



JI-AZ-002-001

Grace McIlvain
MILLER & PITT
111 South Church Avenue
Tucson, Arizona 85701-1680
602-792-3836

David Lambert
NATIONAL CENTER FOR YOUTH LAW
114 Sansome Street, Suite 900
San Francisco, California 94104-3820
415-543-3307

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MATTHEW DAVEY JOHNSON; S.G., a minor,)
by and through his mother and next)
friend, A.G.; P.M., a minor, by and)
through his mother and next friend,)
V.J.; D.F., a minor, by and through)
his mother and next friend S.F.;)
M.G., a minor, by and through)
his father and next friend D.G.;)
O.S., a minor, by and through)
his father and next friend A.S.;)
D.A., a minor, by and through)
his father and next friend, J.A.;)
and B.L., a minor, by and)
through his father and next)
friend, D.L., on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

vs.)

JAMES R. UPCHURCH, in his)
personal capacity; GENE MOORE,)
in his official capacity as Acting)
Superintendent of Catalina Mountain)
Juvenile Institution; SAMUEL LEWIS,)
in his official capacity as Director)
of the Arizona Department of)
Corrections; and CAROL MOORE HURTT,)
in her official capacity as Director)
of Juvenile Services for the Arizona)
Department of Corrections,)

Defendants.)

NO. CIV-86-195-TUC-RMB

C O R R E C T E D

SIXTH AMENDED COMPLAINT

INTRODUCTION

1
2 1. This is a civil rights class action which concerns
3 policies, practices, and conditions of confinement at the Catalina
4 Mountain Juvenile Institution (CMJI) near Tucson, Arizona.
5 Plaintiffs are juveniles who are or who have been confined at CMJI
6 and who have been subjected by defendants, acting under color of
7 state law, to cruel, unconscionable, and illegal conditions of
8 confinement.

9 2. Plaintiff MATTHEW DAVEY JOHNSON seeks damages from
10 Defendant JAMES UPCHURCH who is sued in his personal capacity.
11 Plaintiff M.G. seeks damages from defendants CAROL MOORE HURTT and
12 THOMAS KORFF who are sued in their personal capacities.

13 3. Plaintiffs MATTHEW DAVEY JOHNSON and plaintiffs S.G.,
14 R.M., D.F., M.G., O.S., D.A., and B.L. seek declaratory,
15 injunctive, and other equitable relief on behalf of themselves and
16 all other juveniles similarly situated who are, or who will be
17 confined at CMJI and thereby subjected to the cruel,
18 unconscionable, and illegal practices of defendants.

JURISDICTION

19 4. This Court has jurisdiction of this action under 28
20 U.S.C. Section 1343(3) and (4); 28 U.S.C. Section 1331(a); 28
21 U.S.C. Sections 2201 and 2202; 20 U.S.C. Section 1401 et seq., and
22 the regulations promulgated thereunder; and Federal Rules of Civil
23 Procedure 57 and 65. Plaintiffs' claims for relief are authorized
24 by 42 U.S.C. Section 1983 which provides for redress of
25 deprivations under color of state law or rights guaranteed by the
26 Constitution and laws of the United States.

27 5. This Court has jurisdiction of plaintiffs' state law
28

1 claims under the doctrine of pendent jurisdiction, which permits
2 federal courts to determine state law claims which form separate
3 but parallel grounds for relief also sought in substantial claims
4 based on federal law.

5 PLAINTIFFS

6 6. Plaintiffs who bring this action by and through a
7 parent as their next friend have not reached their eighteenth
8 birthday. The plaintiffs and their next friends are actual
9 persons and, except for plaintiff JOHNSON, sue under fictitious
10 names because they fear humiliation and embarrassment if their
11 true identities are made public.

12 7. At the time of filing of the Fourth Amended Complaint,
13 plaintiff MATTHEW DAVEY JOHNSON was 18 years of age; a citizen of
14 the United States; and a resident of the State of Arizona. He was
15 confined at CMJI from October, 1985, until December, 1986.
16 Plaintiff JOHNSON initiated this action in April, 1986, by and
17 through his father as next friend but has since reached his
18 eighteenth birthday and sues in this Amended Complaint on his own
19 behalf.

20 8. Plaintiff S.G. is 14 years of age; a citizen of the
21 United States; and a resident of the State of Arizona. He is
22 currently confined in CMJI and has been so confined since
23 November, 1986. He brings this action by and through A.G., his
24 mother, as next friend.

25 9. Plaintiff P.M. is 17 years of age; a citizen of the
26 United States; and a resident of the State of Arizona. He is
27 currently confined in CMJI and has been so confined since August,
28 1986. He brings this action by and through V.J., his mother, as

1 next friend.

2 10. Plaintiff D.F. is 17 years of age; a citizen of the
3 United States; and a resident of the State of Arizona. He is
4 currently confined in CMJI and has been so confined since
5 November, 1986. He brings this action by and through S.F., his
6 mother, as next friend.

7 11. Plaintiff M.G. is a resident of the United States and
8 a citizen of the State of Arizona. At the time that the Fourth
9 Amended Complaint was filed, M.G. was 15 years old and he brought
10 that action by and through D.G., his father and next friend. M.G.
11 reached his eighteenth birthday on January 12, 1990 and sues in
12 this Amended Complaint on his own behalf.

13 12. Plaintiff O.S. is 17 years of age; a citizen of the
14 United States; and a resident of the State of Arizona. He is
15 currently confined in CMJI and has been so confined since July,
16 1986. He brings this action by and through A.S., his father, as
17 next friend.

18 13. Plaintiff D.A. is 17 years of age; a citizen of the
19 United States; and a resident of the State of Arizona. He is
20 currently confined in CMJI and has been so confined since July,
21 1986. He brings this action by and through J.A., his father, as
22 next friend.

23 14. Plaintiff B.L. is 14 years of age; a citizen of the
24 United States; and a resident of the State of Arizona. He is
25 currently confined at CMJI and has been so confined since April,
26 1986. He brings this action by and through D.L., his father, as
27 next friend.

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DEFENDANTS

15. Defendant JAMES UPCHURCH was the Superintendent of CMJI from January, 1986, to November, 1986. As such, he was responsible for the day to day administration and management of CMJI, for formulating, implementing, and approving policies and decisions affecting juveniles confined at CMJI, and for training, directing, and supervising persons at CMJI responsible for the care and custody of plaintiffs, including volunteer counselors. He is sued in his personal capacity.

16. Defendant THOMAS KORFF has been Superintendent of CMJI continuously since May, 1987. In that capacity he is responsible for the day to day administration and management of CMJI, for formulating, implementing, and approving policies and decisions affecting juveniles confined at CMJI, and for training, directing, and supervising persons at CMJI responsible for the care and custody of plaintiffs, including volunteer counselors. He is sued in his personal capacity.

17. Defendant SAMUEL LEWIS is the Director of the Arizona Department of Corrections. As such, pursuant to Arizona Revised Statutes 42-1603, he is responsible for maintaining and administering CMJI for the treatment and rehabilitation of youth offenders, and for implementing Arizona Department of Corrections regulations, policies, and rules affecting juveniles confined at CMJI. During all times relevant to this complaint, he has been responsible for supervising defendants UPCHURCH, MOORE and KORFF. He is sued in his official capacity.

18. Defendant CAROL MOORE HURTT has been Assistant Director for Juvenile and Community Services in the Arizona

1 Department of Corrections continuously since April, 1985. In that
2 capacity she is responsible for the general supervision and
3 management of juvenile institutions in Arizona, including CMJI,
4 and for implementing Arizona Department of Corrections
5 regulations, rules, and policies affecting juveniles confined at
6 CMJI. Defendant CAROL MOORE HURTT was the immediate supervisor of
7 Defendant JAMES UPCHURCH from April, 1985 to November, 1986, and
8 has been the immediate supervisor of Defendant THOMAS KORFF since
9 May, 1987. She is sued in her personal capacity.

10 19. Defendant C. DIANE BISHOP, is the Superintendent of
11 Public Instruction and Director of the Arizona Department of
12 Education. She also is the Executive Officer of the Arizona State
13 Board of Education. Under Arizona law, she is primarily
14 responsible for state supervision and enforcement of all laws,
15 rules and regulations concerning elementary and secondary
16 education in Arizona and, pursuant to federal and state laws and
17 regulations, she is primarily responsible for the provision of
18 special education and related services to all eligible
19 "handicapped children," as that term is defined in the Education
20 for all Handicapped Children Act and Arizona Revised Statutes 15-
21 761, including such children confined at CMJI. She is sued in her
22 official capacity.

23 20. Defendant, the ARIZONA BOARD OF EDUCATION, is the
24 statutorily created entity responsible for setting and enforcing
25 educational policy in the State. It has the authority to and has
26 adopted rules and regulations regarding elementary and secondary
27 education, including the provision of special education services
28 to "educationally handicapped" children as that term is defined in

1 the Education for all Handicapped Children Act and Arizona Revised
2 Statutes 15-761, including such children confined at CMJI.

3 21. In doing the acts described herein, each of the
4 defendants has acted under color of state law and by virtue of the
5 authority vested in each of them as employees of the State of
6 Arizona.

7 CLASS ACTION

8 22. Plaintiffs bring this action on their own behalf and
9 on behalf of all others similarly situated pursuant to Rule 23(a)
10 and (b)2 of the Federal Rules of Civil Procedure. the class
11 consists of all juveniles who are now or who in the future will be
12 confined at CMJI.

13 23. The members of the class are so numerous that joinder
14 of all members is impracticable. On information and belief, there
15 are approximately 175 juveniles presently confined at CMJI and
16 other juveniles are brought into the institution with regularity.
17 In addition, there are questions of law and fact common to the
18 members of the plaintiff class regarding practices of the
19 defendants, and the claims of the named plaintiffs are typical of
20 the claims of the members of the plaintiff class. The named
21 plaintiffs and plaintiffs' counsel will fairly and adequately
22 protect the interests of the members of the class.f

23 24. By their policies, the defendants have acted and
24 continue to act on grounds and in a manner generally applicable to
25 the class, thereby making appropriate final injunctive relief or
26 corresponding declaratory relief with respect to the class as a
27 whole.

28 25. The injuries suffered by the named plaintiffs and the

1 members of the plaintiff class as a result of the policies and
2 practices of defendants are capable of repetition, yet may evade
3 review, thereby making class relief appropriate.

4 FACTUAL ALLEGATIONS

5 A. FACTS IN SUPPORT OF CLAIMS FOR DECLARATORY, INJUNCTIVE, AND
6 OTHER EQUITABLE RELIEF

7 I. DISCIPLINARY PRACTICES

8 A. Solitary Confinement

9 26. Defendants maintain a punishment cottage at CMJI known
10 as Yucca Cottage which contains 16 cells. These cells are
11 approximately 9' x 9' and are of concrete block construction with
12 bare cement floors and heavy barred doors. Except in two of the
13 cells which contain uncovered institutional-style toilets and
14 sinks, there are no furnishings in the cells except a heavy metal
bed frame stationed on metal legs.

15 27. Defendants have failed to maintain these cells in a
16 safe condition. The cells are inadequately heated in winter and
17 inadequately cooled in summer; they are inadequately lighted, and
18 they are unclean and unsanitary.

19 28. Defendants have confined plaintiffs in these cells for
20 periods ranging from several hours to weeks or even months. For
21 example, defendants confined plaintiff JOHNSON in Yucca Cottage
22 for over 50 consecutive days. Defendants confined plaintiff D.A.
23 in Yucca Cottage on at least seven occasions for periods as long
24 as thirteen days. Defendants confined plaintiff O.S. in Yucca
25 Cottage on at least 30 occasions for periods as long as seven
26 days. Defendants have confined each of the plaintiffs in Yucca
27 Cottage.

28 29. Defendants have confined plaintiffs in cells in Yucca

1 Cottage twenty-four hours a day except for brief periods to use
2 the bathroom or shower or for periods of forced exercise.
3 Defendants permit plaintiffs to shower only every other day and to
4 leave their cells to exercise only after they have been in
5 solitary confinement for five consecutive days. On occasion,
6 defendants have denied plaintiffs confined in Yucca Cottage
7 permission to leave their cells to go to the bathroom and, as a
8 result, plaintiffs have urinated or defecated on the floor of
9 their cells.

10 30. Defendants have failed to provide adequate clothing
11 for plaintiffs in Yucca Cottage cells. Before being placed in
12 these cells, defendants strip-search plaintiffs and give them only
13 a jumpsuit to wear. On occasion, defendants have denied
14 plaintiffs jumpsuits and have confined plaintiffs in Yucca Cottage
15 cells with no clothing but underwear. For example, defendants
16 confined plaintiff D.A. in a cell in Yucca Cottage overnight with
17 no clothing but underwear. Defendants do not permit plaintiffs to
18 wear shoes while confined in Yucca Cottage and defendants often do
19 not permit plaintiffs to wear socks.

20 31. Defendants have failed to provide adequate bedding to
21 plaintiffs while in Yucca Cottage cells. Defendants give
22 plaintiffs a mattress and one small blanket each night and then
23 remove the mattress and blanket from the cell each morning. On
24 occasion, defendants withhold mattresses and blankets at night as
25 additional punishment.

26 32. Defendants have failed to take sufficient precautions
27 in the event of fire to adequately protect plaintiffs in Yucca
28 Cottage cells. For example, defendants lock cells in Yucca

1 Cottage individually with padlocks and have failed to provide an
2 adequate plan for evacuation in the event of fire.

3 33. Defendants have confined depressed, agitated and
4 emotionally disturbed children in solitary confinement in Yucca
5 Cottage and defendants have taken inadequate measures to protect
6 them from self-injury. As a result plaintiffs have cut, hanged
7 and otherwise injured themselves.

8 34. Defendants have failed to provide adequate psychiatric
9 and psychological counseling and other mental health services to
10 plaintiffs held in solitary confinement in Yucca Cottage,
11 including those plaintiffs who have injured or attempted to injure
12 themselves. As a result, plaintiffs have suffered serious
13 psychological stress, including the effects of sensory
14 deprivation, while in Yucca Cottage.

15 35. Defendants have failed to provide educational programs
16 for plaintiffs in Yucca Cottage and they have failed to provide
17 appropriate reading materials. In addition, defendants have
18 prevented plaintiffs from participating in educational programs
19 which they have tried to pursue on their own initiative. For
20 example, defendants intentionally and deliberately denied
21 plaintiff JOHNSON the opportunity to take the Graduate Equivalency
22 Degree Examination (GED) because he was in Yucca Cottage.

23 36. Defendants have failed to provide rehabilitative
24 treatment or counseling programs for plaintiffs in Yucca Cottage.

25 37. Plaintiffs have suffered and continue to suffer
26 serious emotional and physical injury as a result of defendants'
27 practices regarding confinement in Yucca Cottage.

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1 B. Punitive Segregation

2 38. Defendants confine plaintiffs in Yucca Cottage cells
3 for indefinite periods of time in a program known as "motivational
4 hold" or "structured management." Defendants permit plaintiffs in
5 punitive segregation to leave Yucca Cottage only to perform hard
6 labor or to attend school. Defendants sometimes deny plaintiffs
7 in punitive segregation the opportunity to attend school or to
8 otherwise participate in any educational program.

9 39. Defendants permit plaintiffs in punitive segregation
10 to visit only with their parents and only for one-half hour on
11 Saturdays and one-half hour on Sundays. Defendants deny
12 plaintiffs in punitive segregation the opportunity to communicate
13 by telephone with family members.

14 40. Defendants fail to provide plaintiffs in punitive
15 segregation with appropriate counseling, recreation, and other
16 rehabilitative treatment.

17 C. Handcuffing and Shackling

18 41. Defendants use metal, police-style handcuffs and leg
19 shackles to punish plaintiffs for violations of institutional
20 rules. For example, defendants placed plaintiff D.A. in handcuffs
21 and leg shackles for refusing to shovel dirt and required him to
22 stand in the sun for two hours.

23 42. Defendants also use metal handcuffs to restrain
24 plaintiffs whenever they are taken to Yucca Cottage or moved from
25 Yucca Cottage. Defendants have restrained all of the plaintiffs
26 in metal handcuffs before taking them to Yucca Cottage even though
27 they offered no resistance and posed no threat to the security of
28 the institution.

1 43. Defendants have also used handcuffs to punish
2 plaintiffs for violations of institutional rules by restraining
3 their arms and legs to the corners of bed frames in what is known
4 as "four-pointing." For example, defendants "four-pointed"
5 plaintiff M.G. and left him on a metal bed frame for several hours
6 because he was involved in a fight.

7 44. Plaintiffs have suffered and continue to suffer
8 serious physical and emotional injury as a result of defendants'
9 use of handcuffs and shackles.

10 D. Disciplinary Due Process

11 45. Defendants subject plaintiffs to cruel, excessive,
12 harsh, and brutal punishments for violations of petty, vague, and
13 ambiguous institutional rules. For example, defendants punish
14 plaintiffs by placing them in handcuffs and leg shackles, by
15 locking them in solitary confinement cells, by placing them in
16 punitive segregation, and by extending their period of confinement
17 in the institution for such rule violations as smoking, swearing,
18 "staff disrespect," "excessive horseplay," and "rumor of AWOL."

19 46. Defendants have failed to adequately train and
20 supervise institutional staff and have permitted institutional
21 staff to impose cruel and harsh punishments in an arbitrary and
22 capricious manner. For example, defendants have authorized
23 institutional staff, as well as volunteer "counselors" who are not
24 employees of the institution, to punish plaintiffs by having them
25 placed in handcuffs, shackles, solitary confinement, and punitive
26 segregation.

27 47. Prior to the imposition of such harsh and brutal
28 punishments, defendants fail to provide plaintiffs with written

1 notice of any alleged rule infractions and an opportunity to
2 adequately defend. Defendants fail to provide hearings which are
3 adequate to determine whether a rule violation has occurred,
4 whether the child charged committed the violation, and to
5 determine the most appropriate disciplinary sanction for a child
6 who has violated an institutional rule.

7 48. Defendants have failed to establish any effective
8 grievance or appeal process for plaintiffs who have been subjected
9 to arbitrary, cruel, excessive, and illegal punishments.

10 II. MEDICAL CARE

11 49. Defendants have failed to adequately screen and
12 evaluate plaintiffs prior to or at the time of placement in CMJI
13 to determine their medical, dental, and mental health needs.

14 50. Defendants have failed to provide adequate and
15 appropriate medical, counseling and mental health services to
16 plaintiffs who have cut, hanged or otherwise injured themselves.

17 51. Defendants have failed to design and implement an
18 adequate and appropriate treatment procedure for plaintiffs who
19 are injured or ill or to provide an appropriate facility to
20 provide for their needs. As a result, plaintiffs who are injured
21 or ill are confined in Yucca Cottage.

22 52. Defendants have failed to protect the plaintiffs and
23 members of their class from the excessive or inappropriate use of
24 psychotropic and anti-depressant drugs. Defendants administer
25 such drugs to plaintiffs and members of their class for purposes
26 of punishment and control.

27 III. EDUCATIONAL PROGRAMMING

28 53. Defendants are recipients of federal funds within the

1 meaning of the Education for All Handicapped Children Act, 20
2 U.S.C. Section 1401, et seq.

3 54. Defendants have failed to adequately evaluate
4 plaintiffs to determine whether they have special education needs
5 and how such special needs can be met. Defendants also have
6 failed to develop appropriate individualized education plans for
7 plaintiffs who require special education. For example, plaintiff
8 P.M. has a stuttering problem and plaintiff M.G. has speech and
9 language disorders and has been determined to be seriously
10 emotionally disturbed. Despite knowledge of the handicapping
11 conditions, defendants have failed to provide plaintiffs with an
12 educational program which addresses these special needs.

13 55. Defendants have failed to hire, adequately train and
14 supervise sufficient numbers of qualified personnel to meet the
15 special education and related needs of juveniles confined at CMJI.
16 For example, there currently are no special education classes at
17 CMJI because the special education teacher position is vacant.
18 This vacancy has existed since at least January 1988. As a
19 result, juveniles at CMJI who are eligible for and/or in need of
20 special education services are not assigned to special education
21 classes or otherwise provided special education or related
22 services.

23 57. Contrary to the mandates of 20 U.S.C. Section 1415
24 (b)(1)(B), and regulations promulgated thereunder, specifically 34
25 C.F.R. 300.514, defendants have failed to recruit, train or assign
26 "surrogate parents" to juveniles confined at CMJI who are eligible
27 for and/or in need of special education services.

28 58. Defendants C. DIANE BISHOP, the ARIZONA BOARD OF

1 EDUCATION, CAROL MOORE, and SAM LEWIS have failed to adequately
2 monitor CMJI to insure that all eligible handicapped juveniles
3 confined at the institution are identified, evaluated, and
4 provided appropriate and necessary special education and related
5 services in a manner that complies with the requirements of
6 federal and state statutes and regulations.

7 59. Defendants have failed to provide an educational
8 program for plaintiffs which complies with the requirements of
9 Arizona law.

10 IV. REHABILITATIVE CARE AND TREATMENT

11 60. Defendants have failed to provide rehabilitative
12 services and treatment to plaintiffs in the least restrictive
13 environment appropriate to their needs.

14 V. INAPPROPRIATE PLACEMENT, EVALUATION, AND CLASSIFICATION

15 61. Defendants have failed to design and implement an
16 appropriate classification system for plaintiffs. As a result,
17 plaintiffs are arbitrarily confined in the institution, and
18 assigned to cottages within the institution, without regard to
19 their treatment needs.

20 62. Defendants have failed to adequately evaluate
21 plaintiffs as to their educational, vocational, psychological, and
22 treatment needs.

23 63. Defendants have failed to prepare adequate individual
24 treatment plans for plaintiffs.

25 64. Defendants have failed to evaluate plaintiffs in order
26 to determine whether CMJI is the least restrictive placement
27 appropriate to their needs. For example, plaintiff D.F. is
28 incarcerated at CMJI for running away from a group home and

1 plaintiff P.M. is incarcerated at CMJI for a probation violation
2 involving loitering. Plaintiff B.L. is incarcerated at CMJI while
3 he is awaiting a hearing on a charge of joy riding.

4 65. Defendants have failed to develop and implement less
5 secure, community-based alternative placements for plaintiffs and
6 members of their class who are inappropriately confined at CMJI.

7 VI. VISITATION, CORRESPONDENCE, AND ACCESS TO COUNSEL

8 66. Defendants have prohibited and otherwise restricted
9 contact between plaintiffs and members of their families. For
10 example, defendants permit plaintiffs in solitary confinement and
11 punitive segregation to visit only with their parents and only for
12 one-half hour on Saturday, and one-half hour on Sunday.

13 Defendants also restrict and prohibit plaintiffs from talking with
14 parents and other family members by telephone. For example,
15 defendants denied plaintiff JOHNSON the opportunity to visit with
16 his father or to receive telephone calls from his father for three
17 months.

18 67. Defendants have unlawfully confiscated, read, and
19 withheld plaintiffs' legal documents and communications with their
20 attorneys. For example, defendants searched plaintiff JOHNSON'S
21 cell and confiscated, read, and withheld his legal papers and
22 correspondence despite his objections and repeated requests that
23 they be returned.

24 VII PAROLE REVOCATION

25 68. Defendants have knowingly and deliberately failed to
26 establish parole revocation procedures which are adequate to
27 protect the rights of plaintiffs and the class they represent.

28 69. Defendants have subjected plaintiffs to parole

1 revocation procedures which violate their rights guaranteed by the
2 United States Constitution and the Arizona Constitution.

3 B. FACTS IN SUPPORT OF PLAINTIFF MATTHEW DAVEY JOHNSON'S
4 CLAIMS FOR DAMAGES AGAINST DEFENDANT UPCHURCH

5 70. As a direct and proximate result of the failure of
6 defendant UPCHURCH to properly train and supervise volunteer
7 counselors at CMJI, on August 4, 1986, plaintiff JOHNSON was
8 summarily handcuffed and confined in a solitary confinement cell
9 in Yucca Cottage. This cell was approximately 9' x 9' and of
10 concrete block construction with a bare cement floor and a heavy
11 barred door. A heavy metal bed frame stationed on metal legs and
12 an uncovered, institutional-style toilet and sink were the only
13 furnishings in the cell. The cell was not maintained at an
14 appropriate and comfortable temperature, it was not adequately
15 lighted, and it was not clean.

16 71. As a direct and proximate result of the failure of
17 defendant UPCHURCH to establish an adequate hearing procedure and
18 other safeguards, plaintiff JOHNSON was denied the opportunity to
19 present testimony of witnesses who had first-hand knowledge of
20 events which led to his solitary confinement and to otherwise
21 present an adequate defense. On August 5, 1986, defendant
22 UPCHURCH approved five days solitary confinement for plaintiff
23 JOHNSON.

24 72. On August 9, 1986, after plaintiff JOHNSON had been in
25 solitary confinement for five days, defendant UPCHURCH ordered
26 that he remain in Yucca Cottage in punitive segregation
27 indefinitely on "motivational hold." Under this program,
28 plaintiff JOHNSON could be released from Yucca Cottage only at the

1 discretion of defendant UPCHURCH. Defendant UPCHURCH kept
2 plaintiff JOHNSON in punitive segregation on "motivational hold"
3 in Yucca Cottage for a period in excess of 50 days.

4 73. Defendant UPCHURCH did not provide plaintiff JOHNSON
5 with notice of an offense or violation of an institutional rule
6 before placing him in punitive segregation or provide him with a
7 hearing. Nor did defendant UPCHURCH advise plaintiff JOHNSON when
8 he would be released from punitive segregation or what he was
9 required to do to be released from punitive segregation.

10 74. Defendant UPCHURCH subjected plaintiff JOHNSON to
11 unnecessarily harsh and cruel practices, conditions, and
12 punishments while in punitive segregation. Defendant UPCHURCH
13 permitted plaintiff JOHNSON to leave his cell to shower, brush his
14 teeth, and comb his hair only every other day; he restricted his
15 visits with his father to one-half hour on Saturdays and Sundays;
16 he did not permit him to receive telephone calls from his father;
17 and he did not permit him to make telephone calls to his father.

18 75. Defendant UPCHURCH failed to provide plaintiff JOHNSON
19 with any educational program while he was in punitive segregation
20 and defendant UPCHURCH prohibited plaintiff JOHNSON from taking
21 his Graduate Equivalency Examination (GED) while he was in
22 punitive segregation.

23 76. Defendant UPCHURCH directed that plaintiff JOHNSON'S
24 legal papers be confiscated, read, and withheld.

25 C. FACTS IN SUPPORT OF PLAINTIFF M.G.'S CLAIMS FOR DAMAGES
26 AGAINST DEFENDANTS HURTT AND KORFF

27 77. M.G. was first committed to the custody of the ADOC
28 for probation violation, running away, and indecent exposure on

1 September 24, 1986 when he was 14 years old.

2 78. While M.G. was under the care, custody, and control of
3 the ADOC, he was confined at AMJI from September 26, 1986 to
4 October 29, 1986; at CMJI from October 29, 1986 to February 12,
5 1987; at CMJI from March 25, 1987 to August 8, 1987; at CMJI from
6 September 4, 1987 to December 9, 1987; at AMJI from December 9,
7 1987 to May 18, 1987; at CMJI from May 18, 1988 to June 7, 1988;
8 at Sonora Desert Hospital from June 7, 1988 to June 17, 1988; at
9 Arizona State Hospital from June 17, 1988 to July 8, 1988; at CMJI
10 from September 2, 1988 to March 2, 1989; at Jane Wayland
11 Residential Treatment Center from July 17, 1989 to August 28,
12 1989; at CMJI from August 28, 1989 to August 30, 1989; and at
13 Alamo Juvenile Institution from August 30, 1989 to December 22,
14 1989.

15 79. At the time M.G. was first committed to the custody of
16 the ADOC, Defendant CAROL MOORE HURTT knew or should have known
17 that M.G. was seriously emotionally handicapped and learning
18 disabled. Defendant CAROL MOORE HURTT failed to establish
19 policies, procedures and regulations within the ADOC to insure
20 that M.G. was properly evaluated and to insure that a treatment
21 plan was prepared and implemented which addressed his treatment
22 needs. Instead, Defendant CAROL MOORE HURTT approved the transfer
23 of M.G. to CMJI which she knew or should have known was unable to
24 adequately meet his treatment and educational needs.

25 80. Defendant CAROL MOORE HURTT knowingly and deliberately
26 failed to develop and implement regulations, rules, and policies
27 of the ADOC so as to insure that M.G. received treatment and
28 education appropriate to his needs. Defendant CAROL MOORE HURT

1 knowingly and deliberately failed to employ, train, and supervise
2 staff to identify and address M.G.'s treatment and educational
3 needs.

4 81. Defendant CAROL MOORE HURTT knowingly and deliberately
5 failed to provide academic and special education programs for M.G.
6 which meet the requirements of state and federal law.

7 82. As a direct and proximate result of Defendant CAROL
8 MOORE HURTT's failure to address M.G.'s treatment and educational
9 needs within the ADOC, or to place M.G. in an alternate program or
10 setting which could identify and address his treatment and
11 educational needs, M. G.'s condition progressively deteriorated
12 while he was in the custody of ADOC.

13 83. As a direct and proximate result of Defendant THOMAS
14 KORFF's failure to develop and implement institutional policies,
15 rules, and regulations and as a direct and proximate result of
16 Defendant KORFF's failure to employ, train, and supervise staff to
17 provide care and supervision for M.G., CMJI staff under the direct
18 supervision and control of Defendant KORFF, and with his knowledge
19 and consent, repeatedly subjected M.G. to arbitrary and cruel
20 punishments, including placing him in handcuffs, belly-chains, and
21 four-point restraints and confining him in solitary confinement
22 for extended periods of time, as punishment for behavior which was
23 the result of his handicapping conditions.

24 84. As a direct and proximate result of Defendant THOMAS
25 KORFF's failure to address M.G.'s treatment and educational needs
26 while at CMJI, M. G.'s condition progressively deteriorated while
27 he was at CMJI.

28 85. Defendant THOMAS KORFF knowingly and deliberately

1 failed to provide academic and special education programs for M.G.
2 which meet the requirements of state and federal law.

3 86. At the direction of Defendants CAROL MOORE HURTT and
4 THOMAS KORFF, CMJI staff repeatedly subjected M.G. to cruel and
5 arbitrary punishments, including confining him in solitary
6 confinement for extended periods and placing him in handcuffs,
7 belly chains, and four-point restraints, as punishment for
8 behavior which was the result of his handicapping conditions.

9 87. In addition to failing to provide appropriate
10 treatment for M.G. while he was in their care and custody,
11 defendants CAROL MOORE HURTT and THOMAS KORFF obstructed efforts
12 to identify M.G.'s treatment needs by others acting on his behalf.
13 For example, defendants CAROL MOORE HURTT and THOMAS KORFF
14 attempted to prevent plaintiffs' expert consultant from evaluating
15 M.G. which resulted in delays in responding to M.G.'s treatment
16 needs.

17 88. Defendants CAROL MOORE HURTT and THOMAS KORFF knowingly
18 and deliberately failed to develop and implement an appropriate
19 release plan for M.G. Although they knew or should have known that
20 M.G. did not possess the social, academic, or vocational skills
21 necessary to function successfully in a non-institutional setting
22 and although they knew or should have known that M.G.'s home was
23 an inappropriate placement, defendants CAROL MOORE HURTT and
24 THOMAS KORFF nevertheless released M.G. on his eighteenth birthday
25 without transition funds or services.

26 89. Defendants CAROL MOORE HURTT and THOMAS KORFF
27 knowingly and deliberately failed to employ, train, and supervise
28 adequate staff at CMJI to protect M.G. from harm.

1 90. Defendants CAROL MOORE HURTT and THOMAS KORFF
2 knowingly and deliberately failed to establish parole services
3 which are adequate to protect the rights of M.G. Defendants CAROL
4 MOORE HURTT and KORFF subjected M.G. to parole revocation
5 procedures which they knew or should have known were violative of
6 his rights.

7 LEGAL CLAIMS

8 First Claim

9 91. Defendants' use of solitary confinement, punitive
10 segregation, handcuffs, and shackles as described herein violates
11 plaintiffs' rights guaranteed by the Eighth and Fourteenth
12 Amendments to the United States Constitution and Article 2,
13 Section 15 of the Constitution of the State of Arizona.

14 Second Claim

15 92. Defendants' failure to provide adequate procedural
16 protections prior to the infliction of harsh and cruel punishments
17 as described herein, defendants' failure to protect plaintiffs
18 from harm while in state custody, and defendants' failure to
19 provide adequate and appropriate medical care, educational
20 programs, rehabilitative treatment, classification, evaluation,
21 and placement as described herein, violate plaintiffs' rights
22 guaranteed by the Fourteenth Amendment to the United States
23 Constitution and Article 2, Section 4 of the Constitution of the
24 State of Arizona.

25 Third Claim

26 93. Defendants' interference with plaintiffs' access to
27 counsel, the courts, and their families as described herein
28 violates plaintiffs' rights guaranteed by the First and Sixth

1 Amendments to the United States Constitution and Article 2,
2 Section 6 of the Constitution of the State of Arizona.

3 Fourth Claim

4 94. Defendants' failure to properly evaluate plaintiffs
5 for handicapping conditions and to provide special education
6 services as described herein, violates plaintiffs' rights
7 guaranteed by the Education for the Handicapped Act, 20 U.S.C.
8 Section 1401, et seq.

9 Fifth Claim

10 95. Defendants' failure to establish procedures which
11 adequately protect the rights of plaintiffs during parole
12 revocation proceedings violates plaintiffs' rights guaranteed by
13 the Fourteenth Amendments to the United States Constitutions.

14 NO ADEQUATE REMEDY AT LAW

15 95. AS a proximate result of the defendants' policies,
16 practices, acts and omissions complained of herein, and the
17 conditions and circumstances described above to which plaintiffs
18 are subjected, plaintiffs have suffered, do suffer, and will
19 continue to suffer immediate and irreparable injury. Plaintiffs
20 have no plain, adequate, or complete remedy at law to redress the
21 wrongs described herein. Plaintiffs will continue to be
22 irreparably injured by the policies, practices, acts and omissions
23 of defendants unless this Court grants the injunctive relief which
24 plaintiffs seek.

25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiffs, on their own behalf and on behalf of
27 all others similarly situated, pray that this Court;

28 A. Assume jurisdiction of this action;

1 B. Award damages against defendant JAMES UPCHURCH in his
2 personal capacity to plaintiff MATTHEW DAVEY JOHNSON in an amount
3 which the Court deems proper;

4 C. Award damages against defendants CAROL MOORE HURTT and
5 THOMAS KORFF in their personal capacities to plaintiff M.G. in an
6 amount which the Court deems proper;

7 D. Issue a judgment pursuant to 28 U.S.C. Section 2201
8 and 2202 and Rule 57 of the Federal Rules of Civil Procedure
9 declaring that by subjecting plaintiffs to the conditions of
10 confinement described herein defendants THOMAS KORFF, CAROL MOORE,
11 and SAMUEL LEWIS have violated plaintiffs' rights guaranteed by
12 the First, Sixth, Eighth, and Fourteenth Amendments to the United
13 States Constitution, the Arizona Constitution, the Education for
14 the Handicapped Act, 20 U.S.C. Section 1401 et seq., the
15 regulations promulgated thereunder, and Arizona statutes and
16 regulations.

17 E. Issue a judgment pursuant to 28 U.S.C. Section 2201
18 and 2202 and Rule 57 of the Federal Rules of Civil Procedure
19 declaring that by subjecting plaintiffs to the conditions and
20 practices described herein at paragraphs 53-58, defendant BISHOP
21 has violated plaintiffs' rights guaranteed by the Education for
22 the Handicapped Act, 20 U.S.C. Section 1401 et seq., regulations
23 promulgated thereunder, and Arizona statutes and regulations.

24 F. Issue preliminary and permanent injunctions enjoining
25 the defendants THOMAS KORFF, CAROL MOORE, and SAMUEL LEWIS, their
26 agents, employees, successors in office and assigns from engaging
27 in unconstitutional and unlawful acts and practices including, but
28 not limited to:

1 1) Subjecting plaintiffs to solitary confinement,
2 punitive segregation, handcuffs and shackles as punishment for
3 violations of institutional rules;

4 2) Failing to provide appropriate procedural
5 safeguards prior to punishing plaintiffs;

6 3) Confining plaintiffs in unsafe, unsanitary and
7 unhealthy facilities;

8 4) Interfering with plaintiffs' right of access to
9 counsel, the courts and their families;

10 5) Failing to provide plaintiffs with appropriate
11 medical, dental, and psychiatric care;

12 6) Failing to adequately screen and evaluate
13 plaintiffs to ensure that they are not inappropriately confined at
14 CMJI;

15 7) Failing to provide sufficient staff with
16 appropriate training, experience and supervision to insure
17 plaintiffs' safety and to provide plaintiffs with rehabilitative
18 treatment.

19 G. Issue preliminary and permanent injunctions enjoining
20 the defendants THOMAS KORFF, CAROL MOORE, SAMUEL LEWIS, C. DIANE
21 BISHOP, and the ARIZONA BOARD OF EDUCATION, their agents,
22 employees, successors in office and assigns from failing to
23 provide plaintiffs with appropriate and necessary educational
24 services, including special education and related services, in a
25 manner that does not comply with the requirements of federal and
26 state statutes and regulations.

27 H. Retain jurisdiction over defendants THOMAS KORFF,
28 CAROL MOORE, SAMUEL LEWIS, C. DIANE BISHOP, and the ARIZONA BOARD

1 OF EDUCATION and each of them until such time as the Court is
2 satisfied that their unlawful policies, practices, acts, and
3 omissions complained of herein no longer exist and will not recur.

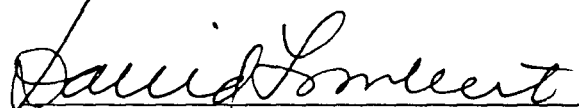
4 I. Award plaintiffs the costs of this proceeding,
5 attorneys' fees under 42 U.S.C. Section 1988, and such other and
6 further relief as to this Court seems just and proper.

7 DATED: April 9, 1990.

Respectfully submitted,

8 

9 GRACE MCILVAIN
10 MILLER & PITT, P.C.
11 111 South Church Avenue
12 Tucson, AZ 85701-1680
13 (602) 792-3836

14 

15 DAVID LAMBERT
16 NATIONAL CENTER FOR YOUTH LAW
17 1663 Mission St., Ste. 550
18 San Francisco, CA 94103
19 (415) 543-3307

20 Attorneys for Plaintiffs
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23
24
25
26
27
28

1 Copy of the foregoing
2 mailed this 9th day
of April 1990 to:

3 Ronald A. Lebowitz, P.C.
4 Louis A. Goodman
Attorneys at Law
5 990 Southwest Financial Plaza
3101 North Central Avenue
Phoenix, AZ 65012-2461

6 *Faye D. Bazemore*
7 Faye D. Bazemore