UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD CAMPBELL, et al.,

Plaintiffs,

v.

ANDERSON McGRUDER, et al.,

Defendants.

C.A. No. 1462-71

MEMORANDUM AND ORDER

This case, which is on remand from the United States Court of Appeals, 580 F.2d 521 (D.C. Cir. 1978), involves the conditions of confinement at the Central Detention Facility ("the Jail") in the District of Columbia. The plaintiffs are a class composed of unconvicted pretrial detainees housed at the Jail.[1] The defendants are the Superintendent of the Jail, the Director of the District of Columbia Department of Corrections ("the Department"), and the Mayor of the District of Columbia.

Plaintiffs have moved the court for an order directing Marion Barry, in his official capacity as Mayor of the District of Columbia, to show cause why he should not be held in contempt for violations of this court's orders of October 8, 1982 and

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[1]The Jail is also used to house convicted persons awaiting sentencing, sentenced felons awaiting transfer to other facilities, and sentenced misdemeanants serving their sentences. These convicted inmates are not members of the plaintiff class.

December 17, 1982. Those orders authorized the defendants to institute double-celling[2] of pretrial detainees subject to several restrictions, the most important of which limit the double-celling of pretrial detainees to no more than 12 hours per day and no more than 30 days.

A hearing was held on the plaintiffs' motion on May 24, 1983. Prior to the hearing, the defendants moved the court to modify its orders of October 8 and December 17 to provide that: (a) if the Department obtains the written consent of a pretrial detainee, it may subject him to an additional 30 days of double-celling following 7 days outside the double cell, and (b) the absolute limitation of 12 hours of double-celling per day be reduced to 10 hours and 15 minutes, "subject to security considerations".[3] Defendants represented to the court that the absolute 30-day limitation is "unmanageable," Memorandum of Points and Authorities in Support of Defendants' Motion to Modify Order at 6, and that the 12-hour limitation is "unduly optimistic," id. at 9. Defendants acknowledged that there had been "deviations" from these time limitations, id. at 13.

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[2]The term "double-celling" describes the practice of housing two inmates in a cell designed for single occupancy. Similarly, the term "double cell" describes a cell which, though designed for single occupancy, is used to house two inmates.

[3]The defendants' motion also asked that a provision in the October 8 order which stated that "[a]dditional guards be placed in each cell block in which inmates are double-celled," be clarified to specify that three guards be placed on each such cell block.

I. Historical Background: Overcrowding at the Jail

The problem of overcrowding is not new to this litigation. In 1971, when the complaint was filed, many pretrial detainees were double-celled at the old D.C. Jail in cells so small that cellmates could not move about in them simultaneously. These crowded conditions persisted, and in March 1975, at the time of the trial, the inmate population at the old Jail was nearly 1,000, about 50% above its rated capacity of 663. Campbell v. McGruder, 416 F. Supp. 100, 102 (D.D.C. 1975).

Following the trial, in an effort to bring conditions at the Jail within constitutional bounds, the court ordered that no pretrial detainee be confined "in any cell, room, or dormitory where there is an average of less than 48 square feet per person." Campbell v. McGruder, No. 1462-71 (D.D.C. March 21, 1975). The Court of Appeals imposed a stay, but ordered "that appellants are obligated to continue to take steps toward compliance with the substance of the March 21, 1975 order." Campbell v. McGruder, No. 75-1350 (D.C. Cir. May 2, 1975).[4]

The matter was remanded to this court for further hearings,

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[4]Subsequently, the Court of Appeals ordered that its stay of the March 21, 1975 order be continued "on the same terms" as in its May 2, 1975 order, namely, "with the proviso that appellants are obligated to continue to take steps toward compliance with the substance of the March 21, Order". Campbell v. McGruder, Nos. 75-1350 and 75-2273 (D.C. Cir. February 6, 1976). In 1978, the Court of Appeals again continued its stay, Campbell v. McGruder, 580 F.2d 521, 553 (D.C. Cir. 1978), and that stay remains in effect.

and at these hearings the defendants initially claimed that they were in compliance with the 48-square-foot requirement. But it turned out that the defendants were not in compliance with the 48-square-foot requirement and had not followed the directions of the Court of Appeals as to how they might achieve compliance with the 48-square-foot requirement.[5] Their representations to the contrary were made in bad faith. Campbell v. McGruder, 416 F. Supp. 106, 107-08 (D.D.C. 1975). In its Memorandum Opinion of November 5, 1975, this court gave the defendants additional directions concerning how they could reduce overcrowding at the Jail. Id. at 109-11.[6] In a separate opinion issued the same day, this court set standards relating to other problems at the Jail, 416 F.Supp. 100. But after describing and analyzing these problems, the court stated that "[b]y far the most flagrant and shocking encroachment on the constitutional rights of the plaintiff class is the overcrowding," Id. at 105.[7]

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[5]The directions of the Court of Appeals concerning the overcrowding problem were issued in the opinion which accompanied the May 2, 1975, order and are quoted at page 17 infra.

[6]See pages 16-18 infra.

[7]To call overcrowding "the most flagrant and shocking encroachment on the constitutional rights of the plaintiff class" was to say a lot. In the early and mid 1970's, pretrial detainees were still confined at the old D.C. Jail. Conditions there were terrible--almost beyond description. Campbell v. McGruder, 580 F.2d 521, 533-35 (D.C. Cir. 1978).

Upon arrival at the old Jail, inmates were often issued old mattresses which were stained with urine and other excretia. They were placed in cramped cells which were infested with rats, mice, and cockroaches. An overpowering stench permeated the cell blocks. Noise levels were deafening. The temperature was either too hot or too cold, depending on the season and the location of the cell, and the ventilation was poor. Laundry service was (Continued)

In April 1976, the first sections of the new Jail (i.e., the present detention facility) were opened, but because of the rising inmate population, the Department continued to house many inmates in the old Jail. Faced with repeated violations of the 48-square-foot requirement, forecasts of continued rises in the inmate population, and the defendants' failure to respond to these forecasts, the court on May 24, 1976, placed a population "cap" on the new Jail and the cell blocks of the old Jail which were still in use. The court also ordered that:

> [I]f compliance requires a reduction in the inmate population at either facility, and other efforts to reduce the population are not successful within 48 hours after compliance ceases, the Director of the

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inadequate. Food was often served cold and sometimes contained insect parts and other foreign matter. Food handlers were not subjected to medical examinations, as required by local regulations. Fire safety inspections were also neglected, and from time to time fires broke out within the cell blocks.

There was little for inmates to do. The old Jail had no indoor recreational facilities and only rudimentary outdoor facilities. There were few books available for the inmates, and mail was strictly censored. Inmates for the most part led lives of boredom punctuated by moments of terror. Fights, assaults, and sexual abuse were everyday occurrences. And administrative punishments were meted out harshly and with little attention to procedural safeguards.

There was no orderly classification and separation of inmates at the old Jail. Convicted inmates were housed together with pretrial detainees. Homosexual inmates were exposed to abuse from the general inmate population. And, because bed space was often unavailable at St. Elizabeths Hospital, inmates with severe psychiatric problems were kept within the Jail. But the Jail had no psychiatrist on its medical staff and no facilities for psychiatric treatment. Disturbed patients were simply shackled to their beds with leg irons and handcuffs. Even for normal inmates medical care was woefully inadequate.

The overcrowding at the old Jail was offensive in and of itself. The overcrowding also seriously exacerbated the problems caused by every other deficiency at the Jail.

Department of Corrections and the Superintendent of Detention Services [are] directed to release on their own recognizance, within 48 hours of the admission to either facility of persons in excess of the numbers stated in the preceding paragraph, those pre-trial detainees held in default of the lowest amount of bail, and among those detainees held in the same amount of bail those held for the longest time, until compliance with that Order is obtained. [Campbell v. McGruder, 416 F. Supp. 111, 117 (D.D.C. 1976).]

The May 24, 1976 Order of this court was stayed by the Court of Appeals. The Court of Appeals stated that:

There is sufficient evidence in the record to sustain this injunction. ... We are aware, however, that the most recent evidence on this issue was received on April 30, 1976 before the full completion of the [new Jail]. ...

We therefore decline at this time to affirm the order of the District Court. Instead we remand the record to the District Court to determine if the anticipated over-crowding has in fact occurred. If the District Court finds that the defendants are in violation of the Constitution despite the full operation of the [new Jail], it may reissue its order. On the other hand, should the court determine that the District Jail is not overcrowded and that there is no likelihood of its being overcrowded in the near future, it may decline to issue relief. ...

[E]ven if the District Court should determine on remand that defendants are presently in compliance, the court should also apprise itself of the likelihood of future infractions. If the District Court finds that there is a likelihood that the constitutional rights of the plaintiff class will be violated in the near future, the court should retain jurisdiction of the case to monitor the conditions at the Jail until it determines, in its sound discretion, that the likelihood of future violations has ceased. [Campbell, 580 F.2d at 542-43.]

Pursuant to these remand instructions, this court continued to monitor conditions at the Jail. A number of hearings were held, and periodic reports were filed with the court by the defendants. For a time, the Department was able to keep the inmate population at the new Jail at, or at least close to, its rated capacity. However, as the population rose, the logistics of doing so became increasingly complicated. According to a report filed by the defendants on February 17, 1981, the Department by then had found it necessary almost every evening to bus inmates from the Jail, where they stayed during the day, to Lorton, where they slept. The report also indicated that on July 29, 1980, the inmate population had peaked at 1,483--103 over the rated capacity of 1,380. And attached to the report was a letter dated December 22, 1980, from the Superintendent of the Jail to the Department's Office of Judicial Affairs which stated that "[t]he saturation of the Detention Facility has reached crisis proportions over the last six months."

On October 27, 1981, the defendants filed another report with the court. This report stated that during the latter part of 1980 and continuing into 1981, the population at the Jail "exceeded on an increasing basis the rated cell capacity". To accommodate this rapidly rising population, the Department had begun to set up makeshift dormitories in the common areas of the Jail. The report showed that in September 1981 the average daily population at the Jail had reached 1,538. Although modest in comparison to present population figures, the September 1981 figure indicated that the point had been reached when such temporary solutions as shuttle-

busing would no longer be sufficent to keep the Jail within its rated capacity.

On December 21, 1981, the defendants filed another report. This report stated that the inmate population at the Jail had exceeded the 1,700 level on December 9, 1981, and that large numbers of inmates were being housed in the makeshift dormitories. As a result, many of the dayrooms at the Jail could no longer be used for inmate recreation.

On March 5, 1982, the defendants asked the court to authorize double-celling at the Jail. The court refused. Campbell v. McGruder, No. 1462-71 (D.D.C. March 8, 1982). In the court's view, the testimony given by officials of the Department showed that the defendants had not adequately considered obvious alternative means for dealing with the overcrowding problem, such as using empty beds at other of its facilities and coordinating its efforts with the judges of the Superior Court of the District of Columbia. It was also clear that the Department had not given adequate thought to how it would administer double-celling, if allowed to do so.

Following the March 5 hearing, the defendants completed their renovation program for the Occoquan I Facility, which had been previously used as the Rehabilitation Center for Alcoholics, and transferred some sentenced misdemeanants from the Jail to the Occoquan Facility. Nevertheless, the inmate population at the Jail continued to rise. In September 1982, the defendants moved the court to vacate its March order prohibiting double-celling. The court heard testimony on the motion and visited the Jail.

The defendants represented to the court that overcrowding at the Jail had reached emergency proportions. Department officials testified that one-third of the inmates were living in the makeshift dormitories and that it was becoming increasingly difficult to maintain security at the jail under those conditions. They said that the inmates could be better protected and cared for if the Department were permitted to move inmates from the dormitories into double cells. The defendants acknowledged that double-celling was undesirable and would itself create problems. However, the Department's Acting Director testified that the Department could "take[] some of the inhumanity away from this kind of situation" by carefully matching cellmates and by giving double-celled inmates ample time out of their cells. Campbell v. McGruder, 554 F. Supp. 562, 565 (D.D.C. 1983). He emphasized that it was important to clear the beds out of the dayrooms so that the dayrooms could be returned to their intended recreational function.

In light of this testimony, particularly the Department's representation that a crisis was at hand, the court on October 8, 1982, reluctantly vacated its earlier order and permitted the defendants to institute double-celling at the Jail. However, pursuant to the constitutional requirement in Bell v. Wolfish, that pretrial detainees not be held under conditions that "amount to punishment," 441 U.S. 520, 535 (1978), the court ordered that no pretrial detainee be double-celled for more than 12 hours in any day or for more than 30 days. The court also ordered that additional guards be placed in each cell block containing double

cells. 554 F. Supp. at 556.

Following the issuance of the October 8 order, the plaintiffs moved the court to modify the order to provide for (a) the classification and medical screening of inmates prior to their being double-celled, (b) recordkeeping, and (c) periodic reports to the court by the defendants concerning their compliance with the order and their long-range plans for dealing with the overcrowding problem. The Department protested that the proposed modifications were either unnecessary or unrealistic; but after taking testimony from Department officials, the court determined that many of the modifications were both necessary and realistic. On December 17, 1982, the court modified the October 8 order to include the following requirements: (a) establishment and filing with the court of a classification procedure for evaluating inmates prior to their being double-celled, (b) medical screening of inmates prior to their being double-celled, (c) recordkeeping concerning dates of double-celling (on an individual basis) and hours of double-celling (on a cell block basis), and (d) filing of a report describing the defendants' long-range plans for eliminating overcrowding at the Jail.

At the time of the December 17 order, only sentenced inmates had been double-celled pursuant to the October 8 order. The double-celling of pretrial detainees began on February 1, 1983. During the next few months, as more and more cell blocks were converted to double-celling, the court began to receive pro se complaints and petitions contending that the Department was not observing the time restrictions imposed by the court. On May 9,

1983, counsel for the plaintiffs moved the court for an order to show cause why the defendants should not be held in contempt for violations of the October 8 and December 17 orders. Defendants responded that there had been "substantial compliance" with the orders, but moved the court to modify the orders.

II. Findings of Fact

A hearing was held on the pending motions on May 24, 1983. At the hearing, the court heard argument from counsel for each of the parties and received testimony from Mr. George Holland, the Department's Assistant Director for Detention Services. The evidence indicated that the defendants had made little effort to comply with the October 8 and December 17 orders. In this regard, the court makes the following findings of fact:

1. Defendants acknowledged that delayed "counts" frequently prevented them from adhering to their daily schedule, which provides each double-celled inmate with 12½ hours out of his cell. It appears, however, that the 12½-hour figure is misleading in that it overcounts meal time by ignoring the fact that individual inmates eat in rotation. No inmate is actually out of his cell for the full period listed on the schedule. The 12½-hour figure also does not reflect the fact that on some days inmates are forced to remain inside their cells doing clean-up work during the "scheduled" morning recreation period. It therefore appears that even when the schedule is implemented as planned, the inmates receive less than the required 12 hours out of their cells.

2. Double-celling of pretrial detainees began on February 1,

1983. Accordingly, the first group of double-celled pretrial detainees ought to have been removed from their double cells no later than March 3, 1983. This was not done, nor was the court informed by the defendants that the terms of the October 8 order had been violated. The vast majority of the pretrial detainees are now double-celled. With three insignificant exceptions discussed below, none of them has been removed from double-celling at the end of the 30-day period. Instead, the defendants offered the members of the plaintiff class the choice of remaining in a double cell or being moved to makeshift dormitories. All but three of them "consented" in writing to remain in the double cells. The three who refused were promptly moved into dormitories, but after only one day they asked to be returned to the double cells. They were promptly returned.

The defendants did not inform the court until shortly before the show-cause hearing that they had instituted a policy of obtaining consent forms from class members as a means of keeping them in double cells for more than 30 days. Such a policy was not authorized by the court's orders of October 8 and December 17. It simply represents an attempt to circumvent the orders. Moreover, an essential part of the defendants' justification for instituting double-celling was to enable them to clear the dayrooms of beds so that the dayrooms could be used for inmate recreation. The court therefore expected that part of the 12 hours inmates spent out of their double cells would be spent in the dayrooms. The court also expected that, following their 30-day confinement in double cells, pretrial detainees would be placed in single cells for the

remainder of their confinement. Obviously, neither thing has happened.

3. The court's order of December 17 provided in part that "Defendants will promptly establish and file with the court a classification procedure, and each inmate will be evaluated according to this procedure prior to being housed in a double cell or dormitory." (Emphasis added.) If this classification procedure was filed at all, it was as an attachment to the motion to modify that was filed on May 19, 1983.

4. The December 17 Order also provided that:

> In general, these [pre-double-celling] medical examinations are to be conducted by a physician. However, upon submission to the court of an acceptable set of procedures for handling late-night intakes and emergency situations, defendants may authorize a nurse or other medically-trained person to perform the medical examination, so long as that preliminary examination is promptly followed by an examination by a physician. [Memorandum and Order at 5-6.]

No set of procedures for late-night intakes has been filed with the court. The court does not know if some of the required medical examinations have been performed by nurses or paramedics. If this has been done, it would constitute another violation of the order, which obviously contemplated that the court would approve the procedures prior to their being implemented.

5. The December 17 order required the defendants to maintain records concerning the dates and hours per day during which inmates are double-celled. The feasibility of maintaining the hours per day records was carefully examined during the hearing

held on November 4, 1982, to consider plaintiff's motion to modify. Counsel for the defendants initially contended that it would be impossible to maintain such records. But this assertion was contradicted by the Departmental official in charge of recordkeeping at the Jail, who testified that it was possible. All that was needed, he said, was for the defendants to make sure that the guards on duty on the cell blocks maintained the existing daily log books accurately and legibly. In fact, the log books have not been maintained in a legible fashion. It is therefore impossible to determine to what extent defendants have complied with the 12-hour requirement of the October 8 order.

6. Defendants filed in timely fashion the court-ordered report concerning their long-term program for dealing with the overcrowding problem at the Jail. The report indicated that the defendants plan to convert the so-called "Occoquan II" facility for use as a detention center for 400-500 inmates. So far, funds have been allocated only for the fence which must be constructed around the existing facility. The defendants predict that the entire renovation project will not be completed until January 1986--more than 2½ years from now. And it would not be unusual for such a project to fall behind schedule, particularly when the funding process has not been completed. As a matter of fact, it appears that unforeseen delays have already occurred since the report was filed less than five months ago. The report also indicated that a new minimum security facility would be constructed at Lorton to house 400 minimum-custody prisoners. The projected completion date for that facility is July 1984.

The present population at the Jail now exceeds 2,300 and is rapidly increasing. The recent implementation of the new mandatory sentencing law in the District of Columbia suggests that the rate of increase may rise substantially in the near future. The defendants hope to have 800-900 additional spaces by January 1986. That would not even provide spaces for the present excess population at the Jail, much less the excess population which can be reasonably anticipated 2½ years from now.

III. Discussion

A.

The defendants maintain that they "have substantially complied with the provisions of the orders regarding double-celling of pre-trial detainees." Memorandum of Points and Authorities, supra, at 4. The court wishes that this were so. But as the court's Findings of Fact make painfully clear, the defendants implemented the court's orders by violating them. They did not comply with either the procedural requirements, such as filing protocols and keeping records, or the substantive time restrictions.

The defendants also maintain that although they did not fully comply with the orders, they made a good faith effort to do so. But this assertion too is contradicted by the evidence produced at the May 24 hearing. Plaintiffs' exhibit #3 consists of a letter written by the Department's Acting Assistant Director for

Detention Services to the Department's Director. The letter was dated January 21, 1983--more than a week before the Department began to double-cell pretrial detainees pursuant to the October 8 order--and clearly indicated that the Department was not prepared to implement double-celling in accordance with the preconditions set by the court. Under the terms of the October 8 order, the Department was not authorized to double-cell pretrial detainees unless those preconditions were met. The Department nevertheless went ahead and instituted the double-celling.

The defendants assert that full compliance with the court's orders has been impossible. But it certainly was not impossible for the defendants to comply with the procedural requirements set by the court. And even with regard to the time restrictions on double-celling, the defendants' protestations of impossibility have little persuasiveness. As this court has repeatedly pointed out during the course of this litigation, the overcrowding problem is not simply a space problem. It stems at least as much from the defendants' persistent failure to coordinate their efforts with the other governmental agencies and authorities whose decisions determine the size of the inmate population at the Jail.

In 1975, when confronted with a similar claim that the court's orders dealing with overcrowding were unrealistic, the court responded:

> The most meaningful step in the direction of compliance is to seek effective implementation of the procedures governing the release of pre-trial detainees. The defendants have had enough experience in this area to be aware of the correlation between effectuating these procedures and reduction in the Jail population. [Campbell,

416 F. Supp. at 109.]

That advice is as appropriate today as it was eight years ago. In its 1975 opinion, the court also directed the defendants' attention to the then-recently issued opinion of the Court of Appeals in this case. The Court of Appeals opinion said in part:

> We recognize that the matter of compliance is in many respects a question of shared responsibility.[2] We contemplate that the Department of Corrections will, in its efforts to comply with the Court's order, seek the active consultation and cooperation of others who, although not technically parties to this action, have an important role to play in evolving the solution for the problem presented. Specifically, we contemplate that the Department and its counsel will seek the cooperation of the Chief Judges of the District Court and the Superior Court as well as the United States Attorney and the D.C. Bail Agency in an effort to explore ways to stem or divert the flow of new pretrial detainees into the jail and reduce the number of sentenced prisoners housed there. Furthermore, we presume that consultation with the designees of the Attorney General, who can e.g. expedite removal of Federal prisoners who have been sentenced, with the Mayor's Office, and other agencies of local and Federal government will permit consideration of other avenues for alleviating this temporary problem, and provide the type of cooperation necessary for a collective solution. The dimensions of the problem may require consideration of unusual remedies, perhaps even, e.g. modifications of unused barracks at service installations.

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[2]The Department observes that to some extent its function is to receive men sent to the jail by others. However, the Superintendent cannot assert a duty under local law that would put him at variance with a Federal decree. [Campbell, No. 75-1350 (D.C. Cir. May 2, 1975).]

The court continues to believe that the Court of Appeals' order "is a virtual road map which if followed is bound to lead to

compliance with the [court-imposed] requirements [concerning overcrowding]." Campbell, 416 F. Supp. at 109.

The court further believes that the Mayor of the District of Columbia, who is one of the defendants in this lawsuit, is the person best situated to initiate contacts and coordinate emergency remedial efforts among the agencies and authorities involved. He has the stature and the access to key individuals that is necessary to get the job done. It is, moreover, his constitutional duty.

The defendants have moved the court to relax the time restrictions placed on double-celling. This motion is without legal support. As the court explained in its October 8 Memorandum and Order, the 12-hour and 30-day restrictions on double-celling marked the minimal standards mandated by the Constitution. 554 F. Supp. at 565. In choosing these specific restrictions, the court applied the same criteria that the Supreme Court used in Wolfish, supra, and the Second Circuit in Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981): facility design and age, cell size, hours per day of double-celling, and length of pretrial detention.[8] The defendants did not appeal the court's October 8 or December 17 orders and have never challenged the validity of these four criteria. In their recent submissions to the court, the defendants offered no evidence that the factual background relating to these criteria has improved since the orders were issued. The evidence produced at the May 24 hearing in fact suggested that the length of

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[8] See Campbell, 554 F. Supp. at 563 (analyzing Wolfish and Lareau).

pretrial detention has increased since last October. Under these circumstances, the motion to modify must be denied with respect to the time restrictions.

The defendants have also moved the court to modify the provision of the October 8 order dealing with the assignment of guards to cell blocks containing double cells. The court cannot rule on this part of the motion until it receives further information concerning the practical effect of the requested change. The evidence presently before the court does not make clear whether the requested order, which would specify that three guards be placed on each cell block containing double cells, would permit guards presently assigned to these cell blocks to be transferred to other areas of the prison, and, if so, whether the Department has considered an alternative course of simply hiring more guards. The evidence also does not make clear whether the defendants' request is premised on the court's acquiescence in the defendants' continued violations of the court-imposed time restrictions on double-celling. The court accordingly invites each of the parties to make a written submission concerning the question of staffing.

B.

This litigation has now come almost full circle. In 1971, when the complaint was filed, pretrial detainees were double-celled; and in 1975, when the trial was held, the inmate population at the Jail exceeded the rated capacity by 50%. After

considerable prodding, the defandants succeeded in building a new detention center and in easing the overcrowding problem. But now, after 12 years of litigation, pretrial detainees in the District of Columbia are once again double-celled. Moreover, the inmate population at the Jail far exceeds the over-capacity figures of the past and is rapidly rising.

The old Jail, of course, no longer stands, but the memory of what went on there lingers.[9] Those intolerable conditions did not exist in some distant time and place: they were found in the Nation's Capitol in the 1970's. The fact that the Department now has a new detention facility cannot by itself prevent a return to the old ways.[10] Overcrowding is an insidious thing. It not only causes cramped conditions, but also diminishes the Department's ability to provide basic safety, food, health, and recreational services. Overcrowding can also lead to catastrophe, as the Department's Assistant Director, Mr. George Holland, made clear at the May 24, 1983, hearing:

> The Court: Are you approaching the danger point at the Jail?
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> Mr. Holland: I believe that when we begin to have double-celling and also repopulate your open areas, that is approaching the danger point. Because what you have done, as Your Honor indicated, is take away your recreation areas, your basketball courts, your lounges, as well as have the cells doubled. And I think you could expect when you do that an increased boredom, an increased contact--that is, closer

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[9] See note 7, supra.

[10] Concerning the limitations of modern detention facilities, see generally W. Nagel, The New Red Barn, at 17-35 (1973).

contact between individuals--and I think when you begin to do that tempers begin to flare, and you are as close to the danger point as you can get.

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The Court: When you say danger point, what are we talking about?

Mr. Holland: Danger point just means that you know out of your experience that when you crowd that you can expect that tempers are going to flare. When those tempers flare, they flare at each other, and they may flare at staff.

The Court: ... In ordinary language, we are talking about rioting.

Mr. Holland: I think you could say that, Your Honor.

In light of this testimony, and the current inmate population figures, there can no longer be any doubt that conditions at the Jail have reached the point of crisis. Throughout this litigation, the court has shown great patience towards the defendants. The court is aware of the obstacles that confront the Department and is mindful that prison officials must be given wide-ranging discretion in administering their facilities. But the court has a duty to protect the constitutional rights of the plaintiff class, and the court must insist that its orders be obeyed.

In 1976, under similar emergency circumstances, the court stated:

All efforts to induce the defendants to put their house in order have been unavailing up to now, and it is apparent that no meaningful effort can reasonably be expected absent a strong order of the Court which makes clear that housing inmates under

unconstitutional standards must cease. [Campbell, 416 F. Supp. at 117.]

In the same spirit, the court hereby

ORDERS that the defendants' motion to modify is denied with respect to the time limitations previously imposed on the double-celling of pretrial detainees. The court

FURTHER ORDERS that the defendants shall file with this court, and serve on counsel for plaintiffs, a report indicating the extent of the defendants' compliance with each of the provisions of this court's orders of October 8, 1982, and December 17, 1982. The report shall also indicate the nature of liaison activities initiated by the defendants with respect to other governmental agencies and authorities. The report shall cover the defendants' activities during the 30-day period following the issuance of this order, and shall be filed within one week after the expiration of that 30-day period. Thereafter, the defendants shall file with this court, and serve on counsel for plaintiffs, compliance reports every 30 days until further notice from this court. The court

FURTHER ORDERS that the parties submit views and/or suggestions which may assist the court in determining whether a limitation should be placed on the number of inmates that can be housed at the Jail in order to protect the plaintiff class, and, if so, what that limitation should be. These pleadings shall be filed within 10 days of the issuance of this order. The court

FURTHER ORDERS that the hearing on the Motion for Order to Show Cause why respondents should not be held in contempt is

continued to the 9th day of August 1983 at 9:30 a.m.

UNITED STATES DISTRICT JUDGE

Date: June 27, 1983