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FILED

JUN - 4 1993

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]*
DEPUTY CLERK

3 JOHN B. CRUZ, et al.,)

Case No. Civ. F-93-6078 REC

4 Plaintiffs,)

Sacramento, California

5 vs.)

Thursday, May 27, 1993

11:00 A.M.

6 COUNTY OF FRESNO, et al.,)

Plaintiffs' motion for
preliminary injunction.

7 Defendants.)

8
9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE JOHN F. MOULDS
11 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiffs:

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14 For County of Fresno:

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15 Court Recorder:

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25 Proceedings recorded by electronic sound recording.
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1 SACRAMENTO, CALIFORNIA, MAY 27, 1993, 11:00 A.M.

2
3 THE COURT: Good morning, all.

4 MR. HAGAR: Good morning, Your Honor.

5 MR. COMISKEY: Good morning, Your Honor.

6 THE COURT: I hear rumors you want to take up Cruz
7 versus Fresno County first.

8 MR. HAGAR: We would, Your Honor.

9 MR. COMISKEY: It's going to be probably fairly
10 brief, Your Honor.

11 THE COURT: Would those present state their
12 appearance, please.

13 MR. COMISKEY: Paul Comiskey appearing for the
14 plaintiffs.

15 MR. HAGAR: John Hagar appearing for the defen-
16 dants, Your Honor.

17 MR. COMISKEY: Your Honor, we have this matter set
18 for a preliminary injunction hearing tomorrow. However, in
19 the interim period we have worked out a stipulation, which I
20 think will result in a preliminary injunction. And we're
21 going to ask that the matter be taken off calendar.

22 And we'd like to just put on the record today the
23 main points of the injunction, and some other concerns. And
24 then we'll follow -- file that stipulation within the next
25 couple days.

1 THE COURT: All right.

2 MR. COMISKEY: Want to go ahead?

3 MR. HAGAR: Yes.

4 THE COURT: Who's going to recite the stipulation?

5 MR. COMISKEY: Mr. Hagar prepared it. I'll let
6 him do it.

7 MR. HAGAR: The stipulation involves three jails,
8 Your Honor. And essentially, what we've agreed to is a
9 permanent injunction in population limit for one of the
10 three jails and a preliminary injunction for the other two.

11 Concerning the Fresno County South Annex Jail and
12 the Main Jail, the defendants are enjoined from bedding
13 inmates on the floor. The defendants are also enjoined from
14 adding beds to the South Annex Jail and the Main Jail during
15 the pendency of this preliminary injunction.

16 The South Annex Jail will temporarily operate two
17 of its four floors, and the preliminary injunction stipula-
18 tion will set forth the exact capacities of each housing
19 unit on those two floors.

20 THE COURT: Have you agreed as to which floors?

21 MR. HAGAR: Yes, Your Honor. The first and second
22 floor. The third and fourth floors are presently being
23 renovated with an expected completion date of approximately
24 January of 1994.

25 And we've agreed that the South Annex Jail shall

1 North Annex Jail at the bed capacities -- essentially,
2 there's six pods, and we will operate each pod at 72 beds,
3 which is essentially identical to the temporary restraining
4 order stipulation entered into by the parties.

5 The defendants will be -- are enjoined from adding
6 beds to the North Annex Jail and are enjoined from bedding
7 inmates on the floor of the North Annex Jail. And the
8 defendants will -- shall also operate the North Annex Jail
9 utilizing five additional correctional officers added to the
10 jail staff as part of the settlement concerning plaintiffs'
11 application for temporary restraining order.

12 THE COURT: Does that mean one additional post?

13 MR. HAGAR: One additional post.

14 The inmates in the North Annex Jail shall also be
15 provided with access to one hour of daily exercise in the
16 North Jail's exercise area. And the stipulation will also
17 contain some provisions that inmates who are out of their
18 housing unit during their scheduled exercise time -- there's
19 not going to be a make-up process, and that inmates that are
20 in discipline for up to ten days will not be provided that
21 recreation.

22 But otherwise, all inmates in the North Annex Jail
23 shall receive one hour of daily exercise. They have, in the
24 North Annex Jail, an indoor/outdoor rec area right next to
25 the housing pods on each floor.

1 operate at the housing capacities that are set forth in the
2 agreement within the 90 days of your signing of the order.
3 During the interim period, the County is going to modify
4 some large dormitories on the first floor of the South Jail,
5 reduce the capacities of those dormitories. And the 90 days
6 is provided to put in new furniture, put in some indoor
7 recreation equipment, etc.

8 We've also stipulated that the parties shall meet
9 and confer and shall report to the Court about the future of
10 the South Annex Jail after Fresno County's fiscal year 1993-
11 94 budget is finalized. The reason we're taking this
12 approach is there's some indication that, because of the
13 budget shortfalls in Fresno County, the South Jail will not
14 be operated after January of 1994.

15 The Main Jail shall temporarily operate at its
16 existing bed capacity, but during the next several months
17 the County of Fresno will be meeting with the California
18 Board of Corrections in conjunction with a proposed pilot
19 project. This pilot project will involve operating several
20 of the floors of the jail as combination dormitories,
21 double-celled, single-celled units.

22 The Main Jail is a, what I would call a "pod
23 jail," with a central observation terminal, and each of the
24 housing units would be operated somewhat different. We're
25 going to attempt to work out a complete pilot project,

1 including staffing capacities for each floor of the Main
2 Jail.

3 The -- we anticipate, and the stipulation sets
4 this forth, that we will approach the formal Board of
5 Corrections concerning this pilot at their July meeting,
6 1993. During this process, Mr. Comiskey will have input in
7 dealing with the board staff, or with the formal Board of
8 Corrections, concerning his suggestions and comments about
9 the pilot process.

10 We will -- the parties will meet and confer after
11 the completion of the pilot project process and shall
12 thereafter report to the Court concerning the status of the
13 Main Jail. What we're hoping to do is to thereafter reach
14 an accord concerning a preliminary -- permanent injunc-
15 tion for the Main Jail at the capacities agreed on with the
16 Board of Corrections.

17 In the interim, a counsel for plaintiffs may
18 inspect the Main Jail and the South Annex Jail concerning
19 compliance with this stipulation, and also counsel will be
20 coming into the facilities with an expert concerning exer-
21 cise and recreation, and we're going to be giving some
22 consideration to that expert's opinions about enhancing the
23 recreation, especially in the South Jail dormitories.

24 We've also agreed and stipulate to the following
25 permanent injunction wherein the defendant shall operate the

1 The final provision of the stipulation calls
2 for -- the Sheriff of Fresno County shall be authorized by
3 this order to release inmates from the Fresno County Jail
4 system or refuse to accept inmates for booking into the
5 Fresno County Jail system whenever the Fresno County Jail
6 system or any facility therein or any specific housing unit
7 therein reaches 90 percent of capacity. The sheriff shall
8 release inmates or refuse to accept newly committed inmates
9 when the total population of the Fresno County Jail system
10 or any facility therein or any housing unit therein reaches
11 100 percent of capacity.

12 THE COURT: Is there a provision for the selection
13 of inmates to be so released, or is that going to be at the
14 discretion of the sheriff?

15 MR. HAGAR: That shall be at the discretion of the
16 sheriff. It was an earlier issue, and after working with
17 them, we've decided to have the sheriff have that discre-
18 tion.

19 If I could just state for the record, Your Honor,
20 I have personally presented this concept to the Board of
21 Supervisors prior to meeting with Mr. Comiskey, and I
22 received their approval to negotiate this approach. Subse-
23 quent to Paul and I working out the details, the Board of
24 Supervisors approved this stipulation in closed session last
25 week. Sheriff Magarian has also approved this stipulation.

1 I've also discussed the necessity of population
2 capacities personally with the Presiding Judge of the
3 Superior Court, the Presiding Judge of the Municipal Court,
4 representatives from the Justice Court, on two occasions
5 with the District Attorney, with the Public Defender, and
6 with the Chief Probation Officer. And we believe that the
7 County as an entity understands the consequences of this,
8 and there is no conflict within the County concerning the
9 need for this stipulated preliminary and permanent injunc-
10 tion.

11 THE COURT: And in any event, you are here and
12 still alive.

13 MR. HAGAR: Barely.

14 THE COURT: All right.

15 Mr. Comiskey?

16 MR. COMISKEY: I'd like to add some brief com-
17 ments, Your Honor.

18 The -- as to the South Annex, we are agreeing to
19 these numbers, but we want it to be clear to the defendants
20 that the -- that we have concerns that these numbers may
21 still be too many for the South Annex to operate on a
22 permanent basis.

23 THE COURT: Well, that issue is preserved --

24 MR. COMISKEY: We understand that --

25 THE COURT: -- to a later time. All right.

1 MR. HAGAR: Yes.

2 MR. COMISKEY: They are talking about putting in a
3 fair amount of money into some renovations, and I'm just
4 making it clear on the record that that is not necessarily
5 going to be the number that we will ask them to end up with.

6 As to the Main Jail, that -- the board-rated
7 capacity of the Main Jail is 427, which is the number of
8 cells that they have there. Mr. Ray Nelson, who -- was of
9 the opinion that this was quite unrealistic, because those
10 cells are very large. And he was of the opinion that that
11 jail could operate quite acceptably with double-celling
12 throughout.

13 And so we have agreed upon this process where
14 we're going to get that Main Jail reviewed by the Board of
15 Corrections with input by Mr. Nelson into whatever the Board
16 of Corrections thinks the number should be there and what
17 they think the number of supervisors should be -- I mean,
18 the supervisory personnel and so forth. We're willing to
19 rely to them, to some extent, to help us come to a number as
20 to what the population in the Main Jail should be.

21 We also have some concerns -- I just want to put
22 this on the record briefly -- about noise in both the South
23 Jail and the Main Jail. The studies that we have received
24 regarding noise show that the noise levels in the Main Jail
25 are considerably above the OSHA decibel ratings. And we

1 think that some noise renovations are going to be necessary
2 in both the Main Jail and the South Jail in order to get the
3 noise level down to a safe level for the inmates and the
4 staff.

5 I just wanted to put those matters on the record,
6 Your Honor.

7 THE COURT: All right. The -- are the outlines of
8 the stipulated matters set forth by Mr. Hagar stipulated to
9 by plaintiffs?

10 MR. COMISKEY: Yes, Judge. We've had long ses-
11 sions and a lot of time to review this. And we're in
12 agreement with the stipulation.

13 THE COURT: All right. That sounds as if you've
14 all made a substantial amount of progress. I have one
15 procedural question.

16 Mr. Hagar, you've made reference to the orders
17 becoming effective upon my signature.

18 MR. HAGAR: Thank you for reminding me of that,
19 Your Honor. The -- we have a specific provision in that the
20 above orders are effective June 17th, 1993.

21 And what's happening today is that the signed
22 stipulation is on its way back to Mr. Comiskey's office to
23 be Fed Ex'd, and we'd hope to have it to you tomorrow --

24 THE COURT: All right.

25 MR. HAGAR: -- or the next day.

1 THE COURT: So I should be seeing this
2 stipulation, at the earliest, by the middle of next week.

3 MR. HAGAR: Yes.

4 MR. COMISKEY: Yes, Your Honor.

5 THE COURT: And is it prepared -- how is it being
6 prepared for Court approval? For my signature, for the
7 district court's signature, or --

8 MR. HAGAR: I wasn't involved in the initial phase
9 of the case, Your Honor. But I believe the County and
10 plaintiffs have stipulated to you as the judge for all
11 purposes. So I prepared it for your signature.

12 THE COURT: All right.

13 MR. COMISKEY: That is correct.

14 MR. HAGAR: It'll be signed by myself, J. Wesley
15 Merritt, the Assistant County Counsel, and Mr. Comiskey.

16 THE COURT: All right. Sometime soon, then, we
17 need to meet and talk about scheduling, right?

18 MR. HAGAR: Yes. But what we'd prefer, if the
19 Court would agree, would be, perhaps, to meet and talk late
20 July, early August. By then, plaintiffs' exercise individ-
21 ual will have gone through the facility, and we will have
22 completed our discussions with the Board of Corrections,
23 and, to a great extent, I think the population aspects of
24 the case may be taken care of.

25 THE COURT: Well, obviously, you've made a lot of

1 progress, and I have great hope that you're going to be able
2 to continue to -- in the same vein.

3 MR. COMISKEY: Your Honor, this is a more narrow
4 case than we usually bring. This only involves population
5 and exercise. Those are the two issues that it --

6 MR. HAGAR: And noise.

7 MR. COMISKEY: -- and -- yeah. That'd be part of
8 the population.

9 THE COURT: My concern only is that, Mr. Hagar,
10 your clients are anticipating spending a fair amount of
11 money in relatively short period of time. And I'm sure that
12 wouldn't be spent in violation of the Constitution, but it
13 would be a real shame if --

14 MR. HAGAR: Well, let me -- maybe I can clarify
15 what we're trying to do.

16 We have dormitories that are board-rated, say, at
17 20. And today they probably have 70 inmates in those dormi-
18 tories. We've developed a plan to move the population from
19 20 down to, say, 40, with --

20 THE COURT: You mean, from 70 to 40.

21 MR. HAGAR: From -- excuse me. From 70 down to
22 40, and then having a separate area for recreation and
23 providing tables for everyone and some other enhancements.
24 And we are, right now, having acoustic people looking at the
25 ceilings and to look at some of Mr. Comiskey's noise

1 concerns.

2 It may be that when we're done and the experts
3 have all come in that there's a dispute between the parties
4 and the County will be able to continue to fund the total
5 operation of the facility, we'll come back to you and say,
6 "We need for you to rule. Should it be board-rated or five
7 higher or ten higher or what?"

8 But we feel we need to get down to those numbers
9 right now from an operational point of view.

10 THE COURT: So that you anticipate that -- in the
11 first place, you anticipate this matter is going to be
12 resolved. To the extent that it cannot be resolved, it
13 would appear that this is a matter which could be the
14 subject of trial someplace in the middle of this next fall,
15 basically.

16 MR. HAGAR: Yes. Probably late fall. I -- it's
17 hard for me to predict the California state budget. But
18 once we know what they all work out, we should know exactly
19 where we would be. And by then, I believe, the experts will
20 have already have been in, and it will probably down to an
21 issue of day rooms.

22 THE COURT: For my purposes, let's set a date for
23 a scheduling conference, or status conference, so that we do
24 not lose track.

25 Let's go off the record for a minute.

1 (Off the record.)

2 THE COURT: August 12th, eleven o'clock, gentle-
3 men?

4 MR. COMISKEY: Very well.

5 MR. HAGAR: Fine, Your Honor.

6 THE COURT: Okay.

7 MR. COMISKEY: Thank you, Judge.

8 THE COURT: One moment.

9 (Pause.)

10 (Off the record discussion.)

11 THE COURT: Mr. Comiskey, I do not find in here
12 a --

13 MR. COMISKEY: Stipulation?

14 THE COURT: -- a consent to proceed before this
15 Court filed by plaintiffs.

16 MR. COMISKEY: If the Clerk will give me one, I'll
17 have one filed tomorrow. I couldn't find mine in my file
18 the other day, either. But I would have sworn that I filed
19 it. And I -- I felt maybe it just hadn't been filed yet.

20 THE COURT: Well, you may have two, but --

21 MR. COMISKEY: Okay. Thanks.

22 THE COURT: Anything further?

23 MR. HAGAR: No, Your Honor.

24 THE COURT: All right. Thank you very much.

25 MR. HAGAR: Thank you, Your Honor.

1 (Whereupon, the hearing in the above-entitled matter
2 was adjourned.)

3 ---oOo---

4 CERTIFICATE

5 I certify that the foregoing is a true and correct
6 transcript from the record of proceedings in the above-
7 entitled matter.

8
9 
10 Siri L. Panton, Transcriber

June 2, 1993

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