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United States District Court, E.D. Pennsylvania.

Randolph C. VAZQUEZ, et al.,
v.
Timothy CARVER, et al.

Civ. A. No. 86–3020. | July 27, 1987.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

HUYETT, District Judge.

INTRODUCTION

***1** This class action was brought under 42 U.S.C. § 1983 on behalf of present and future inmates of Lehigh County Prison (LCP). Plaintiffs challenge the conditions of their confinement at LCP.

Presently before the Court is plaintiffs' motion for a preliminary injunction.[1] Plaintiffs assert that the crowded conditions at LCP constitute a violation of their rights under the Eighth and Fourteenth Amendments. Plaintiffs ask this Court to impose a population cap on each of several living areas within the prison, reducing the total population from approximately 260 to 200. Plaintiffs also seek an order relating to the plumbing, lighting, ventilation, heating and sanitation in the institution. Further, plaintiffs seek injunctive relief concerning medical screening, physical exercise, recreation, and classification. The injunction sought by plaintiffs would, inter alia, require defendants to develop a classification plan to help separate pretrial detainees from convicted inmates. Finally, plaintiffs seek an order requiring defendants to comply with all state and local fire codes.

The Court heard testimony and argument over 6 days in Allentown and Philadelphia. These hearings were limited to matters raised by the motion for preliminary injunction. Thus, evidence was received concerning prison population, the physical dimensions of the prison, prisoner classification and cell assignments (including medical screening and racial discrimination as they relate thereto), heating, sanitation, lighting, ventilation, adequacy of exercise, adequacy of fire protection, and the psychological impact of prison conditions on inmates and guards.

The Court heard the testimony of past and present inmates, correctional officers, the Acting Warden, and expert witnesses for both plaintiffs and defendants. In addition, the Court toured LCP on April 23, 1987.[2] After the close of evidence, and at the request of the Court, the parties submitted such population figures as were available from 1983 to the present and a summary of the various physical measurements within the prison.

This memorandum represents my findings of fact and conclusions of law relating to the motion for a preliminary injunction. For the reasons that follow, I will deny the preliminary injunction.

THE PARTIES

By order of May 1, 1987, the Court has permitted this action to proceed as a class action. The plaintiff class consists of all present and future inmates of Lehigh County Prison, and includes the subclasses of all present and future female, Black, and Hispanic inmates.

By agreement of the parties, the subclass of female inmates has no involvement with the present motion for injunctive relief.
The defendants in this action, named individually and in their official capacity, are: Timothy Carver, Warden of LCP; Richard Dilcher, Deputy Warden of LCP; William Evetushick, Director of Treatment of LCP; and David Bausch, Jane Baker, John Brosious, Donald Davies, Judith Diehl, Leon Eisenhart, John McHugh, Kevin Mohr, Sterling Raber, and Donald Wirand, Members of the Board of Commissioners of the County of Lehigh. Also named as defendants are the County of Lehigh and Prison Health Services, Inc.[3]

***2** By stipulation of the parties, defendant Prison Health Services, Inc. has no involvement with the present motion for injunctive relief.

FINDINGS OF FACT

Lehigh County Prison is located in the heart of the downtown area of Allentown, Pennsylvania. Pretrial detainees make up approximately 60% of the prison population. However, the population also includes convicted prisoners awaiting sentencing and prisoners serving sentences of five years or less. In the past, no attempt has been made to house pretrial detainees and convicted inmates in separate areas of the prison. Plaintiffs' expert witness Major Cox testified that the average length of stay at LCP fluctuates around 54 days.

Like many other penological institutions throughout the country, LCP has recently experienced a sudden and dramatic increase in population. In 1972, the prison housed approximately 90 inmates. By 1975, this number had grown to 200. By 1986, the population was over 300. Officials anticipate that the population will continue to grow.

Over the years, the physical facility has also been expanded. LCP now consists of several distinct living areas. I will discuss each of these areas separately, and then consider certain issues of fact common to all areas.

OLD JAIL

The 'Old Jail' section was built in 1867. Each of the two floors of the Old Jail contains 17 cells, with approximately 104 square feet of floor space per cell.[4] In many cells, this space is currently shared by four prisoners, for an average of 26 square feet per prisoner. The Old Jail is used to house prisoners classified as 'general population.'

Each cell in the Old Jail contains two double-tiered bunk beds, four footlockers, and a toilet and sink unit. In the Old Jail, as in other areas of the prison, the toilet is not secluded in any way from the rest of the cell.

The cell is entered through a narrow doorway at one end of the cell. At the opposite end is a rectangular slit, approximately 4′ by 4′, which serves as a window. The only artificial light is a single bulb near the doorway to the cell. This bulb is enclosed in a solid metal case, with small slits to allow light to pass through. At best, the lighting in the Old Jail cells can be described as dim. I am persuaded that an inmate could not read under such light for extended periods of time.

Ventilation in the Old Jail cells is also poor. The window is too narrow to provide significant ventilation, and the central circulation system does not reach all cells. To alleviate this condition, prison officials have placed large floor fans in the Old Jail area, and small fans in each cell. The day of the Court's visit, the weather was cool, and the Court did not find the Old Jail section uncomfortably hot. However, the uniform testimony at the hearing was that the Old Jail can become quite hot in the summer months.

The Court heard general testimony from plaintiffs' expert witness Dr. Guy and from inmates that the noise level in the Old Jail, as well as in other sections of the prison, was uncomfortably high. However, the record is devoid of any measurement of the noise level. Nor was the Court able to conclude from its ovservations during the course of its short visit to LCP that the noise level was so high as to be unhealthy. Dr. Guy testified that the noise level could be a factor in increasing stress, but did not establish that it was a significant problem at LCP. However, it is obvious that the amount of noise generated by 136 inmates is substantially greater than that which would be generated by half that number. It is possible that a more complete record will establish that the noise level in the Old Jail, or in other sections of the prison, is so high as to affect the health of inmates.

***3** Six shower heads are available to serve all Old Jail inmates. These showers are available to inmates upon request during the block-out period. There was undisputed testimony that a number of wall tiles had been missing in the shower area. However, all tiles have now been replaced. The showers are clean and are in good working order.

The 'day area' available to Old Jail inmates consists of an area measuring approximately 1465 square feet in front of the cells on the ground floor, and a catwalk area several feet wide in front of the cells on the second floor. Assuming that four inmates are housed in each cell, the first floor area provides 10.8 square feet per inmate. On the day of the Court's tour, a number of prisoners were standing on the catwalk, observing activities on the floor below.

Presently, the Old Jail cells are unlocked for approximately 6 1/2–7 hours per day.[5] During this time, known as 'block out', prisoners are free to use the day area, the telephone, and the shower. Prisoners often play cards or chess at the two large tables in the day area. During a portion of this time, the inmates have access to the outside yard and the weight room. Various programs are available during block out and throughout the day.

NB1 AND NB2

'NB1' and 'NB2' are cell areas in the part of LCP known as the 'New Building,' which was constructed in the last decade. NB1 currently houses inmates employed in various jobs throughout the prison. Depending on his job,

an inmate in this section may be out of his cell for a few hours or for most of every day.[6] NB2 is used to house new inmates who have been processed through booking but who have not completed the classification and cell assignments process.

NB1 has 12 cells, each measuring approximately 70 square feet. Two prisoners are housed in a cell, so that each is provided with 35 square feet of space.[7] Each cell contains one double-tiered bunk bed, two wardrobe lockers, a desk, a chair, and a toilet and sink unit. NB2 contains 12 cells, essentially the same as those in NB1. The parties have stipulated that two inmates are housed in each cell in NB2.

Each cell has a screened outside window of an adequate size. The only artificial light is at the entrance of the cell. Although this light is otherwise adequate, the design of the cell is such that the wardrobes are placed between the light and the desk, blocking virtually all of the light from the desk area.

The New Building is served by a central air conditioning and heating system. Additional heaters are installed where necessary. Although Correctional Officer Bachman, testifying on behalf of the plaintiffs, found fault with the ventilation system, plaintiffs' expert Major Cox testified, and I now find, that the ventilation in the New Building section is quite adequate for the needs of that area.

The day area for NB1 consists of an area measuring 6′ by 72′, or approximately 432 square feet. Based on my finding that this area is being used to house 2 inmates per cell, each inmate is provided with an average of 18 square feet of day space. Workers housed in NB1 are out of their cells for various periods throughout the day performing their jobs throughout the facility. Because inmates work on different schedules, it would appear that the average day area space per inmate at any given time is significantly higher than 18 square feet.

***4** Inmates housed in NB2 while awaiting classification and cell assignment are generally considered to be quarantined. These inmates receive two hours per day of outdoor recreation. Apart from this and meal times, NB2 inmates remain in their cells. Inmates are housed in NB2 for 3–5 days until the classification process is complete.

NEW JAIL

The New Jail section, constructed early in this century, consists of 6 tiers known as 1 North, 1 South, 2 North, 2 South, 3 North and 3 South. Each tier contains 14 cells with approximately 40 square feet of floor space. Two inmates are housed in each cell in 1 North, 1 South and 2 South, so that each inmate is provided with 20 square feet of cell space. These tiers house general population inmates. One inmate is housed in each cell on the remaining tiers. These tiers house mentally ill inmates (3 South), Behavioral Adjustment inmates (3 North), and Administrative Custody (2 North).

Each cell contains a single or double-tiered bunk, a foot locker, a toilet and sink, and a small nook for personal effects.
There are no windows in the New Jail cells, which are on the interior of the building. Some natural light is provided by large windows opposite the cells and approximately 13 feet from them. These windows are screened, and are open in the summer months.[8] The artificial light in each cell consists of a bare bulb which is turned off by unscrewing the bulb. Although it is clearly desirable that some switch mechanism be provided, the bulb is quite bright and provides ample light.[9]

The New Jail is equipped with a central ventilation system, with a vent in each of the 24 cells. There was conflicting testimony as to whether this system functions properly. Acting Warden Nesbitt testified that all vents were operational. Inmate Regan testified that there was little, if any, airflow from the vent in his cell. Plaintiffs' expert witness Major Case, inmate Gusko, and inmate Castillo testified that the vents were not functioning properly in some or most cells. I find this testimony to be credible and conclude that, in some cells and on some occasions, the ventilation system has not been functioning properly. I note, however, that Major Case testified that if the ventilation system worked it would be adequate to meet the needs of the New Jail.

Each tier in the New Jail has a relatively new shower facility with three shower heads. Plaintiffs' expert Major Case testified that these facilities were adequate to meet the needs of the New Jail.

In those tiers which are single bunked, the 14 inmates have access to a catwalk approximately 5′6″ by 75′, running the length of the tier. Separated from this catwalk by bars is a 'chase area' for correctional officers.

Double bunking was instituted in 3 tiers at the end of 1986 and first weeks of 1987, after notification to the Pennsylvania Department of Corrections.[10] The bars between the cells and the officer's chase area have been removed, giving the inmates access to a total area of approximately 36 square feet per inmate. A weight machine and tables have been installed on each of these three tiers.

***5** Inmates housed in the Behavioral Adjustment Unit for disciplinary reasons are permitted out of their cells for no more than two hours per day. The average stay in BAU is estimated in the range of 30–60 days.[11] With the exception of the BAU and mental health tiers, inmates housed in the

New Jail section enjoy approximately 13 hours of block out time per day.

HOLDING CELLS

Two holding cells measuring 6′ by 10′ are located in the Old Jail area. Each of these cells currently houses only one inmate. However, each contains a double-tiered bunk, and the prison administration does not rule out the possibility of double bunking in the future. Each cell contains a toilet and a sink.

When built as part of recent renovations, the holding cells were designed for temporary housing of inmates pending classification and assignment to permanent cells. However, the cells have been and are now being used to house inmates on a long-term basis. Currently housed in the holding cells are a transsexual and an inmate who requested isolation for his own safety. There is no evidence that the cells have been used or will be used for long-term housing of inmates who are not in special need of isolation.

The holding cells have no outside window in or near the cell, and have poor ventilation and dim lighting. One shower is available to inmates housed in the holding cells.

The inmates housed in holding cells are permitted outside their cells for 1–2 hours per day. This time is spent in an area in front of the cells, measuring approximately 21 square feet.

Because of the location of the cells, the inmates are not plainly visible to a correctional officer making a tour of the Old Jail section.

WORK RELEASE

Inmates participating in the work release program are housed in a separate, low security area. The cells in this area are shared by 2–3 inmates. However, double bunking in this area is not challenged.

The defendants' expert consultants, Cox Associates, have advised defendants that the lack of a sprinkler system in this area presents a serious fire hazard.

Inmates housed in this area spend a substantial part of each day at jobs outside the prison. Within the prison, they have free access to an extensive recreation area.

GED

The undisputed evidence shows that, from May, 1986 until sometime in October, 1986, the GED classroom was used to house up to 20 inmates on cots in dormitory fashion. These inmates shared one toilet and sink, and had to be escorted to a separate area to shower.

This use of the GED room has been terminated, and the area is now being used for classes and other programs. There is no evidence in the present record to lead the Court to believe that the current administration would again use this room to house inmates.

EXERCISE AND RECREATION

The outdoor yard area is generally available to inmates for two hours per day, weather permitting.[12] However, inmates housed in the holding cells have no regular access to any yard area. Inmates are not required to take advantage of the opportunity to use the yard. On the day of the Court's tour, the weather was cool but dry. It appeared to the Court that between 30 and 40 prisoners were using the main yard. Acting Warden Nesbitt testified that no more than 55 inmates had used the yard on any day during the week prior to his testimony.

***6** The main yard is a concrete area large enough to accommodate two basketball hoops, a handball court, and two concrete tables. A volleyball net is available as an alternative to basketball, but there is insufficient space for both games to be played at one time. A separate and much smaller area is fenced off for use by inmates housed in administrative custody.

It is the opinion of plaintiffs' expert Major Case, based on testimony concerning isolated incidents of injury in the yard area and his observation of the yard surface, that the yard is hazardous. However, the Court has also had an opportunity to observe the yard, and has heard the testimony. Although the concrete surface is not in the best condition, I do not find from the present record that it poses a serious immediate hazard.

A rooftop area is used for outdoor recreation by inmates housed in NB2 pending classification. This area is small, and is not suitable for games involving balls. Indeed, the area permits little more than walking, sunbathing, and calisthenics. The uncontested testimony of plaintiffs' expert is that the heat on this rooftop becomes excessive in the summer months.

There is presently a limited opportunity for inmates to exercise indoors. Single weight machines have been installed in three tiers of the New Jail section, NB1, and NB2. A weight room located next to the GED room can accommodate up to 15 inmates at one time. However, the noise from the weight room interferes with GED classes. Therefore, the Administration has limited inmates' access

to the weight room, and inmates in the Old Jail and holding cells currently have no access to weight equipment.[13]

No other indoor exercise is organized by the prison administration. Inmates have been left to their own resources, and do engage in exercise such as pushups, chinups, or shadowboxing. However, the Court heard testimony that it was difficult to find space to exercise in the day areas. This testimony is consistent with the Court's own observations during its visit.

Inmates are permitted to have their personal televisions and radios in their cells, but sets are not provided to them. Some inmates play cards or chess, but such activities are not organized by the prison administration. There are few tables in the day areas, and these must be shared by large numbers of inmates.

EDUCATIONAL AND SOCIAL PROGRAMS

A number of educational and social programs are available to LCP inmates. It must be noted that, although many different organizations come to LCP, many of these groups hold meetings biweekly or less. Moreover, because of space constraints or constraints inherent in the nature of the group, many of these programs are open to a limited number of prisoners. Therefore, many prisoners are left without prison jobs and with little or no organized activity during the day.

Educational classes are open to the general population, and inmates are urged to attend. Presently, there are two adult basic education classes and one class in English as a second language. Each class can accommodate fifteen students. Each class presently has a waiting list.

***7** A 'Life Skills' program teaches inmates such skills as writing checks and preparing income tax returns. This program also seeks to teach inmates how to deal with stress.

Several drug and alcohol programs, including Alcoholics Anonymous, Confront, and Hogar Crea are available to inmates. The Confront program is limited to 8 inmates. Since it is the organization's policy to 'vote' inmates into the group, a particular inmate may be denied admittance to the group indefinitely. The Hogar Crea organization conducts one program for both English speaking inmates, and a second for Spanish speaking inmates. Hogar Crea groups are also limited to a small number, but are otherwise open to all inmates. Both of these organizations have waiting lists of up to a year. Alcoholics Anonymous conducts weekly meetings and is open to an unlimited number of inmates.

A number of different Bible study groups meet within LCP. There was no evidence that any inmate who wished to attend these meetings had been denied access to them.

Religious services are conducted regularly. There is no claim that any inmate has been prevented from attending services. Defendants' expert consultants, Cox Associates, did conclude that the prison chaplain should be provided with a better physical space in which to talk with inmates. However, there was no evidence that any inmate had ever been denied an opportunity to speak with clergy.

A network of volunteers works with inmates on a one-to-one basis, and some inmates are taken out of LCP on supervised 'furloughs.'

Counselors, including 5 Spanish speaking counselors, are available to meet with inmates. There is no evidence that an insufficient number of counselors are available to meet the needs of the inmates. However, inmates must be escorted to the counselling area and, as a result of scheduling problems, there may be a delay of several days between the request to see a counselor and the time of the visit. (Exhibit D6 at 14).

Although the adequacy of the law library is not presently before the Court as an independent constitutional violation, the Court did permit testimony relating to limited access to the library as a result of overcrowding. At the present time all inmates have access to the library.[14]

SANITATION

In all sections of LCP, the inmates are responsible for the cleanliness of their cells. In addition, an inmate is assigned the job of cleaning the common areas. The ultimate responsibility for assuring sanitation lies with the prison administration. Although certain areas of LCP are badly in need of wall and ceiling repairs and painting, the sanitation appeared adequate on the day of the Court's tour.

There was testimony that cockroaches are often seen throughout the facility. However, LCP is exterminated at least monthly, and the Court saw no evidence of cockroaches during its tour. Pennsylvania Department of Corrections Inspector Weaver testified that, considering the age of the prison, the administration has kept well abreast of sanitation.

MEDICAL SCREENING, CLASSIFICATION, AND CELL ASSIGNMENT

***8** When inmates first enter the prison, they undergo a

booking procedure which includes limited medical screening. Using a form questionnaire (Exhibit D9), a correctional officer asks a series of questions. Certain visual observations are also noted by the officer. This initial screening is not detailed in nature. The form also requires the officer to recommend placement in one of the following classifications: general population, immediate medical referral, later medical referral, or isolation. No testimony was offered as to the use of this portion of the form or the criteria used in making this recommendation.

New admittees are housed in NB2 section while awaiting further classification and cell assignment. No medical examination is performed before inmates are double-bunked in NB2. The evidence shows that the present administration policy is that every new admittee must be examined by a nurse within 24 hours of booking. A follow-up examination is to be performed by a physician, as needed, within two weeks. There is no clear evidence that this policy has not been followed since the new administration took office in December, 1986. However, there was considerable evidence that, as recently as six months ago, there have been delays of up to two weeks in performing blood tests and physical examinations. Moreover, the report of the January, 1987 inspection by the Pennsylvania Department of Corrections (Exhibit P4) notes that not all inmates were receiving a medical examination prior to their release into the general population. However, the incidents noted by the Department of Corrections may all have taken place prior to the tenure of the present administration and the implementation of the present policy.

I have considered the policy of the new administration and the lack of evidence of current violations of that policy, as well as the evidence of past delays in medical testing. The record of the hearings does not satisfy me that there is a present risk that inmates will not receive adequate medical screening before their release into general population.

A separate classification process seeks to identify those inmates who pose a risk to others in the institution or who are, themselves, at risk. Prisoners are assigned to a living area based upon their classification as general population, administrative custody, mental health, behavioral adjustment, prison workers, work release, furlough, or DUI.[15] The classification process is completed 3–5 days after the inmate is booked.

Each inmate is interviewed by a 3-person team. The results of this interview, the observations made by the tier officer, the arrest record, and the inmate's prior record at LCP are all considered in determining the inmate's classification. Obviously, the classification effort will be hampered if there is no available cell space in a particular living area of the prison. The Court heard testimony from inmates that on at least two occasions inmates were improperly classified. Although the plaintiffs did not establish that the improper classifications were the result of a lack of cell space, the defendants did not offer any other explanation.

***9** After the initial classification decision, the inmate is assigned to a particular cell in the appropriate living area. It is uncontested that the inmate's race is one of the factors which is considered in making this assignment.[16] Unless it is determined that an inmate has no trouble dealing with members of another race, an attempt is made to house the inmate with members of his own race. I find that the prison administration has considered the factor of race in the same way that they consider, for example, the inmate's age. An effort is made to reduce tension and improve security by ensuring, so far as possible, that inmates housed in the same cell will be compatible.

As a result of the administration's policy, a large number (though by no means all) of the cells house inmates of the same race. However, inmates who have no objection are frequently assigned to 'mixed' cells.

The prison administration's concern with security appears to be based in reality. Indeed, one inmate testified that it is his strong belief that races should not be mixed in cells. This inmate stated that he could not live with members of another race, and that mixed cell assignments would lead to tensions amond cellmates.

The present policy explicitly recognizes and attempts to accommodate the prejudices of particular inmates. However, there is no evidence in the record to suggest that Black or Hispanic inmates have been subjected to more intense crowding or otherwise more oppressive living conditions than have other inmates.

PRISON MORALE

The Court heard testimony concerning the morale of both inmates and correctional officers. The plaintiffs presented the testimony of Edward Guy, M.D., an expert in the fields of confinement, medical screening, and overcrowding as it relates to stress. The Court found Dr. Guy's testimony to be helpful in this matter.

Inmates testified that inmate morale at LCP is very low. Many of the complaints voiced by inmates were those the Court would expect to hear from any person incarcerated in a penal institution. Other complaints related specifically to the overcrowded conditions at LCP. Inmate Castillo, who is housed in the Old Jail section, complained of lack of access to counselors and to the weight room, and of the 'dirty' living conditions in the Old Jail. Inmate Mitchell testified that he was not accustomed to being in a prison with nothing to do. He

also testified that fights had frequently erupted in his cell because his cellmates did not want to play cards or chess with him. Mr. Mitchell explained that the lack of activity produces frustration among the prisoners, and that the dense population makes everyone 'want to get out.' Inmate Regan, who is housed in the Administrative Custody tier of the New Jail, complained of the lack of privacy in using the toilet, and testified that he feels 'closed in' at LCP. Inmate Whah also complained of the lack of privacy, and testified that the crowded conditions and lack of exercise has left him frustrated and ready to 'snap out.' Inmate Bauer testified that his cellmates were considerably younger than he, and complained of rock music being played in the cell late at night.

***10** Corrections Officer Bachman characterized inmate morale as 'very low,' citing as causes the lack of activity, the long periods of waiting, and the quality of the food.[17] He testified that it is his belief that double-bunking leads to more competition for favors and the use of telephones, but that he could not say that double-bunking had led to an increase in tension. Officer Bachman noted that much of the low morale among inmates was related to their personal situations at home or in the courts, and that many of their tensions arise simply from the fact that they are incarcerated.

Lt. Fried also described inmate morale as 'very low.' He agreed that this was, in part, the result of the fact of incarceration. However, he noted that the increase in population over the past fifteen years has left inmates without enough activity to keep them occupied. He also noted that in recent years there has been an increase in the number of younger inmates. He testified that older inmates do not want to share a cell with these younger inmates, and that this has affected morale. Lt. Fried also testified that he has observed that the policies of the present administration have improved inmate morale in many ways.

Acting Warden Nesbitt testified that inmate morale has improved since he took office, in large part due to increased activities for inmates and an improved classification system.

Evidence was presented concerning two recent occasions on which inmates refused to return to their cells for 'lock-up.' The first of these incidents occurred in January, 1987 as a direct result of inmates' uncertainty and fears concerning the recent change in the prison administration. There is no evidence to tie this incident to crowded conditions. The second incident occurred in April, 1987, a few days before these hearings commenced. Ostensibly, this incident was triggered by a delay in permitting Oil Jail inmates into the yard area and was indirectly related to crowded conditions. At least several of the inmates involved in this incident were aware that these hearings were imminent. Although I do not entirely discount the April incident as a manifestation of inmate tension and morale, I must express some doubt as to the motivation for the incident.

Dr. Guy's testimony was based on his professional experience and training, his limited conversations with several inmates, and the testimony of inmates Whah and Castillo at the hearings. While I find Dr. Guy's testimony helpful, I note that his investigation of this particular facility has been quite limited. Dr. Guy defined stress as the situation which exists when an individual's adaptive capacity is exceeded. He testified that excessive stress may endanger the health and welfare of an individual.

Overcrowding in a penal institution can, in and of itself, increase the anxiety and tensions in that institution. Dr. Guy noted that such factors as excessive noise, inadequate lighting and ventilation, high temperature and humidity may contribute to stress.[18] Dr. Guy testified that the effect of these variables will vary with the individual and with the length of confinement.

***11** It is Dr. Guy's opinion that the conditions at LCP, and particularly in the Old Jail section, may threaten the health and welfare of the inmates. He testified that to reduce by half the number of inmates in a cell would significantly reduce the amount of stress felt by those inmates. However, Dr. Guy testified that, because of what he called 'the odd man out syndrome', it is significantly worse to house three inmates housed in one cell than four, provided that the cell can accommodate four inmates.
There have been several recent suicide attempts or gestures at LCP. However, the plaintiffs have not established that the number of such attempts has increased disproportionately to the increase in population over the years. Nor have the plaintiffs shown that these attempts could have been prevented if the prison population were reduced.[19]

From the evidence presented during the hearings, I find that, although the low inmate morale cannot be attributed entirely to crowded conditions at LCP, those conditions have had a significant impact on morale. However, I am unable to conclude at this time that the lowered morale poses a serious threat to the health or welfare of inmates.

Correctional officers' morale and ability to perform their job is relevant to the issue of overcrowding. Dr. Guy testified that prolonged stress makes the correctional officers irritable, hostile, and insensitive to the needs of the inmates and of other staff members. Defendants' expert Mr. Cox did not disagree with Dr. Guy's testimony, but added his opinion that the correctional officers' interest in their own safety leads to increased concern for what the inmates are doing.

In order to fully staff LCP, the administration in the past has resorted to mandatory overtime. Presently, mandatory

overtime is being used as a short-term measure to compensate for recent terminations. However, there is no evidence that the use of mandatory overtime can be expected to continue, or that its use in the past has in any way affected safety or morale in the prison.

There was testimony that, because a guard is not always available to escort laundry workers to a lavatory, the workers have been forced to urinate in a drain in the laundry room. After reviewing the record on this point, I find that this is a rare occurrence. Inmate Whah testified that he is in the laundry room for six hours a day, six days a week, and that such incidents had occurred 'once in a while'—'a few times.' Acting Warden Nesbitt testified that a correctional officer is assigned to the laundry facility daily, and there is no reason that the officer would be away for extended periods. I conclude that any such incidents are isolated occurrences and do not necessarily reflect a shortage of staff or the effects of crowding.

Officer Bachman testified that the morale of correctional officers at LCP is generally low, and that the group is not cohesive. He testified that the staff is often unsure of how to handle situations which arise at LCP, and are unable to obtain the guidance of their superiors. When asked how the number of inmates affected the morale of correctional officers, Officer Bachman testified that it was harder to keep track of inmates, and that on approximately six occasions he had come on duty to find that the 'board' used to track inmates was inaccurate.

***12** Lt. Fried also testified that officers' morale was low, and attributed this to overcrowding. However, Lt. Fried did not explain why he felt the two were related.

Acting Warden Nesbitt testified that since he took office in December, 1986 no correctional officer had sought to raise the issue of officer morale at the meetings of the Labor Management Team.

It is clear to the Court that it is more difficult to oversee and control forty inmates than ten. However, the record at this stage of the proceedings does not establish that crowding has significantly affected the morale of correctional officers, or caused them to be unable to adequately perform their job.

INMATE SAFETY[20]

Acting Warden Nesbitt agreed that overcrowding seriously handicaps efforts to control and manage inmate population, and raises the potential for assaults and violence. The stated reason for the 22 hour 'lock-down' in 1986 was the need to maintain control over the increased population. However, the Court heard testimony that the number of reported assaults had not increased disproportionately to the increase in population. The present record does not permit me to make any finding as to the number of unreported assaults at LCP. I have considered the testimony of inmates regarding specific incidents of unreported violence, and I conclude that some assaults do go unreported. The very nature of double-bunking creates a potential for inmate assaults which does not otherwise exist, and the Court heard evidence concerning several incidents in which inmates were assaulted by their cellmates. Similarly, to the extent that the classification system is hampered by the unavailability of cell space in certain living areas or is otherwise inadequate, there is a potential for assaults by or against improperly classified inmates.

I find that the crowded conditions at LCP have increased the potential for inmate violence and that there have been at least two incidents of assault which may be related to improper classification of inmates or the increased opportunities for assault by cellmates.

PROPOSED SOLUTIONS

Prior to the commencement of these hearings, the prison administration had undertaken a number of measures aimed at improving conditions at LCP. A number of cosmetic changes are being made, including repainting. The medical facilities and the weight room are being relocated. The County has hired the Texas firm of Cox & Associates as independent expert consultants, and appears to be implementing their recommendations promptly. A new administration was placed in charge of LCP on December 4, 1986.[21] This administration has made a concerted effort to interact with the inmates on a daily basis. A Population Review Committee seeks to identify those inmates who can be relocated outside of the facility through a number of existing programs. Lt. Fried and Officer Bachman both testified that there had been many recent improvements in the prison, and acknowledged that there has been a noticeable improvement in morale since the current administration took office.[22]

***13** Lehigh County recently approved a $23 million bond issue for the construction of a new prison facility, and has hired a contractor and architect for the project. Acting Warden Nesbitt testified that the target date for the commencement of construction is 18 months from the present. Defendants' expert Mr. Dufficy testified that the new facility will not be ready for occupancy for 3–4 years. The plans for the new facility are still in a preliminary stage, and even the site selection process has not been completed. The Court has no real assurance that a 1991 target date can be met.

The Court is persuaded that the County has acted in good faith in attempting to ameliorate the conditions in the present facility and in seeking to construct a new facility. I find reason to believe that defendants will continue to

act in good faith to take advantage of every opportunity to improve the conditions at LCP as quickly as possible.

The plaintiffs contend that the proposed and actual changes made by the County and by the present administration are not sufficient to overcome the alleged unconstitutional conditions, and assert that a reduction in population to 200 is necessary to avoid irreparable injury to the plaintiff class. Plaintiffs assert that this can be accomplished without injury to the public interest through a number of measures.

Plaintiffs contend that the work release inmates can be housed outside of the prison facility, freeing space for 34 inmates.[23] They assert that the ROR program should be expanded, and that the house arrest program (currently used for 'furloughs' at the end of inmates' terms) could be expanded to include inmates incarcerated for minor offenses. Plaintiffs describe a program currently in use in Florida in which a bracelet worn by the prisoner causes an alarm to be set off if the prisoner strays outside a narrowly circumscribed area of the home. Major Case also suggested that it may be possible to increase the number of inmates housed in other facilities within the state. Plaintiffs also suggest that temporary modulars (prefabricated mobile units which can be erected in 90 days) be used to relieve the crowded conditions. This alternative is currently under consideration by the County.

Defendants' expert Mr. Dufficy agrees that 'community supervision' may be appropriate for selected offenders. He also believes that electronic monitoring may be suitable for some offenders, but has not investigated this possibility in depth because of resistance from the local judiciary.

The present record does not reveal what percentage of the population of LCP is made up of first time offenders, or inmates incarcerated for minor offenses who might safely be released under a furlough or ROR program. Further, the record contains no information pertaining to the number of beds available in other institutions within the Commonwealth. Although it is my understanding from recent news reports that the electronic surveillance system is in use in many localities in this area, as well as in Florida, the present record does not allow me to conclude that it is or is not a workable solution. Thus, I cannot determine from the present record how many inmates could be housed outside of the facility without endangering the public safety. Although it would appear that at least some of the proposed solutions are viable alternatives to which the County should give careful consideration, I cannot determine from the present record whether the population cap sought by the plaintiffs would endanger the public interest.

LEGAL PRINCIPLES AND CONCLUSIONS OF LAW

PRELIMINARY INJUNCTION

***14** In considering a motion for preliminary injunctive relief, a court must carefully balance the following factors:
(1) Whether the movant has shown a reasonable probability of success on the merits;

(2) Whether the movant will be irreparably injured pendente lite by denial of such relief;

(3) Whether granting preliminary relief will result in even greater harm to the nonmoving party; and

(4) the effect that granting preliminary relief will have on the public interest.

S.I. Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1254 (3d Cir. 1985); Punnett v. Carter, 621 F.2d 578, 582 (3d Cir. 1980).

An injunction is an extraordinary and drastic remedy, based on a limited hearing. The power to issue injunctive relief should be exercised sparingly, and only in very clear cases. Best Resume Service, Inc. v. Care, 602 F. Supp. 653, 656 (W.D. Pa. 1985); Crawford v. Davis, 249 F. Supp. 943, 945 (E.D. Pa.), cert. denied, 383 U.S. 921 (1966). Relief should be granted only in the rare instances in which the law, the facts, and the equities are clearly in the moving party's favor. Sovereign Order of St. John of Jerusalem-Knights of Malta v. Messineo, 572 F. Supp. 983, 988 (E.D. Pa. 1983).

The court's decision to grant or deny a preliminary injunction, based as it is on a limited hearing, does not constitute an adjudication of the ultimate rights of the parties and does not foreclose further consideration at the trial on the merits of any question presented. Surber v. United States, 285 F. Supp. 775, 777 (S.D. Oh. 1968). The court's findings of fact are tentative in nature, and are not binding on the court in the ultimate trial on the merits. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981); Wyrough & Loser, Inc. v. Pelmor Laboratories, Inc., 376 F.2d 543, 547–48 (3d Cir. 1967).

Thus, although plaintiffs may fail to carry their heavy burden on a motion for a preliminary injunction, they may ultimately succeed on the merits.

CONSTITUTIONAL STANDARDS

The Eighth Amendment prohibits prison conditions which inflict cruel and unusual punishment. These words, emblazoned in the Bill of Rights in 1791, are incapable of static definition. The Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.' Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (citation omitted). 'Today the Eighth Amendment prohibits punishments which, although not physically barbarous, 'involve the unnecessary and wanton infliction of pain,' or are grossly disproportionate to the severity of the crime. Among 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification." Id. (citations and footnote omitted). Conditions of confinement which, alone or in combination, deprive inmates of the 'minimal civilized measure of life's necessities' as measured by this contemporacy standard must be held to be unconstitutional. Id. at 347. However, 'the Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes[ ] cannot be free from discomfort.' Rhodes, 452 U.S. at 349.

***15** The conditions of confinement of pretrial detainees must be evaluated under a slightly different standard. The Court must determine whether these inmates have been deprived of their liberty without due process of law in violation of their rights under the Fourteenth Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 and n.16 (1979). Pretrial detention is not, in and of itself, a violation of the Fourteenth Amendment. United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed.2d 697, 55 U.S.L.W. 4663 (1987). Incarceration of pretrial detainees is unconstitutional only if the conditions of confinement amount to punishment of the detainee. Bell, 441 U.S. at 535.

In exercising its authority to detain a person pending trial, a Government 'is entitled to employ devices that are calculated to effectuate this detention.' Bell, 441 U.S. at 537. 'Loss of freedom of choice and privacy are inherent incidents of confinement. . . . [T]he fact that such detention interferes with the detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into 'punishment." Id.

In determining whether a condition of confinement amounts to punishment in the constitutional sense of the word, the court must determine
whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn 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].' Thus, if 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 538–39 (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963) (citations and footnotes omitted).

Whether prison conditions are challenged under the Eighth or Fourteenth Amendment, the Supreme Court has repeatedly cautioned that federal courts must not interfere with the policy choices of state officials concerning the operation of prisons. This Court may not engage in the 'unguided substitution of judicial judgment for that of the expert prison administrators' on matters concerning the day-to-day operation of the prison. Bell, 441 U.S. at 554. See also, O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400, 2407, 96 L. Ed.2d 282, 293, 55 U.S.L.W. 4792, 4794 (1987).

> ***16** The deplorable conditions and Draconian restrictions of some of our Nation's prisons are too well known to require recounting here, and the federal courts rightly have condemned these sordid aspects of our prison systems. But many of these same courts have, in the name of the Constitution, become increasingly enmeshed in the minutiae of prison operations. Judges, after all, are human. They, no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination. But under the Constitution, the first question to be answered is not whose plan is best, but in what branch of the Government is lodged the authority to initially devise the plan. This does not mean that constitutional rights are not to be scrupulously observed. It does mean, however, that the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any

> prohibition of the Constitution.

Bell, 441 U.S. at 562. The question is not whether the court believes that the prison administration has chosen the worse of two alternatives, but whether the alternative chosen is constitutionally permissible. Id. at 562; Rhodes at 351.

Courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement, and conditions in a number of prisons, especially older ones, have justly been described as 'deplorable' and 'sordid.' When conditions of confinement amount to cruel and unusual punishment, 'federal courts will discharge their duty to protect constitutional rights.' In discharging this oversight responsibility, however, courts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system.

Rhodes, 452 U.S. at 352.

In considering whether the physical space provided for inmates at LCP is so small as to violate their constitutional rights, I am mindful of the Supreme Court's teaching that '[w]hile confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment, nothing even approaching such hardship is shown by this record.' Bell, 441 U.S. at 542 (footnoted omitted) (emphasis added). My focus must not be on whether the conditions of incarceration offend my personal sensibilities, but on whether the record, as it exists at this time, establishes that the conditions at LCP have worked actual privations and hardships.

The practice of double-bunking is not, in and of itself, a violation of the Eighth or Fourteenth Amendment. Rhodes v. Chapman, 452 U.S. 337; Bell v. Wolfish, 441 U.S. 520. In Rhodes, the Supreme Court examined a facility in which two inmates were housed in a single cell measuring 63 square feet. The cell contained a double-tiered bunk bed, a cabinet-type night stand, a wall mounted sink and toilet, a shelf and a built-in radio. Each cell had a heating/air conditioning vent. Slightly over half of the cells had windows which could be opened and shut. One wall of each cell consisted of bars. Each inmate had access to a dayroom with television, card table and chairs from 6:30 a.m. until 9:30 p.m. However, the Court held that even if it accepted the District Court's suggestion that double-celled inmates spent 'most of their time in their cells with their cellmates,' the conditions fell 'far short in themselves of proving cruel and unusual punishment.' Id. at 348.

> ***17** The double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care, or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement. Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain; deprivations of this kind simply are not punishments. We would have to wrench the Eighth Amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution.

Id. (citations omitted).

Whether a given set of conditions violates the Constitution is a matter of degree, and no two cases can be easily compared. However, the conditions found to be constitutional in Rhodes provide a convenient starting point of comparison.

I will first consider each of the conditions raised at trial to determine whether it establishes a constitutional violation in and of itself. I will then consider the totality of the conditions at LCP to determine whether, taken as a whole, the conditions of confinement constitute cruel and unusual punishment or punishment without due process of the law.

Presently, each inmate housed in the Old Jail has 26 square feet of cell space, and access to alightly more than 10.8 square feet[24] of day space for approximately 7 hours per day. This cell space is only 6 square feet less than that allotted to the inmates in Rhodes. Moreover, although the inmates in Rhodes enjoyed considerably more day space than do the Old Jail inmates, the Supreme Court was explicit in holding that even if the inmates spent most of their time locked in the cells, the conditions did not rise to the level of cruel and unusual punishment.

Inmates in NB1 and NB2 enjoy 35 square feet of cell space and over 18 square feet of days space. This cell space exceeds that held constitutional in Rhodes.

The holding cells presently house only one inmate per cell. However, there is a real possibility that the defendants will place two inmates in these cells. Assume that two inmates were to be housed in these cells, the

resulting 30 square feet per inmate does not differ significantly from the cell space upheld in Rhodes. Although inmates housed in the holding cells are permitted out of their cells very infrequently, I again note the Court's recognition of this possibility in Rhodes. Moreover, I note that the holding cells are used to house sensitive inmates in order to provide for their safety. The decision to house these inmates separately and to limit their access to areas used by the general population is precisely the sort of balancing between comfort and security which is best left to experts in prison administration. I cannot conclude that the alternative selected is unconstitutional.

The portion of the New Jail which is double-bunked is the most troublesome area of the facility with regard to the amount of space provided to inmates. These New Jail inmates are provided with only 20 square feet of cell space per inmate. However, they do have access to day space of approximately 36 square feet per prisoner for approximately thirteen hours per day. Although the cell space on these tiers is significantly smaller than that in Rhodes, I conclude that it does not establish a per se violation of the Eighth or Fourteenth Amendment.

***18** Unquestionably, the lighting and ventilation in many areas of the prison are extremely poor, and are considerably worse than the conditions described in Rhodes. However, they are not so poor as to establish, in and of themselves, 'conditions intolerable for prison confinement.' Nor do these inadequacies amount to punishment of pretrial detainees.

The screened lighting fixtures in the Old Jail are reasonably related to the legitimate goal of maintaining the internal security of the prison. Similarly, the design of the New Building cells appears to reduce unnecessarily the available lighting. Whether or not I agree with the defendants as to the need for such measures, I must resist the temptation to second guess those who are experts in the field of corrections.

The ventilation system in some New Jail cells provides little or no airflow, and the Old Jail can become 'quite hot' in the summer months. I have no doubt that the conditions can become very uncomfortable. However, the record as it presently exists simply does not establish the level of intolerable conditions necessary for a finding of a constitutional violation based solely on a finding of inadequate ventilation.

Nor can I conclude that the sanitation at LCP is so poor as to seriously concern the court. Any facility which houses many persons, and particularly a facility the age of LCP, can be expected to have sanitation problems. However, LCP is exterminated monthly and is cleaned daily. During my tour of the prison, I did not observe unsanitary conditions which would pose an unreasonable health hazard to the inmates.

I have no doubt that inmates' concern for their own safety is increased when they are forced to share their cells. The residents of LCP have been accused or convicted of serious criminal acts. No one would deny that double-bunking must, by definition, increase the risk of inmate assaults. Further, it may create a dangerous potential for frustration, tension, and violence. But the mere possibility of such dangers, without more, does not establish a constitutional violation. Rhodes, 452 U.S. at 349, n.14; Bell, 441 U.S. at 542.

The plaintiffs have established a few incidents of assaults involving improperly classified inmates. However, the Court cannot conclude from the limited record now before it that these incidents were symptomatic of a systemic breakdown in the classification process. In any institution the size of LCP, and particularly one with such a high turnover rate, there will be incidences of erroneous classifications. I cannot simply assume that the two or three incidents concerning which the Court heard evidence are the result of official indifference or of an institution stretched beyond its capabilities. Absent more extensive evidence in the record that crowding and related conditions have actually led to an increase in inmate assaults, I cannot grant injunctive relief on this basis.

Inmates also suffer from lowered morale as a result of the crowded conditions at LCP. Although it is appropriate to consider inmate morale in evaluating the totality of the circumstances within the prison, I am mindful of the requirement that there be some actual deprivation or hardship before conditions are held to be unconstitutional. I note further that, regardless of the prevailing views on the advisability of maintaining a positive prison attitude, there is no constitutional requirement that inmates enjoy the conditions of their confinement. While I have considered the testimony of Dr. Guy concerning the potential negative effects of prolonged stress on inmates and staff, I must place his remarks in the proper context. In view of the limited nature of Dr. Guy's investigation to date, I am not able to conclude that the conditions at LCP have actually imposed the threat to the health and welfare which Dr. Guy anticipates. Although the conditions at LCP have heightened the degree of stress experienced by inmates, there has been no actual detrimental effect on the physical well-being of inmates at LCP.

***19** I cannot help but be troubled by the consideration of race as a factor in determining cell assignments. Anytime that race is consciously considered by decisionmakers, the specter of a denial of an individual's right to equal protection of the laws is immediately raised. But the fact that race has been considered in making cell assignments doew not compel the conclusion that there has been a violation of convicted inmates' right to be free from cruel and unusual punishment or pretrial detainees' rights to be free from punishment.[25]

The prison administration has attempted to reduce tension and security problems in the institution by assigning inmates of similar age and interests in the same cell. Defendants have made a particular effort to accommodate an inmates' preference to live with members of a particular race, whether the inmate is Black, White, or Hispanic. The decision to house certain inmates in segregated cells is a rational solution to a perceived security risk. It would appear from the testimony at the hearings that this practice actually serves the stated purpose of reducing tension among inmates. There is no evidence in the present record that the effects of crowded conditions at LCP have in any way been exacerbated by this practice. Nor is there any other evidence that this practice violates the inmates' right to be free from cruel and unusual punishment or punishment without due process of law. I therefore conclude that this practice is not a violation of the constitutional rights at issue in the motion for a preliminary injunction.

I emphasize that the subject of the present motion for a preliminary injunction is whether the conditions at LCP constitute cruel and unusual punishment under the Eighth Amendment or punishment under the Fourteenth Amendment. Plaintiffs' claim that this policy violates their right to equal protection is not before the Court at this stage of the proceedings, and I express no opinion thereon. At this time, I hold only that the policy of considering race as one factor in making cell assignments does not infringe the particular constitutional rights at issue here.

I also have serious concerns about the recreational and educational facilities and programs available to the inmates. With the exception of the two inmates housed in holding cells, the inmates of LCP have access to some outdoor area for at least two hours a day, weather permitting. The general yard area is adequate for limited exercise. I have serious concerns about the use of the rooftop area for inmates housed in NB2. However, inmates are housed in NB2 for periods of less than a week while they await classification and cell assignment. In addition inmates NB2 have access to weight equipment. I am not prepared to hold that the limited exercise available to these inmates, for periods of only a few days, rises to the level of a constitutional violation. In view of the need to segregate these inmates from other inmates while the classification process is proceeding, the use of the rooftop area appears to be a reasonable choice well within the discretion of prison officials.

***20** The lack of indoor recreational and educational activities causes me particular concern. Clearly, the more time inmates spend in organized activities outside their cells, the less constrained they will be by the limited cell space. However, the lack of activities does not, in and of itself, constitute punishment. Educational and rehabilitative opportunities may diminish the effects of crowded conditions, but the deprivation of such activities does not constitute punishment. Rhodes, 452 U.S. at 348.

I must also express my concern with the adequacy of the medical screening procedures. Although the record is ambiguous, it appears that in some instances in the past inmates have been released into the general population before receiving blood tests and physical examinations. However, the record does not contain evidence which specifically relates to the period since the present administration took office in December, 1986. Rather, the evidence establishes that the policy of the present administration is to require such tests within 48 hours of booking. Moreover, assuming that there have been isolated incidents of early release into the general population, there is no evidence that this is the result of indifference of the prison administration. Rhodes 452 U.S. at 342–43. I am unable to conclude at this early stage of the proceedings that there is a present danger to inmates in this regard.

In determining whether the conditions of confinement of pretrial detainees constitute punishment, it is appropriate to consider whether pretrial detainees are housed separately from convicted inmates. See United States v. Salerno, 481 U.S. 739, ——, 107 S. Ct. 2095, ——, 95 L. Ed.2d 697, ——, 55 U.S.L.W. 4663, 4666 (1987). However, there is no constitutional requirement that an absolute separation may be achieved. It is enough if a reasonable effort is being made. Id.

To date, there has been no effort to make such a separation at LCP. However, there was testimony that, in the future, the Old Jail will be used to house pretrial detainees. Although this measure had not been instituted at the time of the hearings, I am persuaded that the defendants, acting in good faith, will promptly institute this policy. I do not believe that the intervention of the Court is required.

In considering the totality of the conditions at LCP, I am mindful of the relevance of the average period of incarceration in determining whether the conditions impose serious deprivations or hardships. United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, ——, 95 L. Ed.2d 697, ——, 55 U.S.L.W. 4663, 4666 (1987); Bell 441 U.S. at 543. The average length of stay of inmates at LCP is less than 60 days. Conditions of confinement which may be unconstitutional if imposed for longer periods may, nevertheless, be upheld if they are imposed for such short periods of time.

I am not able to conclude from the record before me that the conditions at LCP, alone or in combination, violate the Eighth Amendment's prohibition against cruel and unusual punishment or Fourteenth Amendment's prohibition against punishment of pretrial detainees. Moreover, I am persuaded that the recent changes at LCP

were instituted in good faith. There is no reason to believe that these improvements will be reversed if an injunction is not issued. It does not appear that the plaintiffs are in imminent danger of being deprived of the minimal civilized measures of life's necessities.

***21** I therefore conclude that the plaintiffs have not carried their heavy burden of showing a reasonable probability of success on the merits regarding the present conditions at LCP, or an imminent danger that the present conditions will deteriorate pendente lite.

There is a further reason why the population cap sought by the plaintiffs may not be imposed at this time. Plaintiffs have the burden of showing that the effect of granting preliminary relief will not injure the public interest. I am, of course, mindful of the public interest in protecting the civil rights guaranteed to all by the Constitution of the United States. Harris v. Pernsley, 654 F. Supp. 1057, 1065 (E.D. Pa. 1987). However, I must also consider the safety of the public, and the threat which may be posed if a population cap forces the release of LCP inmates.

While the plaintiffs have put forth a number of alternatives which may remove this threat, the record does not establish that those alternatives are sufficient to protect the public interest in the context of LCP. The balance between the rights of the inmates and the interest of the public is a delicate one. However, in view of the deficiencies in the record, I cannot conclude that the public interest would be adequately protected if the preliminary injunction sought by the plaintiffs was granted.

For all of these reasons, the plaintiffs' motion for a preliminary injunction must be denied. In so ruling, I emphasize again that I am deeply troubled by the conditions at LCP and I recognize the strong possibility that, when a more complete record has been established, the totality of the conditions at LCP will be held to be unconstitutional. The burden carried by the plaintiffs in establishing a constitutional violation is an extremely heavy one. That burden is heightened by the preliminary nature of the relief sought here. The present state of the record simply does not permit me to rule in favor of the plaintiffs.

An appropriate order is attached.

ORDER

Upon consideration of the plaintiffs' motion for a preliminary injunction, the response of the County defendants, the pretrial submissions of the parties, the evidence adduced at hearings on this matter, and the arguments of counsel, and for the reasons stated in the attached memorandum, IT IS ORDERED that the motion for a preliminary injunction is DENIED.

IT IS SO ORDERED.

Footnotes

1 The amended class action complaint asserts a number of claims, not all of which are relevant to the motion presently under consideration. Plaintiffs' allegations of inadequate and unsafe medical services; denial of access to the courts; denial of equal protection of Black and Hispanic inmates in the assignment of prison jobs, in cell assignments, and in the administration of discipline; denial of equal protection through a lack of comparable facilities, rights and programs and a lack of adequate privacy for female inmates; inadequate screening and classification of inmates; and denial of the right to petition under the First Amendment are not presently under consideration except as they relate to the issue of overcrowding.

2 The Court was accompanied by counsel for plaintiffs and defendants. Expert witnesses and a reporter for the Allentown Morning Call were also permitted to observe the tour. All parties received advance notice of the Court's visit.

3 Defendants Henry Barr, Jay C. Waldman, and Glen Jeffes have been dismissed from this action.

4 Plaintiffs' expert Major Case and defendants' expert Mr. Dufficy testified that the Old Jail cells contain 104–105 square feet per cell. Exhibit P2, prepared by inmate Michael Whah, represents that these cells measure 14′7″ by 5′9″ (87 square feet). Where Exhibit P2 conflicts with expert testimony, I consider the expert testimony to be more reliable than the hurried measurements performed by Mr. Whah. Therefore, I have discounted Exhibit P2 in reaching these findings of fact.

5 During a recent period ending in December, 1986, inmates in the Old Jail were locked in their cells for as many as 23 hours per day. This 'lock down' was instituted by the prior administration in an attempt to increase control and reduce the number of inmate assaults. The present administration has discontinued this practice, and the Court is persuaded that such a 'lock down' will not be reinstituted. Since December, 1986, the amount of time out of cells has been increased gradually to the present level. I am persuaded that the Administration will continue to expand the block out period in the months to come.

6 For example, laundry workers begin their job at 6:00 a.m. and continue until early or mid-afternoon.

7 In the past, there have been cells in which a third inmate has slept on a mattress on the floor. Although inmate Whah testified that he had seen 3 inmates housed in one cell in the New Building as recently as a week before this hearing, there is no other evidence that this practice is continuing at the present time. I have carefully reviewed the population figures submitted by counsel following the hearings. While figures are not available for every day, the available data shows that the population in NB1 has not exceeded 24 (2 per cell) on any day between February 1, 1987 (when the female inmates were moved to another facility) and June 17, 1987 (the last date for which figures were provided). I am not persuaded that any inmates are currently sleeping on mattresses placed on the floor in NB1. Nor do I find any evidence to lead me to believe that there is an imminent threat that this policy will be reinstated.

8 Correctional Officer Bachman testified that he did not know how to open the windows. However, I find that the correctional officers have available to them a number of avenues to arrange to have the windows opened. Moreover, a grievance procedure exists whereby inmates may request that the administration open the windows. There is no evidence that inmates have filed grievances asking that windows be opened which have been ignored. In light of the record as a whole, I am unable to find at this time that these windows are not opened when the weather requires.

9 The record shows that the wattage of the bulbs has recently been increased.

10 Before instituting double bunking in the New Jail, the prison administration sought review by the Pennsylvania Department of Corrections. An official of that department came on site on December 16, 1986 and reviewed the plan for double-bunking after it had been implemented in 1 North. The plan was subsequently approved by the Department of Corrections, per Harry E. Wilson, Director of Bureau of Special Services. Exhibit D5.

11 Acting Warden Nesbitt offered this approximation. A more exact figure is not contained in the evidence.

12 It is uncontested that, prior to December, 1986, the inmates received less than 2 hours per day of outdoor exercise. However, that situation has now been remedied, and there is no reason to suspect that the present administration will not continue to provide access to the yard for two hours per day.

13 The Acting Warden testified that the Administration plans to relocate the weight room within a few weeks, and that a new schedule for the use of the room will be devised. However, the Court has not received any substantial assurance that the weight room will be widely available to inmates.

14 The evidence shows that when women were housed at the prison, security concerns prevented some prisoners' access to the library. Since the women have now been moved from LCP, there is no evidence to lead the Court to believe that this situation is likely to be repeated.

15 DUI inmates and furloughed inmates are housed outside the prison facility.

16 I note that the Classification Data Sheet (Exhibit D4) is used for both classification and cell assignment. This form includes a space for the inmate's race. However, I find that race is considered only in making the cell assignment, and is not considered in determining the inmate's general classification.

17 There was no other suggestion in the record that the food provided to inmates is in any way inadequate.

18 Dr. Guy also testified that certain medications which are used to treat the mentally ill may be life threatening if there is inadequate ventilation. However, there is no evidence in the record that such medications have ever been administered to inmates at LCP. Therefore, I have not considered this evidence.

19 There was evidence that the Mental Health Nurse at LCP prefers to isolate suicidal inmates, whereas national standards and the judgment of Acting Warden Nesbitt suggest that such inmates should not be isolated. Assuming that isolation of these inmates is against their best interest, this evidence does not establish that crowded conditions have in any way contributed to suicide attempts. Rather, the inference is that inmates would be better served if there were fewer cells available for isolation.

20 I have already made note of the evidence regarding suicide attempts at LCP, and my finding that there is no showing that there has been any increase in such attempts as a result of crowding at LCP.

21 The tenure of this triumvirate administration was to coincide with the County's nationwide search for a Director of Corrections. The Court understands that the County has now made that appointment, and that the Director of Corrections soon will name a warden at LCP.

22 I also note that, prior to these hearings, the female inmates and DUI offenders had been relocated to other facilities. Since my discussion of the conditions in the prison assumes that these inmates are not housed at LCP, I do not treat these relocations as changed conditions. I do note, however, that this action provides further evidence of the County's good faith efforts to improve the situation at LCP.

23 It would be necessary to upgrade this minimum security area before it could be used to house members of the general population.

24 Plaintiffs argue that the catwalk area should not be considered in determining the amount of day space available. Plaintiffs rely on the standards issued by the American Correctional Association in support of this theory. They further rely on the standards issued by the ACA and other organizations in support of their argument that the cell space at LCP falls well below the constitutional standard.

I note that the standards issued by the ACA and by other experts in the field of corrections do not establish constitutional minima. Rhodes v. Chapman, 452 U.S. at 348, n.3; Balla v. Bd. of Corrections, 656 F. Supp. 1108, 1112 (D. Id. 1987). The ACA standards, while making 'every effort to found their work in relevant court decisions,' have often 'gone beyond case law and the statutes of many jurisdictions.' American Correctional Association, Standards for Adult Local Detention Facilities, 2d ed. at xvi (1981) (emphasis added). Such standards, like any expert opinion, may be helpful to the court in determining whether conditions meet contemporary standards of decency, and I have considered those standards in reaching my conclusions of law. However, the goals set forth by the American Correctional Association or other organizations of experts in the field are not substitutes for the judgment of the Court.

In considering whether prison conditions constitute cruel and unusual punishment under the Eighth Amendment, or punishment of pretrial detainees under the Fourteenth Amendment, I must consider all of the circumstances of confinement. While I recognize that the catwalk does not provide the same utility as the larger floor area, it is space to which the inmates have access, and the Court has observed that the inmates do take advantage of that space. Therefore, I conclude that it is appropriate to consider the catwalk area in reviewing the conditions at LCP.

25 Plaintiffs assert that Lee v. Washington, 390 U.S. 333 (1968), and Jones v. Diamond, 636 F.2d 1364, 1373 (5th Cir. 1981), establish the proposition that cell assignment based on race constitutes cruel and unusual punishment. A careful examination of these cases reveals that the findings of unconstitutionality were based on the equal protection clause of the Fourteenth Amendment. The equal protection claim poses a separate and distinct constitutional issue, as does the allegation that a ban on petitioning violates the First Amendment. See Jones, 636 F.2d at 1368.