



PC-IA-001-003

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

GEORGE GOFF, et al.,

Plaintiffs,

vs.

CHARLES HARPER, et al.

Defendants.

NO. 4-90-CV-50365

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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This matter comes before the Court on class representative George Goff's suit pursuant to 42 U.S.C. § 1983. Goff and the other class members claimed that the internal disciplinary system at the Iowa State Penitentiary violates their constitutional rights. Specifically, the inmates challenged the prison's policy of handing out extremely long lockup sentences. The inmates also challenged the general environment in the lockup cell blocks; the small sizes of the lockup cells; and the lack of mental health care, exercise and educational opportunities provided to lockup inmates. Also, the mentally-stable inmates challenged the effects of pandemonium and bedlam they suffer because they are intermingled with mentally-ill inmates who cannot control their behavior and other inmates whose behavior the prison cannot control. The class sought no damages, only injunctive relief. The Court held a week-long bench trial at the Penitentiary in Fort Madison, Iowa, and later, took additional testimony via

telephone. After carefully considering the evidence, the parties' written and oral arguments and the briefs, the Court finds that the Penitentiary's lockup policies deny the class members their constitutional rights.¹ The plaintiffs' request for injunctive relief will be held in abeyance at this time.

I. FINDINGS OF FACT

A. THE DISCIPLINARY SYSTEM AT THE IOWA STATE PENITENTIARY

1. LOGISTICS OF THE DISCIPLINARY SYSTEM

When an inmate is written up for a rules violation at the Iowa State Penitentiary (a.k.a. ISP or the Penitentiary), the matter is adjudicated by an administrative law judge (ALJ). An inmate at ISP can be written up for two types of reports, a class I report, or a class II report. Class I reports (known as major reports) are much more serious than class II reports (known as minor reports). Plaintiffs' Ex. 4 shows that 95% of the reports written are class I reports. Before an inmate can be found guilty of any report at ISP he must appear before an administrative law judge. Charles Harper sits as the Penitentiary's administrative law judge and adjudicates almost all disciplinary cases involving inmates unless he is on vacation or for some other reason out of the office.

¹ This case involves many sensitive issues, foremost among these is the mental health status of the inmates who are in lockup status. By agreement of the parties, when individual inmates' psychological records were discussed, all other inmates, including the class representatives, left the court room. The Court has also issued orders which protect the integrity of the inmates' mental health records.

If an inmate is found guilty of a rules violation, i.e., the ALJ finds the report justified, he is usually sentenced to serve some time in disciplinary detention and some additional, usually much longer time in administrative segregation. The combination of disciplinary detention and administrative segregation time is referred to as lockup time. When an inmate begins serving lockup time he is transferred from the Penitentiary's general population to either cellhouse 220 or cellhouse 319. The number of inmates in lockup at any given time is between 160 and 190.

Inmates in lockup must remain in their cells twenty-three hours each weekday and twenty-four hours on Saturday and Sunday. Inmates in lockup, especially those in disciplinary detention, are severely restricted in the amount of property they can possess. For example, inmates in disciplinary detention are not allowed to purchase food from the commissary or keep televisions or radios in their cells. Inmates in administrative segregation are allowed a television, a radio, their legal papers, personal photos, toiletries they purchase (if they have the money), and a very limited number of law books; they are also allowed to place three ten-minute, collect, personal phone calls per month; and two ten-minute, collect, legal phone calls per week. Lockup inmates are allowed three showers per week. Dfs. Ex. PP, Policy and Procedure Statement; testimony of Martin Rung, cellhouse 220 unit manager. The Court will elaborate later in this order on additional consequences of being locked up in the Iowa State Penitentiary, but notes for now that lockup ranges are often

horrendously loud and the cells, especially those in cellhouse 319, are claustrophobically small.

Inmates placed in lockup generally also lose "good time" as part of their disciplinary sanction. Good time is a system that allows inmates to be paroled from prison prior to discharging their sentences. The system is set out in Iowa Code § 903A.2. Inmates, except those convicted of violent crimes, receive one day of good time for every day of good behavior. When the time remaining on an inmate's sentence is equal to the amount of good time he has accumulated, he is released from prison, usually to some sort of halfway house or work release center. When an inmate loses good time as part of a disciplinary sanction, the inmate must spend the lost time in prison instead of getting out early or going to some less restrictive environment. Inmates who thereafter behave well can still earn good time over the course of their remaining time in prison. As a practical matter, inmates who do not have any good time built up are unaffected by a sanction which takes good time away.

Until some point in the early 1980s, rules violations at ISP were punished with periods of indefinite segregation. Subsequent court orders restrained the Penitentiary from using such a system. In the early 1980s, ALJ Harper, in conjunction with corrections division attorneys of the Iowa Attorney General's office, decided the maximum punishment time given to an inmate convicted of a major report would be thirty days in disciplinary detention and one year in administrative segregation and the loss

of one year of good time. ALJ Harper and the unnamed assistant attorneys general decided violations for escape, assault, and fighting would receive the maximum sentence. This policy decision conflicts with the Penitentiary's own rules which require discipline to account for the individual circumstances of the offense. ISP Rule Book, pp. 46-47.

ALJ Harper's definition of "assault" is a novel amalgamation of the legal definitions of "assault" and "battery." Legally, an assault is defined as an attempt or threat, with unlawful force, to inflict bodily injury upon another, accompanied by the apparent present ability to give effect to the attempt if not prevented. The legal definition of battery is the unlawful application of force to the person of another. Battery need not result in physical injury. With ALJ Harper presiding, inmates have been convicted of assault for (1) sticking a pen out of a cell in an attempt to stick a correctional officer, (2) telling a correctional officer, "You're Satan. You're Satan," and then attempting to spit on the officer, (3) shoving a food tray out of a food slot and spattering food and juice on a correctional officer, and (4) sticking a hand out of a cell and scratching the wrist of a correctional officer. On the other hand, when inmates have hit guards with a fist or a barbell, these attacks have also been defined as assaults even though they are much more serious than those set out above.

ALJ Harper doles out punishment with rigid consistency. All rules violations for assaults (including each of those mentioned

above) receive the maximum punishment of thirty days disciplinary detention, one year administrative segregation, and one year loss of good time regardless of the seriousness of the assault. For example, an assault where an inmate throws cereal at a guard merits the same punishment as an assault where an inmate throws a combination of urine and feces at a guard. ALJ Harper discussed a hypothetical situation where an inmate begins fighting, grabs a shank and has to be maced before he stops fighting. ALJ Harper testified the inmate's punishment would not depend on whether the inmate stopped fighting on his own, whether he grabbed a weapon, or even whether he was the initial aggressor. Regardless of the circumstances, the inmate would receive thirty days disciplinary detention, one year administrative segregation, and one year loss of good time. This is the rigid consistency complained about by the plaintiffs. See Plfs. Ex. 2 (showing more than 500 instances of Rule 2 and 13 violations, for assault and fighting respectively, where the penalty is almost always as set out above, and different conduct results in the same punishments).

ALJ Harper testified that he does not believe fighting is as serious a rules violation as is an assault. Nonetheless, he punishes both fighting and assault with the same penalty because he believes fighting is a serious rules violation which deserves the maximum penalty. He does not punish assault with a greater penalty because he cannot assign a punishment greater than the maximum penalty which is thirty days in disciplinary detention

and one year in administrative segregation and loss of one year of good time. He cannot reduce any charges.

There are very rare occasions, however, when ALJ Harper deviates from the disciplinary scheme to which he normally faithfully adheres. For example, once ALJ Harper adjudicated a report that four inmates (George Goff, Alan Henderson, Thomas Yarges and Herbert Speller) received for assaulting a guard. ALJ Harper punished each of the inmates with thirty days in disciplinary detention, three years in administrative segregation and one thousand days loss of good time. Although Henderson used a weapon and caused permanent injury during his assault, he and the others received the same sentence even though the others had no weapons and did not cause permanent injury. Plfs. Ex. 78, pp. 7, 10, 15, 24.² ALJ Harper testified these punishments were his aborted attempt to create a higher-level offense for assault on guards. Since he no longer hands out sentences as long as those, he calls that process his "aborted" system. Harper said he tried this at the suggestion of an assistant Attorney General.

If an inmate is written up multiple times for related incidents, ALJ Harper testified he will punish the inmate multiple times. For example, ALJ Harper testified if an inmate threw a tantrum over a five-hour period and was written up for five assaults during that time, he would assign the inmate the maximum penalty five times. In this example, the inmate's total

² The Court recognizes that Yarges' and Spiller's sentences were modified later on.

punishment would be 150 days in disciplinary detention, and five years in administrative segregation and a loss of five years good time.

These situations are not merely hypothetical. In one thirty-six-hour period in 1996, inmate Chris Myers "acted out" toward each guard who approached his cell. Myers threw an unknown liquid at some guards and spit on others. Plfs. Ex. 40. When all was said and done, ALJ Harper deviated only slightly from his standard punishment schedule. Myers received seven reports and was assigned to 135 days in disciplinary detention and three years and seven months in administrative segregation, and he lost three years and seven and one-half months of good time. Plfs. Ex. 40. Myers said it appeared the guards enjoyed watching him lose control of his emotions.

The trial testimony produced numerous other examples of inmates who had bad days, weeks or months which resulted in multi-year stints in lockup. These clustered sanctions punish inmates guilty of relatively minor but extended misbehavior much more harshly than inmates who engage in distinct episodes of serious misbehavior. When asked about this, Harper flatly said, "I don't think the system is working right." In contrast, Larry Brimeyer, the ALJ at Iowa's other maximum security facility in Anamosa said he commonly combines incidents that are close in time into one incident.

ALJ Harper testified he is authorized to dismiss reports he finds to be without merit, but he rarely exercises this

authority. The most recent prison records produced at trial showed, in the twenty months between July 1994 and February 1996, of major reports written in cellhouse 220, ALJ Harper dismissed about 8% of them (after talking to ISP Security Director Colonel Emmett). Of the 133 reports written for assaults (Rule 2 violations) in cellhouse 220, ALJ Harper dismissed one report, or about 0.75% of the assault reports written. Plfs. Ex. 4.

ALJ Harper is not authorized to reduce major reports to minors and has never done so. In the most recent twenty months of records, there were 557 major reports and about 28 minor reports written for inmates in lockup. Of the major reports 133 were issued for violating ISP Rule 2 which prohibits assaults. None of the reports were for violating ISP Rule 13 which prohibits fighting.³ In cellhouse 319, after talking to Colonel Emmett, Harper dismissed 13% of the most recent twenty months' major reports, but he only dismissed 4% of the Rule 2 violations. In the past twenty months there were 417 major reports, 25 of which were Rule 2 violations. Plfs. Ex. 4. In contrast, as mentioned, Brimeyer testified he has the authority to, and commonly does, reduce major reports to minor reports in Anamosa. That difference alone is a major factor in why the Anamosa system works fairly well and why Fort Madison's system is in bad shape.

³ The significance of the distribution of fights and assaults becomes apparent when the modifications to the time-cut policy are described below.

Brimeyer also testified he uses a sentencing matrix,⁴ Plfs. Ex. 12, at Anamosa similar to the Federal Sentencing Guidelines in that it contemplates circumstances relevant to the commission of any act and sets out the probable punishment. The matrix is published and posted so that Anamosa inmates know the probable penalties assessed for any given rule infraction prior to its commission. The punishment matrix terms are set by Brimeyer and two members of the administrative staff at Anamosa. Once a year that committee convenes and reviews the punishment guidelines to see if they are appropriate. He said that he had the full and final say as to whether or not there would be a loss of good conduct time. He further said that he treated fights and assaults on a case by case basis and had no rigid penalties.

ALJ Harper testified he keeps a loose sentencing matrix in his head, but he does not share it with any inmates. For example, he said that even though fighting and assault both merit major reports, fighting is punished less severely than is assault. As mentioned, however, almost no reports are written for fighting.

On this subject, the defendant's expert George Camp⁵ testified that 75% of the prison systems he has observed use

⁴ The term "matrix" as used by Brimeyer and other witnesses at the trial refers to a listing of the various offenses that a prisoner might commit, together with a proposed or probable sanction (sentence) for that offense. A good substitute for "matrix" would be "grid."

⁵ Camp's resume is discussed on page 22 of this Order.

lists (a matrix) containing all of the major and minor infractions an inmate can commit. He said in the other 25% of the prison systems he has observed there are no lists, but the penalties for each level of infraction are posted. Camp testified that broad sanction guidelines which allow the adjudicator to account for the seriousness of the offense are becoming more common in prison disciplinary systems. He said all factors need to be taken into account when assigning a disciplinary sentence and, even though consistency in sentencing is important, consistency must be tempered with the need to account for aggravating and mitigating factors.

Some inmates at the Penitentiary have amassed staggeringly large amounts of time in lockup, due in part to ALJ Harper's approach to adjudicating reports and disciplining inmates. As of March 6, 1996, more than forty inmates at the Iowa State Penitentiary were scheduled to serve time in lockup until the year 2000 or beyond. Plfs. Ex. 1, pp. 88-91. Included in this group was inmate Nathan James Wallace who was not scheduled to be released from lockup until August 8, 2061. Id. at 88. Inmate Paul Blaise was not scheduled to be released from lockup until September 30, 2057. Id. at 89. Inmate Larry Limkeman was not scheduled to be released from lockup until August 2, 2054.⁶ Id. at 88. Inmate Kurtis Strohbahn was not scheduled to be released from lockup until June 20, 2039. Id. Inmate David Sheldon was

⁶ Inmate Limkeman received forty-four one-year sentences as shown by Plfs. Ex. 2, pp. 8-11.

not scheduled to be released from lockup until March 14, 2027. Id. Inmate Timothy Thompson was not scheduled to be released from lockup until February 27, 2025. Id. at 89. Many other Penitentiary inmates are scheduled to discharge their sentences and be fully released from ISP before their theoretical release from lockup.

ALJ Harper testified his practice of writing reports for inmates who, for example, have lockup time into the year 2050 deters other inmates from misbehaving. He agreed, however, that when some inmates' administrative segregation sentences run into the second-half of the twenty-first century, the system is not working well. ALJ Harper testified the courts were too restrictive in allowing meaningful sentences and, if he were king for a day, he would reform disciplinary detention status at ISP to make it "meaningful" to the inmates and to provide it with the bite it currently lacks. ALJ Harper would "improve" the system by:

- (1) serving a subsistence diet of bread and water;
- (2) allowing mattresses in the cells only from 10:00 p.m. to 6:00 a.m.;
- (3) requiring inmates to stand the remaining sixteen hours of the day;
- (4) prohibiting all visits to inmates; and
- (5) taking away telephone and canteen rights.

Under the present procedure, if an inmate is found guilty of a rules violation, his first recourse is to appeal the decision to the Penitentiary's warden. If the warden denies the inmate's appeal, he can appeal the decision to the Department of Corrections in Des Moines. Assistant Director of the Department

of Corrections Wayne McKinney usually adjudicates these appeals. If the inmate receives an unfavorable decision from the Department of Corrections, he can appeal the decision into state district court and, conceivably, to the Iowa Supreme Court and even the United States Supreme Court (although this rarely happens).

Inmates who are punished with time in lockup do not necessarily serve 100% of their lockup sentence. Prior to September 1984, the Penitentiary used a time-cut system designed to allow inmates to work their way out of long-term lockup. The system's eligibility requirements were such that most inmates could eventually work their way out of lockup. The time-cut policy awarded progressively larger time cuts for good behavior, i.e., if an inmate remained report free for two months, he received a fourteen-day time cut. If the inmate remained report free for a third month, he received a thirty-day time cut. If the inmate remained report free for a fourth month, he received a forty-five-day time cut. If the inmate remained report free for a fifth month, he received a sixty-day time cut. In all following months the inmate remained report free, he received a sixty-day time cut. This procedure continued until the inmate was either out of lockup or he received a report. If an inmate received a report, he did not receive a time cut for the month in which he received the report or for the following month. If the inmate remained report free for the two months following the

month in which he received a report, he would again receive time cuts beginning with a fourteen-day cut.

The time cuts were awarded by a thirty-day review committee. The committees are composed of the inmate's unit manager, a representative from the Penitentiary's security staff and Deputy Warden James Helling. The committee has the sole authority to grant or deny the time cuts. The committee meetings are also designed as a forum for inmates to air their concerns and grievances about conditions in lockup. The committee meetings also appear to be the primary means of conducting an ongoing evaluation of lockup inmates' mental health. On average, the thirty-day review committees meet with each inmate for five minutes. Inmates have the option of not attending their review committee meetings.

In addition to the regular system of time cuts, there is also a system of super or enhanced time cuts. The Penitentiary's warden may, in his discretion, issue time cuts of six months, a year, or more to inmates who are particularly deserving. Former Warden Hundley made it his custom to grant large time cuts to inmates at Christmas and Easter through the enhanced time-cut system. These time cuts were in addition to the regular time cuts inmates earned. Though the enhanced time-cut system still exists, the evidence at trial showed no warden or acting warden who followed Warden Hundley in the last couple of years has made use of the enhanced system. The evidence showed that, as of the time of trial, very few inmates were receiving enhanced time

cuts. The defendants' expert Camp testified that only seven inmates had received enhanced time cuts in the last three years. Dfs. Ex. S.

Initially, all inmates in lockup were eligible to participate in the regular time-cut policy except for those inmates being punished for having killed someone while in prison. In September 1994, after Warden Nix left his position at the Penitentiary, the interim warden changed the time-cut policy. Thereafter no inmate serving lockup time for an assault which caused an injury was eligible for the time-cut system. This change in policy was the catalyst for the instant case. Prior to trial, the plaintiffs sought a temporary injunction prohibiting the Penitentiary from barring those who had been convicted of assaults causing injury from participating in the program. This Court granted the injunction. The defendants appealed that order and the Eighth Circuit Court of Appeals declined to rule on the matter until this Court issues its final ruling, so the injunction is now in force.

After an inmate serves his time in disciplinary detention and administrative segregation, he seldom if ever returns directly to general population. In most cases the inmate is placed in a status called close management. There are three levels of close management through which an inmate must progress before he is returned to general population. The first level bears a close resemblance to administrative segregation. For example, inmates are confined to the same cell for twenty-three

or twenty-four hours a day and their property rights are still severely limited. Inmates may be allowed to have an additional sweatshirt. In the next two levels, inmates are allowed more time out of their cells to, for example, eat and exercise with the general population. The inmates then are allowed to have some limited additional property in their cells. Unlike time served in lockup, there is no set time an inmate must serve in close management. Inmates advance at the discretion of prison officials. An average stay in close management might be four to six months.

2. PLAINTIFFS' EXPERT'S TESTIMONY REGARDING THE DISCIPLINARY SYSTEM

Gordon Kamka testified at the trial as the plaintiff's expert witness. Kamka has previously held a number of positions with state and municipal departments of corrections in the Eastern United States. Kamka served as the director of the Maryland Department of Corrections, a system of more than 9,000 inmates, 1,700 of whom were under his direct control. Kamka was also warden of the Baltimore City Jail which usually housed 300-400 inmates in lockup. In addition, Kamka was warden of Maryland's Medical and Classification Center, the head of the West Virginia Jail Improvement Program, and has experience in U.S. military corrections. Kamka has testified in more than sixty other prison cases for both plaintiffs and defendants. Kamka has testified in at least three trials concerning

disciplinary systems in others states' maximum security prisons. He has good credentials.⁷

Kamka testified briefly about some of the other institutions where he worked. He said lockup sentences at the Baltimore County Jail could be no longer than two years. Kamka testified his work on the West Virginia prison improvement project familiarized him with the Mt. Olive Correctional Center, a new maximum-security West Virginia prison. Kamka testified inmates cannot receive more than a two-year lockup sentence in the Mt. Olive disciplinary system. Even then, two-year disciplinary sentences are assigned only if an inmate fights and wounds someone. At the time of trial no Mt. Olive inmates were serving disciplinary sentences longer than one year. The longest sentences are usually between three and six months. Any inmate who receives a sentence of six months or more is transferred to a special facility designed to help inmates with disciplinary problems.

Kamka testified to his expert opinion about the disciplinary system at the Iowa State Penitentiary after interviewing a number of inmates in lockup. Kamka spoke with fourteen inmates in cellhouses 220 and 319 on his two visits to the Penitentiary on February 22, 1995, and March 19, 1996. Kamka also read the depositions of five other inmates in those cellhouses. Based on his years of corrections experience and his personal observations

⁷ His resume is Plfs. Ex. 82.

of the Iowa State Penitentiary in Fort Madison, Kamka concluded that sanctions at the Penitentiary are unusually and extraordinarily long. Kamka testified he had not seen such long lockup sentences since the mid-1970s. He further testified it appeared many of the disciplinary sentences were handed out for purely punitive reasons and no corrective benefit was gained from their imposition. The problems with the disciplinary system render it meaningless to the inmates so it does nothing to correct their misbehavior. Rather, the system simply frustrates and angers them.

Kamka testified the current system sometimes results in inmates discharging or almost discharging their sentences and going out into society from lockup status. In some cases, inmates who have spent multiple years in lockup are moved to the general population only a few months before they are released into society. This happens, he testified, because inmates' lockup sentences are often many years greater than their actual court-imposed prison sentences. Kamka called discharging from lockup "particularly dangerous" because the inmates have little or no residual social skills and are ill-adjusted to life on the streets after having spent twenty-three or twenty-four hours of every day locked in their cells. Kamka further testified, the longer the time spent in lockup, the worse off the inmates are because they receive no meaningful intervention or treatment while in lockup. He said inmates who discharge from lockup and head straight for the streets are "walking time bombs."

Kamka suggested how the Penitentiary could address the problems created by its disciplinary system. Kamka testified that he had reviewed Penitentiary records which described Chris Myers' situation. As mentioned, Myers became upset and, over the course of five hours was written up for five assaults for throwing various things out of his cell at guards. Plfs. Ex. 40. Myers was convicted of five assaults that occurred at 10:25 a.m., 10:40 a.m., 12:05 p.m., 12:30 p.m., and 3:53 p.m. Id. For just those five assaults which took place in five and one half hours, Myers received a total sentence of 105 days of disciplinary detention, three and one-half years of administrative segregation and he lost three and one-half years of good time. Id. Kamka testified there was no benefit to treating the extended incident as five separate incidents and practically quintupling the inmate's disciplinary sentence. He recommended the Penitentiary only charge an inmate with one disciplinary violation in a similar situation. Kamka testified that the ALJ should be able to use a flexible matrix which sets out possible penalties and that the ALJ should stick with the range set out in the matrix. Kamka testified that behavior contracts could improve the behavior of inmates in lockup. He said in a behavior contract, an inmate is promised certain privileges if he acts in a certain manner. Kamka suggested the contracts would be most effective if they allowed inmates a realistic chance to earn their way out of lockup. He testified that behavior contracts are not currently used at ISP.

Kamka also testified about the thirty-day reviews intended to give inmates in lockup an opportunity to discuss their situations with the people authorized to modify their living conditions. Kamka testified that, at Fort Madison, these reviews are a farce and typically last only five minutes. For those inmates ineligible for time cuts under the revised disciplinary policy (Kamka interviewed inmates prior to the issuance of the Court's temporary injunction), the reviews are particularly meaningless because the committee rarely, if ever, acts on the inmates' concerns. This prompts many of the inmates not to attend their review committee meetings.

As mentioned, the thirty-day-review meetings appear to be the primary means of conducting an ongoing evaluation of lockup inmates' mental health. The Iowa Department of Corrections policies #IN-V-05 and #SE-IV-05 mandate thirty-day reviews for inmates in lockup and provide:

The reviews will consider whether the reasons for initial placement [in segregation] still exist or are still valid. These reviews will also consider adjustment, disciplinary conduct, observation treatment program and work reports as well as cell inspections, the seriousness of the placement incident and other relevant factors determined by the review committee.

Clearly, the review committee makes no serious attempt to meet these requirements during the monthly meetings. Even if the committee made a good faith effort to comply with Department of Corrections policies, it would be impossible to do so in a five-minute meeting or any short period of time. Moreover, those inmates most in need of help because of mental health problems

are the least likely to be eligible for time cuts and, therefore, the most likely to skip their meetings. The revised time-cut policy deprives the committee of what minimal psychological insight it would otherwise gain from a short meeting. The policy also insures that the inmates who would most benefit from monthly reviews do not receive the help they need required by departmental policy set out above.

Kamka testified a time-cut procedure is crucial to a well-run system because it gives inmates an incentive to change their behavior. He said in West Virginia's disciplinary system all inmates receive time cuts for good behavior. Kamka also testified that most major infractions in the Iowa system would be minor infractions in West Virginia. He testified in the Maryland system, anyone sentenced to disciplinary time for more than 180 days is sent to a super maximum security facility where the average stay is only 13 months. Almost no inmates stay in the super max facility more than three years. Kamka testified the Iowa Penitentiary's disciplinary system is consistent but, "There is nothing good about being consistently wrong."

3. DEFENDANTS' EXPERT'S TESTIMONY REGARDING THE DISCIPLINARY SYSTEM

The defendants called their own expert, George Camp. Camp is co-president of the Criminal Justice Institute.⁸ From 1973-77 he was in charge of the Missouri Department of Corrections. Id. He has good credentials and has testified in more than fifteen

⁸ Camp's resume is Dfs. Ex. 00.

cases, usually for the defendants, but also at the request of the court. Id. Camp, in the Court's opinion, was at a distinct disadvantage during the trial because, on cross-examination, he said, "I have never seen the plaintiffs' exhibits."⁹ From 1963-71, Camp was a parole officer in the Federal Bureau of Prisons. Id. Camp testified the thirty-day disciplinary detention sentence an inmate receives for a major report at ISP is not out of line with the federal system where an inmate might expect to receive 30-120 days of disciplinary detention for a rule violation. Camp testified that a fundamental problem at Fort Madison is that they must keep a lot of prisoners in lockup because there not enough of general population cells. If they have someone they want to take out of general population because he has earned it, they often have no place to put him. Camp did not say if an inmate in the federal system who violates a rule also receives a one-year sentence in administrative segregation and an indeterminate sentence in close management as does an inmate at ISP. He did say most prisons place inmates in an intermediate status between lockup and general population.

Camp testified ISP's disciplinary system is different from many other systems he has observed because Iowa inmates receive definite sentences. In most other systems, he said, inmates receive indefinite sentences in disciplinary detention. Camp

⁹ There are ninety-one plaintiffs' exhibits (some with multiple parts) which the plaintiffs claim support their contentions.

also testified, in the indefinite disciplinary systems, inmates usually receive reviews every thirty days. Camp also testified, in most prison systems in the United States, if an inmate receives more than one report, all of the reports merge into one report for which the inmate is reviewed every thirty days. This is different from the Iowa Penitentiary's system where inmates must complete serving their time for each separate offense. Nonetheless, Camp testified lockup times at the Penitentiary are similar or slightly shorter than what he sees at other prisons. This conclusion is hard to support when one considers some of Camp's exhibits which are discussed on the next two pages of this order.

Camp testified lockup sentences at the Penitentiary are deceptively shorter than they appear at first blush. He attempted to support this premise with Dfs. Ex. T which supports his position that 43.7% of inmates in cellhouses 220 and 319 will be released from lockup in less than two years. This, of course, also means that 56.3% will serve more than two years. Camp said many inmates discharge their sentences prior to their scheduled release from lockup; therefore, those inmates do not serve their entire assigned lockup sentence. The flip side of that situation is that some inmates discharge from lockup; i.e., they spend no time in the general population before they are released into society. Camp called this situation "unfortunate," and said something should be done to help lockup inmates prepare to live in society outside the prison.

By Camp's estimates, Dfs. Ex. QQ, p. 15, the average time an inmate spends in lockup is 110 days. Camp's calculations were challenged because they counted only those inmates who had already been released from lockup. Dfs. Exs. T, EE and QQ (with EE's "backup" exhibit GG), all of which related to length of time in lockup, did not include inmates who were currently in lockup but had not yet discharged. This excluded from his calculations inmates such as Kurtis Strohbehn, Michael Galvin, Tim Thompson, Leonard Wreiden and Nathan Wallace, who were in lockup at the time of the trial and had been there for twelve, twelve, eleven, twelve, and nine years respectively. Plfs. Ex. 1, pp. 88, 90, 89, 89 and 88 respectively. Camp's calculations were also less than accurate because they included some inmates who received suspended sentences and never spent a day in lockup. In addition, Camp's calculations were somewhat deceptive because they included quite a number of inmates who had spent only very short periods in lockup. His calculations also failed to account for the additional lockup time many, if not most, of the inmates in cellhouses 220 and 319 will pick up before finally being released from lockup, which is not shown by Dfs. Exs. Z, EE, GG, or any other exhibit.

Though Camp introduced Dfs. Exs. AA, BB and CC, to attempt to support the premise that ALJ Harper is not frozen into giving long periods of administrative segregation, Dfs. Ex. AA showed that at hearings for all the population inside the walls at the Penitentiary during the month of December 1995, 16% of his cases

were dismissed, 10.4% of the cases were reprimanded, and 2.8% were fined. However, Dfs. Ex. BB, which related to cellhouse 220 where a good deal of the problems are, showed that, during the same period, no cases were dismissed involving cellhouse 220 inmates, none were reprimanded, and none were fined.

Camp's statistics showed 80% of inmates in cellhouse 319 had disciplinary sentences of a year or more, while 56% of inmates had disciplinary sentences of two years or more. In cellhouse 220, Camp's statistics showed more than 97% of inmates had disciplinary sentences of a year or more, and more than 86% of inmates had disciplinary sentences of two years or more. As mentioned, Camp's review of the time-cut system showed only seven inmates received enhanced time cuts in the past three years.

Dfs. Ex. S. Camp testified that usually an institution has a matrix with major and minor offenses. Seventy-five percent of all states have them. He said there ought to be a range with some variation of sentences. He testified that forty to fifty years in lockup is not appropriate, that the officials at ISP should back off, rethink the whole problem, and he concluded that it can be accomplished. Plaintiffs' expert Kamka agreed wholeheartedly with these statements.

Camp, the defendants' expert, concluded his testimony by saying that if he were anointed king for a day he would wipe clean the slates of inmates with especially long lockup sentences and transfer them to general population to see if they had learned to control their behavior. Camp repeated his statement

that the Iowa State Penitentiary's disciplinary system would benefit from review as would all prison's disciplinary systems. Camp suggested it would be in the best interest of both parties to restructure the disciplinary system, especially if it could be done without judicial intervention. Camp agreed with the plaintiffs' expert Kamka that Iowa authorities should back off and rethink the whole lockup situation.

4. PENITENTIARY OFFICIALS' TESTIMONY REGARDING THE DISCIPLINARY SYSTEM

Martin Rung had been the unit manager of cellhouse 220 for about seven months when he testified about the Penitentiary's disciplinary sentences. Unit managers periodically rotate the cellhouses for which they are responsible. Rung estimated half the inmates in his cellhouse are in administrative segregation and half are in disciplinary detention. Rung testified he has seen some inmates discharge their sentences directly from cellhouses 220 and 319 to the cities and towns of Iowa and elsewhere. He included Clay Spears as one of those who had been released directly to the civilian world after nine consecutive years in lockup and there had been no program to help prepare him for release.

Unit manager Rung testified about review committee meetings for inmates in cellhouses 220 and 319. Rung said the reviews last about five minutes apiece. He said during those five minutes the reviews serve as a forum for inmates to discuss their problems and concerns. Also in those five minutes the review

committee is able to observe the inmate and decide whether he has behaved well enough to earn a time cut that month. Some of the criteria involved in determining eligibility for a time cut includes whether the inmate keeps himself and his cell clean and whether he has remained report-free for the previous month. Rung testified the reviews have 50% to 60% attendance rates, and that he was unsure why some inmates choose not to attend. He did testify, however, under the new time-cut policy many of the inmates are no longer eligible for time cuts because they are in lockup for having committed assaults. Rung testified that at that time, no one in cellhouse 220 was getting time cuts. The defendant's expert Camp also testified about the attendance rates at the monthly reviews. Camp found attendance rates dropped off dramatically after January 1995 -- the month the review committees stopped recommending time cuts.

Richard Larkin, a counselor in cellhouse 220, corroborated Rung's testimony that most inmates were ineligible for time cuts after Penitentiary officials changed the time-cut policy pertaining to assaults. There is little incentive to go to monthly review if there is no chance to be given a time cut.

James Helling testified about the Penitentiary's enhanced time-cut system. Helling was ISP deputy warden at the time of the trial. Helling developed the system of enhanced time cuts used at ISP. Helling testified an inmate is eligible for enhanced time cuts if (1) he has been in administrative segregation for more than two years, (2) he shows a positive

attitude, and (3) he is referred to the thirty-day review committee by his unit manager and attends his unit reviews. Helling was unsure if any inmate received an enhanced time cut in the past year. He was sure that month after month there are few referrals to the time-cut committee. Even though almost no inmates receive enhanced time cuts, Helling testified the program works well.

Helling was asked about Kevin Dean Edwards, an inmate who, at the time of trial, had been free of reports for fifteen months and had not received an enhanced time cut even though he was otherwise eligible for one. Helling speculated Edwards had not received an enhanced time cut because during those fifteen months he had been warned (a disciplinary measure less serious than a minor report) one time for turning the volume on his television above the acceptable level. There was also testimony about inmate Michael Gavin who had been in lockup since 1983. Gavin had not received additional disciplinary time since 1988 and had earned a number of enhanced time cuts. Nonetheless, these cuts were not enough to discharge his entire disciplinary sentence. Helling testified he was unaware and had not been told of the September 1994 changes to the standard time-cut policy which precluded certain inmates in administrative segregation who had committed assaults from receiving time cuts.

Robert Washington was the unit manager for cellhouse 319 at the time of the trial. Washington testified there were three inmates in his unit eligible for enhanced time cuts, but none of

the three was receiving the cuts. Washington said one of the inmates was once offered an enhanced time cut of fourteen days but refused it because he believed it was too short. He testified neither of the other two inmates who are eligible have been offered time cuts. The Court finds that, even though the prospect of advanced time cuts appeared to be available to many inmates, as a practical matter, almost no inmates actually receive enhanced time cuts especially after the change in policy. Washington testified that he had been employed at ISP for a number of years and that, prior to 1981, inmates were not in lockup for more than a year.

Colonel John Emmett testified about ISP's disciplinary practices. Colonel Emmett is the Penitentiary's security director. Colonel Emmett offered some suggestions on improving the disciplinary system. He testified the enhanced time-cut system would be more effective if the inmates knew the precise requirements for earning enhanced time cuts. Colonel Emmett also said the hearing officer does not have the authority to reduce major reports to minor reports because otherwise inmates would constantly badger the hearing officer to do so. Colonel Emmett testified that he, by designation to his aide Larry Moline, makes the decision as to what will be a major or a minor report. When shown Plfs. Ex. 4, he agreed that "most" (it shows 95%) reports were major. He said that once or twice a year, ALJ Harper comes to him and asks that he reduce a major to a minor.

Colonel Emmett's testimony revealed a situation that must be taken into consideration when trying to improve the way things work as to lockup. He said that in the last ten years, there have always been at least 160 inmates in lockup and that in the same period, there have never been more than 190 inmates in lockup. Lockup, therefore, has 160 to 190 cells assigned to it. If nobody did anything wrong over a sixty-day period so that there would be no new additions to lockup and they got down to 130 inmates that had to be in lockup, they would still have to keep most all of the inmates in lockup because they do not have the needed cells to transfer those coming out of lockup to general population cells. Colonel Emmett said he had and would recommend that a penalty matrix, such as the one used in Anamosa, Plfs. Ex. 12, be used at ISP. That matrix takes into account both favorable and unfavorable circumstances of an offense and would help in meting out fair punishments. Finally, Colonel Emmett testified there is nothing about the current disciplinary system at the Iowa State Penitentiary that could not be improved a little and he informed the Court that fifty inmates in lockup status were going to be transferred any day to ISP from Anamosa. This addition, of course, will make the non-lockup cell availability even worse. This Court is persuaded that the evidence clearly shows that witnesses Colonel Emmet, Camp, Kamka, et al., cannot be wrong, and that the Iowa State Penitentiary should have a matrix or a grid similar to Plfs. Ex. 12 used at Anamosa.

James McKinney testified about the Penitentiary's disciplinary system. At that time he was the deputy director of institutions for the Iowa Department of Corrections (IDOC) and at the present time is acting director of the IDOC. In his position McKinney oversees eight wardens and is the judge of all disciplinary appeals from an adverse warden's decision. McKinney testified he is not concerned the Penitentiary's disciplinary system locks up inmates for too long. McKinney said, if they find any incorrigible inmates, they transfer them to Fort Madison, and that it was his intention to transfer an additional five or six inmates to Fort Madison soon. McKinney also testified he is not concerned nor bothered by the twenty-to-one ratio of major reports to minor reports in cellhouses 220 and 319. He testified that there was a need to be consistent in handing out sanctions. McKinney testified he often suspends disciplinary reports which are written for six months or a year and allows the inmate to avoid serving time in lockup if they receive no other reports for the duration of the disciplinary sentence. The defendants offered statistics to support some of their positions, but there was no evidence that supported this particular statement of McKinney's and none of the inmate witnesses ever mentioned getting any relief from a McKinney decision. McKinney also testified he was unconcerned about lengthy lockup sentences because giving the warden authority to absolve all lockup time places a check on the system. There was no evidence that any warden at Fort Madison (except for former

Warden Hundley, whose tenure was very short) ever exercised this power in a significant way.

McKinney testified the appropriate discipline should take into account the severity of the offense. He said if two inmates stopped fighting when told to do so he would punish them less severely than if they continued to fight and guards needed to use mace to break up the fight. McKinney testified that, unlike himself, if Charles Harper was faced with the same two situations, ALJ Harper might hand out the maximum penalty for both incidents. McKinney said there is not a written policy (matrix) explaining what penalties an inmate will receive for certain rules violations. McKinney testified a behavior contract where inmates could "knock off major chunks of time if they behaved" would be a good idea. He said the system is broken down. He acknowledged that he was not happy with the fact that Iowa had more prisoner lawsuits than any other state in the country (which fact, of course, supports his conclusion that the system is broken down). Gordon Kamka, the plaintiff's expert agreed that behavior contracts would be a good idea. He said behavior contracts are not currently used at ISP. McKinney said former Warden Hundley often gave inmates substantial reductions in their disciplinary sentences if they behaved well but Wardens Acevedo and Nix never made time cuts to his knowledge.

David Babcock testified about the time-cut system. Babcock was a counselor in cellhouse 319 from March 1995 to May 1996. Babcock testified about one-half to two-thirds of the inmates

attend their thirty-day reviews. Babcock estimated six to ten inmates receive time cuts each month under the normal time-cut policy. He further estimated two of fifty inmates receive enhanced time cuts in cellhouse 319. Babcock testified he recalled one occasion where an inmate had all his lockup time cut three months before he was to discharge his sentence. Nicola Ann Brown, a psychologist in cellhouse 319, corroborated Babcock's testimony that only two inmates in cellhouse 319 were receiving enhanced time cuts at the time of the trial.

B. CONDITIONS IN ADMINISTRATIVE SEGREGATION AND
DISCIPLINARY DETENTION AT THE IOWA STATE PENITENTIARY

1. BEHAVIOR OF INMATES

ALJ Harper also testified about the mental health issues involved in the disciplinary process. Harper said he does not check closely to see if the inmates he is punishing have psychological problems when he presides over the administrative hearings. He did estimate, however, as many as 20% of the inmates in cellhouse 220 have mental problems. ALJ Harper agreed some inmates he punishes could probably use psychological help to extricate themselves from a cycle of misbehavior.

Though ALJ Harper did not cite inmate Tim Thompson as an example, he could have. ALJ Harper adjudicated Thompson guilty of 185 major reports between 1984 and 1988. Plfs. Ex. 27, pp. 1-275. Consequently, Thompson has spent the last eight years in disciplinary detention. Thompson remains in administrative segregation today. Thompson said, "I had so much time I had no

hope of getting out so I went ahead and did a lot of dumb things." He originally came to the Iowa penal system for false use of a financial instrument and had no violence in his background. His release date from lockup was, at the time of trial, 2025, Plfs. Ex. 1, p. 89, but he will have served his sentence in full this year, 1997. He has never been out of lockup in twelve years and will soon be out on the streets. Thompson said he would like to get stress and anger management programs, but nothing has ever been offered. He says, "Cellhouse 220 is noisy -- lots of banging and really dirty. Being on the bug range is very stressful, it takes its toll.¹⁰ You can't sleep, you get high blood pressure and turn into a mad man."

ALJ Harper also adjudicated a number of reports involving Inmate 109.¹¹ Inmate 109 received fifteen major reports on almost consecutive days in November and December of 1993. On previous occasions he had been written up for cutting his wrists and painting his cell walls with his own blood. ALJ Harper admitted he did not review Inmate 109's psychological records

¹⁰ The bug range is described in depth beginning on page 38.

¹¹ This trial involved a great deal of sensitive and confidential information, exhibits and testimony. The attorneys for both the plaintiffs and the defendants were rightly concerned about keeping this information as confidential as possible. During the trial, when it was apparent sensitive and confidential information was about to come into evidence, the Court asked the plaintiffs' class representatives to leave the courtroom. The class representatives and their counsel agreed this was the best approach to the situation. For this reason, the Court has elected to assign numbers to certain inmates to preserve those inmates' confidentiality.

before adjudicating him guilty of any of his fifteen major reports.

In September and early October 1995, ALJ Harper adjudicated five assault reports involving Inmate 103. Inmate 103's IQ score is 61. Tests performed when Inmate 103 was evaluated during the intake procedure at the Iowa Medical and Classification Center in Oakdale, Iowa, showed Inmate 103 to be illiterate. Inmate 103 spent time in juvenile mental health facilities growing up. He said he had a fourth- or fifth-grade education. When Inmate 103 was initially inducted into the Iowa correctional system in 1987, he was placed in the special needs unit for mentally ill inmates.¹² Psychological reports show Inmate 103 is delusional and often bangs his head against his cell wall. Medical records show Inmate 103 has received stitches in his forehead.

When he testified at trial, Inmate 103 said he was sure that singing cowboy Gene Autry was his father because he and Autry are both bald. He also testified he knows of women who have been raped at the Penitentiary and whose bodies have subsequently been dumped in the Mississippi River. He told the Court he bangs his head against the walls to keep his real father away from his cell. He recently spent a short time at the Oakdale Center, but he was sent back to Fort Madison because he was too aggressive to be treated there. He said September 1995 was a good month for him. In reality, Inmate 103 received six major reports and had

¹² The Special Needs unit is described beginning on page 47 of this Order.

four and one-half years added to his lockup time during that month.

Inmate 103's October 1995, report is interesting, because it recognized Inmate 103 has significant problems. On October 5, 1995, the Penitentiary's psychologist Kazam Hassan wrote a memo to unit manager Martin Rung which provided:

It now appears that since the last several months [Inmate 103]'s behavior and emotional status is again deteriorating. During the last few weeks he was involved in two separate incidents. On both occasions [Inmate 103] became assaultive towards officers without any apparent reason. He was also verbally threatening to kill then. By staff observations, he has been seen talking to some imaginary subjects in his cell. It is further noted that during these incidents he was quite delusional about the officers. It is also noted that in between these incidents he remains calm, aloof, and detached.

At this point it is recommended that [Inmate 103] should again be transferred to IMCC [the Iowa Medical Classification Center at Oakdale, Iowa] for further observations and to determine if psychiatric treatment is in order. In this regard, it is noted that [Inmate 103] will discharge his current sentence in May, 1996. A transfer to IMCC would also provide him an opportunity to have a social interaction, as well as to determine the possibility of civil commitment before or upon his release into the society.

Plfs. Ex. 47, p. 29. Strikingly, this review seems to be in direct contrast to a similar section of Inmate 103's classification review which Hassan authored on October 24, 1995, only nineteen days later. The review provided, "In my other contacts, he presented as oriented and alert but somewhat rambling. No unusual concerns are noted at the present." Kazam Hassan, psychologist III, signed this classification review. Plfs. Ex. 47, p. 7-5.

Two later reviews of Inmate 103 also found he did not have noteworthy mental or behavioral problems. Significantly, the "Clinical Report" section of Inmate 103's December 19, 1995, classification review provided, "No mental illness noted." Louis Gustilo, psychologist II, signed this classification review.¹³ Plfs. Ex. 47, p. 7-2. The similar section of Inmate 103's January 16, 1996, classification review provides, "No unusual problems have been reported to this psychologist." Plfs. Ex. 47, p. 7-1. Kazam Hassan, psychologist III, signed this classification review. There is no record that Inmate 103 had any treatment or care that would make this drastic change from October to January possible.

ALJ Harper testified he was not aware of Inmate 103's psychological records before he found him guilty of each of the five assault charges. ALJ Harper testified he might have handled Inmate 103's cases differently if he had known he was mentally ill. When shown Plfs. Ex. 47, p. 27, which is a letter showing that Inmate 103's mental health is deteriorating, ALJ Harper said, "I didn't know about and didn't recognize he was deteriorating. I did recognize that my giving him thirty days in the hole and 365 days in administrative segregation was not deterring him at all." The defendants' expert George Camp testified that generally 5-10% of inmates in a corrections system are psychotic. He said a hearing officer needs to know if an

¹³ Gustilo did not testify at trial.

inmate has a mental illness before sentencing the inmate.

Similarly, Richard Larkin, who was Inmate 103's counselor and, as such, sat on Inmate 103's thirty-day-review committee, testified neither he nor the two other committee members knew Inmate 103 was delusional when they evaluated him for possible time cuts.

ALJ Harper, who, of course, is in charge of implementing it, testified that the current disciplinary system is not particularly meaningful in correcting the behavior of the inmates on the "bug range." The bug range is a colloquial term for the lower ranges of cellhouse 220 which are generally conceded to be populated with the inmates with the most severe mental and behavioral problems. The combined testimony of inmates and prison staff alike showed the bug range to be dominated by maddening waves of noise. Some inmates yell at the top of their lungs for no apparent purpose other than to make noise. This behavior often lasts for hours.

Other inmates are known as "bangers." These inmates bang on either their cell walls, their cell bars or their stainless steel sink-toilets combinations. They bang with whisk brooms, shoes or whatever else makes the loudest racket. Some inmates bang on the cell walls with their heads. This form of banging produces less noise than the other methods, yet is, of course, disturbing. Some inmates testified they try to reverse the normal human sleep cycle, staying awake during the night and sleeping during the day because the only time of day the din subsides enough to concentrate is during the middle of the night. Nonetheless, it

is not uncommon for bangers to be active at 3:00 a.m. Other inmates testified they fashion crude earplugs from toilet paper to keep their sanity.

Still other inmates in the bug range urinate and defecate anywhere other than their stools. Some inmates cover the walls of their cells with feces. Other inmates gather their urine and throw it at anyone who passes by their cell. Some of these inmates also defecate and urinate in the communal shower and cover the walls and fixtures with their excrement. This makes it unlikely that the people who follow them in the shower will emerge cleaner or healthier. One inmate, Inmate 110, is prone to urinate in front of his cell. This inmate urinates there so often his recurring puddle is nicknamed "Lake [Inmate 110's last name]".

Not much can be done to quiet the yellers. Inmate Chris Myers kept a log, Plfs. Ex. 81, over a period of time which showed, for example, in the early morning hours of March 9, 1996, there were bouts of screaming and hollering at 6:02 a.m., 6:08 a.m., 7:07 a.m., 7:40 a.m., 8:38 a.m., 9:03 a.m. The bouts lasted on average twenty or thirty minutes. In the early morning hours of March 11, 1996, there were screaming bouts at 1:45 a.m. and 3:38 a.m. The second bout lasted two and one-half hours. There was another two-hour bout of screaming and yelling that began at 7:55 p.m. that evening. Other prolonged incidents of screaming occurred at 10:02 p.m. and 10:22 p.m. that evening. The log showed similar outbursts for each day.

Another inmate, Steve Wycoff, testified cellhouse 220 was like a zoo -- feces all over, papers all over, and a lot of people with serious problems screaming all the time and that nobody could do anything about it. Inmate Jeffrey Winters testified that in cellhouse 220 there was a constant loud noise with people urinating and defecating all the time. Inmate Alan Langley said, "They have all the nuts in there, it's noisy, filthy, and stressful." Inmate Dennis Henderson said he had been three years in cellhouse 220, that it is rough in there -- twenty-four hours of yelling and banging. Inmate Kevin Dean Edwards testified, "I can't sleep at night because the 'bugs' bang and people scream all night. Nothing is ever done about it."

Cellhouse 220 unit manager Martin Rung testified that there are at least five inmates whom he considers problem yellers. Rung said the noise level had increased since he has been in cellhouse 220. He said, "We do not write them up for banging." He testified that some inmates are almost always loud. Other testimony showed the noise problems are worse in cellhouse 220 than 319. However, cellhouse 319 unit manager Robert Washington testified that the noise problems in cellhouse 319 are exacerbated because the open (front door) cells in 319 allow the noise from the banging and yelling to carry throughout the cellhouse. Marilyn Sales, the head nurse for the Iowa Department of Corrections, testified the living conditions in cellhouse 220

were "part of the picture" that contributed to Inmate 103's mental breakdown.

One of the plaintiffs, Inmate 111, testified about the mental health of some of the other inmates who were also housed in cellhouse 220. Inmate 111 has no psychological background and his observations were simply those of a man who has spent twenty-three or twenty-four hours a day with the inmates he observed over a period of years. The Court finds Inmate 111's lay testimony worthy of consideration and credible since it had been admitted that several inmates in cellhouse 220 are mentally ill. See Plfs. Ex. 84(a). Inmate 111 testified: Inmate 101 bangs constantly and defecates in the shower. Inmate 103 is a banger. Inmate 104 bangs and screams and hollers that it is OK to rape children. Inmate 105 is explosive at times. Inmate 107 is the worst of all the bangers. Inmate 109 cuts himself and paints himself with his own blood. Inmate 112 hears voices, sees demons and screams. Inmate 113 bangs and screams. Inmate 114 believes the guards are trying to poison his food. Inmate 115 believes he has a woman in his cell. He has also cussed all day for every day of the last seven years. Inmate 116 sings all day. Inmate 118 does not shower. Inmate 119 frequently urinates in his cell; he is also a banger. Inmate 120 has totally lost his mind, is a banger and hollers all the time. Inmate 121 must be forced to take a shower, rips his clothing to pieces, and believes Jesus Christ is going to set him free. Inmate 122 screams and hollers about what the white inmates are planning to do. Inmate 123

strips down in his cell, masturbates and "goes crazy." Inmate 124 is a banger and a screamer. Inmate 125 is absolutely silent. Inmate 126 is a banger and a screamer and throws his feces all over. Inmate 127 believes the National Guard is coming to the Penitentiary.

2. RESTRICTIONS PLACED ON, AND SERVICES AVAILABLE TO, LOCKUP INMATES

Inmates in disciplinary detention or administrative segregation are restricted to their cells for twenty-three hours per day on the weekdays and for twenty-four hours per day on the weekends. The one hour inmates may leave their cells each weekday is reserved for exercise. This hour includes the time spent going to and returning from the yard. These inmates must exercise outdoors. They are never allowed to exercise in the Penitentiary's full-size gymnasium. This is true in the summer and the winter. The apparent reason for this is for greater security. When the weather is cold inmates are allowed to wear a hat, coat, gloves and boots outside to exercise. Lockup inmates must exercise in fenced-in pens approximately the same size and shape as batting cages.

The plaintiff's expert Gordon Kamka testified all lockup inmates in the Baltimore County Jail had the option of indoor exercise while he was the warden. Kamka said the same was true in the West Virginia correctional system. Kamka said the exercise pens are poor excuses for real exercise and compared the

Iowa Penitentiary's pens with those used to store dogs at a kennel.

The defendant's expert George Camp reviewed prison records and concluded, on average, inmates in cellhouse 220 take advantage of just 27.3% of their exercise opportunities. Dfs. Ex. L. Camp found the months of highest usage are in the summer. In the two and one-half years of records Camp reviewed, the month when the largest percentage of inmates in cellhouse 220 chose to exercise was August 1995, when 42% of inmates exercised. Id. Camp found the lowest months of usage are in the winter. The lowest month of usage was February 1994, when inmates used only 8.4% of potential exercise time. Id. Camp estimated, on average, inmates in cellhouse 319 take advantage of 48.5% of their exercise opportunities. Dfs. Ex. N. During the month of highest usage in August 1993, inmates in cellhouse 319 exercised 63.4% of the time. Id. In the month of lowest usage, January 1994, inmates in cellhouse 319 exercised only 27.1% of the time. Id. Defendants' Ex. K shows that in cellhouse 220, in January 1995, of 1,000 opportunities to exercise, 900 were refused and 100 were accepted.

The defendant's expert Camp testified about the American Correctional Association's standards governing the amount of exercise time an inmate in lockup should receive. Camp testified ACA standards mandate inmates in lockup should receive at least one hour a day, five days per week, of exercise. Plfs. Ex. 89, p. 3. Camp testified, in his experiences prior to visiting the

Iowa Penitentiary, he had seen institutions which allowed inmates in lockup as much as two or three hours of exercise each day. Camp said without exercise inmates are less able to keep their minds and bodies healthy. The plaintiff's expert Kamka testified a discipline system, such as the Penitentiary's, which provides little opportunity for exercise and out-of-cell time ultimately results in lazy and lethargic inmates who gain weight and develop medical problems.

Camp observed cellhouse 319 and testified the cells provide 48 square feet of floor space. Of that area, only 21 square feet, or less than half of the cell's floor space, is unencumbered. Unencumbered space is that which is not occupied by some fixture or furniture such as a cot, a toilet, or a foot locker. Camp testified the cells in cellhouse 319 are "much smaller than what anyone would design now." According to Camp, the American Corrections Association suggests a minimum standard of 80 square feet for a cell used to incarcerate an inmate who is to be locked up more than ten hours each day. Of that 80 square feet, Camp said the ACA standards call for 25 square feet of it to be unencumbered. On the other hand, Camp said the opportunity to exercise is more important than having the full amount of recommended space and quality of life is much more important than cell size. Camp also testified the ACA standards are only suggested, not mandatory. Testimony from inmates in cells in 319 showed there is not enough room to even do pushups. Cells in 220 are about twice as large as those in 319.

The plaintiff's expert Gordon Kamka testified about the programming in lockup. Kamka said in cellhouse 220 programming consists of only the barest educational opportunities. For all intents and purposes, he testified, inmates in cellhouse 220 are deprived of programming. Inmates in lockup are also not allowed to hold jobs. Nicola Ann Brown, a prison psychologist, testified the programming for cellhouse 319 inmates is similarly lacking. Kamka contrasted the Penitentiary with the super maximum security facility in Maryland where there is a bevy of programming such as closed-circuit TV which allows inmates to take high school and college classes while in disciplinary status.

Richard Larkin is a counselor in cellhouse 220, arguably a cellhouse with tougher cases than 319. Larkin testified about the programming that inmates in lockup receive. Larkin testified he spends about one hour each day discussing personal problems with the inmates in his cellhouse. Larkin said some inmates at the Penitentiary may take a social skills class and an anger management class. In those classes inmates read materials and listen to audio tapes. Larkin testified he was not sure if inmates in cellhouse 220 have access to the tapes. Other testimony indicated it can take weeks before an inmate can get tapes because there are only seven sets of tapes for the approximately 1,000 inmates in the Penitentiary and the lower-security John Bennett and farm facilities which are also located in Fort Madison, Iowa.

David Babcock a counselor in cellhouse 319, testified he does not often counsel inmates personally. On the other hand, he said, most of the inmates do not ask for personal counseling. Babcock estimated two inmates of fifty participated in the social skills program offered in cellhouse 319 while he was the counselor. He said there are no opportunities for group counseling in cellhouse 319. Inmate Kevin Dean Edwards agreed that there are essentially no programs in cellhouse 319. He testified, "I saw a psychologist once, about a year and a half ago." The defendants' expert Camp testified inmates do not need programming to maintain a sound mind and body because contacts with staff, recreational programs and books accomplish the same purpose. Camp took issue with the ACA standards which call for inmates in lockup to have contact with a mental health professional once a month and an evaluation every three months. He said that most inmates do not require such an extensive level of care. He said this level of care should be reserved only for those inmates who truly need it.

As was described on page 3, inmates in lockup are allowed few privileges. One restriction already mentioned it that lockup inmates are allowed to take only three showers per week. Kamka testified in his experience, such shower restrictions are "incomprehensible." A nurse makes rounds through the lockup cellhouses five days a week. One counselor, Martin Rung, said he makes "occasional" rounds. There are also a priest, a rabbi, an

imam,¹⁴ and other religious leaders who make occasional visits to the prison. In the six months prior to the trial, however, only the priest had visited cellhouse 220.

Colonel Emmett testified about conditions in the close management program. He said an inmate in close management has about the same level of privileges as does an inmate in administrative segregation. A close management inmate can, for example, have a sweatshirt whereas an inmate in administrative segregation may not. In some levels of close management inmates are also allowed to leave their cells to eat with inmates from the general population. Close management is more fully discussed on page 15 of this Order.

3. IOWA MEDICAL AND CLASSIFICATION CENTER DIRECTOR'S TESTIMONY
REGARDING MENTAL HEALTH CARE AT IMCC'S SPECIAL NEEDS UNIT

Much of the testimony at trial was devoted to the status and care of the inmates' mental health. The defendants' expert George Camp testified his review of prison records showed there are about 500 inmates at ISP. Fifty of those 500 inmates are mentally ill and half of the mentally ill inmates are in disciplinary detention or administrative segregation.

Lowell Brandt, the treatment director at the Iowa Department of Corrections' Medical and Classification Center in Oakdale, Iowa, testified about how his department cares for inmates with mental health needs. Brandt discussed the "special needs" unit at Oakdale which is designed to help inmates at Oakdale and other

¹⁴ An imam is a Muslim religious leader.

institutions who have difficulty residing in a prison's general population. Many of the inmates who meet this description are mentally ill, although mental illness is not a requirement for transfer to the special needs unit. He said the special needs unit is an actual mental hospital setting except the special needs officers do not have mental health training. Brandt said the special needs unit is not equipped to handle violent, aggressive or high risk inmates and must reject them when they are referred for transfer to the unit. This would and has included most of the inmates at ISP. "We don't want them and don't need the aggressive or high risk inmates who are also mentally ill," Brandt testified. He then went through a list of lockup inmates. He concluded by saying very few have ever been transferred to our Oakdale unit. "I believe that the mental hospitals in Iowa are the proper place for them and they can stay until some doctor says they can get out. They are civilly committed, and one of the advantages of that is that they can be forcibly medicated."

Brandt testified one of the goals of the special needs unit is to help inmates buried in long lockup time. This testimony is corroborated by the Oakdale facility's written description of the special needs unit. Brandt said 25-50% of the inmates who come to the special needs unit have accumulated extraordinary lockup sentences at the institutions from which they were transferred. The special needs unit is authorized to reduce the disciplinary sentences imposed at other facilities. Testimony showed that

very few of the inmates who are transferred to Oakdale come from cellhouses 220 or 319.

Brandt testified the waiting list for the special needs program can be as long as one year. He testified if an inmate has committed an assault recently he probably will not be considered for the special needs program because Oakdale does not have the ability to handle violent inmates. He testified the only information the Oakdale staff receives about an inmate's assault report is the brief description on the Department of Corrections computer records. Brandt said he never travels to ISP to evaluate potential participants in the special needs program. He testified it would not be difficult to create a special needs program designed to deal with maximum security inmates.

Brandt testified the special needs program at Oakdale uses a different disciplinary system than at ISP. The Oakdale system has fails, minor infractions and major infractions. An inmate who receives a fail must return to his room. About half of the disciplinary reports at Oakdale are fails. The other half of the reports are evenly divided between minor and major infractions. Brandt said an inmate who takes part in a fight where blows are exchanged would probably earn a major infraction at Oakdale and could receive anywhere from two to ninety days in disciplinary detention and some additional time in administrative segregation and be considered seriously for a transfer to Anamosa or Fort Madison. A fight usually merits a fourteen-day disciplinary

detention punishment. A lengthy disciplinary sentence at Oakdale is sixty to ninety days. He did not say if disciplinary detention and administrative segregation carry the same restrictions in Oakdale as they do at ISP. From the evidence presented at trial, however, the Court concludes it is a much tougher situation to be in disciplinary detention or administrative segregation at Fort Madison than at Oakdale.

Brandt testified, when an inmate arrives at the special needs program at Oakdale, he is assigned to level I where he spends most of his time in cell restriction. After seven days he can move to level II where he is allowed more time in the common areas. After fourteen days he can stay in level II, but he is allowed additional time away from the cell. After thirty to sixty days he can move to level III and is allowed even more time away from his cell.

Brandt testified the special needs facility has thirty beds. The special needs unit is the same size as it was ten years ago even though the state's prison population has doubled since then. Brandt said there is also an eight-bed special needs unit at the Iowa Men's Reformatory in Anamosa. In addition, there is a twenty-three-bed psychiatric hospital at Oakdale. Brandt testified the average stay at the psychiatric hospital is between forty and fifty days.

4. PENITENTIARY OFFICIALS' TESTIMONY REGARDING
MENTAL HEALTH CARE AFFORDED TO INMATES IN ISP'S
LOCKUP UNITS AND PROBLEMS WITH THAT CARE

Plaintiffs' expert Gordon Kamka who, as mentioned earlier, has worked in corrections work all over Europe and extensively for the State of Maryland, testified that there are special places for the mentally ill in states around the country. They are not kept with other inmates. Kamka said he had interviewed three individuals at ISP that were clearly mental patients. They are Inmates 101, 102, and 103. They are sad cases, he said. Each has been in lockup for many years, they have low intelligence, few verbal skills and do not have a clue as to what they should do. One is wasting away. In West Virginia, none of them would be in the penitentiary; they would be in a facility, housed together working like janitors. Kamka said he interviewed Inmate 104, who is in lockup until the latter half of the twenty-first century. Inmate 104 needs a thorough psychiatric evaluation. Kamka said that in West Virginia, if you get more than 180 days in sanctions, you go to a different treatment center. Kamka reported that the mentally ill should not be in prison, they should be in a mental health situation. This is exactly what Dr. Paul Loeffelholz, medical director for the Iowa Department of Corrections, said. A forensic unit would be a great step forward.

Kazam Hassan, director of psychological services at the Penitentiary, testified about the mental health care provided to the inmates at the Penitentiary. He said he has three

psychologists that help him, but none of them has an Iowa license. Hassan said he is certified in Iowa. Hassan estimated, on average, eight to ten inmates in cellhouse 220 are mentally ill. This squares with Plfs. Ex. 84, a list of sixty-one inmates at ISP considered mentally ill or disordered inmates as of January 30, 1996, which includes twelve from cellhouse 220 and nine from cellhouse 319.¹⁵ Hassan testified, if he believes an inmate is mentally ill, he refers him to a psychiatrist at the Oakdale facility, but there was little or no evidence that inmates ever get transferred to Oakdale or would ever have been seen by the psychiatrist. Hassan testified he had no idea how many inmates he refers are actually transferred to Oakdale. Hassan said one of his duties is to evaluate cellhouse 220 inmates for parole. He said none of the inmates he has evaluated has been paroled.

As mentioned, ALJ Harper does not review the psychological records of inmates before issuing disciplinary sentences. On the other hand, it may not matter that Harper does not read the psychological reports because they are often woefully inadequate and even deceptive. Such was the case with Inmate 107's reports. As mentioned, in one two-day period Inmate 107 received seven major reports. Some of the reports were for throwing urine and feces. In 1993, 1994, and 1995, Inmate 107 was found guilty of

¹⁵ Plaintiffs' Ex. 84 has the names whited out. Plaintiffs' Ex. 84(a) is the same list with the names on the exhibit. Plaintiffs' Ex. 84(a) had been sealed by the Court.

seventeen major reports. Records indicated much of Inmate 107's juvenile life was spent in the state-run Juvenile Mental Health Institute in Mt. Pleasant, Iowa. He had been released for only a few months before he was arrested on his present charge. In prior incarcerations, Inmate 107 has spent time in Oakdale's special needs program. Despite all of his behavioral problems and longstanding inability to function in society, Hassan's psychological report showed Inmate 107 had no significant emotional difficulties and was likely to work his way out of lockup. Plfs. Ex. 39, pp. 13-15.

Hassan also wrote psychological reports about Inmate 116. Inmate 116 sings songs or yells at the top of his lungs at all hours of the day and night. Despite this, Hassan's psychological reports and his in-court testimony indicated Inmate 116's conduct is appropriate and rational. Hassan said, so long as his singing fulfills a need and he derives satisfaction from it, there is no need to intervene.

Hassan also wrote psychological reports about Inmate 114. Inmate 111 testified that Inmate 114 believes the guards are trying to poison his food. In one six-month period in 1995 Inmate 114 was found guilty of committing twelve assaults. He received thirty days in disciplinary detention and one year administrative segregation for each assault. Despite this abysmal behavior, Hassan's monthly psychological assessments of Inmate 114 from late 1995 stated on different occasions, "there are no indications of unusual problems," and "he is encouraged to

maintain his satisfactory unit management," and, "he is encouraged to continue to maintain his satisfactory unit adjustment."

Inmate 114 was online to discharge from custody soon after the trial concluded. Hassan testified Inmate 114 might discharge straight out of lockup, or he could spend anywhere from thirty to sixty days in the general population before discharging his sentence. Hassan disagreed that keeping inmates in lockup until they discharge affects them negatively, in direct contrast to both experts' testimony. Instead, Hassan said the only way to deal with problem inmates is to lock them up. Hassan testified inmates cannot be helped until they are ready to help themselves.

Hassan testified Inmate 105 has no mental illness. This is despite the fact that Inmate 105 has attempted to commit suicide and constantly spreads feces and urine on the walls and floor of his cell and has hurt himself many times. Plfs. Ex. 45, p. 42. This is also despite the fact Inmate 105 spent time in three juvenile mental health facilities, the first of which he entered when he was eight years old. This is also despite the fact that the Department of Corrections tried to civilly commit Inmate 105 to a mental hospital several years ago. Hassan testified before one can diagnosis a mental illness there needs to be more evidence than simply suicidal tendencies and unsanitary practices. He said he has not recommended Inmate 105 for the special needs program at Oakdale because that would be a "vacation" for him. Hassan testified if Inmate 105 could keep

himself report free for three or four months, he might then recommend him for placement at Oakdale. When Inmate 105 discharged his previous sentence in 1985, he was rearrested and sentenced to the Penitentiary within months.

Hassan testified about Inmate 106. He said Inmate 106 has a mental illness, but he is mentally stable. The last time Inmate 106 discharged his sentence from the Iowa State Penitentiary was April 18, 1992. On May 11, 1992, Inmate 106 was back in the Penitentiary having been convicted of a new crime. Hassan testified Inmate 106 would not benefit from participating in the special needs program in Oakdale. Hassan said one of Inmate 106's problems was he was content to stay in cellhouse 220. Even though Inmate 106 was out of prison for less than a month the last time he discharged from lockup, Hassan speculated it might be best for Inmate 106 to discharge straight from lockup again.

Inmate 101, like Inmate 103, Inmate 105, and Inmate 107, spent most of his formative years in state-run juvenile mental health facilities in Iowa. In fact, Inmate 101 testified he grew up with Inmate 103 in the Mt. Pleasant facility. When he was admitted into Mt. Pleasant, Inmate 101's psychological report described him as an inadequate individual displaying near mental retardation. Inmate 101 also suffered brain damage as a result of an automobile accident. Inmate 101 spent three months in the special needs program in Oakdale in 1987, but he accumulated too many reports and was sent back to the Penitentiary in Fort Madison. There was also testimony from Inmate 111 and others

that Inmate 101 enjoys defecating and urinating in the showers and, at times, attempts to intoxicate himself by sniffing his dirty clothes. At trial, Hassan testified Inmate 101 is mentally stable and is without mental illnesses despite his psychological history and the large number of reports he received. Hassan's testimony about Inmate 101 is in direct conflict with the plaintiffs' expert Kamka who, as mentioned, said he had interviewed three individuals at ISP that were clearly mental patients, Inmates 101, 102 and 103. In Plfs. Ex. 84(b), Inmate 101 is listed as having only an antisocial disorder. It is clearly hard to be determined mentally ill by Hassan and those who prepare the lists which are Plfs. Exs. 84, 84(a) and 84(b).

Hassan also testified about Inmate 107. Inmate 107 has been in prison since he was 18 years old and prior to that he was in a number of state institutions since he was 9 years old. Plfs. Ex. 39, p. 1. Inmate 107 admits he has mental problems. Hassan testified Inmate 107 has a mixed personality disorder, that he is antisocial and immature. Hassan testified he has had at least sixteen conferences with Inmate 107. Inmate 107 categorically denies that, and says, at most, it was a handful of times and that he has had no counseling from Hassan. This is the inmate described by Inmate 111 as the worst of all bangers. Inmate 107 had been in 220 lockup since 1993 and his release date from lockup is 1999. Plfs. Ex. 1, p. 88. He admits he "goofs off" (i.e., loses temper and does dumb things) usually after being teased by guards who he says get a kick out of getting him to "go

off." ALJ Charles Harper told Inmate 107 he was not going to get out of lockup until he discharged from the institution.

Hassan also testified about Inmate 108, a former inmate at the Penitentiary who discharged from lockup. Hassan testified Inmate 108 was mentally ill (he was diagnosed in 1989 as having bipolar disorder or being manic depressive), but the only form of treatment offered Inmate 108 during his incarceration was psychiatric medicine. While in lockup, Hassan saw Inmate 108 once every three months. At one point during his stint in lockup Inmate 108 was report free for twenty-four months. In other months Inmate 108 picked up multiple major reports, usually for assault. Hassan testified Inmate 108 remained in lockup because his good record was never good enough to erase his remaining lockup time.

Inmate 108 eventually discharged his sentence without any treatment, but almost immediately thereafter was in trouble with the law again. Within weeks he was charged with another felony in Johnson County, Iowa. While awaiting trial, Inmate 108 underwent a psychological evaluation. The written report prepared by private clinical psychologist Frank S. Gersh found Inmate 108 to,

have multiple symptoms consistent with a mood disorder not otherwise specified (atypical Manic Disorder). He reports that his current behavior is long standing and goes back to at least 1970 and possibly earlier [M]ood is usually either elevated and expansive, or irritable. He typically gets one to two hours of sleep a night and does not need more He demonstrates an excessive involvement in pleasurable activities that have a high potential for painful consequences.

The picture of a manic disorder is complicated by the possibility of frontal lobe brain damage that could conceivably cause the same symptom picture. He reports that on June 20, 1970, a black man pulled out to pass his truck on the highway and shot him in the forehead [The] bullet penetrated his skull, but stopped before it penetrated the brain. His forehead was severely swollen for days afterward

There is also a significant history of alcohol abuse. He has been arrested 9 or 10 times for OMVI. The theft which resulted in his incarceration at Fort Madison was committed when he was drunk.

I would recommend a complete neurological evaluation including an MRI and EEG to rule out the possibility of brain damage. A neuropsychological evaluation would also be useful in this regard.

Plfs. Ex. 51, pp. 60-61. One day before a court hearing where Inmate 108 thought he would be returned to jail, Inmate 108 committed suicide. Inmate 108 had been released from Fort Madison for four months before the tragedy occurred.

Hassan testified Inmate 109 exhibited no abnormal behavior. Inmate 109 has received more than 200 reports while in disciplinary detention and administrative segregation. One of Hassan's psychological reports about Inmate 109 said he appears to be relaxed. During the same period Hassan wrote the report Inmate 109 was slitting his wrists and smearing the cell walls with blood. Inmate 109 was also in the habit of beating his head on cell walls. This behavior was confirmed by Inmate 111 and others. Hassan testified one cannot assume a person beats his head on the wall due to emotional distress. Inmate 109 has requested anger management tapes but Hassan said the dearth of tapes delays their receipt. Inmate 109 has also requested to be

sent to the special needs program at Oakdale. This request has never been granted.

Hassan also testified about mental illness in general. He said most mentally ill persons deny they are mentally ill. On the other hand, Hassan testified before a mentally ill person can be helped, he must realize he is mentally ill. Until this recognition, a psychologist is unable to help the mentally ill person. A mentally ill person will only change his behavior if he is willing to change.

With respect to the disciplinary process, Hassan testified that, without mental health training, Charles Harper cannot tell the difference between patients who simply "act out" their frustrations at being locked up and those patients who are indeed mentally ill. He said ALJ Harper could perform his job better if he sought the help of a psychologist before making disciplinary decisions. The Court strongly agrees with this statement and finds, as a matter of fact, that it is true. Because ALJ Harper has never sought his help, Hassan concluded, there is little chance ALJ Harper knows if an inmate deserves punishment.

Nicola Ann Brown, as mentioned, is the psychologist for inmates in cellhouse 319. Brown testified she does not consider inmates in cellhouses 220 and 319 isolated. She said she spends about five minutes a month with each of the persons in cellhouse 319. She said the most negative effect of keeping people in lockup for long periods of time is that some begin to enjoy being in lockup. She testified that discharging straight from lockup

makes it tougher on inmates who have to adjust to living in society. Brown also testified anger management classes are available to inmates in general population, but there are no programs in cellhouse 319 right now. Brown testified she never refers inmates to the special needs program although she has the authority to do so. Martin Rung, the unit manager of cellhouse 220, testified he has only recommended two inmates for transfer to the special needs unit. Rung also testified, other than these transfer recommendations, he does not try to separate the mentally ill in his cellhouse from those inmates who are not mentally ill.

Dr. Paul Loeffelholz, medical director for the Iowa Department of Corrections who also supervises the special needs unit at Oakdale, testified at trial about the mental health treatment of inmates at the Penitentiary. Hassan calls Dr. Loeffelholz and they discuss and decide who at Fort Madison might go through Oakdale. Very few have been sent. In his testimony, Dr. Loeffelholz distinguished inmates who are mentally ill from those who are merely mentally disordered. Dr. Loeffelholz said an inmate who cuts himself or smears himself with feces is not mentally ill, just mentally disordered. For example, Dr. Loeffelholz discussed Inmate 103 who, as mentioned, bangs his head on his cell walls to keep his dead father out of his cell. Dr. Loeffelholz testified Inmate 103 may not be delusional or mentally ill. Rather, Inmate 103 may offer an explanation for his behavior to keep from getting in trouble for banging his

head. This would mean Inmate 103 was just mentally disordered. On the other hand, if Inmate 103 is actually delusional, he should not be held accountable for his head banging and his sanctions should be decreased. The doctor testified that head bangers in cellhouses 220 and 319 should be all in one place. You cannot mainstream them. The doctor also testified that, about 50% of the mentally ill inmates are on medication. The rest refuse to take such medication. He said in the most recent fiscal year, 6.7% of the inmates at ISP were receiving psychological medicine. He said that in cellhouse 220, 25% of the inmates receive such medicine.

Dr. Loeffelholz also testified he is unconcerned about inmates who garner extraordinarily long sentences in disciplinary detention and administrative segregation. The long sentences are simply the inmate's way of saying "screw the system." Loeffelholz said he has no problem with the disciplinary system as long as inmates can earn time cuts, but he said he personally would decrease sanctions and there should be a program for those in lockup, but there are none. Many inmates, Dr. Loeffelholz testified, are naive and enter prison expecting it to be heaven, which it is not. These inmates are hobbled by their belief that prison should be a system of entitlements. Dr. Loeffelholz testified that he had been in cellhouse 220 and it is really noisy at times. He said that he did not recall cellhouse 319 being as outrageously noisy.

Dr. Loeffelholz also testified that the aggressive and explosively violent inmates have not been and are not going to be accepted at his special needs program in Oakdale. He said, "There is no alternative place for those kind of inmates. There is a need for such a unit at ISP." He said such a unit should be like the one they have in Pennsylvania -- a very supportive faculty with a good program. He said that it can be done in Iowa. He stated, "I have tried to talk to authorities [my bosses] about this need, but nothing has happened yet."

Dr. Loeffelholz also testified that there could be better mental health screening when inmates first come in at Oakdale. He said there is no review of further screening at ISP. He said mental background information is given to Hassan, the in-house psychologist at ISP, and inmates are scheduled to see a psychologist every ninety days, but it is fair to say that most of the inmates do not see a psychologist or, if they do, it is not for very long. He said it is hard to get on the mentally ill list. This helped to understand Hassan's testimony that inmates with severe problems, who do gross and disgusting things on a regular basis, are, in Hassan's opinion, not mentally ill.

Finally, Dr. Loeffelholz testified that, because ALJ Harper has no professional mental health training, he cannot tell if an inmate who receives a report is simply acting out his frustrations, or if he is actually delusional and, therefore, it is hard for the ALJ to do the right thing.

Marilyn Sales, the head nurse for the Iowa Department of Corrections, testified about the special needs program at Oakdale. Sales said the program was designed for inmates who have trouble living in the general population of a prison. She testified the program has thirty beds, some of which are filled by inmates who are mentally ill or borderline mentally ill. Sales testified, based on her knowledge of the Iowa corrections system, there are considerably more than thirty inmates who would benefit from placement in a special needs program. Sales said there is no reason why a special needs program could not be established at the Fort Madison Penitentiary. She said such a program would be particularly helpful because many of the inmates from the Penitentiary present behavioral and security problems which the Oakdale facility is not equipped to handle.

Sales testified that, in her opinion, at least nine inmates in cellhouse 220 and one inmate in cellhouse 319 have serious mental problems and would or probably would benefit from a special needs program. Sales identified Inmates 101, 104, 105, 106, 113, 115, 127, 129 and 130 as the cellhouse 220 inmates, and she identified Inmate 128 as the cellhouse 319 inmate. Sales said she certainly would have named more inmates in cellhouse 319 if she could have seen a roster of inmates. Sales testified, in a perfect world, there would be a special needs program in every institution. Finally, Sales distinguished between the mentally ill and the socially inadequate and said many of the bangers and yellers are socially inadequate inmates.

On a similar point, then-Warden Acevedo testified he worked for the Illinois Department of Corrections before he accepted the position as warden at the Iowa State Penitentiary. Acevedo testified Illinois devotes more of its facilities to housing and caring for inmates with mental problems. He testified Illinois's system is superior to Iowa's system because it provides facilities geared toward patients with mental problems whereas Iowa offers only a small special needs unit at Oakdale. The plaintiff's expert Gordon Kamka also suggested some part of ISP should be devoted exclusively to treating mentally-ill inmates.

The final form of mental health care afforded to the inmates at the Iowa State Penitentiary is to have them mentally committed. Such was the case with Inmate 103. A month or so before he was set to discharge his sentence, correctional officers took Inmate 103 to the Oakdale facility in Johnson County, Iowa. While there, a Johnson County attorney conducted commitment proceedings against Inmate 103 before a jury. The jury committed Inmate 103 to the care of the state because he lacked mental capacity. Inmate 103's situation was not an isolated case. Dr. Loeffelholz testified, while the State does not have a policy of waiting until an inmate is about to discharge his sentence before trying to civilly commit him, it often works that way in practice. In this case, a report written by prison psychologist Hassan suggested it would be appropriate to consider committing Inmate 103 just before he was to be

released. See Plfs. Ex. 47, p. 29. This is a glaring fault in the present practice.

Marilyn Sales testified sometimes the State commits inmates who are close to discharging their sentences, especially when the inmates do not have anywhere to return on the outside. Sales said the corrections system has become the custodial caretaker for many of the inmates, holding them even though they should be at the state hospitals in Glenwood or Woodward. She said one of the corrections officials' biggest concerns is where the inmates go when they get out of prison with no social or economic support. She told of her contacts with Inmate 103, who was due to be discharged soon. She said, "I have some real concerns about him. He recently beat his head against a wall and required stitches. He thought his mother was in his cell. He is a violent, assaultive person." She had recently seen him and, although he has known her for some time, he did not recognize her. She said, "It is going to be a problem with him on the streets."

Dr Loeffelholz expressed his frustration when he testified, "There is a mistaken idea that freedom is great, because that's the wisdom of the courts. We have eighty inmates that are retarded, we have 160 more that are borderline. They used to be in mental hospitals. They now end up at ISP. The net is getting wider. Anyone the mental hospitals does not want is getting sent to prison. Many that we get as inmates were in mental hospitals twenty years ago, some homeless come to prisons; again, the net

is getting wider. This should not be. These people should be left in the hospitals." He further said that, "Because of this situation, if they have an inmate who is close to being discharged but is a good candidate for early return to prison, we try to get them civilly committed. If they are close to discharge, with lots of problems, the judges are easier to deal with and we can get them civilly committed to a mental hospital until such time as they are ready and it is appropriate to release them."

The defendants' expert Camp refused to second guess the way that mentally ill inmates were being handled. When he said this, however, he had not heard Dr. Loeffelholz's clear testimony set out above. Camp did testify that, in his opinion, prison officials are in a terrible dilemma as to where to house the mentally ill.

Marilyn Sales said no institution wants the bad ones. They just do not fit at Oakdale because there is not enough security. "We get them for custodial care and they are put in cellhouses 220 and 319 which is not the proper place for them." She continued that they actually should be in mental health facilities or, if that cannot be done, that it would not be hard to make a separate unit at Fort Madison of about 30 beds for the mentally ill and some of the "socially inadequate."

Sale's and Loeffelholz's testimony that many of the inmates in lockup ought to be receiving treatment in mental health facilities is corroborated by the prison records of many of the

inmates currently in lockup which document time spent in juvenile mental health facilities while growing up.

II. CONCLUSIONS OF LAW

The inmates' complaint raises multiple issues and two legal theories. The inmates' first issue concerns the length of their lockup sentences. A second issue is the overall conditions in the lockup cellhouses and the effects those conditions have on the inmates' mental health. A third issue is the small size of the lockup cells. A fourth issue is the deprivation of exercise for inmates in lockup during the winter months. The fifth issue is the pandemonium and bedlam the mentally-stable inmates suffer because they are intermingled with the mentally-ill inmates who cannot control their behavior and other inmates whose behavior the prison cannot control. The inmates' legal theories are based on the Eighth Amendment and the substantive portion of the Due Process Clause. The Court finds the inmates' complaint about lengthy sentences is best analyzed as a substantive Due Process violation, and addresses this issue first.

A. SUBSTANTIVE DUE PROCESS CLAIMS

Substantive due process bars "'certain government actions regardless of the fairness of the procedures used to implement them" Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 846 (1992) (citing Daniels v. Williams, 474 U.S. 327, 331 (1986)). "The most widely accepted view is that substantive due process is violated by government conduct that

'shocks the conscience' or when the government engages in action 'which offends those canons of decency and fairness which express the notions of justice of English speaking peoples.'" Bendiburg v. Dempsey, 707 F. Supp. 1318, 1324 (N.D. Ga. 1989) (quoting Malinski v. New York, 324 U.S. 401, 416-17 (1945)). Substantive due process is also invoked when the government "interferes with rights 'implicit in the concept of ordered liberty.'"¹⁶ United States v. Salerno, 481 U.S. 739, 745 (1987) (quoting Palko v. Connecticut, 302 U.S. 319, 325-326 (1937)).

The courts have long struggled with delineating the boundaries of substantive due process rights. The Eighth Circuit has agreed that, in order to offend substantive due process, actions must be "something more than . . . arbitrary, capricious, or in violation of state law." Anderson v. Douglas County, 4 F.3d 574, 577 (8th Cir. 1993). In fact, the Circuit has limited substantive-due-process claims to "'truly irrational' governmental actions." Chesterfield Dev. Corp. v. City of Chesterfield, 963 F.2d 1102, 1104 (8th Cir. 1992) (citing Lemke v. Cass County, Neb., 846 F.2d 469, 472 (8th Cir. 1987)). The seminal case for analyzing an inmate's substantive due process claim pleaded in a court governed by Eighth Circuit jurisprudence is Brown v. Nix, 33 F.3d 951 (8th Cir. 1994). In Brown, Ronnie Brown, an inmate at the Iowa State Penitentiary, challenged his

¹⁶ As defined in Palko, "ordered liberty" is that combination of rights, without which, "a fair and enlightened system of justice would be impossible." Palko, 302 U.S. at 324.

nine-year sentence to administrative segregation claiming it denied him of his substantive due process rights. Just as do the inmates in this case, Brown claimed his cumulative punishment was disproportionate to the violations he had committed.

The Eighth Circuit began its analysis of Brown's claims with United States v. Salerno, 481 U.S. 739, 746 (1987), where the United States Supreme Court held that substantive due process prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Brown, 35 F.3d at 953. The Circuit elaborated:

Thus, substantive due process claims are analyzed under two tests. First, the state is forbidden from infringing certain "fundamental" liberty interests at all -- no matter what process is provided -- unless the infringement is narrowly tailored to serve a compelling state interest. Reno v. Flores, 507 U.S. 292, 302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993). Second, the state's conduct must shock the conscience or otherwise offend our judicial notions of fairness, or must be offensive to human dignity. Weimer v. Amen, 870 F.2d 1400, 1405 (8th Cir. 1989).

Id. The Circuit noted that it had approached the case with caution as shown by, "'The doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.'" Id. at 953-54 (citing Reno, 507 U.S. at 302). But the Circuit kept in mind that, "[A] prison inmate retains those constitutional rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Id. at 954 (citing Turner v. Safley, 482 U.S. 78, 95 (1987)).

Upon reaching the merits of Brown's claim, the Circuit found Brown had no claim under the first prong of the substantive due process analysis because being forced to spend time in administrative segregation did not violate a fundamental liberty interest. Id. It described a fundamental liberty interest as one which is "'so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" Id. (quoting Salerno, 481 U.S. at 751).

In analyzing the second prong of the substantive due process test, the Circuit held:

Neither does segregating Brown from the general population shock the conscience or offend notions of fairness in light of his repetitive misconduct. It does not offend our notions of fairness for prison officials, after hearing, to discipline an unruly inmate by placing him on cell restriction. This is especially true since his sentence is periodically reviewed and he can earn early release by appropriate behavior. Brown has not convinced us that any of his many sentences are disproportionate to his offenses, which, though not necessarily violent, cannot be characterized as minor. Neither has he shown that the acts of the prison officials are arbitrary or capricious. The essence of Brown's complaint amounts to nothing more than dissatisfaction with his aggregate sentence.

Id. (emphasis added). The Court addresses the second prong of the Due Process Clause first.

In the first underlined portion of Brown the Circuit Court found an inmate could earn early release by appropriate behavior. The basis for the temporary injunction the Court issued in this case was the change of policy at the Penitentiary which prevented those inmates being disciplined for murders or assaults causing

injury from being eligible for time cuts. It is clear that this statement (that a prisoner can earn early release by appropriate behavior) is no longer true for these particular inmates. For all other inmates in disciplinary lockup this statement may be theoretically true, but this Court's Findings of Fact show it to be empirically false. That is to say, many of the inmates in lockup, particularly those inmates who suffer from mental afflictions, are incapable of conducting themselves in such a manner that they could earn early release from lockup. Other inmates who are capable of behaving appropriately have, in a matter of a few hours of misbehavior, managed to bury themselves so deep in lockup that, even if they behaved appropriately for the duration of their multi-year prison terms, they could not extricate themselves from their lockup sentences. Further, the evidence presented at trial clearly demonstrated that, though available in theory, early release credit has very rarely been awarded at ISP during the last decade.

Moreover, even those inmates without mental problems who have not committed an assault causing injury or a murder and who are not hopelessly buried in lockup, still face great challenges before they can work their way out of lockup. As the Findings of Fact show, the procedures the Penitentiary has established to review inmates' behavior once in lockup are farcical. The thirty-day review committee which is charged with evaluating an inmate's worthiness of receiving a time cut meets with eligible inmates for an average of only five minutes per month. In that

time inmates are also supposed to raise, discuss, and resolve any issues they have concerning the operations and conditions in the lockup cellhouses. The purpose of these meetings is established by Department of Corrections policies #IN-V-05 and #SE-IV-05, which are set out on page 20. It is obvious these purposes are not being met. An inmate's attendance is not even required when his thirty-day review committee meets. It is not surprising that this Court now reaches different conclusions than did the Circuit in Brown. The breadth and depth of the evidence in this case was vast. The Court heard six days of testimony and reviewed more than one hundred exhibits with a combined total of much more than one thousand pages.

In the second underlined portion of Brown the Circuit found the plaintiff had not shown the punishments he received were disproportionate to his offenses. In contrast, in this case, as shown in the Findings of Fact, the inmate who commits the relatively minor misdeed of sloshing cereal on a guard would receive thirty days disciplinary detention, one year in administrative segregation and loss of one year's good time under ALJ Harper's present system. This Court recognizes and appreciates the need for discipline in a prison system. The Court finds, however, these sentences are clearly disproportionately much more serious than the offenses and are constitutionally inappropriate.

In the third underlined portion of Brown the Circuit found the plaintiff had not shown the punishments he received were

arbitrary. Again, this Court reaches a different conclusion than did the Circuit Court in Brown based on the facts in this case. As mentioned, the Findings of Fact show that relatively insignificant offenses such as sloshing cereal on a correction officer, and grave offenses, such as punching a correctional officer, meet with the same punishment -- thirty days disciplinary detention, one year in administrative segregation and loss of one year's good time. Conversely, incidents of approximately equal severity may receive glaringly different punishments. Under ALJ Harper's practice of assigning multiple penalties for a series of closely-related misbehaviors, an inmate who, for example, throws cereal at all five guards who walk past his cell one morning might receive five disciplinary reports and the corresponding penalties. But, an inmate who assaults a guard and causes him to go to the hospital would only receive one report and one-fifth of the penalties assigned to the cereal thrower.

There is another way in which the Court finds the punishments at ISP to be arbitrary. ALJ Harper makes no attempt to take into account the factors surrounding the individual disciplinary reports. One of the potential relevant factors Harper ignores is an inmate's mental health. As shown in the Findings of Fact, ALJ Harper does not review an inmate's mental health status before assigning a punishment. Thus when, for example, Harper disciplines Inmate 103 for banging his head against his cell wall to keep his dead father from entering his

cell, Harper has no idea of the type of magnitude of mental afflictions that inmate suffers. On the other hand, because he has no psychological training, it is unknown how much insight Harper or any other judge without the appropriate training could gain from the inmates' mental health records even if Harper did review them. Both Dr. Paul Loeffelholz, medical director for the Iowa Department of Corrections and Kazam Hassan, director of psychological services at the Penitentiary, testified for the defendants as core participants in the present system, but had to admit that, without mental health training, Charles Harper cannot tell the difference between inmates who simply act out their frustrations and those patients who are indeed mentally ill. Hassan testified there is little chance ALJ Harper knows if an inmate deserves punishment or not. And while Loeffelholz and Hassan are participants in the prison system, they do not participate in Harper's adjudication.

ALJ Harper also fails to take into account any other factors which may be pertinent to an individual disciplinary report. Larry Brimeyer, ALJ Harper's counterpart at the Anamosa prison, tries to make the punishment fit the crime by using a sentencing guideline matrix he developed in conjunction with members of his staff and then published for all inmates. In contrast, ALJ Harper has made no attempt to formulate a written sentencing matrix, even though, as mentioned in the Findings of Fact, Colonel Emmett and Brimeyer both said creating a matrix would be a positive step for the Penitentiary.

In addition to Colonel Emmett who believed that a matrix would work well at ISP and ALJ Brimeyer who testified the matrix was working well at Anamosa, and Experts Kamka and Camp whose similar testimony was described previously (pages 19 and 25 respectively), the United States Congress believes that a matrix-like system is appropriate for determining the sentences of the nation's federal prisoners for whom Congress is ultimately responsible. In the Sentencing Reform Act of 1984, Congress provided for the creation of the Federal Sentencing Guidelines. Three years later, in 1987, the Federal Guidelines Sentencing Commission released its first version of the Guidelines. Congress mandated the creation of the Guidelines because it "sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders" and "proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity." United States v. Khang, 904 F.2d 1219, 1223 (8th Cir. 1990) (citing U.S.S.G. Policy Statement: The Basic Approach). These motivations are in line with those expressed by Colonel Emmett, ALJ Brimeyer and experts Kamka and Camp.

All of these factors demonstrate the arbitrary nature of the acts of the higher-up prison officials who condone ISP's present disciplinary system which results in extraordinarily-long lockup sentences, and of ALJ Harper, who administers ISP's present system. Again, this Court presumes it reaches a different

conclusion than did the Circuit Court in Brown because of the expansive record the plaintiffs made in this case. Also, it was easier for this Court to label the Penitentiary's punishment system "arbitrary" because it was able to compare and contrast the similar sentences handed down for extremely divergent acts. The Brown Court reviewed Brown's punishments alone. The Court concludes, therefore, the plaintiffs have proved the second prong of the Brown substantive due process analysis which requires them to show: (1) they cannot earn early release by good behavior, (2) their sentences are disproportionate to their crimes, and (3) the ALJS act arbitrarily in assigning punishments.

Having found that the Penitentiary's lengthy lockup sentences violate the second prong of Brown's substantive due process analysis, the Court turns to the plaintiffs' claim that their lockup sentences violate the first prong of Brown's substantive due process analysis. The first prong requires the plaintiffs to prove their extremely long sentences violate a fundamental liberty interest of the inmates. In Brown, the Eighth Circuit concluded a nine-year administrative segregation sentence did not violate Brown's fundamental liberty interest. As mentioned, when it reached this conclusion, the Circuit assumed Brown had the opportunity to extricate himself from lockup before, and perhaps well before, he actually served his full nine years. Brown, 33 F.3d at 954. As the Findings of Fact here and the above analysis of the second prong of the substantive due process analysis show, it is guaranteed that many

inmates under Harper's present system serve every day of their assigned lockup sentences, exactly the opposite of the Brown situation where the Circuit court determined that, under the facts then before them, inmates could earn early release.

Moreover, many of those inmates acquire additional time in lockup for new rules violations even as they are discharging time for old rules violations. This means the total time an inmate will serve in lockup is often longer than it would appear from checking his time remaining in lockup. The Brown opinion does not mention, and therefore probably did not consider, that now an inmate must serve several months or even a year in close management upon completing his lockup sentence. The Findings of Fact showed that the conditions in close management, including the cells in which inmates are housed, are the same or substantially similar to the conditions in lockup. Because the Circuit made no mention of it, this Court must assume the Circuit did not take into consideration an inmate's close management time when it held a nine-year lockup sentence does not violate a fundamental liberty interest. Again, it is unlikely the Circuit enjoyed access to the complete record available to the Court in this case.

To summarize the above analysis of the first prong of the test for a substantive due process violation, the Eighth Circuit held that when an inmate receives a nine-year lockup sentence, but does not necessarily have to serve the complete sentence, there is no violation of fundamental liberty interest. Brown, 35

F.3d at 954. The facts in this case differ from Brown because many inmates serve their complete sentences or even longer in lockup. In addition, they serve time in close management which is substantially similar to lockup. Also, many inmates' sentences are much longer than the nine years Brown received in his case. At this point, the Court must determine if the factual differences between this case and Brown are great enough to make the long lockup sentences in this case so grave that they "violate a fundamental liberty interest so rooted in the traditions and conscience of our people as to be ranked as fundamental." Salerno, 481 U.S. at 751.

A case which sheds some light on this problem is Sheley v. Dugger, 824 F.2d 1551 (11th Cir. 1987),¹⁷ in which the Eleventh Circuit addressed the case of Robert Sheley, a Florida inmate who had been confined to close management for more than eleven years. Id. at 1552-53. Sheley was serving a life sentence after having been convicted of various crimes including assault with intent to commit murder. Id. at 1552. Later, Sheley made a brief escape from prison for which he received an additional, consecutive ten-year sentence. Id. However, for the seven years prior to the Sheley court's order which found a substantive due process violation, Sheley had not received any disciplinary reports. Id.

¹⁷ This case was later vacated by the Eleventh Circuit on sua sponte reconsideration. On reconsideration, the Circuit remanded the case on the basis of a potential Eighth Amendment violation. Although the case has no precedential value, the Court finds it a well-articulated analysis of a substantive due process claim and, for this reason alone, it is worth mentioning.

at 1553. Nonetheless, Sheley was not removed from close management. Sheley filed a petition for writ of habeas corpus which the district court denied. Id.

In analyzing the case, the Eleventh Circuit addressed the petitioner's three theories of relief: equal protection, due process, and Eighth Amendment violations. The Court acknowledged that a substantive due process claim relies on "standards of justice" which "are not authoritatively formulated anywhere as though they were specifics," but a claim, nonetheless arises when state conduct "'shocks the conscience', is 'brutal' and 'offends even hardened sensibilities.'" Id. at 1555 (quoting Rochin v. California, 342 U.S. 165, 169 (1952)). The Court stated that substantive due process "standards are applicable to the question of the propriety of petitioner's long-term, indefinite confinement in [close management]." Id. (citing Parker v. Cook, 642 F.2d 865 (5th Cir. 1981)). The Court found the prison in violation of the inmate's substantive due process rights in part because,

[T]he state's procedures have afforded the petitioner only the most perfunctory review and also lack expressly articulated factors to guide the review. The practical effect of this procedure is that petitioner could never re-enter the general prison population and thus remain in [close management] until his prison term runs out.

Id. at 1556. The lockup procedures and conditions at ISP place many inmates in a similar situation, i.e., they cannot work their way out of lockup until their prison terms run out.

Not only are the extraordinarily long lockup sentences objectional in their own right, the sentences are objectional for the unintended side effects they have on the inmates. In the Findings of Fact, the Court found testimony from Martin Rung and Kazam Hassan (which was confirmed by a number of inmate records), that it is not uncommon for inmates to discharge directly from lockup. This state of affairs can create a number of problems. The plaintiff's expert Gordon Kamka said inmates who learn to prefer to stay in lockup become "walking time bombs" when they are released into the outside world because they no longer possess the social skills to cope with life on the street. Kamka said this was especially true of the inmates who discharged straight from lockup, one consequence of the lengthy lockup sentences. The defendants' expert George Camp also described discharging from lockup as "unfortunate," and testified something should be done to prepare lockup inmates to live in society outside the prison. Penitentiary psychologist Nicola Ann Brown testified when inmates are confined to lockup cells for years on end, they begin to enjoy being in lockup. Discharge from lockup not only threatens innocent members of society, but deprives the inmates themselves of the ability to adjust to society and thus avoid future incarcerations. This, of course, makes it harder to adjust when they are released. In addition to the above-mentioned testimony, Penitentiary records showed many inmates who discharge directly from lockup commit new crimes and are rearrested and sentenced within months of their release. This is

strong support for the belief that discharging directly from lockup is the cause of many problems. Discharge directly from lockup, a direct consequence of the extraordinarily-long lockup sentences, not only threatens innocent members of society, but deprives the inmates themselves of the ability to adjust to society and thus avoid future incarcerations. This is another factor the Eighth Circuit apparently did not have before it when it weighed the constitutionality of the plaintiff's due process claim in Brown.

The Court also finds Furtado v. Bishop, 604 F.2d 80, 88 (1st Cir. 1979), relevant to this claim. In Furtado the court noted that, "[S]ome courts have indicated that segregated confinement amounts to cruel and unusual punishment or a violation of substantive due process if it is imposed arbitrarily and without basis." Id. at 88. (citing Wilwording v. Swenson, 502 F.2d 844, 851 (8th Cir. 1974); Black v. Warden, United States Penitentiary, 467 F.2d 202, 203-04 (10th Cir. 1972); United States ex rel. Bennett v. Prasse, 408 F. Supp. 988, 999 (E.D. Pa. 1976); O'Brien v. Moriarty, 489 F.2d 941, 944 (1st Cir. 1974); Feeley v. Sampson, 570 F.2d 364, 371 (1st Cir. 1978); Nadeau v. Helgemoe, 561 F.2d 411, 419 (1st Cir. 1977)). For these reasons, the Court concludes the Penitentiary's procedures violate a "fundamental liberty interest" and, therefore, constitute a violation of substantive due process under the first prong of the Brown analysis.

For all of the above reasons, the Court concludes the conditions and procedures related to lockup sentences at the Iowa State Penitentiary, combine to create an atmosphere where some inmates are incapable of extricating themselves from lockup and violates the inmates' substantive due process rights. This situation is one of those rare "truly irrational" governmental actions contemplated in Chesterfield, 963 F.2d at 1104, which is also "offensive to human dignity," Weimer, 870 F.2d at 1405. The disciplinary system at ISP is violative of the plaintiff inmates' substantive due process rights because it (1) infringes on a "fundamental liberty interest," and also because it (2) "shock[s] the conscience" and offends "judicial notions of fairness." Brown, 35 F.3d at 953.

B. EIGHTH AMENDMENT CLAIMS

The inmates' second legal theory is that prison officials are violating their Eighth Amendment right to be free from cruel and unusual punishment. The inmates make two distinct Eighth Amendment claims. Their first claim is that prison officials are deliberately indifferent to the serious medical needs of the inmates in lockup units. The inmates' second claim is that the very conditions of their confinement violate the Eighth Amendment. Before engaging in a more specific analysis, the Court notes initially, Justice Douglas's pronouncement that, "The Eighth Amendment expresses the revulsion of civilized man against barbarous acts -- the 'cry of horror' against man's inhumanity to his fellow man." Robinson v. California, 370 U.S. 660, 676

(1962) (Douglas, J., concurring). Along these same lines, Justice Brennan described a court's duty in Eighth Amendment cases as the need to determine "whether a challenged punishment comports with human dignity." Furman v. Georgia, 408 U.S. 238, 282 (1972) (Brennan, J., concurring).

1. DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS

The inmates' first complaint is that the conditions in the cellhouses 220 and 319 have such a pronounced adverse effect on the mental health of those inmates in lockup units, especially those inmates who have been diagnosed as mentally ill or mentally disordered that the conditions constitute a violation of the Eighth Amendment.¹⁸ In Hudson v. McMillian, the United States Supreme Court described why different Eighth Amendment claims are evaluated according to different standards. The Hudson Court held,

What is necessary to show sufficient harm for purposes of the Cruel and Unusual Punishments Clause depends upon the claim at issue, for two reasons. First, the general requirement that an Eighth Amendment claimant allege and prove the unnecessary and wanton infliction of pain should . . . be applied with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged. Second, the Eighth Amendment's prohibition of cruel and unusual punishments draw its meaning from the evolving standards of decency that mark the progress of a maturing society, and so admits of few absolute limitations.

503 U.S. 1, 8 (1992) (citations and internal quotations omitted).

¹⁸ As is discussed on pp. 106-09, other states segregate mentally-ill inmates from inmates without mental problems.

In 1976, the United States Supreme Court issued a seminal case establishing the standard for evaluating inmates' Eighth Amendment claims concerning the medical treatment they receive in prison. In Estelle v. Gamble, the Supreme Court held,

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.

429 U.S. 97, 104-05 (1976) (citations and internal quotations omitted) (emphasis added). The Estelle Court cautioned, however, not all prisoner complaints rise to the level of Eighth Amendment violations. The Supreme Court held:

[A]n inadvertent failure to provide adequate medical care cannot be said to constitute an unnecessary and wanton infliction of pain or to be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend evolving standards of decency in violation of the Eighth Amendment.

Estelle, 429 U.S. at 105-06 (internal quotations omitted).

The "deliberate indifference to serious medical needs" standard, as with most Eighth Amendment claims, is often broken down into objective and subjective components. E.g., Wilson v.

Seiter, 501 U.S. 294, 298 (1991). In the current claim the objective component is the "serious medical need." From the existing case law, the Court can objectively determine whether the inmates in the class suffer from a serious medical need. The subjective component of this claim is the "deliberate indifference." Assuming the plaintiffs prove the first component of their claim, the Court must use its subjective judgment to determine whether Penitentiary officials are acting deliberately indifferently to inmates' serious medical needs. This subjective finding requires the Court to weigh the evidence and evaluate the credibility of witnesses who testified at trial.

There is no doubt that those inmates at the Iowa State Penitentiary whom the Department of Corrections medical staff has found to be mentally ill or mentally disordered have objectively serious health needs, i.e., there is no doubt that mental health problems are "medical needs" within the meaning of Wilson and similar cases.¹⁹ "Deliberate indifference by prison personnel to an inmate's serious medical needs violates the inmate's Eighth Amendment right to be free from cruel and unusual punishment.

¹⁹ In addition to the Department of Corrections records which showed certain inmates were mentally ill or mentally disordered, there was also testimony from other lockup inmates who shared their firsthand observations of these mentally ill and mentally disordered inmates. While this lay testimony, standing alone, is not determinative of whether these inmates were mentally ill, a witness need not be a medical professional to provide credible testimony about the symptoms of mental illness. See Brewer v. Lincoln Nat'l Life Ins. Co., 921 F.2d 150, 154 (8th Cir. 1990) ("The cause of a disease is a judgment for experts, while laymen know and understand symptoms.").

This principle extends to an inmate's mental health care needs." Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1990) (citations omitted). See also Warren v. Fanning, 950 F.2d 1370, 1373 (8th Cir. 1991) ("Deliberate indifference to a prisoner's serious medical needs violates the prisoner's Eighth Amendment right to be free from cruel and unusual punishment."); Torraco v. Maloney, 923 F.2d 231, 233 (1st Cir. 1991) (same); Greason v. Kemp, 891 F.2d 829, 835-36 (11th Cir. 1990) (same); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983) (same); Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1981) (same); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3rd Cir. 1979) (same); Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977) (same); Newman v. Alabama, 503 F.2d 1320 (5th Cir. 1974) (same). As clearly shown above, mentally ill or mentally disordered inmates meet the objective component of an Eighth Amendment claim because the courts have found that mental problems are included in the category of "serious medical needs."

It is a relatively closer question whether the class members' complaint meets the subjective component of the Eighth Amendment analysis -- deliberate indifference. In its Findings of Fact, the Court found Dr. Loeffelholz testified there is a great demand for a special needs program at the Penitentiary which can handle maximum security inmates. The Court also found Dr. Loeffelholz has expressed this professional opinion to his bosses (presumably the director of the Iowa Department of Corrections) but no action has been taken. Then-Warden Acevedo,

testified that the Illinois Department of Corrections, his immediate past employer, had special needs programs such as separate wings of prisons devoted to taking care of inmates with mental problems, that were far superior to those established by the Iowa Department of Corrections. He said, when a facility devotes itself exclusively to taking care of mentally-ill patients, it can provide much better psychiatric care.

As set out in the Findings of Fact, Marilyn Sales, the head nurse for the Iowa Department of Corrections, testified there are considerably more than thirty inmates who would benefit from placement in a special needs program similar to the one at Oakdale. Sales also testified there is no reason a special needs program could not be established at the Penitentiary. Finally, Sales testified a special needs program at the Penitentiary would be particularly helpful because many of the Penitentiary's inmates present behavioral and security problems the Oakdale facility is ill equipped to handle. The defendant's expert George Camp testified half of the mentally ill inmates in the Penitentiary are in disciplinary detention or administrative segregation. Dr. Loeffelholz was also adamant that there needs to be a program at the Penitentiary that can treat mentally-ill inmates who are also high security risks.

The director of the special needs program at Oakdale, Lowell Brandt, testified his program is designed to help inmates who are unable to reside in the general population of their prison. He said many of these inmates have mental problems and the special

needs program is run similarly to a mental health hospital. Brandt testified it is difficult for inmates at the Iowa State Penitentiary to be placed in Oakdale's special needs program for two reasons. First, Brandt said the special needs unit is not equipped to handle violent, aggressive or high risk inmates that are commonly housed at the Penitentiary. Second, Brandt testified the waiting list for spaces in the special needs unit is often more than a year long. Moreover, some Penitentiary mental health professionals such as Hassan and Brown testified they rarely, if ever, recommend any inmates for placement in the Oakdale special needs program. Counselor Martin Rung testified he has only recommended two inmates for the special needs unit in the years he has worked at the Penitentiary. Clearly, most inmates in lockup at ISP will never be admitted to the special needs unit at Oakdale and will never be able to take advantage of its services.

The Court is persuaded that the above analysis is sufficient to show that Dr. Loeffelholz and those prison officials he described as his bosses, had knowledge that mental health needs of inmates with mental health disorders at ISP were not being met and were deliberately indifferent to the situation. Therefore, those inmates with mental health disorders at ISP who are not receiving treatment for their needs, are being held under conditions which violate the Eighth Amendment.

In addition, there are other arguments which persuade the Court to draw the same conclusion. In Ruiz v. Estelle, 503 F.

Supp. 1265 (S.D. Tex. 1980), aff'd in part, rev'd in part on other grounds, 679 F.2d 1115 (5th Cir. 1982), and cert. denied, 460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983), and Balla v. Idaho, 595 F. Supp. 1558 (D. Idaho 1984), Judge Justice (in Ruiz) formulated, and Judge Ryan (in Balla) concurred that there are, six components of a minimally adequate mental health treatment program. According to the Balla court:

First, there must be a systematic program for screening and evaluating inmates in order to identify those who require mental health treatment. Second, . . . treatment must entail more than segregation and close supervision of the inmate patients. Third, treatment requires the participation of trained mental health professionals, who must be employed in sufficient numbers to identify and treat in an individualized manner those treatable inmates suffering from serious mental disorders. Fourth, accurate, complete, and confidential records of the mental health treatment process must be maintained. Fifth, prescription and administration of behavior-altering medications in dangerous amounts, by dangerous methods, or without appropriate supervision and periodic evaluation, is an unacceptable method of treatment. Sixth, a basic program for the identification, treatment and supervision of inmates with suicidal tendencies is a necessary component of any mental health treatment program. This court finds the analysis in Ruiz persuasive with regard to minimally adequate psychiatric care and adopts the essential elements as Conclusions of Law.

Balla, 595 F. Supp. at 1577 (citations omitted). See also Coleman v. Wilson, 912 F. Supp. 1282, 1298 (E.D. Cal. 1995) (citing the six elements cited in Balla). This Court also finds the analysis in Balla persuasive and adopts as a Conclusion of Law the principle that the above-mentioned six essential elements are necessary for a minimally-adequate mental health treatment plan. The Court recognizes Balla is a district court decision

and, therefore, carries less weight than would a circuit court's decision. Be that as it may, the Court has read numerous cases which address the issue of minimally-adequate mental health care for inmates, and no case offers as thorough of a framework for analysis of this issue as does Balla.

The testimony at trial revealed that when any inmate enters or reenters the Iowa Corrections system he is sent to the Oakdale facility, which provides a systematic program for screening and evaluating inmates for physical and mental problems. On the other hand, inmates who develop problems after entering the system or inmates whose problems do not manifest themselves until they have been in the system for a while are often left undiagnosed. These are the inmates most likely to end up in the lockup cellhouses in Fort Madison. While the initial screening system satisfies Balla's first test,²⁰ the lack of repeated follow up evaluations means the complete system of screening lockup inmates for mental health problems does not pass the Balla test. Neither does the Penitentiary's mental health care program satisfy Balla's second element which requires more than segregation and close supervision. For those inmates who are not transferred to the Oakdale special needs unit, and there are very few of those from Fort Madison, treatment of lockup inmates entails no more than segregation and indifferent supervision of

²⁰ In the Findings of Fact, however, Dr. Loeffelholz testified there should be substantially more screening of inmates when they are at Oakdale.

the inmate patients. Likewise ISP does not satisfy the third element of the Balla test. Although the prison employs trained mental health professionals, the testimony showed that treatable inmates suffering from serious mental disorders receive almost no treatment at ISP. For example, the psychological report on an inmate who received ten reports in a month might note "no unusual behavior" and nothing else. Only those less than a handful of inmates who were lucky enough to be transferred to Oakdale received treatment in an individualized manner. Cf. United States v. Michigan, 680 F. Supp. 928, 983 (W.D. Mich. 1987).²¹

It appears that the Penitentiary meets the fourth element of the Balla test although probably not in the manner Judge Ryan envisioned when he formulated the test. The prison keeps

²¹ In United States v. Michigan, the court held,

Within sixty (60) days of the issuance of this Order, any inmate assigned to disciplinary or administrative segregation, for whom an anti-psychotic medication has been prescribed, shall be examined by a psychiatrist within seventy-two (72) hours of initial placement on the segregation unit, and shall be examined on a daily basis by a psychiatric nurse practitioner. Following seven days of confinement, such inmate shall be interviewed by a psychologist weekly, and by a psychiatrist not less than monthly. The findings of such interviews shall be documented in the inmate's medical record.

680 F. Supp. 928, 983 (W.D. Mich. 1987), rev'd on other grounds 940 F.2d 143 (6th Cir. 1991) ("Sections [of the district court's order] may be implemented to the extent that they permit, pursuant to the consent decree, the provision of minimally acceptable medical (including mental health) care and to protect persons from self-inflicted harm or harm to others" 940 F.2d at 158 n.10.)).

accurate, complete, and confidential records of the mental health treatment process, although for all those inmates who are not transferred to the special needs unit, there is precious little "treatment" to record. With regard to the fifth element of the Balla test, there was no evidence indicating the Penitentiary administers behavior-altering medications in a dangerous manner. ISP, therefore, satisfies the fifth element of Balla. Finally, although there was evidence that at least one inmate committed suicide in a lockup cell at ISP, there was no persuasive evidence that the Penitentiary's basic program for the identification, treatment and supervision of inmates with suicidal tendencies is substandard. In summation, the Penitentiary fails the first, second and third elements of the Balla test and, therefore, is not providing a minimally adequate mental health treatment program.

Finally, the Court notes that in Coleman, a California district court reviewed a situation remarkably similar to the case at hand where,

mentally ill inmates who act out are typically treated with punitive measures without regard to their mental status . . . [and] such treatment was the result of inadequate training of the custodial staff so that they are frequently unable to differentiate between inmates whose conduct is the result of mental illness and inmates whose conduct is unaffected by disease.

Coleman, 912 F. Supp. at 1320. The Coleman court affirmed a magistrate judge's finding that this troubling state of affairs in the disciplinary system rose to the level of an Eighth Amendment violation. The Court held,

There is substantial evidence in the record of seriously mentally ill inmates being treated with punitive measures by the custody staff to control the inmates' behavior without regard to the cause of the behavior, the efficacy of such measures, or the impact of those measures on the inmates' mental illnesses.

Id. Along the same lines, in Casey v. Lewis, the court found Eighth Amendment violations where it deemed

the treatment of seriously mentally ill inmates to be appalling. Rather than providing treatment for serious mental illnesses, ADOC punishes these inmates by locking them down in small, bare segregation cells for their actions that are the result of their mental illnesses. These inmates are left in segregation without mental health care. Many times the inmates, such as H.B. are in a highly psychotic state, terrified because of hallucinations, such as monsters, gorillas or the devil in her cell. Nor does it appear that H.B. is the exceptional case as seven to eight mentally ill women may be locked down at the Santa Maria Unit in Perryville at any one time and may remain there for months without care.

834 F. Supp. 1477, 1550 (D. Ariz. 1993), aff'd in part, vacated and remanded in part on other grounds, 43 F.3d 1261 (9th Cir. 1994) (footnotes omitted). The court also noted, "[F]emale inmates are returned to general population and are generally locked down for behavior caused by their mental illness. Sometimes, the lockdown reoccurs within 24 to 72 hours of return to general population." Id. at 1550 n.17. Casey represents yet another example of a situation where a court faced with facts similar to those in this case found an Eighth Amendment violation.

From the above Findings of Fact and analysis of case law, it is apparent to this Court that those inmates who are mentally ill and mentally disordered need the type of mental health care that

a special needs unit can provide. It is also clear that only a minimal number of the Fort Madison inmates who need this help are able to get it. The Court was persuaded this was true by the testimony of the plaintiffs, but the point was driven home by the testimony of a number of officials at the Iowa State Penitentiary. The Department of Corrections's Head Nurse, Marilyn Sales, testified the conditions at Fort Madison contributed to one inmate's mental breakdown. She also testified other mentally ill inmates need a special needs program and there is no reason why the State could not provide such a program. Finally, she testified because the Penitentiary does not provide adequate treatment for mentally ill inmates, it ends up having to commit many of them to mental institutions after they discharge their sentences. It is also clear that the higher-placed prison officials who make the final decisions have been told by their own staff that inmates need this help but are not getting it. Dr. Paul Loeffelholz testified he has told the director of the Iowa Department of Corrections that mentally ill inmates need a special needs unit at ISP, just like the one they have in Pennsylvania. Former Warden Acevedo testified that the Penitentiary's mental health care was inadequate, and fared poorly when compared to the Illinois system with which he was familiar.

For all these reasons, the Court concludes prison officials have acted deliberately indifferently to the inmates' serious mental health needs, which constitutes an unnecessary and wanton

infliction of pain on them. From these findings, this Court concludes that the defendants have and are violating the Eighth Amendment rights of those inmates who are mentally ill or mentally disordered because they have acted with deliberate indifference to the serious medical need these inmates have for the treatment they would receive in a special needs unit. As previously mentioned, "Deliberate indifference by prison personnel to an inmate's serious medical needs violates the inmate's Eighth Amendment right to be free from cruel and unusual punishment. This principle extends to an inmate's mental health care needs." Smith, 919 F.2d at 93.

The plaintiffs also presented evidence that inmates with behavioral problems that did not rise to the level of mental illness could benefit from the special needs program. They did not, however show that behavioral problems amount to "serious medical needs" as the term is defined by current Eighth Amendment law. For that reason, this Court cannot conclude that inmates with mere behavioral problems suffer a violation of their Eighth Amendment rights because they are not placed in a special needs unit.

2. ADDITIONAL CONDITIONS OF CONFINEMENT

The plaintiff class in this case also argues the conditions of their confinement violate their Eighth Amendment right to be free from cruel and unusual punishment. Part of their claim is similar to their substantive due process claim and is based solely on the length of their sentences. Another part of their

claim is based on conditions such as small cell sizes and the lack of indoor exercise during winter months. Yet another part of their claim is based on the bedlam and pandemonium the mentally stable inmates suffer every day as a result of living with mentally-ill inmates who are unable to control their behavior and other inmates whose behavior the prison cannot control. This final part of the claim is related to, but separate from, the inmates' Eighth Amendment claim which alleges the mentally-ill inmates do not receive minimally-adequate medical care.

In Williams v. Delo the Eighth Circuit outlined the two elements a plaintiff must establish to prove an Eighth Amendment conditions of confinement claim. It held:

To establish that a prisoner's conditions of confinement violate the Eighth Amendment, the prisoner must show that (1) the alleged deprivation is, "objectively, sufficiently serious," resulting "in the denial of the minimal civilized measure of life's necessities," and (2) that the prison officials were deliberately indifferent to "an excessive risk to inmate health or safety," meaning that the officials actually knew of and disregarded the risk. Absent a showing that the prison officials consciously understood that prison conditions created such an excessive risk, the conditions are not a "punishment" within the meaning of the Eighth Amendment.

49 F.3d 442, 445 (8th Cir. 1995) (citing Farmer v. Brennan, 511 U.S. 825, 834 (1994)). "[A]cts which are accidental or inadvertent do not constitute punishment and do not violate the Eighth Amendment." Brewer, 836 F.Supp at 641.

The Eighth Circuit has also approved²² the following jury instruction for use with an Eighth Amendment conditions of confinement claim:

You must decide whether the conditions of plaintiff's confinement . . . violated the evolving standards of decency which mark the progress of a maturing society. You must take into account broad and idealistic concepts of dignity, civilized standards, humanity and decency. If, after having considered all of the circumstances of the plaintiff's confinement in solitary . . . you are convinced that those circumstances were so inhumane, base, or barbaric so as to shock the sensibilities, then the plaintiff has proven that the conditions of his solitary confinement violated the Eighth Amendment's prohibition against cruel and unusual punishment.

Porth v. Farrier, 934 F.2d 154, 157 (8th Cir. 1991). This instruction is essentially the "totality of circumstances" test adopted in Rodgers v. Thomas, 879 F.2d 380, 383 (8th Cir. 1989) ("When considering an Eighth Amendment claim, the fact finder must consider the 'totality of the circumstances' surrounding the punishment. Rhodes v. Chapman, 452 U.S. 337, 362-63 (1981):"). Therefore, even if no one incident of life at ISP violates the Eighth Amendment, the Court will consider all the potentially unconstitutional conditions to determine whether, in toto, the conditions of confinement violate the Eighth Amendment.

²² The Court held, "We find that the jury instruction in this case was proper. It incorporated the totality of the circumstances test." Porth v. Farrier, 934 F.2d 154, 157 (8th Cir. 1991).

a. LENGTH OF INMATES' LOCKUP SENTENCES

With regard to the inmates' first Eighth Amendment claim, that their long lockup sentences alone constitute cruel and unusual punishment, the Court notes the inmate plaintiff in Brown also raised this Eighth Amendment claim. In ruling on the claim, the Eighth Circuit held simply, "We find Brown has not alleged an Eighth Amendment violation." Brown, 33 F.3d at 955. This succinct analysis does not give the Court much with which to work. The only reasonable conclusion it can draw is that the Eighth Circuit does not believe lengthy lockup sentences present Eighth Amendment questions regardless of the length of the sentences. While the record in this case is much more developed than in Brown and, therefore, presents much more serious issues than in Brown, the Court is persuaded that the Eighth Circuit would nonetheless reject this claim. This Court, therefore, has no choice but to deny the plaintiffs' claim that their lengthy lockup sentences alone violate the Eighth Amendment's cruel and unusual punishment clause.²³

²³ This is not to imply there is not strong support for the inmates' claim in other jurisdictions. In Sheley v. Dugger (Sheley II), the Eleventh Circuit held:

Sheley's case is unique because of his long period of segregation. While we have been hesitant in the past to apply the Eighth Amendment to claims of physical and mental deterioration by prisoners in the general prison population . . . Sheley's twelve-year confinement in [close management] raises serious constitutional questions. In addition to the mental and physical deterioration he alleges, Sheley's Eighth Amendment claim is supported, at this stage of the litigation, by his contention that his confinement in

b. INMATES' SMALL LOCKUP CELLS

With respect to the inmates' claim that their single-inmate small cell sizes alone violate the Eighth Amendment, the Court is not persuaded the plaintiffs should prevail. As mentioned in the Findings of Fact, the cells in cellhouse 319 are 48 square feet. Of those 48 square feet, only 21 square feet are unencumbered. The plaintiffs did present evidence showing their cells are smaller than the American Correctional Associations recommended guidelines for inmates who are locked up more than ten hours a day. The defendants' expert, George Camp testified, however, that these standards are merely recommendations and their violation does not create an automatic constitutional violation. In Watson v. Ray, 90 F.R.D. 143 (S.D. Iowa 1981), Judge Stuart found the same 48-square-foot cells at ISP were constitutional, although he did comment that inmates "have the opportunity to spend substantial periods of time outside their cells." Id. at 149. Even though the Findings of Fact show that the inmate plaintiffs in this case spend almost all of their time in their cells, the Court considers the Watson class action settlement

CM is punitive in nature. If the segregation is punitive, it should be determined whether it shocks the conscience, is grossly disproportionate to the offense, or is totally without penological justification.

Sheley, 833 F.2d 1420, 1429 (11th Cir. 1987). Sheley II, unlike Sheley I (824 F.2d 1551 (11th Cir. 1987)) was not vacated. More generally, the Supreme Court has cautioned, "[T]he length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards." Hutto v. Finney, 437 U.S. 678, 686 (1978).

ruling binding on the question of whether the cell sizes alone violate the Eighth Amendment.

Moreover, in Rhodes, 452 U.S. at 341, the Supreme Court found a 63-square-foot cell constitutionally adequate for two inmates. The Eighth Circuit has not set a constitutional limit on the cell size necessary for a single inmate, but other courts have addressed the problem. See, e.g., Morales-Feliciano v. Parole Bd. of the Commw. of P.R., 887 F.2d 1, 5 (1st Cir. 1989) (mandating minimum 35-square-foot cell); Gregory v. Wyse, 512 F.2d 378, 380-82 (10th Cir. 1975) (approving 36-square-foot cell); Seed v. Hudson, No. Civ. A. 93-0008, 1994 WL 229096, at *5 (D. N. Mar. I. May 11, 1994) (approving 42-foot-square cell); Lovell v. Brennan, 566 F. Supp. 672 (D. Maine 1983) (approving 42-foot-square cell). In conclusion, while this Court cannot condone 48-square-foot cells, neither can it declare such cells constitutionally infirm.

c. LACK OF EXERCISE INMATES IN LOCKUP RECEIVE

The inmates also claim they do not receive enough exercise time outside of their cells, and they are precluded from exercising in their cells because the amount of unencumbered space is so small. As mentioned in the Findings of Fact, inmates are only allowed to exercise for one hour, five days a week, including the time spent going to and returning from the yard. The Findings of Fact also showed that in cellhouse 319 there are only 21 square feet of unencumbered space (and only 48 total square feet of space) per cell. Moreover, the unencumbered space

is not conveniently arranged in a seven-foot-by-three-foot rectangle conducive to exercise. The Court is persuaded the inmates in cellhouse 319 are precluded from exercising in their cells. While there is more unencumbered space in the cellhouse 220 cells, the testimony showed those cells were also so small as to prevent productive exercise. A number of courts have addressed the issue of how much exercise inmates should receive. In Wishon v. Gammon, 978 F.2d 446 (8th Cir. 1992), the Eighth Circuit held:

In considering an alleged deprivation of adequate exercise, courts must consider several factors including: (1) the opportunity to be out of the cell; (2) the availability of recreation within the cell; (3) the size of the cell; and (4) the duration of confinement.

Id. at 448. In that case, the Circuit concluded forty-five minutes of exercise per week was constitutionally adequate for an inmate in protective custody, reasoning the inmate was "assigned to protective segregation for his own safety and the limitations on out-of-cell time were necessary to ensure his safety and security." Id.

The facts in our case differ from those in Wishon because the plaintiff inmates in this case are not locked up because they need to be protected for their own security. They are locked up because they have violated the internal rules of the prison. There was little or no evidence presented at trial which showed the total exercise time allotted to inmates is limited due to the administration's security concerns.

The Court next turns to Hosna v. Neal, 80 F.3d 298 (8th Cir. 1996). In Hosna the Eighth Circuit held, "[Nor] does a limitation of three hours per week of out-of-cell exercise necessarily violate the Constitution." Id. at 306. One of the factors on which the Circuit predicated its decision was that the plaintiff had refused some of the exercise opportunities provided to him; therefore "any ill effects arising from lack of exercise stem[med] from his own, rather than defendants' actions or inactions." Id.

The Findings of Fact in this case also showed inmates refused exercise on a regular basis. Indeed, in February 1994, inmates in cellhouse 220 chose to exercise during only 8.4% of their opportunities. In contrast, in August 1995, 42% of inmates in cellhouse 220 opted to exercise. In other words, four out of five inmates who opted to exercise in August opted not to exercise in February. There were similar dropoffs in the exercise rates in cellhouse 319. Common sense tells one that Iowa's harsh winter weather is primarily responsible for this disparity in exercise rates. Having recently endured -70 degree windchills in Iowa, the Court is not surprised inmates would choose not to exercise in similar conditions, even if provided the appropriate clothing. See also, MICHAEL MUSHLIN, RIGHTS OF PRISONERS, vol. 1, 88 n.444 (2nd ed. 1993) ("[E]specially in Northern climates, inclement weather during certain seasons of the year preclude outdoor exercise as a practical matter.").

As mentioned, inmates in lockup do not have the option of indoor exercise. Prison officials who testified at trial did not emphasize any security concerns as the reason for the lack of indoor exercise for lockup inmates. There was little or no evidence to show the inmates could not exercise in the gymnasium, on the range in front of their cells, or in an empty room somewhere in the Penitentiary.

In light of the statistics demonstrating how infrequently inmates choose to exercise in the winter, the Court concludes the inmates have shown they do not receive adequate exercise as per the four-factored Wishon test. With regard to Wishon's first factor, the Court has already mentioned that lockup inmates' only opportunity to be out of their cells are their five hours of exercise each week. With regard to Wishon's second factor, the Court has already concluded lockup inmates do not have the opportunity to exercise within their cells. With regard the third Wishon factor, the Court has already concluded that lockup inmates' cell sizes are just large enough to be marginally constitutional. With regard to the fourth Wishon factor, the Court has already concluded the long disciplinary sentences violated the inmates right to substantive due process and are marginally constitutional as per the Eighth Amendment. Taken together, the Court concludes ISP administrators effectively deny inmates a constitutionally minimal opportunity to exercise during the winter months.

This denial of exercise -- a denial of a minimal civilized measure of life's necessities -- is only a violation of the Eighth Amendment if prison officials are deliberately indifferent to an excessive risk to inmate health or safety, meaning that the officials actually knew of and disregarded the risk. In the lack of adequate exercise context, an excessive risk to inmate health or safety occurs when an inmate's "muscles are allowed to atrophy or if an inmate's health is threatened." Hosna, 80 F.3d at 306. The plaintiffs' expert, Gordon Kamka, testified inmates afforded as few exercise opportunities as the inmates at ISP will become lazy and lethargic, gain weight, and develop medical problems. This testimony clearly meets the Hosna "health threatened" standard.

The only question then is whether prison officials were deliberately indifferent to this risk to inmates' health. In Howard v. Adkinson, the Eighth Circuit held,

Although there is no "static test" to determine what confinement conditions violate the eighth amendment, common sense is sometimes helpful. The jury found that Howard had been forced to live under extreme conditions for a period of two years. If, as appellants assert, no previous case law specifically declares these confinement conditions to be violative of the eighth amendment [i]t should have been apparent to a reasonable person that the conduct in question was impermissible.

887 F.2d 134, 140 (8th Cir. 1989) (internal citations and quotations omitted). Howard resembles our case in that this court has determined, as a factual matter, that inmates at ISP have been effectively deprived of exercise during winter months

for many years. Even if no previous case law specifically outlaws such an exercise arrangement, it should have been apparent to the defendants that their conduct was impermissible. This Court concludes, therefore, prison officials were deliberately indifferent to this risk to inmates' health, and, thus, violated the inmates' Eighth Amendment right to be free from cruel and unusual punishment.

This conclusion is bolstered by the Supreme Court's pronouncement that, when a court weighs an Eighth Amendment claim, it should consider the "totality of the circumstances surrounding the punishment." Rhodes, 452 U.S. 362-63. It is possible that another court would not find, as did this Court, that the lack of winter exercise by itself constituted a deprivation of a minimal civilized measure of life's necessities. However, after considering the totality of the marginally-constitutional circumstances which the inmates must endure (extremely small cells, raucous living conditions and little or no winter exercise), it is this Court's opinion that almost all courts would conclude that, *in toto*, the lack of winter exercise constitutes a violation of the Eighth Amendment.

d. BEDLAM AND PANDEMONIUM MENTALLY-STABLE INMATES SUFFER LIVING WITH MENTALLY-ILL INMATES WHO CANNOT CONTROL THEIR BEHAVIOR AND OTHER INMATES WHOSE BEHAVIOR THE PRISON CANNOT CONTROL

Finally the mentally-stable inmates claim their Eighth Amendment rights are violated due to the bedlam and pandemonium they must suffer every day as a result of living with mentally-ill inmates who are unable to control their behavior and other

inmates whose behavior the prison cannot control. As mentioned, the standard for analyzing an Eighth Amendment conditions of confinement claim is composed of two parts and requires (1) that the violation be objectively serious such that it denies a minimal civilized measure of life's necessities, and (2) that the defendants are deliberately indifferent to an excessive risk of inmate health or safety. The Supreme Court established this test in Farmer and the Eighth Circuit reiterated the test in Williams, as mentioned on page 96 of this Order.

A number of circuit and district courts have addressed similar claims. In each of the similar cases this Court reviewed, the presiding court found an Eighth Amendment violation. The Court will briefly recap the relevant portion of each case before ruling on the facts in the situation at hand.

In Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996), the Ninth Circuit held that, "'[P]ublic conceptions of decency inherent in the Eighth Amendment require that [inmates] be housed in an environment that, if not quiet, is at least reasonably free of excess noise." (citing Toussaint v. McCarthy, 597 F. Supp. 1388, 1397, 1410 (N.D. Cal. 1984), aff'd in part, rev'd in part, vacated in part and remanded, 801 F.2d 1080 (9th Cir. 1986), and cert denied, 481 U.S. 1069 (1987), and cert. denied sub nom. McCarthy v. Toussaint, 481 U.S. 1069 (1987)). Based on a prisoner's affidavit "that at all times of day and night inmates were screaming, wailing, crying, singing and yelling, often in groups, and that there was a constant, loud banging," the Keenan

court denied a motion for summary judgment on an inmate's Eighth Amendment claim holding the affidavit produced a material question of fact for purposes of summary judgment. Id. (internal quotations omitted).

In Tillery v. Owens, 719 F. Supp. 1256 (W.D. Pa. 1989), the Court faced a situation similar to the one that exists at the Iowa State Penitentiary where mentally-stable inmates' cells are mixed with mentally-ill inmates. The Tillery court concluded,

We think it only makes sense that severely mentally ill inmates should be segregated from the general population. These inmates who randomly scream all night, talk loudly and laugh hysterically without apparent reason increase tension for psychologically normal inmates. In addition, such irrational behavior invites retaliation from impatient and stronger inmates. To maintain such persons in the North and South Blocks concocts a "recipe for explosion."

Tillery, 719 F. Supp. at 1303. This Court agrees. The wisdom of the preceding statement is self-evident and there should be little wonder among Penitentiary officials that their correctional officers must constantly oversee "explosions" at their own facility.

In Bracewell v. Lobmiller, 938 F. Supp. 1571 (M.D. Ala. 1996), the court considered a situation much like the one that presently exists at the Iowa State Penitentiary where, as mentioned in the Findings of Fact, mentally-ill inmates scream and yell almost constantly and often throw unsanitary items outside of their cells. In Bracewell, the court held,

The court has little trouble concluding that the conditions, both past and present, in the segregation unit at Julia Tutwiler Prison for Women are

sufficiently serious to meet the objective component of the Eighth Amendment test due entirely to the presence of Deborah Daniels on that unit.²⁴ The evidence before the court shows that inmates who are confined in the segregation unit at Tutwiler are forced to endure Daniels' repeated and erratic outbursts of disruptive and disgusting behavior. These outbursts include yelling, screaming, hollering, banging, cursing, and the throwing of liquids, unclean sanitary napkins, and feces. These outbursts are Daniels' trademark and any inmate who is confined in segregation for whatever reason is punished by her behavior.

Id. at 1578. Bracewell is particularly relevant to this Court's analysis because, as mentioned in the Findings of Fact, there are a number of inmates in the Penitentiary's lockup cells whose behavior rises to Deborah Daniels-type levels. The Court agrees with the Bracewell court that the conditions described above constitute proof of the objective half (i.e., the violation is objectively serious such that it denies a minimal civilized measure of life's necessities) of the Farmer test for proving an Eighth Amendment violation.

In Langley v. Coughlin, the court also faced a situation where mentally-ill and non-mentally-ill inmates were confined with one another. The district court concluded,

Even if plaintiffs had been unable to establish deliberate indifference to their medical needs, which is not the case here, they would still be able to establish an Eighth Amendment violation by pointing to the conditions in which they are confined. In Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981), the Second Circuit continued to define the scope of the Eighth Amendment's protections. The Court held that the prison's practice of housing healthy or nondisruptive

²⁴ "Obviously, if other inmates like Daniels were housed on the unit, conditions would be worse." Bracewell, 938 F. Supp. at 1578 n.13 (footnote in text).

inmates with physically ill or psychiatrically ill inmates did not pass "constitutional muster." Id. at 108.

709 F. Supp. 482, 485 (S.D.N.Y. 1989). Langley concludes that simply mixing mentally-ill inmates with mentally-stable inmates is enough to establish the objective half of the Farmer test for proving an Eighth Amendment violation. The Court agrees.

Finally, in Matthews v. Hardy, 420 F.2d 607 (D.C. Cir. 1969), the D.C. Circuit addressed the problem of mentally-stable inmates who are erroneously placed in a mental hospital. This is no doubt a different situation than the instant case, but some obvious parallels are highlighted in the following passage:

[W]e are faced with the obvious but terrifying possibility that the transferred prisoner may not be mentally ill at all. Yet he will be exposed to physical, emotional and general mental agony. Confined with those who are insane, told repeatedly that he too is insane and indeed treated as insane, it does not take much for a man to question his own sanity and in the [end] to succumb to some mental aberration.

Matthews, 420 F.2d at 611. In other words, it is likely that the many mentally-stable inmates in lockup at the Penitentiary who hold a precarious grasp on their own sanity will lose their grip if forced to spend years in the close proximity of mentally-ill inmates.

As mentioned in the discussion of Bracewell and Langley, it is clear the Penitentiary's policy of mixing mentally-ill inmates with mentally-stable inmates violates the objective part of the Farmer test for proving an Eighth Amendment violation. The Court must now determine if, in establishing and continuing this policy

of mixing mentally-ill and mentally-stable inmates, Penitentiary officials have acted deliberately indifferently to this excessive risk to inmates' health and safety. This question is easily answered. Though the Court did not have an opportunity to tour the Penitentiary in connection with this trial, the Court has had the opportunity on numerous occasions in the past and takes judicial notice of the yelling and screaming, the pandemonium and the bedlam that exists in the lockup units, cellhouses 220 and 319. On the occasions when the Court has toured the lockup cells with prison officials, it was necessary to retreat to the corner of the range, cup hands, and shout into the ear of the other person in order to conduct an audible conversation. The lockup conditions described in the Findings of Fact (which were based on the testimony at trial) are precisely those conditions this Court has experienced in the past on its tours. In other words, these tumultuous conditions have existed for far more than a decade and the Penitentiary officials have been deliberately indifferent to those conditions for just as long. The Court also bases its findings on the testimony of the unit managers, counselors and even ALJ Harper who confirmed that the noise and disorder in lockup cells often reach extreme levels and Fort Madison officials have had little success combating the problem. Based on these findings, the Court is persuaded the Penitentiary's longtime practice of mixing mentally-ill inmates with mentally-stable patients violates the Eighth Amendment's prohibition against cruel and unusual punishment. Again, this conclusion is

only bolstered by the Rhodes totality-of-the-circumstances analysis.

C. SUMMARY OF CONCLUSIONS OF LAW

The Court has found for the plaintiffs on a number of claims. Specifically the Court finds the Penitentiary's practice of assigning extraordinarily long sentences to disciplinary lockup violates the substantive portion of the due process clause. The Court also finds the mental health care the Penitentiary provides for mentally-ill and mentally-disordered inmates falls astonishingly below Eighth Amendment standards and constitutes deliberate indifference to those inmates' serious medical needs. The Court finds the Penitentiary's practice of effectively denying inmates any exercise at all during the winter months of the year is also in violation of the Eighth Amendment. Finally, the Court finds the Penitentiary's practice of mixing mentally-ill inmates with mentally-stable inmates violates the Eighth Amendment rights of the mentally-stable inmates.²⁵

²⁵ Some of the best evidence came as a cry for relief from the defendants' own employees. This relevant evidence is of necessity lengthy. In order to capsulize the evidence for easy reading and clarity, the Court finds that the evidence overwhelmingly demonstrated a number of factors that need to be addressed by Penitentiary officials. The Administrative Law Judge's system of handling the charges against prisoners has real problems. His system is not working right. This was testified to by Administrative Law Judge Harper himself, see p. 8 of this Order, see generally pp. 8-16, 33-39; by Dr. Loeffelholz, pp. 63, 65; by plaintiffs' expert, Kamka, pp. 18, 19, 20; by defendants' expert, Camp, p. 26; by Colonel Emmett, p. 30; by Mr. McKinney, p. 32.

One of the major problems is that there are too many major infractions with long sanctions. Expert Kamka, pp. 21, 53; Mr. Brandt, pp. 51-52. As a result of these major charges, lockup is

too long. It is like it used to be in the mid-1970s. Expert Kamka, pp. 17-18; Expert Camp, p. 25; Mr. Washington, p. 29; Mr. McKinney, p. 32; Dr. Loeffelholz, p. 63; Plfs. Ex. 27, p. 33. Very few inmates are getting time cuts which reduce these long sanctions. Expert Kamka, p. 25; Mr. Rung, p. 27; Mr. Babcock, p. 33; Ms. Brown, p. 33. The present lockup policies shake down so that people being discharged oftentimes go straight into the streets from lockup, which was described as a "walking time bomb." Expert Kamka, p. 18; Expert Camp, p. 26; Mr. Rung, p. 26; Ms. Sales, p. 67; Mr. Brown, p. 62; Plfs. Ex. 27, p. 33-34.

They have another special problem that complicates all of this. ISP officials must keep a lot of prisoners in lockup because there are no enough general population cells. Colonel Emmett, p. 30; Expert Camp, p. 22.

There are a number of good solutions to these problems. The first is to give the ALJ more power to dismiss or reduce charges as is permitted at Anamosa. Dr. Loeffelholz, p. 63; Psychologist Hassan, p. 61. The penitentiary hierarchy should require that the 30-day review methods are used and followed as anticipated by Iowa Department of Corrections policies #IN-V-05 and #SE-IV-05 so that they will not be a farce, as they are now. Expert Kamka, p. 20. The evidence clearly showed that time cuts are crucial. Expert Kamka, p. 21; Dr. Loeffelholz, p. 63.

There is a real need for a matrix such as Plfs. Ex. 12 that is used at Anamosa. Colonel Emmett, p. 30; Expert Camp, pp. 11, 25; Expert Kamka, p. 20; Mr. Brimeyer, p. 10. There was also important evidence that a behavioral contract might help to solve the problem. Expert Kamka, p. 20; Mr. McKinney, p. 32.

The evidence further clearly showed that there are a number of mentally ill patients in Iowa State Penitentiary. Plfs. Ex. 84(a) shows the list of sixty-one inmates considered mentally ill. P. 53. Dr. Loeffelholz acknowledges this. P. 68; Marilyn Sales, p. 65; Psychologist Hassan, p. 53; Expert Kamka, p. 53; Expert Camp, p. 26; ALJ Harper, pp. 35, 39; Mr. Rung, p. 62; Inmate 111, p. 42. It is a serious a problem having the sane housed with the mentally ill. Dr. Loeffelholz emphasized this. P. 64; Marilyn Sales, p. 65; Expert Camp, p. 69; Expert Kamka, p. 53; Mr. Rung, p. 62.

Cellhouses 220 and 319 are continually very noisy and this is hard to cope with. Dr. Loeffelholz, p. 64; Marilyn Sales, p. 68; Plfs. Ex. 81, pp. 41-42; Mr. Rung, p. 42; Mr. Washington, p. 29; Mr. Thompson, p. 36; Mr. Edwards, p. 42; a number of other witnesses, p. 40. It was clear that mentally ill patients should not be in the prison. Dr. Loeffelholz, p. 68; Expert Kamka, p. 53; Marilyn Sales, p. 68. Some of these inmates should be taken out of the Iowa penitentiary system and should be kept in Iowa state mental hospitals. Dr. Loeffelholz, p. 68; Marilyn Sales, p. 68.

For those not housed in Iowa state mental hospitals, there

The Court, as heretofore mentioned, rejects two of the plaintiffs' claims. First, the Court is not persuaded that the extraordinarily long lockup sentences the Penitentiary assigns by themselves violate the cruel and unusual punishment clause of the Eighth Amendment.²⁶ Similarly, the Court is unpersuaded that the small size of the cells in which lockup inmates serve twenty-three or twenty-four hours a day are small enough to violate the Eighth Amendment's cruel and unusual punishment clause.

This Court, as is the Eighth Circuit, is "keenly aware . . . that federal courts owe great deference to the expertise of the officials who perform the always difficult and often thankless task of running a prison." Salaam v. Lockhart, 856 F.2d 1120, 1122 (8th Cir. 1988). Along those same lines, the Court appreciates that,

Since problems that arise in the day-to-day operation of a corrections facility are not susceptible

should be a special needs unit at ISP that should take care of mentally ill and mentally disordered patients. Dr. Loeffelholz, p. 64; Marilyn Sales, pp. 65-67; Expert Kamka, pp. 52, 65; Warden Acevedo, p. 65; Mr. Brandt, p. 51. Tied in with the special needs unit, but perhaps an adjunct to it if there are too many inmates for the special needs unit, it is clear that all head bangers and yellers should all be in one place so that they are not disturbing many others who are sane. Dr. Loeffelholz, p. 63.

Outdoor exercise in the winter in Iowa is a disaster. There should be indoor exercise for cellhouses 220 and 319 inmates. Expert Kamka, p. 44; Expert Camp, pp. 44-45. There are the barest of programs for inmates or no programs at all in the Iowa State Penitentiary, and this lack of programs contributes to the problems at ISP. Dr. Loeffelholz, p. 63; Expert Kamka, p. 46; Ms. Brown, p. 62; Mr. Babcock, p. 47.

²⁶ As mentioned on p. 111, however, the Court does find the extraordinarily long lockup sentences violate the substantive portion of the due process clause.

of easy solutions, prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.

Bell v. Wolfish, 441 U.S. 520, 521 (1979). This Court also understands that,

Although a district court has wide discretion in tailoring a remedial injunction, that discretion is not unconfined. [T]he constitutional mandate against cruel and unusual punishment is not a warranty of pleasant prison conditions. Reporative injunctive relief must be targeted at elimination of the unconstitutional conditions. The nature of the violation determines the scope of the remedy. Therefore, a court can order only relief sufficient to correct the violation found.

Ruiz v. Estelle, 679 F.2d 1115, 1144 (5th Cir. 1982) (internal citations and quotations and footnotes omitted). Finally, this Court is well aware that the Supreme Court has said,

[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of the reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism.

Procunier v. Martinez, 416 U.S. 396, 404-05 (1974).

The Court does not pretend that it knows more than the men and women who run the Penitentiary about how best to eliminate the constitutional violations described above. Indeed, the Court's job is only to identify constitutional violations if any exist; it is in the province of the Penitentiary's officials to

attend to those violations. Of course, pursuant to the recently enacted Prison Litigation Reform Act,

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by relief.

18 U.S.C. § 3626(a)(1)(A) (1994). Asking the Penitentiary officials to bear this in mind, the Court will order Penitentiary officials to prepare a plan to alleviate the enumerated constitutional violations. This approach will serve justice with a minimum of judicial intervention and provide prison officials with the maximum possible discretion to manage their own institution.

The Court could have easily taken the position that a hands-off position as to these violations is the only way to go based on today's law-and-order mentality. However, there are obvious constitutional violations. The State has had opportunities to rectify or partially rectify the situation and has done nothing. Based on the present aura that everybody must take a tough-on-crime position, it is unlikely that these constitutional violations would be corrected by Iowa officials in the foreseeable future.

The Court is not attempting to run or micromanage the prisons. Iowa should be ashamed that such conditions have not been improved upon or terminated. This Court has the choice of ignoring the situation or directing the State to submit an "improvement plan" on its own. This is really the only course this Court believes it can take.

Upon the foregoing,

IT IS HEREBY ORDERED that Iowa State Penitentiary officials are to develop a plan to remedy the four constitutional violations described in this order, namely the violation of substantive due process resulting from the extraordinarily long lockup sentences, the violation of the Eighth Amendment resulting from the inadequate mental health treatment received by mentally ill and mentally disordered inmates, the violation of the Eighth Amendment resulting from the deprivation of exercise for inmates in lockup during the winter months, and the violation of the Eighth Amendment resulting from the pandemonium and bedlam the mentally-stable inmates must suffer because they are intermingled with the mentally-ill inmates who either cannot or do not control their behavior.

IT IS FURTHER ORDERED that, in the plan to remedy the above-enumerated constitutional violations, prison officials will consider: (1) incorporating a sentencing matrix (similar to the matrixes that thirty-five other states and the federal government already use and the matrix that is working fairly well at the State's other maximum-security facility, the Iowa Men's

Reformatory in Anamosa, see Plfs. Ex. 12); (2) housing the mentally ill inmates in a non-prison environment; (3) creating a higher security level "special needs" program at ISP; (4) separating the mentally ill from the mentally stable inmates; (5) using behavioral contracts or some other system to give all lockup inmates the opportunity to reduce their lockup time; (6) giving ALJ Harper the same authority at Fort Madison as ALJ Brimeyer has at Anamosa to dismiss, reduce, or lump together reports; (7) considering a system where the ALJ confers with psychologists and others as to the inmate's mental health status before he assigns sanctions; (8) following Department of Corrections policies #IN-V-05, and #SE-IV-05 which describe the purpose of the thirty-day review committee meetings.

IT IS FURTHER ORDERED that Penitentiary officials will report to the Court within 45 days of the date of this order with their plan to remedy the constitutional violations which currently exist at the Iowa State Penitentiary.

IT IS FURTHER ORDERED that Plfs. Ex. 84(a), the list of ISP inmates known to have mental problems; and the "Tables of Inmates, and Page Numbers, and Inmates and Exhibit Numbers;" will be sealed to protect the inmates involved by the Clerk of this Court and not opened except by further order of the Court.

IT IS FURTHER ORDERED that the plaintiffs' request for injunctive relief will be held in abeyance until the directives above are carried out by the defendants. Thereafter, said request will be reconsidered if that proves to be appropriate.

Dated this 5th day of June, 1997.

Donald E. O'Brien
Donald E. O'Brien, Senior Judge
UNITED STATES DISTRICT COURT