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

BILLY JOE TYLER, et al,

Plaintiffs,

vs.

SHERIFF PERCICH, et al,

Defendants,

and

UNITED STATES OF AMERICA,

Amicus Curiae.

Cause No. 74-40-C (2)

MEMORANDUM OPINION

This Court has heretofore entered an order declaring that the conditions in the City Jail are constitutionally impermissible and ordered it closed. This order was stayed for 30 days for the purpose of giving the defendants the opportunity of bringing that institution into compliance with constitutionally accepted standards. No detailed findings of fact and conclusions of law were set forth in that order, and to supplement our order, the Court now makes findings and conclusions incorporated in this Opinion.

The pro se Amended Complaint of Billy Joe Tyler, John Fitzpatrick and Richard Belleville seeks an adjudication that their civil rights and those of the class have been violated by reason of the conditions at the jail. Because of the complexities and importance of the issues, the Court appointed counsel to represent plaintiffs, and the preparation for trial and the trial itself was accomplished through this court-appointed counsel.

APPENDIX I

After a pre-trial conference, and with the agreement of the defendants, this Court entered an order determining that the action was maintainable as a class action under Rules 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure and that the class consisted of those persons who are now confined or have been confined or will be confined in the Jail of the City of St. Louis.

The case was tried under the terms of a pre-trial order entered September 20, 1974, which represented the agreement of counsel of the several parties at a pre-trial conference held on September 19, 1974.

During the two day trial plaintiff Billy Joe Tyler and defendant Tallent testified in person as plaintiffs' witnesses. Charles Robert Sarver, a penologist, Dr. Robert Eardley, a physician, and William Whissenhunt, a medical administrator, the latter two with the Federal Bureau of Prisons, were called as expert witnesses by the amicus in support of plaintiffs' case. For the defense, only Raymond Percich testified in person and he largely confined himself to administrative details of the office of sheriff. Depositions admitted in evidence pursuant to the pre-trial order included those of George Millsap, a major on the guard force of the City Jail, defendant Alphonso Lark, the Warden of the Jail, Edward Tripp, Director of the Department of Welfare of the City of St. Louis, defendant Jefferson Tallent, Ronald Hardgrove, an administrator of an immediate release program for the State courts in St. Louis, Brendan Ryan, Circuit Attorney of the City of St. Louis, Hon. John Poelker, Mayor

of the City of St. Louis, Dr. John Allen, a psychologist at the City Jail, Howard Abbott, a former correctional officer at the City Jail, Dr. Walter Abell, at the time of trial the physician at the City Jail, Walter Young, a guard captain at the City Jail, Dorrance Gene Combs, current correctional manager of the City Jail, thirteen former inmates of the City Jail now imprisoned by the State of Missouri (actually, there were ten depositions and three affidavits which, by stipulation of the parties, were used in the place of depositions), Billy Joe Tyler, the plaintiff, and George Camp, Chief of the Department of Corrections of the State of Missouri. The Tyler and Camp depositions were offered by defendants Tallent and Lark, the Combs deposition was offered by the amicus, and all others were offered by the plaintiffs.

The evidence in the proceedings, supplemented by the depositions, stipulations and documents which were introduced and are a part of the record in this action, reflected inhumane conditions existing within the Jail, and indeed the facts depicting the inhumanity of the Jail were uncontroverted by the defendants, with defendant Jefferson Tallent, Commissioner of Adult Services of the City of St. Louis, the chief penologist of that City, a major witness in support of plaintiffs' allegations. It was undisputed, and we so find, that those accused of crimes and awaiting trial under a presumption of innocence are incarcerated in the City Jail under conditions worse than those afforded to persons convicted of the most heinous crimes in Missouri.

Because the evidence clearly proved that the problems at the City Jail had reached crisis proportions, we entered our order at the conclusion of the hearing finding that the constitutional rights of the prisoners were being violated and closing the Jail as a place of detention and incarceration for plaintiffs and the class. The order was stayed thirty days contingent upon the accomplishment of certain emergency procedures to alleviate conditions at the Jail and to protect the inmates.

At the time of the trial, the Jail housed slightly under 400 inmates, the lowest population in years. Apparently, the drop in population was occasioned at least in part by the painting of tiers which was going on during the trial. Prior to this, statistics indicated the normal population for the Jail ranged between 400 and 500 inmates.

About 90 per cent of theinmates of the Jail are men, and an overwhelming percentage of the inmates are persons accused of state crimes and awaiting trial. The evidence was that even those pre-trial detainees who entered a plea of guilty were held in the City Jail for as long as four months, and for those who actually stood trial, it was customary for such persons to be held for periods ranging from six months to over a year.

The assignment of prisoners within the Jail is largely on the basis of availability of space, and there is no classification system worthy of the name. Thus, prisoners are housed together without regard to previous records, tendencies to violence, sexual bent, age, or any other

relevant factor. Moreover, because there are no available treatment facilities elsewhere, prisoners with radical mental disorders are housed in the general population of the Jail.

It is undisputed and we find that the Jail, over sixty years in age, is possessed of structural inadequacies; that there are no means to evacuate prisoners in case of a fire; with minor exceptions, the cell areas are unpainted; the toilet facilities are frequently inoperative; there is inadequate ventilation, and inadequate lighting; the structure is frequently infested with mice and insects; the noise level throughout the day is excessive; visitors' accommodations are cramped and inadequate; the prisoners are confined in tiers where they spend twenty-four hours a day and are never permitted out except to go to court or to the hospital, and there is a total lack of recreational facilities at the Jail.

Inmates are subjected to disciplinary action without being properly informed of the rules of the Jail, the standard of conduct expected of them, or the nature of charges against them.

Although a doctor is available five days a week, prisoners are denied direct access to the doctor and go through a screening process involving determinations by inmates, guards and nurses. Prisoners are given only a rudimentary physical examination upon entry to the City Jail and there is no psychiatric evaluation or treatment offered there. No dental treatment of any nature is available within the Jail and except for extractions none is available

at all.

Inmates are forced to meet with their lawyers in an open lobby space in the presence of a guard and in the presence of other inmates and other lawyers and subject to the prevailing noise levels in the Jail, factors which substantially inhibit the proper preparation of a defense.

For many years the Jail has been overcrowded. At least two and often three men are housed in cells which cannot humanely accommodate more than one prisoner and eight men are housed in squad rooms where no more than four should be held.

The guard force, which is charged with the security of the Jail and the protection of inmates, numbered less than forty at the time of trial. We find, on the basis of the testimony of the expert witnesses , supported by that of Tallent, that a force of 125 guards, exclusive of supervisory and administrative guards, is necessary to properly police the structure.

With all of these factors in mind, savagery and violence in the Jail could be anticipated, and the uncontroverted evidence is overwhelming that the Jail is a place of incredible violence, where prisoners live in justified and well-founded fear for their own safety. Rape, assault, and attempted suicide are common occurrences in the brutal environment in the City Jail.

The jurisdiction of this Court to respond to the Amended Complaint is clear. Collins v. Schoonfield, Warden, 344 F.Supp. 257, (D.C. Md. 1972; Inmates of the Suffolk County

Jail, et al v. Eisenstadt, 360 F.Supp. 676 (D.C. Mass. 1973), aff'd, 494 F.2d 1196 (C.A. 1. 1974).

Indeed the propriety of a class action suit to test the constitutionality of conditions within the City Jail of St. Louis was recognized in Johnson v. Lark, Cause No. 71 C 114(3), United States District Court, Eastern District of Missouri, Eastern Division.

The almost complete lack of structure in the disciplinary proceedings in the City Jail, with no published rules sufficiently detailed to inform inmates of the standards of conduct required, the lack of notice of charges and the absence of even a rudimentary hearing system are constitutionally suspect. Sinclair v. Henderson, 331 F. Supp. 1123 (D.C. La. 1971); Gates and United States v. Collier, 349 F. Supp. 881 (D.C. Miss. 1972); aff'd 489 F.2d 298 (C.A.5. 1973); Nolan v. Scafati, 430 F.2d 548 (C.A.1, 1970); Landman v. Royster, 333 F.Supp. 621 (D.C. Va. 1971); see also, Black v. Warden, 467 F.2d 202 (C.A.10, 1972); Sostre v. McGinnis, 442 F.2d 178 (C.A. 2, 1971), cert. denied sub nom Sostre v. Oswald, 404 U.S. 1049 (1972).

The lack of necessary medical facilities and care was recognized as an Eighth Amendment violation as early as 1970 in Hamilton et al v. Schiro, Mayor (D.C. La.) 338 F. Supp. 1016.

In the instant case, the lack of weekend and holiday medical care, the total lack of psychiatric and dental care, and a medical care system wherein an inmate may be denied access to a doctor by another inmate, a guard or a nurse is not compatible with constitutional requirements. Hamilton et al v. Schiro, Mayor (supra) and Collins v. Schoonfield, Warden, et al

(supra).

The facilities for family visitation and even more urgently those provided for inmate and counsel are worse than those found inadequate in other cases. Inmates of Suffolk County Jail v. Eisenstadt, et al, and Collins v. Schoonfield, Warden, et al (both supra).

Having deprived a man of his liberty, the State has a constitutional obligation to reasonably protect him. In Gates v. Collier, 349 F.Supp. 881, 894 (D.C. Miss. 1972), aff'd 489 F.2d 298 (5th Cir. 1973), the court stated with reference to prison inmates:

> "The defendants have subjected the inmates population at Parchman to cruel and unusual punishment by failing to provide adequate protection against physical assaults, abuses, indignities and cruelties of other inmates, by placing excessive numbers of inmates in barracks without adequate classification or supervision, and by assigning custodial responsibility to incompetent and untrained inmates.

and in Holt v. Sarver, 300 F. Supp. 825, 827, (D.C. Ark. 1969) aff'd 442 F.2d 304 (8th Cir. 1971), the court stated:

> "... and the court is convinced that the state owes to those whom it has deprived of their liberty an even more fundamental constitutional duty to use ordinary care to protect their lives and safety while in prison."

And further, in Holt, supra, at 831, the Court stated:

> "The Court is of the view that if the State of Arkansas chooses to confine penitentiary inmates in barracks with other inmates, they ought at least to be able to fall asleep at night without fear of having their throats cut before morning, and that the State has failed to discharge a constitutional duty in failing to take steps to enable them to do so."

See also, Holt v. Sarver, 309 F. Supp. 362 (D.C. Ark. 1970); Hamilton v. Love, 328 F. Supp. 1182, 1196 (D.C. Ark. 1971); Woodhous v. Commonwealth of Virginia, 487 F.2d 889 (C.A. 4, 1973).

To further precisely relate each of the failings of the City Jail to that language of the Constitution violated would serve no useful purpose. The Jail is used primarily, to detain those who are accused of crime but who are too poor to afford bail. Each accused is clothed in a presumption of innocence. The interest of the State in depriving an accused of his liberty is to insure his presence at trial and when that detention becomes punitive it is no longer consistent with the State's lawful interests.

Here, those who are merely accused of crime suffer an imprisonment worse than that reserved for convicted felons. Two witnesses, one a defendant, called the Jail "barbaric," and it is. A Jail can not be "barbaric" and exist within the requirements of the Constitution of the United States.

Dated this 15th day of October, 1974.

John K. Regan

UNITED STATES DISTRICT JUDGE