

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JAN 10 1995

R. J. Sanchez
COMPLAINT

Class Action

Civil Action No.

CIV 95 00 24 MV

DON J. SVET

JIMMY (BILLY) MCCLENDON, HAROLD :
LUND, PETER SUMATKAKU, :
DAVID M. BAUER, CARL RAY LOPEZ, :
BRUCE DAVID MORAWA, THOMAS YOUNG, :
RUTHIE DURAN, DEBORAH LAVERA, :
JANELLE ROYBAL, DANETTE DIFIORI, :
MARIA SISNEROS, LARRY GREEN, :
BARTEL HALEY, MICHAEL COTE, :
JOE RAY HERRERA, JOSIE KRIENA, :
DEBBIE LUCERO, DAVID SHAWKIN, :
MARC A. GILLETTE, GEORGE CHAVEZ, :
ELISEO BACA, CLINT BARRAS, :
FRANCISCO MELENDEZ, SAMUAL HERROD, :
VINCENT PADILLA, CARL DUCKWORTH, :
JOSEPH W. ANDERSON, PAUL JOHNSON, :
FRED MALL, HECTOR LOPEZ, RICKY :
ROSE, HERBERT KING SR., JAMES :
PARKS, MICHAEL A. JOHNSON, JOHNNY :
VALLEJOS, JOE NEWBERRY, DARRYL :
CRAFT, ALBERT WILLY, WILLIAM :
P. JIMMY, AUGUSTINE TAPIA, RICHARD :
A. SMITH, ROBERT LOVATO, ROY :
WHATLEY, MARTY BEGAY, MARTIN :
VALDIVIA, TALLIE THOMAS, AUGUSTINE :
JACKSON, DONALD HALL, CARL SUR, :
STEVE ESQUIBEL, LONNIE WHATLEY, :
JAMES SAIZ, BRYON ZAMORA, ALLEN M. :
SAWYER, PATRICK BENNY ROMERO, :
RICHARD C. KOPECKY, PHILLIP :
SHUMATE, NELSON ROMERO, STEVE :
JOHNSON, BENNIE F. GARCIA, LOUIE :
CHAVEZ, BRIAN SALAZAR, RICHARD :
GALLEGOS, LARRY STROUD, JAMES :
BURKS, BRAD FISCHER, AMIHON BACA, :
JEFF DILLOW, PETE MCQUEEN, MANUAL :
MARTINEZ, ARNOLD ANTHONY MAESTAS :
JOHN HEWATT, AND ALL OTHERS :
SIMILARLY SITUATED :

Plaintiffs, :

vs. :

CITY OF ALBUQUERQUE; :
MARTIN CHAVEZ, MAYOR OF :
ALBUQUERQUE, THE COUNTY OF :
BERNALILLO, BERNALILLO COUNTY :
COMMISSIONER PATRICK BACA, :
COMMISSIONER ALBERT VALDEZ, :
COMMISSIONER EUGENE GILBERT, :

COMMISSIONER BARBARA SEWARD, :
 COMMISSIONER JACQUELYN SCHAEFER, :
 BILL DANTIS, DIRECTOR OF THE :
 BERNALILLO COUNTY DETENTION :
 CENTER AND THE BERNALILLO COUNTY :
 DETENTION CENTER, BERNALILLO :
 COUNTY DETENTION CENTER EMPLOYEES :
 PAUL SANCHEZ, FRANK LOVATO, DEPUTY :
 DIRECTOR ERCELL GRIFFIN, LIEUTENANT :
 MICHAEL SMITH, LIEUTENANT JOHN :
 VAN SICKLER, OFFICER WILL BELL, :
 LIEUTENANT ALBERT CHAVEZ, :
 LIEUTENANT FUSCO, GEORGE FUENTES, :
 LIEUTENANT BACA, VICTOR HERNANDEZ, :
 KEVIN D. SEVIR, DR. MASON, BARBARA :
 COLE, MARIA LUCERO, MEDICAL STAFF :
 NURSE DAVID, CAPTAIN FELIMON :
 MARTINEZ, STANLEY LENTS, DOUGLAS :
 ROBINSON, SEAL BARLEY, LYNN KING, :
 DAVE SHERMAN, BRIAN MASER AND ALL :
 EMPLOYEES OF THE BERNALILLO COUNTY :
 DETENTION CENTER REFERRED TO AS :
 "JOHN DOE" and OTHER BCDC EMPLOYEES :
 MENTIONED IN THE COMPLAINT BUT NOT :
 IN THE CAPTION OF THE COMPLAINT, :

Defendants.

COMPLAINT CLASS ACTION

Comes now plaintiff above-named, by and through their attorney of record, Anthony James Ayala, P.A., and for cause of action and claim for relief against the defendants allege as follows:

I. PRELIMINARY STATEMENT

1. Anthony James Ayala, brings this class action on behalf of the Plaintiffs and all prisoners who are presently, or will be confined in the Bernalillo County Detention Center (hereinafter referred to as (BCDC)). Plaintiffs contend that the totality of the overcrowding and other conditions at BCDC fall beneath standards of human decency, inflict needless suffering on prisoners and create

an environment which threatens prisoners' mental and physical well being, and results in the physical and mental deterioration and debilitation of the persons confined therein which is both unnecessary and penologically unjustifiable. Plaintiffs ask this Court, after hearing the evidence on the allegations in this complaint, to declare that the totality of conditions and certain specific conditions presently existing at the BCDC are unconstitutional under the Constitutions of the United States and New Mexico and further are in violation of certain statutes of the United States and New Mexico. Consequently the Plaintiffs ask that the Defendants, and each of them, be permanently enjoined from operating and administering the BCDC, or any other facility to which the class members may be assigned, except in compliance with acceptable constitutional and statutory standards as are established by this Court.

2. The Plaintiffs mentioned herein seek to obtain declaratory and injunctive relief from wide spread and severe interference with federal constitutional and state mandates, statutory requirements, and established national policies. These state and federal mandates, requirements and policies provide that citizens of, and persons within, the United States are not to be subjected to practices which, inter alia, inflict summary punishment by the use of force beyond that which is reasonably necessary to serve legitimate ends and which is arbitrary, unreasonable, or shocking to the conscience. Such illegal practices have been implemented by the Defendants in the BCDC and

their agents and employees which have deprived persons of all races, colors, and national origins of basic federal and state rights. Such practices have been implemented with the intent, and/or the effect, of inflicting disproportionate abuse upon persons of Hispanic origin, Indian origin and Black persons and, therefore, also constitute a pattern or practice of discrimination on the basis of race, color, or national origin.

3. The practice of the Defendants are implemented by the BCDC personnel whose activities, in part, are funded by substantial amounts of federal monies. The practices of the Defendants affect persons resident of Albuquerque, New Mexico, and persons who enter and leave Albuquerque, New Mexico in the course of interstate commerce.

4. The Plaintiffs, through Anthony James Ayala, P.A. seek: to enforce the provisions of the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States; to see that federal law is faithfully executed as provided by Article II, Section 3 of the Constitution of the United States; to protect the freedom of persons within the United States to travel and transact business in channels of interstate commerce as established by Article I, Section 8 of the Constitution of the United States; and to protect the rights of persons within the United States to receive the benefits of the supreme law of the land as provided by Article VI of the Constitution of the United States. Such practices of the Defendants violate the clear national policy established by Congress in 42 U.S.C. §1983, 18 U.S.C. §242, and 18

U.S.C. §245. Such practices also violate the constitutional principles, laws, and regulations that are implied as conditions in federal grants received or administered by the City of Albuquerque and the County of Bernalillo and the other Defendants mentioned herein.

5. Insofar as such practices of the defendants are implemented with the intent and/or the effect of discriminating on the basis of race, color, or national origin, the Plaintiffs also seek to enforce the protection secured by the Thirteenth Amendment to the Constitution of the United States; the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; 42 U.S.C. §1981; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §200d; the regulations of the Department of Justice, 28 C.F.R. V4,6 42.101, et. seq.; Section 518 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3766; the regulations of the Law Enforcement Assistance Administration, 28 C.F.R. §42.201 et. seq.; Section 122 of the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. §1242; Section 207 of the Public Works Employment Act of 1976, as amended, 42 U.S.C. §6727; and the regulations of the United States Department of Treasury, 31 C.F.R. §51.0, et. seq.

I. JURISDICTION AND VENUE

1.1. This Court has Jurisdiction of this Action Pursuant to 28 U.S.C. §1343, 28 U.S.C. §1345, 31 U.S.C. §1242(g) and 42 U.S.C. §3766(c).

1.2. This action is authorized by law to redress

deprivation under color of law, statute, ordinance, regulation, custom and usage of a right, privilege, and immunity secured to Plaintiffs by the Constitution of the United States of America, particularly the First, Fourth, Fifth and Fourteenth Amendments thereto, and under Federal Statute, particularly Title 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 42 U.S.C. § 1986. Accordingly, this Court has jurisdiction over the claims pursuant to 28 U.S.C. §1331 and §1343 (3)

1.3. Plaintiff's claims for relief are derived from common nuclei of operative facts involving substantially identical issues of fact and law, such that the entire action constitutes a single case which would ordinarily be judicial economy, convenience and fairness, and in order to avoid unnecessary duplication and multiplicity of actions, this Court's jurisdiction over the claims, which are based in part upon state law, is pendent to the Court's jurisdiction over the claim.

1.4. Additional and further jurisdiction over this Court in invoked under 28 U.S.C. §1331 and therefore a claim for relief arises under 49 U.S.C. §3750(b) in that the amount in controversy exceeds \$50,000.00, exclusive of costs.

1.5. Venue is proper in this Court.

II. PLAINTIFFS

2.1. Plaintiffs are all United States citizens, live in the State of New Mexico and were residents of the State of New Mexico at the time of the events complained herein.

2.2. Each of the named Plaintiffs is or will be a

prisoner incarcerated in the BCDC. Several of the Plaintiffs are now or have been confined in segregation facilities at BCDC. Others are now or have been incarcerated in the protective custody facilities of the BCDC.

III. DEFENDANTS

3.1. Defendant, the City of Albuquerque, is a Municipal Corporation, incorporated pursuant to the laws of the State of New Mexico.

3.2. Defendant, Bernalillo County, is a County recognized pursuant to the laws of the State of New Mexico.

3.3. The Defendants, City of Albuquerque, and the County of Bernalillo, have received and are receiving substantial amounts of Federal funds.

3.4. The Defendants, City of Albuquerque, and Bernalillo County, maintain and operate the BCDC for the stated purpose of enforcing, within its corporate limits, its' ordinances and the laws of the State of New Mexico.

3.5. Defendant, Martin Chavez, is the Mayor of the City of Albuquerque. He is responsible for the supervision, direction, and control of the conduct of the executive and administrative departments of the City and the BCDC.

3.6. Defendants, County Commissioners Patrick Baca, Albert Valdez, Eugene Gilbert, Barbara Seward and Jacquelyn Schaefer, are the County Commissioners of Bernalillo County. They are responsible for the supervision, direction, and control of the conduct of the executive and administrative departments of the

County of Bernalillo and the BCDC.

3.7. Both the Mayor of the City of Albuquerque and the Bernalillo County Commissioners appoint the director of the Bernalillo County Detention Center or consent to the appointment.

3.8. They approved of any action by the BCDC Director to apply for and receive funds.

3.9. Defendant, Mr. Dantis is the Director of the BCDC. It is his duty to manage all operations of the BCDC and to administer and enforce the laws with which he or the BCDC is charged.

3.10. Defendant Dantis as the Director of the BCDC has numerous duties as set out in state statutes.

3.11. Defendant Dantis as the Director of the BCDC is responsible for the overall daily operation and management of the BCDC and is responsible for the execution of programs at the BCDC as well as other management duties.

3.12. Deputy Director Ercell Griffith is the Deputy Director of the BCDC and has numerous duties as provided by law, and also is an individually named Defendant.

3.13. Paul Sanchez, Frank Lovato, Lieutenant Michael Smith, Lieutenant John Van Sickler, Officer Will Bell, Lieutenant Albert Chavez, Lieutenant Fusco, George Fuentes, Lieutenant Baca, Victor Hernandez, Kevin D. Sevir, Dr. Mason, Barbara Cole, Maria Lucero, Medical Staff Nurse David, Captain Felimon Martinez, and Stanley Lents are all employees of the BCDC.

3.14. That the Plaintiffs are unaware of the full, true

and correct names of Defendants named "John Doe" and after discovery of the true and correct names of said Defendants, Plaintiff will provide the same to this Court and the Plaintiffs pray that they may be allowed to proceed accordingly.

3.15 Each of the named natural person Defendants has acted, and is acting, pursuant to the laws, ordinances, regulations and customs of the City of Albuquerque and the County of Bernalillo, the State of New Mexico and is named herein in its official capacity.

3.16. Each of the named natural person Defendants have initiated and/or continues to enforce the policies, practices, and procedures which the plaintiffs hereby seek to have enjoined.

3.17. The Defendants have pursued and continue to pursue policies, practices and procedures which result in a totality of conditions of confinement at the BCDC which violates the constitutional and statutory rights of the Plaintiffs and has caused and is causing persons incarcerated therein irreparable harm.

3.18. That the BCDC is presently and has been for some time grossly and inhumanely over crowded. New State of New Mexico DWI Laws which require mandatory incarceration for misdemeanors, and the growth of the city have made the over crowding at the BCDC totally and completely intolerable. Some of the original space allocated for recreation in the women's area has been converted to house male inmates. On information and belief, the Plaintiffs allege that the present space used for housing prisoners was

originally designed to house a capacity of approximately seven hundred prisoners. Although Plaintiffs maintain that the "design capacity" would not meet constitution standards for living space for prisoners, the BCDC and the Defendants presently house over 1000 prisoners.

3.19. The Defendants keep a large portion of the prisoners at the BCDC in cells and force the prisoners to live in cells which are approximately 6' by 9' in size. Although cells of that size do not meet any modern recognized standards for space for human beings in prison, the problem is exacerbated by having two or more people housed in many of them, with one or persons having to sleep on the floor, often without a mattress. In addition, the PCU Unit which is designed to hold twenty five (25) inmates, at various times has held up to fifty one (51) inmates, and those prisoners are all mentally impaired.

3.20. The Defendants keep the majority of the population at the BCDC house in "pods" which are grossly and inhumanely overcrowded with mattresses, blankets and other materials, and packed so tightly in many places that there is no space in between them and with many prisoners having been forced on occasion to sleep on the floor without even a mattress.

3.21. The Defendants force the prisoners at the BCDC to live in "pods" which are filthy and impossible to clean under the present over crowded conditions. Similarly, the Defendants force prisoners to live in "pods" where security is impossible to provide, thereby endangering the lives of the prisoners confined at

the BCDC.

3.22. The Defendants force the inmates at the BCDC to live in grossly overcrowded areas thereby denying them Constitutional Rights and destroying the possibility of privacy for the persons housed there, and which results in increased violent and homosexual acts.

3.23. The Defendants force the inmates at the BCDC to live in grossly overcrowded areas which causes tensions, anxiety, frustration and emotional and psychological problems. In addition, the overcrowding exacerbates virtually every other constitutionally deficient aspect of the BCDC which has existed and will continue to exist in spit of the overcrowding.

3.24. Defendants keep the inmates living at the BCDC, and the BCDC living quarters are totally unfit for human habitation from the standpoint of health and sanitation. Mice, roaches, and other vermin are commonplace. Toilets often do not work properly and are never properly cleaned. The plumbing in the BCDC and the sewage disposal system pose serious threats to the health of the persons incarcerated there. Inadequate lighting throughout the living areas is physically and mentally harmful to the BCDC prisoners. The lack of minimally adequate ventilation is likewise harmful to the inhabitants. Temperatures are often unbearably hot in the summer and cold in the winter.

3.25. The Defendants control the food service facilities and the BCDC does not meet minimal public health and sanitation standards. Proper methods are not used in preparing and handling

the food served to prisoners. The food served is nutritionally inadequate.

3.26. The Defendants force persons incarcerated at the BCDC to live in constant fear for their lives. Physical attacks upon prisoners are commonplace. Sexual assaults are a daily occurrence and regularly occur and the refusal to submit to sodomy and other assaults often results in serious physical injury. The fear of such assaults and injuries is so great that many prisoners have requested to give up what little freedom or access to recreation they have in the general population to be locked up and segregated in single-cell "protective custody." This "protective custody" cell block is the most overcrowded area in the BCDC with two or more prisoners confined in a cell with an area of thirty eight (38) square feet. Prisoners are also confined twenty four hours a day except for three hours per week allotted for exercise and showers. The BCDC officials have not instituted any programs or practices as will reasonably guarantee the physical safety of prisoners from violent homosexual acts against them.

3.27. The BCDC is severely understaffed in professional, education and security personnel. This under staffing contributes to the inability of the BCDC to meet minimal constitutional standards as are described in this complaint. The staff that is available is inadequately trained.

3.28. Idleness is the hallmark of the BCDC. Most prisoners are in the BCDC on misdemeanors and are processed and are released within weeks, however several prisoners are in the BCDC awaiting

felony proceedings, or are individuals who have long prison terms awaiting them, and for those prisoners there is not a regular meaningful industrial or institutional employment, training or other constructive activity. Neither are there adequate basic, vocational or other education programs to meet the needs of those incarcerated for long periods of time who desire to participate in meaningful education training. The forced idleness especially by felons contributes to a deterioration of whatever work habits and skills the prisoners may have possessed when they entered the BCDC.

3.29. The Defendants do not provide any recreational or exercise opportunities for the inmates at the BCDC. Recreational and educational opportunities are inadequate. Recreation facilities, equipment, programs and staff are insufficient, thereby increasing idleness, tension and violence at the BCDC and contributing to the physical and mental deterioration and debilitation of those incarcerated there.

3.30. Visitation at the BCDC is also restricted as to be either non-existent for many prisoners or meaningless to others. The lack of a reasonable visitation policy at the BCDC contributes to tension, anxiety and frustration, destroys ties with families and friends and contributes to mental deterioration and debilitation without any penological justification.

3.31. The Defendants do not provide adequate medical and dental services to the inmates, and the present medical service and dental staff is under-equipped and does not even meet the bare minimum needs of the inmates.

3.32. The Defendants do not provide a special care to inmates who are inflicted with disease such as sugar diabetes and other disorders or disease which require that inmates eat a certain diet which results in cruel and unusual punishment and exposes the inmates to death.

3.33. The Defendants do not provide emergency medical, dental or hospitalization to the inmates.

3.34. The Defendants do not provide the inmates at the BCDC with proper psychological and rehabilitative services and programs to meet their needs..

3.35. The Defendants perpetuate a system of punishing all the inmates by putting them into segregation for numerous hours and even days because of the conduct of a few and such is intolerable. It should be that those who create problems should be punished and those who do not should not be punished.

3.36. The Defendants do not provide a television set on second south at the BCDC, however allows a television in every other unit and therefore discriminates against the inmates on second south.

3.37. The Defendants have a "pod" for psychologically impaired inmates however it can accommodate only twenty five (25). The most severest of cases are only dealt with in the psychological unit and can only accommodate twenty five (25), and the other inmates who are still psychologically impaired but who do not classify for placement in the psychologically impaired unit are placed in other units with other inmates and that creates an

extreme hardship for those non-psychologically impaired inmates because psychologically impaired inmates refuse to take showers and pose constant physical threats to other inmates and create other problems.

3.38. Because of overcrowding at the BCDC, (i.e., placing approximately 1000 in the detention center); personal hygiene has deteriorated and more colds and other diseases are spreading.

3.39. That the disciplinary process for individuals at the BCDC results in inmates being placed in basically what is termed solitary confinement in cells without sufficient oxygen or ventilation.

3.40. That inmates are not allowed to change clothing frequently, in addition, clothing and bedding is not washed or cleaned properly which has resulted in unsanitary conditions.

3.41. The Defendants encourage guards to have inmates discipline themselves and such has resulted in decreased morale.

3.42. The Defendants have pursued and continue to pursue policies, practices, and procedures which result in widespread, arbitrary, and unreasonable physical abuse or abuse of inmates at the BCDC which shocks the conscience and other denials of rights of citizens of, and persons within, the United States, including persons travelling within and through the City in the course of interstate commerce. The Defendants have administered or otherwise used substantial amounts of federal funds in so doing.

3.43. The Defendants, employ or direct, have initiated, approved, enforced, and pursued internal administrative policies at

the BCDC which results in practices and procedures which directly contribute to and result in physical abuse at the BCDC inmates and other denials of rights of persons in New Mexico. Such BCDC policies, practices and procedures include, but are not limited to:

- a. Maintenance of investigative, disciplinary, and related BCDC practices, policies and procedures in a manner that is calculated to and does result in the acquiescence in, condonation and approval of, such denials of rights by the BCDC employees and correction officers;
- b. Maintenance of policies, practices, and procedures by the defendants that are calculated to insulate and do result in insulating the BCDC employees and correction officers from external investigation and sanction for such denial of rights;
- c. Acquiescence in, condonation of, and approval of such policies, practices and procedures that raise isolated incidents of physical abuse and other denials of rights to the level of a pattern or practice.

3.44. The defendants, employ, or direct, have initiated, approved, enforced, and pursued practices in the BCDC, which results in policies and procedures which result in physical abuse and other denials of rights of the prisoners in the BCDC. Such physical abuse has been unwarranted, has been beyond the level of force reasonably necessary to serve legitimate ends, and has amounted to arbitrary and unreasonable force which shocks the

conscience. Such practices, policies, and procedures include:

- a. Without probable cause, accosting and harassing the inmates, and responding to their subsequent protestations with physical abuse or solitary confinement;
- b. Physically abusing inmates who are accused of assaulting or resisting BCDC correction officers;
- c. Physically abusing Bernalillo County Detention Center inmates who are hand cuffed or otherwise under BCDC control;
- d. Physically abusing inmates to intimidate them or to extract confessions;
- e. Verbally abusing the inmates at the Bernalillo County Detention Center including directing racial slurs at them;
- f. Detaining inmates in secluded areas without proper cause or for excessive periods, and denying access to counsel, medical services, dental services, and other necessities while so detained.

3.45. The Defendants, maintain a purposefully fragmented system for investigating complaints of abuse of persons by Bernalillo County officers. This system is intended to result in, and does result in, both inadequate investigation of such complaints, and also assignments of areas of investigative responsibility to the Defendants with inherent conflicts of interest vis-a-vis such investigations.

3.46. Complaints against the BCDC are investigated by BCDC

management, all of the individuals herein work together, and maintain control over the jail facilities. That by having such coarse of investigation, and by having the BCDC management, ie. Defendants investigate creates a responsibility which conflicts with their duties.

3.47. The Defendants involve themselves in investigations that concern allegations of abuse by the BCDC officers and are conducted pursuant to a number of practices by which Defendants acquiesce in, condone and approve of abuse while protecting abusive BCDC officers from effective investigation and appropriate sanction. Such practices include:

- a. Pressuring complainants about abuse to withdraw their complaints, which is used as one of several pretexts to close such investigations prematurely, even where there is substantial evidence of abuse;
- b. Preparing statements from Bernalillo County Detention Center correctional officers and witnesses in a manner calculated to justify the conduct of the officers under investigation regardless of the actual circumstances;
- c. Accepting implausible accounts given by the BCDC officers under investigation as reasons to condone their unlawful behavior;
- d. conducting investigations which intentionally exclude evidence that would tend to impeach the credibility of the BCDC correctional officers, such as

statements from BCDC inmate witnesses, the officers' backgrounds, the views of the prisoners attorney, physical evidence, and evidence about the scene of the incident;

e. Compiling reports which justify the officers conduct regardless of the actual circumstances, by various practices including speculative explanations of injuries for which no other exculpatory explanation is forthcoming;

f. Compiling reports which justify the accused BCDC officer's conduct regardless of the actual circumstances and rarely if ever recommending discipline for BCDC correction officers.

3.48. The Defendants have pursued and continue to pursue disciplinary practices by which they acquiesce in, condone, and approve the abuse of inmates, including the discriminatory infliction of abuse on Black, Indian and Hispanics. Through such practices the Defendants have maintained control of the operation of the BCDC investigatory and disciplinary systems, and despite the fact that they have been familiar with facts of individual incidents of abuse and the frequent commission of abuse by the BCDC officers. These practices include, but are not limited to:

- a. Commending and promoting Bernalillo County Detention Center corrections officers and staff whom the Defendants know, or should have known, have abused inmates;
- b. Refusing to suspend or discipline individual

BCDC Officers when the Defendants knew, or should have known, that such officers had physically abused inmates.

3.47. The Defendants have pursued and continue to pursue inadequate training for BCDC correctional officers and staff which results in a pattern of abuse of persons by the BCDC employees, including:

- a. Failing or refusing to provide sufficient training for newly recruited BCDC officers in the use of force, including deliberate refusal to instruct them on when not to use force against inmates especially psychologically impaired ones;
- b. Failing or refusing to provide sufficient training, and periodic reinforcement concerning when not to use force, and requiring qualification in the use of force for promotion;
- c. Failing or refusing to provide psychological services and screening to aid BCDC officers in dealing with stress and to eliminate BCDC officers with a known propensity to abuse persons;

IV. CLASS ACTION ALLEGATIONS

4.1. Plaintiffs bring this action on their own behalf and as representative parties on behalf of all persons similarly situated, pursuant to the Federal Rules of Civil Procedure 23(a), 23(b) (1) (A), and 23(b) (1), and (2).

4.2. Plaintiffs are representative parties of the class which is composed of all persons presently confined in the BCDC or who

may be so confined in the future. Plaintiffs are members of the class and their claims are typical of the claims of all class members.

4.3. That part of the class consists of all persons of Native American, Mexican, Black, Latin-American or Hispanic ancestry or appearance of all spanish surnamed individuals who have been, are, or will be living, working, traveling or visiting within the City of Albuquerque, New Mexico. The class size is in excess of one hundred members, the exact size of which will be determined after the plaintiffs have had an opportunity to conduct discovery.

4.4. The class is so numerous that joinder of all members is impracticable.

4.5. There are questions of law and fact common to the class.

4.6. The claims of the representative parties are typical of claims of part of the class in that the named Plaintiffs are U.S. citizens, Native Americans, Blacks and Hispanics, who have lived and worked in Albuquerque, New Mexico, who have been incarcerated at the BCDC, and who have been subject to unconstitutional and discriminatory treatment by the BCDC Defendants and the other Defendants named above.

4.7. The representative parties are represented by experienced and competent counsel, Anthony James Ayala, P.A., who will fairly and adequately protect the interest of the class.

4.8. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which

would establish incompatible standards of conduct for the Defendants.

4.9. The Defendants have acted or failed to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

FIRST CLAIM FOR RELIEF BY THE CLASS

5.1. Paragraphs 1-4 above are incorporated herein.

5.2. The totality of the conditions at the BCDC violates the rights of persons incarcerated therein under the Eighth and Fourteenth Amendments to the United States Constitution. These conditions also violate the prisoners' rights to freedom of religion, expression and association, access to the Courts, family integrity, privacy, equal protection and due process of law guaranteed by the First, Fourth, Fifth Sixth, Ninth and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM FOR RELIEF BY THE CLASS

5.3. Paragraphs 1-4 above are incorporated herein by reference.

5.4. The totality of conditions at the BCDC which makes rehabilitation by prisoners impossible and causes the unnecessary deterioration of them violates the cruel and unusual punishment clause of the New Mexico Constitution. Article II, sec. 13. These conditions and practices as described also violate the prisoners' rights to freedom of speech, religion, equal protection, due process and other rights guaranteed by Article II, secs. 11, 17,

and 18, of the New Mexico Constitution.

THIRD CLAIM FOR RELIEF BY THE CLASS

5.5. Paragraphs 1-4 above are incorporated herein by reference.

5.6. Defendants have failed to exercise their duties to operate the BCDC in accord with Article II, sec. 4 of the New Mexico Constitution and State Statute.

FOURTH CLAIM FOR RELIEF BY THE CLASS

5.7. Paragraphs 1-4 above are incorporated herein by reference.

5.8. Upon information and belief, the Defendants have received funds from the United States Law Enforcement Assistance Administration (LEAA) under 49 U.S.C. sec. 3750(b) for the planning acquisition or construction of correctional facilities. The amount of funds received by Defendants from LEAA exceeds \$50,000.00.

5.9. As a condition of the receipt of such federal funds, the Defendants contractually agreed pursuant to 42 U.S.C. sec. 3750 (b) that the programs and facilities of the BCDC would reflect advanced practices and standards; that advance techniques would be used in the design of institutions and facilities; and that necessary arrangements would be provided for the development and operation of narcotic and alcohol treatment programs.

5.10. Plaintiffs are third party beneficiaries of the contractual arrangements between LEAA and Defendants.

5.11. The Defendants have failed and refuse to carry out their contractual obligations under 42 U.S.C. sec. 3750(b).

PRAYER FOR RELIEF OF THE CLASS

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs request that this Court do as follows:

6.1. Certify this action as a class action pursuant to Rule 23, F.R.C.P. with the named Plaintiffs representing a class of all persons presently incarcerated in the BCDC or who may be in the future.

6.2. Enter a declaratory judgment declaring the totality of conditions and practices at the BCDC, as well as certain specific aspects thereof, violate the rights of the Plaintiffs and members of their class under state and federal constitutional and statutory standards as are specified in this complaint.

6.3. Enter a preliminary injunction pending the final disposition of this case, enjoining the Defendants from crowding prisoners in the BCDC in excess of the minimum space standards that they have available, and space standards established by the United States Court of Appeals for the Tenth Circuit, and immediately release three hundred (300) prisoners to the custody of their homes so that the overcrowding can immediately cease.

6.4. Enter a permanent injunction to the Defendants and each of them enjoining them from continuing to incarcerate persons in the BCDC or other facilities until they are brought into compliance with constitutional and statutory standards as specified by this Court.

6.5. Require the Defendants to pay the costs of this action, including a reasonable attorneys' fee for counsel for the

Plaintiffs pursuant to 42 U.S.C. sec. 1988.

6.6. Grant such other and further relief as is proper.

6.7. At the appropriate time, if the Court desires, Plaintiff's counsel will submit proposed standards and procedures to assist the Court in fashioning appropriate relief.

STATEMENT OF FACTS FOR INDIVIDUAL RELIEF

DAVID M. BAUER

7.1. Plaintiff David M. Bauer is under the Federal Witness Protection Plan because he was a witness for the Federal Government. The staff at the BCDC did not follow the rules of secrecy and protection of the Plaintiff and made his true name known within the BCDC, along with the fact that he was in the Federal Witness Protection Plan. In addition, the BCDC has helped facilitate the Plaintiff's face appear on local television stations and newspapers.

7.2. The use of Defendant's real name by the BCDC should have and could have been avoided by specific instruction which was made available to them in this regard.

7.3. At this time, due to the negligence or intentional misconduct on the part of the BCDC, and or it employees, the Plaintiff's life is in great jeopardy and he faces death, or in the alternative is forced to live in solitary confinement and in protective custody.

7.4. That numerous attacks and attempted assaults have been made on the Plaintiff by inmates at the BCDC which are directly related to the fact that the Plaintiff is in the Federal Protection

Plan. Defendant David M. Bauer alleges malicious disregard for the safety and well being of a pre-trial detainee by the BCDC.

7.5. At approximately 10:45 A.M. on January 28, 1994 the Plaintiff was housed on level 3 south east at BCDC, where the staff of the BCDC allowed two "high risk" residents, David Strichfeld and Joe Sanchez, who were classified as violent and were to be restrained with leg irons and belly chains when freed from their cells and assigned housing areas, to roam around freely.

7.6. The Plaintiff was escorted from his cell (H-9) to be interviewed by his attorney, Ms. Jacqueline Cooper.

7.7. While being in protective custody, the two correctional officers, Paul Sanchez and Frank Lovato were directly responsible for his safety.

7.8. Defendant's Paul Sanchez and Frank Lovato are agents and employees of the BCDC and were acting within the scope of their employment at all times and all actions done by them were done in their individual capacity as well as in their capacity as agents and employees of the BCDC.

7.9. That at all times herein mentioned the Board of Commissioners of the County of Bernalillo and the City of Albuquerque are vicariously liable for the negligent acts set forth herein.

7.10. After entering the day room to be interviewed, Ms. Cooper advised the Plaintiff to make a phone call to verify certain legal issues relating to his case. While attempting to use the telephone resident Joseph Sanchez began pounding on his door and

screaming threats directed toward the Plaintiff calling him a "snitch".

7.11. At this time Ms. Cooper suggested that he use the phone in H-Pod. John Dow allowed inmate Joseph Sanchez out of his cell without prescribed restraints, said Joseph Sanchez is a high risk violent individual, and inmates Paul Sanchez and Frank Lovato then allowed inmate Sanchez to open the officer's desk draw and pull out the key to open the pod door.

7.12. While trying to fit the key into the slot above the door, inmate Sanchez was also banging on the windows and door screaming threats at the Plaintiff.

7.13. At that point the Plaintiff began to have a panic attack as he suffers from a severe anxiety and panic disorder.

7.14. Joseph Sanchez battered and beat the Plaintiff about the face and body, and inmates Paul Sanchez and Frank Lovato made no effort to stop inmate Joseph Sanchez from assaulting the Plaintiff.

7.15. In addition, the BCDC employees took their time in retraining Joseph Sanchez.

7.16. The BCDC allows residents housed therein to open their own doors virtually at any time they wish to do so, thereby threatening the safety of those in protective custody.

7.17. Individuals can open their door by rigging a lock which calls for very little mechanical aptitude. The residents can open a cell door with a stiff piece of cardboard or plastic and with the full knowledge of the BCDC employees the Plaintiff and those similarly situated are put at risk.

7.18. On one occasion a correctional officer was thrown from a tier and suffered several serious injuries as a result of an argument with a resident who rigged his lock and attacked the officer while making his rounds.

7.19. At another time, the Plaintiff was not being allowed to spend the usual allotted thirty minutes out of his cell. When the Plaintiff was ordered back into his assigned cell the Plaintiff refused and the correctional officer radioed in a "code 99" for staff assistance.

7.20. Several staff members arrived and Lieutenant Michael Smith ordered the Plaintiff to his cell. The Plaintiff walked upstairs without incident.

7.21. Upon entering cell E-8 the Plaintiff sat on his bed. He began discussing the issue with Deputy Director Ercell Griffin and during the course of the discussion they both began to get loud especially the Plaintiff, who demanded his time out of his cell since he is required to stay there 24 hours a day and only wanted thirty minutes.

7.22. Mr. Griffin ordered Lieutenant Michael Smith and Lieutenant John Von Sickler to bring the Plaintiff down the stairs and put him in "The Chair".

7.23. Lieutenant John Von Sickler ordered the Plaintiff to get up, but in fear of physical abuse the Plaintiff remained seated. Lieutenant Michael Smith and Lieutenant John Von Sickler along with other staff members physically picked up and carried him to the top of the stairs.

7.24. At all times herein mentioned, Deputy Director Ercell Griffin, Lieutenant Michael Smith, and Lieutenant John von Sickler and the other employees named herein, were working in the capacity of employees of the BCDC, and the City of Albuquerque, and therefore the Board of County Commissioners, the County of Bernalillo and the City of Albuquerque are vicariously liable to the Plaintiff under the theory of respondeat superior. That the said Defendants are responsible for all the acts of their employees.

7.25. The Plaintiff was hand cuffed behind his back while still seated in his cell. Lieutenant Michael Smith had a grip on the Plaintiff's left arm and upon reaching the top of the stairs let go of the Plaintiff's arm and began twisting the Plaintiff's left hand severely, ordering him to "walk like a man".

7.26. Lieutenant John Von Sickler then dropped the Plaintiff causing him to slide down the stairs backwards with his head facing toward the bottom of the stairs.

7.27. The Plaintiff was then picked up and carried to the exit. At the exit gate in full view of several inmates Lieutenant Michael Smith savagely twisted the Plaintiff's right wrists, right index and middle fingers causing the Plaintiff to cry out in pain.

7.28. The Plaintiff was carried to the elevator and was struck on the face by another correctional officer causing the Plaintiff to bite his tongue drawing blood.

7.29. Several other officers laughed and taunted the Plaintiff while Lieutenant John Von Sickler pushed the Plaintiff's head into

the corner of the elevator.

7.30. At the ground level, the Plaintiff was carried through receiving and discharge to cell number 6 where he was shackled and a heavy leather belt was secured around the Plaintiff's waist to secure the handcuffs holding his hands behind his back.

7.31. The Plaintiff was then seated in a chair designed for restraining residents who are exhibiting behavior which is either a threat to staff or a threat to themselves.

7.32. All BCDC staff was advised by Lieutenant Michael Smith that the Plaintiff was to remain in these restraints until he ordered otherwise.

7.33. During the next six (6) to seven (7) hours the Plaintiff repeatedly requested medical attention and staff assistance to loosen his handcuffs and be allowed to eat.

7.34. That under the direction of Lieutenant Michael Smith the Plaintiff was not allowed to eat, urinate or allowed medical attention, and such constituted cruel and unusual punishment.

7.35. At approximately 5:15 P.M., correctional officer Will Bell came to cell number six. Officer Bell observed that the Plaintiff's hands were becoming blue and numb and immediately removed the belt and cuffs allowing the Plaintiff's hands to be loosely cuffed in the front. Officer Bell then called a medical nurse.

7.36. Upon examining the Plaintiff's wrists the nurse stated that the handcuffs were left on too tight for too long. This statement was made in front of correctional officer Bell and

correctional officer Smiel.

7.37. The medical nurse also observed several lacerations on the Plaintiff's back and on the back of his right arm as well as lacerations caused by the handcuffs.

7.38. After being advised of the situation by correctional officer Bell, Lieutenant Kathy Martinez ordered officer Bell to escort the Plaintiff to Lieutenant Albert Chavez to take photographs of the Plaintiff's injuries. Lieutenant Chavez examined the Plaintiff and took two (2) photographs. The first was of the Plaintiffs wrists, hands and arms held crossway and the second of his back.

7.39. At all times mentioned herein, defendants did not have the authority to detain or beat the Plaintiff herein.

7.40. Defendant, BCDC officers did not have any justification or reason for depriving the Plaintiff the time out of his cell, the authority to allow another inmate to beat him, or to remain free without shackles, and/or the authority to keep the Plaintiff restrained in cuffs for six (6) to seven (7) hours without food, the ability to urinate, or medical attention.

7.41. Defendant's knew they had no reasonable cause to justify their actions and they intentionally proceeded without legal authorities solely because the Plaintiff was a prisoner in the BCDC.

7.42. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of law, to-wit: under color of the statutes, ordinances, regulations,

customs and usages of the State of New Mexico and of the City of Albuquerque. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

7.43. That at all of the times of the events herein mentioned, Plaintiff was acting in a reasonable and peaceful manner, and was not disturbing the peace or committing any offense against the BCDC, another inmate, and was not violating any rule or regulation of the BCDC and did not cause any action which would justify the conduct of the BCDC and its employees.

7.44. That despite the fact that Plaintiff was acting in a reasonable manner considering the circumstances, and was not in any way or fashion disturbing the peace or committing any public, private or any offense of the BCDC whatsoever, Plaintiff was assaulted in an unreasonable, unwarranted, and unlawful fashion, by false pretext, by the BCDC employees herein named, and was herein deprived of his liberty, his right to guarantees and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Law of the New Mexico.

7.45. As a result of actions taken by the Defendants, Plaintiff has suffered emotional distress and physical damage and has been subjected to humiliation and embarrassment. Plaintiff

taken upstairs. He told the correctional officer that his back and legs were hurting and he told the correctional officer that he wanted to see a Lieutenant.

8.16. The correctional officer stated that he was a Lieutenant and asked if the Plaintiff had told anyone about his pain. The Plaintiff informed him that he had told everyone and they ignored him. The Lieutenant told the Plaintiff to fill out a medical slip, which he did, and put it in the sick call box. Right in front of the Lieutenant were the two mentioned correctional officers. The Lieutenant told the Plaintiff that he was going to notify the Captain about his pain. This was also ignored.

8.17. On November 6, at 2:30 A.M., the Plaintiff was lead to H-5. The correctional officers told him to grab a mattress so he did. The Plaintiff's back was killing him but he still drug it into the room.

8.18. Kirk Carlier was in there and he was upset that they put the Plaintiff in with him. He started complaining about the situation and was telling the Lieutenant and correctional officer that he was going to have to pick up new charges, i.e., meaning that he would have to beat the correctional officer or the Plaintiff because they had put an individual in his cell.

8.19. At 2:45 A.M., they moved Kirk out and the Plaintiff tried to go to sleep. At 1:00 A.M., the Plaintiff asked the correctional officer if he could talk to the Lieutenant or Captain and the correctional officer asked why. The Plaintiff informed him of his back and legs were still hurting quite badly and the

correctional officer told him to put in a sick call slip.

8.20. The Plaintiff informed him that he already had, and that it was put in the night before at approximately 12:30 A.M. The correctional officer stated that it takes 12 hours. The Plaintiff informed him that it had been more than 12 hours and again asked him if he could talk to a Lieutenant or Captain. The correctional officer walked away and ignored the Plaintiff.

8.21. At 3:00 A.M., it was time for a shift change and the Plaintiff was still in excruciating pain. At 5:00 A.M., the Plaintiff asked Stanley Lents if he would call the Captain, Lieutenant or medical and the reply was, let's see. At 6:00 A.M., the Plaintiff gave his sick call slip to Stanley Lents.

8.22. At 7:00 P.M., the Plaintiff asked Stanley Lents to stop the nurse and he said he would check the Plaintiff's record and come back. The Plaintiff also requested him to call the Captain or Lieutenant.

8.23. At 9:00 P.M., the Plaintiff asked the correctional officer, Stanley Lents, if the Captain or Lieutenant was going to come and he said they would come when they felt like it or when it was the right time. AT 10:00 P.M. The Plaintiff was still in pain.

8.24. On November 6, 1994 the Plaintiff asked to make a phone call and they said no. Approximately 12:30 P.M., the Plaintiff talked to the Lieutenant and told him that his back, legs and head were hurting and the Lieutenant asked him if he had told anyone. The Plaintiff informed him that he had been ignored all night and the Lieutenant said he would let the Captain know, but the

Plaintiff was ignored again.

8.25. On November 6, 1994 at 2:00 A.M., the Plaintiff was moved to room 5. Kirk Carlin did not want the Plaintiff in his room and wanted to beat him up. They moved Mr. Carlin. The Plaintiff asked the correctional officer to speak to the Lieutenant. The Lieutenant asked why and the Plaintiff told him that his back, legs and head were killing him. The correctional officer asked the Plaintiff if he put in a sick call slip and the Plaintiff replied yes, about 12:30 last night. He was informed again that it takes about 12 hours. The Plaintiff tried to explain that it had been past 12 hours but the correctional officer walked away and ignored him.

8.26. On November 7, 1994, the Plaintiff told the two correctional officers on shift, and they said they would notify the Lieutenant or Nurse on duty. At 5:00 A.M., the nurse gave the Plaintiff Advil. The Plaintiff saw the nurse and the nurse said the Plaintiff was fine and they gave him more Advil.

8.27. At 2:00 P.M., the nurse made his rounds and the Plaintiff told him that he was on the list. The nurse said no you are not, and the Plaintiff said I have not been seen for my back and it is still hurting. The Plaintiff gave the correctional officer a call slip, the third slip, at 2:15 P.M.

8.28. At 5:00 P.M., the Plaintiff saw an employee at the BCDC pick up the sick call slips. The Plaintiff talked to the lady who was in the control center. She informed him that it was bad that he was in A-Pod flat. The Plaintiff told her that medical came on

the floor and they were usually asked to go to A-Pod or whatever pod is open when medical comes on the floor. Once again the Plaintiff asked to talk to the Lieutenant that was there.

8.29. At 7:30 P.M., the Plaintiff was brought more Advil. At 8:30 P.M., he was given another sick call slip making it his fourth one.

8.30. November 8, at 6:00 A.M., the Plaintiff received more Advil and was still in pain. At 1:00 P.M., he was given more Advil and was becoming tired of asking for help.

8.31. At 6:30 P.M., the Plaintiff gave the nurse his sick call slip, personally. He informed him that his back was still hurting and the nurse told him that he thought all the Plaintiff's sick call slips were because he had not received his Advil.

8.32. The Plaintiff continued to ask to see a Lieutenant all that shift and as of 7:00 P.M., nobody had come.

8.33. On November 9, at 5:00 A.M., the Plaintiff was given more Advil. At 8 A.M., he talked to the nurse and the nurse informed him that he could not have x-rays only Advil and there was no need to see a Doctor.

8.34. That the Plaintiff continued in pain, and after a very long period of time was allowed to seek the attention of a medical doctor who properly treated his medical condition, however for the longest period of time remained in serious pain.

8.35. That all times herein mentioned, the Defendant employees at the Bernalillo County Detention Center at all times mentioned herein were agents and employees of Defendants Board of County

Commissioners, the Bernalillo County Detention Center, the County, and the City of Albuquerque and were authorized by them to operate the BCDC and were acting in the scope of employment at all times, and that all actions done by them were done in their individual capacity as well as in the capacity as agents and employees of the Defendant Bernalillo County, and City of Albuquerque, and therefore the Defendant's Board of County Commissioners and the City of Albuquerque as well as the other Defendants named herein are vicariously liable for the actions set forth herein.

8.36. That at all times herein mentioned, the Defendants were negligent in allowing psychologically impaired individuals like Mike Donovan and the other individuals named herein into other pods where they could injure and inflict serious damage to other Plaintiffs, specifically Plaintiff herein.

8.37. In addition, the Defendants were negligent and not careful and prudent in ignoring the Plaintiff's request for medical treatment, and were negligent in not providing medical treatment.

8.38. That as a direct and proximate result of psychologically impaired inmates allowed in the general population of the BCDC and in violation of the policies of the BCDC and the aforesaid acts of carelessness and negligence, the Plaintiff was beaten about his body and refused proper medical attention, thereby proximately causing the injury and other losses complained of herein.

8.39. Plaintiff, Carl Ray Lopez, suffers and continues to suffer severe permanent personal injuries; he suffered, and continues to suffer, great pain of both a mental and physical

nature, all of which are permanent; he has incurred, and continues to incur, and will incur in the future, medical and non medical expenses; he has become permanently and partially disabled; he has lost earnings and future earning potential and the value of his household services; he has experienced, and will experience in the future, a diminished enjoyment of life and a diminished quality of life.

8.40. Wherefore, Plaintiff Carl Ray Lopez prays for judgment against the Defendants in an amount reasonable to compensate him for all the foregoing damages and injuries, plus interest and prejudgment interest, the costs of the action, including attorney's fees, and for such other relief as the Court may deem proper.

8.41. As a result of actions taken by the Defendants, Plaintiff has suffered emotional distress and physical damage and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

BRUCE DAVID MORAWE

9.1. On November 19, 1994, Plaintiff, Bruce David Morawe was taken to the law library to fulfill the requirement of his Court Order from the Honorable Judge James F. Blackmere. He had not been taken down on the previous Friday, because that was the day of an escape attempt in which two prisoners had been digging through the wall of their cell for about two or three weeks with two crow bars.

9.2. The Plaintiff is indigent and he barricaded himself in the law library in May of 1994 because of the living conditions at

the BCDC and their refusal to provide indigent prisoners with bath soap or toothpaste for over two months.

9.3. The order of the Court requires the BCDC to provide the Plaintiff with access to the law library for four (4) hours per day, Monday through Friday, but since the Institution was slammed down on Friday the Plaintiff enforced his right of access on Saturday.

9.4. Among other things, the current order of the Court requires that the Plaintiff be given fifteen (15) minutes per day access to a telephone known as "the free phone".

9.5. The Plaintiff used the "free phone" on November 19, 1994, to call the office of Ms. Patricia S. Condon of Gay & Taylor, Inc., and the telephone was fully functional. The Plaintiff also wrote a letter to Ms. Condon and left it on the desk at the law library.

9.6. The Plaintiff has been forced to use the free phone to call the BCDC itself to inform them of when he needs to eat or to be returned to his cell. The BCDC is not happy with the Plaintiff in that he uses the free phone to call the South Tower Lieutenant's office to let them know he is hungry, needs to use the rest room or that he is ready to be returned to his cell.

9.7. The Plaintiff has to do this because they forget about him being in the law library and sometimes he is in there for up to six (6) or more hours before trying to contact the BCDC.

9.8. The swing shift is especially upset when the Plaintiff calls by phone, they are even mad just because they have to escort him back to his cell. They claim it is not the job of the security

staff to escort him to and from his cell. The worst objector is Lieutenant Albert Chavez. Lieutenant Chavez usually has derogatory remarks to make towards the Plaintiff such as, "Have you sued any more guards today?", or "Write another letter to the Mayor today?".

9.9. Lieutenant Albert Chavez is the officer that the Plaintiff made contact with on November 19, 1994 when he wanted to go back to his cell so that he wouldn't miss his evening meal. When Lieutenant Chavez arrived the Plaintiff had legal papers he had typed and/or wanted copied, spread out on Kevin Christianson, the law librarian's desk along with stick-em notes as to how many copies he wanted. Lieutenant Chavez made special notice of all the Plaintiff's legal papers scattered out on the desk, and for the first time made no comment about the Plaintiff calling him on the telephone. He failed to lock the door when they left the library for the Plaintiff's housing unit. It is the contention of the Plaintiff that Lieutenant Albert Chavez went back to the library and purposely sabotaged, tore, mutilated and otherwise destroyed the legal papers of the Plaintiff.

9.10. Kevin, the law librarian, was not in the institution on Monday, November 21, 1994. When this was realized the Plaintiff was able to get in touch with Lieutenant Fusco, and the Lieutenant made arrangements for the Plaintiff to be brought to the law library so that he could have his four (4) hours of access. When they arrived at the law library, it was very obvious upon entering that the Plaintiff's legal papers had been virtually destroyed by Lieutenant Chavez since his last visit to the library as previously

indicated.

9.11. The law library keys are kept in the Watch Commander's office. A fact that is not commonly known among staff, and they have to ask the Watch Commander for the keys in order to get access to the library.

9.12. The Plaintiff wanted to call his lawyer but unfortunately the free phone was no longer operational. It is the contention of the Plaintiff that Lieutenant Chavez had stolen the phone cord that connects the phone to the wall jack to additionally intimidate the Plaintiff. When Lieutenant Fusco returned to the library for some reason, the Plaintiff informed him of the situation and asked if it could be replaced or if he could be allowed to go to the booking area to the free phone the new arrestees use in attempting to secure a bail bond.

9.13. During the day shift there are never any complaints about the fact that it is not custody's job to escort prisoners. Only on the evening watch when Lieutenant Albert Chavez is on duty is there any question about the proper functions of custodial staff.

9.14. At approximately 1:30 P.M., Lieutenant Fusco returned with one of the escorting officers. The Plaintiff was informed that the maintenance person in charge of the telephones was not in the institution that day, but he was going to send the escorting officer to detention level 3 control room because he knew for a fact that they had an extra cord there. The Lieutenant made the Plaintiff promise to return the cord and that promise was made.

9.15. At about 4:15 P.M., the Plaintiff went to the Watch Commander's Office because they forgotten him in the law library and he wanted to go to his cell so that he would not miss his evening meal. The Plaintiff had already called the South Tower Lieutenant's office and never got a response other than they would send someone after him soon.

9.16. Lieutenant Baca wanted to know what the Plaintiff was doing with the phone cord so the Plaintiff explained everything to him and the Lieutenant said he would return the cord personally.

9.17. Lieutenant Baca refused to return the cord to the control room on November 22, 1994. When Kevin, the law librarian came to get the Plaintiff for his legal access, the Plaintiff attempted to call his counsel once again to no avail since still there was no phone cord.

9.18. Kevin, the law librarian was never able to contact Lieutenant Chavez, but Lieutenant Baca told him that the Plaintiff had indeed given him the telephone cord from control room 3, and that he had decided not to return it in violation of his promise to the Plaintiff. Also, that he had forgotten overnight what he had done with the phone cord.

9.19. On November 23, 1994 the Plaintiff still had no access to a phone cord. Kevin, the law librarian, assured the Plaintiff that he would try to get access to one so that he could make phone calls on Friday when he would return to the law library.

9.20. The phone cord mystery created by Lieutenant Chavez deprives the Plaintiff from contacting his counsel and prevents

other plaintiffs from contacting their counsel. The conduct of the Defendants specifically Lieutenant Chavez, is a direct act to disrupt communications between counsel and inmates.

9.21. Additionally, the conduct of Lieutenant Chavez has deprived Mr. Morawe, a Pro Se Defendant in a criminal case, with access to the Courts, the opposing Counsel, Joe Lally, and also the U.N.M. Prison Law Project that does legal research for the Plaintiff.

9.22. That in the course of being incarcerated in the BCDC, Plaintiff Bruce David Morawe was robbed two (2) nights in a row in the maximum security section of the institution, by inmates who were let out of their cells by officers of that institution for the sole purpose of robbing the Plaintiff.

9.23. In addition, the Plaintiff has been a victim of an assault by a staff member at the BCDC who will be identified as, "John Doe".

9.24. In addition, the Plaintiff's glasses were stolen during the cell robberies, and the Plaintiff is legally blind without his glasses and Plaintiff's prescription BI-Focals were replaced by the BCDC with \$3.00 reading glasses which allows him to see out of his left eye but not his right, and forcing the Plaintiff to use these glasses has resulted in pain from eye strain and effects his ability to defend himself on his criminal case as pro se.

9.25. That without proper glasses, the Plaintiff's eyes get worse by the day and might possibility result in him losing his eye sight or in the alternative, forcing the Plaintiff some time in the

future to wear even stronger corrective lenses.

9.26. That as a result of the Plaintiff losing his eyeglasses and the other wrongs complained of herein, the Plaintiff has suffered damages. It is Plaintiff's information and belief that the Defendant Chavez and the other Defendants mentioned are agents and employees of Defendants Board of County Commissioners, the Bernalillo County Detention Center, the County, and the City of Albuquerque and were authorized by the Defendants to operate the BCDC and were acting in the scope of employment at all times, and that Mr. Chaves was acting in the scope of his employment at all times, and that all actions done by him were done in his individual capacity as well as in his capacity as an agent and employee of the Defendant Bernalillo County Detention Center.

9.27. Therefore the Defendant Chavez is individually responsible, and Defendant Bernalillo County and the City of Albuquerque are individually, as well as vicariously, liable for the actions set forth herein.

9.28. That despite the fact that the Plaintiff was acting in conformity with a valid court order and was not in any way or fashion disturbing the policies and procedures of the BCDC, the Plaintiff has not been allowed the full use of the law library and its privileges, by the Defendants named herein, and it thereby deprived of his liberty and his right to represent himself, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

9.29. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and physical damages, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

THOMAS YOUNG

10.1. Plaintiff, Thomas Young, is in for probation violation and wrecking into a police car. On August 15, 1994 he was in one north maximum security when two hispanic men, Manual Martinez and Joseph Garcia aka "Lazy" began to fight each other.

10.2. A rookie correctional officer pushed the panic button and the riot crew immediately responded. As they separated them, a couple of the correctional officers were beating up on Joseph Garcia.

10.3. Joseph Garcia's cousin, Manual Martinez and other prisoners began to protest. The riot team tear gassed the entire floor which caused choking, gagging and skin burning and the inmates had to wrap a towel around their faces.

10.4. At this point, Mr. Young heard one of the guards say, "You got shit coming out of your mouth instead of breath." Deputy Chief Griffith later came up and threatened everyone about creating a riot and threatened that he would write them all up.

10.5. All inmates of that level were locked down approximately 23 to 26 days from August 15, until September 7, 1994. That Mr. Young, and others situated did not start the fight, did not create a riot, were not involved in a riot, and did not encourage, entice,

or in any way involve themselves in the altercation between Joseph Garcia and Manual Martinez, and therefore the only persons that should have been in lock down for approximately four (4) weeks should have been Manual Martinez and Joseph Garcia, however, Mr. Young, among several other, were punished severely for the conduct of the two (2) other inmates named herein.

10.6. That the conduct of the Bernalillo County Detention Center and Ercell Griffith in locking down all the inmates was cruel and unusual punishment.

10.7. In addition, Defendant Young has no library access and should be afforded such. In addition, the Plaintiff Mr. Young is not given his prescribed anxiety medicine called Cronopin and suffers great depression and emotional distress as a result of being put in lock down, and because of the overcrowding, and suffers irreparable injury by not being allowed his proper medication of Cronopin.

10.8. Because the Defendants jointly and in concert, as employees and agents of the Bernalillo County Detention Center are refusing to give the medical attention to the Plaintiff have acted vicariously, and therefore the Defendants are all jointly and severally responsible to the Plaintiff.

10.9. In addition, the acts of punishing Mr. Thomas Young for the acts of others is and continues to be unreasonable, unwarranted and unlawful, and is done by false pretext, and hereby deprives him of his liberty and his right to be free from cruel and unusual punishment, and for other privileges and immunities and violates

other privileges and immunities secured to him by the Constitution of the United States of America and the Constitution and Law of the State of New Mexico.

10.10. As a result of the actions taken by the Defendants, Plaintiff suffers and continues to suffer great anxiety because the BCDC refuses to give him his prescription of Cronopin prescribed by a physician for his anxiety, and he especially needs his anxiety medicine being in closed quarters which results in increased stress and hardship.

10.11. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in the amount greater than \$50,000.00, the exact amount to be proven at trial.

RUTHIE DURAN

11.1. The Plaintiff, Ruthie Duran, is in for probation violation. Ms. Duran was on October 20, 1994, 5 1/2 months pregnant. However, because of arguments and fights which have resulted from over crowding at the BCDC, severe stress and anxiety was placed on Ruthie Duran.

11.2. That Ruthie Duran began to have contractions at 8:00 P.M. on October 20, 1994. When she told the correctional officers that she was having contractions, they told her it was probably just a back pain, and to drink some water and lie down. Ms. Duran continued to cry and complain and she lied down in dire pain pleading for medical care.

11.3. Defendants at all times were responsible to attend her during her pregnancy and for the ultimate delivery of her child, since she was incarcerated at the BCDC and she relied on the BCDC to properly treat and take care of her pregnancy.

11.4. Defendant's refusal to give the Plaintiff treatment when she requested it on October 20, 1994, and by perpetuating conditions of stress and anxiety by the over crowding at the BCDC, by failing to adequately ascertain and familiarize themselves with the Plaintiff's medical condition, by failing to discover that the Plaintiff was suffering and needed serious and immediate medical attention in this part of her pregnancy, resulted in serious injury to the Plaintiff.

11.5. The next morning Ms. Duran's contractions were five (5) minutes apart. At approximately 7:00 A.M. on October 21, 1994, they called the medical unit and they came up to see Ms. Duran. Ms. Duran was taken to the hospital at 7:00 A.M. and as a direct and proximate result of Defendant's negligence aforesaid, severe injury resulted which perpetuated the pre-mature birth of Ms. Duran's child.

11.6. A certificate of live birth was issued, however the child only lived for ten (10) minutes and died.

11.7. A physician who attended to Ms. Duran, (the Plaintiff) had informed her that if she had been brought in earlier, her contractions and her medical problem could have been treated, and the child could have been put in an incubator, and possibly her child could have been saved.

11.8. At the time of death, the minor child of the Plaintiff had a life expectancy of 70 years.

11.9. By reason of the death of the minor child of the Plaintiff, the Plaintiff has been deprived of her child's support, comfort, society, counsel and services, all to her damage.

11.10. As a direct and proximate result of Defendant's negligence, the Plaintiff, Ruthie Duran, suffered severely and substantial injuries and as a consequence of these injuries and neglect, gave premature birth to the deceased. The deceased was born alive and survived the birth for only ten (10) minutes.

11.11. As a direct and proximate result of Defendant's negligence, deceased was caused to be born pre-maturely, and the cause of death to decedent was pre-maturity.

11.12. There is no controversy in that the deceased, "A person within the meaning of state statute, and was not a non viable fetus when born, and lived for ten (10) minutes."

11.13. That as a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to the loss of her child. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

DEBORAH LAVERA

12.1. Deborah Lavera is in for Parole Probation Violation. Ms. Lavera is approximately 3 1/2 months pregnant and has taken three (3) pregnancy tests at BCDC which have come back with

positive results.

12.2. That the tests taken by Plaintiff were witnessed by Barbara Cow and also by Maria Lucero who are staff at BCDC in that they have witnessed her urine tests.

12.3. On the week of November 20, 1994, Ms. Lavera was informed by a nurse in the medical unit that they heard a rumor that she was not really pregnant so that they would retest her for the fourth time.

12.4. Ms. Lavera has taken three (3) tests which have been verified and she considers a fourth test to be without merit especially in light of the fact that she is being subjected to an additional test by conjecture and rumor, and at the present time is being refused proper medical treatment.

12.5. That the Plaintiff has volunteered to go to any hospital or clinic outside the BCDC and give a fourth urine test to qualify as indicated, however the staff nurse and the BCDC, whose name is David, said that if she did not give a urine analysis to them again, that she would not get another test period. Because the Plaintiff has already been given three (3) tests she sees a fourth tests as being invalid, harassing, and degrading.

12.6. To pressure the Plaintiff into cooperating for the fourth time, the Plaintiff was put into holding cell without blankets on November 27, 1994, and caught a severe cold. She had a runny nose and a fever and was refused proper medical care.

12.7. In addition, on November 17, 1994, the staff has started a policy of refusal in administering 85 ml. of Methadone to the

Plaintiff which was prescribed by Monroe Detox Clinic.

12.8. That the actions of the Bernalillo County Detention Center through its agents, makes the Bernalillo County and the City of Albuquerque vicariously liable in forcing the Plaintiff to take a fourth urine test is degrading and humiliating and is without just cause.

12.9. That the conduct of the Defendants in putting the Plaintiff in a cold cell and not allowing her Methadone when she is a heroin addict results in cruel and unusual treatment and could possibly result in prenatal injuries, and has already resulted in injury to the Plaintiff herself.

12.10. That the conduct of the Defendant is unreasonable, unwarranted and unlawful, and deprives the Plaintiff of her liberty and other privileges and immunity secured by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

12.11. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JANELLE ROYBAL

13.1. Janelle Roybal is in for conspiracy to commit fraud, and promoting prostitution. On approximately November 3, 1994, the Plaintiff refused to have homosexual sex with three (3) women inmates at the BCDC and as a result was beaten, punched, her hair

pulled and one of her teeth was knocked out.

13.2. That the beating that was inflicted on the Plaintiff for refusing to have homosexual sex lasted for approximately fifteen (15) to thirty (30) minutes and because of the over crowding at the BCDC was not noticed by any guards of the BCDC.

13.3. In addition to being beaten for not having homosexual sex, willing homosexual partners of the women who beat her are jealous of Mr. Roybal because sex is demanded by their partners and they have also continually threatened her with violence.

13.4. On December 7, 1994, the Plaintiff was again attacked and had to fight off a homosexual advance in the women' section. The Plaintiff was locked in a cell with a women named Samantha and there were no guards on duty in that section to see or prevent the vicious attack.

13.5. That at all times herein mentioned, the guards at the BCDC have been made fully aware of the fact that there is increased tension, homosexual violence, however because of the over crowding at the BCDC have not been able to properly protect any of the inmates specifically in this case, the Plaintiff Janelle Roybal, who will have to be put in protective custody and taken out of the general population because of the homosexual attacks which results in severe and unusual punishment for Janelle Roybal because of the negligence of the Defendants in keeping the areas free, and from over crowding.

13.6. That the conduct of the Defendants in having the BCDC over crowded is unreasonable, unwarranted, unlawful, and deprives

the Defendant of her right to be put in a general pod rather than in protective custody, and other privileges and immunities secured to her by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

13.7. In addition, the Plaintiff, Janelle Roybal, suffers from cancer and is in need of a hysterectomy, and despite repeated requests, and orders by medical staff at the Bernalillo County Medical Center, the BCDC has refused to facilitate a proper medical procedure to treat the Plaintiff, and she continues to be in great pain.

13.8. As a result of actions taken by the Defendants, in allowing over crowding, the Plaintiff suffered emotional distress and physical damage, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

DANNETTE DEFIORI

14.1. On November 23, 1994, Ms. Defiori came down with an ear infection. Dr. Mason prescribed 500 ml, three times a day, of K-Flex for her ear infection. Ms. Defiori began having an allergic reactions to the medication and began being infected all over her body with boils and what looked like grease burns on the second day after receiving the K-flex.

14.2. It is Plaintiff, Dannette Defiori's belief that Defendant, Dr. Mason was, at all times herein mentioned, an agent and employee of the Defendant, City of Albuquerque, and the County of Bernalillo, and/or the BCDC, and was authorized by those

Defendants to give medical care and attention to Dannette Defiori, and that he was acting within his scope of his employment at all times, and that by actions done in his individual capacity, as well as his capacity as an agent and employee and Defendant, BCDC, and the City of Albuquerque,

14.3. It is the contention of Plaintiff that Defendants, Bernalillo County, and City of Albuquerque, are responsible for the acts of Dr. Mason, under the theory of respondent superior, and therefore are vicariously liable for his acts.

14.4. That on November 23, 1994, the Plaintiff, Danette Defiore received a steroid shot on her hip. This also created ugly bruises and welts on her from head to toe.

14.5. That K-Flex that was injected by Dr. Mason has a 10% of carryover of penicillin, and that Dannette Defiori is allergic to penicillin and this was reflected on her record at the BCDC and it clearly states that she is allergic to penicillin and despite the fact that Dr. Mason had access to her files wherein it was stated that she was allergic to penicillin, still gave her a shot of K-Flex wherein he stated, "Well I hope your not allergic to K-Flex". However had he proceeded with due caution and care would have noted that K-Flex does have penicillin.

14.6. Despite the boils that have developed all over the body of Danette Defiori, she has been refused hospitalization and proper care, and continues with boils all over her body including her genitals.

14.7. That because of the negligence of Dr. Mason, and the

refusal of the BCDC to give the Plaintiff proper medical care, she has suffered greatly.

14.8. That the conduct of the Defendant has been unreasonable, unwarranted and unlawful, and has deprived the Plaintiff of her right to be secure in her person, and other privileges and immunities secured to her by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

14.9. As a result of actions taken by the Defendants, Plaintiff has suffered emotionally and physically and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

MARIA SISNEROS

15.1. Maria Sisneros is a Plaintiff in for felony shoplifting and residential burglary.

15.2. Plaintiff has had sexual advances made by her by a nurse at the BCDC named David.

15.3. Plaintiff described the Defendant as being a short red haired man and is known by female residents as "Pervert David".

15.4. It is Plaintiff's information and belief that Defendant David was and at all times herein mentioned an agent and employee of the Defendant BCDC, the County of Bernalillo and the City of Albuquerque and is authorized by the Defendant to operate and run or in the very minimum work within the infirmary at the BCDC and at all times herein mentioned was acting within the scope of his

employment. And that all actions done by him were done in his individual capacity as well as in his capacity as an agent and employee of the Defendant BCDC and the City of Albuquerque.

15.5. When the Plaintiff first came into BCDC in April 1994, she stated herein that the employee of the BCDC known as David asked her if he could see her bare body. He promised to bond her out of jail. The Plaintiff refused and threatened him with a report, however has not made up a formal report against him.

15.6. On or about November 15, 1994, Defendant known as David took the Plaintiff in for a pregnancy test at the BCDC and caressed her breasts and caressed her all the way down to her waist.

15.7. When the Defendant got to her waist he turned around to look at the correctional officer present whose name was Tina, who had her back facing them all this time and was not paying attention and at that particular time the Defendant stopped fondling the Plaintiff and got a urine sample for the pregnancy test.

15.8. That all times herein mentioned, the Defendant touched the Plaintiff without permission and such touching was offensive. That all times herein mentioned, the Plaintiff has been afraid of retaliation and has not formally filed a grievance against the Defendant known as David.

15.9. That the conduct of the Defendant was unreasonable, unwarranted and unlawful, and has deprived the Defendant of her liberty and the right over her own person, and other privileges and immunities secured by the Constitution of the United States of America and by the Constitution and Law of the State of New Mexico.

15.10. As a result of actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

LARRY GREEN

16.1 Larry Green is in for trafficking cocaine. On approximately November 10, 1994, he was having to work cleaning up the pods at 3:00 A.M., in the morning. He was asked to scrub the floor with a brush and strip the stairs. At this time in the morning, the lights were off which made it too dark to see safely. Larry ended up slipping off the stairwell and cutting his foot. He was transported to UNM Hospital where he received two (2) stitches on his foot. The conditions he was asked to work under were unreasonable and hazardous. No rubber boots or other safety supplies were given to the Plaintiff to prevent such an injury.

16.2. Mr. Green also noted that when the accident happened, there was not a guard on the floor which is a requirement. Instead the guard was in the control center but the guard falsified the report by not including this information.

16.3. A second incident on or about November 17, 1994, Mr. Green claims his girlfriend, Lupe, dropped off \$10.00 for him which was taken by BCDC staff, the Canteen Officer, because he said he owed them for supplies. Such allegation was false and his \$10.00 was kept unlawfully.

16.4. That the Defendant has been in the BCDC since August of

1994 and has not received indigent supplies for most of that time which includes soap, shampoo and toothpaste.

16.5. In addition, BCDC does not utilize appropriate grievance procedures, and therefore they have become non-existent. The grievances of not having indigent supplies have been totally ignored by the BCDC since there is no grievance committee and no feedback is given with regards to the grievance reports submitted at the BCDC.

16.6. Because of the negligence of the Defendants, and their unreasonable unwarranted and unlawful conduct in having the Defendant work without proper attire or in a safe environment, in addition to not allowing indigent supplies like toothpaste, toilet paper and soap, in addition to not providing an appropriate grievance procedure or committee, the Defendants have acted unreasonably, unwarranted and in an unlawful fashion and have deprived the Plaintiff of his basic Constitutional Rights, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws of New Mexico.

16.7. As a result of the actions taken by the Defendant, Plaintiff has suffered emotional and physical distress and has been subjected to humiliation and embarrassment in addition to pain and suffering. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

BARTEL HALEY

17.1. Plaintiff, Bartel Haley, was arrested for possession of

cocaine on April 1, 1994.

17.2. On that particular date, the Plaintiff was approached from behind and hit without warning by the Albuquerque Police Department and they knocked him out. Paramedics who arrived on the scene insisted that they take him to the hospital but he ended up being taken to BCDC instead because police officers were of the opinion that he would run away from the hospital. Lieutenant Chavez at BCDC took pictures and sent him to the infirmary for a few days but refused to give him hospitalization.

17.3. The Plaintiff continually requested to see a physician at the BCDC or at another medical institution but was refused.

17.4. That the Defendant suffered cracked ribs, a fractured tooth and other serious injuries but medical attention was denied him by Lieutenant Chavez.

17.5. It is Plaintiff's information and belief that the Defendant, Lieutenant Chavez was at all times herein mentioned an agent and employee of the BCDC and the City of Albuquerque and the Board of Commissioners of the County of Bernalillo and was authorized by the Defendants to determine whether the Plaintiff should and did receive medical attention, and the Defendant Chavez was acting within the scope of his employment at all times, and that all actions by him were done in his individual capacity, as well as his capacity as an agent and employee of the Defendant BCDC, the Defendant Board of Commissioners of the County of Bernalillo and the City of Albuquerque.

17.6. Defendant Chavez, the BCDC, the Board of Commissioners

of the County of Bernalillo are all individually, as well as vicariously, liable for the actions set forth herein.

17.7. That because of the negligence of the Defendants in not authorizing immediate medical care for the Defendant, he has been permanently disabled and scared, and the conduct of the Defendant was unreasonable, unwarranted and unlawful, and deprived him of his due process rights, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws by the State of New Mexico.

17.8. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and damages and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

MICHAEL COTE

18.1. That the Plaintiff has been incarcerated at the BCDC for numerous months and has not been provided on a full time basis with indigent supplies like soap, shampoo, and toothpaste and has no money on the books to purchase those items.

18.2. In addition, the Plaintiff complains that the cleaning supplies which the BCDC has to keep the facilities clean is very limited in that they have very minimal cleaning supplies, very few brooms, no mops, and for the most part the mop heads smell like sewer. In addition, the rooms are filled with cockroaches, mice and other vermin.

18.3. The Defendant complains that there is no reasonable

procedures to file a grievance regarding lack of indigent supplies.

18.4. That the conduct of the BCDC is unreasonable, unwarranted and unlawful in that it deprives the Plaintiff due process and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

18.5. That as a result of actions taken by the Defendant, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JOE RAY HERRERA

19.1. Mr. Herrera suffers from a sleeping disorder called Sleeping Amnia and because of the over crowding is suffering great emotional distress and is in constant pain.

19.2. In addition, Joe Ray Herrera is in the BCDC for the crime of burglary. At the time he was arrested, he had been hit over the head with a rock, suffered great damage, and is in a lot of pain and continually requested a cat-scan and other medical intervention regarding his head injury but has been refused such.

19.3. In addition, Mr. Herrera was involved in a fist fight with a relative of someone who works at the BCDC, in fact the father-in-law of this person he has been involved with works at the BCDC.

19.4. Because of the altercation, the father-in-law (John Doe) who is an employee at the BCDC has continually threatened the

therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

CARL RAY LOPEZ

8.1. On November 5, 1994, at 9 A.M., Donald Sullivan, a psychologically impaired inmate at the BCDC, who belonged in the Psych. Ward, attacked Plaintiff Carl Ray Lopez, for no reason.

8.2. Mr. Lopez went down to see the nurse after his attack and he was informed that he was fine. The Plaintiff told the nurse that his head and back hurt and they told him to wait until the swelling went down. The Plaintiff was given an ice pack for his bumps.

8.3. The Plaintiff continued to complain about his back and leg pain and asked the nurse in R & D if he could see a doctor. The nurse refused saying that the Plaintiff had already seen medical.

8.4. At approximately 8:00 P.M., the Plaintiff was talking to Tom Horton in his cell. Michael Donovan, another psychologically impaired individual who belong in the Psych. Ward in the BCDC, but who was in the general population, came in and told the Plaintiff to stop talking about him.

8.5. The Plaintiff informed him that he did not know him to talk about him and Mr. Donovan said he would fuck the Plaintiff up if he did not stop. There was no 8:00 P.M. head check by the BCDC employees.

8.6. At 8:35 P.M. the Plaintiff walked down the stairs and shared a cup of coffee with Tom Horton. C & D pods were now out.

The Plaintiff asked Lorraine (employee of BCDC) (John Doe) if she would let him talk to the Lieutenant and she said to hold on, but the Lieutenant said she would be back in a little while.

8.7. On November 5, at 9:00 P.M., Michael Donovan came running out of his room shouting and telling the Plaintiff that he was going to fuck him up. Michael Donovan threw a kick at the Plaintiff and missed. The Plaintiff backed up and asked Mr. Donovan what the problem was. Mr. Donovan told the Plaintiff that he was talking about him and the Plaintiff said I don't even know you. Mr. Donovan started swinging and the Plaintiff backed up away from Mr. Donovan trying to make him understand the he did not know him and that he had not talked about him and using all his efforts to avoid a fight with Mr. Donovan.

8.8. Finally Mr. Donovan hit the Plaintiff about 5 or 6 times and the Plaintiff could not take it any longer. The Plaintiff still did not hit Mr. Donovan but he tried to wrestle him down, but Mr. Donovan kept popping the Plaintiff in the face. The Plaintiff flipped over the chairs and fell to his knees. Mr. Donovan kept on kicking the Plaintiff and the Plaintiff tried to roll away but he kept on.

8.9. Finally, Tom Horton said he had enough and he broke it up. Then the guards finally came and the Plaintiff stayed in the corner of the room. Three or four officers came, and at that particular point hand cuffed him and took him to see medical.

8.10. On November 5, at 9:30 P.M., the Plaintiff saw a male nurse. The nurse asked him to wash his face so he did. The nurse

looked over the Plaintiff, took pictures of his face and back, and asked him if he wanted to see himself. The Plaintiff did and saw that his face was all bumpy and that he had cuts over his eyes, the side of his head, under his right eye and some in his mouth. The nurse gave the Plaintiff three (3) Advil and an ice pack. The Plaintiff informed the nurse that his head and back hurt and the nurse said it was just the incredible swelling.

8.11. On November 5 at 9:45 P.M., the Plaintiff was taken to R & D. The Plaintiff told Marty, (a correctional officer) (John Doe) that his back and legs were hurting him and the correctional officer took him by the R&D medical door.

8.12. The correctional officer told the Plaintiff not to even look at Michael Donovan who was in the door next to medical. The Plaintiff waited for awhile and then they locked him up in cell 1.

8.13. Every time a correctional officer would pass by the Plaintiff, he would tell them that he needed to talk to the Lieutenant or Captain because he was seriously hurt and they would say hold on. The Plaintiff told them that his back was hurting. He told a bald headed man that works in medical (John Doe) that he wanted to see a doctor and he said you already saw medical and refused his request for a doctor.

8.14. The Plaintiff agreed but informed him that he still needed to see a doctor and the employee of the BCDC said no I don't think so and walked away. At about 11:00 P.M., the Plaintiff asked to make a phone call and they said no.

8.15. Between 12:00 and 12:30 P.M., the Plaintiff was being

Plaintiff, and has sent word that he will die. Because of such, the Plaintiff has been put in the protective (PSU) unit. The father-in-law who is a correctional officer will be identified at a later point in time.

19.5. Because of the actions of the Defendant father-in-law and the BCDC, such conduct has been unreasonable and unwarranted, coupled with the fact that the Defendants have refused to give the Plaintiff proper medical care, all of which have deprived him of his due process and equal protection rights, and his privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and laws of the State of New Mexico.

19.6. That as a result of actions taken by the Defendant, Plaintiff has suffered physical and emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JOSIE KRIENER

20.1. Josie Kriener is in for failure to comply with probation.

20.2. Ms. Kriener is going through a lot of stress and emotional problems because of the over crowding. In addition, she has been unlawfully detained in lock down four (4) different times since May 1994.

20.3. The first time that the Plaintiff was locked down was because she was informed that she could not have her hair in

extensions. Because of her refusal, she was put in lock down for approximately fifteen (15) days.

20.4. Subsequently a couple of the correctional officers by the name of Lorraine Vallenzuela and Sherry checked on the issue for her and were informed that she did not have to take her hair down and therefore the punishment she received was unwarranted in this regard.

20.5. A correctional officer by the name of Evelyn made the accusation against the plaintiff that she had stolen some shoes, and because of such allegation she was again put on lock down. However, it was subsequently determined that the Plaintiff had in fact bought the shoes at the commissary but that the shoes were not actually the girls who sold them to her. In any event, it was proven that the Plaintiff did not steal the shoes, and the subsequent lock down was without justification.

20.6. In another incident a correctional officer by the name of Barbara Cole, who was serving food was asked by the Plaintiff if she could have more juice and the correctional officer's response was that the Plaintiff was too fat and was a pig and did not need any more juice.

20.7. The Plaintiff's response was that she was old and senile and she needed to get laid. They locked Ms. Kriener down this time for an additional fifteen (15) days and the lock down was unwarranted and cruel and unusual punishment.

20.8. In addition, on or about November 18, 1994 the Plaintiff was locked down in addition to her entire pod because two (2) girls

has gotten into a fight, and the lock down of everyone because of two (2) individuals fighting was unwarranted and unjustified and unfair to all the other individuals.

20.9. In addition, the Plaintiff along with other female inmates have continuously requested a steady supply of toilet tissue, however have made several requests to Jerry Gino of the BCDC and such requests have been refused, and the Plaintiff and her roommates have been forced to use brown paper bags and magazines to clean their genital areas.

20.10. In addition, the lack of toilet paper and the forcing of use of brown paper bags and magazines to clean themselves has resulted in rashes, discomfort and is very embarrassing, because the Plaintiff has now developed boils on her rectum and is now using Hydro-Cortisone to help alleviate the pain in her anus and vagina.

20.11. That at all times herein mentioned, the Plaintiff has informed Lieutenant Kathy Martinez of the toilet paper problem, and the BCDC has been made fully aware of the problem with the lack of toilet paper, shampoo and soap and other indigent supplies.

20.12. In addition, the BCDC on the women's side has numerous shake downs where her personal papers and documents have been taken away.

20.13. That at all times herein mentioned, upon Plaintiff's information and belief, the Defendants named herein mentioned are agents and employees of the Defendants, and therefore the Defendants BCDC and the City of Albuquerque are vicariously liable

for the conduct of their employees.

20.14. That because of the conduct of the Defendants, which is unreasonable, unwarranted, unlawful, the Defendant has been deprived of due process and equal protection and of her right to peaceably live, and other privileges and immunities secured to her by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

20.15. As a result of actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subject to humiliation and embarrassment in addition to physical damage. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

DEBBIE LUCERO

21.1. That while Debbie Lucero was incarcerated in the BCDC, and while she was several months pregnant, and suffered great stress and tension because of the over crowding, and suffered great abdominal pain and subsequently aborted.

21.2. That as a direct and proximate result of the Defendant's negligence, and over crowding, the BCDC in creating additional stress for the inmates, and as a result of causing stress upon the deceased, he was still born. And by reason of the Plaintiff surviving the deceased and being deprived of the support, comfort, society, counsel and services of the deceased has suffered damages.

21.3. That the refusal of the Defendant to provide medical care and the refusal of the BCDC to keep the population at appropriate limits and because of over crowding, the Plaintiff

suffered a miscarriage, and the conduct of the Defendants in that regard was unreasonable, unwarranted and unlawful, and deprived the Plaintiff of her right to due process and equal protection and immunity secured by her to the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

21.4. That as a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater and \$50,000.00, the exact amount to be proven at trial.

JIMMY LEE MCCLENDON

22.1. Jimmy Lee McClendon is an individual who is severely mentally impaired and is basically homeless.

22.2. The Plaintiff was incarcerated at the BCDC and because of his psychological impairment was placed in the psychiatric unit, and subsequently got toothpaste in his eye, and because of the negligence of the BCDC, coupled with Mr. McClendon being unable to take care of his eye or himself, Mr. McClendon scratched his eye and the infection spread to his face, and subsequently that required extensive medical treatment, and it is a strong probability that Mr. McClendon might lose his eye, and therefore suffered compensatory damages.

22.3. As a result of the Defendant's failing to properly supervise Jimmy Lee McClendon because he is psychologically impaired and their refusal to adequately treat the Defendant,

deprived him of his due process and equal protection rights, and privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Law of the State of New Mexico.

22.4. As a result of actions taken by the Defendants, Plaintiff has suffered physical and emotional distress and physical injury and has been subjected to humiliation and embarrassment because of the scarring on his face. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

HAROLD P. LUND

23.1. Mr. Harold P. Lund was brought into the Bernalillo County Detention Center on or about October 1, 1994, after being arrested for DWI and being in a car accident. He was not afforded medical attention for three (3) days despite the fact that he made repeated attempts indicating that he had been hurt in the car accident, and that he could not eat or swallow and that he was spitting up blood.

23.2. The Plaintiff was in the BCDC for three (3) days without any medical treatment, and subsequently upon his release, he went to the UNM Medical Center where it was determined that he had suffered a broken upper pallet and several small fractures to the right cheek, and subsequently he has to go through several severe surgeries because of the negligence of the BCDC refusing him medical attention.

23.3. The conduct of the Defendants, in refusing to give

medical attention to the Defendant for three (3) days, was unreasonable, unwarranted, and unlawful and deprived him of his liberty, his right to due process and equal protection and privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

23.4. As a result of actions taken by the Defendants or the lack thereof, Plaintiff has suffered physical damage and great emotional distress and has been subjected to extreme hardship and pain notwithstanding humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

PETER J. SMITH

24.1. On October 21, 1994, the Plaintiff, Peter J. Smith was taken to the BCDC by officers Victor J. Hernandez and Kevin D. Sevir of the University of New Mexico Police. At approximately 11:00 after being booked and held in a holding pen the Plaintiff was taken upstairs to spend the night at BCDC.

24.2. The Plaintiff was taken to an elevator with approximately five other men who were being escorted to cells as well. The Plaintiff stepped out of the cage that encompasses the door of the elevator, he was forcibly pushed from behind on the top of his shoulders which both jerked and snapped his head back. The Plaintiff was told by a correctional officer to move along even though he was moving in stride with the rest of the group.

24.3. The Plaintiff was pushed from behind once again in the

same manner. This time he turned around and said if you are going to push me like that I would at least like to know what your name is. The correctional officer's badge was partially covered up because it was sideways and in a crease of his uniform and the Plaintiff did not get his name.

24.4. The correctional officer who pushed the Plaintiff was about 5'10", black hair that was tied in a small pony tail, a small thin mustache, and was wearing glasses and was a big boned, husky, broad shouldered man. When the Plaintiff tried to look at his name tag he said, "Shut the fuck up, you don't need to know what my name is, get in the fucking cell."

24.5. At this point the correctional officer gave the Plaintiff one final push, this time to the front in his chest area that pushed him into cell F-1. The Plaintiff was given a blanket and a towel and he put in on the floor where there was room and went to sleep.

24.6. Around 4:00 A.M. the door opened and the correctional officer that had pushed the Plaintiff earlier that night was standing at the door and said, "Smith, P. Smith, come with us please." He was accompanied by a second correctional officer that was short 5'6" - 5'8", of Mexican decent and about 40 to 45 years of age. They took the Plaintiff to a vacant cell on the second level which was on the right hand side if facing the cells from where the correctional officer's desk is.

24.7. The Plaintiff was told to sit down and after he sat down on the concrete slab he looked up and the officer who had pushed

him earlier that night and saw that he had wrapped his hand in a towel and the correctional officer punched the Plaintiff across his face, hitting his nose. The Plaintiff laid down on his side and the two correctional officers began to laugh and the one who hit him said, "That will teach you to keep your fucking mouth shut." The second correctional officer had stood in the doorway and watched while the first one hit the Plaintiff. The Plaintiff was left in the cell for about 20 to 30 minutes and then they took him back down to his original cell.

24.8. Breakfast was called an hour or two later and the correctional officer who hit the Plaintiff was the one handing out the trays with breakfast. He was not wearing his name tag at this point. Later that morning (Saturday October 22, 1994), the Plaintiff was called out to the area where there are tables to fill out a form to see if he could be released on his own recognizance. The pre-trial officer the Plaintiff spoke with was Paul Stein. After the Plaintiff had given Mr. Stein the information he wanted, the Plaintiff told him that he had been beat up the night before. The Plaintiff pointed to the correctional officer who had hit him the night before because he was standing less than 20 feet away. The Plaintiff asked Mr. Stein how he could file a formal complaint and Mr. Stein informed the Plaintiff that he could do it when he was released to downstairs.

24.9. After the interview with Mr. Stein the Plaintiff walked back to the cells by the phones and watched Mr. Stein and the correctional officer have a conversation while the entire time the

correctional officer was starring at the Plaintiff. The Plaintiff was released from custody around 4:00 P.M., Saturday October 22, 1994 without any charges brought against him.

24.10. On Tuesday, October 25, 1994, the Plaintiff went to speak with Captain Felimon Martinez accompanied by Andres Valdez of New Mexico Vecinos United. Captain Martinez took notes as he told him what had happened to him and they went to his office to try and identify the correctional officer who had hit the Plaintiff. The photo line-up was incomplete and Captain Martinez was waiting for updated photos from the Albuquerque Police Department I.D. Department.

24.11. That despite repeated requests by Mr. Smith to try and identify the correctional officer that beat him, Captain Martinez did not have any updated photos of his officers and therefore the correctional officer who beat the Plaintiff has never been identified.

24.12. That all times herein mentioned, the correctional officer who beat the Plaintiff is an employee and/or agent of Defendant, Bernalillo County Detention Center, or the City of Albuquerque or the County Board of Commissioners, and were acting individually and in his official capacity of employee, and therefore the Defendants BCDC, the City of Albuquerque, and the County of Bernalillo are vicariously liable to the Plaintiff for the conduct of its employees.

24.13. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of

law, to-wit: under the color of the statutes, ordinances, regulations customs and usages of the State of New Mexico and rules of the BCDC. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the Laws of the State of New Mexico.

24.14. That at all of the times of the events herein mentioned Plaintiff was acting in a reasonable and peaceful manner, and was not disturbing the peace or committing any infraction against the BCDC rules.

24.15. That despite the fact that Plaintiff was acting in a reasonable and peaceful manner, and was not in any way or fashion disturbing the peace or committing any offense against the BCDC or the officers, Plaintiff was assaulted and beaten in an unreasonable, unwarranted, and unlawful fashion by false pretext, by the BCDC officers named herein, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

24.16. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JOSEPH GARCIA

25.1. On or about August 15, 1994, Joseph Garcia was in one north maximum security when he and his cousin Manuel Martinez started fighting.

25.2. A rookie correctional officer pushed the panic button and the riot crew immediately responded and as they separated them, two (2) correctional officers started to severely beat Joseph Garcia.

25.3. Joseph Garcia received multiple contusions and abrasions and was viciously beaten by the officers and such force was clearly excessive and was not warranted.

25.4. The force used by the officers against Mr. Garcia under the circumstances was such to violate such federal and state law and inflicted great bodily harm, was arbitrary and beyond that which was reasonably necessary to serve legitimate ends, and was shocking to the conscious.

25.5. That all times herein mentioned, the correctional officers who beat the Plaintiff were employees and/or agents of Defendant, Bernalillo County Detention Center, or the City of Albuquerque or the County Board of Commissioners, and were acting individually and in their official capacity as employees, and therefore the Defendants, BCDC, the City of Albuquerque, and the County of Bernalillo are vicariously liable to the Plaintiff for the conduct of its employees.

25.6. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of

law, to-wit: under the color of the statutes, ordinances, regulations customs and usages of the State of New Mexico and rules of the BCDC. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

25.7. That at all times herein mentioned the officers of the BCDC acted in a manner that was unreasonable, unwarranted, and unlawful fashion by false pretext, by the BCDC officers named herein, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

25.8. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

MANUEL GARCIA

26.1. On or about August 15, 1994, Manuel Garcia was in one north maximum security when he and his cousin Joseph Garcia started fighting.

26.2. A rookie correctional officer pushed the panic button and the riot crew immediately responded and as they separated them,

two (2) correctional officers started to severely beat Manuel Garcia.

26.3. Manuel Garcia received multiple contusions and abrasions and was viciously beaten by the officers and such force was clearly excessive and was not warranted.

26.4. The force used by the officers against Mr. Garcia under the circumstances was such to violate such federal and state law and inflicted great bodily harm, was arbitrary and beyond that which was reasonably necessary to serve legitimate ends, and was shocking to the conscious.

26.5. That all times herein mentioned, the correctional officers who beat the Plaintiff were employees and/or agents of Defendant, Bernalillo County Detention Center, or the City of Albuquerque or the County Board of Commissioners, and were acting individually and in their official capacity of employees, and therefore the Defendants, BCDC, the City of Albuquerque, and the County of Bernalillo are vicariously liable to the Plaintiff for the conduct of its employees.

26.6. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of law, to-wit: under the color of the statutes, ordinances, regulations customs and usages of the State of New Mexico and rules of the BCDC. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth,

Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

26.7. That at all times herein mentioned the officers of the BCDC acted in a manner that was unreasonable, unwarranted, and unlawful fashion by false pretext, by the BCDC officers named herein, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

26.8. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JOHN LAWVER

27.1. John Lawver is a 31 year old man from Chicago. He is in BCDC on a Detainer Court Writ from Dixon Correctional Center. Mr. Lawver arrived at BCDC on November 1, 1994.

27.2. On Sunday December 4, 1994 at approximately 8:30 PM he was talking on the telephone with his mother out of Chicago and he was facing the direction of the day room with his head against the window.

27.3. The Plaintiff suddenly felt pounding on his head. He was struck approximately seven (7) times. He fell straight down with his hand covering his head.

27.4. He looked up and he saw an inmate, Reuben Romero,

swinging and beating his head with an ice pitcher which was clear white hard plastic. Reuben is psychologically impaired and is an inmate who belongs in the psych. ward and until the date of this incident was unknown to the Plaintiff.

27.5. The Plaintiff was unable to get up because he was pinched between the window and the chair. He finally did get up and tried to grab the pitcher from the mentally deranged inmate, however Reuben Romero ran upstairs and locked himself in a room.

27.6. At that time, the Plaintiff went up to his room and sat on his bed. He was feeling very unconscious and was bleeding badly from the top and side of his head. He was badly cut.

27.7. He started to wash his wounds and about that time a correctional officer came into his cell which was B-11 on second north.

27.8. The correctional officer asked the Plaintiff what was wrong and the Plaintiff said he needed medical attention and asked the officer if he could please get him some.

27.9. The correctional officer suggested they go downstairs and talk to the control officer and go from there. The Plaintiff stated that he needed to stay in his room because he was just beaten almost to death with a pitcher and he needed medical attention right then.

27.10. The correctional officer said no, lets go downstairs and I can assist you downstairs, I can handle this situation. The Plaintiff once again stated that he wanted to stay in his room because he could not walk until further assistance could come to

his room to help him.

27.11. At that time the correctional officer denied the Plaintiff any kind of medical assistance so the Plaintiff followed the officer downstairs into the day room though unconscious and feeling very poorly he had no choice but to follow the correctional officer as he suggested and barely did so.

27.12. At that time the officer approached the control window and was talking to the correctional officer. The Plaintiff was walking around the day room a couple of times trying to gain consciousness that he was losing.

27.13. The correctional officers asked him to go to the gate and the Plaintiff did. He was taken outside the blue door and was seen right away by a medical person that was standing out there. The medic asked him if he was alright and the Plaintiff stated No. He was losing a lot of blood and needed to go to the hospital.

27.14. The medic instructed the Plaintiff to sit down and wait for the Lieutenant to come and take him downstairs. The Plaintiff was taken downstairs into the medical room.

27.15. At that time, the officers came in and took pictures of the Plaintiff. The Plaintiff spent at least two hours at the BCDC before he was taken to the hospital.

27.16. The Plaintiff was then taken to the hospital and he was stitched up. At the hospital he was taken to the x-ray room and numerous amounts of x-rays were taken. At least twenty on his head, neck, spine and other parts of his body.

27.17. He then had to wait for the x-rays to come back because

the hospital staff did not want to do further work on him until they knew how injured he was.

27.18. After about four (4) hours, he went into the suture room and was given approximately 16 stitches on his head.

27.19. The Plaintiff spent approximately nine (9) hours at the hospital. At approximately 9:30 A.M. the officer at the hospital was relieved and he was taken back to BCDC.

27.20. He was then put into a holding cell downstairs for a total of thirty (30) minutes and then a correctional officer came to him with a tray and stated he was being moved to the first floor where they had a room for him.

27.21. At this time he was still drowsy and sleepy because he was given shots for his pain and the correctional officer still had his prescription in his hand and stated he was going to get it filled.

27.22. The Plaintiff was taken downstairs and ate his breakfast. He was sitting in a room that had nothing in it, not a mattress or anything. The sink and toilet were filthy and clogged up.

27.23. The Plaintiff sat there for an hour and was becoming concerned about the sanitary condition of the room and the fact that he had fresh wounds on his body.

27.24. At that time the Plaintiff got the attention of a correctional officer who called another correctional officer and both officers agreed that the Plaintiff should not be in that cell.

27.25. The officers called assistance from a Lieutenant

George, who came and one of the correctional officers, George Fuentes explained the situation to the Lieutenant and asked if they could put the Plaintiff in a new room.

27.26. The Plaintiff was moved to another room on two south where there was a mattress. He asked for his medication which he did not receive that night and was in extreme pain and suffered greatly because they refused to give him the medication that had been prescribed to him at the hospital.

27.27. The Plaintiff awoke the next morning about 6:00 A.M. and he was in extreme pain. He asked a correctional officer if he could see medical. The correctional officer stated that medical would be there at lunch time.

27.28. At that time the Plaintiff laid back down until lunch time. Being in such pain he could hardly eat and requested the correctional officer to please bring him his medicine.

27.29. At approximately 4:00 P.M. the Plaintiff still had not received his medication so he requested it once again and asked to see medical.

27.30. The correctional officer said he would call medical but at 5:30 P.M. the Plaintiff still had not seen medical.

27.31. The Plaintiff alleges that Reuben Romero, the inmate who attacked the Plaintiff is in fact a PSU patient, and has been in a psychiatric unit at the Penitentiary of New Mexico before. The Plaintiff alleges that Reuben Romero should have never been on the same floor that the Plaintiff was in but should have been in the psychiatric unit. If Reuben Romero would have been placed in

the psychiatric unit and appropriately treated by the BCDC, the vicious attack on the Plaintiff would never have occurred.

27.32. The beating of the Plaintiff lasted about twenty (20) minutes with no intervention and it was thirty (30) minutes before the Plaintiff was actually taken off the floor.

27.33. That despite the fact that Plaintiff was acting in a reasonable and peaceful manner, and was not in any way or fashion disturbing the peace or committing any offense against the BCDC or the officers, Plaintiff was assaulted and beaten by a psychiatric patient in an unreasonable, unwarranted, and unlawful fashion by false pretext, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

27.34. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

MICHAEL LANDO

28.1. On November 14, 1994 while in a protective custody status in the jail, the Plaintiff was attacked by four (4) inmates. The assault was racially motivated.

28.2. That evening on November 14, 1994 a correctional officer and two (2) strong inmates entered the Plaintiff's cell and threatened his life and the correctional officer stated, "You are

fucking with the familia, no matter where you go we are going to kill you."

28.3. After the attack on November 14, 1994, BCDC authorities took photos of the Plaintiff in his beaten up status.

28.4. That at all times herein mentioned, the four (4) inmates that went in and beat and assaulted the Plaintiff were allowed into his cell by a correctional officer working at the BCDC. In addition, the same correctional officer subsequently went in and threatened to kill the plaintiff.

28.5. That the Defendants, Bernalillo County and the City of Albuquerque, and the Board of County Commissioners are vicariously responsible for the conduct of the several officer Defendants.

28.6. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of law, and under statutes, ordinances, and regulations of the BCDC and of the State of New Mexico. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of the Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

28.7. That at all of the times of the events herein mentioned Plaintiff was acting in a reasonable and peaceful manner, was not disturbing the peace or committing any infraction against any of the officers involved or the BCDC.

28.8. That despite the fact that the Plaintiff was acting in

a reasonable and peaceful manner, and was not in any way or fashion disturbing the peace committing any infraction against the BCDC or any of the employees therein, Plaintiff was assaulted, beaten and punched in a unreasonable, unwarranted, and unlawful fashion, under false pretext, and was thereby deprived of his liberty, and his right to peaceably be therein, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and the Laws of the State of New Mexico.

28.9. As a result of actions taken by the Defendants, Plaintiff has suffered physical and emotional damage and distress and has been subjected to physical pain, humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

SHAWN DUFFY

29.1. Mr. Duffy was recently convicted of first degree murder, and when he was brought back to the BCDC, correctional officers at the BCDC took all of the Plaintiffs possessions including confidential papers from his attorney, legal documents from the Court, including an order from the Honorable Ross Sanchez to allow Mr. Shawn Duffy access to the law library at the BCDC.

29.2. In addition, the correctional officers at the BCDC also took Mr. Duffy's food, and other personal items like a toothbrush, toothpaste, soap and his shoe strings.

29.3. The Plaintiff was put on the suicide watch and locked into a single cell with fifteen minute checks and defense counsel or any of the defense counsel staff was not allowed to talk to

Shawn Duffy.

29.4. That subsequently counsel for the Plaintiff was informed that there was a red alert on Shawn Duffy because he had indicated that he was going to hurt any roommate they imposed on him or any of the correctional officers that came near him, and those allegations are false and without merit and no disciplinary action has been filed to this date against Shawn Duffy.

29.5. In addition, Chief Griffith informed Plaintiff that threats had been made against Mr. Shawn Duffy from his old pod and for these reasons Mr. Griffith was forced to take action and locked him down and such allegations are false and without merit.

29.6. To this date, Mr. Duffy had filed two (2) grievances and they have both gone ignored and unanswered and Mr. Duffy has yet to receive any legal or personal belongings which were taken from him from the BCDC staff.

29.7. In addition, Mr. Duffy and been treated despondently and cruelly by correctional officers since his conviction indicating that they did not want him in their level because they did not have a favorable opinion of him because he was convicted of first degree murder.

29.8. That at all times herein mentioned the Plaintiff was not allowed to receive legal papers or written letters from his lawyer because he was on a red alter status.

29.9. That at all times herein mentioned the psychiatric staff at the BCDC indicated that Mr. Shawn Duffy despite being locked down should have had his personal possessions and should have been

allowed his legal papers.

29.10. In addition, during his period of incarceration at the BCDC, Mr. Duffy sustained serious injury from correctional officers specifically one correctional officer named Lovato.

29.11. At that particular time when he suffered a severe beating by Lovato, Mr. Duffy had a PSU Psych. Ward guy as a cell mate who required psychiatric help, who had been kicking and banging the door of the cell. The correctional officer i.e., Lovato judged Duffy to be the culprit and beat on him while he was hand cuffed.

29.12. That Shawn Duffy the Plaintiff was injured and sustained shoulder injuries and was taken to the hospital to treat his unlawful injury. Mr. Duffy could not fight back because he was in handcuffs.

29.13. Since the beating, Mr. Duffy, the Plaintiff has had problems with pain and his capacity to use his shoulder and has been scheduled continuously to visit the doctor at UNM Hospital.

29.14. That despite the fact that the injuries that Plaintiff, Shawn Duffy, received were at the hands of the BCDC i.e., Lovato, The BCDC staff has refused to take the Plaintiff for medical treatment and care and has two (2) cards showing that they refuse to take him to two (2) appointments at UNM Hospital. One of them was on October 14, 1994 and the other was on October 28, 1994.

29.15. That the BCDC staff continues to ignore his request for the medication for the pain in his shoulder that was allowed to him by the doctors at UNM Hospital, and at the very minimum has

refused his continued to request for Advil to keep the inflammation down.

29.16. On one occasion the Plaintiff was administered steroids and pain killers and this one treatment did not alleviate the problem that Mr. Duffy continues to face with the permanent injury he has suffered as a result from a severe beating by the BCDC staff i.e., Lovato.

29.17. That just recently Mr. Shawn Duffy was taken back to his normal pod and now after nine (9) months of being at the BCDC is still having to sleep on the floor without sufficient blankets.

29.18. In addition, visitors who come to see Mr. Duffy, including his attorney are continually harassed, and interrogated about visits with the Plaintiff.

29.19. That at all times herein mentioned BCDC correctional officer Lovato was an employee and an agent of the BCDC and the City of Albuquerque, and was acting individually and in concert with other officers, and therefore Defendant Bernalillo County Detention Center and the City of Albuquerque are vicariously liable for the conduct of Lovato.

29.20. In addition, the Defendants jointly and separately have violated the Defendant's rights as mentioned herein by other actions, which have been unreasonable, unwarranted, and unlawful fashion, under false pretext, and was thereby deprived of his liberty, and his right to peaceably be therein, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and the Laws of

the State of New Mexico.

29.21. As a result of actions taken by the Defendants, Plaintiff has suffered physical and emotional damage and distress and has been subjected to physical pain, humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

SEAN AKA SHAWN RICHARD BROUGHTON

30.1 On November 20, 1994 when the Plaintiff was booked into the BCDC he was hand cuffed behind his back and complained that the cuffs were too tight and that they were uncomfortable, and one correctional officer by the name of Seal Barley came into the room and punched the Defendant several times and threw him to the ground and injured him, subsequently the Plaintiff informed a medical officer of his injuries that he had received, and was laughed at and ignored.

30.2. That the medical screening only consisted of a blood pressure check of the Plaintiff, notwithstanding the fact that his back, neck and hip was hurting from the beating he had suffered at the hands of Seal Barley.

30.3. After he was checked by medical he was placed in 5-E which is the unit (cage) used for inmates who are suicidal. At no time did the Plaintiff show signs or make any indications that he was suicidal, violent or in any way or form a danger to himself or anyone else.

30.4. That at all times herein mentioned the Plaintiff was put in the cell as punishment for reporting the beating that he had

received to a medical officer.

30.5. That during the time that the Plaintiff was in 5-East, he did not have a mattress, it was very cold and he only had one (1) blanket.

30.6. In addition, the Plaintiff was fed smaller portions of food, was placed in an area without any ventilation or windows and was fed by styrofoam utensils, and was thoroughly intimidated and degraded.

30.7. Subsequently, the Plaintiff was sent to level 4-East which had approximately 35 to 40 people sleeping without mattresses and very few blankets and most of the prisoners there should have been in the Psych. Ward.

30.8. While in this level, one Douglas Robinson, a County Detention Officer verbally abused and degraded the Plaintiff and others in that area.

30.9. That at all times herein mentioned Seal Barley and Douglas Robinson were agents and employees of the BCDC and therefore the City of Albuquerque and the BCDC are vicariously liable for the conduct of Seal Barley and Douglas Robinson.

30.10. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of law, to-wit: under the color of the statutes, ordinances, regulations customs and usages of the State of New Mexico and rules of the BCDC. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and

immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

30.11. That at all of the times of the events herein mentioned Plaintiff was acting in a reasonable and peaceful manner, and was not disturbing the peace or committing any infraction against the BCDC rules.

30.12. That despite the fact that Plaintiff was acting in a reasonable and peaceful manner, and was not in any way or fashion disturbing the peace or committing any offense against the BCDC or the officers, Plaintiff was assaulted and beaten in an unreasonable, unwarranted, and unlawful fashion by false pretext, by the BCDC officers names herein, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

30.13. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

GLEN DEE PACKLA

31.1 That the Plaintiff was incarcerated on October 9, 1994 and for the first two (2) weeks had to sleep on the floor without a mattress.

31.2. That the Plaintiff has very severe back problems and the

BCDC was informed of the Plaintiff's back problems but no effort was made to try and obtain a mattress for him.

31.3. There was no sanitation packet given to the Plaintiff including but no limited to toothpaste, toothbrush, soap or shampoo.

31.4. After approximately 42 days into his stay, Glen Dee Packla was still sleeping on the floor without a mattress.

31.5. On November 16, 1994, the Plaintiff was finally able to get into a bunk.

31.6. The Plaintiff is a borderline manic depressive and he has a prescription for Lithium and a prescription for Alluvial and has been on a prescription for Lithium now at the BCDC for approximately 50 days and has yet had a blood level test done on him despite repeated requests, since Lithium tends to go toxic in a persons system and the Plaintiff is aware that he could die from the toxicity of Lithium however, he has not been tested even though he has repeatedly requested to be.

31.7. That because of the actions of the inaction of the BCDC, the Plaintiff has requested that his medication be modified to prevent his death, and that was done on December 6, 1994.

31.8. That the Plaintiff is now in 4-West of the BCDC and that during the week it averages 140 people and during the weekends that floor averages 170 people.

31.9. That at one period the population of this floor went above 200 and several of the inmates were taken to sleep in the recreation room.

31.10. That in the month of November, a PSU (Psych. Ward. Inmate) was sent to 4-West, and was viewed by all the inmates including a correctional officer named Lynn King, who witnessed the inmate masturbate in front of the other inmates opening for two (2) days, and in addition to masturbating, this individual had a very foul smell and it was evident that he had not bathed for a very long period of time.

31.11. That the individual from the Psych. Unit was subsequently moved after two (2) days, however left the other inmates feeling ill and violated.

31.12. On November 11, 1994, another PSU (Psych. Unit Inmate) was placed in Mr. Glen Dee Packla's pod, said individual clearly was an individual with psychiatric problems.

31.13. That the individual known as Lewis (who was the psych. unit individual) would take showers six (6) or seven (7) times a day and would urinate and opening masturbate in the shower and in front of others and would have conversations with people that were not there, would laugh and scream and it was very clear that he was a person who should have been in the Psych. Ward.

31.14. Subsequently this PSU inmate was moved to the Psych. Ward., however not before he had created a great disturbances.

31.15. That after November 11, 1994, another inmate was placed in 4-West that belonged in the Pscyh. Ward, who took a book and was beating himself in the throat with it. The correctional officers did not take the book away from him and this individual continued to beat himself.

31.16. In addition, there was an unwarranted lock down from November 18, through the November 22, without just cause which weighs heavily and psychologically against all inmates.

31.17. That the captain of each pod is allowed to lock down and set free inmates as he wishes, and the lock downs severely depress the inmates and has a great emotional, psychological and negative impact on all the inmates including the Plaintiff.

31.18. That correctional officers work double and triple shifts and are greatly overworked and their tempers are short and they in turn abuse and have verbally abused the Plaintiff and others.

31.19. That the Plaintiff has been placed on lock down for no reason and is therefore not allowed to use the telephone which makes him anxious and subsequently depressed.

31.20. That notwithstanding his depression and medical situation, the Plaintiff has been continuously ignored and proper medical treatment is denied.

31.21. That there is no clean laundry given to the inmates; and soap and bleach is not used in the laundry. Also, machines are over packed so that they cannot clean what they do attempt to wash, and the laundry is very dirty and unkept.

31.22. Because of the negligence of the Defendants, and their unreasonable unwarranted and unlawful conduct in having the Defendant housed with psychologically impaired inmates, in addition to not allowing indigent supplies like toothpaste, toilet paper and soap, in addition to not providing the Plaintiff with his

Lithium for his manic depressant medical condition which endangers his life, the Defendants have acted unreasonably, unwarranted and in an unlawful fashion and have deprived the Plaintiff of his basic Constitutional Rights, and other privileges and immunities secured to him by the Constitution of the United States of America and by the Constitution and Laws of New Mexico.

31.23. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional distress and has been subjected to humiliation and embarrassment in addition to pain and suffering. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

DAVID SHAYKIN

32.1. On December 7, 1994 at approximately 9:15 P.M., the Plaintiff was playing ping pong in the open area when he moved to hit the ping pong ball there was some debris on the floor. The debris seemed to have been some food left over from dinner at 4:00 PM.

32.2. The debris that had been left was koolaid which has been served off the ping pong table at dinner which had not been cleaned off by the BCDC employees.

32.3. That David Shaykin suffered a serious injury to his knee however no medical attention was given for approximately one (1) hour.

32.4. Subsequently the Plaintiff was only given an ice pack once and crutches, and has never been treated again despite the fact that he has sever ligament injury on his leg and needs

arthroscopic surgery.

32.5. On December 8, 1994, the Plaintiff was seen by the same doctor who has taken five (5) months to consider whether the Plaintiff needs some sort of medical intervention on his feet, since the Plaintiff is suffering from Jungle Rot and Agent Orange or a combination of both and his feet condition coupled with the knee condition make his medical condition critical, however the staff at the BCDC refuse to treat him for his medical condition.

32.6. That the Plaintiff has repeatedly requested of Dr. Mason that he be allowed something other than Motrin and crutches, and that he be allowed to go to some hospital where he can be properly checked, however despite his repeated requests and the obvious serious injury, he has not been afforded any medical treatment and it is continually refused.

32.7. The conduct of Dr. Mason is negligent and since he is an agent and employee of the Bernalillo County Detention Center, the Board of County Commissioners and the City of Albuquerque are all vicariously liable for the malpractice of Dr. Mason.

32.8. Because the Defendants jointly and in concert, as employees and agents of the Bernalillo County Detention Center are refusing to give the medical attention to the Plaintiff have acted vicariously, and therefore the Defendants are all jointly and severally responsible to the Plaintiff.

32.9. Therefore, the negligence of Dr. Mason, the Bernalillo County Detention Center and the City of Albuquerque deprives the Plaintiff of his liberty and his right to be free from cruel and

unusual punishment, and for other privileges and immunities and violates other privileges and immunities secured to him by the Constitution of the United States of America and the Constitution and Law of the State of New Mexico.

32.10. As a result of the actions taken by the Defendants, Plaintiff suffers with great pain because the BCDC refuses to give him proper medical treatment for his feet and knee.

32.11. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional and physical distress and has been subjected to pain and suffering. Plaintiff therefore seeks damages in the amount greater than \$50,000.00, the exact amount to be proven at trial.

ARNOLD ANTHONY MAESTAS

33.1. Arnold Anthony Maestas is a resident at the BCDC for residential burglary charges. He has been at the BCDC since May 25, 1994.

33.2. On August 16, 1994, the Plaintiff was let out for one (1) hour for time out of his cell. The medical staff came on the level and the inmates were told to get back into their pods.

33.3. Correctional officer Martinez told the inmates they would get their remaining fifteen (15) minutes out of their cells after the medical staff was gone. At the time medical finished another correctional officer came in to relieve officer Martinez.

33.4. When medical left, William Nellie went to B-Pod to open it. The inmates started hitting on the window trying to tell the correctional officer that they still had fifteen (15) minutes of

time out. The correctional officer shut the B-pod up and went back over to D-Pod to open the door. Plaintiff assumed they were going to be let out but that was not the case because officer Nellie would not let D-Pod out because he said it was officer Martinez's decision not his.

33.5. At that time, Officer Martinez came back into the day room and asked what was going on and Rick Bundy stated that D-Pod had not been given their fair amount of time out. Officer Martinez stated that the inmates had two (2) choices, either they got back into their pods or that he would call "code 99".

33.6. All the inmates started moving back into the pod slowly and Officer Martinez pushed the "code 99" button. Several officer responded to the call and forced the inmates into their pods.

33.7. At that time Lieutenant Chavez started opening maze into A-pod and then to C-pod. At that time other officers that were with Lieutenant Chavez left out of the day room coughing and choking.

33.8. Approximately 15 to 20 minutes after the officers left fifteen or twenty officers reentered with full riot gear on. Gas masks, shock shields, sticks. They came into B-pod and started taking out Manuel Martinez, Rick Bundy, and "Lazy", the three (3) residents who were protesting our time out.

33.9. After they removed inmates Manuel Martinez, Rick Bundy and Lazy gas was released and started seeping through the doors and vents. The inmate started placing wet towels and toilet paper underneath the door. At this time the Plaintiff heard residents

being removed from D-pod and the correctional officers were beating them.

33.10. The correctional officers finally made it to the Plaintiff's room and was told by a correctional officer named Lucille to step away from the door and get down in his hands and knees and not to react to anything but stay put and lie down.

33.11. The Plaintiff did as he was told and when they came into his room he was by himself laying on his stomach with his hand behind his neck.

33.12. Six officers entered his cell and stepped on him. The Plaintiff asked the correctional officers not to be so rough and they started to pick him up and hit him with something and slammed up against the wall. The last thing the Plaintiff remembers was somebody's hand on his neck.

33.13. The Plaintiff was hand cuffed and he was telling the correctional officers that he was not fighting them and then passed out waking up in the day room later hog tied.

33.14. As a result of what happened in the riot the Plaintiff sustained injuries to his back and his left ribs. He put in sick call slips to see a doctor and the doctor told him he just had muscle spasms and prescribed Advil and some other kind of pain killer.

33.15. The Plaintiff put in sick call slips requesting x-rays and further treatment but medical has never responded. The Plaintiff knows something is wrong with him but has no way of getting proper medical treatment.

33.16. Because the Defendant jointly and in concert, as an employee and agent of the Bernalillo County Detention Center and refusing to give the medical attention to the Plaintiff has acted vicariously, and therefore the Defendants are all jointly and severally responsible to the Plaintiff.

33.17. Therefore, the negligence of the Bernalillo County Detention Center and the City of Albuquerque deprives the Plaintiff of his liberty and his right to be free from cruel and unusual punishment, and for other privileges and immunities and violates other privileges and immunities secured to him by the Constitution of the United States of America and the Constitution and Law of the State of New Mexico.

33.18. As a result of the actions taken by the Defendants, Plaintiff suffers with great pain because the BCDC refuses to give him proper medical treatment for back and left ribs.

33.19. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional and physical distress and has been subjected to pain and suffering. Plaintiff therefore seeks damages in the amount greater than \$50,000.00, the exact amount to be proven at trial.

RICHARD KOPECKY

34.1. The Plaintiff, Richard Kopecky is an inmate at BCDC for domestic violence which occurred on November 2, 1994. On that date the Plaintiff was denied by the police to get a soft cast before he was taken to the BCDC. This cast is needed for a previous achilles tendon injury.

34.2. On November 3, 1994 when the Plaintiff was booked he was taken to the fourth floor, he asked for a bottom bunk and was denied. The BCDC staff gave him the option of the floor or the top bunk and the Plaintiff ended up on a top bunk.

34.3. The Plaintiff was also denied an ace wrap and certain medication by the medical staff and the Plaintiff called his lawyer.

34.4. On November 4, 1994 the Plaintiff was given a set of crutches which were four inches different in size from each other and the Plaintiff was told that, that it was the only pair they had available at that time and no other crutches were offered at that time or at any other time.

34.5. Plaintiff made a submission for use of the law library and has made grievances which he has had no response on.

34.6. On November 6, 1994 the Plaintiff slipped out of his bunk and broke or bruised his heel. He was taken to the Bernalillo County Medical Center six (6) hours later. There were no x-rays taken and a prescription was given to him, but BCDC employees would not have it filled.

34.7. On November 7, 11, 15, 18, 21, 23, 29, and December 2, 6 and 9 the Plaintiff made law library submissions. In addition, on November 9 the Plaintiff submitted a medical slip for his heel and there was no response to any of the requests.

34.8. On November 10, the Plaintiff talked with PSU and was told that they could only talk to him but could not give any counseling at that time. The Plaintiff then called his case worker

trying to talk to his lawyer and no response was given.

34.9. On November 11, the Plaintiff talked with David at PSU and was told they he could not be given therapy while he was in BCDC and all therapy must be done on an out patient basis. On November 14, he sent out another treatment release for PSU and received no response. At that time he was taken to medical and given an x-ray. No result of the x-ray has been given as of this date.

34.10. On November 16, 1994 the Plaintiff had a roommate, Phillip Shoemate, who had cigarettes in the room and some gang members (names unknown) came into the room and started to fight with him over the cigarettes. The correctional officer took no corrective action at the time and the Plaintiff's roommate ran out of the room with the crutches.

34.11. The Plaintiff asked the correctional officer to take the crutches out of his room but the correctional officer would not.

34.12. The Plaintiff received a threat from an inmate, Chris Crespine in front of Rosemary, a correctional officer at the time that time in that he threatened to hurt the Plaintiff's other leg. The correctional officer took no action at that time and did nothing to subdue Mr. Crespine, letting him harass the Plaintiff for a period of time in front of the other inmates.

34.13. Later that evening Mr. Crespine and another resident by the name of Arisimo threw a glass of urine on another inmate named Donald who has since been moved.

34.14. On November 22 and 28, the Plaintiff once again made a medical request for heel pain and was given a verbal refusal from the night nurse and no response on the written.

34.15. On December 2, during a shakedown search a paper with a list of grievances was taken without permission during the search. On December 7, Dave Sherman a case worker crumpled the paper and threw the request from the case workers mailbox including the Plaintiff's request for the law library and medical treatment release.

34.16. On December 9, the Plaintiff awoke at 12:30 AM with arthritis pain in his knee. He asked a correctional officer to call medical so that he could get some relief from his pain. As of 5:30 AM there had been no response to his request for medical. A correctional officer informed the Plaintiff that he had to leave to go to Court.

34.17. The Plaintiff refused to leave until he received some medication to relieve his pain. A correctional officer did finally take the Plaintiff to medical but medical refused to give medication because proper channels were not followed.

34.18. In addition, the Plaintiff states that the eighteenth streets and westside gangs at the BCDC are taking over cell by cell and the correctional officers do nothing to control the situation.

34.19. As a result of the actions taken by the Defendants, Plaintiff suffers with great pain and depression because the BCDC ignores his medical needs refusing to give him proper medical treatment for his arthritis, heel, and achilles tendon injury.

34.20. That the conduct of the Defendant is unreasonable, unwarranted and unlawful, and deprives the Plaintiff of his liberty and other privileges and immunity secured by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

34.21. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional and physical distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

JOHN HEWATT

35.1. John Hewatt is in the BCDC for residential burglary. He complains of improper medical care at the BCDC.

35.2. On October 24, 1994 the Plaintiff was involved in an accident where he had his hand slammed into a door. At that time Plaintiff's hand swelled immensely. He contacted the correctional officers on duty and told them what happened and one of the correctional officers called medical four (4) to five (5) hours later.

35.3. Medical showed up and stated that they could not help the Plaintiff because the doctor was not in and all they could do was administer Advil and ice.

35.4. The following day the Plaintiff was able to see the doctor and the doctor examined the Plaintiff's hand and said that it was not broken but just badly bruised. The Plaintiff stated that he thought his hand was broken. The doctor asked the

Plaintiff if he could move his fingers and the Plaintiff stated that he could but it hurt badly to do so.

35.5. The Doctor said that his hand was not broken and that he could not x-ray it because it was too swollen. The Plaintiff was given ice and Advil for three (3) days.

35.6. The Plaintiff continued to complain of his hand and correctional officer Brian Maser continued to call medical. The Plaintiff was told by officer Maser that medical said to quit being a cry baby and grow up. Medical informed Mr. Maser that they would do nothing more for the Plaintiff's pain.

35.7. The Plaintiff went to Court and was sentenced to one (1) year in the BCDC with work release. On the first day he was told by the case worker that the first thing he should do is get his hand checked because it was still swollen.

35.8. The Plaintiff went to the hospital and during the pre-screening in the emergency room the nurse said that his hand looked deformed to her. When the doctor examined the Plaintiff's hand he felt it was broken and had x-rays taken.

35.9. The Plaintiff's hand was in fact broken and due to the fact that so much time had passed he had to go through surgery to have the bone re-broken and have pins put in to reset it so that it would heal as close to normal as they could get it since so much time had passed.

35.11. The Plaintiff returned to jail after the operation at approximately 9:30 to 10:00 P.M. The Plaintiff was at the satellite facility at that time and they moved him back to the main

facility because he could not work with his arm.

35.12. The Plaintiff was prescribed pain killers for the pain but the doctor at the BCDC cut out the prescription the doctor at the hospital gave him and prescribed the Plaintiff 1 1/2 days of Tylenol III, and then two (2) Advil after that.

35.13. After subsequent visits to the hospital, the Plaintiff was given a clearance to work or find a job that he could perform with his left hand but the case worker, Edwina Brown denied him and said that he had to wait until he had a release from the doctor.

35.14. The Plaintiff has been in the BCDC main center this entire time waiting to be released for treatment on his hand. The Plaintiff was not aware that he needed another clearance to work but has been informed that he did need one.

35.15. The day that the Plaintiff was going to be sent back to the main facility at the BCDC, Edwina canceled the Plaintiff's work search and work release until he got a work clearance from the doctor. The Plaintiff informed her right then that he had a person at Satellite that would give him a job.

35.16. At this time the Plaintiff is authorized by the Judge to work. He feels frustrated and angry that he is not being released to work especially since the Court has ordered them to do so.

35.17. As a result of the actions taken by the Defendants, Plaintiff suffers with pain and injury because the medical staff at BCDC ignored his medical needs refusing to give him proper medical treatment for his broken hand causing much more long term and even

permanent damage to him because of lack of prompt treatment.

35.18. That the conduct of the Defendants is unreasonable, unwarranted and unlawful, and deprives the Plaintiff of his liberty and other privileges and immunity secured by the Constitution of the United States of America and by the Constitution and Laws of the State of New Mexico.

35.19. As a result of the actions taken by the Defendants, Plaintiff has suffered emotional and physical distress and has been subjected to humiliation and embarrassment. Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

DAVID W. LAYMAN

36.1 On October 23, 1994 the Plaintiff was booked into the BCDC on a DWI and subsequently the Plaintiff complained to correctional officer "John Doe" that the room he was in was very crowded and that some of the individuals there did not have sheets or blankets, and that they were sleeping on the floor and "John Doe" correctional officer punched the Plaintiff in the face about eight times in front of other inmates. Subsequently because "John Doe" gave the Plaintiff a broken nose during the beating, the Plaintiff required surgery, and at the present time continues to need an additional surgery.

36.2. That at all times herein mentioned "John Doe" corrections Officer was an agent and employee of the BCDC and therefore the City of Albuquerque and the BCDC are vicariously liable for the conduct of "John Doe" corrections Officer.

36.3. At all times mentioned herein, Defendants, and each of them separately and in concert, acted under color and pretense of law, to-wit: under the color of the statutes, ordinances, regulations customs and usages of the State of New Mexico and rules of the BCDC. Each of the Defendants herein, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges, and immunities secured and guaranteed to him under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States.

36.4. That at all of the times of the events herein mentioned Plaintiff was acting in a reasonable and peaceful manner, and was not disturbing the peace or committing any infraction against the BCDC rules.

36.5. That despite the fact that Plaintiff was acting in a reasonable and peaceful manner, and was not in any way or fashion disturbing the peace or committing any offense against the BCDC or the officers, Plaintiff was assaulted and beaten in an unreasonable, unwarranted, and unlawful fashion by false pretext, by the BCDC officer names herein, and hereby deprived of his liberty, his right to due process and equal protection and immunity secured to him by the Constitution of the United States of America and the Constitution and Laws of the State of New Mexico.

36.6. As a result of the actions taken by the Defendants, Plaintiff has suffered physical and emotional damages, emotional distress, and has been subjected to humiliation and embarrassment.

Plaintiff therefore seeks damages in an amount greater than \$50,000.00, the exact amount to be proven at trial.

Respectfully submitted,
ANTHONY JAMES AYALA, P.A.

By: 

Anthony James Ayala, P.A.
Attorney at Law
P.O. Box 1966
Albuquerque, NM 87103
(505) 247-4321
FAX (505) 247-4441