

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: SU 1-0666

3 Attorney for plaintiff  
4 Robert Charles Jordan, Jr.

5  
6  
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, CORRECTIONAL  
TRAINING FACILITY at SOLEDAD,  
14 CALIFORNIA, RICHARD A. MCGEE, CLETUS  
J. FITZHARRIS, R. H. DONNELLY, C. L.  
15 SWAGGERTY, GEORGE F. JOHNSTON, AL  
DeCARLI, WILLIAM T. KIEPURA, and  
16 EDWARD KUNKEL,

17 Defendants.  
18

19 MOTION TO ADD PARTIES UNDER RULE 21

20 Plaintiff Robert Charles Jordan, Jr. moves the Court  
21 pursuant to Rule 21 of the Federal Rules of Civil Procedure for  
22 an order adding the State of California, the Correctional Train-  
23 ing Facility at Soledad, California, Richard A. McGee, R. H.  
24 Donnelly, C. L. Swaggerty, George F. Johnston, Al DeCarli, Wil-  
25 liam T. Kiepura, and Edward Kunkel as parties defendant and di-  
26 recting the issuance and service of process upon each of them.

27 This is an action for injunction and damages founded  
28 upon claims arising from violations of 42 U.S.C. §§ 1981, 1983,  
29 1985 and 1986, commonly known as Federal Civil Rights Acts.

30 Plaintiff has alleged facts relating to the nature of his incar-

1 ceration at the Correctional Training Facility at Soledad, Cali-  
2 fornia. Said Correctional Training Facility is a penal insti-  
3 tution operated by the State of California at Soledad, Califor-  
4 nia. Each said individual whom plaintiff seeks by this motion  
5 to add as a party defendant is employed by the State of Califor-  
6 nia at said Correctional Training Facility, except Richard A.  
7 McGee who is employed by the State of California as Director  
8 of Corrections. Plaintiff has alleged that all named defendants  
9 acted jointly and severally and pursuant to conspiracy to de-  
10 prive plaintiff of his rights under said Federal Civil Rights  
11 Acts. Plaintiff has further alleged that in violation of said  
12 Federal Civil Rights Acts said named defendants have neglected  
13 or failed to prevent or to aid in preventing the commission of  
14 said wrongs, although having the knowledge that said wrongs were  
15 about to be committed and having the power to prevent or to aid  
16 in preventing said wrongs by reasonable diligence. Plaintiff  
17 has prayed that damages be awarded against all defendants jointly  
18 and severally.

19 Each said individual whom plaintiff seeks to add as  
20 a party defendant is a citizen and resident of the State of  
21 California. Each named defendant whom plaintiff seeks to add  
22 as a party defendant is subject to the jurisdiction of this Court  
23 as to both service of process and venue, and can be made a party  
24 defendant herein without depriving the Court of jurisdiction.

25  
26  
27 *Charles B. Cohler*

28 Charles B. Cohler  
29 Attorney for plaintiff  
30 Robert Charles Jordan, Jr.

1 CHARLES B. COHLER  
111 Sutter Street  
2 San Francisco, California 94104  
Telephone: SU 1-0666

3  
4 Attorney for plaintiff  
Robert Charles Jordan, Jr.

5  
6  
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, CORRECTIONAL  
TRAINING FACILITY at SOLEDAD,  
14 CALIFORNIA, RICHARD A. MCGEE, CLETUS  
J. FITZHARRIS, R. H. DONNELLY, C. L.  
15 SWAGGERTY, GEORGE F. JOHNSTON, AL  
DeCARLI, WILLIAM T. KIEPURA, and  
16 EDWARD KUNKEL,

17 Defendants.

18  
19 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF PLAINTIFF'S MOTION TO ADD PARTIES PURSUANT TO  
20 RULE 21

21 Plaintiff, a layman incarcerated at the Correctional  
22 Training Facility at Soledad, California, has brought this ac-  
23 tion for damages and an injunction, claiming that the named de-  
24 fendants have deprived him of constitutional rights which are  
25 protected by certain Federal Civil Rights Acts, viz., 42 U.S.C.  
26 §§ 1981, 1983, 1985 and 1986. Plaintiff has charged a conspiracy  
27 among all named defendants and has prayed damages against all  
28 defendants jointly and severally.

29 On February 14, 1966, pursuant to an order of this  
30 Court permitting plaintiff to file his civil rights complaint

1 in forma pauperis, the original complaint in this action was  
2 filed. That original complaint, drafted without the assistance  
3 of counsel, named as party defendants: "C. J. Fitzharris, war-  
4 den, et al. Deputies & Agents of the State of California". On  
5 March 23, 1966, appointed counsel for plaintiff filed an amen-  
6 ded complaint, naming additional defendants. Each named de-  
7 fendant whom plaintiff seeks to add pursuant to the instant  
8 motion is an alleged co-conspirator and is responsible for the  
9 administration of said Correctional Training Facility, at least  
10 in part. This motion seeks to add, in essence, the "et. al.  
11 Deputies & Agents of the State of California" who were in sub-  
12 stance named by the plaintiff himself as "Does" in his original  
13 complaint. Plaintiff's amended complaint alleges the responsi-  
14 bilities of said additional named defendants as follows:

15 (a) The Correctional Training Facility at Soledad,  
16 California, is a penal institution operated by the State  
17 of California;

18 (b) Richard A. McGee is the Director of Correc-  
19 tions of the State of California; and

20 (c) the remaining named defendants are officials  
21 or employees of the State of California at the Correc-  
22 tional Training Facility itself, viz. R. H. Donnelly  
23 as Deputy Superintendent, C. L. Swaggerty as Associate  
24 Superintendent, George F. Johnston as Unit Three Program  
25 Administrator, Al DeCarli as Correctional Counselor Grade  
26 I, William T. Kiepura as Correctional Counselor Grade II,  
27 and Edward Kunkel as Chief Medical Officer.

28 Rule 21 of the Federal Rules of Civil Procedure pro-  
29 vides with respect to adding parties that:

30 "Parties may be dropped or added by order of

1 the court on motion of any party or of its  
2 own initiative at any stage of the action  
and on such terms as are just."

3 Each party named in the amended complaint and sought  
4 by plaintiff to be added pursuant to the instant motion is a  
5 proper party to this action. The controlling principle is em-  
6 bodied in Rule 20 which provides with respect to permissive  
7 joinder of parties defendant that:

8 "All persons may be joined in one action as  
9 defendants if there is asserted against them  
10 jointly, severally, or in the alternative, any  
11 right to relief in respect of or arising out-  
of the same transaction, occurrence, or series  
of transactions or occurrences and if any ques-  
tion of law or fact common to all of them will  
arise in the action."

12  
13 The heart of this action is that plaintiff has been  
14 subjected to unconstitutional and unlawful treatment during his  
15 incarceration as a result of defendants' actions. In an action  
16 challenging an official "program" or course of action taken un-  
17 der color of law, those persons "concerned with the administra-  
18 tion of the ... program" are properly added as defendants.  
19 Parker v. Lester, 112 F. Supp. 433, 445 (N.D. Cal. 1953), rev'd  
20 on other grounds, 227 F2d 708 (9th Cir. 1955) (granting greater  
21 relief to plaintiffs on appeal than was afforded below).

22 Moreover, the rights involved in this action are of  
23 such paramount importance that the substantive provisions of  
24 federal law themselves provide for a single action against all  
25 conspirators. 42 U.S.C. §1895 provides with respect to actions  
26 arising from stated violations of civil rights that

27 "the party so injured or deprived may have an  
28 action for the recovery of damages, occasioned  
29 by such injury or deprivation, against any one  
or more of the coconspirators." (Emphasis  
added)

30 Similarly, 42 U.S.C. §1896 provides with respect to actions

1 arising from failure to prevent or aid in preventing the de-  
2 privation of stated civil rights that

3 "any number of persons guilty of such wrongful  
4 neglect or refusal may be joined as defendants  
in the action ..." (Emphasis added)

5 Each said named defendant is subject to the juris-  
6 diction of this Court both with respect to service of process  
7 and venue, and each may be added as a party defendant without  
8 depriving the Court of its jurisdiction.

9 Dated: *March 24, 1966*

10  
11  
12 *Charles B. Cohler*

13 Charles B. Cohler  
14 Attorney for plaintiff  
15 Robert Charles Jordan, Jr.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing  
"Notice of Motion to Add Parties Under Rule 21", "Motion  
to Add Parties Under Rule 21" and "Memorandum of Points  
and Authorities in Support of Plaintiff's Motion to Add  
Parties Pursuant to Rule 21" have been served by mail on  
Honorable Thomas C. Lynch and Robert R. Granucci, Esq.,  
attorney for defendant Cletus J. Fitzharris.

Charles B. Cohler  
Charles B. Cohler  
Attorney for plaintiff  
Robert Charles Jordan, Jr.

Dated: *March 24, 1966*