

1993 WL 181496

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United States District Court, N.D. California.

William BESK, et al., Plaintiffs

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,  
Defendants.

No. C91-3453 WHO. | May 24, 1993.

**Attorneys and Law Firms**

Morton P. Cohen, San Francisco, CA, James Severson,  
Beth Parker, McCutchen, Doyle, Brown & Enersen, San  
Francisco, CA, for plaintiffs.

Dennis Aftergut, Chief Asst. City Atty., James Harrigan,  
Counsel to the Sheriff, for defendants.

**Opinion**

**STIPULATION OF DISMISSAL**

ORRICK, District Judge.

\*1 The parties, by their respective counsel, hereby stipulate as follows:

**I. INTRODUCTION**

Plaintiffs have filed this action challenging living conditions at San Francisco County Jail # 3 located at San Bruno, California. The plaintiffs seek damages, fees and costs, and claim that such conditions violate the United States Constitution in regard to safety, overcrowding and other aspects of living conditions at Jail No. 3. Defendants have denied such violations. The purpose of this stipulation is to settle certain aspects of this litigation.

**II. PROCESS**

A. By entering into this agreement, defendants admit no liability or legal violation of any kind, nor do plaintiffs stipulate that the conditions created under this agreement comport with constitutional or other legal or professional standards.

B. Upon initial full compliance with this agreement, and no earlier than October 15, 1993, plaintiffs will dismiss this action. Notwithstanding such dismissal, in the event

the defendants fully comply with this agreement, plaintiffs reserve the right between October 15, 1993 and October 15, 1994 to reopen the instant action on the sole issue of whether crowding at Jail No. 3 violates the inmates' constitutional rights.

C. This agreement shall remain in effect until October 15, 1995. In the event defendants fail to comply with this agreement at any point before dismissal of the action on or about October 15, 1993, plaintiffs may resume litigation of all claims set forth in their complaint, except such claims for damages as have been settled and satisfied. In the event defendants fail to comply with this agreement at any point after dismissal of the action on or about October 15, 1993 and before termination of the agreement on or about October 15, 1995, plaintiffs may move to reopen the action and allege any claims as to the violation of their rights. If plaintiffs seek to reopen this action on the grounds of noncompliance, defendants reserve the right to oppose the re-opening on the grounds of actual or substantial compliance. Should the action be reopened and the plaintiffs prevail or the defendants comply with paragraph II(G) below, nothing in this agreement shall preclude plaintiffs from seeking reasonable fees and costs.

D. The remedies set forth in the preceding paragraph shall be plaintiffs' sole remedies for noncompliance by the defendants. Plaintiffs may not bring any action or file any motion to enforce the terms or extend the time of this agreement, and the agreement shall confer no authority on any court to provide any remedy for any violation of the agreement.

E. Nothing in this agreement shall preclude inmates at Jail No. 3 from bringing any new action concerning conditions at Jail No. 3 after termination of this agreement. Nor shall anything in this agreement preclude inmates at Jail No. 3 from using materials or information discovered in this litigation in any new action.

F. While this agreement is in effect, defendants shall maintain monthly logs as to all requirements of Sections III through XI of this agreement. Such logs shall be available to counsel for plaintiffs upon 48 hour notice to counsel for defendants. Further, defendants shall, on a monthly basis, report to plaintiffs on whether defendants are in compliance with the terms of the agreement, and if not, the specific facts of non-compliance.

\*2 G. In the event that (1) by April 1, 1994, the inmate population at Jail # 3 and within the individual housing areas shall conform and be likely to continue to conform to the rated capacities set by the California Board of Corrections, or that (2) by October 15, 1994, the City shall have obtained funding earmarked for a new facility or facilities with fixed plans and dates to conform to Title

**Besk v. City and County of San Francisco, Not Reported in F.Supp. (1993)**

15, CCR, and to accommodate the population at Jail # 3, all claims regarding overcrowding in this lawsuit shall be dismissed with prejudice. The dates for opening such facility or facilities must be supported as reasonable in the opinion of an expert independent of defendants. Any dismissal of claims regarding overcrowding shall terminate any preliminary or nonfinal court order regarding overcrowding that may have issued in this case. This provision shall apply notwithstanding the provisions of sections II(B) and XI of this agreement.

H. The number of inmates housed at Jail No. 3 shall be no more than 750.

**III. DOUBLE-CELLING AT JAIL # 3**

A. This agreement shall not affect existing housing classification and reclassification programs, including request or hearing processes related to housing classification and reclassification. Inmates may verbally seek reclassification and changed housing for any reason, including but not limited to health and safety.

B. Beginning no later than October 15, 1993, any inmate in the general population at Jail No. 3 housed in a cell with another inmate for 28 continuous days may request in writing that he be placed in a cell by himself. After prompt confirmation of the 28 continuous days, the Sheriff's Department shall place any inmate making such a request in a cell by himself within 72 hours after receipt of the request and the expiration of the 28 continuous days.

C. For purposes of this section, a 28-day period of double-celling is "continuous" even if during that period, the inmate has been temporarily removed from his double cell for fewer than 24 hours. Classification officers shall retain discretion to remove an inmate from a double cell before the 28-day period expires.

D. The Sheriff's Department shall provide notice of the right to be removed from a double cell under this Section in the following ways: (i) Upon placement in a double cell, the Department shall provide all such inmates with a written notice as to their rights under this section; (ii) the Department shall provide new arrivals at Jail No. 3 with a written notice within 24 hours of arrival at Jail No. 3; and (iii) the Department shall place a sign on the desk of the classification officer who interviews new arrivals at Jail No. 3. All such notices shall be in English and Spanish.

E. The Sheriff's Department shall provide any inmate placed in a double cell who requests placement in a cell by himself with a form to be used in requesting such single cell placement, and with instructions written in English and Spanish as to the submission of such completed request. A duplicate or copy of the completed

and submitted request form shall be provided by the Sheriff's Department to Prisoner Legal Services at or near the time such request is submitted to a Sheriff's Department representative.

**IV. TIME OUT OF CELLS**

\*3 A. Prior to October 15, 1993, absent emergency conditions, inmates in general population shall continue to receive at least five hours a day outside of their cells seven days a week and inmates in administrative segregation and on lockdown shall receive no less time out of their cells than they are currently receiving. During the period prior to October 15, 1993, defendants shall increase such time out of cells if safety and staffing permit.

B. An emergency shall exist where action is necessary for the preservation of life or the prevention of serious bodily harm to inmates or staff on the tier or tiers affected, and shall continue only so long as such is the case. If an institution-wide emergency exists for longer than 7 days, the Sheriff shall meet and confer with plaintiffs' counsel for the purpose of attempting agreement on ending the emergency and restoring privileges within a reasonable period. If a tier-wide emergency exists for longer than 5 days, the Sheriff, the Undersheriff, or the Chief Deputy Sheriff shall meet and confer with plaintiffs' counsel for the purpose of attempting agreement on ending the emergency and restoring privileges within a reasonable period.

C. Beginning no later than October 15, 1993, inmates in the general population shall be allowed out of their cells a minimum of 10 hours per day in the absence of emergency conditions.

D. Absent an emergency or violation of institutional rules, only those current administrative segregation units located in tiers 4N, 5S, 6S shall be used for the purpose of administrative segregation, and those units shall be operated in conformance with the requirements of Title 15, Section 1053 of the California Administrative Code.

**V. STAFFING**

A. Defendants currently have seventy-five deputies assigned to Jail # 3 and shall maintain at least such number until October 15, 1993.

B. By May 1, 1993, defendants shall have hired at least an additional twenty-six persons who shall be assigned to and maintained as part of the correctional staff at Jail # 3.

C. By May 15, 1993, the new deputies referred to in the previous paragraph shall have commenced academy

**Besk v. City and County of San Francisco, Not Reported in F.Supp. (1993)**

training in an academy class. This class shall graduate by October 14, 1993.

D. Beginning no later than October 15, 1993, there shall be at least 101 deputy sheriffs assigned and maintained at Jail No. 3 at all times.

E. Whenever inmates in the general population are out of their cells as set forth in Section IV above, there shall regularly be at least one deputy sheriff on each tier above the second floor, except during lunch breaks and work breaks when there shall be at least three deputy sheriffs for floors three and four, and at least three deputy sheriffs for floors five and six.

F. Adequate staff shall be maintained to assure the agreements set forth below concerning outdoor recreation.

G. The additional staff hired by May 1, 1993 shall include an additional classification officer, and this position shall be maintained.

**VI. PASSIVE RECREATION**

\*4 A. Television sets and other forms of passive recreation currently available in both general and segregated housing shall be maintained.

B. There shall be: 1. as of April 1, 1993, a reasonable amount of multi-language reading materials for those persons housed at Jail # 3, including but not limited to religious materials; 2. as of June 1, 1993, 50 decks of playing cards; and 3. as of June 1, 1993, 12 complete sets of passive recreational games, such as chess, checkers, and dominos, regularly available and maintained on each tier within Jail No. 3.

C. By June 1, 1993, there shall be a cadet assigned to Jail # 3 whose primary duties shall be the maintenance and dissemination of the materials set forth in paragraph B above.

D. By August 15, 1993, there shall be at least four television sets in each general population tier within the Jail, and reasonable efforts will be made to assure English and Spanish programming.

**VII. EXERCISE**

A. At least such exercise as currently exists shall be continued, including but not limited to outdoor exercise and to such parallel and chinning bars as are available.

B. Beginning no later than October 15, 1993, inmates shall have the opportunity to receive at least three hours of outdoor exercise per week, weather permitting. In the

event of inclement weather, the Sheriff's Department shall provide those inmates affected an opportunity to make up the lost outdoor exercise time. The Sheriff is not precluded from denying this opportunity to specific inmates who may be temporarily ineligible due to violations of inmate rules and regulations.

C. By July 1, 1993, the City shall improve the drainage on the outdoor field so that outdoor exercise will not be impeded by standing water after a rain. By October 15, 1993, the City shall enclose the lower recreational yard.

**VIII. PHYSICAL AND MENTAL HEALTH**

A. Inmates confined to wheelchairs shall not be housed at Jail No. 3.

B. In addition to the 101 deputies described in Section V above, by October 15, 1993, the City shall hire, assign and maintain at Jail No. 3 at least three deputy sheriffs available for transporting inmates from Jail No. 3 to medical appointments at outside medical facilities.

C. Such treatment for mentally ill inmates as currently exists shall continue. In addition, beginning October 15, 1993, weekly opportunities to participate in mental health programs and to receive individual or group treatment with informed consent shall be provided to inmates identified as having mental health problems of sufficient severity to justify separate housing. Space assuring privacy for interviews shall be provided beginning October 15, 1993.

D. An automated management information system for inmates' health records shall begin operation by May 1, 1993.

**IX. FIRE SAFETY**

By October 15, 1995, the City shall obtain a fire safety clearance for the facility from the State Fire Marshall or an opinion in writing from an agreed upon expert in fire safety stating that the facility substantially meets all relevant criteria for fire safety as a correctional facility. Plaintiffs' agreement to such an expert shall not be unreasonably withheld.

**X. TELEPHONES**

\*5 A. The City currently has, and shall maintain in reasonable working order, six telephones in each tier.

B. All inmates, including but not limited to those in administrative segregation, shall be permitted reasonable access to and use of the aforesaid telephones.

**XI. OVERCROWDING AND PHYSICAL CONDITIONS**

A. The inmates may pursue their claims regarding overcrowding at the facility after October 15, 1993. The inmates may amend the instant complaint for up to a period of one year after October 15, 1993 to pursue such claims, and defendants may amend their answer accordingly. Plaintiffs may commence their discovery as of September 15, 1993. This agreement shall not preclude the use of material previously discovered in this action as part of any and all allegations regarding overcrowding. No claims of violations of this agreement shall be admissible in such litigation or in any subsequent litigation brought by the plaintiff class. All facts regarding other conditions of confinement, however, may be admissible in such litigation, insofar as those facts are relevant to the issue of overcrowding.

B. The City shall maintain adequate heating within the facility and plumbing in all occupied cells.

**XII. DAMAGES**

A. Defendants agree to pay plaintiff WILLIAM BESK the sum of \$75,000 upon final approval of this settlement, and thereafter to pay plaintiff BESK \$10,000.00 per year for five years.

B. This agreement does not preclude plaintiffs other than William Besk from such damage claims as they might otherwise possess.

**XIII. FEES**

Defendants agree to pay plaintiffs counsel McCutchen, Doyle, Enersen & Brown and Morton P. Cohen the sum of \$279,095.70 to settle any and all claims for fees and costs herein by July 15, 1993. Such agreement does not include fees and costs incurred after the signing of this agreement for legal work performed in connection with claims relating to overcrowding or to noncompliance with this agreement. In the event plaintiffs prevail as to any such claims or defendants comply with Paragraph II(G) above, plaintiffs may seek attorneys' fees for their work in connection with such claims and federal law shall be determinative.

**XIV. CLASS NOTICE**

There shall be notice given to the inmates at County Jail No. 3 by the defendants' posting in that jail notices setting forth the agreements herein regarding conditions at the jail, the process set forth in this agreement, and the opportunity to object to this agreement.

**XV. EFFECTIVE DATE**

This agreement shall not become effective until it is approved by the court.

SO STIPULATED.