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Review Granted
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(Cal.Const. art. 6, s 12; Cal. Rules of Court, Rules 8.500, 8.1105 and 8.1110, 8.1115, 8.1120 and 8.1125)
Court of Appeal, Fourth District, Division 1, California.

KEITH G. et al., Plaintiffs and Respondents,
v.
Brian **BILBRAY** et al., Defendants and Appellants.

No. D018045. | July 21, 1995. | As Modified on Denial of Rehearing Aug. 21, 1995. | Review Granted Oct. 27, 1995.

Group of juveniles brought suit for injunctive and declaratory relief, alleging that pretrial detention conditions at county juvenile hall violated due process rights protected by Federal Constitution and constituted cruel and unusual punishment. The Superior Court, San Diego County, No. 626554, Robert J. O'Neill, J., found constitutional violations and directed probation department to take measures in areas involving crowding, staffing, mental health care, and postdisposition treatment. County appealed. The Court of Appeal, Benke, Acting P.J., held that deficiencies identified by trial court were not cruel and unusual and could not support judicial intervention in absence of identified discrete areas of human need which were not being adequately fulfilled at juvenile hall.

Reversed and remanded.

Attorneys and Law Firms

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Opinion

BENKE, Acting Presiding Justice.

In this case the trial court was called upon to review conditions at San Diego County's juvenile hall. The trial court identified a number of areas where conditions at the hall could be improved substantially. However as we explain below, as valid as the trial court's observations may be, the trial court's findings do not support judicial intervention into operation of the juvenile hall.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs and respondents in this case are a group of juveniles confined or to be confined in juvenile hall (plaintiffs). For the most part they are juveniles waiting determination of delinquency allegations. On July 20, 1990, plaintiffs filed a class action complaint against members of the county board of supervisors, officials of the county's probation department and the county itself (county).[1] Plaintiffs alleged conditions at the hall violated rights protected by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.[2] Plaintiffs asked the court for injunctive and declaratory relief, the appointment of a special master and attorney fees.

1 Unless otherwise indicated the defendants will be referred to collectively as county.

2 They also alleged violations of sections 7 and 17 of article I of the California Constitution, section 4277 of title 15 of the California Code of Regulations and Welfare and Institutions Code section 850 et seq.

On March 18, 1991, the trial court certified the class. Trial, without a jury, commenced on November 20, 1991, and the case was submitted to the trial court on June 4, 1992. On October 12, 1992, the trial court issued a statement of decision which included a number of factual findings and a series of orders relating to operation of the hall.

The court noted that at the time of trial additions were being made to the juvenile hall which would provide 120 new beds and that following completion of the additions, existing portions of the juvenile hall would be remodeled. Notwithstanding the improvements being made, the trial court stated: "After a thorough review of the evidence and the law in this matter, the Court finds that San Diego Juvenile Hall as of the commencement of this trial was so

overcrowded as to deny the minors confined there of their constitutionally protected liberty interests in safety, freedom of movement, medical care, appropriate living conditions and training; that such deprivations as outlined above, when taken together amounted to 'punishment' as defined in *Bell* [*v. Wolfish* (1979) 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447]."[3]

[3] The trial court found that it had no statutory authority to interfere in the operation of juvenile hall. The plaintiffs have not challenged that determination.

To remedy the constitutional violations it found, the trial court directed the probation department take measures in five broad areas: crowding, staffing, mental health care, post-disposition treatment and the future.

A. *Crowding*

With respect to crowding, the trial court's order states in part: "It is difficult to evaluate the conditions of confinement in an institution which is constantly changing in both total population and capacity. This can only effectively be accomplished when the capacity has stabilized and the ability of the newly expanded facility to handle the influx of detainees has been evaluated and this can only be accomplished when all of the newly constructed and renovated facilities are on line and in use."

Notwithstanding these qualifications, and in the words of its order "to assure that no minor be subjected to punishing living conditions," ***279** the court ordered that the population of juvenile hall not exceed 395 minors, that no room rated for 1 occupant be occupied by more than 2 minors, that 35 percent of the single rooms remain available for minors with unique mental health or security problems and that none of the remaining rooms be occupied at greater than 150 percent of rated capacity.

B. *Staffing*

"[I]n order to assure that minimum required staffing be maintained to deal with the extra pressures presented by overcrowding," the trial court ordered the staff-to-minor ratio not exceed 1 to 10 during waking hours and 1 to 30 during sleeping hours.

C. *Mental Health Care*

According to the trial court, "It is not entirely clear whether the medical screening presently employed at Juvenile Hall is adequate to determine whether minors detained suffer from a mental illness. This screening often relies on self-reporting, i.e., through an interview with a minor who may or may not have insight into his or her condition or who may be unwilling to give an accurate history."

Because it was not entirely clear the juvenile hall's medical screening program was adequate, the court ordered:

1. All minors suspected of suffering from a mental illness be evaluated by a psychiatrist to determine whether immediate treatment is necessary and whether it would be medically harmful to detain them at juvenile hall;

2. Minors for whom immediate treatment is needed were ordered to either be given appropriate treatment or brought before the juvenile court immediately. Minors for whom detention in the juvenile hall is medically harmful were also ordered to be brought before the juvenile court. With respect to such minors the juvenile court would then have an opportunity to "make such orders as it deems appropriate for the protection of the minor and the protection of the public;"

3. If the screening and assessments required by the trial court could not be funded from resources available to the probation department, the court upon application and a showing of necessity would "make such orders on the County Treasurer as are required to assure proper medical treatment of the minors detained in Juvenile Hall."

D. *Post–Disposition Treatment*

The court found that at any given time 20 to 25 percent of the population at juvenile hall consisted of juveniles for whom disposition orders had been made and who were awaiting placement in a program ordered by the juvenile court. The court found the disposition orders were made for the purpose of rehabilitating the minors and further that "[d]ue 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 time."

Given these findings the court ordered that all minors held at juvenile hall more than 15 days after disposition "shall be offered a program of treatment or rehabilitation appropriate to his or her needs." If the probation department does not have the resources to meet this requirement with respect to any particular minor, "the minor shall be brought before the Juvenile Court Judge at the first 15–day review to determine whether his due process rights are being infringed by continued confinement in Juvenile Hall."

E. ***Future***

Because the trial court recognized that the foregoing orders would require planning and preparation, the court ordered that the probation department prepare a plan within 45 days of the court's order. In particular, "[t]his plan shall address the long-term space needs of Juvenile Hall, considering the most recent demographic projections and the actual growth rate in the number of minors who have been presented to the Hall for detention. It shall include consideration of such additional physical facilities as might be necessary to meet future needs and shall set ***280** forth a schedule of the dates when those facilities are likely to be required.

"Further, it shall include an analysis of the resources which might be created or exploited in order to alleviate the burden on Juvenile Hall by providing alternative placements or programs which could siphon off detainees from the Hall. The plan should also include an analysis of those measures which might be taken to simplify the process of licensing and setting up of such alternative programming."

Judgment on the October 12, 1992, order was entered on November 10, 1992, and county filed a timely notice of appeal.

On April 8, 1993, the trial court issued a second order awarding plaintiffs $215,000 in attorney fees and $11,069.02 in costs, including $5,307 in expert witness fees. In making this award the court relied on Code of Civil Procedure section 1021.5.[4] County filed a timely notice of appeal from this order as well. We ordered the county's second appeal consolidated with the county's first appeal.

[4] Section 1021.5 states: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.

"Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in *Serrano v. Priest,* 20 Cal.3d 25, 49, 141 Cal.Rptr. 315, 569 P.2d 1303."

On March 25, 1994, the trial court modified its first order and raised the population cap from 395 to 463 and also allowed the population to rise on a temporary basis to 512.

This modification was based on the trial court's inspection of the expanded juvenile hall. The trial court found: "Juvenile Hall is significantly improved in all areas covered by [the court's] prior order. The condition of the facility, the staffing, the medical and mental health services, and the overall atmosphere of the facility are substantially better. It is evident that current management, with current staffing ratios and resources, is providing a constitutionally adequate detention facility." Nonetheless the court found that because resources were not stable, mental health programs were only funded for the short term and full-time staffing resources were limited, "continued monitoring by this Court is necessary to assure that recent improvements persist and become part of the permanent program." On May 25, 1994, the court issued its fourth order (also known as Modification No. 2).

This order modified the trial court's initial order commanding the probation department to conduct "long-term planning." In making this order the court noted that because county had appealed from the court's first order, county had taken the position that all mandatory aspects of the first order, including the requirement that the probation department make plans for future improvement of the juvenile hall, were stayed pending county's appeal. (See Code Civ.Proc., § 916.)

Because the court found the probation department had not conducted the planning required by the initial order, the initial order was modified to require that the planning be completed by the board of supervisors instead of the probation department. The court ordered that the planning be completed by June 27, 1994.

County filed a timely notice of appeal from the modified order. We consolidated the county's third appeal with the prior appeals.[5]

[5] On November 21, 1994, following a status hearing conducted by the trial court, plaintiffs filed an order to show cause regarding contempt in which they alleged county had violated the court's March 25, 1994, population cap and the May 25, 1994, order requiring the board of supervisors prepare a long-term plan for juvenile hall.

On November 29, 1994, the trial court appointed a law school professor, Robert Fellmeth, to be the court's expert under Evidence Code section 730.

Relying on Evidence Code section 731, the court ordered that Fellmeth's fees be paid by the county.
Under the order "Professor Fellmeth shall provide expert assistance, as requested by the Court, in the evaluation of County compliance with outstanding orders in the above entitled case and shall present viable alternatives and remedies thereto in order to facilitate compliance with the constitutionally and lawfully required standards at issue."
County filed a timely notice of appeal from the order appointing Fellmeth. County also filed a writ of supersedeas in which it asked us to stay the order to show cause regarding contempt and the order appointing Fellmeth as the court's expert.
On December 7, 1994, this court issued an order staying the contempt proceeding. On December 8, 1994, this court issued a further order to expedite county's initial appeal and to consider the petition for writ of supersedeas with the appeal.

***281 DISCUSSION**

I

Among other contentions, on appeal county attacks the validity of the trial court's initial finding conditions at juvenile hall violated plaintiffs' constitutional rights. County argues that before intruding upon its operation of the juvenile hall, the trial court was required to identify discrete areas of human need which were not being adequately fulfilled at juvenile hall. According to county, the trial court did not adequately identify any such area.

We agree with county. The need to identify discrete deficiencies is particularly acute here because the trial court's order represents judicial intrusion in virtually every aspect of juvenile hall, from day-to-day operations to long-term planning. Moreover, the record fails to disclose specific areas which fall below constitutional requirements.

II

[1] At the outset we recognize that juvenile pre-trial detainees must be detained under conditions which meet the due process requirements of the Fourteenth Amendment of the United States Constitution, including the necessarily incorporated Eighth Amendment proscription against cruel and unusual punishment. (*Gary H. v. Hegstrom* (9th Cir.1987) 831 F.2d 1430, 1432 (*Gary H.*); see also *Davis v. Hall* (8th Cir.1993) 992 F.2d 151, 152–153.) The leading case setting forth the requirements of due process in this context is *Bell v. Wolfish* (1979) 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (*Bell*). In *Bell* the Supreme Court held custodial institutions do not have to show a "compelling necessity" for adverse or uncomfortable conditions they impose on pre-trial detainees. Rather, in order to satisfy the requirements of due process, all custodial institutions must demonstrate is that a particular condition is "reasonably related to a legitimate governmental objective." (*Id.* at p. 539, 99 S.Ct. at p. 1874; see also Pen.Code, § 2600 [prisoner may "be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests"].)

In explaining its holding, the court in *Bell* stated: "Once the Government has exercised its conceded authority to detain a person pending trial, it obviously is entitled to employ devices that are calculated to effectuate this detention. Traditionally, this has meant confinement in a facility which, no matter how modern or how antiquated, results in restricting the movement of a detainee in a manner in which he would not be restricted if he simply were free to walk the streets pending trial. Whether it be called a jail, a prison or a custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. And the fact that such detention interferes with the detainees' understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into 'punishment.' " (441 U.S. at p. 537, 99 S.Ct. at p. 1873.)

The court went on to state "the 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. [Citations.] 'Such considerations are peculiarly ***282** within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.' [Citation.] We further observe that, on occasion, prison administrators may be 'experts' only by Act of Congress or of a state legislature. But judicial deference is accorded not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of Legislative and Executive Branches of our Government, not the Judicial." (*Bell, supra,* 441 U.S. at pp. 547–548, 99 S.Ct. at pp. 1878–1879.)

In *Youngberg v. Romeo* (1982) 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (*Youngberg*), the court reached a similar conclusion. In *Youngberg* a resident of a state mental institution sought damages because of physical restraints placed on him and because of the state's failure to provide him with adequate training. Consistent with the views expressed in *Bell,* in *Youngberg* the court set forth both the substantive requirements imposed on custodial institutions by the due process clause and the means by which courts must determine whether those requirements have been met: "[T]he State concedes a duty to provide adequate food, shelter, clothing, and medical care. These are the essentials of the care that the State must provide. The State also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution.

".... In determining whether the State has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function." (*Youngberg, supra,* 457 U.S. at p. 324, 102 S.Ct. at pp. 2462–2463.)

[2] The deference mandated by the court in *Bell* and *Youngberg* has led to important procedural restrictions on the power of courts to interfere in the administration of custodial institutions. (See *Wright v. Rushen* (9th Cir.1981) 642 F.2d 1129, 1132–1133; *Hoptowit v. Ray* (9th Cir.1982) 682 F.2d 1237, 1246; *Toussaint v. McCarthy* (9th Cir.1986) 801 F.2d 1080, 1087.) Most significant for our purposes, a trial court may not find a constitutional violation based solely on its assessment of the totality of the conditions at a custodial institution. Such an approach to evaluating the operation of detention facilities is impermissible because it does not limit judicial intrusion to identifiable constitutional violations. Rather, an analytical approach which requires no more than a judgment about the totality of conditions in reality gives courts plenary supervisorial power over prison and jail officials. (See *Wright v. Rushen, supra,* 642 F.2d at p. 1132.)

As opposed to simply judging the totality of conditions at a prison or jail, a court must identify a discrete area of human need—such as food, warmth or exercise—which is not being met and provide a remedy tailored to the deficiency it has found. (See *Wilson v. Seiter* (1991) 501 U.S. 294, 304–305, 111 S.Ct. 2321, 2327–2328, 115 L.Ed.2d 271.) As the court stated in *Gary H., supra,* 831 F.2d at page 1433: " '[O]nly the specific conditions that violate the Constitution may be remedied.' " (See also *Hoptowit v. Ray, supra,* 682 F.2d at p. 1246.)

Although the requirement that courts identify specific areas of deficiency has been articulated most often in cases alleging Eighth Amendment violations, in no sense is the requirement restricted to cases involving Eighth Amendment claims. Because the requirement of discrete findings arises from the need for judicial deference to coordinate branches of government, it applies with equal vigor to claims based on the Eighth and Fourteenth Amendments. Indeed the specificity requirement was imposed by the court in *Gary H.,* a case where the court expressly found that conditions at a juvenile facility were governed by the due process provisions of the 14th Amendment. (See *Gary H., supra,* 831 F.2d at p. 1432.)

***283** [3] We hasten to acknowledge that although courts may not rely on a totality of circumstances in determining whether the Constitution has been violated, courts must nonetheless consider how separate circumstances may interact and together create an identifiable condition which fails to meet the requirements of the Constitution. As the court in *Wright v. Rushen* stated: "[E]ach condition of confinement does not exist in isolation; the court must consider the effect of each condition in the context of the prison environment, especially when the ill-effects of particular conditions are exacerbated by other related conditions. [Citations.] But the court's principal focus must be on specific conditions of confinement. It may not use the totality of all conditions to justify federal intervention." (*Wright v. Rushen, supra,* 642 F.2d at p. 1133; accord *Wilson v. Seiter, supra,* 501 U.S. at pp. 304–305, 111 S.Ct. at pp. 2327–2328.)

III

[4] In determining whether the trial court successfully identified deficiencies in discrete areas of human need, we are governed by the presumptions favoring the trial court's order. "As has often been said, 'A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error. [Citations.]' [Citation.]" (*Atlantic Richfield Co. v. State of California* (1989) 214 Cal.App.3d 533, 538, 262 Cal.Rptr. 683.) When a judgment or order is challenged on the grounds it is unsupported by the record, the scope of our review begins and ends with the determination whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted, which will support the conclusions reached by the trier of fact. (*Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51, 248 Cal.Rptr. 217.)

" 'Substantial' evidence, however, is not synonymous with 'any' evidence. To constitute sufficient substantiality

to support the verdict, the evidence must be 'reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case.' [Citations.]" (*Kruse v. Bank of America, supra,* 202 Cal.App.3d at p. 51, 248 Cal.Rptr. 217.) Moreover a reviewing court cannot simply isolate evidence which supports a judgment and ignore the impact of contradictory evidence. "A formulation of the substantial evidence rule which stresses the importance of isolated evidence supporting the judgment, however, risks misleading the court into abdicating its duty to appraise the whole record. As Chief Justice Traynor explained, the 'seemingly sensible' substantial evidence rule may be distorted in this fashion, to take 'some strange twists.' 'Occasionally' he observes, 'an appellate court affirms the trier of fact on isolated evidence torn from the context of the whole record. Such a court leaps from an acceptable premise, that a trier of fact could reasonably believe the isolated evidence, to the dubious conclusion that the trier of fact reasonably rejected everything that controverted the isolated evidence. Had the appellate court examined the whole record, it might have found that a reasonable trier of fact could not have made the finding in issue. One of the very purposes of review is to uncover just such irrational findings and thus preclude the risk of affirming a finding that should be disaffirmed as a matter of law.' [Citation.]" (*People v. Johnson* (1980) 26 Cal.3d 557, 577–578, 162 Cal.Rptr. 431, 606 P.2d 738.)

With these principles in mind we turn to the trial court's findings.

IV

[5] The trial court's initial findings run to 89 pages and demonstrate the trial court's diligent review of the evidence presented and its genuine concern for the welfare of the minors being detained at juvenile hall. Nonetheless the trial court did not successfully identify a discrete area of human need for which juvenile hall fails to meet the requirements of the Constitution.[6]

[6] Rather, the record suggests that in the end the trial court found a constitutional violation based on its perception of the totality of the circumstances at juvenile hall.

> Particularly telling with respect to the analysis which guided the trial court is the following statement which precedes the trial court's description of conditions at juvenile hall: "Plaintiffs in their complaint and in the evidence made numerous specific allegations regarding conditions, omissions or procedures which they alleged are constitutionally improper. At the conclusion of the evidence, they conceded many of these conditions, in and of themselves, did not rise to the level of constitutional violations. It remains their position, however, that taken together these conditions create a constitutionally impermissible custodial environment which is not only unsuitable for the detention of minors but which amounts to punishment within the meaning of *Bell* and *Gary H.* and which serve no legitimate governmental purpose."

***284** The trial court set forth its observations in each of 14 separate areas.[7] With respect to 11 of the areas, the court offered its criticism but did not find any constitutional violation. For instance with respect to crowding, the court noted that the hall does not conform with California Youth Authority regulations. The court also criticized the use of day rooms for classrooms, the need to move some juveniles from room to room, and in particular the difficulty in segregating violent and aggressive juveniles from younger and weaker ones.

[7] The areas were: crowding, lock down, safety, toilet, food, clothing, school, medical care, suicide rooms, safety rooms, rehabilitative programming, girls rehabilitation facility, staffing, post-disposition/24–hour school commitments and CYA enforcement.

The court also found that because of the crowded conditions and the difficult logistics involved in transporting plaintiffs to and from various activities, plaintiffs were locked in their rooms an average of 13 to 14 hours a day. However the trial court did not find that the crowding itself or the periods of confinement violated the Constitution.

The trial court reached similar conclusions with respect to the toilet facilities which require juveniles to alert the staff with a light switch and wait for an escort to a communal bathroom. The trial court found that this system imposed hardship when the population at juvenile hall was high. However, again the trial court did not find that the hardship violated the Constitution.

The trial court also criticized food and clothing distribution systems at juvenile hall, but again it found no constitutional violation.

With respect to schooling at the hall, the court stated: "The Sarah Anthony School at the Juvenile Hall is one of the few hopeful programs on site." Nonetheless the trial court criticized the fact that the school did not address the problems of juveniles with learning disabilities or offer appropriate services to juveniles who were participating in Individual Educational Programs (IEP's). The trial court observed: "While neither the failure to recognize and deal with learning disabilities in the detention facility nor the failure to implement IEPs arise to constitutional

dimensions, they are discussed here because of this Court's perception of their importance in achieving the overall purpose of this lawsuit, to promote the welfare of delinquent minors and protect the public from the minors' continued delinquency."

The court also noted that experts had criticized the hall's suicide rooms and safety rooms as cold and inhumane. However the trial court stated: "The evidence does not reveal what procedures would be considered the standard of care in a licensed mental health facility, but it seems unlikely that a minor at this level of emotional turmoil in a private setting would receive considerably more supportive care, attention and nurturing."

The court found no fault with the voluntary rehabilitation programs offered at juvenile hall. The court criticized the staffing at juvenile hall because it relied extensively on use of overtime and personnel from other areas of the probation department. Again, however, the court did not find that the staffing violated plaintiffs' constitutional rights.

In the three areas where the court did find impermissible conditions—safety, mental health and post–disposition/24–hour school commitment—the trial court's findings do not withstand scrutiny.

A. ***Safety***

In finding the crowded conditions at juvenile hall posed a threat to the safety of ***285** plaintiffs, the court stated: "While, during trial, probation officials offered evidence in an attempt to establish, statistically, that the incidence of physical and sexual assaults had not increased at a greater rate than the population. However, they were only able to analyze assaults which were formally discovered by staff and made of record. Crowding makes it difficult to learn of and deal with violent incidents, so the statistics are inconclusive. The statistical analysis could not accurately reflect the incidents which remained unreported due to the smaller size, frailer stature or mental and emotional instability of many victims of violence. Therefore while the data, examined uncritically, tended to support probation[']s position, on analysis it was unconvincing. The fact is, fear of retribution is an effective gag used by aggressors to prevent their victims from reporting assaults." The trial court further stated: "The probation staff, intuitively, knows the facility is more violent. They do what they can. They are too busy chopping with a dull ax to take time to stop and sharpen it, and they don't have the means of sharpening it even if they had the time."

With due respect for the trial court and its very genuine concern for the welfare of juveniles detained in juvenile hall, judicial intervention in the administration of custodial facilities must be based on something greater than speculation about unreported assaults or intuition. Judgments about prison conditions " 'should neither be nor appear to be merely the subjective views' of judges. [Citation.] To be sure, 'the Constitution contemplates that in the end [a court's] own judgment will be brought to bear on the question of the acceptability' of a given punishment. [Citations.] But such ' "judgment [s] should be informed by objective factors to the maximum possible extent." ' " (*Rhodes v. Chapman* (1981) 452 U.S. 337, 346, 101 S.Ct. 2392, 69 L.Ed.2d 59.) Here, in the absence of substantial proof which rebutted the statistics presented by the county, the trial court could not reasonably conclude that crowding at juvenile hall exposed the juveniles to greater levels of violence. (See *ibid.; People v. Johnson, supra,* 26 Cal.3d at 577–578, 162 Cal.Rptr. 431, 606 P.2d 738.)

B. ***Mental Health***

With respect to mental health the court initially found that "[t]he provision of mental health evaluation and treatment is wholly inadequate." This finding was of course somewhat undermined by the trial court's March 5, 1994, order finding that juvenile hall was constitutionally adequate. However the greater difficulty with the trial court's finding is the nature of proof offered by the parties on the mental health issue.

[6] In order to demonstrate constitutional deficiency in the mental health care provided to juveniles, plaintiffs were required to show either a pattern of cases where juveniles suffering serious mental illness were not treated (*Capps v. Atiyeh* (1982) 559 F.Supp. 894, 917–918 (*Capps*)) or such systemic deficiencies that serious injury to juveniles is inevitable. (See *Ruiz v. Estelle* (1980) 503 F.Supp. 1265, 1339.) The inherent subjectivity in every aspect of mental health treatment makes this a difficult burden to sustain. As the court in *Capps* explained: "First, there is considerable room for disagreement and debate among psychiatrists and other mental health professionals as to what is a serious mental illness for which the denial of adequate treatment causes constitutionally-cognizable pain. 'Despite many recent advances in medical knowledge, it remains a stubborn fact that there are many forms of mental illness which are not understood, some of which are untreatable in the sense that no effective therapy has yet been discovered for them, and that rates of "cure" are generally low.' [Citation.] As the Fourth Circuit has remarked: 'Although it is possible to categorize some forms of mental illnesses, diagnosis remains "an extremely subjective art." ' [Citation.] The diagnosis of mental illnesses is made tougher still because it is easy for inmates tired of their boring, 'restrictive and even harsh' routines to feign the symptoms of mental illness to effect a change in their environment. [Citation.] It is safe to say that the inmates must show, at a

minimum, that they suffer from illnesses such as acute depression, paranoid schizophrenia, psychoses, or nervous collapse. [Citation.] The eighth amendment does not require the State to solve inmates' ***286** behavioral, emotional, and personality problems. [Citation.]

"Second, psychiatrists themselves differ on the underlying theories and thus on the methods of treatment. [Citation.] This state of the psychiatric art makes it all the more difficult for [a court] to distinguish between cases that show inmates receiving, on the one hand, constitutionally inadequate treatment, and, on the other hand, treatment about which mental health professionals could reasonably differ. The Constitution requires [the court] intervene in the former cases; however, the latter are beyond [judicial] purview. As the Supreme Court said in another context: 'the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made.' [Citation.]

"Third, unlike their medical care counterparts, mental health care providers face an additional hurdle in treating their patients: the patient must acknowledge his illness and cooperate with those attempting to treat him. A large number of mentally ill patients, not just inmate-patients, refuse to cooperate with their doctors. [Citation.]" (*Capps, supra,* 559 F.Supp. at p. 917.)

At trial in this case the evidence disclosed that the probation department does not provide long-term mental health at juvenile hall, but instead attempts to stabilize juveniles who are in emotional crisis. According to Carol Russ, the chief psychologist of the county's juvenile forensic service: "[T]he current thinking in my profession has to do with a system of care for children. Detention facilities are not viewed as mental health treatment programs per se, and the current thinking is that detention facilities should function in a crisis intervention mode and make referrals for after care, and the referral for after care would really depend on the specific needs of the child." Dr. Russ's testimony was supported by a mental health administrator who evaluated the juvenile hall: "When you're talking about kids who have been physically and sexually abused as children, and you start opening up, sort of cracking that egg, if you start doing in-depth treatment with some of those issues, and the continuity of the professionals and the continuity of that treatment is not there, that can be very dangerous and damaging I think to the child too."

For their part plaintiffs presented no mental health records or case histories of individual juveniles who were denied treatment for serious mental disorders. Rather, plaintiffs presented testimony from two psychiatrists, Joseph Mawhinney and Martin Greenberg.[8] Both Mawhinney and Greenberg recognized that because of the relatively short period of time juveniles spend at juvenile hall, long-term mental health treatment at juvenile hall was not a realistic goal.

[8] They also presented testimony from a juvenile detention consultant, Paul Demuro. Although Demuro conducted a fairly extensive inspection of the juvenile hall, he did not review any mental health records of juveniles or study the mental health staff at juvenile hall.

Mawhinney inspected juvenile hall and testified to a system in which juveniles suffering from severe mental illness were hospitalized outside of juvenile hall and less severely ill juveniles were seen by staff psychiatrists, given any medication prescribed by the psychiatrists and placed on varying levels of watch by the juvenile hall staff. Mawhinney believed the mental health needs of juveniles would be better met if a 20–bed secure mental health facility were constructed at juvenile hall and operated by the probation department. According to Mawhinney such a facility is needed because referrals from juvenile hall do not have high priority at local psychiatric facilities.

Greenberg is a staff psychiatrist assigned to juvenile hall. His description of the mental health system was consistent with Mawhinney's testimony. Greenberg testified that oftentimes he must go to extraordinary lengths to obtain psychiatric hospitalization for the most severely disturbed juveniles. However Greenberg testified that he had been successful in placing juveniles who needed psychiatric hospitalization in local psychiatric hospitals. According to Greenberg he had no problem placing juveniles who had private insurance. His biggest difficulty and concern was obtaining Medi-cal ***287** approval for hospitalization of uninsured juveniles. Greenberg testified that Medi-cal officials would only approve hospitalization of juveniles who were suicidal and acting out and that following stabilization at hospitals these juveniles would be returned to juvenile hall because Medi-cal would not authorize any further treatment. Greenberg thought that a 20–bed facility for juvenile hall would be excessive, that a 6–bed facility would be adequate and that any facility for hospitalizing juvenile hall detainees should be at another location.

This record does not show a pattern of injury to juveniles because of lack of mental health treatment and it does not demonstrate any systemic deficiencies which pose a threat to juveniles. The record shows a psychiatric staff which treats juveniles in emotional crisis and in fact is able to obtain hospitalization for juveniles when it is needed. At most the record discloses that county, based on expert psychiatric advice, has made a decision to stabilize rather than intensively treat juvenile hall detainees who are

mentally ill and another psychiatric expert who believes juvenile hall should itself provide hospital treatment. Courts are in no position to resolve such a psychiatric dispute. (*Capps, supra,* 559 F.Supp. at p. 917; see also *Youngberg v. Romeo, supra,* 457 U.S. at p. 321, 102 S.Ct. at p. 2461.) Given these circumstances there is no factual basis in the record for judicial interference in the mental health system at juvenile hall. (*Capps, supra,* 559 F.Supp. at pp. 917–918.)

C. *Post–Disposition*

The trial court found a constitutional violation in the juvenile hall's failure to provide post-disposition rehabilitation to juveniles awaiting placement in a residential treatment center as ordered by the juvenile court. This finding cannot withstand scrutiny because plaintiffs were not being held on the basis of their mental or physical condition.

Admittedly, the Supreme Court has made it clear that "the nature and duration of commitment must bear some reasonable relation to the purpose for which the individual is committed." (*Jackson v. Indiana* (1972) 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435.) We also recognize that where the State detains a person because they have a mental or physical illness or disorder, the State must provide adequate treatment. (*People v. Feagley* (1975) 14 Cal.3d 338, 359, 121 Cal.Rptr. 509, 535 P.2d 373.) However, juveniles awaiting placement in a residential treatment center are not being held in juvenile hall because of their physical or mental condition. The juvenile court's power over such a juvenile is predicated on a finding that the juvenile committed an act which is otherwise punishable as a crime or because the juvenile committed an act which otherwise demonstrates he needs the protection of the court. (See Welf. & Inst.Code §§ 601, 602, 727, 730.) 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. (*Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1127, 232 Cal.Rptr. 814, 729 P.2d 80; see also *Santana v. Collazo* (1983) 714 F.2d 1172, 1176–1177, but see also *Woe v. Cuomo* (1984) 729 F.2d 96, 105.)

V

Because the record does not disclose an area of human need for which juvenile hall fails to meet the requirements of the Constitution, the trial court's judgment and orders directing that county remedy conditions at juvenile hall must be reversed.

Notwithstanding our holding, we believe it is important to note the limited nature of our disagreement with the trial court. We believe that in large measure the trial court's statement of decision accurately portrays conditions at juvenile hall as they existed at the time of trial. We also wholeheartedly endorse the trial court's conclusion that every day our community loses valuable opportunities to protect itself from future harm because as a community we have not devoted more resources to the services provided at juvenile hall. Our only disagreement is with the trial court's apparent conclusion that courts are competent to provide a remedy for such lost opportunities. We are not. (See *Bell, supra,* 441 U.S. at p. 562, 99 S.Ct. at p. 1886.)

***288** Judgment and orders reversed and remanded with directions to enter judgment in favor of county. Each party to bear its own costs of appeal.

HUFFMAN and NARES, JJ., concur.

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