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JAMES P. WELSH, Clerk

7 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
8 OF CALIFORNIA, SOUTHERN DIVISION

9  
10 ROBERT CHARLES JORDAN, JR.,

11 Plaintiff,

No. 44786

12 vs.

13 STATE OF CALIFORNIA, et al.,

14 Defendants.

15  
16 PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
17 DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT  
AND FOR DISMISSAL

18 I. THE PRESENT PROCEDURAL POSTURE

19 This is an action brought under the Civil Rights Acts,  
20 42 U.S.C. §§1981, 1983, 1985 and 1986. Plaintiff has alleged  
21 that he has been denied rights under the United States Consti-  
22 tution in that all the facts and circumstances of his incarcera-  
23 tion establish that he has been subject to cruel and unusual  
24 punishment.

25 Defendants attempt by three motions to parse plain-  
26 tiff's amended complaint; defendants would have the court rule  
27 upon isolated segments of plaintiff's case rather than consider  
28 the full impact of all conditions to which plaintiff has been  
29 subjected. This the defendants cannot do, for in conspiracy  
30 cases

1 "plaintiffs should be given the full benefit  
2 of their proof without tightly compartmental-  
3 izing the various factual components and wiping  
4 the slate clean after scrutiny of each." Con-  
5 tinental Ore Co. v. Union Carbide & Carbon Corp.,  
6 370 U.S. 690, 699 (1962).

7 Where the conspiracy relates to conditions of alleged unconsti-  
8 tutional incarceration, consideration of the totality of cir-  
9 cumstances is not only required by the niceties of procedure  
0 but it is essential to the very determination of constitution-  
1 ality vel non. Robinson v. California, 370 U.S. 660, 676 (1962)  
2 (Douglas, J., concurring); Fulwood v. Clemmer, 206 F. Supp.  
3 370, 378-80 (D.D.C. 1962).

4 Plaintiff has filed ten affidavits which are hereby  
5 incorporated by reference.\* The congeries of horrors described  
6 therein cry out for a trial on the merits of plaintiff's case  
7 as a whole.

8 Not only do plaintiff's supporting affidavits lay  
9 bare the stark reality of defendants' conduct, defendants' own  
0 admissions help lay the foundation for their undoing. Defen-

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\* Plaintiff's affidavit has not been filed simultaneously with this Memorandum and the accompanying ten affidavits for the reasons set forth in the Declaration of Charles B. Cohler, paragraphs 2 through 8.

Rule 56(c) of the Federal Rules of Civil Procedure provides in relevant part that "The adverse party prior to the day of hearing may serve opposing affidavits." In order to conform with this portion of the Rules governing summary judgment, it was necessary to file this Memorandum and the accompanying ten affidavits by Friday, June 17.

As set forth in said Declaration of Charles B. Cohler, paragraphs 2 through 8, it has not been possible to obtain plaintiff's affidavit prior to June 18.

In order that plaintiff's affidavit may be considered with respect to the defendants' motion for summary judgment as well as with respect to defendants' motions to dismiss, plaintiff respectfully requests that the court receive his affidavit on the date of hearing rather than on the day prior thereto, pursuant to Rule 56(f) which provides in relevant part that "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts

1 dant Fitzharris has answered interrogatories propounded to him  
2 by the plaintiff, and defendants have submitted three affida-  
3 vits in support of their motions. Defendants' affidavits and  
4 defendant Fitzharris' answers to interrogatories are in con-  
5 flict with each other on the most vital aspects of this case.

6 Solely for the convenience of the court and without  
7 conceding in the slightest that defendants are entitled to  
8 bifurcate this case, plaintiff will treat defendants' motions  
9 seriatim -- but discussion is necessarily interrelated and  
10 the court's consideration of the action as a whole is invited  
11 throughout.

12 II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT MUST BE DENIED  
13 BECAUSE AFFIDAVITS SUBMITTED ON BEHALF OF PLAINTIFF  
14 HEREIN DEMONSTRATE CLEARLY THAT THERE IS A GENUINE  
15 ISSUE OF MATERIAL FACT.

16 Defendants have moved pursuant to Rule 56 of the  
17 Federal Rules of Civil Procedure for summary judgment as to  
18 the amended complaint as a whole on the ground that the "com-  
19 plaint is sham and frivolous and this action represents no  
20 more than an attempt to harrass and annoy the defendants."  
21 (Defs.' Notice of Motion, page 1, lines 29-30). A determina-  
22 tion by this court that there is a genuine issue of material  
23 fact precludes summary judgment. United States v. Diebold, Inc.,  
24 369 U.S. 654 (1962); Browner v. Pearl Assurance Co., Ltd., 267  
25 F.2d 45 (9th Cir. 1958).

26 (footnote continued)

27 essential to justify his opposition, the court may ... make such  
28 ... order as is just."

29 As set forth in said Declaration of Charles B. Cohler,  
30 paragraph 9, plaintiff's counsel represents that he has reason  
to believe at the time of filing this Memorandum that plaintiff's  
affidavit will support the allegations of plaintiff's amended  
complaint.

1       There is not only a genuine issue of material fact,  
2       there is a veritable flood of tendered evidence which puts  
3       Edgar Allen Poe's imagination to shame.

4       Defendants would appear to be trying to avoid a  
5       factual inquiry into pre-medieval prison conditions by resort-  
6       ing to medieval legal theory. Defendants' Memorandum in sup-  
7       port of their motion for summary judgment relies almost ex-  
8       clusively upon the assertions that an inmate is inherently  
9       lacking in veracity, that lawsuits brought by inmates are per  
0       se no more than shams. This is like the "barbarous rule" of  
1       the Middle Ages, that an accused may have no witnesses on his  
2       own behalf because they would tend to perjury. ~~II~~ Wigmore on  
3       Evidence (3rd Ed.), p. 685.

4       The problems of proof in this case may be real, for  
5       as a general matter it may be observed that both inmates and  
6       defending prison officials come into court from an environment  
7       where outside scrutiny is a rarity. As stated by Chief Judge  
8       Henley in Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965):

      "The Court has been caused some difficulty by  
      the fact that none of the inmate witnesses,  
      including Talley, is particularly worthy of  
      belief, and because of the patent interest of  
      Mr. Harmon whose conduct as Assistant Warden  
      has been called into serious question in the  
      course of the proceedings." (at p. 685, fn. 2).

In that case the court went on to hold that the conditions of  
incarceration constituted cruel and unusual punishment.

      At this stage in the proceedings, plaintiff asks no  
more than that he be permitted to submit for the court's deter-  
mination which witnesses are credible, what the conditions have  
been and are. A trial is imperative.

A.   The Affidavits Filed on Behalf of Plaintiff  
      Demonstrate Clearly the Presence of Genuine  
      Issues of Material Fact.

1           Nothing could speak more forcefully of the actual  
2 conditions in the strip cell than the live testimony of those  
3 who have been subjected to that form of "rehabilitation". At  
4 the present stage of the proceedings, affidavits must suffice.  
5 The court's attention is respectfully invited to the affidavits  
6 themselves; the recapitulation herein is but surface treatment.

7           The testimony tendered to the court through affida-  
8 vits herein can be but a sample of what a full-scale investi-  
9 gation would likely produce. This is a lawsuit, not a State  
0 investigation, although the latter would surely seem called for.

1           The ten persons whose affidavits are submitted here-  
2 with represent but a random sampling. Plaintiff propounded  
3 interrogatories calling for the names of those inmates who  
4 happened to have been confined in the one of six strip cells  
5 in which plaintiff himself was detained. Only inmates occupy-  
6 ing that cell for the periods sixty days prior to and sixty  
7 days subsequent to plaintiff's detention therein were called  
8 for. Only ten of the nineteen inmates listed in response were  
9 available for interview at the Correctional Training Facility.  
0 All ten affidavits have been submitted to the court.

1           The ten affidavits tend to show that the stated poli-  
2 cies of the Correctional Training Facility were not adhered to  
3 in at least the following respects: (1) water was not made  
4 available twice a day, as much at each time as an inmate re-  
5 quested; (2) showers were not afforded at least every five days;  
6 (3) the strip cell was not kept in a clean condition either  
7 through inmate porter or orderly cleaning or through supplies  
8 afforded inmates of the cell itself; (4) the window flaps in  
9 the wall directly outside the bars of the strip cell itself  
0 were not kept open at all times except when an inmate created

1 a disturbance requiring their being closed; (5) ventilation  
2 of the strip cell was not afforded by the so-called ventila-  
3 tion ducts within the strip cell itself; (6) the Chief Medical  
4 Officer did not visit each inmate in a strip cell once a week;  
5 (7) Medical Technical Assistants did not visit each inmate in  
6 a strip cell once a day; (8) a blanket or canvass mat was not  
7 supplied to each inmate in a strip cell; (9) each inmate was  
8 not clothed in coveralls, one pair of shorts, one pair of  
9 socks, and one T-shirt; (10) each inmate was not permitted  
10 to have toilet paper, soap, comb, and a toothbrush.

11 B. Defendants' Own Assertions by Way of Affidavit  
12 and Interrogatory Answers Reveal Inconsistency  
and Conflict in Abundance.

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13 Defendant Fitzharris has filed answers to interro-  
14 gatories propounded to him by the plaintiff. According to  
15 defendants' counsel, Robert R. Granucci, Esq., 245 hours were  
16 spent preparing these answers and they represent the sum total  
17 of any information available. (See Declaration of Charles B.  
18 Cohler, paragraph 10.)

19 Throughout the answers to interrogatories, it is  
20 asserted that there is no information available as to specific  
21 conditions prevailing with regard to plaintiff's own incarceration  
22 at the relevant times. Yet, throughout the affidavit of  
23 William Thomas Friedrich there are purported assertions of just  
24 such specific knowledge. The affidavits and the answers to  
25 interrogatories were filed and served by defendants' counsel  
26 on the same day.

27 1. Affidavit of William Thomas Friedrich

28 Mr. Friedrich asserts several facts regarding the  
29 specific conditions to which plaintiff was subjected: (1)  
30 "the door and window flaps of plaintiff's cell were open all

1 the time that I was on duty" (Friedrick Aff., p. 2, lines 1-2);  
2 (2) "toilets in all the quiet cells, including the cell where  
3 plaintiff was confined, were flushed at least twice per shift"  
4 (Id., p. 2, lines 3-5); (3) "each inmate was furnished at least  
5 two styrofoam drinking cups. At least twice during the morn-  
6 ing and afternoon shifts, each quiet cell prisoner was given  
7 as much water as he cared to drink, in addition to two cups  
8 of water which were left for him to either drink later or wash  
9 with" (Id., p. 2, lines 22-28).

10 Superintendent Fitzharris was unable to ascertain  
11 any of these specific facts which his subordinate seems to  
12 have been able to supply to counsel for filing on the very  
13 day that counsel filed Superintendent Fitzharris' answers to  
14 interrogatories. Thus, Superintendent Fitzharris' answer to  
15 Interrogatory 22(e) states that no information is available as  
16 to the actual handling of the flaps which Mr. Friedrich tells  
17 the court he knows to have been open. Further, Superintendent  
18 Fitzharris' answer to Interrogatory 22(m) states that no re-  
19 cords are available to determine the actual exercise of con-  
20 trol over flushing of the toilets. Defendants' counsel has  
21 stated that all interrogatories reflect all information avail-  
22 able even where they are phrased in terms of records available.  
23 (See, Declaration of Charles B. Cohler, paragraph 10.) Yet,  
24 Mr. Friedrich tells the court that he knows what his Superin-  
25 tendent couldn't find out, that the toilets were in fact  
26 flushed at least twice per shift. Similarly, Superintendent  
27 Fitzharris tells us in answer to Interrogatory 22(r) that there  
28 is no information available as to when in fact water was sup-  
29 plied to plaintiff; Mr. Friedrich tells us that he, however,  
30 does know.

1 In addition, Mr. Friedrich states that he personally  
2 saw plaintiff take at least one shower. This will be dealt  
3 with in plaintiff's own declaration to be filed prior to hear-  
4 ing on the instant motion. But it must also be emphasized that  
5 Superintendent Fitzharris has sworn that there was no informa-  
6 tion respecting whether or not plaintiff took a shower. (Ans.  
7 Int. 22(r)). It is shocking that a factor which is so material  
8 to this action and which was specifically called for was not  
9 discovered during the 245 hours of preparation of answers to  
10 interrogatories, but that counsel was able to garner that very  
11 same information in an affidavit which was filed on the same  
12 day as the answers to interrogatories. The same can be said  
13 of Mr. Friedrich's assertion that each quiet cell inmate was  
14 given "one set of underwear, one pair of coveralls, one pair  
15 of socks and one pair of rubber sandals." (Compare Friedrich  
16 Aff., p. 3, lines 5-12 with Ans. Int. 22(jj).)

17 In addition to these flagrant inconsistencies, Mr.  
18 Friedrich's affidavit consists of conclusionary statements  
19 and assertions which he is wholly incompetent to make.

20 (1) Mr. Friedrich swears that he is competent to testify  
21 that "all cells were cleaned every Saturday morning" (Fried-  
22 rick Aff., p. 2, lines 9-10.) But Mr. Friedrich has also told  
23 us that he was on duty only Monday through Friday. Unless he  
24 spends his spare time down in the strip cells making sure that  
25 they are cleaned every Saturday, this is at the very least  
26 nothing more than wholly inadmissible hearsay. The entire para-  
27 graph relating to the cleaning of strip cells is subject to the  
28 same fatal defect.

29 (2) Mr. Friedrich further tells us that it "is customary  
30 practice to flush the toilets twice from 4:00 p.m. to midnight,



1 and from midnight to 7:30 a.m. a prisoner's toilet is flushed  
2 at his request" (Id., p. 2, lines 5-7) (emphasis added), and  
3 that the "general practice is that each quiet cell prisoner  
4 is removed from his cell at the end of four or five days,  
5 brought out for a shower, sooner if at all possible." (Id.,  
6 p. 2, lines 19-21) (emphasis added). In the first place, the  
7 general practice is no evidence of what in fact was done with  
8 the plaintiff. In this respect, the ten affidavits submitted  
9 herewith tend to show overwhelmingly that general practice  
10 doesn't exist very generally. Secondly, the assertions are  
11 made in the present tense; Mr. Friedrich's affidavit goes on  
12 to state many other changes which have allegedly been made sub-  
13 sequent to the filing of plaintiff's lawsuit. And, again, Mr.  
14 Friedrich was not on duty at all the times of which he speaks.  
15 Thus, these statements are without weight as to the actual con-  
16 ditions which prevailed as to the plaintiff during the time he  
17 was detained in the strip cell.

### 8 2. Affidavit of Edward Paul Kunkel

9 Dr. Kunkel's affidavit, insofar as it relates to the  
0 specific occurrences regarding plaintiff, will be dealt with in  
1 plaintiff's declaration to be filed prior to hearing on the in-  
2 stant motion.

### 3 3. Affidavit of George Francis Johnston

4 There is nothing in Mr. Johnston's affidavit relating  
5 specifically to the facts alleged by plaintiff.

6 III. EVEN IF THE ALLEGED PHYSICAL CONDITIONS OF PLAINTIFF'S  
7 SOLITARY CONFINEMENT ARE NOT UNCONSTITUTIONAL STANDING  
8 ALONE, PLAINTIFF'S FURTHER ALLEGATIONS THAT HE HAS BEEN  
9 AND MAY BE SUBJECTED TO SUCH PHYSICAL CONDITIONS WITHOUT  
0 ADEQUATE PROCEDURAL SAFEGUARDS STATE A CAUSE OF ACTION.

1 Defendants purport to move to dismiss "pursuant to  
2 Rule 12(b)". Defendants have already answered plaintiff's

1 amended complaint; defendants' motions ought to be made pursuant  
2 to Rule 12(c) and, thereunder, be treated as though made for  
3 summary judgment under Rule 56. Rule 12(b) provides in rele-  
4 vant part:

5 "A motion making any of these defenses shall be  
6 made before pleading if a further pleading is  
permitted." (Emphasis added.)

7 Rule 12(c) provides that:

8 "After the pleadings are closed but within such  
9 time as not to delay trial, any party may move  
for judgment on the pleadings. If, on a motion  
for judgment on the pleadings, matters outside  
the pleadings are presented to and not excluded  
by the court, the motion shall be treated as  
1 one for summary judgment and disposed of as pro-  
2 vided in Rule 56, and all parties shall be given  
reasonable opportunity to present all material  
made pertinent to such a motion by Rule 56."  
3 (Emphasis added.)

4 Defendants' motions are before the court, since a misnomer does  
5 not go to their merit; however, supporting affidavits filed and  
6 to be filed on behalf of the plaintiff and other documents on  
7 file herein are properly considered with respect to all of de-  
8 fendants' motions in view of the express provisions of Rules  
9 12(b), 12(c) and 56.

10 Defendants' Memorandum misconceives plaintiff's alle-  
11 gations respecting the exercise of administrative discretion.

12 At the outset, it must be emphasized that in the  
13 first instance it is plaintiff's contention that the United  
14 States Constitution precludes the imposition upon any human  
15 being in any circumstance of the physical conditions alleged  
16 in plaintiff's amended complaint and further described in af-  
17 fidavits.\*

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\* The validity of this contention is not presently before the court. Plaintiff's present "motion to dismiss" does not attack the allegations respecting physical conditions, but is addressed solely to the allegations regarding procedural safeguards. Defendants refer only to "Paragraph 20" of plaintiff's amended complaint. (Def.'s Memorandum, page 7, lines 14-19.)

1 In addition to the allegations respecting physical  
2 conditions, plaintiff has alleged that such conditions are im-  
3 posed without adequate procedural safeguards. If this court  
4 should subsequently hold that such physical conditions may be  
5 imposed, plaintiff submits that their extraordinary character  
6 requires that they may only be imposed under certain circum-  
7 stances with attendant procedural safeguards, safeguards which  
8 plaintiff alleges have been and are wholly lacking.

9 Thus, defendants misrepresent plaintiff's position  
10 when they state:

11 "Reduced to its [sic] essentials, these allegations  
12 merely mean that plaintiff does not agree with the  
13 defendant [sic] as to the degree of custody re-  
quired to maintain proper control and discipline  
over him." (Defendants' Memorandum, page 7.)

14 To the contrary, it is plaintiff's alternative contention that  
15 if such a degree of "custody" be constitutionally permissible  
16 at all, the method of imposition has fallen short of constitu-  
17 tionally required procedure.

18 Plaintiff does not seek to interfere with the exer-  
19 cise of discretion by prison officials. Plaintiff does contend,  
20 however, that the administration of prison discipline must meet  
21 constitutional standards; above that minimum level, the authori-  
22 ties are free to choose their own means of custody and rehabili-  
23 tation as far as a federal court is concerned.

24 "A punishment out of all proportion to the offense  
25 may bring it within the ban against 'cruel and unusual punish-  
26 ment.'" Robinson v. California, 370 U.S. 660, 676 (1962)  
27 (Douglas, J., concurring); Fulwood v. Clemmer, 206 F. Supp.  
28 370, 378-80 (D.D.C. 1962). Even where restraint of freedom  
29 lies within the executive discretion of the Governor and any  
30 freedom on conditional parole is but a matter of executive

1 "grace", revocation of such a conditional parole must be accom-  
2 panied by procedural due process. Fleenor v. Hammon, 116 F.2d  
3 982, 986 (6th Cir. 1941); United States ex rel. Howard v. Ragen,  
4 59 F. Supp. 374 (N.D. Ill. 1945). And it is axiomatic that  
5 where an individual's rights are affected by official action,  
6 even though it be of a non-judicial nature, minimum requirements  
7 of procedural due process must be met. Joint Anti-Fascist Re-  
8 fugee Comm. v. McGrath, 341 U.S. 123 (1951).

9 Thus, even if the physical conditions of plaintiff's  
10 confinement in "solitary" do not of themselves infringe plain-  
11 tiff's constitutional rights, the circumstances attending his  
12 detention in such surroundings must be inquired into. There  
13 must be a reasonable relationship between the punishment and  
14 the alleged violation, even within the prison walls (Fulwood  
15 v. Clemmer, supra), and it is thus incumbent upon the prison  
16 officials to provide a responsible forum to make this consti-  
17 tutionally imposed determination, a forum fulfilling the demands  
18 of due process.

19 Whether the procedures actually employed in confin-  
20 ing plaintiff in the strip cell were adequate as a matter of  
21 constitutional law must be determined after full hearing where  
22 the facts and circumstances can be established.

23 Solely from the face of defendants' own admissions at  
24 this preliminary stage of the proceedings, it is apparent that  
25 even the "policy" set forth with respect to detainment in "solli-  
26 tary" is ignored in practice. The very confinement which is  
27 the principal subject of plaintiff's lawsuit was imposed by  
28 one officer without the "hearing" called for by the institu-  
29 tion's own alleged rules. Sergeant H. Owens confined plain-  
30 tiff for twelve days in the so-called "strip cell", and the

only reason stated by Superintendent Fitzharris was "Hold pending disciplinary action" (emphasis added). According to Superintendent Fitzharris' own answer, "policy" demands that the only circumstance when an inmate may be subjected to isolation without full review by committee is for a holding purpose pending investigation, and even then that action can only be taken by the Chief Disciplinary Officer, must be followed by the Adjustment Center Program Administrator and the inmate cannot be forced to spend an undue time without committee action. (Ans. Int. 9, App. A thereto, p. 4 thereof). It is admitted on the record that plaintiff was held without any of the requisites called for by institutional policy. This is a very long headstart toward proving the constitutional challenge itself.

IV. WHERE ALLEGATIONS OF SPECIFIC FACTS CLAIMED TO CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT INCLUDE AN ALLEGATION OF FAILURE TO RENDER ADEQUATE MEDICAL TREATMENT, AND WHERE SUPPORTING AFFIDAVITS SET FORTH SPECIFIC INSTANCES THEREOF, A PIECEMEAL DISMISSAL IS NOT WARRANTED.

Again seeking to avoid the impact of the overall factual context, defendants would have the court consider the conditions of plaintiff's incarceration piece by piece. As previously shown, supra pp. 1-2, an action of this nature necessitates consideration of all elements together in judging whether the tolerance of our society has been stretched beyond the breaking point and constitutional rights have been impinged.

In particular, the defendants ask this court to separate from all other allegations of mistreatment the alleged mistreatment respecting medical care. Invoking the shibboleth that allegations underpinning constitutional causes must include specific factual assertions, the defendants would have the court put to one side an abundance of pinpointed allega-

1 tions and focus upon one sentence of plaintiff's amended com-  
2 plaint.

3 Defendants' "motion to dismiss" as to this single  
4 allegation presupposes that the court will reject their claim  
5 that the action is no more than a sham and frivolous, for if  
6 the court should sustain that ground for summary judgment the  
7 question of adequate pleadings as to but a part of the amended  
8 complaint will not be reached. In these circumstances, the  
9 court will of necessity be considering defendants' "motion to  
0 dismiss" as to the allegation of inadequate medical treatment  
1 as but one of several interrelated allegations.

2 The theory underlying courts' insistence that alle-  
3 gations in constitutional cases include specific factual re-  
4 ferences is itself the very reason for denying defendants'  
5 motion here. The constitutionality of any course of action  
6 is inherently dependent upon a view of the facts and circum-  
7 stances taken as a whole. For that reason a court could never  
8 judge the validity of a cause of action unless there were in-  
9 cluded factual rather than conclusionary allegations. For that  
10 same reason, a court cannot permit defendants to lift from the  
11 midst of factual allegations a plaintiff's further and related  
12 allegation that as an integral part of the course of action  
13 complained of he was denied adequate medical treatment.

14 Indeed, in United States v. Ragen, 337 F.2d 425 (7th  
15 Cir. 1964) (cited by defendants at page 7), the court said:

16 "Deprivation of essential medical care by  
17 state prison officials may be an exceptional  
18 circumstance which is actionable in federal  
19 courts under the Civil Rights Act." (at p. 426).

29 In the instant case, whether defendants' alleged failure to  
30 render adequate medical care is actionable does not even depend

1 upon its own weight as an "exceptional circumstance", for it  
2 is but part of a congeries of horrors which themselves consti-  
3 tute -- to say the least -- exceptional circumstances. More-  
4 over, the court in Ragen rested its holding upon its determina-  
5 tion that the record supported the trial court's findings of  
6 fact adverse to plaintiff. It is no more than an opportunity  
7 to make a complete record which plaintiff seeks here.

8 Even if plaintiff's amended complaint be deemed in  
9 any respect deficient standing alone, any such defect will have  
10 been cured by the time this matter is submitted. Plaintiff's  
11 counsel has represented to the court that plaintiff himself is  
12 competent to testify and to make an affidavit or declaration  
13 setting forth facts in support of the allegations of the amended  
14 complaint. (Declaration of Charles B. Cohler, paragraph 9.)  
15 Defendants' motion for summary judgment -- brought on erroneously  
16 as a motion to dismiss -- cannot be granted in view of the  
17 genuine issues of fact apparent on this state of the record.

18 V. THE COURT SHOULD AT THIS TIME DENY THE "MOTION TO DISMISS"  
19 FOR FAILURE TO STATE A CLAIM AGAINST DEFENDANTS STATE OF  
CALIFORNIA AND CORRECTIONAL TRAINING FACILITY BECAUSE:

20 (A) A PROPER CONSTRUCTION OF THE STATUTES IN QUES-  
21 TION PERMITS AN ACTION AGAINST GOVERNMENTAL  
22 ENTITIES WHERE THERE IS NO SOVEREIGN IMMUNITY  
UNDER STATE LAW;

23 (B) THE TRIAL OF THIS LAWSUIT WILL NOT BE ALTERED  
24 ONE IOTA IF THESE DEFENDANTS ARE LEFT IN, WHERE-  
25 AS SHOULD THIS COURT DISMISS AS TO THEM AT THIS  
TIME AND BE REVERSED ON APPEAL AN ENTIRE NEW  
TRIAL WOULD BE REQUIRED

26 A. A Proper Construction of the Statutes in Question  
27 Permits an Action Against Governmental Entities  
28 Where There is No Sovereign Immunity Under State Law

29 The term "person" in the Civil Rights Acts has been  
30 consistently construed narrowly. Plaintiff submits that where  
as a matter of State law the doctrine of sovereign immunity is

1 no longer applicable, the State or other governmental entity is  
2 subject to suit under the federal statute.

3 The internal legislative history of the original Civil  
4 Rights enactments has been relied upon by the Supreme Court in  
5 limiting the reach of those statutes. Monroe v. Pape, 365 U.S.  
6 167, 187-92 (1961) (cited by defendants at page 6). A careful  
7 consideration of that judicial construction and the internal  
8 legislative history relied upon therein supports plaintiff's  
9 contention.

0 Mr. Justice Douglas, writing for the majority, relied  
1 upon the Conference Report's rejection of a Senate provision  
2 which would have expressly included liability against towns  
3 and counties, and the Conference Report's conclusion is said  
4 to have resulted from the House's intractability on the ques-  
5 tion. The House's position rested, according to the spokesman  
6 for the House conferees, upon the theory that:

"the House had solemnly decided that in their  
judgment Congress had no constitutional power  
to impose any obligation upon county and town  
organizations, the mere instrumentality [sic]  
for the administration of state law." (as  
quoted at 365 U.S. 190).

Thus, the position of the legislators responsible for  
the passage of the Civil Rights Acts was that those Acts should  
not attempt to create liability where there might be constitu-  
tional infirmity; constitutional infirmity was thought to derive  
from the immunity under local law of local governmental entities.  
In other words, the legislative purpose was to reach as far as,  
but no further than, local governmental immunity would permit.

The development of the "law of officers" and suits  
against the sovereign is a revealing testimonial to the law's  
ingenuity and bears on the instant question. When the principle



1 that "The King can do no wrong" became accepted and stretched  
2 into the doctrine of sovereign immunity, social conscience found  
3 its outlet in suits against lower officials. This was frus-  
4 trated to some extent by notions of indispensable parties which  
5 required joinder of higher executive officers who themselves  
6 enjoyed immunity. Yet where actions against officials have  
7 been sustained, it has been commonly accepted that a judgment  
8 rendered against them will ultimately be satisfied from the  
9 sovereign's pocketbook. Thus, the law has permitted plaintiffs  
10 to do indirectly what has been denied them directly: sue the  
11 sovereign.

12 It was in a context of prevailing notions of sovereign  
13 immunity that the Congress in 1871 felt unable to provide ex-  
14 pressly for actions against governmental entities. But today  
15 the doctrine of sovereign immunity has been rejected by Cali-  
16 fornia's legislators and Supreme Court. There is no reason not  
17 to breathe life into Acts which were originally designed to go  
18 as far as sovereign immunity would let them, where sovereign  
19 immunity no longer exists as a stumbling block.

20 It is clear today under California law that neither  
21 the State nor any governmental subdivision or entity thereof  
22 is immune from suit in an action of this nature. In Muskopf v.  
23 Corning Hospital Dist., 55 C.2d 211, 11 Cal. Reprtr. 89 (1961),  
24 Mr. Justice Traynor held the doctrine of sovereign immunity in-  
25 applicable in California, saying:

26 "After a re-evaluation of the rule of governmental  
27 immunity from tort liability we have concluded  
28 that it must be discarded as mistaken and unjust."  
(11 Cal. Rptr. at p. 90).

29 Thereafter the California legislature provided a grace period  
30 to permit time to examine the question, and subsequently the

1 present statutory provisions "waiving" governmental immunity  
2 were passed. Gov. Code §815.2(a) provides that:

3 "A public entity is liable for injury proximately caused by an act or omission of an employee  
4 of the public entity within the scope of his employment if the act or omission would, apart from  
5 this section, have given rise to a cause of action against that employee or his personal representative."  
6

7 Thus the liability to suit of a governmental entity is triggered  
8 by liability of "employees" or officers thereof. The defendants  
9 in the instant case have raised no question respecting the immunity of individual named defendants, nor would such a contention be meritorious. Cohen v. Norris, 300 F.2d 24 (9th Cir.  
1 1962); Jobson v. Henne, 34 L.W. 2381 (2d Cir. 1966); Gov. Code  
2 §§820(a), 820.2.

3 In Williford v. California, 352 F.2d 474 (9th Cir.  
4 1965) (cited by defendants at page 6), the Ninth Circuit Court  
5 of Appeals held that the People of the State of California were  
6 not subject to suit under the Civil Rights Acts, relying upon  
7 Monroe v. Pape, supra. The Court of Appeals did not indulge  
8 in extensive discussion, and the contention raised herein by  
9 plaintiff respecting the factor of sovereign immunity was not  
1 touched upon.

2 Plaintiff recognizes that the District Court hesitates  
3 before holding contrary to authority from the Court of Appeals  
4 in its Circuit. But where the reviewing court has not met arguments advanced to the court of original jurisdiction, the  
5 lower court ought to exercise its own judgment more freely, for  
6 the appellate court is more likely to alter its own position.  
7 This is particularly true where there are strong forces of judicial economy at play, as are set forth in Subsection B, directly  
8 infra.

1 B. The Trial of This Lawsuit Will Not be Altered  
2 One Iota if These Defendants are Left in, Whereas  
3 Should This Court Dismiss as to Them at This Time  
4 And be Reversed on Appeal an Entire New Trial  
5 Would be Required.

---

6 Considerations of judicial economy must be given great  
7 weight in a trial court's ruling on dispositive motions (Mont-  
8 gomery Ward & Co. v. Duncan, 311 U.S. 243 (1940)), even where  
9 there are strong countervailing considerations (see Momand v.  
10 Universal Film Exchange, 72 F. Supp. 469 (D. Mass. 1947) (Wyzanski,  
11 J.)). Here there are strong considerations of judicial economy  
12 and no countervailing difficulties.

13 The trial of the present lawsuit will not be altered  
14 in any conceivable manner by the presence of the State of Cali-  
15 fornia and the Correctional Training Facility as defendants.  
16 Their presence is urged by plaintiff solely to insure that any  
17 injunctive relief which may be afforded plaintiff will have per-  
18 manent value and not be subject to future claims of nullity by  
19 subsequent incumbents to the positions occupied presently by  
20 individual defendants.

21 The Office of the Attorney General represents all  
22 named defendants in this action. No counsel will be relieved  
23 of responsibility by virtue of a dismissal as to the State of  
24 California and the Correctional Training Facility. No additional  
25 expenses will be borne by any party and no additional time of  
26 the court will be consumed by leaving these parties in the action.

27 On the other hand, should the court grant defendants'  
28 "motion to dismiss" at this time, and should the argument urged  
29 here by plaintiff be upheld on appeal, a new trial could be re-  
30 quired as to the defendants who had been dismissed in this court.  
31 Having been dismissed before verdict, they would not have been  
32 parties to any determination made at trial, favorable or unfavor-

1 able to plaintiff.

2 In such circumstances, consideration of the court's  
3 and counsels' time which could be required for a full-scale  
4 new trial should be controlling. This court has nothing to  
5 lose and everything to gain by denying defendants' motion at  
6 this time.

7  
8 CONCLUSION

9 Plaintiff respectfully submits that the court should  
10 deny each and every motion of the defendants.

11 Dated: June 16, 1966.

12  
13 Respectfully submitted,

14 *Charles B. Cohler*

15 Charles B. Cohler

16 Attorney for Plaintiff  
17 Robert Charles Jordan, Jr.

1 able to plaintiff.

2 In such circumstances, consideration of the court's  
3 and counsels' time which could be required for a full-scale  
4 new trial should be controlling. This court has nothing to  
5 lose and everything to gain by denying defendants' motion at  
6 this time.

7  
8 CONCLUSION

9 Plaintiff respectfully submits that the court should  
0 deny each and every motion of the defendants.

1 Dated: June 16, 1966.

2  
3 Respectfully submitted,  
4  
5

6 *Charles B. Cohler*

7 Charles B. Cohler

8 Attorney for Plaintiff  
9 Robert Charles Jordan, Jr.

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900  
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4 Attorney for plaintiff  
Robert Charles Jordan, Jr.

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

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF ALFONSO HENRY ESPARZA

18 STATE OF CALIFORNIA )  
T )  
19 COUNTY OF MONEREY )

ss.

20 ALFONSO HENRY ESPARZA, being duly sworn, deposes and  
21 says:

22 1. My true name is Alfonso Henry Esparza. I am  
23 currently detained at the Correctional Training Facility,  
24 Soledad, California.

25 2. From August 21, 1965 through at least August 24,  
26 1965, I was detained at the Training Facility in Cell O-121,  
27 a so-called "strip cell".

28 3. During the entire time that I was detained in  
29 Cell O-121 the flaps on the outer wall were closed as was the  
30 door of that wall. At no time, except when food was brought

1 to me was the door open, and the door was closed immediately  
2 after passing me my food. During the first night that I  
3 was in this strip cell I was given no blanket whatsoever  
4 and was stripped absolutely naked. There was nothing in  
5 the nature of a furnishing of any kind in the cell -- nothing  
6 but me and concrete. During the whole period that I was in  
7 this strip cell I was only given an opportunity to have water  
8 in the morning and in the evening. At those times, the  
9 officer poured one cup of water only into a plastic cup and  
10 refused to give me more than that one cup of water. This  
11 cup is a small plastic cup similar to a ten-cent coffee cup  
12 on the streets. There was no opportunity for me to get  
13 water at any other times at all. The so-called ventilation  
14 openings in the rear wall were not functioning at all. I  
15 felt no air, either going in or going out of those openings.  
16 I am positive that there was no air coming through these  
17 ventilation openings because I was looking for matches  
18 behind the screen over the openings, and I never felt the  
19 passage of air in or out at all.

20 4. There was human bodily waste smeared all over  
21 the walls and floor, particularly in the area of the so-called  
22 commode from previous inmates that were detained in this  
23 cell. Because of the waste throughout the cell, and be-  
24 cause the flaps and door were continuously closed there  
25 was no ventilation whatsoever, the air in the cell during  
26 this period was extremely foul and nauseating.

27 5. From on or about October 26, 1965 through  
28 December 24, 1965, I was detained continuously in isolation.  
29 During that time, from approximately October 26th until  
30 approximately November 18th, I was in one of the two rear

1 strip cells. Thereafter, for a period of about five days  
2 I was in another isolation cell. On approximately November  
3 23rd I was returned to one of the two rear strip cells.  
4 On November 24th, after I refused to yield my clothing,  
5 a full can of tear gas - of the size which I believe generally  
6 to be used to quiet an entire tier of about 25 cells - was  
7 shot into the strip cell where I was. Immediately there-  
8 after all the flaps and the door were closed and I was left  
9 there in convulsions. I was not moved to any other strip  
10 cell to permit the tear gas to be removed from the cell.  
11 Even three days later, Officer Nash, a guard on the evening  
12 shift, had tears in his eyes from the presence of tear gas  
13 which was still hanging in the cell.

4 6. During the October-November period when I was  
5 in the strip cell I was never given an opportunity to take  
6 showers as frequently as once a week.

7 If sworn as a witness I could competently testify  
8 to the above facts.

9 I declare under penalty of perjury that everything  
10 said in the above is true and correct to the best of my  
11 knowledge.

*Alfonso Henry Esparza*

Alfonso Henry Esparza

12 Subscribed and Sworn to before  
13 me this 11th day of June, 1966.

*Claudia Waggoner*

NOTARY PUBLIC CLAUDIA WAGGONER  
State of California

My Commission Expires Feb. 13, 1967





1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.

5  
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7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION  
10

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF SIEGFRIET PORTE

18 STATE OF CALIFORNIA )

19 COUNTY OF MONTEREY )

ss.

20 SIEGFRIET PORTE, being duly sworn, deposes and says:

21 1. My true name is Siegfriet Porte. I am currently  
22 detained at the Correctional Training Facility, Soledad,  
23 California.

24 2. From approximately May 15, 1965 through approxi-  
25 mately May 18, 1965 I was detained in a so-called "strip  
26 cell", Cell O-121.

27 3. During this time while I was in this strip cell  
28 all my clothing had been taken from me and I was permitted  
29 nothing to wear at all. I was given no blanket or mattress  
30 of any kind. Three times a day I was given one cup of water

only. No more than one cup of water was poured for me at one time. This cup is about half the size of a "Mainline" drinking cup. I was never permitted to take a shower. The flaps and door of the outer wall were closed the entire time I was in this cell.

4. When I came into this cell there was human bodily waste smeared on the walls and left on the floor. At no time while I was in this cell was I given anything to clean it up with. I was never visited by the Chief Medical Officer or any Medical Technical Assistant.

5. In approximately March 1965 I was detained in a "strip cell" for 29 days. During this time I was not permitted to have more than one cup of water at a time, three times a day. The flaps and door of the outer wall were closed the entire 29 days. I was never given an opportunity to take a shower during this time. I was never visited by the Chief Medical Officer and saw a Medical Technical Assistant only twice. I was never given anything to clean my cell up with. I never heard anyone cleaning any other strips up.

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

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Siegfried Porte  
Siegfried Porte

Subscribed and Sworn to before  
me this 11th day of June, 1966.

Claudia Waggoner

NOTARY PUBLIC CLAUDIA WAGGONER  
State of California



My Commission Expires Feb. 13, 1967

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
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4 Attorney for plaintiff  
Robert Charles Jordan, Jr.

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6  
7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION  
10

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

No. 44786

AFFIDAVIT OF  
WENDELL HARRIS

17 STATE OF CALIFORNIA )

18 COUNTY OF MONTEREY )

ss.

19  
20 1. My true name is Wendell Harris. I am currently  
21 detained at the Correctional Training Facility, Soledad,  
22 California.

23 2. From approximately August 29, 1965 through  
24 August 30, 1965 I was detained in a so-called "strip cell",  
25 Cell O-121.

26 3. During the time that I was in this strip cell  
27 I received no water at all at any time. During this time  
28 I was supplied with no toilet paper or anyother furnishing  
29 whatsoever except that I was permitted to wear shorts and a  
30 T-shirt. When I arrived in this cell there was human bodily

1 waste spread on the floor and the walls. At no time was I  
2 given anything<sup>with</sup>/which to clean this cell.

3 4. During the entire time that I was in this strip  
4 cell the flaps and door on the outer wall were closed. There  
5 was no ventilation of any kind in the cell; I felt with my  
6 hands near both of the so-called ventilation openings, and  
7 could feel no air moving in or out.

8 5. From approximately May 2, 1966 through May 10,  
9 1966, I was detained in a "strip cell". At this time I was  
10 supplied with toilet paper. I was permitted to wear shorts,  
11 T-shirt, overalls and sandals. Towel, soap, toothbrush,  
12 a plastic wash basin and a plastic water pitcher were avail-  
13 able and water was supplied for use in the basin and the  
14 pitcher. The flaps in the outer wall were continuously  
15 left open.

16 6. In addition to the period in August 1965 and the  
17 period in May 1966, I have also been detained in strip cells  
18 for approximately eleven (11) days in February 1966 and three  
19 (3) days in October 1965. The only time that I was ever  
20 offered an opportunity to take a shower during those times  
21 was in May 1966.

22 7. During each of the times stated above when I  
23 have been in the strip cells, I have never once seen the  
24 Chief Medical Officer. During each of the times stated  
25 above that I have been in the strip cells, I have never seen  
26 a Medical Technical Assistant in the strip cells, except  
27 once in May 1966 when I was able to get the attention of an  
28 MTA which resulted in my going to the hospital thereafter  
29 (to be examined after having been roughed up by several  
30 officers) and except once in February 1966 when I was also

1 trying to get into the hospital.

2 If sworn as a witness I could competently testify  
3 to the above facts.

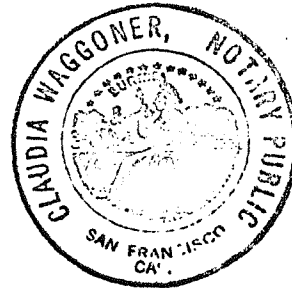
4 I declare under penalty of perjury that the fore-  
5 going is true and correct to the best of my knowledge.

6  
7 Wendell Harris  
8 Wendell Harris

9 Subscribed and Sworn to before  
10 me this 11th day of June, 1966.

11 Claudia Waggoner

12 NOTARY PUBLIC CLAUDIA WAGGONER  
State of California



3 My Commission Expires Feb. 13, 1967

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.

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6  
7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION  
10

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

AFFIDAVIT OF  
HENRY WINBUSH

17 STATE OF CALIFORNIA }

ss.

18 COUNTY OF MONTEREY }

19 HENRY WINBUSH, being duly sworn, deposes and says:

20 1. My true name is Henry Winbush. I am currently  
21 detained at the Correctional Training Facility, Soledad,  
22 California.

23 2. I am presently living in South Facility, the  
24 minimum security portion of the Correctional Training Facility.  
25 The only time that I have ever been in a "strip cell" was  
26 on or about September 10, 1965.

27 3. At the time I was in the strip cell I was  
28 provided with shorts, T-shirt, overalls and sandals, and  
29 was permitted to bring my towel with me. The flaps and  
30 door on the outer wall were kept closed from the time I

1 entered the cell throughout the night and until morning just  
2 before breakfast. A Medical Technical Assistant visited me  
3 that morning.

4 4. I have been an inmate porter for about two  
5 years.

6 5. I am due before the Parole Board around June 28,  
7 1966. I last appeared before the Parole Board in January,  
8 1966.

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

I declare under penalty of perjury that the fore-  
going is true and correct to the best of my knowledge.

*Henry Winbush*  
Henry Winbush

Subscribed and Sworn to before me  
this 11th day of June, 1966.

*Claudia Waggoner*  
NOTARY PUBLIC CLAUDIA WAGGONER  
State of California



My Commission Expires Feb. 13, 1967

1 CHARLES B. COHLER  
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4 Attorney for plaintiff  
Robert Charles Jordan, Jr.  
5  
6  
7

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

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF WARREN WILLIAM WELLS

18 STATE OF CALIFORNIA }

19 COUNTY OF MONTEREY }

ss.

20 WARREN WILLIAM WELLS, being duly sworn, deposes and says:

21 1. My true name is Warren William Wells. I am  
22 currently detained at the Correctional Training Facility,  
23 Soledad, California.

24 2. From approximately August 3rd through August 5th,  
25 1965, I was detained in a so-called "strip cell". This was  
26 my first time in a strip cell at Soledad. During this time  
27 I was given water twice a day, and each time I was permitted  
28 to have only one cup of water -- a small cup like a dixie cup.  
29 There was no soap, no water for washing, no towell and no  
30 furnishing of any kind, except that I was permitted to wear



1 coveralls (no socks or other clothing of any kind) and  
2 slept on a canvas mat.

3 3. During this whole period the flaps and door  
4 of the outer wall were closed continuously, except when  
5 the door was opened for feeding twice a day. I didn't make  
6 any noise or create any disturbance. I was too scared to,  
7 since I was new to the strip cell. I was not permitted  
8 to take a shower at all.

9 4. When I came into the strip cell there was  
10 human bodily waste all around the so-called commode in the  
11 rear and on the wall. I asked for rags or anything to let  
12 me clean it up, but I was not allowed anything. There are  
13 two square openings in the rear wall which are supposed to  
14 be for ventilation, but there is no ventilation at all.  
15 I felt with my hands at both openings to see if there was  
16 air going in or out and it never was.

17 5. The odor in the cell from all the filth was so  
18 nasty that I could not eat anything during the whole time  
19 I was in this strip cell. To try to get away from the filth  
20 and odor, I sat at the front end of the cell as far from  
21 the so-called commode as I could. I saw a Medical Technical  
22 Assistant only once while I was in this strip cell at this  
23 time; that was on the day before I was let out of the strip  
24 cell and I complained that I had a pain and strange growth  
25 at my rectum. He said I probably had hemorrhoids and should  
26 see the doctor.

27 6. The Monday after I left the strip cell I saw  
28 Dr. Kunkel, the Chief Medical Officer. He had me taken to  
29 the prison hospital where he examined me and told me that I  
30 had hemorrhoids. He asked me if I had been in a strip cell

1 lately, and I told him that I had just gotten out the past  
2 week. He asked me if I had been sitting on the floor; I  
3 said yes, and he said that that was how I got the hemorrhoids.  
4 The hemorrhoids were removed by surgery that day.

5 7. From October 26, 1965 through December 24, 1965  
6 I was continuously in isolation. During that time I was  
7 in one of the two rear strip cells all of the time, except  
8 about five days preceding Thanksgiving, which was ~~on~~ on  
9 November 25th. During the time that I was in one of the  
10 two rear strip cells the flaps and door were closed almost  
11 all the time. Whether or not they were left open at all was  
12 dependent upon which officer was on duty. Officer Nash and  
13 his relief Officer Thompson were the ones who opened the  
14 flaps for me occasionally. Each time, Officer Nash told  
15 me to keep the noise down so no one else would know the  
16 flaps were open and said that if I did not he would get  
17 chewed out by his Sergeant for opening the flaps. During  
18 this time I received water only twice a day. During the  
19 morning shift I never received more than one cup of water.  
20 During the afternoon shift Officer Nash or Officer Thompson  
21 usually let me drink more than one cup of water. During  
22 this time the only furnishing I was permitted was a stiff  
23 canvas mat and a pair of coveralls. Only once did I have  
24 a chance to take a shower within a week of my previous shower;  
25 I had no more than four showers during the 57 days I was in  
26 isolation. The so-called ventilation system was never  
27 working while I was in the strip cells.

28 8. There was, of course, no opportunity for me to  
29 brush my teeth the whole 57 days/<sup>I</sup>was in isolation and I  
30 first began to brush my teeth again ~~xxx~~ as soon as I got

1 out of isolation. After I had been released from isolation  
2 and begun brushing my teeth again, two fillings in my front  
3 upper teeth came out. When I was first able to see the prison  
4 dentist to have new fillings put in, he told me that I  
5 hadn't been brushing my teeth often and that when I had be-  
6 gun to brush them again it caused the problem of the cavaties  
7 falling out.

8 If sworn as a witness I could competently testify  
9 to the above facts.

10 I declare under penalty of perjury that the foregoing  
11 is true and correct to the best of my knowledge.

12  
13 Warren William Wells  
14 Warren William Wells

15  
16 Subscribed and Sworn to before me  
17 this 11th day of June, 1966.

18 Claudia Waggoner  
19 NOTARY PUBLIC CLAUDIA WAGGONER  
20 State of California



21 My Commission Expires Feb. 12, 1967  
22  
23  
24  
25  
26  
27  
28  
29  
30

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.  
5  
6  
7

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

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF ANTHONY ESTRADA

18 STATE OF CALIFORNIA )

19 COUNTY OF MONTEREY )

ss.

20 ANTHONY ESTRADA, being duly sworn, deposes and says:

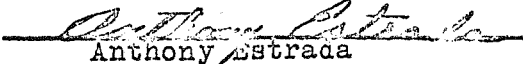
21 1. My true name is Anthony Estrada. I am currently  
22 detained at the Correctional Training Facility, Soledad,  
23 California.

24 2. I recall that I was in a so-called strip cell  
25 toward the end of July 1965. I also recall that I was given  
26 a shot or sedative at that time due to the fact that I had  
27 been under emotional strain. I am frankly unable to re-  
28 collect any details of my experience in the strip cell at  
29  
30

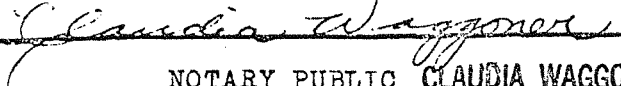
1 this time.

2 If sworn as a witness I could competently testify  
3 to the above facts.

4 I declare under penalty of perjury that the foregoing  
5 is true and correct to the best of my knowledge.

6  
7   
8 Anthony Estrada

9 Subscribed and Sworn to before me  
10 this 11th day of June, 1966.

11   
12 NOTARY PUBLIC CLAUDIA WAGGONER  
13 State of California



14 My Commission Expires Feb. 12, 1969

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.

5  
6  
7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION  
10

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF HERMAN LOUIS ALEXANDER

18 STATE OF CALIFORNIA )

19 ) ss.  
COUNTY OF MONTEREY )

20 HERMAN LOUIS ALEXANDER, being duly sworn, deposes  
21 and says:

22 1. My true name is Herman Louis Alexander. I am  
23 currently detained at the Correctional Training Facility,  
24 Soledad, California.

25 2. From approximately June 24, 1965 through June 29,  
26 1965 I was detained in a so-called strip cell. This is the  
27 only time I have been in a strip cell at Soledad. When I  
28 came into the strip cell there was general filth, including  
29 human bodily waste all over. I asked the officer on duty  
30 to clean it up and I asked him to let me have something to

1 clean it out with myself, but he didn't do either. I used  
2 old paperlunch sacks which were lying on the floor to try  
3 to scrape the waste on the floor into one corner by the  
4 so-called commode.

5 3. During the six days I was in this strip cell  
6 the flaps and door were kept closed all the time except  
7 when they were opened for feeding and delivering my mail,  
8 and except on one occasion when a visiting Catholic priest  
9 opened the flap himself to ask how I was. I couldn't read  
10 my mail in the dark and the officer closed the flaps as  
11 soon as he had thrown the mail in. I felt two openings  
12 for ventilation in the rear wall but I never felt anyair  
13 moving in orout.

14 4. All my clothes were taken from me when I was  
15 taken to the strip cell, and I was nude for all of the six  
16 days. There was not even a canvas mat to sleep on, and no  
17 furnishings of any kind. I tried to sleep on the old paper  
18 lunch sacks. The paper lunch sacks were also the only thing  
19 I could use as toilet paper. I couldn't sleep any more  
20 than about two hours during the day and had to remain  
21 standing almost all the time. The reason I couldn't sleep  
22 and the reason I had to stand up was that the only time  
23 the so-called commode was "flushed" was once a day at mid-  
24 night, and the "flushing" was really flushing out into the  
25 cell, not draining the commode. I couldn't keep the waste  
26 shoved back far enough to let me lie down.

27 5. I was only offered water once aday in a very  
28 small plastic cup, and I was never given more than one cup  
29 full of water. I did not have a shower at anytime during  
30 the six days I was in thisquiet cell.

6. I only was visited by a Medical Technical Assistant one one of the six days I was in the strip cell. At that time I told him that my back hurt, but he didn't do anything about it. After I saw the Medical Technical Assistant I also asked an officer on duty if I couldn't please see the doctor. I was never visited while in the strip cell by any doctor, including the Chief Medical Officer.

7. When I was released from the strip cell I fell from weakness and dizziness.

Herman Louis Alexander

Subscribed and Sworn to before me  
this 11th day of June, 1966.

Claudia Waggoner  
NOTARY PUBLIC CLAUDIA WAGGONER  
State of California



**My Commission Expires Feb. 18, 1967**



CHARLES B. COHLER  
111 Sutter Street  
San Francisco, California 94104  
Telephone: 434-0900

Attorney for plaintiff  
Robert Charles Jordan, Jr.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, SOUTHERN DIVISION

ROBERT CHARLES JORDAN, JR.,

Plaintiff,

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 44786.

<sup>A</sup>  
AFFIDAVIT OF DICK RAE JERRELL

STATE OF CALIFORNIA )

COUNTY OF MONTEREY )

ss.

<sup>A</sup>  
DICK RAE JERRELL, being duly sworn, deposes and says:

1. My true name is Dick Rae Jerrell. I am currently detained at the Correctional Training Facility, Soledad, California.

2. From approximately August 24, 1965 through August 27, 1965 I was detained in a so-called "strip cell". This is the only time that I have been in a strip cell at Soledad.

3. When I was taken to the strip cell in the morning I was not permitted to wear anything at all; in the evening I was given coveralls, shorts, T-shirt and socks (the same and

1 only clothes I was given for approximately fifteen days).

2 In the cell was a small amount of toilet paper, only one  
3 day's supply; I had no toilet paper or anything to use for  
4 toilet paper for the other four days. The only other fur-  
5 nishing of any sort in this strip cell was a thin canvas mat.

6 4. Twice a day I was given a small cup of water and  
7 occasionally the cup was refilled once at that time.

8 5. When I first came to the strip cell I pushed  
9 the accumulated waste down the commode with my hands. During  
10 the five days I was in the strip cell it was not cleaned by  
11 anyone. The flaps on the wall directly outside the bars  
12 were sometimes left open and sometimes left closed. I  
13 never made any noise or disturbance while I was in the strip  
14 cell. I never had a shower while in the strip cell.

15 6. On only one occasion while I was in the strip  
16 cell did a Medical Technical Assistant or anyone who seemed  
17 to be a Medical Technical Assistant ask how I was. That one  
18 time the MTA opened the flap, asked if I was O.K. and slammed  
19 the flap shut before I could tell him that there was some-  
20 thing I wanted.

21 If sworn as a witness I could competently testify  
22 to the above facts.

23 I declare under penalty of perjury that the foregoing  
24 is true and correct to the best of my knowledge.

25  
26  
27  
28 Subscribed and Sworn to before me  
29 this 11th day of June, 1966.

30  
*Claudia Waggoner*  
NOTARY PUBLIC CLAUDIA WAGGONER  
State of California

My Commission Expires Feb. 13, 1967



1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3  
4 Attorney for plaintiff  
Robert Charles Jordan, Jr.

5  
6  
7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION

10  
11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF MAHLON DALE ROOT

18 STATE OF CALIFORNIA )

) ss.

19 COUNTY OF MONTEREY )

20 MAHLON DALE ROOT, being duly sworn, deposes and says:

21 1. My true name is Mahlon Dale Root. I am currently  
22 detained at the Correctional Training Facility, Soledad,  
23 California.

24 2. From approximately July 3, 1965 through July 5,  
25 1965 I was detained in a so-called "strip cell". This was  
26 the only time I have ever been in a strip cell at Soledad.

27 3. In the early morning after I was taken to the  
28 strip cell I was given a broom to sweep the cell and then a  
29 wet mop to mop the cell and I did the best job I could to  
30 clean it up although it was a littledifficult because there

1 wasn't a lot of light. The flaps on the wall outside the  
2 strip cell were open while I was sweeping and mopping, but  
3 they were closed all the other time I was in the strip cell  
4 except at meal time. I was permitted to wear only coveralls  
5 and I had a thin canvas mat to sleep on or sit on. I did not  
6 have a shower during the time I was in the strip cell. I  
7 was given two cups of water each noon, and this is the only  
8 time I was given water. While I was in the strip cell no  
9 one but the officers on duty spoke to me and I spoke to no  
10 one except the officers on duty.

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

13 I declare under penalty of perjury that the foregoing  
14 is true and correct to the best of my knowledge.

15  
16 *Manion Dale Root*  
17 Manion Dale Root

18  
19 Subscribed and Sworn to before me  
20 this 11th day of June, 1966.

21 *Claudia Waggoner*  
22 NOTARY PUBLIC CLAUDIA WAGGONER  
23 State of California

24 My Commission Expires Feb. 12, 1967



1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: 434-0900

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.

5  
6  
7  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SOUTHERN DIVISION  
10

11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 AFFIDAVIT OF MELVIN EUGENE ALLISON

18 STATE OF CALIFORNIA )

19 COUNTY OF MONTEREY )

ss.

20 MELVIN EUGENE ALLISON, being duly sworn, deposes and says:

21 1. My true name is Melvin Eugene Allison. I am  
22 currently detained at the Correctional Training Facility,  
23 Soledad, California.

24 2. On May 27, 28 and 29, 1965, I was detained in a  
25 so-called "strip cell". This is the only time I have been  
26 in a strip cell at Soledad.

27 3. When I first was taken to this strip cell I was  
28 able to feel the filth all over the floor, including human  
29 bodily waste. I wore coveralls, shorts and socks. I was  
30 given a canvas mat. Each evening I was supplied with a very

1 short strip of toilet paper. There were no other facilities  
2 or furnishings of any kind, except a so-called commode at  
3 the rear of the cell.

4 4. During the time I was in this strip cell I was  
5 given one cup of water only in the morning and in the evening.  
6 The flaps in the outer wall were continuously closed; the door  
7 was opened only at meal time, twice a day, except once a day  
8 when an MTA asked if I was all right and except for head  
9 checks or counts when a light was flashed in. I did not  
10 make any noise or create any disturbance while I was in  
11 the strip cell. I could not feel the movement of anyone  
12 coming in or going out of this cell. I asked an officer  
13 on duty to open the flaps and he said he couldn't. I was  
14 not given an opportunity to take a shower at any time when  
15 I was in the strip cell. I was released from the strip  
16 cell Saturday evening, the third day.

17 5. A lot of the time I was in the strip cell I  
18 tried to pull the mat over my head in order to try to  
19 prevent burning sensation in my eyes from the foul air.

20 If sworn as a witness I could competently testify  
21 to the above facts.

22 I declare under penalty of perjury that the foregoing  
23 is true and correct to the best of my knowledge.  
24

25 Melvin Eugene Allison  
26 Melvin Eugene Allison

27 Subscribed and Sworn to before me  
28 this 11th day of June, 1966.

29 Claudia Waggoner  
30 NOTARY PUBLIC CLAUDIA WAGGONER  
State of California



My Commission Expires Feb. 13, 1967

CHARLES B. COHLER  
111 Sutter Street  
San Francisco, California 94104  
Telephone: 434-0900

Attorney for Plaintiff  
Robert Charles Jordan, Jr.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, SOUTHERN DIVISION

ROBERT CHARLES JORDAN, JR.,  
Plaintiff,  
vs.  
STATE OF CALIFORNIA, et al.,  
Defendants.

No. 44786

DECLARATION OF CHARLES B. COHLER

CHARLES B. COHLER deposes and says:

1. By order of this court, I am counsel for the plaintiff in this action. I make this declaration in opposition to defendants' motions for summary judgment and dismissal.

2. On or about May 23, 1966, I was duly served with copies of defendants' motions for summary judgment and dismissal and notice of hearing thereon set for Wednesday, June 22, 1966; defendant Cletus J. Fitzharris' Answer to First Set of Interrogatories Propounded to Defendant Cletus J. Fitzharris by Plaintiff Robert Charles Jordan, Jr. was also served at that time.

3. Said Answer to Interrogatories included in response to Interrogatory 20 the names and addresses, where known, of persons who had occupied the cell allegedly occupied by plain-

1     tiff in this action for a period of 60 days prior to and sub-  
2     sequent to plaintiff's occupancy thereof.

3             4. Through the courtesy of the Office of the Attorney  
4     General, on June 6, 1966 I arranged to visit and to interview  
5     those persons listed in response to Interrogatory 20 who were  
6     presently detained at the defendant Correctional Training Faci-  
7     lity.

8             5. On Saturday, June 11, 1966, in the company of a  
9     secretary, I traveled to the defendant Correctional Training  
10    Facility and there interviewed each of the ten persons referred  
11    to in paragraph 4, supra. The affidavits of those ten persons  
12    are being filed herewith. I arrived at the defendant Correc-  
13    tional Training Facility at approximately 9:30 a.m. and departed  
14    therefrom at approximately 11:30 p.m. In view of the approxi-  
15    mately fourteen hours thus occupied at the defendant Correc-  
16    tional Training Facility, it was my best judgment that I could  
17    not ask my secretary to remain longer in order to permit a  
18    necessarily lengthy interview with my client, the plaintiff  
19    herein, and that under the circumstances an interview with my  
20    client could not have been as comprehensive as was called for.

21            6. On Monday, June 13, 1966, through the courtesy  
22    of the Office of the Attorney General, I arranged to visit my  
23    client, plaintiff herein, on Saturday, June 18, 1966.

24            7. On Tuesday, June 14, 1966 I was advised by Mr.  
25    Peter Grace that the court wished to move the hearing forward  
26    from Wednesday, June 22 to Monday, June 20. In view of the  
27    urgent nature of this litigation and the request of the court,  
28    I informed Mr. Grace that such a change of hearing date was  
29    welcomed, but that I would not be able to file an affidavit  
30    of my client on the day prior to the date of hearing.



1 8. In view of the above circumstances and in spite  
2 of diligent efforts, I am unable to file an affidavit of my  
3 client, plaintiff herein, on the day prior to the date of hear-  
4 ing.

5 9. Without intending hereby in any way to waive  
6 the attorney-client privilege, I hereby represent to the court  
7 that on the basis of my previous communications with my client  
8 it is my good faith expectation that my client is competent to  
9 testify and to make an affidavit or declaration which will sup-  
10 port the allegations of the amended complaint.

11 10. On May 24, 1966 I spoke by telephone with Robert  
12 R. Granucci, Esq., an attorney for the defendants in this ac-  
13 tion. In the course of that telephone conversation, Mr. Granucci  
14 stated to me that 245 hours had been spent preparing Mr. Fitz-  
15 harris' answers to interrogatories propounded to him by the  
16 plaintiff. Mr. Granucci further stated that in each instance  
17 the answer was prepared on the basis of all information avail-  
18 able and that answers were not limited to what was discovered  
19 in formal or written reports, even where the answer was phrased  
20 in terms of no records being available.

21 If sworn as a witness I could testify competently  
22 to each of the above facts.

23 I declare under penalty of perjury that each of the  
24 foregoing statements is true to the best of my knowledge.

25 Executed this 16th day of June, 1966 at San Francisco,  
26 California.

27  
28 Charles B. Cohler  
29 Charles B. Cohler  
30

1 CHARLES B. COHLER  
2 111 Sutter Street  
3 San Francisco, California 94104  
4 Telephone: 434-0900

5 Attorney for plaintiff  
6 Robert Charles Jordan, Jr.

16  
FILED

JUN 20 1966

JAMES P. WILSE, Clerk

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

10  
11 ROBERT CHARLES JORDAN, JR.,

12 Plaintiff,

No. 44786

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.  
16

17 DECLARATION OF ROBERT CHARLES JORDAN, JR.

18 ROBERT CHARLES JORDAN, JR., deposes and says that:

19 1. My true name is Robert Charles Jordan, Jr.

20 I am the plaintiff in the above-entitled action, and I  
21 make this declaration in opposition to defendants' motions  
22 for summary judgment and to dismiss. I am presently  
23 detained at the Correctional Training Facility, Soledad,  
24 California.

25 2. From Friday, July 9, 1965 through Tuesday,  
26 July 20, 1965 I was detained in a so-called strip cell,  
27 Cell O-121.

28 3. I was placed in this strip cell by Sgt. Owens  
29 on Friday, July 9. At that time, all my clothing was  
30 removed and taken from me by Sgt. Owens. When I was put

the strip cell, the window flaps and door of the  
inter wall immediately outside the bars of the strip cell  
were closed.

4. On Monday, July 12, I asked Officer Dodd if  
he would get my clothes for me and if he would open the  
flaps. I had not been making any noise or disturbance  
at any time while I was in the strip cell; I did not make  
any noise or disturbance at any time during the twelve  
days that I was in the strip cell. Officer Dodd said  
he would get my clothes for me, but when he returned he  
said that he wasn't authorized to give them back to me  
and that I would have to ask for them from the Third Watch.  
That afternoon, I asked Officer Nash of the Third Watch  
for my clothes and to open the flaps. Officer Nash said  
that he wouldn't give me my clothes or open the flaps.  
I asked Officer Nash if I could see the Sergeant on duty  
about this. Sgt. Loefsky came to see me, and I asked  
him for my clothes and to have the flaps let down. Sgt.  
Loefsky said that he couldn't do it, that Sgt. Owens had  
taken my clothes and left me with the flaps up so only Sgt.  
Owens could give me back my clothes or open the flaps for  
me.

5. Thursday, July 15, was the seventh day I had  
been in the strip cell. This was the first day that Sgt.  
Owens saw me after I had been told that he was the only  
one who could give me back my clothes or open the flaps.  
(I understand that Sgt. Owens worked only on Thursday  
and Friday in this area.) Sgt. Owens told me that he would  
give me back my clothes and open the flaps as soon as he  
could.

1           6. On Friday, July 16, at about 5:00 p. m., Sgt.  
2 Owens gave me a pair of coveralls (only, no more) and  
3 opened the window flaps.

4           7. On Saturday, July 17, the flaps were again  
5 closed by the officer on duty. The door flap was opened  
6 in the morning of Tuesday, July 20, the day I was released  
7 from the strip cell.

8           8. Except as stated above, the door and window  
9 flaps were continuously closed, except during feeding,  
10 when head counts were made and when medical visits were made.

11           9. On Friday, July 16, about 5:00 p. m., I asked  
12 Sgt. Owens when I could get out of the strip cell, that I  
13 had not been creating any disturbance there. Sgt. Owens  
14 agreed with me that I hadn't been creating any disturbance,  
15 and he said that he would let me out; but he said he couldn't  
16 do it until Monday, because from 4:00 p. m. Friday until  
17 6:00 a. m. Monday his shift couldn't move anyone except  
18 for emergency. He said that he would leave a note so that  
19 I could get out Monday.

20           10. On Monday, July 19, I told the officers  
21 on duty that Sgt. Owens had left a note that I was supposed  
22 to get out then. No one could find the note. On Tuesday,  
23 July 20, I was released from the strip cell and put in  
24 Cell 105, a solitary cell but not a strip cell.

25           11. During the time that I was in the strip cell,  
26 I was given a cup of water three times a day. On each  
27 occasion that I was offered water, I was permitted to  
28 drink as much as I wanted while the officer or "trustee"  
29 was there to pour from the pitcher they carried.

30           12. During the time that I was in the strip cell,

1 the "toilet" was flushed sometimes in the morning, sometimes  
2 in the afternoon and always at night, but no more often  
3 than that. The midnight shift never flushed the toilet.

4 13. When I was first put in the strip cell, I  
5 was given a new "strong blanket" which was so stiff that  
6 I couldn't cover myself with it unless using so much conscious  
7 effort that I couldn't sleep; if I wasn't covered, I was  
8 too cold to sleep. On approximately Tuesday, July 13, I  
9 was given an older strong blanket which could be used better  
10 for sleeping.

11 14. During the time that I was in the strip cell,  
12 I was never given an opportunity to take a shower and I  
13 never took a shower. On Thursday, July 15, I asked Sgt.  
14 Owens for a shower, but he said he didn't have authority  
15 to let me take a shower. Approximately two days after  
16 I was released from the strip cell, I was given a shower.  
17 I did not see Sgt. Freidrick at that time. About a week  
18 after that, I had taken a shower and saw Sgt. Freidrick  
19 when I came out of the shower.

20 15. During the time that I was in the strip cell,  
21 I was never given anything to clean the cell myself. At  
22 no time was the cell cleaned by anyone else, either. On  
23 Thursday, July 15, I asked Sgt. Owens if I couldn't have  
24 a mop or rags to clean the cell. He said that he wasn't  
25 authorized to let me have anything to clean it out with.

26 16. During the time that I was in the strip cell,  
27 the so-called ventilation system never let air in or out  
28 of my cell. I felt with my hands at the two openings in  
29 the rear walland never felt anything going in or out. On  
30 Thursday, July 15, I told Officer Nash that there was no.

1 ventilation coming into the strip cell. I held a piece  
2 of toilet paper up to the openings in the rear wall and  
3 nothing moved the paper, in or out. Officer Nash said  
4 that he would go around in the tunnel behind the cell to  
5 see if the system was working. He came back and told me  
6 that it wasn't working, but he couldn't do anything about it.  
7 Later that same day, I told Sgt. Owens that there was no  
8 ventilation, that the system wasn't working in the strip  
9 cells. I could hear the system working somewhere, but no  
10 air was coming through into the strip cells. I knew that  
11 there had been air coming into my cell when I had been  
12 up front in an isolation cell (not a strip cell).

13 17. During the time that I was in the strip cell,  
14 I was visited by a Medical Technical Assistant every day  
15 and the Chief Medical Officer or another doctor on the  
16 two Mondays that I was there. I complained that I had  
17 very bad stomach pains and that I was very sore from  
18 sleeping on the hard floor. I was given pills; the problem  
19 continued. At least twice during this time, I vomitted  
20 in my cell; it was never cleaned up.

21 18. About a week after I was released from the  
22 strip cell in July, I wrote a letter to Dr. Kunkel. I  
23 wrote that I had never "shammed" about illness and now I  
24 really wanted to have a physical examination because my  
25 stomach was really bothering me and my bones were very sore  
26 and I hadn't had a physical at all since I had arrived. I  
27 received no reply to this letter. In late October or early  
28 November I again wrote to Dr. Kunkel and asked for a  
29 physical because the same conditions were bothering me.  
30 Shortly thereafter, I wrote to Dr. Bailey about dental

1 problems. Dr. Bailey saw me soon afterwards and took out  
2 two teeth for me. I still never heard anything from Dr.  
3 Kunkel and couldn't get a physical. In early February,  
4 1966 when I was out of the isolation area and up in the  
5 regular part of "O Wing", I wrote again to Dr. Kunkel  
6 asking for a physical. On February 14, I was taken from  
7 my regular cell, not a quiet cell, to the hospital where  
8 Dr. Kunkel examined me. He did not take a urine sample or  
9 a blood sample. His examination consisted in its entirety  
10 of looking at my eyes, tapping my knee with a hammer, using  
11 the stethoscope on my chest, having me cough while  
12 touching my groin, looking at my anus and looking at my  
13 fingers. My stomach still bothers me.

14 If sworn as a witness, I could testify competently  
15 to each of the above facts.

16 I declare under penalty of perjury that each of  
17 the above statements is true to the best of my knowledge.

18 Executed this 18th day of June, 1966 at Soledad,  
19 California.

20  
21 Robert Charles Jordan, Jr.  
22 Robert Charles Jordan, Jr.  
23  
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26  
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29  
30

CERTIFICATE OF SERVICE BY MAIL

I hereby certify as follows:

I am an active member of the State Bar of California, counsel in this cause, and not a party thereto. On June 20, 1966, I deposited in the mail at San Francisco, California, one (1) sealed envelope, with postage fully prepaid thereon, containing a true copy of the document attached hereto, and addressed as follows:

Hon. Thomas C. Lynch  
Edward P. O'Brien, Esq.  
Robert R. Granucci, Esq.  
Office of the Attorney General  
6000 State Building  
San Francisco, California

Charles B. Cohler  
Charles B. Cohler

111 Sutter Street,  
San Francisco, California 94104.