NELSON v. **HEYNE**

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

491 F.2d 352
September 20, 1973, Argued
January 31, 1974, Decided

KILEY, Senior Circuit Judge.

The district court in this class civil rights action enjoined defendants from implementing alleged unconstitutional practices and policies in conducting the Indiana Boys School under their administration; and declared the practices and policies unconstitutional. We affirm.

The School, located in Plainfield, Indiana, is a medium security state correctional institution for boys twelve to eighteen years of age, an estimated one-third of whom are non-criminal offenders. The boys reside in about sixteen cottages. The School also has academic and vocational school buildings, a gymnasium and an administrative building. The average length of a juvenile's stay at the School is about six and one-half months. Although the School's maximum capacity is less than 300 juveniles, its population is generally maintained at 400. The counseling staff of twenty individuals includes three psychologists with undergraduate academic degrees, and one part-time psychiatrist who spends four hours a week at the institution. The medical staff includes one part-time physician, one registered nurse, and one licensed practical nurse.

The complaint alleged that defendants' practices and policies violated the 8th and 14th Amendments rights of the juveniles under their care. Plaintiffs moved for a temporary restraining order to protect them from, inter alia, defendants' corporal punishment and use of control-tranquilizing drugs.

I--CRUEL AND UNUSUAL PUNISHMENT
A.
It is not disputed that the juveniles who were returned from escapes or who were accused of assaults on other students or staff members were beaten routinely by guards under defendants' supervision. There is no proof of formal procedures that governed the beatings which were administered after decision by two or more staff members. Two staff members were required to observe the beatings.

In beating the juveniles, a "fraternity paddle" between 1/2 inch and 2 inch thick, 12 inch long, with a narrow handle, was used. There is testimony that juveniles weighing about 160 pounds were struck five blows on the clothed buttocks, often by a staff member weighing 285 pounds. The beatings caused painful injuries.

We recognize that the School is a correctional, as well as an academic, institution. No case precisely in point has been cited or found which decided whether supervised beatings in a juvenile reformatory violated the "cruel and unusual" clause of the 8th Amendment. However, the test of "cruel and unusual" punishment has been outlined. In his concurring opinion in Furman v. Georgia, 408 U.S. 238, 279, 33 L. Ed. 2d 346, 92 S. Ct. 2726 (1971), Justice Brennan stated that:

> The final principle inherent in the [Cruel and Unusual Punishment] Clause is that a severe punishment must not be excessive. A punishment is excessive under this principle if it is unnecessary: The infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive.

Expert evidence adduced at the trial unanimously condemned the beatings. The uncontradicted authoritative evidence indicated that the practice does not serve as useful punishment or as treatment, and it actually breeds counter-hostility resulting in greater aggression by a child. For these reasons we find the beatings presently administered are unnecessary and therefore excessive. We think, under the test of *Furman,* that the district court did not err in deciding that the disciplinary beatings shown by this record constituted cruel and unusual punishment.

There is nothing in the record to show that a less severe punishment would not have accomplished the disciplinary aim. And it is likely that the beatings have aroused animosity toward the School and substantially frustrated its rehabilitative purpose. We find in the record before us, to support our holding, general considerations similar to those the court in *Jackson* found relevant: (1) corporal punishment is easily subject to abuse in the hands of the sadistic and unscrupulous, and control of the punishment is inadequate; (2) formalized School procedures governing the infliction of the corporal punishment are at a minimum; (3) the infliction of such severe punishment frustrates correctional and rehabilitative goals; and (4) the current sociological trend is toward the elimination of all corporal punishment in all correctional institutions.

B.

Witnesses for both the School and the juveniles testified at trial that tranquilizing drugs, specifically Sparine and Thorazine, were occasionally administered to the juveniles, not as part of an ongoing psychotherapeutic program, but for the purpose of controlling excited behavior. The registered nurse and licensed practical nurse prescribed intramuscular dosages of the drugs upon recommendation of the custodial staff under standing orders by the physician. Neither before nor after injections were the juveniles examined by medically competent staff members to determine their tolerances.

We agree with defendants that a judge lacking expertise in medicine should be cautious when considering what are "minimal medical standards" in particular situations.

However, practices and policies in the field of medicine, among other professional fields, are within judicial competence when measured against requirements of the Constitution. We find no error in the competent district court's determination here that the use of tranquilizing drugs as practiced by defendants was cruel and unusual punishment.

We are not persuaded by defendants' argument that the use of tranquilizing drugs is not "punishment." Experts testified that the tranquilizing drugs administered to the juveniles can cause: the collapse of the cardiovascular system, the closing of a patient's throat with consequent asphyxiation, a depressant effect on the production of bone marrow, jaundice from an affected liver, and drowsiness, hematological disorders, sore throat and ocular changes.

The interest of the juveniles, the School, and the state must be considered in determining the validity of the use of the School's tranquilizing drugs policy. The interest of the state appears to be identical more or less with the interest of the maladjusted juveniles committed to the School's care, *i.e.,* reformation so that upon release from their confinement juveniles may enter free society as well adjusted members. The School's interest is in the attainment and maintenance of reasonable order so that the state's purpose may be pursued in a suitable environment. The School's interest, however, does not justify exposing its juveniles to the potential dangers noted above. Nor can Indiana's interest in reforming its delinquent or maladjusted juveniles be so compelling that it can use "cruel and unusual" means to accomplish its benevolent end of reformation.

We hold today only that the use of disciplinary beatings and tranquilizing drugs in the circumstances shown by this record violates plaintiffs' 14th Amendment right protecting them from cruel and unusual punishment. We do not intend that penal and reform institutional physicians cannot prescribe necessary tranquilizing drugs in appropriate cases. Our concern is with actual and potential abuses under policies where juveniles are beaten with an instrument causing serious injuries, and drugs are administered to juveniles intramuscularly by staff, without trying medication short of drugs and without adequate medical guidance and prescription.

II--THE RIGHT TO REHABILITATIVE TREATMENT

The School staff-to-juvenile ratio for purposes of treatment is approximately one to thirty. The sixteen counselors are responsible for developing and implementing individualized treatment programs at the institution, but the counselors need have no specialized training or experience. Administrative tasks ("paper work") occupy more than half of the counselors' time. The duties of the staff psychiatrist are limited to crises. He has no opportunity to develop and manage individual psychotherapy programs. The three staff psychologists do not hold graduate degrees and are not certified by Indiana. They render, principally, diagnostic services, mostly directed toward supervising in-take behavior classifications.

We hold, the district court, that juveniles have a right to rehabilitative treatment.

The right to rehabilitative treatment for juvenile offenders has roots in the general social reform of the late nineteenth century, was nurtured by court decisions throughout the first half of this century, and has been established in state and federal courts in recent years. Since the beginning, state courts have emphasized the need for "treatment" in their Juvenile Court Acts.

The United States Supreme Court has never definitively decided that a youth confined under the jurisdiction of a juvenile court has a constitutionally guaranteed right to treatment. But the Court has assumed, in passing on the validity of juvenile proceedings, that a state must provide treatment for juveniles.