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DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN CROWE, ET AL.,  
Plaintiffs,  
v.  
COUNTY OF SAN DIEGO, ET AL.,  
Defendants.

CIVIL NO. 99-0241-R (RBB)  
consolidated with:  
CIVIL NO. 99-0283-R  
CIVIL NO. 99-0253-R

AARON HOUSER, ET AL.,  
Plaintiffs,  
v.  
CITY OF ESCONDIDO, ET AL.,  
Defendants.

ORDER ADDRESSING DEFENDANTS'  
MOTIONS TO DISMISS AND MOTIONS  
FOR SUMMARY JUDGMENT

MICHAEL LEE TREADWAY, ET AL.,  
Plaintiffs,  
v.  
CITY OF ESCONDIDO, ET AL.,  
Defendants.

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1     **I.    Introduction**

2           Defendants removed these three consolidated cases in early  
3 February, 1999, yet this Court still finds itself examining the  
4 pleadings for sufficiency. The Court issued a fifty-four page  
5 order on January 3, 2000 ("January 3 Order"), on Defendants'  
6 motions to dismiss the original complaints. Now Defendants move  
7 to dismiss the Joint First Amended Complaint ("JFAC"), and the  
8 Court again faces the daunting task of dissecting a tangled web of  
9 complex, interdependent allegations. Plaintiffs' JFAC consists of  
10 64 pages of allegations, 13 causes of action, and 280 pleading  
11 paragraphs, many of which incorporate allegations from preceding  
12 paragraphs. Nine Defendants have moved to dismiss the complaint  
13 or for summary judgment on numerous grounds, some of which the  
14 Court previously addressed in its January 3 Order. After two  
15 hearings and several hundred pages of briefing, the time has come  
16 to conclusively determine what federal causes of action have been  
17 stated and to move past the pleading stage.<sup>1</sup>

18  
19     **II.   Discussion**

20           The Court's January 3 Order sets forth the background facts,  
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22           <sup>1</sup> In their pending motions to dismiss and for summary  
23 judgment, Defendants once again focus on Plaintiffs' federal  
24 causes of action under 42 U.S.C. § 1983. (See, e.g., Def.  
25 McDonough's Mot. at 6.) For that reason, the Court addresses only  
26 the federal causes of action in this order. Later, Defendants may  
27 move to dismiss the state causes of action on the merits or for  
28 lack of supplemental jurisdiction. Defendants may file motions  
directed to the state claims separate from or together with  
motions for summary judgement on the federal claims.

1 which will not be repeated here. (January 3 Order at 3-11.)

2 Where appropriate, the Court will address new facts pleaded in the  
3 JFAC in the analysis that follows. After examining the broader  
4 issues of conspiracy and proximate cause, the Court addresses each  
5 federal cause of action in turn.

6  
7 **A. Conspiracy and Causation**

8 Plaintiffs offer two distinct doctrines to hold individual  
9 Defendants liable for constitutional violations that they did not  
10 directly cause: (1) conspiracy and (2) proximate cause. First,  
11 Plaintiffs allege that Defendants Claytor, Hoover, McDonough,  
12 Blum, Sweeney, and Wrisley conspired to coerce illegal confessions  
13 in order "to justify the myriad egregious civil rights violations  
14 heaped upon all plaintiffs herein." (Compl. ¶¶ 110, 111, 112.)  
15 Second, Plaintiffs attempt to hold individual Defendants liable  
16 for "set[ting] into motion a series of events which [they] knew or  
17 should have known would cause others to inflict Constitutional  
18 [sic] injury." (Opp'n to Def. Blum's Mot. at 6-7.) Because these  
19 issues apply broadly to most of the allegations in the JFAC, the  
20 Court considers them first before separately addressing each  
21 federal cause of action.

22 In its January 3 Order, the Court found that Plaintiffs'  
23 original complaints failed to meet the heightened pleading  
24 standard for allegations of conspiracy. (January 3 Order at 16-  
25 17.) The Court ordered Plaintiffs to plead the alleged conspiracy  
26 with "'at least some degree of particularity' beyond the  
27

1 conclusory allegations of the current complaints." (January 3  
2 Order at 17 n.9.) "This standard is not intended to be difficult  
3 to meet as 'it serves the limited purpose of enabling the district  
4 court to dismiss 'insubstantial' suits prior to discovery and  
5 allowing the defendant to prepare an appropriate response . . .  
6.'" Harris v. Roderick, 126 F.3d 1189, 1195 (9th Cir. 1997)  
7 (quoting Branch v. Tunnell, 937 F.2d 1382, 1386 (9th Cir. 1991)).  
8 Plaintiffs may meet the standard by pleading circumstantial  
9 evidence. See Branch, 937 F.2d at 1387.

10 In the JFAC, Plaintiffs have plead a conspiracy involving  
11 Defendants Claytor, Hoover, McDonough, Blum, Sweeney, and Wrisley  
12 with adequate specificity. In support of their assertion that  
13 Defendants conspired, Plaintiffs allege conduct by each Defendant  
14 that contributed to the conspiracy and plead substantial  
15 circumstantial evidence that Defendants acted in concert.

16 As alleged, the conspiratorial objective is limited to the  
17 illegal arrest and detention of Plaintiffs Michael Crowe, Joshua  
18 Treadway, and Aaron Houser. Specifically, Plaintiffs assert that  
19 the conspiring Defendants "jointly intended and planned" to use  
20 coerced confessions "to justify the arrest, detention,  
21 incarceration, search and seizure and separation from family" of  
22 the Michael, Joshua, and Aaron. (JFAC ¶ 112.) Accordingly,  
23 because they further that conspiratorial objective, Plaintiffs'  
24 § 1983 claims for violation of the Fifth Amendment, Fourth  
25 Amendment, Fourteenth Amendment due process, and Fourteenth  
26 Amendment deprivation of companionship are part of the alleged  
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1 conspiracy. In contrast, the § 1983 claims for defamation and  
2 violation of the Sixth Amendment are not based on the alleged  
3 conspiracy but rest on purported statements by the particular  
4 Defendants named. (JFAC ¶¶ 158-62.) Of course, because the Court  
5 permits Plaintiffs' lawsuit to progress based on the alleged  
6 conspiracy, the scope of that conspiracy may be further refined  
7 and modified by discovery or motions for summary judgment.

8 Plaintiffs also argue that the expansive theory of proximate  
9 cause under § 1983 permits liability for violations that  
10 Defendants did not directly cause through their own conduct.  
11 Under § 1983, "[t]he requisite causal connection can be  
12 established not only by some kind of personal participation in  
13 the deprivation, but also by setting in motion a series of acts by  
14 others which the actor knows or reasonably should know would cause  
15 others to inflict the constitutional injury." Johnson v. Duffy,  
16 588 F.2d 740, 743-44 (9th Cir. 1978). On this basis, Plaintiffs  
17 argue that Defendants who purportedly participated in the alleged  
18 coercion of confessions may be held liable for subsequent  
19 violations by other Defendants, such as the alleged illegal  
20 arrests of Michael, Joshua, and Aaron.

21 While this broad theory of causation does apply to individual  
22 Defendants, it is mostly redundant of the conspiracy claim.  
23 Coercion of confessions may constitute proximate cause for  
24 subsequent illegal arrests and deprivation of parent-child  
25 companionship, but it cannot support liability for the defamatory  
26 statements of other Defendants or unrelated conduct of  
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1 investigators that allegedly "shocks the conscience" (e.g.,  
2 displaying nude pictures of family members or drawing guns on  
3 family members in the police station). The Court holds, as a  
4 matter of law, that individual Defendants who coerced confessions  
5 reasonably should have known that such conduct would lead to the  
6 subsequent Fourth Amendment violations and resulting Fourteenth  
7 Amendment violations for deprivation of family companionship.  
8 However, apart from Plaintiffs conceptually distinct conspiracy  
9 allegations, the Court is unwilling to hold that Defendants should  
10 have anticipated the alleged conduct supporting the § 1983 claims  
11 for defamation, or for violation of the Sixth Amendment or  
12 Fourteenth Amendment Due Process Clause.

13 Now that the Court has delineated the scope of Plaintiffs'  
14 conspiracy and proximate cause theories, the remainder of this  
15 order addresses, in turn, each cause of action in the JFAC.  
16

#### 17 **B. Plaintiffs' Federal Causes of Action**

18 Defendants Phil Anderson, Mark Wrisley, and Ralph Claytor  
19 filed an answer to the JFAC in lieu of motions to dismiss.  
20 Therefore, except for claims that the Court dismisses against all  
21 Defendants, Plaintiffs may maintain each alleged cause of action  
22 against these Defendants. In contrast, Defendants state no claims  
23 against Defendant Rick Bass. While Defendant Bass' name appears  
24 in the list of Defendants for the First, Fourth, Fifth, and  
25 Seventh Claims for Relief, Plaintiffs do not make any allegations  
26 regarding conduct by Defendant Bass. The Court therefore  
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1 dismisses all claims against Defendant Bass. The Court addresses  
2 the causes of action against the remaining Defendants below. To  
3 avoid confusion, the Court clearly states which causes of action  
4 may be asserted by which Plaintiffs against which Defendants.

5  
6 **(1) Fourth Amendment Claims**

7 All Plaintiffs assert claims under 42 U.S.C. § 1983 for  
8 violation of the Fourth Amendment against Defendants Hoover, Blum,  
9 Wrisley, Sweeney, Claytor, McDonough, and Anderson. (JFAC at 32.)  
10 In addition to Defendants Anderson, Wrisley, and Claytor,  
11 Defendant Sweeney does not move to dismiss the Fourth Amendment  
12 claim. The Court addresses the motions of the remaining  
13 Defendants in turn.

14 Defendant Hoover asserts absolute "prosecutorial function"  
15 immunity from the Fourth Amendment claim. The Court has already  
16 considered and rejected this argument in its January 3 Order.  
17 (January 3 Order at 30-33.) That previous ruling is the law of  
18 the case, and the Court will not revisit the issue here.

19 Defendants Blum and McDonough seek dismissal of the Fourth  
20 Amendment claims against them because the JFAC does not allege  
21 that they participated in any illegal arrests or searches and  
22 seizures, only the coercion of confessions. Under the Court's  
23 analysis above, however, Plaintiffs may maintain their Fourth  
24 Amendment claims against Blum and McDonough based on conspiracy or  
25 proximate cause.

26 To summarize, Plaintiffs have stated § 1983 claims for  
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1 violation of the Fourth Amendment against Defendants Hoover, Blum,  
2 Wrisley, Sweeney, Claytor, McDonough, and Anderson.

3  
4 **(2) Fifth Amendment Claims**

5 Michael Crowe, Joshua Treadway, and Aaron Houser assert  
6 § 1983 claims for violation of the Fifth Amendment against  
7 Defendants Hoover, Blum, Wrisley, Sweeney, Claytor, McDonough, and  
8 Anderson. (JFAC at 35.) In addition to Anderson, Wrisley, and  
9 Claytor, Defendants Sweeney and McDonough do not move to dismiss  
10 the Fifth Amendment claim. The Court denies the motions by Hoover  
11 and Blum.

12 Hoover claims absolute immunity from Plaintiffs' Fifth  
13 Amendment claim. The Court has already rejected this argument.  
14 (January 3 Order at 32-33.) Blum moves for summary judgment  
15 against Plaintiffs Joshua Treadway and Aaron Houser on the basis  
16 of a self-serving declaration filed with his motion. Blum argues  
17 that the declaration "conclusively establishes that he did not  
18 participate in the interrogations of Joshua or Aaron." (Blum Mot.  
19 at 11.) The Court is unwilling to order summary judgment based  
20 only on Blum's declaration, particularly given the discovery stay  
21 and Plaintiffs' consequent inability to present facts in  
22 opposition. See Fed. R. Civ. P. 56(f). The purpose of this order  
23 is to establish what claims Plaintiffs have stated and to move  
24 beyond the pleading stage. The Court reserves consideration of  
25 summary judgment motions for another day.

26 To summarize, the Court finds that Michael, Joshua, and Aaron  
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1 have stated § 1983 claims for violation of the Fifth Amendment  
2 against Defendants Hoover, Blum, Wrisley, Sweeney, Claytor,  
3 McDonough, and Anderson.

### 4 5 (3) Sixth Amendment Claims

6 Michael Crowe, Joshua Treadway, and Aaron Houser assert  
7 § 1983 claims for violation of the Sixth Amendment against  
8 Defendants Hoover, Stephan, Blum, and Sweeney. Plaintiffs' Sixth  
9 Amendment claims rest on alleged public statements regarding their  
10 involvement in the murder of Stephanie Crowe. (JFAC at 37.) The  
11 Court holds that Plaintiffs cannot assert these claims against any  
12 Defendant because they have not alleged that Defendants' purported  
13 statements contributed to an unfair trial.

14 A Sixth Amendment claim based on tainting of the trial  
15 process through publicity must allege a causal link between the  
16 alleged statements and an actual deprivation of the right to a  
17 fair trial. See Powers v. McGuigan, 769 F.2d 72, 74 (2d Cir.  
18 1985); Stevens v. Rifkin, 608 F. Supp. 710, 727 (N.D. Cal. 1984)  
19 (requiring allegations that "the defamatory statements deprived  
20 [plaintiffs] of their right to a fair and impartial trial")  
21 (emphasis added). Plaintiffs have cited no case law holding that  
22 Defendants can violate the Sixth Amendment by making statements  
23 that might, if Plaintiffs are charged with a crime, affect their  
24 right to receive a fair trial. Rather, when a plaintiff faces  
25 only an uncertain possibility of criminal charges, a Sixth  
26 Amendment claim is not ripe for adjudication. See Kaylor v.

1 Fields, 661 F.2d 1177, 1181 (8th Cir. 1981) ("[U]ntil [plaintiff]  
2 is subjected to a criminal trial, we can only speculate as to  
3 whether his Sixth Amendment right is being denied."). The Court  
4 therefore dismisses Plaintiffs claims under the Sixth Amendment  
5 because the charges against Michael, Joshua, and Aaron were  
6 dropped prior to trial.

#### 7 8 (4) Outrageous Government Conduct

9 All Plaintiffs assert a § 1983 claim for violation of the  
10 Fourteenth Amendment against Defendants Hoover, Stephan, Blum,  
11 Wrisley, Sweeney, Claytor, McDonough, and Anderson based on  
12 outrageous government misconduct that purportedly "shocks the  
13 conscience." (JFAC at 39.) In addition to Anderson, Wrisley, and  
14 Claytor, Defendant Sweeney does not move to dismiss this claim.  
15 With respect to the remaining Defendants, the Court holds that  
16 Plaintiffs may maintain their outrageous misconduct claims against  
17 Hoover, Blum, and McDonough to the extent based upon conduct  
18 distinct from that underlying the other constitutional claims.

19 The Court dismisses Plaintiffs' Fourteenth Amendment  
20 outrageous misconduct claim against Defendant Stephan. The  
21 Court's January 3 Order sets forth the law on due process  
22 violations for conduct that "shocks the conscience," and the Court  
23 will not repeat that precedent here. (January 3 Order at 44-45.)  
24 Stephan is alleged to have made statements to the media regarding  
25 the investigation and prosecution of Michael, Joshua, and Aaron  
26 after the criminal charges were dismissed. The Court finds, as a  
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1 matter of law, that this conduct falls short of the "shocks the  
2 conscience" standard. See Hammer v. Gross, 932 F.2d 842, 850 (9th  
3 Cir. 1991) (dismissing claims based on immunity because the  
4 alleged conduct did not "shock the conscience" as a matter of  
5 law).

6 Defendants Hoover, Blum, and McDonough are swept into the  
7 Fourteenth Amendment outrageous misconduct claim by Plaintiffs'  
8 conspiracy allegations.<sup>2</sup> While Plaintiffs do not precisely  
9 specify the alleged conduct that "shocks the conscience," the  
10 Court holds that they may not base their claim on conduct  
11 underlying other alleged constitutional violations. See United  
12 States v. Lanier, 520 U.S. 259, 272 n.7 (1997) (finding that "if a  
13 constitutional claim is covered by a particular constitutional  
14 provision, such as the Fourth or Eighth Amendment, the claim must  
15 be analyzed under the standard appropriate to that specific  
16 provision, not under the rubric of substantive due process"). For  
17 example, because Plaintiffs assert Fourth and Fifth Amendment  
18 claims, they cannot base the government misconduct claim on the  
19 alleged coercion of confessions, illegal arrests, or overly  
20 intrusive searches and seizures.

21 To summarize, the Court dismisses the Fourteenth Amendment  
22 claim based on government conduct that "shocks the conscience"  
23 against Defendant Stephan. The Court finds that Plaintiffs have  
24 stated such a claim against Defendants Hoover, Blum, Wrisley,  
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26 <sup>2</sup> The Court once again rejects Hoover's claim of immunity  
27 based on its January 3 Order. (January 3 Order at 34 n.23.)

1 Sweeney, Claytor, McDonough, and Anderson, but they must base the  
2 claim upon conduct different than that underlying Plaintiffs'  
3 other constitutional claims (e.g., displaying nude pictures of  
4 family members or drawing guns on family members in the police  
5 station).

6  
7 **(5) Deprivation of Companionship**

8 All Plaintiffs assert § 1983 claims for violation of the  
9 Fourteenth Amendment right to parent-child companionship against  
10 Defendants Hoover, Blum, Wrisley, Sweeney, Claytor, McDonough,  
11 Anderson, and Stephan. (JFAC at 42.) In addition to Defendants  
12 Anderson, Wrisley, and Claytor, Defendant Sweeney does not move to  
13 dismiss this claim. The Court holds that certain Plaintiffs state  
14 a claim for deprivation of family companionship against all  
15 Defendants except Defendant Stephan.

16 The Court's January 3 Order instructed Plaintiffs to assert a  
17 claim for deprivation of companionship in the JFAC only if they  
18 could "provide authority for the proposition that the substantive  
19 due process right to companionship is violated by interferences  
20 that are less than permanent." (January 3 Order at 39.) In  
21 response, Plaintiffs filed with the JFAC a Joint Memorandum of  
22 Points and Authorities On Loss of the Right to Parent-Child  
23 Companionship, which argues that temporary deprivation of parent-  
24 child companionship is sufficient to state a Fourteenth Amendment  
25 claim. Plaintiffs rely heavily on the recent case of Ovando v.  
26 City of Los Angeles, 92 F. Supp. 2d 1011 (C.D. Cal. 2000). The  
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1 Ovando decision rests on several lines of substantive and  
2 procedural due process cases holding that temporary or partial  
3 interference with a constitutionally protected interest supports a  
4 Fourteenth Amendment claim. See Ovando, 92 F. Supp. at 1017-21.  
5 The Court agrees with the analysis in Ovando, and holds that  
6 Plaintiffs may assert a Fourteenth Amendment claim for loss of  
7 companionship based on the temporary separation alleged in this  
8 case.<sup>3</sup>

9 As the Court held in its January 3 Order, only parents and  
10 their children hold a right to companionship protected by the  
11 Fourteenth Amendment. (January 3 Order at 39.) The January 3  
12 Order states that Plaintiffs "Shannon Crowe, Judith Kennedy, and  
13 Zachary Treadway lack standing to claim loss of companionship  
14 because the right does not extend to siblings and grandparents."  
15 (Id.) Plaintiffs offer no argument that grandparents and siblings  
16 may assert claims for deprivation of the right to companionship.  
17 The Court therefore holds that Shannon Crowe and Judith Kennedy<sup>4</sup>  
18 do not state a Fourteenth Amendment claim for deprivation of

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19  
20 <sup>3</sup> The Court stresses that not just any temporary separation  
21 of parent and child constitutes a deprivation of the right to  
22 companionship. Rather, the separation must be accomplished  
23 through some sort of wrongful or unconstitutional conduct by the  
24 government. See, e.g., Wallis v. Spencer, 202 F.3d 1126, 1138-41  
25 (9th Cir. 2000) (holding that temporary separation of parent and  
26 child without "reasonable cause to believe that the child is in  
imminent danger of serious bodily injury" violates the right to  
companionship). Whatever the precise nature of this requirement,  
Plaintiffs meet it in this matter by alleging that parent-child  
separation resulted from illegal arrests in violation of the  
Fourth Amendment.

27 <sup>4</sup> Zachary Treadway is not a Plaintiff in the JFAC.

1 companionship.

2 The claim against Defendant Stephan cannot stand because her  
3 alleged conduct could not possibly have caused the deprivation of  
4 companionship. Stephan is alleged only to have made statements to  
5 the media after the criminal charges against Michael, Joshua, and  
6 Aaron had been dropped. (JFAC ¶¶ 102, 118.) Stephan is not sued  
7 as part of the conspiracy, which the Court has already held does  
8 not extend to alleged defamatory statements. There is  
9 consequently no basis in the JFAC to hold Defendant Stephan liable  
10 for the alleged deprivation of companionship.

11 To summarize, all Plaintiffs in the JFAC but Shannon Crowe  
12 and Judith Kennedy state § 1983 claims for deprivation of  
13 companionship under the Fourteenth Amendment against Defendants  
14 Hoover,<sup>5</sup> Blum,<sup>6</sup> Wrisley, Sweeney, Claytor, McDonough, and  
15 Anderson.

16  
17 **(6) Defamation Under § 1983**

18 Michael Crowe, Joshua Treadway, and Aaron Houser assert  
19 § 1983 claims for defamation against Defendants Hoover, Stephan,  
20 Blum, and Sweeney. (JFAC at 45.) Defendant Sweeney does not move  
21 to dismiss this claim. The Court holds that certain Plaintiffs  
22 state a claim for defamation under § 1983 against Defendants

23 \_\_\_\_\_  
24 <sup>5</sup> Hoover asserts absolute immunity from Plaintiffs'  
25 companionship claims. Again, the Court rejects this claim based  
26 on the law of the case. (January 3 Order at 30-33.)

26 <sup>6</sup> Blum again moves for summary judgment based on his  
27 declaration. As noted above, the Court will not entertain summary  
28 judgment motions at this early stage.

1 Hoover, Blum, and Stephan.

2 The Court's January 3 Order held that Plaintiffs could state  
3 § 1983 claims for defamation based on statements made "in  
4 connection with" a federally protected right, satisfied here by  
5 the alleged constitutional violations arising from the  
6 investigation of Michael, Joshua, and Aaron. (January 3 Order at  
7 45-47.) The Court also admonished Plaintiffs that the JFAC should  
8 "plead [defamation] explicitly and specifically identify the  
9 alleged defamatory statements" made by each Defendant. (Id. at  
10 47.) The Court now reviews Plaintiffs' attempt to meet these  
11 requirements.

12 The JFAC alleges that Defendant Hoover "said Aaron Houser was  
13 a 'monster' and a 'sociopath' and was mentally ill." (JFAC  
14 ¶ 102.) Because these are the only alleged statements by Hoover  
15 in the JFAC, only Aaron Houser states a § 1983 claim against  
16 Hoover for defamation.<sup>7</sup>

17 With respect to Defendant Blum, the JFAC alleges an attempt  
18 to demonize Aaron Houser by calling him a "sociopath" and "Charles  
19 Manson with an IQ." (JFAC ¶ 106.) The JFAC attributes no other  
20 statements to Blum. For this reason, only Aaron Houser states a  
21 § 1983 claim for defamation against Defendant Blum.<sup>8</sup>

22 \_\_\_\_\_  
23 <sup>7</sup> Based on its January 3 Order, the Court rejects Hoover's  
24 claim of qualified immunity from the § 1983 claims for defamation.  
(January 3 Order at 33-34.)

25 <sup>8</sup> In his motion to dismiss, Blum argues that Plaintiffs must  
26 support the § 1983 claim for defamation with allegations "showing  
27 how the defamatory statement deprived [Plaintiffs] of a fair  
trial." (Blum Mot. at 12.) Blum confuses defamation under § 1983

1           According to the JFAC, Defendant Stephan appeared on the  
2 television program "48 Hours" and made numerous statements about  
3 the murder of Stephanie Crowe that implicated and defamed Michael  
4 Crowe, Joshua Treadway, and Aaron Houser. (JFAC ¶ 102.) These  
5 allegations state a claim for defamation against Stephan on behalf  
6 of all three boys. In her motion to dismiss, Stephan argues that,  
7 because she allegedly made the statements several months after the  
8 criminal case was dismissed, the JFAC does not establish a  
9 sufficient connection between the statements and the alleged  
10 violations of federal rights. The Court rejects this argument. A  
11 § 1983 claim for defamation "in connection with" a federally  
12 protected right may rest upon allegations of statements made after  
13 the alleged federal violations. See Cooper v. Dupnik, 924 F.2d  
14 1520, 1535 (9th Cir. 1991) (finding that statements made by  
15 defendant on the day of plaintiff's release were clearly made "in  
16 connection with" an alleged illegal arrest because "it directly  
17 referred to this arrest"); see also Marrero v. City of Hialeah,  
18 625 F.2d 499, 519 (5th Cir. 1980) (finding statements actionable  
19 under § 1983 because "the public surely perceived the defamatory  
20 statements . . . to be connected to the arrests and search and  
21 seizure"). The fact that Stephan's statements concerned the  
22 allegedly illegal investigation, interrogation, and arrest of  
23 Michael, Joshua, and Aaron is sufficient to make them actionable  
24 under § 1983.

25 \_\_\_\_\_  
26 with violations of the Sixth Amendment. As discussed above, the  
27 former requires only defamation "in connection with" a federally  
28 protected right. (January 3 Order at 46.)

1 To summarize, Aaron Houser states a § 1983 claim for  
2 defamation against Defendants Hoover, Blum, Stephan, and Sweeney.  
3 Michael Crowe and Joshua Treadway state defamation claims against  
4 only Stephan and Sweeney.

5  
6 (7) 42 U.S.C. §§ 1985, 1986

7 All Plaintiffs assert claims under 42 U.S.C. §§ 1985 & 1986  
8 for conspiracy to violate civil rights against Defendants Hoover,  
9 Stephan, Blum, Wrisley, Sweeney, Claytor, McDonough, and Anderson.  
10 (JFAC at 47.) The Court dismisses Plaintiffs' conspiracy claims  
11 against all Defendants because they have failed to allege that  
12 Defendants acted with class-based, invidious discrimination.

13 To state a claim under § 1985(3), Plaintiffs must allege that  
14 Defendants formed a conspiracy dedicated to class-based  
15 discrimination. See Stevens v. Rifkin, 608 F. Supp. 710, 720-21  
16 (N.D. Cal. 1984) (citing Griffin v. Breckenridge, 403 U.S. 88  
17 (1971)). While the JFAC does not allege violation of a particular  
18 subsection of § 1985, Plaintiffs concede that they must meet the  
19 class-based discrimination requirement to state a claim. (Opp'n  
20 to Blum Mot. at 13.) Because they have not alleged discriminatory  
21 intent, they do not argue that the JFAC states a claim under  
22 §§ 1985 & 1986.<sup>9</sup> (Opp'n to Blum Mot. at 13.)

23 Plaintiffs claim, instead, that they "can prove conspiracy  
24

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25 <sup>9</sup> Section 1986 imposes liability for failure to act to  
26 prevent a known violation of § 1985. See 42 U.S.C. § 1986; Karim-  
27 Panahi v. Los Angeles Police Dept., 839 F.2d 621, 626 (9th Cir.  
28 1988). The viability of Plaintiffs § 1986 claim thus depends  
entirely on the claim under § 1985.

1 without reference to" §§ 1985 & 1986. (Id.) While that may be  
2 true, such a conspiracy is not a separate cause of action. As  
3 Judge Posner wrote in Jones v. City of Chicago, 856 F.2d 985, 992  
4 (7th Cir. 1988), which Plaintiffs themselves cite: "In a [§ 1983]  
5 tort case such as this . . . , the function of conspiracy doctrine  
6 is merely to yoke particular individuals to specific torts charged  
7 in the complaint." The Court has already found that Plaintiffs  
8 may "yoke" Defendants Claytor, Hoover, McDonough, Blum, Sweeney,  
9 and Wrisley to particular causes of action through application of  
10 conspiracy doctrine. The alleged conspiracy does not, however,  
11 constitute a separate cause of action. The Court therefore  
12 dismisses Plaintiffs Seventh Claim for Relief under 42 U.S.C.  
13 §§ 1985 & 1986 against all Defendants.

#### 14 15 (8) Municipal Policy Claims

16 All plaintiffs assert § 1983 claims against the Cities of  
17 Escondido and Oceanside based on municipal policies that allegedly  
18 lead to violations of Plaintiffs "rights[] guaranteed by [the]  
19 Constitution of the United States of America." (JFAC at 52.) In  
20 support of its motion to dismiss, Escondido argues (1) that  
21 Plaintiffs fail to allege the existence of a policy with adequate  
22 specificity and (2) even assuming that Plaintiffs state a policy,  
23 that policy, as alleged, states a claim only for violation of the  
24 Fifth Amendment. Defendant City of Oceanside joins in Escondido's  
25 motion. The Court finds that Plaintiffs state a § 1983 claim  
26 against Escondido and Oceanside only for violation of the Fifth  
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1 Amendment.

2 The Court's January 3 Order sets forth the applicable  
3 precedent regarding the pleading standard that Plaintiffs must  
4 meet to state a claim based on a municipal policy. (January 3  
5 Order at 19-20.) Under this precedent, the Court holds that the  
6 JFAC pleads municipal policies against Escondido and Oceanside  
7 with adequate specificity. Plaintiffs identify an unwritten  
8 policy, resulting from training and promulgated by the cities'  
9 chiefs of police, to coerce involuntary confessions. (JFAC ¶  
10 121.) They describe the particular conduct encompassed by the  
11 policy and assert circumstantial evidence that the policy actually  
12 exists, including Oceanside's alleged failure to discipline  
13 Defendant McDonough for coercing a confession in another case.  
14 (JFAC ¶¶ 121, 126, 127.) Such allegations are certainly enough to  
15 state a claim, permitting Plaintiffs the opportunity to seek  
16 discovery that may confirm or lead to modification of the alleged  
17 policy.

18 While Plaintiffs state a policy with enough specificity,  
19 their allegations narrowly describe a policy confined to coercion  
20 of confessions in violation of the Fifth Amendment. Escondido  
21 points out this limitation on Plaintiffs' pleadings in its motion  
22 to dismiss. (Escondido Mot. at 5.) Nonetheless, Plaintiffs argue  
23 that they may assert all federal causes of action against the  
24 municipal Defendants arising from their "setting in motion a  
25 series of acts by others which the actor knows or reasonably  
26 should know would cause others to inflict the constitutional  
27

1 injury." Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978).  
2 The Court finds that this proximate cause doctrine does not apply  
3 to policy claims against municipalities under Monell v. New York  
4 City Dept. of Soc. Serv., 436 U.S. 658, 694 (1978).

5 Monell established that a municipality does not "cause" a  
6 constitutional violation giving rise to a § 1983 claim unless it  
7 establishes a policy that is the "moving force" behind the  
8 violation. See Oklahoma City v. Tuttle, 471 U.S. 808, 818-20  
9 (1985). "At the very least there must be an affirmative link  
10 between the policy and the particular constitutional violation  
11 alleged." Id. at 823. Due to this limitation on municipal  
12 liability, plaintiffs may not assert claims based on the actions  
13 of employees not taken pursuant to an alleged municipal policy:  
14 "Where a plaintiff claims that the municipality has not directly  
15 inflicted an injury, but nonetheless has caused an employee to do  
16 so, rigorous standards of culpability and causation must be  
17 applied to ensure that the municipality is not held liable solely  
18 for the actions of its employee." Board of the County Comm'rs of  
19 Bryan County, Okla., v. Brown, 520 U.S. 397, 405 (1997).

20 The alleged policies of Escondido and Oceanside are limited  
21 to Fifth Amendment violations. The JFAC does not allege that any  
22 additional violation underlying a § 1983 claim occurred pursuant  
23 to some directive or order from an official municipal policy  
24 maker. Rather, Plaintiffs allege that individual Defendants acted  
25 in concert with each other to commit most of the remaining federal  
26 violations. To hold Escondido or Oceanside liable for those  
27  
28

1 violations would violate the limitations on municipal liability  
2 established by Monell. Therefore, Plaintiffs may only assert  
3 § 1983 claims for violation of the Fifth Amendment against  
4 Escondido and Oceanside. Moreover, because only Michael Crowe,  
5 Joshua Treadway, and Aaron Houser assert Fifth Amendment claims in  
6 the JFAC,<sup>10</sup> only those three Plaintiffs may assert Fifth Amendment  
7 claims against Escondido and Oceanside.

### 9 **III. Conclusion**

10 Plaintiffs may continue to assert their federal causes of  
11 action only as set forth above. Plaintiffs may not amend the  
12 JFAC. Because the issue of Defendants' immunity has been  
13 resolved, the Court will permit discovery commencing thirty days  
14 from the filing of this order. If any party seeks to enjoin such  
15 discovery, they may bring a motion prior to that date.

16 The Court is aware that the San Diego County Sheriff's  
17 Department has taken control of the continuing criminal  
18 investigation. As a result, the Court may be receptive to a  
19 motion to intervene and stay discovery by the Sheriff's Department  
20 based on the "official information" privilege for ongoing  
21 investigations. See Youngblood v. Gates, 112 F.R.D. 342, 345  
22 (C.D. Cal. 1985). Nonetheless, the parties should read no  
23 implication as to how the Court would rule on such a motion.

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26 <sup>10</sup> The Court's January 3 Order holds that the Crowe,  
27 Treadway, and Houser family members lack standing to assert Fifth  
28 Amendment claims. (January 3 Order at 43.)

1 Barring a successful motion to stay, discovery will commence  
2 thirty days from the date of this order.

3  
4 IT IS SO ORDERED.

5 DATE: 7/26/2000



JOHN S. RHOADES, SR.  
UNITED STATES DISTRICT JUDGE

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8 Copies to:

9 All Parties in 99-CV-241; 99-CV-253; 99-CV-283  
10 Magistrate Judge

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