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United States District Court, D. Idaho.

Lance LOYA and Casey Cutler, individually and on  
behalf of all other persons similarly situated,  
Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF  
BANNOCK COUNTY, IDAHO; and William Lynn,  
Sheriff, Defendants.

No. CV91-216-E-MHW. | May 4, 1992.

#### Attorneys and Law Firms

Stephen L. Pevar, American Civil Liberties Union,  
Denver, Colo., for plaintiffs.

David Sasser, Hamlin & Sasser, Boise, Idaho, for  
defendants.

#### Opinion

#### ORDER

WILLIAMS, United States Magistrate Judge.

\*1 This matter is presently before the Court on Plaintiffs' Motion for Summary Judgment. Plaintiffs Loya and Casey are representatives of a class consisting of inmates, both present and future, of the Bannock County Jail in Pocatello, Idaho. Plaintiffs seek to rectify unconstitutional conditions of confinement at the jail through injunctive and declaratory relief pursuant to the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

#### INTRODUCTION

Plaintiffs seek partial summary judgment regarding the following five unconstitutional conditions of confinement existing in the Bannock County Jail:

1. Overcrowding
2. Inadequate staffing
3. Inadequate recreation
4. Inadequate lighting

#### 5. Inadequate plumbing

The Bannock County jail was built in 1954 and contains 73 beds. The facility houses male and female prisoners, pre-trial detainee and sentenced prisoners, petty offenders and felons.

Three experts were engaged to inspect the facility: Ward Duel by Plaintiffs, A.I. Murphy by Defendants, and an independent expert, Raymond Leidig, by order of the Court.

#### STANDARD OF REVIEW

In its consideration of Plaintiffs' request for injunctive and declaratory relief, the Court is "limited to the issues of whether a particular system violates any prohibition of the Constitution..." *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). Further, the Court must look at each individual condition to determine whether each condition, by itself, presents a constitutional violation. The Court is to "examine each challenged condition of confinement ... and determine whether that condition is compatible with 'the evolving standards of decency that mark the progress of a maturing society.'" *Balla v. Idaho State Board of Corrections*, 595 F.Supp. 1558, 1574 (D.Idaho 1984) (*Balla I*), quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958). The Court cannot find constitutional violations based on the "totality of conditions." *Toussaint v. McCarthy*, 801 F.2d 1080, 1107 (9th Cir.1986); *Wright v. Rushen*, 642 F.2d 1129, 1132 (9th Cir.1981).

Further, once a constitutional violation has been identified, the Court's function is only to cure the constitutional violation, and to fashion a remedy "that does no more and no less than correct that particular constitutional violation." *Balla I*, 595 F.Supp. at 1563, quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir.1982).

The Eighth Amendment "requires neither that prisons be comfortable nor that they provide every amenity that one might find desirable," and proscribes only the unnecessary and wanton infliction of pain, that is, punishment that serves no legitimate penological justification. *Id.* See also *Balla v. Board of Corrections*, 656 F.Supp. 1108, 1110-11 (D.Idaho 1987) (*Balla II*).

The United States Supreme Court has recently held that it is not enough that plaintiffs show that jail conditions impose cruel and unusual punishment. Plaintiffs are also required to show that the condition of confinement causing such punishment is the product of the

government's deliberate indifference to the plaintiff's suffering. *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321 (1991).

## ANALYSIS

### A. OVERCROWDING

#### 1. *Sleeping on the floor.*

\*2 All the parties and their experts agree that the Bannock County jail is grossly overcrowded. A facility designed in 1954 to house up to 73 inmates regularly houses more than 100 inmates. During the month of May 1991, the jail had an average daily population of 103, and for three days in a row 117 prisoners were housed in the jail. According to Sheriff Lynn, during the 556-day period from January 1, 1990, to July 10, 1991, prisoners had to sleep on the floor 504 days, which is 90% of the time. This Court has previously held that sleeping on the floor is constitutionally prohibited. *Balla II*, 656 F.Supp. at 1118.

#### 2. *Cramped living quarters.*

While living in cramped quarters is not unconstitutional per se, living space is an important consideration. Most prisoners in the Bannock County jail have less than 19 square feet per inmate in their cells and, if they have access to a dayroom at all, it is a small one. All three of the experts recommended that the jail contain no more than 35 beds. Sheriff Lynn would place the cap at 45, with an additional five allowed in emergency situations for no more than 72 hours.

#### 3. *Increased violence, tension and psychiatric disorders.*

Overcrowding exacerbates the already existing potential for violence, disruption, and tension among the prisoners. Because of the crowded conditions, officers are unable to properly classify prisoners and often predator and weak prisoners share the same cell, increasing the risk of assault. As a result, the prisoners are suffering both mentally and physically due to the Defendants' failure to provide them with adequate living space. The Court in *Balla II* recognized these problems and ordered a reduction in the prison population. 656 F.Supp. at 1117.

The Court finds that the Bannock County jail is unconstitutionally overcrowded. "Providing for the housing of inmates in such an overcrowded fashion threatens their physical, mental and emotional health and certainly threatens their personal and property safety.

Such conditions are dehumanizing, intolerable and certainly of no penological benefits." *Balla II*, 656 F.Supp. at 1114. Overcrowding results in violence, risk of violence, and psychological injury in violation of the Eighth Amendment.

The Court finds that a maximum of forty (40) prisoners at any one time will be allowed in the current jail facility. In emergency situations, however, an additional five (5) prisoners will be allowed, but for no more than 72 hours. The Court will allow Defendants 30 days within which to prepare and submit to the Court a remedial plan explaining in detail how the decrease in prison population will be accomplished. The population cap shall be accomplished within 60 days of the date of this order.

### B. LIGHTING AND PLUMBING

The lighting in the jail facility is quite dim and does not meet standards set by various correctional associations. Inadequate lighting causes health problems, including headaches, eyestrain, and fatigue. It impedes surveillance of prisoners and hinders efforts to ensure proper sanitation. Again, the experts agree that the lighting in the Bannock County jail is substandard and inadequate. "Adequate lighting is one of the fundamental attributes of 'adequate shelter' required by the Eighth Amendment." *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir.1985).

\*3 Defendants concede that the jail has quite a few plumbing problems. Estimates for the necessary repairs are in the range of \$50,000. The Bannock County Commissioners have failed to provide funding for the necessary repairs in spite of Sheriff Lynn's pleadings. The jail was appropriated only \$10,000 to correct \$50,000 worth of needed repairs.

For example, many of the toilets, sinks and showers have constant leaks. The hot water temperature is dangerously hot, making inmates susceptible to scalding, either by accident or by other inmates. Any fluctuation in the cold water usage in other areas causes the water temperature to increase quickly. Many sinks don't have *any* hot water to them at all. Some of the showers do not work. These plumbing and sanitary problems can cause the spread of disease among the inmates, causing extreme health hazards to both the inmates and the staff.

Plumbing that "is in such disrepair as to deprive inmates of basic elements of hygiene and seriously threaten their physical and mental well-being" constitutes cruel and unusual punishment. *Id. See also Balla II*, 656 F.Supp. at 1119.

The Court finds that the lighting and plumbing

inadequacies rise to the level of a constitutional violation. The Court further finds that these repairs, especially the plumbing repairs, are of paramount importance and must be accomplished as soon as possible. Defendants have requested that they be given the time to retain competent experts to inspect the existing lighting and plumbing systems and to provide them with written reports containing recommendations for the necessary improvements. The Court finds that this is a reasonable request and will allow Defendants thirty (30) days in which to obtain electrical and plumbing inspections and to provide a written report to the Court detailing the necessary repairs. The repairs shall be accomplished within as short a time following that as possible.

### C. STAFFING

All parties agree that at the present population levels the Bannock County jail is inadequately staffed. Sheriff Lynn stated that in order to have the jail adequately staffed during all of its shifts, he needs five to six additional staff, at a minimum. Lack of sufficient staff jeopardizes both the security of the jail and the health and safety of staff and prisoner alike. The Bannock County jail has a linear design which decreases visibility of the cells. Jail cells are on two levels of floors, and most hours of the day the jail only has two jailers on duty, one per floor. This places each staff person in jeopardy of being physically overwhelmed by inmates. There is also danger that an emergency, such as fire, might not be discovered in time to be handled properly. Because the staff is overworked due to the shortages, they suffer from extreme stress. As a result there is a high turnover rate, resulting in the need to constantly train new staff.

While the Court finds that at present population levels the staffing is constitutionally inadequate, in view of the fact that the Court has ordered a cap on the prison population, it is not necessary at this time to order an increase in staffing. The Court will require the Defendants to report to the Court within 60 days of the effective date of decreased population on whether current staffing levels are adequate to meet the needs of the decreased population.

### D. RECREATION AND EXERCISE

\*4 There is substantial agreement among courts that some form of regular exercise is extremely important to the psychological and physical well-being of inmates. *Bailey v. Shillinger*, 828 F.2d 651, 653 (10th Cir.1987). See also *Spain v. Procnier*, 600 F.2d 189, 199 (9th Cir.1979)

(long-term prison inmates must be afforded opportunity for outdoor exercise). The jail currently has an outdoor recreational facility with basketball hoops, and an indoor dayroom with games and reading materials for passive recreation. There is, however, no indoor facility which allows inmates physical exercise. Plaintiffs contend that, even with a population cap of 45, the current jail facilities cannot provide inmates with minimally adequate recreation and have recommended that a portion of the outdoor recreation facility be enclosed and that exercise equipment be installed. Defendants argue that by reducing the inmate population, the current recreation facilities will be adequate.

The Court finds that, based on its order to reduce inmate population, it is not necessary at this time to take any action on the recreational facilities. The Court will allow Defendants time at the decreased population levels to determine whether the current recreational facilities will meet the needs of the inmates.

### CONCLUSION

In a recent opinion, *Wilson v. Seiter*, 111 S.Ct. 2321 (1991), the United States Supreme Court held that a prisoner must also show that the condition of confinement that is causing such punishment is the product of the government's deliberate indifference to the inmate's suffering. It is obvious to the Court that Sheriff Lynn and his staff are not indifferent to the conditions of confinement suffered by the prisoners. Sheriff Lynn has made every effort to get funding for a new facility and to get funding for necessary repairs to the existing facility. However, Sheriff Lynn lacks the power to provide the necessary relief. The power lies in the hands of the Bannock County Commissioners and the citizens of Bannock County. The Court therefore finds that the requisite deliberate indifference standard has been met by the conduct of at least some of the Defendants.

The Court has found above that each of these five conditions of confinement has reached the level of a constitutional violation. The Court is ordering a population cap which should alleviate many of the problems in the current facility. The Court, however, recognizes that at that population maximum, the present facility will be unable to house all those assigned to that facility by local authorities. The County will be required to find some means of increasing the availability of jail space.

The Court is also aware that the residents of the Pocatello area have refused to pass a bond election to raise money for a new jail facility, in spite of vigorous campaigning by Sheriff Lynn. The Court is not unsympathetic to the

expense involved in remedying the unconstitutional conditions at the Bannock County jail. However, "concepts of dignity, civilized standards, humanity, and decency" are at stake. *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir.1968). This Court rejects the notion that citizens of the greatest democracy in the world cannot "afford" to construct a jail that complies with the minimum requirements of the Eighth Amendment to the United States Constitution to prevent cruel and unusual punishment. See *Battle v. Anderson*, 594 F.2d 786, 792 (10th Cir.1979). See also *Miller v. Carson*, 563 F.2d 741, 748 (5th Cir.1977).

### ORDER

\*5 Based upon the foregoing, the Court having reviewed the matter and being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment be, and hereby is, GRANTED, as follows:

1. That Defendants be allowed sixty (60) days from the date of this Order within which to reduce the inmate population housed in the Bannock County jail to a maximum of forty (40) inmates. From and after this date, no more than forty (40) inmates can be housed in the Bannock County jail at any one time, with the following exception. In emergency situations an additional five (5) prisoners will be allowed, but for no more than 72 hours. Defendants shall report to this Court within thirty (30) days from the date of this Order on the method to be used to accomplish this population reduction.

2. That Defendants shall have thirty (30) days in which to obtain electrical and plumbing inspections and to provide

a written report to the Court detailing the necessary repairs. The repairs shall be accomplished within as short a time following that as possible.

3. That Defendants be allowed sixty (60) days from and after the date upon which the inmate population is reduced to forty (40) inmates within which to conduct their operations at their present staffing levels. During this sixty-day period, the jail staff will be prohibited from conducting any duties outside of and unrelated to the operation of the jail, thereby allowing Defendants sixty days within which to determine whether or not the existing staff can reasonably perform all the functions essential to the proper management of the Bannock County jail. At the end of that sixty-day period, Defendants will provide a report to the Court and counsel regarding their findings as to their staffing needs. At that time, the Court will issue any additional orders its deems appropriate with regard to staff of the jail.

4. That Defendants be allowed sixty (60) days from and after the date upon which the inmate population is reduced to forty (40) inmates within which to continue providing recreation and exercise opportunities with existing recreational facilities, during which time Defendants will evaluate the adequacy of such services in light of the reduced inmate population. At the end of that sixty-day period, Defendants will provide a report to the Court and counsel regarding their findings and recommendations regarding any improvements necessary to provide exercise and recreational opportunities that will protect the inmates' health and welfare. At that time, the Court will issue any additional orders its deems appropriate with regard to the recreational facilities of the jail.