

1 THOMAS C. LYNCH,
Attorney General of California
2 EDWARD P. O'BRIEN
Deputy Attorney General
3 ROBERT R. GRANUCCI
Deputy Attorney General

4 6000 State Building
5 San Francisco, California 94102
Telephone: 557-1959

6 Attorneys for Respondents

6/2/66 GBH
FILED
JAMES P. WELSH, Clerk

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11
12 ROBERT C. JORDAN, JR.,)
13)
14)
15)
16)
17)

Plaintiff,

vs.

15 STATE OF CALIFORNIA, et al.,)
16)
17)

Respondents.

14
No. 44786

18 NOTICE OF MOTION FOR SUMMARY
19 JUDGMENT AND MOTION TO DISMISS
20 PURSUANT TO 12(b) OF THE
FEDERAL RULES OF CIVIL PROCEDURE

21 TO: ROBERT CHARLES JORDAN, JR. AND TO CHARLES B. COHLER,
22 HIS ATTORNEY

23 PLEASE TAKE NOTICE that on June 22, 1966, at 10:00 a.m.,
24 or as soon thereafter as counsel can be heard, defendants will
25 present the following motions to the Honorable George B. Harris,
26 Judge of the United States District Court, at the United States
27 Courthouse, 450 Golden Gate Avenue, San Francisco, California:

28 A motion for an order entering summary judgment because
29 the complaint is sham and frivolous and this action represents
30 no more than an attempt to harass and annoy the defendants.
31 This motion will be based upon this notice, the affidavits of

1 George Francis Johnston, William Thomas Friedrich and Edward
2 Paul Kunkel and the memorandum of points and authorities in
3 support of this motion.

4 A motion to dismiss the action pursuant to Rule 12(b)
5 of the Federal Rules of Civil Procedure, because the complaint
6 fails to state a claim against defendants upon which relief
7 can be granted. This motion shall be made upon the papers and
8 files in this action as well as this notice of motion and the
9 supporting memorandum of points and authorities.

10 DATED: May 23, 1966

11 THOMAS C. LYNCH, Attorney General
12 of the State of California

13 EDWARD P. O'BRIEN
14 Deputy Attorney General

15 
16 ROBERT R. GRANUCCI
17 Deputy Attorney General

18 Attorneys for Defendants
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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF SUMMARY JUDGMENT

Introduction

Plaintiff has filed his first amended complaint, seeking damages against the defendants under provisions of Title 42 U.S.C. § 1983, the Civil Rights Act. Generally speaking, plaintiff complains about the conditions in the California Correctional Training Facility at Soledad, a penal institutional in which he is presently confined pursuant to his 1958 conviction of assault with force likely to produce great bodily injury in violation of section 245 of the California Penal Code.

Plaintiff's complaint contains three basic theories:

(1) That the conditions in the isolation section of the prison, and more particularly, of the quiet cell in which he was confined during a period in July, 1965, were and are such as to amount to cruel and unusual punishment in violation of the Eighth Amendment, as made applicable to the states through the Fourteenth Amendment (see Robinson v. California, 370 U.S. 660 [1962]);

(2) That plaintiff was and is being denied adequate medical treatment; and

(3) That there are no standards for the proper exercise of the discretion of prison employees in subjecting plaintiff to punishments for violation of prison rules and discipline.

This motion for summary judgment is directed primarily to the first of plaintiff's theories; his second and third will be the subject of the memorandum supporting our motion to dismiss.

Plaintiff's principal complaint about the conditions of his confinement is directed to the sanitary conditions of his quiet cell during the period in question. While we question

1 whether plaintiff has stated a cause of action at all, neverthe-
2 less the affidavits of Sgt. Friedrich and Dr. Kunkel, however,
3 establish that plaintiff's cell was in a sanitary condition.
4 Plaintiff's allegations that during the period of his confinement
5 in the quiet cell he was not given an opportunity to wash or
6 clean himself is disproven by the affidavit of Sgt. Friedrich
7 that he personally observed plaintiff taking at least one shower
8 and that plaintiff always had water available to him in his cell
9 to wash with. The Sergeant's affidavit also answered plaintiff's
10 allegation that his toilet was seldom flushed.

11 Plaintiff also complains that he was not furnished
12 sufficient bedding except a stiff canvas mat approximately 4-1/2
13 feet by 5-1/2 feet which was so stiff that it could not be folded.
14 The affidavit of George Francis Johnston, and the photograph
15 attached thereto, gives the lie to this allegation.

16 From the three affidavits attached to this motion it
17 appears that the conditions actually attending plaintiff's
18 confinement in isolation are far different from those he alleged
19 in his complaint. However, this should not surprise the court,
20 for as Judge Duniway said in his concurring opinion in Weller
21 v. Dickson, 314 F.2d 598 at 602 (9th Cir. 1963):

22 "We know from sad experience with habeas corpus
23 and 2255 cases that imprisoned felons are seldom,
24 if ever, deterred by the penalties of perjury. They
25 do not hesitate to allege whatever they think is
26 required in order to get themselves even the temporary
27 relief of a proceeding in court. The prospect of
28 amercing their jailers in damages must be a most
29 tempting one, even if it will not get them their
30 freedom. The disruption of prison discipline that
31 the maintenance of such suits, at government expense,
can bring about, is not difficult to imagine. Par-
ticularly since Monroe v. Pape, 1961 365 U.S. 167,
81 S.Ct. 473, 5 L.Ed.2d 492, it has become apparent
that the 'jailhouse lawyers' think that they have
a new bonanza in the Civil Rights Act."

Once plaintiff's fanciful fabrications about the con-
ditions of his confinement are disposed of, it is perfectly

1 obvious that all that remains is a complaint alleging
2 that he was placed in the isolation section of the prison and
3 denied adequate medical treatment. These allegations will be
4 discussed in our memorandum in support of the motion to dismiss
5 under 12(b).

6 DATED: May 23, 1966

7 THOMAS C. LYNCH, Attorney General
8 of the State of California

9 EDWARD P. O'BRIEN
10 Deputy Attorney General

11 *Robert R. Granucci*
12 ROBERT R. GRANUCCI
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14 Attorneys for Defendants
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11 ROBERT C. JORDAN, JR.,)
12)
13 Plaintiff,)

13 vs.)

14 STATE OF CALIFORNIA, et al.,)
15 Respondents.)
16)

No. 44786

17 AFFIDAVIT OF
18 GEORGE FRANCIS JOHNSTON

19
20 GEORGE FRANCIS JOHNSTON being first duly sworn deposes and
21 says: I am the Program Administrator in charge of Unit 3 of
22 Central Facility at the Correctional Training Facility at Soledad.
23 Among other wings my unit includes "O" Wing, (which is known as
24 the Adjustment Center). The west side of the lower floor of "O"
25 Wing is the isolation section. This section provides 18 cells
26 for inmates undergoing disciplinary detention plus six cells known
27 as quiet cells. The quiet cells are similar to other cells in
28 the isolation section except that they do not contain conventional
29 cell furnishings.
30
31

32 Also in front of each quiet cell there is an ante room 6'
by 2'8" constructed of concrete and having a metal door 6' 10" x

1 x 2' and an opening 20" x 14". The door and the window each have
2 a steel flap which may be closed and secured in the event of continued
3 disturbing noises. Photographs of a quiet cell and ante room are
4 attached.
5

6 These quiet cells are not provided with conventional cell
7 furnishings because inmates placed in these cells are the most
8 aggressive, destructive and violent inmates in the entire insti-
9 tution. It is common knowledge of those engaged in prison admin-
10 istration that these emotionally disturbed inmates will destroy
11 the cell furnishings and utilize them as weapons. Such fixtures
12 as conventional toilet bowls and wash basins have been broken
13 and the pieces used to assault staff and other inmates. Also
14 conventional cell beds have been disassembled by extremely violent
15 inmates and the metal used to fashion weapons. I have been acquaint-
16 ed with plaintiff since 1959. Inmate Jordan is an aggressive,
17 assaultive inmate who is quite volatile. He constitutes a real
18 danger to himself, prison personnel and other inmates. On many
19 occasions it has been necessary for personnel to use force to
20 control him.
21
22

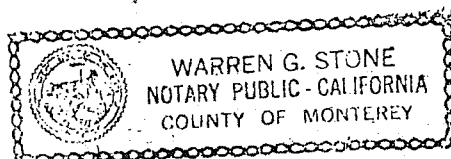
23 If sworn as a witness I could competently swear to the above
24 facts.
25

26 *George Francis Johnston*
27 GEORGE FRANCIS JOHNSTON

28 Subscribed and sworn to before
29 me this 2nd day of May
30 A.D., 1966.

31 *Warren G. Stone*
32 Notary Public in and for the
County of Monterey, State of
California.

WARREN G. STONE
My Commission Expires Jan. 28, 1970



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10 SOUTHERN DIVISION

11 ROBERT C. JORDAN, JR.,)

12 Plaintiff,)

13 vs.)

14 STATE OF CALIFORNIA, et al.,) No. 44786

15 Respondents.)
16)

17 AFFIDAVIT OF
18 WILLIAM THOMAS FRIEDRICK

19
20 WILLIAM THOMAS FRIEDRICK being first duly sworn, deposes and
21 says: I am a Correctional Sergeant assigned to "O" Wing at the
22 Correctional Training Facility at Soledad. My duties are to
23 assist in maintaining a high standard of cleanliness, and I am
24 responsible for the safekeeping, welfare, feeding and housing of
25 all inmates confined in "O" Wing. I have been assigned to "O"
26 Wing from June 1965 to the present time. My duty hours are
27 7:30 a.m. to 4:00 p.m. Monday through Friday. Plaintiff was
28 placed in a quiet cell in "O" Wing on the evening of July 9, 1965
29 and was removed from that cell on the morning of July 20, 1965.
30
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32

1 To the best of my knowledge the door and window flaps of plain-
2 tiff's cell were open all the time that I was on duty.

3 During my tour of duty the toilets in all the quiet cells,
4 including the cell where plaintiff was confined, were flushed
5 at least twice per shift. It is customary practice to flush the
6 toilets twice from 4:00 p.m. to midnight, and from midnight to
7 7:30 a.m., a prisoner's toilet is flushed at his request.

8 During the time in question all quiet cells were cleaned
9 every Saturday morning. The unoccupied cells were cleaned by
10 an inmate porter under the direct supervision of the Isolation
11 Officer. The occupants of the other quiet cells were furnished
12 materials to clean their own cells including a broom, cleansing
13 powder, either a mop or rags and water.

14 During the time in question, July 9, 1965 through July 20,
15 1965, when plaintiff was confined in the quiet cell, I personally
16 observed him take one shower and I believe he took a second shower
17 during this period. The general practice is that each quiet
18 cell prisoner is removed from his cell at the end of four or
19 five days and brought out for a shower, sooner if at all possible.

20 During the time in question each inmate housed in a quiet
21 cell was furnished at least two styrofoam drinking cups. At
22 least twice during the morning and afternoon shifts, each quiet
23 cell prisoner was given as much water as he cared to drink, in
24 addition to two cups of water which were left for him to either
25 drink later or wash with. During the midnight to 7:30 a.m. shift
26 each prisoner would be furnished water on request.

1 Since the time in question, plastic wash bowls and one half
2 gallon water containers have been obtained and one of each of
3 these items is furnished to each quiet cell prisoner and they
4 are filled twice per shift.

5 Each quiet cell inmate is and during the time in question
6 was given one (1) canvas strong mattress blanket (6 feet 10½ inches
7 long and 5 feet and ¾ of an inch wide), (a photograph is
8 attached which shows the blanket folded double), one set of
9 underwear, one pair of coveralls, one pair of socks and one pair
10 of rubber sandals. Once a week the inmates of all units are given
11 clean bedding and clothing.

12 If sworn as a witness I could testify competently to the
13 above facts.

14
15
16 *William Thomas Friedrich*
17 WILLIAM THOMAS FRIEDRICK

18
19 Subscribed and sworn to before
20 me this 2nd day of May
A.D., 19 66.

21 *Warren G. Stone*
22 Notary Public in and for the
23 County of Monterey, State of
24 California.

25 WARREN G. STONE
My Commission Expires Jan. 26, 1970

