

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
C-C-90-104-P

ROBERT L. THOMAS, et al.,

Plaintiffs,

v.

C. W. KIDD, et al.,

Defendants.

BRIEF BANK

CONSENT ORDER

This matter came before the Court with the consent of the parties to resolve the plaintiffs' pending motion for a preliminary injunction and upon the plaintiffs' pending motion for class certification. Based upon the record and upon the representations of the parties, the Court finds that this action was filed in April 1990 by three inmates at the Mecklenburg County jail, in which it is alleged that a variety of conditions violated the Eighth and Fourteenth Amendments of the United States Constitution and in which a remedy is sought under 42 U.S.C. § 1983. This Consent Order is the result of discussions and negotiations among the parties.

The plaintiffs, by and through their counsel of record; the defendant Kidd, in his official capacity as Sheriff of Mecklenburg County, and by and through his attorney of record; and the defendants other than Kidd, in their official capacities as mem-

bers of the Mecklenburg County Board of Commissioners, and Mecklenburg County, by and through the Mecklenburg County Manager and the attorney of record for such defendants, hereby consent to the entry of this Order, in settlement of the plaintiffs' motion for a preliminary injunction and in settlement of the plaintiffs' request for certification of a class. Nothing herein shall be construed as an admission of liability by any defendant or as a resolution of the merits of the plaintiffs' claim or claims for a permanent injunction. All parties reserve the right to argue for a resolution inconsistent with this Consent Order at such time as the Court considers the issuance of a permanent injunction.

All individual defendants (as distinguished from the defendant Mecklenburg County) have been sued only in their official capacities as elected officials of Mecklenburg County. This Consent Order shall be binding upon all of the named defendants in their official capacities, upon those individuals who succeed the named defendants in their elected positions, and upon the agents and employees of each of the official capacity defendants who act at the direction of or on behalf of the officials who have been named as defendants.

Plaintiffs have sought to bring this action as a class action. The Court finds that each of the prerequisites of Rule 23(a) and Rule 23(b)(2), F.R.Civ.P., has been met and that certification of a class under Rule 23(b)(2) is appropriate. The class is hereby defined as encompassing the following persons:

All persons currently confined at the Mecklenburg County jail, located at 801 East Fourth Street, Charlotte, N.C., and all such persons who will be so confined in the future, while this Consent Order is in effect.

Defendants other than Sheriff Kidd have represented to the Court the following: Mecklenburg County has purchased a site on Spector Drive of approximately 42 acres upon which (in the absence of unexpected subsurface and environmental problems) temporary units with a capacity of approximately 600 inmates will be placed at the earliest possible date. The Board of Commissioners for Mecklenburg County has adopted a Detention/Jail Facilities Capital Project Ordinance, which has provided for up to \$10,000,000 for a number of things, including the acquisition of the Spector Drive property, the acquisition of the modular units, site work, etc. The defendants other than Sheriff Kidd (who are responsible for the development) presently believe that this facility will be available for operation no earlier than April 1, 1991 and no later than June 1, 1991. As a matter of interest, the defendants other than Sheriff Kidd anticipate that this same site will be used for construction of the new facility for sentenced persons with a capacity of approximately 600 inmates and that the construction of this new facility can occur concurrently with the use of the temporary facilities.

IT IS THEREFORE ORDERED AS FOLLOWS:

Except as specifically noted to the contrary, the following paragraphs address the existing Mecklenburg County Jail ("the jail").

1. Population Limit. Effective April 1, 1991, only space

designed for housing inmates will be used for that purpose (except in emergencies such as a riot or fire in the jail or mass arrests resulting from such things as a rock concert or a riot out of the jail), and, except as otherwise specified in this Consent Order, no inmates will be housed in any space other than those identified in the attached Exhibit 1. The term "emergency" shall not include a normal increase in the inmate population of incarceration facilities operated by Mecklenburg County. Moreover, even in an emergency, inmates may be placed in areas in the jail not designed for housing for a maximum of 48 hours. In the event of an emergency triggering the provisions of either this or the following paragraphs, defendants will notify plaintiffs' counsel within 24 hours of the time of declaring such an emergency.

The entry level of the jail contains 14 holding cells and two drunk tanks, and it is those additional spaces which are referred to as "areas not designed for housing," and which may be used in the event of emergencies such as those stated above. They may also be used for temporary holding, for no more than eight hours, while inmates are newly received at the jail or while inmates may be waiting for transportation to other facilities within or without Mecklenburg County. In the event of the use of these facilities in an emergency or for temporary holding, the following conditions will be met:

- (a) No more than one person will be placed in each single cell and no more than six persons will be placed in

each drunk tank; and,

- (b) No inmates will be placed in these facilities unless defendant Kidd and his staff provide staffing such that inmates remain under continuous supervision by staff; and,
- (c) A seat will be available for each inmate placed in the drunk tanks, and a bunk will be provided for each inmate who may remain in the drunk tank overnight.

Effective April 1, 1991, no more than the specified number of people will be housed in each cell block, as designated separately in the attached Exhibit 1. While the plaintiffs are consenting to the population numbers set forth above, they reserve the right after April 1, 1991 to contest the population figures contained in Exhibit 1 in any trial on the merits.

2. Intake Center. Effective December 1, 1990, under normal, non-emergency circumstances Sheriff Kidd and his staff will house no inmate in the Intake Center for more than 48 hours. Under emergency circumstances described in paragraph 1 above, inmates may be housed in this facility for a maximum of 72 hours. No more than 48 inmates will be housed in the Intake Center at any time. "Housed" does not include those inmates in the processing and booking areas, e.g., those waiting to be interviewed by pretrial release, those waiting for the arrival of a bondsman or a co-signer of a bond, etc.

3. Emergency Satellite. This facility is located at 220 West 31st Street. It has been vacated and is no longer being used to house inmates. This facility may be reopened only if and when renovations and improvements are made which bring this facility

to the present standards established by the North Carolina Department of Human Resources, 10 NCAC § 3J.3401 through § 3J.3426.

4. Staffing Levels.

(a) By November 1, 1990, the defendants other than Sheriff Kidd will provide the financial resources for the employment and deployment by Sheriff Kidd of four additional deputy sheriffs per shift at the jail (a total of approximately 20 new positions).

By January 1, 1991, Sheriff Kidd and his staff will place two deputy sheriffs on duty at all times in each wing of the two wings of the second and third floors of the jail (total of eight deputies). This includes providing sufficient staffing to ensure relief and to deal with absenteeism, vacations, illness, turnover and other absences, as well as providing sufficient staffing to perform such duties as escorting inmates to medical appointments and supervising recreation. Deputy sheriffs will maintain continuous supervision of all housing areas and cell block. Such supervision will include patrolling throughout all areas of each cell block at least once every half hour and viewing each inmate during the entire shift. Coffee breaks and being summoned to other areas of the jail are not sufficient grounds for absence. Any failure to have two deputies on duty in any of the four wings will be documented in writing in the shift log and will be made a part of the Sheriff's permanent records. Shift logs will be made available to plaintiffs' attorneys upon request by them.

(b) Beginning January 1, 1991, Sheriff Kidd and his staff

will employ and deploy sufficient staff in order to have deputies to transport inmates to outside medical treatment and to escort inmates to sick call and other types of medical treatment within the jail.

(c) All persons employed at the jail will attend all training and schools within the time required by the State of North Carolina for certification of jail personnel.

5. Recreation. Effective December 1, 1990, the defendants other than Sheriff Kidd will provide the funds to modify the jail to permit access by inmates to the open court yard located on the south side of the second floor of the jail, such that both courtyards can be used simultaneously. Effective January 1, 1991, Sheriff Kidd and his staff will modify the jail in accordance with the foregoing sentence so that both courtyards on the second floor of the jail may be used separately or simultaneously in order to provide inmates with outdoor recreation. Sheriff Kidd and his staff will, effective December 1, 1990, equip and maintain both courtyards with basketball goals, nets and basketballs. Sheriff Kidd and his staff will ensure that both recreation areas are continuously supervised by staff at all times that inmates are in these two outdoor recreation areas. Weather permitting, (neither courtyard has a roof), Sheriff Kidd and his staff will provide each inmate with the opportunity for outdoor recreation at least one hour per day, five days per week. Sheriff Kidd and his staff will provide inmates with indoor recreation without

cost to the inmates, including: board games, reading materials, and televisions.

6. Hygiene Materials. Effective December 1, 1990, the defendants will furnish the funds necessary to comply with the remainder of this paragraph. Effective January 1, 1991, Sheriff Kidd and his staff will ensure that each new inmate is given an initial hygiene kit, which contains a toothbrush, toothpaste, a comb, soap, shampoo, shaving soap and deodorant, all without cost. After the initial kits are consumed, inmates with funds may purchase these items, and indigent inmates will be given these items when needed without cost. Razors will be provided three times per week. Feminine hygiene products will be readily available to female inmates without cost.

7. Sanitation and Environment.

(a) Cleaning Materials. Effective December 1, 1990, Sheriff Kidd and his staff will provide adequate quantities of cleaning materials and tools to proper personnel. Sheriff Kidd and his staff will ensure that cells are cleaned daily. Sheriff Kidd and his staff will require inmates to maintain cells in a sanitary condition.

(b) Lighting. Effective January 1, 1991, the defendants other than Sheriff Kidd will provide funds necessary to improve the lighting in all housing areas of the jail to at least 20 foot candles, and Sheriff Kidd and his staff will implement this improvement where needed.

(c) Kitchen sanitation. Beginning December 1, 1990, Sheriff Kidd will seek advice from the Mecklenburg County Health Department concerning improvement of the sanitation in the kitchen. Beginning December 1, 1990, Sheriff Kidd and his staff will cause to be maintained all kitchen surfaces, including walls and floors, clean and free of debris, mold, and trash. Beginning December 1, 1990, defendants will cause the Mecklenburg County Health Department to make quarterly inspections of the kitchen, and the Health Department will have access to the jail to respond to any complaints. The kitchen (and other areas of the jail) will continue to be subject to semi-annual inspections by the Jail and Detention Branch of the North Carolina Department of Human Resources.

(d) Clothing, Towels and Linens. Effective December 1, 1990, the defendants other than Sheriff Kidd will provide the funds, and effective January 1, 1991, Sheriff Kidd and his staff will use these funds to provide each inmate with clean jump suits or other outer wear twice per week and underwear (shorts and T-shirts) twice per week. Female inmates shall have the option of using their own personal underwear or of using the shorts and T-shirts provided at the jail. Beginning January 1, 1991, Sheriff Kidd and his staff will provide clean sheets and towels to each inmate at least once per week.

(e) Beginning December 1, 1990, Sheriff Kidd and his staff will provide orientation of inmate kitchen workers, which shall

include instruction in the basics of sanitation and hygiene in the preparation of institutional food service.

(f) Beginning January 1, 1991, the defendants other than Sheriff Kidd will provide the funds, and Sheriff Kidd and his staff will use these funds to ensure that ventilation of confinement areas is provided with 15 cubic feet per minute per occupant of outside or recirculated air.

(g) Beginning January 1, 1991, Sheriff Kidd and his staff will ensure that all hot foods are maintained at a temperature of not less than 140 degrees Fahrenheit and that cold foods are maintained at a temperature of not more than 45 degrees Fahrenheit until placed in the cells.

(h) Beginning December 1, 1990, Sheriff Kidd and his staff will ensure that all eating and cooking utensils, dishes, and trays are clean and air dried after each use.

(i) Beginning December 1, 1990, the defendants will institute a vermin control program in the jail which includes professional pest control programs. By January 1, 1991, the defendants other than Sheriff Kidd will furnish sufficient funds, and Sheriff Kidd and his staff will seal all openings in the walls in the kitchen of the jail in which vermin might hide.

8. Due Process. Effective immediately, no inmate will be placed in a metal "box" at any time. The term "box" refers to two single cells located in Cell Blocks F-1 and S-4, which consist of a concrete floor, three solid metal walls, a solid metal door and

no plumbing except for a hole in one corner of each room. Effective immediately, no inmate will be placed in a cell with a solid door for more than 24 hours in any seven-day period. These cells refer to four single cells located in Cell Blocks F-1 and S-4. Effective immediately, no inmates will be placed in any disciplinary or administrative segregation without being given a written copy of the charge or charges against him or her within 12 hours after the occurrence of the alleged offense, and each such inmate will be provided a hearing on the charge or charges within 60 hours of the occurrence of an event before an impartial hearing officer.

9. Medical and Health Services.

(a) Effective April 1, 1991, Sheriff Kidd will cause his medical staff to comply with all provisions of the current version of the Jail Medical Manual, or as it may be amended from time to time to comply with new accreditation standards promulgated by the National Commission on Correctional Health Care or its successors, if any.

(b) Effective immediately, a health screening form will be completed for each inmate upon admission to the jail. Effective April 1, 1991, Sheriff Kidd and his medical staff will provide each inmate with a physical examination within 14 days of his or her incarceration, which examination will be conducted by jail nurses, reviewed by jail physicians, and will include a health history and laboratory screening for tuberculosis and venereal

disease. Jail physicians will be on call 24 hours per day, seven days a week, and problems which may require advice from a physician will be presented to such.

(c) Effective April 1, 1991, Sheriff Kidd will require that his medical staff conducts sick call five days per week, Monday through Friday, in a clinical setting at the jail's medical facility and under circumstances which ensure confidentiality. Sick call in a clinical setting will be available to inmates upon request, unless the nurse believes that a particular inmate is abusing this privilege. Nurses will make daily rounds to each cell for the purpose of distributing over-the-counter medication and other routine services. Effective December 1, 1990, Sheriff Kidd will make available to inmates access to the emergency room and various clinics at the Carolinas Medical Center or another appropriate medical facility. Effective December 1, 1990, all inmates will have the right to see a physician for a medical complaint upon request, unless the nurse or physician believes that a particular inmate is abusing this privilege. Effective December 1, 1990, no inmate will receive psychotropic drugs unless such drugs have been prescribed by a physician who has seen the inmate at the jail or elsewhere. Inmates receiving psychotropic drugs will be seen by the jail physician or another physician no less than quarterly.

(d) Effective January 1, 1991, Sheriff Kidd and his staff will provide medically modified diets if such diets are pre-

scribed by a physician or by a dentist.

(e) The defendants intend to leave the jail's medical facilities at the present location on the third floor for the indefinite future. The plaintiffs may challenge this decision if the reduction in the jail population scheduled for April 1, 1991 fails to reduce substantially the use of these facilities. Effective December 1, 1990, the defendants other than Sheriff Kidd will provide the funds for another examining/treating room in the now unused M-1 cell block at the jail. Effective February 1, 1991, Sheriff Kidd and his staff will use these funds to convert a portion of the now abandoned M-1 cell block into another examining/treating room as part of the medical facilities at the jail.

(f) Effective December 1, 1990, Sheriff Kidd will assign at all times to each floor upon which inmates are housed at least one deputy who has been trained and certified in the administration of CPR.

(g) Effective December 1, 1990, inmates will be furnished with medically prescribed and medically necessary medication during confinement at the jail. Medication previously prescribed by a physician prior to the inmate's incarceration will be provided in accordance with appropriate prescriptions and medical judgment. Vanity drugs, such as diet pills, which may be prescribed but which are not medically necessary, will be administered only upon prescription and only to inmates who are able to pay for

same in advance or who are able to otherwise provide such medication. All medication orders will be under the general supervision of the jail physician.

(h) Beginning January 1, 1991, the defendants other than Sheriff Kidd will provide financing for the provision of direct medical services by a physician at the jail for an average of three hours per day, two days per week. Sheriff Kidd will use these funds to employ a physician or physicians to provide these services. The defendants will undertake further study with regard to the presence of physicians at the jail, for providing care from registered nurses and from physicians will be subject to change as new facilities are opened and old facilities are vacated.

10. Fire Safety.

(a) Effective January 1, 1991, the defendants other than Sheriff Kidd will repair and bring the smoke ionization system at the jail fully operable, and will see that the system is tested at least quarterly by a qualified person, and will at least quarterly request that the Charlotte Fire Department monitor, test and inspect the system. In addition, on or before December 1, 1990, Sheriff Kidd will install appropriate smoke detector devices and systems in all storage rooms with alarms sufficient to be heard outside the room and will further install such other smoke detector devices and systems as the Charlotte Fire Department shall designate and approve. Such devices and systems will be

placed at such locations as may be designated by the Charlotte Fire Department, and they shall be checked at least monthly to make certain that they are in working order.

(b) Beginning December 1, 1990, as the present plastic trash cans used in cell blocks wear out or are replaced, such cans will be replaced with metal trash cans with tight-fitting lids or with UL-rated plastic trash cans.

(c) Beginning December 1, 1990, one fire drill will be held each month and documented. Such fire drills will be held at different times of the day and will be rotated among each shift. Such fire drills will be held according to a routine which all parties can agree upon. While inmates need not be physically removed from the jail as part of a fire drill, each inmate will be given a fire plan at the time of admission, informing the inmate as to what actions are to be taken in the event of a fire.

(d) No later than January 1, 1991, the defendants other than Sheriff Kidd will furnish the funds for the replacement of non-fire rated exit doors at the jail with fire rated doors and will furnish the funds for the division of the second floor of the jail into two smoke compartments and for the division of the third floor of the jail into two smoke compartments, consistent with § 1008.2 of the North Carolina State Building Code. Sheriff Kidd and his staff will use these funds to make these improvements.

(e) By no later than January 1, 1991, Sheriff Kidd and his

(e) By no later than January 1, 1991, Sheriff Kidd and his staff will: (i) have all keys necessary for evacuation in case of fire or emergency marked so that they can be readily identified by feel alone; (ii) retain in the first floor control room two prominently marked separate sets of keys which will allow staff access to each fire escape stairs and which will enable staff to open both fire escape stairs in the event of fire.

(f) Effective January 1, 1991, all storage areas in the jail will be equipped with smoke detectors which emit a sufficiently loud alarm to be heard in the adjoining corridor. Such smoke detectors will be checked monthly and will be maintained in operable condition.

(g) Effective April 1, 1991, Sheriff Kidd and his staff will cause all jail personnel who have contact with inmates to be provided with six hours of initial training in the use of self-contained breathing apparatus and quarterly refresher training of one hour.

(h) Beginning immediately, each self contained breathing apparatus will be checked monthly and will be kept in operable condition by Sheriff Kidd and his staff.

(i) By January 1, 1991, Sheriff Kidd and his staff will clean up all storage rooms, the rear emergency exit and the second floor control booth, by removing all trash and flammable materials and will thereafter prevent such materials from accumulating.

(j) No later than January 1, 1991, Sheriff Kidd and his staff will mark all exits consistent with § 1007.11 of the North Carolina State Building Code.

11. Plumbing Repairs. Effective December 1, 1990, Sheriff Kidd and his staff will correct all plumbing deficiencies within 12 hours of such deficiencies being reported to jail personnel.

12. Non-Punitive Segregation. Effective December 1, 1990, subject to the limited number of single cells available in the jail, Sheriff Kidd and his staff will isolate all inmates requiring non-punitive segregation, including those requiring such housing for mental health and protective custody purposes. All such inmates will have at least the same access as regular population inmates to the following privileges: daily access to telephone, canteen, outdoor exercise, visiting, recreation, reading materials and diet.

13. Classification. Effective April 1, 1991, Sheriff Kidd and his staff will adopt and implement a plan for classification of inmates which utilizes the following devices developed by the National Institute of Corrections Jail Center as part of the Objective Jail Classification System: (1) Inmate Screening Form; (2) Initiate Custody Assessment Scale; (3) Custody Reassessment Scale; (4) Initial Inmate Needs Assessment Form; and (5) Inmate Needs Reassessment Form.

14. Inmate Control of Other Inmates. Beginning immediately, Sheriff Kidd and his staff will ensure that no inmate is given

any sort of authority over any other inmate or inmates.

15. Compliance and Monitoring. Beginning January 1, 1991, and every six months thereafter for the duration of this Consent Order, defendants will make reports to the court and to plaintiffs' counsel concerning their compliance or progress towards compliance with each provision of this Consent Order. Sheriff Kidd and his staff will provide, without prior notice, access to the jail and to inmates by plaintiffs' counsel and their experts and consultants in order to evaluate compliance. Defendants' will provide to plaintiffs' attorneys, upon request, additional documents and information necessary to evaluate defendants' compliance with their respective obligations under this Consent Order. In the event that plaintiffs' counsel believe that defendants are not in compliance, they will first provide defendants with written notice of such claims of non-compliance. The parties must first attempt to resolve any such issues between or among themselves. Any question of non-compliance will be resolved by the Court if the parties cannot agree.

16. Continuing Jurisdiction. The Court shall retain jurisdiction over this action.

17. Attorney Fees and Costs. Plaintiffs are the prevailing parties at this point in this action and are entitled to recover their costs and attorney fees, as allowed by law. An itemized statement of such costs and charges allowed by law may be submitted by the attorneys for the plaintiffs, and the parties will

seek to reach an agreement as to these costs and charges. In the event of unsuccessful negotiations, any party to this litigation may apply to the court for resolution of the dispute or disputes upon this subject.

18. Notice to the Class. No later than December 1, 1990, Sheriff Kidd and his staff will cause each inmate at the jail and all inmates admitted thereafter so long as this Order remains in effect to be given notice of the terms of this Consent Order by:

- (a) Posting in each cell block a copy of this Consent Order and replacing such copy whenever it becomes lost, torn, mutilated or otherwise unavailable.
- (b) Providing each current and newly admitted inmate upon admission a copy of the notice attached as Exhibit 2, after signature by the Court.

19. Except as stated above, the defendants shall retain their respective options with regard to the operation of the Mecklenburg County Jail.

IT IS SO ORDERED, this the _____ day of November 1990.

Robert D. Potter, Chief
United States District Judge

WE CONSENT:

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Date revised: November 2, 1990

POPULATION LIMITS
BY HOUSING AREAS
SECOND FLOOR

HOUSING AREA

| | |
|--------------------|-----|
| D-1 | 12 |
| D-2 | 12 |
| D-3 | 12 |
| F-1 | 6 |
| F-2 | 12 |
| F-3 | 12 |
| F-4 | 12 |
| R-1 | 12 |
| R-2 | 12 |
| R-3 | 12 |
| S-1 | 12 |
| S-2 | 12 |
| S-3 | 12 |
| S-4 | 6 |
| TOTAL SECOND FLOOR | 156 |

*Cell Blocks S-4 and F-1 each have two cells with solid doors. These four cells will be used only for disciplinary confinement not to exceed 24 hours in any seven-day period or for confinement for a maximum of two hours while a shakedown of the area is occurring.

POPULATION LIMITS
BY HOUSING AREAS
THIRD FLOOR

HOUSING AREA

| | |
|-------------------|-----|
| P-1 | 12 |
| P-2 | 12 |
| P-3 | 12 |
| T-1 | 8 |
| T-2 | 12 |
| T-3 | 12 |
| T-4 | 12 |
| M-2-I | 5 |
| M-2 | 7 |
| M-3 | 12 |
| M-4 | 8 |
| W-1 | 5 |
| W-2 | 7 |
| W-3 | 7 |
| W-4 | 12 |
| TOTAL THIRD FLOOR | 143 |
| TOTAL | 299 |

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
C-C-90-104-P

ROBERT L. THOMAS, et al., Plaintiffs,

v.

C. W. KIDD, et al., Defendants.

NOTICE TO CLASS MEMBERS

This Court has certified this lawsuit as a class action consisting of inmates at the Mecklenburg County Jail. If you are confined at this Jail, you are a member of the class. The Court has also approved a Consent Order which calls for changes in conditions at the Jail.

The lawsuit was begun in April 1990 by three inmates of the Jail. The lawsuit claims that conditions at the Jail constitute cruel and unusual punishment and that they impose punishment in violation of the United States Constitution. The complaint includes claims regarding overcrowding, inadequate facilities, medical services, discipline, lack of activities, hygiene, staffing and security, and violence. The Consent Order addresses certain of those conditions.

The plaintiffs are represented by the following lawyers:

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These lawyers are available to answer your questions about the status of this lawsuit, about your rights as a class member and about the requirements of the Consent Order. They will also communicate with you if you have information which is relevant to the lawsuit or about compliance with the Consent Order. These lawyers are not available to handle matters other than those related to this lawsuit.

This the _____ day of November 1990.

Robert D. Potter, Chief
United States District Judge

Exhibit 2

Thomas v. Kidd



JC-NC-002-001