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declaratory, injunctive and monetary relief concerning plaintiff's transfer from one maximum security prison to another, the court has partially granted a motion for class certification. Plaintiff sought two classes: persons who suffered because of the bar on unionization, and a second class including persons transferred without due process. The court granted the first and denied the second.

Additionally, plaintiff sought notification of other class members. However, the court rejected the request since it found that this is an action under Rule 23(b)(2) and no notice is required at this stage of the litigation.

### **Held that Santa Cruz Jail Fails to Provide Basic Security, Privacy and Human Decency to Detainees; Disciplinary Procedures Violate Due Process**

**9568. Sandoval v. James**, No. C-72-2213 RFP (SJ) (N.D. Cal., Oct. 5, 1975). Plaintiffs represented by Keith Lesar, Community Advocates, Legal Aid Society of Santa Cruz County, Inc., P.O. Box 1166, Watsonville, Cal. 95076, (408) 724-2253; Terry Slocum, 701 Ocean St., Santa Cruz, Cal. 95060. [Here reported: 9568G Opinion (24pp.).]

Finding that the sentenced inmates of the Santa Cruz jail are suffering cruel and unusual punishment in violation of the eighth amendment, and that pretrial detainees confined at the jail are deprived of due process and equal protection in violation of the fourteenth amendment, the court granted plaintiffs' motion for partial summary judgment on the issues of the right to security, privacy and humane treatment. The court noted that the county is under a constitutional obligation to provide basic security, privacy and human decency to detainees, and has a duty to undertake the following remedial measures: (1) institution of a meaningful classification system, so that detainees will be subjected to no more onerous conditions than necessary; (2) provision of reasonable facilities and opportunities for exercise and recreation; (3) creation of a safe and healthful physical environment; and (4) employment of sufficient numbers of qualified staff to assure the safety of inmates.

Although the court granted defendant's motion for summary judgment regarding conjugal visitation, it found that there was conflicting evidence on the potential security problems and degree of risk involved in permitting contact visitation, and therefore denied both parties' motions for summary judgment so that the factual dispute could be settled.

As to plaintiffs' contention that they are denied access to the courts, the court made a finding that the jail fails to provide adequate legal reference materials. However, the court stated that the fact "that inmates are denied access to legal reference material does not establish a *per se* violation of their right of access to the courts. The deficiency in written material may be effectively remedied by skilled counsel with sufficient time to research and develop prisoner complaints." The court found sharp conflicts as to whether inmates receive adequate legal assistance from the local Legal Aid program, and therefore denied both parties' motions for summary judgment.

The court granted summary judgment for plaintiffs on the issue of lack of attorney-client confidentiality within the

prison. Plaintiffs argued that although contact visits with attorneys are permitted, the facilities are so small and so poorly ventilated that communication with counsel for a long period of time is essentially denied. The court found that "although interview rooms need not be plush, it seems elementary that effective assistance of counsel includes the right of an inmate to talk freely with an attorney for reasonable periods of time." Defendants did not dispute that the facilities inhibit attorney-client consultation, but merely that it is insignificant so long as they make no overt effort to eavesdrop on the conversation.

Finally, the court found that the defendant's comprehensive rules and procedures governing the administration of discipline at the jail fail to meet the requirements of due process in that: (1) isolation for periods of up to 48 hours is authorized as a punishment for minor infractions without the protections ordered in *Wolff*; (2) the rules grant inmates only a conditional right to cross-examination and fail to require the disciplinary board to record and communicate their reasons for denial of the right; (3) the rules authorize punishment for conduct considered "disorderly" and the term "disorderly conduct" provides insufficient notice of culpable behavior to a reasonable person and is therefore unconstitutionally vague; (4) notice of minor infractions includes a statement of recommended disciplinary action; however, the supervisory officer is not bound by the recommendation and the inmate is therefore not advised of the privileges potentially lost upon a finding of culpability; and (5) the rules do not prescribe the maximum time period for initiation and completion of disciplinary action and thus an inmate charged with a minor infraction may be placed in isolation status indefinitely pending determination of disciplinary action for an infraction for which isolation would not be permissible punishment. The court concluded that "while jail administrators are to be afforded wide latitude in fashioning disciplinary procedures, they cannot justify the luxury of indefinite periods of time within which to undertake disciplinary measures."

### **Court Limits the Population of New York City's House of Detention for Men; Pre-Trial Detainees Need Only Share Cell With Another Detainee for 30 Days**

**17,046. Benjamin v. Malcolm**, No. 75 Civ. 3073 (S.D. N.Y., Nov. 18, 1975). Plaintiffs represented by William Hellerstein, Joel Berger, Legal Aid Society, Prisoners' Rights Project, 15 Park Row, 19th Floor, New York, N.Y. 10038, (212) 577-3530. [Here reported: 17,046A Opinion (9pp.); 17,046B Order (4pp.).]

The court has enjoined the New York City Commissioner of Corrections from confining any pre-trial detainee at the House of Detention for Men on Rikers Island in a cell with another detainee for a period longer than 30 days unless both detainees given written consent to such confinement. Defendants are also enjoined from involuntarily confining with another detainee any detainee who has previously been double celled for 30 days or longer, and any detainee celled for less than 30 days as of the date of the order may be so confined for only such number of days as will bring the total number of days double celled to 30 days. The court held that involuntary confinement with another detainee shall be permitted only (1)