the rewritten procedures.

V. Plaintiffs and Defendants shall confer and jointly submit to the Court a form of Notice to Class Members and a recommendation as to the manner of publication of the Notice.

VI. Plaintiffs are the prevailing party and are entitled to such costs, expenses and fees as are permitted by law on the sole issues of the unconstitutionality of (i) Defendants' use of soft-tie restraints and the rubber/safety room and (ii) Paragraph I(1) of Rule 3-1-025 of Defendants' current written procedures, the amount to be fixed by the Court on noticed motion.

DATED: July 27, 1990

LINDA HODGE McLAUGHLIN
Judge of Superior Court
and
Judge of the Juvenile Court

LHM:be/ec
90-006

FILED

JUL 27 1990

[illegible] County Clerk

By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HELENE HOLLINGSWORTH, et al. Plaintiffs, vs. COUNTY OF ORANGE, et al. Defendants.	CASE NO. 51-08-65 ORDER TO POST NOTICE OF JUDGMENT

The defendants in the above entitled action are hereby ordered to post a full and complete copy (which may be reduced to one page) of the attached notice in the following locations:

I. JUVENILE HALL:

A. On the bulletin board in each unit.

B. Posted within eyesight of person using telephone, inside a plastic cover, in each unit.

II. LOS PINOS FORESTRY CAMP:

Laminated, and inside binders hung from chains near the telephones in each of the eight units.

///

III. JOPLIN YOUTH CENTER:

A. On the two bulletin boards.

IV. YOUTH GUIDANCE CENTER:

A. Same as Juvenile hall.

V. ALL FACILITIES:

A. In the public reception and release areas in a manner reasonably calculated to apprise the parents, legal guardians and visitors of class members of the Judgment in this case, and the opportunity to receive information relevant thereto.

IT IS FURTHER ORDERED that such notices shall be posted as ordered herein not later than ten (10) days after the date of this Order, and continuing for 6 months until December 30, 1990.

DATED: JULY 27, 1990

Linda H. McLaughlin
Judge of the Superior Court and
Judge of the Juvenile Court

LHM:sd
90-010

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

NOTICE TO MINORS CONFINED IN THE ORANGE COUNTY JUVENILE HALL DURING JANUARY 2, 1987, TO JULY 27, 1990, OF JUDGMENT IN CLASS ACTION LAWSUIT

I. CLASS ACTION LAWSUIT: On January 2, 1987, a class action lawsuit entitled Hollingsworth, et al. vs. Orange County et al., (Case No. 51-08-65) was filed in the Orange County Superior Court seeking to stop or change certain policies, conditions and practices affecting minors confined in Orange County juvenile facilities. On August 18, 1989, the Court appointed Michael D. Pursell, Esq., as Guardian ad Litem to protect the best interests of each minor who is a class member.

II. JUDGMENT: On July 27, 1990, the Court issued its Judgment, and ordered the following:

A. Attorney Contact: The Court ordered that a licensed attorney, who certifies he has no conflict of interest, does not have to obtain permission from a minor's "Juvenile Court Attorney of Record" before he or she may have access to the minor.

B. Restraints: The Court ordered that a minor may not be cuffed to a bed or placed in a rubber/safety room without prior approval by a psychiatrist, except in a clear emergency where there exists an immediate threat of violence to the minor

the minor or others and the psychiatrist is unavailable. In a clear emergency, the Juvenile Hall staff member who makes the decision to restrain a minor must have been trained and certified by a psychiatrist that he/she is qualified to make such decision.

Whenever a minor is cuffed to a bed or placed in a rubber/safety room, a medical nurse must be summoned immediately and must maintain medical records of the entire incident while the minor is restrained. Additionally, there must be supervisory review of the incident, including consultation, review, and critique of all actions taken during the incident by a psychiatrist.

III. CLASS MEMBERS AND QUESTIONS: Class members consist of minors who were confined at Orange County Juvenile Hall at any time during the period January 2, 1987, to July 27, 1990.

If you are a class member, and you have any questions about this lawsuit, or about the Court's Judgment, or if you would like further information, you may call collect or write directly to the Guardian ad Litem. Your communications with the Guardian ad Litem are confidential.

GUARDIAN AD LITEM: Michael D. Pursell, Esq.
~~517 North Main Street, Suite No. 214~~ 888 T 4C
~~Santa Ana, CA 92702~~ Orange 92668
(714) 835-8855

DATED: July ____, 1990

Gary L. Granville
Clerk of the Court

90-011
LHM:sd

FILED

JUL 27 1990

[illegible] L. GRANVILLE, County Clerk

By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

HELENE HOLLINGSWORTH, a taxpayer; MATT X., CLIFF Y., and LETYCIA H., formerly children confined in Orange County Juvenile Hall; and MELISSA P. and RUTH T., children currently confined in Orange County Juvenile Hall, by and through their guardian ad litem, NANCY PHELPS, individually and on behalf of all others similarly situated, Plaintiffs, vs. ORANGE COUNTY, CALIFORNIA, a local government entity; MICHAEL SCHUMACHER in his official capacity as Orange County Chief Probation Officer; EDWARD M. CLARKE, in his official capacity as Chief Deputy Probation Officer for Institutional Services; and STEPHANIE LEWIS, in her official capacity as Director of the Orange County Juvenile Hall, and DOES 1-50, inclusive, Defendants.	CASE NO. 51-08-65 ORDER OF REFERENCE

FINDINGS

The Court has made the following determinations: the hearing on Plaintiff's Motion for Attorneys' Fees and Costs requires the

examination of a long account; the taking of accounts is necessary for the information of the Court; and questions of fact have arisen upon Plaintiffs' Motion for Attorneys' Fees and Costs.

It appears that the interest of justice and efficiency will best be served in this case by the appointment of a Referee, for the purpose of hearing and determining these matters, and to report and make recommendations to the Court thereon.

APPOINTMENT OF REFEREE

It is therefore ordered that the Judicial Arbitration & Mediation Services, Inc., by a Judge of the Superior Court, Retired, is hereby appointed Referee for such purposes. His office and address and telephone number are:

500 North State College Blvd., Ste. 600

Orange, CA 92668 ph: (714) 939-1300

MATTERS SUBMITTED

The following matters shall be heard and determined by the Referee:

Plaintiffs' Application for Attorneys Fees and Costs

1. The issues of fact in the examination of Plaintiffs' application for attorneys' fees in the lodestar amount of $651,994.50 ($632,017.00 + $19,977.50), including, without limitation:

A. Determination of the total number of hours actually and productively spent by each attorney, law clerk, and paralegal on only the issues of (i) restraints (soft-ties and the rubber/safety room) and (ii) Rule 3-1-025. The calculation of hours for these issues shall be separate. The Referee is

directed to the Court's Statement of Decision attached hereto for the discussion of these issues on which the Plaintiffs were determined prevailing parties under 42 U.S.C. 1988. Time expended on all other issues, including any matters relating to the guardian ad litem, Michael D. Pursell, Esq., shall be excluded. To the extent possible, this determination shall be made by the Referee examining, to the Referee's satisfaction, Plaintiffs' original documentation, i.e., contemporaneous time records maintained to systematically record the work performed for which fees are claimed.

B. Determination of the reasonable hourly rate for each attorney, law clerk and paralegal for whom Plaintiffs are claiming fees. Because Plaintiffs claim fees for work performed from 1985 to 1990, the Referee shall consider the prevailing community rate for attorneys of similar qualifications performing similar work when the work was performed and not use only the attorneys' present fees. Additionally, the Referee may consider any other factors the Referee considers relevant and identify any such factors in his findings.

C. Determination of the allowable litigation and expert costs attributable only to the issues of (i) restraints and (ii) Rule 3-1-025. Costs attributable to any other issues, including the guardian ad litem, Michael D. Pursell, Esq., shall be excluded. To the extent possible, this determination shall be made by the Referee examining, to the Referee's satisfaction, Plaintiffs' back-up documentation to verify each item for which costs are claimed. The Referee may set forth his findings in the manner the Referee decides will most clearly state his

accounting.

D. Determination of the lodestar amount, i.e., the reasonable attorneys' fees which would fully compensate Plaintiffs' attorneys for prevailing on only the issues of (i) restraints and (ii) Rule 3-1-025 in this litigation. The Referee need not determine a multiplier.

Defendants' Application for Costs

1. The issues of fact in the examination of Defendants' application for costs in the amount of $17,325.78 including, without limitation:

A. Determination of the allowable costs to Defendants, which are attributable only to the issues on which Plaintiffs were unsuccessful. Also, any costs attributable to the guardian ad litem, Michael D. Pursell, Esq., shall be excluded. The Referee may set forth his findings in the manner the Referee decides will most clearly state his accounting.

POWERS OF REFEREE

In order to accomplish this reference, the Referee shall have and is granted the following powers:

1. To set the date, time and place of all conferences and hearings.

2. To recommend the issuance of subpoenas.

3. To preside over hearings, take evidence and rule on objections and motions.

4. To order the production of all pertinent writings, including books of account, records, documents and receipts in the possession of any of the parties. The Referee, in this regard, is to recommend to the court the imposition of any

sanctions for the failure of any party or attorney to comply with such an order to produce or to cooperate with the Referee.

5. To employ, as reasonably necessary, accountants, and other experts, and to recommend to the court appropriate fees for such services.

6. To order, supervise, preside over, conduct hearings, rule on objections, and recommend sanctions for any appropriate discovery to accomplish this reference.

7. To petition the Court for any further, additional, and different powers in this reference.

REPORT OF REFEREE

The Referee shall submit a written report to this Court within 20 days from the completion of this reference, with copies mailed to the attorneys for the parties. The report shall contain the following:

1. For the court only, all of the original, back-up documentation submitted to the Referee by plaintiffs.

2. Regarding Plaintiffs, determination of the total number of hours actually and productively spent by each attorney, law clerk, and paralegal on only the issues of (i) restraints and (ii) Rule 3-1-025, set forth separately, with the computations for each individual also set forth separately.

3. Regarding Plaintiffs, determination of the reasonable hourly rate for each attorney, law clerk and paralegal for whom Plaintiffs are claiming fees for the time period during which their respective work was performed. Computations for each individual shall be set forth separately.

4. Regarding Plaintiffs, determination of the litigation

CRS

and expert costs attributable only to the issues of (i) restraints and (ii) Rule 3-1-025. Computations shall be set forth in the manner the Referee decides will most clearly state his accounting.

5. Regarding Plaintiffs, determination of the lodestar amount, i.e., the reasonable attorneys' fees which would fully compensate Plaintiffs' attorneys for prevailing on only the issues of (i) restraints and (ii) Rule 3-1-025 in this litigation.

6. Regarding Defendants, determination of the allowable costs to Defendants, which are attributable only to the issues on which Plaintiffs were unsuccessful. Computations shall be set forth in the manner the Referee decides will most clearly state his accounting.

7. Any other matters which the Referee feels are necessary to provide a complete report to the Court regarding this reference.

8. Recommendations as to the following items:

(a) Amount of fees and costs of the Referee, and fees of any experts employed to assist the Referee that the Court should allow; and

(b) The allocation of all costs and fees payable to the Referee between the parties; and

(c) The imposition of any sanctions against any of the parties and/or attorneys for failure to produce discovery items or to cooperate with the Referee in this reference.

Interim reports may be submitted from time to time by the Referee to the Court.

OBJECTIONS TO REPORT

Objections to the report may be filed with the Court no later than fifteen (15) days after the Referee serves the report or all objections thereto will be deemed waived. Copies of such objections and any response thereto, shall be served upon the Referee, who may then file a supplemental report. The Court will then set a hearing on the matters of objections, fees or sanctions. Such hearing may be waived by the parties in writing, filed with the clerk of the Court; in such event, the Court will determine these matters based on the written objections, any responses, the report and any supplemental report of the Referee.

FEES AND COSTS -- PAYMENT

The Referee shall receive a fee as agreed to by the parties, or if the parties cannot agree, then in a reasonable amount, subject to approval of the Court.

The parties shall pay in advance, to the Referee, the estimated reasonable fees and costs of the reference, as may be specified in advance by the Referee. The parties shall initially share equally by each paying their proportionate amount of the estimated fees and costs of the reference. The costs shall include the costs of a certified shorthand reporter, if so ordered by the Referee. All fees and costs shall be paid within ten (10) days of the billing by the Referee.

All costs and fees shall be subject to reallocation as recommended by the Referee and as finally determined by the Court.

///

///

JURISDICTION RESERVED

The Court reserves jurisdiction to make such other and further orders with respect to this reference as may be just and proper, including, but not limited to, the allowance of reference fees and costs and the enforcement thereof.

DECISION OF THE COURT

The Referee is invited, as may be appropriate, to append, at the end of the report, wording as follows: "The hearing on objections to the report of the Referee having been [heard and submitted] [waived]; and the Court having considered all of these matters independently of the report of the Referee, the Court now decides as follows: The above report, [statement of decision] [and] [findings] and recommendations are approved, confirmed, and adopted by the Court [as follows:]

[_____],[and the parties are ordered to comply with the terms thereof] [as the decision of the Court as to each of such matters in this case]."

Dated: July _____, 1990.

LINDA HODGE McLAUGHLIN
Judge of the Superior Court

THE ABOVE REFERENCE IS SO ORDERED:

Dated: July 27, 1990.

LINDA HODGE McLAUGHLIN
Judge of the Superior Court

LHM:ec
90-009