

141 Cal.App.3d 482
Court of Appeal, First District, Division 4, California.

In Re Ervin Grant BRANSON, et al., on habeas
corpus.

A020323, A020324. | March 29, 1983. | Hearing
Granted June 30, 1983.

Inmates filed petition for writ of habeas corpus, seeking relief from alleged overcrowding and inhumane conditions in jail. The Superior Court, Santa Clara County, Bruce Allen, J., ordered sheriff and county to take specific steps to eliminate conditions in violation of petitioners' constitutional rights and ordered county to pay cost of complying with orders. County and sheriff petitioned for extraordinary relief and filed notices of appeal. After prehearing conference resulted in stipulated settlement, clerk of Court of Appeal issued remittitur pursuant to stipulation, and Court of Appeal, on its own motion, recalled remittitur, county moved to "confirm" the final judgment and consent decree and for reissuance of the remittitur pursuant to the stipulation. The Court of Appeal held that: (1) before Court of Appeal may order entry of new judgment by stipulation or consent, such stipulation must be considered by three-judge panel and approved by at least two judges of that panel; (2) attempted transmutation of habeas corpus proceeding into civil rights action would not, even if effective, confer jurisdiction upon Court of Appeal to approve stipulation; (3) since habeas corpus proceeding was in effect a class action, compromise or dismissal of action had to be approved by trial court and Court of Appeal had no jurisdiction to approve stipulated judgment and consent decree in first instance; and (4) even if Court of Appeal had jurisdiction, Court would decline to review stipulated judgment and consent decree in absence of complete review of proposal by trial court.

Ordered accordingly.

Attorneys and Law Firms

*414 Donald L. Clark, County Counsel, Steven Woodside, Deputy County Counsel, San Jose, for respondents, appellants and petitioners Santa Clara County and Members of the Bd. of Supr's of Santa Clara County.

John T. Ball, San Jose, for respondent, appellant and petitioner Robert Winter, Sheriff.

H. David Grunbaum, Eileen Matteucci, San Jose, for petitioners and respondents Ervin Branson, et al.

Joseph V. Thibodeaux, Deputy Dist. Atty., San Jose, for intervenor People of the State of Cal.

Opinion

THE COURT:

Ervin Grant Branson and 17 other inmates in the Santa Clara County main jail filed a petition for a writ of habeas corpus in the Santa Clara County Superior Court (Sup.Ct. Action No. 78807). They sought relief from alleged overcrowding and inhumane conditions in the jail. Santa Clara County and its board of supervisors and sheriff were named in the petition as respondents.¹

¹ The petitioners did not serve a copy of the petition on the district attorney as required by Penal Code section 1475. Months later, when the court ordered the early release of some inmates due to overcrowding, the People of the State of California, represented by the Santa Clara County District Attorney, were allowed to intervene for the limited purpose of protecting the People's interest against early release of jail inmates.

At hearings on the petition, the superior court found that overcrowded and inhumane conditions in the jail violated the petitioners' constitutional rights. The court therefore ordered the sheriff and the county to take specific steps to eliminate those conditions. The court also ordered the county to pay the cost of complying with the orders.

The county and the sheriff petitioned this court for extraordinary relief from 18 orders of the trial court. They also filed six notices of appeal from the same orders. (See Pen.Code, § 1507.)² Shortly after the first notices of appeal were filed, a judge of this court conducted prehearing conferences pursuant to rule 19.5 of the California Rules of Court.³ The conferences resulted in a *415 stipulated settlement which treated the habeas corpus proceeding as an action for violation of the petitioners' civil rights. (42 U.S.Code, § 1983.) The stipulated settlement also provided for the entry of a "final judgment and consent decree" which would have vacated all "existing orders."⁴ A copy is attached hereto. (See appendix) The stipulated settlement was approved by the prehearing conference judge and filed. Pursuant to the stipulation, the clerk of this court issued a remittitur on February 1, 1983, which directed the clerk of the superior court to enter the final judgment and consent decree.

² The People have not appealed from these orders. They have appealed only from superior court order 9C, which ordered the sheriff to include work credit under Penal Code section 2933 in computing all prisoners'

release dates. That appeal is pending before this court in action No. A021188.

³ Rule 19.5 provides: “(a) At any time after the notice of appeal is filed, the Presiding Justice may: (1) order the appellant to file a short statement of the nature of the case and the issues on appeal; (2) order counsel for the parties, and any other persons he deems necessary, to appear before a judge of the court for a prehearing conference to consider the simplification of the issues on appeal, the possibility of settlement, and any other matters the designated conference judge determines may aid in the disposition of the appeal. Matters agreed upon shall be reduced to writing and, when executed as a stipulation and approved by the conference judge, shall be filed with the clerk and shall control the subsequent course of the appeal, unless modified to prevent manifest injustice.

“(b) The conference judge and any court attache who attends the conference shall not participate in or do anything to influence the consideration or decision of the appeal on its merits.

“(c) The statement of the nature of the case and the issues and any matters occurring or said at a prehearing conference, unless stipulated to, approved and filed as provided in subdivision (a), shall not be referred to in any subsequent proceedings in the appeal, except a further prehearing conference or other settlement negotiations.

“(d) If a prehearing conference is ordered prior to the date appellant’s opening brief is due to be filed, the period for filing the brief is extended to a date 30 days after the conference date specified in the order.”

⁴ The People were not a party to the stipulated settlement.

This court, on its own motion, recalled the remittitur (see rule 25(d)) because the stipulated final judgment and consent decree had not been approved by this court, i.e., by a panel of three judges.⁵ (See Cal. Const., art. VI, § 3). The county then filed a motion to “confirm” the final judgment and consent decree and for reissuance of the remittitur pursuant to the stipulation. That motion is now before us. For the reasons hereinafter stated, we deny that motion.

⁵ This court’s order provided: “The document purporting to be a ‘remittitur,’ which was addressed and transmitted to the clerk of the superior court by the clerk of this court on February 1, 1983, is hereby recalled on the ground that it was issued by reason of inadvertence of mistake. Alternatively or cumulatively, said document purporting to be a ‘remittitur’ is hereby vacated and set aside on the ground that it is null and void. The written ‘Stipulation for Consent Decree’

signed by certain attorneys on February 1, 1983, and approved by the conference judge and filed with the clerk of this court on said date, shall remain on file pending its consideration by the undersigned justices of this court, only, sitting as a Court of Appeal. Nothing in said stipulation has or shall have any force or effect unless and until, and to the extent that, the same is approved in an order or orders of this court sitting as a Court of Appeal.”

The first question is whether the stipulated final judgment and consent decree must be approved, and ordered entered, by a three-judge panel of this court before the clerk may issue the remittitur, or whether the remittitur may be issued on approval of the stipulation by the prehearing conference judge. The question is one of first impression in this state.

[1] [2] When a court of appeal has an appealable judgment or order before it, the court has jurisdiction to affirm, reverse, or modify it, and to direct the entry of a proper judgment or order. (Code Civ.Proc., §§ 43, 906; Pen.Code, § 1260.) Where the parties to an appeal stipulate that the judgment or order must be affirmed, reversed, or modified, this court may, if it agrees, render a decision pursuant to the stipulation. (See, e.g., *People v. The Federal Land Bank of Berkeley* (1948) 31 Cal.2d 871, 192 P.2d 948; *Miller v. Board of Supervisors of Santa Clara County* (1966) 64 Cal.2d 890, 50 Cal.Rptr. 915, 413 P.2d 859.)

[3] [4] [5] [6] [7] Article VI, section 3, of the California Constitution provides that a court of appeal “shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.” Rule 19.5(a) provides: “Matters agreed upon shall be reduced to writing and, when executed as a stipulation and approved by the conference judge, shall be filed with the clerk and shall control the subsequent course of the appeal, unless modified to prevent manifest injustice.” This rule in effect binds the parties to the stipulation once it is approved by the conference judge. It prevents a party from withdrawing from the stipulation unless it is later disapproved or set aside by the court. To be consistent with article VI, section 3, of the Constitution, rule 19.5(a) cannot be interpreted to *416 mean that the prehearing conference judge has authority to vacate the judgment or orders that have been appealed and order the entry of a new judgment; a single judge is not “a court of appeal.” (Cal. Const., art. VI, § 3.) Before the court of appeal may order the entry of a new judgment by stipulation or consent that stipulation must be considered by a three-judge panel and approved by at least two judges of that panel.⁶

⁶ Not all stipulations approved by a prehearing

conference judge must be approved by a three-judge panel of this court. For example, where a prehearing conference results in a settlement before the record has been filed, the appellant or the parties may agree to a voluntary abandonment and dismissal of the appeal pursuant to rule 19(a). The stipulated settlement, however, cannot change the trial court's judgment or order without approval of the trial court. Dismissal of an appeal after the record has been filed requires approval of this court (rule 19(b)).

The next question is whether entry of the stipulated final judgment and consent decree which is on file with the clerk (see Appendix) should be ordered by this court.

[8] We are asked to approve a stipulated final judgment and consent decree which purports to convert this state habeas corpus proceeding into a civil rights action under a federal statute. There is federal court precedent for the entry of consent decrees in actions brought by jail inmates or prisoners for violations of their civil rights under the statute invoked in this stipulation (42 U.S.Code, § 1983). (See, e.g., *Goldsby v. Carnes* (W.D.Mo.1973) 365 F.Supp. 395, amended (1977) 429 F.Supp. 370; *Padgett v. Stein* (M.D.Pa.1975) 406 F.Supp. 287; *Finney v. Mabry* (E.D.Ark.1978) 458 F.Supp. 720.) But in each of these cases, a judgment by consent was approved not by an appellate court in the first instance but by the federal district court pursuant to the Federal Rules of Civil Procedure. Thus the attempted transmutation from habeas corpus to a federal civil rights action even if effective would not confer jurisdiction upon this court to approve the stipulation.

[9] Instead, the case before this court is in the form of a habeas corpus proceeding in which the superior court granted relief on petition by 18 inmates. Since none of the 18 petitioners is now in custody the issues presented are therefore moot as to them. But the same rationale that encourages this court to resolve otherwise moot questions when they involve matters of broad public interest which are likely to recur, particularly in the administration of criminal justice (*In re Walters* (1975) 15 Cal.3d 738, 744, 126 Cal.Rptr. 239, 543 P.2d 607; *In re Brindle* (1979) 91 Cal.App.3d 660, 670, 154 Cal.Rptr. 563), also impels this court to treat this proceeding as one in the nature of a class action brought to remedy matters not only for the 18 named petitioners but for all those in the jail subjected to the same allegedly unconstitutional conditions.

In similar fashion the federal courts have held that a class action, or an action analogous to a class action, is appropriate in a habeas corpus proceeding, particularly where the relief sought is for the benefit of all jail inmates or prisoners. (*Williams v. Richardson* (8th Cir.1973) 481 F.2d 358; *United States ex rel. Sero v. Preiser*, (2d Cir.1974) 506 F.2d 1115, 1125, cert. den., 421 U.S. 921,

95 S.Ct. 1587, 43 L.Ed.2d 789; *Bijeol v. Benson* (7th Cir.1975) 513 F.2d 965, 968; see also, *Adderly v. Wainwright* (M.D.Fla.1967) 272 F.Supp. 530, 46 F.R.D. 97, 58 F.R.D. 389.)

[10] In such actions the California Supreme Court has directed the trial courts to follow the procedures prescribed in rule 23 of the Federal Rules of Civil Procedure (28 U.S.C.). (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821, 94 Cal.Rptr. 796, 484 P.2d 964; *Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 360, 134 Cal.Rptr. 388, 556 P.2d 750; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146, 172 Cal.Rptr. 206, 624 P.2d 256.) Subdivision (e) of rule 23 provides: "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such *417 manner as the court directs." The California courts follow that rule. (See, e.g., *Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 129 Cal.Rptr. 509; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451, 131 Cal.Rptr. 482.) Since this action is in effect a class action, any compromise or dismissal of the action must be approved by the trial court in order to protect the interests of all members of the class. This court has no jurisdiction to approve the stipulated judgment and consent decree in the first instance.

[11] Even if this court had jurisdiction to review the stipulated judgment and consent decree in the first instance we would decline to do so in the absence of a complete review of the proposal by the trial court. The stipulated judgment is not limited to disposition of the underlying legal issue, namely, whether the trial court exceeded its jurisdiction or power in ordering the county to pay the cost of complying with the court's orders; rather, it consists of a far-reaching, detailed plan to revamp and regulate the administration of the entire Santa Clara County Jail system. This court cannot approve such a plan based primarily on the representations of the parties, i.e., without a complete record. Such plans can best be approved by the trial judge or judges who hear the evidence and will have responsibility for enforcement of the judgment.

[12] For the guidance of the parties in further efforts to reach a settlement we note that several of the features of the consent settlement document are beyond the power of the parties to impose and therefore are beyond the power of any court to approve. For example, with respect to enforcement or modification of the decree the provisions of Part XX purport to: (a) remove jurisdiction from the trial court judge now hearing these matters; (b) eliminate the fact finding function of the superior court; (c) require as a condition precedent to any order of modification or enforcement a hearing before a fact finding panel whose findings of fact would be "final and binding" on the trial

court; and (d) allow each party, on *each* motion, the right to disqualify the judge assigned. Such provisions, which go both to the heart of the jurisdiction of the trial court and to the very function of a judge as fact finder in habeas corpus, constitute an improper interference with the trial court's jurisdiction.

Accordingly, the motion to confirm the stipulated final judgment and consent decree is denied. The stipulated final judgment and consent decree shall have no force or effect. The clerk of this court shall not issue a remittitur directing entry of that judgment and consent decree in the trial court. The stay ordered by this court on February 8, 1983, shall remain in full force and effect, except that the parties may seek the trial court's approval of a settlement.⁷ Meanwhile, this court shall proceed to decide the merits of the pending legal issues. Because we find that the appeals from the orders do not provide the parties with a speedy and adequate remedy at law, we are ordering the issuance of an alternative writ in response to the petition for extraordinary relief which is pending in proceeding No. A020324. Further proceedings herein will be expedited.

⁷ Section 664.6 of the Code of Civil Procedure provides: "If parties to pending litigation stipulate, in writing or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement."

CALDECOTT, P.J.
RATTIGAN, J.

POCHÉ, J.

APPENDIX

[Caption and stipulation omitted]

STIPULATED FINAL JUDGMENT AND CONSENT DECREE

(42 U.S.C. § 1983)

Order 9-C (50% work and conduct credit) is under review in the Court of Appeal; it is unaffected by this disposition. Similarly unaffected is the right of the People to participate as intervenor in any future proceeding for

enforcement or modification of the Decree in which the People desire to challenge the propriety of any provision for *418 release of inmates which may be proposed in connection with the Decree.

All other existing orders of the trial court are vacated. Final judgment is rendered as follows:

I. POPULATION

(A) The population of the main jail shall not exceed 715 persons housed. Every inmate kept in the main jail over 8 hours between the hours of 6:00 p.m. and 8:00 a.m., who is not in the process of being released or transferred to another facility, shall be classified as a "person housed" within the meaning of this decree. The Sheriff shall keep a record of the time of receipt of any person received for booking in the main jail and shall record the time the booking process is completed for each individual and he is placed in the classification unit holding cell. This information shall be logged on each inmate's booking jacket or other files kept by the classification unit.

(B) Every inmate kept in the main jail over 8 hours between 6:00 p.m. and 8:00 a.m. shall be supplied with a bed, mattress, sheets, a pillow, blankets and a complete issue of clothing; and each inmate shall receive a copy of the rules and regulations issued by the Sheriff for control of the main jail, otherwise known as the Orientation Manual. Inmates temporarily housed longer than 8 hours shall receive meals which are comparable to the meals provided to the general jail population.

(C) No inmate shall at any time be bedded on the floor in any jail facility.

(D) The Sheriff must inform the Public Interest Law Firm, the County Counsel, and the District Attorney (hereinafter referred to as "all counsel") within 24 hours should the main jail population exceed 715 for any period of time whatsoever.

II. ADDITIONAL BEDS

(A) Twenty additional minimum security beds have been installed in barracks at the Elmwood jail facility during December 1982.

(B) Twenty-four additional maximum security beds shall be installed in the modular jail facility at Elmwood for occupation no later than February 15, 1983. The Sheriff shall require staff to patrol into the bedroom areas of this facility at intervals of no less than once every two hours commencing at 6:00 a.m. and continuing through 11:00 p.m. Within 60 days of the entry of this Decree, the Sheriff shall send to all counsel a report of compliance

with this Decree, recording the frequency of patrol.

(C) An additional facility housing a minimum of 20 inmates previously confined in the main jail (public inebriates and physically infirm persons) shall be added at the Elmwood facility. The new facility shall be fully in operation no later than March 31, 1983. An additional 40 hours per week of nursing services shall be provided by the county in this facility. The County shall immediately appropriate all necessary funds to complete construction and to hire additional staff to operate this facility.

(D) A second new facility to house 40 medium security inmates shall be added to Elmwood and be fully in operation no later than April 30, 1983.

(E) The county shall proceed expeditiously with its present plans to construct a 240-bed work furlough facility to be operational no later than October 31, 1983, as well as plans to remodel the North County Jail adding approximately 55 maximum security beds, and said facilities are incorporated as a requirement of this Decree.

(F) No later than April 1, 1983, the County shall publish and transmit to all counsel a comprehensive plan for the housing of inmates pending completion of the planned new main jail. The plan must include: 1) an estimate of the number of beds needed in each year, 2) the number of new or replacement beds to be added in each year, 3) all alternatives to add new facilities or to remove the need for new facilities that are considered but rejected, and the reason for the rejection, 4) a financial analysis of such plans, and 5) a plan to reduce inmate populations in existing facilities. Thereafter, the County shall file identical but up-dated *419 reports to all counsel every 6 months. Nothing herein shall be construed as foreclosing a motion to modify the judgment.

(G) The County acknowledges its responsibility to provide new bed space and facilities for inmates should the population increase beyond the current bed space as required above and as otherwise set forth below.

(H) EXISTING FACILITIES

(1) The main jail shall not exceed 715 inmates housed. The North County Facility currently has a bed capacity of 76 inmates; the minimum security facilities at Elmwood presently has a bed capacity of 1052; the medium security at Elmwood facility has a bed capacity of 180; the modular unit shall have a bed capacity of 144 on February 15, 1983, as set forth in subpart A of this part.

(2) Additional beds shall not be added to any existing facilities without providing all counsel with at least 30 days written notice, except in emergencies, other than fluctuations in the inmate population.

III. USE OF FACILITIES

The Board of Supervisors shall immediately establish a public works labor program pursuant to the terms of Penal Code section 4024.2. The Board shall immediately establish the criteria for inmate eligibility for the program. The Sheriff shall thereafter immediately identify all inmates eligible to participate under the established criteria, and immediately implement the program.

The Park Alameda facility may be vacated immediately upon implementation of this program. This provision should not be interpreted to permit a violation of Section I(C) or other terms and conditions of this Decree.

The County shall not vacate any other facility, building, or bed used to house inmates until and unless there is a replacement facility, building or bed of equal number and of like security. If a particular replacement bed, building or facility becomes unnecessary, it may be vacated. But prior to vacating any facility other than Park Alameda, the County shall give 30 days' notice to all counsel.

IV. STAFFING

The average number of custodial staff at the main jail each week shall be no less than 24 on each shift. In no event shall there be fewer than 22 on duty on any shift. No two consecutive shifts shall be as low as 22; and, for purposes of computing an average, no more than 28 per shift may be counted.

The transportation staff shall consist of no less than 15 persons.

V. MEDICAL SERVICES

Adequate regular and emergency medical and psychiatric care is essential to all inmates. Medical care must be provided in a timely and appropriate manner in response to a request by any inmate. To achieve this standard, the following requirements are specified:

(A) The County shall comply with all state and federal laws concerning medical care, health and facility sanitation.

(B) The County shall develop a plan for semiannual inspections and audits as well as a mechanism for review by a panel of experts. The first inspection team shall be comprised of persons mutually agreed to by the Public Interest Law Firm and by the County and shall commence no later than 60 days from the date of this Decree. An inspection report, including written findings and recommendations shall be provided to all counsel. Such

report shall address the following questions as well as other questions raised by the panel:

- (1) Systems to ensure prompt response to request for medical services;
 - (2) Procedures to adequately screen newly admitted inmates;
 - (3) Staffing levels;
 - (4) Staff training;
 - (5) Methods to improve staff morale and sensitivity to inmate needs;
- *420** (6) Recording keeping regarding inmate requests for treatment.

The County shall within 30 days of the submission of the report, respond in writing to each finding and recommendation. The parties reserve their right to seek modification of the Decree regarding the implementation of these recommendations. There shall be a peer review system which shall be consistent with the peer review system currently in use at the Santa Clara County Valley Medical Center (VMC).

(C) A medical screening questionnaire shall at booking be given to each inmate housed in the main jail. The questionnaire shall state, in bold type, that the information set forth on the form is confidential and will not be used by the Sheriff except for medical purposes. This information shall also be set forth in the Sheriff's orientation manual. The medical screening questionnaire shall be printed in English and Spanish and shall request information concerning any present medical complaints; whether the inmate is under a doctor's care, and the name of such doctor; whether the inmate wishes to see a doctor prior to being assigned housing; whether the inmate is taking any prescribed or unprescribed drugs or medication; whether the inmate has any special dietary requirement; whether the inmate has any special or specific medical conditions which need immediate medical attention. In addition, the questionnaire shall permit the inmate to request to immediately see a physician, stating the reason for the request. If the questionnaire cannot be completed by the inmate, a custodial or medical staff member must complete it on the inmate's behalf. If the questionnaire is not completed, the inmate shall be seen by medical staff within 24 hours of completion of the booking process.

Any inmate wishing to see a physician prior to being assigned to housing shall be seen by the medical staff.

(D) All inmates shall be provided a form to request medical assistance. All such requests shall be transmitted

only to medical staff. The medical request shall be dated by the inmate or by the medical staff upon receipt. Every request for medical services shall be reviewed by a physician or registered nurse. A record of all such requests, including the date of each request shall be maintained and the disposition of all requests shall be recorded. Should any request be denied, the reason must be noted. Any reason for postponement or any change in a medical appointment shall be noted as well as the date of any future appointment.

VI. FOOD SERVICE

(A) The County shall comply with all state and federal laws concerning food service and preparation in the jail facilities.

(B) All special diets required by medical order shall be provided to each inmate without exception.

(C) Each inmate shall be allowed at least 15 minutes in which to eat.

(D) The County shall develop a plan for semiannual inspections and audits of food service, preparation, delivery, and nutrition. The first inspection team shall be comprised of experts who are mutually agreeable to the Public Interest Law Firm and the County and shall commence no later than 60 days from the effective date of the decree. An inspection report, including written findings and recommendations, shall be provided to all counsel. Such report shall address the following questions as well as other questions raised by the panel: 1) Food preparation and nutritional content; 2) Adequacy of portions; 3) Quality control; 4) Staffing levels and performance; 5) The nutritional content of the commissary; and 6) Delivery of food to inmates. The County shall, within 30 days of the submission of the report, respond in writing to each finding and recommendation. The parties reserve their rights to seek modification of this Decree regarding the implementation of these recommendations.

VII. MAINTENANCE OF THE MAIN JAIL

The inspection and maintenance plan submitted to and approved by this Court is ***421** hereby adopted as the maintenance plan for the main jail. Faithful execution of the maintenance plan is commanded by the Decree.

Because the main jail will continue to be heavily burdened, an active program of maintenance is necessary. The County must:

(A) Supply the Sheriff with no less than 150 gallons of paint each year. The Sheriff shall develop and implement

a plan to routinely repaint all areas, especially housing areas, within the main jail.

(B) Provide a permanent and qualified maintenance force in the main jail to repair, replace and maintain all plumbing, ventilation, heating, kitchen, electrical and mechanical fixtures, equipment and appliances.

(C) Procure, install, replace, repair and maintain appropriate drinking fountains in every housing unit in the main jail on or before July 1, 1983. If this project cannot be completed by July 1, the County shall report to all counsel no later than June 15, 1983, as to reasons for delay and anticipated completion date. In every housing unit or cell that does not have an operating fountain, a clean cup or appropriate drinking vessel shall be provided daily to every inmate assigned to the housing unit.

(D) Initiate steps within 24 hours to repair or replace any defective or inoperative plumbing, ventilation, heating, electrical, kitchen and mechanical fixtures, equipment and appliances in the main jail or at Elmwood. Any defect of a health threatening nature shall be immediately repaired.

VIII. LAW LIBRARY

Use of the law library in the main jail and at Elmwood is governed by the Orders entered in *Batchelder v. Geary*, C-71-2017 (N.D.Cal.1977), except as modified herein.

(A) The law library shall be available to all inmates who request the use of the facility without limitation except as to those inmates who have destroyed, altered, or taken law library materials from the law library without permission of the Sheriff's staff. Every inmate shall be given reasonable access to the law library. The library shall be open from 7:50 a.m. to 11:00 p.m. every day. A record of requests and of library usage shall be maintained with respect to the main jail library. Library usage shall be scheduled in order of request except that priority is to be given to those inmates who are *in propria persona*, or assisting their counsel in any civil or criminal proceeding in the state and/or federal courts. Access to the law library shall not conflict with or take precedence over other jail visitation, exercise, recreation, medical, or mealtime activities except with the consent of the inmate. Writing materials, including typewriters in working condition, will be supplied.

(B) The contents of the law library at the main jail and at Elmwood shall be increased to include the materials set forth in Appendix A attached hereto. At least semiannually a written inventory will be taken of all materials and supplies in the law library. The inventory will note all missing and/or out-of-date materials and the County shall, within 30 days, order supplements or replacements to bring the law library into compliance

with this order. The inventory and the order requests shall be provided to all counsel on request.

IX. VISITATION

The Sheriff shall increase the visitation hours to a minimum of three hours each weekday in addition to the previously existing weekend schedule. All inmates shall be allowed a minimum of one hour each week for visitation. Stewards shall receive a minimum of two hours each week. In addition, the Sheriff shall make all reasonable efforts to maximize visiting opportunities. Inmate use of any unused and available visiting position shall be on a first visiting request priority basis. No inmate shall have an absolute right to more than one hour in excess of the established minimum period per week. All public notices and signs posted concerning visitation shall conform to this Decree as shall the Sheriff's Orientation Manual.

***422 X. EXERCISE**

The County shall comply with the California Minimum Jail Standards in providing exercise opportunities to all inmates. In addition, the Sheriff shall increase recreational activities by providing chess sets and other similar games and supplies to the inmates including sports or other physical activities. Within 60 days of the entry of this Consent Decree, the Sheriff shall report in writing to all counsel the increases in recreational opportunities. The parties reserve their rights to further hearings regarding the substance and implementation of this plan.

XI. READING MATERIALS

The County shall establish a system to permit inmates to order books and reading materials from a local organization or business approved by the Sheriff. The County shall file with all counsel within 60 days of entry of this Decree a report regarding the implementation of such a system.

XII. CLOTHING, SUPPLIES AND PERSONAL HYGIENE

The County and the Sheriff shall comply with all state and federal statutes and regulations concerning the provision of adequate and clean clothing and bedding supplies to all inmates housed in the main jail and at Elmwood.

XIII. RELEASE OF INMATES

(A) The discretion to release inmates is vested in the

judiciary, except that the Sheriff has statutory authority to release certain misdemeanants.

(B) The Sheriff shall exercise discretion pursuant to Penal Code section 853.6 to cite and release persons, otherwise eligible for release on their own recognizance, who are charged with a failure to appear. The Sheriff is authorized to require such persons to appear as early as the next available court session.

(C) The Sheriff shall release inmates pursuant to Penal Code section 4024.1, as previously ordered by this court.

(D) The County shall provide additional probation services for the purpose of permitting the County Parole Board to exercise parole authority pursuant to Penal Code section 3016.

(E) Order No. 9C, providing for a 50% work and conduct credit shall not be affected in this Decree and that issue shall proceed independently of this action.

XIV. ADDITIONAL FUNDS FOR JAIL FACILITIES

The County Executive and the Santa Clara County Board of Supervisors shall, after public hearing, cause an election to be held upon a measure to provide funds for the purpose of constructing and operating jail facilities. Within 30 days of this Decree, the County shall establish an advisory task force, including representatives of the County Bar Association, the League of Women Voters, law enforcement groups, etc., for the purpose of advising as to the nature and timing of such measure.

XV. FIRE SAFETY

The County shall immediately purchase or put out for bid, a contract to provide heat and smoke alarms in every housing unit at the Elmwood facility, said project to be completed on March 31, 1983.

XVI. MAIL

The Sheriff shall date stamp and promptly deliver upon receipt all mail sent to any inmate unless it is found to contain contraband. The Sheriff shall also promptly forward all mail to inmates held in other County jail facilities.

XVII. TELEPHONE USE

The Sheriff shall provide inmates reasonable and routine access to telephones for use in communicating confidentially with their lawyers or the courts.

XVIII. REPORTS

(A) The County shall transmit to all counsel within 60 days of this Decree a *423 written report fully detailing its compliance with all the terms of this Decree.

(B) On at least a semiannual basis beginning September 1, 1983, the main jail and other detention facilities shall be thoroughly inspected by a team consisting of a qualified sanitarian, a qualified dietician or nutritionist and a qualified public health nurse. The inspection team shall be required to inspect the facilities to insure that the terms of the Decree are being met. The inspection procedure shall be governed by the provisions of Health and Safety Code section 459, Penal Code section 6031 and the Minimum Standards for Local Detention Facilities, 15 California Administrative Code, section 1014. The inspection team shall file with all counsel a comprehensive written report within 20 days of the inspection. The County shall, within 30 days of such report, respond in writing to each finding and recommendation, transmitting copies of its response to all counsel.

(C) The Santa Clara County Bar Foundation Public Interest Law Firm shall be permitted to inspect all facilities and records, except individual medical records to investigate compliance with all the terms of this Decree at any reasonable times.

(D) Any violation of any provision of this Decree shall be reported by the Sheriff in writing to all counsel within 72 hours of the incident or violation. Such report shall include a complete narrative of the incident or violation, a statement of the reasons therefor, and all corrective action taken or anticipated to cure the violation.

(E) In addition to the above, copies of all reports by inspection teams from the California State Board of Corrections shall be transmitted to all counsel by the Sheriff within 5 days of receipt from the Board of Corrections. The County shall respond in writing to all counsel within 30 days regarding the finding of the Board of Corrections. The parties reserve their rights to seek a modification of this Decree regarding the substance and the implementation, if any, of the Board's recommendations.

XIX. ENFORCEMENT

(A) The superior court retains jurisdiction of this case to modify or enforce this Consent Decree as provided herein until such time as the planned new main jail is completed.

(B) This Decree shall be posted in every jail law library and available at every jail security station. The substance

of it shall be included in the next printing of the jail orientation manual.

(C) Unless otherwise provided, every term of this Decree shall be effective immediately. Lack of funds shall not constitute good cause for failure to abide by this Decree. The County shall appropriate and expend funds to meet the terms of this Decree.

(D) Inmates may complain of any violation to the attorney for the inmates:

Directing Attorney

The Public Interest Law Firm

210 South First Street, Third Floor

San Jose, California 95113

XX. COMPLIANCE AND PROCEEDINGS FOR ENFORCEMENT AND MODIFICATION

There shall be appointed a Compliance Officer to monitor compliance with all the terms of this decree. The Compliance Officer shall be mutually agreeable to the Public Interest Law Foundation and the County and shall be employed under contract at County expense. If the parties are unable to agree in the selection of the Compliance Officer, the fact-finding panel described below shall select the Compliance Officer. The Compliance Officer shall have 24-hour access to all areas of all jail facilities and shall be immediately provided access to all records and information which is necessary to evaluate compliance with the terms of this decree. The Compliance Officer in determining a violation shall call the perceived violation to the attention of the person on duty with responsibility for managing the facility. If the Compliance Officer is not satisfied with the facility manager's response, he shall immediately notify the *424 Sheriff and the County Executive. A copy of this notification shall be sent to the Public Interest Foundation. The Compliance Officer shall report in writing to all counsel any noncompliance with the terms of this decree and the circumstances surrounding such noncompliance.

Prior to any action to enforce or modify the terms of this decree, the parties through their respective counsel shall be required to meet to attempt to negotiate a settlement or other agreement respecting the issues underlying the proposed motion. Should the parties disagree after such a meeting, any party may request a convening of the fact-finding panel.

The panel shall convene no later than five working days after any request. The fact-finding panel shall consist of

three persons. One representative shall be appointed by the Public Interest Law Foundation, Inc. One representative shall be appointed by the County. These two members shall select the third member of the panel by mutual agreement. If the two representatives are unable to agree within seven working days on the selection of the neutral member, they shall request a list of five recommended candidates from the California State Mediation and Conciliation Service. The two members shall select the third member by alternately striking names from this list until a single candidate remains. Such candidate shall be appointed as the neutral member of the fact-finding panel.

Said panel shall take testimony under oath, and shall record all hearings by tape recorder. Either party may petition the court to issue subpoenas to compel the attendance of any witness before the fact-finding panel. The panel shall issue written findings of fact and, where appropriate, recommendations within seven days of the close of the hearing. Where the fact-finding panel is hearing a matter dealing with compliance with this decree, the determination of the facts shall be final and binding upon all parties. The panel shall issue a recommended compliance remedy. After the fact-finding panel has issued its findings and recommendations, a party may bring before the Presiding Judge of the Superior Court a regularly noticed motion to enforce the Decree. At such hearing the court shall be bound by the facts as found by the fact-finding panel.

Provisions of this Consent Decree may not be modified except upon consent of the parties or upon a finding of changed circumstances. For the purposes of this decree, a change of circumstance shall consist of any material fact or condition not reasonably foreseeable by any party nor within the ability of any party to control. In the event any party seeks to modify this consent decree, it shall first request a hearing before the fact-finding panel. The facts as found by the panel shall be final and binding and the panel shall make a recommendation as to whether a change of circumstance exists and, if so, shall also recommend a remedy. Such recommendation shall not be binding upon the court. Any modification in the decree shall not affect any other portion of the decree unless that portion is substantially related to the change of circumstance. Any motion for modification of the decree shall be treated as a new action for all purposes connected with the assignment of the matter to a judge or department for hearing. For the same purpose, the County, the Board of Supervisors and the Sheriff shall be regarded as a single side.

Any order altering or amending the terms of this decree (e.g., to increase bed capacity through construction or remodeling of facilities) shall be considered a motion to modify this decree. Any order requiring implementation of the terms of this decree (e.g., to require the county to

In re Branson, 141 Cal.App.3d 482 (1983)

maintain and/or repair existing facilities) shall be considered a motion for enforcement.

XXI. ATTORNEYS FEES

The trial court will determine and award to the Public Interest Law Firm attorneys fees for services to the date of entry of this decree.

Parallel Citations

141 Cal.App.3d 482