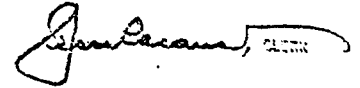


FILED

IN THE UNITED STATES DISTRICT COURT UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO SANTA FE, NEW MEXICO

JUL 11 1985

DWIGHT DURAN, et al.,
Plaintiffs,



vs.

No. CIV 77-721 JB

TONEY ANAYA, et al.,
Defendants.

DEFENDANTS' MOTION TO MODIFY
THE MAXIMUM SECURITY POLICY
STATEMENT OF THE CONSENT DECREE

Defendants, by and through their counsel of record, John Bigelow, Special Assistant Attorney General, hereby file their Motion to Modify the Maximum Security Policy Statement of the Consent Decree.

Pursuant to paragraph 6 of the General Agreement of the Consent Decree, Defendants move this Court for an order modifying the Maximum Security Policy Statement of the Consent Decree herein as follows:

The first modification would be in paragraph 3(a)(i) of the Maximum Security Policy Statement and the new proposed language of that section would be:

(i) The disciplinary committee has recently found that the inmate has committed an act of violence, substantial destruction of state property, escape or attempted escape, rioting or inciting a riot, taking hostages, or possession, introduction or manufacture of a contraband instrument capable of causing death or serious physical injury, and as a result of



such finding has been sentenced to disciplinary segregation; and

Defendants also move this Court for an order which would amend paragraph 9 of the Maximum Security Policy Statement, by adding a new section (f), as follows:

. . . above; or

(f) Possession, introduction or manufacture of a contraband instrument capable of causing death or serious physical injury.

The reasons for the proposed modifications include increasing the physical safety of the overwhelming majority of persons in the inmate population, increasing the physical safety of persons who work with the inmate population and increasing the delivery of benefits of the Consent Decree to a larger number of the Plaintiff class.

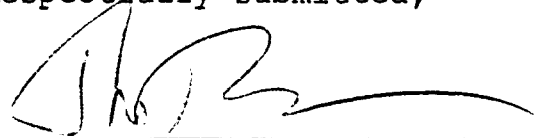
Defendants have filed concurrently herewith their Memorandum in support of this Motion, and have attached thereto the affidavits of George E. Sullivan, Warden of the Penitentiary of New Mexico; Dareld Kerby, Warden of the Central New Mexico Correctional Facility; and Eloy Mondragon, Warden of the Southern New Mexico Correctional Facility, as Exhibits "A", "B" and "C", respectively.

Counsel for Plaintiffs have been notified of the proposed modification, object thereto and do not concur with the relief sought by way of this Motion.

Defendants request a hearing on this Motion, at the convenience of the Court, at which hearing they intend to

present evidence in support of the Motion, in addition to the evidence presented by way of the affidavits attached hereto.

Respectfully submitted,



John Bigelow
Special Assistant
Attorney General
Post Office Drawer 9570
Santa Fe, New Mexico 87504
(505) 982-9911

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Motion to Modify the Maximum Security Policy Statement of the Consent Decree was mailed to all counsel of record this 12th day of July, 1985.



John Bigelow

SCHEUER & ENGEL, P.C.
ATTORNEYS & COUNSELLORS AT LAW
125 LINCOLN AVE., SUITE 223
P.O. DRAWER 9570
SANTA FE, NEW MEXICO 87504

RALPH H. SCHEUER
ROBERT A. ENGEL
JOHN BIGELOW
ASENATH M. KEPLER

505-982-9911

June 4, 1985

William W. Deaton
Attorney at Law
Deaton & Twohig
Suite 212
20 First Plaza
Albuquerque, New Mexico 87102

Re: Duran v. Anaya

Dear Mr. Deaton:

This is to notify you, pursuant to paragraph 6 of the agreement of the Consent Decree, that effective July 7, 1985, Defendants intend to treat possession of a contraband instrument capable of causing death or serious bodily harm as grounds for involuntary placement in maximum security status. For purposes of this procedure, Defendants intend to change and now propose changes in the Maximum Security policy statement of the Consent Decrees.

The first change would be in paragraph 3(a)(i) and the new proposed language of that section would be:

(i) The disciplinary committee has recently found that the inmate has committed an act of violence, substantial destruction of state property, escape or attempted escape, rioting or inciting a riot, taking hostages, or possession, introduction or manufacture of a contraband instrument capable of causing death or serious bodily harm, and as a result of such finding has been sentenced to disciplinary segregation; and

Defendants also propose to amend paragraph 9 of the maximum security policy statement, by adding a new section (f), as follows:

(f) Possession, introduction or manufacture of a contraband instrument capable of causing death or serious bodily harm.

The reasons for the proposed changes include:

EXHIBIT "A" TO DEFENDANTS' MOTION TO MODIFY THE MAXIMUM
SECURITY POLICY STATEMENT OF THE CONSENT DECREE - Page 1 of 2

William W. Deaton
June 4, 1985
Page Two

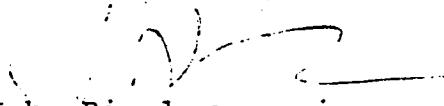
1. Increasing the physical safety of the overwhelming majority of persons in the inmate population; and
2. Increasing the physical safety of persons who work with the inmate population.

As you are aware, weapons have been a constant and long-standing problem throughout the institution. By increasing the potential sanctions for contraband instruments capable of causing death or serious bodily harm, Defendants anticipate that the possession and use of weapons in the institutions will dramatically decrease. This decrease will result in increased benefits to the vast and overwhelming majority of persons in the Plaintiff class. The only persons who could be conceivably disadvantaged would be those persons who were illegally possessing or using contraband weapons of any kind in the institutions.

Defendants are following the procedures set forth in paragraph 6 of the agreement, to insure that Plaintiffs are given every possible opportunity to object to the proposed changes as contemplated by the paragraph 6 procedure. Defendants are following this procedure notwithstanding the fact that Plaintiffs have been on notice as to the intentions of Defendants in attempting to increase potential sanctions for contraband instruments over the past several months. Because of the Plaintiffs' lack of willingness to consider increased sanctions, Defendants will assume that unless they hear to the contrary from Plaintiffs, informal efforts to resolve this matter would be futile. However, should Plaintiffs decide at any time that informal efforts to resolve the matter would be helpful, Defendants would consult with them.

Sincerely,

SCHEUER & ENGEL, P.C.



John Bigelow
Special Assistant
Attorney General

JB:blm

cc: Michael Francke
Kay Monaco
Carol Leach de Montoya
George Sullivan
Vincent Nathan