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United States Court of Appeals
For the First Circuit

No. 00-1052

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Jaan Laaman, et al.,
Plaintiffs - Appellants

NATIONAL CENTER
ON POVERTY LAW

v.

Warden, New Hampshire State Prison, et al.
Defendants - Appellees

Appeal
From The United States District Court
For The District Of New Hampshire

BRIEF OF APPELLANTS

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Jurisdictional Statement.

A. Basis for district court's subject matter jurisdiction.

Plaintiffs, convicted prisoners, brought these consolidated Civil Rights actions, pursuant to 42 USC §1983, against prison officials to redress the deprivation under color of law, of their federal rights, including their rights under the Eighth Amendment to the United States Constitution. Jurisdiction was conferred on the district court pursuant to 28 USC §1343(3) and (4).

B. Basis for court of appeals' jurisdiction.

The prisoners appeal from the final order and judgment of the United States District Court for the District of New Hampshire pursuant to 28 USC 51291. The district court terminated the Consent Decree in this case pursuant to the Prison Litigation Reform Act (PLRA), 18 USC §3626(b)(2). The prisoners appeal the district court's action as being violative of §3626(b)(3) of the PLRA.

C. Filing dates establishing timeliness of this appeal.

- June 15, 1999. District court order terminating Consent Decree and dismissing plaintiffs' Motion For Contempt as moot.
- June 16, 1999. Judgment.
- June 30, 1999. Order denying plaintiffs' Motion To Alter/Amend Judgment.
- July 1, 1999. Post Judgment Judgment.
- July 16, 1999. Order granting plaintiffs' Preliminary Motion For Attorney's Fees (Rule 4(a)(4)(A)(iii)).
- July 20, 1999. Order extending time for appeal pursuant to Rule 58, F.R. Civ. P.

- December 3, 1999. Order granting Assented To Motion For Approval of Attorney's Fees.
 - December 30, 1999. Notice of Appeal.
- D. This appeal is from a final order and judgment that disposes of all parties' claims.

Statement of the Issues Presented For Review.

1. Whether the district court erred as a matter of law and/or abused its discretion in terminating the Consent Decree without affording plaintiffs the opportunity to submit evidence or supplement the record to demonstrate that prospective relief remains necessary to correct a current and ongoing violation of their Eighth Amendment rights to minimally adequate mental health treatment.
2. Whether plaintiffs were unfairly prejudiced by the failure of the district court to render a decision following the contempt trial held in December, 1995, and whether the district court erred in terminating the Consent Decree in the absence of such a decision.

Statement of the Case.

This is an appeal from the district court's order terminating a Consent Decree under the Prison Litigation Reform Act, 18 USC §3626(b)(2). The district court also dismissed as moot the plaintiffs' Motion for Contempt.

In July, 1977, following a trial, the court ruled that conditions of confinement at the New Hampshire State Prison were unconstitutional. The conditions included constitutionally

inadequate mental health treatment. Laaman v Helsamoe, 437 F. Supp. 269 (D. NH, 1977).

In August, 1978, the court approved a Consent Decree (Document #335; Appendix, p. 5). Section VIII of the Consent Decree covered required mental health treatment (Appendix, pp. 24-26). The Decree superceded the above court decision (Document #335, para. 6; Appendix, p. 6). In May, 1990 the court approved a second Consent Decree (Document #383; Appendix, p. 43). Paragraphs 53-63 of the 1990 Decree contained requirements for mental health treatment (Appendix, pp. 70-74). The 1990 Decree replaced the 1978 Decree with respect to mental health treatment (Document #383, para. 11; Appendix, p. 46).

In June, 1993 plaintiffs filed a Motion For Contempt (Document #408), alleging, inter alia, violations of the mental health provisions of the 1990 Decree. A trial took place in December, 1995 on whether defendants were in contempt of the mental health requirements of the 1990 Consent Decree. The trial judge never issued a decision on this matter.

The trial judge died in February, 1999. The case was reassigned to Judge Barbadoro in April, 1999. On April 20, 1999 Judge Barbadoro issued an Order sua sponte directing the parties to file a memo explaining why the Consent Decree should not be terminated under §3626(b)(2) of the PLRA and the pending Motion For Contempt dismissed as moot (Document #498; Appendix, p. 125).

Plaintiffs filed a brief (Document #499), explaining that evidence of constitutional violations was contained in the December, 1995 trial record which had yet to be ruled on.

Plaintiffs also suggested that the record could be supplemented if the court felt that the 1995 trial record was not current enough with respect to a showing of a current and ongoing violation of a federal right pursuant to §3626(b)(3) of the PLRA. Defendants urged termination of the Consent Decree in their memo (Document #500).

On June 15, 1999 Judge Barbadoro terminated the Consent Decree and dismissed the pending Motion For Contempt as moot (Appendix, p. 128). Judge Barbadoro did not afford plaintiffs an opportunity to offer evidence or supplement the record to show a current and ongoing violation of a federal right.

Plaintiffs filed a Motion To Alter/Amend Judgment (Document #502, Appendix, p. 116), which defendants opposed (Document #504, Appendix, p. 120), and which the court denied by Order dated June 30, 1999 (Appendix, p. 131). Judgments were entered on June 16 and July 1, 1999 (Appendix, p. 130 and p. 133, respectively).

Plaintiffs did not immediately appeal as the court issued an Order on July 20, 1999 (Document #507) extending the time for appeal under Rule 58, F.R. Civ.P., until the issue of attorney's fees on another aspect of the case was resolved. On December 3, 1999 the court issued an Order approving the parties' resolution of the attorney's fees issue. The time for appeal having commenced again, the plaintiffs filed a timely Notice of Appeal on December 30, 1999 with respect to the final Orders of June 15 and June 30, 1999, and the corresponding judgments of June 16 and July 1, 1999.

Statement of Facts.

This case began in 1975 when prisoners at the New Hampshire State Prison filed pro se Civil Rights complaints under 42 USC §1983 challenging conditions of their confinement. The conditions included constitutionally inadequate mental health treatment. The court appointed counsel to represent the prisoners. The cases were consolidated and the action was certified as a class action.

A trial was held, and, on July 1, 1977, the court issued a decision finding that defendants violated plaintiffs' constitutional rights, including plaintiffs' rights to minimally adequate mental health treatment under the Eighth Amendment of the United States Constitution. The defendants were ordered to provide constitutionally adequate mental health treatment to the prisoners. Laaman v Helsamoe, 437 F. Supp. 269 (D. NH, 1977).

The defendants appealed to this court and plaintiffs filed a cross appeal. The appeals were withdrawn when the parties signed a Consent Decree (1978 Decree) which was approved by the court in August 1978 (Document #335, Appendix, p. 5).

Subsequently, the prisoners filed pro se motions for contempt. Counsel was reappointed by the court to represent the prisoners. In 1990, the parties executed a second Consent Decree (1990 Decree) which was approved by the court (Document #383, Appendix, p. 43).

In June, 1993 the prisoners, through their undersigned counsel, filed a Motion For Contempt against defendants (Document

#408). The motion alleged, inter alia, violations of the mental health provisions of the 1990 Consent Decree, as well as portions of the 1978 Consent Decree. A trial took place in December, 1995 on the issue of whether defendants were in contempt of the mental health requirements of the Consent Decree.

The court never issued a decision following the trial. No reason can be ascertained from the record to explain the court's failure to render a decision. The trial transcripts were filed in January, 1996 (Documents #473-477), and the parties submitted post-trial briefs and requested findings of fact and rulings of law in February, 1996 (Documents #481, 482, 483, 484).

The trial judge died in February, 1999 without having ruled on the issues at trial. The case was reassigned to Judge Barbadoro on April 5, 1999. On June 15, 1999 Judge Barbadoro terminated the Consent Decree under §3626(b)(3) of the PLRA. The judge also dismissed the pending Motion For Contempt as moot. Plaintiffs thereafter filed this appeal.

Summary Of Argument.

The district court erred in terminating the Consent Decree under §3626(b)(2) of the Prison Litigation Reform Act (PLRA). The court ignored S(b)(3) of the PLRA. Section (b)(3) does not permit termination if the court makes findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the prisoners' federal rights. The court erred in failing to make such findings based on a current record and erred in refusing to give the prisoners an

opportunity to present evidence of current and ongoing violations of their federal rights.

The district court had before it a December, 1995 trial record of constitutional violations. This record has never been ruled on. The district court ignored this record and refused the prisoners' request to supplement the record to show a current and ongoing violation of their constitutional right to minimally adequate mental health treatment. The district court then said that the prisoners had failed to demonstrate that prospective relief remained necessary to correct a current and ongoing violation of the prisoners' federal rights.

The district court erred in deciding that it could not look beyond the Consent Decree for findings that comply with §3626 (b)(2) of the PLRA. The PLRA does not say that a district court should not look at what is happening today in order to make findings based on the record. Section 3626(b)(3) would be stripped of all meaning if it were construed to require findings of a current and ongoing violation of a federal right but that a prisoner is not to be afforded an opportunity to show this violation.

The majority of courts that have considered §3626(b)(3) have found that prisoners should be afforded the opportunity to present evidence or supplement the record. This is especially so when there is not a current record and the issue of current violation is in dispute, as is the case here. In Inmates of Suffolk County Jail v Rouse, 129 F.3d 649 (1st Cir., 1997), there was a current record available to the district court for it to

determine that findings could be made that there was no evidence of a current and ongoing violation of a federal right.

The plaintiffs were not only prejudiced by the denial of an opportunity to present evidence or to supplement the record. They were also prejudiced by the failure of the district court to issue a decision based on a trial record which was over three years old. Had the district court rendered a timely decision, and assuming a decision in the plaintiffs' favor, the plaintiffs would have been able to present further evidence to demonstrate that prospective relief remained necessary to correct a current and ongoing violation of a federal right. Plaintiffs were thus deprived of an opportunity to show that the criteria of §3626(b)(3) were met.

The district court created a Catch-22 situation for plaintiffs. On the one hand, the district court said that the plaintiffs could not supplement the record to show a violation of a federal right. On the other hand, the district court said that because the plaintiffs failed to demonstrate a current and ongoing violation of a federal right their Consent Decree would be terminated. The district court had before it a record of constitutional violations. The court chose to ignore it. The plaintiffs were told there was nothing they could do to make the record current. The result in this case is both unfair and violates the PLRA. The order of the district court should be reversed.

Statement of the **Applicable** Standard of Review.

According to this court's ruling in Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649, 661 (1st Cir., 1997) whether the district court erred in failing to afford plaintiffs the opportunity to present evidence or supplement the record is a "mixed question of fact and law." The answer to that question must be reviewed "along a degree-of-deference continuum, ranging from plenary review for law dominated questions to clear-error review for fact-dominated questions." 129 F.3d at 661.

At the "no deference" end of the continuum are the "unadulterated questions of law, which customarily entails de novo review." In Re Extradition of Howard, 996 F.2d 1320, 1327 (1st Cir., 1993). At the other end of the continuum are the "straight factual determinations." These reviews require a high degree of deference, such as "clear error," "palpable error" or "abuse of discretion." Id. For "mixed questions" of fact and law, the more fact-dominated the question, the more likely it is that the trier's resolution of it will be accepted unless shown to be clearly erroneous. 996 F.2d at 1328.

This court has held that the interpretation of a regulation presents a "purely legal" question, "spark[ing] de novo review." Johnson v. Watts Regulator Co., 63 F.3d 1129, 1132 (1st Cir., 1995). Once the meaning of the regulation has been clarified, the "mixed" question that remains -- the regulation's "applicability" in a given case -- may require fact finding, and if it does, that fact finding is reviewed only for "clear error." 63 F.3d at 1132.

In this case, there are questions of law as well as questions of fact. The questions of law require an interpretation of Section 3626(b)(3) of the PLRA. These questions of law include:

- 1) Whether a district court is required to look at the post-consent decree record. The district court insisted that the record must consist of only the record "prior to entry" of the consent decree. See Order dated June 15, 1999, page 1 (Appendix, p. 128) or, that the decree itself must "contain findings" required by Section 3626 of the PLRA. See Order dated June 30, 1999, page 1 (Appendix, p. 131).
- 2) Whether a district court must address the requirements of Section 3626(b)(3) in conjunction with the mandate of Section 3626(b)(2). See Benjamin v. Jacobson, 172 F.3d 144, 166 (2d. Cir., 1999) en banc. (Sections 3626(b)(2) and (b)(3) to be read "together"). The district court never mentioned Section (b)(3) in any of its three Orders (Appendix, pp. 125, 128, and 131).
- 3) Whether Section 3626(b)(3) requires that the party opposing the termination of the consent decree be afforded the opportunity to present evidence or supplement the record to show a current and ongoing violation of a federal right when the record is not current.
- 4) Whether Section 3626(b)(3) allows a district court to terminate a consent decree when a decision on the issue

of current and ongoing violation of federal rights has been pending before the district court for in excess of three years?

The district court essentially answered the above questions adverse to the plaintiffs when it denied plaintiffs the opportunity to supplement the record or present evidence of a current and ongoing federal violation. This court is not bound by the district court's answers to these legal questions. These questions of law call for plenary review by this court.

Assuming that this court resolves the above legal questions in the plaintiffs' favor, a deferential review must then be made by this court to determine whether the district court correctly applied the law to the unique facts of this case. Johnson v. Watts Resulator Co., 63 F.3d at 1132.

ARGUMENT.

1. TEE DISTRICT COURT ERRED AS A MATTER OF LAW AND/OR ABUSED ITS DISCRETION IN TERMINATING TEE CONSENT DECREE WITHOUT AFFORDING PLAINTIFFS THE OPPORTUNITY TO SUBMIT EVIDENCE OR SUPPLEMENT TEE RECORD TO DEMONSTRATE TEAT PROSPECTIVE RELIEF REMAINS NECESSARY TO CORRECT A CURRENT AND ONGOING VIOLATION OF THEIR EIGHTH AMENDMENT RIGHTS TO MINIMALLY ADEQUATE MENTAL HEALTH TREATMENT.

- A. The district court failed to Provide plaintiffs with the **opportunity** to **present** evidence that **prospective** relief remains necessary to correct a current and **ongoing** violation of their federal **rights** as required by Section **3626(b)(3)** of the **PLRA**.

Section 3626(b)(2) of the PLRA (see Addendum, AD-6) authorizes a district court to terminate a consent decree that fails to contain findings that the relief approved was narrowly drawn, extends no further than necessary to correct the violation

of a federal right and is the least intrusive means necessary to correct the federal violation. However, Section 3626(b)(2) is subject to the "important limitation" (Lovd v. Alabama Department of Corrections, 176 F.3d 1336, 1342 (11th Cir., 1999)) of Section 3626(b)(3). Section 3626(b)(3) states that prospective relief "shall not terminate" if the court "makes written findings based on the record" that prospective relief remains necessary to correct a "current and ongoing violation" of a federal right, extends no further than necessary to correct the violation, is narrowly drawn and the least intrusive means to correct the federal violation.

In terminating the consent decree the district court essentially ignored Section 3626(b)(3).

First, the district court failed to look at or rule on the record of the December, 1995 trial. The trial record contains extensive evidence of the current and ongoing violations of plaintiffs' federal rights.

Secondly, despite the court's acknowledgment in its Order dated June 30, 1999, (Appendix, p. 131) of the allegations in plaintiffs' brief (Document #499, p. 1) that defendants continue to violate the Consent Decree, the court ignored plaintiffs' request to supplement the record of the 1995 trial. See Plaintiffs' Brief Regarding The Effect Of The Prison Litigation Reform Act On This Case (Document #499, pages 1,2).

Third, the court failed to make "written findings based on the record." In the instant case, in order to make findings based on a record an evidentiary hearing or supplementation of

the 1995 trial record is required. No such evidentiary hearing or court proceeding took place in this case.

Fourth, the district court failed to notify plaintiffs that they were apparently expected to proffer evidence of current and ongoing violations of their federal rights. On April 20, 1999 the district court judge to whom the case was assigned following the death of the trial judge in February, 1999, issued an Order sua sponte. The Order directed the plaintiffs "to file a memo" within 30 days, "limited to 25 pages," "explaining" why the consent decree should not be terminated under the PLRA and the pending Motion For Contempt deemed moot (Document #498). The plaintiffs submitted such a memo (Document #499).

By Order dated June 15, 1999 the district court terminated the Consent Decree and dismissed plaintiffs' Motion For Contempt as moot. In doing so, the judge stated that the plaintiffs failed to "demonstrate" a current and ongoing violation of their federal rights (Appendix, p. 128).

The plaintiffs, however, never had a chance to demonstrate the current and ongoing violation of their constitutional rights. The plaintiffs were essentially placed in a "Catch 22" situation by the district court. The court failed and refused to provide the plaintiffs with an opportunity to present evidence or supplement the record, but then ruled that plaintiffs failed to demonstrate a current and ongoing violation of their federal rights.

The district court's refusal to hold an evidentiary hearing or allow plaintiffs to supplement the record deprived plaintiffs

of the continuing injunctive relief necessary to maintain the "framework wherein the Eighth Amendment rights of the New Hampshire State Prison inmates would be preserved and protected." Order, December 5, 1995, page 9 (Document #468, Appendix, p. 113). In contrast, other district courts that have held hearings under Section 3626(b)(3) have found current and ongoing violations of federal rights and have thus been able to order prospective relief to preserve and protect the inmates' federal rights.

For example, in Cartv v. Farrelly, 957 F. Supp. 727 (D. VI., 1997) the court noted that Section 3626(b)(3) of the PLRA allows the court to make specific findings of current and ongoing violations of federal rights "because the findings will enable the court to uphold the agreement..." 957 F. Supp. at 734. The court in Cartv held evidentiary hearings and made findings that prison conditions were unconstitutional and required continuing court intervention to enforce the existing consent decree. The court found, inter alia, that defendants failed to provide treatment for mentally ill inmates in violation of the Eighth Amendment. 957 F. Supp. at 739. See also Ruiz v. Johnson, 37 F. Supp. 2d 855 (S.D. Tex., 1999) where the district court held extensive evidentiary hearings and ordered prospective injunctive relief to protect the prisoners' safety upon a finding of violations of their federal rights.

B. The decision of this court in Inmates of Suffolk County Jail v. Rouse is not **dispositive** of the case at bar.

In Inmates of Suffolk Countv Jail v. Rouse, 129 F.3d 649 (1st Cir., 1997) this court upheld the constitutionality of the

PLRA and affirmed the termination of a consent decree. This court also affirmed the determination of the district court that there was no evidence before the court to support findings that the defendants were not in compliance with the consent decree. 129 F.3d at 662. The plaintiffs' claims that the district court erred in failing to conduct an inquiry into whether a violation of a federal right exists, or will probably come into existence if the strictures of the consent decree are lifted, were rejected by this court. 129 F.3d at 661.

Notwithstanding the above holdings by this court plaintiffs respectfully submit that Inmates of Suffolk County Jail v. Rouse, supra, is not dispositive of the case at bar. The question of whether conditions at the Suffolk County Jail constituted an ongoing violation of federal rights under the PLRA was determined by this court to be "more factual than legal." 129 F.3d at 661. Such a fact based standard requires an individual evaluation of the circumstances of each case.

Secondly, this court noted in Rouse that "the district court for some time had been receiving and evaluating periodic reports from the sheriff..." 129 F.3d at 662. While this should not be dispositive of whether an evidentiary hearing is required under Section 3626(b)(3), nevertheless it appears that there was a relatively recent and current record available to the district court on which to base its determination that there was no evidence of a current and ongoing violation of a federal right. In the instant case, there is no current record.

This court found that the district court in Rouse did not err in refusing to hold a hearing on "what the future may bring" if the consent decree were lifted. 129 F.3d at 662. Unlike the Rouse inmates, plaintiffs herein have not asked the district court to address a "speculative claim of harm to come." Id. Instead, plaintiffs requested in their brief (Document #499) that the district court allow the record to be supplemented if it found that the 1995 trial record, which the court had never ruled on, needed to be updated.

Plaintiffs do not read Rouse to hold that a district court is never required to hold a hearing under Section 3626(b)(3) regardless of the circumstances. Nor do plaintiffs read Rouse to stand for the proposition that this court will never find that a district court abused its discretion in refusing to hold a hearing or to supplement the record under Section 3626(b)(3). Rouse should not be interpreted to require that the findings authorized under Section 3626(b)(3) be made solely on the record at the time of entry of the consent decree. Plaintiffs submit that the holding of Rouse should be limited to the facts of that case.

The facts of the instant case are unique. The district court had before it, for well over three years, a trial record of constitutional violations that it never ruled on. Then, without allowing any supplementation of the record, the district court terminated the consent decree and dismissed the Motion For Contempt, finding that there was no record of current and ongoing violations of plaintiffs' federal rights. Plaintiffs were thrown

out of court without the opportunity for a hearing or findings based on a current record. Under such circumstances, Rouse does not lend support for the district court's orders depriving plaintiffs of their day in court.

- c. Plaintiffs should be afforded the opportunity to present evidence that prospective relief remains necessary to correct a current and ongoing violation of their federal rights.

The courts differ in their interpretations of Section 3626(b)(3) of the PLRA. However, the majority of the courts agree that the party opposing termination of a consent decree should be given an opportunity to show a current and ongoing violation of a federal right.

The Second Circuit, in an en banc decision, has held that Sections 3626(b)(2) and (b)(3), together, require that a district court must afford inmates the opportunity for a hearing, upon request, to show a current and ongoing violation of their federal rights before a consent decree can be terminated under Section 3626(b)(2). Benjamin v. Jacobson, 172 F.3d 144, 166 (2d Cir., 1999) en banc.

Other courts have held that while Section 3626(b)(3) does not require a hearing, it is an abuse of discretion for the district court to fail to hold a hearing where the inmates have alleged specific facts, which, if true, would amount to current and ongoing violations of their federal rights. Casle v. Hutto, 177 F.3d 253, 258 (4th Cir., 1999). See also Jensen v. County of Lake, 958 F. Supp. 397, 406 (N.D. Ind., 1997) (hearing to be held based on inmates' arguments that there are ongoing violations of their constitutional rights).

The Seventh Circuit has held that while an evidentiary hearing is not always required under Section 3626(b)(3) the district court must hold a hearing and receive testimony if there are disputed issues of material fact concerning current and ongoing violations of federal rights. Berwanser v. Cottev, 178 F.3d 834, 840 (7th Cir., 1999). The court noted that a district court is required to make written findings "based on the record" whether or not an evidentiary hearing is held. 178 F.3d at 840.

The Eleventh Circuit has held that it is an abuse of discretion to fail to conduct an evidentiary hearing even where the record in the case is "current." Lovd v. Alabama Department of Corrections, 176 F.3d 1336, 1342 (11th Cir., 1999). The court noted that the party opposing termination of the consent decree must be given the opportunity to challenge or supplement a monitor's report and to present evidence concerning current and ongoing violations of federal rights. 176 F.3d at 1342. Contra. Watson v. Ray, 192 F.3d 1153, 1158 (8th Cir., 1999) (district court did not abuse its discretion in denying inmates the opportunity to conduct discovery where there was a "wealth of information" available in the record to support the district court's findings of no current and ongoing violations of federal rights).

Where the record is not current courts have held that Section 3626(b)(3) gives the court the power to supplement the record by taking further evidence in order to determine present circumstances. Thompson v. Gomez, 993 F. Supp. 749, 756 (N.D. Cal., 1997).

A critical question is what does "the record" mean? Courts that have addressed this issue have held that the "record" is not limited to the record that existed prior to the filing of the motion to terminate under Section 3626(b)(2). Rather, the "record" means a record "reflecting conditions as of the time termination is sought." Benjamin v. Jacobson, 174 F.3d at 166. The Benjamin court cogently pointed out: "Evidence presented at a prior time, however, could not show a violation that is 'current and ongoing'." Id. See also Thompson v. Gomez, 993 F. Supp. at 756 (record encompasses "present circumstances").

The majority of courts have held that prisoners should, in some manner, be afforded the opportunity to present evidence or supplement the record in order to demonstrate current and ongoing violations of their federal rights under Section 3626(b)(3).

It would read all meaning out of this section to force the party opposing termination to show that the consent decree meets the requirements of §3626(b)(3) and then not provide that party with the opportunity to present evidence on that point. Lovd v. Alabama Department of Corrections, 176 F.3d at 1342.

Yet, this is-precisely what happened in the instant case. The district court said that plaintiffs failed to demonstrate that the conditions of Section 3626(b) were met. However, the court acknowledged on page one of its Order dated June 30, 1999 that "Plaintiffs filed a brief alleging that defendants continue to violate the consent decree." (Appendix, p. 131). Nevertheless, the court refused to provide plaintiffs with the opportunity to present evidence or supplement the record on this point.

In the instant case, the record lacks any current reports or information concerning defendants' compliance with plaintiffs' federal rights. Yet, defendants' compliance with constitutional requirements with respect to mental health treatment is clearly in dispute, as evidenced by the record of the 1995 contempt trial.

Ironically, there was and is a "wealth of information" available to the district court from the record of the trial that would have enabled the court to make findings of violations of plaintiffs' federal rights. The existence of such evidence would require that the district court hold an evidentiary hearing or permit plaintiffs to supplement the record in order to demonstrate that prospective relief remains necessary to correct a current and ongoing violation of their federal rights.

Plaintiffs submit that under the facts of this case the district court's denial of the opportunity to present evidence or supplement the record constitutes an abuse of discretion and clear error. Accordingly, plaintiffs urge this court to "form a strong, unyielding belief that a mistake has been made." In Re Extradition of Howard, 996 F.2d at 1327, 1328.

2. PLAINTIFFS WERE UNFAIRLY PREJUDICED BY THE FAILURE OF THE DISTRICT COURT TO RENDER A DECISION FOLLOWING THE TRIAL HELD IN DECEMBER 1995, AND THE DISTRICT COURT ERRED IN TERMINATING THE DECREE IN THE ABSENCE OF SUCH A DECISION.

On December 5, 1995 shortly prior to the contempt trial in this case, the district court noted that both the 1978 Consent Decree and the follow-up 1990 Consent Decree were intended to remedy ongoing constitutional violations. The court said:

The primary purpose of [the Laaman Consent Decree] was to create a framework wherein the Eighth Amendment rights of NHSP inmates would be preserved and protected. Order, December 5, 1995, page 9 (Appendix, p. 113).

See also, Order of December 5, 1995, page 1: ". . . consent decrees entered in the cases of Laaman v. Helaamoe, No. 75-258, and Guav v. Perrin, No. 77-256, on August 10, 1978, have well served to preserve the constitutional rights of the inmates at NHSP." (Appendix, p. 105.)

A trial was held on plaintiff's motion for contempt from December 11 through December 18, 1995, at which plaintiffs presented extensive evidence of the defendants' ongoing deliberate indifference to class members' chronic mental health needs.. Defendants vigorously contested plaintiffs' claims. At the close of the evidence, each side submitted requests for findings of fact and rulings of law. (Document #482, 483).

Based on extensive references to the trial record, plaintiffs specifically requested nine rulings of law which would have found the defendants' mental health program in violation of the Eighth Amendment (Document #482, Requests for Rulings of Law, #11, 13, 14, 16, 17, 18, 19, 20, and 21, pp. 68-70). These requested rulings included: "Defendants' failure to substantially comply with the Consent Decree has resulted in the infliction of mental pain and suffering on seriously mentally ill inmates of NHSP." (Document 482, Request #14, p. 69); "Defendants were deliberately indifferent to the known and significant mental health needs of seriously mentally ill inmates at NHSP (id. Request #16); that "defendants' mental health system

fails to provide ready access to adequate mental health treatment to inmates who are seriously mentally ill, in violation of the Eighth Amendment of the United States Constitution." (id. Request 517); and "defendants have failed to provide minimally adequate mental health treatment in violation of the Eighth Amendment of the U.S. Const." (id. Request #18). Defendants specifically requested rulings establishing the constitutionality of their mental health program (Document #483, Request for Rulings of Law # 31, p. 55. See also, Requests ##4, 6, p. 53).

On April 26, 1996, just over four months after the trial and while the court's decision on plaintiffs' Motion for Contempt was pending, the PLRA became law. On April 5, 1999, following Judge Devine's death, the case was reassigned to Judge Barbadoro. On April 20, 1999, Judge Barbadoro, sua sponte raised the issue of whether, based on the PLRA, the decree should be terminated without a decision on the plaintiffs' motion for contempt (Appendix, p. 125). On June 15, 1999, Judge Barbadoro answered that question in the affirmative (Appendix, p. 128).

The two key provisions of the PLRA relevant to the case at bar are §3626(b)(2), calling for immediate termination of prospective relief in the absence of specified findings by the court, and §3626(b)(3), prohibiting termination if the court makes certain findings based on the record. See Inmates of Suffolk County Jail v. Rouse, 129 F.3d at 655.

The district court's orders of June 15 and June 30, 1999 are in error because they focus almost entirely on the lack of the required findings in the consent decree and fail to give adequate

consideration to the record of the trial in December 1995, which would have led to the retention of the decree pursuant to §3626(b)(3). It is instructive to note that all three of the district court orders dealing with the implications of the PLRA for this case discuss the requirements of §3626(b)(2), but there is no reference whatsoever to the limitation on termination imposed by §3626(b)(3) (Appendix, pp. 125, 128, 131).

The district court's initial order regarding termination, dated April 20, 1999, quotes §3626(b)(2) which provides that a defendant is entitled to termination of prospective relief "if the relief was approved . . . in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right" (Order, p. 2, quoting 18 U.S.C. §3626(b)(2)) (Appendix, p. 126). Focusing entirely on the consent decree and §3626(b)(2), the court opined that it was unlikely that the consent decree could survive the PLRA and, therefore, the motion for contempt would be moot (Order, April 20, 1999, p. 2) (Appendix, p. 126).

In its order of June 15, 1999, the district court, again with no mention of §3626(b)(3), ruled that "the findings called for in §3626 were never made prior to the entry of the consent decree. Moreover, plaintiffs have failed to demonstrate that a basis currently exists for finding that the decree 'extends no further than necessary to correct the violation of the federal right' or that the decree is 'narrowly drawn and the least

intrusive means to correct any alleged violation of plaintiffs' federal rights.' Accordingly, the consent decree must be terminated." (Order, June 15, 1999, quoting §3626(b)(2)) (Appendix, 128). In response to plaintiffs' Motion to Alter or Amend Judgment (Appendix, p. 116), the district court explained, "when I examined the Consent Decree after the case was reassigned to me following Judge Devine's death, I became concerned that the decree did not contain findings that the decree was 'narrowly drawn, extends no further than necessary to correct the violation of federal right and the least intrusive means necessary to correct the violation of federal right.' Nor was I aware of any facts in the record that would permit me to make such a finding." (Order, June 30, 1999, p. 1, emphasis added) (Appendix, 131).

The problem with the district court's analysis is that it focuses entirely on the Consent Decree and §3626(b)(2) and gives no regard to §3626(b)(3), the extensive record established at the trial of December 11-18, 1995, or the orders that would have resulted had plaintiffs prevailed at trial.

Several Courts of Appeals, including this Court, have recognized that 18 U.S.C. §3626(b)(3) grants the plaintiffs the right to the benefit of the retention of the prospective features of prison consent decrees that are essential to vindicate federal rights. Berwanser v. Cottey, 178 F.3d 834; Benjamin v. Jacobson, 172 F.3d at 166; Casle v. Hutto, 177 F.3d 253, 258; Inmates of Suffolk County Jail v. Rouse, 129 F.3d at 653, 657. As this Court noted in Rouse, "the termination of a consent decree in response to the PLRA. . . merely effectuates Congress' decision

to divest district courts of the ability to . . . perpetuate relief when no violation of a federal right exists." 129 F.3d at 657 (emphasis added). Thus, the Court of Appeals for the Second Circuit has held that subsections (b)(2) and (b)(3) of §3626 must be "read together" to "allow plaintiffs an opportunity to show a current and ongoing violation of their federal rights."

Benjamin, 172 F.3d at 166. See also, Caale , 177 F.3d at 258, and Berwanser, 178 F.3d at 839.

The first of the findings required to prevent termination -- "that prospective relief remains necessary to correct a current and ongoing violation of the Federal right" -- is the most important of the findings required by §3626(b)(3) since it is a predicate to the other required findings. The plaintiffs presented extensive evidence of a current and ongoing violation of a federal right at the trial in December 1995. Until the district court rendered a decision as to whether there was a "current and ongoing violation," it was impossible for the plaintiffs to seek to complete their burden of establishing the remaining requirements for preventing termination under §3626(b)(3).

The district court has broad powers to enforce its decrees and to do so by making modifications and such further orders as justice requires. U.S. v. Swift Co., 286 U.S. 106, 11.4 (1932); System Federation No. 91, Railway Employees Dent., AFL-CIO, et al. v. Wright, 364 U.S. 642, 647 (1961); Pearson v. U.S., 990 F.2d 653, 657-58 (1st Cir., 1993). Had the district court rendered a decision upholding plaintiffs' claim of current and

ongoing violations of their constitutional right to adequate mental health care, it would have, with the advent of the PLRA, been able to issue further orders directing compliance with those provisions of the consent decree which were necessary to correct the current and ongoing violations of federal rights. The court also would have been able to ensure that those further orders extended no further than necessary to correct the violation of the federal right, and were narrowly drawn and the least intrusive means to correct the violation.

Thus, the court could have ordered defendants to comply with paragraphs 53-55 of the 1990 Consent Decree (Document #383, Appendix, pp. 70, 71) providing for constitutionally required access to medically necessary mental health services for inmates with significant mental illness, and paragraph 61, establishing suicide prevention procedures (Appendix, p. 73). At the same time, the court could refrain from enforcing provisions in the decree which might be deemed to be unrelated to the prevention of pain and suffering, such as paragraph 56, relating to group therapies (Appendix, p. 71).

The "record" - meaning the record of the proceedings at the time termination of the consent decree is sought [see Benjamin v. Jacobson, 179 F.2d at 166] - was full of evidence of current and ongoing violations of plaintiffs' constitutional rights which, if accepted by Judge Devine, would have enabled the court to make the findings as to the decree being "narrowly drawn" and "least intrusive" that were required to prevent termination pursuant to §3626(b)(3). (See Plaintiffs' Brief Regarding the Effect Of The

Prison Litigation Reform Act On This Case, pp. 8-23; Document #499).

By failing to render a decision after the trial on plaintiffs' motion for contempt, the district court deprived the plaintiffs of their entitlement to avoid termination of the Consent Decree, notwithstanding plaintiffs' timely and thorough presentation of evidence at the trial as to the existence of the key factor: current and ongoing violations of a federal right. As the months and years dragged on, with no decision from the court, the only thing that plaintiffs could have done to establish their right to avoid termination was to move for a new hearing on whether prospective relief remained necessary to correct violations which the court had yet to decide existed as of 1995. Until the court issued a decision as to whether, as of December 1995, there were any remaining constitutional violations such an action by the plaintiffs would have been futile.'

While the circumstances of the case at bar are unique, the Seventh Circuit case of Berwanser v. Cottey, 178 F.3d 834 (7th Cir., 1999) is instructive. In that case, the defendant jail officials moved to terminate, which the plaintiffs opposed as not warranted pursuant to subsection 3626(b)(3). After more than one year elapsed, the court terminated the decree without holding a hearing or making any findings relative to 18 U.S.C. §3626(b)(2) or (b)(3). In reversing, the Court of Appeals held:

¹ Plaintiffs' counsel did, however, file a "Motion for Ruling" entered March 31, 1998, to which the court did not respond. (Document #495).

By letting more than a year pass without action, and then terminating the decree without making any findings under subsection (b) (2) or (b) (3), the district court erred. Resolution of the issues posed by these provisions is a precondition to exercise of the termination power under subsection (b) (2).

Berwanser v. Cottev, 178 F.3d at 839.

In the case at bar, the district court's failure over a period exceeding three years to resolve the issue of current and ongoing constitutional violations presented in the 1995 trial rendered it impossible for plaintiffs to obtain relief under §3626(b)(3). Under these unique circumstances, the termination of the consent decree pursuant to the PLRA was a clear abuse of discretion and error of law.

Conclusion.

The Order of the district court terminating the Consent Decree and the Order dismissing plaintiffs' Motion for Contempt as moot should be reversed. The case should be remanded to the district court. The plaintiffs should be afforded the opportunity to conduct discovery and to present evidence or supplement the record. The district court should be ordered to make findings under 18 USC §3626 (b)(3) to determine whether prospective relief remains necessary to correct a current and ongoing violation of plaintiffs' federal rights.

Respectfully submitted
Jaan Laaman, et al.,
Plaintiff - Appellants

By their Attorneys
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Alan Linder, Esquire

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Attorneys for Appellants

3/10/00
Date

Certificate of Service

I certify that on this date two copies of this brief were delivered to Daniel Mullen, Esquire, Office of the Attorney General, counsel for defendants.

New Hampshire Legal Assistance

3/13/00
Date

Alan Linder
Alan Linder, Esquire

Addendum

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6. Section 3626(b) of the Prison Litigation Reform Act, 18 USC §3626(b)	AD-11

APR 20 11 38 AM '99

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Jaan Laaman, et al.

v.

Civil Nos. 75-258-SD/B
77-256-SD/B
87-301-SD/B

Ronald Powell, et al.

O R D E R

Plaintiffs filed a Motion for Contempt on June 15, 1993, claiming that the defendants have violated the Laaman Consent Decree. On October 6, 1995, they filed an assented-to motion to amend their contempt motion. Senior Judge- Shane Devine held an evidentiary hearing on the motion on December 11-14, 1995. Judge Devine had the motion under advisement at the time of his death on February 22, 1999. On April 5, 1999, the case was reassigned to me.

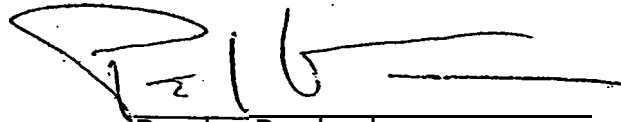
The Prison Litigation Reform Act of 1995 ("PLRA"), 18 U.S.C. § 3626 (Supp. 19.98) significantly changed the rules governing consent decrees addressing prison conditions. In pertinent part, the PLRA provides that "in any civil action with respect to

prison conditions, a defendant or intervener shall be entitled to the immediate termination of any-prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right." Id. The First Circuit has construed the term "prospective relief" as used in the PLRA to include consent decrees., See Inmates of Suffolk-County Jail v. Rouse, 129 F.3d 649, 654 (1st Cir. 1997). The court also has rejected a challenge to the PLRA's constitutionality. Id. at 655-60.

It does not appear from a review of the record that the Laaman Consent Decree can survive in light of the enactment of the PLRA. Further, if the consent decree is terminated, the Motion for Contempt would become moot as the only relief plaintiffs seek is the prospective enforcement of a decree that would no longer be in effect. Accordingly, on or before May 15, 1999, the plaintiffs shall file a memorandum, limited to 25 pages, explaining why the Consent Decree should not be terminated and the pending Motion for Contempt be deemed moot.

Defendants shall file a responsive memorandum, limited to 25 pages, on or before June 15, 1999.

SO ORDERED.



Paul Barbadoro
Chief Judge

April ²⁰~~19~~, 1999

cc: Alan Linder, Esq.
Daniel Mullen, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE
WARREN B. RUDMAN COURTHOUSE
55 PLEASANT STREET
CONCGRG, NEW HAMPSHIRE 03301-3941

Office of the Clerk
Federal Building
Room 110

Telephone
603-225-1423

Date: June 16, 1999

In Re: Jaan Laaman et al. v. Ronald Powell, et al.
Civil No. 75-258-B

The following order was made on June 15, 1999 by Chief Judge Paul
Barbadoro:

On the Motion for Miscellaneous Relief (document no. 408):

"18 U.S.C.A. § 3626(b)(2) provides that 'a defendant or intervenor shall be entitled to immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.' Defendants in this action argue that the Laaman Consent Decree must be terminated based upon this provision. I agree. The findings called for in § 3626(b)(2) were never made prior to the entry of the Consent Decree. Moreover, plaintiffs have failed to demonstrate that a basis currently exists for finding that the decree 'extends no further than necessary to correct the violation of the Federal right' or that the decree is 'narrowly drawn and the least intrusive means to correct' any alleged violations of the plaintiffs' federal rights. Accordingly, the Consent Decree must be terminated. As the only relief plaintiffs seek in their motion for contempt is to order the enforcement of a consent decree that has now been terminated, the motion for contempt

is moot. The clerk is instructed to enter judgment for the defendants. This order is entered without prejudice to plaintiffs' right to seek relief from any further alleged Eighth Amendment violations in separate actions."

cc: Alan Linder, Esq.
Daniel Mullen, Esq.

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Jaan Laaman. et al

v.

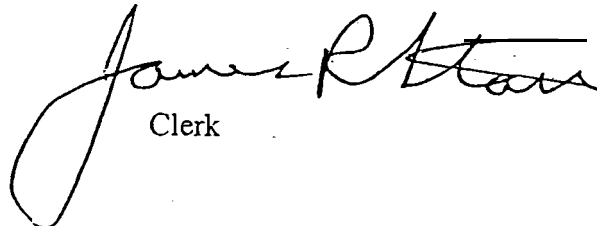
Civil Action No. C. 75-258-B

Ronald Powell. et al

J U D G M E N T

In accordance with the endorsed order by Chief Judge Barbadoro dated June 15, 1999,
judgment is hereby entered.

By the Court,


Clerk

June 16, 1999

cc: Alan Linder, Esq.
Daniel Mullen, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE
WARREN B. RUDMAN COURTHOUSE
55 PLEASANT STREET
CONCORD, NEW HAMPSHIRE 03301-3941

Office of the Clerk
Federal Building
Room 110

Date: June 30, 1999

In Re: Jaan Laaman, et al. v. Ronald Powell et al.
Civil No. 75-258-B

The following order was made on June 30, 1999 by Chief Judge Paul
Barbadoro:

On the Motion to Alter or Amend Judgment (document no. 502):

"Plaintiffs' counsel apparently misunderstood my June 15, 1999 ruling. Plaintiffs' motion for contempt was based solely on alleged violations of the Laaman Consent Decree. They sought only prospective relief enforcing the Consent Decree. Accordingly, I reasoned that the motion for contempt would be moot if the Consent Decree had to be terminated pursuant to 18 U.S.C. § 3626. Plaintiffs apparently do not challenge this conclusion.

When I examined the Consent Decree after the case was reassigned to me following Judge Devine's death, I became concerned that the decree did not comply with 18 U.S.C. § 3626 because it did not contain findings that the decree was "narrowly drawn, extends no further than necessary to correct the violation of the federal right and is the least intrusive means necessary to correct the violation of the federal right." Nor was I aware of any facts in the record that would permit me to make such a finding. Accordingly, I directed the parties to brief the issue. Defendants filed a brief arguing that the decree should be terminated. Plaintiffs filed a brief alleging that defendants continue to violate the consent decree. Their brief failed, however, to explain how the record in the case justifies a conclusion

that the decree extends no further than necessary to correct the violation, is narrowly drawn, or that it is the least intrusive means necessary to correct the violations alleged. The current motion also fails to address this deficiency. As I lack the power to leave in place a Consent Decree over defendants' objection that fails to comply with 18 U.S.C. § 3626, I have no choice but to deny plaintiffs' motion to alter or amend judgment. I reiterate that I take this action without prejudice to plaintiffs' right to seek relief for any alleged Eighth Amendment violations in separate actions."

cc: Alan Linder, Esq.
Daniel Mullen, Esq.

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Jaan Laaman. et al

v.

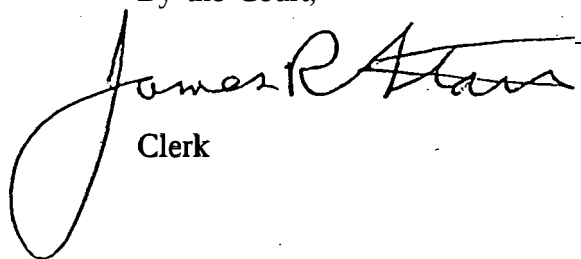
Civil Action No. C. 75-258-B

Ronald Powell. et al

P O S T J U D G M E N T
J U D G M E N T

In accordance with the Judgment dated June 16, 1999 and the endorsed order dated June 29, 1999 by Chief Judge Barbadoro, post-judgment judgment is hereby entered.

By the Court,


Clerk

July 1, 1999

cc: Alan Linder, Esq.
Daniel Mullen, Esq.

18 USC §3626

(b) Termination of relief.--

(1) Termination of prospective relief--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener --

(i) 2 years after the date the court granted or approved the prospective **relief**;

(ii) 1 year **after** the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief -- In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) Limitation. -- Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) Termination or modification of relief. -- Nothing in this section shall prevent any party or intervenor from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.