

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

Palmigiano v. Trivisono



PC-RI-001-010

NICHOLAS A. PALMIGIANO, et al.	)	
	)	
v.	)	C.A. No. 74-0172 P
	)	
EDWARD DiPRETE, et al.	)	
	)	
THOMAS R. ROSS, et al.	)	
	)	
v.	)	C.A. No. 75-0032 P
	)	
EDWARD DiPRETE, et al.	)	

MEMORANDUM AND ORDER

PETTINE, Senior Judge. In my Opinion and Order of April 6, 1989, I set forth the travel of this case as it developed from my order of October 21, 1988 when Governor DiPrete and John J. Moran, Director of the Rhode Island Department of Corrections "were found to be in contempt of court for having failed to comply with certain provisions contained in standing orders of this Court regarding conditions of confinement at the state's Adult Correctional Institutions (hereinafter 'ACI'): ... the prohibition against housing pre-trial detainees in dormitories, the limitation on double-celling any pre-trial detainee for more than thirty days, and the population cap of 250 persons at the Intake Service Center (hereinafter 'ISC'), this last having been entered with the consent of the parties. Defendants were ordered to file with the Court by November 21, 1988 a specific and detailed plan, to be approved by

the Court, which would ensure compliance with the enumerated provisions. The Court further ordered that the defendants might purge themselves of contempt by implementing, by February 20, 1989, their plan to comply with the standing orders. Finally, the Court ordered that, if defendants failed to file a plan with the Court by November 21, 1988 or if they failed to bring the ISC into compliance with the court orders by February 20, 1989, fines would accrue at the rate of \$50 per day for each person held in the ISC in excess of the 250 population limit."<sup>1</sup>

Because the factual findings and legal conclusions set forth in my Opinion and Order of April 6, 1989 are relevant and pertinent to the instant matter, I do not feel it is necessary to either reiterate or summarize the same. I refer the reader to 700 F.Supp. 875 (D.R.I. 1989) and incorporate herein its factual and legal pronouncements.

On November 21, 1989, the plaintiffs filed a "Motion for a Hearing on the State of Compliance at the Intake Service Center." That motion focuses on a specific provision of the April 6 order. Because of the brevity of the memorandum in support of the motion, I quote the same in its entirety.

In its April 6, 1989 Opinion and Order, the Court stated, inter alia, that:

IT IS FURTHER ORDERED that the accrual of new fines will be suspended for six months from the effective date of this Order, at which time a compliance hearing will

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<sup>1</sup> At midnight on May 9, 1990, there were 557 persons housed at the ISC and 223 in the Pinal Building.

be held. By the date of the compliance hearing, the court expects that defendants will have implemented the initiatives which they set forth in the December Plan and the February Report to bring the ISC into compliance with the Court's standing orders. Defendants must not rely only on the Emergency Overcrowding Relief Fund or Project Bail; they must move forward with alacrity on all fronts. Defendants are hereby put on notice that the Court will consider harsher sanctions if defendants are again found to be in contempt of court.

Palmigiano v. DiPrete, 710 F.Supp. 875, 889 (D.R.I. 1989), aff'd. No. 89-1440 (1st Cir. 8/17/89) (emphasis added).

The plaintiffs are informed and believe that defendants continue to be wholly out of compliance with the standing orders of the Court with respect to the Intake Service Center. Plaintiffs will urge the Court to find defendants in continuing contempt of court and will provide the Court with a list of proposed sanctions, together with authority in support of each sanction, prior to the hearing.

Wherefore, plaintiffs, by undersigned counsel, request that the Court schedule a hearing on the current state of compliance at the Intake Service Center of the Adult Correctional Institutions.

On December 5, 1989, I held a hearing on this motion; post-hearing briefs were received in December. On January 8, 1990, the defendants filed a "Motion to Modify Orders" and a "Motion to Modify the April 6, 1989 Order"

...to exclude from eligibility for Emergency Overcrowding Relief Fund bail those detainees held on charges of rape (first degree sexual assault), murder in the first degree, and first degree child molestation, as well as any

defendant arrested for a crime of violence against the person while bailed under the Emergency Overcrowding Relief Fund.

Removing the prohibition against "dormitory" housing of pre-trial detainees (1977 Order decretal ¶ 2(b));

Permitting the dormitory housing in two new 40-bed units of 80 protective-custody pre-trial detainees;

Temporarily (until the completion of the ISC permanent annex construction) allowing the housing of sentenced and pre-trial detainees together in the discretion of the Director of the Department of Corrections;

Temporarily (until the completion of the ISC permanent annex construction) permitting the double-celling of ISC inmates in excess of 45 days in the discretion of the Director of the Department of Corrections; and

Establishing the population cap for the Intake Service Center at 416 (four hundred sixteen) inmates.

On February 5, 1990, I issued an order appointing Vincent M. Nathan as an expert; I incorporate said order as part of this Memorandum and Order and because of its conciseness, I attach a copy hereto as Appendix A. Finally, on March 14, 1990, I issued an order encompassing the Pinel Building (annex to ISC) as part of this litigation.

On May 10, 11 and 14, 1990, I heard further evidence on the litigants' motions, identified supra. At the hearing, the plaintiffs presented three experts; their testimony is summarized as follows:

Patrick McManus<sup>2</sup> toured the ISC in October and December, 1985, October, 1989, and May, 1990. He provided compelling testimony on the changes in the institution over the last five years. In October, 1985, the inmate population stood at 345; in May, 1990, the population in the ISC was 553.

Because of the increase and the resultant overcrowding, Mr. McManus testified that conditions in the ISC now were "much, much worse, much, much worse" than they were in 1985. Virtually no program or education space remains in the ISC; space formerly used for these activities is now used to house prisoners. Day rooms now have bunk beds; hallways, with no immediate access to toilets or showers, have been converted to housing. Even the law library houses prisoners, making it necessary for prison officials to close the library for much of the time.

In Mr. McManus's opinion, the overcrowding in the ISC and Annex has taxed the support services and reduced recreation space for the institution, and, most importantly, created an atmosphere in which violence plays an increasingly common role. Drawing on Mr. Nathan's report, Mr. McManus considered the presence of 90 prisoners in protective custody to be an indication that the inmates viewed the ISC and Annex as "a dangerous place to live."

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<sup>2</sup> Mr. McManus qualified in 1985 as an expert in this litigation. He has been the Deputy Commissioner of Corrections for Minnesota and the Director of Corrections for Kansas. Since 1985, he has served as a special master for a federal district court in litigation over the Tennessee prisons and for the West Virginia Supreme Court in litigation over the state prison at Moundsville. Additionally, he has been a member of a compliance panel for the district court in Hawaii.

Moreover, Mr. Manus found the 222 disciplinary write-ups for assaultive behavior and the 72 inmate assaults on correctional officers between January, 1989 and February, 1990 "extremely high" and a direct result of the overcrowded conditions.

Mr. McManus, in response to my inquiry, felt conditions in the ISC and Annex were so serious that I must take "immediate and uncompromising action" to alleviate the overcrowding; I cannot, in his opinion, wait for the state to finish a new addition to the ISC. Mr. McManus agreed with Mr. Nathan's recommendations and found the conditions in the ISC and Annex to be neither constitutional nor in compliance with my standing orders.

Theodore Gordon<sup>3</sup> testified after Mr. McManus and covered the deficiencies in the environmental health and safety at the ISC. Overcrowding at the ISC, in Mr. Gordon's opinion, has overwhelmed the institution's maintenance and support services and, therefore, it represents "an immediate and overt threat to the inmate population." He described living conditions that, because of the overcrowding, were cramped, noisy, and stifling. The ISC did not, in Mr. Gordon's opinion, conform to this Court's standing orders or the environmental health and safety standards promulgated by the American Public Health Association ("APHA"), standards this Court

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<sup>3</sup> Mr. Gordon testified as an expert in this Court in 1977 and 1985. He is a senior policy analyst for the District of Columbia's Department of Consumer and Regulatory Affairs. That Department has direct responsibility for monitoring the compliance of the District's correctional facilities with a federal court's order. Mr. Gordon has inspected, in his estimate, three quarters of the state prisons and jails in this country and has been involved in developing environmental health and safety standards for correctional institutions.

has followed in its previous opinions.

Specifically, Mr. Gordon felt that the overcrowding has compromised the food service, maintenance, and fire safety at the ISC and Annex. He inspected the kitchens and found that the ovens and other equipment could not handle the increased number of meals the ISC had to provide. The ovens were greasy and had not been cleaned; the refrigerators were dirty, and, because they had to hold more food than they had capacity for, they could not maintain adequate food temperatures. Moreover, he found mouse droppings and evidence of roaches. Mr. Gordon concluded that the overcrowding, and the corresponding burden on the food service operation, resulted in a very serious potential for food-borne disease at the ISC.

Similarly, he found shortcomings in the fire safety at the institution. First, many housing areas either do not have adequate paths for evacuation in the event of a fire or, because of the double bunks, have obstructed paths for evacuation. Second, the fire alarms and smoke detectors have not been maintained. Finally, Mr. Gordon felt that the prison officials' inability to maintain an adequate ventilation system exacerbated the unhealthy environment created by overcrowding.

When I asked Mr. Gordon whether I had to take immediate action or could wait for the completion of the new ISC addition, he outlined several steps the prison officials could take to remedy, at least temporarily, some of the environmental health and safety deficiencies at the ISC. First, the officials should institute a

24-hour fire watch and inspect and repair the ISC's fire and smoke alarm system. Second, the institution should increase its maintenance staff in order to clean the ventilation system and food service area. Third, the officials should increase the number of food service staff and more closely monitor the temperatures of the prepared food. Finally, the prison officials should ensure that the bunks in the ISC are at least three feet apart and placed head to foot to decrease the risk of spreading infectious disease.

Mr. Gordon emphasized, however, that, unless the inmate population is brought down to manageable levels, any measures to improve the food service conditions would soon be overwhelmed by the burden of providing food for too many prisoners. He thought that the institution might be able to get by for another four months but "would not recommend that the Court take that risk."

Dr. Lambert King<sup>4</sup> was the plaintiffs' final expert witness. His testimony covered the inadequacies of the medical services at the ISC caused by the overcrowding. He found that the medical and dental examination of prisoners when they arrive at the ISC failed to meet APHA standards, that screening for tuberculosis was deficient, and that the medical records were improperly documented.

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<sup>4</sup> Dr. King is the Medical Director and Vice President for Professional Affairs at the Saint Vincent Hospital and Medical Center of New York City. In addition to his responsibilities for the direction of the medical services within the hospital, he is responsible for the provision of ambulatory medical, dental and mental health services at the Manhattan Detention Center in Manhattan as well as two maritime facilities housing additional inmates. He formerly served as the Director of the Montefiore-Rikers Island Health Services in New York City, and as a special master at the Menard Correctional Center in Southern Illinois.



Additionally, he felt that the medical system was drastically undersupported. A shortage of nurses, medical doctors, and physician assistants and a lack of consistent medical leadership has led, in Dr. King's opinion, to a situation in which the staff at the ISC cannot meet the legitimate medical needs of the inmates; the organization and provision of medical services at the ISC are random and chaotic.

Dr. King, in response to my questions, stated that the medical shortcomings at the ISC represented a serious and present danger to the prisoners that required my immediate intervention. I specifically asked, "Do you believe that the situation is so critical as to mandate an immediate and uncompromising intervention by this Court?" His answer was, "Yes, I do, Your Honor." He felt that I should not wait before taking action to alleviate the strain on institution caused by overcrowding. The potential for the spread of contagious disease, particularly tuberculosis, was, in Dr. King's opinion, particularly grave. Most tellingly, for this Court, Dr. King found that, in comparison with fifteen other prison systems he has inspected, the ISC is at the bottom in terms of organization, leadership, and resources.

The court appointed expert Vincent Nathan also testified. In essence, he reiterated much of what he already submitted in his reports, which are filed as part of the record in this case. The need to expedite this Memorandum and Order, in the face of pressing trials and other court commitments, causes me not to labor a reiterative narrative of his report; instead, the expert's

Executive Summary is attached as Appendix B. Suffice it to say, I adopt his overwhelming factual findings.

Excepting for Mr. Moran's testimony, I have before me an uncontradicted record of sordid and explosively dangerous conditions existing at the ISC caused by overcrowding -- in many respects *deja vu* of the Maximum Security Section as it existed in 1977. See 443 F.Supp. 956 (D.R.I. 1977). The record will show that I probed in vain to get some support for deferring action to November, 1990 when the new ISC permanent annex is scheduled for completion. Repeatedly, I asked each witness if I could wait and, in substance, coupled such inquiry with the further question, "Do you believe that the situation is so critical as to mandate an immediate and uncompromising intervention by this Court?" The answer was always the same -- I had to act now. In fact, I pressed Mr. McManus, who persisted in saying I should act immediately; a two month, three month or four month wait could not be tolerated.

Now, it is true Mr. Moran is of a *contra* mind, but it must be remembered he is on the firing line; with all due respect -- and this Court does respect Mr. Moran, appreciating the Herculean task resting on his shoulders as created by the uncontrollable proliferation of inmates -- I cannot accept his self-serving assessment. It is also true Mr. Gordon offered some weak support for waiting, if certain conditions were immediately and unequivocally met. However, his strong testimony describing the intolerable conditions he encountered, negated any serious thought of postponing my intervention.

The final, quintessential blow to defendants' request that this Court stay its hand until November was accomplished by defendants' own witness -- Major John D. Case. He testified that he found the conditions unconstitutional "as far as what [he] understand[s] to be at the present time," albeit he did not find "them to be unconstitutional and cruel and unusual ... when [he] was there on the 5th of December when the total count between the two institutions [he] believe[d] was -- the count, the count at the jail was 526"; he hoped it would be reduced to 416.

I then asked, "Do you believe the conditions are so critical as to required immediate action?" Answer: "Yes, I do." This was followed with an inquiry as to whether or not the Court could "stay its hand" if certain conditions were effectuated immediately, i.e., such as correcting the ventilating system, repositioning the present health hazardous sleeping arrangements, repairing the unsatisfactory operation of the fire alarm system, instituting a 24-hour fire watch, correcting present unhealthy sanitation conditions, increasing maintenance staff, and completing the new building by November. He answered this in the affirmative but engrafted a further condition -- the "release [of] sentenced inmates three months before the expiration of their sentence." I then put the following question to the witness: "Now-Mr. Nathan you know, has recommended that there be accelerated parole consideration in this sense, that the -- give them ninety days good time and that would do, if I understand correctly, would do two things. One, it would accelerate the mandatory release time of

certain inmates and, secondly, it would expedite the parole hearing time on other inmates. Would you recommend that be put into effect?" Answer: "Yes, indeed, your Honor."

The record portrays an emergency situation screaming for instant action. The Court's own searching questions for an alternative approach proved to be a futile quest.

I find the defendants are in continuing contempt of this Court. Accordingly, it is hereby

1. ORDERED that defendant shall maintain at all times at least Two Hundred Thousand Dollars (\$200,000.00) or, as requested by the state, its equivalent as may be acceptable by the state judiciary, to finance the Emergency Overcrowding Relief Fund to provide bail for all indigent detainees with bail set at Ten Thousand Dollars (\$10,000.00) cash or less. It is further

2. ORDERED that all sentenced prisoners in the ACI shall immediately be awarded 90 days of expedited good time, which shall be applied against the maximum sentence of each affected prisoner and shall, contrary to the terms of R.I. Gen. Laws sec. 42-56-24, be deemed to advance each affected prisoner's eligibility for consideration for parole. Moreover, all sentenced prisoners, regardless of the length of their terms of incarceration, shall

receive the expedited good time required by this order.<sup>5</sup> It is further

3. ORDERED that expedite awards of 90 days of good time shall be made every 30 days in accordance with the immediately preceding paragraph of this order until all sentenced prisoners have been removed from the ISC and the Pinel Annex. It is further

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4. ORDERED that no later than 30 days following the entry of this order, no more than 450 prisoners may be housed at the ISC and no more than 184 prisoners may be housed at the Pinel Annex. At the expiration of this 30 day period, the parties shall meet with the Court to evaluate the progress made by the defendants. At that time, this Court will issue orders establishing goals for further reductions and the means to achieve these goals. It is further

5. ORDERED that defendants shall take all steps, in addition to those specified above, to accomplish the maximum capacities as heretofore established by this Court. It is further

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<sup>5</sup> Because the plaintiffs' motion and subsequent hearings were directed only at the overcrowding in the ISC and the Pinel Annex, which house only male prisoners, the order shall apply only to male prisoners. Although the Court cannot so order, it is hoped that defendants will voluntarily apply the terms of this order, to the extent possible, to female prisoners.

The Court recognizes that the effect of this portion of its order may be that some prisoners sentenced to 90 or fewer days of incarceration will be released without serving any time in prison. First, the extreme gravity of the situation at the ISC and the Pinel Annex justifies this relief. Second, granting an award of expedited good time to prisoners with longer sentences, who presumably have committed more serious offenses, while excluding from this order prisoners whose short sentence suggest that they present the least danger to the community, would be anomalous.

6. ORDERED that on the 31st day following the entry of this order, defendants shall file a report of the population of the ISC and the Annex. The report shall reflect the daily population of each facility between the date of this order and the date of the report. In the event defendants fail to achieve and maintain the required maximum capacities required by this order, the Court will enter a subsequent decree enforcing the terms of this order. That decree will include such other relief as the Court finds necessary to ensure compliance with the instant order, and may include imposition of daily fines of \$50.00 per prisoner per day in excess of the relevant maximum capacity. It is further

7. ORDERED that with 60 days following the entry of this order, no prisoner shall be assigned to a double occupancy cell or any dormitory in the ISC, or to any multiple occupancy room in the Pinel Annex, unless that prisoner has been properly classified and is housed only with prisoners of the same classification. Prisoners classified as high security, maximum security, and protective custody shall be housed in single occupancy cells, and one or more modules in the ISC shall be designated for exclusive use by prisoners requiring protective custody. Sentenced prisoners shall be classified within 30 days of sentencing and, until classification, shall be assigned to single occupancy cells in modules reserved for unclassified sentenced inmates. Modules and dormitories shall be restricted by class of prisoners (sentenced or pretrial) and, to the greatest extent feasible, by classification. It is further

8. ORDERED that within 14 days following the entry of this order, defendant shall cause intake medical screening of all prisoners assigned to the ISC and the Pinel Annex to be completed within seven calendar days of the prisoner's incarceration. It is further

9. ORDERED that within 14 days of this order defendants shall cause the results of tuberculin skin tests to be examined and evaluated by appropriate medical personnel no earlier than 48 and no later than 72 hours following administration of the test. It is further

10. ORDERED that within 14 days of this order defendants shall deploy security staff members whose primary duties shall be the monitoring and detection of fires and fire hazards, including but not limited to the presence of excessive quantities of flammable materials, obstructions to fire exits, and inoperative fire alarm and fire suppression equipment. Each such staff member shall be responsible for no more than two housing units in the ISC or one wing in the Pinel Annex. Defendants also shall notify the local fire marshal that the maximum occupancy capacities of the ISC and the Pinel Annex are being exceeded. It is further

11. ORDERED that commencing immediately all fire detection and suppression equipment in the ISC and the Annex shall be maintained in proper working order and shall be inspected regularly and frequently by qualified institutional personnel and representatives of the State Fire Marshal's office. It is further

12. ORDERED that within seven days of the entry of this order

defendants shall rearrange the beds located in dayrooms and dormitories so that beds are separated by unobstructed corridors of at least 36 inches in width. No such corridor shall terminate at either end at a solid wall. Additionally, to assist in the prevention of transmission of disease, beds in dayrooms and dormitories shall be rearranged to ensure that prisoners sleep head-to-foot. It is further

13. ORDERED that within 30 days of the entry of this order defendants shall balance and repair the ventilation system at the ISC to ensure that the system operates properly and effectively. It is further

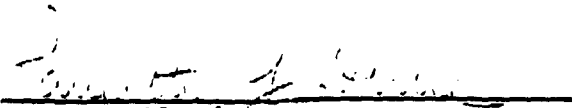
14. ORDERED that within 14 days of the entry of this order defendants shall take all steps necessary to ensure that proper sanitary conditions are maintained in the kitchen of the ISC and the food service areas of the Pinel Annex and that all necessary precautions are taken to ensure that food is prepared and served in a manner that does not endanger the health of prisoners.

Orders numbered 1, 2 and 3 shall not apply to inmates charged with murder in the first degree, rape, first degree sexual assault, first degree child molestation, and any prisoner arrested for a crime of violence against the person while bailed under the foregoing program, supra.

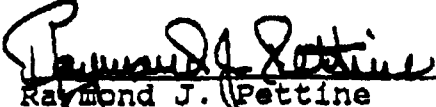


The court-appointed Master, J. Michael Keating, Jr., shall monitor the defendants' compliance with this Order.

Enter:

  
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Deputy Clerk

By Order:

  
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Raymond J. Pettine  
Senior U.S. District Judge

May 22, 1990