

1995 WL 17814072 (Mass.Super.) (Trial Order)  
Superior Court of Massachusetts.

William HAVERTY, David Cosme, Robert Grady, Mark Gentile, and Israel, Hina,  
v.  
Larry DOBOIS, Commissioner of Correction, and Ronald Duval, Superintendent, MCI Cedar Junction.

No. 95-3634.  
July 14, 1995.

### Memorandum and Rulings

[Paul A. Chernoff](#) Justice of the Superior Court.

SUFFOLK, SS.

No authority need be cited for the proposition that society's problems are mirrored, and indeed substantially magnified, in our prisons. The recent infusion into the state prison<sup>1</sup> of substantial numbers of members of warring gangs has presented the corrections system with unprecedented problems in controlling the institution and making it reasonably safe for staff and inmates. The escalation in the level and nature of violence at the state prison is evidenced by events earlier this year where combatants in an interracial, intergang dispute, for the first time, turned against the correctional officers who were responding to the disorder. Further, on April 3, 1995, a group of inmates attacked and stabbed a correctional officer, seriously injuring him. The Department of Correction responded with a lockdown of the entire institutional population of 858 inmates. The lockdown has now continued for three months and the resultant conditions and events form the primary basis for this litigation and the prayers for preliminary injunctive relief in particular.

The Court conducted a hearing on July 11, 1995 where evidence contained in affidavits was considered along with the extensive arguments by counsel. Although there are disputes of fact about serious issues involving, *inter alia*, alleged brutality by correctional officers on inmates and in particular shackled inmates, there are other facts which are nearly uncontroverted.

1) The Department of Correction (Department) initiated the lockdown in order to quell an immediate disturbance, and to isolate the entire population from common areas both inside and outside of the housing areas so that new construction can be accomplished. This construction is intended to facilitate the following goals: isolation of gang members from the general population; non-contact visiting for the entire population; private contact meeting facilities for attorneys' visits; and more secure recreation areas for the general population inside and outside the housing areas. The Department plans to end the lockdown at the completion of construction, which is currently estimated for the end of July 1995.

2) During the lockdown, all inmates are confined to their cells 24 hours per day and allowed out of their cells, three at one time, for no more than 20 to 30 minutes twice each week. During that time, the inmate may shower, engage in conversations, and use the phone. Time constraints often compel the inmate to elect between phone use and a shower.

3) No inmate has any access to cleaning materials for cleaning his cell. The Department is reluctant to give inmates access to potential weapons such as mop handles and chemicals. Unsanitary conditions are likely existing in the majority of living areas.<sup>2</sup>

4) There is a very serious problem of an infestation of vermin in the cells.<sup>3</sup> Cockroach infestation is so rampant that some inmates have shaved their heads to prevent the depositing of larvae in their hair. The Department ordinarily attempts to

control insects through quarterly treatments in cells and common areas by a pesticide company. During the lockdown there has been some attempt to administer pesticides in common areas, but none in the cells. The Department maintains that use of pesticides in occupied cells in itself creates health risks.

5) During the lockdown no prisoners have had direct access to the prison's law library. Some prisoners have availed themselves of the opportunity to order copies of laws or cases from the librarian. Some prisoners are racing deadlines for responsive pleadings on *pro se* civil cases and will be unable to meet required filing dates. There is evidence that some inmates have had access to a book cart.

6) Individual attorney consultation areas are under construction and should be completed on or about the end of July 1995. In the interim, all inmates have access to counsel, but the setting is such that a correctional officer may be within fifteen feet of the conversation. At this juncture, some inmates feel that correctional officer are, in fact, overhearing confidential communications with counsel. No attorneys as of this time have manifested a similar complaint.

7) Paralegals are permitted to accompany counsel and participate in the interviews. Where counsel and the paralegal desire to interview a number of inmates, the Department is reluctant to allow the paralegal alone to interview a particular inmate. A paralegal is not permitted to conduct a one on one interview with a non-client inmate; in other words, an inmate who is a potential witness or a potential client. The Prisoner Legal Assistance Project (PIAP) law students from Harvard Law School are not permitted entry to the institution on grounds that the agreement between the Department and the PIAP director limits their representation to disciplinary matters and there are no disciplinary hearings or disciplinary prosecutions commenced during the pendency of the lockdown.

The petitioners also allege that the food service since the commencement of the lockdown has been substandard as to the quality, quantity, and method of service. The respondents contest this and state that inmates have had sufficient and appropriate nourishment in addition to regular access to the canteen. A major controversy centers around allegations of brutality by correction officers on dozens of inmates with a resultant fear of retaliation shared by the inmate population. This Court is in no position at the present time to make even preliminary findings as to these issues. Fact-finding here will have to await other court proceedings.

### ***RULINGS***

This Court is issuing rulings at this time in anticipation that the problems involved in the subject areas will become moot or nearly moot once the lockdown is discontinued at the end of July 1995. These rulings are designed to help ameliorate the pressing problems at the institution which bear on minimum health standards for prisoners and minimum standards for access to legal services. The Court is aware that the duration of the lockdown, coupled with its severity and impact on the entire inmate population, is or has reached the limits of court sanctioned lockdowns. In the absence of further precipitating events which would necessitate a new lockdown, the Court expects that the instant lockdown will be discontinued on or before the end of July 1995 as represented by the Department's legal counsel. In the interim, the Court makes the following rulings:<sup>4</sup>

A. At a minimum, until the end of the lockdown, each inmate in the general population will be permitted out of cell time of at least 3 hours per week with access to showers at least 3 times per week during that time.<sup>5</sup> The Department may schedule this out of cell time in increments consistent with staffing.

Inmates in the maximum or special custody sections of the institution will be permitted out of cell time of at least 90 minutes per week, with access to showers at least 3 times per week during that time. As with the general population inmates, the Department may schedule this out of cell time in a manner that best suits its staffing levels.

B. Upon the request of an inmate, the Department will provide said inmate with cleaning equipment and cleansers so that the inmate may clean his cell under the supervision of correctional staff. After expiration of a reasonable time for cleaning, the Department may remove the equipment and cleansers. The Department shall respond as quickly as feasible to such requests.

C. Upon request of an inmate, the Department will make reasonable efforts to rid his cell of cockroaches and other vermin. The Department should investigate the use of pesticides which do not present the risk of harm to humans.

D. Paralegals working in conjunction with an attorney and accompanying that attorney to the prison, may interview their clients or potential clients and their witnesses individually.

E. Although access to the law library at this juncture may be inadequate, in light of the expected termination of the lockdown later this month, the Court is reluctant to make a ruling on that issue. Nevertheless, because there may be inmates who have pressing legal matters that require attention (e.g. time sensitive court filings), those inmates in the general population with imminent court filing deadlines must be given access to the law library during their out of cell time. Obviously, the courts would not be inclined to enforce filing deadlines for pro se litigants who have not had access to legal materials during the period of the lockdown.

The inmates in the maximum or special custody sections of the prison must be given access to law books via a cart or some other mechanism.

The provisions outlined above are predicated upon the individual inmate's cooperation with the Department's attempts to comply with these rulings.

The Court will schedule a conference with counsel on this case in early August.

<<signature>>

Paul A. Chernoff

Justice of the Superior Court

Dated: July 14, 1995

#### Footnotes

- 1 MCI Cedar Junction is the state prison and it is the sole maximum security institution in the commonwealth.
- 2 A small number of inmates have seriously compromised their own health and safety as well as the health and safety of others by trashing their cells and spreading feces on the walls.
- 3 Including, but not limited to, mice and cockroaches.
- 4 In making these rulings, the Court of course recognizes that it is for the most part beyond its purview to micromanage prisons, and acknowledges that prison management is best left to those with the most expertise. Nevertheless, considering the conditions presently existing at the state prison, the Court is compelled to grant plaintiffs some form of relief pending the end of the lockdown.
- 5 The Court takes judicial notice of the advent of summer temperatures and the prediction of unusually hot and humid weather. There has been no suggestion to the Court that there is any artificial summer climate control within the living areas at the institution.