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

NICHOLAS A. PALMIGIANO, et al.)
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 v.) Civil Action No. 74-172
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 J. JOSEPH GARRAHY, et al.)

THOMAS R. ROSS, et al.)
)
 v.) Civil Action No. 75-032
)
 J. JOSEPH GARRAHY, et al.)

OPINION AND ORDER

PETTINE, Chief Judge. In its Order of August 10, 1977, ^{1/} the Court directed defendants to submit within 30 days a date certain by which time they would cease to use the Maximum Security Facility (Maximum) to house inmates at the Adult Correctional Institution. That date was to be no later than August 10, 1978. The Court directed, in paragraph 3(c) of the Order, the defendants to take interim measures by February 10, 1978 to bring the Maximum facility "into economically feasible and practicable compliance" with various minimum public health standards "as they relate to food service, sanitation, lighting, plumbing and insect and rodent control". Palmigiano v. Garrahy, 443 F. Supp. 956, 936-87 (D.R.I. 1977). Paragraph 3(a) of the Order provided, however, that if arrangements could not be made, by

Palmigiano v. Travisono



PC-RI-001-003

however, submit a report on March 30, 1978, from the environmental health officer of the Department of Corrections. It noted many deficiencies in physical conditions, some of which had been addressed by the Court's August 10 Order, but again concluded that "none posed a serious health hazard except the condition that affects the potable water system."

After hearings on March 17 and April 17 to review compliance with 3(c), the Court extended the compliance date for 3(c) until May 17. Plaintiffs, sometime after May 17, moved this Court to hold defendants in civil contempt for their failure to comply with 3(a) and 3(c).^{2/} The Court held hearings on June 29 and 30 and July 3 to determine whether defendants were in compliance, and on plaintiffs' motion for contempt. The question of compliance and the motion for contempt are presently before the Court for decision.

At the recent hearings, plaintiffs' witnesses detailed the physical conditions at Maximum. Mr. Theodore Gordon, a health and sanitation expert, testified that:

- a) Correctional officers are not trained in fire safety, nor are they given instructions concerning fire evacuation procedures.
- b) There are leaking pipes in proximity to hot exposed electrical wires in the service areas, creating a serious risk of electrocution for any person coming in contact with them.

- c) There are exposed electrical outlets in the North-state shower area adjacent to a washer and dryer, constituting a serious safety hazard.
- d) The sewage system remains cross-connected with the potable water system.
- e) Sewage lines cannot meet the demands of some of the cell block areas, with the result that simultaneous flushing of toilets is likely to cause waste water to overflow into individual cells.
- f) There are dangerously exposed hot water pipes in all showers in the cell block areas.
- g) There are two areas in which upper level railings on the cell block tiers are broken, thereby creating a serious safety hazard.
- h) There are three polyurethane mattresses and numerous polyurethane pillows, which present a serious health risk from toxic fumes in case of fire.
- i) There are 20 unoccupied cells full of solid waste, trash, cardboard boxes, and food garbage; these cells have not been cleaned for anywhere from one week to one month.
- j) There are numerous soiled and torn mattresses, often stemming from the fact that recently purchased mattresses are too large for the bed frames.
- k) Numerous windows in the South-state cell block area are broken.

- l) Many of the windows throughout the institution are not screened.
- m) Window ledges lack any evidence of recent cleaning.
- n) There is inadequate lighting in the South-state shower area, creating a safety and security hazard.
- o) Mold is growing on the walls of all shower areas.
- p) Newly installed lighting in the medical isolation areas is grossly inadequate, measuring 0-5 foot candles at eye level.
- q) Sanitary and safety conditions in the laundry area have deteriorated since April, 1978.
- r) Inadequate ventilation continues to go uncorrected in the shower area of the industrial building.
- s) Fifty percent of the inmates do not have pillows.
- t) There is no evidence of any routine cleaning program in the cell block and shower areas.

Defendants failed to offer concrete evidence contradicting most of the specific deficiencies testified to by plaintiffs' witnesses. Even their environmental health officer did not deny many of these instances. Rather, defendants attempted to mitigate the severity of the evidence by placing the noted deficiencies in some perspective. For example, they contrasted the danger of eight feet of broken railing with the total of approximately eight thousand feet of railing in the facilities. They concluded that these deficiencies did not constitute an imminent health hazard.

In addition, defendants' business management officer testified concerning the total amount of contracts let by the Department since July 1, 1977, for repairs in electrical systems, window glass, plumbing, roofs and ceilings, and for the purchase of lumber, paint, household supplies and mattresses. While defendants have spent thousands of dollars for hundreds of hours of contractors' time, they were unable to detail how the money was specifically or effectively directed toward achieving compliance with the August 10 Order. Also, cross-examination of the official responsible for reporting to the administration on health and safety conditions indicated that he receives little administrative support, and that his recommendations for corrective measures are seldom carried out.

Because of the conflicting testimony regarding current conditions at Maximum and because of the incomplete and contradictory reports submitted by the defendants over the past 6 months, the Court decided that a view was necessary. In the company of the Special Master and the parties, the Court, on the morning of July 3, 1978, conducted an inspection at Maximum of the living quarters, feeding areas, education and recreation facilities, showers, and industries area.

On the basis of all the testimony, the view, and prior hearings, the Court happily notes that significant progress on many fronts has been achieved in bringing the prison into compliance with the August 10 Order. There is no doubt that the food service area has been

raised from a totally unacceptable level to one that comports with minimum health standards. A massive reclassification process has been completed. Awaiting-trial detainees have been separated from convicted inmates, although they continue to be housed in a walled-off area of Maximum. Extermination programs have been carried out. Many window panes have been replaced, hundreds of mattresses have been purchased, and some cell block areas have been painted. In addition, the number of protective custody inmates has been reduced from 120 to approximately 20 sentenced inmates; this indicates a lessening of the fear and violence that was rampant a year ago. There is no longer a general lockup: inmates eat under decent conditions, they exercise and shower regularly, and visitation rights have been restored. All of these changes constitute significant progress toward creating a constitutionally acceptable prison.

However, in the physical plant there are obvious violations of the standards set forth in 3(c) and 3(a), as they relate to the sanitation, lighting, plumbing and safety of Maximum, during this interim period of occupancy until alternate facilities are available. The Court has come to the conclusion that the testimony of plaintiffs' expert witness must be credited as accurate in all its substantial points^{3/} and that significant defects in the physical plant exist. The overall lack of cleanliness and sanitation throughout the institution and the presence of certain conditions imminently hazardous to life and health result ineluctably in a finding of non-compliance with 3(a) and 3(c). Moreover, these conditions apparently

have worsened, rather than improved, since April of this year. These violations, in most cases, appear to be caused by a lack of administrative direction and supervision, not by insufficient fiscal resources. Many can be rectified by hard work, elbow grease and management controls, which do not require additional funding by the legislature. What is sadly lacking is a consistent, systematic commitment to safety through continuing repair and to cleanliness through an adequate housekeeping program. As a consequence, improvements in sanitary and safety conditions one month may be undone the next by a failure systematically to maintain the facilities.

The Court extended the original date for abandoning Maximum to two and one-half years from the entry of the original Order. The time when those prisoners classified to maximum security will be housed in physical conditions acceptable under the August 10 Order is thus another year and one-half off. To accomplish reasoned, orderly, and economically feasible change in the state prison, the inmates will have to endure the Maximum building during this time of transition. While sensitive throughout this litigation to the time and planning required to remedy pervasive constitutional violations, the Court in good conscience cannot permit those conditions which are imminently hazardous to life and health to continue during the transition; such defects truly make Maximum unfit for human habitation. Nor can it in justice allow departures

from those minimum standards, referred to in 3(c) and 3(a), which may be accomplished without undue expense through improved administration. Section 3(c) took this into account by requiring in the interim period only that defendants achieve compliance with standards which are economically feasible and practicable.

Moreover, patterns of effective administration determine the fitness of a prison as much as the physical plant does. A new prison can become a dungeon, if an orderly system of maintenance and accountability is not established on a continuing basis at all staff levels. Even before the move to the new facility, habits of good administration must be developed at the ACI and incorporated into daily functioning. The deterioration of physical conditions at Maximum in only four months, which can only be attributable to problems in administration, persuasively evidences its importance. Indeed, the Court has on several occasions recognized the causal connection between poor administration and the constitutional violations of the ACI. Palmigiano v. Garrahy, 443 F.Supp. 956, 977-78 (D.R.I. 1977); 448 F.Supp. 659, 673 (1978); Jefferson v. Southworth, 447 F.Supp. 179, 190-91 (D.R.I. 1978).

The Court therefore is today ordering defendants to make certain improvements at Maximum in order to eliminate conditions imminently hazardous to life and health and in

order to achieve compliance with certain standards required in 3(c). Several sections of the order compel the establishment of procedures of effective administration for the regular reporting and correcting of dangers and defects and for the maintenance of improved conditions.

Time and circumstances have influenced the Court's order today. The temporary nature of the present occupancy makes economically wasteful those major structural changes necessary for the realization of a safe and healthy prison. The egregious conditions, which the very nature of the structure imposes, cannot help but have a demoralizing impact on inmates. In this atmosphere, management is put to its keenest test and idleness haunts the mind, feeding whatever quarrelsome and mutinous nature an inmate may have.

The plaintiffs have moved this Court to hold the defendants in contempt. It is clear that defendants are out of compliance with the August 10 Order in ways which cannot be permitted. Yet they have exerted efforts to alter deplorable conditions. These efforts have paid off in key ways, already noted. Most striking and gratifying to this Court is the renovation of the food processing area from a disgusting and filthy health hazard to a clean, orderly and sanitary kitchen. But their commendable efforts have not always been actively and freely made. For example, the completion of the essential reclassification process came about only after this Court held the Director of Corrections in contempt and threatened the State with daily fines. The plaintiffs now ask for a fine of \$5,000 per day

until the defendants create tolerable physical conditions for them. The efforts of the defendants make a fine of that proportion unwarranted today. The cost would be borne in the final analysis by the taxpayers; and it is they who bear the cost of the prison already. The Court seeks to avoid, if possible, making the taxpayers suffer for the inefficiencies of the Department of Corrections. Instead, the Court today attempts to facilitate compliance by specifying certain key alterations which are obviously required, by giving defendants 30 more days to comply, and by requiring carefully designed administrative procedures for proper prison maintenance. The defendants are thus put on notice of what precisely is required and by when. If they fail to comply, they will know that they have only themselves to blame for the sanctions which this Court will necessarily impose.

This Court will review the effects of defendants' compliance with today's order, 30 days hence, and will await the findings of OSHA before finally determining whether defendants are in substantial compliance with 3(a) and 3(c) of the August 10 Order. Should there be any further delay past 1979 in the projected transfer of prisoners from Maximum, the considerations relevant to the interim occupancy may have to be revised and reweighed consistent with the prolonged use of this antiquated facility.

It is therefore ordered that:

1. Within 3 days, the defendants shall remove all polyurethane from the cells and cell block areas.
2. Within 7 days, the defendants shall make arrangements for a monthly fire inspection of the Maximum Security Facility, for as long as this building is occupied by inmates of the Department of Corrections, by the State Fire Marshal. All his reports shall be submitted to the Special Master and all parties. Reports of action taken by the defendants to remedy any violations cited in the monthly Fire Marshal's report shall be submitted to the Special Master and all parties within 10 working days of receiving the Marshal's report.
3. Within 7 days, the defendants shall draft and present to the Special Master for his approval a detailed daily housekeeping program, including, but not limited to, the following information:
 - a) Staff responsible for cleaning each area of the institution;
 - b) Staff responsible for supervising cleaning;
 - c) Equipment available for cleaning;
 - d) Frequency of cleaning;
 - e) Staff responsible for daily inspections.

Reports of the daily inspections are to be made and are to be given to the Senior Administrator in charge of the Maximum Security Facility with copies to the Special Master.

4. Within 7 days, the defendants shall have all broken or loose railings repaired, and devise a system that will assure that when any railings are broken in the future, an emergency maintenance order will be prepared and repair service provided within a 24-hour period.
5. Within 14 days, the defendants shall request the U. S. Department of Labor, Occupational Safety and Health Administration, to perform an inspection of the Maximum Security Facility. The defendants shall file a report with the Court within 5 days of receipt of the Occupational Safety and Health Administration's report indicating the course of action to be followed to remedy any violations cited.
6. Within 14 days, the defendants shall bring all "Hospital Isolation Cells" up to all minimum public health standards or, in the alternative, discontinue their use. In addition, assurance shall be given to the Court that such cells will be used only for medical purposes and only on specific authority of approved medical personnel.

7. Within 14 days, the defendants shall publish a Fire Safety Manual, approved by the State Fire Marshal, that details:
 - a) Fire prevention programs and staff responsible for compliance ;
 - b) Fire inspection schedules and staff responsibility for compliance;
 - c) Fire safety training for all correctional officers and supervisory staff and staff responsible for compliance;
 - d) Schedule and plan for regular fire drills and staff responsible for compliance.

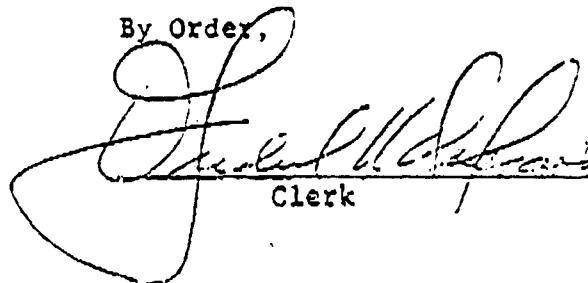
8. Within 30 days, the defendants shall attest by sworn statement to the Court that all correctional officers and supervisory staff have received "basic fire training" as set forth in the Fire Safety Manual.

9. Within 30 days, the defendants shall demonstrate to the Court that all inmates' mattresses and pillows are fire proof. In addition, all mattresses shall be covered with a non-toxic plastic cover that is chemically washed whenever the mattress is reissued, or with a cloth cover that is laundered every 90 days or whenever the mattress is reissued, whichever occurs earlier.

10. Within 30 days, the defendants shall properly clean, vent, and light all shower areas and repair all drains and ceiling tiles. All steam pipes in shower areas shall be enclosed to avoid accidental injurious body contact with exposed pipes. All toilets shall be capable of flushing adequately without causing flooding into adjacent toilets.
11. Within 30 days, the defendants shall have all windows repaired and appropriate screening material placed over those that are to be opened. A daily report form shall be prepared by the officer in charge of each area, indicating the number of windows broken in the previous 24-hour period and demonstrating that a request for repair has been submitted. A compilation of these reports shall be submitted weekly to the Special Master.
12. Within 30 days, the defendants shall repair or replace all defective laundry equipment so that it meets fire and safety standards and is capable of processing the clothing and linen needs of the Maximum Security Facility population.
13. While the duration of occupancy for the Maximum Security Facility is so short as to make renovation of the existing heating and ventilation systems economically unfeasible,

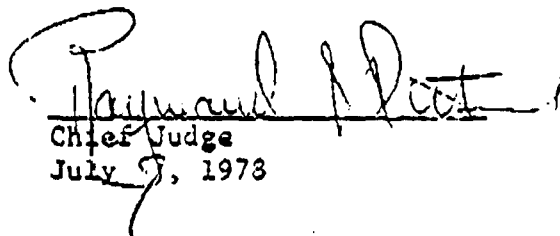
it is imperative that satisfactory air exchange be maintained in all inmate living quarters. Therefore, within 30 days, the defendants shall present to the Special Master for his review a plan to institute adequate air exchange, through the use of exhaust fans or blowers, which will meet minimum public health standards.

By Order,



Clerk

Enter:



Chief Judge
July 7, 1973

FOOTNOTES

1/ In the original opinion in Palmigiano v. Garrahy, 443 F. Supp. 956 (D.R.I. 1977), the Court found that the conditions under which the prisoners were confined violated the Eighth and Fourteenth Amendments in that:

- 1) inmates were subjected to constitutionally intolerable levels of fear and violence;
- 2) inmates were subjected to constitutionally intolerable conditions of confinement including gross filth, unsanitary living quarters, unsanitary food services, dangerously inadequate medical care and near-total idleness;
- 3) pre-trial detainees were punitively subjected to conditions worse than those suffered by sentenced inmates; and
- 4) prisoners in protective custody were arbitrarily subjected to conditions worse than those suffered by inmates in the general population.

The Court extensively documented the deplorable living conditions in Maximum. Among those the Court noted were: dirt, grime, and missing panes of glass throughout the facility; trash on floors and in empty cells; infestation of cockroaches, mice, and rats; leaking roofs and loose ceiling tile; inadequate plumbing constituting a health hazard; lack of hot water in cells; the absence of vacuum breakers in pipes to prevent waste water from backing up into the fresh water system; leaks throughout the cell tiers, particularly in the service areas; damp conditions in the service areas that provided a breeding ground for cockroaches; lavatories with large pools of standing water; the pervasive stench of urine; shower areas with mold and mildew covering the floors and walls; glass, trash and dead cockroaches everywhere on the shower floors; inadequate lighting for reading in cells; inadequate heating with no system to spread hot or fresh air; fire hazards throughout the facility, including many polyurethane mattresses that release toxic fumes when burned; inadequately ventilated

clothes dryers, and laundry areas with exposed electrical wiring; deplorable conditions in the food services area; industrial shops in a general state of disorder; no safety instructions for inmates working in the shops; no control of infectious disease in the infirmary; no written control manual for the infirmary staff; infirmary window screens blocked with debris and dirt; and colostomy bags in the infirmary simply deposited with the general trash. In addition to the foregoing, the Court found that there was no meaningful classification program; a total lack of drug treatment programs; inadequacy of the guard complement, and, concomitantly, rampant fear and violence, and incredible idleness. The statistical breakdown of the prison population bore witness to these findings -- 120 men were in protective custody, 40 in punitive segregation and 70-80 percent of all inmates on drugs of one sort or another.

Based on all these findings, the Court concluded that the ACI presented an imminent public health, fire, and safety hazard and that the totality of the living conditions rendered it not only cruel and unusual punishment in violation of the Eighth Amendment, but further, unfit for human habitation. Pursuant to this finding, the Court ordered, inter alia, the following remedial measures, as amended by subsequent orders:

- 2(b) Defendants shall house pre-trial detainees in facilities which comply with the minimum standards set forth hereafter in paragraph 4, and detainees shall not be housed in dormitories;
- 3(a) Defendants shall within sixty days from the entry of this order, advise the Court of a date certain when the present maximum security facility will no longer be used for housing prisoners, which date certain shall be no later than December 31, 1979. It is further ordered that by January 15, 1978, the defendants present to the Special Master a plan for making the Maximum Security Building ... fit for human habitation and provided further the defendants fully comply with the other relevant provisions of this order, particularly but not limited to paragraph 5...;

- 3(c) Defendants shall, by May 17, 1978 and for so long as they utilize the Maximum Security facility, bring said facility into economically feasible and practicable compliance with the minimum standards of the United States Public Health Service, the American Public Health Association and the Department of Health, State of Rhode Island, as they relate to food service, sanitation, lighting, plumbing and insect and rodent control.
- 4(a) Defendants shall within nine months from the entry of this order, bring each building and facility under their control, particularly but not limited to the housing and food service areas of said buildings and facilities, into compliance with the minimum standards of the United States Public Health Service, the American Public Health Association, and the Department of Health, State of Rhode Island. (The separate compliance requirements for the Maximum Security facility are set forth in paragraph 3(c) above). Implementation of this paragraph 4(a) shall include, but not be limited to, the following:
- (1) all facilities shall be adequately heated, lighted and ventilated. Windows and window panes shall be properly maintained and replaced when broken;
 - (2) each prisoner shall have access to household cleaning implements and supplies;
 - (3) a regular and effective program of insect and rodent control shall be undertaken;
 - (4) food shall be stored, prepared and served under sanitary conditions which meet minimum public health standards. Equipment shall be maintained in good working order. Kitchen employees and prisoners shall be adequately trained and supervised;
 - (5) all trash and debris shall be regularly removed from hallways, cellblocks, corridors and other common areas and trash and debris shall in no circumstances be stored or accumulated in vacant cells;

(6) all toilets, showers and wash basins shall be properly maintained and kept in good repair. Every cell shall be equipped with a working toilet that flushes from inside the cell and with a wash basin with hot and cold running water;

(7) no more than one prisoner shall be confined in any cell which is less than 60 square feet;

(8) every prisoner shall be provided with a clean mattress, which meets with federal fire safety standards, and with clean bed linens, towels and soap;

(9) 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;

(10) each dormitory shall be equipped with at least one toilet to every 15 prisoners; one urinal or one foot of urinal trough to every 15 prisoners, one shower to every 15 prisoners and one sink to every 10 prisoners. Toilets and urinals shall be kept reasonably clean and in good working order.

2/ Also before the Court is the question of defendants' compliance with paragraph 2(b) of the August 10 Order and plaintiffs' motion for contempt for noncompliance with 2(b). Paragraph 2(b) established permanent minimum physical standards, by reference to paragraph 4, for housing pretrial detainees. By an order of February 14, 1978, this Court permitted defendants to continue to use, during the interim period, the Maximum building for housing pretrial detainees, provided that they be physically separated from the sentenced prisoners. As such, the interim requirement of "economically feasible and practicable" minimum standards of 3(c) became the interim standard for judging interim compliance with 2(b). Today's opinion and order is hereby made applicable to the question of defendants' compliance with 2(b).

3/ The Court on its inspection also found loose ceiling tiles in the cell block, a defect not mentioned by the expert witness.