UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD CAMPBELL, et al.,	:	
Plaintiffs,	:	
v.	:	C.A. No. 1462-71
ANDERSON McGRUDER, et al.,	:	
Defendants.	:	

MEMORANDUM OPINION

This case, which is on remand from the United States Court of Appeals, Campbell v. McGruder, 580 F.2d 521 (D.C. Cir. 1978), involves the conditions of pretrial confinement at the Central Detention Facility--more commonly known as the D.C. Jail ("the Jail"). The defendants are the Mayor of the District of Columbia, the Director of the Department of Corrections of the District of Columiba ("the Department"), and the Superintendent of the Jail. The plaintiffs are a class composed of unconvicted pretrial detainees housed at the Jail.

There can be little doubt that conditions at the Jail are in a state of crisis. Earlier this summer the rapidly increasing inmate population passed the 2,400 level, exceeding the rated capacity of the Jail by more than 75%. In May of this year, Mr. George Holland, the Department's Assistant Director for Detention Services, testified before this court that overcrowding at the Jail had reached the "danger point" and that rioting could be expected. In fact, on July 22, 1983, a riot did occur, and order

was not restored until large numbers of policemen and guards arrived at the Jail armed with shotguns. Soon afterwards, under emergency circumstances, the defendants transferred about 450 convicted inmates from the Jail to the Department's penal facilities in Lorton, Virginia. This temporarily eased the population pressure at the Jail but did not address the underlying problems that gave rise to the overcrowding.

It is against this somber background that the court must now consider whether the defendants should be held in contempt for having violated the court's orders of October 8, 1982 and December 17, 1982 concerning the double-celling[1] of pretrial detainees.

A. Procedural History

In its Memorandum and Order of June 27, 1983, the court discussed the history of overcrowding at the Jail and the events leading up to the issuance of the October 8, 1982 and December 17, 1982 orders. Those events are highlighted by the following statistics, which were recently supplied to the court by the defendants:[2]

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[1]The term "double-celling" describes the practice of housing two inmates in a cell designed for single occupancy. Similarly, the term "double cell" describes a cell which, though designed for single occupancy, is used to house two inmates.

[2]These statistics are taken from an attachment to the Report to the Court filed by the defendants on September 2, 1983. The attachment, entitled "Detention Services Population," contains population figures (average daily population, high count, low count, and "thru-put" (total movement)) for each month from July (Continued)

Inmate Population at the Jail
(Rated Capacity = 1,355)

Date	Average Daily Population	High Count
July 1980	1,313	1,557
October	1,354	1,397
January, 1981	1,386	1,426
April	1,414	1,479
July	1,472	1,521
October	1,559	1,603
January, 1982	1,640	1,688
April	1,776	1,840
July	1,854	1,918
September	2,027	2,135
October	2,171	2,221
January, 1983	2,113	2,181
April	2,154	2,228
July	2,268	2,449
August	1,935	2,028

As these statistics show, during the past three years the inmate population at the Jail has steadily increased.[3] Until October 1980, the average daily population (although not the "high counts") remained within the rated capacity of the Jail, but since then the average daily count has exceeded the capacity on an ever increasing basis. The defendants persistently failed to anticipate and make adequate provisions to house this rising population. By September 1982, when the population had reached

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1980 until August 1983.

[3]The drop from July 1983 to August 1983 is attributable to the emergency transfer of about 450 convicted inmates from the Jail to the Lorton facilities. Other statistics submitted to the court by the defendants indicate that since then the upward spiral of the Jail population has continued: on August 11 and 12, 1983, a low daily count of 1,859 was recorded, but by September 1--the last day for which statistics were produced--the count had reached 2,004.

50% over capacity, most of the dayrooms and gymnasiums at the Jail had been converted into makeshift dormitories. This not only deprived the inmates of much-needed recreational opportunities, but also created unacceptable security risks for both guards and inmates.

To obtain temporary relief from these problems, the defendants in September 1982 moved the court to vacate its prohibition of March 8, 1982 on the use of double-celling at the Jail. According to the defendants, inmates could be more closely supervised in double cells than the makeshift dormitories, thus controlling the situation while the defendants developed a long-term approach to the overcrowding problem. The defendants acknowledged that double-celling was undesirable, since the Jail--like virtually every other modern penal facility--was designed exclusively for single-celling. Consequently, the cells at the Jail are too small to properly accommodate two inmates and are positioned so as to make it impossible for the centrally-stationed guards to monitor what goes on within the cells. Nevertheless, the defendants viewed double-celling as a lesser evil compared to continued use of the dormitories.

Deferring to the defendants' expert judgment in this matter, the court on October 8, 1982 vacated its prohibition on double-celling. However, in accordance with the defendants' representations concerning the factors necessary for the proper administration of double-celling and with the constitutional requirement set forth in Bell v. Wolfish, 441 U.S. 520, 535 (1979), that pretrial detainees not be held under conditions that

"amount to punishment," the court placed the following preconditions on the use of double-celling at the Jail:

> (1) Additional guards [must] be placed in each cellblock in which inmates are double-celled. These guards are to make frequent inspections of the inside of the individual cells.
>
> (2) No pre-trial detainee [may] be confined in his cell for more than 12 hours in any day in the company of another inmate.
>
> (3) No pre-trial detainee [may] be double-celled for more than 30 days. [Campbell v. McGruder, 554 F. Supp. 562, 566 (D.D.C. 1982).]

Soon after the issuance of the October 8 order, the plaintiffs moved the court to modify the order to provide, among other things, for recordkeeping and filing of periodic reports concerning the defendants' compliance with the time limits on double-celling. At a hearing held on November 4, 1982, the defendants at first protested that it would be impossible for them to keep the records requested by the plaintiffs, but this assertion was contradicted by the official in charge of records at the Jail, who testified that logbooks could be accurately maintained if the guards were properly supervised. In light of this testimony and the necessity for verifying whether the time limits were being complied with, the court ordered the defendants to maintain records of the hours per day of double-celling (on a cellblock basis) and the total number of days of double-celling (on an individual basis). However, the court declined to order the defendants to file periodic compliance reports. Campbell v. McGruder, No. 1462-71 (D.D.C. December 17, 1982).

The defendants did not appeal either the October 8 or the

December 17 orders. And prior to placing pretrial detainees in double cells, the defendants made no effort to seek clarification or reconsideration of the orders from this court.

The double-celling of convicted inmates, who are not protected by the 12-hour and 30-day time limits, began in November 1982. It was not until February 1, 1983 that the first pretrial detainees were double-celled. During the next few months, as more and more cellblocks were converted to double-celling, the court began to receive pro se complaints and motions contending that the time limits on double-celling were being violated. On May 9, 1983, counsel for the plaintiffs moved the court for an order directing Marion Barry, in his official capacity as Mayor of the District of Columbia, to show cause why he should not be held in contempt for violations of the October 8 and December 17 orders. In response to the plaintiffs' motion, the defendants stated that there had been "substantial compliance" with the orders but moved the court to modify them. Specifically, the defendants asked that the absolute 12-hour minimum on time outside the double cell be reduced to 10 hours and 15 minutes "subject to security considerations," that double-celling be permitted for more than 30 days with the consent of the pretrial detainee, and that an additional 30 day period of double-celling be permitted after an interim of seven days outside the double cell.

On May 24, 1983, a hearing was held on the two motions. In its Memorandum and Order of June 27, 1983, the court determined that there had been significant violations of the October 8 and December 17 orders, denied the defendants' motion to modify the

orders, and continued to August 9 the hearing on the plaintiffs' motion for an order to show cause why the defendants should not be held in contempt.

At the August 9 hearing, the court received into evidence a number of documents--principally memorandums exchanged among various City officials and statistical summaries produced by the Department--and heard testimony from three officials of the Department, including Director James Palmer and Assistant Director George Holland.

On the basis of this record, the court now makes the following determinations.

B. The Failure to Comply with the 30-Day Limit on Double-Celling

Since the first pretrial detainees were placed in double cells on February 1, 1983, they should have been removed from their double cells no later than March 3, 1983. But this was not done, nor were the successive groups of pretrial detainees removed from double cells at the end of their respective 30-day periods. The court was not informed of these violations until shortly before the show-cause hearing held on May 24, 1983. By that time, most pretrial detainees at the Jail were being held in double cells--some for periods approaching four months. It was not until the latter part of July 1983 that the pretrial detainees were finally taken out of the double cells.

The defendants have attempted to justify their violations of

the 30-day limit on double-celling by saying that the violations were done with the "consent" of the affected inmates. This justification is untenable. The terms of the October 8 order were unambiguous: "It is hereby ordered that ... [n]o pretrial detainee be double-celled for more than 30 days." 554 F. Supp. at 566. It is a simple statement, without qualifications. For linguistic reasons alone, the court cannot believe that the defendants or their counsel in good faith could have interpreted the order to permit inmates to waive enforcement of the 30-day limit.

Moreover, this strained "interpretation" must be evaluated in the context of a series of actions which, when taken together, demonstrate that the defendants never made any real effort to comply with the 30-day limit. First, on October 13, 1982--within days of the issuance of the October 8 order--Mr. Donald Soskin, the Department's Judicial Affairs Officer, wrote the Assistant Corporation Counsel handling this case to ask two questions:

> 1. May the Department double cell a pre-trial detainee for periods in excess of 30 days when the detainee had consented to such housing? ...
>
> 2. May the Department, after releasing a pre-trial detainee at the expiration of 30 days (double celled) return the detainee to a double cell status in some reasonable time frame? ... [Plaintiffs' Exhibit 14.]

As these questions indicate, the Department's initial focus was more on how to evade the 30-day requirement than on how to comply with it. The questions also suggest that officials of the Department knew from the beginning that they probably would have

difficulty fulfilling the preconditions for double-celling unless they acted promptly to reduce the population at the Jail.

Second, on November 4, 1982, before any pretrial detainees had been double-celled, Mr. Thomas Gaydos, the Major/Operations (a senior position at the Jail), wrote in a memorandum to the Acting Administrator that:

> A review of the existing plan pertaining to double bunking residents housed at the Detention Facility has been found to be unacceptable and unworkable due to the thirty day time limitation specified in the Court Order dated October 8, 1982. [Plaintiffs' Exhibit 3.]

Nevertheless, the defendants protested against the plaintiffs' request that the defendants be required to keep records and file periodic reports concerning their compliance with the court's order. In their written opposition, the defendants told the court that no such order was needed since the defendants would comply:

> The assumption implicit in this request seems to be that defendants will ignore the restrictions on double-celling contained in the October 8 order. There is no basis for this assumption. [Opposition of Defendants to Plaintiffs' Motion to Modify Order Regarding Double-Celling at 5 (emphasis added).]

The attorney who made this representation was the same attorney to whom Mr. Soskin had written a few weeks earlier.

Third, on November 4, 1983, the defendants and their counsel appeared before the court at the hearing on the plaintiffs' motion to modify the October 8 order. If the defendants had had any real questions about the meaning of the order, they should have, and

almost certainly would have, taken the simple step of asking the court for clarification. The inference is unmistakable that no such request was made because the defendants knew that such an "interpretation" was totally at odds with the purpose and intent, as well as the language, of the October 8 order, and because the defendants wanted to be able to claim later that they were unsure about the meaning of the order.

Fourth, during the next three months the defendants took few steps to deal with the overcrowding problem or to prepare to administer double-celling in accordance with the 30-day limit. Then, on February 1, 1983, despite having been told that their plan for double-celling was "unacceptable and unworkable," the defendants placed the first pretrial detainees in double cells. There can be little doubt that by early February, Director Palmer and Assistant Director Holland knew that, unless they took immediate action to prevent it, the 30-day limit would be violated on March 3. But no such action was taken, nor was the court informed of the impending violations.

After March 3, this pattern of withholding information from the court continued. The evidence strongly suggests, and the court so finds, that the defendants deliberately sought to conceal their violations of the October 8 and December 17 orders from the court. In March 1983, when the court received several pro se motions alleging that the time limits on double-celling were being violated, counsel for the plaintiffs wrote the Department to determine the status of the inmates who had signed the motions and the accuracy of their allegations. On March 23, the Department

responded in a letter to counsel and the court that the inmates in question were sentenced inmates not subject to the time restrictions on double-celling. What the defendants failed to mention was that there were many pretrial detainees who were being confined under the same conditions complained about in the convicted inmates' pro se motion--conditions which violated the court's orders.

Subsequently, on April 18, 1983, the defendants informed plaintiffs' counsel and the court that most of the signers of a second pro se motion were pretrial detainees. They acknowledged that some violations of the 12-hour limit had occurred (though they added that such violations "are largely within the control of the residents"), but maintained a discreet silence concerning their systematic violations of the 30-day limit.

It was not until after the plaintiffs filed their motion for an order to show cause that the defendants finally informed the court that pretrial detaines had not been removed from their cells after 30 days. The court then learned that the defendants had offered detainees the choice of remaining in a double cell or being moved to makeshift dormitories. All but three of the detainees "consented" in writing to remain in the double cells. The three who refused were promptly moved into dormitories. But after one day in the dormitories, they all asked to be returned to the double cells and were promptly returned. However, the defendants did not permit any of the pretrial detainees to move into single cells after 30 days of double-celling -- a policy directly counter to the rationale behind the 30-day limit.

C. The Failure to Comply with the 12-Hour Limit on Double-Celling

The defendants informed the court and counsel for plaintiffs that they had implemented a schedule which permitted each double-celled pretrial detainee to leave his cell for 12 ½ hours each day. The 12 ½ hour total included 1 ½ hours for breakfast, 1 ½ hours for lunch, and 1 ½ hours for supper. But these figures were misleading because they represented the total time spent feeding all inmates, although the long-standing practice was to feed inmates in two shifts. In reality, an individual inmate was out of his cell for only half the period listed for meals. Thus, even if the schedule was fully implemented, an individual inmate spent only two hours and 15 minutes per day out of his cell for meals, not 4 ½ hours. Consequently, his total out-of-cell time under the schedule was at the most 10 ½ hours. Mr. Holland conceded that the schedule, as presented to the court, was "misleading."

Moreover, the schedule was often not implemented as planned, with the result that inmates were given even less than 10 ½ hours out of their cells. This is attributable to the fact that out-of-cell recreation time cannot begin until the "count" of the inmate population is completed. As Mr. George Holland informed Mr. Donald Soskin in a memorandum dated March 23, 1983:

> There have been occasions when the security count has not cleared in a timely manner or other circumstances that cause some delay in the start of some of the out of cell activities .... There have also been numerous emergency circumstances that

have required restrictions in the out of cell limits for prolonged periods of time. [Plaintiffs' Exhibit 10.]

The defendants knew that their schedule of out-of-cell activities did not comply with the court's 12-hour limit on double-celling, yet took no steps to extend out-of-cell time. They did not inform the court of these violations or move the court to modify the 12-hour limit until after plaintiffs filed their motion for an order to show cause why defendants should not be held in contempt. The requested modification was denied by this court on June 27, 1983.

D. The Failure to Comply with the Recordkeeping Requirement

The court's December 17 order required the defendants to keep records of the dates during which each pretrial detainee was double-celled and the hours during which inmates on each pretrial cellblock containing double cells were permitted to leave their cells. The feasibility of these recordkeeping requirements was established at the November 4, 1982 hearing. Nevertheless, the defendants failed to maintain the logbooks in a legible fashion.

At the August 9, 1983 hearing, Mr. Holland testified that there had been discussions concerning the adequacy of the logbooks, but could not recall what was said. He did remember that at some point he had been told that the logbooks were not being properly maintained, but could not remember when. It can be determined, however, that by March 23, 1983 at the latest, Mr.

Holland must have known that the records were inadequate, since his memorandum of that date to Mr. Soskin (Plaintiffs' Exhibit 10) refers to a review that had been made of the logbooks. And on April 28, 1983, Mr. Holland received a memorandum from Mr. Soskin (Plaintiffs' Exhibit 13) which stated that "the Department must immediately commence to upgrade its reporting consistent with its legal obligation." Despite this warning, the defendants failed to adequately supervise the guards who were charged with keeping the logbooks.

Even as late as the August 9, 1983 hearing, problems surfaced concerning the Department's recordkeeping. At the hearing and in their Report to the Court filed on August 3, 1983, the defendants stated that no pretrial detainee had been double-celled since July 19, 1983, but this statement appeared to be contradicted by the daily count sheets maintained by Assistant Administrator William Long. For example, the entry for July 29, 1983 shows that while cellblock S-1 is supposed to house a maximum of 53 pretrial detainees, it in fact contained 98 inmates, 15 of whom were in the "overflow floor" space. This implies that most of the inmates on S-1 were confined in double cells well after July 19.

When asked about this discrepancy, Mr. Holland said that only Mr. Long would know whether compliance with the orders had been achieved. He also said that while he receives the count sheets every day, he had not questioned Mr. Long about the discrepancy. Mr. Long, in turn, explained that the July 29 count sheet may simply indicate that some convicted persons were housed in a pretrial cellblock, but he could not state from personal knowledge

that this was so. Regardless of whether his understanding was correct, this interchange demonstrated that even in August 1983 the defendants were still unable to assure the court that its orders were being obeyed.

E. The Failure to Fully Utilize Existing Space

A recurrent problem in this litigation has been the Department's failure to make full use of its existing bedspace. Thus, while one facility may be terribly overcrowded, beds may remain unused at another facility. The recent example of the Minimum Security Facility is, unfortunately, typical.

The Minimum Security Facility is designed to hold only convicted inmates, but since a significant proportion--usually over half--of the residents of the Jail are convicted inmates, an obvious method for reducing overcrowding at the Jail is to transfer convicted inmates to the Department's Lorton facilities, such as the Minimum Security Facility.[4] In its order of March 8, 1982 denying the defendants' initial request for authorization to double-cell, the court pointed out that there were approximately 60 unused bedspaces at the Minimum Security Facility.

However, in a Report to the Court filed on April 9, 1982, the Department insisted that those 60 spaces were not available, and

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[4] In addition to relieving overcrowding at the Jail, the transfer of convicted inmates serves to return the Jail to its intended function as a holding facility for pretrial detainees. There are sound penological reasons for separating pretrial detainees from convicted inmates.

that while the facility was slightly under capacity, the correct capacity of the Minimum Security Facility was 252, not 300. Nevertheless, in a plan to relieve overcrowding at the Jail filed with the court on February 1, 1983, the Department stated that "[t]he District of Columbia shall further promptly expand population capacities at Minimum Security (+48) and Occoquan I (+38)." The expansion of the Minimum Security Facility by 48 spaces would have raised its capacity from 252 to 300. In a memorandum dated February 8, 1983, Mr. Palmer directed Mr. Holland and Mr. James Freeman, the Assistant Director for Correctional Services, to implement this expansion in an "immediate and orderly phased manner." The "expansion" of the facility required no new construction, but simply use of existing space. On February 1, 1983, the first day that pretrial detainees were double-celled at the Jail, the Minimum Security Facility contained only 214 inmates, or 86 inmates below its full capacity. On March 3, 1983, the first day of defendants' violation of the 30-day limit, there were 75 spaces open at the Minimum Security Facility (Plaintiffs' Exhibit 4). The defendants could have used these empty spaces to achieve compliance with the 30-day limit. But it was not until July 9, 1983, after more than four months of violating the 30-day limit, that the defendants finally reached the 300-person capacity at the Minimum Security Facility.

Similar questions can be raised concerning the emergency transfer in July 1983 of about 450 convicted inmates from the Jail to the Maximum Security Facility and the Central Facility at Lorton. The court is aware that as a result of other litigation--

Twelve John Does v. District of Columbia, No. 80-2136 (the Central Facility); John Doe v. District of Columbia, No. 79-1726 (the Maximum Facility) -- the Department is under pressure to reduce overcrowding at the Lorton facilities. Nevertheless, the defendants have not explained to this court how so many spaces suddenly became available in late July and why they were not used sooner. In the absence of such explanation, the court can only assume that the transfer could have been made months earlier if the defendants had exercised reasonable diligence.

F. The Failure to Take Any Other Timely Actions

When the defendants moved the court in September 1982 for authorization to double-cell, they acknowledged that double-celling could not offer a long-term solution to the overcrowding problem at the Jail. But they asked the court to authorize double-celling as a temporary measure which would give them additional time for implementing some program for dealing with the overcrowding.

Generally speaking, there are two means for reducing overcrowding at the Jail. One is to expand the capacity of the Department's custodial facilities. The other is to work with other governmental agencies to reduce the number of persons confined at the Jail.

The court had anticipated that the defendants would act vigorously on both these fronts, but, in fact, little or nothing was done. Consequently, almost a year of precious time was

lost. The responsibility for this costly delay cannot be placed solely on the Department of Corrections. If the problems at the Jail are to be dealt with in a meaningful fashion, adequate funds must be devoted to the task, and the activities of a number of governmental agencies must be coordinated; and such an effort, without the active leadership of the head of the City government, must fail.

Within the past few months (subsequent to the court's Memorandum and Order of June 27, 1983 and the inmate riot of July 22, 1983), the defendants apparently have at last begun to address the need for such a comprehensive approach. On August 3, 1983, a reform proposal entitled "Strategies for Addressing Jail and Prison Overcrowding" was issued by the Mayor's office and later presented to members of the recently-formed "Justice System Board".

The proposal establishes the following overall objectives:

A) To improve overall coordination between all elements of the system.

B) To reduce the number of offenders requiring incarceration through greater use of alternatives at both pretrial and post conviction states in the process.

C) To enact measures that, where appropriate, reduce the length of time that certain categories of sentenced offenders spend in prison.

D) To establish reasonable capacities in correctional facilities and institute mechanisms for ensuring them. [Proposal at 14.]

The proposal goes on to say:

> Systemwide strategies must be developed and implemented to meet these objectives. Successful implementation of these strategies is contingent upon, more than anything else, the successful coordination of the efforts of all elements of the criminal justice system. [Id. at 15.]

Among the specific "strategies" recommended in the proposal are improving coordination between police and prosecutors when large-scale arrests are planned, decriminalizing selected offenses, facilitating the sharing of information among the various criminal justice agencies, reviewing bail for reduction, release on recognizance or conditional release (including third-party custody), expanding use of diversion, improving treatment services for juveniles, increasing use of " pre-release centers", enacting "capping" legislation to limit the inmate population at the Department's custodial facilities, creating public service jobs for ex-offenders, increasing the capacity of the custodial facilities, and improving screening and retention of correctional officers.

This is obviously an ambitious agenda of reform, but a necessary one if the constitutional questions repeatedly confronted in this litigation are to be avoided. Of particular importance is the review of bail conditions for inmates incarcerated pending trial. See Campbell v. McGruder, 416 F. Supp. 106, 109 (D.D.C. 1975) ("The most meaningful step in the direction of compliance is to seek effective implementation of the procedures governing the release of pre-trial detainees.").

It is difficult to gauge the strength of the defendants' commitment to the overall goals and specific reforms contained in

their proposal. Unfortunately, the 12-year history of this litigation is not such as to inspire unqualified optimism.[5]

G. The August 9, 1983 Hearing

The general outline of the actions described above--though not all the unpleasant details--were known to the court by the end of the hearing held on May 24, 1983 to consider the plaintiffs' motion for a show-cause order and the defendants' motion for modification of the time limits on double-celling. It can be argued that the record produced in conjunction with the May 24 hearing provided a sufficient factual basis for this court to rule on the contempt motion. But this court has always refrained from using its contempt authority except when confronted with the most extreme cases of misconduct. Consistent with this longstanding policy, the court continued the contempt hearing until August 9 so as to give the defendants additional time to explain and justify their conduct. But as it turned out, the testimony and documentary evidence presented at the August 9 hearing did nothing to exonerate the defendants.

The first witness was Mr. Holland, who, in addition to his present position as Assistant Director for Detention Services,

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[5]As the court observed some years ago, "[t]hroughout these proceedings, when pressure was brought to bear, the impossible has become possible and compliance has been obtained, at least for a time. What has been missing, unfortunately, is a commitment to a long range, continuing effort to maximize the resources presently available to the Department and the City, and to make plans to increase those resources to meet the need." Campbell v. McGruder, 416 F. Supp. 111, 115 (D.D.C. 1976).

served from March 1982 until January 1, 1983 as the Department's Acting Director. In both capacities, he has been responsible for alleviating the overcrowded conditions at the Jail. Mr. Holland has been a frequent witness in these proceedings, and the court has often relied on his expert testimony in assessing conditions at the Jail. But it was obvious at the August 9 hearing that Mr. Holland was nervous and uncomfortable, and his credibility was undercut by his uncharacteristic inability to remember names and dates.

Mr. Holland acknowledged that the court's orders regarding double-celling had been knowingly violated. He said that he believed that in early February 1983 he had informed the Director's Office that the 30-day limit would soon be violated. He said that he believed that he had also discussed the violation with the City Administrator's Office and the Corporation Counsel's Office, but could not recall when. He emphasized that he had planned to comply with the court's orders by moving the detainees out of their double cells and into the open dormitory space before the expiration of the 30-day limit, but that he had received a "direction" not to do so. However, despite being prodded by the court, he insisted that he could not remember who had issued this direction. No clarification or explanation was presented from the City Administator's Office or the Office of the Corporation Counsel.

The second witness was Mr. James Palmer, who has been the Department's Director since January 2, 1983. Like Mr. Holland, Mr. Palmer suffered from memory lapses when questioned about the

actions he took in response to the October 8 and December 17 orders. For example, Mr. Palmer at first claimed that although he had been aware in January 1983 that this court had issued an order concerning double-celling at the Jail, he had not known about "details" like the 30-day limit, until April 1983. However, when confronted with a memorandum written to him on January 21, 1983 (Plaintiffs' Exhibit 9), which discussed the difficulties anticipated by his staff in complying with the 30-day limit, Mr. Palmer admitted that, in fact, he had known of that provision in January.

Mr. Palmer made similar misstatements when questioned about the July 22 riot. In response to a leading question from the Assistant Corporation Counsel, Mr. Palmer confidently asserted that the riot had begun in a cellblock housing only sentenced inmates. But when this account was challenged by plaintiffs' counsel, Mr. Palmer seemed unsure of himself, and eventually he acknowledged that his testimony concerning the riot was based on a short written report which he had not even carefully read.

Mr. Palmer also claimed that he had thought in March 1983 that his Department had been complying with the court's orders by moving pretrial detainees into the open dormitory areas of the Jail, that Mr. Holland had so informed him, and that he did not become aware of the Department's noncompliance with the 30-day order until late April. Under the circumstances, this testimony is not persuasive; and even if taken at face value, it at best would reflect an unacceptably passive attitude toward meeting the Department's legal obligations.

The last witness was Mr. William Long, who has been the Assistant Administrator of Detention Services since May 9, 1983. Mr. Long, of course, could not testify concerning actions taken by officials of the Department before he assumed his position. The principal effect of his testimony was to reveal the continuing problems in the Department's recordkeeping procedures at the Jail.

The defendants produced no witnesses from the office of the Mayor or the City Administrator.

CONCLUSION

In the light of clear and convincing evidence, it appears beyond question that the actions of the defendants since the issuance of this court's orders of October 8, 1982 and December 17, 1982 constitute civil contempt. The defendants knowingly violated the 30-day limit, the 12-hour limit, and the recordkeeping requirements set by the court, and sought to conceal their violations from the court's view. The defense of substantial compliance, though asserted,[6] has no basis in fact. Moreover, since the defendants failed to fully utilize existing cell space or to take any other timely actions to reduce overcrowding at the Jail, they cannot argue that they were unable to comply with the court's orders concerning double-celling. And, in any event, the defendants always had the option of placing the detainees in dormitories while seeking relief from the court. In

[6] See Defendants' Report to the Court dated August 3, 1983 at 7.

fact, Mr. Holland testified that he had planned to do exactly that, but was directed to do otherwise.

This is not the first time that the defendants have violated the court's orders. See, e.g., Campbell v. McGruder, 416 F. Supp. 106, 108 (D.D.C. 1975). But what is involved now is not simply another painful instance of bureaucratic rigidity and ineptitude, but rather a policy of bad faith, of disregard for the City's legal obligations, and of deliberate violations of the inmates' constitutional rights--in short, a pattern of "contemptuous" conduct, as both lawyers and non-lawyers understand that term.

Under these circumstances, the real question is not whether the defendants should be held in contempt, but what sanction should be imposed on them in order to neutralize their insensitivity to the rights of the plaintiffs, and to stimulate future compliance with the court's orders. Otherwise, the court's orders, though designed to protect the rights of the parties, are mere empty gestures, and the plaintiffs will continue to be at the mercy of the defendants.

In accordance with these objectives, and taking into account the grave harm likely to be suffered by the plaintiff class as a result of the defendants' "contumacy," and the resources available to the defendants, see United States v. United Mine Workers, 330 U.S. 256, 304 (1947), the court will impose a fine to be paid within 180 days of this order, and an additional fine for each day following the issuance of this order that the defendants are not in compliance with this court's orders concerning overcrowding at the Jail. However, the defendants may avoid these fines and purge

themselves of the contempt finding by demonstrating that they have fully complied with the court's orders during the 180-day period.

The court will also award the plaintiffs the costs, including attorney's fees, which they incurred in prosecuting the contempt motion. See, e.g., Hutto v. Finney, 437 U.S. 678, 689-93 (1978); Halderman v. Pennhurst State School and Hospital, 533 F. Supp. 649, 654 (E.D. Pa. 1982). Counsel for plaintiffs should submit an appropriate affidavit in support of this award.

According to the defendants' Reports to the Court dated August 3, 1983, and September 2, 1983, the double-celling of pretrial detainees at the Jail ceased on July 19, 1983: since that date, pretrial detainees have been housed in either single cells or "floor space" (sometimes referred to as "temporary dormitories").[7] This would appear to be the means by which the Department intends to maintain compliance with the October 8 and December 17 orders. The plaintiffs have claimed that use of these temporary dormitories threatens to subject them to further violations of their constitutional rights, and there is some evidence in the record tending to support their claim. Accordingly, the court will schedule an evidentiary hearing to consider this matter.

The foregoing constitutes the court's findings of fact and conclusions of law. An order consistent with this opinion will be

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[7]As the court discussed at pages 14-15, supra, the accuracy of this representation is uncertain.

entered.

UNITED STATES DISTRICT

Date: September 30, 1983