

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, MICHAEL HARRIS
JAMES JOHNSON, LAWRENCE ROBERT PLAMONDON,
NORMAN RICHARDSON, CAROLYN TRAYLOR, and
NORA WARE, individually and on behalf of
all other persons similarly situated,

Plaintiffs,

v

CIVIL ACTION
NO. 173217

WAYNE COUNTY BOARD OF COMMISSIONERS,
ROBERT E. FITZPATRICK, Chairman of the
Board, WILLIAM LUCAS, Sheriff of Wayne
County, FRANK WILKERSON, Administrator
of the Wayne County Jail, ARTHUR A.
SUMERACKI and JOHN F. WILLIAMS, members of
the Wayne County Board of Auditors; and
GUS HARRISON, Director of the Michigan State
Department of Corrections, individually and
in their official capacity,

Defendants

Second Interim Order and First Interim
Declaratory Judgment

At a session of said Court held in
the City-County Building, Detroit,
Michigan, on MAY 18 1971

PRESENT: HONORABLE VICTOR J. BAUM,
HONORABLE RICHARD M. MAHER,
HONORABLE JOHN D. O'HAIR,
Circuit Judges

This matter having come before the court for trial;
testimony having been taken; oral argument having been heard,
written briefs having been filed and studied by the court;

the court having previously entered an interim order; the court now being adequately advised; and a written opinion giving the courts decision having been filed;

NOW THEREFORE IT IS ORDERED THAT UNTIL FURTHER ORDER:

1. The interim order heretofore entered on March 25, 1971 shall remain in full force and effect except as modified herein.

2. If defendants intend to continue the use of the present jail structure, they shall, within 30 days, submit, for court approval, a plan for correction of deficiencies in the heating, plumbing, wiring, ventilation and fire prevention systems. Said plan shall provide for complete correction of existing defects as noted in the Court's opinion within one year from the date of entry of judgment.

3. If defendants intend to continue the use of the present jail structure, they shall, within 30 days, submit a plan to reduce the inmate occupancy of the jail to 1240 persons or less. Said reduction to a population of 1240 is to be accomplished within 90 days from the date of entry of judgment. Defendants shall also provide in such plan for the reduction of inmate population to 813 persons within nine months from the date of entry of judgment. Defendants shall also provide in such plan for the reduction of inmate population to "lawful inmate capacity" in accordance with the opinion herein. Reduction to "lawful inmate capacity" is to be accomplished within 2½ years from the date of entry of judgment.

4. The defendant sheriff shall secure prompt psychiatric attention for inmates who in apparent earnest attempt or threaten suicide.

5. Within 30 days, the defendant, sheriff, shall submit, for court approval, a plan for identifying and caring for potentially suicidal inmates.

6. Within thirty days, the defendants shall submit, for court approval a plan for dealing with inmate drug addicts who experience withdrawal symptoms.

7. The defendants shall, within 30 days, submit, for court approval, a plan for providing reasonably adequate surveillance to guard against assaults and suicides.

8. The defendant sheriff shall obtain prompt psychiatric attention for all prisoners who appear to be mentally ill, whether or not they are dangerous, and if the psychiatrist recommends hospitalization, the sheriff shall take such steps, or shall cooperate with such psychiatrist, in taking such steps as may be necessary to bring about the hospitalization of the mentally ill inmate in an appropriate mental health care facility.

9. The defendants shall provide treatment for inmates suffering acute dental distress comparable to that given in the free community, provided that the inmate's period of confinement will permit.

10. Within 30 days, the defendants shall submit, for court approval, a plan for correcting medical care inadequacies

giving consideration and attention to the admission examination, and the medical care of inmates, including psychiatric care.

The plan shall give consideration and attention to the hospital care needs of inmates. The plan shall consider professional and non-professional manpower needs related to inmates' health.

11. The Defendant, Sheriff, shall forthwith put into operation a program for disinfecting all cells which have toilet leaks or overflows.

12. Inmates shall not be confined in any cell in which leaking, overflowing or defective plumbing equipment discharges human wastes, except in the case of an inmate who has deliberately and wantonly produced this defective condition and only if there is no available clean, dry cell where he may be housed without overcrowding other inmates.

13. Within 30 days the defendants shall submit for court approval, evidence by affidavit of an adequate existing program for vermin control or in the alternative a plan for establishing such a program.

14. Shower walls and floors shall be immediately scrubbed and disinfected and maintained in a clean and sanitary condition.

15. The defendant sheriff shall cause nicked enamel areas of plumbing fixtures to be frequently scrubbed and disinfected.

16. If inmates are used for kitchen help, they shall be required by the sheriff to maintain high standards of personal hygiene.

17. The sheriff shall cause prisoners' cells and rock areas to be maintained in a clean and sanitary condition and shall by written rule, published and disseminated to all inmates, prohibit the storage of edibles on cell floors and the accumulation of junk, debris, trash, and waste in cell and rock areas. Said rule shall be strictly enforced by the Sheriff.

18. Within 60 days from entry of judgment, defendants shall furnish to every inmate on admission a clean mattress, covered with an impermeable material which can be easily cleaned and shall also furnish to each inmate such bedding as required by the regulations of the Michigan Corrections Department.

19. Within sixty days, the defendants shall furnish to each inmate on admission a clean towel which is of a reasonable size and in reasonably good condition and shall replace the same at reasonable intervals with a clean towel.

20. Within 30 days, the defendants shall submit for court approval a plan to correct nutritional deficiencies, with consideration given to adequate and identifiable sources of vitamins A and C; sufficient green leafy vegetables, and a diet for diabetics.

21. Within 30 days, defendants shall submit a plan for correcting their failure to provide "heat carts" for transporting food to cell blocks.

22. If Defendants continue to use the present jail structure, they shall, within 30 days, submit for court approval, a plan for providing suitable recreation facilities. In any plans which defendants may have for a new jail building, they shall provide adequate facilities for recreation and shall give consideration to providing opportunity for outdoor recreation.

23. The court reserves jurisdiction to consider plans submitted by defendants hereunder; to hear argument concerning the same; to approve or disapprove such plans; to enter orders and a judgment enforcing the rights of the parties, to appoint a monitor or monitors to see to the execution and performance of the court's orders ^{Start here} and judgment; and to take such other action as justice may require.

24. The court reserves the right to revert to a single judge tribunal, when in its judgment only one judge is required, subject to the approval of the presiding judge of the Third Judicial Circuit.

25. The judgment, referred to herein is the judgment which will be entered after a hearing on the plans submitted by the defendants and counter-plans, if any, submitted by the plaintiffs. The plaintiffs shall have 30 days after receiving defendants' plans to submit counter-plans. The court will set a time for hearing argument on plans. If the plaintiffs decide not to submit counter-plans, they shall promptly notify the court of their decision.

Interim Declaratory Judgment

26. In designing and planning any remodeling of the existing jail structure, and in designing and planning for any new jail building, the defendants shall take into account the constitutional right of presumptively innocent inmates to have, within the confines of the jail, the maximum freedom of locomotion which is reasonably consistent with the risks presented by the inmate and with the security and good order of the institution.

27. The sheriff's visitation rules and policies as described in the court's opinion are lawful.

28. Censorship and inspection by the sheriff of mail coming into the jail is lawful. Censorship and inspection of outgoing mail is lawful, except for letters addressed to inmates' lawyers of record, who are members of the Michigan Bar in good standing, and to public officials and governmental agencies. Inmate's letters to such lawyers, officials and agencies must not be opened or read by jail personnel.

29. If inmates are so impecunious as to be without the means of writing and mailing letters to their lawyers of record, who are members of the Michigan Bar in good standing, the sheriff shall, within reasonable limits, furnish such means of writing and mailing such letters to such inmates.

30. The Sheriff may inspect incoming published written materials, such as books, newspapers and periodicals, which are mailed or delivered to the jail, for tangible

contraband, for clearly pornographic content and for content which creates a clear and present danger of violent disorder or escape. Tangible contraband may be confiscated. Published written materials containing clearly pornographic matter and written materials which create such a clear and present danger may be withheld. All other published written materials shall be delivered to the inmates for whom they are intended.

31. The inmates have no legal right to central dining or to congregate dining.

32. The sheriff's policies and practices respecting the jail library are lawful.

33. There is nothing unlawful in the sheriff's failure to provide educational and vocational training programs for inmates.

34. There is nothing unlawful in the Defendants' policies and practices relative to furnishing telephone service to inmates.

35. There is nothing unlawful in failing to furnish law books to inmates who have counsel. There is no justiciable controversy on the evidence in this case concerning uncounseled inmates' right of access to law books.

36. Jail inmates have no legal right to self government or to representation on jail grievance councils. Inmates may submit grievances to the sheriff and to other governmental agencies, including the courts.

37. In view of the pleadings and the parties who have been and who have not been joined as defendants, this court cannot grant relief to any inmate on the ground that he is being held under an unconstitutional bail order.

38. Published prison rules and regulations shall be distributed to each inmate upon arrival. No inmate shall be subjected to a penalty unless his conduct is prohibited by such rules and regulations or his conduct is such that he should have known as a matter of general intelligence and common sense that it would subject him to a penalty.

39. Disciplinary sanctions may be imposed without a prior hearing when due inquiry discloses circumstances, indicating a strong probability of the inmate's guilt, and the inmate's conduct poses a serious, immediate and substantial threat to the safety of others or the security of the institution. Such summary punishment must be followed by immediate upper echelon administrative review, and by a prompt and fair hearing before the disciplinary board. Such administrative review may be by the sheriff or by one or more persons designated by the sheriff who shall be of a higher rank than the person who imposed the summary punishment.

Summary punishment, without a hearing, may not be imposed for trivial offenses which do not pose a serious immediate and substantial threat to the safety of others or the security of the institution. Prior to the imposition of summary punishment inmates must be informed with particularity

for what acts or conduct they are being disciplined.

40. Prior to a disciplinary hearing, the inmate must be advised, with particularity, what act or acts of misconduct he is charged with, and what regulation or common sense standard his conduct allegedly violates.

41. An inmate, who is to be subjected to a disciplinary sanction or to the continuation of summary punishment imposed without a hearing, must be given the opportunity to attend a hearing before a disciplinary board and to be heard in his own defense.

42. An accused inmate does not have the right to be represented in the disciplinary proceeding by counsel or counsel substitute.

43. An accused inmate does not have the right to produce witnesses at the disciplinary hearing to testify on his behalf, but if he claims that fellow inmates will verify matters alleged in his defense, the disciplinary board must have his claim fairly investigated by the board or by a disinterested and competent person, who may be a member of the disciplinary board and upon a report of such investigation, the board shall determine whether, in fact, defense is substantiated. The investigation contemplated is not an adversary proceeding requiring the presence of the accused inmate.

44. An accused inmate does not have the right to confront or cross-examine his accusers, or witnesses adverse to him, or to have their identity disclosed to him.

45. An accused inmate must be advised of the nature of the evidence against him, and if this cannot be done without divulging the identity of adverse witnesses, their identity must be disclosed. The disciplinary board must cause a disinterested investigation to be made of all information and evidence unfavorable to the accused. Such investigation shall be as provided above.

46. The disciplinary board may not find an inmate guilty except upon substantial evidence, which has all the earmarks of reliability and is convincing beyond a reasonable doubt.

47. Members of the sheriff's custodial staff may not sit on the disciplinary board.

48. A verbatim record must be kept of proceedings before the disciplinary board and reports of non-adversary investigations must be included in the record.

49. The hole is presently administered unlawfully, in violation of Michigan Corrections Department regulations and in violation of Constitutional prohibitions against cruel and unusual punishment.

50. If inmates are to be confined in the hole, they must be given bedding, mattresses, the necessities of personal hygiene, such as toilet paper, soap, towels, and in the case of women in menses, sanitary napkins, and eating utensils at meal times, unless there is probable cause to believe that these articles will be used as implements of self-destruction.

If these articles are destroyed by an inmate, they may be withdrawn, and further articles withheld.

51. If inmates are to be confined in the hole, they must be given fresh drinking and washing water, apart from that which flushes the floor drain toilet; and the cells must be adequately lighted and heated.

52. If use of the hole is to be continued, drinking fountains must be installed and the size of the cells must be increased to 8 x 8 feet within one-hundred-twenty days from entry of judgment.

53. Ordinary reading and writing materials may be withheld from persons confined in the hole, but persons confined therein must be allowed to correspond with counsel of record, courts and other governmental bodies.

54. Ordinary visitation privileges may be withdrawn from persons confined in the hole, but they must be allowed to confer with their attorneys of record, elsewhere, in a setting which permits confidential communication.

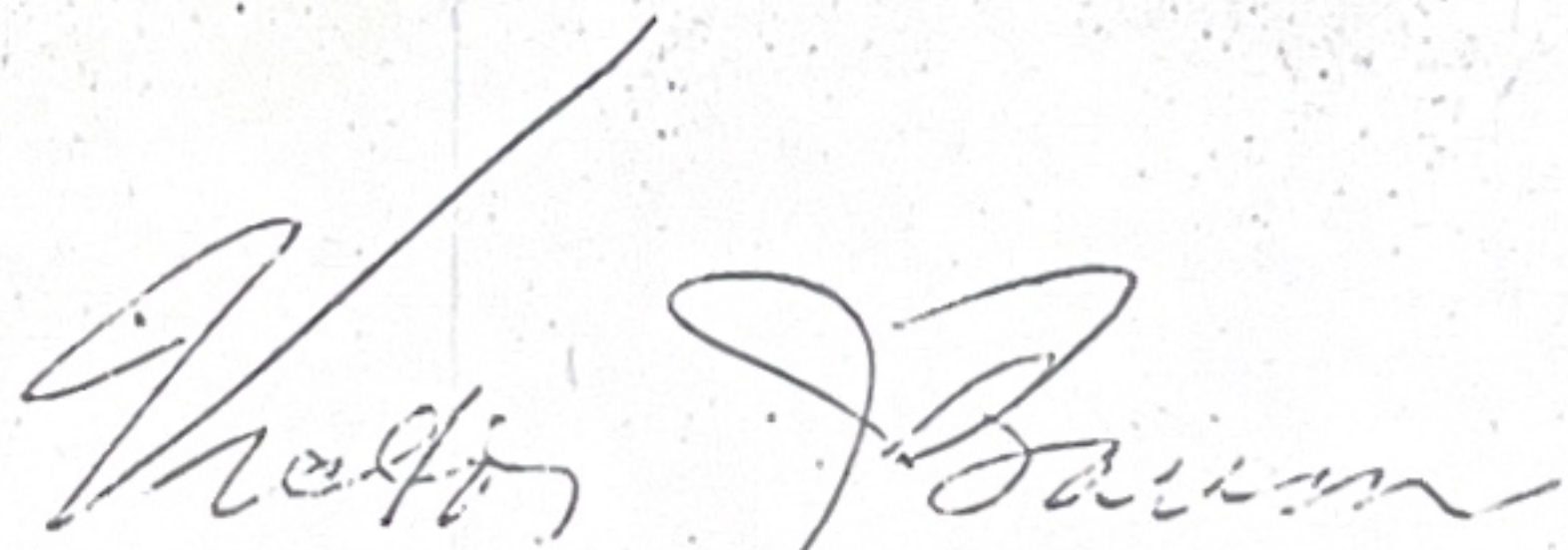
55. Incarceration in the hole may not be ordered for disciplinary infractions which do not seriously and substantially threaten the security and good order of the institution.

56. Inmates assigned to maximum security confinement, other than as a disciplinary measure, must be advised of the reasons for the assignment, and must be afforded the opportunity for a hearing, as in discipline cases, to determine

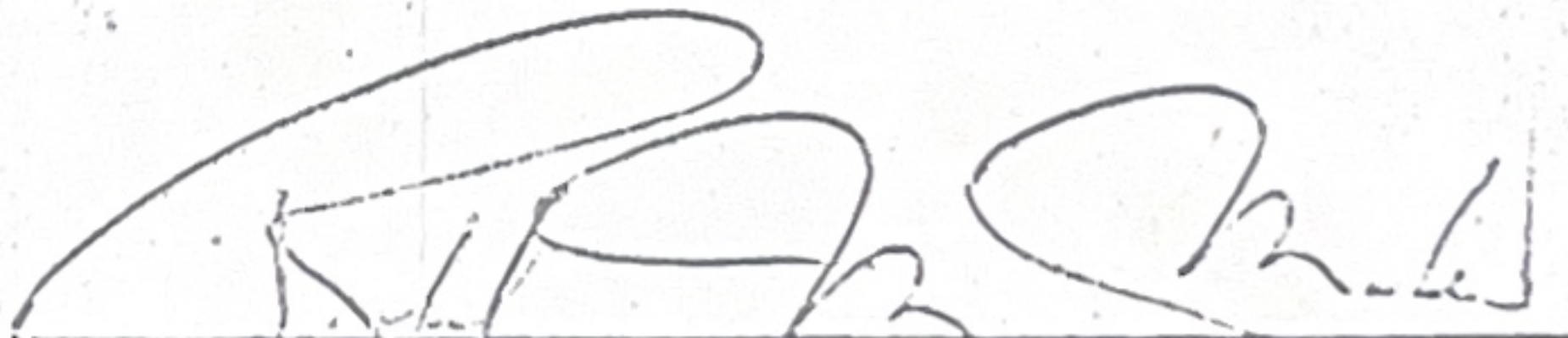
whether such assignment is fair and rational, and reasonably related to a proper objective of classification.

57. The safety of persons within the institution, institutional security and order, the separation of youthful inmates from older inmates and recidivists, the segregation of homosexuals, the prevention of escapes and elimination of contraband are proper objectives of classification. This does not purport to be a complete list of appropriate classification objectives.

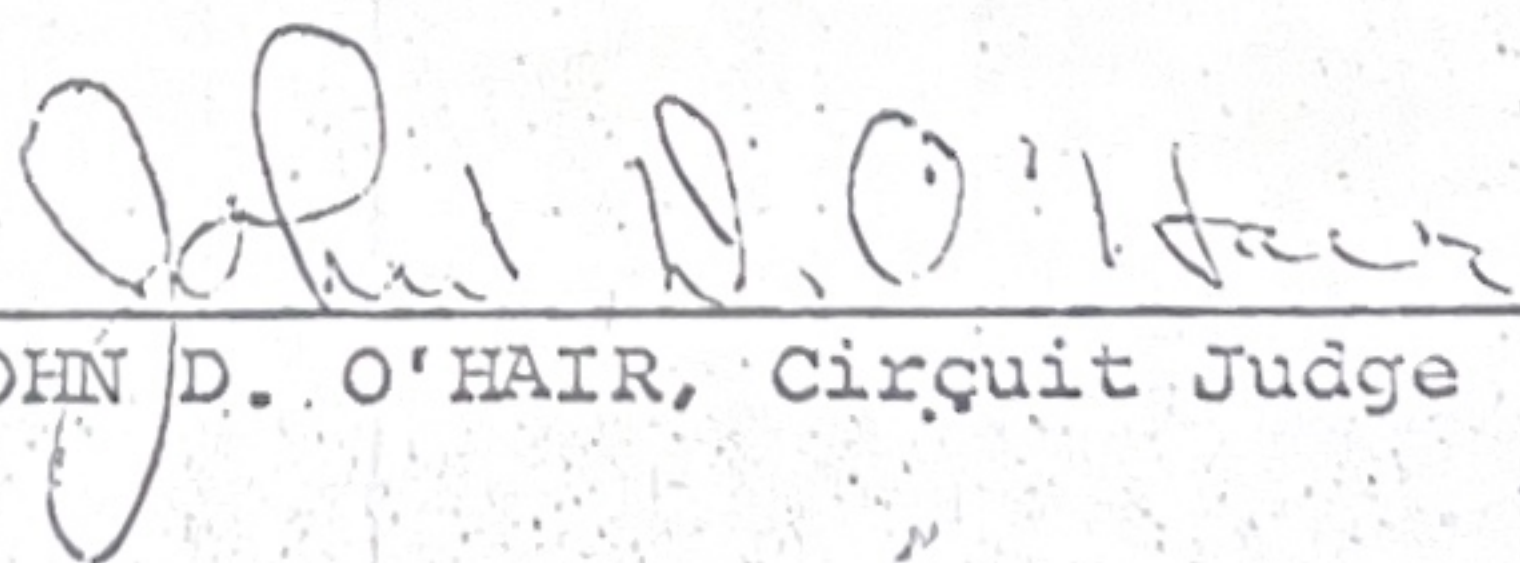
58. Inmates have a right to be free from any burden, hardship or loss of liberty imposed upon them because of their political or religious beliefs.



VICTOR J. BAUM, Circuit Judge



RICHARD M. MAHER, Circuit Judge



JOHN D. O'HAIR, Circuit Judge