E-filed: 8/30/06

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EUGENE BATCHELDER et al,

Plaintiffs,

v.

JAMES M. GEARY,

Defendant.

No. C-71-2017 RMW

ORDER ON THE AMENDED DISCIPLINARY PROCEDURES DECREE'S WRITTEN STATEMENT REQUIREMENT AND REMEDY FOR CONTEMPT

[Re Docket Nos. 365, 366, 383]

On November 14, 2005 this court terminated the Amended Disciplinary Procedures Decree to the extent it required prison officials to (1) give prisoners twenty-four hour written notice of disciplinary hearings and (2) permit prisoners to present evidence and call witnesses during such hearings.[1] However, the court could not determine whether the Decree remained necessary to ensure that officials provided "a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken." *Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974). Although the prisoners claimed that seventy-five percent of the County's hearing records contained no such rationale, they apparently failed to account for the fact that not all prisoners are entitled to *Wolff* protection. *See* November 14 Order at 41:17-20 ("Subsequent cases have made clear that

[1]The termination of the Decree, of course, does not affect the County's constitutional obligation to comply with the requirements of due process.

[*Wolff*] appl[ies] to (1) all pretrial detainees, *see Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir. 1996), and (2) convicted prisoners whose potential punishments constitute 'atypical, significant deprivation.' *Sandin v. Conner*, 515 U.S. 472, 486 (1995)"). The court ordered the prisoners to show the County the records from which they derived their calculations. It asked the County to tell the court if it disputed the prisoners' analysis. It also ordered the parties to discuss a remedy for the County's contempt of the Access to the Courts Decree. On December 6, 2005 the County informed the court that it believed that the prisoners' calculations were inaccurate. The parties' meet and confer efforts were unsuccessful. On January 4, 2006 the court ordered the parties to submit proposals on outstanding issues by January 27, 2006. The court has now considered these submissions.[2] For the reasons set forth below, the court holds that the County has failed to carry its burden of demonstrating that the court should terminate the Amended Disciplinary Procedures Decree's written statement requirement. However, the court chooses not to order relief that exceeds the constitutional minimum and will permit the County to move to terminate the Decree in one year. The court also holds that the prisoners' attorneys may be entitled to recover their reasonable fees as a remedy for the County's contempt.

A. The Amended Disciplinary Procedures Decree

As mentioned in the November 14 Order, the County bears the burden of demonstrating that the Amended Disciplinary Procedures Decree's written statement requirement is no longer necessary to correct a "current and ongoing" constitutional violation. *See* November 14 Order at 18:13-15. Both parties have submitted hundreds of hearing records and competing proposed methods for determining the County's compliance.

1. The County's Methodology and Conclusions

The County first selected all hearings that occurred between April 15, 2004 and April 15, 2005. Harris Decl. Supp. County's Proposal ("Harris Decl.") ¶ 10. The County then eliminated records that pertained to inmates (1) who the panel found not guilty or (2) who did not fall within

[2] The prisoners have filed *ex parte* applications to file responses to the County's submissions. Much of the prisoners' proposed submissions merely rehashes earlier arguments. The court denies the prisoners' motion.

Wolff because they were sentenced at the time of the hearing and received minor punishment for their disciplinary violation. *Id*. It also flagged "unsentenced inmates who [it] submits were not entitled to *Wolff* protections because the nature of the discipline was so minor (warning, loss of a visit, loss of commissary, etc.)" with the designation "ID." *Id*. Resolving all disputed "ID"-designated hearings in the prisoners' favor, the County determined that 61 of the 72 hearings — or 85% — were constitutional. *Id*. Resolving all "ID" hearings in the County's favor revealed that 67 of the 72 hearings — or 93% — were constitutional. *Id*.

There are two problems with the County's analysis. For one, it does not account for the sufficiency of the written statement of decision. *Wolff* explained that the written statement requirement ensures transparency and accountability in disciplinary hearings:

> Written records of proceedings will thus protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding. Further, as to the disciplinary action itself, the provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others.

Wolff, 418 U.S. at 565. In *Superintendent v. Hill*, 472 U.S. 445, 455 (1985), the Supreme Court held that a prison's disciplinary board's decision comports with the Due Process Clause if "some evidence supports [it]." Courts generally find decisions that provide some basis for deducing the panel's reasoning to be constitutional. *See Saenz v. Young*, 811 F.2d 1172, 1174-76 (7th Cir. 1987) ("Officer Fabry's written statement supports the finding of guilt."); *Pardo v. Hosier*, 946 F.2d 1278, 1284-85 (7th Cir. 1991) ("resident's statements and officer's report"); *Brown v. Frey*, 807 F.2d 1407, 1410-14 (8th Cir. 1986) ("(1) Relied on CV & additional report; (2) No CV's for past nine months; (3) Relied on # 5 definition"). Nevertheless, wholly conclusory decisions are inadequate:

> The line between constitutional adequacy and inadequacy is a fine, but important one. When the Committee writes 'based on all available evidence the resident is guilty,' no agency or court can discern the basis for the Committee's rulings. If, however, the Committee writes 'resident is lying,' or 'the guard saw him therefore . . .,' or 'resident admits he committed the act charged,' or 'resident does not refute charges,' or another statement establishing the evidence underlying its decision, then the inmate is protected from a mischaracterization of the disciplinary action when it comes under review.

Redding v. Fairman, 717 F.2d 1105, 1116 (7th Cir. 1984) (holding that numerous decisions stating only that the board's rationale was "testimony" or "evidence" violated due process).

The court's review reveals that the vast majority of the County's selected decisions comport with the Constitution.[3] *See, e.g.*, Bates Nos. MJ030379 ("[i]nmate refused to discuss the matter"); MJ030391 ("inmate admitted metal was in cell, could not justify it"); MJ030456 (inmate "refused to attend hearing"); MJ03513 ("[t]est[imony] from inmate witness . . . confirmed that def. asked him to test this PIN number"); MJ030538 ("[i]nmate offered no defense other than he didn't 'do it'; The Board did not believe him."); MJ030585 ("[i]nmate stated he was defending himself"); MJ030607 ("[i]nmate's initial reaction to officer was disrespectful"); MJ030610 ("[i]nmate conceded guilt [and] offered no testimony"); MJ030648 ("[i]nmate admits he called the inmate a 'bitch'"); MJ030663 ("[a]dmitted guilt"); MJ030675 ("the inmate acknowledged his guilt during his defense"); MJ030678 ("[i]nmate admitted to using PIN"); MJ030682 ("inmate admission during hearing"); MJ030814 ("Board did not believe the inmate plus inmate said that nightshift told him that he could not have paper but did not know it applied during the dayshift"); ELM031067 ("admitted having paper clips"); ELM031063 ("admitted guilt"); ELM031045 ("[i]nmate admitted to hiding medication [and] kissing the other inmate but claimed it was a peck"); ELM031030 ("Board did not find testimony of inmate . . . to be credible").

Nevertheless, some decisions are confusing or offer little explanation. *See, e.g.*, Bates Nos. MJ030402 ("[t]he Board believes he had adequate notice and he was in possession of the contraband"); MJ030447 ("[i]nmate testified he did not hear the officer"); MJ030499 ("[i]nmate states he was not the first in the room, but he was moving towards his room"); ELM031099 ("Board found guilty disobeying order but felt the disrespect was afterwards and not in conjunction w/ security search"). Several others state only that the Board "did not believe the inmate." *See, e.g.*,

[3] Apparently, some records that the County claims were attached to as Exhibit C to the Declaration of Kristine Pantiga and bear Bates Numbers below 030992 are actually contained in Exhibit C to the Declaration of Joan Conner.

Bates Nos. MJ030374; MJ030467; MJ030527; MJ030799; MJ030806.[4] A few are plainly insufficient. *See, e.g.*, MJ030486 ("testimony"); MJ030523 ("[t]estimony of witnesses"). This suggests that the County's compliance rate is lower than it claims.

Compounding this problem is the fact that the court must resolve all six disputed records marked as "ID" against the County. These records reflect "*unsentenced* inmates" who the County believes "were not entitled to *Wolff* protections because the nature of the discipline was so minor[.]" Harris Decl. ¶ 10 (emphasis added). Although *sentenced* inmates only receive Due Process protections for hearings for infractions that carry consequences so serious that they exceed the normal hardships of prison life, pre-trial detainees "may not be punished prior to an adjudication of guilt in accordance with due process of law." *Mitchell*, 75 F.3d at 524; *Sardin*, 515 U.S. at 485 (reasoning that punishing pre-trial detainees without due process "would improperly extend the legitimate reasons for which such persons are detained — to ensure their presence at trial"). Therefore, the fact that some unsentenced inmates faced minor repercussions does not justify the County's failure to provide a written statement of decision. Because it appears that the County is complying with *Wolff*'s written statement requirement only about 70 to 80 percent of the time, the court declines to terminate the Amended Disciplinary Procedures Decree's written statement requirement at this time.

2. The Prisoners' Methodology and Conclusions

However, the prisoners fail to convince the court that it should order sweeping remedial relief. The prisoners conclude that, since 2002, the Main Jail's non-compliance rate has been 29.5% and Elmwood's non-compliance rate has been 83.4%, for a combined non-compliance rate of 56.7%. The prisoners base these calculations on "a) inmates who were sentenced at the time of their disciplinary hearings and received loss of good time punishments as a result of the disciplinary hearings, b) inmates who were unsentenced at the time of their disciplinary hearings, and c) inmates

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[4] This may or may not be appropriate depending on the claimed infraction. *See Culbert v. Young*, 834 F.2d 624, 630-31 (7th Cir. 1987) ("[T]he teaching of both *Wolff* and *Hill* [is] that the kind of statements that will satisfy the constitutional minimum will vary from case to case depending on the severity of the charges and the complexity of the factual circumstances and proof offered by both sides.").

whose sentencing status is unknown to [prisoners]." Junginger Decl. Supp. Pla.'s Proposal ("Junginger Decl.") ¶ 3. Once again, however, the prisoners have failed to account for the fact that only pretrial detainees and convicted prisoners facing significant deprivations fall under *Wolff*.[5] Because the prisoners' analysis includes "inmates whose sentencing status is unknown," it is impossible to gauge the County's compliance. For example, of the dozens of records that the prisoners offer with respect to Elmwood, only seven include the inmate's sentencing status. The only group that the court can examine in detail is unsentenced prisoners at the Main Jail. Under the prisoners' own methodology, the lion's share of the decisions meet constitutional standards. *See, e.g.*, Bates Nos. C00769-71; C00814-18; C00819-25; C01009-13; C01149-53; C01257-60; C01278-86; C01457-58; C01460-62; C01575-21; C01662-66; C01708-10; C01719-22; C01768-72; C01956-59; C02053-57; C02205-07; C02302-03; C02340-43; C02448-54; C02461-68; C02480-84; C02504-10; C2531-35; C02546-49; C02571-74; C02577-80; C02582-86; C02632-36; C02643-49; C02766-73; C02789; C02836-40; C02862-64; C02871-74; C02899-902; C02920-23; C02933-38; C0293-43; C02955-60; C02961-64; C02967-71; C03021-25; C03061-65; C03066-70; C03086-89; C03105-15; C03116-19; C03121-25; C03152-56; C03161-66; C03190-95; C03290-94; C03353-62; C03388-96; C03532-38; C03667-72; C03723-35; C03740-46; MJ30360-68; MJ30402-06; MJ30447-50. Admittedly, some do not. *See, e.g.*, Bates Nos. C00928-32; C00947-50; C01109-13; C01267-70 (decision stated only that "[b]ased upon facts in case, I found [inmate] guilty of Rule 2-19"); C01488-91; C01610-16; C01712-18; C01758-62; C01824-27; C01875-78; C01960-66; C02100-02; C02150-53; C02281-88; C03485-89 (decision stated only that the "facts supported the allegation"). Nevertheless, the prisoners' submissions do not support their argument that the County's compliance rate is less than fifty percent.

Another factor that cautions against ordering relief that exceeds the constitutional floor is that the County's compliance has dramatically improved. For instance, the prisoners claim that only twelve out of the 112 inmates who attended hearings after July 2003 did not receive an adequate statement of decision. Notably, this figure includes *all* inmates: both those who were entitled to

[5] The prisoners apparently did not realize this until January 18, 2006, when they asked the County to provide them with "every inmate's in-custody status back to 2003." Harris Decl. ¶ 8.

Wolff protections and those who were not.[6] Because the PLRA requires courts to terminate consent decrees unless the prisoners show a "*current and ongoing* violation of federal right," 18 U.S.C. § 3626(b)(3), the absence of evidence of recent constitutional violations suggests that widespread relief would be over-broad. *See Cason v. Seckinger*, 231 F.3d 777, 783 (11th Cir. 2000) (rejecting argument that because "institutional policies that led to violations in the past are still in existence and pose a danger that future violations will occur . . . the 'current and ongoing' violation standard is met"). In addition, the Department of Corrections has voluntarily required "all administrative level staff who have any involvement with the disciplinary hearing process to attend training." Harris Decl. ¶ 11. Prison officials' voluntary efforts to ameliorate unconstitutional conditions can show that court involvement is not necessary or should be limited. *See Baker v. Haun*, 333 F. Supp. 2d 1162, 1165 (D. Utah 2004) (striking down consent decree where "no present unwillingness on the part of the prison officials to comply with the 1992 injunction . . . has been shown").

Based upon the analysis above, the court leaves the Amended Disciplinary Procedures Decree's written statement clause in effect, but permits the County to move to terminate the remaining portion of the Decree (the written statement requirement) one year from the issuance of this Order.

B. Remedy for Contempt

The prisoners propose that the court order the County to pay $240,000 into a fund that they shall use "to create and maintain . . . [a] core secondary law library accessible to *in pro per* inmates." Pla.'s Proposal at 2:9-15. According to the prisoners, this library should contain six specific hornbooks. In addition, the prisoners seek to use the funds to establish "[a] program to provide civil legal assistance to inmates" and "[a] manual on how to conduct legal research, which the County shall distribute to *in pro per* inmates." The prisoners' attorneys seek their fees and costs.

The court denies the prisoners' request for library funds. After terminating the Access to Courts decree, it makes little sense for the court to permit the prisoners to saddle the County with the burden of maintaining a law library, no matter how limited. As discussed in the November 14

[6] Based on the prisoners' analysis, only three unsentenced inmates did not receive adequate statements.

Order, a court should think carefully before substituting its judgment for that of prison officials. Because the County has chosen to close the law libraries due to security concerns in favor of a different program, the court elects not to second-guess this determination.

The court will, however, permit the prisoners to move for reasonable attorneys' fees. However, the court does so with the admonition that the prisoners' request must reflect (1) their limited success in this matter and (2) the fact that the prisoners' occasional oversights and inadvertent errors have consumed greater legal resources than might otherwise have been necessary. *See* November 14 Order at 44:3-44:25 (noting that the prisoners counted all infractions, even ones where the inmate admitted the charge against him, as indicative of whether the County had complied with *Wolff*'s twenty-four hour notice requirement); Harris Decl. ¶¶ 5-6 (noting that the prisoners' seventy-five percent non-compliance estimate on *Wolff*'s written statement requirement failed to (1) include approximately one hundred records, (2) exclude inmates who did not fall under *Wolff*, and (3) exclude records that pertained to hearings in which the panel found the inmate not guilty).

C. Order

The Amended Disciplinary Procedures Decree is terminated except for the requirement that the prisoners be given a written statement by the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken. The County may move to terminate the written statement requirement of the Decree in one year upon a showing that during that one year they are fully complying with the written statement requirement. The prisoners may move to seek recovery of their reasonable attorney's fees for bringing to the court's attention the County's failure to seek court approval before implementing a change to the Access to the Courts Decree and for their limited success in resisting the County's motion to fully terminate the Amended Disciplinary Procedures Decree.

DATED: 8/30/06

Ronald M. Whyte

RONALD M. WHYTE
United States District Judge

A copy of this order was mailed on _____ to:

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