



JI-CA-003-002

FILED

JUL 27 1990

CARY L. GRANVILLE, County Clerk

By [Signature] 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

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

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

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

13 Prior to trial, counsel filed trial briefs. On April
14 11, 1990, in response to the Court's request, the Plaintiffs
15 filed a Statement identifying which allegations applied to which
16 Defendant institutions. On April 26 and 27, 1990, during the
17 presentation of Plaintiffs' evidence, Plaintiffs withdrew
18 certain allegations. On May 7, 1990, Dr. Michael Schumacher
19 agreed that Defendants would substitute leather cuffs for the
20 soft ties used by Orange County Juvenile Hall (OCJH) staff to
21 tie minors to metal bedframes. (Exhibit 7.1906). At the
22 conclusion of Plaintiffs' case in chief, Defendants moved for
23 judgment pursuant to Section 631.8 of the Code of Civil
24 Procedure. At the hearing on this motion, Plaintiffs withdrew
25 certain allegations; Plaintiffs moved to conform their Third
26 Amended Complaint to proof, which motion was granted; Plaintiffs
27 dismissed and substituted certain parties; and the Court granted
28 the CCP 631.8 motion as to certain allegations, but declined to

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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.

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

4 Description of Orange County Juvenile Hall.

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

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

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

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

16 Dr. Michael Schumacher is the Chief Probation Officer of
17 the County; Edward M. Clarke is the Chief Deputy for
18 Institutional Services (including OCJH); and Stephanie Lewis is
19 the Director of OCJH. Generally, the OCJH staff consists of
20 four assistant directors, three of whom are responsible for
21 supervising several units; one supervising probation counselor
22 for each unit; and deputy and night probation counselors who
23 manage the minors on the living units. OCJH maintains a ratio
24 of one staff member for each ten (10) minors in detention during
25 the day and for each twenty (20) minors at night, which complies
26 with Section 4279 of the Minimum Standards for Juvenile Halls as
27 adopted by the Department of the Youth Authority and which are
28 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

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

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

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

14 Second, the evidence showed the Defendants have worked
15 continuously since 1985 to study, update and revise their
16 written procedures. There is no evidence that Defendants
17 intend, or will turn back the clock. When Mr. Clarke became
18 Chief Deputy Probation Officer for Institutional Services in
19 1985, he instructed Ms. Jan Honadle, Staff Assistant to
20 Probation Management, to prepare an Institutional Liability
21 Study which addressed, among other items, the issues Plaintiffs
22 have challenged. Ms. Honadle completed her report in August,
23 1985. It became a working tool for many revisions to the
24 written procedures, particularly those adopted in January, 1987.

25 Third, County Counsel has advised Defendants since before
26 1985 regarding whether to revise the written procedures.

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

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

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

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

18 Phipps v. Saddleback Valley ('88) 204 C.A.3D 1110 is
19 distinguishable from Hollingsworth. In Phipps, the Appellate
20 Court affirmed the permanent injunction granted by the trial
21 court and rejected the argument that the issue whether the boy
22 with AIDS should be allowed to attend school was moot. The
23 Court explained that good faith "voluntary" discontinuance of
24 the policy not to allow the boy to attend school was the key;
25 and the school district had admitted the boy to school only
26 under the compulsion of a preliminary injunction ordered by the
27 Court. By contrast, in Hollingsworth, all the evidence supports
28 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

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

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

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

15 III

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

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

24	SUBJECT	CURRENT WRITTEN PROCEDURE
25	Room Confinement	3-1-027 (3/22/89)
26	Minor's Rights	3-1-022 (3/21/89)
27	(a) Access to Legal Materials	
28	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

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1 for security purposes, the passage of Proposition 115
2 directly impacts the applicable law in the Hollingsworth
3 case because now the "reasonable relationship/rational
4 response" test probably applies and not the "necessity"
5 or "least drastic means" test promulgated by the
6 California Supreme Court in In re Arias ('86) 42 C3d 667.
7 The California Supreme Court relied primarily on
8 De Lancie v. Superior Court, 31 C3d 805, as the "guiding
9 principle" [In re Arias, p. 689] for its reasoning and
10 holding in In re Arias. The proponents of Proposition
11 115 specifically sought by the passage of Proposition 115
12 to overturn De Lancie. See "Analysis of Crime Victims
13 Justice Reform Act" prepared for the Senate Committee on
14 Judiciary and the Assembly Public Safety Committee, p.
15 26. Therefore, if De Lancie has been overturned and In
16 re Arias was based on De Lancie, the authority of
17 In re Arias is highly questionable.

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

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

1 this Court and applied to the evidence in this case.

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

13 Mail: 3-1-024 (3/13/89). Defendants' current written
14 procedure regarding mail is set forth in procedure 3-1-024
15 (3/13/89), and is reinforced in the minor's rights procedure 3-
16 1-022 (3/21/89). The current procedure complies with Section
17 2601(b) of the Penal Code. Further, it exceeds the Youth
18 Authority's Minimum Standards as set forth in Section 4290. The
19 California Youth Authority found OCJH in compliance with the
20 mail standard for minors in its 1989 annual inspection of OCJH.
21 Plaintiffs have not carried their burden of proof to present
22 evidence or law which establishes that Defendants' current
23 procedure 3-1-024 (3/13/89) is unconstitutional on its face.

24 Pictures/Reading Materials (excluding Legal Materials):
25 3-1-041 (2/1/90). Defendants' current procedure regarding
26 pictures/reading material is set forth in procedure 3-1-041
27 (2/1/90), and is reinforced in the minor's rights procedure 3-1-
28 022 (3/21/89). A minor's right to access to legal materials is
not covered by the Pictures/Reading Materials procedures, but by

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

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

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

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

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matters upon request by the minor.

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

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

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

20 For analysis, the Court will assume "monitor" is most
21 intrusively interpreted to mean surreptitiously listening-in to
22 a telephone call between a minor and another person. Both
23 In re Grimes, 208 C.A.3d 1175, and People v. Torres, 218 C.A.3d
24 700, are inapplicable because these cases involve telephone

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

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

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

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27 ² It is interesting to note that In re Grimes purports to
28 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.

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

18 IV

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

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

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

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1 following current written procedures are unconstitutional, to
2 wit: Room Confinement [3-1-027 (3/22/89)]; Minor's Rights,
3 including Access to Legal Materials [3-1-022 (3/21/89)]; Mail
4 [3-1-024 (3/13/89)]; Pictures/Reading Material [3-1-041
5 (2/1/90)]; Telephone (Collect) [3-1-036 (3/8/89)]; and
6 Visitation [3-2-025 (3/21/89)]. Accordingly, Plaintiffs have
7 not carried their burden of proof to present evidence or law
8 which entitles Plaintiffs to an injunction enjoining Defendants'
9 current practices implementing these procedures.

10 Alleged practices unconstitutionally deviating from
11 written procedures which Plaintiffs do not challenge.

12 Recognizing that actual practices may vary from valid written
13 procedures (Milonas v. Williams, 691 F.2d 931) and, if so, a
14 court may enjoin a party from violating its own rules (Pena v.
15 New York State Division for Youth, 419 F. Supp. 203), Plaintiffs
16 contend the following alleged practices at OCJH
17 unconstitutionally violate minor's rights:

- 18 (1) Rules of Conduct not explained.
- 19 (2) Discipline is arbitrarily imposed without due
20 process.
- 21 (3) Discipline is imposed by depriving minors of
22 exercise.
- 23 (4) Minors who seek legal counsel and remedies for
24 violation of their civil rights are harassed and
25 intimidated.
- 26 (5) OCJH is overcrowded.
- 27 (6) Defendants fail to provide minors in OCJH with
28 adequate psychiatric, psychological, or counseling
services.

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

3 (8) Grievance practices.

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

6 (1) Rules of Conduct are adequately explained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (6) Minors in OCJH receive adequate psychiatric, psycho-
14 logical and counseling services (except as to "Restraints"
15 discussed below).

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

25 Plaintiffs' expert, Dr. Lauer, testified he thought
26 CEGU was too small to provide meaningful service. However,
27 Plaintiffs themselves testified in contradiction to their own
28 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

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

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

10 (8) Defendants' Grievance practices are adequate.

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

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

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

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

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

17 V

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

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

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

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

9 The evidence showed the following:

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

26 ³ N.B. The Hollingsworth lawsuit had not been certified as a
27 class action in late 1986 and January, 1987. It was certified
28 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.

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

10 (2) Mr. Rito Rosa, regional administrator of the Youth
11 Authority testified Paragraph I(1) appears to violate Section
12 4304 of the Youth Authority's Minimum Standards. Section 4304
13 provides: "While under juvenile hall supervision, minors shall
14 not be denied access to licensed attorneys."

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

18 (4) Paragraph I(1) of current procedure 3-1-025
19 (3/21/89) is facially inconsistent with Paragraph I(D)(2)(a)(2)
20 of current procedure 3-2-025 (3/21/89) which refers to
21 "identification" requirements when visitors are attorneys, but
22 omits the requirement of obtaining permission from the Juvenile
23 Court Attorney of Record.

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

28 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.

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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'

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

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

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

26 Decision Making Process. Mr. Hallstrom, Director of OCJH
27 for the past five years, testified that the decision to restrain
28 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.)

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

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

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

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

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

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

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

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

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

26 Clear Emergency. In a clear emergency, where neither
27 time nor availability permits OCJH staff to obtain the prior
28 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

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

19 Changes to Supervisory Review: In order to provide the
20 care, treatment and safety constitutionally guaranteed to
21 minors, the Court will order that, in addition to the current
22 procedures, the Supervising Probation Counselor, or Assistant
23 Director, or Director, as the case may be, must consult with a
24 psychiatrist at the time limits now indicated in the current
25 procedure; and the approval of a psychiatrist must be obtained
26 in order for the restraint of the minor to be continued.
27 However, under extraordinary circumstances where it is
28 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 claim⁵, 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.

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

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

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

12 IT IS ADJUDGED:

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

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

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

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

17 PROVIDED, HOWEVER, the foregoing injunction is
18 subject to the following conditions: Defendants shall
19 submit to the Court proposed rewritten procedures
20 3-1-025; 3-2-110; and 3-2-111 which correct the
21 deficiencies and incorporate the changes consistent with
22 this Statement of Decision together with a Corrective
23 Action plan which shall set forth (1) the steps to be
24 taken to implement the rewritten procedures; (2) a
25 detailed timetable for implementing each step; and (3)
26 identification, by name, of each person or persons
27 responsible for implementing each step to be taken in the
28 rewritten procedures.

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

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

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

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

20 DATED: July 27, 1990

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23 LINDA HODGE McLAUGHLIN
24 Judge of Superior Court
25 and
26 Judge of the Juvenile Court

27 LHM:be/ec
28 90-006

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FILED

JUL 27 1990

MARY L. GRIFFIN, County Clerk
By B 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.

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1 III. JOPLIN YOUTH CENTER:

2 A. On the two bulletin boards.

3 IV. YOUTH GUIDANCE CENTER:

4 A. Same as Juvenile hall.

5 V. ALL FACILITIES:

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

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

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16 DATED: JULY 27, 1990

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19 *Linda H. McLaughlin*
20 Linda H. McLaughlin
21 Judge of the Superior Court and
22 Judge of the Juvenile Court

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25 LHM:sd
26 90-010
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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. *888 T 92*
~~517 North Main Street, Suite No. 214~~
~~Santa Ana, CA 92702~~ *Orange 72668*
(714) 835-8855

DATED: July ____, 1990

Gary L. Granville
Clerk of the Court

90-011
LHM:sd

FILED

JUL 27 1990

WILLIAM L. GRANVILLE, County Clerk

By B 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

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

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

9 APPOINTMENT OF REFEREE

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

14 500 North State College Blvd., Ste. 600
15 Orange, CA 92668 ph: (714) 939-1300

16 MATTERS SUBMITTED

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

19 Plaintiffs' Application for Attorneys Fees and Costs

20 1. The issues of fact in the examination of Plaintiffs'
21 application for attorneys' fees in the lodestar amount of
22 \$651,994.50 (\$632,017.00 + \$19,977.50), including, without
23 limitation:

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

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

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

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

1 accounting.

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

7 Defendants' Application for Costs

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

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

17 POWERS OF REFEREE

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

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

22 2. To recommend the issuance of subpoenas.

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

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

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

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

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

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

11 REPORT OF REFEREE

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

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

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

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

28 4. Regarding Plaintiffs, determination of the litigation

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

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

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

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

18 8. Recommendations as to the following items:

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

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

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

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

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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

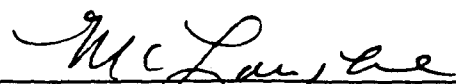
The Referee is invited, as may be appropriate, to append, at the end of the report, wording as follows: "The hearing on objections to the report of the Referee having been [heard and submitted] [waived]; and the Court having considered all of these matters independently of the report of the Referee, 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

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90-009