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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GEORGE GOFF,
Plaintiff,

No. 4:90-CV-50365

vs.

ORDER

CHARLES HARPER, et al.,
Defendants.

This matter is before the Court on the defendants' request for clarification as to whether they must allow inmates to use their television sets during the two-day breathers from lockup that each prisoner is to receive every thirty days (Doc. No. 323).

In its Order of August 6, 1999 (Doc. No. 299), this Court ordered that the defendants' plan be modified to allow a two-day (48-hour) "breath of air" after every thirty days of disciplinary detention served, even if that "breath of air" only allows for a couple of personal telephone calls and a chance to, just for that period, have access to some additional personal property the inmate may own, such as some cigarettes, a radio, a television, and a newspaper. (Doc. No. 299 at 47-48.) That portion of said Order was purposely not precise, as the Court was leaning over backward to keep from micromanaging the penitentiary. The portion of the Order set out above left the penitentiary officials some leeway as to procedures that would allow for a meaningful two-day breather, which the experts had testified was necessary for the physical and mental health of the lockup prisoners. The defendants forthwith appealed. (Doc. No. 300)

The next pertinent pleading was a motion by the plaintiff (Doc. No. 301) to clarify whether the Court intended one- or two-day breather periods, and a request for the Court

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to expand its findings to clarify the importance of those breaks for mental health purposes, particularly before the special needs unit is completed (probably two years in the future). This Court, in its order of September 30, 1999 (Doc. No. 321), made it plain that the "breather" days covered 48 hours.

This Court all along has hoped the penitentiary would (we knew it could, but would it) accept that the Court, for good, solid reasons as set out in its previous orders, was persuaded that continued long "hole time" sentences should have a meaningful breather or break to ensure that the inmates under such sentences would be less likely to go stir crazy. The Court's August 6, 1999 Order explained:

This Court, despite claims to the contrary, is persuaded that the defendants here can devise a plan that will in no way compromise security but will give an inmate in disciplinary detention a two-day (48-hour) break every thirty days so that the new, long disciplinary detention sentences will be less likely to manufacture new candidates for the 200-bed special needs addition because they have gone "buggy" while serving long, uninterrupted period[s] in disciplinary detention.

(Doc. No. 299 at 21-22.) This, again, was a statement that recognized the horse was on the defendants' back to devise an adequate plan and not leave this Court subject to the contention that it was micromanaging the penitentiary.

The defendants came up with a plan, Exhibit 201, a copy of which is attached to this Order. The plan did not include televisions or cigarettes, as had been suggested by this Court. (See *supra*, page 1.) The plan probably would have flown, but the defendants started giving inmates radios on breather days without any headphones and then telling the inmates they could not play the radios without headphones.

As set out on page 4 of this Court's Order of September 30, 1999 (Doc. No. 321):

Exhibit 201, the new policy, ignores the fact that many inmates do not have a radio but do have a TV. Further, as to cigarettes, the authorities could either let them buy cigarettes while in disciplinary detention to be held in their property until their "breather" days come up, or allow them early in the 48-hour "breather" days to order and receive cigarette[s] without having to wait until a portion of the 48 hours has gone by, or give them cigarettes sufficient for 48 hours from the already available "care" package program that is sometimes used at the Fort.

This Court cannot conceive of Director Kautzky okaying a situation where radios and ear phones were taken and on the "breather" days, only the radio was given back and it could not be played on the direct orders of the cellhouse officials because the prisoner had no ear phones. Colonel Emmett seemed to be unaware of this situation, which graphically points out that some of his subordinates are making decisions which are as inappropriate as the one set out above.

It is obvious that a meaningful, satisfying, 48-hour break in the lockup time is not happening, despite the clear trial evidence that it is very important to inmates' well-being. Colonel Emmett had promised in open Court to check it out. We have never heard back from him. In this Court's Order of September 30, 1999, the Court, as set out above, stated it could not conceive of Director Kautzky sanctioning the fiasco where the radio was permitted, but no way was provided for an inmate to listen to it. However, when these matters were argued before this Court, counsel for the defendants stated they did not have any witnesses, no evidence, and no update that the Exhibit 201 format was now working better, and no evidence the defendants recognized that a meaningful, relaxing breather for hole time was now in place. Can the Court assume, then, that the defendant are carrying out the Court's Order? Hardly, as "by their deeds you shall know them."

As shown by page two of Exhibit 201, there has been a lockdown in effect at the penitentiary for almost two months. This means there is no exercise, no open yard, no jobs, no one out of their cell except for a few minutes three times a week for showers. The purpose of the lockdown is to look for weapons and/or contraband so the penitentiary will be a safe place. No one can justify that it takes two months to complete this task, especially when the correctional officers and the Cert Team (8 or 10 members) are not doing their usual jobs each day and have more time to look for contraband.

The Court has included this "side" issue because it is pertinent to the only argument the defendants have put forward for not allowing "breather" inmates to have televisions; *i.e.*, it is too dangerous to open a breather inmate's cell door to put in and take out the televisions. As pointed out by this Court in its Order of September 30, 1999, which is by reference incorporated herein in full, this Court was persuaded by the testimony that there would be only one inmate involved in "breather" days every other day, or fifteen times a month. This is not a "big job."

As heretofore set out, this Court early on was persuaded the defendants could devise a plan that would fairly work out breather days. This Court was correct that the defendants could devise such a plan, but they have failed to do so. Furthermore, they give every indication they do not want or intend to do so.

In Exhibit 201, the defendants first brought up the matter of "waiving" breather days. If an inmate really wants to waive the breather days, all right, but if the evidence shows all they were going to get was a radio which they could not listen to, then why not waive it?

For all the reasons set out herein, and those set out in previous orders, prisoners on "breather" days will be given their televisions sets for a full 48-hour period. Exhibit 201

does not mention cigarettes, but each "breather" prisoner will, if he smokes, get cigarettes, not to exceed one pack per day, for the same full 48-hour period.

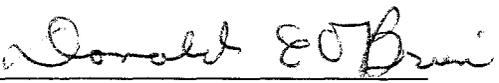
This Court grants this relief after finding the relief is narrowly drawn, it extends no further than necessary to correct the violation of the plaintiffs' federal rights, and it is the least intrusive means necessary to correct the violation of the plaintiffs' federal rights. Therefore, for good cause shown,

IT IS HEREBY ORDERED that prisoners on breather days shall get their televisions for the full 48-hour period.

IT IS FURTHER HEREBY ORDERED that prisoners on breather days will, if they so request, be allowed cigarettes, not to exceed one pack per day, for the full 48-hour period.

IT IS SO ORDERED.

DATED this 27th day of October, 1999.



DONALD E. O'BRIEN
UNITED STATES DISTRICT COURT



Ex 201

Interoffice Memorandum

Iowa State Penitentiary

L.W. Graves
Warden

Date: August 31, 1999
 To: Inmates in Disciplinary Detention Status
 From: James G. Helling - Deputy Warden
 Subject: DD Breather

In response to the Harper vs. Goff case, inmates in DD status will be allowed a 2-day breather after each 30-day period in disciplinary detention.

While in this breather period, inmates will be authorized the following additional property items/allowances if owned:

- 1) One radio as authorized per DOC policy. (Only if inmate owns headphones or ear buds).
- 2) One set of ear buds or headphones.
- 3) Periodicals, newspapers, and magazines stored at 328 personal property not to exceed authorized limits.
- 4) 2 personal phone calls per day. (Authorization required from correctional counselor)

All inmates that have been in disciplinary detention for 30 days or more will initially receive their breather period from September 4, 1999 to September 6, 1999.

Inmates will not be reducing their disciplinary detention sanction while they are in this breather period. Inmates may waive the breather period by written request on an inmate memorandum with approval by the Security Director. To maintain integrity of the afore mentioned schedule, inmates should present their waiver prior to the completion of each 30 day time period. The cellhouse unit manager will facilitate this process prior to the implementation of this schedule on September 4, 1999.

If you have questions and/or concerns you may notify your unit manager or correctional counselor.

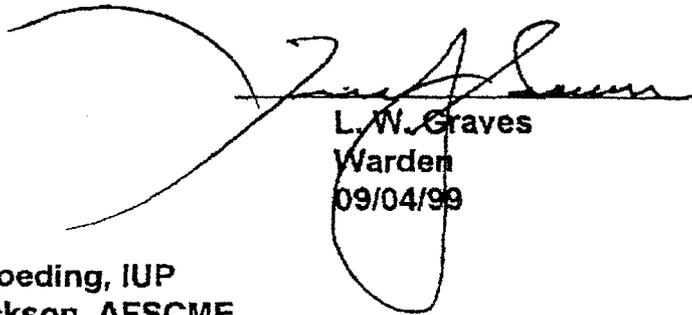
JGH/SY/sv

IOWA STATE PENITENTIARY

On September 3, 1999, at 8:00 P. M. a State of Emergency at the Iowa State Penitentiary was declared.

Until further notice, a modified inmate schedule is in effect for all inmates. Reasonable accommodations for visits and medical appointments only will be made.

Exercise and other out of cell activities will be restricted until further notice.



L.W. Graves
Warden
09/04/99

cc: Neal W. Boeding, IUP
Wade Erickson, AFSCME
All Staff
All Inmates