

1990 WL 132460

Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

Martin HARRIS, Jesse Kithcart, Thomas Sims,
Jonathan Lewis, Keith Sheldon, Carol Devan,
James Kelly

v.

Joan REEVES, in her official capacity as
Commissioner of the Department of Human
Services of the City of Philadelphia, Rev. Albert F.
Campbell, Labora Bennett, James Barber, Mark
Mendel, Donald Padova, Allen M. Hornblum, each
individually and in his or her official capacity as a
member of the Board of Trustees of the
Philadelphia Prison System, Edmund H. Lyons,
individually and in his official capacity as
Superintendent of the Philadelphia Prison System,
Press Grooms, individually and in his official
capacity as Warden of Holmesburg Prison, Willy
Gray, individually and in his official capacity as
Warden of the Detention Center, Paul Shuler,
individually and in his official capacity as Warden
of the House of Correction, James S. White, in his
official capacity as Managing Director of the City
of Philadelphia Hon. Wilson W. Goode, in his
official capacity as Mayor of the City of
Philadelphia The City of Philadelphia.

Civ. A. No. 82-1847. | Sept. 4, 1990.

Opinion

MEMORANDUM and ORDER

SHAPIRO, District Judge.

*1 The City of Philadelphia (“City”) has requested the court’s permission to place three inmates in each of a limited number of cells at Holmesburg Prison (“Holmesburg”) on a temporary basis while completing renovations on each of the Holmesburg cellblocks. The plaintiff class, while presumably favoring the renovations designed to make Holmesburg cellblocks habitable for a limited period of time pending replacement of this aged institution, objects to even the limited use of triple celling to accomplish the renovations. Triple celling is expressly prohibited by the parties’ stipulation of settlement and the Consent Decree entered herein.¹ Unlike other provisions, the prohibition against triple celling has been observed (with a single minor deviation) since this court has exercised jurisdiction.

Upon receiving the City’s request for deviation from the court’s Order, the court requested the Special Master to meet with the parties; a Report and Recommendation dated July 20, 1990, was forwarded to the court and provided to the parties by covering memorandum of August 16, 1990 after a meeting with counsel and prison personnel to discuss the issue. This material and additional information provided by the City on June 20, 1990 in response to questions of the court at the status hearing of June 18, 1990, will be filed of record herewith.

The City’s proposal has been made with care and consideration of ways to ameliorate the situation if permitted. The Commissioner of Prisons plans to request written consent to triple celling from inmate volunteers who would then have priority for housing in newly-renovated cellblocks. The City has expressed an intention to limit the time period for triple celling by strict compliance with renovation timetables provided to the court; it also has expressed a willingness to provide a comprehensive plan addressing issues of staffing and classification raised by the Special Master. Most of all, the court appreciates the City’s renovation of the deplorable conditions at Holmesburg for the limited time it will be in operation in view of the City’s announced intention to replace it with new construction.

However, the court agrees with the Special Master’s recommendation that this request for triple celling, even though temporary, must be denied. The difficulties in implementation and monitoring referred to by the Special Master could be managed but the precedent is both inadvisable and avoidable. The plaintiff class, having been deprived of compliance with the maximum allowable population limitation of the Consent Decree and the full implementation of the qualified admissions moratorium, should not be required to endure triple celling as well. Once permitted, it is too easy to find other good reasons for ignoring or overlooking this prohibition against triple celling temporarily or permanently.

Moreover, the need for triple celling has not been clearly established. There are 68 single cells at Holmesburg, some of which can be converted to double cells without violating the Consent Decree or the Constitution. Some of the 64 reported unusable cells should be made usable within a reasonable time. The good time/earned time program effective July 1, 1990, should result in some population reduction to permit renovations. Finally, the City has repeatedly assured the court that an additional 250 beds are immediately forthcoming. While these are minimum security beds, implementation of the program the Commissioner of Prisons has underway will permit reclassification and relieve the population at Holmesburg so that the repair schedule can be met.

PHILADELPHIA, PA 19106-5008

*2 For these reasons, the court concurs with the Special Master that the City's request for triple celling must be denied. An appropriate Order follows.

August 16, 1990

The Honorable Norma L. Shapriro

Judge, U.S. District Court

Eastern District of PA

10614 U.S. Courthouse

601 Market Street

Philadelphia PA 19106

RE: *Holmesburg*

Dear Judge Shapiro:

ORDER

AND NOW, this 4th day of September, upon consideration of the City of Philadelphia's request not to comply with the prohibition on triple celling (Order of December 30, 1906, ¶ 2b) for at least 38 weeks to allow renovations to the cellblocks at Holmesburg Prison, plaintiffs' opposition thereto, the written Report and Recommendation of the Special Master, and for the reasons set forth in the foregoing Memorandum, it is ORDERED that:

1. No triple celling shall be permitted for renovation or otherwise.
2. Single cells (68) may be converted to double cells and unusable cells (64) may be rendered usable to provide the 117 beds necessary to renovate cellblock by cellblock as planned; if this cannot be done timely, the population must be reduced by the good time/earned time program or otherwise.
3. Inasmuch as the 250 minimum security beds that the court has been assured are imminent should also allow for reclassification and transfer to make the necessary arrangements for renovation, the City shall report on when those beds will be made available at the September status conference.

Enclosed please find a memorandum to the Court dated July 20, 1990, regarding proposed triple-celling at Holmesburg. I delayed forwarding the memorandum because of a subsequent meeting with counsel and Warden Gray to discuss this issue.

At the meeting, plaintiffs' counsel did not change its position in opposition to triple-celling, and that was reiterated in subsequent conversations with both David Richman and David Rudovsky.

The issues outlined in the memorandum that would need to be addressed if the Court chose to allow a temporary exception (*e.g.*, staffing, classification, etc.) were raised at the meeting, and the City stated that it would provide a comprehensive plan addressing each issue. I have not received the plan but will forward it to the Court as soon as I do.

Warden Gray stated at the meeting that the Prisons would not begin the project (and thus the triple-celling) until after the summer to avoid the tension normally associated with the hot weather. That also will allow the City time to see what impact the good/earned time program will have and hopefully to contract for some or all of the promised 250 minimum security beds.

ATTACHMENT

WILLIAM G. BABCOCK, ESQ.

SPECIAL MASTER

HARRIS V. REEVES

P.O. BOX 40008

I hope that this information is helpful.

Sincerely yours,

/s/ William G. Babcock

Special Master

Enclosure

cc: Philip Lebowitz, Esq.

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Guy Vilim, Esq.

David Rudovsky, Esq.

*3 Joseph Gallagher, Commissioner

Willie Gray, Warden, Holmesburg

WILLIAM G. BABCOCK, ESQ.

SPECIAL MASTER

HARRIS V. REEVES

P.O. BOX 40008

PHILADELPHIA, PA 19106-5008

TO: Judge Shapiro

FR: Bill Babcock

RE: Triple-celling at Holmesburg

DT: July 20, 1990

At the June 18, 1990 status conference, the City requested the Court's permission to triple-cell inmates at Holmesburg on a temporary basis while completing renovations on each of the Holmesburg cellblocks. The Court instructed me to make a recommendation to the Court on whether an exception to Paragraph 2(b) of the Order of December 30, 1986 should be allowed in this instance.

Holmesburg is the oldest institution in the Philadelphia prison system and is generally recognized as the worst physical plant in the system. The City's consultants have stated that, "it is hardly necessary for a case to be made to justify the razing of Holmesburg Prison." (See, *Justice Facilities and System Improvement Strategy*, Book Three, Volume V, Section 2 at 14.) The consultants went on to provide three possible scenarios for dealing with Holmesburg:

—refurbish each cellblock, the control room and program areas at an approximate cost of \$1,550,000 and with a life span of less than 5 years;

—make major renovations, including new electric, plumbing and air circulation systems at an approximate

cost of \$30,000,000 and with a life span of 15–20 years;

—replace the original facility in two phases, with half of the new facility built in each phase, within the walls of the current site, at an approximate cost of \$54,000,000.

(*Id.* at 14–15.) They concluded that "the elimination of Holmesburg [is] seen as the most practical and desirable" scenario. (*Id.* at 14.)

Subsequently, in its section on findings and recommendations, the consultants made the following recommendation: "RECOMMENDATION No. 10: The Holmesburg Prison facility should be replaced." (*Id.*, at Book 2, Volume III, Section A, p. 31.) The report does not elaborate as to whether "replaced" means the third scenario described above, or whether it means replaced by a facility at a different site.

It is clear is that the City has chosen not to adopt scenario number two (major renovations) and that they are proposing the construction of a new prison with 500 cells (1000 beds) at a site other than Holmesburg. Assuming that it will be two to three years before a new institution is operational, it could be concluded that the City has opted for scenario number one for Holmesburg (refurbishing with a life span of less than five years) with the intention of making it habitable only until such time as a new facility is opened.

While the City has not so stated, one conclusion to be drawn is that the City intends to close Holmesburg after the new facility is opened. That would be consistent with Richard Gold's earlier representation to Don Stoughton and me that the City intends to adopt all of the recommendations in the consultants' report, and recommendation no. 10 which clearly states that Holmesburg "should be replaced."

*4 The work to be done was described in some detail by John O'Connell, Director of Physical Plant, and he characterized it as "cosmetic" in nature and confined to the cellblocks. The Prisons intend to repair all of the external plumbing, which includes replacing about half of the sinks in the cells; plaster and paint; put in new skylights with security screens; replace the current porcelain light fixtures and bare incandescent bulbs with fluorescent lighting (which will provide more light and be less susceptible to vandalism); and reverse the vents in the ventilation system to pull fresh air into the cellblocks through the skylights.

Additionally, D block will be given special attention by putting the plumbing in the basement access areas (rather than being exposed on the cellblock run, as in the other cellblocks) and replacing all of the porcelain plumbing fixtures with stainless steel fixtures. This will be done at a

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cost of approximately \$125,000 and with the intent of using D block to house those inmates requiring a higher level of security. Although the consultants' report also referred to work being done on the control room and program areas, Mr. O'Connell was not aware of any additional work to be done other than repairing the fire alarm system in one of the cellblocks.

It is commendable that the City wants to refurbish Holmesburg for the period of time that it intends to keep it in operation, and it is assumed that the plaintiff class would favor the refurbishing of Holmesburg. The question is whether the plaintiff class should be asked to triple-cell at Holmesburg during the period of the refurbishing. There are two basic options available to the Court.

The first option is that the triple-celling be allowed, but with specific restrictions relating to number of inmates, duration, staffing and classification. At a maximum, the number of cells that are tripled should not exceed the number of inmates removed from the cellblock being refurbished, and every attempt should be made to limit the number further by housing some of the displaced inmates in cells currently housing only one inmate.

As of July 1, 1990, Holmesburg reported 68 single cells and 551 double cells, with 64 unusable cells. The population in the cellblocks ranged from 73 inmates (C block) to 139 inmates (E and G blocks). The average population per cellblock was 117 inmates.

Second, the refurbishing of each cellblock, and thus the length of time that each inmate is required to be triple-celled on another cellblock, should be restricted to two weeks. The attached plan submitted by the Prisons would appear to anticipate that the repairs can be completed in two weeks on each cellblock.

Third, by removing an average of 117 inmates from one cellblock and adding them to cellblocks also housing an average of 117 inmates, it is assumed that some changes will need to be made in staffing patterns for those cellblocks asked to absorb the additional population. The City should be asked to provide their plan for addressing staffing needs.

*5 Finally, there is the question of classification. The City has proposed that no one will be triple-celled who does not consent to such housing, and, if the Court adopts the triple-celling option, the City should be held to that requirement. There still, however is the need on the part of the Prisons to insure that those inmates being asked to triple-cell are appropriately classified for the temporary housing offered. There are differences in classification that need to be addressed, such as protective custody, disciplinary segregation, administrative segregation, mental health, etc., before inmates are housed together.

Again, the City should be asked to provide their plan for addressing classification.

The second option available to the Court, of course, is to deny the City's request to allow temporary triple-celling and to leave it to the City to provide the additional housing needed to carry out the refurbishing. Such housing may be of a permanent or a temporary nature; that would be up to the discretion of the City. (The City also may attain its objective through increased releases of inmates; for example, by the implementation of the good time/earned time program retroactively.)

For the following reasons I recommend that the Court deny the City's request to allow temporary triple-celling and place the responsibility on the City to find the housing needed to avoid triple-celling during the course of the refurbishing.

First, while I have outlined the restrictions needed if triple-celling is allowed, there would be obvious problems with both the implementation and monitoring of those restrictions. It is admirable, for example, to triple-cell only those who consent to triple-celling, but one can imagine the difficulty in obtaining signed consent forms from both the displaced inmates and their prospective new cellmates, as well as the number of inmates who would subsequently allege that their consent was not, in fact, given, or that it was not, under the circumstances, voluntary.

Second, the plaintiff class already has been deprived of compliance with the maximum allowable population established in the consent decree, and now the City is asking that the plaintiff class endure an additional violation of the Order by being subjected to triple-celling. I am struck, however, by the fact that the maximum allowable population (MAP) at Holmesburg is 800 inmates and the current population is approximately 1,170 inmates, or 370 inmates above the MAP. If the City were in compliance with the Holmesburg MAP, there would be no need to triple-cell during the refurbishing.

The current overall population in the Prisons is approximately 5,000 inmates, and the overall MAP of 3,750 has been exceeded by at least 1,000 inmates for almost two full years. The situation has existed for so long that it could be argued that a *de facto* MAP of at least 4,750 inmates has been created. It is that mindset which makes it very inviting to simply go along with the City's request on the rationale that it will benefit the inmates in the long run.

*6 I feel compelled, however, to object to allowing triple-celling under these conditions. The plaintiff class already has had to bear the weight of the City's inability to comply with the MAP and should not now be required to undergo further privations in order to eventually be

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housed in conditions that begin to resemble those that are minimally required by the U.S. Constitution. Compliance with the Order and with the U.S. Constitution should not be mutually exclusive.

Third, I also believe that to allow triple-celling—under almost any circumstances—would be to establish a bad precedent in this case. The Court’s adamant opposition to triple-celling throughout the enforcement of the consent decree has been a constant that should not be subject to tampering. For good reasons, the Court was willing to amend the qualified admissions moratorium and the impact on the MAPs has been negative. We should try, therefore, to avoid a similar scenario with respect to triple-celling.

The City currently is in the process of issuing a request for proposals for an additional 250 beds, and they are implementing the good time/earned time program, effective July 1, 1990, retroactively. These actions in combination should allow the refurbishing of Holmesburg to take place without the need to triple-cell. By denying the City’s request for triple-celling, the Court will emphasize the need to move expeditiously on both the additional 250 beds and the retroactive implementation of good/earned time.

For the above reasons, I recommend that the Court not grant the City’s request to allow triple-celling at Holmesburg during the refurbishing project.

cc: David Richman, Esq.

Richard Gold, Esq.

David Rudovsky, Esq.

Sarah Vandenbraak, Esq.

Donald Stoughton

J. Patrick Gallagher, Commissioner

90.1.2

CITY OF PHILADELPHIA

LAW DEPARTMENT

15th Floor, Municipal Services Building

Philadelphia, Pa. 19102–1692

CHARISSE R. LILLIE

City Solicitor

RICHARD J. GOLD, ESQUIRE

(215)686–5260

June 20, 1990

Honorable Norma L. Shapiro

United States District Court

for the Eastern District of PA

10614 United States Courthouse

601 Market Street

Philadelphia, PA, 19106

RE: *Harris v. Reeves*

Dear Judge Shapiro:

Regarding the renovations to Holmesburg Prison, I discussed with Commissioner Gallagher how the Prisons will decide who will be triple-celled during the renovation period. He advised me that he will request permission from the inmates to triple-cell and will have statements signed by the inmates providing their consent. Furthermore, Commissioner Gallagher plans to reward those volunteers by giving them priority for housing in the newly renovated blocks.

Also, enclosed please find a schedule for the renovations at Holmesburg Prison. The numbers at the top of the sheet indicate the number of weeks required for the entire project. I have outlined those periods when triple-celling would be necessary for each of the blocks being renovated. Last, “I” Block will be renovated at the end of the process.

*7 If I can provide any further information, please let me know.

Very truly yours,

/s/ RICHARD J. GOLD

First Deputy City Solicitor

RJG:g

Enclosure

cc: William Babcock, Esquire

David Richman, Esquire

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Sarah Vandenbraak, Esquire

RENOVATIONS TO HOLMESBURG

EVERY CELL BLOCK, EXCEPT "D" BLOCK*

1. New skylight

Install security screen, install lexan skylight cover, install lexan canopy for light and ventilation.

2. Evaluate the condition of the following items and repair or replace anything that is either broken or in total disrepair.

Plumbing; sinks; toilets; pipes; heating

3. Push-rod modifications

4. Evaluate windows and walls (including ceilings)

Repair all leaks

Replace any damaged glazing

Remove all damaged plaster and then replaster applying sealer as required

Footnotes

¹ "At no time shall more than two inmates be housed in a cell in the Philadelphia Prison System." Order of December 30, 1986, ¶ 2b.

* Please note that many of these repairs were completed already for "I" Block after the October 1989 disturbance. The remaining modifications will also be completed for "I" Block.

5. 100% replacement of cell lighting with security fixtures

6. 100% replacement of corridor lighting with provision for emergency lighting

7. Ventilation modifications to improve circulation

8. Bolt cell beds to floor

9. Repaint all cells, corridors, and program spaces

FOR "D" BLOCK

1. All of the above

2. Conceal all plumbing and install plumbing combination fixtures (stainless steel)

