

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ASHOOR RASHO, et al.,)
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 Plaintiffs,)
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 V)
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 DONALD SNYDER, et al.,)
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 Defendants.)

Civil No. 00-528-DRH

FILED
JAN 10 2003

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

ORDER

PROUD, Magistrate Judge:

Before the Court is plaintiffs’ motion to compel the defendants to produce certain requested documents in the absence of a protective order, and for the production of certain other documents with the benefit of the entry of a protective order-- all relative to plaintiff’s Third Set of Requests for Production of Documents and For Permission to Enter Upon Land. **(Doc. 122)**. Because protective orders are the rare exception, not the rule, even with regard to those documents plaintiffs agree warrant protection, the Court must discern whether protection is appropriate under the dictates of Federal Rule of Civil Procedure 26(c), *Citizens First National Bank of Princeton v. Cincinnati Insurance Co.*, 178 F.3d 943 (7th Cir. 1999), and *Union Oil Company of California v. Leavell*, 220 F.3d 562 (7th Cir. 2000). The defendants have not sought a protective order themselves, and they have failed to respond to the subject motion; nevertheless, because of the obvious security concerns related to the Tamms “super-max” correctional facility, the Court will carefully review the objections noted in defendants’ response to the production requests themselves.

Agreed Scope of Protection

The items the parties agree warrant protection, and the proposed protective order submitted by plaintiffs, appear consistent with the Court's previous order relative to the scope of any protective order. (**See Doc. 108**). However, the Court finds paragraph 8 of the proposed protective order somewhat problematic. (**See Doc. 122, Exhibit C**).

Paragraph 8 permits counsel to freely designate as confidential testimony obtained during discovery. That provision should be modified to reflect that any such designated testimony is only conditionally protected, until such time as the appropriate party seeks, and the Court determines that protection is warranted. The Court cannot sanction the protection of testimony it has not reviewed. Simply cross-referencing paragraphs 8 and 11 will clarify the import of a conditional designation and the necessity of obtaining Court approval of any such designation and protection. Provided such modification is made, the Court approves of the protective order drafted by plaintiffs.

Request No. 6– Videotapes

Request No. 6 seeks all videotapes recorded at Tamms of the plaintiffs. Defendants agree to make such videotapes available for viewing, but object to actual release of the tapes to plaintiffs, based on "safety and security concerns." (**See Doc. 122, Exhibit B, Request #6**). Several of the 26 tapes depict cell extraction situations, several in mental health settings, and one is of a plaintiff on the yard. Defendants object to release of extraction tapes because they show the techniques and duties of the tactical team members. Defendants further argue, "If these videotapes were to be produced without protective order prohibiting dissemination to third parties the defendants fears that inmates would be encouraged to create or provoke situations

which would necessitate the creation of videotape footage of themselves.” (*See Doc. 122, Exhibit B, Request #6*).

Defendants’ fear that inmates will create or provoke situations which would necessitate the creation of videotape footage of themselves reflects a desire for the inmates not to be seen by the public. The Court has previously declined to offer protection from bad or unwanted publicity and will not do so at this juncture.

Plaintiffs correctly note that a videotape will capture little that the plaintiff being taped could not observe. However, that is not where the danger lies. First-hand observation and recollection do not equal the ability to repeatedly observe and analyze extraction techniques captured on tape. Defendants’ fear of the general release of extraction tapes is justified. How to permit both counsel and the inmate plaintiffs to all view the tapes is the problem.

The defendants have failed to argue and establish why plaintiffs’ counsel cannot be given copies of the tapes with the understanding that the tapes may not be shown or distributed to others outside the litigation team. Therefore, copies of the 26 tapes at issue must be produced to plaintiffs’ counsel, under the same terms contained in the protective order the Court approved above. The Court is certain that the parties can work out a scheme for inmate plaintiffs and their counsel to together view tapes in the prison.

Request No. 8– ADs and IDs Relative to Transfers

Request No. 8 seeks all rules, regulations, policies and procedures concerning transfers to and from Tamms for reasons related directly or indirectly to mental health. Defendants object to producing AD 05.06.130 and ID 05.06.130 because they reveal the procedure and necessary documents to effect the transfer of an inmate, which could lead to the fabrication or modification

of transfer forms. This is a reasonable fear and a legitimate security concern. Although the defendants have released “similar” directives in connection with this case, that does not necessarily waive protection of the directive at issue. Furthermore, just because there may be some leaks in the release of sensitive information does not mean that the flood gates should be raised. Production of AD 05.06.130 and ID 05.06.130 will be permitted under the same terms contained in the protective order the Court approved above.

Request No. 9- STU Transfers and the Operations Procedure Manual

Request No. 9 seeks documentation regarding the Special Treatment Unit (STU), including information regarding transfer to and from the STU. For security reasons, defendants do not want to produce ID 05.505.005 and the STU Operations Procedure Manual. Defendants fear that inmates could glean how to manipulate transfer to and from the STU and how to circumvent search procedures and the like. Again, these appear to be valid security concerns, which can be ameliorated under the terms of the protective order approved above.

Request No. 11– IDOC Mental Health Treatment at Tamms

Request No. 11 seeks all IDOC documentation regarding mental health treatment at Tamms. Defendants have security concerns about releasing IDs 04.03.103; 04.04.102; and 04.04.103; as well as a nursing manual. Defendants assert that these documents could aid an inmate in manipulating transfer within various health care units, and disclose criteria for release, as well as crisis intervention techniques and restraints. These security concerns are legitimate; therefore, the defendants’ production of the aforementioned documents shall be made in accordance with the terms of the protective order approved above.

Request No. 15– Conditions of Confinement

Request No. 15 seeks all documentation regarding the conditions of confinement at Tamms. The following documents are at issue: D 05.504.001 regarding standards for property reduction; WB 98-20 regarding newspapers; and WBs 98-25, 98-46, 98-52 and 00-90 setting forth visiting room procedures, including searches.

Defendants contend that D 05.504.001 would not only enable inmates to learn how to manipulate property restrictions, but would also create or provoke situations which would necessitate the creation of videotape footage of themselves. Fear of photography in this instance is not grounds for protection. Nevertheless, property restrictions are in integral part of discipline and security at Tamms. Therefore, D 05.504 001 must be produced, in accordance with the terms of the protective order approved above.

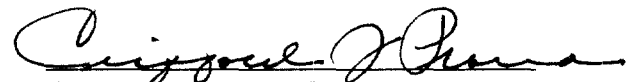
In objecting to production of WBs 98-20, 98-25, 98-46, 98-52 and 00-90, defendants have failed to specify the grounds for protection, except to explain that “Institutional level policy and procedures directed to staff presents a safety and security concern if possessed by inmates in that they may circumvent the procedure or policy thereby thwarting the implementation or effectiveness of the procedure or policy.” **(Doc. 122, Exhibit BB, Request # 15)**. That rationale suggests that virtually all documents within the prison system should be subject to protection, which certainly is not contemplated by the narrow scope of protection offered under Federal Rule of Civil Procedure 26(c). However, because WBs 98-52 and 00-90 relate to search policies, the Court is willing to afford those documents protection, out of an over abundance of caution. Therefore, defendants must produce documents WBs 98-20, 98-25, 98-46 without benefit of a protective order. WBs 98-52 and 00-90 shall be produced, subject to the terms of the protective

order approved above.

IT IS THEREFORE ORDERED that plaintiffs' motion to compel the defendants to produce certain requested documents in the absence of a protective order, and for the production of certain other documents with the benefit of the entry of a protective order— all relative to plaintiff's Third Set of Requests for Production of Documents and For Permission to Enter Upon Land— **(Doc. 122)** is **GRANTED IN PART AND DENIED IN PART**, as detailed above. The final protective order should be executed by the parties on or before **January 24, 2003**, and on or before **February 7, 2003**, defendants shall comply with the Court's directives regarding production.

IT IS SO ORDERED.

DATED: January 10, 2003


CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE