

Alexa P. Freeman
ACLU National Prison Project
1875 Connecticut Ave. N.W.
Suite 410
Washington, DC 20009
(202) 234-4830

Kyle A. Gray
ACLU of Montana Foundation
Box 3012
Billings, MT 59103
(406) 252-2166

Penelope S. Strong
P.O. Box 804
Livingston, MT 59047
(406) 222-2556

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

KAY MANY HORSES, LINDA RODRIGUEZ,
STEPHANIE VORIS, GERALDINE KIEFER,
LORI DOANE, LUCY MARIE REDCROW,
KATHLEEN YVONNE BESSETT, JANICE MCCORD,
and BONNIE ROGERS, on their own
behalf and on behalf of all other
persons similarly situated,

Plaintiffs,

v.

MARC RACICOT, Governor; RICK DAY,
Director, Department of Corrections and
Human Services; JAMES "MICKEY" GAMBLE,
Administrator, Corrections Division;
STEVEN A. MACASKILL, Warden, Women's
Correctional Center at Warm Springs;
and LOUISE MCCLOUD, Correctional
Treatment Supervisor and Chair of
Classification Board, sued in their
official capacities,

Defendants.

No. CV 93-_____

COMPLAINT

Many Horses v. Racicot



PC-MT-002-001

PRELIMINARY STATEMENT

1. This is a class action on behalf of all women prisoners incarcerated at the Women's Correctional Center ("WCC") in Warm Springs, Montana. Plaintiffs seek to rectify the inhumane conditions at WCC which are in all respects unsuitable for prisoner habitation or programs. Dilapidated buildings at WCC pose severe life-threatening fire and other safety hazards to those who live and work there. The defendants are deliberately indifferent to the serious medical and psychiatric needs of women prisoners and have failed to accommodate those with disabilities. Prisoners at WCC are denied their constitutional right of access to the courts. Solely because of their gender, women prisoners are subjected to invidious discrimination with respect to education, employment, vocational training, visitation, recreation, religious and other programs. Plaintiffs seek programs and services comparable to those afforded men prisoners at Montana State Prison.

JURISDICTION

2. Plaintiffs bring this action under 42 U.S.C. §1983 to vindicate their rights under the First, Eighth and Fourteenth Amendments of the United States Constitution; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et. seq., as amended by the Civil Rights Restoration Act of 1987; and the Americans with Disabilities Act of 1990, 42 U.S.C. §12132. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and the authority to order declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

3. Venue is proper in the District of Montana under 28 U.S.C. §1391(a). The defendants reside in the state of Montana and the plaintiffs' claims for relief arise in Montana.

4. Venue is proper in the Butte Division under Rule 105-3(a) of the Rules of Procedure of the United States District Court for the District of Montana because a defendant and most of the plaintiffs reside in that division and the claims arose there.

PARTIES

5. Plaintiffs are prisoners currently assigned to the Women's Correctional Center in Warm Springs, Montana. Each is affected by the conditions complained of herein.

6. Defendant Marc Racicot is the Governor of Montana. As such, he is the chief executive officer for the state of Montana and is ultimately responsible for the operation of the Montana prison system. He is sued in his official capacity.

7. Defendant Rick Day is the Director of the Montana Department of Corrections and Human Services. As such, he is responsible for supervising the administration of the Corrections Division. He is sued in his official capacity.

8. Defendant James "Mickey" Gamble is the Administrator of the Corrections Division of the Montana Department of Corrections and Human Services. He is responsible for the administration and operation of all the prison facilities in Montana and provides for the health, safety and welfare of the persons incarcerated there. He is sued in his official capacity.

9. Defendant Steven A. MacAskill is the Warden of the Women's Correctional Center in Warm Springs, Montana. He is responsible for overseeing the daily operation of the women's prison. He is sued in his official capacity.

10. Defendant Louise McCloud, who on information and belief resides in Deer Lodge County, is the Correctional Treatment Supervisor and Chair of the Classification Board of the Women's Correctional Center in Warm Springs, Montana. She is responsible for supervising all educational, employment, medical and other treatment programs at the women's prison. She is also responsible for managing the Classification Board. She is sued in her official acity.

CLASS ACTION ALLEGATIONS

11. This action is brought as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

12. Plaintiffs are representative parties of a class composed of all women who are now, or who in the future will be, in the custody of or under the supervision of the Montana Department of Corrections and Human Services.

13. The class is so numerous that joinder of all members of the class is impractical. Currently the class consists of approximately forty-eight women at WCC and approximately twenty-three women in pre-release centers in Butte and Billings. There is a high turnover in these facilities each year.

14. Conditions described in this complaint are common to all prisoners at the WCC. Women assigned to pre-release remain under

the authority of the Department of Corrections, have served time at the WCC, and are subject to return there at any time during their sentences.

15. Defendants' acts and omissions as set forth in this complaint present questions of law and fact common to the class, including the constitutionality of the conditions of confinement at the WCC.

16. The plaintiffs are members of the class and their claims are typical of all class members.

17. The plaintiffs will fairly and adequately represent the interests of the class as a whole. They are represented by competent counsel.

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

FACTUAL ALLEGATIONS

A. PHYSICAL FACILITIES

19. The Women's Correctional Center in Warm Springs is Montana's only prison facility for women. It must admit and process all new female admissions to the Montana Department of Corrections and Human Services.

20. All women offenders are assigned initially to the WCC. Most women subsequently are assigned to a pre-release center in Butte or Billings prior to the completion of their sentences.

21. WCC is located on the grounds of the Montana State

Hospital in a remote valley in western Montana near Anaconda. Approximately forty-eight women are currently incarcerated there.

22. WCC consists of two buildings. The Main Building contains the administrative offices and houses approximately thirty-five women. The Expansion Unit houses approximately fifteen women in one wing of the building; the other wing houses male protective custody prisoners from Montana State Prison.

23. The Main Building is a two story plus basement structure built and formerly used as a dormitory for nurses at the state hospital. It was designated for temporary use as a women's prison over a decade ago even though it was then, and continues to be, unfit for this purpose.

24. The Main Building basement is used for program space, consisting of a dayroom, classroom, reading library and exercise room. A former storage area was partitioned to create space for two sewing machines and some bookshelves for a few lawbooks. The first floor is comprised of administrative offices, the nurse's office and examination room, the food area, dayroom, four locked cells and two bathrooms. The prisoners' rooms and two bathrooms are located on the second floor. These two second floor bathrooms provide the only space for personal hygiene for prisoners in the Main Building; there is no bathroom in the basement and prisoners are not generally allowed to use the first floor bathrooms.

25. The Expansion Unit is a dark, squat one story building with two wings. It was formerly the forensic unit for the Montana State Hospital but was discontinued for use as such in 1988, after

the State determined the building was unfit for use as a mental health facility.

26. The women's wing in the Expansion Unit consists of a narrow hallway with seven cells on each side, a small room that is used for food service and program space, four additional cells for isolation and a glassed-in control desk. The hallway to the fourteen cells provides the only day room space. There are two bathrooms with a shower, two sinks and two toilets in each.

27. The Main Building is a security coverage nightmare. Only two correctional officers are assigned per shift to cover the three floors. Because one officer must always cover the front entrance, the second officer must try to cover the rest of the building, an impossible task.

28. For six shifts a week there is no supervisor at the prison for the two buildings. WCC is ill-prepared to deal with a medical emergency, disturbance, escape, suicide attempt or other emergency.

29. The Main Building is a severe fire hazard. It has not been adequately refitted for use as a prison under the Life Safety Code. It lacks fire separation walls between authorized smoke compartments, an automatic alarm system and a complete sprinkler system. In the event of a serious fire, it would be virtually impossible to evacuate everyone safely. Each cell and exit door is individually locked and can only be opened by the two officers on duty. Likewise, all the fire extinguishers are kept under lock and key accessible only by staff. There are no lighted signs to

indicate the exit locations and one of the second floor exits is partially blocked because the stairway landing is used as a staff lounge. The stairwells and steps are very steep and lack proper lighting and skid treads. Fire in the stairwell would prohibit evacuation from the basement. A power outage, common in a fire emergency, would throw an evacuation into complete chaos because there is no back-up emergency lighting capability. The state's own architectural assessment of the Main Unit's fire system gave it a grade of D+.

30. Fire drills have not been conducted at the Expansion Unit since 1990. No standing emergency plans exist. The Fire Marshall has not inspected WCC since November, 1991.

31. Opportunities to create and hide contraband in the Main Building abound. The walls are cracked, tiles are missing from the floors, light bulbs are routinely uncovered, light sockets and fixtures are frequently loose, and exposed heating and water pipes run along the ceilings. With only two correctional officers on each shift, the safety of the women cannot be assured during routine operations, and especially in an emergency.

32. Ventilation is grossly inadequate. Upon entering the Main Building, one encounters the smell of mold and mildew. Sewer gas is present in all the rooms and several of the rooms reek of gas fumes from the boiler. In the winter, the rooms are so overheated that the women must leave their windows open to reduce the temperature and to escape the fumes.

33. There is no effective preventive maintenance, cleaning

and repair program. Blocks are missing from the bathroom walls and mortar frequently cracks and falls down, leaving gaping holes. Mold and mildew flourish and paint is peeling everywhere.

34. Food is prepared in the Montana State Hospital kitchen and transported to the Main Building and Extension Unit for service in electric carts that do not maintain proper temperatures and often sit unplugged outside the buildings while count or line-up takes place. No food temperatures are taken. Leftover meals are re-served later as snacks without utilizing appropriate sanitation and storage procedures.

35. Meals in the Expansion Unit are served in a small, unsanitary room not equipped for food service. Aprons are washed only once a week. While silverware and trays are washed off-site (and often return soiled) the women retain and wash their own dishes in tap water with generic dish soap. No water temperatures are taken and bleach is only occasionally provided. Institutional standards for sterilizing food dishes after each meal are violated daily.

36. The defendants are aware of these serious threats to the health and safety of women prisoners at WCC yet have responded with deliberate indifference.

B. MEDICAL AND MENTAL HEALTH CARE

37. While medical management of women prisoners is a recognized correctional mandate due to their health profile, the health care available to women prisoners at WCC is best characterized by what is lacking.

38. Health care at WCC is woefully understaffed. The doctor from Montana State Prison, the men's prison at Deer Lodge, attends WCC once a week. Until April 19, 1993, WCC did not have a permanent nurse on staff; nursing services were provided by a part-time temporary contract nurse. Even now that the nursing position is filled, coverage is unavailable on the second and third shifts and weekends.

39. Because of medical understaffing, untrained correctional officers are responsible for the distribution of medicines, including psychotropics, and screening of medical complaints.

40. There is no sick call at WCC. Women must submit complaints to correctional staff at pill call. Appointments with the doctor are scheduled through correctional staff or the nurse if available; prisoners have no ability to contact the doctor directly through request slips ("kites") or to receive a medical assessment of an immediate problem.

41. Women in the Main Unit usually have an opportunity to see the nurse once a day at a pill call; however, the nurse does not routinely visit the Expansion Unit, even for pill call, unless "kited".

42. WCC has no treatment, infirmary or medical isolation facilities. Other than an initial intake examination, almost all medical problems must be treated off premises at the infirmary at Montana State Prison or specialty clinics in Butte. Scheduling and transportation delays are not uncommon. Women with hepatitis or other communicable diseases are sent to the same segregation cells

that are used for all forms of non-medical segregation. Some women are confined to their rooms with infectious medical problems.

43. Medical records are maintained primarily by untrained correctional staff. There are few physician or nurse progress notes in the charts. Laboratory results and specialist orders are telephoned to the doctor by untrained correctional staff. Prisoners are not generally informed of abnormal initial pap smear laboratory results. No sign-off or follow-up system is in place to assure medical management of a known problem.

44. The prenatal care afforded pregnant women is deficient. They do not receive regular routine monthly physical screenings or weekly screenings during the ninth month. Extra dietary supplements are not provided. Pregnant women assigned to the Main Building must climb up and down steps to reach housing and program space.

45. Requests for special medical diets are sent to the Montana State Hospital kitchen but WCC has no system for assuring compliance.

46. Approximately a third of the prisoners at WCC are on psychotropic medications. The use of psychotropic drugs has become a management tool. Delays or failures in testing for toxicity levels are common. Women feel coerced into taking psychotropic medications at times.

47. Actively psychotic women are kept in isolation without adequate access to mental health professionals. The transfer policy from WCC to the psychiatric unit at the Montana State

Hospital is deficient in that WCC prisoners in need of psychiatric services are not appropriately referred, or, when referred, are refused admission.

48. Mental health services are inadequate. A psychiatrist visits only two times a month, primarily for the purpose of prescribing drugs. There is no full time psychologist on staff. Such limited psychiatric and psychological contact is insufficient to meet the needs of those prisoners who have mental health problems.

49. WCC has no current written suicide precaution policy. Women on suicide precaution are isolated in segregation cells. The segregation cell log, used for recording segregation for all purposes, is posted outside the segregation units, thus affording no confidentiality. Prisoners are being "trained" to check on suicidal women in segregation because of staff shortages. WCC averages two suicide precautions a month.

50. There is no specific policy on the use of restraints or use of force. Staff may use four-point restraints and there is no set time in which restrained prisoners must be seen or taken out for bathroom and "stretch" time. Health care staff are not notified to examine women after the use of restraints or force. Prisoner injuries of whatever cause are recorded in incident reports which are not routinely provided to health care staff or filed in medical records.

51. WCC is located more than seventeen miles from the nearest emergency room yet it does not have an emergency vehicle in which

to transport women in the event of a medical emergency. If an ambulance is needed, the Powell County Hospital, seventeen miles away, is contacted. Staff shortages prohibit transporting emergencies at night.

52. WCC has no system of quality assurance for its health care. There is also no system for auditing the distribution of medicines, thus there is no accountability for narcotics, psychotropics and other dangerous drugs.

53. Defendants are aware of all these systemic deficiencies in medical and mental health care which have persisted throughout the life of the WCC. Women experience serious harm to their present health, risk grave harm to their future health and suffer unnecessary pain, yet the defendants are deliberately indifferent to their prisoner's serious medical and mental health needs.

C. DISCRIMINATION AGAINST PRISONERS WITH DISABILITIES

54. WCC does not meet federal standards for treatment of people with disabilities. Solely because of their handicaps, prisoners with disabilities are excluded from participation in, and denied the benefits of, housing, services, facilities and programs offered at WCC and for which they are otherwise qualified.

55. WCC facilities present formidable barriers to women with mobility disabilities. The Main Building has no ramps or elevators and only one handrail, making the living and program space inaccessible to some prisoners.

56. Several women with mobility disabilities are assigned to the Expansion Unit because the Main Building cannot accommodate

them. These prisoners are housed with women who have demonstrated behaviors warranting formal disciplinary actions and they are unable to participate in programs offered in the Main Unit. For example, Bonnie Rogers, a named plaintiff, resides in the Expansion Unit because she is unable to manage the stairs in the Main Building. As a result, she is denied the opportunity to participate in Main Building programs for which she is otherwise qualified.

57. Defendants have failed to make reasonable accommodations for prisoners with disabilities. Other prisoners are required to assist disabled prisoners with routine functions.

58. The Montana Department of Corrections and Human Services receives federal financial assistance.

D. CLASSIFICATION, DISCIPLINE AND DUE PROCESS

59. Enforcement of prisoner discipline at WCC is arbitrary and capricious. Prisoners are unable to determine the difference between disciplinary, classification and administrative procedures or designations.

60. Segregation cells used for divergent purposes, including suicide watch, punishment and medical isolation, are located together and women in these cells are treated similarly. WCC lacks confinement policies for administrative segregation, protective custody and maximum custody.

61. The Expansion Unit is designated for close and maximum custody, yet all custody levels have been assigned there on an arbitrary and discriminatory basis. The lack of adequate bed space

forces these arbitrary housing decisions.

62. Women assigned to the Expansion Unit for whatever reason, including women assigned there solely because of their disabilities, are subjected to harsher conditions than those assigned to the Main Unit. The waiting lists for programs are much longer for women there. Those who need to participate in a program for chemical dependency or sex abuse must choose between the program and outside exercise time, whereas women in the Main Building may have both. Exercise in the Expansion Unit, in any event, is limited to one hour a day, five days a week, the minimum afforded locked-down prisoners under American Correctional Association standards. Visitation is more limited in the Expansion Unit than in the Main Unit; there is no separate room for overnight visits with children as there is in the Main Building.

63. Women in the Expansion Unit are denied reasonable access to basic necessities of hygiene and are subjected to painful and humiliating treatment. They must raise their hands and receive permission to use the bathroom or to take a shower. Only one prisoner is allowed in the bathroom at a time. One woman who has urinary incontinency is embarrassed because the other women are required to clean up after her.

64. The defendants' deliberately indifferent failure to provide minimal privacy inflicts psychological pain upon women in the Expansion Unit. There are no curtains on the windows in the cells in the Expansion Unit. Women whose cells face the men's wing must undress and live in full view of the men and endure their

catcalls. When they put up towels for privacy they are ordered to remove them.

65. The defendants have no policy on the assignment of women to a pre-release center. Prisoners are unaware of what they must do to progress to pre-release. Screening requirements for pre-release are inconsistent.

E. SEX DISCRIMINATION

66. Women incarcerated at WCC are suffering invidious discrimination because of their sex. The facilities, programs, services and privileges available to women are far inferior to those available to men incarcerated in the Montana State Prison and are often based upon sexual stereotyping. This discrimination pervades every aspect of institutional life.

Education

67. Women at WCC are offered GED preparation and Adult Basic Education while incarcerated, but no college level courses are available, whereas men at Montana State Prison have the opportunity to take college courses and College of Great Falls telecommunications educational programs.

Employment

68. There are only two industries employing women at WCC: data entry for the Montana Highway Patrol (three positions) and sewing for the Montana Correctional Industries (seven positions). The remaining job opportunities for women are limited to in-house assignments doing cleaning, food service, clerical work and school, which is considered a "job." On-the-job-training consists of tasks

associated with housekeeping, secretarial work, baking, and working in the canteen and library. Except for the sewing positions, all of these jobs occupy no more than three hours a day. Over twenty women have no job at all.

69. In contrast, men at Montana State Prison have extensive employment opportunities. These include prison industries in logging; furniture manufacture and restoration; sign manufacture; printing; and license plate manufacture. Men also work on the prison ranch and dairy operations.

Vocational Training

70. There is no vocational curriculum or training for women at WCC beyond the jobs described above. Men, in contrast, may enroll in the following vocational industries: telemarketing; horticulture; motor vehicle maintenance; industrial arts; meat cutting; and business skills.

Recreation

71. Recreation opportunities for women at WCC, while considered important, are simply not comparable to those available for men at Montana State Prison. The men have a large gymnasium for basketball and other indoor sports as well as a fully-equipped weight room. In contrast, the women in the Main Unit have no gym at all and must use the gym at the State Hospital. The Expansion Unit contains a small, unfurnished room called a gym but which is inadequate for basketball and has no hoop. The "fitness" rooms in each unit are poorly equipped compared to the men's. The men also have spacious facilities and materials for hobbycraft and a shop to

sell their goods to the public. The women have nothing of the sort.

Religious Services

72. Women at WCC are not offered formal corporate religious services on a weekly basis. Instead, a Protestant and a Catholic chaplain visit once a week for Bible studies. No Spiritual Leader is available for Native American women and they do not have a Sweat Lodge. Male prisoners have the opportunity to participate in weekly religious services and Montana State Prison has a Sweat Lodge.

Visitation

73. Visitation for women at WCC must take place on alternating weekends for two hours each in the mornings and afternoons in the multi-purpose room. Inadequate visitation makes it difficult to maintain family ties, particularly mother/child bonds. Male prisoners have unlimited visitation five days a week.

F. LEGAL ACCESS

74. WCC deprives women of their right of access to the courts. The law book area in the Main Unit has no federal reporters. While its Montana code is current, the annotations are not. This area lacks digests and other research tools so that unless a prisoner knows what to order from the Montana State Prison law library, that resource is unavailable. Likewise, women in the Expansion Unit may order books from the Main Unit but have no digests or research tools to assist them.

75. The clerk assigned to the Main Unit law area is not

trained; no clerk is assigned to the Expansion Unit area. The Montana Defender Project is supposed to train clerks and assist prisoners but is only able to conduct sentence reviews.

76. Male prisoners at Montana State Prison have a large, well-lit and amply stocked law library. It is equipped with typewriters, desks, copying machines and reading areas and is covered by staff and trained prisoner clerks.

CAUSES OF ACTION

77. With respect to each and every following cause of action, plaintiffs re-allege and re-incorporate by reference all of the allegations contained in paragraphs 1 through 76.

78. Defendants' acts and omissions constitute deliberate indifference to plaintiffs' serious medical, environmental, health, safety and privacy needs, violating the Eighth Amendment's prohibition against cruel and unusual punishment.

79. The failure of defendants to accommodate disabled prisoners discriminates against these prisoners in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et. seq., as amended by the Civil Rights Restoration Act of 1987 and the Americans with Disabilities Act of 1990, 42 U.S.C §12132.

80. Defendants' arbitrary and discriminatory classification, discipline, due process and good time procedures deny plaintiffs due process of law in violation of the Fourteenth Amendment.

81. Defendants' acts and omissions in providing women prisoners inferior facilities and programs to those provided men prisoners deny plaintiffs the equal protection of the laws in

violation of the Fourteenth Amendment.

82. Defendants' acts and omissions deprive plaintiffs of their right of access to the courts protected by the First and Fourteenth Amendments, as well as constitute invidious sex discrimination in violation of the Equal Protection clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

83. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs they have suffered as set forth in this complaint. Plaintiffs have suffered and will continue to suffer, irreparable injury as a result of the unlawful acts and omissions of the defendants as alleged herein unless they are granted the relief they request.

84. WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

(a) certify the class of all women who are now or who will be in the future under the custody of or under the supervision of the Montana Department of Corrections;

(b) adjudge and declare that the acts and omissions of the defendants, their agents and employees and all persons acting in concert with them under color of state law violate the First, Eighth and Fourteenth Amendments to the United States Constitution, the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990;

(c) issue preliminary and permanent injunctions sufficient to

rectify the unconstitutional and unlawful acts and omissions complained of herein;

(d) Retain jurisdiction in this case until the unconstitutional and unlawful acts and omissions complained of herein no longer exist and will not recur;

(e) award plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and,

(f) grant any other relief that this Court deems just and proper.

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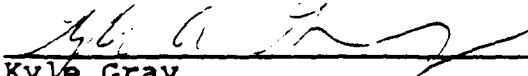
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Respectfully submitted,



Alexa P. Freeman
ACLU National Prison Project
1875 Connecticut Ave. N.W.
Suite 410
Washington, DC 20009
(202) 234-4830



Kyle Gray
ACLU of Montana Foundation
Box 3012
Billings, MT 59103
(406) 252-2166



Penelope S. Strong
P.O. Box 804
Livingston, MT 59047
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