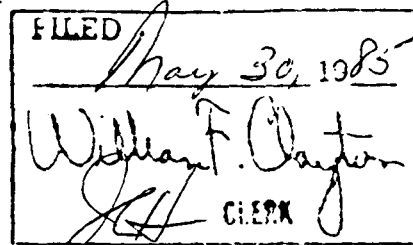


- Consent Decrees

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION



WILLIAM R. CODY, Individually and on behalf
of all other persons similarly situated,

Plaintiffs

vs.

CIV. 80-4039

CAROLE HILLARD, President of the Board of
Charities and Corrections; FRANK BROST,
Vice President; TED SPAULDING, Member;
D.A. GELHOFF, Member; LYLE SWENSON, Member;
JAMES SMITH, Executive Secretary; HERMAN
SOLEM, Warden of the South Dakota State
Penitentiary; sued individually and in
their official capacities,

PROPOSED
FINAL ORDER

Defendants.

The Court having filed, May 31, 1984, findings and conclusions in a Memorandum Opinion, together with an interlocutory judgment and order; having considered proposed remedial orders, together with objections thereto, filed by the parties; having heard the parties on the merits of this Proposed Final Order to which the parties have agreed on the record on May 29, 1985; recognizing the earnest steps taken by the Defendants in addressing the issues raised in this action; acknowledging the diligence of Plaintiffs in advancing their interests herein; desiring a prompt and satisfactory resolution of the matters before it; being satisfied that the provisions of this Proposed Final Order do substantial justice and are fairly supported by

Cody v. Hillard



PC-SD-001-005

the evidence; the Court hereby orders that notice of the following order be given the plaintiff class in this matter:

I. ENVIRONMENTAL CONDITIONS--HOUSING

A. Fire Safety

1. Fire exits and stairs.

a. The Defendants shall provide new fire stairs from East Hall, Federal Hall and West Hall by May 15, 1985;

b. The Defendants shall provide an additional fire exit from East Hall by July 6, 1985; and

c. The Defendants shall provide an additional fire exit from West Hall by December 1, 1985.

2. Automatic unlocking system.

The Defendants shall provide that all cells used for inmate housing in East, West and Federal Cell Halls at the South Dakota State Penitentiary's main institution in Sioux Falls (hereinafter SDSP) are equipped with an automatic cell unlocking system by December 31, 1985.

3. Fire separation barriers.

The Defendants shall provide for the installation of roll-up steel slat doors at the entrance to West and Federal Halls by July 6, 1985.

4. Emergency lights.

a. The Defendants shall provide for emergency lights connected to the emergency generator by July 6, 1985; and

b. The Defendants shall provide for two additional exit lights over the doorways in the converted exit from West Hall and one over the new exit from East Hall prior to installation of doors specified in paragraph A.1.b and c. above.

5. Smoke and fire detection system.

The Defendants shall continue to maintain a fire alarm system and smoke detector system in East, West and Federal Cell Halls.

6. Fire evacuation drills.

The Defendants shall conduct semiannual unannounced fire drills in East, West and Federal Cell Halls and other appropriate areas of the SDSP.

7. Other fire safety measures.

a. The Defendants shall continue to maintain smoke exhaust fans in good working order in East, West and Federal Cell Halls;

b. The Defendants shall continue the use of fire retardant mattresses and pillows, and the posting of fire evacuation instructions in every cell;

c. The Defendants shall continue to maintain self-contained breathing apparatus for staff use in the event of an emergency evacuation; and

d. The Defendants shall continue to submit to inspections by the South Dakota State Fire Marshal and shall abate any deficiencies found as a result of such inspection.

B. Ventilation and Heating System.

1. Cell ventilation and heating.

By March 1, 1986, the Defendants shall install a new digital system to control ventilation and heating in each cell hall, install screened damper grills on the exhaust vents in all cells, install new exhaust fans on each tier in the pipe chases behind each cell hall and install new ductwork to connect the cell exhaust vents to the exhaust fans.

2. West Hall shower.

The Defendants shall continue to maintain the West Hall shower in a safe and sanitary condition with adequate ventilation.

C. Overhead Lighting and Electrical Wiring.

1. Cell lighting.

The Defendants shall provide adequate cell lighting in East, West, and Federal Cell Halls by December 31, 1985.

2. Cell wiring.

a. The Defendants shall provide properly grounded outlets in West Cell Hall by December 31, 1985; and

b. The Defendants shall provide a properly grounded second double outlet in East Cell Hall by December 31, 1985.

3. Removal of jerry-rigged wiring.

The Defendants shall maintain the cell areas free of improper wiring jerry-rigged by the occupants.

D. Hot Water and Water Control System.

1. The Defendants shall continue to provide a hot water system for individual cells in Federal Cell Hall; and

2. The Defendants shall either provide proper plugs for sinks in individual cell halls; or

3. The Defendants shall continue to maintain a temperature regulator for East and Federal Halls.

II. ENVIRONMENTAL CONDITIONS--KITCHEN AND FOOD STORE AREA

A. Milk Pasturization Process.

1. Should the Defendants resume pasturization operations, these operations shall be conducted in a safe and healthful manner;

2. Should the Defendants resume pasteurization operations, the Defendants shall submit such operations to monthly inspections of milk samples and quarterly

inspections of the monitoring equipment by the South Dakota Department of Agriculture; and

3. The Defendants shall immediately abate any deficiencies found as a result of such inspections.

B. Food storage.

1. Basement food storage.

a. The Defendants shall continue to maintain all food storage areas in the SDSP in good repair and in a clean, healthful and vermin-free condition; and

b. The Defendants shall continue to maintain canopies or some other appropriate protective measure to ensure against unsanitary spillage from the overhead pipes in or around the stored food in the basement food storage area.

2. Kitchen food storage.

a. The Defendants will continue to maintain proper kitchen freezers and coolers.

b. The Defendants will continue to maintain proper methods of food storage in the kitchen.

C. Kitchen elevator.

1. The Defendants shall continue to maintain the kitchen elevator in a safe operating condition and shall

maintain safety buffer devices on the doors to prevent injuries; and

2. The Defendants shall submit to inspections of the kitchen elevator at appropriate intervals and shall abate any deficiencies found as a result of such inspections.

D. General Kitchen Practices and Conditions.

1. Ventilation.

The Defendants shall provide for adequate kitchen ventilation by August 15, 1985.

2. Kitchen Fire Safety.

The Defendants shall continue to maintain ancillary fire protection systems for the kitchen stove hoods.

3. Utensil repair and sanitation.

The Defendants shall maintain kitchen pots, pans and dining utensils in good repair and in safe and sanitary condition.

4. Inmate access to the infirmary through the kitchen.

The Defendants shall continue to prohibit inmate access to the infirmary through the kitchen during normal operational hours.

5. Kitchen food defrosting.

The Defendants shall continue to maintain the food

defrosting equipment in a safe and healthful manner, free from potential back siphonage.

6. Other kitchen practices.

a. The Defendants shall continue to maintain the proper use of hair restraints among food service workers;

b. The Defendants shall maintain the ice machine in good repair and in a sanitary condition; and

c. The Defendants shall continue to prohibit use of any part of the kitchen area as a worker lounge or smoking area.

III. ENVIRONMENTAL CONDITIONS-SHOPS AND VOCATIONAL PROGRAMS

A. Welding Shop.

The Defendants shall maintain adequate ventilation and toxic fume removal in the welding booths, sanding room and spray booths.

B. Furniture Upholstery Shop.

a. The Defendants shall maintain adequate ventilation and toxic fume removal in the furniture upholstery shop; and

b. The Defendants shall require that inmate workers in the furniture upholstery shop wear appropriate protective devices when employed in the paint stripping and spraying booths.

C. Proper Storage of Combustibles.

The Defendants shall continue to maintain safe and proper storage of combustible materials in the shop area.

D. Barbershop.

The Defendants shall continue to maintain safe and sanitary conditions in the barbershops.

E. Safety Locking Devices.

The Defendants shall continue to maintain appropriate safety devices on machinery in the vocational shops.

F. Sawdust Removal.

The Defendants shall continue to provide a proper sawdust removal system in the carpentry shop.

IV. ENVIRONMENTAL CONDITIONS--OTHER AREAS

A. Underground Corridor Lighting

The Defendants shall continue to provide adequate lighting in the underground corridor to the recreation building.

B. Sanitary Conditions in the Infirmary.

1. The Defendants shall continue to maintain proper sanitary conditions in the infirmary; and
2. The Defendants shall continue to maintain the infirmary free of potential back siphonage.

V. MEDICAL AND DENTAL CARE

A. Use of Inmate Workers.

1. The Defendants shall not employ inmate workers in the provision of medical or dental services; nor shall inmate workers schedule appointments or be otherwise involved in determining the access of other inmates to health care services; and the operation of medical or dental equipment; and

2. The Defendants shall provide that no inmate has access to the medical or dental records of other inmates.

B. Emergency Medical Care.

1. Protocols.

The Defendants shall maintain proper emergency care protocols, including a provision setting forth the identification system for the emergency medical technician (EMT) on duty.

2. Emergency Staff.

The Defendants shall provide that at least one certified EMT or registered nurse shall be on duty at the SDSP at all times by July 31, 1985.

3. Crash Cart.

By June 30, 1985, the Defendants shall provide a

crash cart at the SDSP for the emergency use solely of physicians and nurses and other qualified personnel otherwise on duty.

4. Resuscitation equipment.

The Defendants shall maintain proper emergency resuscitation equipment.

C. Prescription Drugs.

1. Formulary.

The Defendants shall maintain an appropriate formulary of the prescription medications utilized at the SDSP.

2. Prohibitions on prescription of certain medications.

The Defendants shall continue not to prohibit the prescription of sleeping medications, pain relievers, minor tranquilizers, appetite suppressants, and cough medicines by qualified physicians when medically necessary in accordance with general medication policies of the SDSP.

3. Limitations on prescription of certain medications.

The Defendants shall continue not to discourage or limit the prescription of anti-convulsive and anti-asthmatic medications by qualified physicians when medi-

cally necessary and appropriate in accordance with general medication policies of the SDSP.

4. Medication dispensation.

The Defendants shall maintain a system in which the administration of a prescribed medication, or the inmate's refusal of such medication, is recorded.

5. Monitoring of inmates receiving major tranquilizers.

The Defendants shall provide for appropriate medical monitoring of all inmates receiving major tranquilizers.

D. Protocols.

The Defendants shall maintain appropriate health care protocols which shall govern the provision of health care services at the SDSP.

E. Medical Records.

The Defendants shall organize existing medical files at the SDSP and shall provide that medical files are maintained in the chart order prescribed in the Defendants' health care protocols.

F. Staff.

1. The Defendants shall continue to maintain adequate medical staff at the SDSP;

2. The Defendants shall provide nursing staff coverage on a 24-hour basis when an inmate needing nursing services is admitted to the infirmary.

G. Financial Constraints on Medical and Dental Services.

1. The Defendants shall provide necessary medical, surgical and dental care;
2. The Defendants shall provide necessary prostheses free of cost to indigent inmates; and
3. The Defendants shall provide that medical judgments of SDSP medical staff regarding necessary treatment shall not be overridden by non-medical staff for financial reasons. In a situation where two or more courses of medical or dental treatment are each considered by physicians or dentists at the SDSP to be adequate and consistent with community standards, the physician or dentist may recommend or prescribe the least expensive treatment.

VI. PSYCHIATRIC AND PSYCHOLOGICAL CARE.

A. Staff at SDSP.

1. The Defendants shall employ an additional clinical psychologist at the SDSP by June 30, 1985; and
2. The Defendants shall, at a minimum, maintain the staffing ratio for correctional counselors, specialized counselors, and psychiatric services which existed as of

May 31, 1984. Should such ratio change in that said counselors would have to provide services for a greater number of inmates, the Defendants have ninety (90) days within which to reestablish the ratio as it existed on May 31, 1984.

B. Staff at the Forensic Unit.

The Defendants shall provide an acute and intermediate level care facility with 24-hour nursing personnel coverage, staffed by a psychiatrist, a psychologist, four counselors or psychiatric social workers, and necessary nursing and correctional staff, provided, however, that Defendants may utilize personnel on a shared basis with the Human Services Center.

VII. INTAKE AREA.

The Defendants shall provide proper initial medical screening for newly-admitted inmates.

VIII. ACCESS TO THE COURTS.

To satisfy inmates' needs for legal assistance at the SDSP and Springfield facilities, the Defendants shall provide legal counsel who shall offer legal advice to indigents. Defendants shall also furnish legal counsel for the purpose of drafting pleadings where indigent inmates lack sufficient literacy to prepare pleadings on their own behalf. All of the

foregoing services shall be provided only with respect to habeas corpus and civil rights actions other than appeals of convictions.

IX. MONITORING.

The Defendants shall provide the Court and plaintiffs with formal progress reports on accomplishing the above Order on June 1, 1985; September 1, 1985; December 1, 1985; and March 1, 1986.

Certain other areas of the Court's findings, specifically those related to double-celling, quality control for health services, and staff coverage of the infirmary, could not be agreed to by the parties, and will be addressed in a separate order by this Court.