

COMPLAINT

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

GARY KNOP, JOHN FORD, WILLIAM)
LOVETT, II, RAMANDO VALEROSO,)
GUS JANSSON, PAT SOMMERVILLE,)
VERNARD COHEN, T. JON SPYTMA,)
ROBERT SHIPP, BUTCH DAVIS,)
RON MIXON, KERWIN COOK, SCOTT)
HICKS, ROBERT ROSE, TROY ROBERTS,)
and VIRECCE GANT,II individually)
and on behalf of all other)
persons similarly situated,)

Plaintiffs,)

v.)

PERRY M. JOHNSON, ROBERT BROWN,)
Jr., DALE FOLTZ, JOHN JABE,)
THEODORE KOEHLER, JOHN PRELESNIK,)
JACK BERGMAN, and WM. ABSHIRER,)
in their individual and official)
capacities,)

Defendants.)

C.A. No. G84-651 CA5

Knop v. Johnson



PC-MI-006-002

FIRST AMENDED COMPLAINT

On behalf of themselves and the class alleged herein, plaintiffs state the following for their complaint against defendants:

I. PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of all prisoners who are or will be confined by the Michigan Department of Corrections and at the State Prison of Southern Michigan (including the Reception and Guidance Center), in Jackson, Michigan [hereinafter Jackson]; the Michigan

Reformatory in Ionia, Michigan [hereinafter Ionia]; the Riverside Correctional Facility in Ionia, Michigan [hereinafter Riverside] and the Marquette Branch Prison [hereinafter Marquette] (including the Michigan Intensive Programming Center [hereinafter MIPC]), in Marquette, Michigan. Plaintiffs contend that the totality of conditions, at these institutions falls beneath standards of human decency, inflicts needless suffering on prisoners and creates an environment that threatens prisoners' mental and physical well being and results in the unnecessary deterioration of prisoners confined there. Plaintiffs further contend that their access to the courts are denied or impeded by the actions or non-actions of defendant Johnson while they are confined by the Michigan Department of Corrections. Plaintiffs further contend that the conditions at the above institutions violate the rights of the prisoners under the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION AND VENUE

2. The claims for relief are filed under 42 U.S.C. §1983 to redress injuries suffered by plaintiffs and the class they represent for deprivation under color of state law of rights secured under the First, Sixth, Eighth and Fourteenth Amendments. The claims also arise directly under the First, Sixth, Eighth and Fourteenth Amendments. Accordingly, this Court has jurisdiction over the claims pursuant to 28 U.S.C. §§ 1331 and 1343(3).

3. Venue in the Western District of Michigan is proper

under 28 U.S.C. §1392(a). Defendants Dale Foltz and John Prelesnik reside in the Eastern District of Michigan; all other defendants reside in the Western District of Michigan.

III. PARTIES

4. Each of the plaintiffs is currently a prisoner within the Michigan Department of Corrections.

5. Plaintiffs Gary Knop and John Ford are currently confined at the Central Complex of Jackson.

6. Plaintiffs William Lovett, II, Ramando Valeroso and T. Jon Spytma are currently confined at the North Complex of Jackson.

7. Plaintiffs Gus Jansson and Pat Sommerville are currently confined at the South Complex of Jackson.

8. Plaintiff Vernard Cohen is currently confined at the Michigan Reformatory at Ionia.

9. Plaintiffs Robert Shipp and Butch Davis are currently confined at Marquette.

10. Plaintiffs Ron Mixon and Kerwin Cook are currently confined at the MIPC, Marquette.

11. Plaintiffs Scott Hicks, Robert Rose, Troy Roberts, and Virecce Gant, II are currently confined at the Riverside Correctional Facility at Ionia.

12. Plaintiffs John Ford, Vernard Cohen, Robert Shipp, Virecce Gant, II, and Ron Mixon are black. All other plaintiffs are white or Hispanic.

13. Defendant Perry M. Johnson is the Acting Director

of the Michigan Department of Corrections. Under Michigan law, he is empowered, subject to rules and regulations adopted by the Michigan Corrections Commission, to supervise and control the affairs of the Department, including the promulgation of rules and regulations that provide for the management and control of state penal institutions.

14. Defendant Robert Brown, Jr., is Deputy Director of the Michigan Department of Corrections. As such, he directs the Bureau of Correctional Facilities, which administers the State Prison of Southern Michigan, the Michigan Reformatory and the Marquette Branch Prison.

15. Defendant Dale Foltz is the Regional Administrator of the State Prison of Southern Michigan. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

16. Defendant John Jabe is the Warden of the Michigan Reformatory. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

17. Defendant Theodore Koehler is the Warden of the Marquette Branch Prison. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

18. Defendant John Prelesnik is the Administrator of the Reception and Guidance Center. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

19. Defendant Jack Bergman is the Administrator of the

Michigan Intensive Programming Center. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

20. Defendant William Abshirer is the Superintendent of the Riverside Correctional Facility. As such, he has certain powers and duties related to the control, governance and supervision of that facility.

21. All defendants are sued in their individual and official capacities.

IV. CLASS ACTION ALLEGATIONS

22. This is a class action under Rule 23(a) and 23(b) (1) and (2), Federal Rules of Civil Procedure.

23. Plaintiffs are representative parties of a class of all persons confined at the above prisons, or who may be so confined in the future, and who are now confined with the Michigan Department of Corrections, or who may be so confined in the future.

24. Plaintiffs Gary Knop, John Ford, William Lovett, II, Ramando Valeroso, T. Jon Spytma, Gus Jansson and Pat Sommerville are the representative parties of a subclass of all prisoners confined at Jackson or who may be so confined in the future.

25. Plaintiff Vernard Cohen is the representative party of a subclass of all prisoners confined at Ionia or who may be so confined in the future.

26. Plaintiffs Robert Shipp, Butch Davis, Ron Mixon and

Kerwin Cook are the representative parties of a subclass of all prisoners confined at Marquette or who may be so confined in the future.

27. Plaintiffs Hicks, Rose, Roberts, and Gant are the representative parties of a subclass of all prisoners confined at Riverside or who may be so confined in the future.

28. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

29. The class is so numerous that joinder of the members is impracticable. Current members of the class number in the thousands.

30. This lawsuit challenges the totality of conditions of confinement at the three prisons and there are questions of law and fact common to the class.

31. This lawsuit also challenges access to the courts provided by defendant Johnson to all prisoners confined within the Michigan Department of Corrections.

32. This lawsuit also challenges the use of Riverside Psychiatric Center to treat mental patients and the confinement of inmates in cells at Riverside Correctional Facility without toilets and wash basins.

33. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V. FACTUAL ALLEGATIONS

A. Physical Plant

34. Jackson, Ionia, and Marquette are large, noisy, antiquated and poorly designed prisons.

35. Jackson is the world's largest walled prison. It holds approximately 5500 inmates in an area covering over two million square feet. Some individual cellblocks hold over 500 inmates each, more than professional corrections standards recommend for an entire prison. Jackson's size and design exacerbate overcrowding and contributes to the failures to provide adequate staffing, inmate classification, staff management, and security.

36. Ionia holds approximately 1400 younger inmates. It contains two cellblocks each holding nearly 500 inmates. There is also a large Adjustment Center and a total of three dormitories.

37. Marquette is a maximum security prison holding approximately 850 inmates. There are seven cellblocks. The MIPC is located behind Marquette. The MIPC was designed as a behavior modification facility and contains approximately 80 inmates.

38. At Marquette most inmates cells are slightly larger than 40 square feet; Ionia cells are 49 square feet. Dormitories are severely overcrowded and areas at Jackson not designed for inmate housing are being used to house prisoners, resulting in unsanitary and unsafe conditions. Recreation

facilities which could relief the overcrowding are inadequate or, when they exist at all, so understaffed as to reduce their availability. Marquette does not have an indoor exercise facility, despite its extremely cold winters. Approximately 1000 Jackson inmates are denied any facilities for indoor exercise.

39. Because of the size and linear design of housing units, surveillance and security is unusually difficult. The cellblocks at Jackson and Ionia are more than 300 feet long. The Jackson cellblocks are five tiers high and guards cannot see or hear all inmates for whose safety they are responsible. At both Jackson and Marquette inmates have been thrown over the railings on gallery catwalks.

40. Plumbing at all three prisons is dangerously antiquated and lacks minimal maintenance. Although the defendants have recently begun to repair cross-connected plumbing lines, numerous instances of cross-connections of sewage lines with potable water lines exist. This condition makes possible contamination of the water supply and constitutes a severe public health hazard.

41. Many toilets, lavatories, and showers are in poor condition, resulting in sewage leaks. In many cases, hot and cold water temperatures are poorly controlled.

42. Many Riverside inmates are confined overnight in cells that do not contain a toilet or wash basin. Each inmate is required to perform bodily functions in a plastic bottle which remains in his cell until the morning or on the cell floor.

43. Each inmate confined at Riverside's disciplinary unit does not have a toilet and wash basin in their cell. The inmate is required to perform bodily functions in a plastic bottle which remains in his cell until a guard will empty it or on the floor or the inmate must pound on the cell door to attract the attention of a guard to be released from the cell so he can use a toilet and then a wash basin.

44. Ventilation is completely inadequate. The lack of ventilation exacerbates the risk of airborne disease caused by the overcrowding. Strong odors of human waste are commonplace. At Marquette, quiet and detention cells have literally no ventilation. Temperature levels are poorly maintained in the cellblocks, with wide variations between the top and bottom tier.

45. Lighting within the prison living areas is inadequate in all three prisons. Detention cells generally have no light fixtures, and these cells at Marquette do not have access to natural light.

46. Housekeeping and maintenance are grossly inadequate. Vermin and filth are widespread, creating a public health risk. Jackson is infested with birds as well as rodents. Inmate clothes, bedding and mattresses are inadequately cleaned. Barbering facilities are unsanitary, thereby making possible the spread of diseases.

47. Inmates are not provided with proper winter clothing.

48. The food service areas at all three prisons

are infested with insects and rodents. Lighting is inadequate. Food is served at unsafe temperatures. Overall conditions in the food service areas and milk pasteurization operations at Jackson and Marquette constitute public health hazards.

49. Life safety provisions against fire and smoke hazards present an immediate risk of harm and are completely deficient.

50. The huge cellblocks at Jackson and Ionia are not subdivided with fire walls or doors, so that smoke could spread throughout the cellblock. Antiquated locking systems in many cells would require individual unlocking in an emergency. In many cases, exits are blocked, poorly designed, too remote, or unmarked. Many cellblocks lack smoke or heat detectors, fire alarms, sprinklers or fire hose. Staff and inmate education for emergency procedures is lacking. These fire safety deficiencies are particularly serious in view of the dangerous understaffing at the facilities.

B. Protection from harm

51. Jackson, Marquette, and Ionia suffer from an atmosphere of violence. Inmate/inmate attacks, including stabbing, are commonplace at Jackson.

52. The prisons lack employment, educational and recreational opportunities, resulting in pervasive idleness. The lack of meaningful inmate programming contributes to the level of violence at the institutions.

53. Staffing levels are completely inadequate to provide for inmate safety. These dangerously low staffing levels

are rendered even more inadequate because of poor staff management, communications, and training. These staffing inadequacies were a major cause of the May, 1981 riots at the three facilities.

54. Inmates are not properly classified. Overcrowding results in inappropriate and frequently unsafe placements for inmates. Classification decisions are primarily determined by the availability of an inmate bunk rather than individual inmate characteristics.

55. Although a majority of the inmates are black, disproportionately few staff members are black. Certain desirable inmates jobs are disproportionately assigned to white inmates. Cafeteria serving lines are generally segregated by race. Black inmates are assigned to punitive segregation in disproportionate numbers; white inmates are assigned to protective custody in disproportionate numbers. Certain white staff display attitudes of racially motivated hostility to black inmates. Racial tension contributes to the atmosphere of violence at the prisons.

56. Because of the atmosphere of violence, a large number of inmates seek the comparative safety of protective custody. But the locking systems and staff protection are totally inadequate in the protective custody sections at Marquette and Jackson. Inmates in protective custody have even less opportunity for out-of-cell programming than inmates in general population. Medical care and legal access are restricted. Ionia holds protective custody prisoners in an open

dormitory under conditions that are entirely inappropriate for this status.

C. Health Services

57. The Jackson hospital unit provides medical care for inmates from throughout the Michigan system. The hospital unit is located in a deteriorating converted cellblock. Many areas in the unit are dirty and suffer from inadequate maintenance. The operating rooms pose serious and unnecessary risks to the inmate population.

58. The Jackson North Complex Unit is characterized by poor layout, lack of privacy and disorganization.

59. The medical examining room at Ionia is dirty and inadequate.

60. At all three prisons, there is a serious shortage of qualified medical staff. As a result, the prisons are substituting untrained, unlicensed personnel for professional staff. These untrained or inadequately trained staff attempt to screen and diagnose inmate medical complaints and provide treatment.

61. As a result of the shortage of appropriately trained staff and the involvement of correctional officers in the health care referral system, inmates lack adequate access to health care. Although access for all inmates is inadequate, inmates in segregation status suffer particularly great obstacles to obtaining medical care.

62. The reception program at Jackson suffers from

inadequate staff and incomplete screening procedures. The prisons lack appropriate programs for the treatment of chronic diseases and the provision of medical diets and necessary prostheses. Medical records are poorly organized.

63. The overcrowding, violence, idleness and poor physical condition of the prisons create very high levels of stress among the prisoners. As a result, mental health services are particularly needed by a high proportion of inmates.

64. The facilities, staff and procedures in the prisons' mental health care units are all deficient. In many cases the provision of mental health care is so inadequate as to make it probable that inmates' mental conditions will worsen.

65. The Riverside Correctional Facility established to provide mental health care to prisoners is deficient. In many cases, the provision of mental health care is so inadequate as to make it probable that inmates' mental conditions will worsen.

66. Mental health services are so understaffed that chronically psychotic and other seriously mentally troubled inmates, including inmates committed to the Michigan prison system after a finding of guilt and mental illness, pursuant to M.S.A. §29.1059, receive no care. Most staffing time is spent on initial assessment and, in some cases, therapy for sex offenders.

67. Although Marquette is designed to house inmates with the most severe behavioral problems in the system, there is no psychiatric staff and the staff offers no psychotherapy.

68. The psychological stress on prisoners is most exacerbated at MIPC, which was originally designed as a behavior modification program. At MIPC, the inmates' cells are monitored for sound, cell doors are opened electronically by guards in remote control booths, cell lights are controlled by the guards, and there are spy-windows along catwalks running above the cells that allow secret observation. Inmates confined under these inhumane conditions of extreme social and sensory deprivation and lack of control over the environment are at grave risk for mental decompensation, particularly paranoia.

69. There is no reliably functioning system for inmates to request mental health services.

70. The maintenance of psychiatric records is inconsistent. Throughout the system, psychotropic drugs are prescribed as virtually the only form of treatment and monitoring for side effects of the drugs is not consistently performed. Staff underdiagnose psychosis and other serious psychological disturbances.

71. The cells used in the system for observation of suicidal or mentally ill prisoners are stark, depressing and disorienting, and in certain circumstances can induce severe mental decompensation.

72. Inmates needing outpatient care, such as rape victims or inmates recovering from an episode of psychotic decompensation, are denied such care, which is absolutely necessary to prevent serious long-lasting psychological injury under the stressful conditions prevailing in the prisons.

73. Inmates who are prescribed over the counter medication by medical personnel must purchase these from the commissary store, whether they are an indigent or have money in their account but none in their possession, or go without medication.

D. Access to the Courts

74. Michigan does not provide attorneys, paralegals, or professionally trained persons to assist inmates with habeas corpus petitions or similar challenges to their convictions or with challenges to their conditions of confinement.

75. MIPC has no law library. The law libraries at the other prisons are inadequate and inmate access to the existing collections is severely limited. Inmates are not provided with meaningful assistance in using the libraries, with the result that inmates without training in legal research cannot effectively use the legal collections.

76. Inmates at MIPC or in administrative segregation, protective custody, or punitive segregation may not visit a law library physically. Alternate provisions for such inmates are totally inadequate.

77. Indigent inmates throughout the Michigan prison system are not provided adequate access to the courts as a result of limitations on free copying, postage, legal supplies, and related items.

E. Totality of Conditions

78. Jackson, Ionia and Marquette are overcrowded

facilities with antiquated, unsafe, unsanitary, and strained physical facilities. These prisons operate in an atmosphere of violence aggravated by insufficient, undertrained staff; poor classification; racial discrimination and tension; and inadequately staffed and equipped medical, mental health and legal services. The totality of these circumstances has caused and is causing irreparable harm to the members of the plaintiff class.

VI. FIRST CLAIM FOR RELIEF

79. Paragraphs 1-78 are incorporated herein by reference.

80. The totality of circumstances at Jackson, Marquette, Riverside, and Ionia, including the condition of the physical plants, the lack of protection from harm, the racial discrimination, the lack of adequate physical and mental health services, the lack of direct access to toilets and wash basins and the lack of legal services subjects inmates to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

VII. SECOND CLAIM FOR RELIEF

81. Paragraphs 1-33 and 55 are incorporated herein by reference.

82. The racial segregation and discrimination against black inmates denies inmates the equal protection of the laws in

violation of the Fourteenth Amendment to the United States Constitution.

VIII. THIRD CLAIM FOR RELIEF

83. Paragraphs 1-33 and 74-76 are incorporated herein by reference.

84. The denial of reasonable access to the courts to inmates for the purposes of challenging their convictions or challenging their conditions of confinement denies such inmates the right to reasonable access to the courts pursuant to the First, Sixth and Fourteenth Amendments of the United States Constitution.

IX. PRAYER FOR RELIEF

85. Wherefore, plaintiffs pray for the following relief:

A. that this Court determine, pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this action is a proper class action and that plaintiffs are proper class representatives;

B. that the Court enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the totality of the circumstances of confinement, and the facilities, programs and policies of Jackson, Ionia, and Marquette violate the rights of the plaintiffs and the class they represent to be free from cruel and unusual punishment, to the equal protection of the laws, and

to access to the courts, pursuant to the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution;

C. that, following a hearing and the development of appropriate specific remedies in each area of constitutional violations, the Court enter a permanent injunction that will serve to prevent defendants, their agents, employees and those persons acting in concert with them from:

1. failing to provide inmates with proper space, noise control, sanitation, plumbing, ventilation, lighting and temperature control within the cells;

2. failing to provide clean and healthful food services;

3. failing to take proper life safety measures to protect inmates from injury or death;

4. failing to take appropriate steps to reduce violence and tension, including providing an appropriate level of staffing, staff training, surveillance, programs to reduce inmate idleness and tension;

5. failing to provide adequate inmate classification;

6. failing to end racial segregation and discrimination;

7. failing to provide adequate qualified staff, facilities, and procedures for the provision of medical care;

8. failing to provide adequate qualified staff, facilities and procedures for the provision of necessary

psychiatric and psychological care, including outpatient care and care for inmates in special statuses;

9. failing to provide a comprehensive program for the provision of access to the courts;

10. failing to provide over the counter medication prescribed by medical personnel to inmates;

D. that defendants pay the costs, expenses and attorneys' fees for this action, as authorized by the Civil Rights Act of 1976, 42 U.S.C. §1988; and

E. that the Court grant such other and further relief as the court deems just and proper.

Respectfully submitted,

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