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UNITED STATES DISTRICT COURT

SLP 832

DISTRICT OF IDAHO

(MOSCOW DIVISION)

LOIS WITKE, GERRY J. ST. JOHN)
HOWELL, SHARON WILHITE, MELINDA)
KLESATH, DARLA HARVEY, JENNIFER)
WINN, PATRICIA YATES, JANA)
CARROLL, CATHY TAYLOR, FRANCINE)
JONES, GERALDINE SENSENIG, and)
BETTY CURL, on their own behalf)
and on behalf of all other)
persons similarly situated,)

Civil No. 82 3078

Plaintiffs,)

vs.)

COMPLAINT

C. W. CROWL, Director,)
Department of Corrections;)
RON MCKINSEY, Superintendent)
of the North Idaho Correctional)
Institution; CHARLES HALL and)
ROBERT ANDERSON, members, State)
Board of Correction; and their)
agents and employees,)

(For declaratory and
injunctive relief)

Defendants.)

PRELIMINARY STATEMENT

This class action lawsuit seeks to rectify the inhumane conditions now existing at the North Idaho Correctional Institution ("NICI"). It also seeks to insure that women prisoners at NICI receive programs and services comparable to those afforded men prisoners in Idaho's correctional facilities. Women prisoners at NICI are subjected to invidious discrimination with respect to such things as work-release, study-release, vocational training, education, employment, recreation, visitation, day passes, furloughs, and parole. Solely because of their gender, they are required to live in an institution which fails to provide them with minimally

Witke v. Crowl



PC-ID-002-001

adequate housing, food, sanitation, medical and psychological care, personal security, recreation, visitation, access to courts, access to publications, and due process of law in classification, disciplinary and parole procedures. Further, the conditions at NICI are so severe and deprivational as to constitute cruel and unusual punishment.

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this court by 28 U.S.C. §1343(3) because plaintiffs' claims for relief are brought pursuant to 42 U.S.C. §1983. The court has jurisdiction over plaintiffs' state law claims pursuant to the court's pendent jurisdiction.

2. Venue in this court is proper pursuant to 28 U.S.C. §§1391 and 1392.

PLAINTIFFS

3. Each plaintiff is currently imprisoned at the North Idaho Correctional Institution ["NICI"], Cottonwood, Idaho, pursuant to Idaho circuit court orders, and is specifically affected by the conditions complained of herein.

CLASS ACTION

4. Plaintiffs bring this action on their own behalf and on behalf of all other women prisoners at NICI, present and future. The nature of this action satisfies all of the requirements of Rule 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil Procedure for the maintenance of this action as a class action.

DEFENDANTS

5. C. W. CROWL is the Director of the Department of Corrections for the State of Idaho. As such, he has the responsibility under State law to administer Idaho's correctional institutions and provide for the health, safety and welfare of the persons incarcerated there. RON MCKINSEY is the Superintendent of NICI. As such, he has the responsibility to direct, supervise and control the day-to-day operation of NICI. CHARLES HALL and ROBERT ANDERSON are the members of the Idaho Board of Corrections. As such, they

have the responsibility to control, direct and manage Idaho's penitentiaries. Art X, §5, Idaho Constitution. They are also required to provide rehabilitative activities, including vocational and educational programs, to prisoners. §§20-209, -244, -408, 33-123, Idaho Code.

FACTUAL ALLEGATIONS

6. NICI is located in a remote area of northwestern Idaho, near Cottonwood. It has been a correctional facility for almost a decade. Approximately 120 men and 30 women are incarcerated at NICI. All but two of the men, and several of the women, are at NICI under the State's 120 day "rider" program. See, §19-2601, Idaho Code. The majority of women at NICI have been sentenced for a term of years, or to life imprisonment. No physical or verbal contact is permitted between the men and women prisoners.

7. NICI is a minimum security facility, and women must initially be classified as minimum security to be placed there. However, upon arrival at NICI, these women are reclassified as maximum, close, medium or minimum security. In contrast to the open nature of the institution as a whole, the women's unit, a single building, is surrounded by a 12-foot high chain-link fence topped with razor wire. NICI is the only facility available in Idaho for the permanent placement of women prisoners, other than the county jails.

A.

SEX DISCRIMINATION

8. Women incarcerated at NICI are suffering invidious discrimination because of their sex. The facilities, programs, services and privileges available to these women are far inferior to those available to the men incarcerated in Idaho's correctional facilities. This discrimination pervades every aspect of institutional life, particularly in the following areas:

Vocational and Rehabilitative Programs

9. Vocational training at NICI is virtually non-existent. Occasionally a typing course is offered. This course consists of one class per week for 12 weeks. This course has been offered

three times in the past seven years. There is no meaningful work-release or study-release program at NICI nor any opportunity for women to receive on-the-job training. In contrast, the main prison for men, the Idaho State Correctional Institution (commonly called "the Yard"), offers a wide range of work-release and study-release programs and on-the-job training opportunities. Men at the Yard also have vocational training available to them in such areas as auto-body repair, electronics, data processing, film processing, leatherwork, and meat cutting, and they can receive substantial wages and job training by participating in various Correctional Industries. The women at NICI have no opportunities of this nature. Even within NICI, male prisoners are allowed work-release while female prisoners are not.

Education

10. Although women at NICI may obtain a GED while incarcerated, no college courses are offered at the institution. There is no study-release, in spite of the fact that a junior college is located nearby. Plaintiffs Howell, Wilhite, and Taylor requested that they be allowed to take college correspondence courses at their own expense. Their requests were denied. College-level courses are offered to men at the Yard through Boise State University.

Prison Employment

11. Only one job at NICI offers a salary: kitchen work. For this, women receive 43 cents per day, often working 12 hours per day. There are many jobs at the Yard which offer pay to inmates and the wage is higher than the wage paid at NICI.

Recreation

12. Recreation for men at the Yard is far more extensive than it is for women at NICI, both in terms of the time allowed for recreation and the equipment and activities available. Men at the Yard are offered a wide range of hobby, craft, religious, and public service clubs, none of which are available for women at NICI. Even the male "riders" at NICI have a better recreational

program than the women at NICI, having a recreational officer, a fully-equipped weight and exercise room and an organized softball league which the women do not have.

Day Passes and Weekend Furloughs

13. Many men at the Yard obtain day passes and weekend furloughs on a routine basis. Plaintiffs cannot recall any woman receiving a day pass or weekend furlough from NICI within the past few years, although requests for them are made regularly.

Parole

14. Women at NICI are not permitted to attend their initial hearing before the Idaho Parole Board (an all-male institution), nor are they permitted in subsequent parole hearings to have their counselor appear with them. In contrast, men at the Yard are allowed to personally attend all of their parole hearings and have their counselor appear with them. In addition, women are required to appear before the Board dressed in state-issued clothing ("whites"), while men may wear their own "street" clothes.

Commissary

15. Both the Yard and NICI offer commissary privileges. Every aspect of these privileges, however, is different between the two institutions. The Yard has its own commissary in which prices are regulated by the State and no sales tax is assessed on inmate purchases. Inmates have access to this commissary once a week. A wide range of items can be purchased, including clothing, stereos and radios. Profits made from the commissary are placed into an inmate welfare fund which provides loans to inmates in family emergencies. The "commissary" at NICI, in contrast, is a private merchant who charges exorbitant prices and retains all the profits. Access is available only once every two weeks. Women are not allowed to purchase clothing, stereos or radios through the commissary or through any other source.

Telephone

16. Women at NICI are never permitted to make more than two five-minute telephone calls per month. There is no restriction

on the number of telephone calls men at the Yard can make.

✓ Accumulation of Mail

17. Women at NICI are prohibited from possessing more than ten letters at any one time. When an eleventh letter arrives, one already in their possession must be discarded immediately. Plaintiffs Harvey, Taylor, Carroll and Winn have all been disciplined for possessing more than ten letters. Men at the Yard have no restriction on the number of letters they can possess.

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✓ Photographs

18. Women at NICI are allowed to have in their possession only one photograph of a friend. Men at the Yard have no restriction on the number of such photos they may have.

✓ Visitation

19. Every aspect of visitation differs between NICI and the Yard: (a) men can receive visitors 5 days a week, women 2; (b) the Yard permits contact visits but NICI does not; (c) certain men qualify for "honor" visitation, allowing them to spend more time with their guests, but NICI has no such program; and (d) NICI allows women to place the name of only one friend on their visitation list while the Yard imposes no numerical restriction on visits by friends.

. B.

CRUEL AND UNUSUAL PUNISHMENT

20. The conditions of confinement for women at NICI constitute cruel and unusual punishment. These conditions are so severe and deprivational as to cause prisoners to suffer physical and psychological harm which has no valid penological purpose. These conditions are destructive and debilitating, particularly in the following areas:

Physical Facilities

21. Women at NICI are housed in one building in uncomfortably small rooms, often two or three to a room. This

building is a fire hazard and is ridden with insects. There are no screens on the windows. Heating, cooling, lighting and ventilation do not meet minimum health standards. The kitchen is unsanitary and unsafe.

Food

22. Women at NICI are constantly getting sick because the food served at this institution is inadequately stored and prepared and fails to meet minimum nutritional requirements. Special diets are not provided to inmates needing them.

Medical, Dental and Psychiatric Care

23. There are no physician, dental or psychiatric services provided at NICI except through outside appointments. Appointments are made only in emergency cases. Preventive medicine, including pap tests, and preventive dentistry, including hygienic care, is not available to inmates. In addition, there is no infirmary at NICI. Sick prisoners remain in the same building with those who are healthy and their medication is dispensed by nonprofessionals. Deficiencies are so severe in terms of medical, dental and psychiatric services at NICI that they constitute a life-threatening situation.

Psychological Services

24. Women have no access to psychological testing or counseling at NICI.

Personal Hygiene Supplies

25. Women at NICI are denied supplies necessary for cleanliness and good health.

Recreation

26. Recreational opportunities at NICI are restricted and inadequate, resulting in chronic idleness, pain and discomfort. Recreation is so limited as to constitute a health hazard.

Visitation and Telephone Calls

27. Access to family and friends by personal visitation and telephone is restricted so severely that incarceration at NICI is destructive and counter-rehabilitative, causing inmates to suffer emotional and psychological distress.

Classification

28. There is no rational, objective system of prisoner classification at NICI. No attempt is made to segregate violent offenders from non-violent offenders, or to protect weaker inmates from stronger inmates. The threat of violence, and the occurrence of violence, is constant.

Staffing

29. The staff at NICI is inadequate in size and training to provide inmates with safety and security. The atmosphere amongst inmates at NICI is one of fear and intimidation, largely because administrative personnel have allowed the stronger and more assertive inmates to dominate others.

C.

DUE PROCESS OF LAW

30. Women at NICI are routinely denied fundamental due process of law, particularly in the following areas:

Access to the Courts

31. NICI deprives women of their right of access to the courts in the following respects: (a) the law library is inadequate; (b) the law library is only open one hour a day; (c) only women in minimum custody status are permitted to use the law library; (d) attorney-client mail is occasionally read by NICI staff and delayed in delivery to inmates; and (e) plaintiffs have been retaliated against for complaining to authorities about their conditions of confinement.

Censorship

32. Plaintiffs have been denied reasonable access to publications. NICI has engaged in impermissible censorship in the following respects: (a) women are not permitted to order any publication which costs money; (b) many publications sent to plaintiffs have been confiscated, such as Rolling Stone, Playgirl, and several publications which NICI staff labeled as being "lesbian" orientated; and (c) publications are withheld from plaintiffs without notice to them.

Discipline, Punishment and Classification

33. Enforcement of inmate discipline at NICI is arbitrary and capricious. Disciplinary rules are inadequately posted. Inmates often are punished and/or reclassified without being afforded prior notice or the opportunity to be heard. In those instances in which hearings are provided, these hearings do not comply with minimal due process requirements: the hearing examiner is not impartial, inmates are not permitted to call witnesses on their behalf, and inmates are denied the opportunity to confront and cross-examine their accusers. In addition, punishment is often arbitrary, excessive and lacks any valid penological purpose.

ADDITIONAL ALLEGATIONS

34. The Idaho Department of Corrections receives federal funds from various federal agencies. Consequently, the disparate treatment between men and women prisoners in Idaho's correctional facilities not only violates plaintiffs' right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, but also violates Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681 et seq., and Title II of the Vocational Education Act of 1976, 20 U.S.C. §§2301 et. seq.

35. The policies, practices and conditions described in paragraphs 6 through 34 above violate numerous Idaho statutes regarding the proper care, treatment, security and rehabilitation of persons incarcerated in Idaho's correctional facilities.

36. The actions and omissions of the defendants described in paragraphs 6 through 34 above have been intentional and purposeful and have caused plaintiffs to suffer severe psychological, physical, emotional and other harm and irreparable injury, for which there is no adequate remedy at law.

FIRST CLAIM FOR RELIEF

37. Defendants have failed to provide equal facilities, programs, services, training and care for its men and women prisoners, discriminating against the latter on the basis of sex. This unequal treatment violates plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF

38. The conditions at NICI, including its facilities, programs, practices and policies, subject women prisoners to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

THIRD CLAIM FOR RELIEF

39. The conditions, policies and practices described in paragraphs 6 through 36 above, particularly paragraphs 30 through 33, violate plaintiffs' rights under the First, Sixth and Eighth Amendments to the United States Constitution, as guaranteed to them through the Due Process Clause of the Fourteenth Amendment.

FOURTH CLAIM FOR RELIEF

40. The conditions, policies and practices described in paragraphs 6 through 36 above, particularly paragraphs 8 through 19, violate plaintiffs' rights under Title IX of the 1972 Education Amendments, 20 U.S.C. §§1681 et seq.

FIFTH CLAIM FOR RELIEF

41. The conditions, policies and practices described in paragraphs 6 through 36 above, particularly paragraphs 8 through 19, violate plaintiffs' rights under Title II of the Vocational Education Act of 1976, 20 U.S.C. §§2301 et seq.

SIXTH CLAIM FOR RELIEF

42. The conditions, policies and practices described in paragraphs 6 through 36 above violate plaintiffs' rights under various Idaho laws providing for the care, treatment, security and rehabilitation of persons confined in Idaho's correctional facilities.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this honorable court will:

1. Assume jurisdiction of this cause.
2. Determine that this action will be maintained as a

class action pursuant to Rule 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil Procedure.

3. Enter a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the conditions of confinement, the facilities, programs, services, policies and practices of NICI, violate the right of plaintiffs and the class of women they represent to freedom of expression and association, privacy, access to the courts, equal protection of the laws, due process of law, and their right to be free of cruel and unusual punishment, as guaranteed by the First, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

4. Issue preliminary and permanent injunctive relief pursuant to Rule 65 FRCP, enjoining defendants and their agents and employees from violating or interfering with plaintiffs' rights as guaranteed to them by the First, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and from failing to provide plaintiffs equal facilities, programs, services, policies and practices as those which apply to or govern male prisoners confined in any of the State's correctional facilities.

5. Award plaintiffs their attorneys' fees and costs and such additional or alternative relief as may seem just and equitable under the circumstances.

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