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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

FRED PIERCE et al., Plaintiffs, vs. COUNTY OF ORANGE et al., Defendants.	Case No. SA CV 01-981-GLT (MLGx) FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs sued for claimed unlawful conditions in the Orange County jails. The Court rules in favor of defendant County.

A. BACKGROUND

Plaintiffs Pierce, Ellerston, Valenzuela, and Conn bring class claims against Defendant County of Orange,[1] contending the County violates certain constitutionally protected and statutorily recognized standards in pre-trial inmate treatment at the Orange County jails. Plaintiffs also contend the County's jail conditions create unlawful barriers and lack of access to programs for disabled inmates.

[1] The other defendants have been dismissed from the case.

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Plaintiffs seek various remedies for the claimed violations of their rights.[2/]

The matter was tried without a jury over several days.[3/] Extensive briefing was submitted before and after the trial. Pursuant to Rule 52(a), Federal Rules of Civil Procedure, the Court now makes its findings and conclusions.[4/]

B. PRE-TRIAL INMATE CONDITIONS OF CONFINEMENT

Plaintiffs contend the County violates standards of pre-trial inmate treatment in several ways. It is claimed these violations are actionable as constitutional violations under 42 U.S.C. § 1983 (as Monell violations), and as state law violations under Title 15, California Code of Regulations.[5/]

As the basis for the § 1983 claim, the Court has reviewed the evidence for indications of the Fourteenth Amendment's "purpose of punishment" standard set in Bell v. Wolfish, 441 U.S. 520, 538-39 (1979). The Court has also examined the evidence for indications of excessiveness in the County's conduct, Demery v. Arpaio, 378 F.3d 1020, 1028-29 (9th Cir. 2004), or deliberate indifference.

[2/]One inmate's separate personal injury claim was bifurcated and will be tried after this matter is concluded.

[3/]This case was tried under a fixed time limit, with equal time allocated to each side. The Court finds the time allocated to each side was adequate to present their case. Each side had full opportunity to, and did, present their case completely and properly, and the positions of the respective parties were fully considered by the Court.

[4/]For purposes of this ruling, the Court finds Plaintiffs have standing and their claims are not moot.

[5/]Claims are treated as not separately actionable under the Court's orders in the Stewart case, but potentially actionable, instead, under 42 U.S.C. § 1983.

1 Since the County of Orange is the Defendant, for § 1983 liability
2 Plaintiffs must show a constitutional violation due to a policy or
3 custom of the County. Monell v. Department of Social Services of the
4 City of New York, 436 U.S. 658, 694 (1978). Random acts or events are
5 not a custom. Thompson v. City of Los Angeles, 885 F.2d 1439, 1443-44
6 (9th Cir. 1989). To be a custom, "the conduct [must have] become a
7 traditional method of carrying out policy." Trevino v. Gates, 99 F.3d
8 911, 918 (9th Cir. 1996).

9 Although compliance with Title 15's requirements is mandatory for
10 agencies like the County, Inmates of Sybil Brand Institute for Women v.
11 County of Los Angeles, 130 Cal. App. 3d 89, 108 (1982), there is a
12 substantial question whether Title 15 creates mandatory duties for
13 purposes of civil liability. Assuming (but not deciding) the potential
14 for civil liability exists, the Court has examined the evidence as to
15 whether the conditions of confinement complained of are reasonably
16 related to a legitimate governmental purpose, Sybil Brand at 101-02,
17 and whether the County has exercised reasonable diligence, California
18 Government Code § 815.6.

19 The claims on which the parties have joined issue are the
20 following:[6/]

21 1. Mealtime

22 Plaintiffs argue there are pervasive violations of sufficient time

23

24 [6/]Plaintiffs referred to other claimed County shortcomings
in various briefings, pretrial hearings, and at the trial, and
25 requested to conform the pleadings to the proof if the trial
evidence disclosed violations beyond those pled. (Plaintiffs'
26 Trial Brief, pp. 7-10, filed November 24, 2004.) However, in
their arguments at trial and the briefing that followed, the
27 parties joined issue on the claims discussed here, and those are
28 the ones upon which the Court will rule. No substantial issue
was presented concerning other claims.

to eat meals, in violation of both § 1983 and Title 15.

For § 1983 purposes, there is no constitutional standard for time to be allocated for an inmate's meal. The Constitution is satisfied as long as detainees are served well-balanced meals, containing sufficient nutritional value to preserve health. Green v. Ferrell, 801 F.2d 765, 770 n.5 (5th Cir. 1986). Title 15 § 1240 sets a minimum fifteen minute meal time.

The evidence shows the County sometimes met or exceeded the Title 15 standard, and sometimes did not. Inmates fed in their cells had as long as they needed to eat. Inmates in the dining hall had approximately fifteen minutes to eat, but reconstructed times from television monitors occasionally fell 10% or 20% under that mark.

For § 1983 purposes, the Court can find no "purpose of punishment," deliberate indifference, or excessive conduct by the County, or a policy or custom to deny sufficient nutrition or sufficient time to eat. For Title 15 purposes, the Court finds the County's food service scheduling is reasonably related to the legitimate government purpose of serving a large number of people in a security-sensitive situation, and the County has exercised reasonable diligence to comply with the state's time standard.

2. Holding cells

Plaintiffs contend the County has a pervasive pattern and practice of maintaining overcrowded holding cells with inadequate seating, in violation of the Fourteenth Amendment and actionable under § 1983.

Overcrowding alone does not rise to the level of a constitutional violation. Jenkins v. Velasco, 1995 WL 765315, at *5 (N.D. Ill. 1995); Hubbard v. Taylor, 399 F.3d 150, 164 (3d Cir. 2005); Malone v. Becher, 2003 WL 22080737, at *10 (S.D. Ind. 2003); Chavis v. Fairman, 1994 WL

1 55719, at 3-4 (N.D. Ill. 1994); Coughlin v. Sheahan, 1995 WL 12255 at
2 *3 n.3 (N.D. Ill. 1995). However, upon proof of excessive County
3 "purpose of punishment" conduct, or crowding giving rise to other
4 unconstitutional conditions, relief could be appropriate.

5 The evidence shows testimony by many inmate witnesses who did not
6 experience overcrowding, but some who said they did. There is no
7 indication the occasional incidents of overcrowding were punitive in
8 nature, deliberately indifferent, or were excessively harsh. The Court
9 is unable to find the claimed occasions of overcrowding are pervasive or
10 due to an improper policy or custom.

11 3. Outdoor exercise

12 Plaintiffs assert there is a pervasive and recurring County custom
13 and practice of providing insufficient outdoor exercise in violation of
14 both § 1983 and Title 15.

15 For § 1983 purposes, regular exercise of some type is crucial for
16 the psychological and physical fitness of prisoners. Bailey v.
17 Shillinger, 828 F.2d 651, 653 (10th Cir. 1987); Spain v. Procunier, 600
18 F.2d 189, 199 (9th Cir. 1979); see also Wrice v. Koehler, 1993 WL
19 300269, at *3 (N.D. Cal. 1993) (allegation pretrial detainees were
20 denied all access to exercise stated a cognizable Fourteenth Amendment
21 claim). However, "what constitutes adequate exercise will depend on the
22 circumstances of each case, including the physical characteristics of
23 the cell and jail and the average length of stay of the inmates."
24 Housley v. Dodson, 41 F.3d 597, 599 (10th Cir. 1994); accord Buffington
25 v. O'Leary, 748 F.Supp. 633, 634 (N.D. Ill. 1990) (no constitutional
26 claim where a prisoner had a reasonable opportunity for exercise and did
27 not allege any significant physical deterioration).

28 For example, in Campbell v. Cauthron, 623 F.2d 503, 507 (8th Cir.

1 1980), the Eighth Circuit held pretrial detainees are ordinarily
2 entitled to one hour of exercise outside their cells each day if they
3 spend more than sixteen hours in their cells. However, courts have
4 held pretrial detainees have no fundamental right to exercise if they
5 are incarcerated for a short time. See, e.g., Wilson v. Blankenship,
6 163 F.3d 1284, 1292 (11th Cir. 1998) (holding there is no "clearly
7 established constitutional law" requiring a jail to provide access to
8 outdoor exercise during time of incarceration when the term of
9 incarceration was short).

10 Title 15, section 1065(a), provides for a combination of exercise
11 and recreation. It calls for the facility administrator to develop
12 written policies and procedures for an exercise and recreation program,
13 in an area designated for recreation, allowing access a minimum of 3
14 hours per week. Although the Title 15 standard does not require it,
15 outdoor exercise is preferable when possible. See, for example, Board
16 of Corrections, Minimum Standards for Local Detention Facilities (1980).
17 Title 15 does not contemplate that dayroom recreation cannot be part of
18 the exercise and recreation combination.

19 The evidence does not show a constitutional violation. There is
20 no indication of a "purpose of punishment," deliberate indifference, or
21 excessiveness in the County's conduct in providing outdoor exercise, or
22 a showing of inmate physical deterioration. No policy or custom to
23 provide inadequate exercise has been shown. The evidence shows the
24 County's compliance with the exercise/recreation requirement of Title 15
25 is reasonably related to the legitimate purpose of providing for
26 movement and security of numerous inmates, and the County has used
27 reasonable diligence.
28

4. Dayroom access

Plaintiffs argue the County has unconstitutionally denied inmates adequate dayroom access.

The Court finds no authority holding dayroom access is, by itself, a constitutional requirement. However, lack of such access, accompanied by other oppressive conditions, can be a constitutional violation. See, for example, Lareau v. Manson, 651 F.2d 96, 105 (2d Cir. 1981) (combination of double-bunked cells, overcrowded dayrooms, and strained prison services over substantial time held unconstitutional punishment). Cases cited by Plaintiffs for the proposition that two hours per day of dayroom are constitutionally required do not so hold. Demery v. Arpaio, 378 F.3d 1020 (9th Cir. 2004) (use of "webcam" to display inmates on Internet; no dayroom issue); Halvorsen v. Baird, 146 F.3d 680 (9th Cir. 1998) (inmate held incommunicado; no dayroom issue).

The evidence shows that, in general, the County provided dayroom access to inmates. Some incidents of particular inmates failing to receive full scheduled dayroom access were shown. However, the evidence does not establish any dayroom deprivation was for the purpose of punishment, or that the County behaved with deliberate indifference, or in an excessive manner, or with a policy or custom to deny meaningful dayroom use. There was no showing lack of dayroom access combined with other factors to create a constitutionally oppressive jail condition.

5. Access to religious services

Plaintiffs assert the County has engaged in a pervasive and recurring custom and practice of denying access to religious services in violation of § 1983.

Under the Constitution, "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the

First and Fourteenth Amendments." Cruz v. Beto, 405 U.S. 319, 322 n.2 (1972). However, prison regulations limiting inmates' free religious exercise do not violate the First Amendment so long as they are reasonably related to a legitimate penological interest. Turner v. Safley, 482 U.S. 78, 89 (1987). Title 15 § 1072 requires the facility administrator to develop written policies and procedures giving inmates the opportunity to voluntarily participate in religious services and counseling. Neither the Constitution nor Title 15 fixes mandatory minimums.

The evidence shows the County does provide opportunities for inmates to participate in religious services and counseling. Occasional instances of impediments to participation were also shown. However, the Court cannot find the sporadic denials of religious service access were for the purpose of punishment, or showed excessive or oppressive conduct or deliberate indifference by the County. No policy or custom of denial of this basic right was shown. The County has exercised reasonable diligence, in view of its legitimate governmental purpose in housing many diverse inmates in a security-sensitive environment.

6. Conclusion

The Court does not find a § 1983 (Monell) constitutional violation or a state Title 15 violation.

C. DISABILITY COMPLIANCE

Plaintiffs contend the Orange County jails are not in compliance with federal or state disabled access requirements, and seek a declaration of such noncompliance and injunctive relief to cure it.

Title II of the Americans with Disabilities Act ("ADA") provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits

1 of the services, programs, or activities of a public entity, or be
2 subjected to discrimination by any such entity." 42 U.S.C. § 12132.
3 The ADA prohibits public entities from discriminating against disabled
4 persons or excluding disabled persons from participating in or
5 benefiting from a public program, activity, or service solely by reason
6 of disability. Weinreich v. Los Angeles County Metro. Transp. Auth.,
7 114 F.3d 976, 978 (9th Cir. 1997). A violation of the federal ADA is
8 also a violation of the California Disabled Persons Act, California
9 Civil Code §§ 54(c) and 54.1(d).
10 The ADA applies to all state and local government agencies,
11 including correctional or detention facilities. Armstrong v. Wilson,
12 124 F.3d 1019, 1022-23 (9th Cir. 1997); Pa. Dep't of Corr. v. Yeskey,
13 524 U.S. 206, 209 (1998) (state prisons); Bogovich v. Sandoval, 189 F.3d
14 999, 1002 (9th Cir. 1999) (same). The ADA's broad language covers
15 "anything a public entity does." Pennsylvania Dep't of Corr. v. Yeskey,
16 118 F.3d 168, 171 (3d Cir. 1997), *aff'd* 524 U.S. 206 (1998). This
17 includes programs or services provided at jails, prisons, and any other
18 "custodial or correctional institution." Id. Here, the ADA applies to
19 Orange County's five jails.
20 Programs provided in the jail environment are "services, programs,
21 or activities of a public entity" under the ADA. Armstrong, 124 F.3d
22 at 1023-24; see also Yeskey, 524 U.S. at 209-10.
23 For providing equal access to services, programs, or activities
24 for disabled inmates, the test is one of "reasonableness": public
25 entities are required to make "reasonable" modifications in policies,
26 practices, or procedures when the modifications are necessary to avoid
27 disability discrimination, unless the public entity can show the
28 modifications would fundamentally alter the nature of the service,

program, or activity. McGary v. City of Portland, 386 F.3d 1259, 1265-67 (9th Cir. 2004), citing 28 C.F.R. § 35.130 (b)(7).

The access standards require a public entity to operate a service, program, or activity so that, when viewed in its entirety, it is readily accessible and usable by disabled individuals. The public entity is required to develop a transition plan for structural changes to make programs accessible. Barden v. City of Sacramento, 292 F.3d 1073, 1075-76 (9th Cir. 2002).

1. Barriers

Unlike a public accommodation (covered by Title III) which must remove architectural barriers whenever "readily achievable," a public entity (covered by Title II) is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. 28 C.F.R. § 35.150(b)(1); Shotz v. Cates, 256 F.3d 1077, 1080 (11th Cir. 2001); Parker v. Universidad de Puerto Rico, 225 F.3d 1, 6 (1st Cir. 2000). For example, if one facility is inaccessible, a public entity may comply with Title II by making its services, programs, and activities available at another facility that is accessible. Shotz, 256 F.3d at 1080.

Cases applying the ADA to a prison setting are few, but reference to cases decided under the earlier Rehabilitation Act is helpful. The interchangeability of such decisional law between the two is appropriate. Parker, 225 F.3d at 4; Theriault v. Flynn, 162 F.3d 46, 48 n.3 (1st Cir. 1998); Gorman v. Bartch, 152 F.3d 907, 912 (8th Cir. 1998).

Although noting the Rehabilitation Act applied to a prison setting, the Ninth Circuit acknowledged the Act was not designed to deal specifically with the prison environment, but was for general societal

application, and consideration must be given to the reasonable requirements of effective prison administration. Gates v. Rowland, 39 F.3d 1439, 1446-47 (9th Cir. 1994). Concerning disabilities, an impingement on an inmate's rights is acceptable if it is reasonably related to legitimate penological interests. Gates, at 1447. The inmate has the burden of showing a challenged prison policy or regulation is unreasonable. Turner, 482 U.S. at 89-91; Casey v. Lewis, 4 F.3d 1516, 1520 (9th Cir. 1993).

The evidence in this case shows that, although significant efforts have been made, the Orange County jails have not yet been brought into full ADA compliance. In 2000, Orange County adopted a Transition Plan to move existing facilities toward ADA compliance. That plan was directed more toward structural modifications of public and visitor areas than toward compliance in inmate areas. Substantial upgrades were made under that plan. As trial of this lawsuit approached, additional significant structural modifications were made.

Certain inmate witnesses and Plaintiffs' expert, Mr. Robertson, identified various specific architectural barriers and features that are out of compliance with the ADA.[7] However, this initial showing falls short of the required additional showing to justify declaratory or injunctive action by this Court. Other than broad conclusory statements that Mr. Robertson thought the items could be fixed, there

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[7]Mr. Robertson was Plaintiffs' expert, but his testimony was of limited value. Plaintiffs had assigned him the limited task of looking only at existing conditions and commenting on what he saw. He made no study of expenses or methods to fix specific shortcomings. He did not evaluate whether other methods were effective in achieving compliance. He seldom testified about specific problems, but frequently talked about what was "typically" present. He made no analysis of accessability to programs or mainstreaming.

was no analysis, cost study, or proposal about how effective modifications could be made. There was no significant showing that, where an architectural shortcoming existed, it was not made accessible by other appropriate action taken by a jail employee.[8/] Where structural corrections were not yet accomplished, there was no significant Plaintiffs' showing that other methods were ineffective in achieving compliance, while there was significant defense evidence that other curative methods were effective. The evidence shows certain areas of ADA noncompliance are within the reasonable requirements of effective prison administration.

In summary concerning the existence of barriers for disabled inmates, the evidence shows some do exist, but the rest of the required showing was not made. On the contrary, the defense showed other effective remedies are in use, and decisions are being made concerning structural modifications in keeping with effective prison administration and based on legitimate penological interests.

2. Program access

Concerning access to programs, the evidence shows that, except for the "Best Choice" program, the various inmate programs are also available to disabled inmates. The various programs may be available only at accessible facilities rather than all facilities, but that is proper compliance. Captain Board testified there are security concerns about disabled inmates participating in the "Best Choice" program, and this legitimate penological interest was not rebutted. In summary concerning access to programs, there was an inadequate showing of the

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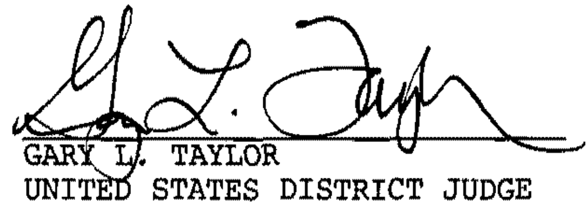
[8/]For example, where a small "lip" or ridge existed when passing from one cell area to another, or into the exercise area, a deputy would simply roll an inmate's wheelchair over the obstacle.

1 "reasonableness" of requiring modifications. The facts taken as a whole
2 show the County is acting in a reasonable manner, making programs
3 readily accessible and usable, with due regard to legitimate penological
4 interests.
5 The evidence shows it would not be reasonable to order
6 "mainstreaming" of disabled inmates. Legitimate penological interests
7 show this would not be appropriate. Programs, activities, and
8 facilities are readily accessible and usable without "mainstreaming."
9 3. Conclusion
10 The County is not yet in full ADA compliance, and it can
11 reasonably be expected to move toward full compliance. There has been
12 no showing the County will shirk that responsibility. The law requires
13 reasonable modifications, taking into account legitimate penological
14 interests. Plaintiffs have not shown violation of that standard. The
15 Court declines to declare an ADA or California Civil Code violation, or
16 order injunctive relief.
17 D. DISPOSITION
18 The evidence shows there is much room for improvement by the
19 County, particularly in areas of record-keeping and documentation,
20 inmate grievance procedure, inmate exercise, access to religious
21 services, and disabled access. However, improvement is always a
22 necessary goal, and the County and its Sheriff show every indication
23 they will perform that high duty. On the evidence presented, there is
24 no actionable federal or state violation.
25 The Court has considered all factors on the issue of a prevailing
26 party, and finds there is no prevailing party in this case.
27 //
28 //

Judgment shall be entered in favor of defendant County.

DATED: April 27, 2005



GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE