

2006 WL 897864

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United States District Court,  
W.D. Wisconsin.

Dennis E. JONES ‘EL, Micha ‘EL Johnson,  
De‘Ondre Conquest, Luis Nieves, Scott Seal, Alex  
Figueroa, Robert Sallie, Chad Goetsch, Edward  
Piscitello, Quintin L’Minggio, Lorenzo Balli,  
Donald Brown, Christopher Scarver, Benjamin  
Biese, Lashawn Logan, Jason Pagliarini, and  
Andrew Collette, and all others similarly situated,  
Plaintiffs,

v.

Richard SCHNEITER and Matt Frank,<sup>1</sup>  
Defendants.

No. 00-C-421-C. | March 31, 2006.

#### Attorneys and Law Firms

Edward R. Garvey, Garvey & Stoddard, S.C., Walter  
Dickey, University of Wisconsin Law School, Madison,  
WI, for Plaintiffs.

Corey F. Finkelmeyer, Assistant Attorney General,  
Madison, WI, for Defendants.

#### Opinion

### ORDER

CRABB, J.

\*1 A hearing was held on March 28, 2006, before United States District Judge Barbara B. Crabb on plaintiffs’ motions to enforce the settlement agreement and to compel access to class members and records. Edward Garvey, Pamela McGillivray, David Fathi and Carlos Pabellon were present on behalf of plaintiffs. Corey Finkelmeyer and David Hoel appeared on behalf of defendants. Also present were Walter Dickey, court-appointed monitor in this case; Kenneth Streit, who has been assisting Mr. Dickey; Warden Richard Schneider; and Deputy Warden Peter Huibregtse.

After hearing argument, I held that the parties must meet to negotiate an amendment to the settlement agreement approved by the court on March 28, 2002, to take into account the changes proposed by defendants at the Wisconsin Secure Program Facility. Defendants will not be permitted to transfer general population inmates to the facility until the agreement is amended.

I made this decision with considerable reluctance. The monitor and defendants have made exhaustive efforts to ameliorate the difficult conditions at the Wisconsin Secure Program Facility. It is apparent that their efforts have been motivated by a genuine desire to make the facility more humane for both the inmates and the correctional officials. They have undertaken a re-assessment of the effectiveness of the facility and the program in bringing about change in recalcitrant inmates. In response to that re-assessment, defendants have developed a comprehensive re-working of the facility’s operations and programming. No doubt, it is true, as the monitor believes, that this planning effort would not have been so successful had it not originated with defendants, independently of plaintiffs and defendants’ counsel. As a general rule, people are more likely to accept change when they initiate it themselves rather than having it foisted upon them, particularly when the foisting comes as a result of court action.

However, there is a settlement agreement in place that this court is not free to ignore, whatever opinions I may have about the value of the proposed changes. It is unfortunate, as the monitor pointed out, that plaintiffs’ counsel did not communicate their concerns to the monitor promptly, in response to his efforts to keep plaintiffs’ counsel abreast of the planning work. It does no service to plaintiffs’ counsel’s clients, the court or the public for counsel to refuse to cooperate while the process is ongoing or to wait to file a motion for preliminary injunction to the court until the week before the first general-population inmates are to be transferred to the Wisconsin Secure Program Facility. At the same time, it is not helpful that defendants’ counsel refused to try to resolve the problem with plaintiffs’ counsel but instead took the position that the proposed changes do not affect the settlement agreement.

In setting 45 days for negotiation of desired amendments to the settlement agreement, I have provided ample time for the attorneys for both sides to reach agreement, provided both groups work with alacrity, civility, cooperation and a true desire to serve their clients and the public interest. It will be disappointing if counsel are not able to resolve their differences, particularly when they have the same goal of making the Wisconsin Secure Program Facility as humane as possible for all the inmates housed there.

\*2 With respect to plaintiffs’ motion for access to class members and their records for the purpose of monitoring the settlement agreement, I have concerns about the difficulties plaintiffs’ counsel and the monitor have had in working together to the benefit of the inmates for whom they are responsible. It is understandable that the monitor

would be discouraged about the value of his and Mr. Streit's strenuous efforts to monitor the agreement in general and the mental health and treatment of the inmates in particular, when plaintiffs' counsel asks to make an independent evaluation of the same subjects. However, plaintiffs' counsel have an independent responsibility to safeguard their inmate clients' interests. Therefore, I will grant plaintiffs' motion to give their counsel access to those clients and to their records so that counsel may undertake an overall assessment of the mental health needs and responses at the facility.

Although the settlement agreement's provision for monitoring expired on the day of the hearing, Mr. Dickey and Mr. Streit are willing to continue in their jobs for the 45 days that the parties have to negotiate an amended settlement agreement.

**ORDER**

IT IS ORDERED that

Footnotes

<sup>1</sup> The current warden of the Wisconsin Secure Program Facility, Richard Schneider, and the current Secretary of the Department of Corrections, Matt Frank, are substituted for their predecessors in office. Fed.R.Civ.P. 25(d)(1).

1. Defendants Richard Schneider and Matt Frank are enjoined from transferring general population inmates into the Wisconsin Secure Program Facility until the parties have negotiated an amended settlement agreement addressing the transfer.

2. Counsel for both parties are to meet with the court on May 5, 2006, at 8:00 a.m. in Courtroom 250, to advise the court of the progress of their negotiations. If the parties reach agreement on the necessary amendments to the settlement agreement before that date, they should advise the clerk of court so that an earlier hearing may be scheduled for a hearing on approval of the amendments. If the parties reach an impasse on any subject, they are free to request a court hearing on the matter.

3. Plaintiffs' counsel are to have access to class members and to the records of class members; and

4. The appointment of Walter Dickey as monitor is extended until May 12, 2006, by stipulation of the parties.