

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF	)	
COLUMBIA DEPARTMENT OF CORRECTIONS,	)	
<u>et al.</u> ,	)	
	)	
Plaintiffs,	)	Civil Action
	)	No. 93-2052 JLG
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA,	)	
<u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CONTEMPT
AND TO ENFORCE THE COURT'S ORDER FOR INJUNCTIVE RELIEF

Plaintiffs bring this motion for contempt and to enforce the Court's Order for Declaratory and Injunctive Relief due to the defendants' continuing failure to implement the relief first ordered by this Court in December 1994. See Revised Court Order dated June 16, 1997, attached as Exhibit A. On December 13, 1994, the Court found that defendants violated the women prisoners' constitutional and statutory rights, and awarded plaintiffs declaratory and injunctive relief. The relief relevant to this current motion included required remedies in the areas of sexual misconduct, environmental and fire safety at the Correctional Treatment Facility (CTF), and equal programming at CTF. This relief remained intact through subsequent modifications to other provisions of the Order in August 1995, and June 1997. For over three and one-half years, defendants have failed to abide

Women Prisoners/DC v. DC



PC-DC-011-022

by the Court's Order, and their persistent violations must be redressed by the Court.

BACKGROUND

monitoring

Pursuant to an order of the Court in April 1995, plaintiffs have been monitoring defendants' compliance with the Order through monthly compliance reports self-reported by the District. Due to the often inaccurate and incomplete information provided in these reports, plaintiffs petitioned the Court on January 11, 1997, to appoint a court expert under Federal Rule of Evidence 703 to investigate and report on the true status of defendants' compliance with the Order. Plaintiffs then withdrew that motion pursuant to an agreement with the District under which DCDC employee, Regina Gilmore, conducted a special audit providing the factual information regarding compliance which plaintiffs sought. The parties had originally anticipated that the Gilmore Audit would be completed by August 15, 1997. Plaintiffs agreed to several extensions of this deadline, and the Gilmore Audit was finally completed on October 10, 1997.

The Gilmore Audit revealed significant outstanding areas of non-compliance in all areas of ordered relief. See Gilmore Audit, attached as Exhibit B (without attachments). Much of this information differed significantly from information which had previously been self-reported by the District in its monthly compliance reports. The parties then engaged in detailed and productive discussions regarding the

Audit, which did result in a few areas of additional compliance. In March and April 1998, the District for the first time allowed plaintiffs' counsel access to confidential documents related to sexual misconduct investigations so that plaintiffs could evaluate whether these investigations were conforming to the Court's Order.

Despite these cooperative efforts, the bottom line remains that the defendants are not complying with the Court's Order in many critical areas. There are still approximately 271 female inmates incarcerated by the D.C. Department of Corrections. See May 1998 Mon. Rep, attached as Exhibit C. Many women prisoners were transferred by the defendants in January 1998 out of the D.C. Department of Corrections to facilities in West Virginia and Connecticut run by the Federal Bureau of Prisons. The 271 women still remaining in D.C. are housed at the D.C. Jail (73 women) and CTF (198 women), and generally include presentence, misdemeanor, and pregnant inmates.^{1/} The Annex was permanently closed to female inmates in January 1998, and will be closed permanently to all inmates as part of the Lorton Closure Act. Accordingly, plaintiffs do not seek enforcement of the provisions of the

^{1/} The CTF is now managed by a private corporation, the Corrections Corporation of America (CCA) pursuant to a contract with the District of Columbia which began on March 15, 1997. Pursuant to that contract, CCA agreed to assume all obligations of the DCDC under court orders, including the orders in this case. See Operations and Management Agreement, Article 1.1 (definition of "court order"); Article 5.1 (duties and obligations). Thus, CCA is bound by this Court's Order.

Order pertaining to the Minimum Security Annex. However, the remaining relief which the defendants have failed to implement simply must be enforced, as relief for the plaintiffs is more than three years overdue.

I. THE RELIEF IS NECESSARY TO REMEDY A VIOLATION OF THE WOMEN PRISONERS' FEDERAL RIGHTS.

Courts traditionally have the inherent power to find a party in contempt for disobeying the provisions of its orders. International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 831 (1994); National Organization of Women v. Operation Rescue, 37 F.3d 646, 659-60 (D.C. Cir. 1994). This "inherent contempt authority" is a "power 'necessary to the exercise of all others.'" Bagwell, 512 U.S. at 831. The underlying rationale for a contempt proceeding is that "all orders and judgments of courts must be complied with promptly." NLRB v. Cincinnati Bronze, Inc., 829 F.2d 585, 590 (6th Cir. 1987); Glover v. Johnson, 931 F. Supp. 1360, 1363 (E.D. Mich. 1996), rev'd in part on other grounds, 138 F.3d 229 (6th Cir. 1998). Thus, the Court here has broad authority to impose judicial sanctions to "coerce the defendant into compliance with the court's order." Bagwell, 512 U.S. at 829.

The Order at issue here was originally entered by this Court on December 13, 1994. After a three-week trial, the Court found numerous violations of the federal rights of the women prisoners in the custody of the District of Columbia Department of Corrections at the Jail, Minimum Security Annex, and the Correctional Treatment Facility ("CTF"). The Court

first found that the incidents of sexual misconduct, poor obstetrical and gynecological care, lack of fire safety, and severe environmental conditions constituted violations of the Eighth Amendment. Women Prisoners v. District of Columbia, 877 F. Supp. 634, 662-71 (D.D.C. 1994). The court also found that the educational and vocational opportunities available to female prisoners were substantially inferior to those provided to similarly situated male prisoners, in violation of Title IX and the Equal Protection Clause of the Fifth Amendment. Id. at 672-79.

Based upon these findings, the Court entered an order setting forth the remedies to be provided by the Defendants. Id. at 679-90. The relief relevant to this contempt motion included required remedies in the area of sexual misconduct at both the Jail and CTF, environmental and fire safety at CTF, and equal programming at CTF.

The relief imposed by the Court was narrowly tailored to fit the scope of the violations. Upon review of the Order entered after trial, this Court held that the provisions of the Order were "consistent with the limiting principles which district courts in this Circuit must apply when devising remedies for unlawful prison conditions." Women Prisoners v. District of Columbia, 899 F. Supp. 659, 672-73 (D.D.C. 1995). The Court specifically found that the relief ordered "faithfully follow[ed]" the guiding mandates set by this Circuit in Inmates of Occoquan v. Barry, 844 F.2d 828,

841 (D.C. Cir. 1988). Women Prisoners, 899 F. Supp. at 672. The relief ordered by this Court has withstood subsequent challenges brought by the defendants in the form of a motion for modification, and upon appellate review before the Court of Appeals. See Women Prisoners, 899 F. Supp. at 659; Women Prisoners of the District of Columbia v. District of Columbia, 93 F.3d 910 (D.C. Cir. 1996). Upon remand from the Court of Appeals, and upon Joint Stipulated Motion of the parties, this Court entered its Final Revised Order which serves as the law of this case on June 16, 1997.

The constitutional violations that this Court found in 1994 still exist today and have not been cured. From 1994 to the present, the defendants have proved either unwilling or unable to remedy the violations cited by the Court. The need for the relief ordered by the Court is just as urgent today as it was four years ago. Thus, plaintiffs respectfully urge the Court to take the necessary steps to ensure that the provisions of its Order are enforced.

To find defendants in contempt, the Court must find that the defendant did not comply with the Court's prior order. Glover v. Johnson, 75 F.3d 264, 266 (6th Cir.), cert. denied, 117 S.Ct. 67 (1996). The test for compliance is not whether a defendant made a good faith effort, but rather whether the defendant took "all reasonable steps" to obey the court's order. Glover v. Johnson, 934 F.2d 703, 708 (6th Cir. 1991); Morales Feliciano v. Parole Board of the Commonwealth

of Puerto Rico, 887 F.2d 1, 5 (1st Cir. 1989), cert. denied, 110 S. Ct. 1511 (1990). Once plaintiffs prove a prima facie showing of a violation of the court's order, defendants have the burden of proving inability to comply. Huber v. Marine Midland Bank, 51 F.3d 5, 10 (2d Cir. 1995).

II. DEFENDANTS HAVE FAILED TO COMPLY WITH THE COURT'S ORDER.

Defendants concede in their own monthly reports and in the Gilmore Audit that they have violated many paragraphs of the Court's Order. The report of the Special Officer, Grace Lopes, found similar violations in her report of May 1995. Across the board, defendants have failed for the past three years to institute the types of remedies ordered by this Court. As a result, women prisoners continue to be exposed to incidents of sexual assault, sexual harassment, frigid temperatures, unhealthy food, unsafe living conditions, and inferior programming. These harms stemming from a violation of the plaintiffs' constitutional rights must be remedied by the defendants, as ordered by this Court.

A. Defendants Have Failed to Comply with Critical Provisions of the Order Pertaining to Sexual Misconduct.

Defendants have failed to comply with the provisions of the Court Order pertaining to the prevention, investigation, and remediation of sexual misconduct by prison staff against female inmates. Plaintiffs' review of the sexual misconduct investigation files, as well as the monthly compliance reports, confirms the findings of the earlier

Gilmore audit that defendants have failed to implement the Court-ordered relief which is critical to eliminating a hostile sexualized environment, such as training, discipline, investigation, and reporting.

1. General duty to investigate and prevent sexual misconduct.

Under the terms of the Court Order, defendants have an obligation to "take appropriate steps to prevent and remedy sexual harassment committed by its own employees." (Court Order ¶ 5). At the time of trial, the Court found that although the Defendants had "policies and procedures to address sexual misconduct," those policies and procedures were "of little value because the Defendants address the problem of sexual harassment of women prisoners with no specific staff training, inconsistent reporting practices, cursory investigations, and timid sanctions." Women Prisoners, 877 F. Supp. at 640. The deficiencies found by the Court in December 1994 still continue to present a problem today.

First, plaintiffs found, upon review of the investigation files, that although the quality of investigating and reporting has improved, defendants continue to find a lack of probable cause in almost all of the cases. Of the approximately 63 files that plaintiffs reviewed, a probable cause finding was made in only ten cases. Plaintiffs have attached a chart summarizing the findings of each of the investigation files reviewed. See Sexual Misconduct Chart, attached as Exhibit D (under seal). It is still true, as the

Court found in 1994, that where the evidence is reduced to a dispute between the inmate and the staff member, defendants generally side with the employee unless the complainant's allegations could be "verified" or "substantiated." For example, in a recent investigation in September 1997, the investigator concluded that the complainant's statement could not be verified because the inmate was on medication and therefore her testimony was unreliable. See Sexual Investigation Report, attached as Exhibit E (under seal).

Although the defendants have taken steps to improve the investigation procedures by contracting out to private firms, and training in-house investigators, the benefits of any improved investigative system are lost because defendants fail to follow up on recommendations made by the private firms. None of the files reviewed by plaintiffs contained any documentation regarding disciplinary steps taken by the defendants, or any policy, staffing or other bureaucratic changes made to ensure that the situation does not occur again. Defendants acknowledge that, up until recently, recommendations have not been implemented because the reports containing the recommendations were kept confidential and consequently were not forwarded to the individuals who could implement the recommended changes. See Amato ltr. of June 5, 1998, attached as Exhibit F (without attachments). Moreover, it appears that recommendations made in reports that find no

probable cause are disregarded completely, even though the investigator finds areas of concern that need improvement.

Plaintiffs' review of the sexual misconduct files also revealed that defendants have in several cases applied an improper definition of sexual misconduct. Defendants have found no probable cause in several cases based upon the rationale that a "specific intent of sexual gratification" must exist. For example, in a report completed in June 1997, the investigator found no probable cause of sexual harassment where a visiting inmate was strip-searched by an officer at the Jail who asked to see her breasts and vagina because the officer was concerned about the inmate's gender. See Sexual Misconduct Report, attached as Exhibit G (under seal). The investigator concluded that because the intent of the officer was not "sexual" in nature, no sexual harassment had occurred. This finding is clearly contrary to the plain language of the Court's definition of sexual harassment, and defeats the purpose of the sexual misconduct policy, which is to eradicate a "hostile and sexualized environment" at the prison facilities.

Of additional and significant concern to plaintiffs is the fact that CCA has hired the same perpetrators previously identified as "bad actors" at the Jail or Annex. A review of the investigative files revealed that several of the "bad actors" terminated by the Department of Corrections have reappeared at CTF and are working with women. Clearly,

defendants are not taking the necessary steps to prevent incidents of sexual misconduct if they are allowing known perpetrators to continue to work with female inmates. For example, two complaints filed in October 1997 and February 1998 involve an individual correctional officer who featured prominently as a "bad actor" in the original trial back in December 1994. See Sexual Misconduct Complaints, attached as Exhibit H (under seal). Investigators from Special Officer Lopes' office have previously expressed concern that there are no safeguards in place to assure that "bad actors" are not rehired by another contractor or by the Department of Corrections.

Finally, defendants have allowed staff members to resign rather than pursue criminal investigations under the District of Columbia law which makes a felony offense sexual contact, consensual or otherwise, between a staff member and an inmate. D.C. Code Ann. § 22-4113 - 4117 (1997). For example, two investigations initiated against a staff member at CTF in June 1997 were closed after the staff member was allowed to resign, despite the fact that one of the investigators found probable cause that the staff member had been involved in a sexual relationship with a female inmate. See Sexual Misconduct Reports, attached as Exhibit I (under seal). Under the provisions of the Court Order, defendants were required to report the incident to the police department

-- not just to let the staff member resign quietly without repercussion.

2. Adoption of penalties for prohibited conduct

In accordance with the terms of the Court Order, defendants were required to determine the "penalties for prohibited conduct" as defined by the Court-defined sexual misconduct policy. (Court Order ¶ 7).

Although the Department of Corrections' policy contains a table of penalties, in compliance with the Court Order, the CCA policy in operation at CTF does not provide enumerated penalties for violations of the sexual misconduct policy. Instead, the policy merely states that the Warden will take "appropriate disciplinary action against employees who are found to have engaged in sexual misconduct." CCA policy 14-100, at 14.100.5(I)(4), attached as Exhibit J. In order to ensure the effectiveness of the sexual misconduct policy, a progressive table of penalties must be in place at CTF, as clearly required by the Court Order.

3. Inmate Grievance Advisory Committee at CTF

Under the terms of the Court Order, defendants are required to "strictly adhere" to the Inmate Grievance procedures, and must establish an Inmate Grievance Advisory Committee as required by Department Order 4030.1D. (Court Order ¶ 8).

Despite this clear mandate, the Inmate Grievance Committee has not met regularly at CTF. There were no

committee meetings between September 1997 and April 1998. See, e.g., Sept. 97 Mon. Rep.; Apr. 98 Mon. Rep., attached as Exhibits K and L respectively. CTF finally convened an inmate grievance committee meeting on April 30, 1998, more than seven months after the last meeting. See May 1998 Mon. Rep, Ex. C. The inmate grievance committee plays a critical role in enabling the female inmates to voice their complaints, and it is essential that the committee convene regularly as required by the Court's Order.

4. Establishment of Confidential Hot Line

Under the terms of the Court Order, defendants were required to establish a confidential hot line, through which women prisoners could report allegations of sexual harassment. (Court Order ¶ 10).

Defendants have only sporadically complied with the requirement of providing a confidential hot line. The Gilmore audit reported that neither the Jail nor CTF had an operational hot line as of October 15, 1997. See Ex. B, at p.8. The Jail had previously operated a hot line, but its operation was suspended after the termination of the duties of the Special Officer of the Court. See Ex. B, at p. 8. After the Gilmore Audit, CTF implemented an operational hot line, which received its first call on October 21, 1997. See May 1998 Mon. Rep, Ex. C. However, the Jail did not implement an operational hot line until some time in February 1998.

5. Reporting of sexual misconduct to law enforcement agency.

Under the terms of the Court Order, defendants are required to notify the "proper law enforcement agency" upon "receipt of any allegation of any act of unwelcome sexual intercourse or any allegation of unwelcome sexual touching." (Court Order ¶ 12).

The Gilmore Audit found, based upon a review of sexual misconduct complaint reports, that defendants were not in compliance with Paragraph 12 of the Court Order. The Auditor's review of investigations of sexual misconduct involving female inmates at the Jail for the period 9/1/96 to 6/30/97 revealed that "no cases were reported to the Metropolitan Police Department." Ex. B, at p. 29. Similarly, the Auditor found at CTF that several sexual misconduct complaints that should have been reported to the police department were not reported. Ex. B, at p. 78. The Auditor found that both facilities did not have an accurate understanding of "the circumstances of a sexual misconduct incident that warrants referral to the MPD."

Plaintiffs' own review of the sexual misconduct investigations in March 1998 also found that defendants are only sporadically reporting complaints to the Metropolitan Police Department. For example, a female inmate at CTF originally filed a complaint in August 1997 alleging sexual abuse by a staff member. The Metropolitan Police Department was not contacted until mid-September, after the inmate filed

an additional complaint demanding that she be allowed to talk to the police department. See Sexual Misconduct Report, attached as Exhibit M (under seal). Similarly, two allegations of sexual misconduct filed against a staff member at Annex in June and July of 1997 were not referred to the police department, as required by the Court Order. See Ex. I.

6. Allowance of 15 days for appeal.

The Court Order requires that any inmate who is dissatisfied with the resolution of a sexual investigation be allowed to appeal to the Director of DCDC "within 15 days of receiving written notice of the outcome of the investigation." (Court Order ¶ 14).

Contrary to the Court Order, both the Jail and CTF have adopted sexual misconduct policies that only provide the inmates with five days to appeal the results of a sexual misconduct investigation. See CCA Policy 14-100, at 14-100.5(L), Ex. J. ("[A]n inmate who is dissatisfied with the investigation or resolution of a complaint of sexual misconduct . . . may appeal by letter to the Director of the DCDC through the DCDC Contract Monitor within five (5) Calendar days of receiving written notice of the outcome of the investigation." (emphasis added); D.O. 3350.2B (VII) (K) (1) (same), attached as Exhibit N. The allowance of only five days to appeal a decision fails to comply with the plain terms of the Court's Order, and, more importantly, hampers an

inmate's ability to retain an attorney and/or obtain advice on how to proceed with an appeal.

7. Training of employees and female inmates.

Under the terms of the Court Order, defendants are required to conduct various staff and inmate training programs on sexual misconduct issues. (Court Order ¶¶ 15, 16). Despite the important role training plays in ensuring that incidents of sexual misconduct are minimized, defendants have failed to comply with training provisions of the Court Order.

Defendants concede in their monthly reports that they have never provided the sexual misconduct training at the Jail mandated by paragraph 15(c) of the Court Order, which requires a forty-hour training program for selected employees working with female prisoners, and semi-annual enhancement training. See May 1998 Mon. Rep, Ex. C.

8. Alterations to ensure privacy at CTF.

Under the terms of the Court Order, defendants were required to make "necessary alterations" at CTF within 60 days of the date of the order to "ensure that women have privacy in their living, sleeping and shower areas." (Court Order ¶ 17).

In October 1997, the Gilmore Audit reported that, although CTF had taken some steps to ensure privacy, such as adopting a mandatory announcement policy, there remained a problem with privacy in the dormitory area -- male inmates and employees could still see in through female inmates' cell windows at night. See Ex. B, at p. 81 ("With lights on in the

cell in E Building, vision of the woman's nude silhouette is not significantly reduced.").

More than seven months later, defendants have not made any alterations to eliminate this problem. A proposed permanent measure to alter the windows, including installing velcro strips for removable curtains, was suspended in March of this year, pending a determination of how many female inmates at CTF would be transferred to the Federal Bureau of Prisons. See May 1998 Mon. Rep, Ex. C. Instead, CTF has resorted to allowing the women to cover their windows with "fabric, cardboard or paper." Ex. C. This temporary measure is clearly insufficient and cannot satisfy the defendants' obligations to make alterations to the facility as required by the Court Order. Moreover, it presents an unnecessary security risk and compromises the safety of everyone at the facility.

B. Defendants Have Failed to Comply with Court-ordered Relief Regarding Environmental Conditions at CTF.

Under the terms of the Court Order, defendants are required to take specified steps to remedy the environmental conditions at the CTF facility, including: (1) hiring a contractor to provide "an acceptable level of air quality to all areas of the facility" (§ 51); (2) take steps to "maintain a minimum cell temperature of 65° in every cell," and "report back to the court" (§ 52); (3) "develop and implement an effective rodent program" (§ 53); (4) "monitor food

temperature and delivery times of all foods" (§ 56); and (5) implement DCRA recommendations within thirty days (§ 59).

Despite the fact that a private contractor, Corrections Corporation of America ("CCA"), has taken over the management of the Correctional Treatment Facility, the same severe environmental problems that the Court documented in its opinion continue to exist at the facility. See Women Prisoners, 877 F. Supp. at 649-50.

1. Air quality and temperature.

Under the terms of the Court's Order, defendants were required to hire a qualified air balancing contractor to service the CTF air handling system so that it provides "an acceptable level of air quality." (Court Order § 51). Although a contractor was hired in March 1997, the facility continues to suffer from poor levels of air quality. For example, the DCRA inspection in October 1997 noted "dirty ventilation" as a problem in numerous areas throughout the facility, including the dormitories, infirmary, and the medical unit. See DCRA Rep. Oct. 1997, attached as Exhibit O. Also, in the April 30, 1998 Inmate Grievance Committee meeting minutes, inmates reported that "vents in cells are dirty and have a foul odor." See May 1998 Mon. Rep., Ex. C. CTF concedes that the air system again needs to be "rebalanced" and reports that it has recalled the contractors to "repair and upgrade the air handling system." See May 1998 Mon. Rep., Ex. C. It is clear that, close to four years after the Court

first ordered that the air balancing system be fixed, no significant progress has been made.

What is even more troubling, however, is defendants' failure to remedy the air temperature problems in the cells at CTF. (Court Order ¶ 52). Defendants concede in the monthly reports that they are not in compliance with the Court's requirement to fix the heating problems which result in cell temperatures dropping below 65°. See, e.g., Mar. 1998 Mon. Rep., attached as Exhibit P; Apr. 1998 Mon. Rep., Ex. L. As recently as April of this year, defendants admitted that they are "unable to develop a feasible plan." See April 1998 Mon. Rep., Ex. M. In their last report, Defendants indicated that they have sought authorization for "insulating all the end cells." See May 1998 Mon. Rep., Ex. C. Although plaintiffs welcome any steps to improve the heating situation, such measures are long overdue, and, in any event, will not remedy the deficiencies in any of the other cells that have perimeter walls.

Despite the fact that Defendants acknowledge they have not fixed the problem, they have failed to report back to the Court on their lack of progress, as clearly required by the Court Order. (Court Order ¶ 52(d)). Defendants originally promised that a report would be filed with the Court on March 16, 1998, a date which has since been postponed numerous times. The current self-imposed deadline of May 26, 1998, set

in defendants' most recent report, has come and gone with no report filed that plaintiffs are aware of.

2. Effective Rodent Program.

The Court Order mandates that defendants implement an "effective rodent program." (Court Order ¶ 53, emphasis added). Although Defendants report "compliance" with paragraph 53 of the Court's Order, all evidence indicates to the contrary -- rodent infestation continues to be a prevalent and serious problem at CTF.

Defendants assert that they complied with the provisions of paragraph 53 back in April 1997 by negotiating a contract with Orkin Chemical Company. However, a DCRA environmental inspection report conducted on October 14-15 1997 cited CTF for failure to implement "effective vermin control." DCRA Report, Oct. 1997, Ex. O. The investigator noted that "evidence of mice droppings were found in the dry storage area, bread storage area, oven area, dishwashing area, [and] equipment storage area" in the Culinary unit at CTF. Ex. O. Defendants should not be allowed to escape their obligations under the Order simply by claiming that they implemented a program, regardless of the obvious poor results.

3. Food Temperature and Delivery Time

Almost three years after the Court entered its original order, the exact same food preparation problems that threatened the health of the women prisoners at CTF continue to plague the culinary operations at CTF. See Women

Prisoners, 877 F. Supp. at 650 (finding that "inadequate food preparation threatens residents at CTF").

Contrary to all evidence, defendants have reported ongoing "compliance" with the food temperature monitoring requirement of paragraph 56 of the Court Order. However, CTF has been cited twice by DCRA in the last eight months for serving food at "potentially hazardous levels." DCRA Oct. 1997 Rep., Ex. O; May 1998 Mon. Rep., Ex. C. To begin with, in the October 14-15 1997 report, DCRA gave CTF an over-all 50% sanitation rating for food service, citing health regulation deficiencies ranging from dirty floors, walls and ceilings, lack of proper hair restraints, faulty refrigeration, and dirty trays and pans. See Ex. O.

On the specific issue of food temperature, the investigator reported that food delivered to the units "were not at safety temperatures." Ex. O. Moreover, food trays took "approximately 27 to 30 minutes after being served to arrive at cell blocks." Ex. O. In a recent DCRA investigation performed on May 8, 1998, CTF was again cited for serving food at potentially hazardous levels. See May 1998 Mon. Rep., Ex. C. The investigator found that "hot food arrived at the cell block at 109° - 125°F," well below the required level of 140° or higher, and cold food arrived at "67° to 77°F," well above the required level of 45° or less. Ex. C.^{2/}

^{2/} Plaintiffs have not received a copy of the entire report of the inspection conducted May 7 - May 9, 1998. Instead,
(continued...)

Defendants' violation of the Court Order is further documented by CTF's own food monitoring forms, which record food temperature on randomly selected meals and regularly report food temperatures at hazardous levels. For example, the ARAMARK food monitoring sheets submitted with the March and April 1998 report indicate eleven separate incidents of food being served at unhealthy temperatures, such as a meat pattie served at 113°F (27° below the minimum accepted temperature), and turkey noodles served at 118°F. See Exs. L, P. In addition, at a recent Inmate Grievance Committee Meeting held on April 30, 1998 (the first one in more than seven months), the inmate representatives reported that "[f]ood does not arrive on time and is undercooked," and "[t]he trays are wet and dirty." See May. 1998 Mon. Rep., Ex. C.

5. Implement DCRA Recommendations

Paragraph 59 of the Court Order requires that DCRA inspect CTF two times per year^{2/}. After each inspection, the Warden is required to obtain a copy of the report within 30 days after the inspection, and to remedy any unsanitary practice or condition within 30 days following receipt of the report. (Court Order ¶ 59).

^{2/}(...continued)

plaintiffs have only received a copy of the worksheet for the last day of the inspection, on which the facility received a rate of 92%. It has been counsel's experience that the ratings on the last day are the most favorable.

Defendants conceded in their May compliance report that, as of the date of the report, they had not yet taken any steps to remedy the violations cited by DCRA in its October 17, 1997 report. Despite the fact that defendants attached the DCRA culinary inspection worksheet for October 17, 1997 to the November 1997 compliance report, defendants assert that they did not receive an "official report" until sometime around April 9, 1998, and thus were not able to correct any deficiencies. Ex. L.^{3/} Plaintiffs find it incredulous that it would take more than five months for CTF to receive a copy of the report.

In any event, once the defendants did receive a copy of the "official report" that they were waiting for, they still did not remedy the violations cited by DCRA. In the last compliance report Plaintiffs received, Defendants forecast the completion date for repairs as May 29, 1998, more than seven months after the original inspection was performed. Ex. C. Plaintiffs have not received any documentation to date to suggest that the repairs were completed.

^{3/} It is also worth noting that defendants reported in November 1997 that they received a 92% rating in the DCRA inspection, attaching as documentation the culinary inspection sheet for October 17, 1997. Plaintiffs did not learn, until they received their own copy of the DCRA report through other means, that, in fact, CTF initially received a rating of 50% for the first two days of inspection, October 14-15, 1997, and that the 92% rating was received only on the third day that the inspector returned to inspect the facility.

C. Defendants Have Failed to Comply with Court-ordered Relief Regarding Fire Safety Conditions at CTF

Under the terms of the Court Order, defendants are required to "conduct and document mandatory semi-annual training on fire safety procedures for all correctional officers." (Court Order ¶ 65).

Defendants concede through their monthly compliance reports that they have failed to perform the semi-annual training for all correctional officers at CTF. See, e.g., Exs. C, L, P. Although new hires received training in fire safety procedures in January 1998, CTF has been promising for months that it would conduct training for the remaining employees, originally forecasting that such training would occur in October 1997, but now asserting that fire training will occur within the next ninety days. See Oct. 1997 Mon. Rep, attached as Exhibit Q; May 1998 Mon. Rep., Ex. C.

In addition to failing to provide the necessary training, the DCRA Environmental Inspection Reports suggests that there are other areas of significant concern. The October 1997 DCRA report cited CTF for the presence of fire extinguishers on the floor, empty fire extinguishers, and covered smoke detectors. Ex. O.

D. Defendants Have Failed to Comply with Court-ordered Relief Regarding Programming at CTF

Under the terms of the Court Order, defendants are required to take certain steps to ensure that women prisoners at CTF receive the same or equivalent educational

opportunities as similarly-situated men, including: (1) providing diagnostic evaluations for women prisoners transferred to CTF (§ 19); (2) providing at least one apprenticeship program to women at CTF (§33); and (3) providing on-site higher education programs, including a four-year college program (§ 27). Despite the clear mandates of the Court, defendants have failed to make reasonable efforts to provide equal educational opportunities to the women at CTF.

1. Diagnostic evaluations.

On April 9, 1998, defendants suspended diagnostic evaluations for women transferred to CTF, "pending the movement of convicted female inmates to the Federal Bureau of Prisons." See Exs. L, P. Defendants have represented on numerous occasions that the women prisoners currently at CTF will be transferred out to Federal Bureau Prisons. Despite these representations, no such transfer has occurred and 198 female inmates remain at the institution. (as of May 9, 1998). Plaintiffs have seen no documentation of any formal decision to transfer the women out of CTF. Until such time, defendants must continue to perform the diagnostic evaluations on all women prisoners transferred to the facility. Without such evaluations, the women will not be eligible for programming at

CTF, or at the Federal Bureau of Prisons facility that they are ultimately (if ever) transferred to.^{4/}

2. Apprenticeship Program.

Defendants have for a long time conceded that they are in violation of their Court-ordered obligations to provide an apprenticeship program for women prisoners at CTF. (Court Order ¶ 33). There has been not been an apprenticeship program for women at any time during the past four years. Although defendants appear to have taken some steps to try and put an apprenticeship program in place (including submitting a proposal to the DC Apprenticeship Council), they concede in their most recent report that they have failed in their efforts, and "there is no accredited apprenticeship program available to the female inmates." See May 1998 Mon. Rep., Ex. C. Until defendants implement an apprenticeship program, the women at CTF will continue to be deprived of a vocational opportunity made available to men.

3. College programs.

Under the terms of the Court Order, defendants were required to provide women prisoners at CTF access to a four-year college program no later than February 1996. (Court Order ¶ 27). Defendants failed to carry out the mandates of this order until December 1997, and classes only just began in

^{4/} Defendants now report that as of June 5, 1998, diagnostic evaluations have been reinstituted and women previously transferred to CTF have been diagnosed. However, in light of defendants' past behavior defendants must be enjoined from arbitrarily suspending court-ordered relief.

January 1998. Thus, the women inmates at CTF were deprived of the opportunity to participate in college classes for two years, despite their clear entitlement to such a program under the Court's Order.

III. PLAINTIFFS ARE ENTITLED TO RELIEF FOR THE DEFENDANTS' PERSISTENT VIOLATIONS OF THE COURT ORDER.

A. The Court Should Impose Prospective Per Diem Fines.

Many of the provisions of the Order which defendants have failed to implement require only simple, affirmative action to remedy the problem. For example, the Court's Order requires that the District follow its Inmate Grievance Policy, which includes routine Inmate Grievance Committee meetings. Yet CTF failed to have these routine meetings for the past seven months. As to these provisions, the Court should impose daily fines until the defendants comply with the specific provisions.

The Court has the inherent power to impose civil contempt sanctions in the form of per diem fines to remedy violations of its orders. Such prospective fines imposed for the defendants' continued failure to perform simple, affirmative acts are clearly within the power of the Court to impose. Bagwell, 512 U.S. at 833-37 (recognizing court may impose civil contempt sanctions for "discrete, readily ascertainable acts"); National Organization of Women, 37 F.3d at 659 (noting that court may impose civil contempt sanctions such as "compensatory fines, coercive imprisonment, and per

diem fines to coerce compliance with affirmative court orders").

Thus, the Court should give the defendants 45 days to comply with the following specific paragraphs:

- ¶ 7 CCA must provide written penalties for sexual misconduct
- ¶ 8 CCA must hold Inmate Grievance Committee meeting
- ¶ 14 Revise Department Order and CCA policy to allow 15 days for inmate to appeal adverse decision on sexual misconduct investigation.
- ¶ 15(b) Conduct annual refresher training at Jail
- ¶ 15(c) Conduct 40 hour training for staff working with female inmates
- ¶ 15(c) Conduct enhancement training on working with female inmates
- ¶ 17 Make alterations at CTF to ensure women's privacy in cells.
- ¶ 19 Provide diagnostic evaluations for women
- ¶ 33 Provide one apprenticeship program for women
- ¶ 52(d) Report back to court on why air balancing and alternative measures have failed to eliminate extreme cold temperatures for women prisoners at CTF.
- ¶ 59 Remedy deficiencies found in DCRA inspection at CTF on October 14, 1997, finding substantial health hazards, sanitation problems, and food delivery problems
- ¶ 65 Conduct training at CTF on fire safety procedures.

If defendants have not complied with these provisions within 45 days, a fine of \$50 per day should be imposed for the first 30 days thereafter, escalating to \$100

per day for the next 60 days, and then doubling every 30 days thereafter.

B. The Court Should Appoint an Expert to Report on Compliance.

Other provisions of the Order are more complex, and cannot easily be remedied by one discrete act. The Order requires that defendants "investigate and prevent" sexual misconduct, and properly train and discipline staff regarding sexual misconduct. (Court Order ¶¶ 5, 11, 12, 15). Defendants have clearly demonstrated their inability to comply with these provisions. Despite their representations that they view sexual misconduct as an important issue, defendants nevertheless have failed to implement the basic relief of training their employees, disciplining employees, or notifying the police department of sexual misconduct allegations. The District has demonstrated its own inability to cure the systemic problems with training, investigation, and reporting, which plaintiffs' experts testified at trial were critical to eliminating a hostile, sexualized environment that perpetuates sexual misconduct in prison. Aside from the Gilmore Audit, defendants are also unable even to accurately report on the status of these various provisions in their monthly reports. Thus, an independent expert is clearly needed to evaluate whether defendants are complying with the Order.

As to these specific provisions involving continuing obligations to remedy sexual misconduct, plaintiffs request

that the Court appoint an expert to investigate and report to the Court within 120 days on the defendants' compliance with these provisions, and any recommended remedial measures. Plaintiffs then request a hearing within 30 days of the expert's report.

C. The Court Should Award Plaintiffs Their Reasonable
 Attorneys' Fees and Costs.

Plaintiffs have invested significant time in investigating the state of defendants' compliance with the Order, obtaining reliable factual information, and in negotiating with the defendants in the hopes of resolving the noncompliance by agreement. Yet none of these efforts has successfully resolved the outstanding areas of noncompliance. Thus, plaintiffs were forced to bring this motion for contempt before the Court in order to enforce the relief ordered.

Plaintiffs are therefore entitled to their reasonable attorneys' fees and costs incurred in enforcing the relief ordered by the Court.

Respectfully submitted,

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