6-21-99

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

GEORGE GOFF, et al.,	)	
	)	
Plaintiffs,	)	No. 4:90-CV-50365
	)	
vs.	)	
	)	ORDER
CHARLES HARPER, et al.,	)	
	)	
Defendants.	)	

This matter is before the Court after a hearing on plaintiffs' resisted motion for the Court to order the defendants to submit a new plan (docket #274). The hearing involved additional testimony and arguments as to whether or not a new plan should be required of the defendants. After careful consideration of the parties' written and oral arguments, the Court is persuaded that plaintiffs' motion will be granted.

I. Background and Procedural History

The Court is persuaded it would be appropriate to set out in this order a short history of the problems involved. On June 5, 1997, after years of controversy and testimony, this Court entered an order that directed the Iowa State Penitentiary officials to develop a plan to remedy the four constitutional violations described therein, namely, the violation of

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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. Further, in that order, in remedying the above enumerated constitutional violations, prison officials were to consider: (1) incorporating a sentencing matrix (similar to the matrixes that 35 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 Plaintiffs' Exhibit 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) consider a system where the ALJ confers with

psychologists and others as to the inmates' mental health status before he assigns sanctions; (8) following Department of Corrections policies Nos. IN-V-05 and SE-IV-05, which describe the purposes of the thirty-day review committee meetings.

In that same order, the plaintiffs' request for injunctive relief was held in abeyance until the directives set out above are carried out by the defendants. The Court further stated that thereafter, said request for an injunction would be reconsidered if that proved to be appropriate.

In the Court's June 5, 1997, Findings of Fact and Conclusions of Law, in order to assist the parties and any appellate court reviewing the same, the Court set out in footnote 25[1] which of the 118 pages in that order pertained specifically to each of the four constitutional violations and to the eight other matters that the Court directed be considered when defendants submitted a plan to the Court.

Thereafter, on September 10, 1997, the defendants filed what they termed to be a plan, but their pleading (referred to hereinafter as "plan one") was more like a motion to set aside the Court's previous order and arguments in support thereof. See docket #184. The Court did not consider that document to be a plan that would assist the Court in helping to resolve the

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[1] On June 10, 1997, footnote 25 was replaced in its entirety. See docket #174. For the revised text of footnote 25, see the Court's Order Nunc Pro Tunc of June 10, 1997.

constitutional violations now before the Court. "Plan one" submitted by the defendants did not even address two of the four violations found by the Court.

On October 8, 1998, the defendants responded with what this Court will hereinafter refer to as "plan two." See docket #258. This plan, however, was not in the format contemplated by the Court, as it was a restatement of plan one to which several independent documents were either attached or incorporated by reference without any explanation from defendants as to how any portion of those documents could remedy the constitutional violations, and was again, in part, a rehash of their legal position and other arguments. Thereafter, at a hearing held at Iowa State Penitentiary on October 15, 1998, the Court again told the defendants: "I don't want any plans in three or four different documents." (Tr. 69, Oct. 15, 1998.)

Another hearing was held on November 13, 1998. Defendants were again ordered to submit a plan. The defendants were ordered to submit a detailed plan of what has been done, what is being done, and what will be done to the rules and regulations, the premises, and policies of the Fort Madison penitentiary to remedy the constitutional violations set out by the Court in its Order of June 5, 1997, and, further, this new plan was to include the affirmative steps already taken by the defendants as set out in the evidence.

On December 11, 1998, the defendants filed what they called a new plan (hereinafter referred to as "plan three"). See docket #269. Plan three includes twenty-two different documents of all phases of the penitentiary's plan over the next several years.[2] There was an appendix of exhibits with a table of contents, but no index.[3] Plaintiffs claim in their motion that the pleading of December 11, 1998, does not constitute a plan that the Court could adopt. Plan three contains almost four hundred Bates-numbered pieces of paper, but only ten or so of those four hundred pages appear to make specific written commitments pertaining to the correction of the constitutional violations at the Fort Madison penitentiary, which is the nub of this lawsuit.

II. Defendants "Plan Three"

The Court will review a few of the pages in the large "plan three" so that defendants will be precisely aware of what the

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[2] The exhibits attached included: "A Blueprint for Progress FYI 1998-99;" a 228-page transcript of a December 17, 1997, hearing held in this case; the Special Needs Study commissioned by the Iowa Department of Corrections (IDOC); the IDOC's budget proposals for FY 1999; the IDOC's infrastructure plan for FY 1999; the 42-page "purple rule book" containing disciplinary policy and procedures for ISP; IDOC policies on administrative segregation and disciplinary detention and time reductions; administrative segregation lists and lists of inmates who have been classified as "special needs" inmates; and samples from inmate files showing classification, behavior agreements, and time reductions.

[3] The pages of defendants plan three have been marked with Bates numbers, and the Court will use those numbers in referring to various pages of plan three in the discussion which follows.

situation is. Before the Court does so, however, it is important to note that defendants did not explain their reasons for singling out of the hundreds of exhibits and transcripts the twenty some documents that they submitted as their plan three. Defendants made no attempt to identify for the plaintiffs or the Court the information contained within those four hundred pages which the Court could use as a basis to rule that defendants had developed a sound plan to remedy the constitutional violations. Therefore, the Court and the plaintiffs have been left to speculate as to why they were included. For example, as mentioned, the 228-page transcript of a hearing held in this matter on December 17, 1997, was included in the plan. Presumably, this transcript was included because some of the testimony given by IDOC officials touched on affirmative steps which were being implemented either throughout the IDOC generally or specifically at ISP. The transcript, standing on its own with no explanation from defendants, does nothing to inform the plaintiffs, this Court, or any reviewing court as to the specific steps to which defendants are committing or how those steps relate to the remedying of any of the four constitutional violations found by this Court. As a second example, defendants have included in their plan three sample inmate classification reviews, behavior agreements, and time reductions. Presumably, these documents were included to illustrate that defendants are

taking steps toward reducing the extraordinarily long lock up sentences which the Court found violate the inmates' right to substantive due process. Plaintiffs, this Court and any reviewing authority, should not be required to guess that this was defendants' intent.

While, as mentioned, plan three contains over twenty documents consisting of a total of close to four hundred pages, only the first of these documents, a 31-page document titled "A Blueprint for Progress FY 1998-99," includes any attempt to set out in a concise fashion, the commitments defendants are willing to make and believe are appropriate in order to remedy the constitutional violations found by the Court. Even this document, however, falls short of that goal. Bates page two of that report is entitled "Executive Summary" and piously states:

> [T]he plan addresses specific needs at the Iowa State Penitentiary to meet the growing demand for high security space. More importantly, the plan focuses on the needs of special needs of offenders in all security levels. Changing disciplinary and administrative segregation policies, combined with a new 200-bed special needs unit, addresses the needs of medically and mentally ill offenders and behavioral disordered offenders.

While this statement is commendable, the remainder of the document contains similar summary type information and little as to the steps defendants will take to address these needs or the time frames they believe will be necessary in which to accomplish these tasks.

On Bates page three of plan three there is a short statement: "At the Iowa State Penitentiary, staffing is concentrated due to external judicial control and can be adjusted to meet the future staffing requirements of the two hundred bed special needs unit." This statement, of course, is commendable in that there was, some time ago, a promise that there would be such a two hundred bed special needs unit built. It was part of the trial testimony and we were told that it would be forthcoming. In plan three, defendants mention that the two hundred bed special needs unit is off in the future someplace. There are no particulars or dates when contracts will be let or anything else that would alert the Court as to how that portion of the plan is coming.

Bates page four of the 400-page "plan three" has a section entitled "Special Needs Inmate" and does show a plan as to bed expansion. Defendants also mention expansions planned for the women's prison and other IDOC facilities. This Court, however, is interested in Fort Madison special needs facilities particularly and is interested in other facilities with special needs units only to the extent that it is anticipated that inmates from ISP will be transferred to them for treatment in order to address the constitutional violations at issue here.

On Bates page five of the defendants' plan three, the following words are included:

> Although the federal court suggested that modifications to the disciplinary policy might be in order at the Iowa State Penitentiary, the wider question of the system-wide policy shift was already under review. However, the court's enthusiasm for a matrix system used at Anamosa State Penitentiary gave rise to standardization of sanctions across the entire correctional system. Disciplinary sanctions were modified both structurally and procedurally.
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> After careful deliberation, the disciplinary policy is crafted around a set of limited sanctions structured into a matrix. The sanctions are based on the serious nature of the offense and can be modified only for defined matters of aggravation or mitigation. Any single offense is limited to a maximum disciplinary sanction of 365 days of disciplinary time. A series of offenses is limited to 720 days. Other privilege losses such as good time adjustments or loss of privilege are structured into the matrix.

This discussion of the disciplinary policy presumably relates to the violation of substantive due process resulting from extraordinarily long lock up sentences and gives the Court more information than it received from their plan as to any of the other constitutional violations at issue in this case. It would be commendable if defendants' plan had similar specifics as to exactly what was going to happen to remedy the remaining violations.

Bates page 7 of defendants' plan three is entitled "Improvements Requested by the Federal Court." This heading is a misnomer. These matters were brought up by evidence that was brought out in testimony to a large extent by testimony of employees of the Iowa State Penitentiary and/or their expert witnesses. This Court has ordered that a plan be formed, and

expects that it will be a good plan, but the plan is not to be considered as improvements requested by this Court. They are affirmative steps which the State of Iowa through its Department of Corrections is telling the Court have been taken and will be taken to address the constitutional violations set out earlier in this order. Page seven further discusses seven other actions to improve services for long-term locked offenders. This is commendable, but not precise. No deadlines or estimated time of completion are given. Some of the paragraphs speak as to the need for approval by the 1999 Legislature. The 1999 legislative session is now over and the Court expects that a new plan, as did the testimony provided on June 15, 1999, will precisely set out what happened in the Legislature and what approval was given. At the hearing before this Court held on June 15, 1999, defendants contended that their plan was set out at Bates page 7 of plan three. That contention had not been made to the Court at any earlier time.[4] Despite defendants' contention, after careful consideration of all the matters set out on page seven, the Court concludes, that as written, they are not sufficient to constitute

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[4] As mentioned, defendants' plan three consisted of almost four hundred pages, none of which was explained by defendants or singled out by defendants as being of any particular importance. Additionally, as stated, the heading on Bates page 7 of plan three is "Improvements Requested by the Federal Court." This title did not signify to the Court that defendants considered this page to be the nub of their plan but instead only that they were mindful of the Court's order of June 5, 1997, which contained eight items to be considered by defendants in developing their plan.

a "plan" that can be could be accepted or rejected by this Court, or any reviewing appellate court, as remedial of the constitutional violations existing at ISP.

Bates page nine of plan three is entitled "Policy Improvement Disciplinary and Administrative." On that page, there is a flat statement that "concurrent with the defined reductions in discretion of the administrative law judges, the administrative segregation policy was completely revised." The Court has read the balance of page nine and has determined that insufficient information has been provided so that it is not possible to evaluate whether this change helps to remedy any of the four violations found by the Court. For example, the second to last sentence says: "More importantly, the process requires a team of treatment staff to communicate requirements for change within the communications process called classification." There is nothing to alert the Court as to how much of this has actually been put in place and exactly who is doing this and how they are doing it and how it is working if it has gotten that far and when it is going to happen if it has not gone that far.

Bates page 15 of plan three is entitled "Special Needs Offender." It is commendable that this page has been included, but it does not go to what steps have been taken, what steps have now been completed, and what steps are anticipated in the future

in relation to serving the special needs inmates that are discussed on that page.

About the only other page of the "Blueprint for Progress" which is specific to the Iowa State Penitentiary is Bates page 32 entitled "Iowa State Penitentiary," giving the history of the penitentiary. While it is precise as to the Iowa State Penitentiary and not intermingled with the overall IDOC plan, this page adds little to solve the problems now before the Court.

III. Moving Forward

As mentioned earlier, the original order dated June 5, 1997, set out precisely what the constitutional violations were. It further set out eight categories that the Court wanted the plan to address and specifically set out in footnote 25 where the reader could find the testimony that supported the conclusions of the Court.[5]

The original plan filed by the defendants was unacceptable. Defendants' plan two was not much help to the Court as, for example, the version of the Blueprint for Progress attached thereto, talked about all the facilities under the IDOC without much in the way of specifics as to Iowa State Penitentiary. That document was an incorporation of the five-year hopes for the

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[5] See Court's Order Nunc Pro Tunc of June 10, 1997, for the text of footnote 25.

entire correctional system for the State of Iowa and was not at all precise as to Fort Madison except in a few instances set out above, and it was not anything the Court could rule on or an appellate court could review.

It should be remembered that this Court's order of November 20, 1998, specifically said that on or before December 13, 1998, defendants shall file a detailed plan with the Court setting out what has been done, what is being done, and what will be done to the rules and regulations, the premises and the policies of the Penitentiary to remedy the constitutional violations set out by this Court in its Order of June 5, 1997, and to further include the affirmative steps taken by the defendants as set out in the evidence. That same order said that any and all arguments or pleadings would be separate from the final plan to the Court.

On January 27, 1999, this Court filed an order directing the plaintiffs to set out a pleading to be filed with as much precision as possible commenting on those items in plan three and those the plaintiffs believes should have been included in the plan so that defendants would attend the hearing prepared to discuss those points. This direction to the plaintiffs to set out the shortcomings of the defendants' plan was somewhat unusual, but the Court wanted, as mentioned, the defendants to be apprised of every position and every objection the plaintiffs had

to their plan so that the defendants would come to the hearing held on June 15, 1999, prepared to address each and every one of the items claimed to be less than perfect by the plaintiffs.

The plaintiffs, instead of filing that report by February 22, 1999, as ordered, did not file the same until May 25, 1999. See docket #285. The plaintiffs' report to the Court concerning defendants' plan, while long delayed, is a fair appraisal of the situation involved in this controversy. Some of the matters set out therein are matters that should have been addressed by the defendants long before this. The Court is not now ruling that each area set out by the plaintiffs was not fairly and completely covered by defendants, but hereby directs that the new plan of the defendants should be organized closely to the format set out in paragraph 8 of plaintiffs' report to the Court concerning defendants' plan. Plaintiffs have identified important matters under 8(a), 8(b), 8(c), and 8(d), and those are items that the Court expects will be in the new plan because, in part, of the testimony provided by Director Kautzky.

Defendants have argued on several occasions that submitting a plan to remedy the constitutional violations found in this case is difficult because of what they term a "moving target." This argument rings hollow with the Court because the four constitutional violations found here have not changed at all. Defendants' new plan should set out and update all efforts and

ideas defendants have to remedy the constitutional violations clearly set out in the Court's order. It should include the time frames expected for completion of and implementation of various portions of that plan.

The Court does not feel that this order to submit a new plan is a matter that should be a serious problem to the defendants. They have, in earlier plans sent to the Court and in pleadings that the Court has received from the plaintiffs, and in the lengthy testimony of Director Kautzky, demonstrated that they have taken several affirmative steps to improve the conditions at Fort Madison. The defendants should set out the affirmative acts they have taken that they know are in furtherance of helping to satisfy the constitutional violations found by the Court, plus those now in motion and those which have been mentioned by Director Kautzky and others as "planned." In addition, there are certain violations that have been overlooked or avoided by the defendants in their first three plans, but they are matters that the Fort Madison authorities and/or their lawyers are quite familiar with. As mentioned, to their credit, defendants have taken several affirmative steps over the course of this lawsuit toward remedying the problems cited by the Court. It may well be that, after defendants have set out a plan which is organized in accordance with this Order so that this Court and any reviewing authority can accept or reject it as remedial of the

constitutional violations existing at ISP, it will become clear that defendants are not in bad shape.

This Court, after finally receiving the plaintiffs' report to the Court, as the parties know, set a hearing and directed that the parties should be fully briefed and fully prepared to take up all the matters set out in the plaintiffs' report to the Court and any others that the defendants feel are appropriate under the circumstances for them to make a plan that the Court can finally rule on. This hearing has now been held. The time has come for defendants' plan four.[6] It must be a plan that will give anyone looking at it an open, fair chance to determine whether or not the plan would in fact solve the constitutional

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[6] The Court is mindful that in Lewis v. Casey, 518 U.S. 343, 362 (1996), the United States Supreme Court reiterated that "'[t]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors . . . also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." The Casey Court went on to approve of the procedure which had been utilized in Bounds to correct violations which had been determined by the district court:

> [R]ecognizing that "determining the 'appropriate relief to be ordered . . . presents a difficult problem,'" the court "'charge[d] the Department of Correction with the task of devising a Constitutionally sound program' to assure inmate access to the courts." The state responded with a proposal, which the District Court ultimately approved with minor changes, after considering objections raised by the inmates. We praised this procedure, observing that the court had "scrupulously respected the limits on [its] role," by "not . . . thrust[ing] itself into prison administration" and instead permitting "[p]rison administrators [to] exercis[e] wide discretion within the bounds of constitutional requirements."

Id. at 362-363 (citations omitted).

violations and improve dramatically the conditions at Iowa State Penitentiary.

Prior to the June 15, 1999, hearing, the Court had gone through all three of defendants plans and set out every comment it could find on each of the four constitutional violations. Since the hearing the Court has faxed to each party ten pages of this information. This information, along with the affirmative steps set out in testimony at the June 15, 1999, hearing should give the defendants a solid basis for a plan that actually sets out what the Court has requested.

In sum, the Court is persuaded that the "plans" submitted by the defendants so far are not appropriate because they have failed to set out in a clear, concise manner the affirmative steps that defendants have already taken or to which they are willing to commit in order to remedy the constitutional violations found by the Court. As mentioned, the detailing of the matters that were overlooked or not fully addressed in each and all of the defendants' plans are substantially set out in the plaintiffs' report to the Court. Defendants would be well-served to look at paragraphs 8(A), (B), (C), and (D) of plaintiffs' report for a proposed outline for the new plan to be submitted.

For good cause shown,

IT IS HEREBY ORDERED that by July 2, 1999, the defendants shall submit a new precise, concise plan to the Court without any

additional documents and without any additional reports, just a plain, clear, concise plan in which each one of the four constitutional violations found by the Court is set out with defendants plan to remedy that particular constitutional violation immediately following it, including expected time frames for implementation of the actions to be taken by defendants. Defendants shall, simultaneously with their filing of the new plan with the Court, fax a copy of the new plan to counsel for the plaintiffs and to the Court.

In the event that the defendants do not file such a clear, complete, concise plan, this Court reserves the right to file a show cause order and set a hearing requiring the defendants to appear before this Court to show cause as to why they should not be held in contempt.

IT IS FURTHER HEREBY ORDERED that by July 9, 1999, plaintiffs shall file their comments as to the appropriateness of the new plan. Plaintiffs shall, simultaneously with their filing of their comments with the Court, fax a copy of the new plan to counsel for the defendants and to the Court.

June 17, 1999.

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