

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

R.J. et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 12-cv-7289
)	
CANDICE JONES,)	Hon. Matthew F. Kennelly
)	
Defendant.)	

**PLAINTIFFS’ SUPPLEMENTAL SUBMISSION
REGARDING IDJJ’s REVISED CONFINEMENT POLICIES**

On February 17, 2015, the IDJJ filed revised draft policies on confinement and restraint. Dkt. #123. On February 18, plaintiffs filed an explanatory memorandum that requested this Court’s approval of those policies. Dkt. #124. On February 27, this Court instructed the parties to provide additional information about the confinement policies. Exh. 1 (Tr. 2/27/15); Dkt. 125.

This supplemental submission provides such information. First, it provides a concise overview of the draft IDJJ confinement policies. Second, it identifies the appropriate legal standard for evaluating the constitutionality of these policies, to wit: whether they fall within the range of acceptable professional standards, and do not impose punishment. Third, it summarizes plaintiffs’ approach to the discussion that yielded these policies. Fourth, it suggests focused revisions to two policy terms to address concerns raised by this Court.

I. OVERVIEW OF THE POLICIES.

This Court requested information about “what happens in an institution that leads a member of staff to say this person needs to be in confinement,” including “examples.” Exh. 1 at p. 3:8-10. Plaintiffs’ understanding is that the IDJJ will provide such information in its own supplemental submission. Plaintiffs believe it would contribute to this Court’s understanding of

that IDJJ information for plaintiffs to provide a concise overview of the draft IDJJ confinement policies now before this Court. These policies (a) authorize and regulate six forms of confinement; (b) prohibit all other forms of confinement; (c) require enumerated safeguards for all confined youths; and (d) require supervisory oversight of all confinement.

Moreover, the IDJJ has agreed, by the end of May 2015, to file with this Court an additional policy that expressly requires IDJJ staff to make every effort to avoid any kind of confinement, and when possible to first attempt less restrictive techniques.

A. Authorization and regulation of six forms of confinement.

1. Confinement status.

Standard to initiate. When a youth “[i] exhibits or threatens violent, aggressive, or uncontrolled behavior and [ii] poses a serious threat to his or her own safety, the safety of others, or the security of the facility.” Dkt. #123-2 at § 240(a) on p. 8.

Time limit. Twenty-four hours, or when the youth “regains self-control,” whichever is sooner. *Id.* at § 240(b) on p. 8.

Location. The facility’s confinement unit, or another area designated by the facility’s superintendent. *Id.* at § 240(a) on p. 8.

Oversight. Every hour, a supervisor must meet the youth to assess whether they have regained self-control. *Id.* at § 240(c) on p. 8. At the fourth hour, and every two hours after that, a mental health professional (if one is present) or other staff trained in crisis response (if one is not) must meet the youth to assist them in regaining self-control and to assess whether they immediately need additional mental health services. *Id.* at § 240(d) on p. 8.

Mental health follow-up. Within 24 hours after confinement began, the youth must be referred to a mental health professional (“MHP”) to determine whether additional treatment

services are needed. *Id.* at § 240(e) on p. 8.

2. Crisis confinement.

Standard to initiate. A youth may be placed on “crisis status” when they “exhibit behavior suggestive of acute mental or emotional disorder or suicidal ideation.” Dkt. #123-2 at § 210 on p. 4. A youth on crisis status may be removed from their regular housing only when doing so is “required” for “mental health treatment or observation,” as determined by an MHP or other staff trained in crisis response. *Id.* at § 280(a) on p. 10. If there is “no present risk” of harm, only an MHP may restrict “movement and access to programs and services,” based on a finding of “mental health need.” *Id.* at § 280(d) on p. 10.

Initial review by a licensed MHP. A licensed MHP must promptly and personally assess youths in crisis confinement, and decide “whether to continue the confinement,” and also whether to provide more treatment services. If a licensed MHP is on grounds, this assessment must occur within one hour. If a licensed MHP is not on grounds, then (i) the on-call licensed MHP must be notified within one hour, and (ii) the licensed MHP must conduct this assessment within one hour of their arrival on site, and no more than 24 hours after confinement began. *Id.* at § 280(a) on p. 10.

Three-day review by a licensed MHP. If a youth is in crisis confinement for three days, the facility’s Treatment Unit Administrator (“TUA”) must evaluate them and decide whether to seek community psychiatric hospitalization. The TUA must do so in consultation with a licensed psychiatrist and the IDJJ’s Chief of Mental Health. (Under the remedial plan, the TUA must have a Ph.D. or Psy.D., plus appropriate licensure. Dkt. #73 at § II-3.) These decisions must be documented. The IDJJ’s mental health leadership must be immediately notified, and must on a quarterly basis conduct a quality assurance review of these decisions. If hospitalization is not

sought, then within 24 hours a multi-disciplinary team, including a psychiatrist, must create a specific treatment plan likely to end the crisis, and that plan must be implemented immediately.

Dkt. #123-1 (draft IDJJ policy on mental health crisis services) at § II(F)(4) on pp. 7-10.

Other mental health safeguards. As set forth below, enumerated safeguards apply to all forms of confinement, including crisis confinement. These include: safety checks every five to fifteen minutes, depending on the level of risk; a daily interview by an MHP, in consultation with a licensed MHP; and continuation of a youth's ordinary mental health services. *See generally infra* Part I(C)(1), discussing: Dkt. #123-2 at § 230(d) & (k) on pp. 6-7; and Dkt. #123-1 at § II(E), § II(F)(3)(b)(2)(c), § II(F)(3)(c)(2)(a), & § II(F)(3)(d)(4)(a) on pp 2, 5-6.

Location. Placement in the confinement unit is allowed only if an MHP determines that doing so is "necessary to prevent physical harm to self or others and a less restrictive area is not available or sufficient." Dkt. #123-2 at § 220(a)(5) on p. 5. Crisis status youths in the confinement unit must be sight and sound separated from other youths, when feasible given the physical layout and youths present. *Id.* at § 220(a)(5)(C) on p. 5. An MHP shall review the necessity of such placement every 24 hours. *Id.* at § 220(a)(5)(A). Such placement must end when the risk ends or when a less restrictive area becomes available. *Id.* at § 220(a)(5)(A). Alternatively, the location for crisis confinement may be another area designated by the facility's superintendent. Dkt. #123-2 at § 280(a) on p. 10.

3. Behavioral hold.

Standard to initiate. Violation of a rule, disobedience of staff, or other disruptive behavior. Dkt. #123-2 at § 270(a) on p. 9. Youths must be informed of what behaviors may result in behavioral hold. *Id.* at § 270(c) on p. 9.

Time limit. Four hours, or when a supervisor determines the youth is ready to return to

program participation, whichever is sooner. *Id.* at §§ 270(f) & (g) on pp. 9-10.

Location. The youth's own room, or another area designated by the facility's superintendent, but not the confinement unit. *Id.* at § 270(d) on p. 9.

Oversight. "Immediately" after the hold begins, the shift supervisor must be notified. *Id.* at § 270(b) on p. 9. Within 30 minutes, a staff member not involved in the incident must meet the youth to provide counsel and de-escalate the behavior. *Id.* at § 270(e) on p. 9. Within one hour, and every hour after that, a supervisor must meet the youth to determine whether they are ready to return to program participation. *Id.* at § 270(f) on pp. 9-10.

4. Medical hold.

Who may initiate. Only a physician. Dkt. #123-2 at § 290(a) & (c) on pp. 10-11.

Standard to initiate. For "medical quarantine, recovery, or observation." *Id.* at § 290(a) on p. 10. Any limits on "movement and access to programs and services" must be based on a physician's finding of "medical need." *Id.* at § 290(c) on p. 11.

Location. Placement in the confinement unit is allowed only if a physician determines "a less restrictive area is not available or sufficient to meet the youths' medical needs." *Id.* at § 220(a)(6) on pp. 5-6. Medical hold youths in the confinement unit must be sight and sound separated from other youths, when feasible given the physical layout and youth present. *Id.* at § 220(a)(6)(B) on p. 6. A physician shall review the need for such placement every 24 hours. *Id.* at § 220(a)(6)(A). Alternatively, the place of medical hold may be the youth's own room, or another area designated by the facility's superintendent. *Id.* at § 290(b) on p. 10.

5. Administrative hold.

Who may initiate. Only the facility's superintendent. Dkt. #123-2 at § 260(a) on p. 9.

Standard to initiate. "Administrative or security purposes" to "separate" a youth who is

“temporarily” housed at a facility from other youths. *Id.* at § 260(a) on p. 9.

Location. Every administrative hold may be located in the facility’s confinement unit for up to 24 hours. *Id.* at § 220(a)(4) on p. 5. The confinement unit also may be used for a total of three business days if the youth is awaiting transfer to the IDOC, or if the facility’s superintendent documents “other safety or security reason why a less restrictive form of housing is not appropriate.” *Id.* at § 220(a)(3) on p. 5. Alternatively, youth on administrative hold may be “separated” from other youths in other locations. *Id.* at § 260(a) on p. 9.

Programs and services. The IDJJ must make “every reasonable effort” to provide “access to the same programs and services” provided to the general population. *Id.* at § 260(c) on p. 9. Youths in the confinement unit for safety reasons do not enjoy this benefit. *Id.*

6. Investigative status.

Who may initiate. Only the IDJJ’s Deputy Director of Operations. Dkt. #123-2 at § 250(a) on p. 8.

Standard for initiate. When (1) a youth “is alleged to have committed a major offense,” and (2) “temporary confinement is necessary for the efficient and effective investigation of the offence.” *Id.* at § 250(a) on p. 8.

Location. The facility’s confinement unit, or another area designated by the facility’s superintendent. *Id.* at § 250(a) on p. 8.

Time limit. Four days. *Id.* at § 250(c) on p. 8. The confinement must end earlier if it is no longer necessary, as determined by the investigator, the facility superintendent, or the Deputy Director. *Id.* at § 250(b) on p. 8. The Deputy Director may grant a four-day extension in the event of an institutional emergency such as a riot. *Id.* at § 250(c)(2) on pp. 8-9. If the investigation is conducted by “an outside agency,” additional time for investigative confinement

is allowed if the agency provides the Deputy Director with documentation showing this is “necessary.” *Id.* at § 250(c)(1) on p. 8.

B. Prohibition of all other forms of confinement.

Other than these six forms of confinement, the IDJJ’s proposed confinement policy prohibits all other forms of confinement. This is shown by the policy’s definition of “confinement.” Dkt. #123-2 at § 210 on p. 3. It begins by broadly defining that term as “intentionally keeping a youth separate from all other youth, removing a youth from the general population, restricting the movement of a youth, or confining a youth to a room or area for any period of time for the reasons defined herein regardless of whether the youth is placed on a confinement unit.” *Id.* This section then critically states: “Confinement of a youth for any reason not defined in this rule is not permitted.” *Id.*

C. Safeguards for all confined youths.

The IDJJ’s confinement policy provides enumerated safeguards to youths in “all confinement, regardless of basis or location.” Dkt. #123-2 at § 230 on p. 6. Most of these safeguards apply without regard to the duration of confinement, and a few apply only to confinements that last 24 hours or longer.

1. Safeguards for confinements of all durations.

Out-of-room time must be provided for “daily showers, personal grooming, and recreation.” Dkt. #123-2 at § 230(f) on p. 6.

Mental health services ordinarily provided must continue. *Id.* at § 230(k) on p. 7.

Education services ordinarily provided must continue. The facility’s superintendent may withhold education services if they determine that providing such services poses a safety threat.

Such determinations must be justified in writing. The services must resume when the threat ends. *Id.* at § 230(L) on p. 7.

Safety checks are required at least every 15 minutes, including a verbal check if the youth is awake. *Id.* at § 230(d) on p. 6. Ten-minute checks are required for youths on “observation status” (meaning they are undergoing emotional crisis), or on “close supervision” (meaning they are potentially suicidal). Five-minute checks are required for youths on “suicide watch” (meaning they are acutely suicidal). Dkt. 123-1 (draft IDJJ policy on mental health crisis services) at § II(E) on p. 2, § II(F)(3)(b)(2)(c) on p. 5, § II(F)(3)(c)(2)(a) on p. 5, & § II(F)(3)(d)(4)(a) on p. 6.

Visits from family, attorneys, and clergy must be allowed. Dkt. #123-2 at § 230(m) on p. 7.

Reading materials must be provided in the confinement room, and writing materials must be daily provided outside the room. *Id.* at § 230(n) on p. 7.

Medical care. Any medical complaints by youths or medical concerns by staff must be reported immediately to medical staff. *Id.* at § 230(c) on p. 6.

2. Additional safeguards for confinements of 24 hours or longer.

Eight daily out-of-room hours. Dkt. #123-2 at § 230(g) on p. 6. This must include at least one hour of large-muscle exercise, outdoors if weather permits. *Id.* at § 230(g) on pp. 6-7. The facility superintendent may restrict this out-of-room time if it poses a safety threat, and must justify such restrictions in writing. *Id.* at § 230(g)(1) on p. 7.

Daily MHP interview. If the MHP does not have a license, they must review the substance of the interview with a licensed MHP. *Id.* at § 230(h) on p. 7.

Notice to parents, if the youth is under 18 years of age. *Id.* at § 230(j) on p. 7.

D. Supervisory oversight of all confinement.

Documentation. All confinement decisions must be justified in writing as soon as practical by the staff making the decision. Dkt. #123-2 at § 230(a) on p. 6. This includes decisions to begin, continue, modify, or end confinement, and decisions to begin or end restrictions on services for confined youths. *Id.* at § 210 on p. 3.

Oversight by the facility superintendent. The superintendent must be notified as soon as possible of all decisions to confine a youth, and shall review all documentation justifying confinement. *Id.* at § 230(b) on p. 6.

Oversight by the IDJJ Deputy Director of Operations. Anytime a youth is confined for 18 consecutive hours or longer, or confined on more than 10 occasions in any 30-day period, the Deputy Director must be immediately notified, and provided all documentation justifying the confinement. *Id.* at § 230(i) on p. 7.

Cumulative data. The IDJJ must maintain cumulative data on all confinement decisions. *Id.* at § 230(o) on p. 7.

II. THE LEGAL STANDARD.

This Court instructed the parties: “I want to know what the standard is for assessing conditions of confinement at an institution like this.” Exh. 1 at p. 22:21-23.

Plaintiffs’ position has been that the standard for assessing whether the IDJJ’s confinement policies comply with federal law is whether they meet “minimally adequate professional standards.” *See, e.g.*, Dkt. #109 (objections of 11/3/14) at p. 1; Dkt. #117 (reply of 12/10/14) at p. 1. *See generally Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (holding that under the Fourteenth Amendment, “the right to treatment [in a juvenile justice facility] includes the right to minimum acceptable standards of care and treatment for juveniles and the right to

individualized care and treatment”); *Youngberg v. Romeo*, 457 U.S. 307, 322-23 (1982) (holding that in facilities for involuntarily confined developmentally disabled patients, the Fourteenth Amendment requires “minimally adequate training”); *Alexander S. v. Boyd*, 876 F. Supp. 773, 798 (D.S.C. 1995) (interpreting *Youngberg* to require “minimally acceptable standards for treatment and rehabilitation” in a juvenile justice facility).

The law regarding the rights of court-involved youths is continuing to evolve in light of increasing scientific knowledge about the intellectual, emotional, and social development of youths, and the resulting need to shift the focus of juvenile justice away from punishment and towards rehabilitation. *See, e.g., Miller v. Alabama*, 132 U.S. 2455, 2464 (2012) (striking down mandatory life without parole for juvenile offenders, based in part on “developments in psychology and brain science”).

Recent legal authority supports the following standard to assess whether the draft IDJJ confinement policies comply with federal law: whether they fall “within the range of acceptable professional practices,” and do not “constitute punishment.” *See R.G. v. Koller*, 415 F. Supp. 2d. 1129 (D. Hawaii 2006). In *R.G.*, the court enjoined a policy of protective segregation of LGBT youths at a juvenile justice facility. The *R.G.* court rested this standard in significant part on *Youngberg*. *Id.* at 1152-53.

Last year, the U.S. Department of Justice’s Civil Rights Division advocated this *R.G.* standard – whether confinement was “within the range of acceptable professional standards” and did not “constitute punishment” – in a challenge to solitary confinement at a juvenile justice facility. *United States v. State of Ohio*, No. 08-cv-475 (S.D. Ohio), Dkt. #131 (TRO motion of 3/12/14) at p. 13, quoting *R.G.*

III. PLAINTIFFS' APPROACH TO SETTLEMENT.

This Court sought plaintiffs' position regarding whether "solitary confinement" should be "eliminated completely." Exh. 1 at pp. 17:24-18:9. Plaintiffs' position is that solitary confinement (that is, the isolation of a youth from others) should be eliminated completely, and that the IDJJ confinement policies now before this Court, if properly implemented, will completely eliminate solitary confinement as we know it.

The IDJJ has practiced punitive and lengthy *isolation* of youths in locked rooms, away from human contact and rehabilitative services and treatment. Dkt. #51-1 (Kraus report of Sept. 2013) at 7, 9-10; Dkt. #51-2 (Krisberg report of Sept. 2013) at 11-14, 20; Dkt. #51-3 (Leone report of Sept. 2013) at 5, 10; Dkt. #108-1 (Krisberg report of Oct. 2014) at 5-7; Dkt. #108-2 (Kraus report of Oct. 2014) at 9. This practice is harmful to youths. *See generally* Dkt. #124 (plaintiffs' 2/18/15 mem.) at 6-8 (summarizing some of the literature on self-harm and psychological injury caused by solitary confinement of juveniles, and especially those juveniles with mental health issues). The draft IDJJ confinement policies forbid this practice.

On the other hand, these draft IDJJ policies allow and closely regulate a fundamentally different practice: temporary *separation* of youths from each other in narrowly defined and closely regulated circumstances that are closely tailored to ensuring safety. These policies prohibit punitive confinement. They minimize the frequency and duration of confinement. They ensure control of confinement by department and facility leadership, and by licensed mental health professionals. They ensure the continuity of youths' education and mental health services, and of human contact. Perhaps most importantly, they ensure that youths separated from the general population will not spend most of their waking hours isolated alone in a locked room.

The controlling legal standard is whether the draft IDJJ confinement rules now before this Court fall “within the range of acceptable professional practices,” and do not “constitute punishment.” *Supra* Part II, *quoting R.G.*, 415 F. Supp. 2d. at 1155. The Court-appointed monitors have advised the parties that these draft IDJJ rules satisfy this standard. *See* Dkt. #127. *See also, e.g.*, American Academy of Child and Adolescent Psychiatry, “Solitary confinement of juvenile offenders” (2012) (“Solitary confinement should be distinguished from brief interventions such as ‘time out,’ which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure”); Juvenile Detention Alternatives Initiative (“JDAI”), “Juvenile detention facility assessment” (2014) at § V(B)(1)(a) on p. 177 (approving “room confinement as a temporary response to behavior that threatens immediate harm to the youth or others”).

In recent years, the “range of acceptable professional practices,” *R.G.*, 415 F. Supp. 2d. at 1155, for confinement of youths at juvenile justice facilities has steadily and decisively narrowed. *See, e.g.*, JDAI, “Detention facility self-assessment” (2006) at § VI(E)(3) on p. 94 (“Room confinement . . . is not imposed for more than 72 hours continuously.”); *compared with* JDAI, “Juvenile detention facility assessment” (2014) at § V(B)(1)(g) on p. 178 (“Staff do not place youth in room confinement for longer than four hours.”). Plaintiffs expect that this salutary transformation of professional standards will continue. If so, the parties, the monitors, and this Court will have every opportunity to revisit and perhaps further tighten the IDJJ’s confinement policies. *Cf. Davenport v. DeRobertis*, 844 F.2d 1310, 1314-15 (7th Cir. 1988) (affirming an injunction requiring more out-of-cell exercise time for adult prisoners in solitary confinement, and holding that “the Eighth Amendment must draw its meaning from the evolving

standards of decency that mark the progress of a maturing society”), *quoting Rhodes v. Chapman*, 452 U.S. 337, 346 (1981).

But at this juncture, the issue is whether the draft IDJJ confinement policies fall within the range of acceptable professional standards. They do. In fact, if properly implemented, they will eliminate solitary confinement as we know it, and will closely regulate and limit the IDJJ’s use of separation.

IV. NEW REVISIONS TO THE DRAFT POLICY.

This Court raised concerns regarding a few provisions of the draft IDJJ confinement policy. Plaintiffs propose revisions to address two of those concerns.

First, the draft policy provides that licensed mental health professionals (“MHPs”) shall promptly assess youths in crisis confinement and “decide whether to continue the confinement.” Dkt. #123-2 at § 280(a) on p. 10. This Court raised concerns regarding the power of the licensed MHPs to enforce this decision. Exh. 1 at p. 11:10-14 (“What’s the provision that says what happens now? Does that mean they automatically get out of confinement?”); *id.* at p. 11:20-22 (“It doesn’t say that their decision is . . . the final say”). To address these concerns, plaintiffs propose the addition of the following as a new section 280(a)(3): “If the licensed mental health professional decides not to continue the confinement, then the youth shall immediately be released from confinement and returned to the general population.”

Second, the draft policy requires eight daily out-of-room hours for youths confined 24 hours or longer. Dkt. #123-2 at § 230(g) on pp. 6-7. This Court raised concerns regarding the quality of these out-of-room hours. Exh. 1 at p. 4:1-3 (“I don’t know if he’s with other people or by himself”); *id.* at p. 6:14-15 (inquiring whether “[t]hey’re just not in a small room, they’re in a bigger room”). To address these concerns, plaintiffs propose the addition of the following

sentence at the end of this section: “During this out-of-room time, the youth shall be in the physical presence of, and have the opportunity to speak with, facility staff who are teachers, mental health professionals, or youth and family counselors.” It would not be difficult for the IDJJ to do this. *See* Dkt. #123-2 (draft IDJJ confinement policy) at §§ 230(k) & 230(L) (requiring a continuation of ordinary mental health and education services for confined youths); Dkt. #102-5 (approved IDJJ confinement liaison policy) at § B (requiring a youth and family specialist or other non-security staff member to be present, during the day shift, at the confinement unit when a youth is there, to help ensure provision of appropriate services).

If this Court has any concerns about other provisions of the draft IDJJ confinement policies, plaintiffs would welcome the opportunity to attempt to address those concerns by proposing additional revisions to that policy.

CONCLUSION

Plaintiffs respectfully request this Court’s approval of the revised IDJJ policies on confinement and restraint, Dkt. #123, subject to the two revisions suggested above in Part IV.

DATED: March 23, 2015

Respectfully submitted,

By: /s/ Adam Schwartz
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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2015, I caused true and correct copies of the foregoing **PLAINTIFFS' SUPPLEMENTAL SUBMISSION REGARDING IDJJ's REVISED CONFINEMENT POLICIES** to be served upon all counsel of record via the Court's ECF filing system.

/s/Adam Schwartz _____

Adam Schwartz

Exhibit 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3 R.J., et al.,) Docket No. 12 C 7289
4)
4 Plaintiff,) Chicago, Illinois
5) February 27, 2015
5 v.) 10:45 a.m.
6)
6 CANDICE JONES,)
7)
7 Defendant.)

8 TRANSCRIPT OF PROCEEDINGS - motion
9 BEFORE THE HONORABLE MATTHEW F. KENNELLY

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1 (The following proceedings were had in open court.)

2 THE CLERK: Case No. 12 C 7289, R.J., et al. v. Jones.

3 THE COURT: Morning.

4 MR. SCHWARTZ: Morning, your Honor; Adam Schwartz for
5 the plaintiffs.

6 MR. DIERKES: Good morning, your Honor; Michael
7 Dierkes and Deborah Beltran for the defendants. And with us is
8 the DJJ's chief legal counsel Beth Compton, and also assistant
9 chief counsel Marron Mahoney.

10 THE COURT: Okay. So I've looked at everything you've
11 given me here. You may have some vague recollection of, you
12 know, back when -- I think it was in late December when we were
13 talking about having a hearing, this is before you had reached
14 the proposed resolution, I said that I wanted to hear at the
15 hearing not just from the monitors, but I also wanted to hear
16 evidence about what types of situations or conditions occur
17 that tend to lead staff at these institutions to determine that
18 confinement, which is I guess the term that's used for solitary
19 confinement, is necessary. And I'm -- honestly, I'm still kind
20 of there, because I have no clue.

21 I mean, I can -- you know, I can see the policies that
22 are written, but I really have no clue about -- you know, in
23 the real world give me some instances of what kinds of
24 situations; because when I look at this, my question is why
25 should there even be solitary confinement given all of the, you

1 know, the scientific research that has been done on the
2 deleterious effects that it has, in particular on young people,
3 you know, juveniles. Why should there even be solitary
4 confinement? I.

5 Understand you've reached an agreement on this that
6 puts all sorts of terms and conditions on it, but that's -- I'm
7 still kind of where I was back then, and that was kind of why I
8 wanted to know what it is -- what happens in an institution
9 that leads a member of staff to say this person needs to be in
10 confinement. Give me an example of something. So I'm still
11 there, and I'm not prepared to approve this yet. And I
12 understand you've all agreed to it, and I understand you're
13 not -- this is not just some fly-by-night attorneys on the
14 plaintiffs' side, they're people who are, you know, very
15 serious about all this kind of thing. But, anyway, so talk to
16 me.

17 MR. DIERKES: Well, I mean, I think, your Honor -- I
18 mean, first of all, I think the DJJ would say that it disputes
19 what is referred to as "solitary confinement." You probably
20 saw in the policies there's all kinds of oversight and
21 monitoring, and it's not a youth locked entirely alone in a
22 room by himself.

23 THE COURT: Yeah. Well, he's in the room he or she is
24 in. I'm assuming we're mostly talking about "he's" here. So
25 he is in the room by himself except for the time that somebody

1 is coming in and visiting him or the time that he has out in
2 whatever the space is. I don't know if he's with other people
3 or by himself in what, you know, in a prison you'd call the
4 yard or whatever.

5 MR. DIERKES: Right. Well, I mean, even in addition
6 to that, there's, you know, the right to continue the education
7 services they've been receiving, the mental health services,
8 visitors, things like that.

9 I mean, in terms of your question about what types of
10 situations lead to confinement, I mean, I guess we'd be
11 interested in how your Honor wants to proceed.

12 I imagine Beth Compton can probably give a little
13 summary right now if you prefer, but if you want something in
14 writing, we could do that too.

15 THE COURT: Give me a second here. I just want to --
16 I want to check something first before I get to that. Just
17 bear with me.

18 When you say they have a right to continue education,
19 that's not what this says. It says if somebody is denied
20 education because they're a threat, then it has to resume when
21 the threat ends. The whole assumption is that education could
22 be denied. Did I miss something?

23 MR. DIERKES: I think -- is there a different
24 provision?

25 THE COURT: Well, I'm looking at -- I mean, okay.

1 Not --

2 MR. SCHWARTZ: Your Honor, I think --

3 THE COURT: The "bureaucracy," a term I mean only half
4 pejoratively, that ends up in regulations, it's kind of hard to
5 fight your way through, so I'm going by the, sort of,
6 summarization that was in Mr. Schwartz's filing. It's on page
7 13, the heading No. 4 at the top. If a confined youth is
8 denied education services because they're a threat, then their
9 education must resume when the threat ends.

10 So I guess I could go back and look. It's section
11 230(L). I've got to find where that is.

12 MR. SCHWARTZ: Your Honor, the document that's
13 connected to 123-2J, I got it right here.

14 THE COURT: Which tab?

15 MR. SCHWARTZ: It's at, I assume, tab No. 2, and it's
16 on page 7 where the section L is.

17 THE COURT: Page 7. Okay.

18 Oh. It's 2504.230(L). Okay. That's -- yeah. "Youth
19 in confinement shall have the opportunity to receive the
20 educational services they ordinarily receive unless the chief
21 administrative officer personally determines that providing
22 such services to the youth poses a threat to the physical
23 safety of the individual or others or to the security of the
24 youth center. Such a determination shall be documented and
25 justified. The opportunity to receive educational services

1 shall resume when the threat ends."

2 So when you told me a second ago that they still have
3 the right to get education, it ain't so. It says "if."

4 MR. DIERKES: That was exactly -- that was exactly the
5 provision I had in mind.

6 THE COURT: Yeah. Okay. So, I mean, like I say, I
7 get that if a person is in confinement that they're going to be
8 visited -- depending upon the basis for the confinement, they
9 are going to be visited by, you know, mental health
10 professionals, you know, they're going to be looked in on, the
11 safety checks and so on and so forth. And they -- let's see.
12 The provision about out-of-room time, they get out-of-room
13 time. I don't know what that means. I mean, I assuming that
14 they're still by themselves, right? They're just not in a
15 small room, they're in a bigger room. What does it mean? Can
16 anybody tell?

17 MS. COMPTON: Well, they --

18 THE COURT: Where do they go?

19 Okay. I'm in -- St. Charles is one of the places,
20 right?

21 MS. COMPTON: Right.

22 THE COURT: So I'm in St. Charles. I'm in
23 confinement. I'm getting my eight hours out-of-room time.
24 Where do I go during that eight hours?

25 MS. COMPTON: Depending on the behavioral status and

1 the reason why you're in confinement, that would guide part of
2 it, but, you know, there's -- you can come out into a day room
3 where there would be staff and potentially other youth,
4 depending, again, on the individual situation.

5 If two youth have been taken there for aggressive
6 behavior, exhibiting aggressive behavior, fighting, you can't
7 get them into timeouts, cooldowns are not working, they are
8 continuing to want to go at each other, that's, you know,
9 generally a maximum of 24 hours anyway.

10 THE COURT: Yeah.

11 MS. COMPTON: But you might be getting out -- you
12 don't want to put those two kids necessarily sitting by each
13 other watching TV.

14 THE COURT: Yeah. I get it.

15 MS. COMPTON: But, you know, they would be, you know,
16 out of the -- the locked individual room in a day room.

17 In other situations they may be going over to -- you
18 know, if they're on a confinement unit for other reasons, one
19 of the reasons sometimes is we get kids that -- the statuses
20 that we've listed as reasons why you can be in confinement, one
21 of them is what's called --

22 THE COURT: Which are you looking at?

23 MS. COMPTON: That would be on page 4 of the same --

24 THE COURT: Of that same --

25 MS. COMPTON: -- of the 2504 confinement policy.

1 We've talked about different reasons you could be there.

2 Administrative hold is one reason. Say we have a kid
3 who --

4 THE COURT: Is going to be transferred.

5 MS. COMPTON: Yeah, you know. They've been with us,
6 they've been in our system, they've been released on aftercare
7 parole, now they've got a new adult case.

8 THE COURT: Right.

9 MS. COMPTON: We've brought them back in on a
10 violation, that's wrapped up, they've got a sentence to the
11 DOC. We have to -- they're now, you know, a 19-year-old,
12 possibly. We've got to keep them now, by law, segregated from
13 the kids.

14 THE COURT: From the 16- or 17-year-olds.

15 MS. COMPTON: Right. So we put them on administrative
16 hold status in the unit pending their transfer. They may not
17 be picked up for a couple of days to be transferred to DOC, and
18 so they may not necessarily have the aggressive behavior
19 problems at that moment, so they might be going out and, you
20 know, doing things. As long as they're not in -- you know,
21 outside, not intermingling with the other kids, it's just --
22 it's kind of a case-by-case situation as to what that
23 out-of-room time would entail.

24 So, you know, I think it's -- you know, I understand
25 for anybody who's not worked in the department, you know,

1 sometimes it's hard to, you know, imagine, you know --

2 THE COURT: Right. That's why I wanted to know that
3 kind of stuff.

4 MS. COMPTON: Historically, you know, two kids get in
5 a fight, you're going to take them off to confinement. They're
6 going to be put in there while it's investigated, and they may
7 be left in there. While it's punishment, that's all -- you
8 know, using it as punishment is explicitly prohibited, and
9 using it for more than 24 hours for behavioral reasons is
10 prohibited.

11 THE COURT: So looking at this same definition, you've
12 got this thing called "behavioral hold."

13 MS. COMPTON: Right.

14 THE COURT: Behavioral hold means "Confinement of a
15 youth in their own room or other area separate from the
16 confinement unit when the youth has violated youth center
17 rules, failed to follow instructions of youth center staff, or
18 otherwise behaved in a disruptive manner." So that's different
19 from what is referred to here as, quote, confinement status,
20 closed quote, because they're not put in the confinement unit,
21 they're put in -- they're just kind of kept in their own room.

22 MS. COMPTON: Right.

23 MR. SCHWARTZ: Your Honor --

24 THE COURT: I'm asking her at this point.

25 MS. COMPTON: Okay. Or, for example, say -- our

1 facilities are all different, but say we've got a facility that
2 has a separate school building, you know, that you could refer
3 to sort of timeout and cooldown areas you may have in the
4 school where if the kid is being very disruptive or throwing
5 things this class, they come out, they're removed from sort of
6 the general programming. They may be in this behavioral hold
7 in a room that's nearby, closer than going back to their own
8 room, where there's going to then be interventions to try to
9 get them back to the point where they can rejoin the general
10 programming.

11 THE COURT: And that's limited to four hours, it looks
12 like. That's in Section 270.

13 MS. COMPTON: Um-hmm.

14 THE COURT: What did you want to say, Mr. Schwartz?

15 MR. SCHWARTZ: I was going to say what you just said.

16 THE COURT: Okay. So then you've got crisis status
17 is, I guess, something that would suggest some sort of acute
18 mental disorder of some kind. And then that kicks over to
19 section 280, which is crisis confinement; is that right? And
20 that's when -- that's a situation where you have to have a
21 mental health professional come in.

22 So here was my -- here is a question about that: So
23 I'm looking at section 2504.28(a). So when a person's on -- if
24 they're on crisis status, they can be put in the confinement
25 unit, and sometimes that's going to be done by a mental health

1 professional, but it can be done by somebody else. And if it's
2 done by somebody who's not a licensed mental health
3 professional, then if the licensed mental health professional
4 is on the grounds, in other words, they're there already, they
5 have to assess the person within an hour. If the licensed
6 mental health professional isn't on the grounds, then they have
7 to be called within an hour, and they have to be there within
8 24 hours.

9 So -- and maybe I'm just dense, but so let's say that
10 happens. Let's make it an easy one where the licensed mental
11 health professional is there. That person meets with the youth
12 within an hour and decides this person doesn't need to be in
13 confinement, okay? What's the provision that says what happens
14 now? Does that mean they automatically get out of confinement?
15 Where does it -- and, if so, where do I find that?

16 MR. SCHWARTZ: I'm not aware that the policy
17 explicitly says that the licensed medical health professional
18 is the decider.

19 THE COURT: It just says they're assessing them, and
20 they decide whether to continue the confinement. It doesn't
21 say that their decision is, kind of, the final say on the
22 thing.

23 MR. SCHWARTZ: Certainly it's the plaintiffs' view
24 that, number one, it should be --

25 THE COURT: If you have a view.

1 MR. SCHWARTZ: Pardon me?

2 THE COURT: If it's about what your views are when
3 you have regulations.

4 MR. SCHWARTZ: We certainly would not object, or we
5 would support language that says --

6 THE COURT: Honestly, I'm just kind of coming up with
7 these things on -- not completely on the fly, but pretty darn
8 close to it.

9 And then the second question about that, as I recall
10 from an earlier date, or maybe it was an earlier set of
11 policies that there were issues about getting enough of these
12 licensed mental health professionals hired. Am I remembering
13 that wrong? I mean, obviously, it's a big deal. You've got --
14 you've got to post positions, you've got to find people that
15 are qualified, people actually have to apply, et cetera,
16 et cetera.

17 MR. DIERKES: Right. And each -- at each facility the
18 remedial plan requires that there be a treatment unit
19 administrator, which would be a licensed mental health --

20 THE COURT: Right. So the idea on these regulations
21 is that if I sign off on them, when do they go into effect,
22 this confinement stuff?

23 MR. DIERKES: It would go into effect immediately.

24 THE COURT: So immediately. Do you have licensed
25 mental health professionals on staff that are going to be able

1 to do this stuff right now? Yes? Everybody is nodding yes.
2 Somebody say it now out loud.

3 MS. COMPTON: Yes.

4 MR. DIERKES: Yes.

5 THE COURT: So what changed? Have you got them all
6 hired or --

7 MR. DIERKES: Yes.

8 MS. COMPTON: I think we have -- I don't want to
9 represent that we have everyone hired that we need to have
10 hired, but we do have enough in place to meet these
11 requirements.

12 THE COURT: To cover this.

13 MS. COMPTON: Right.

14 THE COURT: Okay. Yeah. Because every time I hear
15 something out of Springfield, it's like that's not -- I know
16 it's true, I've been saying that since day one, and you all
17 knew that before, that there's not enough money for anything
18 and we're cutting this, cutting that, cutting the next thing.
19 So have you been told yet how much you're going to lose?

20 MS. COMPTON: I think it's a matter of --

21 THE COURT: It's a state secret. You don't have to
22 tell me.

23 MS. COMPTON: I think it's a matter of public record
24 that the governor's introduced budget did not include any cuts
25 for the --

1 THE COURT: Oh. I didn't.

2 MS. COMPTON: -- Department of Juvenile Justice.

3 THE COURT: That's good.

4 MS. COMPTON: And, in fact, included some increases.

5 THE COURT: Oh.

6 MS. COMPTON: And I can represent to the Court that,
7 you know, this consent decree --

8 THE COURT: It's not going to be --

9 MS. COMPTON: -- was certainly discussed as --

10 THE COURT: Compliance is not going to be a problem
11 from a financial standpoint?

12 MS. COMPTON: We'll see. The governor's introduced
13 budget, of course, is not what will ultimately be passed by the
14 general assembly.

15 THE COURT: I got that. Yeah. There's one or two
16 other people.

17 MS. COMPTON: Yeah.

18 THE COURT: There's two other people that have a say
19 in that. If I recall correctly, two.

20 MS. COMPTON: Yes.

21 THE COURT: All right. Well, can somebody, like, tell
22 me -- can somebody give me, like, an anecdotal example or two
23 of, like, what happened? I get the fight thing. I mean, I get
24 that people get into fist fights, but so somebody give me a
25 horror story of a crisis confinement-type situation. Do you

1 have any that you can give me?

2 MS. COMPTON: Yeah. I -- I think -- I think part
3 of -- and I think just as a background, you know, the
4 confinement unit historically was the unit at the facility
5 where you would have the most staff direct supervision, where
6 you would have a small number of kids --

7 THE COURT: Makes sense.

8 MS. COMPTON: -- so that if you have -- you know,
9 historically, one of the things -- suicide. Suicide, you know,
10 whether it's ideation or behaviors, you know, a kid --

11 THE COURT: Yeah.

12 MS. COMPTON: Our facilities at this point have been
13 largely retrofitted for safety where -- so there's not bunk
14 beds with bars so you can hang yourself, but it doesn't mean a
15 kid can't tie their pants around their neck.

16 THE COURT: Right.

17 MS. COMPTON: So, actually, acting out would lead to
18 interventions and, you know, historically the confinement unit
19 was, at times and in some facilities, the one place where you
20 could take them where they're going to get the most direct
21 supervision. That's one example.

22 Or a kid who is, you know, developing active psychotic
23 behaviors that include also sort of flailing, thrashing, and
24 aggressive acting out.

25 THE COURT: So that person --

1 MS. COMPTON: Right.

2 THE COURT: -- the acute-psychotic-behavior-type
3 situation --

4 MS. COMPTON: Um-hmm.

5 THE COURT: -- even under these guidelines, they're --
6 it would be appropriate assuming that, you know, the right
7 people make the determination and so on, for a person to go
8 into the confinement unit.

9 MS. COMPTON: Right. Well, it's our preference that
10 the confinement unit should only be used -- and this
11 incorporates provisions, I think, both from our emergency
12 mental health services ad that we've submitted --

13 THE COURT: Yeah.

14 MS. COMPTON: -- once, maybe even twice already as
15 well as this. The preference is if the facility has a better
16 place other than the confinement unit, they would -- it still
17 removed them from --

18 THE COURT: Let me get to the questions I was going to
19 ask, and you'll know why I asked them.

20 MS. COMPTON: Sure.

21 THE COURT: You'll know I didn't asked this question
22 at that point.

23 So there's this thing about safety checks. Anybody
24 who's confined gets one every 15 minutes. Doesn't take 15
25 minutes to kill yourself, right? So these places you're

1 putting these people, anybody thought about putting cameras in
2 them? Do they have cameras in there?

3 MS. COMPTON: We do have some facilities with -- with
4 actually a camera in the room on the youth.

5 THE COURT: Yeah.

6 MS. COMPTON: At our Kewanee, which is at our acute
7 mental health facility, they do have that equipment capacity
8 there.

9 THE COURT: But not in the confinement places like
10 St. Charles?

11 MS. COMPTON: Not in general confinement units the
12 rooms do not have cameras.

13 THE COURT: Yeah.

14 MS. COMPTON: But, then, under the emergency mental
15 health policy, you can be on a higher level of crisis, suicide
16 watch or crisis watch, where you're getting 5-minute checks
17 rather than --

18 THE COURT: Okay.

19 MS. COMPTON: -- 15 or 10.

20 So 15 is for anybody in confinement, I believe. And I
21 don't want to misspeak, but you would get more frequent checks.
22 For example, if you're actually on suicide watch, that's a
23 5-minute check.

24 THE COURT: Okay. So, Mr. Schwartz, you had -- in
25 your memorandum, you cited all of these -- a whole bunch of,

1 you know, studies and articles and things like that about
2 psychological harm that's caused by confinement, solitary
3 confinement, whatever you want to call it; particularly true
4 with juveniles, but even more particularly true with juveniles
5 with mental health issues. So here's my question for you as
6 the lawyer for the plaintiffs: Why aren't -- I'm not saying
7 you should. I'm just asking why. Why aren't you in here
8 saying shouldn't be any, period, end of discussion, eliminated
9 completely?

10 MR. SCHWARTZ: The plaintiffs' preference would be
11 that there is no confinement at all, especially, you know,
12 these scenarios we hear about with acute --

13 THE COURT: Yeah, but answer my question.

14 MR. SCHWARTZ: Okay. This is a monitor-driven
15 process, and in meeting with the monitors that this Court has
16 appointed before, during, and after the processes we've gone
17 through to get here, this is what the monitors have told us is
18 minimally required under professional standards.

19 THE COURT: Say that word again?

20 MR. SCHWARTZ: The monitors --

21 THE COURT: The word that started with an M.

22 MR. SCHWARTZ: Minimally required.

23 THE COURT: And that standard comes from which case or
24 cases?

25 MR. SCHWARTZ: Well --

1 THE COURT: Because that's used throughout here.
2 Where does that come from? I suppose I should know the answer
3 to that question, but I do not. Minimally required, why is
4 that the standard? That's my question. Anybody can answer
5 that question.

6 MR. SCHWARTZ: Yeah. Well, under the Prison
7 Litigation Reform Act, the regulations have to be the narrowest
8 possible to cure the Constitutional violation.

9 And we think that the standard applied by the
10 Constitution in this context is the minimal standards in the
11 profession.

12 Now --

13 THE COURT: Okay. But you said you -- you just said
14 you think that the standard that the Constitution requires is
15 the minimal standard in the profession. Where did you get
16 that? That's what I'm asking you.

17 MR. SCHWARTZ: I can't give you a case citation for
18 that right now.

19 THE COURT: Okay. I mean, I would have figured there
20 was, like, some Supreme Court case that says that or something
21 like the equivalent of Pennhurst or something like that.

22 MR. SCHWARTZ: Yeah. We can get back to you.

23 THE COURT: Because I -- when I saw that in here, I
24 mean, the term is used several times in various filings, and
25 I'm thinking, okay, this has got to come from somewhere; where

1 is it coming from? So the PLRA. So what part of -- which is
2 42 U.S.C. Sec. 1997(a), right? Let me look. I've got that in
3 there. See if that's in here. All right. Just a minute.
4 Anybody know off the top of your head the citation for the
5 PLRA? Is it 42-1997?

6 MR. SCHWARTZ: Unfortunately, the pleadings I have
7 here don't have the citation to that section of the PLRA. It's
8 the section on entry of injunctions.

9 THE COURT: Well, we're going to start with 1997(a).

10 MR. SCHWARTZ: If anyone has the consent decree, it's
11 cited in the consent decree in the remedial plan.

12 MS. COMPTON: 3626(a). 18 U.S.C. Sec. 3626(a).

13 THE COURT: There you go. "Appropriate remedies with
14 respect to prison conditions. Prospective relief in any civil
15 action with respect to prison conditions shall extend no
16 farther than necessary to correct the violation of the Federal
17 right of a particular plaintiff or plaintiffs.

18 "The Court should not grant or approve any prospective
19 relief unless the Court finds that such relief is narrowly
20 drawn, extends no further than necessary to correct the
21 violation of the Federal right, and is the least intrusive
22 means necessary to correct the violation of the Federal right.

23 "The Court shall give substantial weight to any
24 adverse impact on public safety or the operation of a criminal
25 justice system caused by the relief." Is that the relief

1 you're talking about?

2 MR. SCHWARTZ: Yes, your Honor.

3 THE COURT: But that still begs the question of what
4 the Federal right standard is. So, I guess, I want to know
5 where this, whatever the lingo is that you've used now that I'm
6 blanking on, minimally appropriate or whatever, I want to know
7 where that comes from. Yeah. I can't find a place where
8 you've used it in here. I thought I saw it.

9 MR. SCHWARTZ: Your Honor, the term that we used
10 throughout the pleading is minimally adequate professional
11 standards.

12 THE COURT: That's it.

13 MR. SCHWARTZ: And it appears, for example, on page 5
14 where we recite what we were asking the monitors their
15 testimony would be at the January 9 hearing.

16 THE COURT: All right. Give me just a second here to
17 do one other thing.

18 Minimally -- say it again?

19 MR. SCHWARTZ: Minimally adequate professional
20 standards.

21 THE COURT: Okay. I just typed into Westlaw, quote,
22 minimally adequate professional standards, closed quote, and
23 did a search of all federal cases. I come up with one use of
24 that term in a 30-year old case out of this district called
25 Kolpak v. Bell, K-O-L-P-A-K, v. Bell. And that's a case --

1 it's an opinion by Judge Getzendanner involving some state
2 institution for mentally disabled individuals. They were at
3 the Waukegan Developmental Center, which was part of what I
4 think -- I'm not sure it's still called the Illinois Department
5 of Mental Health and Developmental Disabilities. That's what
6 it was called then. And the single time that Judge
7 Getzendanner uses that language it's just in a sentence that
8 doesn't have any citations, so I want to know where that comes
9 from.

10 And I'm not trying to give you a hard time here.
11 Well, maybe I am. I don't know. But I -- I just -- I want to
12 know why I'm doing what I'm being asked to do. And that would
13 be part of it. So I need you to figure that out. Why is that
14 the standard? Or if there's some other standard, tell me what
15 the standard is. And I -- you know, and -- okay. Maybe you
16 used it in the consent decree, and so maybe the question is why
17 I shouldn't have asked you about this then, but it's still a
18 legitimate question, so figure it out.

19 I guess, I want -- what I want to know, just to be
20 clear about it, is I want to know where that comes from. And
21 I -- and more generally, I want to know what the standard is
22 for assessing, you know, conditions of confinement at an
23 institution like this. And let me just say that if there -- if
24 we had -- if you were litigating an individual lawsuit, you
25 know, for damages, let's say, about prison conditions or

1 conditions at any kind of a correctional facility, including a
2 juvenile facility, that wouldn't be the standard. The standard
3 would be whether it was deliberate indifference to something,
4 so it's got to come from somewhere. And I just -- I want to
5 know what the standard is. So is a week enough time to do
6 that? I'm not going to be -- I'm still on this long trial, and
7 I'm not going to be here two weeks from today, so is a week
8 enough time to give you a chance to look into that and come
9 back and talk to me?

10 MR. SCHWARTZ: Sure.

11 THE COURT: Okay. So I would like to get something in
12 writing by, let's say, the day before. So I'm going to
13 continue this to the 6th of March, but I'd like to get some
14 sort of written submission; it can be joint, it can be
15 non-joint, I don't really care, frankly, by the 5th, close of
16 business on the 5th. And then on the 6th, come in at 10:30.
17 That way, again, you won't have to hang around for a long call,
18 okay?

19 Anything else we should talk about? Okay. See you
20 then.

21 MR. SCHWARTZ: I'm sorry, just --

22 THE COURT: Yeah.

23 MR. SCHWARTZ: Your Honor, I just want to pose a
24 question and --

25 THE COURT: Pose away.

1 MR. SCHWARTZ: We understand that we have instructions
2 to give you, you know, what you instructed us to give. If
3 there are particular provisions of the unopposed filed policy
4 on confinement that this Court has concerns about, the
5 plaintiffs certainly are willing to, you know, open up
6 discussion or support additional constraints on the use of
7 confinement.

8 THE COURT: Let me go back to this. Let me go back to
9 what you said when I asked the question about why aren't you,
10 you know, in here telling me there shouldn't be any confinement
11 at all, and you basically said it's a monitor-driven process
12 and this is what the monitor said was consistent with minimally
13 adequate whatever.

14 And, I mean, I have the monitors' reports from back
15 when they assessed things originally. I don't have any report
16 from monitors on this; not that I'm asking for them, because I
17 know this was a discussion that you had, but I guess it would
18 be beneficial to me -- and maybe if what I just talked about
19 isn't enough time to do this then tell me; I'll give you a
20 different date. It would be beneficial to me to have -- and I
21 don't know if it's all of the monitors or some of them or
22 whether it's one of them that's really more focused on this to
23 say: I've looked at this and I think that this is the right
24 way to go, and here's why I think that. And, I mean, you know
25 what my question is. My question is why should there be

1 confinement at all. And maybe one of the monitors can speak to
2 that to say: Okay. I'm not advocating an absence of
3 confinement, and here's why I'm not advocating an absence of
4 confinement, because there's situations that arise that make it
5 necessary in certain types of cases, and I think that these
6 policies and procedures adequately define or describe when that
7 can be done. It would be nice to have something like that.

8 I mean, it's kind of -- I know I had done some
9 preparation, as I told you before the scheduled hearing in
10 January, and, I mean, I had seen some of the same kinds of
11 articles that you cite in this thing here, and so it's a
12 serious issue, and so it would -- it would be helpful to have
13 something like that.

14 And, again, I know everything is an expense, you know,
15 everything costs something. And I don't want to, you know,
16 just kind of gin up expenses for no reason, but we're not
17 talking about something that's, you know, just whether, you
18 know, the business days ends at 4:30 or 4:45, it's more
19 important than that, so it would be nice to have something like
20 that.

21 And it would be also nice, and I can sort of imagine
22 how you would give me a little bit more education, if you will,
23 on the types of situations that result in this. I mean, I
24 assume that when somebody is put in one of these statuses that
25 there has to be a report or something.

1 MS. COMPTON: Yes.

2 THE COURT: Maybe you could come up with a way of, you
3 know, giving me some of those under seal and redacting the
4 names and so on and so forth so that I have at least a sense
5 of -- you know, give me some examples of real life situations.
6 I think that might be helpful too.

7 So should I give you more time? Probably should give
8 you more time.

9 MR. DIERKES: Yes.

10 THE COURT: Why don't I make it the 20th of March at
11 10:30 rather than the 6th.

12 MR. DIERKES: I think, your Honor, Ms. Compton can't
13 be here. Do you have another day around the 20th?

14 THE COURT: I need her here because she's good, so how
15 about the 27th then?

16 MS. COMPTON: That should be fine.

17 THE COURT: Does that work?

18 MS. COMPTON: Yes.

19 MR. DIERKES: Okay.

20 THE COURT: Okay. 10:30.

21 Actually, you know what, no. We don't have to do it
22 on a Friday that week because I think I'm going to be done with
23 my trial.

24 No. Let's keep it on the Friday. Yeah. That week is
25 kind of goofy. All right. I'll see you then. So this motion,

1 whatever we called it today, whether it was a motion hearing or
2 status hearing or whatever, it's continued to the 27th of March
3 at 10:30.

4 MR. SCHWARTZ: What time?

5 THE COURT: 10:30.

6 And so what I'd like to get from you -- since I'm
7 giving you a little bit more time, what I'd like to get, we'll
8 just call them supplemental submissions, by, let's say, the
9 23rd of March. So that will give me a couple of days to read
10 them. And if something needs to be under seal, you have leave
11 to file it under seal. And that would probably only be the
12 case with regard to, you know, whatever kind of anecdotal
13 examples you want to give me.

14 MS. COMPTON: Right.

15 THE COURT: Other stuff wouldn't need to be under
16 seal.

17 MR. SCHWARTZ: Right. I'm sorry to be dense, but the
18 legal document you're interested in, that would also be on
19 March 23rd?

20 THE COURT: 23rd, yeah. So you don't need to give me
21 anything before that.

22 MR. SCHWARTZ: Yeah. Okay.

23 MR. DIERKES: Okay.

24 THE COURT: Everything clear now?

25 MR. DIERKES: Great, your Honor.

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THE COURT: Thanks.
(Which were all the proceedings had on the day and date
aforesaid.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct
transcript of the record of proceedings in the above-entitled
matter.

/s/ JENNIFER L. DUNN

March 2, 2015

DATE

JENNIFER L. DUNN, CSR, RMR, CRR
Contract Court Reporter