

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.,)	
)	
v.)	C.A. No. 74-172
)	
J. JOSEPH GARRAHY, et al.,)	
)	
THOMAS R. ROSS, et al.,)	
)	
v.)	C.A. No. 75-032
)	
J. JOSEPH GARRAHY, et al.)	

ORDER

There are two motions pending in this case, one to maintain a ceiling of 250 on the population of the Intake Services Center (ISC) for pretrial detainees in the Rhode Island Adult Correctional Institutions (ACI), the other for a continuation of a population cap of 268 in Medium Security until the completion of a new facility in November, 1989. In addition, the Court entered an order on June 9, 1987, which gave the defendants until August 1, 1987 to reduce the population of the ISC to 250 or be liable for a daily fine of \$3,000 for any subsequent excess. A conference was held among all of the parties on July 8, 1987 to consider these pending matters and work out, if possible, a formula to resolve the issues underlying these various motions and order.

Because the Court's continuing intervention in the ACI must be keyed not to numbers but to the conditions that in their totality violate the constitutional rights of prisoners,

Palmigiano v. Trivisono



PC-RI-001-006

the parties agreed to the necessity of developing a system of review that focuses primarily on conditions. This focus on conditions, however, should not obscure the Court's experience in the long history of this case, which illustrates clearly that excessive numbers lead almost ineluctably to the rapid deterioration of conditions.

In fact, of course, this Court's ruling on the ISC's unconstitutionality last year was based on a thorough evaluation of conditions. In conferences and in a December, 1985 hearing, it was made obvious that conditions in the ISC relating to safety and security, medical and mental health services, food services and sanitation and programming were all unacceptable. In my May 12, 1986 Opinion and Order, the defendants were found to be in violation not just of earlier Court orders but also, more importantly, of the Constitution:

Under the new case law, to be unconstitutional the double celling and overcrowding must impact on the basic health and safety of the inmates so as to constitute cruel and unusual punishment in violation of the Eight Amendment....

The situation here is not merely one of pure numbers. I do not look at the overcrowding in a vacuum. The experts chronicled the problems of extensive confinement: high levels of frustrations and irritation, increased assaults, high levels of idleness, serious environmental, health and maintenance problems, over-extended staff, and dangerous mental and medical health practices, all of which were linked to and exacerbated by the overcrowding.

Palmigiano v. Garrahy, 639 F.Supp 244, 257 (D.R.I. 1986).

As a result, I ordered gradual reduction of the ISC's population and simultaneously directed the defendants to remedy inadequate conditions, while preserving for them the opportunity to return to the Court and argue that improved conditions warranted a halt to further population reductions. Hence, the pending motion to hold the population cap at the ISC to 250.

The defendants' difficulties recently have been further compounded by their inability to hold the ISC population even to 250. Since May of this year, they have regularly exceeded that number. They are currently rushing to refashion part of an Institute for Mental Health (IMH) facility, the Pinel Building, to provide housing for up to 30 additional pretrial detainees, an effort expected to be completed by August 1, 1987. While the population pressures of May and early June have eased somewhat, it is clear that the population cap of 250 for the ISC will be difficult, if not impossible, to maintain in the future. Meanwhile, there has been substantial amelioration of conditions at the ISC since the December, 1985 hearing that documented the deplorable conditions referred to in my May, 1986 opinion. When the defendants returned in early 1987 to seek a freeze of the population at 250, they were able to argue that most of the conditions cited as offensive in 1985 had been

substantially improved. In the most recent hearing on the plaintiffs' objections to a freeze on the population cap at 250, the plaintiffs focused solely on medical and mental health services, while conceding that other conditions at the ISC generally met applicable orders and standards.

At that May hearing, however, a number of inadequacies in mental health and medical care were identified. Some of the deficiencies were conceded by the defendants and others contested. In the July 8 conference of parties, the defendants contended that they had met all of the plaintiffs' relevant criticisms of medical services and mental health care. They went on to argue that, even when the number of pretrial detainees confined in the ISC exceeded 250, the totality of conditions of confinement comported with constitutional standards and met all applicable orders of the Court.

To resolve these outstanding issues relative to the ISC some determination of the current state of medical and mental health services is needed, as well as a system for monitoring future conditions in the facility in the face of a potentially expansive population.

The situation with regard to Medium Security is not greatly different. In the original August 10, 1977 Order in this case, the defendants were required to reduce the population of Medium Security to 222. Today, just two weeks

shy of the tenth anniversary of that order, the population of the facility remains at 260 to 270 prisoners. Based on the defendants' adamant representations in a June 1986 conference that a protective custody facility would be constructed and ready for occupancy within a year, thereby permitting the reduction of the Medium Security population by about a hundred prisoners, I ordered the defendants to reduce the population of Medium Security to 222 by June, 1987, and, meanwhile, allowed them to retain that facility's population at 268.

No protective custody facility was built; no prisoners, protective custody or otherwise, have been removed from Medium Security. Instead, the defendants returned to Court in late June, 1987 to file a motion to retain the 268 population ceiling until November, 1989, by which time they pledge a new Medium Security will be complete. Meanwhile, the defendants argue, they have made Medium Security a constitutional facility, even with 268 prisoners by improving staffing, programming, maintenance and health services.

The troubles at Medium Security differ substantially from those at the ISC in one important aspect. There exists, at least, a plan to build a new Medium Security facility and the funds to do so. While the delays associated with getting the facility actually built are frustrating, eventually a new building will be constructed and available. No such denouement is promised for the ISC, for whose expansion there are neither

plans nor money. Thus, any formula developed now to keep a finger on the pulse of conditions at the ISC can be expected to be needed for, at least, the next five or six years. To meet the need to fashion a monitoring framework for conditions in the ISC and the Medium Security, it is hereby

Ordered

A. The Intake Service Center (ISC)

The Special Master shall make arrangements immediately for an expert, independent review of medical services and mental health care in the ISC to assess the defendants' compliance with applicable orders and standards, with special attention to those issues raised during the May 22 and 23 hearing.¹ Any deficiencies identified for the Court by the neutral expert shall be addressed and remedied by the defendants within 30 days. At that point, the population ceiling of 250 shall be lifted.

If the defendants fail to remedy reported deficiencies within the time specified, the population cap shall revert to 250, and the defendants shall be required to show cause why they should not be held in contempt.

Thereafter, at six-month intervals, a monitoring team consisting of three members (one with expertise in correctional medical services, one in jail/prison operations and one in correctional environmental and sanitation matters) will review conditions at the ISC. If, however, prior to this scheduled

semi-annual review, the population of the ISC should exceed a monthly average of 265 detainees for two consecutive months, the outside review shall be accelerated and conducted immediately. Whatever causes the review, the review team shall conduct its inspection and report to the Court whatever deficiencies of compliance with applicable orders and standards it may find, together with a schedule for their remedy within a fixed period of time. The defendants' failure to remedy deficiencies shall precipitate a court hearing that shall result in a reduction of the population ceiling to 250 and may result in other appropriate sanctions. A similar inspection and report by the three-member monitoring team shall be required immediately if the ISC population exceeds a monthly average of 280 detainees for two consecutive months, and thereafter, each time the average monthly population for two consecutive months grows by an increment of ten additional detainees (thus, when the population hits 290, 300).

Following each such review, if the defendants fail to remedy reported deficiencies within the time specified, the population cap shall revert to 250, and the defendants shall be required to show cause why they should not be held in contempt.

Whenever the defendants trigger an independent review by exceeding one of the indicated population measures, the following semi-annual monitoring shall be rescheduled to occur

six months later. The purpose here is to reduce the number of redundant inspections when possible.

Medium Security

In conjunction with the immediate review of medical services and mental health care conducted at the ISC, the full three-member team shall conduct a broader review of all conditions at Medium Security. The standards for this review shall be compliance with all outstanding orders of the court and various standards applied thereunder. The defendants shall be required to remedy any deficiencies reported to the Court by the monitoring team within 30 days or within a time frame identified by the review team as reasonable.

If the defendants fail to remedy the deficiencies reported as a result of the review, they shall be required to show cause why they should not be held in contempt for violation of existing Court orders. The Court, moreover, shall consider immediate reduction of the population of the Medium Security to 222, the number originally called for in the August 10, 1977 Order.

Thereafter, the review team shall inspect Medium Security every six months to ensure that conditions continue to comply with applicable orders and standards. A failure on the defendants' part to meet these orders and standards or to remedy the deficiencies identified by the team within a reasonable period shall result in the issuance of a show cause order.

The defendants shall also complete the new Medium Security facility and occupy it by no later than November 1, 1989.

This order supercedes all existing orders relative to population in Medium Security and the ISC and specifically rescinds the Court's Order of June 9, 1987.

Also, because the overcrowding of ISC and Medium Security infringes on the medical and mental health services available in all ACI facilities, the monitoring team shall consider in each inspection such impact on the overall medical and mental health care provided throughout the ACI.

By Order,

Concetta R. Zinn
Clerk *Deputy Clerk*

Enter: Cited by consent of all parties. ^{up} -

Raymond J. Lettine

Senior Judge

July 28, 1987

FOOTNOTE

1. Among general issues raised in the May 22 and 23 hearing which should be addressed by the independent medical/correctional expert, are the following:

- Staffing (medical, dental, nursing, mental health)
- Internal quality assurance system
- Administrative, central management of the health care delivery system
- Emergency plans
- Procedures and protocol

Specific issues include:

- A tracking system for the chronically ill
- Physical examinations on intake
- First aid kits
- Dispensation and control of psychotropic medicines (stop-orders)
- An on-site EKG
- Suicide prevention plans and programs
- On-site IV solutions

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND
PROVIDENCE, RHODE ISLAND 02903

CHAMBERS OF
RAYMOND J. PETTINE
SENIOR JUDGE

January 23, 1989

Memorandum To: George M. Cappello, Esquire
John Moran
David Dugan, Esquire
Peter Palombo, Esquire

Re: Palmigiano v. DiPrete
C.A. No. 74-0172 P

*Directly
Substantive*

Having received and studied the State of Rhode Island's Initiatives to Reduce the Inmate Population at the Intake Service Center submitted to this Court on December 30, 1988, I am now writing to inform you of my initial response and to tell you what issues I expect you to address at the conference scheduled for January 31, 1989. Although I find the comprehensive approach outlined in the plan to be very laudable and, as you say, "a rational and sensible means" of providing a long-term solution to the overcrowding problems besetting the A.C.I. as a whole, I also find that the proposals as they now stand appear to do little to alleviate the immediate overcrowding crisis at the I.S.C. At this stage in this crisis, nothing will suffice to satisfy the October 21, 1988 Order of this Court except an immediate reduction of the population at the I.S.C. As I contemplate your report, it seems to me that the only way to comply with this requirement in the short-term is through some combination of home confinement, pre-trial services (especially contemplating release-on-recognizance) and bail fund programs. I find the bail fund option especially viable given the data that the State submitted to the Court in Appendix F of its plan, in which the Department of Corrections reported that 42.2% of all awaiting trial inmates were being held for want of \$5,000 or less cash bail on November 17, 1988. In light of the above, I expect discussion at the January 31st meeting about exactly what the State is doing to devise some such combination of services to reduce the pre-trial detainee population by February 20, 1989.

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Although I am concerned that the plans as submitted do too little to address the immediate crisis at the I.S.C., they do make several proposals relevant to the reduction of the population at the I.S.C. However, necessary specifics are lacking. I expect that you will address the following issues at the meeting on January 31st:

1) ISC EXPANSION (Defendants' Initiatives, p.9)

The ISC expansion, which would provide 192 additional beds, was approved by the Public Buildings Authority last spring. What is the current status of the project? Is the Cranston City Council scheduled to vote on the project and if so, when? Are alternatives to local approval being considered?

2) PUBLIC BUILDINGS AUTHORITY PROJECTS (pp.8-9)

The schedule for the ISC expansion, along with schedules for other projects, is shown on a timetable (Appendix C). According to the timetable, occupancy would begin in February 1991. You state that "the time frames assume selection of the A&E by January 13th and the use of a fast track approach." (p.9) Were architects and engineers selected for the ISC expansion by January 13th? Were architects and engineers selected for any of the projects by January 13th?

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3) JAIL BASED NOTIFICATION PROGRAM

Is it true that the jail based notification program is currently staffed by only one person? Are there plans to add more staff to this program?

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ref unit*

4) ACI PRETRIAL SERVICES UNIT (pp.22-23)

You state that: "As soon as possible after the beginning of the next fiscal year, the Department of Corrections will build on the success of the Jail Based Notification Program by establishing the ACI Pretrial Services Unit. This Unit will consist of a Coordinator and two counselors." (p.22). Is there any impediment to establishing this pretrial services unit now?

5) HOME CONFINEMENT (p.10)

You state that "In January 1989, legislation will be introduced to modify this statute in order to meet the needs of a home confinement program." (p.10) Was this legislation introduced? Please provide the Court and plaintiffs' counsel with copies. Did the Legislature vote on the proposal?

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You state that "In January 1989, the department will issue a Request for Qualifications from interested service providers and will negotiate a contract with the most qualified agency to supervise the home confinement population." Has a contract been finalized?

Will pretrial detainees participate in the home confinement program?

the statute

In your plan, you also theorize that the expansion of options for the sentenced population will create additional bedspace throughout the ACI and state that "In the case of the sentenced population, the chain reaction will reach all the way back to the ISC, where newly sentenced inmates will no longer need to be housed beyond the initial stages of confinement due to lack of bedspace elsewhere." Although the numbers reveal that finding other space for sentenced offenders will still leave the ISC population above the 250 population cap, I agree that the sentenced offenders must not remain in the ISC and that moving them elsewhere is a partial solution to the ISC problem. Therefore, I expect you to address the following issues relevant to the sentenced population:

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on
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Sanabetti*

Human Resources

6) USE OF THE BERNADETTE BUILDING (p.4)

You state that this building will be ready for occupancy on February 15, 1989. Is this proceeding on schedule? Appendix C shows that occupancy will precede renovation. How can the building be used before the renovations are made? Can it be used during the period of renovations, scheduled for late October 1989 through June 1990 according to the timetable of Appendix C?

7) EMERGENCY CONSTRUCTION AND RENOVATION PROGRAM (pp.5-6)

The plan lists five projects, totalling \$8.94 million. A timetable for completion of these projects is attached as Appendix C. You state: "The time frames are predicated on a contract award date of January 13, 1989." Have all contracts been awarded for all five projects? If not, what is the schedule for awarding these contracts?

8) HALFWAY HOUSE (pp.11-12)

You state: "Pursuant to Executive Order 88-15, in January 1989 the Department will issue a Request for Qualifications. It will negotiate a contract to operate this facility with the most qualified responding agency." Has the Department issued a Request for Qualifications? When will the Department make its decision?

written

Have any efforts been made to locate suitable premises?

9) MANAGEMENT STUDY/POPULATION PROJECTIONS (pp. 36-37)

You state that the Department of Corrections has just begun to develop the capacity to analyze its pretrial population in a sophisticated way and that the Department is now completing its first project, a "snapshot" of the awaiting trial population as it appeared on November 17, 1988. Please make a complete copy of that data available to the Court and to plaintiff's counsel at the January 31st meeting, or sooner if possible.

If there are any other facts which bear on the reduction of the population at the I.S.C., bring them to my attention at the January 31st conference. I repeat at this time, the overcrowding crisis at the I.S.C. transcends all other problems and requires immediate attention.

Very truly yours,

Raymond J. Pettine
Raymond J. Pettine
Senior Judge

Contracts about to be awarded

RJP/lcs

cc: Alvin J. Bronstein, Esquire
J. Michael Keating, Jr., Esquire