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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

DEAN GINEST, ROBERT WILLEY,)
CLIFFORD DAVIS, RICK WRIGHT,)
DAVID CARPENTER, FRANK W. COOK,)
and FRANK R. LOPEZ,)
individually and on behalf of)
all others similarly situated,)
Plaintiffs,)

vs.)

Civil Action No. C86-0310

THE BOARD OF COUNTY COMMISSION-)
ERS OF CARBON COUNTY, WYOMING;)
C. W. OGBURN, Sheriff of Carbon)
County, in his individual and)
official capacities; and ROBERT)
GRIEVE, JAMES A. YORK, and O.R.)
"BUD" DAILY, Carbon County)
Commissioners, in their)
individual and official)
capacities; and DONALD SHERROD,)
in his official capacity,)

Defendants.)
-----)

CONSENT ORDER AND DECREE

The Court, upon request of the parties for the approval and entry of a Consent Order and Decree, having reviewed the proposed Consent Order and Decree and being of the opinion that it is a fair and reasonable resolution of the issues in this action, hereby approves the proposed Consent Order and Decree and directs the entry thereof as follows:

I. PRELIMINARY STATEMENT.

1. This action was brought as a class action relative to declaratory and injunctive relief (not as to damages) on behalf of all present and future inmates of the Carbon County Jail. The action also sought compensatory and punitive damages for the named Plaintiffs.

2. This Order and Decree is directed to the Board of County Commissioners of the County of Carbon, State of Wyoming, hereinafter referred to as the "County", and to the Sheriff of Carbon County. The obligation for complying with the provisions of this Order and Decree shall be upon the County with respect to those matters which are solely within the statutory duty and authority of said County and shall be upon the Sheriff with respect to those matters which are solely within the Sheriff's statutory duty and authority. Concerning those matters which are or may be within the joint, common or overlapping statutory duty

and authority of said County and Sheriff, the obligation shall be upon both.

II. GENERAL MATTERS.

3. The agreement of the parties and the provisions of this Order and Decree are not to be construed to establish or modify any standard of civil or criminal liability of any official, employee, agent or representative of Carbon County, or of the County itself, other than for the sole and limited purpose of enforcement of this Order and Decree. This Consent Order and Decree includes and is applicable to all present and future inmates of the Carbon County Jail.

4. The agreement of the parties and the terms of this Order and Decree were voluntarily and mutually agreed upon by the Plaintiffs and the Defendants who are parties to this Order as a compromise settlement of disputes between the parties, and neither said agreement nor this Order and Decree constitute admissions by Defendants that any previous or existing condition, policy, procedure, act or omission of Carbon County, its officials, employees, agents and representatives, was, or is, in any way improper, negligent, unconstitutional, or in violation of any right of Plaintiffs. Nothing in this agreement of the parties or in the provisions of this Order and Decree shall be

deemed to constitute findings of fact or conclusions of law with respect to the claims or defenses of the parties in this action.

III. RECREATION AND EXERCISE.

5. The Sheriff shall provide a library of at least 50 books and magazines for inmate use. Inmates also shall be allowed to purchase books, magazines, newspapers and other reading materials directly from the publisher. Access to such materials shall be denied only as punishment, if the publications constitute a security risk, or such publications would be considered pornographic under standards articulated by the United States Supreme Court. Inmates shall also have access to playing cards and to table games, such as checkers and chess.

6. Inmates shall be allowed access to paper and felt-tipped pens for a period of at least from the time of wake-up call in the morning until the time of lights out in the evening, seven days per week.

7. The Sheriff shall install one exercise bicycle and one universal weight-pulling machine. No inmate shall be compelled to use such equipment. Subject to any medical or disciplinary restrictions, all inmates, in whatever cells they may be confined, shall have access to such equipment for not less than one-half hour, five days a week.

IV. RELIGIOUS MATERIALS AND SERVICES.

8. The Sheriff shall allow access to bibles and other religious literature and religious counseling.

V. ACCESS TO THE COURTS.

9. The Sheriff shall allow reasonable access to the courts in the following ways:

(a) Unless the use of a telephone by an inmate constitutes a security risk or would interfere with an on-going criminal investigation, inmates shall be allowed access to the telephone for one three-minute call at the time they are booked into jail. In no event will access to the telephone for the purpose of contacting an attorney be denied to an inmate for a period in excess of 48 hours from the time he^{*} is booked into jail without prior Court-ordered authorization for such denial. The Sheriff will attempt in good faith to maximize access to the telephone for contacts with attorneys. Under no circumstances will telephone calls between attorneys and their clients be tape recorded.

(b) All correspondence from inmates to attorneys may be sealed by the inmate prior to its delivery to the

*Throughout this Consent Decree, the use of the word "he" with reference to an inmate or to a Sheriff also includes the word "she", as appropriate.

jailor and will not be opened or examined by Sheriff's Office personnel. Incoming legal mail may be opened by jail personnel in the inmate's presence and inspected for contraband. Such mail shall not otherwise be read, examined, or restricted by jail personnel.

10. Access to a person trained in the law or to a law library in civil cases will be accorded indigent inmates to the extent mandated by the United States Supreme Court in Bounds v. Smith, 430 U.S. 817 (1977), as applied in Nordgren v. Milliken, 762 F.2d 851 (10th Cir., 1985) and Ward v. Kort, 762 F.2d 856 (10th Cir., 1985).

VI. VISITATION.

11. Inmates will be allowed to receive "approved" visitors during scheduled visiting hours. A visitor is deemed to be "approved" unless the jailor has a reasonable suspicion that the visitor would constitute a security threat, in which case the grounds for such suspicion must be placed in writing and kept in a central file, and the jailor's decision must be reviewed by the Sheriff, who must give the inmate and the visitor, upon request, at least an informal hearing. Scheduled visiting hours will allow each inmate visitation of not less than one-half hour twice a week. In addition, the Sheriff shall afford visitation for not

less than an aggregate among all the prisoners of three hours on Saturday and three hours on Sunday by prior appointment. The privilege of visitation may be suspended as punishment for violation of jail rules.

12. Visitation shall be accorded in the physical facility proposed by the Sheriff as set forth in the plans and specifications prepared by Saratoga Construction and Electric and approved by Plaintiff's expert, Dr. Leidig, which shall be constructed by the Sheriff not more than 90 days from the entry of this Consent Decree. After that physical facility is constructed, the Sheriff shall impose no age limitations on the visitors.

VII. ACCESS TO THE MAIL AND TELEPHONE.

13. Incoming non-legal mail may be read by jail personnel, but shall be delivered to the inmate unless the contents of the letter constitute a security risk. Stamps, paper and envelopes for five (5) non-legal letters a week and ten (10) legal letters a week will be furnished by the Sheriff's Department for indigent inmates.

14. Because of the Sheriff's concern for security, all non-legal telephone calls will be tape recorded. Access to the telephone for non-legal purposes will be permitted only as the

jailor's schedules may permit, and any such non-legal telephone privileges shall be subject to suspension for disciplinary reasons.

VIII. ATTORNEY-CLIENT PRIVILEGE.

15. No telephone conversations between attorneys and their incarcerated clients shall be recorded or monitored.

16. Inmates shall be permitted to seal letters to their attorneys in envelopes.

IX. RULES AND REGULATIONS.

17. Written statements of the jail rules and regulations shall either be given to inmates as they are booked into the County Jail, or continuously posted in the jail within 90 days of the entry of this Consent Decree.

18. It shall be the policy of the Carbon County Jail personnel to use the least restrictive means available to control and discipline inmates, and physical force shall always be the last alternative.

19. Whenever any violence occurs in the jail, all jail personnel present shall file an "incident report" with the head jailor. A copy of this report shall be placed in the file of the inmate involved and another copy shall be filed together with all

other such incident reports, in a central location. The head jailor shall investigate each incident to determine whether any jail policy was violated by the use of force in that instance.

20. The inmate disciplinary policies which will be developed within 90 days of the entry of this Consent Decree shall specify the methods of punishment for infractions of the rules. No inmate shall be punished for violating an unwritten rule, or receive a type of punishment not specified as being authorized for the particular infraction that occurred.

21. No prisoner shall be punished for rule violations of other inmates.

X. DENIAL OF DUE PROCESS.

22. In the event of an incident constituting an immediate threat to the welfare of an inmate or to the security of the jail, jail personnel may immediately institute such reasonable disciplinary action as may be necessary. A written report of such disciplinary action shall be submitted to the head jailor at such time as the head jailor is next on duty. The head jailor shall review the incident for which disciplinary action is taken, as well as the form of discipline, with the jailor and with the inmate. The inmate shall be allowed to corroborate his position with verbal and written statements from other persons.

When it is the head jailor who initially imposes discipline, said action will be reviewed as set forth above with the inmate and the head jailor by the head jailor's immediate supervisor. A prisoner shall be afforded the right to submit a written appeal directly to the Sheriff or to the person taking his place in his absence, and the Sheriff or his replacement shall take such actions with reference to such appeal as is appropriate.

When an infraction of the rules does not involve an immediate threat to safety or security, the disciplinary process shall be the same as set forth above, except that the review by the supervisor shall occur prior to the imposition of the punishment.

Inmates may not be placed or kept in isolation unless the jail has complied with the procedural protections set forth in Wolff v. McDonnell, 418 U.S. 539 (1974).

XI. OVERCROWDING.

23. Inmates who have been incarcerated in the jail for fourteen continuous days must be placed in a cell that has no more than four prisoners, provided that such cell may contain more than four prisoners during overflow periods, but never to exceed 72 hours. The permanently attached bunks in one of the

four sleeping cells shall be reduced in number from eight to four and may be replaced with hinged bunks at the election of the Sheriff.

XII. TEMPERATURE CONTROL.

24. The Sheriff shall provide and maintain adequate temperature control in the Carbon County Jail in accordance with all applicable standards of the Wyoming Department of Health for institutions.

XIII. LIGHTING.

25. The Sheriff shall provide and maintain adequate lighting in the Carbon County Jail to fulfill all requirements of the Wyoming Department of Health for institutions.

XIV. BEDDING.

26. The Sheriff shall provide sheets or mattress covers for all inmates. The Sheriff shall provide such blankets as may be necessary for the warmth of the inmates.

XV. MEDICAL CARE.

27. Inmates who request to see a physician or dentist shall be allowed to see a doctor within a reasonable time period.

If emergency care is required, the inmate shall be transported immediately to the emergency room of a hospital. Inmate medication shall be delivered to the inmate within an hour of the time prescribed. When medicines are delivered to an inmate, the inmate shall be afforded an opportunity to initial a form indicating the time of delivery.

XVI. HYGIENE.

28. The Sheriff shall provide soap, toothpaste, toothbrush, individual shaving equipment, and a comb to each inmate.

29. Inmates shall not be required to have their hair cut by jail personnel unless it has been determined that such action is necessary for health or hygiene reasons by the jail's physician, and that no less drastic remedy is feasible.

XVII. FOOD.

30. The jail's menu shall be approved in writing by a nutritionist, and the meals shall be placed on at least a two-week rotation. All dishes and utensils must be washed in accordance with the regulations of the Wyoming Department of Health for institutions.

XVIII. ADEQUATE SUPERVISION.

31. Jail personnel will make regular rounds of not less than every one-half ($\frac{1}{2}$) hour to check on the welfare of the inmates.

32. A microphone will be installed in the bullpen area and the audio transmission from the microphone will be properly monitored. Calls for help by the inmates will be investigated immediately.

XIX. SANITATION.

33. The Sheriff shall continue to maintain the jail in a sanitary condition. Inmates will be required to assist in keeping the jail clean and sanitary, although such maintenance will be ordered only during reasonable hours and in a reasonable manner.

XX. STRIP SEARCHES.

34. Persons arrested for minor offenses will only be strip-searched if there is a reasonable suspicion that contraband or a communicable disease will be discovered. Persons arrested for other than minor offenses may be strip-searched. Exit strip searches will be conducted only if the jailor has reasonable suspicion that the departing prisoner is removing articles which

can be reasonably considered a threat to the safety or welfare of persons.

XXI. IMPLEMENTATION, COMPLIANCE AND CONTINUING JURISDICTION.

35. The Sheriff shall immediately undertake steps designed to implement and comply with the terms of this Order and Decree, and shall within 120 days of the entry of this Consent Decree submit to the Court and Plaintiffs' counsel a report concerning those steps which have then been undertaken, those matters in which implementation and compliance is then in process, and those steps yet to be taken towards implementation and compliance with the terms of this Order and Decree. Said report shall include copies of all reports and recommendations of the agencies required to be utilized under the terms of this Order and Decree, and shall address each aspect of the conditions in the jail which are addressed in this Order and Decree.

36. Should the State of Wyoming promulgate a set of jail standards which are inconsistent to the provisions of this Decree, any affected party may petition the Court for modification if such modification is required by law.

37. After the submission of the report required by paragraph 35 of this Decree and Order, Plaintiffs shall be free to commence such contempt or other proceedings as may be neces-

sary to insure compliance of the Sheriff and the County with the terms of this Order and Decree.

38. This Consent Order and Decree resolves all matters at issue between the Plaintiffs and the present Sheriff of Carbon County, Donald F. Sherrod, and the Board of County Commissioners on the claim for injunctive relief, except the following which are specifically preserved:

(a) the requirement to report in accordance with paragraph 35 of this Consent Order and Decree;

(b) the potential for contempt proceedings for failure to comply with the provisions of this Consent Order and Decree;

(c) the Plaintiffs' entitlement to recover attorney's fees against the present Sheriff of Carbon County, Donald F. Sherrod, in his official capacity.

Accordingly, all allegations of Plaintiffs' Amended Complaint as to the present Sheriff, Donald F. Sherrod, and as to the Board of County Commissioners as to the injunctive relief, which are not specifically covered by the terms and provisions of this Consent Order and Decree are hereby dismissed with prejudice. This Consent Order and Decree is the product of a dialog between the Plaintiffs and the present Sheriff, Donald F. Sherrod, and the terms and provisions hereof merely represent a mutual concep-

tion of how the Carbon County Jail should be operated. The Defendant Board of County Commissioners is a party to this Consent Decree for the sole and limited purpose of agreeing on behalf of the County to fund the physical changes reflected herein and to maintain such improvements when requested by the Sheriff. Entry of this Consent Order and Decree does not constitute injunctive relief. Approval of this Consent Order and Decree by the Plaintiffs, the present Sheriff, Donald F. Sherrod, and the Board of County Commissioners, does not in any way or manner constitute nor infer any waiver nor any admission on the part of the present Sheriff, Donald F. Sherrod, or the Board of County Commissioners, that the Plaintiffs have or could have obtained injunctive relief against the Sheriff in his official capacity or the Board of County Commissioners, nor that the Plaintiffs have or could have obtained judgment for, or any other entitlement to recover, attorney's fees, costs or damages against the Sheriff in his official capacity or the Board of County Commissioners.

39. This Consent Decree does not pertain to the Plaintiffs' claim for damages against the Defendant C. W. Ogburn in his personal and official capacity, and the Plaintiffs' claim for damages against the County now sued as the Board of County Commissioners of the County of Carbon, State of Wyoming. Nothing contained herein shall be construed as a waiver to such claims

for damage, nor shall any of the provisions of this Consent Order and Decree be deemed as an admission by any of the parties in the context of such claims for damages.

ORDERED, ADJUDGED AND DECREED this 28th day of July, 1987.

Frank R. Harrison
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

K. Craig Williams
K. Craig Williams

Jane A. Villemez
Jane A. Villemez

Richard Rideout
Richard Rideout

Stephen L. Pevar
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Kenneth C. Brown
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