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United States District Court, D. Kansas.

Thomas PORTER, et al., Plaintiffs,  
v.  
Governor Bill GRAVES, et al., Defendants.

No. 77-3045-RDR. | Dec. 19, 1995.

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#### Opinion

#### MEMORANDUM AND ORDER

ROGERS, District Judge.

\*1 Following an evidentiary hearing, this case is now before the court upon defendants' motion for permission to double-cell three medium security units at the Lansing Correctional Facility (LCF). These units are designated the K, L and M units at LCF. Defendants' proposal "at this time" is to have double occupancy in 134 of the available cells at the units. Defendants have limited their current plans for double-celling to this number of cells because they believe they can only provide employment for that additional number of inmates. Plaintiffs oppose any double-celling at the K, L and M units.

#### Facts

The K, L and M units at LCF hold medium security inmates. After opening in the mid-1980s, these units were double-celled until July 1, 1991. Double-celling stopped on that date by order of the court in this litigation.

K, L and M units have 96 cells apiece; a total of 288 cells. Each unit has three levels. Two of the levels contain the cells which are divided into six pods with eight cells per pod. Each pod has twenty-four hour access to a corridor which leads to the bathroom and shower area. This corridor was described as a "walkway" by an inmate witness. It was described as a "living area" by the defendants' witnesses. The corridor appears wide enough to accommodate a few chairs or tables. A third level in each unit contains a dayroom which has tables, chairs, a television, and pool tables.<sup>1</sup> Picnic tables are stationed outside of the K, L and M units. A multipurpose building containing an indoor gymnasium and numerous kinds of recreational equipment is available to the inmates.

The cells in the K, L and M units are 112 inches deep by 82 inches wide. They contain an alcove area next to the cell door. The alcove area is 34 inches by 32 inches. Each cell currently contains a bed approximately 34 inches wide by 80 inches long with two storage drawers beneath it. The cells also currently contain a desk, a chair and a locker/wardrobe. The locker/wardrobe fits in the alcove area. The cells are centrally heated. There is no air conditioning, but fans are available.

The inmates in K, L and M units are not confined to their cells for more than 10 hours a day. When the units were double-celled previously, there was more frustration and homosexual activity among the inmates, and the guards were more tense. There were also fewer services for the

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inmates.

Defendants' double-celling motion is in response to population pressures in the Kansas prison system. There are several alternatives to double-celling inmates at K, L and M units. Changes in the sentencing guidelines could be made to lessen the overall prison population. Double-celling could be implemented at the correctional facility at Norton, Kansas. Renovation or expansion of facilities at Winfield, El Dorado or Lansing could be tried.

LCF has been accredited by the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC). The K, L and M units have been accredited by the ACA twice; however, they were not accredited by the ACA when they were double-celled. Defendants contend that double-celling the K, L and M units will not prevent ACA accreditation because the ACA revised its standards in August 1991 to permit double-celling of medium security inmates under certain conditions. Defendants believe they can meet those conditions.

\*2 Under defendants' double-celling proposal, those cells not designated for physically handicapped inmates will be modified in the following fashion. The desk and chair will be removed. Bunk beds which are 28 inches wide and 80 inches long will be installed. The locker/wardrobe will be divided into two separate units. The locker/wardrobe will be 24 inches by 34 inches. Five additional correctional officers and two additional counselors will be staffed for the extra 134 inmates. More shower or toilet facilities may also be installed to comply with ACA standards.

By removing the desks and chairs from the cells and reducing the size of the bed, defendants' measurements show that 50.11 square feet of "unencumbered" space will exist in each cell. This figure includes the two-inch space between the bed and the wall and other space where fans might sit during the summer. Plaintiffs contend that defendants are counting space which is actually encumbered by fixtures or furniture. This debate has significance because one of the standards of the ACA calls for inmates who are double-celled to have 50 square feet of unencumbered space.<sup>2</sup>

### **Prior court orders**

It is important to look at prior orders of the court to determine whether defendants are asking, in effect, for the court to modify the substance and intent of a previous final judgment or consent decree. The Supreme Court has discussed the standards for making such a modification. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). We do not believe the *Rufo* standards apply to defendants' double-celling motion. We believe the court

and the parties anticipated that changes would be made in prison capacities because of new construction and renovation and that the court would approve or disapprove any changes if the parties could not agree upon them. A procedure for automatic approval was agreed upon when certain standards were met, but if those standards were not met, then it was agreed that the court would evaluate the changes on the basis of standards consented to or ordered in previous decrees.<sup>3</sup>

The original consent decree in this case, which was filed on May 15, 1980, provided in its first substantive paragraph that defendants would apply for accreditation of LCF (then called the Kansas State Penitentiary) by the ACA. The decree further provided that plaintiffs would agree to dismiss their claims when, *inter alia*, the institution received accreditation. The decree also called for single cell occupancy or closely supervised multiple occupancy dormitories to the extent reasonably possible. This decree was entered five years before K, L and M units were constructed.

After the case was reactivated and a few years after the K, L and M units were finished, the court entered an order on April 13, 1989. The order was issued in reaction, in part, to overpopulation at LCF. The court noted that in March 1988 there were 1,810 inmates in the same space as 933 occupied at the time of the consent decree and 658 inmates in the medium security building.<sup>4</sup> The court also noted that: virtually all the inmates were double-celled; hundreds of inmates were doubled-celled for 17, 21 or 24 hours a day; and the population made it impossible to meet accreditation standards.

\*3 On April 13, 1989, the court issued an order directing defendants to reduce the population at LCF to not more than 1,262 inmates by July 1, 1991. The court further ordered that double-celling in the medium security unit end on July 1, 1991, and, in the meantime, that double-celled inmates not be confined to a cell for more than 12 hours per day except for security or disciplinary reasons. The order also required that an ACA audit of LCF be completed by October 1, 1989 and that ACA and NCCHC medical standards be met and certified by December 18, 1990. ACA accreditation was ordered to be certified by October 1, 1991 and maintained thereafter. Population caps for other prison facilities in Kansas were also established in the order.

In 1991, defendants filed a motion to enlarge the operating capacities in certain prisons in Kansas. In response to the motion the court issued a tentative order which provided notice and opportunity to respond to the plaintiff class of inmates. Doc. No. 331. One portion of the tentative order related to a process for considering requests for modification of population limits which resulted from new construction or renovation consistent with ACA standards. The following standards were set

forth in the tentative order:

- 1) new construction which complies with ACA standards and which does not significantly reduce the ability to maintain ACA required services will be automatically allowed;
- 2) renovations of space not previously used to house inmates will be permitted automatically if there was a minimum of 35 square feet of unimpeded floor space per inmate and ACA physical plant standards and dayroom space standards are satisfied—otherwise specific approval must be provided by the court after consideration of any objections; and
- 3) renovation of existing facilities which increases their capacity shall be adequate if it meets the standards for new or renovated facilities specified above; modifications which maintain prevailing standards of compliance with ACA Standards for the existing institution as a whole, and which do not result in any significant reduction in space or services for inmates compared to those generally prevailing in the institution, will also be allowed.

The tentative order stated, as an example of the application of these standards, that proposed increases in the operating capacities of the Topeka Correctional Facility and the Ellsworth Correctional Facility would be *automatically* allowed since, in the case of the Topeka Correctional Facility, the 35 square feet standard and ACA standards were satisfied, and, in the case of the Ellsworth Correctional Facility, the modifications would maintain standards and conditions which currently prevailed in the institution.

On May 17, 1991, the court formally adopted these procedures for automatic approval of future renovation and construction. Doc. No. 350. The court also gave complete approval to the proposed modifications in the operating capacities of Topeka Correctional Facility and conditional approval (later made permanent, see Doc. No. 451) to the proposed modification in the operating capacity at Ellsworth Correctional Facility.

\*4 In the same order the court disapproved defendants' request for an extension of time to discontinue double-celling the K, L and M units at LCF. The court noted that: the end to double-celling was at the heart of the litigation; the need to continue double-celling after the July 1, 1991 deadline was not clear; and that other alternative measures could be taken which would not appear to cause a substantial danger to society.

A few months after this opinion was filed, the ACA issued the previously mentioned standards for double-celling medium custody inmates. The parties do not argue against the application of the new standards

even though the standards were promulgated after the above-mentioned court orders.

***Evaluation of defendants' proposal***

The court does not find, nor do plaintiffs contend, that defendants' proposal will violate the Eighth Amendment to the Constitution. The question before the court is whether defendants' motion is contrary to prior orders of the court.

The court's May 17, 1991 order set out procedures for the *automatic* approval of modifications in operating capacities. Standards for automatic approval were established for new construction, renovation of facilities which do not currently house inmates, and renovation of existing prison facilities. The standard governing renovation of existing prison facilities applies here.

The proposed modification for double-celling at the K, L and M units does not meet the standards for automatic approval for renovation of an existing prison facility. The cells at K, L and M units will not provide 35 square feet of unimpeded floor space per inmate. Moreover, defendants have not shown that the space available for double-celled inmates will be comparable to the space most inmates have at LCF. Certainly, there will be a significant reduction in space as compared to what the single-celled inmates in K, L and M units enjoyed. For these reasons, defendants' proposal does not warrant *automatic* approval.

However, the court may still approve the proposed modification after considering plaintiffs' objections. Indeed, the order which originally established population limits for prisons in this case stated that inmate population limits may be modified because of new or renovated housing which complies with ACA standards. Doc. No. 206 at ¶ 17 (4/13/89). Although the renovations in K, L and M are relatively minor, they are intended to achieve compliance with ACA standards. Accordingly, the court believes defendants' motion must be considered as a *renovation* proposal for the court's consideration, as opposed to a motion for relief from a final judgment or consent decree. This distinguishes defendants' current motion from defendants' prior request to extend the deadline to end double-celling at K, L and M units.

Compliance with ACA standards has been a consistent guideline agreed to by the parties and the court in this litigation. Obviously, if double-celling the renovated cells in K, L and M units satisfies ACA standards, the language and intent of the prior judgments and decrees will be followed. The parties disagree, however, as to whether the ACA standards will be violated by the double-celling of inmates in the renovated cells.

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\*5 Specifically, the disagreement concerns whether the renovated cells will provide 25 square feet of unencumbered space per inmate. According to defendants' calculations, the cells will contain 50.11 square feet of unencumbered space. Defendants arrive at this figure by subtracting the square feet occupied by fixtures and equipment from the total square feet of the cell. Plaintiffs object to this computation because it counts the 2 inch by 28 inch space between the bed and the wall as unencumbered space. Plaintiffs contend that this space is not usable and should not be counted as unencumbered space. By plaintiffs' calculations, the cells provide 49.7 square feet of unencumbered space. Both sides have sought and shall be granted leave to supplement the record with letters from the same ACA regional administrator. These letters state that defendants' calculations conform with the literal reading of the standard, but suggest that the intent of the standard may not be upheld by defendants' approach.

It is not the court's intention to micromanage the Kansas prison system. Therefore, the court is reluctant to render a decision based on a difference of less than one hundred square inches, particularly when that difference may have no impact on any Eighth Amendment issue. Moreover, the ACA square footage standards might be satisfied in the K, L and M unit cells without necessarily improving the comfort of the cells. For instance, if the beds were narrowed to 26 inches, a sufficient amount of "unencumbered space" might be produced under the standards. It is also conceivable that the standards might be met by shortening the beds to 76 inches, thereby making the space between the beds and the wall larger and more "usable." These are matters best left for the decision of persons trained in prison administration.

Nevertheless, the court does not want to diminish the practical advantages of the parties agreeing to fairly specific standards for cell construction and renovation as well as other aspects of prison administration. Usually,

Footnotes

1 LCF officials indicate that the pool tables may be removed and not replaced as they wear out. The inmates may also have televisions in their cells.

2 The relevant ACA standards read as follows:  
3-4128-1 Single cells/rooms and multiple occupancy cells/rooms may be used for housing inmates in medium/minimum custody when the classification system, cell/room size, and level of supervision meet the following requirements:

1.	Number of Occupants	Amount of Unencumbered Space *
	1	35 square feet per occupant
	2-50	25 square feet **

\* "Unencumbered space" is usable space that is not encumbered by furnishings or fixtures. At least one dimension of the unencumbered space is no less than seven feet. In determining unencumbered space in the cell or room, the total square footage is obtained and the square footage of fixtures and equipment is subtracted. All fixtures and equipment must be in operational position and must provide the following minimums per person: bed, plumbing fixtures (if inside the cell/room), desk, locker, and chair or stool.

\*\* Sleeping area partitions are required if more than four people are housed in one sleeping area.

this reduces litigation and the expense and unpredictability attendant to litigation.

Nor can the court or the parties ignore the fact that the ACA standards were consented to in previous decrees and incorporated by the court in prior orders. These decrees and orders cannot be modified without proper cause. *Rufo, supra*. Moreover, defendants have not expressly asked for relief from these guidelines.

With this in mind, the court shall conditionally approve defendants' proposal to double-cell 134 cells in K, L and M units. The conditions for this approval are as follows: 1) maintaining ACA accreditation at the K, L and M units; 2) the completion of necessary renovations consistent with ACA standards; 3) screening of inmates for suitability for double-celling; and 4) maintenance of employment opportunities for the inmates who are double-celled. In so ruling, the court is permitting the ACA, in the normal cycle of accreditation, to decide whether its physical standards are met by defendants' double-celling proposal. If the standards are not satisfied or if accreditation is denied, then defendants must develop a different proposal for housing the inmates at K, L and M units or ask for modification of the previous orders of this court.

**Conclusion**

\*6 Plaintiffs' and defendants' motions to supplement the record shall be granted. Defendants' double-celling motion is granted under the conditions set forth in this order.

IT IS SO ORDERED.

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2. When confinement exceeds 10 hours per day, there is at least 80 square feet of total floor space per occupant.

3. Housing is in compliance with ACA standards 3-4132, 3-4133, 3-4134, 3-4137, 3-4144, and 3-4282.

4. Medium security inmates housed in multiple occupancy cells/rooms require direct supervision. (See glossary for definition of direct supervision.)

A classification system is used to divide the occupants into groups that reduce the probability of assault and disruptive behavior. At a minimum, the classification system evaluates the following:

- mental and emotional stability
- escape history
- history of assaultive behavior
- medical status
- age
- enemies of record

Male and female inmates are housed in separate cells/rooms.

3-4128-2 Written policy, procedure, and practice provide that single occupancy cells/rooms shall be available, when indicated, for the following:

- inmates with severe medical disabilities
- inmates suffering from serious mental illness
- sexual predators
- inmates likely to be exploited or victimized by others
- inmates who have other special needs for single housing

3-4129 Each inmate confined to a cell/room for 10 or more hours daily is provided a sleeping area with the following: a sleeping surface and mattress at least 12 inches off of the floor; a writing surface and proximate area to sit; storage for personal items; and a place to suspend clothes.

Each inmate confined to a cell/room for less than 10 hours daily is provided a sleeping area with the following: a sleeping surface and mattress at least 12 inches off of the floor; storage for personal items; and a place to suspend clothes.

3 The court shall not consider the potential application of 18 U.S.C. § 3626 to this matter. Prior to filing their proposed findings of fact and conclusions of law, defendants did not mention this statute. Consequently, the issue was not raised or discussed during the hearing in this matter or responded to by plaintiffs' counsel. Also, defendants have not formally asked the court to reopen a prior order or consent decree under the terms of the statute.

4 The 658 inmates may have included inmates in a dormitory building.