

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLENN WOODEN, et al.,

Plaintiffs,

vs.

COUNTY OF SHASTA, et al.,

Defendants.

No. CIV S-90-1003 EJG PAN

FINDINGS AND RECOMMENDATIONS

This is a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 42 U.S.C. § 1983, on behalf of the inmates at the Shasta County jails.<sup>1</sup> Defendants are Shasta County and the Shasta County Sheriff who operate the Shasta County Main Jail and the Detention Annex, in Redding, California, and the Crystal Creek facility, a forestry camp. Both sentenced inmates and pretrial detainees are housed at all three facilities. Plaintiffs allege violations of their civil rights resulting from the conditions of

<sup>1</sup> The action was referred to me by Local Rule 302(d)(1) pursuant to 28 U.S.C. § 636(b).

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1 their confinement. Defendants seek summary judgment on all claims.  
2 Plaintiffs have abandoned claims based upon alleged inadequate  
3 toilets and interference with mail. The eight claims in dispute  
4 relate to (1) beds for all inmates; (2) medical, dental and mental  
5 health care; (3) access to and seating in dayrooms; (4) outdoor  
6 exercise; (5) prompt probable cause hearings; (6) use of safety  
7 cells; (7) general jail safety; and (8) access to a law library.  
8 Oral argument was heard on April 13, 1992.

#### 9 LEGAL STANDARDS

##### 10 A. Standards for Summary Judgment

11 A party seeking summary judgment bears the initial burden  
12 of identifying portions of the record that demonstrate the absence  
13 of a genuine issue of material fact. Celotex Corp. v. Catrett, 477  
14 U.S. 317, 106 S.Ct. 2548, 2553. After adequate time for discovery,  
15 the moving party is entitled to summary judgment against a party  
16 who fails to establish the existence of an element essential to his  
17 case and upon which he has the burden of proof at trial. Id. 106  
18 S.Ct. at 2552. To succeed, the party opposing a motion must show  
19 that there is a genuine issue of material fact that reasonably  
20 requires trial, i.e., there is sufficient evidence favoring the  
21 opposing party for a jury to return a verdict in his favor taking  
22 into account the kind and quantum of evidence required. Anderson  
23 v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 254, 106 S.Ct. 2505,  
24 2511, 2513 (1986). If the claims of the party opposing the motion  
25 are implausible, more persuasive evidence may be necessary to  
26 defeat the motion. Matsushita Elec. Indus. Co. v. Zenith Radio

Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356 (1986).

B. Legal Standards Governing Jail Conditions Cases

The plaintiff class includes pretrial detainees and convicted prisoners serving sentences. Civil rights claims of pretrial detainees are analyzed under the Fourteenth Amendment; claims of convicted prisoners are analyzed under the Eighth Amendment. See Ingraham v. Wright, 430 U.S. 651, 671-72 n. 40 (1977).

Jail officials are not required to provide comfortable jails, but they are required, by both the Eighth and the Fourteenth Amendments to provide, adequate food, clothing, shelter, sanitation, medical care and personal safety. Bell v. Wolfish, 441 U.S. 520, 537 (1979); Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982). Any remedy must be limited to what is required to correct constitutional violations. Hoptowit v. Ray, supra, at 1246. The court should defer to the policy choices made by prison officials and order a remedy consistent with the basic approach taken by prison officials unless that approach itself is unconstitutional. Id.

A. Pretrial Detainees

In Bell v. Wolfish, 441 U.S. 520 (1979), the Supreme Court held that it is a violation of due process for persons to be punished prior to adjudication of guilt. Id. at 535. The threshold inquiry for Fourteenth Amendment purposes is whether the condition of confinement complained of amounts to "punishment." The court must first ask whether the challenged condition is

1 imposed to punish. If no express intent to punish is found, the  
2 court must ask whether the condition is rationally connected with  
3 an alternative purpose and does not appear excessive in relation to  
4 that purpose. Id. at 538. If a particular condition or restriction  
5 of pretrial detention is reasonably related to a legitimate  
6 governmental object, it does not, without more, amount to  
7 punishment. Id. at 539. If a condition of confinement is not  
8 reasonably related to a legitimate goal, however, the court may  
9 infer intent to punish. Id.; see also Thompson v. City of Los  
10 Angeles, 885 F.2d 1439 (9th Cir. 1989).

#### 11 B. Convicted Prisoners

12 The Eighth Amendment proscribes cruel and unusual  
13 punishments, i.e., punishments that result in the "unnecessary and  
14 wanton infliction of pain." Gregg v. Georgia, 428 U.S. 153, 173  
15 (1976). Express intent to inflict unnecessary pain is not  
16 required. Whitley v. Albers, 475 U.S. 312, 319 (1986) (quoting  
17 Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). Only deprivations  
18 that deny the minimal civilized measures of life's necessities are  
19 sufficiently grave to form the basis of an Eighth Amendment  
20 violation. Id. If plaintiffs meet this objective requirement,  
21 they also must prove that prison officials acted with a culpable  
22 state of mind. The state of mind required to violate the Eighth  
23 Amendment is "wantonness." In a prison conditions case  
24 "wantonness" may be found in deliberate indifference. Estelle v.  
25 Gamble, 429 U.S. 97 (1976). Id.

26 Deliberate indifference is not "mere indifference" or

1 "negligence" but "obduracy and wantonness, not inadvertence or  
2 error in good faith." Whitley v. Albers, 475 U.S. 312 (1986). It  
3 requires less, however, than showing that defendants acted  
4 "maliciously and sadistically for the very purpose of causing  
5 harm." Wilson v. Seiter, 111 S.Ct. 2321. In Smith v. Wade, 461  
6 U.S. 30 (1983), the Supreme Court defined "wantonness" as the  
7 conscious failure by one charged with a duty to exercise due care  
8 and diligence to prevent an injury after actual or constructive  
9 discovery of the peril and the inevitable or probable results of  
10 such failure. Id. at 39-40 n. 8 (quoted in Redman v. County of San  
11 Diego, 942 F.2d 1435, n.10 (9th Cir. 1991) (en banc), cert.  
12 denied, 112 S.Ct. 972 (1992)).

#### 13 C. Mixed Jail Populations

14 The constitutional measure for review of conditions  
15 affecting both classes of inmates is the Fourteenth Amendment  
16 substantive due process standard. Fischer v. Winter, 564 F.Supp.  
17 281, 297 (N.D. Cal. 1983). Although, since it precludes  
18 punishment, the Fourteenth Amendment standard may be higher, it is  
19 tempered by consideration of the length of time inmates are exposed  
20 to the challenged conditions. Hutto v. Finney, 437 U.S. 678, 686  
21 (1978). Therefore, a condition may violate the Eighth Amendment  
22 rights of convicted prisoners confined for substantial periods but  
23 not violate the Fourteenth Amendment rights of persons detained for  
24 relatively short periods.

25 In Redman v. County of San Diego, 942 F.2d 1435 (9th Cir.  
26 1991) (en banc), cert. denied, 112 S.Ct. 972 (1992), the court

held:

That "deliberate indifference" is the standard used to measure violations of the eighth amendment's proscription of cruel and unusual punishment does not mean it applies only to persons who may be punished. [Plaintiff's] status as a pretrial detainee who may not be punished, therefore, does not preclude application of the standard. We do not find it inappropriate that the same standard may be used under the fourteenth and eighth amendments. \* \* \* The requirement of conduct that amounts to "deliberate indifference" provides an appropriate balance of the pretrial detainees' right not to be punished with the deference given to prison officials to manage the prisons. This standard also comports with the purpose of the due process clause: to protect against the deliberate, but arbitrary, choices by government. Id., at 1142-43.

#### D. Municipal Liability

Section 1983 provides a remedy against "any person" who, under color of state law, deprives another of rights protected by the Constitution. Local government entities such as Shasta County are included among the "persons" subject to liability by section 1983. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018 (1978).

The County is not liable simply because it employs a wrongdoer and is not vicariously liable to plaintiffs on a respondeat superior theory; the county may not be held liable unless action pursuant to its "official policy" caused a constitutional deprivation. Id. at 691, 98 S.Ct. at 2036. Wrongful conduct of an officer without policy-making authority does not establish county liability. Oklahoma City v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427 (1985). Further, decisions by subordinate employees do not necessarily reflect official policy. St. Louis v. Praprotnik, 485 U.S. 112, 108 S.Ct. 915 (1988). Defendant sheriff, on the other hand, is the official responsible for establishing pertinent policy

and the County may be held liable for his unconstitutional actions. Pembaur v. Cincinnati, 475 U.S. 469, 106 S.Ct. 1292 (1986). The Ninth Circuit Court of Appeals has instructed that a county may not be held liable for acts of prison officials unless the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers or if the constitutional deprivation was visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decisionmaking channels. Redman v. County of San Diego, 942 F.2d 1435 (9th Cir. 1991).<sup>2</sup>

At bottom, the County is liable only if it fairly can be said that the county itself is the wrongdoer because there is a "direct causal link between a policy or custom and the alleged constitutional deprivation."<sup>3</sup>

#### DISCUSSION

<sup>2</sup> In Redman, the jail had a policy or custom of protecting passive homosexual inmates by segregating homosexuals "as necessary." The unwritten policy was to place aggressive homosexuals in the general population upon the assumption that heterosexual inmates could protect themselves. Plaintiff was small, young and had no prior record yet as a pretrial detainee he was placed in a cell with a larger, older and aggressive homosexual with a history of coercing sex from others, who raped plaintiff. Reversing a directed verdict for all defendants, the court found that the jury might have found that plaintiff's predicament was created by county policy or custom that so exacerbated the danger of homosexual rape as to amount to deliberate indifference to plaintiff's safety in violation of section 1983. Although the Sheriff had no personal knowledge of the threat to plaintiff, the court held that the jury might have found the Sheriff deliberately indifferent to plaintiff's rights either by allowing overcrowding or because, with knowledge of the overcrowding, the Sheriff acquiesced in a deficient policy that was a moving force behind plaintiff's injury.

<sup>3</sup> Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197 (1989). If a local government employee violates another's constitutional rights, the government entity may be held liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional deprivation. And see Collins v. City of Harker Heights, Tex., 112 S.Ct. 1061 (1992).



A. Permanent Beds

Plaintiffs allege that the Board of Corrections<sup>4</sup> has rated the population capacity of the Shasta County Main Jail at 337 inmates; that the average daily population on July 24, 1989, was 356; that when this action was commenced on August 2, 1990, there were 400 beds in the facility; and that, as a result of overcrowding, inmates were forced to sleep on mattresses on the floor.

In Thompson v. City of Los Angeles, 885 F.2d 1439 (1989), the court held that failure to provide "a bed [or] even a mattress" unquestionably constituted a 14th Amendment violation. Presumably, the court would hold that failure to provide a pretrial detainees with bed or bunk violates the constitution.<sup>5</sup>

Defendants argue there is no evidence that any inmate in

<sup>4</sup> See Statement of Uncontroverted Facts in Support of Defendants' Motion for Partial Summary Judgment ("Statement of Facts"), 4-5.

<sup>5</sup> Several courts have held that a jail's failure to provide detainees with a mattress and bed or bunk runs afoul of the commands of the Fourteenth Amendment. See Anela v. Wildwood, 790 F.2d 1063, 1067 (3d Cir.) (allegation that City failed to provide bed or mattress to pretrial detainees states actionable constitutional claim), cert. denied, 479 U.S. 949, 107 S.Ct. 434, 93 L.Ed.2d 384 (1986); Union County Jail Inmates v. Di Buono, 713 F.2d 984, 996-97 (3d Cir. 1983) (elimination of "unsanitary and humiliating" practice of forcing detainees to sleep on floor mattresses essential to bring jail up to minimum constitutional standards), cert. denied, 465 U.S. 1102, 104 S.Ct. 1600, 80 L.Ed.2d 130 (1984); Lareau v. Manson, 651 F.2d 96, 105 (2d Cir. 1981) (prison's use of floor mattresses for pretrial detainees unconstitutional "without regard to the number of days for which a prisoner is so confined"); Vasquez v. Gray, 523 F.Supp. 1359, 1365 (S.D.N.Y. 1981) (use of floor mattresses for pretrial detainees unconstitutional); Marino v. Carey, 563 F.Supp. 984, 1002 (D.Or. 1983) (fact that jail overcrowding forced some pretrial detainees to sleep directly on the floor contributed to finding that overcrowded conditions violated detainees' Fourteenth Amendment rights); Steward v. Gates, 450 F.Supp. 583, 588 (C.D. Cal. 1978) ("basic concepts of decency, as well as reasonable respect for constitutional rights, require that [each inmate] be provided a bed"); Rutherford v. Pitchess, 457 F.Supp. 104, 109 (C.D. Cal. 1978) (same), aff'd in part and rev'd in part on other grounds, 710 F.2d 572 (9th Cir. 1983), rev'd sub nom. Block v. Rutherford, 468 U.S. 576, 104 S.Ct. 3227, 82 L.Ed.2d 483 91984). "Thus, Thompson's uncontroverted allegations that he was provided with neither a bed nor even a mattress unquestionably constitutes a cognizable Fourteenth Amendment claim." 885 F.2d at 1448.



any Shasta County jail has been required to sleep on a mattress on the floor since 1989, a year before this action was filed.

Plaintiffs do not dispute this claim but contend that without a permanent injunction defendants will return to their "old ways." See, e.g., United States v. W.T. Grant, 345 U.S. 629, 632, 633 (1953). The undisputed evidence shows, however, that unlike their counterparts in W.T. Grant, defendants corrected the challenged condition not in response to the litigation but before the litigation commenced. Defendants, therefore, are entitled to summary judgment on this claim.

B. Medical, mental health and dental care

Plaintiffs claim that overcrowding also has resulted in constitutionally inadequate medical, dental and mental health care. Plaintiffs contend that such services either are "non-existent" or "unnecessarily delayed."

In Hoptowit v. Ray, 682 F.2d 1237 (9th Cir. 1982), the court set forth the minimum requirements for providing constitutionally adequate medical care. An inmate must have the opportunity to inform medical personnel of a problem; must have access to medical personnel competent to examine, diagnose and either treat or refer the inmate to others, and must have access to adequate emergency care, which may be provided outside remote or inaccessible jail facilities. These requirements apply to medical, dental and mental health care.

Isolated occurrences of neglect are insufficient to establish a constitutional violation. Id; see, also, Wood v.

2 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (record must show  
3 substantial indifference in the individual case; must be more than  
4 "mere malpractice" or even "gross negligence" and must be more than  
5 isolated occurrence). Mere delay in providing treatment does not  
6 establish a constitutional violation (Shapley v. Nevada Bd. of  
7 State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985)); the delay  
8 must have caused substantial harm. Id. ; Wood v. Housewright, 900  
9 F.2d at 1335.

#### 10 1. Medical Care

11 Defendants argue that in 1985 their medical department  
12 was accredited by the California Medical Association through the  
13 National Commission on Correctional Health Care (hereafter,  
14 "CMA/NCHC accreditation"). Defendants contend the requirements for  
15 accreditation establish the adequacy of the medical care they offer  
16 inmates. Indeed, these requirements far exceed the constitutional  
17 minima set forth in Hoptowit. They include intake screening by  
18 trained custody staff using an NCHC approved protocol; daily sick  
19 call and triage, including weekends and holidays; twice-daily  
20 dispensing of medication (and more often if required by particular  
21 medication treatment); complete physical assessment within 14 days  
22 of booking; full services for physically and developmentally  
23 disabled inmates; confidential and secure storage of medical  
24 records; "in service" medical training for staff; prenatal  
25 treatment conforming to community standards; private rooms for  
26 medical examinations by physicians; a full-service medical facility  
at the Main Jail; referral of inmates to the county medical center

for emergency care and specialist services; and "on site" staff including registered nurses, a physician, a dentist, and a psychiatrist. The Shasta County jail system is one of only nine county jail systems in California to have achieved CMA/NCHC accreditation.

Plaintiffs do not dispute that defendants are CMA/NCHC accredited but argue that the services actually provided to inmates fall below the promised level. In support, plaintiffs present the declarations of several inmates (Plaintiffs' Exhibits A-E in Opposition) and the opinion of Dr. Corey Weinstein based on his review of inmate medical records and personal observations.

Dr. Weinstein is a physician in private practice in San Francisco and serves as medical consultant to the Prisoners' Rights Union. In 1990, Dr. Weinstein was chair of the Jail and Prison Health Committee of the American Public Health Association and is a member of the American Correctional Health Services Association. He has academic experience and has worked for various public health clinics including the Noe Valley Health Clinic in San Francisco, St. Luke's Hospital Medical Clinic, the Centro de Salud para la Gente, and the San Francisco Department of Public Health.

There is no material dispute about the historical facts but, rather, only disputes about the efficacy of the treatment disclosed by such facts.

Dr. Weinstein first charges that four cases involving inmates Holmes, Cowger, Wooden and Yearly reflect "superficial care and dangerous procedures amounting to neglect of a serious

1 illness."

2 Holmes was booked on December 4, 1990, and Cowger was  
3 booked on January 24, 1992. Weinstein claims that the two inmates  
4 suffered seizures and were placed in a "safety cell" without proper  
5 neurological examination or treatment. Dr. Weinstein also believes  
6 that Cowger was improperly medicated and that Holmes was denied  
7 prescribed medication. Defendants dispute the claims and contend  
8 that both inmates were properly evaluated, treated and medicated.<sup>6</sup>  
9 Defendants admit that Holmes was placed in a safety cell for his  
10 protection during a seizure on October 1, 1990, and that Cowger was  
11 placed in a safety sell on February 3, 1992, for observation after  
12 she reported a seizure. Defendants also admit that Holmes was  
13 denied anti-seizure medication but only pending tests to determine  
14 the level of phenobarbital in his system. Dr. Weinstein also  
15 charges that an x-ray of Cowger's suspected nasal fracture was  
16 misinterpreted during her two or three-day confinement in December  
17 1990. Plaintiffs allege no substantial harm to Holmes or Cowger.

18 Dr. Weinstein also criticizes defendants' alleged delay  
19 in conducting a neurological evaluation of Wooden who, when booked  
20 on December 5, 1989, reported a history of seizure disorder.  
21 Defendants admit that Wooden was not evaluated by a neurologist for  
22 more than three months after Wooden first reported "blackouts" but  
23 plaintiffs allege no other harm to Wooden and do not refute  
24 defendants' claim that during his seven-month confinement, Wooden  
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26 <sup>6</sup> Defendants' claims are based upon the declaration of Claire Busby, the  
Health Services Administrator for the Shasta County Jail, based upon her review of  
the pertinent medical records.

1 was visited 493 times by nurses and 23 times by physicians, was  
2 referred nine times for neurological evaluations outside the jail  
3 was seen twice by his own physician, and received many tests which  
4 resulted in no positive findings of neurological disorder.

5 Dr. Weinstein also charges that inmate Yearly was denied  
6 prescribed medication. Yearly was first booked in December 1990 and  
7 had a recorded history of drug abuse. Yearly received Tylenol with  
8 codeine, phenobarbital and dilantin. When booked again in January  
9 1992, she was treated with painkillers and muscle relaxants for  
10 reported back pain and during her eighteen-day confinement she was  
11 seen twice by a physician, six times by a registered nurse and  
12 twice by a licensed vocational nurse.

13 In support of his charge that "disabling and serious  
14 musculoskeletal problems are ignored," Dr. Weinstein cites four  
15 cases of inmates with orthopedic problems. Jones was booked on  
16 December 26, 1991, and released on January 12, 1992. When booked,  
17 Jones reported that he had a prescription for Tylenol with codeine  
18 for sciatica secondary to a ruptured disc. On December 28, Jones  
19 was seen by a physician who prescribed ibuprofen and a second  
20 mattress.

21 On December 27, 1991, before booking Porter was taken to  
22 a hospital emergency room for assessment of potentially serious  
23 problems. Before his release on April 1, 1992, Porter was seen six  
24 times by a physician and 38 times by nurses; he received medication  
25 for shoulder pain until two successive x-rays were interpreted as  
26 negative. Dr. Weinstein believes that defendants should have

provided physical therapy and consultation with an orthopedic specialist for "frozen shoulder." No substantial harm to Porter is alleged.

Foglesang was transferred from Santa Cruz County Jail with advice to contact her treating surgeon who instructed defendants that Foglesang should have surgery to remove screws in her leg after her release. Dr. Weinstein charges that Foglesang should have received physical therapy and consultation with an orthopedist during her seven-month confinement.

Johnson was booked on December 28, 1989. At the time, she was under care of a chiropractor following a September 11, 1989, automobile accident. During her 93-day confinement, she was seen by a nurse 25 times and by a physician four times. Dr. Weinstein charges that defendants failed to "appreciate" her condition and failed to provide "routine therapy."

Dr. Weinstein also charges that defendants failed to investigate the cases of inmates with recorded symptoms or history of physical illness. In one case, inmate D'Avy had a one-degree elevation in temperature which fell to normal within 24 hours. Inmate Fite had a temperature of 99.6 degrees but no symptoms; his temperature returned to normal and he had no symptoms or complaints during his confinement. Inmate Hoesktra was booked on December 18, 1991, and between January 9 and March 29 she complained of abdominal pain and other symptoms of stomach and bowel disorder, sometimes inconsistently; during that period, she was examined and treated at least six times.

1 When she was booked, inmate Williams' pregnancy test was  
2 negative, apparently because it was administered too soon after  
3 conception. Two weeks after the test was repeated with positive  
4 results, Williams was examined at a hospital obstetrics clinic.

5 Dr. Weinstein charges that Inmate Jackson's unspecified  
6 "neurological symptoms" consequent to an elbow injury after a fall  
7 on March 20, 1988, were never addressed. Immediately following the  
8 accident, Jackson was attended daily by a registered nurse and  
9 within two days was examined by a physician who ordered an x-ray  
10 that was negative. Jackson made no complaints before his release  
11 on September 6, 1988. No harm is alleged in any of these cases.

12 Dr. Weinstein also charges that defendants provided  
13 "grossly substandard" physical examination of inmate William  
14 Johnson, who was 66 years of age, had a history of surgery for  
15 bladder cancer, heart attack, hypertension and other medical  
16 problems. Johnson was placed in the jail infirmary upon booking,  
17 was examined by a physician within ten days and was treated for  
18 hypertension and heart problems. There is no record of complaints  
19 of abdominal pain, however, and no allegation that Johnson suffered  
20 any injury.

21 When he was booked on November 27, 1988, inmate Ralph  
22 Johnson reported that his tests for HIV were positive. He was  
23 segregated from other inmates, exhibited no symptoms and lodged no  
24 complaints, and was released after 33 days. Dr. Weinstein charges  
25 that defendants should have tested Johnson and provided counseling.

26 Inmate Neva Hoskins also reported that she had been



1 tested as positive for HIV two or three years before. A test was  
2 ordered on November 25, 1991, performed on December 13, 1991, and  
3 the negative result were reported to Hoskins on January 16, 1992,  
4 as soon as jail personnel received it.

5 Inmate William Sidham was diagnosed as suffering from  
6 hepatitis within two days after he complained of symptoms and  
7 laboratory tests were performed. Dr. Weinstein challenges  
8 defendants' failure to counsel Sidham upon a relationship between  
9 hepatitis and HIV but there is no evidence that Sidham has HIV.

10 Igor Budzinsky was released on his own recognizance after  
11 48 hours in custody and was driven from the jail to a hospital  
12 emergency room for treatment for diabetes. Dr. Weinstein alleges  
13 that defendants secured Budzinsky's release and believes the  
14 decision put Budzinsky at risk and amounted to "patient dumping."  
15 Defendants contend that a court ordered Budzinsky's release.

16 Dr. Weinstein alleges that inmates are discouraged from  
17 reporting medical problems because they would rather be confined in  
18 the Jail Annex rather than in the Main Jail which has medical  
19 facilities.

20 Finally, Dr. Weinstein charges that inmates must unduly  
21 wait for care by medical specialists. Inmate Rodney French was  
22 treated in an emergency room the same day he injured his eye, was  
23 seen by an ophthalmologist the next day and was kept in the  
24 infirmary for a week for treatment. A subsequent appointment with  
25 the ophthalmologist was cancelled because the ophthalmologist was  
26 in surgery and was rescheduled six days later when the

1 ophthalmologist ordered no further treatment and annual checkups.

2 Ten days after she was booked, Cynthia Eckelman was  
3 examined because she reported a congenital bladder disorder for  
4 which she had had surgery. During her 116-day confinement,  
5 Eckelman was seen 20 times by a nurse and twice by a physician.

6 As plaintiffs concede, defendants' written policy for  
7 providing medical care to their inmates is constitutionally sound.  
8 Plaintiffs' initial burden, therefore, is to demonstrate that  
9 defendants' actual practice so habitually deviates from the written  
10 policy as to compel an inference that the written policy is  
11 essentially a sham and ought not to be considered. For such  
12 purposes, examples of such alleged deviations need not rise to the  
13 level of constitutional violations; the relevant inquiry is simply  
14 whether the written policy is defendants' de facto policy. On the  
15 other hand, evidence of episodic deviations from the written policy  
16 by subordinant officials does not per se establish a different  
17 county policy; without direct evidence, the written policy must be  
18 regularly avoided in material ways by a substantial number of  
19 subordinates in order to create an inference that a de facto policy  
20 has displaced the written policy. If plaintiffs surmount that  
21 first obstacle, they next must demonstrate what defendants' actual  
22 practice is and show that it is constitutionally infirm. The  
23 county and the sheriff are liable only if there is a direct causal  
24 link between their actual policy or custom and alleged  
25 constitutional deprivations.

26 Plaintiffs have not demonstrated that there is a genuine issue

of material fact that reasonably requires trial. Defendants' written policy has been in effect since 1985; the average daily population of the jail facilities in 1989 was 356; the average confinement of the inmates offered as examples is less than 100 days. During the past seven or eight years, plaintiffs at best have identified only 20 inmates whom plaintiffs claim received inadequate medical care, i.e., less than three cases per year. It is not clear in any case how plaintiffs contend the care actually provided fell short of the approved protocol; it is less clear on what specific basis plaintiffs contend that the de facto practices effectively belie the written policy, i.e., demonstrate that subordinate officials sporadically implement the written policy imperfectly. In sum, plaintiffs have simply not adduced the quantity or quality of evidence sufficient to suggest let alone support an inference that defendants' medical protocols are a sham.

Even assuming, arguendo, that plaintiffs adduced evidence sufficient to look beyond defendants' written policy, plaintiffs' evidence falls woefully short of demonstrating that defendants' de facto policy amounts to such deliberate indifference to inmates' medical care as to subserve an Eighth Amendment or Fourteenth Amendment claim. At best, plaintiffs have adduced dubious evidence of sparse occurrences of neglect and delay that are legally insufficient to support a constitutional violation. Finally, and conclusively, plaintiffs have adduced no evidence of medical care or lack of it that caused substantial harm to any inmate.

Defendants are entitled to summary judgment upon this claim.

2. Dental Care

"Ready access" to adequate dental health care is constitutionally required and delay in providing such care when an inmate has made staff aware that a dental problem is causing an inmate severe pain, is interfering with the inmate's ability to eat properly, and may cause permanent damage may be unconstitutional. Hunt v. Dental Dept., 865 F.2d 198, 200 (9th Cir. 1989).

Defendants allege that they are providing constitutionally adequate dental health care by providing the services of a licensed dentist who holds dental clinics two to three times per week at the jail, as required for CMA/NCHC accreditation.

Plaintiffs support their claim that dental care is inadequate with the declarations of inmate Terry Frison and plaintiff's dental care expert, Dr. Rosenblum, who reviewed a sample of inmate dental files.<sup>7</sup>

Plaintiffs' claims of unconstitutional dental care suffer all the same legal defects as their claims of unconstitutional medical care. Defendants are entitled to summary judgment on this claim.

3. Mental Health Care

Defendants allege that the mental health care they provide satisfies the constitutional standard set forth in Balla v. Idaho, 595 F.Supp. 1558, 1577 (D. Idaho 1984), aff'd, 869 F.2d 461 (9th Cir. 1989), to wit: (1) a systematic screening and evaluation

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<sup>7</sup> Exhibit F; Exhibit H to the Opposition.

program for identifying inmates needing mental health treatment;  
(2) treatment must be more than segregation and close supervision;  
(3) caregivers must include sufficient numbers of trained mental health professionals so that inmates requiring treatment for serious mental disorders may be identified and treated in an individualized manner; (4) accurate, complete and confidential records of the mental health treatment process must be maintained; (5) psychotropic medications must be prescribed and administered in a safe manner and with appropriate supervision and periodic evaluation; and (6) a basic program must be developed and implemented for identifying, treating, and supervising inmates with suicidal tendencies.

Defendants' mental health program is also CMA/NCHC accredited and includes: (1) systematic screening by specially-trained custody staff using a form approved by the NCHC, for mental health problems at the intake stage; (2) treatment including thrice-weekly clinics with a licensed mental health counselor and weekly clinics with a fully licensed Board certified psychiatrist, with segregation in the safety cell reserved for psychiatric emergencies, combative self-destructive behavior, and suicide prevention; (3) individualized treatment plans developed by licensed mental health professionals, including a Board certified psychiatrist; (4) psychiatric records specially marked and kept with the inmates' medical records charts, secured in the medical wing of the jail, kept confidential except through court order or through the inmate-patient's written consent, and not available to

1 custody staff; (5) screening for psychotropic medication use and  
2 need at intake, confirmation of medication history prior to  
3 administering psychotropic medication, referral to licensed mental  
4 health counselor for evaluation of status and medication needs,  
5 referral to psychiatrist as needed if medication is indicated,  
6 medications ordered by the psychiatrist and dispensed through jail  
7 medical staff as part of an individualized plan including provision  
8 for special housing, observation for suicide risk, counselling and  
9 follow-up with the psychiatrist; and (6) evaluation for suicide  
10 risk upon intake, referral to medical staff for screening by  
11 nursing staff of inmates observed to be possibly suicidal during  
12 incarceration, special housing and observation of possibly suicidal  
13 patients if ordered by medical staff, referral to the next  
14 available mental health clinic for evaluation by the mental health  
15 counselor, placement of high suicide risk inmates in the medical  
16 unit safety cell with direct continuous camera observation and 15-  
17 minute interval observation by medical staff, and return to general  
18 population housing through gradual stages as the risk is deemed to  
19 diminish. Exhibit C, Defendants' Motion for Summary Judgment,  
20 Declaration of Claire Busby.

21 Plaintiffs argue that, despite defendants' mental health  
22 care policy, defendants' actual practices are deficient. In  
23 support, plaintiffs present the declaration of Dr. Frank Rundle.<sup>8</sup>  
24 Dr. Rundle's opinions of mental health care in the Shasta County  
25 jails are based on personal observation on February 19 and 20,  
26

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<sup>8</sup> Exhibit I, Opposition, Declaration of Dr. Rundle.

1992, his inspection of housing units, the medical area including the isolation and safety cells in that area, and the booking area; interviews with medical and custodial staff; discussions with inmates; private interviews with nine inmates; review of the medical files of thirteen inmates; and review of the jail policies and procedures manuals.

Dr. Rundle concludes that the screening protocol during booking is inadequate because it "poses an unanswerable question: Does inmates behavior/appearance suggest the risk of suicide/assault?" Dr. Rundle believes that a question concerning a history of suicide attempts or suicidal ideation is inadequate to "trigger a yes answer in some suicidal persons." Finally, Dr. Rundle believes a registered nurse, not custody staff, should make the evaluation. Dr. Rundle also believes that follow-up mental health evaluations performed by medical staff are inadequate to identify serious mental illness.

The protocol approved by the NCHC and defendants medical department is accredited by NCHC. Under such circumstances, Dr. Rundle's dissatisfaction with the protocol and procedure is inadequate to support a finding of deliberate indifference.

Dr. Rundle further states that, even if the mental health evaluation procedures are adequate to identify inmates requiring mental health care, defendants' medical staff either does not always recognize the significance of the information or does not always utilize the information properly. In support, Dr. Rundle relies upon the case of inmate "D.S." When first jailed, staff



1 found D.S. disoriented as to the time and month and when  
2 subsequently jailed again, D.S. was "rambling and mumbling." Dr.  
3 Rundle interviewed D.S. and found him to have a "severe  
4 associational thought disorder with rambling, circumstantiality  
5 irrelevancy and confabulation . . . probably . . . a form of  
6 dementia probably related to alcohol toxicity." Dr. Rundle  
7 believes that D.S. should have been referred for mental health  
8 treatment.

9  
10 D.S. is a 52-year-old male with a long history of  
11 alcoholism that has resulted in severe brain damage and physical  
12 damage.<sup>9</sup> D.S. has failed attempts at alcohol-abuse rehabilitation  
13 and has repeatedly demonstrated that he does not want and will not  
14 benefit from psychiatric counselling. Defendants medical  
15 department determined that no known drug therapy can cure D.S.'  
16 condition and therefore determined to treat D.S. only for his  
17 physical problems. Defendants also produce evidence that D.S.  
18 adjusts well in the general jail population and does not require  
19 special housing.

20 Dr. Rundle agrees that D.S. manifests a mental disorder  
21 resulting from brain damage caused by alcohol abuse. Drawing all  
22 inferences most favorably to the plaintiffs, the case of D.S.  
23 illustrates, at worst, a single occurrence of dubious neglect and  
24 not a constitutionally inadequate policy for identifying and  
25 evaluating mental health needs.

26 Dr. Rundle also challenges defendants' treatment of three

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<sup>9</sup> Busby Decl. at Exh. C, C.1.



1 other inmates whom Dr. Rundle believes are mentally ill. One,  
2 "C.G.", was seen by the mental health counselor five times, by a  
3 psychiatrist twice, by a doctor once and by nursing staff 42 times  
4 during 118 days.<sup>10</sup> Defendants' Exhibit C & C.1-C.4 to the Reply.  
5 Another, "L.H.", was found by defendants' medical staff to have a  
6 history requiring psychotropic medication and hospitalization but  
7 was not under treatment at the time of his incarceration and  
8 appeared to function normally when he was evaluated and interviewed  
9 by a registered nurse and functioned in the general population,  
10 with no problems reported by custody staff or other inmates. The  
11 third, "A.B.", was found to be delusional, had an extensive mental  
12 health history and previously had been treated by the same  
13 psychiatrist who treated her at the jail,

14 In each case, the inmate was determined to have mental  
15 health needs and was evaluated and treated. At worst, with all  
16 permissible inferences drawn in favor of plaintiffs, these cases  
17 show isolated occurrences of neglect rather than a systemic  
18 deficiency in the mental health policies and practices at Shasta  
19 County jail.

20 Dr. Rundle also believes that "safety cells" are  
21 inappropriately used as a suicide prevention device upon the  
22 recommendation of nursing staff without an adequate mental health  
23 evaluation. Dr. Rundle in part bases his opinion upon information  
24 that such inmates are left in safety cells naked, but for a  
25

26 <sup>10</sup> Dr. Rundle himself notes that the medical file on this inmate was two  
volumes long.

1 blanket, "sometimes for many days." There is no evidence in the  
2 record that any inmate has been left in a safety cell "for many  
3 days" with or without a psychiatric evaluation and treatment. On  
4 the contrary, defendants' policy is to place an inmate in a safety  
5 cell only when medical staff has determined that the inmate poses a  
6 high risk of suicide, to evaluate the inmate's progress at each  
7 shift, and to refer the inmate to the next mental health clinic.

8 As a matter of law, abandonment of defendants' safety  
9 cells to house inmates found to be high suicide risks might expose  
10 defendants to liability for failure to protect other inmates. See  
11 Wright v. Wagner, 641 F.2d 239, 241-42 (5th Cir. 1981); see also,  
12 Bowen v. City of Manchester, 966 F.2d 13 (1st Cir. 1992) (finding  
13 similar policy constitutionally adequate to protect suicidal  
14 inmates); cf. Imprisoned Citizens Union v. Shapp, 461 F.Supp. 522,  
15 528 (E.D. Pa. 1978) (plaintiffs requested padded cells as better  
16 alternative to "glass cage" isolation cells for psychiatrically  
17 disturbed inmates).

18 In addition, Dr. Rundle's expert opinion upon the use of  
19 "safety cells" is inadmissible. It is explicitly based upon  
20 reports of unknown origin and credibility and there is no evidence  
21 that such experts in Dr. Rundle's field reasonably rely upon such  
22 information, as required by Fed. R. Evid. 703.

23 Dr. Rundle also believes that the mental health staffing  
24 is "grossly inadequate" to meet inmate mental health needs.  
25 Plaintiffs, however, have failed to verify a single instance in  
26 which an inmate was denied mental health care because of staffing

11. Accordingly, Dr. Rundle's opinion is not material to plaintiff's claims that injunctive relief is required.

Finally, Dr. Rundle believes that defendants' record-keeping is inadequate. Defendants, on the other hand, argue that they follow the records-keeping procedures recommended by the NCHC. Exhibit C, Defendants' Summary Judgment Motion, 30-31. Plaintiffs have not shown that defendants' records-keeping procedure has resulted in denial of appropriate or adequate mental health care of a single inmate, far less the existence of a systemic deficiency arising to the level of a constitutional violation. Accordingly, plaintiffs' have failed to adduce evidence of deliberate indifference.

In sum, I find that the policies and procedures governing mental health care at the Shasta County jails are constitutionally adequate and defendants should be granted summary judgment on this issue.

#### C. "Exercise" Issues

Plaintiffs request an order requiring defendants to

11 Plaintiffs may argue that the three inmates Dr. Rundle uses as examples of inmates needing but not receiving mental health care are sufficient to meet the burden of pointing to specific facts in the record defeating summary judgment on this issue. However, a review of the synopses of these inmates' mental health records indicates, as discussed in the text *supra*, that each of them was known to have mental health needs and that each of them received individualized evaluation and treatment, if appropriate, including access to the mental health counselor and to the psychiatrist. On the other hand, plaintiffs cite, in support of their contention that inmates do not receive adequate exercise, a declaration by an inmate who also states that he had a lengthy delay in receiving prescribed Doxepin because the psychiatrist was on vacation for 1 1/2 months. Declaration of Robert Armstrong, Exh. M, Opposition to Summary Judgment. This declaration is not supported by the inmate's medical or mental health care records, nor, apparently, did Dr. Rundle interview this inmate. Again, assuming that this declaration is true, it shows only an isolated occurrence in which the delay was attributable to the exceptional (one assumes) circumstance of the psychiatrist's vacation.

2 provide inmates with increased access to a "dayroom," increased  
3 opportunities for outdoor exercise, and increased seating in the  
4 dayroom area. Broadly, all of these issues are subsumed under the  
5 rubric of "exercise."

6 Courts that have considered the constitutionality of  
7 provisions for exercise have analyzed it as a medical care issue  
8 arising under the Eighth Amendment. See, e.g., Spain v. Procunier,  
9 600 F.2d 189, 199 (9th Cir. 1979); Toussaint v. McCarthy, 597  
10 F.Supp. 1388, 1393 (N.D.Cal. 1984), aff'd in part, rev'd in part,  
11 801 F.2d 1080 (9th Cir. 1986) (exercise provisions unaffected),  
12 cert. denied, 481 U.S. 1069 (1987), aff'd in part, rev'd in part,  
13 vac'd in part, 918 F.2d 752 (1990) (exercise provisions unaffected);  
14 LeMaire v. Maass, 745 F.Supp. 623, 639-643 (D.Or. 1990). In  
15 Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Supreme Court found  
16 that the Eighth Amendment is violated when prison officials  
17 manifest "deliberate indifference to [an inmate's] serious medical  
18 needs."

19 Denial of outdoor physical exercise is not  
20 unconstitutional under all circumstances. Spain v. Procunier, 600  
21 F.2d at 199. It is clear, however, that complete, long-term denial  
22 of opportunity for indoor or outdoor exercise does violate the  
23 Eighth Amendment and, by extension, the Fourteenth Amendment.  
24 Toussaint v. McCarthy, 597 F.Supp. at 1412.

25 Defendants present evidence in support of their motion  
26 that general population inmates at the main jail are provided with

1 access to a dayroom 17.5 hours daily, 7 days a week <sup>12</sup> and access  
2 to outdoor exercise for at least 1.5 hours daily, 3 days per  
3 week. <sup>13</sup>

4 In opposition, plaintiffs present the declaration of one  
5 inmate, that in a "pod" in the womens' section of the Main Jail, on  
6 one occasion, there were 39 inmates but only 32 seats in the  
7 dayroom. <sup>14</sup> Of course, the inmates may sit down in their cells.  
8 The lack of seating in one pod, upon occasion, for each inmate  
9 offends neither the Eighth nor the Fourteenth Amendments.

10 Inmates at the Annex are out of their cells from 6 a.m.  
11 until 10:30 p.m. and during that time may be working or engaging in  
12 outdoor or indoor recreation. Exhibit E, Summary Judgment Motion.  
13 Inmates at the Crystal Creek facility are out of their cells  
14 engaged in forestry work all day during weekdays and have unlimited  
15 access to a dayroom and outdoor recreation from 4:30 p.m. until 11  
16 p.m.; this inmate population also has access to a dayroom and  
17 outdoor recreation for 15 hours daily on weekends.

18 Plaintiffs have not disputed these exercise opportunities  
19 at the Annex and Crystal Creek facilities.

20 Defendants contend that inmates who are segregated at the  
21 main jail have access to a dayroom from 5:30 a.m. until 11 p.m.  
22 except for a few segregated inmates who are on "walk alone" status-  
23

24 <sup>12</sup> Declaration of Lt. Dan Cunningham, Exh. E, Defendants' Motion for Summary  
25 Judgment.

26 <sup>13</sup> Declaration of Lt. Cunningham, Exh. N, Summary Judgment Motion.

<sup>14</sup> Declaration of Neva Hoskin, Exh. N, Opposition to Summary Judgment.

-they have access to a dayroom for one hour each day.

Administratively segregated inmates also have access to outdoor exercise facilities three hours per week.

Plaintiffs present inmate declarations that inmates in the main jail have access to outdoor exercise only twice a week.<sup>15</sup> Defendants' recreation yard schedule reflects that inmates are offered outdoor recreation only twice a week for three hours.<sup>16</sup> While plaintiffs' declarations raise an issue of fact about the amount of outdoor exercise,<sup>17</sup> the dispute is not material.

Based on international human rights standards, plaintiffs argue that all inmates are entitled to one hour per day of outdoor exercise. This court, however, must ask whether the opportunity for outdoor exercise is "so undesirable as to be 'shocking', 'offensive', 'inhumane', 'base' or 'barbaric.'" The list of Eighth Amendment adjectives is long but not endless, and undesirable is not among them." Imprisoned Citizens Union v. Shapp, 461 F. Supp. at 528. Because plaintiffs have not shown that outdoor exercise

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<sup>15</sup> Declaration of Robert J. Armstrong, Exhibit M, Declaration of Neva Hoskin, Exhibit N, Declaration of Richard Roach, Exhibit O, Opposition to Summary Judgment.

<sup>16</sup> Exhibit N, Summary Judgment Motion; Exhibit P, Opposition to Summary Judgment.

<sup>17</sup> It appears from the jail's exercise logs that the inmates in Richard Armstrong's housing unit were offered the opportunity for outdoor exercise every three to four days, weather permitting, from October 1, 1991 until March 31, 1992, that the inmates in Neva Hoskins' housing unit were offered the opportunity for outdoor exercise, weather permitting, every three to four days from November 3, 1991 until her release from custody on February 23, 1992, and that the inmates in Richard Roach's housing unit were offered outdoor exercise, weather permitting, every three to four days from September 29, 1991 until his release from custody on February 3, 1992. Declaration of Lt. Van Buskirk, Exhibit E, Reply to the Opposition, and E.4, E.5, E.7. These logs cover the time during which each of these inmates states, in his or her sworn declaration, that he or she was restricted to one or two hours of outdoor exercise one day per week or less.



opportunities are so limited for the main jail general population or administratively segregated population as to cause a deterioration of inmates' physical or mental health, defendants are entitled to summary judgment on this issue.

D. Failure to Provide Prompt Probable Cause Hearings

Plaintiffs request an order requiring defendants promptly to hold hearings to determine whether there is probable cause to detain inmates arrested without a warrant. Plaintiffs have not shown that defendants are not presently adhering to the law as expressed by the Supreme Court in County of Riverside v. McLaughlin, 111 S.Ct. 1661 (1991). Plaintiffs oppose summary judgment on this issue solely on the basis that defendants might return to their alleged "old ways" without a permanent injunction. This argument is defeated by the qualification in United States v. W.T. Grant, 345 U.S. 632 (1953) that only voluntary changes undertaken in response to litigation are suspect; here, defendants' policy changes reflect changes in the law of the land.<sup>18</sup> Accordingly, defendants are entitled to summary judgment on this issue.

E. Use of Safety Cells/Rubber Rooms

Plaintiffs request an injunction barring all use of safety cells at the Shasta County jails.

Defendants contend that their policies governing use of the safety cells conforms to NCHC and Title 15 of the California Code of Regulations; standards for using safety cells, and that,

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<sup>18</sup> See Exhibit Q, Summary Judgment Motion.

accordingly, the decision to use the cells temporarily to restrain certain inmates is among those subsumed within the broad category of decisions by correctional administrators regarding the maintenance of internal order and discipline to which the court must give "wide ranging deference." Bell v. Wolfish, 441 U.S. at 547.

Plaintiffs oppose on the ground that use of such cells is a per se constitutional violation. Plaintiffs rely upon decisions considering the constitutionality of confining inmates in "strip cells" in lieu of treating them for mental illness or as a form of punishment. Each of these cases involves confinement under abhorrent conditions for relatively long periods of time.

The protocols governing safety cells at the Shasta County jails provide that safety cells may be used for inmates who are highly intoxicated or violent during booking, require that medical staff be notified immediately after an inmate is placed in the cell, and require that the inmate be checked at least every 15 minutes. An inmate who is violent or combative and judged a danger to himself or others may also be confined to a safety cell. Use of a safety cell requires authorization from a Watch Commander and documentation of the reasons. Medical staff must observe the inmate and record their observations within six hours. Medical staff also must review the case every eight hours and a Watch Commander must review the case every four hours. Inmates placed in a safety cell for aggressive, violent, or bizarre behavior indicating that the inmate is a danger to self or others are



1 required to be referred to a psychiatrist. Restraints may only be  
2 used if authorized by medical staff and a written policy governing  
3 use of such restraints. Restrained inmates are taken to the toilet  
4 every three hours during waking hours and their hygiene needs are  
5 administered to. Acutely suicidal inmates are not left in  
6 seclusion.<sup>19</sup> Absent a showing, which plaintiffs have not made,  
7 that these written policies and procedures routinely are not  
8 followed, I find that the use of safety cells at the Shasta County  
9 jails is distinguishable from the use of "strip cells" or  
10 "isolation cells" found to be unconstitutional in the cases cited  
11 by plaintiffs in their opposition. Decisions made pursuant to  
12 defendants' policies are decisions governing internal discipline  
13 and order to which this court owes deference. Defendants are  
14 entitled to summary judgment on this issue.

15 F. "Unsafe Jail"

16 Plaintiffs also seek an injunction requiring defendants  
17 to provide "safety" for the plaintiff class. No specific factual  
18 support is given for the allegations of the complaint that  
19 defendants operate an unsafe jail. Defendants are entitled to  
20 summary judgment on this issue.

21 G. Law library access

22 The County maintains a law library at the Main Jail  
23 facility and an inventory of the library is posted at all  
24 facilities. Inmates at the Main Jail are allowed to use the  
25 library upon request; inmates at other facilities who request  
26

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<sup>19</sup> See Exhibits A & B, Defendants' Supplemental Brief.

direct physical access to the materials at the Main Jail are temporarily transferred to the Main Jail to accommodate the request. Inmates have direct, physical access to a law library in the Main Jail facility. The Main Jail library includes California Appellate reports since 1974, California Supreme Court Reports since 1980, United States Supreme Court reports since 1968, annotated California codes, a California digest service, and various other texts and materials. In addition, County policy provides that "a determination will be made on how to accommodate any request for legal materials that are not available in the law library." The County also provides access to public defenders.

Plaintiffs alleges that the library is constitutionally inadequate because (a) of the absence of copies of any but one title of the Code of Federal Regulations, reports of United States Court of Appeals and District Court decisions, United States Supreme Court decisions before 1968,<sup>20</sup> Supreme Court Reporter Digests,<sup>21</sup> California Supreme Court decisions before 1970, and current text supplements; (b) lack of materials on civil issues of interest to prisoners, e.g., child custody, bankruptcy, and wills; and (c) because inmates at the Detention Annex and forestry camp must forego their more desirable housing in order to visit the law library.

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<sup>20</sup> Volumes 89 through 110 B of West's Supreme Court Reporter. VanBuskirk Decl., Ex. "U."

<sup>21</sup> Each volume of the Supreme Court reports contains a Key Number Digest cataloguing reported decisions under such headings as constitutional law, habeas corpus, and civil rights.

In order to give prisoners a "reasonably adequate opportunity" to present to the courts claimed violations of fundamental constitutional rights, inmates must have either access to a law library or assistance of persons trained in the law. Bounds v. Smith, 430 U.S. 817, 828 (1977); Lindquist v. Idaho State Bd. of Corrections, 776 F.2d 851, 855 (9th Cir. 1985). Inmates who assert that they are deprived of both law library access and legal assistance state a per se claim that their right of access to the courts is violated, and need not show actual injury. Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989).

Prisoners have no federal constitutional right to materials on other issues and no right to a library and "more desirable housing."

In addition to the right to access to the courts, prisoners retain limited constitutional rights to free speech, association and religion; privacy; conditions of confinement consistent with the prohibition against cruel and unusual punishment; equal treatment; and procedural due process. Deprivations of such rights may be remedied in an action pursuant to 42 U.S.C. § 1983. These rights are all articulated in Supreme Court decisions since 1968.<sup>22</sup>

<sup>22</sup> See, e.g., Bounds v. Smith, 430 U.S. 817 (1977) (access to courts); Turner v. Safley, 482 U.S. 78 (1987) (right to marry); Hudson v. Palmer, 468 U.S. 517 (1984) (rights compatible with objectives of incarceration retained); Wolff v. McDonnell, 418 U.S. 539 (1974) (due process); Cruz v. Beto, 405 U.S. 319 (1972) (free exercise of religion); Lee v. Washington, 390 U.S. 333 (1968) (equal protection); Estelle v. Gamble, 429 U.S. 97 (1976) (cruel and unusual punishment); Thornburgh v. Abbott, 490 U.S. 401 (1989) (mail); Wilson v. Seiter, 111 S.Ct. 2321 (1991) (defining punishment); Whitley v. Albers, 475 U.S. 312 (1986) (constitutionally required conditions); Board of Pardons v. Allen, 482 U.S. 369 (1987) (parole).

Prisoners also have the right to petition the district court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The grounds for habeas relief most frequently raised are identified in a form petition provided to pro se prisoners with instructions for completing the petition.<sup>23</sup> Though many of the seminal decisions antedate the reports available, these grounds are nonetheless explicated in recent Supreme Court decisions available to Shasta County jail inmates.<sup>24</sup>

The digest contained at the end of each volume of the Supreme Court Reporter provides the opportunity to explore legal remedies by "browsing" through relevant decisions in search of inspiration and chance discovery of helpful authority. Of course, the principles articulated by the Supreme Court are refined in the decisions of Courts of Appeal, to which immediate, direct access is not provided. The relevant inquiry, however, is what is needed to give prisoners a "reasonably adequate opportunity" to present to the courts claimed violations of fundamental constitutional rights.

<sup>23</sup> These grounds are that the conviction was obtained by (a) an involuntary guilty plea, (b) a coerced confession, (c) evidence obtained pursuant to an unconstitutional search and seizure, (d) evidence obtained pursuant to an unlawful arrest, (e) violation of the privilege against self-incrimination, (f) failure of the prosecutor to provide exculpatory evidence, (g) violation of the protection against double jeopardy, (h) action of a grand or petit jury that was unconstitutionally selected and impaneled, (i) denial of effective assistance of counsel, and (j) denial of the right of appeal.

<sup>24</sup> See, e.g., Illinois v. Perkins, 110 S.Ct. 2394 (1990) (coerced confessions); United States v. Leon, 468 U.S. 897 (1984) (exclusionary rule and good faith exception); Edwards v. Arizona, 101 S.Ct. 1880 (self-incrimination); Arizona v. Youngblood, 488 U.S. 51 (1988) (exculpatory information); Justices of Boston Mun. Court v. Lydon, 466 U.S. 294 (1984) (double jeopardy); Casteneda v. Partida, 430 U.S. 482 (1977) (grand jury selection); Duren v. Missouri, 439 U.S. 357 (1979) (petit jury selection); Batson v. Kentucky, 476 U.S. 79 (1986) (peremptory challenges); Strickland v. Washington, 466 U.S. 668 (1984) (effective assistance of counsel).

1 Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. at 1496.

2 Pro se prisoner pleadings are liberally construed by the  
3 court. Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987).  
4 Before a district court will dismiss a pro se complaint for failure  
5 to state a claim, the court will provide the pro se litigant with  
6 notice of the deficiency and an opportunity to amend the complaint.  
7 Eldridge v. Block, 832 F.2d 1132, 1136; Ferdick v. Bonzelet, 963  
8 F.2d 1258, 1261 (9th Cir. 1992); Karim-Panahi v. Los Angeles Police  
9 Dept., 839 F.2d 621, 625 (9th Cir. 1988); Noll v. Carlson, 809 F.2d  
10 1446, 1447 (9th Cir. 1987).<sup>25</sup>

11 Because the Supreme Court Reports contains the Supreme  
12 Court's most recent decisions articulating the fundamental  
13 constitutional rights of pro se prisoners, because the digests  
14 permit pro se prisoners to "browse" through relevant decisions in  
15 search of inspiration and helpful authority, and because their  
16 complaints will not be dismissed without notice of a deficiency and  
17 an opportunity to amend the complaint, I find that the materials  
18 provided by defendant County provide "reasonably adequate  
19 opportunity" to present to the federal courts claimed violations of  
20 fundamental constitutional rights and that they are therefore  
21 constitutionally adequate.

22 In addition to the right to access to the courts, an  
23

24 <sup>25</sup> To this end, the court provides a form of complaint for use by an inmate  
25 of a jail or prison and instructions for completing the complaint. The instructions  
26 explain that an action under section 1983 is available to challenge violations of  
the federal constitution or federal statutes that affect the conditions of the pro se prisoner's confinement. They also require the pro se litigant to state the facts of his case and describe how each defendant is involved without legal argument or citations to authority. This court also routinely provides pro se litigants with copies of the court's local rules upon service of the complaint or petition.

1 indigent criminal defendant who cannot afford to retain an attorney  
2 has an absolute right to have counsel appointed by the court.  
3 Gideon v. Wainwright, 372 U.S. 335 (1963). An accused also has a  
4 right to conduct his own defense pro se. Faretta v. California,  
5 422 U.S. 806 (1975). Plaintiffs complain that the shortcomings of  
6 the Shasta County jail library deprive pro se inmates of the right  
7 to conduct their own defense.

8 Faretta holds that an accused who invokes his right  
9 personally to make his defense is entitled to time to prepare and  
10 some access to materials and witnesses. 422 U.S. at 818, 95 S.Ct.  
11 at 2532. But an accused may reject the services of an attorney to  
12 present his defense yet accept counsel's assistance in preparing  
13 his defense. If such assistance is made available, the sixth  
14 amendment is entirely satisfied and the inmate may not insist upon  
15 access to a well maintained library. See Milton v. Morris, 767  
16 F.2d 1444 (9th Cir. 1985). Thus, so long as the County offers  
17 legal assistance, inadequacies of its jail law library deprive  
18 plaintiffs of no constitutional rights.

19 For all of the foregoing reasons, I RECOMMEND that  
20 defendants' motion for summary judgment be granted and this action  
21 be dismissed.

22 These findings and recommendations are submitted to the  
23 Honorable Edward J. Garcia pursuant to 28 U.S.C. § 636(b)(1)(C).

24 ////

25 ////

26 ////

1 Any party may file written objections to these findings and  
2 recommendations pursuant to L. R. 305(b) within fifteen days after  
3 service.

4 DATED: September 3, 1992.

  
UNITED STATES MAGISTRATE JUDGE



2:90-cv-01003

Wooden

v.

Shasta, County of

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on September 4, 1992, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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