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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, MICHAEL HARRIS, JAMES JOHNSON, LAWRENCE ROBERT PLAMONDON, NORMAN RICHARDSON, CAROLYN TRAYLOR, and NORA WARE, individually and on behalf of all other persons similarly situated, Plaintiffs, -v- WAYNE COUNTY BOARD OF COMMISSIONERS: ROBERT E. FITZPATRICK, Chairman of the Board; WILLIAM LUCAS, Sheriff of Wayne County; FRANK WILKERSON, Administrator of the Wayne County Jail; ARTHUR A. SUMERACKI and JOHN F. WILLIAMS, members of the Wayne County Board of Auditors; and GUS HARRISON, Director of the Michigan State Department of Corrections, individually and in their official capacity, Defendants.	Civil Action No. 173217

BRIEF OF THE PLAINTIFFS

I.

INTRODUCTION

A. Background

This Brief is filed by Plaintiffs who have sued the County Defendants in an effort to obtain legal redress for the wretched and cruel conditions imposed upon 24,000 persons who are sent each year by the local courts to the Wayne County Jail. Named Plaintiffs represent the interests of approximately 1,100 persons who at any given time are incarcerated at the jail and deprived of their liberty solely because they, unlike wealthier persons accused of crime cannot afford the price of bail or ransom.[1] The only reason such persons are being held is to insure their presence at trial, and society's interest in their trial appearance has been quantitatively measured under the present system of law by a simple dollar amount or bail bond figure. Thus, Exhibit 92 reveals that more than 500 inmates are being held simply because they cannot afford the price of a $2,500.00 bail bond or less; more than 300 of such persons are being held simply because they cannot afford to post a

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[1] "Bail" is properly defined as the price one must pay to procure release from legal custody. "Ransom" is the word more aptly used by Plaintiffs because it defines the price one must pay to procure release from captivity or illegal custody. Cf. definitions of these terms are given in Black's Law Distionary, 4th Ed., at 176 and 1426. The evidence in this case starkly portrays the illegal custody inflicted upon persons who are held captive in the jail because they cannot afford the ransom price of freedom.

bond of $1,000.00 or less.[2]

Plaintiffs' Complaint was filed on January 26, 1971 and requested relief by way of a temporary restraining order was denied. A three-judge panel was selected for the trial which commenced on February 23, 1971, after the Court in the presence of counsel for both parties toured the jail on February 22, 1971. Plaintiffs concluded their proofs on March 11, 1971, after calling 27 witnesses, 2 of whom were not permitted to testify.[3] Twelve witnesses presented by Plaintiffs were present or former inmates, and Plaintiffs also presented the testimony of Dr. Thomas Murton, an expert penologist, as well as other expert witnesses: a dietician, electrician, master plumber, environmental health specialist, fire safety expert, psychiatrist and industrial hygienist.

The defense presented 9 witnesses over a four-day period from March 15 through March 18, 1971. They called the Warden of Jackson Prison, who had never been in the Wayne County Jail, as well as a fire safety expert, plumber, cook, the jail doctor, 2 deputies, the Sheriff, and the Chairman of the Board of Commissioners.

Closing arguments were heard on Monday, March 22, 1971, at which time Plaintiffs renewed their standing Motion for Immediate Relief and filed with the Court 11 specific requests for Interim Relief. On Friday, March 26, 1971, the Court addressed itself to the question of interim relief ordering that inmates confined in the hole be provided with drinking and washing water; that all inmates be provided with mattresses, mattress covers, sheets and blankets; except where safety or security precautions dictate otherwise; and, that mentally disturbed persons presenting a serious danger to themselves or others be removed from the jail and admitted to mental health facilities.

Pre-trial detainees continued to die during the pendency of this lawsuit. On February 22, 1971, Gregory Kenny, a 23 year old black male being held on traffic tickets, allegedly committed suicide by hanging.[4] On March 14, 1971, Calvin Johnson, a 19 year old black male, died at Detroit General Hospital showing "signs of meningitis." (See Exhibit 111). On March 12, 1971 he had been returned to Ward 714 after having been conveyed to the hospital. He had received no treatment on March 12 for the alleged reason that no doctors were available, and he was scheduled to return to the hospital on March 19. However, he did not live that long.

Attempted suicides continued during the lawsuit's tenure. At least 13 attempted suicides were reported from January 1, 1971 to February 23, 1971. (Stipulation of February 23, 1971).

B. A Brief Preview

The evidence in this case shows that Wayne County Jail inmates are subjected to a magnitude of horror that bears no relationship

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[2] The bond premium rate in Michigan is 11%, thereby requiring cash in the amount of $275.00 or $110.00 for the bonds referred to above; in addition, an accused must make arrangements for collateral or other methods of securing the state-licensed businessmen who are known in the trade as "bail bondsmen."

[3] The testimony of a man alleged by Plaintiffs to be mentally incompetent was not taken on the grounds that it was cumulative; and, the testimony of the Detroit Zookeeper was held to be inadmissible on grounds of irrelevancy.

[4] Plaintiffs have been unable to locate the 1971 Suicide Report on Gregory Kenny and do not recall it having been submitted to the Court despite the fact that it was subpoenaed.

whatsoever to the presentment at trial of those inmates who are presumed innocent and incarcerated solely because of their inpoversihment. Plaintiffs, who are pre-trial detainees, take the position that if they are to be deprived of their liberty because of poverty or relative poverty, they may, constitutionally and legally, be detained only in a facility that will assure them no hardship or conditions "except those absolutely requisite for the purpose of confinement only," which will allow them to "retain all the rights of an ordinary citizen except the right to go and come as they please" (Jones v. Wittenberg, No. 70388 (N.D. Ohio, Feb. 22, 1971,))[5] and which will not subject them "to confinement conditions which preclude them from the maximum freedom of motions that persons under confinement should have within a facility consistent with the security risks involved." Brenneman v. Madigan, No. 70-1911 (N.D. Calif., March 11, 1971).

After an abbreviated Statement of Facts, infra, this Brief is divided into two parts. First, Plaintiffs will apply constitutional and statutory law to a summarization of some of the horrors of the Wayne County Jail, knowing that they cannot in a written document recapture the horrors and tortures described to the Court from the witness stand. The torture endured by Clarence McCall, the agony of James Grubbs, Jerry Widner and Frank Griffin (who are now dead) and Donald Smith (who may still be alive), the affront to human dignity displayed by the confinement of John Sawyer--these totally inhumane conditions cannot be reduced to writing. In fact, despite the length of this trial and the power of the testimony, no proceeding could ever begin to capture the brutal degradation inflicted upon human beings hour by hour, day by day in the Wayne County Jail. That institution, both in its physical structure and its administration is, to put it euphemistically, unconstitutional.

In Part Two of this Brief Plaintiffs again point to the standards of ordered liberty which this Court, as the triers of fact, must adopt and apply to the Wayne County Jail. It is the province and duty of this Court, as jurors, to set forward those reasonable standards that are to be applied. Plaintiffs provide to this Court an analysis that properly measures and balances those indices reflective of society's and law's interests. Plaintiffs evaluate, analyze, and once again call for the deliverance of that to which Plaintiffs are, to put it simply, lawfully entitled.

It is true that the law in this case requires a drastic alteration of the status quo. However, this is not the fault of Plaintiffs who simply seek their legal rights. How ironic it is that Plaintiffs, incarcerated because of poverty, are told by Defendants' (legally irrelevant) plaintive apologies to accept such unconstitutional conditions because the Government cannot raise the necessary revenue to comply with the Government's constitutional edicts. Poor people, as usual, are being asked to bear the brunt of these alleged (and false) protestations. Poor people are being told by the highest law enforcement officers of the County to personally accept the pain and suffering occasioned by the Government's illegal conduct because the Government is poor. Such a situation surpasses even the sagacious sarcasm of Anatole France's remark: "The law, in all its majestic equality, forbids the rich as well as the poor to sleep under bridges on rainy nights, to beg on the streets and to steal bread."

The time has come for the richest society in the history of civilization to abide by its own laws. The buck has stopped here, at the Wayne County Circuit Court. We know this:

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5 Plaintiffs have provided an appendix with copies of all unreported cases cited in this Brief.

1. The Wayne County Jail can provide nothing but maximum custody;

2. The 24-hour maximum custody conditions found in the Wayne County Jail would violate constitutional standards applicable to the most hardened convicts serving sentences for the commission of heinous crimes;

3. The great bulk of the Wayne County Jail population, properly classified, merits minimum or medium custody at most;

4. The Wayne County Jail cannot now nor in the future provide minimum or medium custody for pre-trial detainees;

5. There are reasonable, less restrictive alternatives available that this Court must, constitutionally, implement now;

6. These reasonable alternatives have nothing to do with moving poor people out to some remote and totally inadequate and probably equally unconstitutional facilities for convicted prisoners;

7. The great bulk of the Wayne County Jail inmates must be released now, with procedures implemented in some cases for regular reporting to probation officers or, in other cases, for procedures for release days while returning to the jail at night.

C. Statement of Facts

The facts, detailed in our Complaint and proved at trial, are clear.[6] Pre-trial detainees in the Wayne County Jail suffer intolerable horrors. Indeed, "there is hardly an item in the construction and design of the Jail that anyone who has ever worked in an institution would advocate."[7] The cells are overcrowded and often contain three inmates. Many inmates sleep on the floor under a bunk without mattresses and directly next to toilets which constantly overflow. The mattresses provided are unsterilized, filthy, and smell heavily of urine and perspiration. The plumbing and electrical systems have been condemned. The toilets and washbasins are badly corroded and may serve as spreaders of disease. The lighting is inadequate at best and often kept on all night. Ventilation is inadequate. Heating is inadequate if not totally deficient. The building is a fire hazard. Showers regularly do not work or provide no regulation of temperature. Sanitation is impossible. Rats, mice, roaches and vermin infect the building.

The services provided are likewise abominable. No programs or facilities for vocational training, education or recreation exist. Food preparation and distribution is not consistent with health standards and the food served is below nutritionally minimal requirements. The kitchen is filthy, unsanitary and in bad repair. Medical care, is for some minimal and, for most, non-existent. Inmates with serious medical conditions, such as epilepsy or septicemia or pneumonia, do not receive necessary medical care. Treatment for inmates is slow and dehumanizing; no psychological treatment is provided. Suicides and attempted suicides are numerous; the attitude of the deputies is indifference. Dental care is limited to extractions. Addiction is not treated and the process of withdrawal unregulated. Preventive care is non-existent; the danger of an outbreak of contagious disease exists. Surveillance is limited. Assaults among inmates are frequent. Classification is ineffective

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[6] We will not support each factual assertion with a specific reference.

[7] See, testimony of Dr. Murton transcript of proceedings, March 2, 1971 at 20.

and all but non-existent; there is no minimum or medium custody. Discipline is meted out without any semblance of due process--without a hearing either before or after at which an inmate is present[8]--and for activities that have absolutely no bearing on the proper functioning of the institution. Few options on discipline exist and the "hole" is used with frequency. Visitation is limited both within and without the institution. Communication is excessively limited and overly inspected. The philosophy of the operation of this intolerable physical plant is one of "punitiveness" and "penal servitude."[9] The institution creates or aggravates severe emotional problems, causes severe depression and results in institutional isolation syndrome.[10]

The witnesses utilized by the Defendants failed to controvert these facts. Perry Johnson, after stating the practices of Jackson Prison, came to the conclusion that a new jail was needed in Wayne County. The plumber, John Kopey, indicated that the plumbing in the Wayne County Jail was intolerable and had to be replaced if the jail was to meet standards. He stated that the damage to the waste-vent pipe system and hot water system was not a result of misuse of plumbing by the prisoners but because of corrosion. William McKeon, the Defendants' fire expert, indicated that the jail was a fire hazard under modern standards because of the chaseways and the holes going into the cells. The cook, Mr. Sapiano, noted "very definitely" a need for a new kitchen. The Superintendent of Buildings Mr. Bresnahan, indicated that the physical conditions of the jail were in violation of the applicable codes and that a new jail, which he first sought in 1966, was an absolute necessity. The Sheriff himself stated that he could not provide humane care[11] and adequate social services to prisoners at the Wayne County Jail and that a new jail was absolutely necessary. Indeed he even admitted that objective conditions for inmates in the Wayne County Jail are less humane than are the conditions for convicted inmates at Jackson Prison. He conceded that the structural conditions of the jail have changed little, if any, since the various studies done of the institution in 1968. The electrical, plumbing, heating, lighting, and ventilation systems are totally inadequate and have even been condemned. Only Robert FitzPatrick, the Chairman of the Board of Commissioners, was reluctant to endorse a new jail; he was reluctant to accept any responsibility for the conditions of the jail which he perceived as caused by institutions other than the County Board of Commissioners. His "solution," however, was the removal of 150 prisoners to the Detroit House of Corrections and the building of a minimum custody facility for youth, women and misdemeanants. In short, not only was the evidence of Plaintiffs uncontroverted, but the Defendants' own witnesses admitted to this Court that a new jail was necessary and that the present jail could not provide even the most minimal of "humane" care to its inmates.

Yet, today in April of 1971, four years after Mr. Bresnahan had proposed a master plan including the construction of a new jail, three years after the Report of the National Council on Crime and Delinquincy which recommended the replacement of the Wayne County Jail,[12] two years after the Department of Corrections requested that

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8 Though Sheriff Lucas testified or guessed that inmates were present at a post-discipline hearing, the testimony of the inmates (Ambrose, Ware, Young, Berryman, Plamondon and Lewis proves otherwise.

9 See transcript of Murton testimony, at 18-19.

10 Testimony of Dr. Rezumna.

11 M.S.A. § 28.2322.

12 At 71.

immediate steps toward the planning and construction of a new structure be initiated and expedited,"[13] and weeks after this suit was filed, the Sheriff admits that they have only "elemental plans on paper" to improve the jail and that these cannot provide any objective improvement in the daily life of inmates within the near future.

In contrast to those citizens awaiting trial in the Wayne County Jail, those citizens awaiting trial who are free, have the opportunity to live in decent, safe, habitable surroundings. They have the opportunity to receive adequate medical, dental, and psychological care, adequate nutrition, recreation, education, vocational training and the opportunity to work. They can live their lives without constant fear of incarceration in a "hole" and with a mattress, running water, adequate light and air, and adequate food and sanitation facilities. Before they can be punished they will receive a full due process hearing. They have the right to visit with whomever they wish on whatever terms they wish. They can write to or receive mail from anyone. They can work with their attorney to prepare their case. They can read whatever they want and can make phone calls whenever they wish. They do not experience the horror known as the Wayne County Jail.

PART ONE

II.

THE CONDITIONS EXISTING AT THE WAYNE COUNTY JAIL IMPOSE UPON INMATES CRUEL AND UNUSUAL PUNISHMENT AND CONTRAVENE THE EQUAL PROTECTION, DUE PROCESS AND FIRST AMENDMENT RIGHTS OF PRE-TRIAL DETAINEES AND, THEREFORE, MUST BE TOTALLY ELIMINATED.

A. The Totality of Conditions at the Wayne County Jail Render the Operation and Administration of the Jail Unconstitutional.

The conditions imposed upon pre-trial detainees at the Wayne County Jail, taken together as a totality (see, Holt v. Sarver, 390 F. Supp. 362 (E.D. Ark. 1970)), are so "base, inhumane and barbaric," Burns v. Swenson, 430 F.2d 771 (8th Cir. August 30, 1970), "so foul, so inhuman, and so violative of basic concepts of decency," Wright v. McMann, 387 F.2d 519 (2nd Cir. 1967), "so shock the conscience as a matter of elemental decency," Hamilton v. Schiro, No. 69-2443 (E.D. La. 1970), that the Court "must intervene--and intervene promptly--to restore the primal rules of a civilized community." Jordan Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966). Indeed, as our evidence has demonstrated, the conditions in the Wayne County Jail "could only serve to destroy completely the spirit and undermine the sanity of the prisoner." Wright v. McMann, supra.[14]

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[13] See Exhibit # 75.

[14] The same concern for subjective harm to a prisoner's personality was exhibited by the District of Columbia Circuit in Barnett v. Rodgers, 410 F.2d 995 (D.C. Cir. 1969). The Court there wrote: "That penal as well as judicial authorities respond to constitutional duties is vastly important to society as well as the prisoner. Treatment that degrades the inmate, invades his privacy, and frustrates his ability to choose pursuits through which he can prepare for a socially useful life." 410 F.2d at 1002. See, also E. Goffman, On the Characteristics of Total Institutions in Assylums, at 7, 11048, 57-8 (1961); G. Sykes, The Society of Captives, at 12, 32, 63-83 (1966). Excerpts from both writings are to be found in R. Donnely, J. Goldstein & R. Schwartz, THE CRIMINAL LAW, 428-32 (1962). Indeed the detention of persons within the Wayne County Jail is not only

The Wayne County Jail is an affront to the "dignity of man" and totally at odds with "the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86 at 100-01 (1958).[15] Indeed, the conditions of the Arkansas prison which were described by one court as "institutions of terror, horror, and despicable evil" (Stephens v. Dixon, No. 3112 (Baker Co. Cir. Ct., Ore., May 31, 1967)) are in fact little different than those in the Wayne County Jail. The conditions in the Wayne County Jail are as foul as those in the Orleans Parish Prison struck down in Hamilton v. Schiro, supra.

But, the issue is "even sharper" (Pennsylvania ex rel. Bryant v. Hendrick, [Ct. Common Pleas, Phil]), and "even more shocking" (Brenneman v. Madigan, supra) because those upon whom this unconstitutional "punishment is inflicted are pre-trial detainees.[16] If detainees cannot be subject to the conditions of convicts, clearly they cannot be subject to conditions that could not constitutionally be imposed even on those incarcerated for punishment. The cruel and unusual punishment clause would be converted to "impotent and lifeless formulas" (Pennsylvania ex rel. Bryant v. Hendrick, supra) if it did not strike down the conditions imposed by the Wayne County Jail upon pre-trial detainees.

Indeed, most of the persons at the Wayne County Jail are there because they are too poor to post bond.[17] The vast majority are

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14 (cont'd.) dangerous and destructive to human personality but is counterproductive. It's more likely to breed contempt of the law and discourage, as well as debilitate, those who are forced to stay there. Cf. Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968).

15 The Defendants are subject to the restraint of the Eighth Amendment, as it is applied to the states through the due process clause of the Fourteenth Amendment. Robinson v. California, 370 U.S. 660 (1962); Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965). The Michigan Constitution also forbids cruel and unusual punishment, Article I, § 15. See, People v. Baum, 251 Mich. 187, 231 N.W. 95 (1930).

The Cruel and Unusual Punishment Clause of the Eighth Amendment contains a prohibition against two separate and distinct kinds of punishment. See, Note, The Cruel and Unusual Punishment Clause and The Substantive Criminal Law, 79 Harv. L. Rev. 635 (1966). The first of these two proscriptions is directed at punishment which itself is barbaric or inhumane; as to this, the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, supra. See, Weems v. United States, 217 U.S. 349, 373 (1910).

The second proscription of the Eighth Amendment is against punishment which is shockingly disproportionate to the "crime" for which it is imposed. See, e.g., United States v. Watson, ___ F.2d ___ (D.C. Cir. 1968), rehearing en banc, modified on other grounds, ___ F.2d ___ No. 21-186, July 15, 1970 (D.C. Cir.); Gallego v. United States, 276 F.2d 914 (9th Cir. 1960); Workman v. Kentucky, 429 S.W.2d 374 (ky. 1968); Ralph v. Warden, 8 Crim. L. Rptr. 2193 (4th Cir. December 11, 1970). It is a "precept of justice that punishment for crimes should be graduated and proportioned to the offense." Weems v. United States, supra, at 376.

16 The conditions at the Wayne County Jail are no better than those of the Lucas County Jail described by Judge Young as "unusually bad," in Jones v. Wittenberg, supra at 10, or those described by Judge Zirpolli in Brenneman v. Madigan, supra, or those imposed by the Holmesburg Prison in Philadelphia, Pennsylvania ex rel. Bryant v. Hendrick, supra.

17 See, NCCD at 54 and testimony of Sheriff Lucas, March 10, 1971, at 24 (Part I); see also Exhibit # 92.

recognized to be indigent and in need of a State appointed attorney, MCLA § 775.16. Yet, they are forced to undergo conditions and practices which are detrimental to them because they cannot afford bail. The effects of this "punishment" are, therefore, even more debasing because its imposition is limited primarily to one economic class and, in Wayne County, to almost exclusively one racial group (85% of the inmates are black). Incarceration under these circumstances cannot be allowed to continue.

B. Conditions That Can Constitutionally Be Imposed Upon Pre-Trial Detainees Must Be Necessary for and Related Only to Assuring Their Appearance at Trial.

1. Equal Protection, Due Process and the Eighth Amendment Compel This Conclusion.

Two equally important but somewhat independent considerations have led courts to the conclusion that "no additional inequality beyond that which is inherent in the confinement itself" (Butler v. Crumlish, 229 F. Supp. 565 (E.D. Pa., 1964)) can be imposed upon pre-trial detainees. See also, Jones v. Wittenberg, supra; Brenneman v. Madigan, supra. The first consideration has evolved from the constitutional requirements of due process and freedom from cruel and unusual punishment. The second evolved from the right of equal protection.

(a) Due process and cruel and unusual punishment.

For centuries in Anglo-American law punishment before conviction has been proscribed:

> [This] imprisonment, as has been said is only for safe custody, and not for punishment; therefore, in this dubious interval between commitment and trial, a prisoner ought to be used with utmost humanity; and neither loaded with needless fetters, nor subjected to other hardships than such as are requisite for the purpose of confinement only. 4 W. Blackstone Commentaries 300.

This position is based upon the fundamental tenet of the Anglo-American criminal system that a person is presumed innocent until proven guilty; an accused is not to be punished before being tried and convicted of a crime. Morrisette v. United States, 342 U.S. 246 at 275 (1951); In Re Winship, 397 U.S. 358 (1970); People v. Dernly, 320 Mich. 477 (1948). Indeed it is impermissible to punish a person not found to be guilty of a crime: "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." Robinson v. California, supra, at 667. Clearly, just as one cannot be punished for having a cold, one can also not be punished for the "crime" of not having enough money to post bail or pay a private bondsman. Plaintiffs have not been found guilty of a crime nor have they been determined in need of punishment. The only procedure which the Plaintiffs in pre-trial detention have gone through is the perfunctory arraignment on the complaint and warrant. Nothing about guilt has been established. See M.S.A. § 28.893. Punishment, therefore, without a determination of guilt and without any hearing related to punishment, is "cruel and unusual" in and of itself and a violation of due process; cf. Inmates of Cook County Jail v. Tierney, No. 68-504, (N.D. Ill., August 22, 1968).[18]

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[18] The courts have specifically required due process in the prison context. See, e.g., Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965); Landman v. Peyton, 370 F.2d 135 (4th Cir. 1966); Howard v. Smyth, 365 F.2d 428 (4th Cir. 1966). In Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963), the Supreme Court held that acts of Congress which granted a federal agency authorization administratively to deprive a citizen of the United States of his citizenship for specified violations to the draft laws are unconstitutional because they empower the agency to inflict severe punishment without due process of law. Thus, conditions of punishment less severe than cruel and unusual punishment may violate due process.

This is not to say, of course, that all forms of detention while awaiting trial are unconstitutional and Plaintiffs do not so contend. However, since inmates awaiting trial are not incarcerated for punishment, they can only be incarcerated to assure their presence at subsequent court proceedings. Conditions of detention must be reasonably related to the single objective of maximizing freedom while assuring presentment at trial. Since punishment cannot be imposed, any deprivation of liberty occurring because of pre-trial detention or any other form of involuntary detention can only be accomplished by the means least restrictive to an individual's liberty. See, Jackson v. Godwin, 400 F.2d 529, 541 (5th Cir., 1968); Barnett v. Rodgers, 410 F.2d 995 (D.C. Cir. 1969); Shelton v. Tucker, 364 U.S. 479, 488 (1960). The availabilit of less restrictive alternatives must be examined and, if available, must be used before more restrictive means can be imposed. Covington v. Harris, 419 F.2d 617, 623-24 (D.C. Cir. 1969).

In fact, Covington makes clear that the availability of least restrictive means is not only related to the question of whether confinement itself is necessary as the only available means to assure presentment, but also whether the conditions imposed within the facility providing confinement are beyond those necessarily entailed by confinement itself. Thus, in Covington, the court held that "additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty . . ." 419 F.2d at 624. The same is true of those restrictions placed upon pre-trial detainees.

Plaintiffs are of course aware that a pre-trial detention facility must maintain security precautions. However such considerations are matters of internal jail administration and are subsumed by analysis of the type of custody warranted for an individual inmate. Defendants are constitutionally obliged to adopt security measures that impose the least restrictive conditions upon Plaintiffs who are presumed innocent, being detained because they cannot afford the price of bail, and being detained solely for the purpose of ensuring their appearance at subsequent Court proceedings. It would be ludicrous to even suggest that "security considerations" require the extent conditions of "maximum custody" for every single inmate confined to the Wayne County Jail.

Furthermore, the Defendants have the burden of justifying the infringements upon the liberty and freedom of pre-trial detainees, as made clear in Covington v. Harris, supra, and Shelton v. Tucker, supra. Defendants have failed to show and cannot show how the total deprivation of nearly all forms of liberty and freedom bear a reasonable and necessa relationship to the purpose of confinement, i.e., the presentment of an accused at trial. In fact, Defendants have the legal obligation of prov ing that they have exhausted all other means available before they can constitutionally justify the imposition of the conditions of nearly tota deprivation that exist in the Wayne County Jail. Obviously Defendants have completely failed to sustain this burden of proof.

b. Equal Protection.

Constitutional guarantees of equal protection also prohibit any form of punitive treatment that bears no relationship to the objecti purposes that affect the legal rights of a cognizable class of persons. In the instant case, there is a recognizable class of citizens represented by all persons accused of crime. Within this class some persons go free on bail while others are remanded to the jail for want of bail. The only basis for according different treatment to detainees than to persons free on bail is that maintaining custody of those who cannot afford bail is thought necessary to ensure their appearance at trial. Stack v. Boyle, 342 U.S. 1 (1942).[19]

Courts which have examined the differences in treatment between persons detained pending trial and persons released on bail have held that these differences must be kept at an absolute minimum.

> The constitutional authority for the state to distinguish between criminal defendants by freeing those who supply bail pending trial and confining those who do not, furnishes no justification beyond that which is inherent in the confinement itself.

Butler v. Crumlish, 229 F. Supp. 565, 567 (E.D. Pa. 1964).[20]

The protections of the equal protection clause are applied even more vigorously if the state discriminates against certain persons on the basis of "suspect classifications" such as poverty or race, Griffin v. Illinois, 351 U.S. 12 (1956), or when it adversely affects "fundamental interests" by its classification, Shapiro v. Thompson, 394 U.S. 618 (1969). In either situation, the governmental discrimination must be "shown to be necessary to promote a compelling governmental interest . . ." Shapiro, supra, at 634. Even if a necessary connection is shown to some compelling governmental objective, the classification will be struck down if there is some less onerous method of carrying out the same purpose. See, e.g. McLaughlin v. Florida, 379 U.S. 184, 196 (1964); Jackson v. Godwin, 400 F.2d 539, 541 (5th Cir. 1968).

In the present case both of the situations requiring the higher standard of equal protection exist. The burden of being at the jail prior to trial falls almost exclusively on poor black citizens. The Supreme Court has made clear that the state may not discriminate against "some convicted defendants on account of their poverty." Griffin, supra, at 18.[21] Moreover, the rights denied Plaintiffs are surely "fundamental". Short of capital punishment and the "rack and screw", a human being can suffer no consequential deprivations in excess of those imposed by conditions in the "hole". But even within the general, maximum custody population, the loss of liberty and freedom is so all-encompassing so as to plainly put the Defendants to the burden of showing a "compelling state interest". Such a burden of proof is, of course, impossible to sustain because the objective facts make manifest the needlessness of so much of the deprivation and degradation suffered by Plaintiffs.

There is yet an additional equal protection argument that is made essentially academic because of the pervasive unconstitutionality of the conditions of life in the Wayne County Jail. It is true that there is a range of permissible custody commensurate with the varying types of inmates detained. For example, maximum custody may be warranted for certain persons held on capital offenses or held without bail while such custody would not be legally permissible for traffic offenders detained due to their inability to post miniscule bonds. However, such varying classifications of inmates and custody present no questions of particular importance because in reality all inmates are subjected to unconstitutional conditions and custody. Some inmates are simply held "less unconstitutionally" than others.

C. Specific Analysis of Particular Administrative Practices and Procedures and of Particular Conditions of Life at the Wayne County Jail Reveal the Pervasive Manner by Which Unconstitutional Conditions Infect the Daily Lives of Pre-Trial Inmates.

In Holt v. Sarver, supra, the Court emphasized the constitutional importance of tying together the totality of the conditions of

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[19] For a more detailed discussion of the purposes of bail and its relation to pre-trial detention, the Court is referred to: Note, Constitutional Limitations on the Conditions of Pre-trial Detention 79 Yale L.J. 941 (1970); "The Coming Constitutional Crisis in Bail: II, 113 U. of Penn. L. Rev.1152 (June, 1965).

[20] See also United States ex rel. Schuster v. Herold, 410 F.2d 1071 (1969) requiring New York to provide prisoners the same procedural safeguards on civil committment as those given a civilian. Cf. Baxtrom v. Herold, 383 U.S. 107 (1966).

[21] See also Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U.S. 214 (1958); Burns v. Ohio, 360 U.S. 252 (1959); Smith v. Bennet, 365 U.S. 708 (1961); Draper v. Washington, 372 U.S. 487 (1963); Rinaldi v. Yeager, 384 U.S. 305 (1966); Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 91 S. Ct. 668 (1971).

daily existence that affect the lives of prison inmates.

> The distinguishing aspects of Arkansas penitentiary life must be considered together . . . All of those things exist in combination, each affects the other, and taken together they have a cumulative impact on the inmates regardless of their status.

309 F. Supp. at 375.

Though this Section of the Brief concerns itself with specific areas of constitutional defects, it should be constantly kept in mind that the cumulative impact of many serious, unconstitutional conditions is of much greater magnitude than the sum of individual defects referred to. Indeed, there is a vicious cycle operative here. The record is replete with references wherein inmates were disciplined for protesting many types of unconstitutional conditions and practices to be analyzed, seriatim. These range from protests over lack of medical treatment to simply swearing at a deputy because of the oppressive, daily tensions. Interspersed throughout this Section will be many such examples. Further, it should be noted that we do not include herein the unconstitutionality that is brought about by the deterioration of the physical structure.[22]

1. The Discipline Accorded Pre-Trial Detainees at the Wayne County Jail Constitutes a Violation of Due Process.

The Wayne County Jail is operated without providing inmantes, at least on a regular basis, with rules defining permissible intra-jail behavior. Inmate after inmate testified to not receiving copies of the rules of the jail nor being provided any knowledge of these rules by guards except when alleged violations occur. (See testimony of Plamondon, McCall, Berryman and Young.) In fact, Sheriff Lucas himself was not even sure of the contents of a document on intra-jail behavior (testimony, March 16) though believing it existed.

These rules were enforced by a procedure which, according to the Sheriff, provided as follows: A violation of jail rules was reported to a Lieutenant. He convened a disciplinary Board which met periodically--every Tuesday and Friday. The Patrolman was present along with the inmates who could answer questions. The Sheriff, however, not sure whether the inmate was in all cases brought before the Board. The Board made recommendations to the Administrator who would then take action. (See testimony, March 16). The behavior reports on the inmate contain the names of the disciplinary Court members. An inmate could be incarcerated in the "hole" up to five days.

Though this procedure may theoretically exist, the evidence presented to this Court proves that it is rarely followed. Disciplinary hearings, when held, do not involve the presence of inmates (supra, at n.8). In fact, numerous behavior reports did not even reflect a disciplinary "board" hearing. The Sheriff himself testified that there were periods of time when no hearings were held. There is no inmate advocacy and the Sheriff had no knowledge of a right to cross-examine or confront deputies or witnesses. (Lucas, p.4, March 16 (II).) The hearing reports reflect no information supporting the position of the inmate disciplined and not even a summary of the inmate's assertions.

For example, let us look at the discipline proceedings taken against inmate Phillip Berryman. He testified that he was the third man in a 6 by 8 foot cell and that he slept on the floor on a mattress under the bunk. However, the toilet continua-ly overflowed and flooded the cell. For this reason he attempted to sleep on the rock instead. A Deputy told him he had to lock up, and he did so. However, burdened by a cold and tired of sleeping in it, Berryman one night refused to lock up and insisted that he should be allowed to sleep on the rock. Because of this, he was summarily taken to the hole, and no hearing was ever had. The "disciplinary report" stated that this inmate was sent to Ward 711 for refusing to lock up and made not a single reference to the

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22 To avoid repetition, the unconstitutional consequences brought about by the age and disrepair of the jail are to a great extent covered in the Statutory and Code Section of this Brief, infra. Compliance with legislative mandates would not necessarily parallel constitutional mandates but do at least codify and represent something approximating a

reason for such refusal. (Exhibit #20).[23]

The "hole" is the chief form of disciplinary sanction for the simple reason that when all inmates are already in maximum custody and without any meaningful privileges, there are essentially no other options. Sheriff Lucas agreed that more options were necessary, and he agreed with Dr. Murton that an effective control measure for maintaining conformance with rules is the ability to deprive persons of valued privileges. (See testimony of Lucas, March 10, at 38).

But it is not enough to agree that a condition is bad, if nothing is done to remedy that condition. Human beings suffer because of these unconstitutional conditions. Consider, for example, the conditions of life endured by Plaintiffs Plamondon, Richardson and others, locked in Ward 611, "maximum security" under conditions worse than those imposed upon Martin Sostre, infra. The jailers leave a man there for 8 months (Plamondon) or a year (Plaintiff Richardson) or more. They tell Plamondon, who was assigned there without a hearing and kept in 24 hours lockup the first month, that he is in 611 for his own good because he holds political views unpopular with other inmates. They tell him this even though his views are doubtlessly shared by oppressed brother and sister inmates for reasons such as the Wayne County Jail. When a mentally incompetent inmate kills another inmate in 711, they transfer him to 611, where security is tighter. They leave the sick person there for months and don't worry that the person tries, on different occasions, to kill himself by cutting his arms, drinking scouring powder, and taking an overdose of any pill he can get his hands on. So what if the person stabs another inmate on 611 in the back with a knife? Many inmates try to kill themselves in 611 anyway. Take all these conditions, and compound them with the other, daily tensions of 611, ranging from leaving the lights on, frequently, 24 hours; scummy showers with scalding hot or freezing cold water; 22 hours a day lockup; 2 hours a day to walk the narrow, short catwalk; forced non-sociability; oppressive, exhausting heat, frequent shakedowns, often in the middle of the night and leaving inmates, sometimes nude, locked for hours in visitors' rooms while deputies destroy the meager personal effects of inmates. But, call deputy a "pig" just once, and you are summarily, and without a hearing, sent to the hole for 6 days until you pass out and split your head open if your name is Plamondon or for 8 days, even though you did not call the deputy anything, if your name is Richardson and you are Black.

Or consider, if you will, another incident which touches upon the cumulative impact of this entire, unconstitutional abomination:

An entire ward of 30 inmates bang on their bars with their cups and then refuse to lock up when told to do so. Why do these human beings bang on their bars? They bang on their bars because they are sick and tired of helplessly observing the suffering of a fellow inmate who has undergone repeated seizures, once severely biting his tongue and requiring numerous sutures. All 30 men are thrown in the hole, ward 711, 8 to 9 men per cell. The victim too is taken to the 7th floor though his detention and whereabouts were not personally observed by the 29 men who breached jail rules. Where did this sick man go? He went to Ward 714, a mental ward. What happened to this man? He died that same night

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22 (cont.)
constitutional minima.

23 The Berryman testimony reflects further upon disputed allegations found in the pleadings filed in this case. Plaintiffs asserted in their Complaint:

> 15,c(1) Toilets leak and overflow flooding the sleeping quarters of inmates and resulting in leakage from one floor to another, below. When the cells are locked overnight, conditions caused by overflowing toilets are not liveable, particularly for inmates forced to sleep on the floor.

Defendants answered:

> 15, c(1) . . . the allegations. . . are denied for the reason that they are untrue, however, that leaking toilets and overflowing toilets are caused by the prisoners stuffing foreign material into sink and toilet

in Ward 714. (See testimony of Michael Lewis and Death Report on James Grubbs, Exhibit # 85).

Now procedural due process is disciplinary hearings has not been fashioned really in the context of trying to save lives by providing a vehicle for information to be hopefully imparted to somewhat responsible jail officials or hearing referees who might not otherwise know persons are righteously protesting on behalf of a dying inmate. The courts have formulated the operative rules of due process in a less tragic and more sterile context, surely. Nonetheless, the purpose of the law is consistent with the interests of justice; and, if its application to the jail is macabre, that is simply because of what the jail is.

Recent Supreme Court cases have required a minimum of due process, including some sort of hearing, when face a serious loss of liberty or privilege. Thus, before a person's wages may be garnished (Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)), or his welfare payments terminated (Goldberg v. Kelly, 397 U.S. 254 (1970)), or before a juvenile can be civilly committed to an institution (In re Gault, 387 U.S. 1, (1967)), or even before a telephone company's rates can be altered (Ohio Bell Telephone Co. v. Public Utilities Comm., 301 U.S. 292 (1937)), some sort of evidentiary hearing must be provided. Michigan courts have likewise required hearings meeting minimal requirements of due process before termination of an occupational license (City of Detroit v. Mashlakyian, 15 Mich. App. 236 (1968)), and termination or reduction of public assistance (Woodsen v. Houston, 27 Mich. App. 239 (1970) and Moore v. Houston, No. 104435 (Wayne Co. Cir. Ct., Nov. 1, 1968) (judge Kennedy)).

The considerations for requiring procedural due process in the above cases clearly apply to the discipline of prison inmates, and a number of federal courts have recently so held. Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970), Wright v. McMann, 7 Crim. L. Rptr. 2427 (N.D. N.Y. 1970), Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970), Nolan v. Scafati, 430 F.2d 548 (ost Cir. 1970), Rhem v. McGrath, 70 Cin. 3962 (E.D.N.Y., March 17, 1971). See also Morris v. Travisono, 310 F. Supp. 857 (D.R.I. 1970). The requirement applies even more clearly to the punishment of pre-trial detainees who are still presumed innocent of crime.

Other jurisdictions have successfully adopted procedures which incorporate many of the requirements of procedural due process. In Carothers, supra, Judge Mansfield noted that the prison rules prevailing in Missouri afford the inmate such safeguards as prior written notice, a hearing before a board of at least three officials including a person from the non-custodial staff, representation in serious cases, and written summary of the evidence and proceedings. Similar rules have been adopted, pursuant to federal court order, in Rhode Island. See Morris v. Travisono, supra. Even if institution ofthe safeguards will hamper administrative efficiency, they "must [not] be dispensed with entirely because of the need for summary action or because administrativ problems would be too burdensome". Carothers, supra, at 1028. In fact, the elements of due process will further important governmental interests, for they will help lessen the alienation of inamtes fostered by the jail system. As Judge Tuttle has written, sporadic and discretionary enforcement of discipline "is more likely to breed contempt of the law than respect for it and obedience to it". Jackson v. Godwin,400 F.2d 535 (5th Cir. 1968).[24]

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23 (cont'd). drains. However, regardless, any flooded cell is vacated of prisoners when this occasion arises.

24 Along with these requirements for disciplinary hearings, the Fourteenth Amendment forbids the arbitrary punishment of politically controversial pre-trial detainees by summarily placing upon their arrival in conditions worse than those provided the general prison population. Davis v. Lindsay, 70 Civ. 4793 (S.D.N.Y. 1970). Plamondon should immediately be revomed from Ward 611 and placed within the general population. See also, Morris v. Travisono, supra, app. A.

The minimum process due those in maximum custody before removal from the general population and placement into the hole, mental ward, or isolation would call for:

(1) Written notice of the cahrge and the rule alleged to be violated. This requirement is elemental to any notion of due process. See Goldberg v. Kelly, supra, Woodsen v. Houston, supra. Further, a prisoner must be given advance notice of the character of the prohibited act and the punsihment which particular conduct would incur. Talley v. Stephens, 247 F. Supp. 683, 389 (E.D. Ark. 1965). "There should be a more complete set of rules, possibly including rules governing inmate behavior, lock-out times and procedures, use of . . . chapel, medical services, and other aspects of inmate life . . ." Rhem v. McGrath, supra, p. 24.

(2) A hearing before an impartial official with the right to cross-examine the accuser and call witnesses. The requirement of an impartial tribunal is fundamental to American notions of fair play. Goldberg v. Kelly, supra. Deputies and command officers are in no position to make out impartial justice. See Landman v. Peyton, 370 F.2d 135, 140 (4th Cir. 1966). The right to call witnesses is essential, and this should cause few difficulties in the jail setting. Further, confrontation and cross-examination of accusers is required in many proceedings. See Pointer v. Texas, 380 U.S. 400 (1965). While these rights may not be necessary in every jail disciplinary proceeding, they must be provided in serious cases when the facts are in dispute and when it will not lead to the actual disruption of jailsecurity. Cf., Warren v. Parole Board, 23 Mich. App. 754 (1970).[25] Not a shred of evidence has been introduced by defendants to support a conclusion that Jail security would be threatened by imposition of such procedures.

(3) Written record of the hearing, decision, reasons therefore and evidence relied upon. An adequate record is essential because it assures that a hearing is actually held and operates as a check on arbitrary action. It also makes meaningful any appeal that is allowed. The requirement of reasons and evidence relied upon helps assure that the decision is a reasoned one.

(4) Right to counsel or counsel substitute. Representation of inmates in disciplinary proceedings is not novel, for both Missouri and Rhode Island permit representation by classification officers. Even Jackson Prison provides inmate advocates for convicts. There is no reason not to permit an inmate facing punishment to seek to obtain the assistance of a lawyer or "counsel substitute," who might be a law student, member of the prison staff, or fellow inmate. Inmate assistance has already been explicitly approved by the Supreme Court in Johnson v. Avery, 393 U.S. 483 (1969).

It may be that, in some extraordinary cases, emergency segregation can be justified. For example, where an inmate is leading an insurrection, there is no doubt that jail officials could justify isolating the inmate forthwith. With this in mind, the Rhode Island regulations for prisons, drafted by prison officials and approved by a federal district court upon agreement of the parties, were drawn with a specific provision for emergency situations. However, these regulations require much more careful and fairer procedures for ordinary disciplinary charges. See Morris v. Travisono, supra.

Except in emergency situations, all pre-trial detainees at the Wayne County Jail must be afforded the procedural safeguards set out above. No evidence of prison security was presented by the Defendants to outweigh these considerations. No showing was made that present procedures are necessary or that greater due process would be

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[25] Though Sostre, infra, may suggest no need for confrontation and cross-examination, we respectfully submit that it is incorrect, is based upon improper application of Supreme Court precedents (e.g. Goldberg v. Kelly, supra), is premised upon questions of rehabilitation having no relevance to pre-trial detention (according to Defendant's counsel and witness, Perry Johnson) and makes no attempt to evaluate what security requirements would be undermined and frustrated by its allowance.

impossible. No relationship was shown between the imposition of procedureless deprivation of rights and privileges and the ability to assure an inmate's presentment at trial.

2. The "Hole".

Incarceration of inmates in Ward 711 must be eliminated. The conditions of the "hole" in the Wayne County Jail are as foul as those which the court in Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966) described and found unconstitutional. Indeed, Defendants made absolutely no showing that use of ward 711 was related to and necessary for assuring presentment at trial of pre-trial detainees. Defendants in no way indicated that other means were insufficient to discipline unruly and dangerous inmates. If incarceration in a punitive segregation unit is to be justified, it is only as a last resort when all other efforts at control have failed. The unit must assure a reasonable temperature, drinking water, facilities for washing, a toilet that works and is usable, a light bulb, and a provision of basic services including reading, visiting privileges, food service, a mattress for sleeping, the availability of recreational facilities, and the availability of access to the outdoors. (See Murton, p. 64, 138, and Ruzumna).

3. Classification.

The classification system presently used at the Wayne County Jail, merely separates, when it is operating at its best, felons or accused felons from those arrested for misdemeanors. Homosexuals are sometimes placed in a homosexual ward and those found to be acting out or psychotic are placed in the 6th or 7th floor treatment-less "mental wards." Present classification does not even provide effective medical examinations for communicable diseases. No evidence has been shown to justify the present classification system. There is no reason why classification should not be done as suggested by Dr. Murton. A receiving unit should be established to check inmates for communicable diseases and provide each inmate with a physical exam. A classification committee which includes inmates should be established. That committee would take into account the person's risk to other inmates, whether the inmate is going to be there for a short or a long period of time, his or her place of residence, a recreational or work assignment, and some evaluation of his or her personality, which could be developed from records. They should also take into account past history or criminal activity.

4. Cleanliness.

No possible justification exists for the filthy and disgusting conditions presently found at the Wayne County Jail. How can Defendants possibly justify the fact that the jail is infested with rats, roaches and vermin? How can they possibly justify the failure to provide clean and sanitary mattresses, clean bedding and clothing, clean desanitizing equipment and mops, adequate towels, and other personal necessities such as toothpaste, soap, sanitary napkins, etc. No showing has been made that denying inmates these minimal sanitary requirements, cleaning up the jail, eliminating rats, roaches and vermin, and providing inmates with clean mattresses and bedding, is in any way necessary to assure thei presentment at trial. Indeed, the unsanitary conditions at the jail, including the often inoperative shower conditions, are so serious that inmates coming from the jail often fail to have a clean appearance at trial.

5. Recreation, Vocational Training and Education.

Inmates at the Wayne County Jail, one-third of whom are between 17 and 21 years of age, live 24-hours a day in forced idleness.

They are confined to their cells or the "rock" area (old jail) or narrow catwalk (annex), except for showers or visits, infra. They receive no recreation, vocational training or educational instruction. They are indeed subject to punishment. "Enforced idleness can be a very real form of punishment." Krist v. Smith, 309 F. Supp. 497 (S.D. Ga. 1970). There is no justification for the continued forced idleness that frustrates the interests and needs of the inmates and, in fact, the jail administration too. Inmates seek and need to be active. As Dr. Murton pointed out: "(G)iven a choice, the majority by far of inmates in any type of institution would rather engage in some activity rather than sitting idle in a cage for twenty-four hours a day." (Murton, p. 46).

The failure to provide these essential services, as well as other services mentioned below, is not inherent in confinement. It is certainly not necessary for presentment to preclude these services from reaching inmates. And if the state is going to incarcerate inmates who are presumed innocent and not provide these and other essential services, then the state is obviously acting inconsistent with the duty on its part to maximize freedom.

Defense counsel has argued, however, that the Jail need not provide a rehabilitation program because its inmates are not convicted but are pre-trial detainees. We agree that no "rehabilitation" program should be established and have asserted the essential distinction between pre-trial detention and the "punishment" and "treatment" of convicts from the outset. But it does not follow that the Jail has no obligation to provide essential services. Indeed, since the Jail houses pre-trial detainees who are entitled to the maximization of freedom, the jail must provide all of the services available to persons free on bail. No essential service can be taken from them unless it is shown to be necessary to and related to presentment at trial. Plaintiffs do not seek to establish a rehabilitation program; plaintiffs seek to have all services available to those on the outside, including recreation, education, vocation training. Plaintiffs seek too to have the opportunity to work on the outside as provided in M.S.A. Sec. 28.1747 et seq.

6. Medical, Dental and Psychological Care.

The failure to provide medical and psychological care at the Wayne County Jail has no possible relation to and is unnecessary for Plaintiffs' presentment at trial.

"When the state undertakes to imprison a person, thereby depriving him largely of his ability to seek and find medical treatment, it is incumbent upon the state to furnish at least a minimal amount of medical care for whatever conditions plague the prisoner." Sawyer v. Sigler, 8 Crim. L. Rptr. 2317 (2318) (D.C. Neb. Dec. 23, 1970). See also, Riley v. Rhay, 407 F.2d 496 (9th Cir. 1968); McCullum v. Mayfield, 130 F. Supp.112 (N.D. Cal. 1958); Coleman v. Johnston, 247 F.2d 273 (7th Cir. 1957); Hirens v. Director, 351 F.2d 613 (4th Cir. 1965); Reeding v. Pate, 220 F. Supp. 124 (N.D. Ill. 1963).[26]

Plaintiffs have provided no justification for failing to provide the following services: (1) Delivery of all requests to the medical personnel for treatment and examination. (2) Providing a physical exam upon entry into the jail. (3) Providing special diets to prisoners with ulcers, diabetes, and to pregnant women. (4) Providing care and treatment by trained medical personnel. (5) Providing a sick call and proper waiting rooms. (6) Providing proper dental care, including treatment besides extractions. (7) Providing unbiased psychological and psychiatric institution for all those who appear to be mentally ill.

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[26] Surely if those confined in mental institutions or other treatment facilities are entitled to treatment (Rouse v. Cameron, 379 F.2d 104 (D.C. Cir. 1967), Mason v. Sup't. of Bridgewater State Hospital, 233 N.E. 2d 908 (Mass. 1968), Michigan v. Bargy, No. 32784 (Wayne Co. Cir. Ct., 1970), those confined to pre-trial detention facilities should be entitled to all essential services necessary to provide them with all the freedom of those on the outside except for the fact of confinement itself

The harshness of the jailer's mentality is plainly documented by the lack of treatment or even minimal human concern that is afforded persons who are sick. The governing premise is that everybody must be faking; and, they cling to this view despite the natural deaths, suicides, and attempted suicides. Defendant's own witness, Deputy Betty Jo Price, testified to the inadequacy of the medical treatment and the frequency with which bona fide requests for medical treatment are totally ignored. The medical clinic pushes pills and at trial sought to defend their total lack of qualitative treatment by a ridiculous quantitative thrust, emphasizing the number of times a person received thorazine or pain pills. It mattered not to the defense that Nora Ware's infection was not treated, but it was sufficient that she received pills or went to the clinic or hospital more times than she remembered, despite the fact that during the critical stages of her misery she received no treatment whatsoever and suffered so that the only means she had to seek help was to start a fire. It mattered not that Donald Smith's seizures, like those of James Grubbs', supra, continued unabated, he was still housed in the Wayne County Jail and on the seventh floor at that. The objective callousness of the jailers and the defense, and the sick, depraved conditions of this institution do indeed lead Plaintiffs to say and believe, deeply, that the Wayne County Jail treats human beings detained solely because of poverty in a manner that this society would not permit to exist at the Detroit Zoo. Remember, for example, the two witnesses called from the "mental wards".

(1) An 80 year old man sentenced to the Wayne County Jail as a trustee to work in the kitchen while serving a 60 day vagrancy sentence shuffles into the courtroom where he sits for a minute and is then excused without testifying on the grounds that his testimony would be cumulative. As he shuffles out of the courtroom he says: "Did I have my trial?" That man was disciplined and confined to the 7th floor to serve his "criminal" sentence because he allegedly urinated and spat on the catwalk. (Disciplinary Report of Thomas McGlynn, read into the record Feb. 24, 1971).

(2) A man finds himself in 24-hour lockup in the mental ward and testifies he does not understand why he has been so confined for months. The County Attorney, with great flamboyance and style breaks the witness and has him admit that he was sent there because of his attempted suicide. Then, with a terrific sense of advocacy counsel brazenly asks: "Well, why did you do that?" Slowly, quietly and with great dignity this jail-rules violator answers: "Well, I guess I thought I would destroy myself rather than let them destroy me." (David Ambrose).

And remember too John Sawyer, who this Court saw, literally hanging from the bars of his 6 by 8 foot cell, where he spent 24 hours a day nude, without a mattress, and with the floor flooded. This man who knew he wasn't having his trial because there were "too many people here" at Court; who said he had been in custody for 25 years at St. Jean Station (the fifth precinct); and who was kept in the above-described condition because he could not afford to post $10.00, the price of ransom while awaiting trial on shoplifting.

It is not enough to order seriously dangerous psychotics to mental care facilities. This Court has to clean up--and in the meantime clean out--the jail, at all times questioning the character and sickness of the institution itself.

7. Food and its Distribution.

What possible justification could be asserted to deprive pre-trial detainees of a menu that lacks Vitamin A and C, is deficient in iron for women and deficient in calcium, is almost totally devoid of cellulose and roughage and provides too few green and leafy vegtables, almost no citrus fruits, fruit juices and tomatoe, no butter, margarine or eggs, and an inadequate mild supply? What possible justification is there for the jail not to provide the Recommended Daily Dietary Allowances of the National Research Council or indeed to comply with the Department of Correction Handbook on the Administrative Operation for Jails? What possible justification is there to continue preparing food in a kitchen

in which the walls are chipping and the plaster is peeling, the floor is cracked, the sink fails to meet minimum sanitary requirements and in which cleanliness and sanitation are totally non-existent? What possible justification is there to continue serving food in inmates'cells and on food carts which are not heated?

Perry Johnson, Sheriff Lucas, and Dr. Murton, agree that congregate dining either in a large central dining hall or in smaller dining units, is essential for all inmates in the Wayne County Jail other than those in punitive or segregated confinement. There is no justification for continuation of present food preparation and service policies.

8. Inspection of all Mail, Limitations Upon and Denials of Access to Reading Materials, Restricted Visitation Provisions, and Prohibition of Direct Telephonic Communication are Unrelated to Presentment and Violate First Amendment Rights of Inmates.

To assert that severe limitations on the First Amendment rights of all pre-trial detainees is related to and necessary to assure their presence at trial seems absurd on its face. And yet, Defendants have systematically (1) prohibited books, papers, or magazines from being brought or sent to jail inmates, (2) subjected all mail, both incoming and outgoing, to a confiscation and inspection network operated by jail personnel, (3) restricted visiting privileges to once every 2 weeks, failed to provide facilities which are private and unmonitored, denied inmates in the "hole" or women's isolation all visitation rights except for attorneys and (4) prohibited direct telephonic communications.

There is no possible justification for the limitations upon and denials of access to reading materials of one's choice, whether a maximum custody or minimum custody detainee awaiting trial. Recent cases have concluded that such restrictions upon constitutionally protected activity of sentenced inmates are not justified by any legitimate penal interest. See e.g., Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968) (Black inmates held entitled to receive newspapers and magazines); Rivers v. Royster, 360 F.2d 593 (4th Cir. 1966) (Black inmates held entitled to receive non-subversive newspapers); Walker v. Blackwell, 411 F.2d (5th Cir. 1969); Long v. Parker, 390 F.2d 16 (3rd Cir. 1968) (inmates entitled to receive Black Muslim newspaper Muhammed Speaks); Sostre v. McGinnis, 334 F.2d 90s at 909 (2nd Cir. 1964) (certain Muslim literature arousing "outrage, resentment and attempts at reprisal" by whites could apparently be kept in Black Muslim inmates' cells, under prison rules); United States ex rel Gabor v. Myers, 237 F. Supp. 852 (E.D. Pa. 1965) (Hungarian refugee entitled to communicate in foreign language through prison mail).

Surely no justification could exist for these restrictions as to pre-trial detainees. See e.g., Shakur v. McGrath, ___ F. Supp. ___ No. 69 Civ. 4493 (S.D. N.Y. Dec. 31, 1969) (Black Panthers held entitled to receive Black Panther newspaper, notwithstanding the Court's characterization of it as a "lurid, poorly edited and provocative political pamphlet").

Any restrictions on the receipt or distribution of mail or any censorship of mail is likewise forbidden. In Palmigiano v. Travisono, 317 F. Supp. 776 (D.R.I. 1970), judge Pettine, after a full hearing including the testimony of experts, held that the First Amendment severely restricts censorship of pre-trial detainee communication by Jail administrators. In describing the confines of thePirst Amendment, Judge Pettine states that:

> In the area of the First Amendment, the United States Supreme Court has given us two applicable tests, namely the "Clear and present danger" test in Schenck v. United States, 249 U.S. 47, 52, 39 S. Ct. 247, 63 L. Ed. 470 (1919), and the modification of this test as enunciated in Dennis v. United States, 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951), analyzing the need for restrictions on freedoms in terms of the consequences which would result if no restrictions existed. The employment of less burdensome alternatives to accomplish the desired result should be considered.

> In a recent case involving the application of the Dennis version of the clear and present danger test in a prison context, Judge Tuttle said: "(In the area of First Amendment freedoms) we have pointed out that stringent standards are to be applied to governmental restrictions *** and rigid scrutiny must be brought to bear on the justifications for encroachments on such rights. The State must show some substantial and controlling interest which requires the subordination or limitation of these important rights, and which justifies their infringement ***; and in the absence of such compelling justification the State restrictions are impermissible infringements of these fundamental and preferred rights. Moreover, in examining the justification for state infringement (in the area of First Amendment freedoms) the Supreme Court has recognized and declared the principle that the means used by the State, as well as the ends, must be legitimate. Even the most legitimate of legislative ends cannot justify the infringement of fundamental rights of individual citizens if these ends may be accomplished by the use of less restrictive alternative means which result in less invasion of these fundamental rights."

[Jackson v. Godwin, 400 F.2d 529, n. 45 at 533, 541 (5th Cir. 1968)] Palmigiano, supra at 786.

Judge Pettine recognized that the prevention of escapes, riots and assaults by inmates are legitimate goals of prison authorities, and that, therefore, they must be allowed to prevent the introduction of objects into the prison such as weapons and hacksaw blades. In addition the mails should not be used to convey illegal materials into the prison such as narcotics and drugs. "However, in taking steps to prevent the introduction of such items into the prison, even though the purpose or end in view is legitimate, prison officials must use means which are legitimate and which provide the least restrictive of the alternative methods of accomplishing the desired end." Palmigiano, supra at 788. Despite pronouncements in cases involving incarceration of convicted prisoners that prison officials have broad powers of censorship, (cf. Sostre v. McGinnis, supra) Judge Pettine found compelling justification "only for fewer restrictions because total censorship serves no rational deterrent, rehabilitative or prison security purposes." Palmigiano, supra, at 785.[27]

Thus, as Judge Mansfield said in Carothers v. Rollette, 314 F. Supp. 1014 (S.D. N.Y. 1970), "(A)ny prison regulation or practice which restricts the rights of free expression that a prisoner would have enjoyed if he had not been imprisoned must be related both reasonable . . . and necessarily . . . to the advancement of some justifiable purpose of imprisonment . . ." Carothers, supra at 1026-7.[28] Defendants though asserting that the reading of outgoing mail might turn up information about escape plans, (see, however, Murton, p. 137) and asserting a general need for censorship, have made no showing that reading of incoming or outgoing mail is necessary for the security of the institution nor related to pre-trial detention. Defendant did not even attempt to introduce testimony showing that censorship imposed was done by the

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[27] Judge Pettine ordered that prison officials cannot open or otherwise inspect letters to or from state or federal public officials (legislative, executive and judicial) as well as the inmate's attorney or other Rhode Island attorney. He further ordered that officials can open and inspect, but not read, letters from persons on a prisoner's approved mailing list, and that they can open, inspect and read letters from all other persons in order to detect expressly defined objectionable material. Finally, he ordered that outgoing letters to persons other than public officials cannot be opened, inspected or read, except with a search warrant.

[28] See also Singer, Censorship of Prisoners' Mail and the Constitution, 56 A.B.A.J. 1051 (Nov. 1970).

... before a three ...

least restrictive means available.[29] Defendants' attorney quoted and relied upon Sostre, thus failing to perceive the thrust of Plaintiffs' case. Pre-trial detainees are entitled to receive and send out any and all mail. That is their preferred right. Some form of inspection can be made of incoming mail to assure that no drugs or weapons are introduced. However, until Defendants establish that no other alternatives are available but a full scale reading of all mail and that censorship is somehow related to the purpose of pre-trial detention, a relation Plaintiffs fail to understand, they cannot continue to restrict or censor the incoming or outgoing mail of inmates.

Communication other than mail can also not be restricted without a showing of relevance and necessity. Surely there is no need for depriving pre-trial detainees of an opportunity to make telephone calls and Defendants have not suggested otherwise. Moreover, pre-trial detainees may well require the services of a phone to help prepare their case and contact witnesses. Indeed that call should be provided at public expense. If phone calls for all inmates present problems, and this Court is convinced that such a problem actually exists in light of that evidence, then inmates could place the call in an office or area where there is an officer, though there could be no monitoring of any calls, particularly those to attorneys or witnesses. (See, Murton, p. 132). It must be emphasized, however, that there is no evidence before this Court indicating any problems with phone communications nor even any reason other than lack of money why phones should not be provided in the jail.

Visitation too should provide no problems for jail administration if handled in a "humane" manner. According to Defendants, visitation cannot now be provided because of lack of space (though this is partially caused by the use of visitation rooms as storage for inmate property and clothes). But lack of space does not justify the severe limitations on visiting (once every two weeks) nor the mechanical devices and physical structure under which visitation is allowed. Indeed there is no justification for any of the limitations upon visitation including the failure to provide conjugal visiting. If it is important for people to be able to talk to, touch and hold someone (Lucas p. 11, March 11) then they should be allowed to do so. The only testimony supporting restrictions upon visitation were statements by Sheriff Lucas and Perry Johnson that the uncertainty of pre-trial detention requires greater security. Yet this opinion is not supported by any showing that open visiting, indeed conjugal visiting, could not be provided to pre-trial detainees. There is no evidence that open visiting would result in more contraband, more escapes, more problems for prison administration. In fact, the opposite is more likely. Conjugal visiting will relieve tension and frustration. Allowing open visits and treating inmates as human may result in less hostility and aggressiveness. If privileges are given, privileges can be denied upon a showing of abuse. Why a prisoner would be more likely to take advantage of his privilege than a convicted prisoner, particularly when he is likely to be out of the Jail in a relatively short time, is hard to understand. But, even if Plaintiffs concede the need for some control, which we do not, there is no showing here that greater visitation privileges are impossible. Indeed the Sheriff concedes that he would consider "very favorably" open visiting in a new facility. (Lucas, p. 13, March 11). Pre-trial detainees are entitled to have their freedom maximized to the degree that they are provided open visits and conjugal visits, subject to only those controls that are proven to be necessary for regulation of contraband.

9. The Total Lack of Legal Material in the Jail Library, the Limitation on Access to Other Persons and Means Necessary to Prepare for Defense, and the Psychological and Physical Effects of Having to Live in the Wayne County Jail Violates Plaintiffs' Right to a Fair Trial and Effective Assistance of Counsel.

The Wayne County Jail provides pre-trial detainees with no legal testbooks, case law books or statutes whatsoever, Access to counsel is

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[29] "Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stiffle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." Shelton v. Tucker, 364 U.S. 479, 488 (1960).

limited and, when granted, is maintained in circumstances often no sufficiently private. Furthermore, inmates are inhibited in their searches for witnesses and other persons necessary for the preparation of a defense by the denial of direct access to telephones, restrictions on mail and severe limitations on visitation. These conditions deprive Plaintiffs of their rights under the Sixth and Fourteenth Amendments.

The rights to a fair trial and effective assistance of counsel are guaranteed to all citizens by the Sixth and Fourteenth Amendments. Gideon v. Wainwright, 372 U.S. 335 (1963). These rights apply no less when the citizen is detained prior to trial. See, Coplon v. United States, 191 F.2d 749 (D.C. Cir. 1951), In re Snyder, 62 Cal. App. 697 (1923). The freedoms and opportunities to pursue those rights cannot be infringed without infringement of the rights themselves. In Johnson v. Avery, 393 U.S. 483 (1969), the Supreme Court held that prisoners must be allowed to write writs for other prisoners as long as the state provided no alternative sufficient assistance. In Gilmore v. Lynch, 319 F. Supp. 105 (D.N. Calif. 1970), Judge Wollenberg found that a prison law library containing only volumes permitted by a state regulation unconstitutionally denied prisoners access to the courts. If prisoners filing motions for habeas corpus have a right to sufficient legal materials, certainly pre-trial detainees must be afforded that same right in their preparation for trial. Some inmates may choose to represent themselves and indigent misdemeanants must represent themselves. Such a path is completely hindered when they are denied access to legal materials. Others may wish to assist their attorneys in preparation of their case or seek to ascertain the validity of representations made by counsel. In preventing these activities, the current procedures in the Wayne County Jail abridge the rights to full and effective counsel.

Furthermore, all criminal defendants have a right to procure witnesses in their behalf. The Ninth Circuit has recently stated in Kinney v. Lemon, 425 F.2d 209, 210 (1970) that:

> The ability of an accused to prepare his defense by lining up witnesses is fundamental, in our adversary system, to his chances of obtaining a fair trial. Recognition of this fact of course underlies the bail system. Stack v. Boyle, 342 U.S. 1, 4, 72 S. Ct. 1, 96 L. Ed. 3 (1951). But it is equally implicit in the requirements that trial occur near in time, Klopfer v. North Carolina, 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed.]d 1 (1967), and place (UL.S. Const. Amend. VI) to the offense, and that the accused have compulsory process to obtain witnesses in his behalf. Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed.2d 1019 (1967). Indeed, compulsory process as a practical matter would be of little value without an opportunity to contact and screen potential witnesses before trial. (Emphasis added).

However, even with conscientious counsel pre-trial detainees are often unable to line up witnesses. According to the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice Report, "experienced defense counsel [find] that in some cases it is only the accused who can locate and induce reluctant witnesses to come forward." (Report, 1963, at 71). It was with this factor in mind that the court in Kinney, supra, ordered a juvenile held on charges growing out of a schoolyard fight released: "There is here a strong showing that the appellant is the only person who can effectively prepare his own defense." Kinney, supra, at 210. In this suit, Plaintiffs do not ask to be permanently released to seek out witnesses. However, Plaintiffs do seek to have their Sixth Amendment rights protected by the provisions of direct and free telephone communication, increased and private visitation rights, and the removal of restrictions or mishandling of mail.

Not only do the inmates of the Wayne County Jail stand trial with the disadvantages described above but the effect of being detained in the Wayne County Jail is also psychologically debilitating and prejudicial. Yet, those who are forced to spend their time in jail while awaiting trial are expected to be prepared for trial, on often very

serious charges. No wonder a higher proportion of those detained are found guilty than those on bail.[30] The conditions at the Jail, thus, in fact, infringe upon a defendant's right to a fair trial and interfere with the total judicial process.

There is no method to ascertain how many defenda-ts plead guilty solely to escape the Wayne County Jail - even if it means hurrying to Jackson Prison, where, as a convict, one is able to exist under hard but better conditions. Despite the lack of emperical data, we all know there is a material, coercive affect to plead guilty that is generated by the barbaric conditions of the Jail.

To expect people to leave a filthy, overcrowded and vermin infested cell and walk over to court to stand trial on a criminal charge is a travesty. That some inmates are able to do so is no answer - that is a tribute to their own strength and cannot be expected of everyone. The time has ended to use the Jail as punishment which limits defendants in their legitimate and constitutional attempts to prepare for trial.

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30 One study has found that because of such disadvantages, 64% of those persons awaiting trial in New York City were sentenced to prison while 17% of those released on bail were so sentenced. Other factors such as court appointed counsel and prior-record had no effect on the sentencing of pre-trial detainees in relation to those on bail. Renkin, The Effect of Pre-trial Detention, 39 N.Y. U.L. Rev. 641 (1964). See, also, the dissenting opinion of Judge Adams in Bowen v. Recorder's Court Judge, 384 Mich. 55, 60 (1970).

III

CONDITIONS IMPOSED ON INMATES OF THE WAYNE COUNTY JAIL VIOLATE THEIR RIGHTS PROTECTED UNDER MICHIGAN STATUTES, CODES AND REGULATIONS; AND, SAID VIOLATIONS ARE ALSO IN CONTRAVENTION OF PLAINTIFFS' RIGHTS UNDER U.S. CONSTITUTIONAL AMENDMENTS VIII AND XIV, SUPRA.

The decrepit and overcrowded conditions found in the Wayne County Jail violate numerous state and local statutes, codes and regulations. This Court is obliged under State law to enforce the minimum standards made applicable to the jail by legislative enactment. Violation of such laws constitutes additional constitutional infringements to the Eighth and Fourteenth Amendments to the United States Constitution, supra. This is not to say that compliance would necessarily satisfy constitutional requirements in these specific areas, however, such a question is academic. The flagrant and wholesale violations enumerated hereinafter add further and obvious weight to the cumulative impact of a horrendously unconstitutional County structure.

A. Standards Applicable to the Jail

The Wayne County Jail is governed by three sets of standards. The State Housing Law, the City of Detroit Building Code, and the Administrative Code of the Department of Corrections. The Plaintiffs will outline here the applicability of each set of regulations and indicate some of the violations of those regulations.

Since 1917 the State of Michigan has, through the State Housing Law, detailed the minimum standards for the construction and maintenance of dwellings.[31] This statute divides dwellings into three categories: private dwellings, 2-family dwellings, and multiple dwellings. M.C.L.A. 125.402(a); M.S.A. 5.2772(2). Multiple dwellings are themselves divided into two categories: class "a" multiple dwellings, which are occupied, more or less, permanently, and class "b" multiple dwellings "which are occupied as a rule, transiently . . ." The statute specifically provides: "This class includes . . . jails . . ." M.C.L.A. 125.402(3); M.S.A. 5.2772(3).

The Wayne County Jail is governed, therefore, by the standards for construction and maintenance of dwellings set forth in the statute. It may well be that certain standards may not be feasible, for security reasons, in the construction of the jail. The statute, therefore, states that in asylums, jails, and similar institutions (presumably those where security is necessary) the construction shall be as near as practible to the provisions of the act. Since full compliance in construction is not required, the statute requires approval of plans by the local enforcing agency and the state board of health.[32] The statute does not exempt the jail from any of the maintenance sections of the State Housing Law.[33]

31 "Dwelling" is defined as "Any House, building, structure, tent, shelter, trailer or vehicle, a portion thereof, (except railroad cars, on tracks or rights-of-way) "which is o-cupied in whole or in part as the home, residence, living, or sleeping place of one or more human beings, either permanently or transiently." M.C.L.A. 125.402(1); M.S.A. 5.2772(1).

32 The Defendants have not established any approvals that have been given as required by the statute.

33 The statute reads:

> All assylums, jails and similar institutions should be constructed as near as may be practicable according to the provisions of this act, and according to the plans and specifications approved by the enforcing official as to safety, fire protection and fire prevention and according to the plans and specifications approved by the state board of health as to sanitation, light and ventilation. M.S.C.A. 125.410a; M.S.A. 5.2781.

The second set of regulations governing the Jail is the City of Detroit Building Code.[34] The code applies to all buildings and structures in the city[35] including minicipal, county and private buildings.[36] The City Building Code contains a number of different Articles, but the one with which we are primarily concerned is the City Housing Code, sections 2100.0 to 2199.0 of the Building Code. The Housing Code is identical to the State Housing Law in many respects and also includes the City Electical[37] and Plumbing codes[38] which are made a part of the Housing Code by reference.

The third set of regulations governing the physical condition of the county jail are the Regulations of the Department of Corrections.[39] These regulations detail the physical conditions required, as well as health, medical care and other requirements noted elsewhere in this brief. One final note on the applicability of these standards should be added. These minimum standards are not waived, nor is the owner of the dwelling excused from compliance with these standards, because some prior occupant has caused certain damage. Thus, if a landlord leases a dwelling with dangerous electrical wiring, backed up plumbing and the like, it is no defense for him to say that some tenant, a few hears ago, caused that problem. Only when the existing tenant is the wrongdoer may the owner be exonerated. But he cannot continue to place persons who have done no wrong into the same housing because of the acst os some prior occupant. If he does so, he has clearly breached these standards.

B. Conditions in the Jail in Violation of Applicable STandards

1. General Condition. Both the City and State laws require the jail to be kept in good repair. They provide:

> Every dwelling and all the parts thereof including plumbing, heating, ventilation and electrical wiring shall be kept in good repair by the owner.
>
> M.C.L.A. 125.471; M.S.A. 5.2842; City Code Section 2169.0.

It is clear that this section has been and is being violated by the Defendants on a massive basis. The Plaintiffs will refer to this section throughout this brief.

2. Overcrowding. The maintenance provisions of both the State Housing Law and the City Code state minimum requirements for rooms used as bedrooms.[40] Both provisions state:

> No bedroom or room used as a bedroom in any class "b" multiple dwelling shall be so occupied as to provideless than 500 cubic feet of air space per occupant . . .
>
> M.S.A. 5.2855; M.C.L.A. 125.483; City Housing Code 2181.0.

Another minimum standard is that required by the Department of Corrections. The Rules - R 791.101(5) - require that "Jail or lockup floor space shall have a ratio of not less than 52 square feet per inmate." None of the cells in the old section of the jail meet either

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[34] Ordinance 121-P and officially identified as Chapter 449 of the Complied Ordinance of the City of Detroit for 1954.

[35] City Code § 100.1.

[36] City Code § 101.0.

[37] City Code § 2169.3.

[38] City Code § 2135.0.

[39] See, Supplement 62 of the 1954 Michigan Administrative Code, pg. 48-52 containing the rules for jails and lockups. Filed February 27, 1970, by the Department of Corrections, Bureau of Correctional facilities, replacing Rules 1-13, entitled "county jails" being R 791.21-R 791.33 appearing on pp. 3419-3422 of the 1954-F annual

of these standards. In the new section of the jail the individual cells may hold one person and the bullpen cells may hold eight persons.

The Plaintiffs here assert that compliance with the minimum standards set forth in the State Housing Law requires the sheriff to use only the cells in the new section of the jail, in a manner not to exceed one person per cell or eight persons per bullpen. All other prisoners must be released or detained in other constitutional facilities

3. Plumbing. It is clear that the plumbing and plumbing fixtures have not been maintained in good repair as required by the State Housing Law and City Code section noted above. The hot water pipes are extensively corroded, substantially reducing the amount and pressure of the water which can come through them. In addition the vent and waste system is severely deteriorated and leaks are present. Plumbing fixtures which have been damaged by time or by prior prisoners have not been replaced. State and local law specifically require defective and unsanitary plumbing fixtures which cannot be repaired must be replaced. M.S.A. 5.2863; M.C.L.A. 125.491; City Code § 2189.0. In addition the failure to provide sinks and sufficient water to the sinks in each cell is itself a violation of state and local law. M.S.A. 5.2844; M.C.L.A. 125.472; City Code § 2170.[41]

The plumbing and fixtures in the jail are also required to meet the standards set forth in the City of Detroit plumbing code since it is part of the Building Code[42] and is also adopted by reference into the City Housing Code. City Code § 2135. See also, Department of Corrections Rule 791.102(4). The plumbing code requires each fixture to have a liquid sealed trap. Plumbing Code § 602.1. Hot water is required to be provided at all times (Plumbing Code § 601.1.1 and City Code § 2170.0) at a temperature of at least 120°F. Plumbing Code § 701.1.3 and City Code § 2169.5. Where showers rather than bathtubs are provided, the walls must be composed of water-proof, non-absorbent materials to a height of six feet above the floor.[43]

4. Heating. As to heat and heating equipment, the City Code requires:

> It shall be the duty of every owner or agent in control of every occupied dwelling unit, in the absence of a contract or agreement to the contrary, to provide safe and adequate heating facilities, properly installed, that are capable of supplying sufficient heat for each habitable room, bathroom and toilet room thereof whenever the outer or street temperature shall fall below fifty-five (55) degrees Fahrenheit temperature. The minimum required temperature when measured at a distance of three (3) feet above the floor level shall be sixty-five (65) degrees Fahrenheit between the hours of 12:00 midnight and 7:00 p.m. and seventy (70) degrees Fahrenheit thereafter until 12:00 midnight.
>
> City Code § 2169.1; and see § 2169.2.

The Department of Corrections sets a higher standard requiring a heating unit sufficient to keep all parts of the Jail at a 75 degree temperature. Rule R 791.102(2). At present not all parts of the Jail are adequately heated as required by either of these requirements.

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[40] In the jail the individual cells are used as bedrooms.

[41] "Every dwelling . . . shall have within each apartment or family unit at least one approved sink with running water furnished in sufficient quantity at all times."

[42] See article 17 of the Code.

[43] "Acceptable materials include ceramic tile, metal tile, and plastic tile . . ." Plumbing Code § 910.2.1.

5. Sanitation. The City Code provides that all buildings must be maintained in a safe and sanitary condition and the final responsibility lies with the owner. City Code §§ 104.0, 104.1. The State Law and City Code also provides:

> Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage, or other matter in or on the same, or in the yards, courts, passages, areas or alleys connected therewith or belonging to the same. The owner of every dwelling shall be responsible for keeping the entire building free from vermin. The owner shall also be responsible for complying with the provisions of this section except that the tenants shall be responsible for the cleanliness of those parts of the premises that they occupy and control.

M.C.L.A. 474; M.S.A. 5.2846; City Code § 2172.0.

The Jail is most certainly not clean. The only exception to the owner's duty is the obligation on the part of the prisoners to keep their own cell area clean. Yet the Defendants have not supplied the prisoners with the necessary cleaning agents (detergents, mops, brooms, brushes, etc.) to maintain their cells in a clean condition. Unless and until the prisoners are supplied with the proper utensils, they cannot be held responsible for the conditions of their cells.

While the Defendants seek to blame Plaintiffs for unsanitary conditions in their cells, they cannot blame Plaintiffs for the accumulation of rubbish and dust in the pipe chaseways. Plaintiffs' own witness, William McKeon, testified that as early as January 12, 1971, he recommended as one of 38 recommendations for fire safety[44] that the Jail take steps to eliminate this fire hazard. Plaintiffs' witness, Ben Zohn, indicated that this condition still existed when he visited the jail in March.

Finally, the City Code and State Law quoted above specifically provide that it is solely the owner's responsibility to keep "the entire building free from vermin." The Jail is presently overrun with rats, roaches, and other vermin.[45] It is no argument to say that there is food in the cells. The prisoners must each there since there are no dining facilities. In addition, the statute makes no exception to the owner's mandatory responsibility for the entire building if some of the occupants do not maintain clean quarters. The duty falls squarely on the owner.

6. Electrical. The general statutory provisions, noted above, require the electrical wiring in the building to be maintained in good repair. M.S.A. 5.2842; M.C.L.A. 125.470; City Code § 2169.0. Present wiring, particularly that in the individual cells of the old section of the jail, does not meet this standard. In addition, the City Code also requires the electrical wiring and fixtures to be installed and maintained in accordance with the Electrical Code of the City of Detroit. City Code § 2169.3. See also Article 15 of the City Code and the Department of Corrections Rule R 791.102(1)(a). The City Electrical Code includes, by reference, the National Electrical Code.

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44 See Plaintiffs' Exhibit 105.

45 Also, it should be noted that the owner must provide insect screens in the summer. This is not done in the Wayne County Jail. City Code § 2172.1.

Article 15 of the City Code.[46]

At the present time there are many violations of the electical codes. These violations include, in addition to the general failure to repair the electrical wiring: overloaded fuse panels, the use of temporary wiring as a substitute for fixed wiring, temporary wiring attached to building surfaces and with splices and without a quick disconnect system; broken and "hot" light fixtures which could cause ventricular fibrillation; loose and dangerous fixtures in cell areas; bare wiring; use of unapproved fixtures in damp areas; failure to ground outlets and electrical apparatus.

It would be of no benefit to delineate in full here the individual violations noted in testimony by Plaintiff's electrician during his brief tour of the jail nor should it be assumed that these violations constitute all or even a substantial part of the total electrical violations existing. What the Plaintiffs here ask is that a thorough and complete inspection of the present jail be made now, and inspection of this jail and any future jail be made at regular intervals, and that all violations of the electrical codes and all other applicable statutes codes and regulations be remedied immediately.

7. Ventilation. The ventilation in the Jail, even when the windows are open, is woefully indaequate as witnesses for both the Defendants and the Plaintiffs have agreed. Not surprisingly, the ventilation does not meet either local code requirements or nationally acceptable code standards. Ventilation tests showed that the national ASHRAE[47] standards, used by the health department, which require 15 c.f.m.[48] per person per cell were not met.

The results were also below local code requirements. The coce, § 515 requires that "mechanical or gravity systems of ventilation shall provide the minimum air changes specified in Table 9A." The table requires a ventilation rate of 1-1/2 c.f.m. per one square foot of floor space in institutional buildings.[49] That would require 64 c.f.m. in the old section of the Jail; 75 c.f.m. in the Annex section. These standards have not been met.

In addition to general code sections, the cells are used as bathrooms, and would therefore be liable under the requirements for air change in bathrooms and toilets. A minimum of 54 c.f.m. in the old section of the Jail and 63 c.f.m. in the Annex section would be required by the codes. See City Code § 2123 and plumbing codes § 907.2.1.

8. Light. The state and local law require that the cat-walk area be adequately lighted at all times.[50]

The individual cells are also dark and poorly lighted, a fact which accents the dank, vermin-infested nature of the building . This

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46 Article 15 of the code requires, "The installation, alteration, repairing, servicing, maintenance and inspection of the electrical equipment shall conform to the requirements of Ordinance 51-F which is known as the Electrical Code of the City of Detroit and includes the National Electrical Code adopted by reference. (The NED is the only electrical code slod by the Building Department.)

47 ASHRAE is the American Society of Heating, Refrigeration, and Air-Conditioning Engineers.

48 C.F.M. is square feet per minute of air velocity. See Plaintiffs' Exhibit 95.

49 The Jail is an institutional building. See City Code § 209.1.

50 The Statute and code read: "In every multiple dwelling all public halls shall be kept adequately lighted at all times by the owners." M.S.A. 5.2837; M.C.L.A. 125.465; City Code § 2163. The catwalk area is a public hall within the meaning of the statutes since it is a "hall, corridor or passageway not within the exclusive control of one family." M.S.A. 5.2772(10); City Code § 2101.10.

insufficient lighting violates the lighting requirement of the City Plumbing Codes.[51]

Finally, it should be noted that all the lighting in the old section of the Jail violates the requirements of the Michigan Department of Corrections that light fixtures be out of reach of inmates. R 791.102(1)(c).

C. The Prisoners in the Wayne County Jail Have Standing to Bring Legal and Equitable Actions to Require Compliance with the State Housing Law and Local Codes.

Prisoners may bring actions to correct violations of the State Housing Law under either of two sections of that law. The first section permits private actions for equitable relief and damages. It reads:

> When the owner of a dwelling regulated by this act permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling . . . where such condition exists in violation of this act, any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

M.C.L.A. 125.536(1); M.S.A. 5.2891(16).

The Court, then, has wide latitude to fashion "injunctive and other relief" as necessitated by the case. This section of the statute also provides, in section (2), that the private remedies available are concurrent with any other remedies available to the occupants.

The state housing law also authorizes suits to enforce the Code by the local enforcing agency. It than goes on to provide: "An owner or occupant of the premises upon which any violation exists may bring an actiont o enforce the provisions of this act in his own name." M.C.L.A. 125.534(2); M.S.A. 5.2891(14)(2).

The statute here also gives the Court wide discretion in fashioning the appropriate orders stating in part, "The Court may enjoin the maintenance of any unsafe, unhealthy or unsanitary condition or any violations of this act, any may order the defendant to make repairs or corrections necessary to abate the conditions." M.C.L.A. 125.534(5); M.S.A. 5.2891(14)(5).

It is clear that an occupant may sue for injunctive relief either in a suit to enforce the act or in a suit for changes and injunctive relief. Plaintiffs therefore have standing to maintain the action under the specific conditions of the State Housing Law.'

The occupants of the Jail are also in a position to bring actions to abate violations of City Codes. The Code states:

> . . . whatever is dangerous to human life or detrimental to health; whatever dwelling is overcrowded with occupants or is not provided with adequate ingress and egress to or from the same, or is not sufficiently supported,

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51 The Code § 912.3, reads: "All bath and toilet rooms shall be provided with sufficient light to readily reveal unsanitary conditions of floors, walls or fixtures. The necessity of using an auxiliary light for inspection will be deemed sufficient cause to declare such condition unlawful."

> ventilated, sewered, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this act, nuisances; and all such nuisances are hereby declared illegal.

City Code § 2101.18; see also, Plumbing Code § 200.83.[52]

It should be clear from this section that the conditions complained of in this suit (ventilation, overcrowding, lighting, sanitation, and so on) are nuisances as defined in this Code. The question remains whether the Plaintiffs may bring an action to abate these violations. This requires a determination of the common law right to abate a public nuisance.

The general rule of common law is, of course, that private individuals may not sue to abate a public nuisance. But Michigan, like other states,[53] has long held that private persons may sue, under certain circumstances, to enjoin a public nuisance. As early as 1904 the Michigan courts, though stating the general rule, also added this general exception, saying: "Only when the nuisance causes special damage to a private person, separate and apart from those done to the public, can he maintain a suit to abate it." McKee v. City of Grand Rapids, 137 Mich. 200, 214 (1904). See also, Lepine v. Klink, 169 Mich. 243 (1912) and Plassey v. Loewenstein and Son, 330 Mich. 525 (1951). The critical question is whether the public nuisance actually effects the plaintiff in a special way, or whether there is no harm in fact. Thus, in Fross v. Gulewicz, 252 Mich. 135 (1930) the court held that a building which violated the State Housing Law would not be enjoined when not a nuisance "in fact" as to them. There the tenants testified that there was no annoyance occasioned by the violation.

Here, however, there has been abundant testimony that the occupants have been severely and continuously harmed, annoyed, bothered and endangered by the conditions constituting nuisances in this case. The prisoners are in fact, as well as in law, harmed and specially damaged in a manner quite apart from the public in general. Whatever harm to the general health, aesthetic sense and good order may occur as a result of the existence of unhealthy and dangerous buildings, it is clear that those living in this building--forced to live in this building--are specially endangered and harmful. Their harm is different from the general harm to the community, for their personal health, safety and welfare are clearly and severaly jeopardized.

It should be clear, therefore, that Plaintiffs are specially harmed, quite apart from the harm to the county residents, because of the conditions in the Wayne County Jail, and they may bring this action for the abatement of this public nuisance.

Finally, Plaintiffs point out that the State Housing Law provision noted above[54] requires that the plumbing, heating, ventilating and electrical wiring in all premises, including this Jail, be maintained in "good repair." No standards are set to guide the Court. Plaintiffs argue that at the very least, the standard of good care should include and adopt the minimum standards for health and safety set forth in the Housing Code of the City of Detroit. These standards specifically dictate minimum requirements for plumbing, heating, ventilation and electical wiring. They should therefore be considered to be equivalent to the standards of good repair required by the State Housing Law, and enforceable through the remedial provisions of that law.

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52 There is no question of the authority of the City to enact a nuisance section. The state law emposers cities to adopt housing ordinances similar to those prescribed therein. M.C.L.A. 125.408; M.S.A. 5.2778. The state law has a section identical to the section in the City Codes. See, M.C.L.A. 125.402(18); M.S.A. 5.2772(18).

53 See, 39 Am. Jur. "Nuisance," § 124. p. 378-82.

54 M.S.A. 5.2843; M.C.L.A. 125.471, noted in section B(1) above.

HAVE BEEN OVERWHELMINGLY PROVEN AND, BY THE EVIDENCE, ALMOST ENTIRELY UNDISPUTED; NOT A SINGLE MERITORIOUS LEGAL DEFENSE HAS BEEN ASSERTED AS TO ALL MAJOR CONSTITUTIONAL AND STATUTORY ISSUES RAISED, AS IS PLAINLY PROVEN BY THE ONLY TWO DEFENSES RAISED, OR HINTED AT, BY THE WITNESSES AND BY DEFENSE COUNSEL THROUGH THE COURSE OF THE TRIAL.

A. Government Defendants, after Subjecting Inmates to the Outrageous Unconstitutional Conditions of the Jail Cannot be Heard to Defend Their Illegal Conduct by Claiming Fiscal Poverty and Inmate Abuse.

Ironically, Defendants attempt to justify their imposition of horror upon pre-trial detainees who would be free of their horror if they were not impoverished, by asserting the impoverishment of the County. Defendants, however, cannot be heard to complain or justify their denial of constitutional rights because they claim a lack of resources. The "vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny, than to afford them." Watson v. City of Memphis, 373 U.S. 526, 537 (1963). See also, Suffen v. County School Bd. of Prince Edward County, 377 U.S. 218, 232-34 (1964); Green v. Kent Co. School Bd., 291 U.S. 420 (1968). In striking down prison conditions courts have rejected jailer's arguments based on the drain of resources which any change in procedure would entail, Jordan v. Fitzharris, supra; Wright v. McMann, supra. Judge (now Justice) Blackmun has stated this forcefully in Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968): "Humane considerations and constitutional requirements are not in this day to be measured or limited by dollar consideration . . ."[55] Judge Henley, in Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970) reiterated more pointedly that rejection:

> Let there be no mistake in the matter; the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or what Respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.

309 F. Supp. at 385.

Moreover, constitutional determination in cases attacking a prison system, cannot turn on the issue of whether the alleged abuses occurred at the hands of fellow inmates or because of the actions of fellow inmates. Defendants herein, in the face of conditions which could not possibly have been caused by inmates--either now or in the past--continue to assert that the fault lies with the inmates and not with the physical structure of the Jail or its administration. Defendants cannot escape responsibility so easily.[56] It is they who have established or acquiesced in a system which permits such inhuman and

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55 See Goldberg v. Kelly, 397 U.S. 254 (1970) where the Court required administrative hearings for welfare recipients despite the fiscal and administrative burden; Shapiro v. Thompson, 394 U.S. 618 (1969) where the court struck down the welfare residency requirements saying: "The saving of welfare costs cannot justify an otherwise invidious classification." 394 U.S. at 633. See also, Woodsen v. Houston, 27 Mich. App. 239 (1970), (public assistance hearings) and Bond v. Ann Arbor School District, 383 Mich. 693 (1970) (School textbooks.)

56 Indeed, Defendants seek to blame all but themselves including the courts and the State Correctional Department as well as the inmates.

Under the constitutional standards which this Court is required to apply, the Wayne County Jail is unconstitutional. Continued confinement of pre-trial detainees in that institution under its present conditions is violative of detainees' rights to equal protection and due process, and to be free from cruel and unusual punishment. These deprivations cannot be justified by the Defendants' lack of finances nor by shifting the blame to inmates or other governmental officials.

B. Defendants' Likewise Mistakenly Rely Upon The Decition Sostre v. McGinnis Which in no Way Limits This State Court's Duty to Grant Immediate Constitutional Relief in This Indefensible Case.

If we take the view of the Defendants, Sostre v. McGinnis, No. 35038 (2d Cir. Feb. 24, 1971) has a major impact upon this case in determining the infringements upon liberty that are permitted jail administrators in their treatment of pre-trial detainees. Plaintiffs, though conceding some relevance to Sostre, fail to recognize the significance of Sostre in determining the central issue before this Court.

Sostre did not involve a pre-trial detainee; on the contrary, Martin Sostre was serving a prison sentence on a narcotics conviction. Indeed, the Court specifically based its decision on the premise that limitations on constitutionally protected freedoms may be justified by the nature of a penal system. See Slip Opinion at 1654 and Price v. Johnson, 334 U.S. 266 (1946). Moreover, the Court discusses the rehabilitation and reintegration goals of modern penology in contrast to those practices "which subject prisoners to deprivation, degradation, subservience, and isolation, in attempt to 'break' them and make them see the error of their ways." p. 1659. The application of the constitutional standard of cruel and unusual punishment which then follows in the Court's opinion is premised upon the fact that Sostre is a convicted inmate. Thus segregated confinement for convicts, in and of itself, in the context of the Sostre situation which the Court found included sufficient diet, the availability of rudimentary implements of personal hygiene, the opportunity for exercise and for participation in group therapy, the provision of some reading matter and unlimited law books, and constant communicative access to other segregated prisoners (p. 1663-64) did not raise the type of inhumane treatment offensive to the Eighth Amendment. Likewise, the case's discussion of minimal due process requirements is premised, at least to some degree, on the effect of such procedures on the rehabilitation of a convicted prisoner (see p. 1671).

Defendants, in oral argument, relied heavily on dicta in Sostre relating to the involvement of federal Courts in a state prison system (see e.g. pp. 1660 and 1668). The Court of Appeals emphasized the remoteness of a Federal Court to the sovereign state's penal system. Though not conceding the legitimacy of that opinion, Plaintiffs point out that this Court--a state trial court--has a direct and intimate concern with the Wayne County Jail. Every day prisoners are remanded to that Jail from this Court. Clearly this Court has the power to make sure that detainees are not punished before trial or treated in an unconstitutional or illegal manner. In re Birdsong, 39 F. 599 (S.D. 1889).

Finally, we note that the Court did not, as a matter of fact, refrain from acting to protect Sostre's constitutional right to be free from discriminatory punishment inflicted solely because of his beliefs or because of his threatened litigation (see p. 1655). The Court reaffirmed that "a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication, taken from him by law." Coffin v. Richard, 143 F.2d 443, 445 (6th Cir. 1944), cert. denied 355 U.S. 887 (1945). The Court upheld the District Court's determination of the limitations on censorship and mailing of communications between Sostre and any Court, any public official or agency or

57 See Holt v. Sarver, supra.

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57 See Holt v. Sarver, supra.

any lawyer. (see pp. 1683-84). And the Court did not disavow the constitutional requirement of due process in the context of prison discipline, though declining to uphold the order of the District Judge. (See pp. 1683 and 1673-74).

Sostre, therefore, provides little help to this Court in determining the actual issues for adjudication. No matter what role a Federal Court may or may not play in regard to prisoners' or pre-trial detainees' rights, this Court is obliged to protect the constitutional right of those who, though convicted of no crime, are incarcerated in an unconstitutional facility. The Sheriff has stated he is unable to meet the necessary standards of humane care. There is evidence that the State Director of Corrections has been unable to force the Wayne County Jail to meet legal requirements. (See, e.g. Exhibit 75, dated April 10, 1969). This is not a case for a Court to allow administrators to use their discretion to resolve the problems. An independent judiciary is at this point required to order remedies which administrators have for year failed to effectuate. The Sostre opinion in no way limits or undercuts this Court's legal obligation to apply the Constitution to Wayne County Jail inmates and to do so now.

V. IT IS THE COURT'S IMMEIDATE RESPONSIBILITY TO FREE WAYNE COUNTY JAIL INMATES FROM THE NEEDLESS, DAILY SUFFERING BROUGHT ABOUT BY THE PROTRACTED FAILURE ON THE PART OF DEFENDANTS' AND THEIR PREDECESSORS TO MAINTAIN A CONSTITUTIONAL PRE-TRIAL DETENTION FACILITY: MORE THAN 500 INMATES SHOULD BE IMMEDIATELY RELEASED BY COURT ORDER, SUBJECT TO RECALL IF AND WHEN A CONSTITUTIONAL MINIMUM CUSTODY DETENTION FACILITY IS MADE AVAILABLE IN DETROIT: APPROXIMATELY 400 ADDITIONAL INMATES SHOULD BE SUBJECT TO CONDITIONAL RELEASE AFTER HEARINGS ARE HELD, IMMEDIATELY, SO AS TO ASCERTAIN WHETHER THEIR RELEASE SHOULD BE BASED ON AN OBLIGATION TO REPORT REGULARLY TO A PROBATION OR JAIL OFFICER OR UPON AN OBLIGATION TO REPORT EACH NIGHT AND SLEEP AT THE WAYNE COUNTY JAIL. FURTHER, DEFENDANTS SHOULD BE ORDERED OR IMMEDIATELY DISPERSE THE BALANCE OF THE JAIL POPULATION THROUGHOUT THE JAIL INTO THE MOST SUITABLE WARDS CONSISTENT WITH MINIMIZING THE UNCONSTITUTIONAL DETENTION OF INMATES AND MAXIMIZING THE IMMEDIATE RENOVATION OF THE JAIL SO THAT IT CAN PROVIDE CONSTITUTIONAL MAXIMUM CUSTODY FOR THAT SMALL PERCENTAGE OF PERSONS WHO WARRANT SUCH PRE-TRIAL DETENTION: AND FURTHER, THE COURT MUST ORDER THE NECESSARY CHANGES IN THE ADMINISTRATION OF THE JAIL SO AS TO PROVIDE SUCH INMATES WITH ADEQUATE AND HUMANE CARE AND SERVICES.

It should be no surprise that the eradication of grossly unconstitutional conditions requires a Court Order compelling major and immediate changes. The Wayne County Jail cannot, probably ever, be made suitable to meet the needs and rights of the vast bulk of the inmates who warrant minimum or medium custody. Likewise, this record is silent as to any available nearby facilities that will provide for the immediate constitutional detention of such inmates. Plaintiffs have repeatedly urged this Court to grasp the urgency of the problems before it and act in a manner that will free pre trial detainees from the daily suffering so plainly unwarranted.

Both in closing argument and here, infra, Plaintiffs have provided the Court with a diagram which depicts in symbolic form an accurate concept of due process balancing the interests of the community in presenting an accused to the court at trial against the requirement that all persons charged with crime be insulated from punishment and enabled to maintain maximum freedom while presumed innocent.

The State does have a legitimate interest in assuring the appearance at trial of persons charged with crime, but weighed against this is the interest in maintaining maximum freedom from punishment for persons who are presumed -nnocent and who cannot afford bail. The greatest equality possible must, under the law, be maintained between persons who cannot afford bail and those otherwise similarly accused

persons who can afford bail.

In the instant case, it is clear beyond doubt that the Wayne County Jail seriously violates the interests to be balanced by punishing hundreds of people, today, and thousands of people each year, in a manner greatly disproportionate to the interest of society in assuring the presence of such persons at trial. The diagram depicted above weighs these interests and offers an analytical standard that the Court, as fact-finders, must allow to be reasonable and consistent with the due process standard of justice which a humane society would legally require to be met so as to assure ordered liberty in 1971.

Below the balanced scale, Plaintiffs have depicted four categories which fairly balance the interests of distinct groups of inmates. The horizontal width near the top of the inverted triangle on the left of the diagram properly depicts the weighted interest, on the side of freedom, which ordered liberty requires to be maintained for all persons properly found to warrant no more than 'minimum custody.' The interest in assuring the appearance of such persons at trial is far less important as reflected by the narrow width near the apex of the triangle on the right side of the diagram. Conversely, for persons warranting "maximum custody" Plaintiffs have properly weighted society's interest in assuring appearance at trial, as represented by the width of the lower region of the triangle on the right, to outweigh society's interest in preserving the total freedom of such persons, as represented by the lesser width of the inverted triangle on the left at the point marked "maximum custody." Yet, the testimony in this case plainly reveals that the Wayne County Jail offers no more freedom to individuals than that reflected by its inclusion in the diagram where it is properly depicted at a point below the level of freedom properly owed to persons in pre-trial, maximum custody detention.

The sort of balancing called for here has a history of judicial precedence with which this Court is familiar. Case after case in the Supreme Court has illustrated that this weighing must be done when important personal rights are at stake, and in such cases the State's interest, however legitimate, must give way when the individual's interests are stronger. Trop v. Dullas, 356 U.S. 86 (1958) (legitimate State interest in preventing desertion is outweighed by individual's interests in retaining citizenship); William v. Rhodes, 393 U.S. 23 (1968) (Legitimate State interest in protecting integrity of election process outweighed by candidate's right to be on ballot); Goldberg v. Kelly, 397 U.S. 254 (1970) (State's interest in avoiding loss of funds to judgment proof welfare recipients outweighed by recipients' interest in adequate hearing before termination).

Who are the persons in the Wayne County Jail now whose interest in freedom outweighs the State's interest in retaining them under the deplorable conditions that prevail there? An objective answer to this question is found in Exhibit #92, which demonstrates that on March 7, 1971, there were 514 persons in the Wayne County Jail on bonds of $2,500.00 or less. Indeed 154 of these persons were detained on $500.00 bonds or less. This means that had these 514 individuals sufficient resources to scrape together $275.00,[58] or, for many detainees far less, they would be free from the vermin, filth and forced idleness which collectively constitutes life at the Wayne County Jail. This Court must answer the question whether over 500 persons presently being illegally punished because of the lack of $275.00[58] or less must, like Job, sit quietly and endure, or, like James Grubbs, Calvin Johnson, Frank Griffin, Gregory Kenny not be able to endure and die.

The law has stated with the greatest precision possible its judgment that $275.00[58] or less is the price of freedom for these inmates. This Court can find no better estimate of the concern society

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[58] See footnote 2, supra at 2, for the method and meaning of bond computation.

has in the appearance of an individual for trial or the fear it has that that individual will flee before his trial commences then that dollar and cent evaluation known as bail bond. But, that bail specifically becomes ransom when the alternative to putting up the money is punishment in the Wayne County Jail. This is not in any way to concede that the monetary bail bond system is just, constitutional or accurate. It merely states that a Judge has expressed a view in as precise terms as this society knows as to whether that individual will appear at his trial and as to the need to incarcerate that person to assure such appearance. In determining bail, Judges have considered "The seriousness of the offense charged, the previous criminal record of the defendant and [most importantly] the probability or improbability of his appearing at the trial of the cause." M.C.L.A. 765.6.

This Court has before it, through Exhibit #92, a very precise and most meaningful, objective measurement as to the number and identity of inmates who in conformance with Plaintiffs' diagram, supra, would warrant "minimum custody."[59] This identifiable class, numbering 514 persons on March 7, 1971 (Exhibit #92), should be freed immediately from the onerous conditions of punishment exacted every hour and day of detention at the Wayne County Jail. Punishment takes many forms, as indicated by the proofs at trial and Part One of this Brief. Wherever this Court looks, whether it be at the lack of medical care, at the inadequacy of the food, at the condition of the plumbing, at the total lack of sanitation, at the overcrowdedness, at the enforced idleness, at the total lack of recreation, or at the arbitrariness of disciplinary procedures, to name a few, this Court is compelled to conclude that human beings, presumed innocent and detained because of poverty, are being "punished" as that word has been defined by the highest Court in this land and by other Courts.[60]

Guarantees of due process and prohibitions against cruel and unusual punishment require the release of these 514 people immediately from the badges of punishment so clearly proven. The guarantee to equal protection of the laws also requires that this identifiable class be immediately released. The Court can and should judicially notice that more than a thousand persons are doubtlessly free today on bonds of $2,500.00 or less, enjoying the total freedom to which they are entitled while 514 other persons presumed innocent suffer the extraordinary punishment inflicted by the conditions in the jail.

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[59] The term "minimum custody" as it is employed here should not be confused with the definition given at trial by Dr. Hurton, who correctly observed that "custody" will vary with the experience gained by the conduct of a particular inmate. While there is indeed, we think, a correlation between the bond and the type of custody warranted, there are obvious exceptions to this, e.g., a homicide defendant on no bond might well adapt to "minimum custody" and not be the type of person who will seek to escape. However, in the sense with which we use the word in Part Two of this Brief, we rely upon the measurement of society's interest in the appearance of an accused as being precisely designated by the bail bond set by the Court. Persons on low bonds, $2,500.00 or less, certainly ought to suffer minimum detention hardship and thus are entitled to a "minimum custody," as we have used that term. Persons on bond in excess of $20,000.00 or held without bond are those over whom Court's have objectively expressed the greatest concern as to their appearance at trial and who might, more properly be held in a constitutional detention center providing for "maximum custody."

[60] See, e.g., Trop v. Dulles, supra; Cafeteria and Restaurant Workers v. McElroy, 367 U.S. 886 (1961); Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); Schneider v. Rusk, 372 U.S. 244 (1963); Krist v. Smith, 309 F. Supp. 497 (S.C. Ga. 1970); Howard v. Smyth, 365 F.2d 428 (4th Cir. 1966).

Plaintiffs are not preoccupied by a concern for a new jail; rather, they are preoccupied by a concern for the constitutional rights of all inmates today. If and when a new jail is constructed, then this Court might find a sufficiently decent institution so that upon a re-weighing, a re-balancing of the factors involved the Court might properly conclude that a $2,500.00 bond is not so little so as to require immediate release. Such a question, however, is not before the Court now nor in the immediate future. At the present time, there is neither a decent nor humane jail. Rather, there is a degenerate structure found at 525 Clinton Street wherein human beings are unconstitutionally and illegally detained.

Though persons may be "committed to the jail", "according to law," under M.C.L.A. § § 765.4 and 766.5, the statutory law necessarily assumes the existence of a constitutional jail which is in fact a decent and humane detention facility. All Judges take an oath to abide by the Supreme Law of the Land, the Constitution. Every Court that orders an accused remanded to the custody of the sheriff implicitly remands that person to constitutional custody. This is the first case to Plaintiffs' knowledge attacking the constitutionality of that custody. And, once this Court, for the first time, determines, as it must, that custodial conditions are flagrantly unconstitutional, then this Court, as the Court in Holt v. Sarver, supra, must see to it that there be a constitutional jail or none at all. In terms of pre-trial detainees presumed innocent, Plaintiffs have already elaborated the legal requirement that there be, immediately, no jail at all for 514 persons until adequate local facilities exist. As for other inmates, there remain additional options which this Court can utilize so as to provide a remedy for the unlawful, 24 hour custody of all inmates in the Wayne County Jail.

Persons who warrant "medium custody," with bonds in excess of $2,500.00 though less than $20,000.00, certainly should not be subjected to such conditions either. Clearly, they too are jailed because they are impecunious. Because society has, through the bond set, expressed greater concern about their willingness to appear at trial, Plaintiffs do not call for the unconditional release of all such persons immediately. Rather, Plaintiffs call for the immediate implementation of either of two available options.[61] Unless an inmate prefers to spend nights in the Wayne County Jail, an immediate hearing should be conducted so as to ascertain which of these inmates should be released on the condition that they report with regularity to a probation or jail officer and which of these inmates should be released each day with the requirement that they return each night to sleep at the Wayne County Jail.

If the Court fulfills its constitutional responsibility, it will be able to provide a constitutional maximum custody jail for the remaining prisoners warranting "maximum custody," i.e., those with bonds of $20,000.00 or more or no bonds at all. The Court can then order the speedy and immediate renovation of the Wayne County Jail along with the immediate implementation of jail programs that will enable the present structure to conform with the standards of ordered liberty required for persons warranting "maximum custody." Obviously, such an order would require a great many things, all of which need not be enumerated here. Any Court which properly assumes its constitutional responsibility will see to it that visitation conditions are greatly improved, that recreational facilities are immediately provided, that inmates be allowed to eat outside their cellblocks, that adequate and humane medical care be immediately assured; in short, that all persons presumed innocent be insulated from any form of punishment not inherent in confinement itself, supra, and be accorded that which is, of course, everymans' due in a humane society--human dignity.

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[61] There may well be other available options and to the extent that they ameliorate the unlawful conditions of life for such inmates in a like manner as these suggested herein, Plaintiff would, of course, have no objection to their immediate implementation.

All parties to this litigation have been put to the task of addressing themselves at great length to the myriad "nuts and bolts" problems of an archaic decrepit jail, while human beings continue each day to suffer unconstitutional punishment by reason of their "crime of poverty." These problems, in their totality, define the unconstitutional conditions that this County's system of government has inhumanely foisted upon poor persons while rich persons, when charged with a crime, go free.

The day has come for an independent, honest and law-abiding judiciary to put an end to the unconstitutional suffering of the 24,000 persons sent to the Wayne County Jail each year and kept there by defendant-apologists who for more than half a decade have known the "problems" and never struggled or fought to make reforms; rather, such persons have sought ridiculous and non-curative, non-reforms, passed the buck, cried poverty and all-the-while defended their pretended moral concern. The denial of equal protection and due process of law and the infliction of cruel and unusual punishment by two branches of government has been thoroughly exposed in this case. Plaintiffs now look to the third branch of government. They look, not for water, not for mattresses, and not for mental treatment for psychotics, nor for transference to another unconstitutional "jail" in the hinterlands; nor, do Plaintiffs look for even a new jail some years hence. Plaintiffs look for an end, now, to the conditions of human degradation and deprivity that mark the 24-hour existence of human beings at 525 Clinton Street, Detroit, Michigan, in the year 1971.

Respectfully submitted,

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