



JI-KY-002-005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON
CASE NO. 91-187

JOHN DOE, a minor, by his next friend
and mother, *Mary Doe*, on behalf of
himself and all others similarly
situated; and, **JEAN DOE**, a minor,
by her next friend and mother,
Barbara Doe, on behalf of herself
and all others similarly situated

PLAINTIFFS

vs.

DON YOUNGER, in his official capacity
as Jailer of the Kenton County
Detention Center; **COUNTY JUDGE/EXECUTIVE**,
CLYDE MIDDLETON, in his official capacity;
JACK LEWIS, Secretary of Corrections,
Commonwealth of Kentucky, in his official
capacity; **LARRY RODENBERGER**, Superintendent,
Covington Independent Public Schools, in his
official capacity; **PAUL PATTON**, Governor,
Commonwealth of Kentucky, in his official
capacity; **WILMER CODY**, Commissioner,
Department of Education, Commonwealth of
Kentucky, in his official capacity; and
VIOLA MILLER, Secretary, Cabinet for
Families and Children, Commonwealth of
Kentucky, in her official capacity

DEFENDANTS

SETTLEMENT AGREEMENT

*** *** *** ***

Whereas, Plaintiffs John Doe, a minor, and all others similarly situated, filed this class
action suit pursuant to 42 U.S.C. § 1983 against county and state officials challenging the

conditions of confinement of the Kenton County Detention Center (KCDC) including inadequate provision of fire safety and emergency evacuation procedures; and

Whereas, Defendants have agreed to the provisions described herein regarding the provision of fire safety for detainees of the KCDC without making admission of violation of the United States Constitution, the Constitution of the Commonwealth of Kentucky or other federal or state law; and

Whereas, at the time the KCDC no longer detains youth, Plaintiffs agree to dismiss their Complaint, and enter into an agreed order of dismissal, except for the education issues which are pending before the court on Plaintiffs' Motion for Findings by the Court on Education Issues and Defendants' Motion for Summary Judgment. Defendants agree to dismiss the appeal pending in the United States Court of Appeals for the Sixth Circuit. Plaintiffs also agree to dismiss their Cross Appeal pending in the United States Court of Appeals for the Sixth Circuit.

Defendants agree to the following:

The KCDC will no longer detain youth after March 1, 1999, which is the date that the juvenile detention facility is scheduled to open in Campbell County, Kentucky.

SMOKE BARRIERS

The smoke barrier on the Eighth Floor will be identified and repaired in compliance with the NFPA Life Safety Code and all unprotected openings, to the extent there are any, shall be protected, including the spaces around utility penetrations of the barrier. All existing doors in the barrier shall remain. This shall be accomplished within 7 days of the filing of

this agreement with the court. This repair shall be reviewed as set forth in the Compliance Monitoring section of this agreement.

COMBUSTIBLE STORAGE

Any combustible storage, furniture or lockers shall be identified and, if present, will be removed from the following areas:

- a) The connecting corridor from the corridor in the juvenile housing area to the elevator lobby/visitors' lobby between Dorm 887 and the stairway;
- (b) Stairways #1 and #4 at the basement level;
- (c) All exit access corridors in the basement. This includes storage, furniture, lockers, etc.; and
- (d) All exit access corridors on the eighth floor. The only exception is the desk used by the correction officer in the vicinity of the day room. The booking area and file cabinets shall be removed from the vicinity of Stairway #4 on the eighth floor.

This shall be accomplished within 7 days of the filing of this agreement with the court.

This repair shall be visually inspected to assure that the areas listed remain free of combustible storage.

SMOKE DETECTORS

Smoke detectors will be installed in compliance with NFPA 72 in the following areas:

- (a) All cells and dormitories occupied by juveniles;
- (b) All exit access corridors on the eighth floor that serve as a means of egress for the juvenile area. This shall also include both elevator lobby areas on the eighth floor;
- (c) The juvenile recreation and classroom area;
- (d) The teacher's office; and
- (e) All day rooms used by juveniles.

This installation shall be completed in 90 days of the filing of this agreement with the court. The installation and testing shall be visually inspected as outlined below.

TELEVISION WIRING

The electrical power supply for the television in isolation cell 862, if damaged, will be repaired and the wiring to the camera in the booking area will be permanent protected wiring in accordance with the National Electric Code and NFPA-70, to the extent it is not so installed at present. This repair shall be completed within 30 days of the filing of this agreement with the court.

EMERGENCY OPERATIONS PLANS

The fire emergency and operational plans shall be modified as set forth below:

- 1) The plan calls for the juveniles to be evacuated using Stairway #1. Nowhere in the plan does it state what to do if Stairway #1 is not available. There are no instructions for the use of alternate means of egress. The plan shall be modified to provide for alternate means of egress.
- 2) The plan does not instruct the correctional officers on how to notify the Control Center in case of a fire. The plan shall be modified to instruct the correctional officers on how to notify the control center in case of fire.
- 3) The plan calls for someone to meet the fire department at the elevators in the lower level. The plan never defines which officer this should be. The plan shall be modified to designate a particular officer to meet the fire department.
- 4) There appear to be emergency instructions contained in a few separate plans. One of these plans calls for the evacuation of eighth floor occupants to the ninth floor. In general, it is not a good practice to evacuate upward in a high-rise building. The plan shall be modified to detail the specific instances where upward evacuation is permitted.
- 5) Keys to the stairways are contained within the Control Center. Nowhere within the fire emergency plans does it state under what circumstances the keys are to be released, who authorizes the release of keys or to whom the keys are to be released. The plan shall be modified to state under what circumstances the

keys are to be released, who authorizes the release of keys or to whom the keys are to be released.

- 6) The document entitled In Case of Fire states: "Under no circumstances will the inmates have passage out of the jail." This contradicts other instructions in the emergency plan. The plan shall be modified to state under what circumstances inmates may have passage out of the jail.
- 7) The documents entitled What to do in Case of Fire states: "Inmates should only be moved to the closest secure area where they can be locked down." As stated before, the closest secured area on the eighth floor would be in the same fire/smoke compartment from which the juveniles are being evacuated. The plan shall be modified to require movement of inmates to the closest secured area outside the same fire/smoke compartment from which they are being evacuated. Every effort shall be made to avoid evacuating juveniles into an adult unit or allowing juveniles to have any contact with adult inmates.
- 8) The plan states that if the Jailer determines that the jail has to be evacuated inmates are not to be evacuated until sufficient backup is obtained. There is no guidance as to what constitutes "sufficient" and no time limit given. It could take a considerable amount of time to get sufficient backup at the jail. The plan shall be modified to define "sufficient" backup and the length of time to wait for backup.
- 9) The Policy and Procedures Manual calls for the Correctional Officer, upon discovery the fire, to contact the fire department via 911. Normal procedure would be for the officer to first contact the Control Center. The plan shall be modified to require the correctional officer, upon discovering the fire to first contact the Control Center and then to contact the fire department via 911.

These modifications shall take place within 30 days of the filing of this agreement with the court. The modifications will be reviewed as outlined in the Compliance Monitoring section of this agreement.

FIRE DRILLS

The defendants will develop a fire drill plan which indicates how fire drills will be conducted 12 times annually. Additionally, defendants shall create a reporting format which

critiques each fire drill conducted. These reports shall be reviewed after the filing of this agreement with the court as outlined in the Compliance Monitoring section of this agreement.

STAFF TRAINING

A fire safety and emergency evacuation training program for correctional officers, to be conducted by the Fire Prevention Bureau of the Covington Fire Department and the Corrections Cabinet, will be developed within 60 days after the filing of this agreement with the court. Additionally, defendants shall document that each officer attend the training approximately 30 days after the training is developed.

COMPLIANCE MONITORING

The provisions of this agreement will be monitored in accordance with the NFPA Life Safety Code 1981 edition by the following monitors:

- 1) Bill Engel, who is Assistant Chief of the Fire Prevention Bureau of the Covington Fire Department, in conjunction with the Commonwealth of Kentucky, Department of Corrections designees.

The monitors shall have open access to the facility, including all records regarding fire safety, without notice. The contact person at the KCDC shall be the Jailer, Don Younger.

DISPUTE RESOLUTION

In the event a dispute arises as to whether Defendants have failed to substantially comply with the terms of this agreement, counsel for the parties shall proceed as follows:

- a. Counsel for the parties shall make a good faith effort to resolve any difference which may arise between them over matters of compliance. Prior to the initiation of any proceeding before the court to enforce the provisions of this agreement, Plaintiffs' counsel

shall notify Defendants' counsel in writing of any claim that Defendants are in violation of any provision of this agreement.

b. Within twenty (20) business days of the receipt of this notice, counsel for Plaintiffs and Defendants shall meet or confer in an attempt to arrive at an amicable resolution of the claim. If after twenty (20) business days following such meeting, the matter has not been resolved, Defendants' counsel shall be so informed by Plaintiffs' counsel, in writing, and Plaintiffs may then have due recourse to the court.

ATTORNEY FEES

The issue of attorneys' fees shall be resolved separately.

OTHER MATTERS

This agreement complies with the Prison Litigation Reform Act, 18 U.S.C. § 3626 et seq.

Dated: _____, 1997

WILLIAM O. BERTELSMAN
CHIEF JUDGE, U.S. DISTRICT COURT

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