

1979

Mark Wickham v. George Fisher : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARK WICKHAM,)	
Appellant,)	
-vs-)	CASE NO. 16322
GEORGE FISHER, Weber County)		
Sheriff,)	
Respondent.)	

BRIEF OF APPELLANT

Appeal by plaintiff from an order of Judge
Wahlquist of the Second Judicial District Court for
granting partial relief as to the place and conditions
of confinement of pretrial detainees in the Weber County
facility.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIEF OF APPELLANT

Appeal by plaintiff from an order of Judge John F. Wahlquist of the Second Judicial District Court for Weber County granting partial relief as to the place and conditions of confinement of pretrial detainees in the Weber County Jail facility.

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PRELIMINARY STATEMENT

This is an appeal from an order of Judge John F. Wahlquist of the Second Judicial District Court for Weber County granting partial, but insufficient, relief as to the place and conditions of confinement of pretrial detainees in the Weber County Jail facility.

DISPOSITION IN LOWER COURT

Concerning the place and conditions of confinement of pretrial detainees in the Weber County Jail facility Judge Wahlquist, on December 28, 1978, ordered as follows:

The Court therefore, makes the following ORDER:

1. That the Jailers are ordered to supply to the Court concerned--whether that be a Circuit Court, District Court, or Justice of the Peace--the names of all prisoners who are awaiting trial and/or sentencing in that court each Tuesday morning. After a detainee has been in confinement for thirty (30) days, the Court must consider that this prisoner has automatically made a motion for release, and should bring him into court to discover whether there is any possible way at that time to lessen the ordeal of his confinement; whether that be a Circuit Court, or a District Court or a Justice of the Peace. Each individual plaintiff must be ruled on separately. This will undoubtedly force the Court Administrator's Office to give the matter considerable attention, and it will undoubtedly result in certain hardships. This, in effect, is requiring that the Court Administrators give more strict allegiance to the State Statute that requires first priority be given to all persons charged with felonies and in confinement, etc., and then on down the list of how courts shall be scheduled. Those who will suffer are, first, the public and the bar that desire to have civil matters heard promptly; second, the convicted prisoner space will undoubtedly suffer. Once a prisoner is convicted, the sentencing judges frequently give due consideration to the pretrial time served as a mitigating circumstance to shorten the sentence. The shortening of this pretrial confinement will

undoubtedly result in some longer sentences, and therefore, heavier confinement in the remaining portions of the jail. The persons benefited will be the not guilty confined persons and prisoners generally.

2. The court invites the County within thirty (30) days to propose some improved form of visitation that might be allowed men in pretrial status. The court suggests that perhaps the space used for sentenced prisoners down on the ninth floor might possibly be used by these personnel on the 12th floor at a different hour. The Court is not ordering what is called "contact visits," but does believe that there should be an obligation to improve the visitations to the quality of those experienced on the ninth floor.

3. The Court suggests that the County contact the State Welfare Department to see if there is any fund or program available that would give a detainee who has no toothbrush, etc., such an item. The Court believes many detainees will not receive them from other detainees.

4. The attorneys from each side are invited to submit proposed Findings of Fact and Conclusions of Law consistent with the above indicated views. The Court will compare the two, and sign one, or make such modifications as it deems proper. (R.31-32)

RELIEF SOUGHT ON APPEAL

Appellant asks that Judge Wahlquist's order be reversed to the extent that the trial court abused its discretion in failing to enter appropriate orders requiring the place and conditions for confinement of pretrial detainees in the Weber County Jail facility be brought into alignment with constitutionally mandated minimum standards for detainment of pretrial individuals. Further, that the case be remanded to the trial court with instructions to enter specific orders upgrading the place and conditions of confinement of pretrial detainees to a level which complies with minimum constitutional requirements.

FACTS

On October 26, 1978 nine pretrial detainees¹ incarcerated on the south half of the 12th floor of the Weber County Jail facility (hereafter referred to as South-12) filed, in the Second Judicial District Court for Weber County, a pro se petition, challenging the place and conditions of their confinement in the jail facility, seeking a Writ of Habeas Corpus. (R.1) Counsel was appointed by the court to represent the detainees (R.7) and an Amended Complaint Seeking Writ of Habeas Corpus was filed on their behalf on November 17, 1978. (R.8-9) A hearing thereon was held before Judge Wahlquist on November 30, 1978. (R.21).

In the interim period between the filing of the pro se Complaint by the detainees themselves and the filing of the Amended Complaint, two individuals² were tried or sentenced and no longer remained in the pretrial status, while one individual³ was added as a named plaintiff. However, by the date of the final hearing on November 30, 1978, only appellant, Mark Wickham, remained in a pretrial status.⁴ On December 28, 1978 Judge

¹Steve Clough, Doug A. Lovell, Durwin Mason, Dan Cottam, Larry Parks, David C. Stewart, Mark Wickham, Duane Johnson and Clarence Holston.

²David C. Stewart and Duane Johnson

³Sonny Gabaldon

⁴In mid-December, 1978, Mark Wickham plead guilty to criminal charges and was subsequently sent to the Diagnostic Center at St. Mark's Hospital in Salt Lake City for a 90 day evaluation before sentencing.

Wahlquist, by written Memorandum Decision, ordered partial relief as to the conditions of confinement provided all pretrial detainees. (R.23-33)

ORIGINAL NAMED PLAINTIFFS

Appellant, Mark Wickham, was arrested on October 18, 1978 (R.113) on charges of auto theft and robbery (R.118) and was placed in the Weber County Jail facility. On December 9, 1978, he plead guilty to these charges and was subsequently sent to St. Mark's Hospital for a 90 day evaluation. He spent 52 days on South-12 as a pretrial detainee. Through the November 30, 1978 hearing date, he had spent the entire time on South-12 never having been in the fresh air or sunlight. (R.115) He was totally indigent having no funds at all with which to purchase personal hygiene items (R.114) or even stamps or pencils to write letters to family or friends. (R.114,117-118) To obtain stamps to mail the few letters he was able to send, he traded away his food. (R.115) He had no visitors because his parents could not come up to Ogden on Sundays to see him, this being the only day visitation is permitted in the jail. (R.114) It is important to note that he remained in the jail as a pretrial detainee only because he could not afford bail. He was in all other respects eligible for bail. (R.116).

Larry Parks, a pretrial detainee at the time of the filing of the original pro se petition, had been placed on South-12 on July 16, 1978 on a felony theft charge. (R.119,128) He remained in the pretrial status until his sentencing on November

period of time he, like appellant Mark Wickham, had no money in his account at the jail (R.120) and had to sell his food or perform favors for more affluent detainees in order to obtain stamps and pencils to write and mail the over 100 letters he sent from the jail. (R.120,131) (approximately 1 letter per day) These letters were not only personal. Some were letters he wrote to various courts but was unable to mail until he could barter away his food to obtain stamps. (R.121)

On several occasions while Larry Parks was on South-12 in the pretrial status the area was filled to capacity with 16 individuals. (R.121) This overcrowding resulted in tension, arguments and fights between detainees. (R.121) Simply to sleep during the day one had to lie on the cement floor cushioned only with a blanket. (R.123) During summer months the jail got so hot detainees sat around in their underwear and in winter months wrapped themselves in blankets simply to keep warm. (R.123) Medical attention was often slow in being provided (R.124-125) and on two occasions all of the pretrial detainees were sprayed down for crabs. (R.126) Like appellant Mark Wickham, Larry Parks was never outdoors in the fresh air and sunlight for exercise or recreation during his entire pretrial detainment. (R.126-127) He had visitors only once - they were an elderly couple who refused to come back to see him because the visitation system was so poor. (R.127-128).

Douglas A. Lovell, arrested on a charge of armed robbery (R.148), was brought to the Weber County Jail facility on August 4, 1978. (R.133) By the November 30, 1978 hearing date he had been found guilty of armed robbery but remained on South-12 awaiting

sentencing. (R. 134) He was in a pretrial status for over 100 days.

Sonny Gabaldon was placed on South-12 on October 19, 1978 (R.105) and was sentenced on criminal charges on October 20, 1978 (R.109) Even though Section 17-22-5, U.C.A. 1953⁵ prohibits sentenced inmates from being locked up with pretrial detainees he remained on South-12 through November 30, 1978, a period of approximately 41 days. He also had some unique medical problems. He had broken his leg very badly 10 months before being placed in jail. The cast had been taken off shortly before his incarceration and he was advised to exercise and keep moving his leg. Due to the total lack of exercise or recreation facilities in the jail he was unable to do this. (R.106)

Clarence Holston had been arrested and placed on South-12 on October 23, 1978 on charges of theft and probation violation. (R.13) By the time of the November 30, 1978 hearing he had plead guilty, been sentenced to the Weber County Jail facility and transferred to the 10th floor of the jail. He remained in a pretrial status for approximately 30 days.

Durwin Mason, at the time he signed his Affidavit in Support of the Amended Complaint, on November 15, 1978 (R.16) had been in a pretrial status on South-12 for over three months. He had severe asthma which was aggravated by the stuffy and crowded

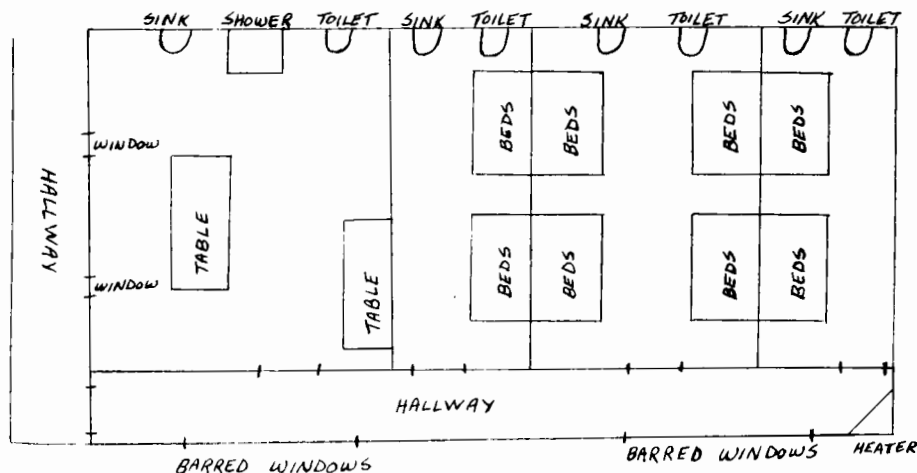
⁵Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners, except husband and wife, be kept or put in the same room. Females shall be under the supervision of a suitable matron to be appointed by the sheriff.

conditions on South-12. (R.16) By the November 30, 1978 hearing however, he was no longer in the pretrial status having been sentenced by the court.

The remaining individuals who had petitioned the court as pretrial detainees were no longer in the Weber County Jail facility on November 30, 1978, having been transferred or released.

PLACE AND CONDITIONS OF CONFINEMENT

South-12, the maximum security area of the jail facility (R.79), is utilized to incarcerate pretrial detainees who are charged with felonies or Class A misdemeanors. (R.79) South-12 consists of an isolated area composed of three cells and a day room with a small hall area running between the south wall of the cells and day room and the outer south wall of the building itself. The general configuration of South-12, as roughly set out in Exhibit 2 (R.34) is as follows:



The two four-man cells each contain 65 square feet of floor space. (16.2 square feet of space per detainee). The eight-man cell contains 104 square feet of floor space. (13 square feet of space per detainee). And, the day room area contains 195 square feet of floor space. (12.1 square feet of space per detainee) (R.80)

There is no interior lighting in either the cell or day room areas. (R. 93,94,98) The only light source is located in the hallway outside the cells and day room or, during the day, comes through the barred windows in the outer south wall of the building itself. On his visual inspection of South-12, Judge Wahlquist noted "that on his visit in the middle of the afternoon, he could have read with some difficulty in each of the spaces if he had turned and made the proper adjustment so the light from the outer windows was utilized." (R.25)

There is no internal ventilation on South-12 with the exception of a forced air heater in the southeast corner of the area.

Along the west wall of the day room are two small, thickly-glassed windows with a wire mesh underneath through which pretrial detainees are permitted visitation each Sunday. (R.84)

There are no recreation or exercise facilities available to anyone in the jail. (R.83)

Chief Correctional Officer Robert D. Humphreys acknowledged that the overall conditions of confinement for pretrial detainees are worse than those of sentenced inmates in the jail facility.

(R.85) Sentenced inmates are housed in a dormitory type area, can become trustees and can move more freely about the jail. (R.85) Officer Humphreys also acknowledged under examination that in December, 1977, Dr. Paul Ensign, then Weber County Health Director had inspected the 11th floor of the jail finding it to be seriously inadequate. (R.99-100) The 11th floor is identical to South-12 (R.99) A copy of Dr. Ensign's report, admitted into evidence as plaintiff's Exhibit 1 (R.34) determined that "the present conditions are completely unhuman. The conditions are also very unhealthy. The S.P.C.A. would not permit such conditions for animals." Dr. Ensign's report recommended changes to alleviate the overcrowded and stuffy conditions, but Officer Hymphreys admitted no changes had been made because the jail has insufficient space. (R.101)

DAILY ROUTINE OF PRETRIAL DETAINEES ON SOUTH-12

Individuals incarcerated on South-12 as pretrial detainees spend their entire day either locked in their cells or locked in the day room. (R.82) Approximately 6:30 a.m. detainees are moved from their cells to the day room (R.81) where all detainees are locked up together. At approximately 6:30 p.m. in the evening they are returned to their respective cells. (R.82) There is no freedom of movement between cells and the day room at any time. The hallway is utilized only to move detainees from one place to the other. With the exception of court appearances pretrial detainees never leave South-12 until sentencing or release. (R.83)

Pretrial detainees are permitted one telephone call per week, on Saturdays. (R.84) They may receive visitors once a week on Sundays for approximately 15 minutes. (R.84) No contact visitation is permitted, rather visitation takes place by yelling through the glass window and wire mesh on the west wall of the day room area. (R.91)

Meals are served to pretrial detainees in the day room (R.86) When South-12 is filled to capacity it is not unusual for some detainees to have to sit on the floor of the day room while they eat because there are insufficient tables or benches to sit on. (R.122) Eating utensils consist of a plastic spoon and a styrofoam cup which are provided each detainee, free of charge, twice a week. (R.86)

The issues which have been raised in this action on behalf of pretrial detainees have also been raised in a federal class action lawsuit in the Federal District Court for the Northern District of Utah. (Case No. NC 78-0015) Judge Aldon Anderson, however, on February 20, 1979, upon learning of this appeal to the Utah Supreme Court entered his order staying any further proceedings in that case until such time as the Utah Supreme Court has had this opportunity to fully address the issues raised by appellant concerning the place and conditions of confinement of pretrial detainees in the Weber County Jail facility.

ARGUMENT

POINT I

APPELLANT'S APPEAL IS NOT MOOT IN THIS INSTANCE
EVEN ~~ALTHOUGH HE IS NO LONGER A PRETRIAL DETAINEE~~
BEING INCARCERATED IN THE WEBER COUNTY JAIL FACILITY.

Appellant is no longer a pretrial detainee being held on South-12 in the Weber County Jail facility. This fact however does not moot an appeal on the merits of this case.

It has long been recognized and is the rule in an overwhelming majority of states that an appeal will not be dismissed as moot when to do so would leave unsettled a question of great public interest or one affecting the public generally. 132 A.L.R. 1179; 20 Am. Jur. 2d, Courts, Section 81. Many courts have addressed this issue. In Van de Vegt v. Larimer County, 55 P.2d 703, 710 (Colo. 1936) in a case dealing with the power through writ of mandamus to compel the Larimer County Board of Commissioners to issue a liquor license the question of mootness of the appeal arose. The Colorado Supreme Court citing Southern Pacific Terminal Co., v. ICC, 219 U.S. 498, 31 S. Ct. 279, 55 L.Ed. 310 (1911) held as follows:

A case is not moot where interests of a public character are asserted under conditions that may be immediately repeated, merely because the time for a particular order has expired.

In a similar vein it has been held that appeals will not be dismissed for mootness where it would be difficult or even impossible in any other way to get a final determination of the questions involved because the case must necessarily become moot before the appeal can be heard. Close v. Southern Maryland Agricultural Asso., 108 A. 209 (1919); Doering v. Swoboda, 253 N.W. 657 (1934).

United States Supreme Court decisions offer further guidance on this question. The Supreme Court has held in a long

line of decisions that an issue otherwise rendered moot through the passage of time or other happenstance will not be dismissed as moot where to do so would allow the continuation of a condition "capable of repetition, yet evading review." Roe v. Wade, 410 U.S. 113,125, 35 L.Ed.2d 147, 161 93 S. Ct. 705 (1973) citing Southern Pacific Terminal Co., v. ICC, supra; Moore v. Ogilvie, 394 U.S. 814,816, 23 L.Ed.2d 1, 89 S. Ct. 1493 (1969); Carroll v. Princess Anne, 393 U.S. 175, 178-179, 21 L.Ed. 2d 325, 89 S. Ct. 347 (1968); United States v. W.T. Grant Co., 345 U.S. 629, 632-633, 97 L.Ed. 1303, 73 S. Ct. 894 (1953).

The place and conditions of confinement of pretrial detainees in the Weber County Jail facility and the propriety of appellant's appeal on the merits in this instance falls squarely under the exception to the mootness dismissal doctrine. Further, the trial court has entered its general order affecting the place and conditions of confinement of pretrial detainees. Judicial review by the courts of this state of the conditions of confinement of pretrial detainees in the jail facility is primarily a state question and is not only a question of great public interest affecting the public generally but is also precisely the type of situation where the unconstitutional conditions of confinement are continuing and ongoing yet evade review due to the relative brevity of time an individual remains in the pretrial detainee status as compared against the length of time necessary to pursue a trial and appeal on the merits. Falling squarely within the rule outlined in the cases above, appellant's appeal is not subject to being dismissed as moot.

POINT II

THE WEBER COUNTY JAIL FACILITY AS A PLACE OF DETAINMENT FOR PRETRIAL DETAINEES IS UNCONSTITUTIONALLY OVERCROWDED. THE TRIAL COURT ERRED IN NOT LIMITING THE NUMBER OF PRETRIAL DETAINEES TO A LEVEL WHICH COMPORTS WITH CONSTITUTIONAL REQUIREMENTS.

In the Amended Complaint seeking Writ of Habeas Corpus appellant had alleged that his Eighth Amendment federal constitutional right⁶ against cruel and unusual punishment had been violated by his incarceration as a pretrial detainee on South-12 and further that his state constitutional right to imprisonment without unnecessary rigor under Article I, Section 9⁷ of the Constitution of Utah had been violated. (R.8) While Judge Wahlquist did not order the immediate transfer or release of the appellant or other pretrial detainees from the jail facility, he did make some remedial orders concerning the place and conditions of confinement of pretrial detainees. This is entirely proper under a complaint seeking writ of habeas corpus. In Carafas v. LaVallee, 391 U.S. 234,238-239, 20 L.Ed.2d 554, 88 S. Ct. 1556 the Supreme Court Stated:

The federal habeas corpus statute requires that the applicant must be "in custody" when the application for habeas corpus is filed. This is required not only by the repeated references

⁶Eighth Amendment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

⁷Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

in the statute, but also by the history of the great writ. Its province, shaped to guarantee the most fundamental of all rights, is to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person. See Peyton v. Rowe, 319 U.S. 54, 20 L.Ed. 2d 426, 88 S. Ct. 1549.

But the statute does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted. It provides that "the court shall ... dispose of the matter as law and justice require." 28 USC §2243. The 1966 amendments to the habeas corpus statute seem specifically to contemplate the possibility of relief other than immediate release from physical custody. At one point, the new §2244 (b) (1964 ed., Supp. ii) speaks in terms of "release from custody or other remedy." See Peyton v. Rowe, supra; Walker v. Wainwright, 390 U.S. 335 19L. Ed. 2d 1215, 88 S. Ct. 962 (1968). Cf. Ex Parte Hull, 312 U.S. 546, 85 L.Ed. 1034, 61 S. Ct. 640 (1941). 8

However, it is equally true that a trial court commits reversible error and abuses its discretion in failing to exercise its power when its exercise is warranted by the facts before the court.

Strzebinska v. Jary, 193 A. 747; 112 A.L.R. 391; 5 Am. Jur. 2d, Appeal and Error, Section 773.

Recognizing that the conditions of confinement of pretrial detainees in the Weber County Jail "would be considered as constitutionally cruel and inhumane if the detainees were so held for a long period" (R.61) and further that "Federal decisions in this area have established as the minimally acceptable standard 50 square feet of space per sentenced prisoner in order to comply with constitutional prohibitions against cruel and unusual punishment. The Weber County Jail

⁸Citing also 9 W. Holdsworth, History of English Law, Article 39 of the Magna Carta 108-125 (1926).

is inadequate in this respect and therefore severely overcrowded." (R.61) the trial court erred in failing to enter its order requiring defendant to comply with minimum constitutional requirements of space for the detainment of pretrial individuals.

Constitutional standards of confinement for pretrial detainees are particularly strict because the pretrial detainee retains all rights of ordinary citizens except those necessary to assure his appearance for trial. Stack v. Boyle, 342 U.S. 1, 4, 72 S.Ct. 1, 96 L.Ed. 3 (1951); Ahrens v. Thomas, 434 F. Supp. 873, 897 (W.D. Mo. 1977); Rhem v. Malcolm, 371 F. Supp. 594, 622 (S.D.N.Y. 1974). As a pretrial detainee, appellant then enjoys all constitutional rights of a defendant on bail awaiting trial, and any curtailment of those rights must be justified to the extent such denial is required to insure that he appears at trial. Brenneman v. Madigan, 343 F. Supp. 128, 137-138 (N.D. Cal. 1972); Ahrens v. Thomas, supra, 897. Pretrial detainees do not stand on the same footing as convicted inmates. Therefore, the conditions for detention must not only be equal to but superior to those permitted for prisoners serving sentences for the crimes that they have committed against society. Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676, 686 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974); Hamilton v. Love, 328 F. Supp. 1182, 1191 (E.D. Ark. 1971); Jones v. Wittenburg, 323 F. Supp. 93, 100 (N.D. Ohio 1971); Ahrens v. Thomas, supra, at 898. Incarceration of pretrial

detainees on South-12 in what are the maximum security cells of the Weber County Jail, when not necessary, violates the detainees rights to due process, to be free from cruel and unusual punishment, to be imprisoned without unnecessary rigor, and violates their right to equal protection of the laws by unnecessarily treating them more harshly than those convicted.

Hamilton v. Landrieu, 351 F. Supp. 459, 552 (E.D. La. 1972); Rhem v. Malcolm, supra, at 624; Brenneman v. Madigan, supra, at 131; Hamilton v. Love, supra, at 1182; Jones v. Wittenburg, supra, at 898.

It was the direct testimony of Chief Correctional Officer Robert Humphreys at the November 30, 1978 trial that pretrial detainees are treated in all respects exactly the same as if they were already convicted inmates serving sentences in the jail facility. (R.85) Indeed, Officer Humphreys testified that all pretrial detainees whether on South-12 or elsewhere in the jail are housed under the most harsh and restrictive conditions in the jail facility. (R.85). This arrangement is completely contrary to the clear and established law regarding the confinement of pretrial detainees and, in and of itself, established a prima facie constitutional violation which the trial court erred in failing to address and order corrected.

In conjunction with the independent constitutional violation set out above, the clear and undisputed testimony at trial also established that even under the most restrictive standards of space requirements for sentenced individuals, South-12, as the detention area for pretrial detainees, is unconsti-

tutionally overcrowded. The trial court erred in failing to enter its order limiting the number of pretrial detainees which may be incarcerated on South-12 to a number which would comport with minimal constitutional standards.

Testimony at trial established that pretrial detainees are at all times locked up in either a four man cell containing 65 square feet of space (16.2 square feet of space per detainee); an eight man cell containing 104 square feet of space (13 square feet of space per detainee); or in a sixteen man capacity day room containing 195 square feet of space. (12.1 square feet of space per detainee) (R.80-81)

Numerous courts have specifically addressed the issue of adequate space for pretrial detainees so as not to run afoul of constitutional requirements. In Detainees of the Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392, 398-399 (2nd Cir. 1975) a case where two pretrial detainees were being placed in cells of approximately 40 square feet in size (20 square feet per detainee and substantially more than that afforded detainees in any area of the Weber County Jail facility) the court stated:

... What we are faced with here is whether double celling in a cell 5 x 8 feet, 40 square feet of floor space, creates such dehumanizing conditions as to deprive the detainees of their constitutional rights of due process and equal protection...

As we have noted, double celling has been disapproved by various correctional associations and numerous experts on prison reform. It has been specifically condemned by lower courts in Inmates of Suffolk County Jail v. Eisenstadt, supra, (cell 8 x 11 feet); Tyler v. Percick,

Civil Action No. 74-40C (2) (E.D. Mo., Filed October 15, 1974) (cell 8 x 5 feet), and also by state courts in Wayne County Jail Inmates v. Wayne County Board of Commissioners, Civil Action No. 173217 (Cir. Ct. Wayne Co., Mich. July 28, 1972 and May 25, 1971), aff'd and remanded, 391 Mich. 359, 216 N.W. 2d 910 (1974) (cell 6 x 7 feet); Commonwealth ex. re. Bryant v. Hendrick, 444 Pa. 83, 280 A.2d 110 (1971). Overcrowding alone in pretrial detention facilities above rated capacities has been held to create a restrictive and deplorable living environment constituting an intolerable violation of the detainees' constitutional rights. Taylor v. Sterrett, 344, F. Supp. 411 (N.D. Tex. 1972); Hamilton v. Love, supra; Jones v. Wittenburg, 323 F. Supp. 93 and 330 F. Supp. 707, 714, (N.D. Ohio 1971); Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972); Hamilton v. Schiro, 338 F. Supp. 1016 (E.D. La. 1970)...

We affirm upon the findings of facts and conclusions of law of the district court that the overcrowding and double celling of detainees at the two institutions create an unconstitutional deprivation of their due process and equal protection rights. Brooklyn v. Malcolm, at 398, 399.

Similar results have been reached in other decisions.

Jones v. Wittenburg, supra, found double celling in 6 x 9 cells to be overcrowded and unconstitutional. That case dealt with the conditions of the Lucas County Jail, in Toledo, Ohio.

Ambrose v. Malcolm, 414 F. Supp. 485 (S.D.N.Y. 1976) recognized the American Correctional Association standard of 75 square feet per inmate as being the minimally acceptable square footage requirements for pretrial detainees. In Ambrose the court entered its order that no more than 29 individuals be detained in the facility in question rather than the 40 to 60 individuals who had previously been detained in the facility. The 29 detainee capacity was the maximum number of individuals allowable under the 75 square feet per detainee standard. If such a standard were applied to the Wayne County Jail facility,

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pretrial detainee maximum capacity on South-12 would be three pretrial detainees. Even assuming a lesser standard of 50 square feet per sentenced inmate were utilized (this coming from Gates v. Collier, 423 F. Supp. 732 (N.D. Miss. 1976) which has been the minimally acceptable reported standard for sentenced inmates, the maximum pretrial detainee capacity of each side of the 12th floor of the Weber County Jail would be 4 pre-trial detainees.

In Rodriguez v. Jimenez, 409 F. Supp. 582 (D.P.R. 1976) the court examined a facility housing both pretrial detainees and sentenced inmates. The court adopted a 70 square feet per inmate standard and found the facility to be constitutionally lacking. In Rodriguez, at 587 examples were given of cell areas found to be deficient. It should be noted that the following examples are more spacious than the Weber County Jail facility.

<u>GALLERY NO.</u>	<u>AREA SQUARE FEET</u>	<u>NO. OF INMATES</u>	<u>AREA PER INMATE</u> <u>SQUARE FEET</u>
I	234.7	13	18
II	237.6	12	19.8
III	234.7	10	23.5

Upon issuing its interim order, before closure of the facility, the court ruled that no more than 4 individuals could be locked up in each of the above three galleries in accordance with its findings of a 70 square feet per inmate requirement.

Separate and apart from the above cited cases, dealing primarily or exclusively with pretrial detainees a multitude of other decisions have addressed space requirements for the constitutional confinement of sentenced inmates.

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is now settled law that pretrial detainees must be housed and treated in conditions of confinement which are not only equal to but superior to those of sentenced individuals. (Citations omitted - see page 15 of this Brief).

Gates v. Collier, 423 F. Supp. 732, (W.D. Miss. 1976) is representative of decisions from throughout the country and establishes the lowest figure for space per inmate in a prison or jail which has been found acceptable. Gates states that 50 square feet per inmate is the minimally acceptable square footage required to comport with the constitutional prohibition in the Eighth Amendment against cruel and unusual punishment.

In Chapman v. Rhodes, 434 F. Supp. 1007 (S.D. Ohio 1976), the court held 63 square feet per two inmates to be unconstitutional. In so holding, the district court referred to several sources which have set minimum square footage requirements for the sleeping space of inmates in prisons or jails. The court in Chapman stated:

The American Correctional Institution has concluded that 75 square feet is the minimally acceptable standard.

The National Sheriff's Assn. Handbook on Jail Architecture (1975) asserts that single occupancy detention rooms should average 70-80 square feet (at pg. 62).

The National Sheriff's Assn. Manual on Jail Administration (1970) suggests that in multiple celling 55 square feet of space per occupant is minimal.

The National Council on Crime and Delinquency Model Act for the Protection of Rights of Prisoners (1972) concludes that no less than fifty square feet of floor space in any confined sleeping areas should be provided as minimal.

The Report of the Special Civilian Committee for the study of the United States Army Confinement system (1970) indicates that the Army standard in 1969 was 55 square feet and the Army, not known for coddling, adheres to that.

Other federal district courts across the country have reached similar results. Anderson v. Redman, 429 F. Supp. 1105 (D. Del. 1977) found 60 square feet per inmate to be the minimum. Ahrens v. Thomas, 434 F. Supp. 873 (W.D. Mo. 1977) found double celling in cells of 75-77 square feet to be unconstitutional. At the circuit court level, the 50 square foot standard per inmate was approved in Newman v. State of Alabama, 559 F. 2d 283 (5th Cir. 1977).

Most importantly, the Tenth Circuit Court of Appeals affirmed a 60 square foot per inmate standard used by the United States District Court for Oklahoma in Battle v. Anderson, 564 F.2d 388 (10th Cir. 1977). See also Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976) requiring 60 sq. ft.; and Martinez v. Jimenez, 409 F. Supp. 582 (D.P.R. 1976) requiring not less than 10 x 7 square feet.

The square footage afforded pretrial detainees in the Weber County Jail facility is far below the minimum constitutional square footage requirements set out above for either pretrial detainees or even for sentenced inmates. The trial court found that there is an average number of nine pretrial detainees locked up on South-12 on a daily basis (R.54) although it is undisputed that there are on occasion 16 individuals on South-12 in a pretrial status (R.121,137) As pointed out previously however, even this average daily pretrial population far exceeds

any constitutionally permissible level. The entire jail facility, originally designed to hold only 52 men, has a total cell area square footage capacity in the mens cell areas of 1427 1/2 square feet (R.102) for both pretrial and sentenced individuals. If filled to capacity (presently 112 beds) (R.102) this would yield approximately 12.7 square feet of space per individual in the entire jail. Under the minimum acceptable standards found by the courts as exemplified by Gates v. Collier, supra, which established a 50 square feet per inmate minimum standard, the maximum capacity of the jail facility at any given point in time, under constitutional standards, would be 28 individuals. Yet, the jail facility on the November 30, 1978 hearing date had 89 individuals in the jail. (R.101) of which, Chief Correctional Officer Humphreys estimated that on a daily basis 40 per cent would be pretrial detainees. (R.101)

According to the unanimous weight of authority, the severely overcrowded Weber County Jail facility violates the constitutional rights of appellant and all other pretrial detainees in that the conditions of their crowded confinement amounts to cruel and unusual punishment; violates their right to due process; violates their right to equal protection; violates their right against cruel and unusual punishment and violates their right to imprisonment without unnecessary rigor. That overcrowding of jails violates an inmate's constitutional rights and adversely affects society was recognized by the New York State Court in Cooper v. Morin, 398 N.Y.S. 2d 36 (1977). The court stated in that case:

Overcrowding of prisons or local detention facilities violates the due process and equal protection rights of the inmates therein. Detainees of Brooklyn House of Detention for Men v. Malcom, (2nd Cir.) 520 F.2d 392, 399, Costello v. Wainwright, (M.D. Fla.) 397 F.Supp. 20 aff'd (5th Cir.) 525 F. 2d 1239, vac., 539 F.2d 547, rev'd., 430 U.S. 325, 97 S.Ct. 1191 51 L.Ed.2d 372 (1977).

...correctional institutions must be more than mere depositories for human baggage... (Detainees etc., supra, at 397) A free democratic society cannot cage inmates like animals in a zoo or stack them like chattels in a warehouse and expect them to emerge as decent, law abiding, contributing members of the community. In the end, society becomes the loser. Costello, supra, at 38.

The sole justification for the conditions of confinement found in the Weber County Jail is that there is no where else to put pretrial detainees and no money to construct better facilities. However, the rationale provides no justification whatsoever.

We restate settled principles of federal jurisprudence, i.e., that constitutional treatment of human beings confined to penal institutions is not dependent upon the willingness or the financial ability of the State to provide decent penitentiaries. Gate v. Collier, supra, at 742.

The conditions under which pretrial detainees are incarcerated in the Weber County Jail clearly and unquestionably violates settled principles of constitutional law. The only justification relied upon by the trial court in not finding the conditions of confinement for pretrial detainees unconditionally unconstitutional was that pretrial detainees were not held under such conditions for longer periods of time. (R.61) This conclusion however, is not supported by the evidence nor does it

provide a justification regardless of the length or brevity of time a pretrial detainee might be subjected to such conditions. Chief Correctional Officer Humphreys acknowledged under examination that the average length of time a pretrial individual might await trial on South-12 was approximately 30 days up to as many as 90 days. (R.83) The undisputed testimony of appellant was that he had been in a pretrial status for approximately 52 days (R.118); Larry Parks had been a pretrial detainee for 108 days (R.119); Douglas A. Lovell had been in a pretrial status for over 100 days (R.134); Sonny Gabaldon had been on South-12 for 41 days (R.105); Clarence Holston was in pretrial detainment for approximately 30 days (R.11) and Durwin Mason had been on South-12 for over 90 days. (R.16). Such clear violations of constitutional standards do not permit such a justification to stand. Pretrial detainees may not be subjected to conditions amounting to punishment until after they have been found guilty of a criminal offense. It must be remembered that:

Pretrial detainees are no more than defendants waiting for trial, entitled to the presumption of innocence, a speedy trial and all the rights of bailees and other ordinary citizens except those necessary to assure their presence at trial and the security of the prison. Brooklyn House of Detention for men v. Malcolm, *supra*, at 397 citing Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 2d 600 (1969); Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971); Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed. 2d 586 (1970); Shelton v. Tucker, 364 U.S. 479, 488, 81 S. Ct. 247, 5 L.Ed.2d. 231 (1960); Collins v. Schoonfield, 344 F.Supp. 257 (D.Md.1972); Seale v. Manson, 326 F.Supp. 1375 (D.Conn. 1971); Davis v.

Lindsay, 321 F.Supp. 1134, 1139 (S.D.N.Y. 1970);
see Note, Constitutional Limitations on the Conditions
of Pretrial Detainees, 79 Yale L.J. 941 (1970)

As the trial court in Jones v. Wittenburg, supra, at 100 pointed out if constitutional rights of pretrial detainees are being violated they are entitled to immediate relief at the hands of the court. In this case however, no relief has been provided on justification and excuse. The trial court erred in failing to exercise its power by immediately ordering the reduction of the pretrial population to a level in accord with constitutional requirements or at the least establish a clear and definite timetable by which the population level of pretrial detainees incarcerated on South-12 would be reduced to an acceptable level with the prohibition that the number of pretrial detainees on South-12 not exceed constitutional levels in the future.

POINT III

THE TRIAL COURT ERRED IN FAILING TO REQUIRE THAT
REGULAR CONTACT VISITATION MUST BE PROVIDED TO
PRETRIAL DETAINEES.

The trial court erred in failing to order that contact visitation must be provided to pretrial detainees on a regular basis. The testimony was undisputed and indeed the trial court found that no contact visitation of any sort was permitted pretrial detainees. (R.57,62) The trial court in his conclusions of law specifically stated(R.61-62):

Further, the visitation facilities and practices utilized in the jail do not comply with current law in reference to pretrial detainees in that the visitation and practices as presently permitted in the jail do not allow for contact visitation between pretrial detainees and friends or family; and, additionally, the frequency of visitations permitted to pretrial detainees are inadequate.

With this specific conclusion however, the trial court merely ordered that defendant submit a plan for improved visitation but declined to order contact visitation. (R.67)

In Rhem v. Malcolm, 371 Supp. 594 (S.D.N.Y. 1974), aff'd 527 F.2d 1041 (2nd Cir. 1975) the court held that pretrial detainees in the Manhattan House of Detention had a constitutional right to contact visitation. This decision has remained the law ever since and is now a settled principle of constitutional law to which pretrial detainees are universally entitled. In Rhem the type of visitation found to be deficient was an arrangement whereby pretrial detainees were allowed visitors twice a week for 30 minutes at each session. Detainees sat in booths and communicated with visitors by telephone while looking through a bullet proof glass window. Even this arrangement, found unconstitutional by the court, was substantially better than the visitation system outlined by Judge Wahlquist in paragraph 13 of his findings of fact. (R.57)

Miller v. Carson, 563 F.2d 741 (5th Cir. 1977) reached an identical conclusion in examining the Duval County Jail in Jacksonville, Florida, a facility with many similarities to the facilities and practices found in the Weber County Jail. At the Duval County Jail, inmates were forced to yell, three at a time, through windows in each cellblock. This arrangement prevented any privacy or physical contact whatsoever. A plan for contact visitation was ordered submitted to the court. Any restrictions on contact visitation were then required to be on institutional

security rather than institutional convenience. The only basis upon which contact visitation may be denied any particular pretrial detainee is based upon the individual detainee being classified a peculiar security risk. A blanket denial of contact visitation to pretrial detainees is constitutionally impermissible. In Detainees of the Brooklyn House of Detention for Men v. Malcolm, supra, at 835 the court stated:

This court is not unaware of the City's concern with the security of its institution and the possible effect contact visits may have on this legitimate concern. However, the possibility of a classification system to determine which inmates are security risks and thus should not participate in contact visits has been upheld. Rhem v. Malcolm, supra, 507 F.2d at 338.

Moreover, the fiscal difficulties of New York City cannot absolve the defendants of their constitutional obligations. This argument has been dismissed repeatedly by the Court of Appeals in this Circuit, reminding us that "an individual's constitutional rights may not be sacrificed on the ground that the city has other and more pressing priorities...Denial of the presumptively innocent detainee's constitutional rights represents an impermissible price to pay for this retention in custody.

The same decision has been reached in Ahrens v. Thomas, supra; O'Bryan v. County of Saginaw, Mich., supra; and Berch v. Stahl, 373 F. Supp. 651 (W.D.Ky. 1976).

Most recently in Marcera v. Chinlund, 47 Law Week 2562 (2nd Cir. 2/27/79) the Second Circuit Court of Appeals definitively stated:

The right of pretrial detainees to regular contact visits is grounded on the bedrock of our criminal jurisprudence: an individual accused of a crime is presumed innocent, and may not be punished, until a jury finds him guilty beyond a reasonable doubt. Thus pretrial detainees

may be subjected only to those restraints on their liberty that inhere in the confinement itself or are clearly justified by the "compelling necessities of jail administration." These necessities do not include cost or mere administrative inconvenience. While reasonable classification schemes designed to weed out those detainees who would present intolerable security risks if granted contact visits are permissible, blanket prohibitions are banned.

In sum, it is too late in the day to suggest that it does not offend the Constitution not to permit pretrial detainees contact visits... (emphasis added)

The Marcera court went on to hold that it was an abuse of the trial judge's discretion not to have awarded the plaintiffs in that case interim relief and ordered that the respective defendants immediately formulate and submit to the trial court plans for implementing contact visits within a period of one year.

By failing to order contact visitation either commencing immediately or within a reasonable time for pretrial detainees who are not exceptional security risks the trial court in this matter committed error to the extent that pretrial detainees, entitled to contact visitation as a matter of right, have been denied the same.

POINT IV

THE TRIAL COURT ERRED IN FAILING TO PROHIBIT THE INCARCERATION OF PRETRIAL DETAINEES IN THE WEBER COUNTY JAIL FACILITY DUE TO THE TOTAL LACK OF EXERCISE OR RECREATIONAL OPPORTUNITIES OR ALTERNATIVELY TO ENTER ITS ORDER THAT REMEDIAL STEPS BE TAKEN TO PROVIDE ADEQUATE EXERCISE AND RECREATIONAL FACILITIES WITHIN A REASONABLE TIME.

Testimony at trial in this matter was undisputed that there are no exercise or recreational facilities or opportunities available to pretrial detainees in the Weber County Jail facility. (R.83) The trial court noted in paragraph 16 of his findings of fact (R.59) that "There is no access to an ordinary exercise space, fresh air or sunlight...Detainees in general have no exercise except that incidental to stretching, leaning on walls, and walking around one or two steps at a time." In his conclusions of law the trial court concluded as follows (R.61):

In addition, federal decisions, as applied to states through the 14th Amendment to the United States Constitution, have clearly established that pretrial detainees as well as sentenced prisoners have an absolute right to outdoor exercise, recreation, fresh air and sunlight. None of these opportunities are available to detainees or sentenced individuals incarcerated in the Weber County Jail and the jail is constitutionally defective in this respect. (emphasis added)

Having determined that the Weber County Jail facility is constitutionally defective in these respects it constitutes error for the trial court not to act to remedy the constitutional defects.

As Judge Wahlquist recognized pretrial detainees have an absolute right to outdoor exercise, recreation, fresh air and sunlight. Ahrens v. Thomas, supra, is squarely on point. That case dealt with conditions of confinement of pretrial detainees in the Platte County Jail in Missouri. In Ahrens pretrial detainees were confined to tank areas without access to any areas outside the tank for recreation or exercise purposes. The court ruled as follows:

The total lack of recreation and exercise facilities and programs at the Platte County Jail violates due process. Brenneman v. Madigan, *supra*, at 140; Jones v. Wittenburg, 330 F. Supp. at 717; Hamilton v. Landrieu, *supra*; Taylor v. Sterrett, 344 F. Supp. 411, 422 (N.D. Tex. 1972), *aff'd in part, rev'd in part*, 499 F.2d 367 (5th Cir. 1974); Hamilton v. Love, *supra*, at 1193.

Confinement in the Platte County Jail without an opportunity for regular outdoor exercise constitutes cruel and unusual punishment in violation of the Eighth Amendment. Sinclair v. Henderson, 331 F. Supp. 1123, 1129 (E.D. La. 1971).

In Rhem v. Malcolm, *supra*, the court held that the right of pretrial detainees to reasonable physical exercise is fundamental. In Rhem, even before the court examined the exercise program, the detainees had some exercise available to them. Each detainee was permitted a 50 minute exercise period once a week on a small, outdoor rooftop area of the facility. For pretrial detainees this was found to be constitutionally inadequate.

Nadeau v. Helgemoe, 423 F. Supp. 1250 (D.N.H. 1976) examined the exercise program for convicted inmates in protective custody at the New Hampshire State Prison. There inmates had some indoor and some outdoor exercise. The court, however, found the program so limited as to endanger the prisoner's health and therefore concluded that the restraint on the inmates right to exercise constituted cruel and unusual punishment.

Sinclair v. Henderson, 331 F. Supp. 1123, 1131, (E.D. La. 1971) held as follows:

...confinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

The same result was reached in Miller v. Carson, supra, which held that state prisoners through the 14th Amendment have an absolute right to outdoor exercise.

In accord with these decisions see also Smith v. Sullivan, 553 F.2d 373 (5th Cir. 1977); Moore v. Janing, 427 F. Supp. 567 (1976); O'Bryan v. County of Saginaw, Mich.; 437 F. Supp. 582 (E.D. Mich. 1977); and Wright v. Raines, 571 P.2d 26 (Ct. of App., Kan. 1977).

Once again, there is no justification in the difficulty in providing space for exercise and recreation. Rhem v. Malcolm, supra, at 627 spoke directly to this point.

The difficulty of providing space for exercise in an urban institution is unacceptable as justification for the deprivation imposed on MHD inmates... Where necessary, courts have required structural alterations to provide the required space, see, e.g., Hamilton v. Love, supra, 328 F. Supp. at 1193 and decree of June 22, 1971 Par. 7D; Wayne County Inmates v. Wayne County Board of Commissioners, Civil No. 173217 Cir. Court, Wayne County, Michigan, July 28, 1972, at 25-6, and have ordered that particular periods of exercise be made available, Hamilton v. Landrieu, supra, 351 F. Supp. at 550, or that outdoor exercise areas be created, Taylor v. Sterrett, supra, 344 F. Supp. at 422. See also, Holland v. Donelon, Civil No. 71-1442 (E.D. La. June 6, 1973) at 12 and cases cited, Brenneman v. Madigan, supra, 343 F. Supp. at 135, 140; Conklin v. Hancock, supra, 334 F. Supp. at 1122 and Jones v. Wittenburg, supra, 330 F. Supp. at 717.

In circumstances where, as in the Weber County Jail, there are no exercise or recreation facilities of any kind; and, the conditions are so bad as to cause the physical and mental deterioration of pretrial detainees⁹ (see plaintiff's exhibit 1) (R.34) the failure of the trial court to prohibit the confinement of pretrial detainees under such condition or at the least to enter its order requiring the correction of these conditions within a reasonable time in an abuse of discretion which must be corrected on appeal.

POINT V

THE PRACTICE OF REQUIRING INDIGENT DETAINEES
TO PURCHASE THEIR OWN STAMPS FOR THE MAILING OF
LETTERS VIOLATES BOUNDS V. SMITH, 430 U.S.
817, 52 L.Ed. 2d 72 S.Ct. 1491 (1977)

The uncontroverted testimony at trial herein revealed that it is not uncommon for some pretrial detainees to be indigent having no money in an account with the jail. (R.96,114,115,117, 118,120,121) Indeed the testimony of Larry Parks revealed that he had even written some letters to courts but was unable to send them because he had no money with which to purchase stamps. (R.120-121) The primary way appellant Mark Wickham and witness

⁹ Dr. Ensign stated:
They spend all day in this room and the night in bunk rooms with similar conditions while awaiting trial. What does an inmate do under such conditions? Just what you or I would do - deteriorate physically and mentally, be exposed to and have our resistance to disease lowered, think of ways to get out, find things to complain about, become very depressed, maybe even think of ways to get even. It doesn't take much skill to see that this is a very unhealthy situation.

Larry Parks obtained stamps was to trade away their food to more affluent detainees. (R.120)

The practice of requiring all detainees, including indigent detainees, to purchase stamps for mailing letters and pencils to write them with violates the detainees right of access to the courts and is a direct violation of Bounds v. Smith, supra. In Bounds, at 824 Justice Marshall writing the majority opinion of the court stated:

Moreover, our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them.

It was an abuse of the trial court's power to fail to correct this constitutional violation. Appellant asks that this matter be remanded to the trial court for entry of an appropriate order.

POINT VI

THE TRIAL COURT ERRED IN FAILING TO
PROHIBIT THE INCARCERATION OF SENTENCED
INDIVIDUALS WITH PRETRIAL DETAINEES AS
REQUIRED BY SECTION 17-22-5, U.C.A. 1953.

Section 17-22-5 provides that sentenced individuals may not be kept or put in the same room as pretrial detainees. Testimony at trial in this case revealed that witness Sonny Gabaldon had been locked up in the same room with appellant, after having been sentenced, for a period of approximately 40 days. (R.109) This was in direct violation of the state statute and further, infringed upon appellant's right to confinement without unnecessary rigor as a pretrial detainee in the

Weber County Jail facility.

The trial court abused its discretion in failing to order defendant's strict compliance with Section 17-22-5.

CONCLUSIONS

The evidence presented at trial in this matter and the case law which supports that evidence is largely undisputed. The defendant's position throughout this action has been to generally agree that the Weber County Jail facility is substandard but not really so bad as to require the imposition of a judicial remedy to the situation. The error with this position however, is that for pretrial detainees the poor physical conditions, the severe overcrowding and related problems of the facility surpass constitutionally permissible levels and enter the realm of unconstitutional and prohibited activities and conditions. When proper facts are presented to the court, as in this instance, requiring judicial intervention, it is as much error for the trial court to fail to exercise its power as for a trial court to act in excess of its power.

In this case proper facts, requiring the exercise of its power, were presented to the trial court which in turn failed to order the necessary relief mandated by the settled constitutional law in this area. This failure to act, on the part of the court, is subject to reversal with a remand of the case to being made to the trial court with instructions to enter appropriate orders bringing the Weber County Jail facility up to a constitutional

par. Appellant respectfully asks that the Utah Supreme Court enter its decision accordingly.

DATED this 18th day of April, 1979.

UTAH LEGAL SERVICES, INC.


JAMES R. HASENYAGER
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the above and foregoing Brief to Robert Hansen, Attorney General at State Capitol Building, Salt Lake City, Utah and two copies to Robert Newey, Weber County Attorney at the Municipal Building, Ogden, Utah 84401, via first class U.S. Mail, postage pre-paid this 18th day of April, 1979.

Kathy Sutherland
SECRETARY