



PC-NJ-0004-0002

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JANE ROE, etc., et al.,	:	Civil Action No. 88-1225(AET)
Plaintiffs	:	
v.	:	<u>OPINION</u>
WILLIAM H. FAUVER, et al.,	:	
Defendants	:	

007 1 1988

THOMPSON, District Judge

This matter comes before the court on a motion by defendants for summary judgment and a motion by plaintiffs for leave to file an amended complaint. This matter was previously before this court on a motion by plaintiffs for a preliminary injunction which was denied on May 13, 1988. The court will first address plaintiffs' motion to amend the complaint.

Motions to amend and supplement a complaint pursuant to F.R.C.P. Rule 15(a) and (d) are denied only when there is a strong justification for not permitting the amendment. Foman v. Davis, 371 U.S. 178, 182 (1962). If the amendment will cause undue delay, undue prejudice to the opposing party or is filed in bad faith as a dilatory move the court may disallow the filing. Id. See Also Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984), cert denied 469 U.S. 1122 (1985). The court cannot find that amending this complaint will unduly prejudice the defendants. Discovery has yet to begin, the amended complaint applies to the same individuals and/or situations included in the original complaint, and it merely broadens the focus of the -

action. Furthermore, it is logical for this court to consider all these claims regarding the housing and treatment of inmates diagnosed with AIDS at once.

In the initial complaint, plaintiff Jane Roe challenged both her confinement in St. Francis Medical Center and the fact that she was treated differently from male inmates diagnosed with AIDS. She also, however, challenged "defendants' general policy which subjects her and other prisoners diagnosed with AIDs to segregation and restrictions purely on the basis of her diagnostic status". (Original Complaint ¶2, see also ¶¶ 3, 12, 44, 46, 47, 54). The allegations in the amended complaint are merely an amplification of this challenge and do not raise new and different issues which would prejudice the defendants. The amended complaint alleges that inmates diagnosed with AIDs are illegally segregated and deprived of all recreation, education, and work programs solely on the basis of their illness. The amended complaint further alleges that this segregation results in denial of adequate legal access. Lastly, plaintiffs allege that the medical care provided them constitutes deliberate indifference to serious medical needs in violation of the Eighth Amendment to the United States Constitution. The court finds that the amended complaint will not unduly prejudice the defendants. Although the amended complaint expands on the issues raised in plaintiffs' original complaint, both complaints focus on a very particular area of the law within the Department

of Corrections - - the care, treatment and rights of those inmates diagnosed with AIDs.

The court will next consider defendants' motion for summary judgment. Defendants maintain that no genuine issues of fact remain and that they are entitled to summary judgment as a matter of law. The court concludes, however, that numerous genuine issues of material fact remain and summary judgment is not warranted at this time. Although prison officials are entitled to a vast amount of discretion in their treatment and placement of prisoners, there are certain perimeters imposed by the Constitution and by Federal and State laws.

The plaintiffs in this action protest their segregation following a diagnosis of AIDs. They also protest their treatment in the Special Medical Unit (SMU) at Trenton State Prison, at the SMU at Clinton Institution for Women and in the other places where they are placed in segregation. These allegations raise two sets of questions, first whether the segregation itself is proper and second whether the treatment plaintiffs receive once they are segregated is proper. Plaintiffs maintain that their right to equal protection is being violated because they are being treated differently from those inmates in general population both in that they are segregated and in that they are denied activities and opportunities within their segregated unit. Plaintiffs also maintain that their due process rights have been violated because they have been placed in these segregated units

without an individual hearing or a showing that they are a risk to themselves or others.

In Cordero v. Coughlin, 607 F. Supp. 9 (S.D.N.Y. 1984), a district court in the Southern District of New York found that segregating prisoners diagnosed with AIDs did not violate their rights under the Eighth or Fourteenth Amendments. The court notes that Cordero was decided four years ago and that in the past four years great progress has been made in our understanding of how AIDs is transmitted and of the course the disease takes. More importantly the court in Cordero only briefly discusses a number of the issues raised by the case before this court. While the Cordero court concludes that the decision to segregate is reasonable it does not examine whether the deprivation of recreation, education, and work is rationally related to a legitimate governmental end nor does the court discuss whether the deprivation of recreation itself is a violation of the Eighth Amendment. Although Cordero does discuss some of the legal precedents which this court will also rely on, the court is not bound by the holding in Cordero particularly as it knows little if anything of the factual circumstances upon which the court based its holding.

While it is true that prison officials have the authority to transfer prisoners and alter their custody status, Hewitt v. Helms, 459 U.S. 460 (1983), they do not have the authority to place them in a disciplinary unit without a hearing. Furthermore, although Hewitt v. Helms, authorizes prison

officials to place inmates in more restricted situations for administrative reasons without allowing them the due process outlined in Wolff v. McDonnell, 418 US 539 (1974), it does require an informal evidentiary review of the reasons for placing the individual inmate in the segregated unit. Hewitt v. Helms, 459 at 476. More importantly, Hewitt v. Helms focuses on the placement of individual inmates in existing administrative segregation units. The matter before this court involves the creation of a new restricted unit which mirrors a disciplinary unit for a particular class of prisoners. Questions remain as to the basis for the determination of the class and as to the reasons for the restrictive nature of the unit. At this time the defendants have not shown why within the unit prisoners could not be given the work, education, good time credits, visits and legal access they were entitled to in general population before they were diagnosed as having AIDs.

Gibson v. Lynch, 652 F.2d 348 (3d Cir. 1981), is also not applicable to this case. Gibson concerns an individual who was held for three months in the type of custody "normally associated with prisoners who are under disciplinary sanction or who require protection". Id. at 354. As the court notes in Gibson the inmate was placed in this unit because of a housing crisis, "a unique circumstance[s]...which we are told never occurred prior to or since, that time." Id. Mr. Gibson was held in this unit because there was no space available for him in the prison to which he was assigned. Id. at 356. Unlike the inmates

in this case his placement was not permanent. In addition, Gibson, like Hewitt v. Helms, involves an individual prisoner placed in a particular restricted unit for administrative reasons. The case before this court concerns a special "disciplinary like" unit created for a certain class of prisoners. A genuine issue of material fact remains as to whether this situation is purely administrative or is more like a situation involving "disciplinary cases, protective custody cases and severe risk cases" in which, as Gibson notes, the authority and discretion of prison officials is more limited. Id. at 358.

This case actually looks more like Perez v. Neubert, 611 F. Supp. 830 (D.N.J. 1985), than like Hewitt or Gibson. In Perez prison officials had placed an entire class of inmates, all Marielitos (Cuban aliens) in MCUs in various state prisons. This court held "[i]f we had found that the conditions of confinement of the plaintiffs were substantially similar to those affecting inmates in the general population we would be proceeding no further. Mere sequestration under "separate but equal" conditions would not in the prison context, be cognizable under §1983." Perez, 611 F. Supp. at 837. The Perez court also noted that a hearing was required and in this instance held, following the placements in MCU, Id. at 838, but the court remained "troubled by the wholesale treatment of the plaintiffs". Id. at 839. This court ordered new hearings for all those Marielitos being held in MCUs and noted that an inmate's interest in non-administrative confinement becomes "more significant as

its duration becomes longer or more indefinite". Id. at 840.

Based on the analysis above, the court must conclude that genuine issues of material fact remain regarding the procedures and justifications for segregation of this class of inmates and regarding the reasons for confining them under conditions "unequal" to those existing in general population units.

The court also notes that the confinement of some number of males diagnosed with AIDs in remission to St. Francis Medical Center because the SMU is full raises genuine issues of fact concerning their treatment in comparison not only to inmates in general population but also to other inmates with AIDs in remission. The court notes that in our opinion of May 13, 1988 on the motion for a preliminary injunction, the court did note that the DOC had failed to show that denying an individual being housed in St. Francis Medical Center but not in need of hospitalization access to the outdoors for extended lengths of time was rationally related to a legitimate state purpose. The court also notes that these inmates at St. Francis are alleged to be housed in the same rooms with inmates not suffering from AIDs (Affidavit of A.T. ¶14; Affidavit of T.A., ¶2) a fact which would belie the defendants' position that these groups are both at risk from any contact with one another.

The court also notes that plaintiffs have alleged violations of their rights under § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, which prohibits recipients of Federal

Funds from discriminating against otherwise qualified handicapped individuals. The United States Supreme Court has held that § 504 applies to individuals with contagious diseases. School Board of Nassau County v. Arline, 107 S. Ct. 1123 (1987). The Ninth Circuit Court of Appeals has held that AIDS is a contagious disease under § 504. Chalk v. U.S. District Court Cent. Dist of California, 840 F.2d 701, (9th Cir. 1988) Sec. 504 has been applied to state prisons. Sites v. McKenzie, 423 F. Supp. 1190 (N.D.W. Va. 1976). LaFault v. Smith, 834 F.2d 389 (4th Cir. 1987) (Court held claim under the Act was moot but not that plaintiff, a prisoner, could not make a claim under the Act). The defendants have not, at this time shown why it is not applicable in this matter. In Sites the court specifically noted that "any exclusion of Plaintiff [a prisoner] from participation in a vocational rehabilitation program simply because of his handicap is forbidden by the Act." Sites, 423 F. Supp at 1197. The court finds that a genuine issue of fact remains as to whether the plaintiffs are entitled to relief pursuant to § 504.

Plaintiffs also allege violations of the Eighth Amendment. They maintain that they are not receiving adequate medical care. Under Estelle v. Gamble, 429 U.S. 97 (1978), the court must determine whether there has been deliberate indifference to a serious medical need. The defendants themselves cite to Burn v. Head Jailor of Lasalle County Jail, 576 F. Supp. 618, 620 (N.D. Ill. 1984), in which the court indicates that in determining whether deliberate indifference

exists it must review the following factors: (1) the severity of the medical problem; (2) the potential for harm if the medical care is denied or delayed; and (3) whether any such harm resulted from the lack of medical attention. The fact that the inmates have gotten some medical care does not mean they cannot maintain a claim for inadequate medical care.

Plaintiffs allege that they were not always given the correct dosages of AZT, sometimes did not get it at the correct time and sometimes did not receive it all. (Aff. of Jane Roe, ¶9, Aff. of A.D., ¶1; Aff. of A.T. ¶11; Aff. of J.H. ¶¶ 5, 6, 7). AZT is the only medication that has proved successful in treating AIDs now distributed in the U.S. Plaintiffs' affidavits allege a number of occasions on which they have not been treated for ailments or occasions when treatment did not occur until they had complained of symptoms for a number of months. The court cannot grant summary judgment for the defendants because the allegations presented to it thus far raise genuine issues of material fact as to whether plaintiffs' Eighth Amendment rights have been violated.

Lastly the plaintiffs maintain that their rights to legal access set forth in Bounds v. Smith, 430 U.S. 817 (1977), are being violated. Plaintiffs allege that they do not have actual access to a law library or to anyone who is trained in the law and that their requests for legal materials are not always honored. (Aff. of Jane Roe, ¶¶ 2, 3, 4; Aff. of K.C. ¶ 9). Defendants argue that they have an adequate system of legal

access, although the only information which they provide about the program is a page from the Policy/Procedure Manual which states that adequate access will be provided and that an inmate paralegal will conduct interviews with inmates in the unit (Da-17a). This document tells the court little about the way the legal access program functions. As this court noted in its Memorandum and Order in Long v. Beyer, Civ. Act. No. 87-1301, dated August 11, 1987, "a service which only supplied...[an inmate] with that material which from his cell he is able to cite adequately, may not satisfy the demands of Bounds". Id. p.3. Although an inmate may not have actual access to the library, he or she must have direct contact with individuals who can provide "legal research assistance sufficient to provide meaningful access to the courts." Id., p.5. Plaintiffs allege that they have not had direct access to anyone who can provide actual research and that, on occasion, they have not received the materials they request. The fact that the Public Advocate's office is assisting the plaintiffs in this action does not mean their other needs for legal access are being met.

The court finds that genuine questions of material fact remain as to plaintiffs' claims regarding legal access. The defendants have failed to provide the court with adequate information regarding how many inmate paralegals service the SMU, how often they visit the unit, whether they are prison library staff or members of the Inmate Legal Association. Without this information the court cannot adequately review the program.

See also Valentine v. Beyer, Civ. Action No. 85-4401 (August 7, 1987). The court will deny defendants' motion for summary judgment.

October 7, 1988