

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

SEP 18 1980

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

ROBERT E. BULLINGTON,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
WARDEN MORELAND, et al.,)
)
Defendants.)

No. 79 - 650 C (2)

Johnson v. O'Brien



JC-MO-010-038

MEMORANDUM

This case is now before the Court on defendants' motion for summary judgment. Plaintiffs brought this suit on behalf of all pre-trial detainees incarcerated in the St. Louis County Jail, attacking almost every aspect of the jail administration. Plaintiffs seek extensive declaratory and injunctive relief, as well as attorneys' fees and costs. This suit is closely related to the prior suit of Johnson v. O'Brien, No. 76 - 210 C (3) (E.D. Mo.), in which this Court ordered compliance by officials of the St. Louis County Jail with certain constitutional minima regarding recreation, medical care, and laundry, as well as other aspects of the jail administration. See 445 F.Supp. 122 (E.D.Mo. 1977). The instant suit challenges some of these same aspects. Several of the plaintiffs in this case have also written this Court seeking to have defendants in Johnson held in contempt due to their alleged failure to comply with this Court's Orders in that case.

It is clear that the instant case can not be resolved via the instant motion for summary judgment. Rather than there being no issue of material fact in dispute, the materials submitted with this motion illustrate that nearly every fact is in dispute. In support of the instant motion, defendants submit the affidavit of the Director of Justice Services for St. Louis County, Missouri, which incorporates numerous reports and documents submitted in response to plaintiffs' complaint. These materials controvert nearly every allegation of plaintiffs' complaint, and set forth defendants' version of the practices and procedures followed at the Jail.

Plaintiffs have not responded to this motion as such. Rather, in a pre-trial conference, plaintiffs' attorney indicated that plaintiffs would rest on their verified complaint. In responding to defendants' motion for summary judgment, this verified complaint is the equivalent of opposing affidavits. Runnels v. Rosendale, 499 F.2d 733 (9th Cir. 1974); Forts v. Malcolm, 426 F.Supp. 464 (S.D.N.Y. 1977). It is therefore clear that there are substantial factual disputes which preclude the granting of the instant motion for summary judgment.

The law in this area is not overly complicated. The Supreme Court has recently set out the standards to be applied in reviewing the conditions under which pre-trial detainees are incarcerated. Bell v. Wolfish, 441 U.S. 520 (1979). The Eighth Circuit has applied these standards in the recent case

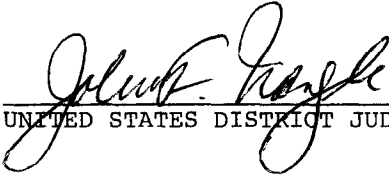
of Campbell v. Cauthron, No. 78-1838 (May 29, 1980). These standards may not be applied, however, until the numerous factual disputes are resolved.

To resolve these disputes, this case will be referred to the Honorable William S. Bahn, United States Magistrate, pursuant to 28 U.S.C. §636(b)(1)(B). Magistrate Bahn is thoroughly familiar with the situation at the St. Louis County Jail, as he played an active role in the resolution of the Johnson case. Furthermore, the Johnson case will be reopened and consolidated with this one. In the course of the proceedings in this case, Magistrate Bahn should review defendants' compliance with this Court's Orders in Johnson. Mr. John Emde, who ably represented the plaintiffs in Johnson will be appointed as plaintiffs' co-counsel in this case.

Magistrate Bahn should conduct whatever proceedings he deems necessary to resolve the factual conflicts in this case. He may find it advisable, for example, to inspect the jail facility himself to determine the adequacy of the physical plant. Upon conclusion of any necessary proceedings, Magistrate Bahn should submit detailed proposed findings of fact and recommendations for disposition of this case. The parties will then be given the appropriate opportunity to comment or object, and this Court will make its de novo determination, as required by 28 U.S.C. §636(b).

Though this Court does not expect Magistrate Bahn to give this case top priority on his docket, he should attempt

to conclude the necessary proceedings as soon as possible.
If the conditions under which plaintiffs are incarcerated
are in fact unconstitutional, they should not have to put
up with those conditions longer than necessary.


UNITED STATES DISTRICT JUDGE

Dated: September 18, 1980.