

ORIGINAL

No. 21445

IN THE

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

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ROBERT CHARLES JORDAN, JR.,

Appellee/Cross-appellant,

vs.

CLEUTS J. FITZHARRIS, WALTER DUNBAR,  
R. H. DONNELLY, C. L. SWAGERTY,  
GEORGE F. JOHNSTON, AL DeCARLI and  
WILLIAM T. KUNKEL,

Appellants/Cross-appellees.

APPELLEE/CROSS-APPELLANT'S  
STATEMENT OF POINTS AND  
COUNTER-DESIGNATION OF RECORD

CHARLES B. COHLER  
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San Francisco, California  
94104

Attorney for Appellee/  
Cross-appellant

FILED

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San Francisco, California 94104

Attorney for Appellee/Cross-appellant

1 Pursuant to Rule 17(6) of the United States Court  
2 of Appeals for the Ninth Circuit, appellee/cross-appellant  
3 hereby files the following statement of points and designa-  
4 tion of record.

5 I. STATEMENT OF POINTS

6 A. That the trial court erred in dismissing this  
7 action against defendants State of California and Correctional  
8 Training Facility at Soledad.

9 B. That the trial court erred in failing to award  
10 damages to plaintiff.

11 II. COUNTER-DESIGNATION OF RECORD

12 A. The complete Reporter's Transcript of Proceed-  
13 ings at Trial as corrected by the Stipulation and Order, filed  
14 in the district court on November 14, 1966.

15 B. The Stipulation and Order Concerning Correction  
16 of the Reporter's Transcript of Proceedings at Trial, filed  
17 in the district court on November 14, 1966.

18 C. The Order filed in the district court on  
19 November 8, 1966, concerning the appellee/cross-appellant's  
20 proceeding on appeal in forma pauperis, the preparation of  
21 one copy of the record on appeal for counsel without cost to  
22 the appellee/cross-appellant, and the transmittal of one copy  
23 of the record on appeal to this court without costs to the  
24 appellee/cross-appellant.

25 D. The Notice of Appeal, filed in the district  
26 court on October 7, 1966.

1                    **(4.)** The acknowledgment of service of the district  
2 court's Memorandum Opinion and Order, Supplemental Order  
3 respecting Findings of Fact and Conclusions of Law, and Final  
4 Judgment and Decree executed by Deputy Attorney General  
5 John P. Oakes, filed in the district court on September 7,  
6 1966.

7                    F. The Final Judgment and Decree, the Memorandum of  
8 Facts and Disbursements, and the Supplemental Order Respecting  
9 Findings of Fact and Conclusions of Law, filed in the district  
10 court on September 7, 1966.

11                   G. The Memorandum Opinion and Order, filed in the  
12 district court on September 6, 1966.

13                   H. Plaintiff's Memorandum in Opposition to  
14 Defendants' Motions for Summary Judgment and for Dismissal,  
15 filed in the district court on June 16, 1966.

16                   I. The Notice of Motion for Summary Judgment and  
17 Motion to Dismiss Pursuant to 12(b) of the Federal Rules of  
18 Civil Procedure, dated May 23, 1966, together with the accom-  
19 panying affidavits of George Francis Johnston, William Thomas  
20 Redbrick and Edward Paul Kunkel.

21                   J. The Answer to the Amended Complaint, dated  
22 May 23, 1966.

23                   **(5.)** The Order to Add Parties, filed in the district  
24 court on April 13, 1966.

25                   L. The Amended Complaint for Injunction and  
26 Damages under Federal Civil Rights Acts, filed in the

1 district court on March 23, 1966.

2 (M.) The Summons issued February 11, 1966 and  
3 addressed to C. J. Fitzharris.

4 (N.) The Order Extending Time to Plead, filed in  
5 the district court on March 8, 1966.

6 O. The Order respecting filing of plaintiff's  
7 civil rights complaint in forma pauperis, filed in the  
8 district court on February 14, 1966. —

9 P. The Order respecting appointment of counsel.  
10 filed in the district court on February 14, 1966.

11 Q. The Complaint together with proof of service  
12 by mail, verification and petition to proceed in forma  
13 pauperis, filed in the district court on February 14, 1966.

14 (R.) The Affidavit of Claudia Waggoner, filed in  
15 the district court on December 12, 1966.

16 Respectfully submitted.

17 *Charles B. Conier*

18 Charles B. Conier  
19 Attorney for Appellee/  
20 cross-appellant.  
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document  
has been served by mail upon:

Thomas C. Lynch,  
Attorney General of the  
State of California,

Robert R. Granucci,  
Deputy Attorney General,

John P. Oakes, Deputy  
Attorney General,  
6000 State Building,  
San Francisco, California 94102.

Dated: December 13, 1966

Charles B. Cohler  
Charles B. Cohler