



PC-ID-002-004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

LOIS WITKE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CASE NO. 82-3078
	)	
JAMES C. SPALDING, et al.,	)	
	)	
Defendants.	)	
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	)	
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COMPLIANCE AGREEMENT

I. PROCEDURAL HISTORY

The Complaint in this action was filed on September 9, 1982 on behalf of the women prisoners in the custody of the Idaho Department of Corrections. The plaintiffs alleged that, among other things, they were not provided minimally adequate medical care, housing, food, sanitation, personal security, recreation, and visitation; were not afforded programs and services comparable to those afforded men prisoners in Idaho's correctional facilities; and were not provided with constitutionally adequate legal access.

On November 20, 1984, counsel for plaintiffs and defendants filed with the Court a Stipulated Settlement Agreement resolving all of the issues raised in the Complaint. That Agreement was approved by the Honorable Harold Ryan on January 22, 1985. The defendants' progress toward compliance with the Settlement Agreement was monitored and reported upon at regular intervals by an Auditor selected by the parties. Although some progress was made, defendants failed to achieve compliance with the Agreement in a number of areas before the monitoring period ended in January

1988. (See Orders of April 17, 1986, January 23, 1987, and August 17, 1987).

On March 28, 1988, the parties submitted to the Court a Supplemental Stipulated Agreement, providing the defendants with an additional eighteen months, until July 1, 1989, to achieve compliance. The Supplemental Agreement was approved by Judge Ryan on May 13, 1988.

On July 13, 1989, plaintiffs filed a Motion for an Order to Show Cause why Defendants Should not be Held in Civil Contempt. Plaintiffs claimed that defendants were out of compliance with several areas of both the original and supplemental agreements. As a settlement of that Motion, on May 9, 1991, the parties filed a third Agreement with the Court, entitled "Interim Agreement." Defendants agreed to build a new institution for women prisoners in Idaho which they anticipated to be ready for occupancy approximately two years later. The Agreement also obligated the defendants to undertake some improvements in various areas, among them medical and mental health care, environmental and life safety, and programming provided to women prisoners. That Agreement was expressly designed to supplement, and not replace, the two previous agreements and, by its terms, expired when the prisoners were transferred to the new facility. The Interim Agreement was approved by the Court on July 11, 1991.

The plaintiffs were transferred to the new facility, the Pocatello Women's Correctional Center (PWCC), in April 1994. Since that time, plaintiffs have continued to monitor defendants'

compliance with the Stipulated Settlement Agreement.

## II. SCOPE OF THIS AGREEMENT

This Agreement does not replace either the Stipulated Settlement Agreement or Supplemental Stipulated Agreement, both of which remain in effect and subject to the continuing jurisdiction of this Court, to the extent consistent with this Agreement. This Agreement sets forth the agreements reached by the parties as to the actions that defendants have undertaken, and will undertake, as part of compliance with the previously existing Agreements. This Agreement also sets forth those provisions of the Stipulated Settlement Agreement that will be the subject of ongoing monitoring by plaintiffs' counsel and those that will not. The parties are continuing to work toward the eventual dismissal of this case and the release of the defendants from the Agreements. This Agreement is filed in furtherance of that end.

For the purposes of this Compliance Agreement, the provisions of the Stipulated Settlement Agreement are divided into three categories: (1) as to some provisions, defendants have achieved compliance and plaintiffs agree to cease monitoring defendants' compliance in these areas (see § III., below); (2) as to other provisions, the plaintiffs and defendants have recently reached several agreements which, when implemented, would render defendants in compliance, and plaintiffs will continue to monitor defendants' efforts to implement these agreements (see § IV., below); and (3) the remaining provisions are the subject of ongoing negotiations and changes and the defendants' compliance with these provisions

will continue to be the subject of negotiations between the parties and monitoring by plaintiffs (see § V., below).

### III. IN COMPLIANCE, PLAINTIFFS WILL CEASE MONITORING

The defendants are in compliance with the following portions of the Stipulated Settlement Agreement in this case: Censorship, Passes and Furloughs, Non-Legal Telephone, Personal Hygiene Supplies, Personal Property, Discipline, Parole, Visitation, and Non-Legal Mail. Plaintiffs will cease monitoring defendants' compliance with these aspects of the settlement agreement.

In addition, defendants are currently in compliance with the Medical, Dental, Psychiatric and Psychological Services provision of the Stipulated Settlement Agreement and plaintiffs agree to cease monitoring thereof. However, defendants are in the process of determining whether to privatize the entire department's system of the delivery of medical care to prisoners. If the DOC decides to privatize the system prior to the full termination of the Agreements in this case, plaintiffs reserve the right to review the adequacy of medical care provided under the privatized system and to enforce the requirement that such medical care comply with the requirements of the United States Constitution and the Agreements in this case.

Finally, with the exception specified on page 12 of this Agreement, defendants are in compliance with the Physical Facilities provision of the Stipulated Settlement Agreement and, subject to that exception, plaintiffs agree to cease monitoring defendants' compliance with this provision.

#### IV. AGREEMENTS, WITH ONGOING MONITORING

Classification: Defendants agree to continue to conduct the initial classification and reclassification processes in accordance with the Policy & Procedure Manual of the Department of Corrections (DOC), such that a prisoner will be given at least 48 hours notice of the date and time of the classification committee meeting and she will be allowed to attend the meeting. If defendants remain in compliance with this provision through November 1, 1995, plaintiffs agree to cease monitoring defendants' compliance with this provision of the Stipulated Settlement Agreement.

Grievance: The grievance system at PWCC was recently revised and computerized to ensure timely responses to grievances. Under this system, the concerned staff member is required to respond to a grievance within one week from the date it is submitted by the prisoner, and a "reviewer" is required to evaluate the grievance and the staff member's response within two weeks of the staff member's response. In light of these recent changes, plaintiffs will continue to monitor defendants' compliance in this area. If defendants remain in compliance with this provision through November 1, 1995, plaintiffs agree to cease monitoring defendants' compliance with this provision of the Stipulated Settlement Agreement.

Vocational Training: In addition to the current secretarial/business class offerings (keyboarding, basic computer literacy, wordperfect, paradox, business machines, shorthand, secretarial training/business communication, office procedures,

accounting/bookkeeping, medical secretary, legal secretary, machine transcription, business math, quattro pro and desktop publishing), beginning on or before October 1, 1995, the PWCC prisoners will be provided with vocational training in mid-level business management, painting, and cabinetmaking. The painting and cabinetmaking programs will be comparable to those offered to male prisoners at Idaho State Correctional Institution (ISCI).

Work Assignments: Several of the male facilities have inmates who work off-site on "work crews" performing various tasks such as road repair and firefighting. No such crews are currently in place at PWCC. However, the DOC has agreed to explore work crew opportunities for PWCC inmates. A "special projects officer" has been hired by the DOC to oversee and/or supervise a work crew. Once a crew is put in place, it will employ a minimum of ten inmates, with a commitment by the DOC to expand this number as feasible.

PWCC prisoners will be provided with on-the-job training and learning opportunities in the areas of electricity, plumbing, and other maintenance work, similar to those provided to male prisoners.

CCU Recreation: The DOC will construct a concrete pad for the playing of basketball and a sand volleyball court outside the CCU housing unit for use by prisoners housed there. Badminton, basketball, and baseball equipment will be available for prisoners' use. The outdoor recreational facilities will be available for use by CCU prisoners from sunrise to sundown. However, prisoners may

be forbidden from using these facilities at times when they are required to participate in required programming, education, or work. Prisoners may also be forbidden from using these facilities during count times or other reasonable administrative or security interruptions to normal operations.

Defendants will make their best efforts to achieve compliance with this provision by October 1, 1995. However, plaintiffs agree not to take any action regarding non-compliance with this provision until after November 1, 1995. Plaintiffs and defendants also agree that if the November 1st deadline is not met, they will meet and confer in an effort to resolve the matter without Court intervention. Plaintiffs will continue to monitor defendants' compliance in this area.

Education:

(1) The courses that appear in the "Robert Janss School Catalog of Self Study Courses" have now been, and will continue to be, made available to all PWCC prisoners, including those in the CCU.

(2) CCU prisoners will be provided with programming that is comparable to that provided to prisoners at the male Community Work Centers (CWC). The Twin Falls Community Work Center has the following on-site programming: "Breaking Barriers," Drug and Alcohol Education, Tutoring, Narcotics Anonymous, Alcoholics Anonymous, Bible Studies, Alcohol and Chemical Treatment Series Program, Pre-Release, Budgeting, and Job Seeking Skills. The Nampa CWC has the following on-site programming: pre-release program,

substance abuse education group, substance abuse relapse prevention group, thinking errors phases 1 and 2, AA meetings, NA meetings, anger management group, Bible Study, and parenting group.

Defendants will make their best efforts to achieve compliance with this provision by October 1, 1995. However, plaintiffs agree not to take any action regarding non-compliance with this provision until after November 1, 1995. Plaintiffs and defendants also agree that if the November 1st deadline is not met, they will meet and confer in an effort to resolve the matter without Court intervention. Plaintiffs will continue to monitor defendants' compliance in this area.

Access to Counsel and Courts: This area continues to be the subject of ongoing changes at PWCC and it is plaintiffs' position that defendants are currently out of compliance but are in the process of achieving compliance. However, the parties have reached the following agreements:

(1) Legal Mail: As a result of negotiations between the parties conducted in March 1995, the defendants have achieved compliance with the provisions that appear in this section. In light of the recency of these changes, plaintiffs will continue to monitor defendants' compliance with these provisions. If the defendants remain in compliance through November 1, 1995, plaintiffs agree to cease monitoring defendants' compliance with the provisions that appear in this section.

(a) There will be two correctional officers adequately trained to perform the functions of "mail officer," whose duties



include reviewing all mail before it is delivered to the prisoner recipient. When the regularly assigned mail officer is out for any reason, such as vacation or illness, the other trained officer will be assigned to this post.

(b) Outgoing legal mail that is sent directly from the prisoners' housing units will be deposited, already sealed, in the drop-off area in the housing unit. The mail officer will inspect the mail without opening it, unless there is reasonable suspicion that the envelope contains contraband.

(c) Outgoing legal mail that is sent from the law library, with the exception of mail from indigent inmates for whom the DOC is paying postage, will also be deposited in a sealed envelope by prisoners. It will undergo a visual inspection, without opening, by the mail officer, unless there is reasonable suspicion that the envelope contains contraband.

(d) Outgoing indigent prisoners' legal mail will be visually scanned for contraband, without reading, in the presence of the sending prisoner.

(e) Incoming legal mail to all prisoners, indigent or otherwise, will not be unsealed or otherwise internally inspected by prison staff outside of the inmate's presence, except with written approval by the Warden that documenting a special, legitimate security need that precludes the inmate's presence.

(f) All mail will be sent and received via the U.S. Postal Service. Prison employees will not pick up prisoner mail from any courthouse or other public building.

(2) Book Collection and Inventory List:

(a) An inventory of the law library's collection, together with a brief description of each book's contents, has now been, and will continue to be, posted in the following places: the segregation booth in the library, all housing units (including the Reception and Diagnostic Unit and the Special Handling Unit), and in the library itself.

(b) The PWCC law library will contain an up-to-date collection of the reporters and other books listed in the attached Appendix A. Defendants will make their best efforts to achieve compliance with this provision by October 1, 1995. However, plaintiffs agree not to take any action regarding non-compliance with this provision until after November 1, 1995.

(3) Law Library Staff:

(a) PWCC will employ a full-time Correctional Law Library Supervisor (CLLS) to begin working on or before August 1, 1995. The CLLS will be responsible for supervising the law library workers and for assessing their competency on an on-going basis.

(b) Beginning on or before August 15, 1995, prisoner law library workers will be required to undergo the International Correspondence School's Legal Assistant program (with the exception of those positions of the program that have no relevance to prisoner litigation), which will be taught by the CLLS on-site rather than by correspondence. Beginning at the time of receipt by the DOC of the videotapes from Idaho Legal Services, prisoner law library workers will also be required to view two videotapes, one

focusing on legal research relevant to prisoner litigation and the other focusing on substantive law relevant to prisoner litigation. In addition, a complete set of the videotapes of the law clerk training provided to prisoners at ISCI or the Idaho Maximum Security Institution (IMSI) will be made available to prisoner law clerks, as well as to other prisoners. No prisoner law library workers shall be allowed to assist other prisoners with legal work unless they have successfully completed the required training, or are in the process of successful completion thereof.

(4) Legal Telephone Calls: The telephone in the segregation booth in the library has been, and will continue to be, designated for attorney-client telephone calls and will not be monitored at any time. Prisoners will be allowed to make collect telephone calls to their attorneys from this phone. This phone has always been available to prisoners for unmonitored attorney-client telephone calls, but prisoners were not aware of this. If defendants remain in compliance with this provision, plaintiffs will cease monitoring defendants' compliance on November 1, 1995.

(5) Access to the Law Library:

(a) Effective July 24, 1995, the hours of access to the law library were expanded as follows: Close custody inmates' access was expanded from five to ten hours per week; segregation inmates' access was expanded from eight to ten hours per week; and medium and minimum custody inmates' access was expanded from eight to fifteen hours per week. Defendants agree to maintain access at least at the level to which it was recently expanded.

(b) Prisoners housed in the Reception and Diagnostic Unit (RDU) will be given access to the law library when they have a court ordered deadline, parole revocation hearing, or other legitimate need for access. Either the CLLS or a prisoner law library worker will visit the RDU unit a minimum of once per week, with additional visits on an as-needed basis.

V. NO AGREEMENTS REACHED AT THIS TIME, ONGOING MONITORING

Physical Facilities: There have been occasions on which RDU prisoners at PWCC have been required to sleep on mattresses on the floor due to a lack of adequate space. Defendants have committed to using a tier in the medium custody housing area for the housing of overflow RDU prisoners and to undertaking all possible efforts to ensure that RDU prisoners are not required to sleep on mattresses on the floor in the future. In light of this agreement, plaintiffs will continue to monitor defendants' compliance in this area. However, apart from the issue of RDU prisoners being required on occasion to sleep on mattresses on the floor, and the consequences related thereto, defendants are in compliance with the Physical Facilities provision of the Stipulated Settlement Agreement.

Commissary: PWCC is a non-smoking facility, while prisoners at currently operating male facilities are allowed to smoke. However, the DOC contends that all future facilities, male and female, will be non-smoking, and that there are currently several new facilities under construction. In light of these developments, plaintiffs will wait until the completion of the new construction

before an appropriate determination can be made as to whether defendants are in compliance with the requirement of parity with regard to commissary items.

Prison Industries: The DOC is currently advertising in an effort to generate interest from private enterprises to use Correctional Industries workers at PWCC. The DOC is also in negotiations with a telemarketing company in Boise which has expressed interest in setting up a telemarketing program at PWCC, which would employ about eight prisoners at PWCC. In light of these ongoing efforts, plaintiffs will continue to monitor defendants' compliance with this provision.

General Population Recreation: Substantial efforts are currently underway to increase the recreation time available to general population (close custody, medium custody, minimum custody, and segregation) PWCC prisoners. In light of these efforts, plaintiffs will continue to monitor defendants' compliance with this provision.

Staffing: This aspect of the Stipulated Settlement Agreement affects the following other provisions of the Agreement: classification, grievance, vocational training, work assignments, CCU recreation, education, access to counsel and courts, prison industries, and recreation, all of which remain the subject of continued monitoring by plaintiffs' counsel. For this reason, this provision will remain the subject of continued monitoring as well. To the extent that plaintiffs cease monitoring of defendants' compliance in any of these areas, as set forth in this Agreement,

plaintiffs will cease monitoring of defendants' compliance with the staffing aspects of those areas as well.

Several copies of this document will be available to inmates in the PWCC law library and a copy will be available in each housing unit. A copy will also be posted in the PWCC library. Prisoners will be informed of the availability of the document through the PWCC Inmate Newsletter.

The foregoing Compliance Agreement is agreed to by the following attorneys of the parties to this lawsuit:

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