UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

JERRY E. STEWART, et al.,

Plaintiffs,

vs.

BRAD GATES, et al.,

Defendants.

Case No. CV 75-3075-GLT

ORDER VACATING EARLIER ORDERS AND DISMISSING CASE

In 1978, and by several follow-up rulings, this Court found certain constitutional violations of pre-trial inmates' rights at the Orange County, California jails, and issued a series of specific mandatory minimum orders to remedy the violations. Stewart v. Gates, 450 F. Supp. 583 (C.D. Cal. 1978). Now, after briefing by the parties and an evidentiary hearing, the Court considers whether these continuing Stewart orders are still necessary or appropriate and whether they should be modified or vacated. Federal Rules of Civil Procedure, Rule 60(b); Prison Litigation Reform Act, 18 U.S.C. § 3626. The Court concludes the orders should be vacated and the case should be dismissed.

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A. THE DEVELOPING LAW

In the 1970s, few standardized rules governed the treatment of pre-trial inmates in the nation's jails. Overcrowding was a persistent problem, and constitutional rights violations were not uncommon.

In 1978, and in several follow-up rulings, this Court made a series of orders to remedy various constitutional violations found to exist at the Orange County, California jails. By way of mandatory minimums, the orders set standards for inmate treatment on such diverse topics as time allocated for meals, seating in holding cells, dayroom access, exercise time, visitor access, telephone access, access to religious services and advisors, children visitation, books and magazines, mail, mattresses and blankets, sleep time, law book access, and population caps.[1]

Since the Stewart orders 27 years ago, the approach to jail litigation and regulation has changed greatly. At the federal level, Congress and the Supreme Court have redefined how jail conditions are supervised and challenged. In 1996, Congress enacted the Prison Litigation Reform Act, 18 U.S.C. § 3626, providing an inmate grievance administrative process.

At the state level, changes have been significant. Since the Stewart orders, California codified jail procedures and policies in Title 15, California Code of Regulations, covering most of the issues raised in the Stewart orders, and many more.

Much of the development in this area of the law resulted from two U.S. Supreme Court decisions, both coming after the Stewart orders:

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[1] Other Stewart orders have been made, but, over the years, have become moot, superseded, or overruled.

Bell v. Wolfish, 441 U.S. 520 (1979), and Turner v. Safley, 482 U.S. 78 (1987). These cases, and those that follow after them, make clear that jail officials have "wide-ranging" deference in handling day-to-day operations of jail facilities. When the federal courts intervene, it must be done with restraint, with due regard to jail needs and exigencies. Noting that "the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial," the Supreme Court cautioned against federal courts, "in the name of the Constitution, becom[ing] increasingly enmeshed in the minutiae of prison operations." Bell 441 U.S. at 548, 562.

The Stewart orders approached the issue from an Eighth Amendment framework. The Supreme Court has held, in cases decided after Stewart, the Fourteenth Amendment governs the conditions of confinement of pretrial detainees. However, because an Eighth Amendment violation may also be a Fourteenth Amendment violation, Oregon Advocacy Center v. Mink, 322 F.3d 1101, 1120-1121 & n.11 (9th Cir. 2003), an Eighth Amendment violation may be actionable.

Unlike Stewart's mandatory minimum quantities, the approach developed over 27 years since Stewart uses a flexible analysis in which jail administrators are given wide latitude to address security and other concerns.

The constitutional rights of a convicted prisoner are different (and lower) from those of a pretrial detainee. While a prisoner's rights arise primarily from the Eighth Amendment's prohibition against cruel and unusual punishment, Estelle v. Gamble, 429 U.S. 97, 104 (1976), a pretrial detainee's constitutional rights arise from the procedural and substantive due process guarantees of the Fourteenth

Amendment. Bell v. Wolfish, 441 U.S. at 535 & n.16. This distinction is crucial: a state cannot punish a pretrial detainee. Id. These rights are related, however, because a pretrial detainee's due process rights are "at least as great as the Eighth Amendment protections available to a convicted prisoner." Hare v. City of Corinth, 74 F.3d 633, 639 (5th Cir. 1996) (citing City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244 (1983)).

In Bell, the Supreme Court began its analysis of the constitutionality of pretrial detention conditions by noting "the Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, [and] confinement of such persons pending trial is a legitimate means of furthering that interest." Bell, 441 U.S. at 534. The government has "legitimate interests that stem from its need to manage the facility in which the individual is detained." Id. at 540. "[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." Id. at 546 (footnote omitted).

However, a pretrial detainee has a "right to be free from punishment and [an] an understandable desire to be as comfortable as possible during his confinement, both of which may conceivably coalesce at some point." Id. at 534. The inquiry is to "determin[e] whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word." Id. at 538. This is a rationality test:

> [I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more,

> amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal — if it is arbitrary or purposeless — a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.

Id. at 539 (footnote omitted).[2]

This rationality test has two parts. The Court looks to legislative intent to determine if there is an express intent to impose punitive restrictions. U.S. v. Salerno, 481 U.S. 739, 747 (1987) (citing Schall v. Martin, 467 U.S. 253, 269 (1984)). Unless the legislative body expressly intended to impose punitive restrictions, the punitive/regulatory distinction turns on "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." Id. (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963)).

The Court looks at the intent of the jailers to "examine whether the restriction is based upon an express intent to inflict punishment."[3] Valdez v. Rosenbaum, 302 F.3d 1039, 1045 (9th Cir. 2002). If there is no express punitive intent found, the Court analyzes the

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[2] The Court also noted "[t]here is ... a de minimis level of imposition with which the Constitution is not concerned." Id. at 539 n.21 (quoting Ingraham v. Wright, 430 U.S. 651, 674 (1977)).

[3] This analysis is somewhat different if the detainee is claiming the deprivation of a separate constitutional right, such as the First Amendment, as opposed to claiming a restriction violates the detainee's substantive due process right to be free from punishment. In the former, the Court first looks to a detainee's underlying constitutional right. "Whether these restrictions constitute 'punishment' for the purposes of Fourteenth Amendment jurisprudence [may] require[] some analysis of the scope of plaintiffs' [underlying constitutional] rights, because the deprivation of a nonexistent right cannot amount to punishment." Jones v. City of San Francisco, 976 F.Supp. 896, 914 (N.D. Cal. 1997).

alternative purpose to determine if it is rationally related to a legitimate governmental objective.[4] Bell, 441 U.S. at 539. Under this permissive standard, Orange County has very broad leeway in making and applying jail rules. The continuing viability and need for the Stewart orders must be reassessed.

B. THE STEWART ORDERS

Under current legal standards, the Stewart orders are no longer necessary or appropriate.

1. Meal Time

A Stewart order requires detainees be given at least 15 minutes to eat their meals. Under the Bell analysis and current case law, this federal requirement is not necessary or appropriate.

There is no evidence of an express punitive intent in the jail's restriction of meal time. There is evidence meal scheduling restrictions are imposed to limit violence and otherwise ensure safety, and 15 minutes is usually allocated for meals, but this standard is sometimes not met.

Bell requires the Court to examine whether the County's meal time

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[4] "A reasonable relationship between the governmental interest and the challenged restriction does not require an 'exact fit,' ... nor does it require showing a 'least restrictive alternative.'" Valdez, 302 F.3d at 1046 (quoting Mauro v. Arpaio, 188 F.3d 1054, 1060 (9th Cir. 1999) (en banc); Thornburgh v. Abbott, 490 U.S. 401, 410-12 (1989)).

> Moreover, it does not matter whether [the Court] agree[s] with the defendants or whether the policy in fact advances the jail's legitimate interests. The only question that [the Court] must answer is whether the defendants' judgment was 'rational,' that is, whether the defendants might reasonably have thought that the policy would advance its interests.

Mauro, 188 F.3d at 1060 (internal quotation marks and citation omitted).

rules and practice are rationally related to a legitimate governmental interest, such as security. The Court finds they are.[5]

Failure to provide inmates with meals sufficient to maintain normal health may constitute a violation of the Eighth or Fourteenth Amendments. See Cunningham v. Jones, 567 F.2d 653, 655-60 (6th Cir. 1977), but there is no evidence of that here. The Due Process Clause is satisfied as long as detainees are served well-balanced meals, containing sufficient nutritional value to preserve health. Green v. Ferrell, 801 F.2d 765, 770 (5th Cir. 1986).

Other than Stewart and one other case decided by the same judge,[6] there are no cases indicating pretrial detainees are constitutionally entitled to have a certain amount of time to eat. There is also no specific constitutional case law to the contrary. There is, however, authority indicating (1) meal restrictions are appropriate in general, see, e.g., Butler v. Crumlish, 229 F.Supp. 565, 566 (E.D. Pa. 1964) ("(P)ending trial ... a defendant may be imprisoned in a cell and must submit to the routine of the prison relating to his meals, his exercise and the many other activities of daily life. All these matters, however, are incidental elements in the organized caretaking of the general company of prisoners."), abrogated on other grounds by Rigney v. Hendrick, 355 F.2d 710 (3d Cir. 1965); and (2) meal time

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[5] In considering whether a specific practice or policy is "reasonably related" to security interests, courts play a very limited role, since such considerations are peculiarly within the province and professional expertise of corrections officials. Bell, 441 U.S. at 540 n.23.

[6] The same judge also imposed the 15 minutes-to-eat restriction in Los Angeles County in Rutherford v. Pitchess, 457 F.Supp. 104, 116(C.D. Cal. 1978).

restrictions are appropriate for prison inmates (not pretrial detainees) in particular, see, e.g., Robbins v. South, 595 F.Supp. 785, 790 (D. Mont. 1984) ("The dehumanizing aspect of being required to eat in 15 minutes, noted in plaintiff's complaint, is not of sufficient intensity to be considered punishment, much less cruel and unusual punishment.").

Under the current law and the Court's necessary deference to jail regulations and practices, the occasional restriction of detainees' meal times to less than 15 minutes is constitutional under Bell. The jail is not constitutionally required to provide a minimum meal time, provided detainees are receiving adequate nutrition. State law provides time rules. There is no longer a need for Stewart's requirement on this issue.

2. Seats in Holding Cells

A Stewart order requires a seat for each inmate in a holding cell when going to or from court. Under Bell, this requirement is not necessary.

There is apparently no other published opinion or state regulation establishing a seating requirement. However, there is ample authority on an analogous topic: overcrowding, by itself, does not rise to the level of a constitutional violation. Jenkins v. Velasco, 1995 WL 765315, at *5-6 (N.D. Ill. 1995); Malone v. Becher, 2003 WL 22080737 at *10 (S.D. Ind. 2003); Chavis v. Fairman, 1994 WL 55719 at *3-4 (N.D. Ill. 1994); Coughlin v. Sheahan, 1995 WL 12255 at *3 & n.3 (N.D. Ill. 1995).

There is no evidence of a punitive intent concerning jail seating. The day-to-day detail of seating for inmates moving to and from court is related to a legitimate governmental objective, and is

properly left to the discretion of jail officials. Turner v. Safley, 482 U.S. 78, 89 (1987). Under present law, no federal court order is necessary or appropriate.

3. Access to Visitors

Stewart orders that inmates in administrative segregation be allowed to receive visitors at least twice a week. Under Bell and current case law, this requirement is unnecessary and inappropriate.

Orange County must be given wide latitude in restricting access to visitors. See Block v. Rutherford, 468 U.S. 576, 589 (1984); Bell v. Wolfish, 441 U.S. at 540 n.23. Visitation may be denied to pretrial detainees based on legitimate security concerns. See Davis v. Milwaukee County, 225 F.Supp.2d 967, 974 (E.D. Wis. 2002) (citing Block 468 U.S. at 588).[7]

It is settled that pretrial detainees have no constitutional right to contact visits. Block, 468 U.S. at 585-88. It is also settled that convicted inmates have no constitutional right to unfettered visitation. See Kentucky Dept. of Corr. v. Thompson, 490 U.S. 454, 460 (1989). It appears pretrial detainees also do not have a right to unfettered visitation. See Martin v. Tyson, 845 F.2d 1451, 1455-56 (7th Cir. 1988) (limitations on amount and length of

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[7] The First Amendment is implicated by visitation. See Feeley v. Sampson, 570 F.2d 364, 372 (1st Cir. 1978) ("Visitation rights, besides having to meet the previously described due process standard, reflect first amendment values, most clearly the right of association."); Brenneman v. Madigan, 343 F.Supp. 128, 141 (N.D. Cal. 1972) (class of pre-trial detainees has a First Amendment right to visitation). But see Morrow v. Harwell, 768 F.2d 619, 625 (5th Cir. 1985) (indicating pre-trial detainees have no First Amendment right to visitation, but not reaching the issue). However, the Ninth Circuit has held a detainee's right to communicate is "subject to rational limitations in the face of legitimate security interests of the penal institution." Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986).

visitation at county jail were justified by small size of jail and number of people to be accommodated).[8]

There is no evidence of an express punitive intent in the restriction of visitation, as visitation poses security concerns. Under Bell, limitations on visitation are only unconstitutional if imposed for punishment. Because Orange County must be given wide latitude in this area, Stewart's blanket minimum is not appropriate.

4. Rooftop Exercise

A Stewart order requires detainees in administrative segregation be given at least two hours per week of rooftop exercise and recreation. Because the case law indicates some minimum amount of exercise is required, but stresses deference to the jail and requires a fact-specific analysis, Stewart's fixed minimum of two hours is not an appropriate or necessary order.

Regular exercise of some type is crucial for the psychological and physical fitness of prisoners. Bailey v. Shillinger, 828 F.2d 651, 653 (10th Cir. 1987); Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979); See also Wrice v. Koehler, 1993 WL 300269 at *3 (N.D. Cal. 1993) (allegation pretrial detainees were denied all access to

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[8] In cases decided before Bell, courts disagreed as to whether pretrial detainees have a right to pretrial visitation at all. Compare Feazell v. Augusta County Jail, 401 F.Supp. 405, 407 (W.D. Va. 1975) ("Visiting privileges are properly within the determination of internal prison considerations.") and Henry v. State of Delaware, 368 F.Supp. 286, 288 (D. Del. 1973) ("[T]here is no federal constitutional or statutory right to visitation privileges.") with Jones v. Diamond, 594 F.2d 997, 1013 (5th Cir. 1979) ("[I]f a jailer were to refuse to allow the ordinary detainee any visitation privileges ... such conduct would be unconstitutional....") and Feeley, 570 F.2d at 372 ("A refusal ... to allow the ordinary detainee any visitation privileges ... would be unconstitutional.").

exercise stated a cognizable § 1983 claim). However, "what constitutes adequate exercise will depend on the circumstances of each case, including the physical characteristics of the cell and jail and the average length of stay of the inmates." Housley v. Dodson, 41 F.3d 597, 599 (10th Cir. 1994); accord Buffington v. O'Leary, 748 F.Supp. 633, 634 (N.D. Ill. 1990) (no constitutional claim where a prisoner had a reasonable opportunity for exercise and did not allege any significant physical deterioration).

For example, in Campbell v. Cauthron, 623 F.2d 503, 507 (8th Cir. 1980), the Eighth Circuit held pretrial detainees are ordinarily entitled to one hour of exercise outside their cells each day if they spend more than sixteen hours in their cells. However, courts have held pretrial detainees have no fundamental right to exercise if they are incarcerated for a short time. See, e.g., Wilson v. Blankenship, 163 F.3d 1284, 1292 (11th Cir. 1998) (holding there is no "clearly established constitutional law" requiring a jail to provide access to outdoor exercise during time of incarceration when the term of incarceration was short).

As with the other restrictions, there is no evidence of an intent to punish in restricting rooftop exercise and recreation. There was evidence a group of detainees congregating in an open area containing weights and other equipment raises security concerns. The Court finds the County's provision of exercise time is rationally related to a legitimate governmental interest. The fixed-minimum Stewart order is unnecessary and inappropriate.

5. Day Room Access

Stewart requires detainees in administrative segregation be allowed two hours of day room access per day. There is no showing of

a punitive intent present in the restriction of day room access. There has been a showing, however, Orange County has a legitimate governmental interest in limiting or preventing day room access for security and control of detainees. The denial of day room access to pretrial detainees for security reasons does not violate the Fourteenth Amendment. Green, 801 F.2d at 767. Stewart's fixed minimum is unnecessary and inappropriate.

6. Telephone Access

In Stewart, the Court instructed Orange County to install 16 additional payphones, and to make all phones reasonably accessible. The evidence shows the additional phones were installed and phones are reasonably accessible.

Pretrial detainees do not have a right to telephone access, per se. Pretrial detainees instead have a First Amendment "right to communicate with persons outside prison walls ... [and] [u]se of a telephone provides a means of exercising this right." Valdez, 302 F.3d at 1048. Regulations limiting pretrial detainees' speech do not violate the First Amendment so long as they are reasonably related to a legitimate penological interest. Id. (citing Turner, 482 U.S. at 89 (1987)); cf. Strandberg, 791 F.2d at 747 (recognizing arrestees have a First Amendment right to telephone access, but noting this right is "subject to rational limitations in the face of legitimate security interests of the penal institution"). Under this framework, the Ninth Circuit has upheld severe restrictions on telephone access based on security concerns. See Valdez, 302 F.3d at 1045-47. A Stewart federal order on this topic is unnecessary and inappropriate.

7. Visitation by Unaccompanied Minor Children

In Stewart, the Court required Orange County to allow visits by a

detainee's unaccompanied minor children. In Rutherford, 457 F.Supp. at 111 (C.D. Cal. 1978), the same judge required the same in Los Angeles County jails. These are the only two cases mandating such visits.

Recent Supreme Court authority indicates this requirement is not proper:

> Turning to the restrictions on visitation by children [including the requirement minor children be accompanied by an adult], we conclude that the regulations bear a rational relation to [the jail's] valid interests in maintaining internal security and protecting child visitors from exposure to sexual or other misconduct or from accidental injury. The regulations promote internal security, perhaps the most legitimate of penological goals by reducing the total number of visitors and by limiting the disruption caused by children in particular. Protecting children from harm is also a legitimate goal. As for the regulation requiring children to be accompanied by a family member or legal guardian, it is reasonable to ensure that the visiting child is accompanied and supervised by those adults charged with protecting the child's best interests.

Overton v. Bazzetta, 539 U.S. 126, 133 (2003) (internal citations omitted). The Stewart order is now moot, and is inappropriate.

8. Mail

A Stewart order requires detainees be allowed to receive books, magazines, and newspapers that may be lawfully sent through the U.S. mail. The Court recognized the jail must be allowed "reasonable withholding for inspection for contraband and security purposes." Stewart, 450 F.Supp. at 590. This standard is correct under current law, but is no longer necessary as a federal order because the right is well-established and no violation is apparent.

Prisoners and detainees have a First Amendment right to receive publications through the mail. Brooks v. Seiter, 779 F.2d 1177, 1181 (6th Cir. 1985); Pepperling v. Crist, 678 F.2d 787, 789-91 (9th Cir.

1982); see also Martin, 845 F.2d at 1454 (absolute ban on newspapers to pretrial detainee would violate First Amendment); Sizemore v. Williford, 829 F.2d 608, 610 (7th Cir. 1987) (holding permanent withholding of prisoner's daily newspaper by prison officials implicates First Amendment rights).

The Supreme Court has recognized reasonable restrictions on inmate/detainee mail are proper. See Turner, 482 U.S. at 91-93 (upholding regulation prohibiting certain types of correspondence between inmates at different institutions); Bell, 441 U.S. at 549-50 (upholding regulation that allowed only publishers, bookstores, and book clubs to mail hardbound books to pretrial detainees because hardbound books could contain contraband). A Stewart order stating this well-established right is unnecessary.

9. Mattresses and Blankets

A Stewart order requires each detainee be given a mattress and a blanket. The failure to provide a pretrial detainee with a mattress and a bed "unquestionably constitutes a cognizable Fourteenth Amendment claim." Thompson v. City of Los Angeles, 885 F.2d 1439, 1448 (9th Cir. 1989) (collecting cases). Because this right is clearly established, Stewart's separate mandate is not necessary.

The Ninth Circuit has not spoken on the requirement of blankets for pretrial detainees, but recent prison cases show the need for adequate blankets in that context. "Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety." Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)). "The circumstances, nature, and duration of a deprivation of these necessities must be considered in determining

whether a constitutional violation has occurred." Id.

The Seventh Circuit has held a pretrial detainee sufficiently alleged a Fourteenth Amendment violation where he was denied protection from cold temperatures by the jail staff's failure to provide blankets. Antonelli v. Sheahan, 81 F.3d 1422, 1433 (7th Cir. 1996). District Courts in Oregon and the Northern Mariana Islands have also indicated the denial of adequate blankets may constitute a violation of the Fourteenth Amendment. Seed v. Hudson, 1994 WL 229096, *3 (D. N.Mar.I. 1994); Martino v. Carey, 563 F.Supp. 984, 1000 (D. Or. 1983); but see Gilland v. Owens, 718 F.Supp. 665, 684-85 (W.D. Tenn. 1989) (short-term deprivations of toilet paper, towels, sheets, blankets, mattresses, toothpaste, and toothbrushes did not violate Eighth or Fourteenth Amendments).

Under the body of developing law, a pretrial detainee must be given a blanket, or denied it for only a short period of time, if the jail is cold and there is no adequate alternative means for warmth. See Wilson v. Seiter, 501 U.S. 294, 303 (1991) (allegations of a low cell temperature in combination with the failure to issue blankets may be sufficient to state an Eighth Amendment claim); Dixon v. Godinez, 114 F.3d 640, 643 (7th Cir. 1997) ("The question ... is not simply whether the inmate had some alternative means of warmth, but whether the alternative was adequate to combat the cold. Moreover, it is not just the severity of the cold, but the duration of the condition, which determines whether the conditions of confinement are unconstitutional.") (internal citation omitted).

Under Bell, the denial of a blanket is only unconstitutional if punitive. Even so, courts have recognized the appropriateness of denying items such as blankets to inmates (not pretrial detainees) for

legitimate security/suicide concerns or to discipline unruly prisoners. See, e.g., O'Leary v. Iowa State Men's Reformatory, 79 F.3d 82, 83-84 (8th Cir. 1996) (discipline); Williams v. Delo, 49 F.3d 442, 445-47 (8th Cir. 1995) (same); Myers v. County of Lake, 30 F.3d 847, 850 (7th Cir. 1994) ("[I]nmates may be deprived not only of belts and ties, but also of pens, sheets, blankets, even clothing, for almost any object may be used to harm oneself...").

There is no evidence here of punitive action or ongoing violations. Rights on this topic are now sufficiently clear under existing law that a specific Stewart order is unnecessary and inappropriate.

10. Eight Hours of Sleep

An order in Stewart requires Orange County to allow a detainee 8 hours of uninterrupted sleep the nights before and after a court appearance. Other than this case, there is apparently no other case mandating a minimum number of hours of sleep any detainee or inmate was required to be given. Recent case law and Bell indicate this order is no longer necessary or appropriate.

Courts have indicated only severe, frequent, and persistent sleep interruption amounts to a Fourteenth Amendment violation. See, e.g., Antonelli, 81 F.3d at 1434 (allegation by pretrial detainee that noise "occurred every night, often all night, interrupting or preventing [plaintiff's] sleep" stated a claim); Ferguson v. Cape Girardeau County, 88 F.3d 647, 650 (8th Cir. 1996) (no claim where detainee was forced to sleep in a cell lighted 24 hours a day but detainee was observed sleeping for 93 total hours in 14 days); Spivey v. Doria, 1994 WL 97756, at *11 (N.D. Ill. 1994) (finding no constitutional violation where inmate only alleged noise level caused him to lose

sleep and made him irritable, and noting "[f]ederal courts are not the forums to determine proper lighting and noise levels in jails").

An occasional sleep deprivation is not necessarily a constitutional violation. Stewart's mandate on this issue is unnecessary and not in accord with current law.

11. Proximately Observing a Cell Search

A Stewart order required a detainee be sufficiently close to any "shakedown" search of his cell. In Block, the Supreme Court reversed the same judge's imposition of the same requirement on the Los Angeles County jail, holding the jail's unannounced searches were proper under Bell. 468 U.S. at 589-91. Under Block, the order in this case is inappropriate.

12. Religious Services

A Stewart order requires detainees in administrative segregation be allowed to attend one regularly scheduled religious service per week or to have an individual visit to the chapel of 20 minutes. There do not appear to be other cases mandating such minimums.[9]

Under the Constitution, "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments." Cruz v. Beto, 405 U.S. 319, 322 n.2 (1972). However, prison regulations limiting inmates' free religious exercise do not violate the First Amendment so long as they are reasonably related to a legitimate penological interest. Turner

[9] Such a mandate for administrative segregation is particularly problematic. "[T]he hardship associated with administrative segregation, such as loss of recreational and rehabilitative programs or confinement to one's cell for a lengthy period of time, does not violate the due process clause because there is no liberty interest in remaining in the general population." Anderson v. County of Kern, 45 F.3d 1310, at 1315 (9th Cir. 1995).

v. Safley, 482 U.S. at 89.

Under Turner, the Court considers four factors in deciding whether the restrictions meet this rational basis scrutiny: (1) whether the restrictions have a logical connection to legitimate government interests; (2) whether alternative means of religious expression remain open to inmates; (3) the likely impact of accommodating the inmates' asserted right on guards, other inmates, and the general allocation of jail resources; and (4) the existence of ready alternatives to the existing policy. See id. at 89-91.

Applying Turner and Cruz, courts have held restrictions on worship for security purposes are generally appropriate. See, e.g., Pedraza v. Meyer, 919 F.2d 317, 320 (5th Cir. 1990) (restriction of convicted jail inmates to worship in "security vestibule" constitutional); Jones, 976 F.Supp. at 914-15 (obstacles to regular attendance of religious services did not amount to "punishment" under Fourteenth Amendment where the restrictions were logically related to legitimate concerns about safety and orderly administration of jail); Muslim v. Frame, 854 F.Supp. 1215, 1227 (E.D. Pa. 1994) (denying detainee access to telephone and religious services during administrative segregation was reasonably related to goal of maintaining maximum security within jail).

There is no indication of punishment here, or any ongoing violation. Under the current case law and Bell, Stewart's automatic mandate on this issue is unnecessary and inappropriate.

13. Lawbook Access

A Stewart order endorsed the jail policy of inmate access to law books, and ordered that it apply to each facility of the jail. The legal standards for inmate lawbook access are now relatively clear,

and the jail has policies for proper access by all inmates. There is no indication of an ongoing violation. A federal Stewart order is no longer necessary or appropriate.

14. Inter-Jail Mail with Jailhouse Lawyers

A Stewart order provided detailed procedures for inmate communication with a "jail house lawyer" in the same facility. State law provides policies for regulation of correspondence, and the jail permits communication under acceptable constitutional standards. There is no indication of an ongoing constitutional violation. This sort of a supervisory Stewart order is no longer appropriate, nor is it needed.

15. Population Cap

Several Stewart orders set population caps of a certain maximum number of inmates assigned housing at certain areas in the jail system.

A population cap may be an appropriate remedy when constitutional violations are caused by overcrowding. Harris v. Angelina County, 31 F.3d 331, 336 (5th Cir. 1994). The Ninth Circuit has recognized the use of a population cap remedy in an appropriate case. Balla v. Idaho State Bd. of Corrections, 869 F.2d 461, 470-73 (9th Cir. 1989).[10]

The showing before the Court indicates there is not presently an

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[10] Numerous courts have concluded a population cap may be an appropriate remedy. See, e.g., Alberti v. Sheriff of Harris County, 978 F.2d 893, 896 (5th Cir. 1992) ("A numerical cap on the number of prisoners is not an overly intrusive remedy."); Mercer v. Mitchell, 908 F.2d 763, 770-71 (11th Cir. 1990) (same); Tillery v. Owens, 907 F.2d 418, 430 (3d Cir. 1990) (collecting cases); Marion County Jail Inmates v. Cottey, 2002 U.S. Dist. LEXIS 9216, *4-6 (S.D. Ind. 2002) (establishing fines for sheriff if court-ordered population cap for lock-up exceeded); Loya v. Bd. of County Comm'rs, 1992 U.S. Dist. LEXIS 11242, at *6 (D. Idaho 1992) (ordering a population cap).

ongoing constitutional violation caused by overcrowding. Decades ago this Court had bona fide concerns about overcrowding conditions, and took the necessary steps to remedy them. In the following years, jail authorities also took appropriate steps to confront overcrowded conditions, and worked to resolve them. Now, years after the original order, there is no showing of an overcrowding condition rising to the level of a federal constitutional violation. Compliance with the applicable constitutional standard is present. Standards for unconstitutional overcrowding are sufficiently stated in the law that a future aggrieved party could frame an appropriate § 1983 case.

The Stewart specific population cap is no longer necessary, and is inappropriate under current law.

C. THE CALIFORNIA STATUTORY SCHEME

Since the Stewart orders in 1978, a substantial statutory scheme of jail regulation has been enacted in Title 15, California Code of Regulations. The California Board of Corrections is charged with establishing the minimum standards for local detention facilities. California Penal Code § 6030. On the Stewart issues, the Board of Corrections' regulations require the following minimum standards in all California jails:

- "A minimum of fifteen minutes shall be allowed for the actual consumption of each meal except for those inmates on therapeutic diets where the responsible physician has prescribed additional time." Cal. Code Regs., Title 15, § 1240.

- "The facility administrator shall develop written policies, procedures, and determine the scope of library service . . . The library service shall include access to legal reference materials, current information on community services and resources, and religious, educational, and recreational reading material." Id. § 1064.

- "The facility administrator of a Type II[11] or III facility shall develop written policies and procedures for an exercise and recreation program, in an area designed for recreation, which will allow a minimum of three hours of such activity distributed over a period of seven days." Id. § 1065.

- "The facility administrator shall develop written policies and procedures for inmate visiting which shall provide for as many visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week." Id. § 1062.

- "The standard issue of clean suitable bedding and linens, for each inmate entering a living area who is expected to remain overnight, shall include ... one serviceable mattress [and]... one freshly laundered or dry cleaned blanket or more depending upon climatic conditions...." Id. § 1270.

- "The facility administrator of a Type II or III facility shall develop written policies and procedures which will permit inmates to purchase, receive and read any book, newspaper or periodical accepted for distribution by the United States Postal Service." Id. § 1066(a).

- "The visitation policies developed pursuant to this section shall include provision for visitation by minor children of the inmate." Id. § 1062(c).

- "The facility administrator shall develop written policies and procedures which allow reasonable access to a telephone...." Id. § 1067.

- "The facility administrator of a Type I, II, III or IV facility shall develop written policies and procedures to provide opportunities for inmates to participate in religious services and counseling on a voluntary basis." Id. § 1072.

There are apparently no state regulations on the minimum hours of sleep to be given to a detainee before and after court, access to dayroom, or minimum holding cell seating.

Although these Title 15 rules are arguably sufficiently mandatory

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[11] The Orange County jails are a Type II facility. "'Type II facility' means a local detention facility used for the detention of persons pending arraignment, during trial, and upon a sentence of commitment." Cal. Code Regs., Title 15, § 1006.

to create liberty interests protectable in a § 1983 action,[12] California jails have a "safety valve" provision, which allows them to temporarily suspend these standards for safety reasons:

> Nothing contained herein shall be construed to deny the power of any facility administrator to temporarily suspend any standard or requirement herein prescribed in the event of any emergency which threatens the safety of a local detention facility, its inmates or staff, or the public. Only such regulations directly affected by the emergency may be suspended. The facility administrator shall notify the Board of Corrections in writing in the event that such a suspension lasts longer than three days. In no event shall such a suspension continue more than 15 days without the approval of the chairperson of the Board of Corrections for a time specified by him/her.

Id. § 1012.

In summary, California has enacted a statewide scheme of standards on the significant Stewart issues. These enactments make it apparent the intervention of this federal Court is not required to supervise the operation of California jails. In the absence of a showing to the contrary, it may be assumed California jail professionals will follow the California regulatory scheme and the body of well-developed constitutional law on jail standards.

D. The Prison Litigation Reform Act

In 1996, Congress passed the Prison Litigation Reform Act, 18 U.S.C. § 3626. Under that law, the Court must vacate orders of prospective relief as to jail conditions if the order is over two years old, unless the Court can find a continuing order is necessary to correct a current and ongoing violation of a federal right. 18 U.S.C. §§ 3626(b)(1)(A) and 3626(b)(3). The message of the statute is

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[12] The Court finds no Ninth Circuit case that has ruled on these specific regulations, and this Court does not rule whether they are separately actionable.

clear: federal courts should avoid administering jails unless absolutely necessary.

Most of the Stewart orders no longer represent current constitutional standards. They are well over two years old, and the Court cannot find they are necessary to correct a current and ongoing federal right violation. Under the Prison Litigation Reform Act, the Stewart orders are no longer appropriate and must be vacated.

E. DISPOSITION

The Court finds the Stewart orders are terminable under current constitutional standards and under the Prison Litigation Reform Act.[13] Therefore, it is now appropriate to vacate the existing Stewart orders and dismiss the Stewart case.

The Court does not anticipate that, with removal of the Stewart orders, the constitutional problems addressed there will begin to recur. On the contrary, jail professionals are expected to abide by the state regulatory scheme and the well-developed body of constitutional law on inmates' rights. If violations occur, appropriate remedies exist. However, the minimum standard Stewart orders have outlived their time, and are unnecessary and no longer appropriate.

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[13] Defendant County makes the novel argument that, although all Stewart orders are terminable under current constitutional standards and the Prison Litigation Reform Act, and there is no present constitutional violation, nevertheless a population cap should remain in place to protect against future overcrowding, a condition where the Sheriff lacks primary control. The County argues a federal population cap would provide the Sheriff a partial defense against a state court contempt proceeding for prematurely releasing inmates to reduce population and protect against other pressures leading toward overcrowding. These are not the purposes of a federal court order. If no constitutional violation is present or immediately threatened, there is no basis for a federal order.

The Stewart orders are VACATED. This case is DISMISSED.[14]

DATED: April 27, 2005

GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE

[14] The Court finds there is no prevailing party.