UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD CAMPBELL, et al., Plaintiffs, v. ANDERSON McGRUDER, et al., Defendants.	:	C.A. No. 1462-71
INMATES OF D.C. JAIL, et al., v. DELBERT C. JACKSON, et al., Defendants.	:	C.A. No. 75-1668

MEMORANDUM AND ORDER

I. Background

Campbell v. McGruder, which is on remand from the Court of Appeals, 580 F.2d 521 (D.C. Cir. 1978), involves the conditions of confinement for pre-trial detainees housed at the District of Columbia's Department of Corrections Central Detention Facility--more commonly known as the D.C. Jail (the jail). The Campbell plaintiffs are a class comprised of unconvicted pre-trial detainees. The defendants are the Mayor of the District of Columbia, the Director of the Department of Corrections and the Superintendent of the jail.

The issues in Inmates v. Jackson are substantially identical to those in Campbell. Plaintiffs in Inmates complain about the same jail conditions at issue in Campbell and request the same relief. The defendants in both cases are the same. The sole material difference is the mutually exclusive composition of the classes: the Inmates' plaintiffs comprise a class of all convicted residents of the jail, i.e., all prisoners who are not members of the plaintiff class in Campbell.

Throughout the history of these two cases numerous hearings have been held and evidence taken regarding the conditions of confinement at the jail. While the court has heard testimony concerning several aspects of the conditions at the jail, including medical care, recreation, classification, and visiting procedures, two of the most recent hearings, in November 1983 and in October 1984, have focused on the rising jail population, the substantial overcrowding which has resulted, and the consequences of such overcrowding. The testimony has been supplemented by written submissions to the court and by deposition testimony. In addition, the court and all counsel have conducted a series of thorough on-site inspections, most recently on February 21, 1985. The court also conducted an unannounced inspection on June 3, 1985.

The evidence clearly reveals that the massive overcrowding at the jail has unacceptably diminished services that are recognized as necessities in a prison setting, and has resulted in increased violence at the institution. Plaintiffs claim that the overcrowding is responsible for conditions so acute that they

violate their rights under the fifth and eighth amendments, and they seek appropriate relief.

II. Findings of Fact

A. The Place and Its Population

The jail is a relatively new facility, which first opened in April 1976. It was initially designed to house and provide services for a maximum population of 960 prisoners.[1] The 1980 addition of 395 cells brought the design capacity of the cellblocks up to 1,355.[2] On June 30, 1985 the jail reached a record population of 2,663--96% over the design capacity of the cellblocks and 177% above the figure the administrative facilities of the jail were designed to service.

Since November 1980 not a month has passed in which the average number of residents has not surpassed these design capacities, and the population levels have persistently maintained an upward trend. The average daily monthly population

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[1]Official Department of Corrections' reports frequently do not specify where pre-trial detainees (the Campbell plaintiffs) or convicted inmates (the Inmates plaintiffs) are housed, or which class is involved in a particular activity. "Prisoners", "residents", and "incarcerees" are used interchangeably to describe members of both classes.

[2]As originally constructed, the jail consisted of two separate units: a housing section, comprising 12 cellblocks with 960 single-bed cells; and an administrative section--an infirmary, kitchen, storerooms, recreation yards, library, visitation area, and offices--designed to provide services for the prisoners and the staff. This administrative section has never been expanded.

has increased from 1,491 in 1981 to 2,116 in 1983 and 2,534 in 1985.[3]

B. Use of "Floor-space" Areas for Housing

The jail holds 18 cellblocks, each of which is designed to hold 80 cells. The cellblocks are in a "V" shape. Both sides of the "V" have a lower and upper tier, each of which holds 20 cells. Aisles run down the center of each tier. A glass-enclosed security module or "bubble" lies at the apex of the "V"s, from which guards can look down the aisles of each tier and into the four lounges or "dayrooms", a small gymnasium, and a small dining area.

On June 4, 1985 the jail housed 2,618 prisoners.[4] Only 71% of the prisoners were housed in cells, and more than half of these were double-bunked in single cells. All told, 29% of the jail population is housed in dayrooms, aisles, gymnasiums, various holding "cages", and even a converted warehouse, none of which was ever designed as housing space.

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[3]January 1 thru June 30, 1985.

[4]Unless otherwise indicated all population figures and percentages are based on the Department's report to the court for June 4, 1985. On that date the jail housed 2,618 prisoners. Jail officials could specify the precise location and status of only 2,538 of the 2,618 incarcerees; they could not account for the exact location of the remaining 80 prisoners other than to say they were were "unassigned" or in "orientation". Pre-trial detainees accounted for 36.9% of the population, 25% of whom were awaiting trial on misdemeanors; the remaining detainees were held on felony charges. Of the inmates, 29% had been convicted of misdemeanors; 68% had been convicted of felonies; and 4% were being held for parole violations.

These areas were principally designed to provide recreation and breathing room and to serve as safety valves for the pressures and tensions normally incident to life in a jail. With the conversion of dayrooms and other common areas from recreational outlets to housing units, the pressures have intensified, the opportunities for respite and relief have diminished, and the expected tensions and problems of incarceration have been exacerbated. The safety valves are now sealed shut.

1. "North-3 'Dorm'" -- This large open storeroom is located in the two upper tiers of one cellblock. Originally designed (and formerly used solely) as a warehouse for supplies, it holds 103 unsegregated prisoners, pre-trial and convicted, violent and non-violent, in an area 3,744 square feet in size. As many as 167 prisoners have been lodged in the "dorm". This "dorm" has only four toilets and four showers. The residents sleep in double bunks. At times prisoners have slept on mattresses placed directly on the concrete floor, and blankets and newspapers have carpeted the area. The double bunks are jammed tightly together, leaving little space in which to move around. Prisoners must lie idle in their bunks or stretch out on the concrete. One of plaintiffs' expert witnesses, E. Eugene Miller, described these conditions, with considerable justification, as "absolutely incredible.... To call it a dormitory is glorifying it."

No permanent lockers or shelves are provided for prisoners to secure their personal property. Instead, residents must store these items in unsecured paper grocery bags or shoe boxes. There

are no tables or chairs. Most residents eat standing up, sitting in their bunks, or on the floor. The double bunks are situated very close together and the aisles between the bunks are very narrow; consequently guards in the security bubble have no clear line of sight into most of the "dorm". The numerous blind spots permit guards to monitor only a small fraction of the warehouse area, notwithstanding the so-called patrolling of the area. Consequently, this dorm is conceded to be the most violent and dangerous housing unit in the jail.

2. Dayrooms -- Each of the 18 cellblocks contains four dayrooms, each approximately 15 by 20 feet in size. The dayrooms were designed as recreational, not housing, areas. In 16 of the 18 cellblocks two of the four dayrooms are used for housing, with inmates and pre-trial detainees, felons and misdemeanants frequently living side by side. These dayrooms now hold 344 prisoners. Typically 14 residents are housed in each dayroom, providing each prisoner with 21.6 square feet of living space. At times as many as 32 prisoners have been housed in two dayrooms. These rooms have neither toilets nor sinks. They have no showers. Instead, prisoners must share the showers and toilets set aside for celled incarcerees. As in the North-3 "dorm," prisoners store their belongings in paper bags.

No guards are stationed in the dayrooms. As in the "dorm," blind spots cannot be supervised from the centrally-positioned security bubble. Privacy is completely absent. Except for his assigned bunk, a resident has no place to call his own. Even while he is sleeping a prisoner is typically surrounded by five

other residents--one at each side, one at his head, another at his feet, and one either directly above or below him.

3. Aisles -- Overcrowding has become so severe that defendants have been forced to convert passageways between rows of cells into areas for housing. The aisles of 11 of the cellblocks now hold 238 prisoners, who are double-bunked down the center of each tier. Personal property lies in open cardboard boxes, ready prey for all who amble by.

4. Mini-gymnasiums -- Each cellblock contains a small gym, 29 x 29 feet. The gyms were designed to provide residents with a place to exercise the body and exorcise the built-up tensions of confinement. There are 44 prisoners housed in three gyms. One of these gyms is now designated for housing 30 "intake" prisoners. There are no toilets, sinks or showers in the gyms. There are no windows. Lighting is poor; during a recent inspection by the court, only 6 of 36 overhead fluorescent bulbs in one gym worked. There are no provisions for the storage of personal property, aside from the commonplace paper boxes.

5. Infirmary "cage" -- This lock-up facility is located in the jail infirmary and is designed to temporarily hold prisoners waiting to be seen by medical personnel. The cage is roughly 15 feet by 23.5 feet -- 352.5 square feet -- in size. On weekends and evenings the cage has been used as sleeping quarters for as many as 47 prisoners at a time. The cage contains no beds or mattresses, no toilets, sink or shower, no drinking facility, no table, no chairs or other places to sit (other than the concrete floor). The prisoners assigned to the cage are not screened to

determine if they have any communicable diseases or other medical or psychological conditions which might require that they be segregated from other prisoners. Similarly, individuals are placed in the cage without regard to whether they pose a security risk to other prisoners.

6. "Police holding" cells and "cage" -- This facility houses women awaiting arraignment. The average stay is one night during the week and up to 30 hours on weekends. Although there are only six double-bunked cells in the unit, each 58.1 square feet in size, on occasion more than 20 women have been housed in this area, with cots placed in a 60 square foot "cage" or in the aisle. When the court visited the jail in February 1985, four of the six cells had filthy, uncovered foam rubber mattresses on the floor.

C. Double Celling

As we have noted, the majority of convicted inmates (924 of 1,601) are double-bunked in cells originally designed for single occupancy. The cells are 70 square feet in size, and are spartanly equipped with two stacked beds, a table, a chair, a combination sink and toilet, and a 24" by 42" plexiglass window. There is centrally controlled heating in the winter and air-conditioning in the summer. The cells have only average light, which often constitutes a problem for inmates assigned to the lower bunk. The windows are opaque, which reduces the natural light that might otherwise supplement the artificial

illumination. The windows cannot be opened.

D. Time Out of Housing Units and Average Length of Stay

All prisoners must stay in their assigned quarters for an average of 16 hours a day. They must remain locked up for even longer periods if the population count (held six times a day) does not match the master prison list, an event which recurs more frequently than not.

As of October 20, 1983 the average length of stay for convicted inmates was 125.5 days. More than 22% of the inmates had been incarcerated for longer than six months; more than 10% had been in jail for over nine months.

E. Recreation, Idleness, and Lack of Privacy

Numbers alone cannot fully convey the human consequences of housing so many people in such limited and unsuitable spaces. One of plaintiffs' expert witnesses, Dr. Francis L. Rundle, testified that overcrowding in one cellblock was so severe "it was almost impossible to walk between [sic] the aisles that were formed by the double bunks in the gymnasium. It was not possible, for example, to squeeze by another person in some of these spaces they were so narrow." Another of plaintiffs' expert witnesses, E. Eugene Miller, reported that the inhabitants were "stacked like cordwood .... The overall conditions in the women's cellblock are absolutely appalling." In the North-3

"dorm" the court observed double bunks considerably less than 3 feet apart, forcing one to walk sideways in order to pass between them.

There are virtually no activities for prisoners while they are locked up in their assigned cells or floor-space housing units. No individual radios or TVs are allowed. Double-celled inmates and floor-space residents have little room in which to move around or exercise. These conditions would not be so important if residents were permitted to spend more out-of-cell time in various activities.

The dayrooms were designed to provide prisoners with the jail equivalent of a home den. Each dayroom was intended to serve 20 prisoners. Overcrowding has now rendered nearly all the dayrooms actually or practically inaccessible, because nearly half are used as sleeping quarters and thus jammed with beds, and because many more prisoners than anticipated are forced to share the remaining number of open dayrooms. Now, instead of 80 prisoners sharing four dayrooms, in 16 of 18 cellblocks as many as 204 prisoners must make do with only two of such rooms. Thus each dayroom must serve as many as five times the number of persons originally contemplated.

Defendants' most recent reports indicate that only 319 prisoners (approximately 12%) are enrolled in educational classes: reading, mathematics, typing, needlecrafts, art, commercial housekeeping, "adult basic education," "general education development", and "vocational development."

Overcrowding has greatly reduced opportunities for physical

recreation, which are particularly needed by prisoners, Campbell v. McGruder, 580 F.2d at 565. The oft-times poorly lit gyms, when not used to house prisoners, are too small for any sport other than a quarter-court basketball game. Moreover, the gyms are open for use only a few hours each day.

Prisoners receive a maximum of three hours of outdoor recreation per week, less than that if the weather is bad. There are two exercise yards, one for men and one for women. The larger male yard is a nearly square walled-in area approximately 36 yards long by 36 yards wide. Prisoners from three male cellblocks share the male yard at one time, forcing up to 479 prisoners to share space that contains but a single full-size basketball court, a volleyball court and one punching bag. Protective custody prisoners have no access to the yard and are allowed no outdoor recreation.

Rather than providing an opportunity for the release of tension, the overcrowded gyms and recreation yard have been transformed into another source of frustration, another arena of competition for limited space and equipment, and another cause for conflict and violence.

There are four telephones in each cellblock. These are used for phone calls to attorneys and family members. The phones are turned on for use during a few hours in the morning and in the evening. They are frequently broken. Large numbers of residents must share these scarce resources; fights over access to the phones are common. More residents also means more noise. Because the phones are located in the midst of the crowded dining

area and adjacent to the gym and because of the noise from the TV set and from other prisoners, telephone users often cannot hear those whom they call. This was apparent on all visits to the site.

The visiting facilities are overloaded and visiting privileges have been curtailed. Jail Administrator William Long stated "visiting used to be allowed on any day, but due to overcrowding visiting is now limited to two designated days per week for each inmate." Overcrowding and delays occasioned by problems with the count have resulted in longer waits to see visitors and increased frustration, which is often taken out on the jail staff. Only non-contact visits are permitted.[5]

Residents who want to do their own legal research face strenuous obstacles. Only 15 residents of each cellblock are permitted access to the 4,240 volume law library each week. Consequently, many prisoners are not able to do any effective research on their own behalf.

Each cellblock has a small dining area, with enough tables and benches to seat 40 prisoners. Originally, prisorers in each block were fed in two shifts, thereby permitting all 80 single-celled prisoners in each block the opportunity to sit down for meals. Now, prepared food trays are distributed to cellblock residents at one time. With as many as 204 prisoners housed in a single block, and only 40 seats in the dining area, many prisoners are forced to eat their meals standing up, in their

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[5]The Department of Corrections inmates at Occoquan and federal prison inmates enjoy contact visits.

bunks, or on the floor.

Privacy is at a premium. No one is ever outside the presence of other prisoners. Dr. Rundle testified that residents he interviewed "stressed that they could never be alone, even in the toilets, because the toilets tended to be either open to view or, if enclosed, in the middle of an area where there were many, many people around ...." This was apparent when we visited the jail. The facilities and services which are ordinarily contemplated as escape valves have been effectively transformed into pressure points.

F. Classification and Parole

Classification and parole (C & P) officers play a crucial role in the lives of all prisoners. As the title implies, C & P officers are charged with classifying and segregating prisoners so that conflict and violence are minimized, and with providing social services to residents to enable prisoners to qualify for parole and reintegration into the community.

Classification of prisoners, by status (convicted or pre-trial), by offense (misdemeanor or felony), by medical or psychiatric condition, and by charge (violent or non-violent offense) is supposed to separate residents so that they pose the least danger to each other; with whom residents are housed is often just as important as where they are housed. Overcrowding at the jail has greatly undermined the ability of jail authorities to categorize and segregate prisoners in a timely

fashion. For example, on June 3, 1983 then Assistant Administrator William Long wrote to Administrator Jesse Jones: "As a result of the population explosion and the increase of inexperienced new correctional officers, it has become extremely difficult to identify the extremely assaultive, and special handling type inmates returning to the institution whether from the community, [the Federal] Bureau of Prisons, or other institutions." Incoming residents are assigned to whatever floor-space "beds" are available on a catch-as-catch-can basis. Violent and non-violent prisoners, pre-trial and convicted residents, youthful first offenders and obdurate recidivists, the healthy and the sick, all live side by side in these areas, creating an extremely volatile situation and subjecting residents to a high risk of assault. Although defendants have denominated all cellblocks as either "pre-trial" or "convicted", in reality most cellblocks house both classes of prisoners. Overcrowding has obliged jail officials to house protective custody prisoners in double cells and even in open floor-space areas.

A single Classification and Parole (C & P) officer is responsible for classifying the 40-70 new residents that arrive at the jail each day. Performing this duty accurately has become a daunting task, with speed often supplanting precision. This officer has little time to make these critical assessments and because the "intake records" that accompany each new prisoner are often incomplete, the C & P officer usually lacks the background material (the prisoner's criminal record, his past institutional behavior, and any existing medical or mental health problems)

needed to make an informed decision.

Nine other C & P officers function as social workers and are entrusted with contacting attorneys, arranging for psychiatric referrals, and bridging the gap between a prisoner and his family and his employer. The number of C & P officers has increased only 43% during the period when the jail population has nearly doubled. Their average caseload has swollen to nearly 300. Not surprisingly, a new prisoner can spend months in jail before having his first full discussion with his C & P officer.

George E. Holland, Assistant Director of the District of Columbia Department of Corrections, acknowledged that the inordinately high caseloads prevent the C & P officers from adequately performing their assigned duties. Instead, C & P officers are often only available to prisoners in emergencies, and even then only after lengthy delays. Residents who seek the relatively secure confines of protective custody, either because they have received specific threats from other prisoners or because they have a generalized fear of jail violence, must wait weeks to see C & P officers and have their transfer requests processed.

The C & P officers are also responsible for assisting sentenced inmates in qualifying for parole. Once again, the sheer numbers of cases assigned to a single officer hampers his ability to provide effective service to individual inmates. Lack of contact with C & P officers has frequently led to delayed parole hearings. On numerous occasions inmates have remained incarcerated seven to nine months past their parole dates.

G. Shelter and Sanitation

1. Food Service

Evidence presented at the November 1983 hearing revealed a concededly appalling situation -- filthy and vermin-infested cooking facilities, unsanitary dishes, trays and utensils, inadequate storage space, and spoiling meats, fruits, and vegetables.

Defendants have made laudable and largely successful efforts to correct these problems. New equipment has been purchased and sanitation shortcomings have been reduced. Nevertheless, overcrowding and the sheer shortage of kitchen space have created problems which even the most dedicated exertions and the most modern equipment cannot solve. Thus, the kitchen, which was built to feed 960 prisoners, must now provide for nearly three times that number. It is forced to run nearly 24 hours a day. As a result, the jail's meal schedule is geared to the kitchen's round-the-clock operation, with the ludicrous consequence that breakfast is delivered to some prisoners as early as 2:50 in the morning.

2. Personal Hygiene

Each cell has a sink and toilet. Each tier of 20 cells has two showers. However, since the aisles, gyms, dorm, and dayrooms

were never designed for housing purposes they were never furnished with toilets, sinks, or showers. This lack of facilities has three consequences.

First, floor-space residents are obliged to share the eight cellblock showers originally intended for use by a maximum of 80 celled residents, thereby increasing the ratio of use from one shower per ten residents to as many as one per twenty-five. Second, floor-space residents are forced to make do with what amounts to "public" toilets in cells left vacant for that purpose. Instead of one toilet and sink for each resident, as originally designed, or one for two prisoners, as in the double-bunked cells, as many as 40 floor-space residents can be allotted to a single toilet and sink.

The final consequence is that many of the showers and most of the toilets and sinks set aside for use by floor-space incarcerees are overused, poorly maintained, filthy, and unsanitary. Many of the toilets lack toilet paper. Most show stains from urine and feces. None have toilet brushes. Few of the sinks have soap or sanitary towels.

Unsanitary conditions pervade other areas of the jail as well. Observation by plaintiffs' experts, and by the court as well, revealed dirty mattresses and bedding. Some were fouled with urine, fecal material, food and vomit. Others were in poor repair. With many more prisoners housed than ever planned for, jail authorities are forced to require more senior residents to use the dirty mattresses longer than desirable and are obliged to issue decrepit and unclean mattresses to incoming prisoners.

H. Health Services

Systemic deficiencies pervade all aspects of the health care services provided at the jail -- medical, pharmaceutical, psychiatric and dental. Dr. Robert W. Yancey, Jr., a Medical Officer at the jail who testified extensively at the November 1983 hearing, characterized the health services system as being overwhelmed by the endlessly increasing numbers of prisoners. He acknowledged that the system is so overburdened that it "is like a dam in which you are just trying to keep the water ... from coming through ...," a situation in which "[i]t is just a matter of time until it just floods everybody ...." At the time Dr. Yancey testified the average daily population was 1,979. Increased overcrowding since that time has only exacerbated the problems.

The jail infirmary was built to serve the needs of a maximum population of 960. Initially, 24 beds were provided for non-psychiatric patient --a ratio of 40:1. Although the population is now 177% higher than it was in 1976, since one-half of the infirmary beds are typically used by mentally ill residents, the number of beds actually available for non-psychiatric cases has been cut in half, producing a ratio of 218:1.

Dr. Yancey stated that the over-population of the jail had substantially impaired the ability of physicians and other staff to deliver prompt and adequate health care. The rise in the jail population since November 1983 has further increased the number

of residents requiring physical examinations, x-rays, and admission to the jail infirmary, as well as the number of medications dispensed. As a result, ill and injured prisoners do not receive proper and timely treatment. According to Dr. Yancey: "With the increased population it is more difficult .... We are really stretched now. We see everything [sic] we can, but some fall through the cracks."

The increase in the jail population and the diminution in the number of beds available for medical cases has not been offset by an increase in the number of health care personnel. In fact, although the jail population has nearly tripled from January 1980 until the present the number of health care personnel has remained virtually constant. The health services system is chronically short of staff and space. In January 1980 there were 25 medical personnel at the jail: three full-time physicians, two part-time physicians, one pharmacist, two dentists, seven nurses, one physician's assistant, eight medical technical assistants, and one x-ray technician. At that time the jail population was 921; the ratio of prisoners to medical staff was 37:1.

Currently, there are 26 medical personnel to care for a population that is 184% larger than it was in January 1980. The ratio of prisoners to medical staff is now 101:1. Furthermore, the composition of the medical staff has changed. There are now four fewer doctors and nurses than there were in 1980. There are now only two full-time physicians (one of whom is a supervisor) and two part-time physicians. The decline in the

number of nurses from seven to five is equally critical. Dr. Yancey testified that "[t]hey are the glue that holds everything together."

The shortage of medical personnel is not only acute, it is chronic; there were too few medical staff members before overcrowding became severe. A March 29, 1982 memorandum from Dr. Robert E. Lee, Assistant Director of Health Services to Department of Corrections Director Holland reported:

> Explosively within the last year or less there has been an added number of inmates[6] further diluting medical services .... This increase has not had a concomitant increase in already depleted medical personnel which have never been up to the arbitrary freeze complement ....
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> The Public Health Survey of 1968 concluded that minimally seventy-three (73) medical personnel were necessary to carry out medical functions at that time.
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> One wonders what such a survey would reveal at this time with the drastic increase in both numbers and sophistication of incarcerees![7]

A November 4, 1982 letter to Director Holland from the jail's Chief Medical Officer, Dr. Francis L. Smith, reached an identical conclusion:

> The Health Care Delivery Program is severely hampered in carrying out its responsibility to provide medical care to incarcerated persons. This condition exists because of increased demand for

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[6]At the time the memo was written, the average daily population in the jail stood at 1,769. A year before the average daily number was 1,419.

[7]A year later, Dr. Lee explained that "the original staffing of 30 was not adequate to handle an inmate population of 1,353...."

> health services on the part of inmates. In spite of a large increase in the jail population, staffing levels have remained the same and have caused major deficiencies in the health care delivery program .... Present medical staff members have been compelled to forego daily sick call to all residents who place their names on lists for medical attention. They are confined basically to caring for (1) new commitments, (2) referrals from correctional staff, (3) surgical conditions, and (4) emergencies. [Emphasis added.]

On March 3, 1983 Dr. Lee recommended that an additional 32 medical personnel should be hired, including one more physician (for a total of six) and eight more nurses (for a total of twelve). These warnings and requests have been ignored.

The drastic cut-back in the number of available beds, the "explosive" growth in population and the defendants' failure to provide more facilities and to hire more personnel also has had a predictable effect on staff morale. Dr. Yancey said: "You kind of wonder when you are going to get more help. Where is it going to end?" Defendants' reports indicate that medical personnel have requested more sick leave, more overtime, more annual leave, and more leave without pay. Defendants concede that this situation has made the hiring and retention of "qualified dedicated" personnel a "perpetual problem". Director James F. Palmer acknowledged that the overcrowded conditions have rendered the jail unattractive as a work site for professionals and is probably the biggest obstacle to acquiring additional medical staff.

1. Medical Care

In January 1980 sick call was available to each resident five

times a week during daytime hours. By the time of the November 1983 hearing shortages of space and staff had forced defendants to hold sick call between 12:30 and 4:00 a.m. Nonetheless, sick call was still available to every resident on every weekday. Now sick call is again conducted during normal business hours, but is available to each prisoner only once a week. Donald R. Soskin, Health Services Administrator at the jail, reported on April 25, 1985 that "[s]ick call service ... continues to be marginal in effectiveness." Initial screening examinations are performed by physician's assistants, who decide whether a physician's attention is required. During evenings and weekends untrained guards are often pressed into service to make the initial determination of who will be treated and who will not. Accordingly, it is not surprising that many residents with medical complaints are never seen by a physician, and thus, as Dr. Yancey concluded, "some fall through the cracks."

Prisoners who are denied an appointment with a physician must sign up again. Weeks can pass before they are seen by a physician. Uncontroverted evidence detailed numerous incidents in which prisoners' complaints were ignored and treatment delayed for lengthy periods. For example, on one occasion a guard told a prisoner that the latter did not appear to be acutely ill and therefore had neither reason nor right to be sent to the infirmary and seen by a physician. Coverage is particularly thin during evenings and weekends. On occasion, the infirmary has been closed because of frequent emergency calls to the cellblocks. The converse is also true; personnel have refused to leave the

infirmary to provide emergency medical assistance to inmates. Thus this past March a guard lieutenant who had requested assistance for a resident was informed that none would be forthcoming--only one staff person was in the infirmary. A similar instance occurred three days later.

Even when access to the infirmary is not denied outright it is often delayed. One inmate, complaining of pains symptomatic of a heart attack, waited two and one-half weeks before being seen by a physician. Numerous other instances were reported where residents repeatedly had to sign up for sick call before they were "sick enough" to be seen by a physician.

Once prisoners have been examined and their illnesses diagnosed they frequently have to wait additional lengthy periods to receive prescribed medication or treatment. One prisoner who had been stabbed in a fight was denied medication that had been ordered by hospital surgeons. Another resident waited three weeks to receive asthma medication. A third waited three weeks to receive medication that had been prescribed by his private physician before his incarceration.

Another prisoner, who had broken his toe while working in the jail kitchen, waited more than two months for surgically-recommended orthopedic shoes. On another occasion a prisoner with hypertension, who had been placed on a special diet by a jail doctor, never received the ordered meals.

Prisoners in need of the services of medical specialists fare even worse. Long delays in obtaining initial appointments are commonplace. One prisoner, who was instructed by a jail physician

to schedule an appointment with a psychologist, waited seven weeks before he received an appointment. Another waited six months before recommended oral surgery was performed.

Prisoners with optometrical problems apparently go to the bottom of the list. One prisoner, whose eyeglasses had been broken during his arrest and without which he was virtually blind, was required to wait three weeks just to get his eyes examined. He was relatively fortunate; two other residents had to wait seven months before they received eyeglasses. Yet another prisoner was told by a guard captain that "it takes at least one year incarcerated before an eye exam and the prescription can be accomplished."

The medical records system is conceded to be "chaotic". Patients who are examined by physicians at the District of Columbia General Hospital must wait for the "Recommended Treatment" and laboratory reports to be reviewed and acted upon by the jail infirmary staff. According to Dr. Yancey, because of the large number of prisoners and the large volume of hospital records transmitted, these reports remain unreviewed for "weeks, months."

The distribution of medications violates generally recognized standards of medical care. Because of the shortage of pharmaceutical personnel, prescription drugs are not passed out on weekends or evenings.[8] Sometimes medical technical assistants

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[8]On October 18, 1983, the Chief Medical Officer, Dr. John H. Seipel, in a memorandum to Dr. Lee, then Assistant Director for Health Services, reported: "[t]he continuing lack of pharmacists/pharmacy technicians makes it necessary for physicians, nurses, and unlicensed MTAs to fill and dispense medications resulting in a partial absence of control .... (continued)

distribute a one or two week supply of medications to residents at one time. Distribution of prescriptions containing narcotics is more carefully controlled, but even these drugs, which may be required to be taken three or four times a day, and which should be dispensed in individual doses no less frequently, are passed out but once or twice a day. Dr. Yancey lamented "[t]here is no other way we can do it right now.... We have too many people."

2. Mental Health Services

Medical care at the jail is, in Dr. Yancey's words, "coming apart at the seams." Mental health services never came together in the first place. Dr. Irwin J. Papish, Associate Chief of Forensic Psychiatry, conceded that the population increases have overloaded the psychiatric facilities and services.

Instances of bizarre and self-destructive behavior by prisoners are routine. Defendants' cellblock logbooks and other records reveal repeated suicide attempts, residents pounding their heads against cell walls, fights and assaults, setting of fires, hoarding of medicine and overdosing, destruction of mattresses and bedding, urinating on the floor, smearing feces on themselves, incessant shouting and yelling--in short, as the court described five years ago, "a bedlam." Campbell v. McGruder, C.A. No. 1462-71, slip op. at 2 (D.D.C. June 9, 1980).

Two cellblocks have been set aside for the treatment of

Patient workload has increased steadily at a rate of about five percent per month over the past six months, further impacting our overloaded staff and services." (Emphasis added.)

mentally ill residents. Nonetheless, population pressures have forced defendants to house some of the mentally ill among the general population, despite the court's order that the two groups should be separated. As the Corrections Mental Health Coordinator Wendell S. Plair lamented some "slip[] through the cracks."

Care of the mentally ill is further hampered by bureaucratic disputes among the mental health care staff, creating a situation plaintiffs' experts, Dr. Frank L. Rundle and Dr. Ron Sable, aptly characterized as an "administratively chaotic" "non-system." Two different groups of personnel attempt to provide mental health services to prisoners, without any coordination, and without any unified administrative or clinical authority, responsibility or supervision. This lack of coordination diminishes the quality of care provided to patients.

Dr. Henry E. Edwards, Chief of the jail Mental Health Program reported in 1982 that the overlapping lines of authority had led to "conflicts, tensions, ... morale problems, ... confusion, inconsistencies, and at times, non-performance of, or interference with, actual program delivery to inmates." While this situation has improved somewhat over the last year, Dr. Papish acknowledged that overall conditions have not.

There are no full-time psychiatrists or psychologists to provide daily care and counseling. No mental health professionals are in the jail on evenings or weekends. Instead of full-time staff, six part-time psychiatrists provide rotating coverage of "screening clinics" held five days a week. This situation presents serious problems in the diagnosis and treatment of

residents with mental health needs. Dr. Yancey stated that patients "can be seen by three different people and the other three [sic] not know it .... [I]t is hard to make a judgment if you have only seen [a patient] one time ... It has [sic] problems for the patient adjusting to the physician." According to Dr. Yancey, the jail has no "psychiatrists under our control. It is a tremendous handicap for us. It is very, very bad. They are not here when we need them."

No intake psychiatric screening is performed at the time of a prisoner's commitment to the jail, despite testimony that incoming prisoners are more likely to have mental health problems than the average citizen. See Campbell v. McGruder, 416 F. Supp. 100, 104 (D.D.C. 1975). Instead, screening occurs only if a prisoner requests mental health services or manifests a condition that appears to require such services. This initial screening is carried out on an ad hoc basis and is performed by guards, unlicensed MTAs, certified physicians assistants or registered nurses, few of whom are trained to assess psychological problems. Thus prisoners with mental health problems may never be seen by mental health professionals.

The increased number of prisoners who are determined to be in need of mental health care face delays in being diagnosed and additional delays in receiving scheduled follow-up examinations. Currently, residents are required to wait up to three weeks after their placement in the special cellblocks before they are examined by a psychiatrist. A noncertified physician's assistant, who lacks training in mental health care, performs the "triage"

function of deciding when residents will be seen by a psychiatrist.

These delays are commonplace despite the fact the psychiatrists are forced to evaluate large numbers of patients in short periods of time. Although Dr. Papish asserted that he never lacked for time, it appears to the court that frequently such evaluations are largely pro forma. For example, on one recent day 33 patients were "examined" in 75 minutes.

As a result of the increased population pressures, few patients receive individualized treatment. The activities provided for residents do not even approach those provided at a typical out-patient "day-care" facility. Instead, the standard regimen calls for the prescription of psychotropic drugs. Mr. Plair "conservatively" estimated that 80% of the mentally ill residents receive daily doses of these medications--250-300 residents in all.

Although this is by far the most common "treatment" provided to the mentally ill the record is replete with examples of abuses in the dispensation and administration of such drugs. Individual residents often do not receive their prescribed medications. Staff shortages have forced entire cellblocks to go without their medications, for up to three days at a time. On some of these occasions guards have been obliged to "deadlock" entire cellblocks in order to prevent disruptions by the anguished patients.

Medications are dispensed in an extremely short period of time to the residents of the mental health cellblocks, making it very difficult to monitor the residents for possible adverse side-

effects. To make matters worse, because of staff shortages medications are frequently prepared and dispensed by personnel who lack specialized psychopharmaceutical training.

Prisoners who are diagnosed as potentially suicidal or otherwise in need of more intensive care scarcely fare any better than those who are never evaluated and examined. "Diagnosed" residents often do not receive the treatment they need at the time they need it. Long delays are the rule. Suicide precautions, when ordered, are frequently not carried out. Because the special mental health facility is itself invariably filled beyond capacity, potential suicides are placed in the regular medical infirmary or housed in administrative segregation. Neither placement comports with generally recognized correctional or mental health standards. Tyically, 50% of the beds in the infirmary are filled with psychiatric patients, persons who require more intensive and specialized care than that facility can provide. The "treatment" potential suicides receive there is often nothing more than a steady diet of sedatives and the imposition of physical restraints. Compare Campbell v. McGruder, 416 F. Supp. at 104.

Tragically, but not surprisingly, there were four suicides at the jail from January 1983 to January 1984, and numerous attempted suicides since then, including three suicide attempts in one cellblock in a single recent month. Dr. Rundle and Dr. Sable testified that the two suicides that occurred in the six months preceding the November 1983 hearing could have been prevented had the prisoners received even minimally adequate mental health care

and monitoring.

The quality and organization of the jail's mental health services does not come even close to complying with minimum professional standards.

3. Dental Care

"Prisoners generally have more extensive dental problems than the average citizen. Consequently dental care is one of the most important medical needs of inmates." Ramos v. Lamm, 639 F.2d 559, 576 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981). Nevertheless, "dental care" at the jail is an oxymoron. In years past a dental sick call was held daily. Dr. Yancey testified that it "had to be abandoned because there were just too many people." Now only emergency cases are treated; "routine" dental needs, the kind that would prompt a free citizen to seek the services of a dentist -- examinations, cavities, tooth extractions, -- are left for another day and another place. According to Dr. Yancey, non-emergency but otherwise "serious" dental needs are "not being met for weeks, even months." As a consequence, prisoners must endure prolonged and severe pain. Plaintiffs, however, disputed that even emergency cases, as that term is defined by the jail medical staff -- abscesses and infectious diseases requiring oral surgery -- were being seen and treated as quickly as the prisoners' needs required.

The lack of even the pretense of an adequate dental care system has led to untold pain and suffering among both classes of

prisoners.

I. Jail Violence

Overcrowding and the concomitant overburdening of facilities and services has created an atmosphere of apprehension, frustration, and hostility. It has also decreased the ability of guards to supervise the cellblocks. As a result, violence at the jail has reached alarmingly high levels. "Disciplinary" and "incident" reports of violence, compiled by defendants, reveal numerous physical assaults by prisoners on other prisoners or on the jail staff and frequent fights, sexual attacks, attempted escapes, and attempts to incite riots. In 1984, with an average daily population of 2,024, the total number of violent incidents was 1,541. Significantly, the number of violent incidents has increased at a disproportionately higher rate than the increase in the jail population, nearly two-and-a-half times faster.

In the first four months of 1984 the average daily population at the jail was 1,854; for the last four months of that year the average was 2,242 -- an increase of 20.9%. During the same periods the total number of violent incidents (as reflected in the "disciplinary" or "incident" reports for assaults, attempted assaults, threats, sexual abuse, fights, escapes and escape attempts, inciting to riot, and creating a disturbance) increased from an average of 105 per month to 155 per month -- a 48% jump, nearly two-and-a-half times the rate of increase in population.[9]

Defendants contend that the dramatic increase in the number

of reported incidents reflects better reporting by more guards and thus does not constitute an increase disproportionate to the increase in the jail population. In an affidavit supplied to the court, Administrator Long stated: "it is my opinion that the most significant factors which produced the increase in the number of reported incidents ... were the increase in the number of officers assigned to the institution, more direct supervision of officers with emphasis on reporting, plus the increase in the number of residents housed at the institution."

The number of guards has increased approximately 11% -- from an average of 498 for January through April to an average of 552 for September through December 1984. At the same time, however, the critical ratio of prisoners to guards has actually decreased from 3.7:1 for the first four months to 4.1:1 for the last four months.

The court also finds the thorough explanation provided by plaintiffs' expert Eugene Miller more credible, illuminating and probative than defendants' self-serving speculations: Mr. Miller reported:

> [A]dditional staffing is not the answer to the security problems ...; the real threats to security go beyond throwing increasing numbers of staff at the problems .... These threats include the increased levels of anxiety and tension among the inmate population brought on by cramped living conditions, lack of sufficient out-of-cell time, and a routine of continual and debilitating boredom. Given these factors, realistically staff

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[9]These figures take on perhaps added significance when we consider that less than half of the population are incarcerated for violent offenses.

> increases can be expected to heighten staff response to incidents, but will do nothing to alleviate the causes of such incidents.... The new officers will be used to bolster staff observation potential, not to increase the level, variety and frequency of inmate activity. To put it bluntly, the most serious single factor currently constituting a threat to the safety of other inmates and staff is the pervasive overcrowding and its corresponding negative human impact upon the inmates, not lack of an adequate number of staff. Given that, as the level of tension escalates among the inmates, the likelihood for an increased level of assaults and more serious incidents, such as the fire-setting in the past several months, also increases dramatically.

The statistics corroborate what testimony averred -- that the jail is an increasingly hostile and dangerous place in which to live and that the chief cause of the ever-widening violence is the growth of the jail population and the resultant strain on prisoners, staff, facilities, and services. As Director Holland admitted: "you decrease the boiling point as you cut off services that should be available to [the prisoners]." The evidence convinces the court that the disproportionately increasing number of violent incidents is caused by crowding too many people into too small a space.

A disproportionate amount of violence occurs in the makeshift open housing areas, where "violent" residents are allowed to mingle among the "non-violent", and where the deterrent presence of guards is most noticeably absent. Indeed, when defendants first asked this court to temporarily authorize double-celling of pre-trial detainees, they justified their request on the fact that prisoners in cells can be more easily observed and more readily controlled than prisoners in open housing areas. Campbell v.

McGruder, 554 F. Supp. 562, 563, 565 (D.D.C. 1982).

Residents are more susceptible to gang attacks in the "floor-space" areas, where there are more opportunities for violence, and more potential collaborators as well. The physical arrangement of these areas reduces the ability of guards to monitor the conduct of prisoners and diminishes the willingness and ability of guards to stop attacks or fights once the incidents are noticed. These areas are virtually unguardable.

Many floor-space residents told Dr. Rundle that they lived in constant fear of assaults and rape.[10] Eugene Miller concluded that "[t]hese temporary housing quarters ... pose a significant and continuing threat to the safety of the [residents] housed in that fashion.... As long as these dormitories remain, there will be a serious actual and potential threat to the overall security of the [jail] .... [T]hey virtually constitute an assault waiting to happen." (Emphasis added.)

Furthermore, there are dangers greater than individual assaults and fights. On July 22, 1983 a riot occurred at the jail. Hundreds of prisoners engaged in armed resistance to jail authorities. Fires were set in the exercise yard and in a number of the cellblocks. There was large-scale destruction of jail and residents' property and the staff and prisoners suffered numerous injuries. Order was not restored until large numbers of heavily armed police and guards arrived.

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[10]This is also reflected in the number of persons in protective custody and the increased number of requests by prisoners for the same.

In the month that preceded this disturbance, the jail population reached a then all-time high of 2,433. At the time of the riot jail officials identified overcrowding, and the long train of miseries that follow in its wake, as the principal causes of the riot. The jail population is now nearly 8% higher than it was at the time of the riot. Overall conditions have worsened. Health care services, substandard for a long time, have further deteriorated. There are fewer doctors, fewer nurses, and less frequent sick call. Violence has become a daily habit. During the February visit to the jail Sgt. Cynthia Coleman told the court: "We expect a riot any day now. Any day now."

Summary of Facts

The overcrowding at the jail has placed unreasonable demands on every jail resource -- both in terms of the physical plant and personnel. The facility's ability to provide essential services has been seriously undermined. As a result living conditions at the jail are doubtless dangerous and uncomfortable and inmates and pre-trial detainees suffer severe privations.

III. Conclusions of Law

The Supreme Court has reiterated that some discomfort, inconvenience, deprivation, and even physical danger are to be expected--and countenanced in the prison setting. Hudson v. Palmer, 104 S. Ct. 3194, 3199 (1984); Rhodes v. Chapman, 452 U.S.

337, 349 (1981); Bell v. Wolfish, 441 U.S. 520, 537, 542 (1979); Wolff v. McDonnell, 418 U.S. 539, 555 (1974); Pell v. Procunier, 417 U.S. 817, 822-23 (1974). However, at the same time the Court has admonished the lower courts to be aware of their responsibility to intercede when these adverse conditions reach a point at which they strip a prisoner of constitutional protections. Hudson, 104 S. Ct. at 3198-3200; Rhodes, 452 U.S. at 351-52; Bell v. Wolfish, 441 U.S. at 545; Wolff, 418 U.S. at 555-56; Pell v. Procunier, 417 U.S. at 822.

A. The Eighth Amendment Standard

The Rhodes Court promulgated three alternative tests for determining whether prison conditions violate the constitutional rights of convicted inmates. The eighth amendment prohibits conditions of confinement which: (1) "involve the wanton and unnecessary infliction of pain"; (2) are "grossly disproportionate to the severity of the crime warranting imprisonment"; or (3) "alone or in combination may deprive inmates of the minimal civilized measure of life's necessities", as tested by "contemporary standard[s] of decency." 452 U.S. at 347. The determination of whether prison conditions are inconsistent with "contemporary standards" of society is to be made on the basis of "'objective factors to the maximum possible extent,'" id. at 346 (quoting Rummell v. Estelle, 445 U.S. 263, 274-75 (1980)).

B. The Fifth Amendment Standard

Overcrowding at the jail directly affects pre-trial detainees as well as convicted inmates. Detainees suffer from excessive violence, inadequate medical care and numerous other indirect effects of overcrowding. Consequently, the conditions at the jail must be squared with the Due Process Clause of the fifth amendment as well as the Cruel and Unusual Punishment Clause of the eighth amendment. The standards set by the fifth amendment are even less forgiving than those established by the eighth amendment. The latter proscribes only cruel and unusual punishment; the fifth amendment bans any punishment at all. Bell v. Wolfish, 441 U.S. at 535 nn.16, 17, 536-37; Ingraham v. Wright, 430 U.S. 651, 671-72 n.40 (1977).

Determining whether particular conditions or restrictions, singly or in the aggregate, amount to punishment requires a two-step inquiry: first, a determination of whether the purposes of the challenged conditions are "legitimate"; and second, an examination of whether the means used to achieve these purposes are "reasonably related" to these goals. Bell v. Wolfish, 441 U.S. at 538-39.

C. The Eighth and Fifth Amendment Standards Applied

The living conditions created by the overcrowding at the District of Columbia Central Detention Facility violate both the eighth and fifth amendments. There are three reasons why, each of

which fully authorizes intervention by the court.

1. The Violence at the Jail Inflicts Unnecessary and Wanton Pain on Inmates and Imposes Punishment on Pre-trial Detainees.

The concept that excessive violence may offend the Constitution is in accord with the well-established duty of correctional officials to protect prisoners from excessive violence. "[P]rison administrators ... are under an obligation to guarantee the safety of the inmates themselves." Hudson, 104 S. Ct. at 3200. See Youngberg v. Romeo 457 U.S. 307, 315 (1982). See also Estelle v. Gamble, 429 U.S. 97, 102-04 (1976).[11]

Some amount of jail violence may be unavoidable "due to the character of the prisoners." Martin v. White, 742 F.2d 469, 475 (8th Cir. 1984). See Hudson, 104 S. Ct. at 3200; Doe v. District of Columbia, 701 F.2d 948, 951 (D.C. Cir. 1983) (MacKinnon, J.: separate statement). Isolated incidents do not equal a constitutional violation, Withers v. Levine, 615 F.2d 158, 161 (4th Cir.), cert. denied, 449 U.S. 849 (1980); "a prisoner has no right to demand the level of protection necessary to render an institution assault-free." Murphy v. United States, 653 F.2d 637,

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[11]Indeed, it is because of the critical need to maintain prison security that correctional authorities are granted extraordinarily broad powers over incarcerated persons. See e.g., Hudson, 104 S. Ct. at 3194 (prison officials may search cells without probable cause; fourth amendment protections inapplicable as prisoners have no reasonable expectation of privacy); Block v. Rutherford, 104 S. Ct. 3227 (1984) (random shakedown searches of pre-trial detainees' cells in their absence are permissible; all contact visits may be banned). See also Bell v. Wolfish, 441 U.S. at 540 & n.3; Phillips v. Bureau of Prisons, 591 F.2d 966, 972 (D.C. Cir. 1977).

644 (D.C. Cir. 1981). A successful eighth amendment challenge on the issue of prison violence must show that

> "violence and sexual assaults occur ... with sufficient frequency that the ... prisoners ... are put in reasonable fear for their safety and to reasonably apprise prison officials of the existence of the problem and the need for protective measures." [Murphy, 653 F.2d at 645 (quoting Withers, 615 F.2d at 161).]

In the cases under consideration, the evidence establishes that violence is pervasive, that the increase in the number of violent acts is disproportionate to the increase in the jail population, and that overcrowding is the direct cause of the increasing violence. The evidence also shows that the prisoners are justifiably in great fear of such violence, and that defendants are well aware of the actual violence, the potential risks of more violence, and the well-grounded fears of the residents and the staff.

Indeed, defendants' earlier request for permission to double-cell pre-trial detainees was premised on their recognition of the need to control what hitherto had been, and apparently is now again, unmanageable violence.

In considering defendants' 1982 motion to permit double-celling of pre-trial detainees, this court deferred to the defendants' assessment that make-shift floorspace housing was inadequate and unsafe.

> The Department offered two justifications for resorting to double-celling .... The first was that dormitories cannot be adequately patrolled and therefore pose a severe security risk.... The second justification was that double-celling would

> enable the Department to remove dormitory beds from dayrooms and gymnasiums and use these facilities to provide inmates with needed recreational opportunities.
>
> ....
>
> In light of this testimony, the court will defer to the Department's judgment that double-celling is a lesser evil than the continued use of make-shift dormitories.... [Campbell v. McGruder, 554 F. Supp. 562, 563, 565 (D.D.C. 1982).]

The arguments advanced by defendants were persuasive then; they remain so now. Indeed, these concessions about the undesirability of make-shift housing take on even more significance in light of the greater overcrowding and the worsened conditions at the jail.

The failure of defendants to alleviate the overcrowding and the resultant inability to protect prisoners from violence inflicts unnecessary and wanton pain and violates the eighth amendment.

In the fifth amendment context, the pervasive risk of violence and the imposition of wanton and unnecessary pain affects all prisorers at the jail, pre-trial detainees as well as convicted inmates. If the overcrowded conditions and concomitant violence are evaluated as ends in themselves, they obviously, and by definition, serve no legitimate penological purpose. See Bell v. Wolfish, 441 U.S. at 538-40. If the overcrowding and the violence are viewed as means to a permissible end, e.g., securing a detainee's presence at trial, they still must be seen as irrationally and unnecessarily harsh and excessive. From either perspective, and by either test, conditions at the jail violate

the fifth amendment. In sum, the jail conditions that violate eighth amendment rights of all convicted inmates a fortiori violate the fifth amendment rights of unconvicted pre-trial detainees. Union County Jail Inmates v. DiBuono, 713 F.2d 984, 998 (3d Cir. 1983); cert. denied sub nom., DiBuono v. Fauver, 104 S. Ct. 1600 (1984). See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). These constitutional violations, by themselves, entitle plaintiffs to relief.

2. The Inadequate Health Care System Inflicts Wanton and Unnecessary Pain on Inmates and Imposes Punishment on Pre-trial Detainees.

The eighth amendment's proscription against the "unnecessary and wanton infliction of pain", Gregg v. Georgia, 428 U.S. 153, 173 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.), obligates prison officials to provide all prisoners with ready access to adequate medical care. Estelle v. Gamble, 429 U.S. 97, 103 (1976). "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met .... Such a failure may actually produce physical 'torture or a lingering death', ... or pain and suffering which no one suggests would serve a penological purpose." Id. (citations omitted) (quoting In re Kemmler, 136 U.S. 436, 447 (1890); see Campbell v. McGruder, 580 F.2d at 549.

The medical care provided must be adequate, and access to this care must be readily available. Id. See Estelle v. Gamble, 429 U.S. at 104-05. The health services system must be able to meet both "'the routine and emergency health care needs'" of

residents. Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980), cert denied, 450 U.S. 1041 (1981) (quoting Battle v. Anderson, 376 F. Supp. 402, 424 (E.D. Okla. 1974)). Satisfactory dental care and mental health care must also be provided. Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982); Ramos, 639 F.2d at 574. New prisoners must be appropriately screened for communicable diseases. Lareau v. Manson, 651 F.2d 96, 109 (2nd Cir. 1981).

Occasional, inadvertent, or negligent denials of adequate care, which might lead to civil liability for medical malpractice, do not become violations of the eighth amendment merely because the victims are prisoners. Estelle v. Gamble, 429 U.S. at 105-06. "[D]eliberate indifference to serious medical needs" must be established in order for plaintiffs to prevail. Id. at 106.

Deliberate indifference to the medical needs of a class of prisoners can be established either by proving repeated examples of negligent care "which disclose a pattern of conduct by the prison medical staff", Ramos, 639 F.2d at 575; Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977) (Kaufman, C.J.), or by showing there are "such systemic and gross deficiencies in staffing, facilities, equipment or procedures that the inmate population is effectively denied access to adequate medical care." Ramos, 639 F.2d at 575 (citing cases). See Todaro, 565 F.2d at 52; Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983), cert. denied, 104 S. Ct. 3587 (1984).

We are cognizant of the fact that the Supreme Court has cautioned the lower courts not to "assume that the opinions of

experts as to desirable prison conditions suffice to establish contemporary standards of decency", Rhodes, 452 U.S. at 348 n.12, and thus "do not establish the constitutional minima", Bell v. Wolfish, 441 U.S. at 543-44 n.27. Nevertheless, in Gamble the Court suggested that "[m]odel correctional legislation and proposed minimum standards" could be used for guidance. 429 U.S. at 103-04 n.8. At the very least, such proposed standards provide some alternative to the subjective opinions of the court or the partisan views of expert witnesses. Though the court is not bound to defer to such proposed standards, it is not prohibited from drawing upon whatever sensible guidelines they might offer. This would appear to be particularly so regarding medical standards, which courts have traditionally viewed as well deserving of respect.

The court has consulted several of the models cited in Gamble.[12] While recognizing that these standards may reflect the

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[12]American Correctional Association, Standards for Local Detention Facilities(2d ed. 1981) Standards 2-5277, 2-5278, 2-5279; American Correctional Association, Standards for Adult Correctional Institutions, (2d ed. 1981) Standards 2-4279, 2-4281, 2-4295; American Bar Asscciation, Proposed Standard of Joint Committee on Legal Status of Prisoners (1981) Standard 23-5.2; American Bar Association, Standards for Criminal Justice: Legal Status of Prisoners (Fourth Tentative Draft 1980) Standards 23-5.1(a), 23-5.2; U.S. Department of Justice, Federal Standards for Prisons and Jails (1980) Standards 5.09, 5.19, 5.20, 5.28; American Medical Association, Standards for Health Services in Prisons (1979) Standards 143, 145, 146, 158, 161; American Public Health Association, Standards for Health Services in Correctional Institutions (1976) §§ I-, V-A, V-B, V-C; National Sheriffs' Association, Standards for Inmates Legal Rights (1974) Right No. 3.2; National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973) Standard 2.6; American Law Institute, Model Penal Code, Part III on Treatment and Correction (1962), §303.4(1); Fourth United Nations' Congress on Prevention of Crime and Treatment of Offenders, Standard Minimum Rules for (continued)

ideal more than the practical, it appears to the court that the medical conditions at the jail fall so far short of any one of them that they cannot be said to be consistent with any contemporary standard of decency. For example, these standards mandate that sick call be available to prisoners no less than four or five times per week, not once a week, as is the practice at the jail.

Here, the evidence discloses continuing shortcomings in staffing, intolerable delays in access to appropriate health care personnel, lack of training and lack of supervision of nonprofessional medical and psychiatric staff, haphazard and ill-conceived administration and organization, sloppy record keeping, "screening" improperly delegated to unqualified personnel, improper dispensation of prescription drugs, and the woeful lack of dental and psychiatric care. These deficiencies cause needless suffering and the purposeless infliction of pain without any conceivable penological justification. The evidence shows numerous incidents of gross and wanton neglect and establishes a pattern of misconduct and malfeasance. These serious conditions amount to deliberate indifference to the health care needs of all prisoners; they violate the eighth amendment rights of inmates and impose punishment on pre-trial detainees. Once again, these constitutional violations, standing alone, justify plenary relief.

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the Treatment of Prisoners (1955) Rules 22(3), 25(1).

3. The Conditions Created by Overcrowding, Taken As a Whole, "Deprive Inmates of the Minimal Civilized Measure of Life's Necessities".[13] These Conditions Also Inflict Punishment on Pre-trial Detainees.

In Rhodes, prisoners complained that double-celling confined them too closely together and therefore violated the eighth amendment. They also contended that the prison population was 38% over design capacity and that this overcrowding overwhelmed the prison's staff, services and facilities. Rhodes, 452 U.S. at 340. Although recognizing that conditions, "alone or in combination,"[14] id. at 347 (emphasis added), could violate the Constitution, the Court held that "under [the] circumstances" in that case they did not. Id. at 348.

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[13] Rhodes, 452 U.S. at 347.

[14] "It is important to recognize that various deficiencies in prison conditions 'must be considered together.' The individual conditions 'exist in combination; each affects the other; and taken together they [may] have a cumulative impact on the inmates.' Thus, a court considering an eighth amendment challenge to conditions of confinement must examine the totality of the circumstances." Rhodes, 452 U.S. at 362-63 (Brennan, J., concurring in judgment) (quoting Holt v. Sarver, 309 F. Supp. 362, 373 (E.D. Ark. 1970)), citations and footnote omitted, emphasis added). See Hutto v. Finney, 437 U.S. 678, 687, 688 (1978)--("interdependence of the conditions", "taken as a whole"); Campbell v. McGruder, 580 F.2d at 531. "It is the totality which the Constitution regulates." Lareau v. Manson, 651 F.2d 96, 107 (2d Cir. 1981). "Various prison conditions do not exist in isolation. Rather, challenged conditions must be viewed in the light of other prison conditions that may aggravate or mitigate the effect of other challenged conditions." See also Wellman v. Faulkner, 715 F.2d 269, 274 (7th Cir. 1983), cert denied, 104 S. Ct. 3587 (1984); Hewitt v. Helms, 459 U.S. 460, 474, 477 & n.9 (1983); Sampson v. King, 693 F.2d 566, 569 (5th Cir. 1982); Union County Jail Inmates v. DiBuono, 713 F.2d 984, 999-1000 (3d Cir. 1983), cert. denied sub nom., DiBuono v. Fauver, 104 S. Ct. 1600 (1984). But see Hoptowit v. Ray, 682 F.2d 1237, 1246-47 and n.3 (9th Cir. 1982); Wright v. Rushen, 642 F.2d 1129, 1132 (9th Cir. 1981).

In determining whether the totality of prison conditions violates the eighth amendment, a court must evaluate the cumulative effect upon inmates

> of the condition of the physical plant (lighting, heat, plumbing, ventilation, living space, noise levels, recreation space); sanitation (control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping, and working); safety (protection from violent, deranged, diseased inmates, fire protection, emergency evacuation); inmate needs and services (clothing, nutrition, bedding, medical, dental, and mental health care, visitation time, exercise and recreation, educational and rehabilitative programming); and staffing (trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other inmates). [Rhodes, 452 U.S. at 364 (Brennan, J., concurring in judgment) (emphasis added).]

Defendants contend that, in accord with Rhodes, plaintiffs are not entitled to relief. They point out that the jail is a relatively new and modern facility and that overcrowding per se is no cause for judicial intervention. But this case is not comparable to Rhodes, and, as a matter of fact, Rhodes cuts not in favor of the defendants but against them.

While it is true that the jail was built in the 1970s, and that it is centrally air conditioned and heated, those appear to be the only common features shared by the jail and the Southern Ohio Correctional Facility (SOCF), the maximum security prison at issue in Rhodes. Furthermore, even the apparent similarity of overcrowding is characterized by a marked difference, i.e., the rate over design capacity in Rhodes was 38%; in this case the population is 96% over the cell capacity and 177% over the service

capacity. In the Ohio facility all inmates were housed in cells, and although they were double celled, 75% of them had the option of spending up to 15 hours per day outside their cells in school and work programs and in outdoor recreation. The Ohio prison had eight bright, well ventilated and well equipped classrooms, and various workshops including a machine shop, shoe factory, engine repair shop, sheet metal shop, print shop and sign shop. It also had a commissary and a barbershop. The cells in the Ohio facility were equipped with individual radios. In Rhodes the dayrooms were spacious and well equipped and completely available to the prisoners. None was used for any purpose other than those originally intended.

By contrast, at the jail 29% of the jail inmates are in makeshift housing. The incarcerees at the jail have but 8 hours out-of-cell time to spend in crowded dayrooms and hallways. They enjoy only 3 hours per week of outdoor recreation. There are a few classrooms at the jail but no workshops as in the Ohio facility. At the jail, nearly half of the dayroom space has been preempted for housing, leaving the remainder to serve nearly double the intended population, thereby geometrically compounding the problem.

The library at the Ohio institution was one "superior in quality and quantity", where the 2,300 inmates had access to 25,000 volumes, including law books. Chapman v. Rhodes, 432 F. Supp. 1007, 1010 (S.D. Ohio 1977). At the jail, 2,600 prisoners have access to only 4,200 volumes. In Rhodes, "there [was] no indication whatsoever that the food facility [had] been taxed by

the prison population." Id., at 1014. The kitchen facilities at the jail are overtaxed and operate on an around-the-clock basis. In Rhodes there were no complaints concerning unsanitary toilets, sinks and showers such as the ones we have at the jail. Apparently the classification and parole services at the Ohio prison were completely satisfactory, and that is not so at the jail. Visiting privileges and facilities had not been affected in the Ohio facility and contact visits were allowed. By contrast, at the jail visiting hours have been reduced and long delays are commmonplace for the noncontact visits which are permitted. At the Ohio facility medical and dental care was completely adequate. Sick call was held daily. Initial sick call and screening was performed by a nurse. Prescriptions were passed out daily and any backlogs for dental patients "were temporary". 434 F. Supp. at 1015-16. In sharp contrast are the systemic deficiencies in medical, dental and mental health care at the jail.

In Rhodes the Court emphasized that the plaintiffs produced no evidence that double celling caused greater violence, and that "the number of acts of violence had increased only in proportion to the increase in population." 452 U.S. at 342-343. Finally, there were no riots or suicides. This is not the picture at the jail where the violence is widespread and disproportionately increasing to the population increase; in addition, a riot in July 1983 occurred at the jail, and there have been four suicides since that time. The obvious implication is that the figures we have in this case reflect a nexus between the gross overcrowding and the

rate of violence.

Obviously the conditions in Rhodes are sharply distinguishable from those at the jail. In Rhodes the Court essentially determined that overcrowding had not adversely affected, in any substantial way, the quality of daily life of the SOCF inmates. Ever-increasing violence did not threaten their safety and poor medical care did not jeopardize their health. Under no circumstances can similar conclusions be drawn in these cases.

Viewed in the aggregate, it is clear that the serious overcrowding at the jail has created conditions which are so acute that they deny inmates the minimum of life's necessities and inflict punishment on pre-trial detainees, thus establishing plaintiffs' claims of constitutional violations.

IV. Relief

The development of intolerable overcrowding and its negative effects on persons housed in the jail were obvious and predictable early on--at least to this court and the Court of Appeals. In light of these predictions both this court and the Court of Appeals have oftentimes identified specific avenues by which the population pressures could be reduced, emphasized the necessity for defendants to develop a long-range, comprehensive approach to overcrowding, and warned of the legal consequences if defendants did not use their presumed expertise to rectify ongoing constitutional violations. See e.g., Campbell v. McGruder, 416 F.

Supp. 106, 108-11 (D.D.C. 1975); Campbell v. McGruder, 416 F. Supp. 111, 114-17 (D.D.C. 1976); Campbell v. McGruder, 580 F.2d at 538 n.35 and id. at 526, 542-44 (1978); Campbell v. McGruder, 554 F. Supp. at 566 (1982). Nevertheless, instead of a sustained drive against the effects of a population crisis, defendants' efforts have been sporadic, and largely unproductive; and conditions have steadily worsened.

Time and again, defendants have requested the court to defer to their accumulated wisdom, to stay its hand and to give them more time. Time and again, these requests have been honored in the hope and expectation that defendants would solve these problems expeditiously and effectively. However, instead of matters improving they have deteriorated. For example, at the October 1984 hearing defendants represented to the court that the jail population, which had steadily risen over the summer months, would fall with the onset of winter. This did not happen; in fact, the opposite occurred. The court was further given to understand that a new 400 bed Department facility, which was scheduled to open in late winter, would reduce the jail population by 400. That facility has opened, and is currently 20 persons shy of its design capacity--yet the jail is still packed with record numbers.

Moreover, there has been no indication of stepped up compliance with provisions of the Bail Reform Act, despite the fact that similar efforts in the past have been successful in reducing the jail population. Similarly, there has been no indication of approaches to the parole commission, or application

to the courts that have imposed population ceilings on other Department facilities for reconsideration or modification of those orders; and there are other facilities not under court order where massive overcrowding does not exist. Nor is there any indication of thought given to utilizing the various empty buildings available to the District of Columbia government. In other words, for the most part there is no indication of anything except complacency.

This court is not eager to encroach upon the responsibilities entrusted to defendants. However, in this case, the court has "learned from repeated investigation and bitter experience that judicial intervention is indispensable if constitutional dictates--not to mention considerations of basic humanity are to be observed...." Rhodes, 452 U.S. at 354 (Brennan, J. concurring; emphasis in the original).

It appears that any effort to alleviate the specific results of overcrowding on a one by one basis is foredoomed. For example, five years ago we ordered defendants to hire additional medical staff. Campbell v. McGruder, C.A. No. 1462-71, slip op. (D.D.C. June 9, 1980). Defendants now assert their inability to hire or retain qualified professionals. This is to be expected inasmuch as the conditions of employment that flow from overcrowding already overtaxed facilities are completely unattractive to professional employees. It appears clear that when, as is the case here, constitutional violations are the direct result of, and inextricably tied to, what amounts to unattended runaway overcrowding, nothing short of an order placing a ceiling on the

population can be an effective remedy. In addition, an order that attempted to rectify each particular infirmity would ineluctably and perpetually entangle the court in the "minutiae" of jail administration, a burden we are advised to avoid. Bell v. Wolfish, 441 U.S. at 562.

The ceiling need not be set at the jail's design capacity of 1,355. Since double-celling is not unconstitutional per se, the total jail population can rise above the limit set when it was assumed that all prisoners must be single-celled. At the same time, even if individual cells can house twice as many prisoners as originally intended, the institution as a whole cannot. At least, it cannot, consistent with the Constitution. Thus some reasonable midpoint must be established. Fortunately, defendants have provided some guidance, albeit inadvertent, on what that point should be.

In the spring of 1983, a few months before the riot, Director James Palmer asked then Assistant Director George Holland to forward recommendations on the maximum number of people that could be safely housed at the jail. Holland replied on July 1, 1983. "Ideally", he said, "I would recommend that 1,356 be our fixed capacity." Noting, however, that defendants had "capability and experience" in dealing with larger populations,[15] Holland concluded that the jail could safely hold nearly 25% more than design capacity. Holland recommended that the fixed limit should be set at 1,694.[16]

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[15]At the time Holland wrote to Palmer, the average daily jail population was 2,325.
(continued)

The court will adopt Holland's expert assessment and recommendation. The evidence confirms that the figure he proposed represents the largest number of prisoners that can be confined at the jail without inflicting cruel and unusual punishment on the residents.

In order to minimize the intrusion into the administrative concerns within the competence of jail officials, the court will order a prohibition on the intake of new residents rather than prescribe what should be done with the prisoners currently held at the jail. "A ban on intake will also serve the salutory purpose of forcing all of the various ... local agencies who either have a need to place people in confinement or the responsibility for providing detention facilities, or both, to face up to the challenge of making alternative arrangements." Badgley v. Varelas, 729 F.2d 894, 902 (2d Cir. 1984). This is also the method of implementing a ceiling specifically proposed by the Court of Appeals. Campbell v. McGruder, 580 F.2d at 536-37 n.28.

The court is aware of the fact that local agencies which would normally expect to send prisoners to the jail "are entitled to some brief period of time to make alternative arrangements ...." Id. The court will therefore direct that the prohibition

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[16]Subsequent testimony by Holland which raised the tolerable limits was thoroughly impeached and had the ring of incredibility.

on the intake of new prisoners not take effect until 40 days after the entry of the accompanying order.

William B Enright
UNITED STATES DISTRICT JUDGE

July 13, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD CAMPBELL, et al., Plaintiffs, v. ANDERSON McGRUDER, et al., Defendants.	:	C.A. No. 1462-71
INMATES OF D.C. JAIL, et al., v. DELBERT C. JACKSON, et al., Defendants.	:	C.A. No. 75-1668

ORDER

Upon consideration of the Findings of Fact and Conclusions of Law entered this date in the above captioned matter, it is by the court this 12th day of July 1985,

ORDERED that beginning on the 40th day after the entry of this Order the defendants, their agents or designees shall not accept at the District of Columbia Department of Corrections Central Detention Facility any new residents, whether sentenced, awaiting trial, or in any other status, until such time as the population of the facility is no more than 1,693; and after such limit has been reached defendants shall accept no persons as incarcerees if such persons will increase the population above

1,694. And it is

FURTHER ORDERED that defendants promptly notify all agencies that send persons for confinement at the facility of the terms and effective date of this Order.

UNITED STATES DISTRICT JUDGE