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DJ 144-42-937

MEMORANDUM FOR THE SOLICITOR GENERAL

**Re: Billy Joe Tyler, et al. v.
Raymond T. Percich, et al.,
Nos. 74-1835, 1836, United
States Court of Appeals for
the Eighth Circuit**

RECOMMENDATION

I recommend the filing of a brief amicus curiae in support of the plaintiff-appellees in this case. The United States Attorney for the Eastern District of Missouri concurs. In addition, Hon. William H. Webster, Circuit Judge, United States Court of Appeals for the Eighth Circuit, who will be a member of the panel in this case, has urged our participation (see Appendix I).

STATUS

This is a class action brought by three inmates of the City Jail of St. Louis on behalf of all past, present and future Jail inmates, alleging that the conditions at the Jail violate their constitutional rights. The motion of the United States for leave to participate as amicus curiae was granted on September 16, 1974. After an intensive period of pre-trial discovery, trial began on September 30. The United States presented three

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witnesses - two medical experts supplied by the Federal Bureau of Prisons and one penologist. Two witnesses were called by plaintiffs. The defendant Sheriff was the only witness called by the defendants. Over 1,000 pages of exhibits were introduced into evidence.

Ruling from the bench on October 2, 1974, District Judge John K. Regan found the rights of the plaintiffs to have been violated by "the conditions of detention" at the Jail, ordered the City Jail closed as a place of confinement and enjoined the defendants from incarcerating or detaining plaintiffs or any member of the class at the Jail. (Appendix II), Judge Regan stayed his order for thirty (30) days to afford the defendants an opportunity to bring the Jail "into full compliance with the requirements of the Constitution of the United States" and also granted interim relief. The Court issued its findings and conclusions on October 15 (Appendix III).

On October 25, the defendants moved the District Court for a further stay of unspecified duration. At a hearing on November 1, 1974, in which the United States participated and presented evidence as to the extent of defendants' compliance with the Order of October 2, Judge Regan denied the motion for a further stay.

Later that day, defendants filed notices of appeal, and moved for a stay pending appeal. Judge Webster granted a stay for a period of fourteen (14) days, re-imposing the conditions set out in Judge Regan's stay (Appendix IV). On November 4, plaintiff-appellee moved for an expedited hearing with simultaneous filing of briefs on November 8.

QUESTIONS PRESENTED

Due to the possibility of simultaneous filing, appellants' statement of the issues cannot be known with precision. The facts in this case were essentially uncontroverted, however, and there appear to be only two possible issues:

1. Whether the conditions of confinement at the City Jail violate the constitutional rights of the plaintiffs-appellees;
2. Whether the order of the District Court, closing the Jail and staying such closure for thirty (30) days, was appropriate in light of the circumstances.

INTEREST OF THE UNITED STATES

Although our formal participation in this litigation did not begin until two weeks before trial, the United States had conducted two extensive investigations into conditions at the City Jail in 1974 and was contemplating independent litigation. The findings and conclusions of the District Court were based in large part on the expert testimony presented at trial by the witnesses for the United States. The St. Louis City Jail currently is and has been in the past a recipient of grants from the Law Enforcement Assistance Administration and has housed Federal prisoners under a contract with the Bureau of Prisons.

Under similar circumstances, your Office, on July 2, 1973, approved the Civil Rights Division's participation in the Fifth Circuit in Newman v. Alabama, a case concerning the right to medical care of convicted offenders in the Alabama penal system.

STATEMENT OF THE CASE

The facts as summarized here are taken from the Court's opinion of October 15, 1974 (Appendix III). At trial defendants disputed neither the actual conditions at the Jail nor the conclusion that such conditions were unconstitutional.

The inmates at the City Jail are housed on the upper five floors of the structure, under maximum security conditions; 144 8'3" x 5' 6" two man cells (three floors), twelve 16' x 9' eight man squad rooms (one floor) and sixteen one-man cells and a woman's detention facility which occupy the sixth floor. Due to perennially overcrowded conditions, a third inmate is often forced to occupy a two man cell by sleeping on a mattress placed on the floor beneath the lower bunk bed. The average daily population of the Jail for 1974 is 427, 95% of whom are pre-trial detainees. Inmates are assigned cells on a "space available" basis and, as a result, violent inmates, homosexual inmates, and mentally unbalanced inmates are scattered throughout the general population.

The Jail provides no facilities for exercise or recreation and inmates are confined to their cells and day rooms twenty-four hours per day.

Supervision over these inmates is provided by a guard force ranging between 6 and 20 per shift.

The physical structure of the Jail makes adequate supervision almost impossible. The design of the tiers and cells requires a guard to be almost directly in front of a cell before he could see inside the cell. Basic supervision was exercised by a "tierboss", an inmate charged with keeping order in the tier area.

As a result of these factors, violence between inmates at the Jail has been and is at an incredible level. As stated by the court "rape, assault, and attempted suicide are common occurrences in the brutal environment in the City Jail." Over 300 official Jail reports detailing such incidents were introduced into evidence at the trial.

Access to medical care is hampered by a screening process involving the inmate tier boss and the correctional officer on the floor. An 80-year old doctor is present at the Jail three hours per weekday. After 6:00 p.m. on weekdays and all day on holidays and weekends, no medical personnel are available at the Jail.

Inmates are disciplined without being informed of the Jail rules or afforded a hearing.

Visiting takes place in cramped facilities for severely limited periods of time.

Finding constitutional violations, Judge Regan ordered the Jail closed on October 2, 1974 and granted a 30-day stay. Both parts of this order were supported by the United States. During the stay period, the Court ordered certain interim measures and afforded the defendants an opportunity to bring the Jail into full constitutional compliance.

At the November 1 hearing, defendants admitted that they had not met the two crucial conditions set by the court - - reducing the population and increasing the guard force. While the guard force interim criterion (a total of 65) would be met in the near future, defendant Tallent testified there were no plans to hire any additional guards (in his Memorandum Opinion, Judge Regan found that 125 guards were required). Mr. Tallent also testified that there was no definite plan to reduce the population as required, although he did testify as to the possibility of the transferring of inmates to a facility which he admitted was inferior to the Jail in every respect.

Mr. Tallent further testified that there currently was no doctor at the Jail and that there were no plans to provide inmates with exercise or recreation.

Incident reports submitted to the Court during the 30 days showed little if any decrease in the level of violence at the Jail.

Stating that he could not permit "brutal conditions" to continue, Judge Regan denied all motions for a further stay. At no time during this hearing did defendants suggest to the Court an appropriate additional stay period.

DISCUSSION

1. Whether the conditions of confinement at the City Jail violate the constitutional rights of the plaintiffs-appellees.

The treatment required to be afforded to an individual who has been charged with the commission of a crime, but has not yet been convicted, is inexorably linked to the constitutional presumption of innocence. Detainees are committed to jail for the limited purpose of assuring their appearance at trial. The substantive guarantees of the Fourteenth Amendment's Due Process Clause require "that the nature and duration of commitment bear some reasonable relationship to the purpose for which the individual is committed." Jackson v. Indiana, 406 U.S. 715, 738 (1972).

The substantive due process theory embodied in Jackson has been specifically applied by the Court of Appeals for the Eighth Circuit to the nature of post-trial commitments in Finney v. Arkansas Board of Correction, No. 73-1745 (8th Cir. 10/10/74). There, the court held that the Arkansas authorities must be required to relate

their prison practices to the goal of rehabilitation. Here, the appellants must relate their jail practices to the only permissible goal permitted by the Constitution, assuring the inmate's presence at trial.

If a condition or practice is not so related, it is unconstitutional. Jones v. Wittenberg, 323 F. Supp. 93, 100 (N.D. Ohio 1971), aff'd sub nom. Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972); Hamilton v. Love, 328 F. Supp. 1182, (E.D. Ark. 1971); Inmates v. Eisenstadt, 360 F. Supp. 676, 686 (D. Mass. 1973); Rhem v. Malcolm, 371 F. Supp. 594 623 (S.D. N.Y. 1974).

Once such a nexus or relationship, is established, substantive due process further requires that

even though the governmental purpose be legitimate and substantial, the purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.

Shelton v. Tucker, 364 U.S. 479, 488 (1960).

Accordingly, it is the position of the United States that, to be constitutional, a jail practice or condition must be reasonably related to assuring the inmate's presence at his trial and it must be the least restrictive alternative available to effect that end. This standard has been adopted in the three other major federal court cases dealing with conditions of pre-trial detention. Hamilton v. Love, supra.; Inmates v. Eisenstadt, supra.; Rhem v. Malcolm,

Applying this standard to the conditions of confinement at the City Jail as found by the court below and supported by the record, the court's conclusions of unconstitutionality are clearly justified.

2. Whether the relief ordered by the District Court on October 2, 1974 was appropriate under the circumstances

It is clear that the most important issue in this case is the protection of the Jail inmates from homosexual rapes and other assaults.

The situation prior to trial was completely intolerable in this regard. Judge Regan's description of the violence as "incredible" is not an overstatement; his finding that the Jail is "barbaric" is fully supported by the record.

Jail incident reports introduced into evidence at the trial indicated that there were over 200 reported fights between inmates at the Jail during 1973 and 1974. Defendant Tallent testified on deposition that other fights go unreported.

Warden Lark testified on deposition that there were some 40 or 50 attempted suicides at the Jail during 1974 (Lark deposition 200-201).

A second factor justifying the relief ordered by the District Court on October 2 is the history of defendants' non-compliance with^d previous Federal court order concerning conditions at the Jail. In a 1973 suit involving only the Federal inmates at the Jail, then District Judge William H. Webster held that such inmates were confined under unconstitutional conditions and ordered remedial action. Johnson v. Lark, 365 F. Supp. 289 (E.D. Mo. 1973). Evidence adduced

at trial clearly demonstrated noncompliance with the various provisions of the Johnson decree.

Limiting his order to areas of "ingrained and traditional behavior" id., at 302, Judge Webster enjoined Jail officials from placing more than two Federal prisoners in the 8'3" x 5'6" cells. At trial, defendants admitted that there were often three inmates confined to such cells. Jail officials were also ordered to employ sufficient guards to protect Federal inmates from assaults and to cease the "invidious practice" of tier boss supervision. Evidence at trial indicated there had been no increase in the size of the guard force, that Federal prisoners had indeed been subject to assaults, and that the tier boss system continued unabated. Lastly, Judge Webster ordered that Federal inmates be informed of all jail rules prior to the imposition of discipline. No such rules have been propounded to this date.

At his deposition, Warden Lark at first denied that he was under a Federal court order relating to the treatment of prisoners at the Jail. When his attention was directed to Johnson, Warden Lark stated that he thought the case had been dismissed. He then admitted the violations as outlined above (Lark deposition, 204-206).

It should also be noted that numerous grand juries have criticized and condemned the very conditions and practices dealt with by Judges Regan and Webster. Notwithstanding that fact, and the fact that city officials have also had extensive notice of the serious deficiencies at the jail from frequent newspaper stories, they have made no changes of substance in jail operations over the years.

This history of civic inaction, the noncompliance with the Johnson order and the high level of violence at the Jail support the order of the District Court. Three other large metropolitan jails are currently under Federal court closure orders. In none of those cases were the reasons for closure

as compelling as they are here. The jails ordered closed and the reasons therefor are:

- 1) New Orleans Parish Prison, by March 1, 1975, Hamilton v. Landrieu, 351 F. Supp. 549 (E.D. La. 1972) - overcrowding and general living conditions;
- 2) Suffolk County Jail, by June 30, 1976, Inmates v. Eisenstadt, 360 F. Supp. 676 (D.Mass. 1973) - overcrowding and general living conditions.
- 3) Manhattan House of Detention, August 10, 1974 (stay pending appeal granted by Second Circuit), Rhoads v. Nichols, 377 F. Supp. 995 (S.D. N.Y. 1974) - general living conditions and inadequate exercise and visiting.

The St. Louis City Jail has all of the deficiencies found in the above cases, plus the critical overriding factor of an almost total inability to protect the inmates from assaults. Sf. Woodhouse v. Commonwealth of Virginia, 487 F.2d 889 (4th Cir. 1973); and Finney v. Arkansas Board of Correction, supra.

CONCLUSION

This case challenges a broad range of conditions under which pre-trial detainees are confined. The right to be treated in accordance with the presumption of innocence is basic to our system of criminal justice. To sanction the pre-trial custody of an individual in an

institution whence there is a likelihood that such individual will be subject to violence is to punish that individual without trial. As Judge Regan stated in his Memorandum Opinion:

The interest of the State in depriving an accused of his liberty is to insure his presence at trial and when that detention becomes punitive it is no longer consistent with the State's lawful interests.

For the foregoing reasons, I recommend that you authorize amicus participation.

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division