

1986 WL 2102

Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern
Division.

CALVIN R., Plaintiffs,
v
Michael LANE, Defendants.

No. 82 C 1955. | Jan. 23, 1986.

MEMORANDUM OPINION AND ORDER

ANN C. WILLIAMS, District Judge.

*1 Before the court is plaintiffs' proposed protective order regarding inspection of Stateville by plaintiffs' expert witness, Dr. Sean McConville. Defendants have advanced numerous objections to the protective order. However, the parties have resolved most of their differences, and only two issues remain for this court's resolution. One, defendants object to the videotaping of inmates during Dr. McConville's inspection. Two, defendants object to that part of the protective order which allows Dr. McConville to ask questions of defendants' non-party employees and requires defendants' counsel to allow the employees to answer. Below the court addresses each of these issues.

In the court's view the proposed videotaping is proper. First, plaintiffs have agreed not to tape any inmate who specifically objects to being filmed. Second, plaintiffs offer to obtain written releases, where practical, from the inmates before filming. Third, defendants have agreed to photographing of inmates, and the court can see no difference between photographing and videotaping (at least with respect to any potential civil rights claims by inmates against defendants). Fourth, unlike the situation in *Smith v. Fairman*, 98 F.R.D. 445 (C.D.Ill.1982),

plaintiffs' counsel here have been appointed by the court to represent all inmates in this case. Any inmate who has failed to opt-out of the class will have a difficult time asserting that his right to privacy was violated by defendants through his own counsel. Finally, defendants can order any employees to move away from the areas being filmed. Such an order, as well as written releases from the employees, should take care of defendants' concerns about potential suits brought by employees. For these reasons, defendants are to allow the videotaping outlined in the proposed protective order. Of course, plaintiffs' counsel must first attempt to obtain releases from inmates and employees and no videotaping is to be done of any inmate who objects to being filmed.

Turning to the issue of the questioning of non-party employees, the court agrees with plaintiffs that Dr. McConville should be permitted to ask questions limited to the events and occurrences he witnesses during his inspections to assist him in forming his expert opinions. However, the court cannot agree, given the sensitive issues of security and future liability of defendants involved here, that defendants' counsel should not be allowed to object to a question. As plaintiffs have noted, disagreements among counsel existed during Dr. McConville's prior inspections. Similar disagreements may occur during his next visit, and the court cannot resolve them before hand. Therefore, while Dr. McConville may question defendants' employees, and the employees are to answer the questions over objections by defendants' counsel, the questioning must be recorded, either by a court reporter or by taperecording. A transcript of the questions, objections and answers are to be given to the court prior to Dr. McConville's preparation of his opinion. This will allow the court to decide what part of the challenged questioning may be used by Dr. McConville in forming his opinion.¹

All Citations

Not Reported in F.Supp., 1986 WL 2102

Footnotes

- 1 Of course, if the parties agree to the appointment of a Special Master, and are willing to share the cost, then a Master would be an acceptable alternative.

