



1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF JOSEPHINE

3 KEVIN DAY, by and through his)
 guardian ad litem, RAYMOND SMITH,)
 4 individually and on behalf of)
 all others similarly situated,)
 5)
 Plaintiff,) No. 81-627-L
 6)
 vs.) CONSENT JUDGMENT
 7)
 MARY E. BENEDETTI, et al.,)
 8)
 Defendants.)
 9)

10 Plaintiff and defendants Benedetti, Ford, Haugen, Combs,
 11 Soeteber, Luckey, Fanning, Warren, Hampton and Josephine County
 12 (hereinafter referred to as "county defendants") by and through
 13 counsel submit this Consent Judgment in resolution of the issues
 14 between them in this case.

15 Plaintiff filed this case on April 21, 1981, as a class
 16 action on behalf of all juveniles presently confined, formerly
 17 confined, or subject to confinement in the Josephine County Jail.
 18 Plaintiff alleged that county defendants' practice of confining
 19 juveniles in the Josephine County Jail without separating them from
 20 the sight and sound of adult inmates violated juveniles' rights under
 21 ORS 419.575(3) and 42 USC § 1983 and the Eighth Amendment to the
 22 United States Constitution, as well as his right to be free from
 23 intentional infliction of emotional distress. Plaintiff sought
 24 declaratory and injunctive relief for himself and the class, and
 25 monetary relief for himself.

26 Plaintiff and county defendants agree that this Court has

1 jurisdiction over the subject matter of and the parties to this
2 action.

3 Based upon the agreement of plaintiff and county defendants
4 that their interests can best be served by entering into this Consent
5 Judgment with respect to the issues presented in this action, without
6 deciding whether county defendants' practices in the past were un-
7 lawful; and

8 Based upon county defendants' representation to plaintiff
9 that they voluntarily ceased to confine non remand juveniles in
10 Josephine County Jail as of July, 1980, and do not intend to resume
11 that practice as long as state law requires sight and sound separation
12 and the facility does not provide it; and

13 Based upon all of the pleadings and papers filed in this
14 action,

15 Plaintiff and county defendants hereby agree to the entry
16 of this Consent Judgment which constitutes the final judgment and
17 settlement of all issues except those specifically reserved herein.

18 IT IS HEREBY ADJUDGED that:

19 1. This Consent Judgment shall be binding on the county
20 defendants and their officers, employees, agents, and successors. It
21 shall apply to all juveniles detained in Josephine County who have
22 not been remanded to the adult court handling criminal action or to a
23 municipal court.

24 Compliance with Sight and Sound Separation Law

25 2. County defendants shall comply with ORS 419.575 for so
26 long as it remains in effect. In the event ORS 419.575 is amended,

1 county defendants shall comply with it as amended.

2 3. Josephine County Jail in its present design and use
3 does not enable county defendants to effectively separate juveniles
4 housed therein from the sight and sound of the adults being detained
5 therein.

6 4. As long as sight and sound separation is required by
7 state law, county defendants shall not house any juveniles in the
8 Josephine County Jail without first making modifications to that
9 facility to enable juveniles to be effectively separated from the
10 sight and sound of the adults being detained therein.

11 5. Juveniles held pursuant to a remand to the adult court
12 handling criminal actions or to a municipal court are currently ex-
13 cepted from the sight and sound separation requirement of ORS 419.575
14 and may be detained in Josephine County Jail without facility modifi-
15 cations. County defendants shall accord remanded juveniles their right
16 to sight and sound separation in the event state law is amended to
17 establish that right.

18 Monitoring and Reporting

19 6. Plaintiff's counsel, Guardian Ad Litem, or a mutually
20 acceptable representative may enter and inspect the Josephine County
21 Jail to monitor compliance with this Consent Judgment unless the
22 timing or circumstances present an unreasonable security risk.

23 7. In the event county defendants intend to modify
24 Josephine County Jail for the detention of juveniles, excluding
25 remands, county defendants shall provide plaintiff's counsel with (a)
26 advance written notice, (b) the plans for modification, and (c) a

1 reasonable period of time in which to comment upon the plans.

2 8. For a period of three (3) years, county defendants
3 shall give plaintiff's counsel advance notice in the event county
4 defendants intend to place any juvenile in Josephine County Jail who
5 is by law entitled to sight and sound separation, with the exception
6 of emergencies where such notice would be impossible. In such a
7 case, notice shall be given as soon as possible after placement and
8 shall state the nature of the emergency.

9 9. County defendants shall report to plaintiff's counsel
10 on a quarterly basis for two (2) years as to the number of Josephine
11 County juveniles detained under ORS 419.575 and the place(s) of
12 detention.

13 10. Plaintiff shall promptly give defendants' counsel 30
14 days' written notice of any alleged noncompliance with this Consent
15 Judgment prior to seeking legal remedies, with the exception of
16 injunctive or other relief to prevent or terminate incarceration of
17 non-remanded juveniles.

18 No Admission of Liability

19 11. Nothing in this Consent Judgment shall be construed as
20 an admission of liability for any past actions of the county defend-
21 ants or of any one of them.

22 Attorney Fees and Costs

23 12. Plaintiff waives any rights against county defendants
24 to an award of attorney fees and costs.

25 13. County defendants waive any rights against plaintiff
26 to an award of attorney fees and costs.

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1 Reservation of Claims Against Judge Defendants

2 14. This Consent Judgment resolves all issues in this case
3 between plaintiff and county defendants. Plaintiff has reserved the
4 right to pursue his claims against defendants Cushing and Bowe.

5 Monetary Relief

6 15. In settlement of plaintiff's claim for monetary relief,
7 plaintiff has received from county defendants a cash payment of Seven
8 Thousand and no/100 Dollars (\$7,000.00). This Court approves the
9 settlement in that amount.

10 DATED this 11th day of June, 1982.

11
12 /s/ Richard L. Barron
CIRCUIT COURT JUDGE

13 CONSENTED TO BY:

14
15 Margaret J. Nightingale
Margaret J. Nightingale
16 Alan Baily, Jeanne Gross,
Julie H. McFarlane
17 Juvenile Rights Project
Oregon Legal Services Corp.
18 408 S. W. 2nd Ave., Rm. 412
Portland, Oregon 97204

Donald E. Murray
Donald E. Murray
Bullivant, Wright, Leedy, Johnson,
Pendergrass & Hoffman
1000 Willamette Center
121 S. W. Salmon Street
Portland, Oregon 97204

19
20 Of Attorneys for Plaintiff
Date: 6/7/82

Of Attorneys for County Defendants
Date: May 28, 1982

21
22 /s/ Raymond Smith
Raymond Smith
23 46 N. Front Street
Medford, Oregon 97051

Duane Wm. Schultz
Duane Wm. Schultz
Josephine County Courthouse
Grants Pass, Oregon 97526

24
25 Guardian Ad Litem for Plaintiff
Date: 6-8-82

County Counsel for Josephine County
Date: 5/25/82

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Kevin Day

Kevin Day
Plaintiff

Date: 5-20-82