



JI-ID-004-001

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13
14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE DISTRICT OF IDAHO

16 FREDERICK YELLEN, JR., a minor,
17 by and through FREDERICK YELLEN,
18 SR. and ANITA YELLEN, his parents
19 and legal guardians; THOMAS J., a
20 minor, by and through JOHN and JANE
21 J., his parents and legal guardians;
22 BENJAMIN M., a minor, by and through
23 JOHN and JANE M., his parents and
24 legal guardians, BERNARD J., by and
25 through Betty J., his mother and
26 legal guardian, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

ADA COUNTY, IDAHO;

E.C. "CHUCK" PALMER, individually
and in his official capacity as
Sheriff of Ada County, Idaho;

VERN EMERY, BILL GRATTON, and ED
RIDDLE, individually and in their
official capacities as County
Commissioners of Ada County, Idaho;
MARIE SCHREINER, individually and
in her former official capacity as
a County Commissioner of Ada County,
Idaho (during certain relevant time
frames herein),

Civil Action No.
83-1026

SECOND AMENDED
CIVIL RIGHTS COMPLAINT
FOR INJUNCTIVE,
DECLARATORY AND OTHER
EQUITABLE RELIEF AND
DAMAGES

(CLASS ACTION)

1 DONALD FISHER, PAT COWLES, JANE GABBERT,
2 JAY KNIGHT, Deputy TAYLOR, Deputy
3 SCARBOROUGH, Deputy DICKOVER, WALTER
4 SCHARF, Deputy MONSON, Deputy VAJDA,
5 FRANK COBB, OMER DURHAM, Deputy WELLMAN,
6 IAN ISHIYAMA, Deputy YOUNGER, indivi-
7 dually and in their official capacities
8 as deputies and guards at the Ada County
9 Jail;

10 THOMAS R. MORDEN, Judge of the
11 Magistrate Division of the District
12 Court, assigned as Juvenile Court
13 Judge, in his official capacity,

14 Defendants.

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INTRODUCTORY STATEMENT

1. This is a civil rights class action involving the
conditions of confinement and policies and practices of
defendants regarding juveniles at the Ada County Jail in Boise,
Idaho. Plaintiffs bring this action for declaratory,
injunctive, and other equitable relief and damages, on behalf of
themselves and all other juveniles similarly situated who are,
have been, or will be confined in the Ada County Jail, and
thereby subjected by defendants to cruel, unconscionable and
illegal conditions of confinement in the jail; illegal
incarceration in the jail without adequate separation from
confined adult offenders; unlawful secure detention in said jail
of juveniles who are charged with or who have committed offenses
which would not be criminal if committed by adults ("status
offenses"); and denial of adequate and appropriate community
placements as alternatives to the jail.

1 2. Plaintiffs bring this action under the federal Civil
2 Rights Acts, 42 U.S.C. §§1983 and 1988, to redress the
3 violations by defendants, acting under color of state law, of
4 the rights of plaintiffs under the Fourteenth Amendment to the
5 United States Constitution, specifically the right to due
6 process of law, right to freedom from cruel and unusual
7 punishments, right to freedom of association, right of privacy,
8 and right to rehabilitative treatment in the least restrictive
9 setting and under the least restrictive conditions. Plaintiffs
10 also bring this action under 42 U.S.C. §§1983 and 1988 to
11 redress the violations by defendants, under color of state law,
12 of plaintiffs' statutory rights under the Juvenile Justice and
13 Delinquency Prevention Act of 1974, as amended, 42 U.S.C. §5601
14 et seq. ["Juvenile Justice Act"], as more particularly set forth
15 hereinafter.

16 3. Plaintiffs also bring this action under the Juvenile
17 Justice Act to challenge (a) the detention of plaintiffs by
18 defendants in the Ada County Jail, without adequate separation
19 from confined adult offenders; (b) the detention by defendants,
20 in the jail, a secure facility, of plaintiffs who are charged
21 with or who have committed offenses which would not be criminal
22 if committed by adults; (c) the failure and refusal of
23 defendants to provide and utilize adequate and appropriate
24 placements as alternatives to said jail.

25 4. Plaintiffs also bring this action under Article I,
26 Sections 1, 2, 6, 13, and 21 of the Constitution of the State of

1 Idaho, and the Idaho Code.

2 JURISDICTION

3 5. This Court has jurisdiction of this action under 28
4 U.S.C. §1343(3), this being an action to redress the
5 deprivation, under color of state law, of rights secured by the
6 Constitution of the United States, the Civil Rights Acts, 42
7 U.S.C. §§1983 and 1988, and the Juvenile Justice Act, 42 U.S.C.
8 §§5601 et seq.

9 6. This Court also has jurisdiction of this action under
10 28 U.S.C. §1343(4), this being an action to recover damages and
11 to secure declaratory, injunctive, and other equitable relief
12 under Acts of Congress providing for the protection of civil
13 rights, specifically the Civil Rights Acts, 42 U.S.C. §§1983 and
14 1988, and the Juvenile Justice Act.

15 7. This Court also has jurisdiction of this action under
16 28 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal
17 Rules of Civil Procedure, this being an action for a declaration
18 of the rights of plaintiffs, and for injunctive and other
19 equitable relief based upon said declaratory judgment, under the
20 Civil Rights Acts, 42 U.S.C. §§1983 and 1988, and the Juvenile
21 Justice Act.

22 8. This Court also has jurisdiction of this action under
23 28 U.S.C. §1331(a), this being an action wherein the matter in
24 controversy arises under the Constitution and laws of the United
25 States.

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

6 PLAINTIFFS

7 10. Plaintiff FREDERICK YELLEN is a juvenile, 17 years of
8 age, and a citizen of the United States. At all times during
9 the events described herein, he resided in Ada County, Idaho,
10 with FREDERICK YELLEN, SR., and ANITA YELLEN, his parents. Said
11 plaintiff is currently incarcerated at the Idaho Youth Services
12 Center in St. Anthony, Idaho, but is subject to the jurisdiction
13 of the Ada County Juvenile Court, and can be returned to
14 confinement in the jail for violation of the conditions of his
15 probation.

16 11. Plaintiff THOMAS J. is a juvenile under 18 years of
17 age, and a citizen of the United States. At all times during
18 the events described herein, said plaintiff has resided in the
19 State of Idaho.

20 12. Plaintiff BENJAMIN M. is a juvenile under 18 years of
21 age, and a citizen of the United States. At all times during
22 the events described herein, said plaintiff has resided in the
23 state of Idaho.

24 12a. Plaintiff BERNARD J. is a juvenile under 18 years of
25 age, and a citizen of the United States. At all times during
26 the events described herein, said plaintiff has resided in the

1 state of Idaho.

2 13. Said plaintiffs are actual persons who sue under
3 fictitious names because they fear retribution from the
4 defendants and humiliation and embarrassment from friends,
5 neighbors, and the public for their participation in this
6 litigation.

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1 capacities.

2 17. Defendants FRANK COBB, OMER DURHAM, LOREN WILLMAN,
3 IAN ISHIYAMA, CHARLES YOUNGER, DONALD FISHER, JANE GABBERT, PAT
4 COWLES, JAY KNIGHT, TAYLOR, SCARBOROUGH, DICKOVER, WALTER
5 SCHARF, MONSON, and VAJDA are all presently or at times relevant
6 hereto were deputies or guards at the Ada County Jail, and were
7 charged with the care and custody of prisoners housed at the Ada
8 County Jail. These defendants are sued in their individual and
9 present or former official capacities.

10 18. Defendant THOMAS R. MORDEN is a Judge of the
11 Magistrate Division of the District Court, and is currently
12 assigned as Juvenile Court Judge of Ada County, Idaho. As such,
13 said defendant is responsible under the Idaho Code and under the
14 Idaho Juvenile Rules for the detention, custody, care, placement
15 and release of all children brought before the juvenile court
16 who are alleged to be delinquents, status offenders, abused,
17 neglected or dependent. Said defendant is sued in his official
18 capacity.

19 CLASS ACTION

20 19. Plaintiffs bring this action on behalf of themselves
21 and all others similarly situated, pursuant to Rule 23(a),
22 (b)(1) and (b)(2) of the Federal Rules of Civil Procedure. The
23 class consists of all juveniles who are currently, have been
24 during the past two years or in the future will be confined in
25 the Ada County Jail.

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1 20. The members of the class are so numerous that joinder
2 of all members is impracticable. According to the available
3 statistics, at least 304 juveniles were confined in the Ada
4 County Jail in 1981. In addition, there are questions of law
5 and fact common to the members of the plaintiff class regarding
6 practices of the defendants, and the claims of the named plain-
7 tiffs are typical of the claims of the members of the plaintiff
8 class. The named plaintiffs and plaintiffs' counsel will fairly
9 and adequately protect the interests of the members of the class.

10 21. The prosecution of separate actions by individual
11 members of the class would create a risk of inconsistent or
12 varying adjudications with respect to individual members of the
13 class which would as a practical matter be dispositive of the
14 interests of the other members not parties to the adjudications
15 or substantially impair or impede their ability to protect their
16 interests.

17 22. By their policies, the defendants have acted and
18 continue to act on grounds and in a manner generally applicable
19 to the class, thereby making appropriate final injunctive relief
20 or corresponding declaratory relief with respect to the class as
21 a whole.

22 23. The injuries suffered by the named plaintiffs and the
23 members of the plaintiff class as a result of the policies and
24 practices of defendants are capable of repetition, yet may evade
25 review, thereby making class relief appropriate.
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1 In addition, adult inmates pass drugs and cigarettes to the
2 juvenile inmates through cracks in the caulking strips which
3 border the windows.

4 29. Defendants issue orange institutional-type jumpsuits
5 to plaintiffs, and require plaintiffs to wear these jumpsuits
6 during their confinement in the jail.

7 30. Defendants fail to provide plaintiffs with supplies
8 necessary to maintain personal hygiene, such as shampoo,
9 toothpaste, and toothbrushes. Defendants allow plaintiffs to
10 have these items only if plaintiffs are able to purchase them
11 through the jail commissary.

12 31. Defendants confine those juveniles who are
13 incarcerated in isolation cells to their cellblocks during the
14 entire period of their confinement, except when plaintiffs meet
15 with visitors. Defendants fail to provide such plaintiffs with
16 opportunities or facilities for exercise or recreation.

17 32. Defendants do not allow plaintiffs to telephone
18 relatives, ministers, or friends during the period of
19 plaintiffs' incarceration in the jail.

20 33. Defendants fail to provide stamps or stationery for
21 plaintiffs to correspond with family members, attorneys, or
22 friends. Defendants allow plaintiffs to send letters to family
23 members, attorneys or friends only if plaintiffs are able to
24 purchase stamps and stationery.

25 34. Defendants deny plaintiffs opportunities for
26 visitation except for one two-hour period each Sunday.

1 35. Defendants fail to provide any medical or
2 psychological screening or examination for plaintiffs when they
3 are taken into custody. Defendants fail to provide regular
4 medical or mental health services to plaintiffs.

5 36. Defendants fail to provide jail personnel who are
6 trained in identifying and responding to problems of juveniles.
7 Defendants' failure to provide trained staff results in lack of
8 attention to problems of plaintiffs during their confinement,
9 lack of appropriate assessment of plaintiffs' physical and
10 emotional needs, and lack of programs for plaintiffs during
11 their confinement. Such failure subjects plaintiffs to serious
12 danger at the hands of institutional personnel, other inmates,
13 and themselves.

14 37. Defendants fail to properly supervise plaintiffs in
15 their cells. Defendants routinely fail to equip and maintain in
16 proper working order the existing audio monitoring devices
17 located in the jail.

18 38. Defendants fail to properly insure the safety and
19 well-being of plaintiffs. Defendants fail to employ and
20 maintain an adequate number of trained supervisory personnel to
21 supervise the well-being of plaintiffs, and to protect the
22 physical safety of plaintiffs.

23 39. Defendants fail to provide plaintiffs with any
24 educational program during plaintiffs' period of confinement.

25 40. Defendants confine and detain plaintiffs in the
26 Ada County Jail where plaintiffs are not separated by sight and

1 sound from adult inmates confined in the jail. Defendants also
2 allow plaintiffs to have regular contact with adult inmate
3 trustees in the jail.

4 41. Defendants fail to implement and promulgate rules and
5 regulations for the proper handling and treatment of plaintiffs.

6 42. As a result of defendants' policies and practices,
7 plaintiffs' confinement in the Ada County Jail is cruel, harsh,
8 punitive and oppressive.

9 43. In 1978, defendant PALMER requested Gary Deland, a
10 corrections consultant for the National Institute of
11 Corrections, to inspect and evaluate the Ada County Jail. In
12 his report, Mr. Deland concluded that the staffing levels at the
13 jail were "dangerously low" and recommended that at least seven
14 personnel be added to the jail staff.

15 44. On April 30, 1982, Lieutenant Hope of the Ada County
16 Jail submitted a memorandum to defendant PALMER, stating that
17 existing staffing levels at the jail constituted a "very
18 dangerous and substantial deficiency in manpower." The
19 memorandum stated that the current staffing ratio was approxi-
20 mately one officer per forty inmates, resulting in a staffing
21 ratio which was lower than what existed at the time of the
22 National Institute of Corrections report. The memorandum
23 concluded that the shortage of manpower did not allow for
24 adequate training or supervision of employees, and that the
25 safety of all jail personnel was in jeopardy.

1 45. Defendants arrested plaintiff FREDERICK YELLEN, JR.,
2 on May 9, 1982. Defendants issued plaintiff a citation for
3 possession of smoking tobacco and also charged him with
4 possession of drug paraphernalia. Upon plaintiff's arrest,
5 defendants placed him in the Ada County Jail where defendants
6 subjected him to the circumstances and conditions complained of
7 herein.

8 46. Upon arrival at the Ada County Jail, defendants
9 placed plaintiff YELLEN in a jail cell, designated by defendants
10 as the "juvenile cell." The cell is located in a corner of the
11 jail, and is outside of visual or audio observation from the
12 central guard room. The monitoring device in the cell was
13 inoperative during the course of plaintiff's incarceration at
14 the facility.

15 47. Defendants incarcerated Plaintiff YELLEN in the same
16 cell with five other juveniles. Two of the other juveniles had
17 been convicted of various crimes and were being held pursuant to
18 their sentences. One of the other juveniles was being held
19 prior to trial.

20 48. The defendants knew or should have known that several
21 of the other inmates in plaintiff YELLEN's cell had backgrounds
22 of violent behavior, and were incarcerated at the jail because
23 of such behavior. Defendants knew or should have known that
24 this seriously jeopardized plaintiff's safety. Inmate Richard
25 Engie had been incarcerated at the Ada County Jail for at least
26 16 previous criminal charges, including 10 felonies. He was

1 transferred to the Ada County Jail in May 1982, after an
2 attempted escape in which a detention officer was injured.
3 Inmate Sean Matthews had been incarcerated at the Ada County
4 Jail on at least 13 previous criminal charges, including 8
5 felonies. He was transferred to the Ada County Jail in May
6 1982, due to his violent and disruptive history at the Ada
7 County Juvenile Detention Facility. Inmate Randall McKeown had
8 been incarcerated at the Ada County Jail on at least 13 previous
9 criminal charges, including 12 felonies. He was transferred to
10 the Ada County Jail from the Nez Perce County Jail prior to May,
11 1982, and his detention at the Jail was continued, in part, due
12 to his history of violent behavior. Inmate Andy Anderson had
13 been previously incarcerated at the Ada County Jail on at least
14 8 previous criminal charges, including 2 felonies.

15 49. Defendants placed plaintiff YELLEN at the Ada County
16 Jail on May 9, 1982. On May 18, 1982, from approximately 1:00
17 p.m. to 4:00 p.m., the other inmates in plaintiff's cell
18 brutally and sadistically beat and kicked plaintiff YELLEN about
19 the head, stomach and back. Plaintiff YELLEN was additionally
20 forced onto his knees on the floor by the open toilet, while the
21 other inmates forcibly shoved his head into the urine and
22 feces-encrusted toilet bowl, and instructed him to "blow
23 bubbles." As a result of these beatings, plaintiff YELLEN
24 suffered severe injuries, including a concussion.

25 50. Defendants did not provide plaintiff YELLEN with
26 medical care until 1:00 a.m., May 19, 1982. He was not

1 transported to the hospital until 1:45 a.m., approximately 10
2 hours after he received his last injury.

3 51. During the course of the beatings of plaintiff
4 YELLEN, defendants failed to intervene or to terminate the
5 brutal beating of plaintiff.

6 52. When plaintiff YELLEN was returned from the hospital,
7 defendants placed him back into the same cell with the same
8 inmates who had originally beaten him, despite the fact that
9 YELLEN had informed the defendants that he had been beaten by
10 the other inmates.

11 53. Christopher Peterman, age 17, was taken into custody
12 on May 28, 1982, pursuant to an Ada County Traffic Contempt
13 Warrant. The defendants issued the warrant because of
14 Christopher's failure to pay \$73 worth of traffic tickets and
15 fine. When Christopher was arrested, defendants immediately
16 transported him to the Ada County Jail and placed him under
17 their control and supervision. During his confinement at the
18 Ada County Jail, defendants subjected him to the circumstances
19 and conditions complained of herein.

20 54. Upon Christopher's arrival at the Ada County Jail,
21 defendants placed Christopher in the jail cell designated by
22 defendants as the "juvenile cell." The cell is located in the
23 southeast corner of the jail, and is outside visual or audio
24 observation from the central guard room. The audio monitoring
25 device in the cell was inoperative during the course of
26 Christopher's incarceration at the facility.

1 55. Defendants incarcerated Christopher in the same cell
2 with five other juveniles, the same juveniles who had previously
3 beaten plaintiff YELLEN.

4 56. The defendants knew, or should have known, that
5 several of the other inmates in Christopher's cell had
6 backgrounds of violent behavior, and were incarcerated at the
7 jail because of such behavior.

8 57. Defendants placed the deceased, Christopher Peterman,
9 in the juvenile cell at the Ada County Jail on May 28, 1982.
10 During a fourteen-hour period, from approximately midnight, May
11 30, 1982, to approximately 2:00 p.m., May 31, 1982, Christopher
12 was beaten and eventually tortured to death by other inmates
13 in the cell. Around midnight of May 30, 1982, while Christopher
14 was asleep, the other inmates wrapped toilet paper around his
15 feet and lit the paper on fire. The other inmates subsequently
16 pulled Christopher from his bunk, and beat him about the head,
17 neck, eyes, stomach, back and testicles. They later forced
18 Christopher onto his knees by the floor of the open toilet bowl,
19 and placed their feet upon his neck and repeatedly shoved his
20 head into the feces and urine-encrusted toilet bowl, instructing
21 him to "blow bubbles." During the afternoon of May 31, 1982,
22 Christopher was again beaten about the head, neck, eyes and
23 stomach. The beatings included incidents of torture in which
24 the inmates used a shoe to smash Christopher's nose. One of the
25 inmates pulled Christopher's fingers back, one by one. As
26 Christopher lay on the ground, one inmate did "football kicks,"

1 whereby he would gather speed and run from a distance before
2 kicking Christopher in the head. During this period the inmates
3 beat Christopher both inside the cell area and in the recreation
4 area. At one point in the afternoon, inmates lifted
5 Christopher's bloodied body up in the air in order to show his
6 body to adult inmates whose cell faced the exercise yard. The
7 beatings terminated around 2:00 p.m. when Christopher lost
8 consciousness. Both juvenile and adult inmates yelled and
9 pounded on various doors in order to summon help from the guard
10 on duty at the Jail. Christopher was pronounced dead at 6:30
11 p.m., May 31, 1982. He died from massive cranial hemorrhaging
12 caused by multiple blows to his head.

13 58. During the course of the fourteen hours of beatings
14 at the Ada County Jail, the defendants did not provide medical
15 attention for Christopher's numerous wounds and injuries.

16 59. During the course of the fourteen-hour-long beatings,
17 the defendants failed to intervene or terminate the brutal
18 beating of Christopher.

19 60. David H. Leroy, Attorney General, State of Idaho,
20 filed an official investigative report pertaining to the murder
21 of Christopher Peterman and the beating of FREDERICK YELLEN, JR.
22 The report concluded that the staffing ratio at the Ada County
23 Jail was "dangerously low" and represented a continuing threat
24 to the safety of both inmates and officers.

25 61. The Attorney General's Report found that the Ada
26 County Jail did not have a comprehensive operations manual in

1 use which described the duties and responsibilities of jail
2 staff and outlined procedures to be used in the operation of the
3 jail.

4 62. The Attorney General's Report found that the
5 monitoring devices within the Jail did not provide for adequate
6 security and observation of inmates.

7 63. Named plaintiffs THOMAS J. and BENJAMIN M. were
8 confined at the Ada County Jail in 1982, and were subjected to
9 the circumstances and conditions complained of herein.

10 63a. Named plaintiff BERNARD J. was confined at the Ada
11 County Jail in 1981, and was subjected to the circumstances and
12 conditions complained of herein. In addition, BERNARD J. was
13 placed in a cell with an adult inmate during his period of
14 confinement at the Ada County Jail.

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1 66. The defendants regularly confine and detain in the
2 Ada County Jail juveniles who are charged with or who have
3 committed offenses which would not be criminal if committed by
4 an adult, where such offenses do not constitute violations of
5 valid court orders. Similar numbers of status offenders have
6 been confined in the Ada County Jail in previous years, and
7 similar numbers will be confined in the future unless plaintiffs
8 are granted the relief requested herein.

9
10 III. DETENTION OF JUVENILES IN JAIL WITHOUT
11 ADEQUATE SEPARATION FROM ADULT OFFENDERS.

12 67. Section 223(13) of the Juvenile Justice Act, 42
13 U.S.C. §5633(13), provides that, in order to receive funding
14 under the Act, a State must comply with the requirement that
15 juveniles alleged to be or found to be delinquent shall not be
16 detained or confined in any institution in which they have
17 regular contact with adult persons incarcerated because they
18 have been convicted of a crime or are awaiting trial on criminal
19 charges.

20 68. The defendants regularly confine and detain juveniles
21 alleged to be or found to be delinquents, as well as juveniles
22 alleged to be or found to be status offenders, in the Ada County
23 Jail, where such juveniles have regular contact with adult
24 persons incarcerated because they have been convicted of a crime
25 or are awaiting trial on criminal charges. Similar numbers of
26 juveniles have been confined and detained in the Ada County Jail

1 in previous years, and similar numbers will be confined and
2 detained in the future unless plaintiffs are granted the relief
3 requested.

4 69. Idaho Code §20-602 and §20-603 provides that each
5 jail must provide separate and distant housing for four
6 categories of inmates: 1) persons committed on criminal process
7 and detained for trial; 2) persons convicted of crimes and held
8 under sentence; 3) persons detained as witnesses or held under
9 civil process, or under an order imposing punishment for
10 contempt, and 4) males and females.

11 70. The defendants regularly confine and detain juveniles
12 at the Ada County Jail in violation of the requirement of Idaho
13 Code §20-602, in that juveniles are not segregated on the basis
14 of their commitment status during their incarceration at the
15 Jail, so that juveniles awaiting trial are incarcerated with
16 juveniles serving sentences. This was true with respect to both
17 FREDERICK YELLEN, JR., and Christopher Peterman.

18 71. Idaho Code §16-1812A states that detention facilities
19 must be constructed and maintained so as to keep children
20 segregated from adult offenders, or those being treated as adult
21 offenders, such that there be no sight and/or sound contact
22 between the two classes.

23 72. The defendants regularly confine and detain juveniles
24 at the Ada County Jail in violation of the requirement of Idaho
25 Code §16-1812A. Juveniles have been similarly confined and
26 detained at the Ada County Jail, and juveniles will similarly be

1 confined and detained in the future unless plaintiffs are
2 granted the relief requested.

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4 IV. FAILURE AND REFUSAL TO PROVIDE AND UTILIZE
5 APPROPRIATE COMMUNITY-BASED ALTERNATIVES TO
6 PLACEMENT OF JUVENILES IN THE ADA COUNTY JAIL

7 73. Section 223(12) of the Juvenile Justice Act, 42
8 U.S.C. §5633(12), requires States receiving funding under the
9 Act to provide non-secure placements for status offenders and
10 non-offenders as alternatives to placement in jails and other
11 secure facilities. Such non-secure placements must be the least
12 restrictive alternative appropriate to the needs of the children
13 and the community, must be in reasonable proximity to the
14 children's families and the home communities, and must provide
15 "community-based" services. Section 103(1) of the Juvenile
16 Justice Act, 42 U.S.C. §5603(1), defines "community based"
17 facility, program or service as "a small, open group home or
18 other suitable place located near the juvenile's home or
19 family and programs of community supervision and service which
20 maintain community and consumer participation in the planning,
21 operation, and evaluation of their programs which may include,
22 but are not limited to, medical, educational, vocational,
23 social, and psychological guidance, training, counseling,
24 alcoholism treatment, drug treatment, and other rehabilitative
25 services."

26 74. The defendants fail and refuse to provide and utilize
an appropriate detention home or other community-based

1 alternatives to placement of juveniles in the Ada County Jail.

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3 V. CRUEL, UNCONSCIONABLE AND ILLEGAL CONDITIONS
4 OF CONFINEMENT

5 75. Defendants regularly subject plaintiffs to the cruel,
6 unconscionable and illegal conditions of confinement described
7 above. Defendants have similarly confined and detained
8 juveniles in the Ada County Jail under such conditions in
9 previous years, and defendants will continue to confine
10 juveniles under such conditions in the future unless plaintiffs
11 are granted the relief requested.

12
13 VI. KNOWLEDGE AND INTENT OF DEFENDANTS

14 76. Defendant ADA COUNTY, IDAHO, is a local government
15 unit in the state of Idaho. In its capacity as a local
16 government unit, it has implemented, executed, and adopted the
17 policies, practices, acts and omissions complained of herein
18 through formal adoption or pursuant to governmental custom. The
19 practices, acts and omissions complained of herein are customs
20 and usages of defendant ADA COUNTY, IDAHO.

21 77. Defendant E.C. PALMER is the Sheriff of Ada County,
22 Idaho. As such, he is responsible under Idaho Code §§31-2202(6)
23 and 20-601 for the safety and welfare of all persons confined in
24 the Ada County Jail. Defendant PALMER knew or should have known
25 of the conditions and circumstances alleged herein and should
26 have taken steps to correct these conditions and circumstances.

1 Having failed to do so, he is in violation of the federal laws
2 and Idaho statutory sections listed above.

3 78. Defendants VERN EMERY, BILL GRATTON, ED RIDDLE and
4 MARIE SCHREINER, as the County Commissioners of Ada County, are
5 or were responsible under Idaho Code §20-612 for appropriating
6 such sums of money as will provide for the maintenance and
7 operation of the Ada County Jail. As such, they knew or should
8 have known of the conditions and circumstances alleged herein
9 and should have taken steps to correct said conditions and
10 circumstances. Having failed to do so, said defendants were or
11 are in violation of the federal laws and Idaho statutory section
12 listed above.

13 79. Defendants DONALD FISHER, PAT COWLES, JANE GABBERT,
14 JAY KNIGHT, TAYLOR, SCARBOROUGH, DICKOVER, WALTER SCHARF,
15 MONSON, VAJDA, FRANK COBB, OMER DURHAM, WELLMAN, IAN ISHIYAMA,
16 and YOUNGER are deputies and guards at the Ada County Jail and
17 were charged with the care and custody of prisoners at the time
18 both Christopher Peterman and FREDERICK YELLEN, JR., were
19 incarcerated at the facility. As such, they knew or should have
20 known of the condition and circumstances alleged herein and
21 should have taken steps to correct these conditions and
22 circumstances. Having failed to do so, they are in violation of
23 the federal laws listed above.

24 80. Defendant THOMAS R. MORDEN, as a Judge of the
25 Magistrate Division of the District Court, currently assigned as
26 Juvenile Court Judge of Ada County, Idaho, is responsible under

1 the Idaho Code and the Idaho Juvenile Rules for the detention,
2 custody, care, placement and release of all children brought
3 before the court who are alleged to be delinquent, status
4 offenders, abused, neglected or dependent. In such capacity,
5 said defendant knew or should have known of the conditions and
6 circumstances alleged herein and should have taken steps to
7 correct said conditions and circumstances. Having failed to do
8 so, said defendant is in violation of the federal laws and the
9 Idaho Code and Idaho Juvenile Rules.

10 81. As a proximate result of the policies, practices,
11 acts, and omissions of defendants complained of herein,
12 plaintiffs have suffered and will continue to suffer serious
13 physical, psychological, and emotional injuries.

14 15 LEGAL CLAIMS

16 82. For plaintiffs' claims, each enumerated below, they
17 reallege Paragraphs 1 through 75 above, as if fully set forth
18 herein, in each and every statement of claim, and further
19 allege:

20 FIRST CLAIM

21 83. Defendants' policies, practices, acts and omissions
22 complained of herein, and specifically defendants' subjection of
23 plaintiffs to the cruel, unconscionable and illegal conditions
24 of confinement in the Ada County Jail, subject plaintiffs to
25 denial of due process of law, guaranteed by the Fourteenth
26 Amendment to the United States Constitution and the Idaho

1 Constitution; subject plaintiffs to cruel and unusual punish-
2 ments, in violation of the Eighth and Fourteenth Amendments to
3 the United States Constitution and the Idaho Constitution;
4 violate plaintiffs' rights to freedom of association guaranteed
5 by the First and Fourteenth Amendments to the United States
6 Constitution and the Idaho Constitution; violate plaintiffs'
7 right to privacy, guaranteed by the First, Fourth, Fifth, Ninth,
8 and Fourteenth Amendments to the United States Constitution and
9 the Idaho Constitution; and violate plaintiffs' right to receive
10 treatment in the least restrictive setting and under the least
11 restrictive conditions, guaranteed by the Fourteenth Amendment
12 to the United States Constitution, and the Idaho Constitution
13 and Idaho statutes; violate plaintiffs' rights under 42
14 U.S.C. 1983; and violate plaintiffs' rights under the Idaho
15 statutory sections cited herein.

16 SECOND CLAIM

17 84. Defendants' policies, practices, acts and omissions
18 complained of herein, and specifically defendants' secure
19 confinement and detention in Ada County Jail of status offenders
20 and other juveniles presenting no danger to themselves or
21 others, violate plaintiffs' rights under the Juvenile Justice
22 Act, 42 U.S.C. §5633(12); subject plaintiffs to denial of due
23 process of law, guaranteed by the Fourteenth Amendment to the
24 United States Constitution and the Idaho Constitution; subject
25 plaintiffs to cruel and unusual punishments, in violation of the
26 Eighth and Fourteenth Amendments to the United States

1 Constitution and the Idaho Constitution; violate plaintiffs'
2 rights to freedom of association guaranteed by the First and
3 Fourteenth Amendments to the United States Constitution and the
4 Idaho Constitution; violate plaintiffs' right to privacy,
5 guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth
6 Amendments to the United States Constitution and the Idaho
7 Constitution; violate plaintiffs' right to receive treatment in
8 the least restrictive setting and under the least restrictive
9 conditions, guaranteed by the Fourteenth Amendment to the United
10 States Constitution and the Idaho Constitution and Idaho
11 statutes; and violate plaintiffs' rights under the Idaho
12 statutory sections cited herein.

13 THIRD CLAIM

14 85. Defendants' policies, practices, acts and omissions
15 complained of herein, and specifically defendants' detention and
16 confinement of juveniles in the Ada County Jail without adequate
17 separation from adult offenders, violate plaintiffs' rights
18 under the Juvenile Justice Act, 42 U.S.C. §5633(13); subject
19 plaintiffs to denial of due process of law, guaranteed by the
20 Fourteenth Amendment to the United States Constitution and the
21 Idaho Constitution; subject plaintiffs to cruel and unusual
22 punishments, in violation of the Eighth and Fourteenth
23 Amendments to the United States Constitution and the Idaho
24 Constitution; violate plaintiffs' rights to freedom of associa-
25 tion guaranteed by the First and Fourteenth Amendments to the
26 United States Constitution and the Idaho Constitution; violate

1 plaintiffs' right to privacy, guaranteed by the First, Fourth,
2 Fifth, Ninth, and Fourteenth Amendments to the United States
3 Constitution and the Idaho Constitution; violate plaintiffs'
4 right to receive treatment in the least restrictive setting and
5 under the least restrictive conditions, guaranteed by the
6 Fourteenth Amendment to the United States Constitution and the
7 Idaho Constitution and Idaho statutes; violate plaintiffs'
8 rights under 42 U.S.C. §1983; and violate plaintiffs' rights
9 under the Idaho statutory sections cited herein.

10 FOURTH CLAIM

11 86. Defendants' policies, practices, acts and omissions
12 complained of herein, and specifically defendants' failure and
13 refusal to provide and utilize a detention home or other
14 appropriate community-based alternatives to placement of juve-
15 niles in the Ada County Jail, violate plaintiffs' rights under
16 the Juvenile Justice Act, 42 U.S.C. §§5633(12), 5603(1); subject
17 plaintiffs to denial of due process of law, guaranteed by the
18 Fourteenth Amendment to the United States Constitution and the
19 Idaho Constitution; subject plaintiffs to cruel and unusual
20 punishments, in violation of the Eighth and Fourteenth
21 Amendments to the United States Constitution and the Idaho
22 Constitution; violate plaintiffs' rights to freedom of associ-
23 ation guaranteed by the First and Fourteenth Amendments to the
24 United States Constitution and the Idaho Constitution; violate
25 plaintiffs' right to privacy, guaranteed by the First, Fourth,
26 Fifth, Ninth, and Fourteenth Amendments to the United States

1 Constitution and the Idaho Constitution; violate plaintiffs'
2 right to receive treatment in the least restrictive setting and
3 under the least restrictive conditions, guaranteed by the
4 Fourteenth Amendment to the United States Constitution, and the
5 Idaho Constitution, and Idaho statutes; violate plaintiffs'
6 rights under 42 U.S.C. 1983; and violate plaintiffs' rights
7 under the Idaho statutory sections cited herein.

8 FIFTH CLAIM

9 87. Since at least 1979, defendants had actual notice
10 that the Ada County Jail was not operated in a manner consistent
11 with the safety and well-being of juveniles detained at the Ada
12 County Jail.

13 88. Defendants were responsible for the following acts or
14 omissions with regard to Plaintiff YELLEN:

15 a. Negligently, carelessly and recklessly failing to
16 provide an adequate staffing ratio at the facility;

17 b. Negligently, carelessly and recklessly failing to
18 equip and maintain a proper monitoring system in order to
19 supervise juveniles at the facility;

20 c. Negligently, carelessly and recklessly failing to
21 provide jail personnel who are trained in identifying and
22 responding to problems of juveniles;

23 d. Negligently, carelessly and recklessly failing to
24 develop rules and regulations which would ensure the safety of
25 juveniles at the Ada County Jail;

1 e. Negligently, carelessly and recklessly failing to
2 provide adequate medical care for juveniles confined at the Ada
3 County Jail;

4 f. Negligently, carelessly and recklessly failing to
5 make reasonable and periodic inspections of YELLEN'S cell to
6 ascertain his safety and well-being;

7 g. Negligently, carelessly and recklessly failing to
8 segregate violent from non-violent detainees;

9 h. Negligently, carelessly and recklessly failing to
10 segregate juvenile inmates from adult inmates at the facility;

11 i. Negligently, carelessly and recklessly failing to
12 segregate the plaintiff from his cellmates, after the defendants
13 were told that he had been beaten by his cellmates.

14 89. The foregoing acts and omissions on the part of the
15 named defendants and their agents were the direct and proximate
16 cause of plaintiff YELLEN'S injuries which he sustained as a
17 result of his beatings.

18 90. Defendants and their agents engaged in a course of
19 conduct with respect to plaintiff YELLEN which was willful,
20 wanton and grossly negligent, and so blatantly indifferent and
21 deliberate as to evidence intentional maltreatment.

22 91. The acts and omissions of the defendants and their
23 agents, in failing to provide for the proper care and treatment
24 of the plaintiff YELLEN, resulted in his beatings. Such conduct
25 resulted in a clear violation of his rights under the due
26 process clause of the Fourteenth Amendment to the Constitution

1 of the United States.

2 92. By reason of the severe medical and psychological
3 injuries sustained by plaintiff YELLEN, he is entitled to
4 compensation for his pain, suffering, and mental anguish in the
5 amount of \$50,000.00.

6 93. As a result of the actions and omissions of the
7 defendants and their agents, plaintiff YELLEN is entitled to
8 punitive damages in the amount of \$100,000.00 for the willful,
9 wanton, deliberate and callous disregard of his rights. Such
10 punitive damages are necessary to deter defendants and their
11 agents from such conduct in the future, and to deter others from
12 similar conduct.

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1 Constitution and the Idaho Constitution;

2 (3) subject plaintiffs to cruel and unusual
3 punishment, in violation of the Eighth and Fourteenth
4 Amendments to the United States Constitution and the Idaho
5 Constitution;

6 (4) violate plaintiffs' rights to freedom of
7 association guaranteed by the First and Fourteenth Amendments to
8 the United States Constitution and the Idaho Constitution;

9 (5) violate plaintiffs' right to privacy, guaranteed
10 by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to
11 the United States Constitution and the Idaho Constitution;

12 (6) violate plaintiffs' right to receive treatment in
13 the least restrictive setting and under the least restrictive
14 conditions, guaranteed by the Fourteenth Amendment to the United
15 States Constitution, the Idaho Constitution, and Idaho
16 statutes;

17 (7) violate plaintiffs' rights under 42 U.S.C. §1983;

18 (8) violate plaintiffs' statutory rights under the
19 Idaho Code, as indicated above.

20 D. Issue preliminary and permanent injunctions sufficient
21 to rectify the unconstitutional acts and omissions and statutory
22 violations alleged herein, as follows:

23 (1) Restraining and prohibiting all defendants from
24 failing to provide plaintiffs with any of the following during
25 their period of confinement:

1 (a) regular changes of clean clothing or means
2 and facilities for laundering plaintiffs' own clothing.

3 (b) basic hygiene supplies, including but not
4 limited to soap, shampoo, toothpaste, and toothbrushes;

5 (c) regular opportunities for exercise and
6 recreation;

7 (d) regular opportunities to telephone
8 relatives, ministers, and friends;

9 (e) stamps and stationery for correspondence
10 with family members, attorneys, and friends;

11 (f) opportunities to visit with family members
12 each day of the week in a suitable and appropriate visiting
13 area;

14 (g) medical and psychological screening when
15 plaintiffs are taken into custody, and regular medical and
16 mental health services during plaintiffs' periods of
17 confinement;

18 (h) personnel trained in identifying and
19 responding to problems of juveniles;

20 (i) an educational program with competent and
21 trained staff for juveniles of school age;

22 (j) a sufficient number of trained recreational
23 personnel to provide wholesome and profitable leisure-time
24 activities;

25 (k) a homelike, non-punitive, neutral atmosphere
26 and environment.

1 (3) Restraining and prohibiting all defendants from
2 confining or detaining in the Ada County Jail or in any other
3 secure facility any juvenile who is charged with or who has
4 committed an offense which would not be criminal if committed by
5 an adult, where such offense does not constitute a violation of
6 a valid court order.

7 (4) Restraining and prohibiting all defendants from
8 confining and detaining any juvenile in the Ada County Jail.

9 (5) Restraining and prohibiting all defendants from
10 failing to provide and utilize appropriate community-based
11 alternatives to placement of juveniles in the Ada County Jail.

12 E. Issue preliminary and permanent injunctions
13 restraining and prohibiting all defendants from transferring any
14 plaintiff to any other jail or any other facility where there
15 exist the conditions complained of herein.

16 F. Order the defendants to develop and implement a
17 comprehensive plan for the correction of the unlawful policies,
18 practices, acts and omissions complained of herein, and to
19 submit said plan to the court and to the attorneys for
20 plaintiffs for review.

21 G. Appoint a Special Master to review and insure
22 implementation of the plan submitted by defendants and to
23 protect the rights of plaintiffs during the pendency of this
24 action.

25 H. Retain jurisdiction over defendants and each of them
26 until such time as the Court is satisfied that their unlawful

1 policies, practices, acts and omissions complained of herein no
2 longer exist and will not recur.

3 I. For the beatings of plaintiff FREDERICK YELLEN, JR.,
4 issue a judgment assessing general damages in the amount of
5 \$50,000.00, or such damages as may be proven at trial, against
6 the defendants, with the exception of defendant THOMAS
7 R. MORDEN.

8 J. For the beatings of plaintiff FREDERICK YELLEN, JR.,
9 issue a judgment assessing punitive damages against the
10 defendants, with exception of defendant THOMAS R. MORDEN, in the
11 amount of \$100,000.00.

12 K. Issue a judgment assessing damages against the
13 defendants, with the exception of defendant THOMAS R. MORDEN,
14 for injuries suffered by plaintiff THOMAS J. as a proximate
15 result of the policies, practices, acts and omissions complained
16 of herein, in the amount of \$50,000.00 or such damages as may be
17 proven at trial.

18 L. Issue a judgment assessing punitive damages for the
19 injuries of plaintiff THOMAS J. against the defendants, with the
20 exception of defendant THOMAS R. MORDEN, in the amount of
21 \$100,000.00.

22 M. Issue a judgment assessing damages against the
23 defendants, with the exception of defendant THOMAS R. MORDEN,
24 for injuries suffered by plaintiff BENJAMIN M. as a proximate
25 result of the policies, practices, acts and omissions complained
26 of herein, in the amount of \$25,000.00 or such damages as may be

1 proven at trial.

2 N. Issue a judgment assessing punitive damages for the
3 injuries of plaintiff BENJAMIN M. against the defendants, with
4 the exception of defendant THOMAS R. MORDEN, in the amount of
5 \$50,000.00.

6 O. Issue a judgment assessing damages against the
7 defendants, with the exception of defendant THOMAS R. MORDEN,
8 for injuries suffered by plaintiff BERNARD J. as a proximate
9 result of the policies, practices, acts and omissions complained
10 of herein, in the amount of \$50,000.00 or such damages as may be
11 proven at trial.

12 P. Issue a judgment assessing punitive damages for the
13 injuries of plaintiff BERNARD J. against the defendants, with
14 the exception of defendant THOMAS R. MORDEN, in the amount of
15 \$100,000.00

16 Q. Award plaintiffs the cost of this proceeding,
17 attorneys' fees under 42 U.S.C. §1988, and such other and
18 further relief as to this Court seems just and proper.

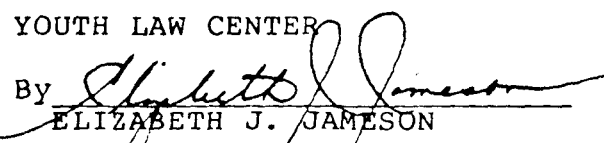
19 R. Award a jury trial on those issues triable by jury.

20 DATED: May ___, 1983.

21 SKINNER, DONNELLY, FAWCETT
22 & MAUK

23 By _____
WILLIAM L. MAUK

24 YOUTH LAW CENTER

25 By 
ELIZABETH J. JAMESON

26 Attorneys for Plaintiffs