



DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.))	
v.))	Civil Action No. 74-172
J. JOSEPH GARRAHY, et al.))	
THOMAS R. ROSS, et al.))	
v.))	Civil Action No. 75-032
J. JOSEPH GARRAHY, et al.))	

MEMORANDUM AND ORDER

This cause came to be heard upon the Report of the Special Master to the Court Regarding Defendants' Compliance With Its (August 10, 1977) Order as of February 10, 1978. For purposes of this memorandum, the Court will deal with subparagraphs 2(a), 7 and 12 of the August 10 Order. No request was received from any parties for hearings on these matters, but memoranda were submitted on some aspects of subparagraph 2(a).

The report which follows measures the conduct of the defendants against the language of the August 10 Order and against that contained in modifications subsequently approved by the Court. The references to numbered paragraphs of the

Court's Order correspond to numbers utilized in the original
DISTRICT COURT OF THE UNITED STATES
order.

COURT OF THE DISTRICT OF RHODE ISLAND

ORDER 2(a)

"Defendants shall by April 1, 1978 house
awaiting trial detainees in facilities
which are physically separate from
facilities which house sentenced prison-
NICHOLAS A. ers; and thereafter shall prevent inter-
mingling of, and contact between,
detainees and sentenced prisoners." All
awaiting trial prisoners shall be re-
moved from the present maximum security
facility no later than the date the
Intake Service Center is completed in
December 1979.

No later than February 22, 1978 the
defendants shall file with the Court their
detailed plan, including dates, approved
by the Governor and the Director of the
Department of Corrections for reducing the
population of the present maximum security
facility to those prisoners who are await-
ing trial, those prisoners who are being
processed through Admission and Orientation
and the 80 to 96 prisoners who they determine
require maximum security confinement. The
Special Master shall file a report on the
defendants' plan with the Court no later
than March 1, 1978 and a hearing, if
necessary, shall be held on the plan on
March 9, 1978;"

Evidence produced for the Court's review would indicate
that the defendants have made good progress toward remodeling
the maximum security unit to provide by April 1, 1978
facilities for awaiting trial detainees "which are physically
separate from facilities which house sentenced prisoners".
After numerous extensions¹ granted by the Court, the defendants

submitted on February 22, 1978, a detailed and comprehensive plan, including dates, for the reduction of the population of the maximum security unit in accordance with subparagraph 2(a).^{2/}

The Special Master filed his memorandum in response to this plan on March 1, 1978.^{3/} The Court transmitted the Master's Memorandum to the Court in Response to the Defendants' "Facilities 'Draw-Down' Plan" to all concerned parties, requesting that they submit in writing their responses and objections to the report no later than Monday, March 13, 1978. It further instructed the parties that if a hearing was not requested the Court would take under consideration adoption of the Master's findings and recommendations immediately thereafter. On March 16, 1978, defendants responded to the Master's Memorandum concerning the "Facilities 'Draw-Down' Plan" over the signature of William G. Brody, Special Assistant Attorney General. There were no objections made to the Master's Memorandum, but attention was called to an acceleration of the defendants' inmate transfer process and the correction of a typographical error which mistakenly had indicated that 36 inmates instead of 40 inmates would remain in the maximum security unit until the completion of the new program building at the medium security unit. These minor changes are acceptable and are to be made a matter of record as representing the defendants' current "Draw-Down" plans. It is to be noted that the defendants did not request a hearing on the issue.

The plaintiffs, in a memorandum dated March 17, 1978, over the signature of Robert B. Mann, Esq., objected to the Master's Memorandum with a number of concerns as follows: 2(a).^{2/}

1) The population of Medium Security would be increased without corresponding increase in program facilities. The Master clearly stated in his memorandum on this subject that the question of program services was more appropriately an element that should be reviewed on May 10, 1978, when the defendants are required to have program services available for all inmates. The Court agrees with the Master's position in this matter, particularly in view of the fact that the population will not increase in medium security until December 1978, at which time additional program facilities are to be available.

2) The plan violates the Court's August 10, 1977 Order prohibiting other than minimum security prisoners being placed in dormitory settings.

The Master and numerous correctional administrators^{4/} who have reviewed Rhode Island's Adult Correctional Institutions find no objection to using the dormitory style of sleeping that exists in the current "Men's Reformatory" because of the small number of inmates assigned to each dormitory unit and the increased security that has been provided. The Court agrees with these recommendations and will amend subparagraph 4(a)(9) accordingly.

3) The amount of indoor exercise space at the "Men's Reformatory" is completely inadequate.

It has never been demonstrated to the Court that the exercise space at the Men's Reformatory is inadequate, but rather that the programs for exercise and recreation have been almost non-existent. The defendants will be required by May 10, 1978, under subparagraph 5(e)(3) "to establish recreational and avocational programs with sufficient resources and staff so that every prisoner in the Rhode Island prison system shall have the opportunity to participate in such programs on a regular basis." The time to evaluate the defendants' progress towards this goal is more appropriate in May than now.

4) Defendants' plan proposes to increase the population in the Reformatory substantially, while at the same time the facilities require massive renovations to meet minimum health, safety and fire standards.

The facts presented to the Court clearly indicate that the population will increase by only 40 inmates and that will not be done until December 1978 when additional program facilities will have been completed.

The increase in population will be housed in the North Basement or in the south end of the first floor, which was at one time the Boys Training School. The defendants are mistaken in their memorandum when they state that the North Basement was

3) The amount of space in this section of the building not designed to house prisoners. The original blueprints for the Reformatory is completely inadequate.

only show that this section was designed as a dormitory complete

It has never been described to the Court that the building with toilets, wash basins and showers, but the history of the exercise space at the Men's Reformatory is inadequate, but building indicates that this area was used as a residential unit for many years. There will, according to the defendants, almost nonexistent. The defendants will be required by 1978, be a thorough upgrading of this area before it would be used 1978, under subparagraph 5(a)(3) "to establish recreational and to house prisoners in December 1978.

It is true that there are extensive electrical, plumbing and heating improvements to be made in the building in question. All of these improvements will have to be made

whether the building is rated as "minimum" or "medium" and whether it is used for 160 inmates or 200 inmates. The defend-

ants are dangerously approaching noncompliance regarding the renovation of this building. However, the issues which are

now before the Court, involve the building's custody rating and a slight increase in the resident population. The Special

Master informs the Court that these changes are within acceptable correctional practice. The Court accepts his recommenda-

tions. This action in no way negates, but rather increases, the importance of the defendants bringing the Reformatory

Building within the minimum standards set forth in subparagraph 4(a).

5) The defendants' plan to use the Reformatory is based on an estimate that no later than May 3, 1978 there will be only 36 prisoners in protective custody. There is no explanation in the plan for how the defendants plan to reduce the number of protective custody prisoners so rapidly.

The defendants have assured the Court that the reclassification process, which will be completed by May 1, 1978, will allow for a new assignment of inmates which will no longer require an unusually large number in protective custody. The Master has informed the Court that the custody schedules developed by the defendants are well within what would be acceptable prison practice.

Finally, the plaintiffs, although expressing a number of concerns about the defendants' plan, did not request a hearing on the objections they made.

ORDER 7

"Defendants shall within six months from the entry of this order bring the health care delivery system into compliance with the minimum standards of the American Public Health Association, the United States Public Health Service, and the Department of Health, State of Rhode Island."

The health care delivery system at the Adult Correctional Institutions has been the subject of several studies and reports. Two studies were undertaken even before the Court's August 10, 1977 Order. The first report was presented in June, 1976, by

Dr. Richard Della Penna, acting as a consultant for the American Correctional Association under an LEAA contract. The second report was initiated in early 1977 by HARICOMP, Inc., a management services organization affiliated with the Hospital Association of Rhode Island (HARI). The final phase of this study was completed in December of 1977. Defendants have forwarded copies of each of these reports to the Court as background information.

Defendants' original implementation team, appointed by Governor Garrahy in response to the August 10 Order, began its approach to achieving compliance with Section 7 by reviewing "Phase I" of the HARICOMP study which had been completed in July of 1977. The Team set out to reorganize all medical services according to the study's proposals, utilizing an appropriation of \$425,000 provided by the 1977 session of the State Legislature.

While the Team did implement major findings of the HARICOMP study, it soon began its own evaluation of the Department's health care delivery system by setting up a Health Care Delivery Work Force. This work force implemented additional staffing changes and produced its own recommendations on January 23, 1978, which were forwarded to the Governor and to the Director of the Department.

Meanwhile, Mr. John Fournier, Medical Services Coordinator within the Department of Corrections, was asked to review the health care delivery system with four goals in mind:

-- identification of the requirements of appropriate health care standards, referenced in the Court's August 10 Order;

-- identification of those Departmental health services which were in compliance with the Order;

-- identification of services not in compliance;

-- specific requirements to achieve compliance where services were deficient.

This comprehensive report was forwarded to the Special Master on December 20, 1977. With the information developed in the report a comprehensive health care plan and policy manual was developed by the defendants and constitutes the blueprint for ACI's health care delivery system. This plan was favorably reviewed by Mr. Richard Kiel, Chief of Health Services for the North Carolina Department of Corrections, who was retained as a consultant during January. Mr. Kiel concluded that "implementation of the health care plan . . . would provide a level of health services in keeping with Standards Developed by the American Public Health Association, the American Correctional Association and applicable standards from the Rhode Island Department of Public Health."

The Court has two reservations about accepting this statement at face value. First, as Mr. Kiel himself stated, "It is evident that sufficient resources have not been made available for implementation of the plan. Thus, I cannot

report that quality health care is being delivered in practice, since no satisfactory assessment of facilities, staffing, and supplies has been made." Mr. Kiel returned to Rhode Island on March 16, 17 and 18 to analyze whether the Department of Corrections' health care plan is actually being carried out. His report should be available by April 10, 1978.

Secondly, Mr. Kiel's expertise is in the field of health care administration--he is not a physician, and the Court is hesitant to evaluate defendants' compliance without advice of an independent medical consultant. The Special Master has retained a qualified physician with wide correctional experience who can evaluate defendants' health care delivery system by April 10, 1978. Until that report is received, the defendants' health care plan cannot be certified as fulfilling the Court's August 10 Order.

Defendants were to have complied with Section 7 of the Order by February 10, 1978. As indicated above, significant progress in health care planning has been made since the August 10 Order was issued. However, the Court is unable to make a definitive finding regarding compliance without an assessment of defendants' health care delivery system in light of resources currently being applied to implement the plan.

ORDER 12

"The defendants shall, within six months from the date of this order, submit to

the Master and to the Court a comprehensive report setting forth their progress in the implementation of, staffing, and each and every subparagraph of this order. The report shall also include a timetable for full compliance."

The defendants initially assigned the responsibility for reporting progress to the Court to the Governor's Implementation Team. The Team submitted detailed reports, at least monthly, until December. At that time, the Governor assigned the reporting responsibility to the Department of Corrections. Although monthly reports have been submitted, the Department has not complied with subparagraph 12 of the August 10 Order requiring, "a comprehensive report within six months setting forth their progress in the implementation of each and every sub-paragraph of this Order. The report shall also include a timetable for full compliance."

Defendants have been most cooperative in submitting whatever report the Court has requested. However, they have not to date developed an overall plan for compliance with the August 10 Order, nor have they developed a timetable for the process of achieving full compliance.

It is imperative that the Court be able to review the defendants' overall plans with projected timetables for completion. The Court should not be forced to make its decisions piecemeal, without an adequate view toward how individual efforts fit into what "should be" a grand blueprint for compliance.

the factor and to the Court's progress-
The Court adopts the findings of the Special Master
progress in the implementation of
in his memorandum to the Court in response to the Defendants'
orders. The report shall also include
"Facilities 'Draw-Down' Plan" updated March 1, 1978, and the
findings of the Special Master in regard to subparagraph 7 and
12 of the August 10 Order, as set forth in his Compliance
Report to the Court dated February 10, 1978.
Implementation Team. The Team submitted detailed reports at

It is Ordered that the Court's Order filed on August
10, 1977, is modified in the following respect: Subparagraph
4(a)(9) shall read as follows: REPORTS HAVE BEEN SUBMITTED

"each convicted prisoner housed in a
dormitory shall have at least seventy-
five square feet of personal living
space and only those prisoners who have
been classified as Minimum or Medium
Security shall be housed in dormitories."

It is further Ordered that all of the defendants, as
well as their subordinates, proceed at once to effectuate full
compliance with subparagraphs 2(a), 7 and 12 of the August 10
Order, as modified by subsequent orders of the Court.

So Ordered.

By Order,

Michelle L. Hastings
Deputy Clerk

Enter:

Raymond W. White
Chief Judge
March 29, 1978

FOOTNOTES

- 1/ February 3, 1978; February 22, 1978;
March 1, 1978
- 2/ See Appendix A; Defendants' "Draw-Down" Plan
- 3/ See Appendix B; Master's Memorandum of March
1, 1978.
- 4/ Raymond Procunier; Gary Hill; Pat Mack; Lyle Egan;
Mario Giugnino; Peter Gobel; Irving F. Roberts;
Fred Stock.