

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

FILED  
DES MOINES, IOWA  
96 AUG -9 PM 3:50

MICHAEL GAVIN, et al.,

Plaintiffs,

v.

ROBERT RAY, et al.,

Defendants.

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CIVIL NO. 4-78-70062

SOUTHERN DISTRICT OF IOWA

**RULING AND ORDER STAYING  
AUTOMATIC STAY PROVISION**

A telephone conference call hearing was held today on plaintiffs' renewed motion for temporary and preliminary relief. Counsel for plaintiffs, defendants and intervenor United States of America participated.

For reasons dictated into the record at the conclusion of the hearing, IT IS ORDERED that operation of the automatic stay provision of the Prison Litigation Reform Act, 18 U.S.C. § 3626(e)(2), is stayed pending final decision of the court on defendants' motion to terminate consent decree, and there shall be no stay of prospective relief. The parties shall continue to comply with the settlement agreement filed on May 3, 1984, and approved by June 13, 1984, order of this court and a supplement to settlement agreement filed August 1, 1988, and order approving the supplemental settlement agreement filed October 4, 1988, pending further order of the court.

DATED this 9 day of August, 1996.

*Harold D. Vietor*  
HAROLD D. VIETOR  
United States District Judge

Gavin v. Ray



PC-IA-003-002

**COPY**

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

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MICHAEL GAVIN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil No. 4-78-CV-70062
	:	
ROBERT RAY, et al.,	:	<u>PARTIAL HEARING TRANSCRIPT</u>
	:	
Defendants.	:	Ruling of the Court
-----X	:	

Judge's Chambers, Second Floor  
U.S. Courthouse  
123 East Walnut Street  
Des Moines, Iowa  
Friday, August 9, 1996  
11:00 a.m.

BEFORE: THE HONORABLE HAROLD D. VIETOR, Judge.

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KELLI M. MULCAHY - CERTIFIED SHORTHAND REPORTER

1 APPEARANCES:

2 For the Plaintiffs:  
3 (via phone)

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9 United States:  
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## P R O C E E D I N G S

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4 THE COURT: On the issue that I understand is before  
5 me, and that is the automatic stay, I do want to point this  
6 out: I advised my colleagues here, Judge Wolle and Judge  
7 Longstaff, on June 13 that the preceding day I had denied  
8 Plaintiffs' motion for a TRO that would preclude the 30-day  
9 stay from going into effect.

10 I did add, "I think the Plaut case, 115 Supreme  
11 Court, 1447, might ultimately prove to be the biggest  
12 constitutional problem for the State on the termination  
13 issue."

14 Going back to June 12, when I ruled from the bench,  
15 as I recall, in denying the plaintiffs' request for a TRO that  
16 would preclude the 30-day stay provision from going into  
17 effect, I believe it was basically represented to me--and  
18 please correct me if I'm wrong on this--but that it was  
19 represented to me and to opposing counsel by Mr. Lindebak that  
20 the prison intended, even though the automatic stay would be  
21 in effect, to continue to abide by Gavin up until such time as  
22 the motion to terminate was heard and decided. There may have  
23 been some slight qualification on that.

24 I'll ask now, Mr. Lindebak, to correct me in any  
25 respect if I don't have that right.

1           MR. LINDEBAK: You do have that right, Your Honor.  
2 I think I made the representation that we had no intention of  
3 changing institutional policy with respect to the things that  
4 Gavin mandated. For example, I had no idea on that date that  
5 we would--that a lockdown would necessitate a change in  
6 showers or exercise, if that is, indeed, the case, or any of  
7 the other provisions of Gavin. That just simply was not  
8 foreseen by me and was not foreseen by the warden, who made  
9 those representations to me.

10           I don't know exactly now what they're planning to do  
11 with respect to all of the things in Gavin. I know that as of  
12 yesterday the deputy director in charge of institutions was in  
13 Fort Madison. I have not been able to talk to anybody since  
14 that to find out whether they have any long-term kinds of  
15 plans to make some changes right now, so I can't make that  
16 representation today.

17           THE COURT: All right.

18           MR. LINDEBAK: But that was correct at the time it  
19 was made. We had no intention, really, to change anything  
20 before these motions were decided.

21           THE COURT: Okay. Picking up from there, at the  
22 time that I ruled on June 12, I certainly considered that  
23 representation that you made at that time, which, of course,  
24 was made in good faith, no question about that, and I think I  
25 also expressed a general reluctance, you know, unless really

1 necessary, to precipitously declare an act of Congress  
2 unconstitutional or otherwise block implementation of a law  
3 that had been duly passed by the Congress and signed by the  
4 President. Those were considerations in my mind when I  
5 concluded that I would not stay the automatic stay provision  
6 of the new law.

7 I did not, in any way, rule that it was  
8 constitutional, and, of course, I did not rule that it was  
9 unconstitutional. I think, essentially, I felt, as a  
10 practical matter, that there was no need for me to in any way  
11 interfere with or block the effectiveness of the new law,  
12 particularly the automatic stay provision, under the  
13 circumstances as they appeared to me at that time.

14 Although I did think, as I think I indicated at that  
15 time, and as I just read to you from the letter I sent to my  
16 fellow judges, that the Plaut case might be a problem for the  
17 State on the termination issue, and I think that interrelates  
18 to the automatic stay issue.

19 I do think that Judge Enslin has written a very  
20 well-reasoned opinion. I am prepared to say, and I do say  
21 that on further and more careful reflection, and in  
22 examination of the cases that have been cited to me, and most  
23 particularly Judge Enslin's decision, and in view of the  
24 facts, that we do now have--whatever the facts may be, we do  
25 now have a situation at Fort Madison where, most likely, some

1 of the provisions of Gavin are not, at the moment, being  
2 carried out, perhaps perfectly lawfully.

3           In other words, obviously, when there is a serious  
4 security situation-- And I accept that the lockdown was  
5 perfectly proper to institute at the time that it was  
6 instituted, perhaps still is proper, but the point is, we're  
7 in a situation now where, to quote a favorite saying of my  
8 father, it's made the cheese more binding, and we are in a  
9 situation where there may well be and probably are some  
10 suspensions of Gavin rights, again, perhaps perfectly properly  
11 under the totality of circumstances for security reasons, or  
12 maybe it's gone beyond.

13           And I have, I might say, experienced the lockdown  
14 situation--the prolonged lockdown situation before, back in, I  
15 think, 1981, when they had a huge riot down there, did  
16 millions of dollars in damage, burned down the administration  
17 building, took guards and prison administration people  
18 hostage, killed one inmate, and all that.

19           Were you around then, Layne?

20           MR. LINDEBAK: Yes.

21           THE COURT: Were you involved in that litigation?

22           MR. LINDEBAK: Yes.

23           THE COURT: You remember it. And Wycoff  
24 brought--finally, Mr. Wycoff, after a long period of time,  
25 brought an action challenging it, and we had a hearing on it,

1 and then the new warden came in, and the lockdown got  
2 dissolved, and things pretty well took care of themselves.  
3 But I know from experience that these lockdowns, when they  
4 become prolonged, can create problems for everybody, including  
5 the Courts, in administering any consent decrees and handling  
6 any new litigation that might arise out of it.

7           Be that as it may, as I indicated, I do find Judge  
8 Enslin's decision very well-reasoned. I don't think it's  
9 necessary for me to make, and I do not make, an outright  
10 decision that the automatic stay provision is  
11 unconstitutional, but I think it is very likely  
12 unconstitutional for the reasons articulated by Judge Enslin.

13           Applying the Dataphase factors, I think we have a  
14 situation where, on the issue of whether or not the automatic  
15 stay is unconstitutional, the plaintiff has probably  
16 demonstrated a likelihood of success on that issue.

17           I think that the lack of an active ongoing Gavin  
18 decree at this point certainly represents irreparable harm to  
19 the plaintiff class. Leaving the Gavin decree intact, pending  
20 the final determination of the motion to terminate, will, I  
21 think, afford the plaintiff class protection that it might  
22 well be meaningfully without if the Gavin decree were not in  
23 place, and therefore I think that the lack of keeping the  
24 Gavin decree in place would represent serious and irreparable  
25 harm to the plaintiff class.

1           By saying that, incidentally, I wanted to make clear  
2 that I am not suggesting that there currently is any violation  
3 of the Gavin decree, and any noncompliance with it may very  
4 well be lawfully justified under the circumstances that exist  
5 down there at this time, but I think without the Gavin decree  
6 in place, and the indication that Mr. Lindebak gave that he  
7 can no longer give the assurances he was able to give back on  
8 June 12, indicate that suspension of the Gavin decree--a stay  
9 of the Gavin decree would possibly work irreparable harm to  
10 the plaintiff class.

11           I don't think that the harm to the defendants and  
12 the prison by keeping the Gavin decree in place is  
13 significant, and certainly if there is any harm, it's greatly  
14 outweighed by the potential harm to the plaintiffs in not  
15 keeping it in place.

16           The Gavin decree is one that the prison has lived  
17 with for all these years. The prison people intended to keep,  
18 as I understand it, basically living with it, even after June  
19 12, but now we have these new circumstances. I think the  
20 public interest is best served by keeping the decree in place  
21 until we are able to have a hearing and a final determination  
22 made on the defendants' motion to terminate the decree, and,  
23 as I understand it, we're ready to get that scheduled for  
24 submission.

25           So I am turning myself around, and I am granting the

1 requested stay or injunction, whatever you want to call it, of  
2 enforcement of the automatic stay provision of the new law.

3 Any question about what I've ruled so far?

4 (Partial transcript concluded.)

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