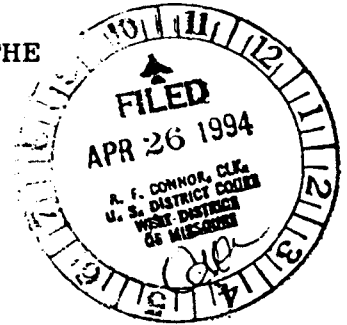




JI-MO-001-002

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



A.J., a minor by his
mother and next friend,
L.B., et al.,

Plaintiffs

v.

LAWRENCE J. MYERS, et. al.,

Defendants

No. 89-1077-CV-W-1

FINDING OF FACTS AND CONCLUSIONS OF LAW

The history of this case is stated in the Court's June 10, 1992 Order. The Court will repeat a portion of that history for the readers' convenience.

I. Background

On November 15, 1989, plaintiff A.J., a 16-year-old minor, filed this class action on behalf of himself and others similarly situated,¹ to challenge the constitutionality of certain policies, practices and conditions at the Jackson County Juvenile Justice

¹The attorneys for plaintiffs repeatedly requested the Court to allow them to obtain the names of previous detainees. The attorneys also wanted to interview previous detainees. The Court refused these requests because each youth who has been detained was represented by an attorney and the youth's attorney could have raised any concerns or complaints about the treatment of his or her client with the Juvenile Court, Juvenile Officers, any members of the detention center staff and any attorneys representing the Juvenile Officers. To allow plaintiffs' attorneys to contact prior juvenile detainees could violate the attorney-client relationship that existed between the youth and the attorney who represented the youth at the time the youth was in detention.

Center ("JCJJC").² Plaintiffs list sixty-two policies, practices and conditions which they allege constitute punishment, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, § 10 of the Missouri Constitution. Plaintiffs submit that these policies and conditions give rise to a claim under 42 U.S.C. § 1983. A.J. and the class seek permanent injunctive relief from the policies and conditions of the JCJJC. Additionally, A.J. seeks monetary damages for the injuries he incurred as a consequence of the JCJJC's allegedly unconstitutional practices.

The JCJJC is a juvenile detention facility built in 1972 with a capacity of fifty-six youths. Each room is designed to hold one individual and is approximately sixty-nine square feet in size. Prior to July 1990, the JCJJC was forced to house as many as three youths in a room because of an unprecedented increase in the number of detained youths. To accommodate the additional youths, the JCJJC provided them with floor mattresses. After July 1990, the JCJJC terminated its practice of placing two and three youths in a room. Instead, during times of overcrowding, the additional youths sleep on floor mattresses in the dormitory. At the time of the trial, the JCJJC operated at less than full capacity.

A.J. was detained at the JCJJC for a period of fifteen days, from October 31, 1989 to November 15, 1989, after he was arrested for carrying a concealed weapon at school. He formally was

²The Court will refer to all defendants collectively as the JCJJC.

adjudicated on the charge on November 15, 1989. During the period of A.J.'s detention, he shared a single occupancy room with at least one and sometimes two other individuals. He slept on a floor mattress throughout his stay because the room was only equipped with one bed. Sometime during his detention, A.J. caught a cold. There was also an outbreak of pubic lice among the youths during A.J.'s period of detention, but he did not become infested with them. On November 8, 1989, the JCJJC staff placed A.J. in isolation for a period of forty-two minutes. While in isolation, A.J. found urine on the floor of the isolation cell.

A jury determined that a staff worker should not have placed A.J. in isolation and required the staff worker to pay A.J. forty-two dollars or one dollar for each minute in isolation. The jury found the other defendants, including the JCJJC, free of any wrongdoing.

A. Issues Ruled on by the Court

The Court entered summary judgment on June 10, 1992, for defendants on some of plaintiffs' claims and set the remainder of the claims for trial. The Court held in the June 10, 1992 Order:

1. The overcrowded conditions at the JCJJC did not give rise to a constitutional violation and did not entitle A.J. to monetary damages.
2. The JCJJC's use of floor mattresses did not violate the Constitution and did not entitle A.J. to monetary damages.
3. Neither the ceilings in the JCJJC's physical plant, nor the condition of the recreational facilities nor the roof were such that they violated the plaintiffs' constitutional rights.
4. The JCJJC did not violate A.J.'s constitutional rights

because he caught a cold while in detention at the JCJJC.

5. The JCJJC did not violate plaintiffs' constitutional rights for not having an emergence generator.

The June 10, 1992 Order also initially granted summary judgment for the JCJJC on plaintiffs' health and safety claims but in the June 17, 1992 pretrial conference, the Court set aside the summary judgment on the health and safety issues and told counsel the Court would hear evidence on those claims.

B. Issues at Trial

At trial, the Court heard evidence on the remaining four categories of issues:

1. Health and safety claims
 - a. no procedures for disease detection
 - b. inadequate health evaluation upon admittance
 - c. unclean floors, kitchen and bathrooms
 - d. insects in some of rooms
 - e. inadequate and improper trash disposal
 - f. inadequate lighting
 - g. improper heat
 - h. inadequate water temperature in showers
 - i. improper storage and cleaning of floor mattresses
 - j. unsafe stairwells
 - k. fire code violations
 - l. inadequate disaster preparedness
2. Staff Problems
3. Adequacy of educational services
4. Detention of status offenders with delinquent offenders.

II. Finding of Facts

From the evidence presented at trial, the Court finds the following facts:

1. The JCJJC was built in 1972 and has been in constant use

since that time.

2. Residents of the detention center include both pre-trial detainees and youths awaiting placement in a facility to serve their sentence.

3. Youths charged with delinquent offenses are housed in the JCJJC. Delinquent offenses are criminal offenses that would be a crime if they were committed by an adult.

4. All offenses which do not constitute a delinquent offense are status offense violations. The JCJJC does not admit a youth who has only status offense violations. While admission logs indicate that the JCJJC admits some youths who are charged only with status offense violations, further examination reveals the youths actually were admitted because of delinquent offenses.

5. The JCJJC is laid out on three floors: the top floor contains the sleeping rooms, bathrooms, shower facilities and a control room; the main floor contains administrative offices, a dayroom, bathrooms, classrooms, isolation rooms, holding rooms adjacent to the nurse's office, visitation room, kitchen and storage facilities; the bottom floor of the JCJJC includes a gymnasium, bathrooms, laundry facilities, wood work shop and access to an outside courtyard.

6. The dayroom is large and lined with windows which allow natural light into the room. It is equipped with tables, chairs, books and televisions. The youths eat meals in the dayroom.

7. The gymnasium is large and has outside windows allowing natural light to enter. It is equipped with a basketball court and

weight equipment. Other activities and games are available for recreation.

8. The laundry facilities are clean. The JCJJC gives each resident a clean change of clothes daily and cleans all bedding once a week. Upon admission, the JCJJC gives each youth clean bedding, clothing, a toothbrush, a comb and other personal hygiene items.

9. All bathrooms are equipped with hot and cold running water.

10. Operational water drinking fountains are found at different locations in the facility.

11. All parts of the JCJJC are heated and air conditioned.

12. The ventilation system works properly.

13. One hot water heater supplies all the hot water for bathing, washing dishes and washing clothes.

14. The JCJJC provides and properly maintains adequate lighting.

15. A full-time maintenance worker is assigned to the facility. Maintenance personnel who do not work for the JCJJC help when necessary.

16. The JCJJC serves the youths three nutritionally balanced meals a day. The JCJJC also provides the youths with sufficient quantities of food.

17. The Kansas City Missouri School District provides the youths with educational programs which meet state requirements.

18. The youths participate in school activities five days a week during the school year. The Kansas City Missouri School

District holds classes on the bottom floor and the main floor of the facility.

19. The JCJJC provides the youths with a regimented program to occupy their hours. The JCJJC staff assign the youths with tasks such as working in the kitchen, cleaning their sleeping areas and cleaning the common areas in the detention center. The JCJJC staff supervise and assist the youths in these tasks.

20. The youths have the opportunity to shower everyday.

21. The youths have the opportunity to clean their sleeping quarters everyday.

22. The youths remain in their sleeping rooms during normal sleeping hours and during the distribution of clean clothing. The only other time when the youths must remain in their sleeping rooms is when institutional security has been threatened and the JCJJC needs to restore order.

23. There is one bed in each of the 56 sleeping rooms. The population of the JCJJC exceeded the 56 bed capacity starting on November 15, 1989. The additional youths slept on mattresses placed on the floor of the single occupancy sleeping rooms. In July 1990, the JCJJC moved the additional youths out of the single occupancy sleeping rooms and placed them in the gymnasium. At all times, the youths stored the floor mattresses on a metal rack eighteen inches off the floor in a dormitory closet when the youths were not sleeping on them.

24. The JCJJC employs a full-time nurse. The nurse is present at the facility during working hours and remains on call twenty-

four hours per day. When the nursing position is vacant, the JCJJC contracts with a private nursing firm for temporary, on-site help until it can fill the position.

25. The JCJJC is located within a few blocks of Children Mercy Hospital and is near Truman Medical Center. When a youth complains of or the JCJJC staff suspects a youth of having a serious medical need, the JCJJC takes the youth to one of these medical centers.

26. At least one doctor and usually two, visit the JCJJC once or twice a week.

27. The JCJJC nurse gives each youth a medical check-up upon admission to the JCJJC or as soon as the nurse can see them.

28. The JCJJC questions a youth immediately upon admission about the youth's current health and medical history. Also immediately upon admission, the JCJJC visually inspects each youth for signs of injury or illness and screens each youth for suicidal thoughts or tendencies.

29. A commercial contractor adequately handles the daily trash disposal at the JCJJC. The trash dumpster is located outside the building and has a cover to contain the trash. The trash dumpster is not regularly overfilled and its location does not cause an infestation of vermin which might then enter the JCJJC.

30. The State Health Department and the Kansas City Fire Department inspect the JCJJC regarding its procedures for trash disposal. The JCJJC procedure for trash disposal complies with all local and state code requirements.

31. The JCJJC substantially complies with all local fire

codes. When the JCJJC discovers a violation of the local fire code, it timely corrects the problem. At no time did the JCJJC display deliberate indifference to the safety of the juveniles. The JCJJC does not expose the youths to fire dangers. Sufficient policies exist to ensure continued compliance.

32. The JCJJC regularly conducts fire and other disaster drills.

33. The Kansas City Fire Department has never cited the JCJJC for inadequate emergency exit markings. Since the beginning of this lawsuit, the JCJJC has installed five additional exit markings for fire exits in response to the opinion of plaintiffs' experts that the existing fire exits markings were inadequate.

34. The JCJJC routinely trains and tests its staff on various policies and procedures regarding fire and other disaster response, safety, suicide prevention, use of isolation and restraint techniques.

III. Conclusions of Law

Plaintiffs' complaints concerning the conditions, practices and procedures of the JCJJC, considered individually or in combination, do not raise any constitutional violations. The Court will use the same analysis as it used in its June 10, 1992 Order in determining whether the JCJJC violated plaintiffs' constitutional rights. The Court will not repeat its explanation of that analysis here.

The Court will first analyze each of plaintiffs' specific

complaints. Neither one of the specific complaints raises a constitutional violation. The Court will then analyze plaintiffs' complaints considered as a whole. Plaintiffs' complaints, even considered as a whole also do not raise a constitutional violation.

A. Health and Safety Claims

1. Health Evaluation and Disease Detection

The Court rejects plaintiffs' complaint that the examination of the youths' medical conditions and needs upon admission is inadequate. The JCJJC employs a full-time nurse who works at the JCJJC five days a week during the day shift. In the event the position is vacant, the JCJJC contracts for the services of a registered nurse to work at the JCJJC until it can hire a new nurse. If the nurse is present during admission, the nurse conducts the screening examination. When youths are admitted while the nurse is not on duty, the staff at the JCJJC screen the youths with the assistance of specific screening forms and charts. The nurse will later examine the newly admitted youths as soon as practicable. Any youth with an obvious, significant health problem at the time of admission is taken to one of the nearby hospitals for care. Thus, although the Constitution may not even require the JCJJC to provide the youths with medical screening, Boston v. Lafayette County, 744 F. Supp. 746, 754 (N.D. Miss. 1990), the JCJJC does provide the screening and does so reasonably well.

The evidence does not support plaintiffs' argument that the staff fails to identify youths with communicable diseases and

allows youths with communicable diseases to interact freely with the other youths at the JCJJC. Plaintiffs' evidence about an outbreak of chicken pox shows, at the most, that between May 29, 1990 and June 17, 1990, five youths suffered from chicken pox and three of those cases occurred in the JCJJC at one time. In all five cases, the staff isolated the youths and the infection did not continue. The JCJJC reasonably handled the situation.

Plaintiffs complain about other incidents of measles, hepatitis, staph infections, head or pubic lice and ring worm at the facility. Each incident proved nothing more than an isolated incident which did not lead to wholesale infection of the population of the JCJJC. It would be unrealistic for this Court to require the staff to maintain the JCJJC disease-free. Plaintiffs cite no authority for the proposition the Constitution requires as much. Only if the staff show deliberate disregard for such outbreaks and the treatment of the youths will the Court find a constitutional violation. Estelle v. Gamble, 429 U.S. 97, 105-06, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976).

The incidence of youths becoming infected with childhood diseases or head lice is no greater in the JCJJC than is faced by the teachers and staff of public schools. The Court finds that the JCJJC provides a reasonable level of medical screening and treatment. Plaintiffs fail to demonstrate the JCJJC staff is indifferent to the medical needs of the youths.

2. Bathrooms

The evidence demonstrates that the staff acts reasonably to

keep the bathrooms clean and working properly. While the bathrooms are not kept absolutely clean at all times, this Court cannot require the JCJJC to keep the bathrooms clean at all times. The JCJJC admitted nearly 3,000 youths in 1989 and over 2,000 in 1990 and 1991. Where bathroom facilities are used by a sizeable number of people, toilets will stop up, one may occasionally find urine or water on the floor. However, the evidence does not demonstrate the conditions in the bathrooms were substandard or that the conditions injure the health of the youth. Cf. Fambro v. Fulton County, 713 F. Supp. 1426, 1431 (N.D. Ga. 1989) ("When sanitary conditions are in question, the court must concern itself with whether substandard sanitation endangers the health of the jail occupants."). When problems with conditions in the bathrooms occur, the staff at the JCJJC take appropriate action to correct and alleviate the problems.

Youths help to clean the bathrooms under the supervision of the custodial or staff employees. Giving the youths these chores is a valid manner of handling the cleaning duties if for no other reason than to teach the youths discipline and responsibility. The youths may not clean the bathrooms as well as professionals, but if the staff finished the work that the youths failed to do, the staff would undermine the purpose for having the youths help clean.

Plaintiffs state the JCJJC does not have enough sanitary fixtures. Although plaintiffs' argument is not clear, the Court assumes plaintiffs are complaining about the ratio of toilets, showers and bathroom sinks to the number of youths at the JCJJC.

Plaintiffs do not tell the Court what ratio the Constitution requires only that in March and again in August of 1990, the number of bathroom fixtures was "inadequate." The Court will not find a constitutional violation based on an expert's testimony that during a two-month period the number of bathroom fixtures was "inadequate." See, Bell v. Wolfish, 441 U.S. 520, 543, 99 S.Ct. 1861, 60 L. Ed. 2d 447 (1979) ("We simply do not believe that requiring a detainee to share toilet facilities and this admittedly rather small sleeping place with another person for generally a maximum period of 60 days violates the Constitution.").

3. Food Preparation

An expert for plaintiffs reported a leak in a pipe under a vegetable preparation sink, a leak in the valves for the pipes under the dishwasher, missing or stained ceiling tiles and lint on or behind air registers. At the time of the trial, the JCJJC was in the process of replacing the missing or stained ceiling tiles. In 1992, the JCJJC thoroughly cleaned the entire ductwork and the maintenance worker periodically cleans the ductwork. The local and state health departments evaluated the JCJJC's food preparation and found only minor problems. The JCJJC corrected the problems the local and state health departments found. No evidence was presented to show that the JCJJC failed to comply with local health standards in operating the kitchen area in the center. The Court finds the conditions during food preparation do not violate the Constitution.

4. Floors

Logs of the JCJJC indicate that the floors were dirty. Once again, the Court is more interested in what is done when a unsatisfactory condition is found. With the JCJJC being used close to or over capacity, one can anticipate that the floors would need constant attention. The evidence demonstrates the JCJJC and the youths clean the floors under the supervision of the JCJJC staff. Plaintiffs' evidence from the logs of the JCJJC that the floors were repeatedly found dirty does not adequately show that the floors were left in that condition. Instead, the evidence indicates the JCJJC corrected the condition when so found. The evidence does not support an argument that the condition of the floors violated the constitutional rights of the youths.

5. Insects

The JCJJC suffers from persistent problems with mice and insects, however, the staff have worked continuously to alleviate the problems by contracting with exterminators to treat the JCJJC on a monthly basis. While the problem exists, mice and insects are not running around the JCJJC unchecked. An investigator for the Missouri Division of Family Services spent forty hours investigating the JCJJC and did not testify to seeing any mice or insects. Further, the staff at the JCJJC take active steps at eliminating the problem. When the staff discovered an exterminator was performing poorly, they fired the exterminator. The staff have not shown deliberate indifference to the problems with mice and insects. Green v. Baron, 879 F.2d 305, 309 (8th Cir. 1989)

(minimum deprivation does not violate the Constitution) (citing Bell, 414 U.S. at 539).

6. Garbage

The JCJJC deposits its garbage in a trash dumpster provided by a trash hauling company. Plaintiffs argue the JCJJC permits mice to enter the trash dumpster because the lid does not completely shut when the trash dumpster is occasionally overfilled. Plaintiffs argue that the mice might then find their way into the JCJJC itself. However, plaintiffs only point to a single day when the trash dumpster was overfilled. The trash hauling company empties the trash dumpster daily. The manner in which the JCJJC disposes of its garbage is satisfactory and does not violate the Constitution.

7. Lighting

Plaintiffs cite five standards for support that the lighting in the JCJJC is inadequate: the Missouri Rules, Food and Drug Administration guidelines, Missouri state food service regulations, American Correctional Association Standards and American Public Health Association standards. National or industry standards can provide a court with some degree of guidance but do not have the force of law. Johnson v. Busby, 953 F.2d 349, 351 (8th Cir. 1991); Patchette v. Nix, 952 F.2d 158, 163 (8th Cir. 1991). Further, standards Missouri may set, do not prescribe a constitutional minimum. Shelby County Jail, 798 F.2d at 1088 n.3. A court may consider the standards along with other forms of evidence in assessing the constitutionality of certain institutional practices.

Gary H. v. Hegstrom, 831 F.2d 1430, 1432-33 (9th Cir. 1987).

In attempting to demonstrate that the lighting and other conditions violate the Constitution, plaintiffs point out that the JCJJC violates various standards and codes such as: Missouri Department of Health, Consumers Product Safety Commission (regulations as to water temperature); American Society of Heating, Refrigeration and Air Conditioning Engineers (standards for heating and air conditioning) and American Correctional Associations. Plaintiffs did not present any evidence the JCJJC must conform its conduct to any of these standards. As the United States Supreme Court explains:

Respondents' reliance . . . on correctional standards issued by various groups is misplaced [citation to numerous professional codes, including American Correctional Association Manual of Standards for Adult Correctional Institutions] And while the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question. For this same reason, the draft recommendations of the Federal Corrections Policy Task Force of the Department of Justice regarding conditions of confinement for pretrial detainees are not determinative of the requirement of the Constitution.

Bell, 441 U.S. at 543 n.27. In upholding a district court's exclusion of jail standards, the Eighth Circuit Court of Appeals held that the jail standards "do not represent minimum constitutional standards." Johnson v. Busby, 953 F. 2d 349, 352 (8th Cir. 1991). The court in Johnson also held that "experts' opinions as to desirable prison conditions do not establish constitutional standards." Id. at 351 (citing Rhodes v. Chapman, 452 U.S. 337, 348-49 n.13, 101 S.Ct. 2392, 69 L. Ed. 2d 59 (1981)).

See also, Gary H., 831 F.2d at 1433 (9th Cir. 1987) (The "wholesale adoption of various professional associations' concepts for model institutions as if they were constitutionally mandated was unwarranted.").

The evidence at trial was that the JCJJC had never received any complaint about inadequate lighting. The JCJJC mounted steel plates on the windows in the dormitory hallways after drive-by shootings occurred in the area. Plaintiffs complain the steel plates reduce the amount of natural light that can enter the sleeping rooms, but the youths rarely use the sleeping areas for anything other than sleep. The youths spend the rest of their days in other areas of the JCJJC where plaintiffs agree are adequately illuminated.

Plaintiffs' expert testified at trial that the lighting in the walk-in freezer did not meet national or industry standards. The JCJJC improved the lighting in the walk-in freezer and throughout the kitchen in response to plaintiffs' complaints. Plaintiffs' expert agreed that the lighting where the JCJJC staff prepared the food was adequate.

8. Room Temperatures

Plaintiffs cite repeated entries from the supervisors' log stating that the dorm areas were cold in the winter and also in the summer. The Court has no evidence as to what the temperatures were. Log entries also state the JCJJC staff gave the youths additional blankets. To fix the problem, the JCJJC installed a new energy management system in late 1990 or early 1991 which controls

temperatures throughout the JCJJC. Once again, defendants recognized a problem and acted to correct the problem by installing a new control system. Plaintiffs failed to show that the JCJJC ignored or failed to timely correct the problem. Instead, until the JCJJC could install a new temperature control system, the JCJJC issued additional blankets to the youths. The JCJJC did not violate the youths' constitutional rights with regards to the temperature in the JCJJC.

9. Water Temperatures

Plaintiffs' constitutional claim about water temperature puts the JCJJC in an untenable position. Plaintiffs' expert testified that the water in one of the bathroom sinks was 139 degrees which exceeded the Consumer Products Safety Commission, the Underwriters' Lab and the American Public Health Association recommended temperature setting of 120 degrees. The same water heater supplies hot water for the laundry and kitchen. When the JCJJC reduced the temperature setting, plaintiffs' same expert complained that the water temperature was not hot enough for the laundry and kitchen.

The difficulty the JCJJC experiences because it only has a single water heater is a far cry from Fambro v. Fulton County, 713 F. Supp. 1426 (N.D. Ga. 1989) which plaintiffs rely on. In Fambro, the court found that when the showers do work, "they often blast extremely hot or cold water." Id. at 1427. While the JCJJC's showers and bathroom sinks may be hotter or colder than some organizations advise, the water is not extremely hot or extremely cold.

Defendants testified that they requested funds to install two more water heaters with one dedicated to the kitchen and the other to be used only for the laundry. This would allow the JCJJC to use the present water heater only for the showers and the bathroom sinks. The final approval had not been made at the conclusion of the trial.

Regardless of the approval of the additional water heaters, the JCJJC is not violating the constitutional rights of the youths with the present water temperatures. While the single water heater is not ideal, it does not violate state or federal law. The JCJJC is acting reasonably to try and correct the problem.

10. Storage and Cleaning of Floor Mattresses

Plaintiffs' expert testified that when he inspected the JCJJC in March 1990, he found mattresses stored on the floor in the janitor's storage closet. The expert then testified that janitors' closets can frequently be dirty and if moisture is present, cockroaches and mice can be present. Plaintiffs' expert failed to produce evidence as to the actual condition of the closet where the mattresses are stored.

The evidence is contrary to the testimony of plaintiffs' expert. The evidence indicates the JCJJC does not store the mattresses on the floor in the janitors' closet rather, the JCJJC stores the mattresses on a metal rack eighteen inches off the ground in a dormitory closet. Each mattress has a protective cover and is cleaned daily. The JCJJC is storing the mattresses in a satisfactory manner and there is no constitutional violation.

11. Stairwells

Plaintiffs argue the stairwells are too narrow and are not equipped to prevent one of the youths from pushing others over the railings. In short, plaintiffs argue the stairwells at the JCJJC pose a significant safety and security hazard.

However, plaintiffs' expert, Dr. Vince Carbone, testified that the width of the stairwells in question is adequate and that he did not know the height of the guard rail. None of the evidence presented even suggests the design of the stairwells caused any injuries to the youths or that the design of the stairwells is punitive or that the staff of the JCJJC are deliberately indifferent to the youths' rights. The design of the stairwells does not violate the youths' constitutional rights.

12. Compliance with Fire Codes

Plaintiffs' expert testified that the fire safety procedures at the JCJJC were inadequate as they were not in compliance with the National Fire Protection Association Life Safety Code 101. The National Fire Protection Association Life Safety Code advises institutions to mount lighted exit signs over all emergency exits.

Plaintiffs' expert testified that the JCJJC did not mount lighted exit signs over the emergency exits. Despite the National Fire Protection Association Life Safety Code, the JCJJC's exit sign markings meet local fire codes. Plaintiffs do not allege the lack of lighted exit signs violates state or local fire and safety requirements. Even if the JCJJC's practices do not comply with a standard plaintiffs' expert prefers, the Court will not hold the

JCJJC's fire and safety practices unconstitutional when the practices comply with state and local requirements and when the state and local requirements themselves are adequate. The Constitution does not require ideally safe conditions. Bell, 441 U.S. at 543 n.27. The JCJJC is not deliberately indifferent to plaintiffs' safety.

Plaintiffs' expert contends the JCJJC does not request routine fire inspections. The Kansas City Fire Marshall conducts regular fire inspections at the JCJJC. The Court will not impose a specific schedule on the JCJJC or the Kansas City Fire Marshall. The only fire inspection the JCJJC failed occurred in March 1992. The JCJJC promptly remedied the problems discovered in the fire inspection and passed the May 1992 fire inspection.

Plaintiffs point out the JCJJC places its smoke detectors above the ceiling. The smoke must pass through a ceiling register before it reaches the smoke detector. The short answer to plaintiffs' concern is the placement meets state and local requirements because fire inspections do not complain about the placement. Plaintiffs' expert found plywood blocking a register leading to the smoke detector. The JCJJC does not explain why the plywood was necessary, however, the JCJJC removed the plywood. Once again, the JCJJC demonstrated that when a problem was pointed out, the JCJJC corrected the problem.

13. Inadequate Disaster Preparedness

The National Fire Protection Association Life Safety Code also advises institutions to conduct fire drills on each shift every

three months. Plaintiffs note that at one point, the second shift did not conduct a fire drill in over seven months.

The JCJJC presented testimony that each shift held a fire drill once a month. The daily schedules which begin in April 1990 support this testimony. Plaintiffs do not dispute that since April 1990, the JCJJC held an adequate number of fire drills. Plaintiffs' expert, however, stated at trial that he talked to a JCJJC employee who works on the second shift. According to plaintiffs' expert, the employee told him that the second shift had not had a fire drill in over seven months.

Plaintiffs' argument that one shift, on one occasion failed to conduct a fire drill in over seven months lacks credibility. Again, plaintiffs admit that since April 1990, the JCJJC held an adequate number of fire drills. Plaintiffs did not present the employee who allegedly made the remarks to plaintiffs' expert; plaintiffs did not provide any additional support that the second shift failed to conduct a fire drill in over seven months. Finally, plaintiffs do not provide any authority for the Court to hold that a single failure to hold a fire drill in the past violates the youths' constitutional rights. In short, plaintiffs quite simply fail to provide the Court with any evidence or authority to determine that the JCJJC violated the constitutional rights of the youths who resided at the JCJJC.

C. Adequacy and Training of Staff

1. Staffing Levels

Plaintiffs complain that the staffing level at the JCJJC violate the NAC Standards, the ACA Standards and the eight to one youth-to-staff ratio prescribed in § 11.2 of the Appendix to Missouri Rule 111.03. As the Court already explained, "reliance . . . on correctional standards issued by various groups is misplaced . . . and while the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima." Bell, 441 U.S. at 543 n.27. While the Appendix to Missouri Rule 111.03 does prescribe a ratio, the rule itself does not. Also, a violation of Missouri's Appendix does not equal a violation of either the state or federal constitutions. Shelby County Jail, 798 F.2d at 1088 n.3. More importantly, however, the JCJJC generally does meet the eight to one ratio. Throughout most of 1991 and 1992, the youth to staff ratio was near or better than eight to one. Most days on which a shortage of staff was noted, the JCJJC found a backup person.³

At times when admissions rose, the JCJJC did not meet the

³Some difficulty also exists in computing the ratio. If the number of staff used in calculating the ratio includes all help at the JCJJC, not just staff whose sole responsibility is to maintain contact with the youths, the ratio improves even more than as reported. As calculated, the ratio does not include cooks, teachers from the Kansas City Public Schools, and maintenance workers. All these individuals are necessary to comply with the statutory requirement of "continued availability of adequate personnel capable . . . of maintaining the purposes of the facility." Rule 111.03(d)(2). While not necessary to this Court's decision, if the ratio includes the entire staff, the JCJJC would meet the advised eight to one ratio without difficulty.

ratio, but it timely took steps to hire additional staff. The JCJJC acknowledges 1989 staffing levels were lower than desired, but when the staff became aware that the increase in population would continue, they took immediate action to obtain additional staff. The Juvenile Court Judge and Juvenile Court Administrator worked from late 1988 through early 1989 to get county approval to hire additional staff for the JCJJC and for other county residential services. This was the proper way for the JCJJC to proceed and the Court is at a loss as to what else plaintiffs feel the JCJJC should have done.⁴

The JCJJC took steps to remedy the staffing shortage. At the time of trial, the JCJJC generally meets the advised ratio of one staff member for every eight youths. Regardless, plaintiffs do not

⁴The parties presented evidence and extensively discussed in their post-trial briefs the continuing problem of obtaining enough funding to operate and staff the JCJJC. The JCJJC constantly must lobby the county and state legislatures to obtain adequate funding. All too often federal courts have entered into the legislators' realm of allocating public funds. A problem some federal courts experience is they erroneously believe the only way to remedy the problem is through spending all the money the experts say is necessary to correct the problem. While additional spending is often necessary to remedy a violation of a constitutional right, uncontrolled spending may ultimately reduce the amount a state or county can spend on other individuals similarly situated thereby depriving others of their constitutional rights. The Court is mindful that a state or county cannot prevent a federal court from fashioning a remedy, but federal courts should be wary of entering a role best left to legislators. Compare, Missouri v. Jenkins, 495 U.S. 33, 68, 110 S.Ct. 1651, 109 L. Ed.2d 31 (1990) (Kennedy, J., concurring in part) (Giving the power to tax to the state and federal legislative branches was to make sure that the power to tax was "under the control of those who are taxed.") with Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803) (The Chief Justice John Marshall declared, the "government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.")

present any evidence that the staffing levels have ever approached a level that would violate the constitutional rights of the youths in the JCJJC.

2. Staff Training

Plaintiffs complain the JCJJC fails to maintain an adequately qualified, trained and supervised staff. These failures allegedly violate Missouri's statutory requirement that "adequate personnel capable, by training or experience, of maintaining the purposes of the facility" be available. Missouri Supreme Court Rule 111.03 (d) (2).

Plaintiffs specifically complain about the JCJJC's practice concerning isolation, mechanical and physical restraints. Plaintiffs argue that the problem with these practices stem from the training manual. The training manual in effect at the time of this suit was adopted in 1984 and the staff operated under the manual until the JCJJC revised the manual in 1991. The manual sets forth policies on the operation of the JCJJC and it specifically addresses the use of isolation, physical restraints and mechanical restraints. All new employees receive forty hours of orientation regarding the operation of the JCJJC within the first six months of employment. All employees have periodic discussions with their shift supervisors regarding the policies and procedures of the use of isolation and restraints.

In determining the adequacy of training, the Court must be mindful of the United States Supreme Court's pronouncement:

[T]he problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy

solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security 'Such considerations are peculiarly within the province and professional expertise of the correctional officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, the Court should ordinarily defer to their expert judgment in such matters.

Bell, 441 U.S. at 547-48 (citations omitted). The Constitution requires only minimally adequate training and a reasonable balance between liberty interests and the institution's operational needs. Gary H., 831 F.2d at 1432. The staff receives adequate training before they begin work at the JCJJC and continue to receive training while working at JCJJC.

Although the manual does not specifically discuss how the staff should handle different situations that might arise, testimony at trial notes that the JCJJC never intended the manual to set forth detailed rules for every conceivable contingency which might occur. To provide such a manual would make it so large that no one would read it.

Plaintiffs presented evidence through their expert witnesses, from supervisors' logs, isolation logs and incident reports which they claim demonstrate juveniles were placed in detention, isolation or restrained in violation of the manual. The Court starts with the premise that it is "not the duty of the district judge to fashion operating manuals for . . . institutions. It is, however, the duty of the federal courts to make certain that minimal constitutional rights are preserved." Gary H., 831 F.2d at

1432. This Court only needs to find that the manuals were and are adequate to meet constitutional requirements and the Court so finds.

The appropriateness of placing a juvenile in isolation is best determined by the officer who is present at the time the situation occurs. When an incident occurs, the staff person on the scene often must act promptly to gain control of the situation and maintain order in the JCJJC. Reading about the incident in a report can only give any reader a sterilized version as to what the situation was and what occurred. The Court also finds that the supervising staff have acted to correct any incidence of incorrect application of the manual and have not shown careless indifference to the right of the juveniles.

This Court will not evaluate every staff worker's application of the manual. The Court finds that the supervising staff has acted properly in correcting any staff workers who did not follow the manual correctly. Plaintiffs never show the staff has ever shown deliberate indifference with regard to the rights of the youths.

C. Educational Services

1. Adequacy of Education

Plaintiffs complain the JCJJC failed to provide adequate educational programming as required under Missouri law:

"[t]he school districts . . . in which county- or court-operated facilities for the care and protection of juveniles are located

shall provide appropriate educational programs for those juveniles of school age who have not been graduated for the twelfth grade and who are placed in such facilities." Mo. Rev. Stat. § 178.296. Section 4.3 of the Appendix to Missouri Rule 111.03 provides in part, that "[e]very attempt should be made to maintain continuity with the juvenile's local/home educational program."

Plaintiffs claim the educational program at the JCJJC does not meet the standards of those in public schools. Specifically, plaintiffs argue the youths do not participate in class five hours a day and at times, the JCJJC staff workers instruct the youths, not teachers from the Kansas City School District.

The parties stipulated that the Kansas City, Missouri School District provides the educational services for the JCJJC. When teachers from the Kansas City School District fail to show up to teach, the JCJJC staff workers substitute as teachers.

In 1989, at the same time the population at the JCJJC increased substantially, a Division of Family Services investigation questioned the adequacy of the educational program at the JCJJC. When the JCJJC was advised of the problem it corrected the problem. No problems with the educational program occurred since 1989.

The Kansas City School District provides the educational program and the JCJJC does not control how the Kansas City School District administers the program. If plaintiffs wish to challenge whether the youths are receiving an education that meets § 178.296, their fight is with the Kansas City Public School District and not

with any of the parties in the present case.

Plaintiffs challenge to the adequacy of the educational services is also based on the directive in § 4.3 of the Appendix to Missouri Supreme Court Rule 111.03 which recommends that every attempt should be made to maintain continuity with the juvenile's local/home educational program. The evidence demonstrates the JCJJC made reasonable efforts to maintain continuity in the youths' educational program.

Once again, the Court recognizes that the administrators and staff of the JCJJC constantly operate under frustrating staff and budget restraints and when a problem arises, they promptly set about to resolve the problem. Plaintiffs presented no evidence showing at any time the JCJJC was deliberately indifferent to the conditions or status of the youths.

B. Access to Education

Plaintiffs claim that many youths are denied sufficient classroom time. The specific complaint again concerns 1989 when the JCJJC experienced a rapid population increase. To handle the increased population, the JCJJC divided the youths into three groups and taught each group on a rotating basis. While not an optimal situation, the short period of difficulty during 1989 did not violate the youths' constitutional rights. Despite the difficulty, each youth had access to and received an adequate education. The JCJJC worked with the Kansas City Public Schools to correct the problems it had with the increased population and the

problems with providing each youth with access to education has not presented a problem since the 1989 difficulty.

D. Confinement of Status Offenders

Plaintiffs allege the JCJJC houses status offenders in the JCJJC together with delinquent offenders. Evidence presented at trial established that status offenders are youths who have committed offenses other than crimes. Status offenders are generally considered to be in need of the assistance of the juvenile court because they have been abused or neglected and are without proper care, custody or support. Status offenders usually need immediate protective custody to prevent personal harm to the youth. Delinquent offenders are those individuals accused of committing an act that would violate a criminal law if they were an adult.

Missouri law permits the detention of status offenders and delinquent offenders for up to twenty-four hours without a court order. To hold a status offender for more than twenty-four hours, the authorities must obtain a court order. The JCJJC cannot house status offenders with delinquent offenders. 42 U.S.C. § 5633(a)(12)(A).

Plaintiffs point to a monthly report which notes status offenders held with delinquent offenders. Testimony from Juvenile Officer Geoffrey Allen established that the monthly report only lists one offense that an admitted youth is charged with. If the first offense a youth is charged with is a status offense, then the

monthly report will note only that the youth is charged with a status offense. The State of Missouri conducts an annual audit of the JCJJC to monitor performance with regard to detention of status offenders. None of the parties could tell the Court of a single instance when the Missouri audit found a status offender was detained in violation of the law. Plaintiffs failed to produce any credible evidence that the JCJJC housed status offenders with delinquent offenders.

E. Summary of Individual Constitutional Claims

Plaintiffs failed to show that considered individually, any of the alleged violations amounted to violating the constitutional rights of the youths at the JCJJC. The evidence does not support plaintiffs' arguments that the staff was deliberately indifferent to the rights and welfare of the youths. On the contrary, the evidence consistently supports the JCJJC's position that when problems occurred, it took timely steps to resolve them. While the county and state legislatures are not as responsive to the needs of the youths as the Court would like them to be, the Court cannot say that either the conditions or the practices of the JCJJC violate the youths' constitutional rights.

F. The Complaints Viewed Collectively

Plaintiffs rely on three cases to support their position that the health and sanitary conditions at the JCJJC violate the Constitution. Tillery v. Owens, 907 F.2d 418 (3rd Cir. 1990); D.B.

v. Tewksbury, 545 F. Supp. 896 (D. Ore. 1982); Ahrens v. Thomas, 434 F. Supp. 873 (W.D. Mo 1977). Plaintiffs' reliance on these cases is not well placed. A reading of those cases reveals severe conditions which would shock a courts' sense of decency. Such shocking conditions do not exist at JCJJC either individually or considered as a whole. A review of those cases will show that the conditions in those cases differ dramatically from the conditions in the present case.

In Tillery, inmates at a state correctional institution sued over the conditions existing at the institution. Inmates could not exercise during the average two-year stay because their cells were so small that "when the district judge entered one of the small double cells during his inspection tour, he 'was unable to turn around once inside it and had to back out'" and because many inmates understandably refused to leave their cells for fear of physical assault. The institution did not provide the inmates with clothing. Instead, inmates often borrowed underwear, jackets, towels and bedding from other inmates for either money or sexual favors. The institution could best be characterized as filthy: a "sizable bird population" dropped "feces on the floors and railings"; most toilets in the cells were old and cracked and unusable during repairs "resulting in the accumulation of human waste for as long as two days" and in the showers, the smell was such that the district court judge "wondered how any inmate could tolerate the physical conditions of the shower long enough to wash himself." Tillery, 907 F.2d at 422-424.

The conditions at the JCJJC do not resemble those in Tillery. The sleeping rooms at the JCJJC are larger than those in Tillery and the JCJJC no longer places two or three youths to a sleeping rooms during times of overcrowding. The JCJJC provides exercise and recreational areas which the youths can use without significant fear of physical assault and also provides the youths with cloths and bedding. The full-time maintenance worker together with custodians and the youths themselves keep the JCJJC generally clean.

The second case plaintiffs rely on, Tewksbury, concerned youths held in an adult county jail which did not have a twenty-four-hour screening process or any guidelines whatsoever regarding admission. Tewksbury, 545 F. Supp. at 899. The county jail did not allow the youths to wear underwear under their prison clothing. Privacy screening did not exist for the toilet and shower stalls -- revealing the youths to corrections officers. Youths in isolation slept on concrete floors and had only a sewer hole in the cell floor as a toilet which, when flushed, gushed water and sewage onto the floor. Id. The youths did not receive regular, nutritional meals. Id. 900. Finally, the jail did not screen the youths for medical problems upon admission, did not provide for regular doctor or nurse visits to identify or attend to the medical needs of the youths and also did not provide emergency medical care. Id.

In contrast, the JCJJC provides each youth with clothing, including underwear, upon admission. The toilet and shower stalls are generally clean and private. Each youth in isolation has

adequate toilet facilities. The JCJJC provides three nutritional meals a day to each youth. Finally, the JCJJC screens each youth upon admission for medical problems, a nurse is always available, either at the JCJJC itself or on call. A doctor also regularly visits the JCJJC to examine youths with medical problems.

In Ahrens, a pretrial detainee challenged the constitutionality of the conditions at the one hundred year old Platte County Jail. Ahrens, 434 F. Supp. at 876 & 890. The average stay of a pretrial detainee was three to four months. The jailers confined the detainees to their jail cell areas at all times and did not give the detainees an area for exercise or recreation. The jailers did not provide clean bedding or mattresses; the jailers did not give detainees clothing or items for basic hygiene and the lack of a regular cleaning program resulted in an extremely dirty jail. An emergency evacuation plan for fire or other disasters did not exist and doctors do not regularly visit the facility. Some toilets lacked seats, some did not flush with sufficient force to remove human feces; women and youths did not have any privacy in their cell's toilet areas. The lack of a mechanical ventilation system resulted in damp, still air and increased the likelihood that the inmates would suffer asphyxiation in the event of a fire. Id. at 890-895.

The facts in the present case differ greatly from those in Ahrens. Unlike Ahrens, the JCJJC provides recreational and exercise areas. While the bathrooms are not spotless, they are generally clean and the toilets are screened for privacy. Each

youth receives clean bedding and at a minimum, a clean mattress; the JCJJC provides each youth with clean clothing and items to maintain personal hygiene. The staff at the JCJJC regularly conduct disaster drills and a full-time nurse as well as regular doctor visits meet the medical needs of the youths. The ventilation system at the JCJJC works well.

The conditions described in these cases are in sharp contrast to the conditions plaintiffs presented to this Court as being severe enough to be considered constitutional violations requiring this Court to issue an injunction. The conditions in the present case do not begin to approach the conditions described in the above cases. Instead, considering the conditions at the JCJJC as a whole, the plaintiffs' cases indicate this Court must find the conditions at the JCJJC are constitutional because they pale in comparison to cases in which other courts found the conditions unconstitutional.

IV. Conclusion

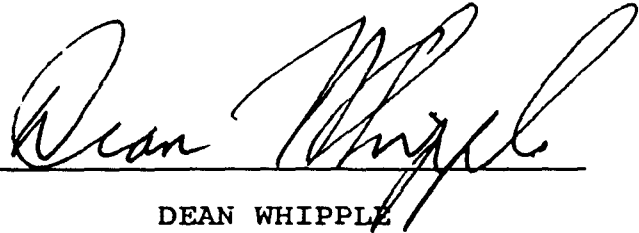
Plaintiffs present exhaustive evidence on the operation of the JCJJC to attempt to prove that the constitutional rights of the resident youths have been violated. Plaintiffs place special emphasis throughout their arguments on the notion that the JCJJC does not meet the standards of some professional organizations. While the JCJJC may not meet the standards of plaintiffs' selected professional organizations, none of the standards of the organizations prescribe the constitutionally mandated minimum

standards that the JCJJC must meet. If the Court did find that the JCJJC violated the constitutional rights of the youths, the Court would grant injunctive relief and direct what corrections the JCJJC would need to make. However, the JCJJC did not violate the constitutional rights of the resident youths.

The Court remains vigilant in protecting the constitutional rights of adults and youths alike, whatever their situation. The situation of the youths is often grim. The youths in the JCJJC come from an array of backgrounds which make them hard to manage when placed in a restricted environment of a detention center. The average youth detained in the JCJJC is not a young person raised in a stable home and community environment. The vast majority of the youths in the JCJJC raised themselves on the streets of Kansas City with minimal parental or adult guidance. The youths are streetwise, accustomed to surviving by their own instincts and reach adult behavior patterns at an early age. Many of the youths in the JCJJC know that until they turn seventeen years old, they may engage in criminal activity without much fear of being required to answer to an adult court for their criminal activity. For too many of these youths, their detention in the JCJJC is the first time anyone subjected them to discipline of any consequence. Unfortunately, for many of the youths, their stay in the JCJJC is only one of many encounters they will have with law enforcement personal and is a prelude to their graduation to the adult criminal justice system. A trier of fact cannot approach this case with the idea that the youths in the JCJJC are "children" that have been

misunderstood by their parents. Instead, the majority are harden juvenile offenders mature far beyond their age. Despite the youths' grim situation and no matter how vigilant this Court is in protecting their constitutional rights, this Court cannot find that the JCJJC violated the constitutional rights of the youths.

The Court therefore finds for defendants and against plaintiffs on all issues.

A handwritten signature in cursive script, appearing to read "Dean Whipple", is written over a horizontal line.

DEAN WHIPPLE

UNITED STATES DISTRICT JUDGE

DATED: APR 26 1994.