

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

AUG 24 1981

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

No. 79-650 C (2)
Court No. 2

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

RESPONSE OF PLAINTIFFS TO REPORT OF UNITED STATES
MAGISTRATE'S REVIEW AND RECOMMENDATION

Come now plaintiffs herein and make the following Response to the Review and Recommendation of the United States Magistrate heretofore filed with the Court dated July 23, 1981.

INTRODUCTION

The report of July 23, 1981 from the United States Magistrate to the District Court was "limited to the recommendations concerning the physical facilities of the existing St. Louis County Jail" (Review and Recommendation, p. 8). Further, at page 4 of the Review and Recommendation, the Honorable Magistrate states as follows:

Mr. Moreland testified at the hearings that in addition to the cell overcrowding, he lacked space for:

- (1) An adequate law library.
- (2) Room for social workers.
- (3) Adequate lawyer-client visitation.
- (4) Kitchen expansion.
- (5) Larger infirmary.
- (6) Housing additional correctional officers.

Depending upon the outcome of the bond issue and, indeed, even before a successful bond issue election can come into fruition, these suggested alternatives have to be considered by both the Court and the County of St. Louis.

Thus, plaintiffs assume that the present report of the Honorable Magistrate is not intended by him to be dispositive of all

Johnson v. O'Brien



JC-MO-010-046

issues submitted for evidentiary hearing and consideration and recommendation by him.

For this reason, plaintiffs, in this response, will comment upon the Report and Recommendation of the Magistrate, subject matter by subject matter and will urge the Court to return the matter to the Magistrate for further consideration and recommendation of those matters not already covered by the Magistrate.

THE STANDARDS BY WHICH PLAINTIFFS
RIGHTS ARE TO BE MEASURED

Plaintiffs in this action are defined as "all pretrial detainees confined within the St. Louis County Jail at Clayton, Missouri. Thus, as persons incarcerated prior to any finding of guilt, plaintiffs are presumed innocent and the conditions of their confinement are measured by the Fifth and Fourteenth Amendments to the United States Constitution. Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).

Persons may not be "punished" prior to conviction and thus, if confinement in the St. Louis County Jail constitutes "punishment", the constitutional rights of plaintiffs are being violated. The Eighth Circuit has reviewed pretrial confinement conditions and in Campbell v. Cauthron, 623 F. 2d 503 (1980) set forth rather clearly defined standards for the measuring of pretrial inmates' constitutional rights. The Court in the Campbell case further comments upon, reviews and analyzes various other cases, with the result that the views of the Eighth Circuit appear to be clearly set forth or reasonably predictable.

When measured by the announced constitutional standards, it is impossible to conclude other than that confinement in the St. Louis County Jail does in fact constitute "punishment".

In all candor, counsel for plaintiffs must concede that the problems existing in the jail are almost without exception not problems of the attitude, motive, or intent of Mr. Moreland and his staff, but rather problems related directly to, and

arising from the total lack of space. The staff has demonstrated a concern and interest in providing such things as appropriate library space, recreational facilities, counseling, educational opportunities for the 15 and 16 year old youths confined in the jail, religious services, dental services and the like. Either the absence or the inadequacy of the foregoing services, is more the result of inadequate space within which to perform such services than a recalcitrance or refusal to provide the same on the part of St. Louis County. Unfortunately, irrespective of the good intentions of the County, the result is the same.

The jail does not pass muster.

Confinement in St. Louis County Jail is punishment.

Plaintiffs' constitutional rights are being violated.

Plaintiffs will now comment upon the Report of the Magistrate on a topic by topic basis.

1. OVERCROWDING

The greatest single problem in St. Louis County Jail is the almost total inability of the staff to carry out in practice its own classification system. Upon entry into the system, each new resident is classified according to his age, physical and mental condition, history of past anti-social behavior, degree of severity of the existing charge, and status as to a convicted or pretrial detainee. Based upon such classification an objective determination is made as to the specific location within the jail in which the new inmate should be housed. In most instances, it is impossible for the staff to house the inmate in the recommended location. Those who are violent, psychotic and combative to other inmates and staff and who should be isolated, are, for lack of space, sharing cells with seven other men. And visa versa, an inmate who has never spent a night in jail, who has no history of anti-social behavior, is placed in a shared cell with multiple repeat offenders.

The jail is overcrowded to the extent that the staff cannot possibly carry out its own proper classification and screening system.

For this reason, the overall aggregate number of inmates within the institution should be limited so as to permit proper assignment of all inmates to appropriate space.

As indicated by the Magistrate's Report, inmates confined in the green zone, the north module, the south module, and the isolation units are all housed in areas which meet the Eighth Circuit test with respect to square feet per man. The red zone is marginal and, depending upon interpretation, may or may not meet the test of the Eighth Circuit. Plaintiffs agree with the Magistrate's report with respect to close security and urge the Court to limit the population therein to one man per cell. Plaintiffs suggest that the Court limit the population of the infirmary to not more than two persons. Consideration must be given, not only to raw square foot numbers, but to the ability of the staff to move about in the infirmary for the purpose of treating the inmates housed therein.

As indicated by the Magistrate, the County does not include the intake unit in computing the 147 man capacity of St. Louis County Jail. The persons housed in the intake unit are held in that unit for periods usually not exceeding three days. Plaintiffs understand that the County has completed installation of the "fold down" bunks to which the Magistrate refers. Based upon this assumption, plaintiffs submit that the Court should order that the population of the intake unit be limited to two persons per cell with no inmate to be held in the intake unit for more than 72 consecutive hours.

Plaintiffs further request the Court to limit the number of cots which may be used in connection with the north and south modules. The exact limitation will depend in part upon the number and manner in which additional toilet facilities are installed

as suggested by the Magistrate.

2. FOOD

Plaintiffs do not agree with the Report of the Magistrate with respect to food. Plaintiffs respectfully request the Court to permit further presentation of arguments as to this matter.

3. MEDICAL-DENTAL FACILITIES

The plaintiffs agree with the recommendation of the Magistrate with respect to the assignment of the LPNs working at the jail. Further, plaintiffs suggest that appropriate arrangements be made for the services of an LPN on the weekend and holidays.

4. LIBRARY

Plaintiffs totally and fully agree with the Report of the Magistrate with respect to the library. Plaintiffs further request the Court to refer the question of library space to the Magistrate for further recommendations with regard to the specific manner in which library facilities may be brought into constitutional compliance.

5. JAIL RULES

Plaintiffs agree with the Report of the Magistrate concerning jail rules. The parties have entered into a stipulation concerning this matter, which in due course will be fully implemented, rendering this subject matter moot.

6. CLEANLINESS

Plaintiffs agree with the Report of the Magistrate.

7. MAIL CENSORING

Plaintiffs agree with the Report of the Magistrate concerning mail censoring. The parties have entered into a stipulation concerning the promulgation of rules and practices concerning inmates' mail from courts and attorneys. It is anticipated that this matter will be rendered moot upon the consummation of such stipulations.

8. STRIP SEARCHES

Plaintiffs' chief complaint concerning strip searches was with respect to noncontact visitation. Searches have been

abandoned with respect to visitation and thus plaintiffs have no present complaint concerning the same.

9. VISITING BOOTHS

The parties have discussed possible solutions concerning plaintiffs' complaints concerning the visiting booths. Plaintiffs agree with the Magistrate's Report and intend to discuss this subject further with defendants in the hope of reaching a solution.

10. INTERNAL ASSAULTS

Plaintiffs submit that internal assaults (prisoner vs. prisoner) are essentially related to inability of the staff to carry out into practice the procedure with regard to the classification and housing of inmates. Except as the problem of overcrowding is solved, there will be no solution to the problem of inmate fighting.

11. RECREATION

The plaintiffs agree with the Report of the Magistrate with regard to recreation.

However, it must be noted that from time to time the elevator required to be used in connection with recreation malfunctions resulting in a total suspension of recreation. Also, because of physical considerations with respect to the movement of inmates for recreation, any shortage of correctional officers caused by illness, adverse weather conditions, or the like, causes the temporary suspension of recreational privileges. In the absence of such unusual circumstances, the recreation program appears to be functioning as well as possible given the physical limitations.

12. PRETRIAL DETENTION


Plaintiffs fully agree with the implication in the Magistrate's Report to the effect that in many instances an inordinate amount of time passes between original confinement as a pretrial detainee and disposition of such charges by trial, plea or otherwise. Plaintiffs submit that the matter should be returned to the Magistrate

for further consideration and recommendation with respect to what, if any, steps may be taken to remedy this situation.

CONCLUSION

Plaintiff respectfully requests the Court to approve the Report of the Magistrate in the respects herein indicated, to reject the Report of the Magistrate in the respects herein indicated and to return the case to the Magistrate for further review and recommendation.

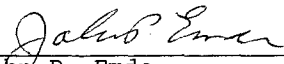
Respectfully Submitted,



John P. Emde #16180
611 Olive Street, Suite 1950
St. Louis, Mo. 63101
621-5070
Attorney for Plaintiff

James L. Thomas
906 Olive Street
St. Louis, Mo. 63101
421-6544
Attorney for Plaintiff

A copy of the foregoing was mailed this 24th day of August, 1981 to Mr. Donald Weyerich, Special Assistant County Counselor, St. Louis County Government Center, St. Louis, Mo. 63105.



John P. Emde