TILLINGHAST, COLLINS & GRAHAM

See corrected version of 4/14/88

MEMORANDUM April 13, 1988

TO: Parties and Counsel in Palmigiano v. DiPrete, C.A. No. 74-172

FROM: J. Michael Keating, Jr. JMK

RE: Applicable Continuing Orders in Palmigiano

In February, Judge Pettine asked me to compile a compendium of outstanding orders in the Palmigiano case to serve as a ready reference, earmarking for the parties those injunctive provisions that continue to be applicable to the defendants' ACI operations.

What follows is a synopsis of remedial provisions, modified in a host of subsequent orders, that survive from the original August 10, 1977 Order. Only a handful of the elements of that order have been declared legally satisfied (see the January 25, 1984 Order, Attachment 3); the rest remain viable and fully applicable injunctive orders, whose effectiveness will endure as long as the court retains jurisdiction of the suit. I have attached to this memorandum copies of those orders that have wrought substantial modification or expansion of the original decree.

The defendants' continuing obligations under the August 10, 1977 Order and its progeny include the following:

3. Physical Conditions in Other Facilities (paragraph 4 of the August 10, 1977 Order):

- Physical conditions in all facilities of the ACI must conform with the minimum standards of the U.S. Public Health Service, the American Public Health Association and the R.I. Department of Health.

- No more than one prisoner shall be housed in a cell that is less than 60 square feet.

- Only prisoners classified as minimum or medium security shall be housed in dormitories (March 29, 1978 Order, Attachment 2).

- The defendants shall employ a sanitarian.

- The new Medium Security facility shall be completed and occupied by no later than November 1, 1989 (July 28, 1987 Order, 5).

4. Classification and Programming (paragraph 5 of the August 10, 1977 Order):

- The defendants must operate a classification system in which decisions are based on adequate information about prisoners and an assessment of individual prisoners' needs.

- Prisoners must have individualized classification plans.

- Admissions and orientation (A&O) prisoners are to be separated from other sentenced offenders.

- Interested prisoners must have educational (including college extension programs), pre-vocational and vocational and recreational and avocational opportunities.

- The defendants must provide the opportunity to prisoners to participate in a pre-release program.

- Work-release, pre-release and other community-based facilities are to be established.

- Prisoners' classification must be reviewed semi-annually.

5. **Mental Health** (paragraph 6 of the August 10, 1977 Order):

- The defendants are to employ an adequate number of mental health professionals to diagnose, treat and care for prisoners with mental health problems.

- The defendants will expand mental health services to keep pace with population increases (November 19, 1984 Order, Attachment 4).

6. **Medical Care** (paragraph 7 of the August 10, 1977 Order):

- The defendants' medical care delivery system must conform with the minimum standards of the U.S. Public Health Service, the American Public Health Association, and the R.I. Department of Health.

- The defendants will expand medical care to keep pace with population increases (November 19, 1984 Order).

- The defendants specifically will:
  - Fill approved medical care staff positions
  - Design and implement a quality assurance program
  - Develop institution-specific procedures and protocols
  - Design and implement a tracking system for the chronically ill
  - Perform intake physicals as required

(October 6, 1987 Order, Attachment 6)

7. Drug Treatment (paragraph 8 of the August 10, 1977 Order):

- The defendants must establish and maintain a detoxification program.

- Drug treatment programs must comply with minimum standards of the U.S. Public Health Service, the American Public Health Association, and the R.I. Department of Health.

- Drug treatment programs must be under the supervision of a physician willing and able to treat prison addicts.

8. Protective Custody (paragraph 9 of the August 10, 1977 Order):

- Physical conditions in facilities used to house protective custody prisoners must conform with minimum standards of the U.S. Public Health Service, the American Public Health Association and the R.I. Department of Health.

- Protective custody inmates must have access to educational, vocational, recreations, avocational, job and transitional and community-based facility opportunities comparable with the general population.

9. Confinement of Prisoners in Appropriate Custody (paragraph 10 of the August 10, 1977 Order):

- Prisoners are to be housed in institutions suitable to their security classification.

ing of such facilities as remain unfit for human habitation.

For the present, the Court will order the defendants to take immediate action to correct the most glaring abuses this case has uncovered. Beyond that, the Court sets out in its order the minimum standards with which defendants must comply.[37]

The complex nature of the task at hand, and the demands on the Court's time and attention which would be entailed by direct court supervision of the remedial order, have led the Court to rely on a Master to assist the Court in the remedial phase of these cases. The Master will monitor the defendants' implementation of the decree, review and evaluate the feasibility of plans proposed by the defendants, assist the defendants in formulating plans, and suggest such modification or supplementation of the Court's Order as seems necessary. To the extent that the Master identifies factors which obstruct compliance with the decree, he shall so advise the Court, and shall suggest necessary action. In short, the Master will act under Fed.R.Civ.P. 53, as an arm and as the eyes and ears of the Court. Although the Court cannot delegate its responsibility finally to resolve any disputes between the parties which may arise during the implementation period, this responsibility can be more intelligently, and perhaps more sparingly, exercised by reason of the Master's fair and impartial assistance.

The costs of these proceedings will be taxed against the defendants.

An Order will be entered accordingly.

ORDER

Pursuant to the findings of fact and conclusions of law set forth in the Opinion made and entered in this cause, it is the order, judgment, and decree of this Court that:

1. Defendants have violated plaintiffs' rights under the Eighth and Fourteenth Amendments to the Constitution as well as Title 42, Ch. 56 of the Rhode Island General Laws.

[19] 2. (a) Defendants shall, within three months from the entry of this order, remove all awaiting trial detainees from the present Maximum Security Facility; shall thereafter house said detainees in facilities which are separate from facilities which house sentenced prisoners; and thereafter shall prevent intermingling of, and contact between, detainees and sentenced prisoners;

(b) defendants shall house pre-trial detainees in facilities which comply with the minimum standards set forth hereafter in paragraph 4, and detainees shall not be housed in dormitories;

(c) defendants, within three months from the entry of this order, shall provide each awaiting trial detainee with recreational programs, and shall make available as soon as possible access, on a voluntary basis, to constructive work opportunities, to educational programs and to treatment programs which deal with problems associated with drug addiction, alcoholism, mental illness and physical illness or disabilities.

[20] 3. (a) Defendants shall, within thirty days from the entry of this order, advise the Court of a date certain when the present Maximum Security facility will no longer be used for housing prisoners, which date certain shall be no more than one year from the entry of the order; to the extent that the defendants are unable to comply with this deadline for those incorrigible inmates eventually to be housed in a new Maximum facility, the Court is prepared to permit retention of such inmates in the present structure, provided that the area housing them can be made fit for human

37. In the appendix, attached to this Opinion, the Court sets forth the standards published by professional bodies, and the leading cases, on which the minimum standards in paragraphs 4, 5, and 6 of the Order in this case are based. The Court is not unmindful that the emergency measures set forth in its Order may necessitate the temporary use of facilities which do not lend themselves, in certain respects, to economically feasible compliance with each of the standards detailed herein. To that extent, the Court is prepared to modify the Order at the noticed request of the defendants with the advice of the Master.

ATTACHMENT 1
Original August 10, 1977
Order

habitation and provided further the defendants fully comply with the other relevant provisions of this order, particularly but not limited to paragraph 5;

[21] (b) defendants shall within nine months from the entry of this order reduce the population of the Maximum Security facility in accordance with the reclassification process set forth hereafter in paragraph 5;

(c) defendants shall within six months from the entry of this order and for so long as they utilize the Maximum Security facility, bring said facility into economically feasible and practicable compliance with the minimum standards of the United States Public Health Service, the American Public Health Association and the Department of Health, State of Rhode Island, as they relate to food service, sanitation, lighting, plumbing and insect and rodent control.

4. (a) Defendants shall within nine months from the entry of this order, bring each building and facility under their control, particularly but not limited to the housing and food service areas of said buildings and facilities, into compliance with the minimum standards of the United States Public Health Service, the American Public Health Association, and the Department of Health, State of Rhode Island. (The separate compliance requirements for the Maximum Security facility are set forth in paragraph 3(c) above). Implementation of this paragraph 4(a) shall include, but not be limited to, the following:

(1) all facilities shall be adequately heated, lighted and ventilated. Windows and window panes shall be properly maintained and replaced when broken;

(2) each prisoner shall have access to household cleaning implements and supplies;

(3) a regular and effective program of insect and rodent control shall be undertaken;

(4) food shall be stored, prepared and served under sanitary conditions which meet minimum public health standards. Equipment shall be maintained in good working order. Kitchen employees and prisoners shall be adequately trained and supervised;

(5) all trash and debris shall be regularly removed from hallways, cellblocks, corridors and other common areas and trash and debris shall in no circumstances be stored or accumulated in vacant cells;

(6) all toilets, showers and wash basins shall be properly maintained and kept in good repair. Every cell shall be equipped with a working toilet that flushes from inside the cell and with a wash basin with hot and cold running water;

(7) no more than one prisoner shall be confined in any cell which is less than 60 square feet;

(8) every prisoner shall be provided with a clean mattress, which meets with federal fire safety standards, and with clean bed linens, towels and soap;

(9) each convicted prisoner housed in a dormitory shall have at least seventy-five square feet of personal living space and only those prisoners who have been classified as Minimum Security shall be housed in dormitories;

(10) each dormitory shall be equipped with at least one toilet to every 15 prisoners; one urinal or one foot of urinal trough to every 15 prisoners, one shower to every 15 prisoners and one sink to every 10 prisoners. Toilets and urinals shall be kept reasonably clean and in good working order.

(b) Defendants shall within one month from the entry of this order, employ a qualified sanitation or environmental health officer to assist the defendants in obtaining and maintaining compliance with the provisions of paragraphs 3.(c) and 4.(a).

(c) Defendants shall for one year from the entry of this order file a monthly written report with the Court setting forth their progress on implementing the provisions of this paragraph 4.

5. (a) Defendants, not having classified prisoners according to state law, shall, within six months from the entry of this order, reclassify all prisoners in the Rhode Island penal system.

(b) Defendants shall contract with a qualified person or organization to aid in the implementation of the reclassification process detailed in this paragraph. The parties shall, within thirty days from the entry of this order, submit to the Court the names of such qualified persons or organizations.

(c) Defendants shall, in the reclassification process, arrange for personal interviews of each prisoner and gather all pertinent information about each prisoner's community and institutional life, including, but not limited to, the following:

1. the age, offense, prior criminal record, vocational, educational and work needs, and physical and mental health care requirements of each inmate;
2. special needs arising from age, infirmity, psychological disturbance or mental retardation, requiring transfer to a more appropriate facility, or special treatment within the institution; and
3. eligibility for appropriate transfer to a pre-release, work-release, or other community-based facility.

(d) Defendants shall, as a result of the reclassification, develop a written classification plan for each prisoner and implement said plan by assigning prisoners to suitable facilities and programs. After nine months from the entry of this order, no prisoner who has been classified as Minimum or Medium custody shall be confined in the Maximum Security facility, and all newly sentenced prisoners who are in the process of being oriented and classified (now housed in the Admissions and Orientation Unit) shall be as required by state law totally separated from other sentenced and classified prisoners. Upgraded classification for any inmate shall not be delayed or denied for lack of program or housing space.

[22] (e) In order to implement the reclassification process, defendants shall:

1. establish adult basic education programs with sufficient resources and staff so that every prisoner in the Rhode Island prison system shall have the opportunity to participate in these programs on a regular basis;
2. establish pre-vocational (including remedial education) and vocational training programs, designed to enhance marketable skills, with sufficient resources and staff so that every prisoner in the Rhode Island prison system shall have the opportunity to participate in said programs on a regular basis;
3. establish recreational and avocational programs with sufficient resources and staff so that every prisoner in the Rhode Island prison system shall have the opportunity to participate in said programs on a regular basis;
4. develop college extension programs so that they are available to prisoners at every Rhode Island prison facility;
5. create sufficient meaningful job opportunities so that every prisoner in the Rhode Island prison system shall have the opportunity to work and every prisoner who works at a job provided by the defendants shall be compensated for all work performed;
6. develop sufficient programs and facilities to provide that each prisoner, prior to release, is afforded the opportunity to participate in a transitional program designed to aid the prisoner's re-entry into society;
7. establish work-release, pre-release, and other community-based facilities to accommodate those prisoners who have been identified as appropriate for participation in such programs.

(f) Defendants shall review the classification plan of each prisoner no less than once every twelve months.

6. Defendants shall hire an adequate number of mental health professionals to diagnose, treat and care for those prisoners who have mental health problems.

7. Defendants shall within six months from the entry of this order bring the health care delivery system into compliance with the minimum standards of the American Public Health Association, the United States Public Health Service, and the Department of Health, State of Rhode Island.

8. (a) Defendants shall within thirty days from the entry of this order establish a program for the treatment of inmates physiologically addicted to drugs or alcohol that does not require withdrawal by means of an abrupt denial or "cold turkey" approach.

(b) Defendants shall within three months from the entry of this order establish a program for the treatment of drug abuse that is in compliance with the minimum standards of the American Public Health Association, the United States Public Health Service, and the Department of Health, State of Rhode Island.

(c) Defendants shall within thirty days from the entry of this order place the responsibility for the treatment of drug abuse under a physician able and willing to treat prison addicts.

9. Defendants shall within nine months from the entry of this order house all protective custody prisoners in accordance with the standards set forth for the general prisoner population in paragraph 4., and make available to protective custody prisoners the equivalent of the educational, vocational, recreational, avocational, job, transitional and community-based facility opportunities set forth in paragraph 5.

[23] 10. Within nine months from the entry of this order, every prisoner shall be confined in an institution suitable to his or her security classification.

[24] 11. A Master shall be appointed by the Court within thirty days and shall be empowered to monitor compliance with and implementation of the relief ordered in this case, in keeping with its purposes as recited in the Opinion. The Master shall also advise and assist the Department to the fullest extent possible. The Master will report on a monthly basis to the Court on the progress of such compliance and implementation.

(a) In order to carry out his duties, the Master or his delegates shall have unlimited access to any facilities, buildings or premises under the control of the Department of Corrections, or any records, files or papers maintained by said Department. Access shall be granted at any time and no advance notice shall be necessary.

(b) The Master is authorized to conduct confidential interviews at any time, without advance notice, with any staff member or employee of the Department or any prisoner. The Master or his delegate may attend any institutional meetings or proceedings.

(c) The Master may require written reports from any staff members or employees of the Department of Corrections with respect to compliance with and implementation of this Court's orders.

(d) The Master shall be empowered to recommend to the Court that any staff member or employee of such Department be moved or transferred within the Department as he deems necessary to obtain compliance with and implementation of this Court's order. In the event that hiring of additional personnel or the termination of any current personnel is necessary to carry out or to prevent interference with the Court's order, the Master shall file a written report with the Court explaining why such action is necessary. Defendants may file a written response to the report and the Court shall approve or reject the recommendation of the Master.

(e) The Master may act as a whole or through subcommittees appointed by him.

(f) The Master is authorized to select and hire with the prior approval of the Court, a full time staff consultant if such person is needed to assist him in carrying out his duties and one full time clerk-stenographer if needed. Adequate offices, equipment and supplies shall be made available by the defendants. The Master may also consult appropriate, independent specialists.

(g) Necessary expenses for carrying out the Master's duties shall be paid pursuant to Rule 53, Federal Rules of Civil Procedure, and shall be taxed as part of the costs of this case against the defendants in their official capacities.

12. The defendants shall, within six months from the date of this order, submit

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.	)	
	)	
v.	)	Civil Action No. 74-172
	)	
J. JOSEPH GARRAHY, et al.	)	
THOMAS R. ROSS, et al.	)	
	)	
v.	)	Civil Action No. 75-032
	)	
J. JOSEPH GARRAHY, et al.	)	

MEMORANDUM AND ORDER

This cause came to be heard upon the Report of the Special Master to the Court Regarding Defendants' Compliance With Its (August 10, 1977) Order as of February 10, 1978. For purposes of this memorandum, the Court will deal with subparagraphs 2(a), 7 and 12 of the August 10 Order. No request was received from any parties for hearings on these matters, but memoranda were submitted on some aspects of subparagraph 2(a).

The report which follows measures the conduct of the defendants against the language of the August 10 Order and against that contained in modifications subsequently approved by the Court. The references to numbered paragraphs of the

Court's Order correspond to numbers utilized in the original order.

ORDER 2(a)

> "Defendants shall by April 1, 1978 house awaiting trial detainees in facilities which are physically separate from facilities which house sentenced prisoners; and thereafter shall prevent intermingling of, and contact between, detainees and sentenced prisoners. All awaiting trial prisoners shall be removed from the present maximum security facility no later than the date the Intake Service Center is completed in December 1979.
>
> No later than February 22, 1978 the defendants shall file with the Court their detailed plan, including dates, approved by the Governor and the Director of the Department of Corrections for reducing the population of the present maximum security facility to those prisoners who are awaiting trial, those prisoners who are being processed through Admission and Orientation and the 80 to 96 prisoners who they determine require maximum security confinement. The Special Master shall file a report on the defendants' plan with the Court no later than March 1, 1978 and a hearing, if necessary, shall be held on the plan on March 9, 1978;"

Evidence produced for the Court's review would indicate that the defendants have made good progress toward remodeling the maximum security unit to provide by April 1, 1978 facilities for awaiting trial detainees "which are physically separate from facilities which house sentenced prisoners". After numerous extensions[1/] granted by the Court, the defendants

submitted on February 22, 1978, a detailed and comprehensive plan, including dates, for the reduction of the population of the maximum security unit in accordance with subparagraph 2(a).[2/]

The Special Master filed his memorandum in response to this plan on March 1, 1978.[3/] The Court transmitted the Master's Memorandum to the Court in Response to the Defendants' "Facilities 'Draw-Down' Plan" to all concerned parties, requesting that they submit in writing their responses and objections to the report no later than Monday, March 13, 1978. It further instructed the parties that if a hearing was not requested the Court would take under consideration adoption of the Master's findings and recommendations immediately thereafter. On March 16, 1978, defendants responded to the Master's Memorandum concerning the "Facilities 'Draw-Down' Plan" over the signature of William G. Brody, Special Assistant Attorney General. There were no objections made to the Master's Memorandum, but attention was called to an acceleration of the defendants' inmate transfer process and the correction of a typographical error which mistakenly had indicated that 36 inmates instead of 40 inmates would remain in the maximum security unit until the completion of the new program building at the medium security unit. These minor changes are acceptable and are to be made a matter of record as representing the defendants' current "Draw-Down" plans. It is to be noted that the defendants did not request a hearing on the issue.

The plaintiffs, in a memorandum dated March 17, 1978, over the signature of Robert B. Mann, Esq., objected to the Master's Memorandum with a number of concerns as follows:

1) The population of Medium Security would be increased without corresponding increase in program facilities.

The Master clearly stated in his memorandum on this subject that the question of program services was more appropriately an element that should be reviewed on May 10, 1978, when the defendants are required to have program services available for all inmates. The Court agrees with the Master's position in this matter, particularly in view of the fact that the population will not increase in medium security until December 1978, at which time additional program facilities are to be available.

2) The plan violates the Court's August 10, 1977 Order prohibiting other than minimum security prisoners being placed in dormitory settings.

The Master and numerous correctional administrators[4/] who have reviewed Rhode Island's Adult Correctional Institutions find no objection to using the dormitory style of sleeping that exists in the current "Men's Reformatory" because of the small number of inmates assigned to each dormitory unit and the increased security that has been provided. The Court agrees with these recommendations and will amend subparagraph 4(a)(9) accordingly.

3) The amount of indoor exercise space at the "Men's Reformatory" is completely inadequate.

It has never been demonstrated to the Court that the exercise space at the Men's Reformatory is inadequate, but rather that the programs for exercise and recreation have been almost non-existent. The defendants will be required by May 10, 1978, under subparagraph 5(e)(3) "to establish recreational and avocational programs with sufficient resources and staff so that every prisoner in the Rhode Island prison system shall have the opportunity to participate in such programs on a regular basis." The time to evaluate the defendants' progress towards this goal is more appropriate in May than now.

4) Defendants' plan proposes to increase the population in the Reformatory substantially, while at the same time the facilities require massive renovations to meet minimum health, safety and fire standards.

The facts presented to the Court clearly indicate that the population will increase by only 40 inmates and that will not be done until December 1978 when additional program facilities will have been completed.

The increase in population will be housed in the North Basement or in the south end of the first floor, which was at one time the Boys Training School. The defendants are mistaken in their memorandum when they state that the North Basement was

not designed to house prisoners. The original blueprints not only show that this section was designed as a dormitory complete with toilets, wash basins and showers, but the history of the building indicates that this area was used as a residential unit for many years. There will, according to the defendants, be a thorough upgrading of this area before it would be used to house prisoners in December 1978.

It is true that there are extensive electrical, plumbing and heating improvements to be made in the building in question. All of these improvements will have to be made whether the building is rated as "minimum" or "medium" and whether it is used for 160 inmates or 200 inmates. The defendants are dangerously approaching noncompliance regarding the renovation of this building. However, the issues which are now before the Court, involve the building's custody rating and a slight increase in the resident population. The Special Master informs the Court that these changes are within acceptable correctional practice. The Court accepts his recommendations. This action in no way negates, but rather increases, the importance of the defendants bringing the Reformatory Building within the minimum standards set forth in subparagraph 4(a).

5) The defendants' plan to use the Reformatory is based on an estimate that no later than May 3, 1978 there will be only 36 prisoners in protective custody. There is no explanation in the plan for how the defendants plan to reduce the number of protective custody prisoners so rapidly.

The defendants have assured the Court that the reclassification process, which will be completed by May 1, 1978, will allow for a new assignment of inmates which will no longer require an unusually large number in protective custody. The Master has informed the Court that the custody schedules developed by the defendants are well within what would be acceptable prison practice.

Finally, the plaintiffs, although expressing a number of concerns about the defendants' plan, did not request a hearing on the objections they made.

ORDER 7

> "Defendants shall within six months from the entry of this order bring the health care delivery system into compliance with the minimum standards of the American Public Health Association, the United States Public Health Service, and the Department of Health, State of Rhode Island."

The health care delivery system at the Adult Correctional Institutions has been the subject of several studies and reports. Two studies were undertaken even before the Court's August 10, 1977 Order. The first report was presented in June, 1976, by

Dr. Richard Della Penna, acting as a consultant for the American Correctional Association under an LEAA contract. The second report was initiated in early 1977 by HARICOMP, Inc., a management services organization affiliated with the Hospital Association of Rhode Island (HARI). The final phase of this study was completed in December of 1977. Defendants have forwarded copies of each of these reports to the Court as background information.

Defendants' original implementation team, appointed by Governor Garrahy in response to the August 10 Order, began its approach to achieving compliance with Section 7 by reviewing "Phase I" of the HARICOMP study which had been completed in July of 1977. The Team set out to reorganize all medical services according to the study's proposals, utilizing an appropriation of $425,000 provided by the 1977 session of the State Legislature.

While the Team did implement major findings of the HARICOMP study, it soon began its own evaluation of the Department's health care delivery system by setting up a Health Care Delivery Work Force. This work force implemented additional staffing changes and produced its own recommendations on January 23, 1978, which were forwarded to the Governor and to the Director of the Department.

Meanwhile, Mr. John Fournier, Medical Services Coordinator within the Department of Corrections, was asked to review the health care delivery system with four goals in mind:

-- identification of the requirements of appropriate health care standards, referenced in the Court's August 10 Order;
-- identification of those Departmental health services which were in compliance with the Order;
-- identification of services not in compliance;
-- specific requirements to achieve compliance where services were deficient.

This comprehensive report was forwarded to the Special Master on December 20, 1977. With the information developed in the report a comprehensive health care plan and policy manual was developed by the defendants and constitutes the blueprint for ACI's health care delivery system. This plan was favorably reviewed by Mr. Richard Kiel, Chief of Health Services for the North Carolina Department of Corrections, who was retained as a consultant during January. Mr. Kiel concluded that "implementation of the health care plan . . . would provide a level of health services in keeping with Standards Developed by the American Public Health Association, the American Correctional Association and applicable standards from the Rhode Island Department of Public Health."

The Court has two reservations about accepting this statement at face value. First, as Mr. Kiel himself stated, "It is evident that sufficient resources have not been made available for implementation of the plan. Thus, I cannot

report that quality health care is being delivered in practice, since no satisfactory assessment of facilities, staffing, and supplies has been made." Mr. Kiel returned to Rhode Island on March 16, 17 and 18 to analyze whether the Department of Corrections' health care plan is actually being carried out. His report should be available by April 10, 1978.

Secondly, Mr. Kiel's expertise is in the field of health care administration--he is not a physician, and the Court is hesitant to evaluate defendants' compliance without advice of an independent medical consultant. The Special Master has retained a qualified physician with wide correctional experience who can evaluate defendants' health care delivery system by April 10, 1978. Until that report is received, the defendants' health care plan cannot be certified as fulfilling the Court's August 10 Order.

Defendants were to have complied with Section 7 of the Order by February 10, 1978. As indicated above, significant progress in health care planning has been made since the August 10 Order was issued. However, the Court is unable to make a definitive finding regarding compliance without an assessment of defendants' health care delivery system in light of resources currently being applied to implement the plan.

ORDER 12

> "The defendants shall, within six months from the date of this order, submit to

> the Master and to the Court a comprehensive report setting forth their progress in the implementation of each and every subparagraph of this order. The report shall also include a timetable for full compliance."

The defendants initially assigned the responsibility for reporting progress to the Court to the Governor's Implementation Team. The Team submitted detailed reports, at least monthly, until December. At that time, the Governor assigned the reporting responsibility to the Department of Corrections. Although monthly reports have been submitted, the Department has not complied with subparagraph 12 of the August 10 Order requiring, "a comprehensive report /within six months/ setting forth their progress in the implementation of each and every sub-paragraph of this Order. The report shall also include a timetable for full compliance."

Defendants have been most cooperative in submitting whatever report the Court has requested. However, they have not to date developed an overall plan for compliance with the August 10 Order, nor have they developed a timetable for the process of achieving full compliance.

It is imperative that the Court be able to review the defendants' overall plans with projected timetables for completion. The Court should not be forced to make its decisions piecemeal, without an adequate view toward how individual efforts fit into what "should be" a grand blueprint for compliance.

The Court adopts the findings of the Special Master in his memorandum to the Court in response to the Defendants' "Facilities 'Draw-Down' Plan" dated March 1, 1978, and the findings of the Special Master in regard to subparagraph 7 and 12 of the August 10 Order, as set forth in his Compliance Report to the Court dated February 10, 1978.

It is Ordered that the Court's Order filed on August 10, 1977, is modified in the following respect: Subparagraph 4(a)(9) shall read as follows:

> "each convicted prisoner housed in a dormitory shall have at least seventy-five square feet of personal living space and only those prisoners who have been classified as Minimum or Medium Security shall be housed in dormitories."

It is further Ordered that all of the defendants, as well as their subordinates, proceed at once to effectuate full compliance with subparagraphs 2(a), 7 and 12 of the August 10 Crder, as modified by subsequent orders of the Court.

So Ordered.

By Crder,

Michele L. Hastings
Deputy Clerk

Enter:

Raymond Pettine
Chief Judge
March 29, 1978

FOOTNOTES

1/ February 3, 1978; February 22, 1978; March 1, 1978

2/ See Appendix A; Defendants' "Draw-Down" Plan

3/ See Appendix B; Master's Memorandum of March 1, 1978.

4/ Raymond Procunier; Gary Hill; Pat Mack; Lyle Egan; Mario Giugnino; Peter Gobel; Irving F. Roberts; Fred Stock.

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO	)	
	)	
v.	)	C. A. No. 74-172
	)	
J. JOSEPH GARRAHY, et al.	)	
THOMAS R. ROSS	)	
	)	
v.	)	C. A. No. 75-032
	)	
J. JOSEPH GARRAHY, et al.	)	

ORDER

Based largely on the late October, 1983 report of the Special Master, which described significant improvements in virtually all aspects of conditions and operations at the Rhode Island Adult Correctional Institutions (ACI) since 1977, the defendants have requested an order affirming their satisfaction of the Court's broad remedial decree of August 10, 1977 in this case. At the same time, echoing the recommendation of the Special Master, the defendants seek additionally an end to the mastership and final removal of the "shackles of direct judicial supervision."

The defendants' request is understandable. After six long years of effort on their part to transform a diseased correctional system into a reasonably healthy one, the ACI has been given a generally clean bill of health by the attending physician. Like most rehabilitated patients, who have been hounded, prodded and lectured regularly throughout their illness, the

defendants want finally to be rid of their institutional "physicians" from the federal court.

To accomplish this, the defendants rely on Rule 60(b) of the Federal Rules of Civil Procedure which permits a court to grant relief to a party from a final decree in certain specified circumstances. Citing changed, i.e., much-improved, conditions at the ACI accomplished through their arduous, good-faith efforts, the defendants urge the applicability of those provisions of FRCP 60(b) which allow a court to grant relief when:

> ...(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Nowhere in their pleadings do the defendants explain which of the three separate grounds for relief contained in 60(b)(5) they believe applicable to their cause; nowhere do they explicate their reliance on 60(b)(6). Presumably the latter reflects little more than the principle of redundant advocacy, since 60(b)(6) is inapplicable in the absence of a showing of exceptional circumstances falling outside the ambit of paragraphs 60(b)(1-5). 7 Moore's Federal Practice, 60.27/27 (2nd Ed., 1982); Ackermann v. United States, 340 U.S. 1983, 199 (1950); DeFilippis v. United States, 567 F.2d 341, 343 (7th Cir. 1977); Lubben v. Selective Service System Local Board No. 27, 453 F.2d 645, 651 (1st Cir. 1972).

Instead, the defendants cite the Special Master's favorable report as evidence of "changed circumstances" at the ACI and argue that, in light of those changed circumstances, it is no longer "equitable" that those provisions of the August 10, 1977 Order with which the defendants have complied should still apply. By way of explanation of their motion, the defendants cite Imprisoned Citizens' Union v. Shapp, 46. F. Supp. 522 (E.D.Pa. 1978), involving an injunction banning the use of so-called "Glass Cage" observation cells in a maximum security facility that violated the eighth amendment's proscription against cruel and unusual punishment. When the defendants later sought expungement of the ban in a pleading construed as a FRCP 60(b)(5) motion, the court found the refurbished cells to be constitutionally tolerable and concluded that ". . . it is no longer equitable that our injunction against their use have prospective application." Supra at 528.

Ironically, it is the very principle of finality that frustrates the defendants' search for a way to finalize judicial interference in their correctional system. Not unnaturally, all successful litigants look to final judicial decrees, especially injunctive ones, to stabilize and protect firmly their victories; they expect courts willingly to supervise and apply their powers and processes on behalf of continuing injunctive remedies: ". . . neither the plaintiff nor the court should be subjected to the unnecessary burden of re-establishing what has once been decided." System Federation No. 91, Railway Emp. Dept. v. Wright, 364 U.S. 642, 647 (1961).

Despite the traditional commitment to finality of judgments, both the rules of equity and the Federal Rules of Civil Procedure recognize that justice occasionally requires a measure of flexibility. Thus, in very limited instances, a trial court may, in its discretion, grant relief from a final judgment. Such grants, however, are exceptional and must be guided by sound legal and equitable principles. Humble Oil and Refining Co. v. American Oil Co., 405 F.2d 803, 812-14 (8th Cir. 1969), cert. den., 395 U.S. 905.

FRCP 60(b)5 specifies three grounds for relief from injunctive decrees, the first of which incorporates the term used loosely here by the defendants ("satisfaction of judgment") to characterize their entire motion. In practice, this first ground has rarely been resorted to and never to dissolve continuing, prospective injunctions. Wright & Miller, Federal Practice and Procedure: Civil § 2863, at p. 202 (1973).

The August 10, 1977 Order in this case, however, did contain some specific mandates that were not intended to be permanent and continuing, such as scheduled reporting requirements (paragraph 4(c) of the August 10, 1977 Order), the reclassification of prisoners (paragraph 5(a)) and the hiring of a consultant to help design a new classification process (paragraph 5(b)). These mandates have been fulfilled; they have no continuing validity and the Court, pursuant to 60(b)(5), accordingly grants relief from judgment with regard to these

provisions of the remedial decree.[1/]

The second ground for relief contained in 60(b)(5), the reversal or vacating of a prior judgment that is the basis for the final judgment complained of, is simply inapplicable in this case.

Although they do not so specify, the defendants clearly must rely on the third ground, that is, the discretionary power of courts to provide relief from injunctions, the continuing application of which are no longer equitable. But such relief is not to be granted lightly, as the parameters for inquiry identified by Justice Cardozo in United States v. Swift and Co., 286 U.S. 106, 119 (1932) indicate:

> There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting.
>
> . . .
>
> The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.

Relief, then depends on 1) "whether the changes are so important that dangers, once substantial, have become attenuated to a shadow"; 2) whether the movants are suffering "extreme and unexpected" hardships; and 3) whether there has been "a clear showing of grievous wrong evoked by new and unforeseen circumstances."

The defendants' application for relief meets none of these three standards. While the Special Master reported compliance with many of the provisions of the August 10, 1977 Order, he also cautioned that "the overcrowding of facilities at the ACI jeopardizes such compliance so severely that the Court should continue to monitor the defendants' efforts to address the conditions and services involved." In his report the Special Master repeatedly cited the tenuous nature of compliance in areas such as housing, mental health, medical services and programming due to the increasing number of prisoners and static resources. In view of the substantial work that yet remains to be done to bring the defendants into full compliance with the original remedial order and the precarious nature of current compliance with many of the provisions of the order, it is not at all clear that "the dangers which the decree was meant to foreclose . . . almost have disappeared." Humble Oil and Refining Co. v. American Oil Co., supra at 813.

Even in those cases where there has been full, or relatively full, compliance with injunctive orders, courts have been reluctant to grant relief pursuant to 60(b)(5). In Brooks v. County

School Board of Arlington County, Virginia, 324 F.2d 303, 307 (1963) the U.S. Court of Appeals for the Fourth Circuit observed:

> Even as of now, it could not possibly be claimed that the record of compliance is more than two years in duration, Obedience to the injunction for so short a time is not sufficient to warrant its termination, even if we were to assume that there has been complete compliance . . .

Neither duration nor completeness of compliance provides inherent assurance that the dangers addressed by an injunctive order have dissipated. Sullivan v. Houston Independent School District, 475 F. 2d 1071, 1078 (5th Cir. 1973) (denial of relief from an order establishing school disciplinary procedures); Goldberg v. Ross, 300 F.2d 151 (1st Cir. 1962) (reversal of a grant of relief after eight years of compliance); Walling v. Harnischfeger Corporation, 242 F.2d 712, 713 (7th Cir. 1957) (defendant's request for relief rejected after 12 years of compliance).

The defendants here, moreover, have made absolutely no showing of any "extreme and unexpected" hardship or "grievous wrong" encountered by them as a result of the injunctions they seek to dissolve. The burden for such a showing rests squarely on the defendants:

> A continuing injunction directed to events to come is subject always to adaptation as events may shape the need. (Citations omitted.) ...In either event (after litigation or by consent), a court does not abdicate its power to revoke or modify its mandate, if satisfied that what it

> has been doing has been turned through changing circumstances into an instrument of wrong. (Emphasis added). United States v. Swift & Co., supra at 114.

In the absence of any demonstration by the defendants of the hardship or wrong inflicted by application of the August 10, 1977 Order, this court is obligated to deny the defendants' motion for relief from the provisions of that order with prospective application. In a recent review of a similarly complex prison suit, the United States Court of Appeals for the Tenth Circuit dealt thoughtfully and at length with the difficulties of implementing institutional, correctional remedies and affirmed unequivocally the need for the continued involvement of courts extending beyond the point of compliance:

> We believe that the court, in exercising continuing jurisdiction to achieve structural reform, cannot terminate its jurisdiction until it has eliminated the constitutional violation "root and branch" See Green v. County School Board, 391 U.S. 430, 438, 88 S.Ct. 1689, 1694, 20 L.Ed. 2d 716 (1968). The court must exercise supervisory power over the matter until it can say with assurance that the unconstitutional practices have been discontinued and that there is no reasonable expectation that unconstitutional practices will recur.
>
> Battle v. Anderson, 708 F.2d 1523, 538 (10th Cir. 1983). [2/]

The Court, then, denies the defendants' motion for satisfaction of judgment except in those limited areas noted earlier and listed in the order below. The effect of this denial is to

continue the Court's jurisdiction over all of those prospective remedial provisions of the August 10, 1977 Order with which the Special Master has found the defendants to be in compliance. In addition, the Court shall adopt the recommendations of the Special Master and direct the defendants to carry out a list of as yet unfinished tasks.

This does not, however, resolve all of the issues raised in the defendants' motion, which also sought a dissolution of the mastership, as recommended by the Special Master in his October report. This Court concurs with the plaintiffs' reaction to the suggestion of the Special Master's departure: "He has counseled all of us wisely and has enabled the parties to move from confrontation to negotiation on many occasions and the plaintiffs are reluctant to see his mastership terminated." Plaintiffs' Objections to the Special Master's Final Report, at p. 6.

During the past six years the Court has come to rely absolutely on the Special Master's expertise and mediating skills. His quiet competence and ready ability to defuse conflicts have prevented innumerable confrontations between parties and between the Court and parties. Repeatedly he has rescued all of us from the rash effects of actions prompted alternately by despair, frustration and anger with his calm and patient ability to generate mutually acceptable solutions to apparent impasse. His assistance has been invaluable and, I believe, one of the chief and critical components in the defendants' compliance with much of the August 10, 1977 Order.

But the Court is also sensitive to the extraordinary nature -- and cost -- of the mastership as a judicially imposed remedy. The Special Master reports substantial compliance with the Court's order and declares candidly that his monitoring efforts are no longer required. For all of that, the list of tasks yet to be accomplished by the defendants is not insubstantial; the initial actions of the defendants in moving to apply and expend the funds realized as a result of the November, 1983 passage of a bond referendum to renovate the old Maximum Security facility are a source of concern to the Court; and overcrowding and budgetary pressures on the defendants are more likely to increase than dissipate during the next few years. Given these conflicting needs and circumstances, the Court elects to terminate immediately the operations of the Special Master and to suspend, rather than vacate, the order of reference creating the mastership. At six-month intervals until the completion of all unaccomplished tasks enumerated below, the Court will confer with the parties to determine whether there is a need to reactivate the mastership. The Court also reserves the right to reinstitute the mastership should the Court judge it to be so necessary.

It is the order, judgment and decree of this Court that:

1. Defendants' motion for satisfaction of judgment is granted relative to paragraphs 4(c), 5(a) and 5(b) of the August 10, 1977 Order.

2. Defendants' motion for satisfaction of judgment relative to other provisions of the August 10, 1977 Order is denied. The Court will return jurisdiction over all of these other elements of the remedial order at least until such time as the defendants are in full compliance with all of the requirements of the original order and its progeny.

3. The defendants shall be required to carry out the following specific tasks to comply fully with the August 10, 1977 Order:

a. Resolve expeditiously the future of the old Maximum Security facility in accordance with existing deadlines relative to planning for the facility's renovation (see the Court's Order in this regard of November 21, 1983);

b. Provide meaningful programming for pretrial detainees in the Intake Services Center, especially for those whose stay at the detention facility exceeds 45 days;

c. Provide meaningful vocational programming opportunities in each facility of the ACI;

d. Increase industrial programming throughout the ACI, particularly in the High Security Center, Maximum Security and Medium Security;

e. Expand mental health and medical services to keep pace with population increases;

f. Reduce the number of protective custody prisoners in B-Dormitory in Medium Security or develop other protective custody housing and increase the number of jobs available for protective custody prisoners.

g. Reduce the number of prisoners in Medium Security or begin planning to increase the availability of medium-custody bedspace at the ACI through conversion or construction.

4. By April 1, 1984 the defendants shall provide the Court and plaintiffs with detailed plans for the accomplishment of all of these tasks. The defendants' plan shall call for completion of all of these tasks (with the exception of renovation of the old Maximum Security facility, which will proceed on its independent timetable) within 18 months or by July 1, 1985. In addition, the defendants shall provide the Court with a report on their progress in accomplishing these tasks every three months. See the attached Memorandum, which contains a breakdown of all applicable deadlines in this case. This memorandum is incorporated into and made part of this order.

5. The Special Master shall terminate immediately his duties. Further operation of the order of reference appointing the Special Master is suspended. At six-month intervals, the Court shall confer with the parties to determine whether an independent progress report by the Special Master is required.

By Order,

Clerk

Enter:

FOOTNOTES

1/ The plaintiffs suggest that paragraph 5(c) of the August 10, 1977 Order, which requires the defendants to establish a classification process that includes interviews with prisoners and based decisions on specific categories of data, might also be declared satisfied. The Court disagrees. The elements defined in paragraph 5(c) as essential for an equitable, efficient classification system were intended to have prospective, continuing application, unlike the one-time hiring of a classification consultant or an immediate reclassification of the whole ACI population.

2/ The procedural context in Battle differs from this case. In Battle, the defendants were appealing an order of the district court retaining jurisdiction and imposing additional planning and reporting requirements even though the system was in compliance with the original remedial order. There was no application there for relief from judgment pursuant to FRCP 60(b)(5) with its own specific and strict standards. Nonetheless, the concerns and fears expressed in the Battle opinion are shared by this Court in this case.

#1

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO	:	
V.	:	C.A. 74-172
J. JOSEPH GARRAHY, ET AL	:	
THOMAS R. ROSS	:	
V.	:	C.A. 75-032
J. JOSEPH GARRAHY, ET AL	:	

ORDER

On January 25, 1984, the Court entered a comprehensive order which inter alia detailed the progress made by the defendants in complying with the Court's remedial decree of August 10, 1977 and which set forth certain further compliance requirements and reporting and compliance deadlines. The defendants have continued their compliance efforts since January 25, 1984 and have periodically reported on same to the Court and to the plaintiffs.

On September 25, 1984, a status conference was held in chambers at which time the defendants and plaintiffs reported on the status of renovations at the Old Maximum Security facility and where the Court also had the benefit of the views of plaintiffs' environmental health expert as well as several of defendants' experts and the plaintiffs expert, Theodore Gordon, has now filed with the Court a written report of his inspection of the Maximum Security facility.

At the September 25, 1984 status conference, the defendants also made oral motions to amend existing compliance and reporting deadlines, which motions were not opposed by the plaintiffs, and

which the Court will grant in light of the substantial compliance efforts made by the defendants. The Court believes it is now appropriate to incorporate all the existing remedial requirements for compliance with the August 10, 1977 order into one new order and the parties have agreed to its terms at the status conference.

It is the order, judgement and decree of this Court that:

1. The defendants' motion to extend their time to complete the renovations at the old Maximum Security facility to June 1, 1985 and to thereafter continue to use the facility for the housing of prisoners indefinitely so long as they maintain that facility in compliance with the minimum standards set forth in the August 10, 1977 order, is granted provided, however, that the defendants incorporate in their renovation and operating plans for this facility the recommendations of the environmental health expert with respect to kitchen waste disposal, kitchen ventilation, food service staff training and general preventative maintenance. Furthermore, the June 1, 1985 deadline for the completion of renovations will not apply to the Industries Building. A report detailing the status of these renovations shall be filed with the Court and plaintiffs by July 1, 1985.

2. The defendants shall be required to carry out the following other specific tasks to comply fully with the August 10, 1977 order:

a. Provide meaningful programming for pretrial detainees in the Intake Services Center, especially for those whose stay at the detention facility exceeds 45 days by July 1, 1985;

b. Provide meaningful vocational programming opportunities in each facility of the ACI by July 1, 1985;

c. Increase industrial programming throughout the ACI, particularly in the High Security Center, Maximum Security and Medium Security by July 1, 1985;

d. Expand mental health and medical services to keep pace with population increases;

e. Reduce the number of protection custody prisoners in B-Dormitory in Medium Security or develop other protective custody housing and increase the number of jobs available for protective custody prisoners by July 1, 1985.

f. Reduce the number of prisoners in Medium Security or begin planning to increase the availability of medium-custody bedspace at the ACI through conversion or construction by July 1, 1985.

3. By November 15, 1984, the defendants shall provide the Court and plaintiffs with a formal report which details all plans, either in place or prospective, together with funding sources for the accomplishment of the tasks set forth in paragraph 2, above. In addition, the defendants shall provide the Court and plaintiffs with formal progress reports on accomplishing these tasks on February 15, 1985, May 15, 1985 and August 1, 1985.

By Order,

Gail E Daniel

Chief Deputy Clerk

Enter:

Senior Judge

November 1st 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.,	)	
	)	
v.	)	C.A. No. 74-172
	)	
J. JOSEPH GARRAHY, et al.,	)	
	)	
THOMAS R. ROSS, et al.,	)	
	)	
v.	)	C.A. No. 75-032
	)	
J. JOSEPH GARRAHY, et al.	)	

ORDER

There are two motions pending in this case, one to maintain a ceiling of 250 on the population of the Intake Services Center (ISC) for pretrial detainees in the Rhode Island Adult Correctional Institutions (ACI), the other for a continuation of a population cap of 268 in Medium Security until the completion of a new facility in November, 1989. In addition, the Court entered an order on June 9, 1987, which gave the defendants until August 1, 1987 to reduce the population of the ISC to 250 or be liable for a daily fine of $3,000 for any subsequent excess. A conference was held among all of the parties on July 8, 1987 to consider these pending matters and work out, if possible, a formula to resolve the issues underlying these various motions and order.

Because the Court's continuing intervention in the ACI must be keyed not to numbers but to the conditions that in their totality violate the constitutional rights of prisoners,

the parties agreed to the necessity of developing a system of review that focuses primarily on conditions. This focus on conditions, however, should not obscure the Court's experience in the long history of this case, which illustrates clearly that excessive numbers lead almost ineluctably to the rapid deterioration of conditions.

In fact, of course, this Court's ruling on the ISC's unconstitutionality last year was based on a thorough evaluation of conditions. In conferences and in a December, 1985 hearing, it was made obvious that conditions in the ISC relating to safety and security, medical and mental health services, food services and sanitation and programming were all unacceptable. In my May 12, 1986 Opinion and Order, the defendants were found to be in violation not just of earlier Court orders but also, more importantly, of the Constitution:

> Under the new case law, to be unconstitutional the double celling and overcrowding must impact on the basic health and safety of the inmates so as to constitute cruel and unusual punishment in violation of the Eight Amendment....
>
> The situation here is not merely one of pure numbers. I do not look at the overcrowding in a vacuum. The experts chronicled the problems of extensive confinement: high levels of frustrations and irritation, increased assaults, high levels of idleness, serious environmental, health and maintenance problems, over-extended staff, and dangerous mental and medical health practices, all of which were linked to and exacerbated by the overcrowding.
> Palmigiano v. Garrahy, 639 F.Supp 244, 257 (D.R.I. 1986).

As a result, I ordered gradual reduction of the ISC's population and simultaneously directed the defendants to remedy inadequate conditions, while preserving for them the opportunity to return to the Court and argue that improved conditions warranted a halt to further population reductions. Hence, the pending motion to hold the population cap at the ISC to 250.

The defendants' difficulties recently have been further compounded by their inability to hold the ISC population even to 250. Since May of this year, they have regularly exceeded that number. They are currently rushing to refashion part of an Institute for Mental Health (IMH) facility, the Pinel Building, to provide housing for up to 30 additional pretrial detainees, an effort expected to be completed by August 1, 1987. While the population pressures of May and early June have eased somewhat, it is clear that the population cap of 250 for the ISC will be difficult, if not impossible, to maintain in the future. Meanwhile, there has been substantial amelioration of conditions at the ISC since the December, 1985 hearing that documented the deplorable conditions referred to in my May, 1986 opinion. When the defendants returned in early 1987 to seek a freeze of the population at 250, they were able to argue that most of the conditions cited as offensive in 1985 had been

substantially improved. In the most recent hearing on the plaintiffs' objections to a freeze on the population cap at 250, the plaintiffs focused solely on medical and mental health services, while conceding that other conditions at the ISC generally met applicable orders and standards.

At that May hearing, however, a number of inadequacies in mental health and medical care were identified. Some of the deficiencies were conceded by the defendants and others contested. In the July 8 conference of parties, the defendants contended that they had met all of the plaintiffs' relevant criticisms of medical services and mental health care. They went on to argue that, even when the number of pretrial detainees confined in the ISC exceeded 250, the totality of conditions of confinement comported with constitutional standards and met all applicable orders of the Court.

To resolve these outstanding issues relative to the ISC some determination of the current state of medical and mental health services is needed, as well as a system for monitoring future conditions in the facility in the face of a potentially expansive population.

The situation with regard to Medium Security is not greatly different. In the original August 10, 1977 Order in this case, the defendants were required to reduce the population of Medium Security to 222. Today, just two weeks

shy of the tenth anniversary of that order, the population of the facility remains at 260 to 270 prisoners. Based on the defendants' adamant representations in a June 1986 conference that a protective custody facility would be constructed and ready for occupancy within a year, thereby permitting the reduction of the Medium Security population by about a hundred prisoners, I ordered the defendants to reduce the population of Medium Security to 222 by June, 1987, and, meanwhile, allowed them to retain that facility's population at 268.

No protective custody facility was built; no prisoners, protective custody or otherwise, have been removed from Medium Security. Instead, the defendants returned to Court in late June, 1987 to file a motion to retain the 268 population ceiling until November, 1989, by which time they pledge a new Medium Security will be complete. Meanwhile, the defendants argue, they have made Medium Security a constitutional facility, even with 268 prisoners by improving staffing, programming, maintenance and health services.

The troubles at Medium Security differ substantially from those at the ISC in one important aspect. There exists, at least, a plan to build a new Medium Security facility and the funds to do so. While the delays associated with getting the facility actually built are frustrating, eventually a new building will be constructed and available. No such denouement is promised for the ISC, for whose expansion there are neither

plans nor money. Thus, any formula developed now to keep a finger on the pulse of conditions at the ISC can be expected to be needed for, at least, the next five or six years. To meet the need to fashion a monitoring framework for conditions in the ISC and the Medium Security, it is hereby

Ordered

A. The Intake Service Center (ISC)

The Special Master shall make arrangements immediately for an expert, independent review of medical services and mental health care in the ISC to assess the defendants' compliance with applicable orders and standards, with special attention to those issues raised during the May 22 and 23 hearing.[1] Any deficiencies identified for the Court by the neutral expert shall be addressed and remedied by the defendants within 30 days. At that point, the population ceiling of 250 shall be lifted.

If the defendants fail to remedy reported deficiencies within the time specified, the population cap shall revert to 250, and the defendants shall be required to show cause why they should not be held in contempt.

Thereafter, at six-month intervals, a monitoring team consisting of three members (one with expertise in correctional medical services, one in jail/prison operations and one in correctional environmental and sanitation matters) will review conditions at the ISC. If, however, prior to this scheduled

semi-annual review, the population of the ISC should exceed a monthly average of 265 detainees for two consecutive months, the outside review shall be accelerated and conducted immediately. Whatever causes the review, the review team shall conduct its inspection and report to the Court whatever deficiencies of compliance with applicable orders and standards it may find, together with a schedule for their remedy within a fixed period of time. The defendants' failure to remedy deficiencies shall precipitate a court hearing that shall result in a reduction of the population ceiling to 250 and may result in other appropriate sanctions. A similar inspection and report by the three-member monitoring team shall be required immediately if the ISC population exceeds a monthly average of 280 detainees for two consecutive months, and thereafter, each time the average monthly population for two consecutive months grows by an increment of ten additional detainees (thus, when the population hits 290, 300).

Following each such review, if the defendants fail to remedy reported deficiencies within the time specified, the population cap shall revert to 250, and the defendants shall be required to show cause why they should not be held in contempt.

Whenever the defendants trigger an independent review by exceeding one of the indicated population measures, the following semi-annual monitoring shall be rescheduled to occur

six months later. The purpose here is to reduce the number of redundant inspections when possible.

Medium Security

In conjunction with the immediate review of medical services and mental health care conducted at the ISC, the full three-member team shall conduct a broader review of all conditions at Medium Security. The standards for this review shall be compliance with all outstanding orders of the court and various standards applied thereunder. The defendants shall be required to remedy any deficiencies reported to the Court by the monitoring team within 30 days or within a time frame identified by the review team as reasonable.

If the defendants fail to remedy the deficiencies reported as a result of the review, they shall be required to show cause why they should not be held in contempt for violation of existing Court orders. The Court, moreover, shall consider immediate reduction of the population of the Medium Security to 222, the number originally called for in the August 10, 1977 Order.

Thereafter, the review team shall inspect Medium Security every six months to ensure that conditions continue to comply with applicable orders and standards. A failure on the defendants' part to meet these orders and standards or to remedy the deficiencies identified by the team within a reasonable period shall result in the issuance of a show cause order.

The defendants shall also complete the new Medium Security facility and occupy it by no later than November 1, 1989.

This order supercedes all existing orders relative to population in Medium Security and the ISC and specifically rescinds the Court's Order of June 9, 1987.

Also, because the overcrowding of ISC and Medium Security infringes on the medical and mental health services available in all ACI facilities, the monitoring team shall consider in each inspection such impact on the overall medical and mental health care provided throughout the ACI.

By Order,

Odette R. Zinnis
~~Clerk~~ Deputy Clerk

Enter: Extended by consent of all parties. mh.

Raymond J. Pettine
Senior Judge
July 28, 1987

FOOTNOTE

1. Among general issues raised in the May 22 and 23 hearing which should be addressed by the independent medical/correctional expert, are the following:

- Staffing (medical, dental, nursing, mental health)
- Internal quality assurance system
- Administrative, central management of the health care delivery system
- Emergency plans
- Procedures and protocol

Specific issues include:

- A tracking system for the chronically ill
- Physical examinations on intake
- First aid kits
- Dispensation and control of psychtropic medicines (stop-orders)
- An on-site EKG
- Suicide prevention plans and programs
- On-site IV solutions

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.	:	
VS.	:	C. A. NO. 74-172
J. JOSEPH GARRAHY, et al.	:	
THOMAS R. ROSS, et al.	:	
VS.	:	C. A. NO. 75-032
J. JOSEPH GARRAHY, et al.	:	

ORDER

On Tuesday, September 22, 1987 the Court presided over a chambers conference to review the posture of the inmate population and medical services at the Intake Service Center. The following parties attended: J. Michael Keating, Jr., Esquire, Special Master; Alvin Bronstein, Esquire, for the Plaintiffs; John J. Moran, Director, David W. Dugan, Esquire, Special Assistant Attorney General, George M. Cappello, Esquire, Associate Director Legal Services, John Biafore, Esquire, Legal Counsel to the Governor, Joseph J. Reilly, Deputy Director of Policy, Governor's Office, A. T. Wall, Assistant Director, Policy and Development, Jeffrey Laurie, Deputy Assistant Director, Rehabilitation Services, and Joseph DiNitto, Assistant to the Director, for the Defendants.

The Court made inquiry into the recent growth of the population and delivery of medical care at the Intake Service Center and elicited responses from the respective parties. Thereupon, the Court requested that the Defendants formulate a written plan which will address reduction of the population at the Intake Service Center on an immediate and long-term basis. The Court also instructed the

Defendants to respond to the findings and recommendations of Armand H. Start, M.D., the Court appointed medical expert. Therewith, it is hereby

ORDERED

1. Defendants shall submit a written plan to the Court by no later than October 20, 1987 which will reduce the population at the Intake Service Center from its present population of 311. The plan must specifically address the opening of the Pinnel Building to house, if necessary, up to sixty (60) awaiting trial inmates as well as Defendants' long-range structure (capital development program) to deal with the escalating population at the Intake Service Center.

2. Defendants shall implement the following recommendations of Armand H. Start, M.D., the Court appointed medical expert, within thirty (30) days of this Order:

a. Develop emergency plans and instructions and initiate emergency drills.

b. Develop an in-service program for clinical health care staff on suicide prevention and rewrite suicide policy.

c. Make provisions for on-site IV solutions.

3. Defendants shall advise the Court in writing on or before October 20, 1987 of the status of Dr. Start's recommendations to be implemented by December 1, 1987, namely:

a. Hire people to fill approved positions and systemize their employment.

b. Design and implement a quality assurance program.

c. Develop institution-specific procedures and protocols.

d. Design and implement a tracking system for the chronically ill.

e. Perform intake physicals as required.

4. Defendants shall provide on a monthly basis inmate population reports reflecting the daily population figures for the Intake Service Center as existed during said month. A copy of this report will be mailed to Alvin J. Bronstein, Esquire and this Court.

5. A conference is hereby scheduled for Wednesday, October 28, 1987 at 3:00 p.m. to review the status of the within issues.

By Order,

Deputy Clerk

Enter:

Senior U.S. District Judge

October 6, 1987

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.,	)	
	)	
v.	)	C.A. No. 74-172
	)	
J. JOSEPH GARRAHY, et al.	)	
	)	
	)	
THOMAS R. ROSS, et al.,	)	
	)	
v.	)	C.A. No. 75-032
	)	
J. JOSEPH GARRAHY, et al.	)	

ORDER

On Wednesday, October 28, 1987 the Court conducted a chambers conference to review the Defendants' Initiatives to Reduce the Inmate Population at the Intake Service Center submitted to the Court on October 20, 1987. The following parties were in attendance: J. Michael Keating, Jr., Esquire, Special Master; Alvin J. Bronstein, Esquire, for the Plaintiffs; John J. Moran, Director of Corrections, David W. Dugan, Esquire, Special Assistant Attorney General, John Biafore, Esquire, Legal Counsel to the Governor, Joseph J. Reilly, Deputy Director of Policy, Governor's Office, A.T. Wall, Assistant Director, Policy and Development, Jeffrey Laurie, Deputy Assistant Director, Rehabilitation Services, Joseph DiNitto, Assistant to the Director, George M. Cappello, Esquire, Associate Director, Legal Services for the Defendants.

The Court requested that the parties present respond to the Defendants' plan to reduce population at the Intake Service

Center. The Court acknowledged that the problem of escalating inmate population was indeed a difficult one to address and correct and indicated its willingness to be realistic in light of the efforts of the Governor of the State of Rhode Island and Director of Corrections to correct the undesirable situation at the Intake Service Center. Thereupon and by and with the consent and agreement of all parties present, the Court

ORDERED

1. Effective Wednesday, October 28, 1987, and continuing until January 1, 1988, the present ceiling shall be lifted to permit double celling at the Intake Service Center to allow a total inmate population of 336 at this facility.

2. On January 1, 1988, Defendants shall make available sixty (60) beds at the Pinel Building (ISC Annex) at which time the inmate population ceiling at the Intake Service Center shall be reduced to 276.

3. On March 1, 1988, Defendants shall make available thirty (30) additional beds [for a total of ninety (90) beds] at the Pinel Building (ISC Annex) at which time the population ceiling at the Intake Service Center shall be reduced to 250.

4. Notwithstanding the population ceilings set forth in this order, the defendants shall make a good faith effort to keep the population as low as possible and limit double celling as much as possible.

5. On or before April 1, 1988, the State shall present to

the Court a concrete plan incorporating future initiatives to reduce the population level at the Intake Service Center.

6. The Court-appointed experts shall conduct a review of the conditions at the Intake Service Center after January 1, 1988 to determine if constitutional standards are being met for the population at that time.

7. After a review of the experts' reports, by all parties, the Court shall determine whether an evidentiary hearing will be required.

8. Failure to comply with this Order shall result in heavy and substantial monetary sanctions against the defendants.

By Order,

Deputy Clerk

Entered By Agreement. —

Senior U.S. District Judge

Dec 16/87