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DISTRICT OF WYOMING
CHEYENNE

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CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

BRAD SKINNER, on his own behalf)
and on behalf of all other persons)
similarly situated,)

Plaintiffs,)

vs.)

JUDITH UPHOFF; VANCE EVERETT;)
JAMES HEWITT; DAVID EBELL; and)
JOHN DOES 1 THROUGH 6; all)
in their individual and official)
capacities,)

Defendants.)

Civ. No. 02-CV-33-B

COMPLAINT

PRELIMINARY STATEMENT

The U.S. Department of Justice issued a detailed report in June 1999 which concluded that the Wyoming State Prison (WSP) was understaffed and dangerously overcrowded and that these conditions, among other things, led to injurious assaults by

Skinner v. Uphoff



PC-WY-003-002

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inmates on other inmates. The defendants, however, refused to address and correct these deficiencies. As a result, four months later plaintiff Brad Skinner, a WSP inmate, was viciously attacked by other inmates, despite his specific pleas to corrections officers for protection. Plaintiff seeks monetary damages from the defendants and corresponding declaratory and injunctive relief on his own behalf and on behalf of all other WSP inmates similarly situated.

JURISDICTION AND VENUE

1. This action seeks relief pursuant to 42 U.S.C. § 1983. Accordingly, the Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1343(3) and (4). Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

2. Plaintiff **Brad Skinner** is currently serving a sentence imposed for a violation of law in the State of Wyoming. Mr. Skinner has been assigned identification number 19955 and placed under the care, custody, and control of the Wyoming Department of Corrections (WDOC). Since his sentence in October 1999, he has been incarcerated at the Wyoming State Prison (WSP) in Rawlins.

3. This action is filed on behalf of Mr. Skinner all other inmates of the Wyoming State Prison as a class action pursuant

to Rule 23(b)(1) and (b)(2) F.R.Civ.P. for purposes of obtaining declaratory and injunctive relief. This action satisfies all four requirements of Rule 23(a), in that (1) the class includes hundreds of WSP inmates; (2) there are questions of law and fact common to the class regarding the extent to which they are at risk from unprovoked assault due to Defendants' deliberate indifference; (3) the claims of Mr. Skinner are typical of the claims of the class, to wit, that Defendants have turned a blind eye to the need to protect inmates from assault by other inmates; and (4) Mr. Skinner and his counsel will fairly and adequately protect the interests of the class.

4. Defendant **Judith Uphoff** is a citizen and resident of Wyoming. At all times material to this action, Ms. Uphoff has been the Director of the WDOC. As such, she is the agency official ultimately responsible under state law for the operation and administration of WSP and for ensuring the safety and proper care of WSP inmates.

5. Defendant **Vance Everett** is a citizen of Wyoming. At all times relevant to plaintiff's claim for damages and declaratory relief, Mr. Everett was the Warden at WSP. With regard to plaintiff's claim for injunctive relief, Mr. Everett is now the Complex Administrator of the WSP. In both capacities he had, and still has, a duty and obligation under state law to

ensure, among other things, that inmates are protected against unprovoked assault by other inmates.

6. Defendant **James Hewitt** is a citizen of Wyoming. At all times material to this action, Mr. Hewitt has been a security officer at WSP having the rank of lieutenant (now, captain) and his duties have included that of ensuring the safety and protection of WSP inmates.

7. Defendant **David Ebell** is a citizen of Wyoming. At all times material to this action, Mr. Ebell has been a security officer at WSP having the rank of sergeant and his duties have included that of ensuring the safety and protection of WSP inmates.

8. The actual identities of defendants **John Does One Through Six** are unknown to the plaintiff at the present time. However, they are the security officers who were assigned to monitor the living unit in which Mr. Skinner resided on the day and time he was assaulted and whose duties included ensuring his safety. Plaintiff will obtain the names of these officers through pretrial discovery after suit is filed.

9. All acts and omissions of the defendants set forth below were done under color of state law and were performed during the scope of their employment. All defendants are sued in their individual and official capacities.

FACTUAL ALLEGATIONS

10. On June 19, 1999, the U.S. Department of Justice, after careful investigation by corrections experts, issued a report regarding conditions of confinement in the Wyoming State Prison. The report concluded, among other things, that WSP was understaffed and overcrowded and that, as a result, inmates were at unnecessary risk of being assaulted by other inmates. Among the report's findings, which plaintiff believes are accurate, are:

(a) "Despite the prison's recent transfer of approximately 100 inmates to an out-of-state facility and efforts to identify additional housing options, WSP regularly operates between approximately 110% to 128% of safe capacity levels." (page 14)

(b) "The ongoing personnel shortage compromises institutional security and the safety of inmates and staff. Due to short staffing, the prison must routinely call security personnel away from fixed posts in order to provide coverage elsewhere in the facility. . . .*Lack of adequate supervision by staff greatly increases the likelihood of inmate-on-inmate violence.*" (page 12, emphasis added)

(c) "According to a 1994 National Institute of Corrections staffing study of WSP, the prison has been plagued by high turnover rates, forcing existing staff to incur substantial overtime on a regular basis. . . .*Excessive overtime accrual*

compromises security because exhausted officers are less likely to remain alert or be able to respond adequately to normal or exigent security needs." (page 12)

(d) "WSP further compromises safety by failing to house some inmates appropriately. Our on-site survey of inmate classification and housing configuration revealed several instances of dangerously inappropriate housing assignments." (page 13)

11. Defendants did not rectify these dangerous deficiencies and, in the months that followed, many inmates were assaulted by other inmates.

12. On November 4, 1999, Plaintiff Skinner was transferred from a housing unit to B-Star, Block 4, Upper Tier, Cell 8, a "Closed Custody" housing unit. (It should be noted that WSP inmates do not currently reside at this prison, called the "North" prison; they have been transferred to the recently opened "South" prison located nearby. A decision is pending whether to return some inmates to the North prison.)

13. Housing unit B-Star (also called B-Unit) is configured roughly in the shape of a star. In the center of the star is a control booth ("rotunda") where security officers are assigned. B-Star is comprised of four Blocks, and each Block contains two tiers, one upper and one lower. From inside the control booth,

the assigned security officers can observe--and are expected to observe--inmate movements within the eight tiers.

14. Within an hour after Mr. Skinner's arrival on Block 4 of B-Star, an inmate on the tier warned Mr. Skinner that certain other inmates on the tier strongly opposed his living there, and that he would be assaulted if he didn't leave.

15. Mr. Skinner took this threat very seriously. He knew that WSP inmates had been beaten by other inmates. Mr. Skinner immediately went down the hall and was allowed to pass through a security door in order to report the threat to two officers located in the B-Star "sergeant's office." These officers then escorted Skinner out of B-Star and brought him to another building, where he was locked into a noncontact visiting booth.

16. Defendant Sgt. David Ebell arrived at the cell a short while later and escorted Mr. Skinner to the office of Ebell's superior officer, Defendant Lt. James Hewitt. On the way, Ebell asked Skinner what the problem was, and Skinner told him.

17. Skinner was so frightened for his life that he began crying during his meeting with Hewitt, and he pleaded with Hewitt to move him to another tier. Instead, however, Hewitt berated, insulted, and yelled at Skinner and said that he "didn't give a shit" what happened to him. Hewitt took out a piece of paper and ordered Skinner to write down verbatim and then sign a statement (authored by Hewitt) to the effect that

Skinner felt safe in returning to his cell. Skinner objected, but Hewitt, in a threatening tone of voice, ordered him to write and sign the statement, which Skinner then did.

18. Skinner would not have asked for a transfer had he felt safe in his cell, and the written statement he wrote to the contrary was coerced. Indeed, as defendants Hewitt and Ebell had to have known based on their experience, Mr. Skinner was now in more danger due to the fact that the inmates who had threatened him would have been able to observe Skinner immediately leave the tier and speak with a security officer. Yet despite these circumstances--and ignoring Skinner's pleas for protection--Hewitt ordered Skinner to return to his cell.

19. Sgt. Ebell remained in the room during Skinner's conversation with Hewitt. Ebell apparently realized that Skinner was in danger. According to the report that Ebell wrote the next day (November 5, 1999), Ebell, right after Skinner left, "called Yard Observation and B-Unit and Central Control to tell them to monitor Skinner #19955, and also to pass this information on to second shift." [Emphasis added.]

20. Ebell would not have made these calls had he thought that Skinner's fears were baseless.

21. Defendants Does One Through Six were the B-Star (B-Unit) officers who were instructed by Sgt. Ebell to monitor Skinner. Those officers disobeyed Ebell's command. Not more

than 10 minutes after Skinner returned to his cell, three inmates entered the cell, at least one of whom was wearing a stocking cap on his head and a white scarf across his face. Two of them began beating Skinner while the third stood in the doorway. Skinner believed they were going to kill him.

22. Cell doors in B-Star generally were left open during the day but were closed and locked by officers during set periods known as "Count." During Count, B-Star officers walked down each tier of the Unit counting the number of inmates in the tier. In addition to counting the inmates, these officers were required and expected to ensure that each inmate was safe and well.

23. During the attack on Skinner, an officer came on the loudspeaker and announced that it was the 4:00 p.m. Count. Hearing this, the three inmates left Skinner's cell but warned Skinner they would kill him if he alerted the officers, and Skinner believed they would.

24. Based on information and belief, the 4 p.m. Count conducted on November 4, 1999, was performed by officers ordered by Ebell to monitor Skinner.

25. Skinner thought the Count officers would see his injuries, as there were bruises and blood on his face. Skinner saw one of the Count officers look right at him, but the officer walked by without stopping.

26. Several minutes later, after Count "cleared," all the doors on the tier were reopened by an officer in the B-Star control booth. One or more inmates returned to Skinner's cell and resumed beating him. Skinner was punched and shoved to the ground and then kicked in the face by an inmate wearing boots. Skinner's wedding band was stolen from him. Skinner was in terrible pain and lost consciousness.

27. The entry into Skinner's cell by inmates not assigned to that cell (at least one of whom was wearing a disguise) should have been observed by the Doe defendants on duty in the Star's control booth, especially given the instructions Sgt. Ebell had given them moments before to monitor Skinner.

28. Skinner is not sure how long he remained unconscious after the beating. When he regained consciousness, he yelled for help. Officers eventually arrived. Photographs were taken of his injuries, and Skinner was taken to the hospital in Rawlins.

29. One of the officers who assisted in removing Skinner wrote in his report that "while looking around his cell I noticed several areas covered in blood." Skinner had severe injuries to his spine (including separations in his vertebrae), a concussion, multiple contusions, swelling on his face and body, and a broken nose. He was in enormous pain.

30. Skinner was examined at the hospital for a few hours and was x-rayed. He was interviewed by someone from the Carbon County Sheriff's Department, who took additional photographs. He was then taken to the prison infirmary.

31. The next day while in the infirmary, Skinner asked to use a telephone, and Skinner called his wife. Skinner told her what had happened, asked her to contact an attorney, and said that he wanted to file a lawsuit.

32. During Skinner's telephone conversation with his wife, a corrections officer stood nearby. Skinner believes that this officer overheard his conversation because not long afterwards Lt. Hewitt came to Skinner's room in the infirmary, accompanied by this same officer. Hewitt started yelling at Skinner for having asked his wife to contact an attorney. Threatening Skinner, Hewitt said that he'd better not file any lawsuits against him or the prison. Skinner believed Hewitt would retaliate against him if he pursued his legal claims.

33. Skinner remained in the infirmary nearly five weeks. On the day of his release, Hewitt came and told Skinner that he was being moved out of the infirmary. Hewitt warned Skinner that he "had better keep his mouth shut about the whole incident."

34. Skinner experienced constant pain for months after the beating. He continues to suffer from throbbing back pain in his

lower right back due to separations in his spine, migraine headaches 2 - 3 times a week, blurred vision, pain when he stands or walks for any length of time, and other physical and psychological pain and suffering.

35. Mr. Skinner has fully exhausted his administrative remedies in seeking compensation for the assault and protection against future harm, which remedies were unavailing. Skinner filed a formal grievance that was denied by WSP's warden on December 7, 2000; his subsequent appeal of that denial to Defendant Uphoff dated December 14, 2000 also was rejected. Ultimately, Defendant Everett dismissed the grievance based solely on the fact that Skinner had since been moved to another living unit. This response, however, did not address Mr. Skinner's request for damages nor the systemic inadequacies that left him unprotected.

36. Defendants Judith Uphoff and Vance Everett developed and pursued policies and customs that created the substantial risk of bodily harm to the plaintiff and other inmates, and which evidence a deliberate and gross failure to supervise their subordinates. Their acts and omissions included (a) a failure to hire a sufficient number of corrections officers for WSP; (b) a failure to adequately train corrections staff in matters of inmate safety from assault; (c) a failure to take steps after each inmate assault occurred in order to determine whether staff

misconduct led to the assault and whether remedial action was necessary to prevent future assaults; and (d) a failure to ensure that corrections staff will adequately report and document threats made to inmates regarding their safety. In short, these supervisors followed a turn-a-blind-eye approach to inmate-on-inmate assaults and refused to conduct a thorough investigation into each inmate assault and take appropriate remedial action to safeguard against their recurrence. These failures were the proximate cause of the assault upon the plaintiff.

37. As a result of Uphoff's and Everett's failure to properly control and supervise their subordinates, they condoned and acquiesced in the errors made by their subordinates that led to the assault on the plaintiff.

38. The failures described above on the part of Uphoff and Everett continue to this day, placing the plaintiff and all inmates of WSP at unnecessary and substantial risk of being assaulted by other inmates. These defendants know from the reports they receive as well as from the report issued by the DOJ that assaults are a chronic problem at WSP, and that some of these assaults cause severe injuries to inmates. Yet these supervisors, due to their deliberate indifference to plaintiff and the class of inmates he represents, refuse to take appropriate and necessary remedial action.

39. Although Sgt. Ebell made some effort to protect Plaintiff Skinner by calling officers and instructing them to monitor Skinner, Ebell knew of the substantial risk of injury that Skinner faced and took inadequate steps to protect him. Upon information and belief, Ebell was the sergeant in charge of B-Star during that shift. He knew from personal experience that officers at WSP--and in B-Star in particular--often failed to take necessary steps to protect inmates. Given all the circumstances known to Ebell, his efforts were unreasonable and inadequate; at a minimum he should have escorted Skinner back to the Unit, discussed with the officers on duty their need to monitor his safety, and conducted an investigation into Skinner's allegations. Moreover, based on information and belief, Ebell failed to conduct an investigation following Skinner's assault to determine why subordinates had disobeyed his instructions, thereby acquiescing in and condoning their misconduct.

40. Although cell doors in B-Unit were normally left open except during certain periods of the day, it was the duty of corrections officers in the control booth to ensure that no inmate entered a cell who was not assigned to that cell. Had defendants Does One Through Six fulfilled that duty on November 4, 1999--a duty specifically brought to their attention by Sgt. Ebell--they would have seen the hooded and disguised inmate(s)

enter Skinner's cell prior to the 4 p.m. Count and they would have observed one or more inmates return to Skinner's cell after the 4 p.m. Count. Moreover, had the Doe defendants properly performed the 4 p.m. Count, they would have observed Skinner's injuries. Thus, these defendants could have prevented the assault from occurring or stopped it once it had commenced. Their deliberate indifference to the safety and well being of the plaintiff was a proximate cause of the injuries he suffered.

41. Indeed, in a Memorandum addressed to "all staff and Maximum population" dated March 3, 1995, administrators of WSP stated the following: "Because of the recent episodes of violence in the cells, anyone caught in another person's cell will immediately be placed on Red Tag status." Thus, as Defendants well knew, violence was occurring due to the presence of unauthorized inmates in cells. Had Defendants enforced their own Memorandum on November 4, 1999, corrections officers would have intervened as soon as the assailants entered plaintiff's cell.

42. Due to inadequate training of staff and the failure and refusal of staff to fulfill their duties, several documents and logs relating to this incident have been lost or deliberately destroyed by Defendants and their subordinates. For example, Lt. Hewitt either failed to create or subsequently lost or destroyed the report he was required to prepare

following his meeting with Mr. Skinner on November 4, 1999. The written statement signed by Skinner during his meeting with Hewitt has been lost or destroyed by Defendants. Moreover, to plaintiff's knowledge, no formal investigation was conducted and no written report was issued as to whether Hewitt erred in not removing Skinner from his tier, and why he failed to write and/or retain a report regarding his meeting with Skinner. Such inadequate reporting and record keeping problems are chronic at WSP, a fact well known to these Defendants.

FIRST CLAIM FOR RELIEF

43. Based upon the facts set forth above, Plaintiff Skinner seeks compensatory damages against all defendants jointly and severally in their individual capacities in an amount as may be shown at trial. In addition, Plaintiff seeks punitive damages against defendant Hewitt in his individual capacity in the amount of \$250,000.00 due to his callous and malicious conduct and his threatened retaliation. Relief is sought pursuant to 42 U.S.C § 1983 based on violations of the Eighth and Fourteenth Amendments to the U.S. Constitution.

SECOND CLAIM FOR RELIEF

43. Based upon the facts set forth above, Plaintiff seeks injunctive relief on his own behalf and on behalf of all persons similarly situated, enjoining Defendants Uphoff and Everett in

their official capacities (and all persons acting under their command) from failing to take all necessary and proper steps to safeguard plaintiff and other WSP inmates from unprovoked assault by other inmates. Defendants should be ordered, among other things, to train staff in how to handle and investigate threats such as those reported to staff by Skinner; to thoroughly investigate each inmate assault to determine whether it could have been prevented by staff and whether staff misconduct led to or encouraged the assault; to issue written findings after each assault; and to ensure that noncompliant or untrained staff receive the discipline they deserve or additional training they need. The Court should also direct these Defendants to ensure that incident reports, documents, and logs are properly made and retained regarding incidents of inmate assault.

PRAYER FOR RELIEF

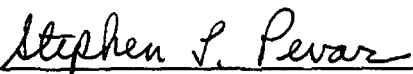
WHEREFORE plaintiff respectfully prays that this Honorable Court will:

1. Accept jurisdiction over this cause.
2. Grant plaintiff pursuant to 42 U.S.C. § 1983 compensatory damages against all defendants jointly and severally as the proof may show at trial, and punitive damages against defendant James Hewitt in the amount of \$250,000.00.

3. Grant plaintiff declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that the defendants violated plaintiff's rights under the Eighth and Fourteenth Amendments to the U.S. Constitution, and that Defendant Hewitt violated plaintiffs' rights also under the First and Fourteenth Amendments due to threatening him with retaliation if plaintiff pursued his right of access to the courts.

4. Issue injunctive relief on behalf of Plaintiff Skinner and on behalf of the class of inmates he represents pursuant to Rule 65 of the Federal Rules of Civil Procedure, ordering the defendants to take all necessary and proper actions to ensure that inmates at WSP will be protected in the future against unprovoked assault by other inmates, and protected against being threatened with retaliation for pursuing their right of access to the courts.

5. Grant such additional and further relief, including the award of attorney's fees and costs, as the Court may deem proper under the circumstances.



Stephen L. Pevar



Timothy C. Kingston