SUPREME COURT NO. S048615

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KEITH G., SARAH A., and JASON F., individually and on behalf of all others similarly situated,

Plaintiffs and Respondents,

v.

BRIAN BILBRAY, GEORGE BAILEY, SUSAN GOLDING, et al.

Defendants and Appellants,

4th Civil No. D018045
(Superior Court No. 626554)

ON APPEAL FROM THE JUDGMENT OF THE
SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE ROBERT J. O'NEILL, Judge Presiding

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF YOUTH LAW CENTER ON BEHALF OF PLAINTIFFS AND RESPONDENTS AND AMICUS CURIAE BRIEF OF YOUTH LAW CENTER ON BEHALF OF PLAINTIFFS AND RESPONDENTS

SUSAN L. BURRELL, Staff Attorney, California State Bar No. 74204
SHANNAN L. WILBER, Staff Attorney, California State Bar No. 121280
LOREN M. WARBOYS, Managing Director, California State Bar No. 88277
YOUTH LAW CENTER
114 Sansome Street, Suite 950
San Francisco, CA 94104
(415) 543-3379

ATTORNEYS FOR AMICUS CURIAE YOUTH LAW CENTER

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TO THE HONORABLE MALCOLM M. LUCAS, CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT:

Susan L. Burrell, acting on behalf of Youth Law Center, respectfully requests this Court to grant leave, pursuant to California Rules of Court, rule 14(b), to file a brief as amicus curiae on behalf of Plaintiffs and Respondents, Keith G., et al. The proposed brief is included with this request.

Youth Law Center, based in San Francisco, is a national public interest law firm specializing in issues relating to at-risk children, especially those in out-of-home confinement through the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights litigation in California and seventeen other states. Youth Law Center staff have also provided research, training and technical assistance to public officials in almost every state on legislation and public policy issues relating to conditions of confinement and juvenile detention practices. Staff attorneys at Youth Law Center have written dozens of articles on various legal aspects of institutional confinement for children, including an extensive analysis, "Legal Rights of Children in Institutions."[1] In California, the Center has represented children in litigation over conditions in a number of juvenile halls and jails, and has recently completed a three-year statewide project through the auspices of the Annie E. Casey Foundation to train California juvenile hall staff, probation department administrators, juvenile court judges, and juvenile justice commissioners on legal standards governing the detention of children.

This case asks the Court to determine the constitutional standards for measuring conditions under which juveniles are detained in California juvenile halls, and to decide whether the trial court properly applied those standards. Because there is little published precedent in California case law, the standards will necessarily be derived from juvenile cases in other jurisdictions, and adult cases involving pretrial detainees or adults confined for non-criminal purposes. It is critical that the Court tailor the constitutional standard to reflect the

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[1] Chapter 2, in Soler, et al., Representing the Child Client (Matthew Bender, July 1995), updated biannually by Michael Dale.

distinct purposes of juvenile confinement and the characteristics of juvenile detainees.

Thus, the goal of the proposed amicus curiae brief is to focus the Court's attention on characteristics of confinement that are different for juveniles than for adults. The brief addresses two major issues. First, it presents additional authority on constitutional standards for measuring conditions in juvenile facilities. Appellants and Respondents have narrowed the discussion of constitutional standards to an interpretation of the Eighth and the Fourteenth Amendments to the United States Constitution, but that interpretation has centered primarily on adult institutional cases. The proposed amicus brief presents pertinent authority from juvenile institutional litigation on the meaning of and reasons for applying the Fourteenth Amendment standard.

Second, the proposed brief addresses the right of children to rehabilitative services if detained in juvenile halls for extended periods after their disposition hearing. The Court of Appeal opinion mischaracterized the issue and concluded that "treatment" as something not available to children confined for delinquent conduct. That view misapprehends the fundamental rehabilitative purpose of juvenile confinement and children's Fourteenth Amendment right to receive treatment consistent with that purpose. There is a significant need for this Court to hear further discussion on this issue.

Because of our work on these issues for nearly two decades, Youth Law Center is well-qualified to discuss the development of constitutional standards in juvenile institutional litigation; the ways in which juvenile detainees are different from adults; and the ways in which the purpose of juvenile confinement affects the constitutional standards for juvenile

detention facilities.

Youth Law Center is familiar with the questions involved in this case and the scope of their presentation. The Center filed an amicus brief on behalf of respondents in the Court of Appeal, and submitted a request to this Court that the appellate opinion be depublished pursuant to California Rules of Court, rule 979(a). Counsel for respondents are aware of Youth Law Center's interest in the case and welcome our participation.

For all of these reasons, we respectfully request that this Application for Leave to File Amicus Curiae Brief of Youth Law Center on Behalf of Plaintiffs and Respondents be granted, and that the Brief of Amicus Curiae Youth Law Center on Behalf of Plaintiffs and Respondents be filed.

Dated this 16th day of February, 1996, at San Francisco, California.

Respectfully submitted,

YOUTH LAW CENTER
Susan L. Burrell, Staff Attorney
Shannan L. Wilber, Staff Attorney
Loren M. Warboys, Managing Director

By: Susan L. Burrell
SUSAN L. BURRELL

ATTORNEYS FOR AMICUS CURIAE
YOUTH LAW CENTER ON BEHALF OF
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San Francisco, CA 94104
(415) 543-3379

ATTORNEYS FOR AMICUS CURIAE YOUTH LAW CENTER

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I. INTRODUCTION

Scarcely two years ago, this Court permitted the state to hold juvenile offenders longer than adults before a probable cause determination is made. Alfredo A. v. Superior Court (1994) 6 Cal.4th 1212, 1216 [26 Cal.Rptr. 623, 626]. Central to the Court's reasoning was that the state's parens patriae interest in preserving and promoting the welfare of the child justified allowing the state more leeway in handling juveniles. Id. at p. 1228 [26 Cal.Rptr. at p. 633]. The Court placed special emphasis on Justice Rehnquist's words in Schall v. Martin (1984) 467 U.S. 253, 265 [104 S.Ct. 2430, 2410], that "juveniles, unlike adults, are always in some form of custody. [citations omitted] Children, by definition are not assumed to have the capacity to take care of themselves . . . [I]f parental control falters, the State must play its part as parens patriae."

This case is now before the Court because the state has faltered in its parens patriae role. While California law calls for juvenile halls to be treated as something other than penal institutions and to be "conducted in all respects as nearly like a home as possible,"[1] this record describes a punitive, out-of-control facility, operated by an overwhelmed staff. When the state deviates from its "parental" duties to incarcerated youth, this Court must not turn away.

The record herein presents extensive and unrefuted evidence of longstanding, appalling conditions in the San Diego County Juvenile Hall. The trial court's Statement of Decision described in great detail a series of inhumane, unhealthy and dangerous conditions that permeated every aspect of institutional life. These conditions would be considered

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[1] California Welfare and Institutions Code section 851.

insupportably harsh even in a maximum security adult prison; they have no place in a facility operated for juveniles.

The court found that because of horrendous overcrowding, many detained juveniles were forced to sleep on the floor, and that it was common for three (and sometimes four) children to be crammed into an 8 X 10 foot room designed for one person. Youth were locked in their rooms for 12 to 17 hours per day, with 13 to 14 hours being the norm. The effects of overcrowding were exacerbated by serious understaffing, and use of overworked, undertrained and exhausted staff.

Persistent overcrowding meant that children relieved themselves in their rooms or urinated out the window because of inadequate access to toilets; that recreational programs were curtailed because of understaffing and space shortages; that many children were forced to eat their meals in their rooms because there wasn't room for everyone in the public areas, and that children in their rooms sometimes received short portions of food; that minors sometimes lacked sufficient bedding, and that some of the living units were smelly and unsanitary; that clothing was ill-fitting and in disrepair; that access to the school program was curtailed, and that children with disabilities were neither identified nor properly served; that the incidence of children with mental health problems increased; that children placed on suicide watch were held in inhumane conditions with inadequate monitoring; that facility mental health services, which were already inadequate to provide appropriate screening, treatment, and transfer of seriously disturbed youth, became even more overtaxed as population increased; that violence, sexual misconduct and assaultive behavior increased; that racial and gang tension increased;

and that the use of punitive measures such as room confinement and group punishment increased with overpopulation.[2]

The trial court properly found that these conditions, whether considered separately, or taken in their entirety, violated the rights of detained children under the Fourteenth Amendment Due Process Clause.[3] For each of the reasons stated in this brief and the Opening Brief of Plaintiffs and Respondents, the opinion of the Court of Appeals should be reversed.[4]

II. THE TRIAL COURT PROPERLY FOUND THAT CONDITIONS IN THE HALL VIOLATED THE APPLICABLE FOURTEENTH AMENDMENT STANDARD FOR MEASURING CONDITIONS IN JUVENILE DETENTION FACILITIES

A. The Fourteenth Amendment Standard

The Fourteenth Amendment Due Process Clause protects the rights of confined persons who have not been convicted of a crime.[5] There are two lines of cases, and both have been

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[2] Superior Court Statement of Decision, pp. 29-50, and Opening Brief of Plaintiffs and Respondents, pp. 4-23. We hereby adopt and incorporate by reference the statement of the case and statement of facts contained in the Opening Brief of Plaintiffs and Respondents.

[3] References to due process in this brief should be deemed to refer both to the federal Due Process Clause under the Fourteenth Amendment and the due process provisions contained in Article I, section 7, of the California Constitution.

[4] The trial court also found that, sitting as a superior court (as opposed to sitting as a juvenile court), it did not have the authority to enforce the Minimum Standards for Juvenile Halls, 15 California Code of Regulations section 4266, et seq. In the trial court's view, the superior court is empowered to intervene if conditions are unconstitutional, but enforcement of the Standards is through the California Youth Authority (legislation enacted after the trial herein has shifted authority to the Board of Corrections) or the juvenile court judge, pursuant to Welfare and Institutions Code sections 209 and 210. While the Standards may well provide additional protection to children in the plaintiff class, neither side has appealed that ruling and the Court of Appeal did not consider the issue. That issue is not before this Court either, and this Court's opinion should so indicate.

[5] The Eighth Amendment prohibits the cruel and unusual punishment of adults convicted of crimes. See, e.g., Rhodes v. Chapman (1981) 452 U.S. 337, 346-347 [101 S.Ct. 2392,

applied in juvenile institutional litigation. The first, following Youngberg v. Romeo (1982) 457 U.S. 307 [102 S.Ct. 2452], addresses the Fourteenth Amendment liberty interests of mentally retarded individuals who are involuntarily committed by the state. The second, under Bell v. Wolfish (1979) 441 U.S. 520 [99 S.Ct. 1861], addresses the substantive rights of adult pretrial detainees under the Fourteenth Amendment.

In Youngberg v. Romeo, supra, 457 U.S. 307, 315-316 [102 S.Ct. 2452, 2458], the Supreme Court held that a mentally retarded individual who was involuntarily committed to a state institution had a Fourteenth Amendment liberty interest in reasonably safe conditions of confinement and freedom from unreasonable bodily restraint. The Youngberg opinion also recognized the confined individual's right to such minimally adequate training as reasonably might be required to preserve his or her interest in safe conditions and freedom from restraint. Id. at pp. 321-22 [102 S.Ct. at p. 2461].

Under Youngberg, a court must determine whether restraints on the liberty interests of the confined individuals are imposed in accordance with the judgment of qualified professionals. Id. at pp. 322-323 [102 S.Ct. at pp. 2461-2462]. Courts must defer to the exercise of professional judgment, and "liability may be imposed only if the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Id. at p. 323 [102 S.Ct. at p. 2462].

2398-2399], Farmer v. Brennan (1994) ___U.S.___, ___ [114 S.Ct. 1970, 1976], Wilson v. Seiter (1991) 501 U.S. 294, 297 [111 S.Ct. 2321, 2323].

In Bell v. Wolfish, the Supreme Court considered the rights of pretrial adult detainees. The Court first established that the appropriate standard emanates from the Fourteenth Amendment Due Process Clause rather than the Eighth Amendment Cruel and Unusual Punishment Clause. 441 U.S. at p. 536 n.16 [99 S.Ct. at p. 1872 n.16]. The Court explained:

> " '[T]he state does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment.' "

Id., quoting United States v. Lovett (1946) 328 U.S. 303, 317-18 [66 S.Ct. 1073, 1079-1080]. The Court concluded that the correct inquiry in assessing the constitutionality of the conditions under which pretrial detainees are confined is whether the conditions "amount to punishment." Bell, supra, 441 U.S. at p. 535 [99 S.Ct. at p. 1872].

B. Application of the Fourteenth Amendment Standard in Juvenile Cases

Children detained in juvenile halls prior to their adjudication hearing are in a status similar to that of pretrial adult detainees, and children detained in post-adjudication status have not been convicted of a crime.[6] Thus, the Fourteenth Amendment standard under Bell and Youngberg is the appropriate source of constitutional protection for all youth confined in juvenile detention centers.

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[6] California Welfare and Institutions Code section 203.

Although the United States Supreme Court has never ruled directly on the constitutional standards for conditions in juvenile facilities,[7] its opinions in related areas strongly suggest that the Court would apply the Fourteenth Amendment. In Schall v. Martin (1984) 467 U.S. 253, 265 [104 S.Ct. 2430, 2410], the Supreme Court considered the validity of New York's juvenile pretrial detention statute. While the Court was looking at the practice of detention, and not the conditions under which children were confined, the primary consideration for the Court was whether pretrial detention was "imposed for the purpose of punishment," or whether it was incidental to the legitimate governmental purpose in detention. 467 U.S. at p. 269 [104 S.Ct. at p. 2412, citing Bell v. Wolfish (1979) 441 U.S. 520, 538 [99 S.Ct. 1861, 1873]. The Court noted that even if there is a legitimate state purpose for detention, the conditions of confinement must be compatible with that purpose. 467 U.S. at p. 269 [104 S.Ct. at p. 2112]. In determining the validity of pretrial detention, the Court looked closely at the conditions under which New York children were held. The Court took into account the brief period of detention (no more than 17 days); the fact that children would be screened for placement in a range of nonsecure or secure placements; and the conditions of confinement, including classification procedures that allowed assignment to dorms based on age, size and behavior; the ability to wear street clothing; and the ability to partake in educational and recreational programs and counseling sessions with trained social workers. Nothing in Schall

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[7] In Ingraham v. Wright (1977) 430 U.S. 651, 669 n.37 [97 S.Ct.1401, 1411 n.37], the Court expressly reserved the question whether the Eighth Amendment Cruel and Unusual Punishment Clause applies to juvenile institutions.

indicates that the Supreme Court would look further than the Fourteenth Amendment in assessing the constitutionality of conditions in juvenile facilities.[8]

Moreover, the First, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits have explicitly held that conditions in juvenile correctional facilities are governed by the Due Process Clause of the Fourteenth Amendment rather than the Eighth Amendment standard. Santana v. Collazo (1st Cir. 1983) 714 F.2d 1172, 1179-80, cert. denied, 466 U.S. 974 (1984)("Santana I"); Bergren v. City of Milwaukee (7th Cir. 1987) 811 F.2d 1139, 1143; A.L. by L.B. v. Kierst (8th Cir. 1995) 56 F.3d 849, 854; Gary H. v. Hegstrom (9th Cir. 1987) 831 F.2d 1430, 1432; Milonas v. Williams (10th Cir. 1982) 691 F.2d 931, 942 & n.10, cert. denied, 460 U.S. 1069 (1983); H.C. ex rel. Hewett v. Jarrard (11th Cir. 1986) 786 F.2d 1080, 1084-85.[9] In applying the Fourteenth Amendment standard, several courts have discussed the Youngberg standard (see, e.g., Gary H., supra, 831 F.2d at p. 1432; Santana I, supra, 714 F.2d at pp. 1179-1180; Milonas, supra, 691 F.2d at p. 942; Alexander S., supra, 876 F.Supp. at pp. 797-798.), and others have discussed the Bell standard (see, e.g., Gary H., supra, 831 F.2d at p. 1432; Jarrard, supra, 786 F.2d at p. 1085; Milonas, supra, 691 F.2d at p. 942; Tewksbury, supra, 545 F. Supp. at p. 905).

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[8] More recently, the High Court used the Fourteenth Amendment analysis relied upon in Schall to determine the validity of release practices used by the Immigration and Naturalization Service with respect to minors detained for immigration proceedings. Reno v. Flores (1993) ___U.S___, ___ [113 S.Ct. 1439, 1448].

[9] In addition, a number of district courts have applied the Fourteenth Amendment standard. Alexander S. v. Boyd (D.S.C. 1995) 876 F. Supp. 773, 796; D. B. v. Tewksbury (D. Or. 1982) 545 F.Supp. 896, 905; Pena v. New York State Div. for Youth (S.D.N.Y. 1976) 419 F.Supp. 203, 207.

In Gary H. v. Hegstrom, supra, 831 F.2d 1430, a civil rights case brought on behalf of juveniles at an Oregon secure facility for wards of the juvenile court, the Ninth Circuit thoughtfully analyzed the standard of review applied in earlier juvenile conditions cases. The Court rejected the Eighth Amendment standard, though it noted that the Due Process Clause implicitly incorporates the Cruel and Unusual Punishment Clause standards as a "constitutional minimum." Id. at p. 1432. In reviewing the decision of the trial court, the Ninth Circuit then applied both Bell and Youngberg.

There have been few published cases involving conditions in California juvenile halls. Conditions in the Los Angeles Central Juvenile Hall were litigated in Manney v. Cahell (9th Cir. 1980) 654 F.2d 1280, but the Ninth Circuit Court of Appeals applied the abstention doctrine to vacate a district court judgment in favor of the plaintiff juveniles. The Ninth Circuit exercised its discretion to abstain because it believed that a review of the conditions of confinement under applicable state statutory law could well obviate the need for a constitutional adjudication of the conditions of confinement under the Fourteenth Amendment. Id. at p. 1284. Nonetheless, in so ruling, the Ninth Circuit made it clear that the Fourteenth Amendment would apply:

> "In Bell v. Wolfish, 441 U.S. 520, 535 & n.16, 99 S.Ct. 1861, 1872 & n.16, 60 L.Ed.2d 447 (1979), the Supreme Court held that, with respect to conditions of confinement, pretrial detainees are entitled to the protections of the Due Process Clause, which are greater than the protections afforded by the cruel and unusual punishment proscription of the Eighth Amendment . . . The California Supreme Court has declared that the cruel and unusual punishment provisions of the United States and California constitutions do not apply to juvenile commitments, because the purpose of such a commitment is rehabilitation, not punishment. See People v. Olivas, 17 Cal.3d 236, 255, 131 Cal.Rptr. 55, 551 P.2d 375 (1976); In re Gary W., 5 Cal.3d 296, 301-03, 96 Cal.Rptr. 1, 486 P.2d 1201 (1971). The correct standard of review in this case is therefor under the Due Process Clause."

Manney v. Cabell, supra, 654 F.2d at p. 1284 n.5.

The appropriate standard of review now before this Court is under the Fourteenth Amendment, as enunciated in Youngberg and Bell. The trial court properly applied that standard in reviewing the conditions in the San Diego County Juvenile Hall. Superior Court Statement of Decision, pp. 14-18.

C. The Trial Court Properly Recognized That Application Of The Fourteenth Amendment To Detained Juveniles May Require An Even Higher Standard of Care Than For Adults

The trial court properly took into account the fact that the conditions before it occurred in a juvenile facility:

> "Much of this description of the present day reality of juvenile hall would be troubling to the average citizen even if it were describing an adult prison. The fact is, however, what has been described is a facility which houses a wide variety of youngsters between the ages of ten and 18 years. Some of these minors could fairly be described as young but hardened criminals who unfortunately are but a few steps from a maximum security prison...But there are also many children in Juvenile hall: young, weak, confused, angry children. A significant portion of the detainees in the Hall are victims of long term sexual abuse and parental neglect. Many of the youngsters in the Hall are seriously mentally ill . . . "

Superior Court Statement of Decision, pp. 69-70, and see p. 75.

In construing the meaning of constitutional due process protections, this Court must similarly consider the special characteristics of juvenile detainees. For ". . . youth is more than a chronological fact. It is a time and condition of life when a person is most susceptible to influence and psychological damage." Eddings v. Oklahoma (1982) 455 U.S. 104, 115 [102 S.Ct. 869, 877]. " ' [A]dolescents, particularly in the early and middle teen years are more vulnerable, more impulsive, and less self-disciplined than adults . . . adolescents have less capacity to control their conduct and to think in long-range terms than adults.' " Id. at p.

115 n.11 [102 S.Ct. at p. 877 n.11], quoting from Twentieth Century Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime (1978).

This Court has long recognized that, " 'It is difficult for an adult who has not been through the experience to realize the terror that engulfs a youngster the first time he loses his liberty and has to spend the night or several days or weeks in a cold, impersonal cell or room away from home or family.' " In re William M., 3 Cal.3d 16, 31 n.25 [89 Cal.Rptr. 33, 43 n.25], quoting from the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (1967), p. 80. The very fact of incarceration carries serious emotional consequences for young detainees. Justice Mosk has expressed this point in the timeless words of Justice Musmanno:

> " 'What is punishment? It is the infliction of pain, sorrow, and grief. To take a child from the comfort of his home, the joy of his companions and the freedom of field, river and wood, and confine him to a building with whitewashed walls, regimented routine and institutional hours is punishment in the strictest sense of the word. To say . . . that this institutionalized incarceration is for the "care and treatment" of the juvenile does not make it any less abhorrent to the boy [or presumably to the girl] of spirit, health and energy.' "

Ramona R. v. Superior Court (1985) 37 Cal.3d 802, 811 [210 Cal.Rptr. 204, 210], quoting from Holmes Appeal (1954) 379 Pa. 599, 615-616 , dis. opn. of Musmanno, J. [bracketed insertion is in Ramona R.].

Incarceration also subjects juveniles to increased physical and mental health risks. Detained children have a higher risk of suicide than other adolescents, and are at increased risk of traumatic injuries from assaults or self-inflicted wounds. Congress of the United States, Office of Technology Assessment, Adolescent Health - Volume II: Background And The Effectiveness Of Selected Prevention And Treatment Services (1991), p. 640. Moreover, the

psychological impact of being confined in cramped rooms for extended periods may be greater for children than adults:

> " '...[E]xtended isolation of a youngster exposes him to conditions equivalent to "sensory deprivation." This is a state of affairs which will cause a normal adult to begin experiencing psychotic-like symptoms, and will push a troubled person in the direction of serious emotional illness."
>
> "What is true in this case for adults is of even greater concern with children and adolescents. Youngsters are in general more vulnerable to emotional pressures than mature adults; isolation is a condition of extraordinary severe psychic stress; the resultant impact of the individual exposed to such stress will always be serious, and can occasionally be disastrous."

Lollis v. New York State Department of Social Services (S.D.N.Y. 1970) 322 F.Supp. 473, 481, modified, 328 F.Supp. 1115 (1971).

More recently, the Seventh Circuit Court of Appeals noted that in assessing whether the requirements of due process have been satisfied during pretrial detention, ". . . it is quite appropriate -- indeed necessary to consider that in such an environment juveniles may indeed have different needs and more importantly, different capacities than adults." Bergren v. City of Milwaukee, supra, 811 F.2d 1139, 1143, Similarly, the Eighth Circuit has held that "the due process standard applied to juvenile pretrial detainees should be more liberally construed than that applied to adult detainees." A.J. v. Kierst, supra, 56 F.3d 849, 854.

D. Appellants' Authorities Do Not Support The Argument That The Eighth And Fourteenth Amendment Standards Are The Same "For All Intents And Purposes"

Appellants would have this Court believe that, "for all intents and purposes," the Fourteenth Amendment standard is co-extensive with that of the Eighth Amendment. Appellants' Answer to Petition for Review, p. 3. Appellants have mistakenly interpreted a

number of Fourteenth Amendment cases which held only that the less stringent Eighth Amendment standard is necessarily incorporated into the more protective Fourteenth Amendment standard.

In support of their assertion that these standards are the same, Appellants have selected cases in which courts have discussed Eighth Amendment cases while applying the Fourteenth Amendment standard. However, these cases do not support the argument that the courts have equated the two.

Courts sometimes analogize to Eighth Amendment cases to determine whether there has been a violation of the Fourteenth Amendment, because conditions that violate the Eighth Amendment also violate the higher Fourteenth Amendment standard. For example, in cases alleging constitutional violations with respect to medical care, courts resolving the rights of pretrial detainees often look at Estelle v. Gamble, 429 U.S. 97, 104 [97 S.Ct. 285, 291], which is an Eighth Amendment prison case. Accordingly, Appellants have cited Barber v. City of Salem, Ohio (6th Cir. 1992) 953 F.2d 232, 235 (Appellants' Answer to Petition for Review, p. 3), as evidence that the standards are the same, but that is not the holding of the case. In Barber, the Sixth Circuit Court of Appeals noted that, with respect to medical care, that the rights of pretrial detainees under the Fourteenth Amendment are "analogous" to those of prisoners under the Eighth Amendment. However, the Court made it clear that the reach of the standards was not the same: ". . . pretrial detainees who have not been convicted of any crimes retain, at the very least, the same constitutional rights enjoyed by convicted prisoners." Id., [emphasis added].

Similarly, Hamm v. DeKalb (11th Cir. 1985) 774 F.2d 1567, 1572, involved an inmate whose incarceration was both pretrial and post-conviction. The Eleventh Circuit properly applied the Fourteenth Amendment to his pretrial claims, and the Eighth Amendment to his post-conviction claims. And while the Eleventh Circuit found that for certain issues such as food, living space and medical care, the result was the same under either standard, the Court was careful to note that its holding did not mean that pretrial detainees' rights are determined by the Eighth Amendment. Id. at p. 1574. Instead, the Court held only that the rights of a pretrial detainee are at least as great as those of convicted prisoners. Id.

Appellants also cite a Ninth Circuit case, Redman v. County of San Diego (9th Cir. 1991) 942 F.2d 1435, for the proposition that the Eighth and Fourteenth Amendment standards are the same. Although the Ninth Circuit concluded that, for purposes of assessing the failure to protect vulnerable inmates against rape, it made sense to apply the same standard to pretrial detainees and convicted prisoners, Id. at p. 1443, the Court did so only after carefully analyzing the personal safety interests of pretrial detainees and convicted inmates. Moreover, the Court emphasized the general caveat that the standards are different in the sense that "...while the eighth amendment proscribes cruel and unusual punishment for convicted inmates, the due process clause of the fourteenth amendment proscribes any punishment of pretrial detainees." Id. at p. 1440 n.7 [emphasis added].[10]

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[10] The other cases cited by Appellants (Appellants' Answer to Petition for Review, p. 3), are inapposite. Hovater v. Robinson (10th Cir. 1993) 1 F.3d 1063, 1064 involved a convicted jail inmate, so the Eighth Amendment was properly applied to her even though she was serving her sentence in a county jail. Taylor v. Freeman (4th Cir. 1994) 34 F.3d 266, which Appellants offer as a case involving a North Carolina juvenile institution, is actually an adult prison case. Thus, it is hardly surprising that the Court applied the Eighth Amendment

Thus, while Eighth Amendment cases are useful to courts in setting constitutional minima under the Fourteenth Amendment, the due process rights of confined people who have not been convicted of a crime are much broader. For example, the Ninth Circuit has recently rejected the Eighth Amendment rules for disciplinary due process in a case involving a pretrial adult jail inmate, on the grounds that it would improperly subject him to punishment, in violation of the Fourteenth Amendment. Mitchell (aka Shabazz) v. Dupnik (January 26, 1996, No. 93-16517) (9th Cir. 1996) ___ F.3d ___, 96 D.A.R. 883, 885 (January 29, 1996).

Moreover, whatever Appellants may say about the identity of interests between pretrial and post-conviction adults, the Fourteenth Amendment interests of juveniles are different.[11] "[I]f the interests of juvenile offenders were identical to those of their adult counterparts, there would be no reason to separate the two groups when they are imprisoned." Ford by Ford v. Scully (D.Kansas 1991) 773 F.Supp. 1457, 1462.

E. The Discrete Conditions In This Case Violated The Fourteenth Amendment

Appellants in this case have characterized the trial court's Statement of Decision as largely a totality of the circumstances determination. That assessment of the record blatantly ignores the extensive findings made on at least six discrete issues: restraint on freedom of

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standard.

[11] The Court should take note that Redman involved the claims of an adult inmate for damages. Melding the Fourteenth and Eighth Amendment standards for the purpose of determining "deliberate indifference" to establish liability is one thing; Appellants go too far in demanding that the same standard and intent requirements be imposed on juveniles in a case calling only for injunctive relief. Respondents have extensively briefed this issue. Opening Brief of Plaintiffs and Respondents, pp. 31-36.

movement and lockdown; living conditions and basic services, including bathroom access; safety; mental health services; rehabilitative services for post-disposition minors; and overcrowding.[12] The trial court properly found that each of those conditions violated the Fourteenth Amendment.

1. Freedom of Movement and Lockdown Within the Juvenile Hall

The trial court found that children in the San Diego facility were locked down for between 12 and 17 hours a day, with 13 to 14 hours being the norm. Sometimes they were locked in their rooms for as much as an hour simply because the understaffed facility could not otherwise cope during shift change. During these long hours, many children were unable to elicit staff response to their requests to use the bathroom, and it was common for children to urinate or defecate in their overcrowded 8 X 10 rooms. This occurred with sufficient frequency that the steel windows, out of which children urinated, had to be replaced because they were corroded. Even when out of their rooms, children were required to move from place to place in silence, with their arms crossed over their chest. Superior Court Statement of Decision, pp. 28-29, 32-33. These conditions would be shocking under any constitutional standard of review; they clearly fall within the protection of the Due Process Clause.

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[12] We agree with Respondents that even under an Eighth Amendment analysis, Respondents should prevail. Whether these conditions are considered as discrete human needs or as a totality, the deprivations are of constitutional magnitude. Should "deliberate indifference" be added into the equation, Respondents should prevail, as well. Under the Eighth Amendment "subjective recklessness" standard articulated by the Supreme Court in Farmer v. Brennan, supra, ___U.S.___,___ [114 S.Ct. 1970, 1984], an institutional official is "deliberately indifferent" if he or she "knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." These conditions in this case were well-known to county officials for many years, and unreasonably were allowed to persist.

Accordingly, in Alexander S v. Boyd, supra, 876 F.Supp 773, the federal court relied on Youngberg in concluding that "the Due Process Clause guarantees to incarcerated juveniles the right to freedom from unreasonable bodily restraint:

> "The interest in freedom from unreasonable bodily restraint includes freedom from unnecessary bodily restraint through mechanical devices as well as . . . unreasonably restrictive conditions of confinement . . . which unduly restrict the juveniles' freedom of action and are not reasonably related to legitimate security or safety needs of the institution."

876 F.Supp. at p. 798.

Youth in the San Diego facility were in lockdown for many of their waking hours. The consequences of being confined in a small space (an 8 X 10 foot room), with "absolutely nothing to do but lay around on their bunks"[13] are analogous to those resulting from extended isolation. Courts have looked closely at restrictions on detained juveniles freedom of movement in a variety of contexts because, "For the juvenile, the experience of incarceration may have a far more long-lasting psychological effect." Bergren v. City of Milwaukee, supra, (7th Cir. 1987) 811 F.2d 1139, 1143.

In Inmates of Boys' Training School v. Affleck (D.R.I.1972) 346 F.Supp. 1354, 1365-66, the court observed that "To confine a boy without exercise, always indoors, almost always in a small cell, with little in the way of education or reading materials, and virtually no visitors from the outside world is to rot away the health of his body, mind and spirit."[14] Research

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[13] Superior Court Statement of Decision, p. 30.

[14] And see, e.g., Morgan v. Sproat (1977) 432 F.Supp. 1130, 1139, where children in an "intensive treatment unit" were relegated to their rooms all day except for showers and calisthenic periods, and children were not allowed to talk to each other; Lollis v. New York State Department of Social Services, supra, 322 F.Supp 473, modified, 328 F.Supp. 1115, in

confirms that in crowded juvenile facilities, children experience an increase in boredom, as well as higher anxiety levels.[15]

The long periods that children in the San Diego facility were locked in their rooms are extremely troubling. The inhumanity of failing to provide prompt access to toilets is almost unthinkable. That children were not permitted to speak as they were marched around the facility, and were routinely denied the opportunity to eat their meals out of their rooms simply added to the prisonlike atmosphere of the Hall. These children were deprived in the most basic sense of their constitutional right to freedom of bodily movement. Under Bell this amounted to punishment; under Youngberg these practices were a "substantial departure from accepted professional standards."

2. Living Conditions and Basic Services at the Juvenile Hall

In addition to its finding that the facility failed to provide adequate bathroom access, the trial court found serious deficiencies in other basic services and living conditions at the Hall, including limited time to shower and use the bathroom; inadequate space for children to eat in common areas even though they were not being disciplined; the size of meal servings being determined by a prison-like "pecking order"; greatly curtailed leisure time in the dayrooms because of the sheer numbers of youth to be accommodated; ill-fitting, tattered clothing; and a deteriorated physical plant. Superior Court Statement of Decision, pp. 24-28,

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which a girl spent nearly two weeks in an isolation room, and extensive expert testimony described the damaging psychological impact of such conditions on children.

[15] State of California, California Youth Authority, Overcrowding In Juvenile Detention Facilities and Methods to Relieve Its Adverse Effects (July 1983), p. 16.

32-35. The court also noted that there were inadequate classrooms to provide an appropriate classroom setting for youth; that the school day and class time were shortened due to overcrowding; and failure to properly serve children with disabilities in the school. Superior Court Statement of Decision, pp. 35-36.

These conditions represent deficiencies in children's basic human needs, and are similar to conditions addressed in past civil rights litigation in juvenile facilities.[16] See, e.g., Alexander S v. Boyd, supra, 876 F.Supp 773, 787-788 (adequate food, programming, education, special education); Ford by Ford v. Scully, supra, 773 F.Supp. 1457, 1458 (clothing, sanitation, meager food, programming); Thomas v. Mears (E.D. Arkansas 1979) 474 F.Supp. 908 (toilet access, eating in common area, education); and Inmates of Boys' Training School v. Affleck, supra, 346 F.Supp. 1354, 1369-1370 (educational program, eating conditions). Under Bell, these conditions may "amount to punishment," and under Youngberg, they represent a "substantial departure from accepted professional judgment."

3. Safety of Children at the Juvenile Hall

The trial court expressed great concern over the incidence of physical and sexual assaults at the Hall. The court noted the difficulties of interpreting statistical data offered by the county, since it inevitably underreports the true incidence of violence. Instead, the court credited the testimony of management staff regarding increasing numbers of violent assaults

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[16] These particular conditions are often litigated in cases that never make their way into published opinions. Dozens of cases involving basic living conditions and services are described in "Legal Rights of Children in Institutions," Chapter 2, in Soler, et al., Representing the Child Client (Matthew Bender, July 1995), updated biannually by Michael Dale.

between minors, as well as increasing sexual assaults and consensual sexual incidents. The court also considered the testimony of minors about rampant sexual acting out, physical attacks and intimidation, and gang fights. The court observed that in times of extreme crowding, the Hall had used dayrooms for sleeping, but had to stop because it was too dangerous; youngsters had begun breaking up the cots and using the parts as weapons. Violence in the Hall was so common that there was an established procedure in case of gang fights, for a Probation officer to yell "bellies", so that the non-combatants would drop to the floor, leaving the fighters more accessible to be restrained by staff. The trial court explicitly found that ". . . Juvenile Hall is not a safe place for the detention of minors . . . At these high population levels with present staffing levels and in the present facility, effectively protecting all of the minors in the court's care is extremely difficult and perhaps impossible." Superior Court Statement of Decision, pp. 26, 29-32.

These conditions clearly come within the protection of the Fourteenth Amendment. In Alexander S., the court cited Youngberg for the proposition that "the Due Process Clause guarantees to juveniles who are incarcerated the right to reasonably safe conditions of confinement . . . Safety . . . encompasses the Plaintiffs' right to reasonable protection from the aggression of others, whether 'others' be juveniles or staff. [citations omitted]." Alexander S. v. Boyd, supra, 876 F. Supp. 773, 798.

Safety issues frequently arise in overcrowded facilities. Researchers have found that residents of overcrowded facilities are more likely to exhibit hostility and anger toward staff

and other detainees.[17] Moreover, there is evidence that staff in overcrowded facilities are less likely to take action on disciplinary problems, often because understaffing leaves them incapable of stopping fights and unable to protect vulnerable children from assaults.[18] The trial court properly found the failure to adequately protect children in the San Diego County Juvenile Hall came within the purview of Fourteenth Amendment protections.

4. Mental Health Services for Children at the Juvenile Hall

The trial court extensively reviewed the mental health services for detained children and concluded: "The provision of mental health evaluation and treatment is wholly inadequate." One psychiatrist estimated that 30% of the minors in the Hall have a diagnosable mental illness; another psychiatrist stated that 10% have immediate mental health care needs. The Chief Probation Officer admitted that ". . . at any given time, there are 4 to 6 'crazy' kids in the Hall who do not belong there"; his report to the county director of health services indicated that 16-20% of the detained minors had known histories of serious psychiatric problems. The court found mental health staffing at the Hall inadequate to serve youth with an immediate and critical need for treatment; to provide appropriate monitoring of mentally ill and suicidal minors; or to provide needed treatment to the considerable number of mentally ill

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[17] State of California, Department of the Youth Authority, Overcrowding in Juvenile Detention Facilities and Methods to Relieve Its Adverse Effects, supra, p. 7 and studies referenced at pages 7-13.

[18] Id. at pp. 7-8, 20; and see, Lerner, Steve, Bodily Harm: The Pattern of Fear and Violence at the California Youth Authority (Common Knowledge Press, 1986), at p. 12.

and emotionally disturbed youth confined at the facility. Superior Court Statement of Decision, pp. 42-51.

We will not linger on this, except to say that this is a critical issue in juvenile facilities. Respondents have extensively briefed it after the Court of Appeal badly misstated the applicable constitutional standards and ignored the trial court's extensive factual findings. In addition to the extensive authority set forth in the Opening Brief of Plaintiffs and Respondents, the Court should know that inadequate mental health services, and failure to provide proper screening and monitoring of suicidal youth in juvenile facilities frequently have been litgated as violations of children's constitutional rights. See, e.g., Morgan v. Sproat, supra, 432 F.Supp. 1130, 143-1144; Pena v. New York State Division for Youth, supra, 419 F.Supp. 203, 207-211; Gary W. v. Louisiana (E.D. La. 1976) 437 F.Supp. 1209, 1219, 1226; Matarella v. Kelley (S.D.N.Y. 1973) 349 F.Supp. 575, 586 ; Thomas v. Mears, supra, 474 F.Supp. 908, 911; Inmates of Boys School v. Affleck, supra, 346 F.Supp. 1354, 1374.

5. The Right to Treatment Following Disposition

The trial court found that even though the mission of the Hall is to provide short term detention, a substantial number were detained for extended periods -- sometimes for six months or longer. Many such children were in post-disposition status, having already been ordered into treatment programs by the juvenile court. The trial court concluded that since the only reason such children are detained is to receive rehabilitative services, the failure to provide such services "is an unreasonable and unnecessary deprivation of the minors [sic] liberty." Superior Court Statement of Decision, pp. 55-63, quoted text at p. 58. That liberty interest falls squarely within the protection of the Fourteenth Amendment.

This issue is more fully briefed in section III, herein.

6. Overcrowding

The trial court's Statement of Decision went to great lengths to present a picture of overcrowding in the Hall and its impact on children and staff. In November 1991, there were 422 minors in a facility designed for 219. This meant that three minors routinely slept in rooms with 80 square feet of floor space. Superior Court Statement of Decision, pp. 23-24. The court described the ways that these conditions violated numerous state regulations and affected the daily operation of the hall. The court noted the impact of overcrowding on staff ability to meaningfully classify children for room assignments, as well as the terrifying prospect it created for young, weak, immature and fragile youth. The court found that overcrowded conditions had existed since at least 1979, and that the Hall had become increasingly overcrowded, its facilities increasingly overstressed, and services increasingly eroded. The court found that "overcrowding is a chronic and corrosive condition at Juvenile Hall which negatively affects all aspects of the program." Superior Court Statement of Decision, pp. 23-27, 67-68. The court concluded that such overcrowding resulted in discrete deprivations of the minors' "constitutionally protected liberty interests in safety, freedom of movement, medical care, appropriate living conditions, and training, and that such deprivations as outlined above, when taken together amounted to punishment as defined in Bell." Superior Court Statement of Decision, p. 72.

These findings are completely consistent with social science research on the impact of overcrowding in juvenile facilities. One study found that classification in overcrowded facilities becomes difficult or impossible, so that juveniles are assigned wherever space is

available. Living unit assignments are made to meet institutional needs and not the individual needs of the detained child.[19] Safety concerns also cause staff in overcrowded facilities to keep children confined in their rooms for longer periods than if the population were more manageable.[20]

Overcrowded living units create an atmosphere in which sexual exploitation and gang activity flourish, and fear abounds. Some children who weren't in gangs before may affiliate for self-protection, and other children may act "crazy" in order to be transferred out of dormitory settings where they feel vulnerable to physical attack.[21] Living or working in an overcrowded facility is extremely stressful. Researchers have found that crowding greatly increases the inmate complaints of illness and suggest that this is partly a function of stress.[22] The lack of privacy and incessant noise of overcrowded facilities is particularly devastating for children. Data suggest that overcrowding affects the ability of staff to meaningfully screen potentially suicidal children, to supervise them and to intervene effectively. It is not surprising

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[19] State of California, Department of the Youth Authority, Overcrowding in Juvenile Detention Facilities and Methods to Relieve Its Adverse Effects, supra, p. 8.

[20] Id. at pp. 19-20, and see, De Muro, et al, Reforming the CYA: How to End Crowding, Diversify Treatment and Protect the Public Without Spending More Money (Commonweal Research Institute, 1988), p. 20.

[21] Id., (De Muro, et al.), p. 19.

[22] U.S. Office of Justice, Office of Juvenile Justice and Delinquency Prevention, Conditions of Confinement: Juvenile Detention and Corrections Facilities: Research Report, (Abt Associates, Inc., August 1994) pp. 49-50.

that overcrowding has been linked with increases in suicidal behavior in juvenile detention centers.[23]

Overcrowding also burdens the physical plant of the facility. It burdens the plumbing and toilet system and reduces the effectiveness of the ventilation system (air movement, temperature regulation, removal of contaminants). It increases sanitation problems, since it demands more laundering of clothing and linens, more food preparation and cleanup, and more housekeeping type maintenance. All of this may adversely affect the health of children and staff, and may result in expensive repairs or improvements.[24]

Finally, research shows that overcrowding has dramatic effects on institutional programming. It restricts the amount of time children have to visit with families, the ability of the facility to provide prompt medical or psychological services, and the amount of time staff have to spend with individual children. In many facilities, overcrowding means that children go to school for less than the full day or not at all.[25]

Appellants have argued that if the Wilson v. Seiter Eighth Amendment test applies, the plaintiff children should lose. Appellants Answer to Petition for Review, p. 3. Why they make such an argument is unclear since Wilson specifically held that "[s]ome conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would

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[23] Id. at p. 208.

[24] State of California, Department of the Youth Authority, Overcrowding in Juvenile Detention Facilities and Methods to Relieve Its Adverse Effects, supra, p. 11, 16-19.

[25] Id. at pp. 16-20, and see, De Muro, et al., Reforming the CYA: How to End Crowding, Diversify Treatment and Protect the Public Without Spending More Money (Commonweal Research Institute), supra, pp. 19-20.

not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single human need such as food, warmth or exercise." Wilson v. Seiter, supra, 501 U.S. at p. 304, 111 S.Ct. at p. 2327. In the overcrowded, understaffed San Diego facility, the "mutually enforcing effect" of the lockdown practices, physical danger, inability for children even to use the toilet, program and service deficiencies, and failure to properly treat children with mental and emotional problems present a compelling showing that children's most basic human needs were not being met. Conditions in the San Diego County Juvenile Hall presented an almost a textbook case on the dangers of overcrowding. On this record, the trial court was well within its discretion to declare that the conditions at the Hall individually, or taken together, amounted to punishment as defined in Bell.[26]

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[26] The trial court's response to the overcrowded conditions was appropriate. Courts around the country have imposed population caps and adjustments to living conditions, even when officials claimed that overcrowding was the result of budgetary constraints. For example, in West Virginia, the Supreme Court of Appeals ordered that no juvenile facility may accept children beyond its licensed capacity, and limited the amount of time a child may be held pending disposition or placement. Facilities Review v. Coe (W.Va. 1992) 420 S.E.2d 532. Similarly, in Alexander S. v. Boyd, supra, 876 F.Supp. 773, 777, 780, the court ordered the defendant facilities to come up with a population management plan. Other cases have dealt with specific institutional conditions, such as the impact of overcrowding upon privacy, and have required single rooms or limits on dormitory size and privacy for children in bathroom use. See, e.g., Thomas v. Mears, supra, 474 F. Supp. 908, D. B. v. Tewksbury, supra, 545 F. Supp. 896, Ahrens v. Thomas, 434 F. Supp. 873 (W.D. Mo. 1977), affd. in part, 570 F.2d. 286 (8th Cir. 1978).

III. THE TRIAL COURT PROPERLY FOUND THAT THE DUE PROCESS RIGHTS OF POST-DISPOSITION CHILDREN ORDERED TO BE CONFINED FOR THE PURPOSE OF RECEIVING REHABILITATIVE SERVICES ARE VIOLATED WHEN THOSE SERVICES ARE NOT PROVIDED WITHIN A REASONABLE AMOUNT OF TIME

The trial court found that many children detained in the miserably overcrowded juvenile hall were awaiting placement in other facilities. At the time the Statement of Decision was written, the Hall population averaged 20% to 25% in post-disposition status.[27] The court noted that since these children had been deprived of their liberty based on a juvenile court order that they receive treatment (Cal. Welf. & Inst. Code § 726 and § 727), the failure to provide treatment within a reasonable amount of time violates their constitutional rights:

> "Post-dispositional minors detained in Juvenile Hall are held there because there has been a determination that they need treatment and because the Juvenile Court has ordered that they are to receive such treatment. Regardless of the crimes they may have committed, the juvenile law grants to the minor the benefit of not being "convicted" in a "criminal" proceeding. Section 203 ."

Superior Court Statement of Decision, p.62-63, p. 82.

Accordingly, the trial court held that "All minors detained pending placement for a period of longer than 15 days shall be offered a program of treatment or rehabilitation appropriate to his or her needs." Alternatively, if the probation department determines that it does not have the facilities or resources to comply with this order, it may cause the minor to be brought before the juvenile court at the 15-day review to determine whether the child's due

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[27] Of the 422 minors in the juvenile hall just prior to commencement of the trial, 115 were awaiting placement in 24-hour schools, the local juvenile ranch, the girls rehabilitation facility, or the California Youth Authority. Superior Court Statement of Decision, pp. 61-62.

process rights are being violated by continued confinement in the hall, and if so, what measures should be taken. Superior Court Statement of Decision, p. 83.[28]

The Court of Appeal took issue with this order, holding that "Because the court's power over such a juvenile is based on conduct and not on mental or physical condition, no constitutional right to treatment arises as a result of the juvenile's detention. [Citations.]" Court of Appeals slip opinion, pp. 27-28. Whether or not this statement is true is beside the point, because the trial court's ruling was not on that issue.[29] The trial court ruled only that where a person is deprived of their liberty to fulfill a purpose, the failure to fulfill that purpose within a reasonable amount of time violates the person's rights under the Due Process Clause.

This ruling is consistent with Youngberg, requiring that the conditions under which a mentally retarded adult was held would "comport fully with the purpose of respondent's confinement," citing Jackson v. Indiana (1972) 406 U.S. 715, 738 [92 S.Ct. 1845, 1858]. 457 U.S. at p. 324, 102 S.Ct. at p. 2462. Jackson held that "due process requires that the

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[28] California Welfare and Institutions Code section 737 requires that "In any case in which a minor is detained for more than 15 days pending the execution of the order of commitment or any other disposition, the juvenile court shall periodically review the case to determine whether the delay is reasonable. These periodic reviews shall be held at least every 15 days . . ." The statute requires the court to inquire into ". . . the action taken by the probation officer to carry out the order, the reasons for the delay, and the effect of the delay upon the minor." These hearings are usually paper reviews, except in unusual cases. Thus, the remedial order in this case is aimed at strengthening the existing statutory procedure to address the severe placement backlog in San Diego County.

[29] Appellants and the Court of Appeal have confused the right to "treatment" in a mental health setting, with the right to "treatment" in the juvenile rehabilitative system. The trial court did refer to adult mental health cases, but only to make the point that due process requires treatment consistent with the purpose of confinement. Superior Court Statement of Decision, pp.61-62.

nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." 406 U.S. at p. 738, 92 S.Ct. at p. 1858.

In California, delinquent children may be deprived of their liberty only for the purpose of receiving rehabilitative and treatment services. California Welfare and Institutions Code sections 202, 726, and 727. Accordingly, the trial court posed the question whether the state in a noncriminal proceeding[30] can deprive the minor of his liberty, on the basis of a court order that the minor receive treatment, by incarcerating him in "what can hardly be called other than a penal institution" for an indefinite period of time without providing the required services? Superior Court Statement of Decision, p. 61. The court concluded that "Due Process requires that when a person's liberty is taken for an indeterminate period of time for the purpose of providing treatment or rehabilitative programming, that person is entitled to receive such programming within a reasonable amount of time." Superior Court Statement of Decision, p. 82.

While In re Gault (1967) 387 U.S. 1 [87 S.Ct. 1428], focused on children's procedural rights in juvenile court, the Court expressed concern that children may not receive the "special consideration and treatment" promised by the juvenile court system. The Court noted that several courts had "indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore, that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment." 387 U.S. at p. 22 n.30 [87 S.Ct. at p. 1441 n.30]. Three years after Gault, the Supreme Court stopped short of finding a

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[30] California Welfare and Institutions Code section 203.

constitutional right to a jury trial for juveniles, partly out of concern that the recognizing such a right would bring an end to individualized rehabilitation of young offenders. McKeiver v. Pennsylvania (1970) 403 U.S. 530, 545-547 [91 S.Ct. 1976, 1986-1987]. While punishment is a legitimate objective of the adult criminal justice system, the objectives of the juvenile justice system "are to provide measures of guidance and rehabilitation for the child . . . not to fix criminal responsibility, guilt and punishment." Kent v. United States (1966) 383 U.S. 541, 554 [86 S.Ct. 1045, 1054].

Accordingly, California Welfare and Institutions Code section 202, subdivision (b), provides, in pertinent part, that "Minors under the jurisdiction of the juvenile court for delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their conduct, and is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative purposes of this chapter." When the juvenile court declares the minor a ward of the court, the dispositional order includes ". . . any and all reasonable orders for the care, supervision, custody, conduct, and support of the minor, including medical treatment. . ." California Welfare and Institutions Code section 727, subd. (a).

As this Court has observed, "The basic predicate of the Juvenile Court Law is that each juvenile be treated as an individual. The whole concept of our procedure is that special diagnosis and treatment be accorded the psychological and emotional problems of each offender so that he achieves a satisfactory adjustment." In re William M. (1970) 3 Cal.3d 16, 31 [89 Cal.Rptr. 33, 44]. Although Welfare and Institutions Code section 202 has been

amended over the years to allow punishment as a rehabilitative tool, and consideration of public safety in fashioning the treatment program, the underlying rehabilitative objective of the Juvenile Court law has not changed. In re Michael D. (1987) 188 Cal.App.3d 1392, 1396 [234 Cal.Rptr. 103, 105].

The trial court properly found that the failure to provide rehabilitative treatment to post-disposition youth within a reasonable amount of time deprived them of their liberty interest under the Fourteenth Amendment. Since the primary purpose of the juvenile justice system is to provide for the care and treatment of children in accordance with their individual needs, a failure to provide such services "amounts to punishment" under Bell, and represents a "substantial departure from accepted professional practice" under Youngberg.

IV. CONCLUSION

The trial court's decision was amply supported by extensive findings of absymal conditions in the San Diego County Juvenile Hall. The Court of Appeal agreed that "We believe that in large measure the trial court's statement of decision accurately portrays the conditions at juvenile hall as they existed at the time of trial." Court of Appeal slip opinion, p. 28. But while the Court of Appeal did not quarrel with the factual findings, it found the trial court's legal conclusions inadequate.

For the reasons stated herein, the trial court's legal findings were sufficient to support its conclusion that the Fourteenth Amendment was violated by a series of conditions, whether considered individually, or in their totality. Accordingly, the decision of the Court of Appeal should be reversed. Even if this Court believes the trial court's rulings were insufficient, the decision should still be reversed with instructions to the Court of Appeal that the case be

remanded for more detailed findings. The case was fully litigated at great expense to all parties, and the four judges who have looked at the record agree that these conditions are deplorable.

Over a period of many years, conditions at the San Diego County Juvenile Hall inflicted damage on the mental and physical well-being of literally thousands of detained children and thwarted the most fundamental parens patriae purpose of the juvenile system. While the state is entitled to great deference in the operation of juvenile facilities, there can be no possible legitimate state interest in keeping youth in the unconstitutional conditions revealed by this record. Ultimately, the failure to properly care for youth in state custody affects the well-being of society. Children subjected to unhealthy, dangerous conditions may come out worse than they went in, and may be released without having had the benefit of services designed to resolve the conditions that led to delinquent behavior. We urge the Court to find that these condition violated constitutional due process protections, and to assure that children in the San Diego County Juvenile Hall receive the relief ordered by the trial court herein.

Dated this 16th day of February, 1996, at San Francisco, California.

Respectfully submitted,

YOUTH LAW CENTER
Susan L. Burrell, Staff Attorney
Shannan L. Wilber, Staff Attorney
Loren M. Warboys, Managing Director

By: Susan L. Burrell
SUSAN L. BURRELL

ATTORNEYS FOR AMICUS CURIAE
YOUTH LAW CENTER ON BEHALF OF
PLAINTIFFS AND RESPONDENTS

PROOF OF SERVICE BY MAIL

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 114 Sansome Street, Suite 950, San Francisco, California 94104.

On the date indicated below, I served the following:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF YOUTH LAW CENTER ON BEHALF OF PLAINTIFFS AND RESPONDENTS AND BRIEF OF AMICUS CURIAE YOUTH LAW CENTER ON BEHALF O PLAINTIFFS AND RESPONDENTS

to the interested parties hereinafter listed by placing a true and correct copy of such document in an envelope and placing such envelope in a United States post office box, postage prepaid:

Nathan Northup, Esq.
Office of the County Counsel
1600 Pacific Highway, Suite 355
San Diego, CA 92101

John Hagar, Esq.
P.O. Box 86935
Los Angeles, CA 90086-0935

Timothy B. Taylor, Esq.
Sheppard, Mullin, Richter & Hampton
501 West Broadway, 19th Floor
San Diego, CA 92101

Honorable Robert J. O'Neill
Judge of the Superior Court
220 W. Broadway, Dept. S-34
San Diego, CA 92101

Jordan C. Budd, Esq.
Alex Landon, Esq.
Elizabeth Missakian, Esq.
ACLU Foundation of San Diego and
and Imperial Counties
P.O. Box 87131
San Diego, CA 92138

Clerk of the Court
Court of Appeal, State of California
Fourth Appellate Division, Division One
750 B Street, Suite 300
San Diego, CA 92101

I, Robin Bishop, declare under penalty of perjury that the foregoing is true and correct.

Served and executed on this 16th day of February, 1996, at San Francisco, California.

Robin Bishop