

NOV 8 1983

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Shapley v. O'Callaghan



PC-NV-005-005

BILLY SHAPLEY, et al.,

PLAINTIFFS

VS.

MICHAEL O'CALLAGHAN, et al.,

DEFENDANTS

CASE NO. CU-R-77-221-ECR

AUDITOR'S SECOND PROGRESS REPORT

ON COMPLIANCE WITH

STIPULATED AGREEMENT

This is a class action which concerns certain conditions of confinement at the Nevada State Prison, a maximum security institution which is a part of the Department of Prisons, State of Nevada. The parties presented, and the Court approved, a Stipulated Settlement Agreement on August 19, 1983. As an integral part of the settlement, parties agreed to retain an independent auditor to observe and report upon compliance with the terms of this Agreement. The Auditor was instructed to prepare reports summarizing findings and evaluations three (3) times during the sixteen (16) month period of the Agreement.

The First Progress Report was submitted to the Court and parties on May 11, 1984. This is the second of the three required reports.

The Agreement contemplates a period of sixteen (16) months during which the defendants are obligated to improve certain conditions of confinement of the plaintiff class. This interim period commenced on August 19, 1983, and would conclude on December 19, 1984, unless the plaintiffs or defendants show good cause upon motion filed prior to termination why the Agreement should be modified, or the Court's jurisdiction continued. The Court also provided that the Auditor has the authority, sua sponte, to extend the period of this Agreement for an additional twelve (12) months to allow for compliance.

The Auditor was not officially appointed by the Court until February 8, 1984, some six months into the "interim period" provided for compliance. Although the defendants have made a good faith effort to comply with the Agreement, there have been a number of conditions which have been beyond their control in this effort:

1. The first progress report submitted by the Auditor was not received by parties until nearly half of the period provided for compliance had been exhausted. The absence of an earlier progress report severely limited the defendant's efforts towards compliance.

2. The State of Nevada's Legislature meets on a biannual basis, with the first session following the Court's Order regarding the Stipulated Settlement Agreement not being until the spring of 1985. This has meant that resources required by the defendants, which can only be provided by the Legislature, have not yet been made available.

On the basis of observations made in the First Progress Report and findings of fact made in this Second Progress Report, the Auditor must conclude that the defendants will be unable to be in compliance with the Agreement by December 19, 1984. Therefore, on the basis of the authority vested in the Auditor by the Court, the period of this Agreement will be extended for an additional twelve months, with termination on December 19, 1985.

For purposes of this report the reader is reminded that by

the conditions of this Agreement, the defendants are required to act immediately to comply fully with the Consent Decree entered in the case of Craig vs. Hocker, CU-R-2662-BRT, dated July 18, 1980. Since the provisions of Part I,A of the Craig vs. Hocker Agreement apply equally to the inmates of both protective custody and administrative segregation classes, this report will cover both groups under the administrative segregation section.

The format for this report will include the verbatim agreements, a discussion section and a finding of fact.

AGREEMENT

Appendix I - Physical Facilities - Renovations

"Defendants shall:

1. Subject to appropriations:
 - (a) remodel the plumbing and electrical systems in both A and B blocks and refurbish the same.
 - (b) create forty-six (46) new larger cells of no less than sixty (60) square feet on the third and fourth floors of A and B blocks.
2. Regardless of appropriations levels:
 - (a) repair or replace locking devices and systems in said cell blocks and abolish the use of padlocks in all cell blocks throughout the institution, and
 - (b) operate A and B blocks consistent with life/safety and public health codes.
3. In the event appropriations referred to in Paragraph (1) are not forthcoming, limit the population to the current occupancy of 103."

DISCUSSION

As of the writing of this report no appropriation has been made by the Legislature for the remodeling of A and B blocks. The Agreement calls for a capacity limit of one hundred three (103) inmates for the two blocks should appropriations not be forthcoming.

The First Progress Report indicated that through May 31, 1984, the defendants, with minor exception, had remained within the

one hundred three (103) population limit. An audit was made of the inmates assigned to A and B blocks during the period June 1, 1984, through September 20, 1984, and it was found that the one hundred three (103) limit had been exceeded twenty (20) times. Although the capacity limit was often exceeded by only one (1) or two (2) inmates, there were days when the population reached one hundred twenty nine (129). It is obvious that when population bulges occur, that cellblocks A and B are being used for temporary housing for short periods of time in excess of the limits set by the Agreement.

The Agreement further requires that all locking devices and systems be repaired or replaced and that padlocks no longer be used in cellblocks. As reported earlier, the defendants have expended over seven thousand dollars in the repair of locking devices. Padlocks are basically no longer used for the confinement of inmates in cells. An exception occasionally occurs. When the gang lock doesn't function properly, it has been necessary to secure an individual cell with a padlock until maintenance repairs can be made. In addition there are several access gates leading to tiers that are secured by a padlock, but the writer has interpreted that such use does not violate the Agreement.

Finally, the Agreement calls for the operation of A and B blocks in a manner consistent with life/safety and public health codes. From an administrative standpoint there are clear cut policies and procedures covering fire, life safety and public health incorporated into Administrative Regulations 40 and 490, and several written Institution Procedures. Besides regular inspections held by institution personnel, there are periodic fire, life safety, and sanitation inspections performed by personnel from the State Fire Marshal's Office and the Office of Public Health Engineering and Sanitation of the Department of Human Resources. Inspections were performed by the Fire Marshal and the Public Health Office during this evaluation period and the following excerpts regarding A and B blocks would appear to be appropriate to this report:

Fire Marshal's Report

Dated June 18, 1984

"The inspection was done using as criteria the Life Safety

Code, the Uniform Fire Code, and the Regulations of the State Fire Marshal.

1. Required fire safety plan has been produced and sent to the State Fire Marshal Division for approval. The plan was approved.
2. The Nevada State Prison has adequate fire protection equipment and has that equipment under a required maintenance agreement.
3. The Safety Officer has a record of his required inspections.
4. The State Fire Marshal Division is making at least two inspections per year.
5. The staff must hold fire drills every six (6) months. This process is being implemented, but no drills have yet been held and recorded. (Fire drills were completed the week of September 24, 1984.)
6. The evacuation and procedure handbook for prisoners has not been completed. (Note: as of September 24, 1984, it was found to be completed.)
7. Evacuation routes have not been painted on the floors. (Note: as of September 24, 1984, the evacuation routes have been painted as per agreement with State Fire Marshal.)
8. Evacuation plans for each building have been prepared and posted in appropriate areas.
9. A number of areas in A and B blocks have open boxes with exposed wiring. These must all be covered.
10. Mattresses throughout the facility are constructed at the prison using State Fire Marshal approved materials.
11. Trash containers accessible to the prisoners are of plastic material under a waiver by the State Fire Marshal.
12. Many of the cell units have all available wall space covered with magazine, newspaper, and other pictures. This constitutes a serious fire hazard and should be limited to ten (10) percent of the wall area. (Prison now limits wall coverage to 18" by 24" area.)
13. In blocks A and B the only present electrical outlets are those outlet bases supplied for the overhead incandenscent light bulb. The extension cords hanging overhead constitute a fire and electrical shock hazard. All extension cords in every cell should be removed and appliances should

be connected directly to the outlets.

14. Some individual cells are overloaded with flammable and combustible materials. A standard must be set that will provide for a limit to the amount of this fuel load and also address the need for a clear aisle width within the cell.

15. The presence of craft materials within individual cells constitutes a serious hazard.

16. The central shaft in A and B blocks is being used for storage. These combustible materials must be removed.

17. Seal with materials appropriate with existing construction all vents and holes that would allow the passage of smoke and flame between the electrical and plumbing corridor and the cells, chowers and restroom that adjoin them.

18. Provide smoke and draft protection for all doors that provide access to the electric and plumbing chases.

19. Modify existing fenced area at the bottom of the emergency exit stairs from A and B blocks to allow any person directed to that area to be able to move to an area at least one hundred (100) feet from the building."

Public Health Report

Dated June 20 and
September 24, 1984

"1. The steps in front of A and B cell block are unsafe.

2. Poor venting in and around shower units.

3. Ceilings need refinishing.

4. Pipe chaseways are still dirty and sewer line leaks were observed."

In summary, the defendants are attempting to rectify the adverse conditions that are identified during institution inspections as well as those regular reviews made by Public Health and State Fire Marshal staff. An acute shortage of maintenance staff, fiscal resources and a long history of inadequate attention to preventive maintenance needs makes the correction of fire, sanitation and life safety needs a slow process. Progress is being made but much must yet be done to meet minimum standards.

FINDINGS OF FACT

Although good faith efforts are being made, the defendants

are not currently in compliance with Appendix I - Physical Facilities - Renovations. To comply, a well developed master plan incorporating the requirements set forth by the Public Health Sanitarian and the State Fire Marshal must be followed, and the necessary resources provided by the Legislature.

AGREEMENT

Appendix I - Physical Facilities

"B. Capacity

1. Design Capacity is that capacity as designed equal to the number of inmates beds excluding infirmary beds. The current design capacity at N.S.P. is 418 plus 11 shortline beds.

2. Critical capacity is that level of safe operation for an extended period with some double-celling. Currently, critical capacity at N.S.P. is 514 plus 11 shortline beds.

3. Emergency capacity is that level of safe operation for no longer than a ninety (90) day period. Currently, emergency capacity at N.S.P. is 604 plus 11 shortline beds.

4. Future capacities shall adhere to these generic definitions.

5. Under no condition shall the emergency capacity be maintained beyond a ninety (90) day period.

6. Upon the conclusion of this agreement, recreational programs, staff, and other programs will be in place such that it will be unnecessary for inmates who are double-bunked to be confined in their cells more than twelve (12) hours daily, absent exigent circumstances."

DISCUSSION

The Agreement calls for specific population limits on capacity at the design, critical and emergency levels.

The critical capacity limits were never exceeded during the period covered by this progress report.

Since the Agreement was authorized by the Court there have been some changes in the capacity figures due to new construction and the remodeling of some older units for the confinement of Federal prisoners. The Department of Prisons has communicated these increases to the plaintiffs' attorneys, but no official action has been taken at this time to change the population limits.

Memorandums reviewed by the writer would indicate that the defendants plan to increase their total capacity by allowing additional double celling in the general population living units. Such a plan has not been presented to the plaintiffs for their review, nor has the Court been requested to revise the existing Agreement.

Although some programming has been added since the last progress report, it has not yet been possible for inmates who are double bunked to be outside of their cells for at least twelve (12) hours each day. The inability to meet this standard appears to be the result of inadequate program resources, inappropriate scheduling and often lengthy count periods during which times all inmates are confined to their cells. There is a great variation between Units I, II, III and IV as to how much time inmates who are double bunked are outside of their cells, and there are no clear records to indicate what actual daily practices are. On the basis of spot checks, it would appear that on the average, an inmate who is assigned to a cell on a double occupancy basis is able to remain outside of that cell for eight (8) hours in a twenty-four (24) hour period. It should be further indicated that the majority of this out-of-cell time is what is called "tier time" and provides little in the way of educational, vocational or recreational opportunities. Also, due to a shortage of correctional officers, inmates who are allowed on the tiers receive little supervision and no immediate control.

FINDINGS OF FACT

The defendants are in compliance with capacity limitations established by this agreement. There is a need, however, for parties to agree on additional capacity which has come about due to new construction, and present these new capacity limits to the Court for its review. Any additional increase in capacity should await court action.

The defendants are not in compliance with the requirement that inmates who are double-bunked will not be confined to their cells more than twelve (12) hours daily.

AGREEMENT

Appendix II

Educational, Vocational, Work and Recreation Opportunities

"1. In accordance with the institutional classification process, each inmate shall be assigned a job, and/or the opportunity to participate in an educational, vocational, recreational, or physical educational program with reasonable equipment and facilities.

2. Consistent with the above, defendants agree:

- (a) units 1 and 4 will have individual recreation yards.
- (b) general population will be given greater gymnasium usage.
- (c) N.S.P. shall offer an ABE, GED or high school diploma program to serve 80-120 inmates initially. In this regard, every effort will be made to develop this program through the Carson or other local or state school district.
- (d) institute additional vocational programs. An industrial program evaluation will be conducted by the Federal Bureau of Prisons. This study will provide information for the implementation of the overall prison industrial program.
- (e) establish Alcoholics Anonymous and substance abuse groups."

DISCUSSION

During the last reporting period the defendants have made valiant efforts to increase the opportunities for inmates to be involved in work, educational, vocational, recreational and physical education programs. The academic school program has been enlarged and a firm contract with the local school district has been established. Some experimental closed circuit T.V. programs of an educational nature have been instituted in one of the locked units. A modification in the scheduling for the gymnasium and outside recreation areas was made to assure greater usage within existing staff resources. Even with these efforts the majority of the inmates assigned to the Nevada State Prison have limited or no programming of a work or educational nature.

Specific requirements were established by the Agreement to provide individual recreation yards for Unit I and IV which were used to house protective custody cases. During the month of August, 1984, the Warden reassigned protective custody cases from

Unit IV to Unit VI. Unit IV now houses general population cases and therefore does not require a separate recreation area. Unit I has an individual recreation yard. If Unit VI continues to be used as a protective custody housing unit it will also meet the requirements of the Agreement as it has a separate outdoor recreation area.

There is currently some confusion as to the type of inmates who are being assigned to Unit VI. They are described in an August 7, 1984, memorandum from Warden George Sumner to Director Vernon Housewright, as "inmates with serious adjustment problems". It would appear by description that this group is more an administrative segregation group than protective custody. Additionally, they receive none of the program opportunities that protective custody cases in Unit I receive. However, if they are in effect administrative segregation cases they have not received the appropriate classification review and decision process.

The Agreement also requires that general population be given greater gymnasium usage. As was earlier noted there has been a recent revision in the schedule of the gymnasium, but the net effect was to provide a fairer allocation of usage to the various living units, and it did not increase the total usage. The prison has requested through the budget process an additional recreation position in order that greater use can be made of this facility. Consideration should also be given to allowing the use of the gym under the supervision of correctional officers.

The defendants are to be commended for the improvements that have been made in their GED and high school diploma programs. The prison had its first high school graduation this summer when 12 inmates received their diplomas.

The Agreement requires that 80-120 inmates participate in academic programs, and there are currently 85-90 involved in some type of school program although the physical conditions of the classroom leave much to be desired. There should be additional efforts to expand the space and utilize acoustical tiles on the ceilings and selected wall spaces to reduce the reverberations. There also appears to be the need for a new circuit breaker, as there are frequent power failures. (Circuit breaker has been repaired.)

The defendants have been unable to add additional vocational programs. The Federal Bureau of Prisons did visit the prison in order to provide an industrial program evaluation, but no report had been received at the time of the Auditor's last visit.

There continues to be operated a substance abuse information program conducted by the prison psychologist. Agreements have been reached with both Alcoholics Anonymous and Narcotics Anonymous to conduct programs and volunteers are being solicited.

FINDINGS OF FACT

Although an appropriate classification process is in operation, there are not sufficient resources to currently assign each inmate to a job and/or the opportunity to participate in an educational, vocational, recreational, or physical educational program with reasonable equipment and facilities.

The Auditor further finds:

1. Protective custody living units have individual recreational yards.
2. General population does not have greater gymnasium usage.
3. The prison does offer a GED/high school diploma program and is initially serving between 80-100 inmates. There is an ongoing contract with the Carson City School District.
4. There have been no additional vocational programs instituted and the Federal Bureau of Prisons has not provided information for the implementation of an overall prison industries program.
5. There is no Alcoholics Anonymous program.

AGREEMENT

Appendix III - Classification

"To provide for the security of the institution and the safety of the inmates, defendants will implement by September 1, 1983, the NIC Model Classi-

fication System recommended in the August, 1982 Krisberg/Austin Report. Contingent upon funding by NIC, the defendants shall also implement an additional risk assessment program designed by Rans/Fowler."

DISCUSSION

The classification process called for in the "NIC Model system" has been instituted at the reception centers and is now being utilized in the reclassification process as well. As one could expect in the introduction of a totally new system throughout the agency there have been bugs to iron out and the need to indoctrinate staff on an ongoing basis. One gets the impression from discussions with staff that many do not understand the new system, and it would appear that additional reinforcing training would be helpful. A random selection of files was made and the paper work involved in the classification procedures was reviewed. Initial impressions are that the system is being properly documented and the procedures are being appropriately carried out. There is some concern that there is an excessively high number of "overrides" where for administrative reasons the classification scores are not accepted. It would seem important for administration to review the use of the "override" and assure that adequate documentation exists when it is used.

A risk assessment evaluation was performed by Rans/Fowler, and their opinion was that sufficient data was not available at this time to carry out an empirically sound risk assessment. To carry out such a procedure would be an extremely expensive and time consuming project, and the Auditor would strongly suggest that no additional resources be expended in this area.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement as the department has instituted a "NIC Model" classifi-

cation system. An effort was made by Rans/Fowler to carry out a risk assessment program and it was found that the necessary data was not currently available.

AGREEMENT

Appendix IV - Administrative Regulations

"to provide for the orderly, efficient and secure operation of the prison the defendants shall revise their operations and procedures manual using and cross referencing DOJ standards, ACA standards or applicable state statutes. Defendants shall also complete and implement a document entitled 'Strategic Management Model with Tactical Response System' to provide for accountability in the management of the facility."

DISCUSSION

The defendants continue to make excellent progress in the development of their new "Administrative Regulations". It is planned that it will be completed on schedule and much of the delay thus far has come about because of the slow process of the review by the Attorney General's office and the Prison Board.

The quality of the work and the cross referencing to applicable state statutes, D.O.J. standards and ACA standards is totally acceptable.

There is some concern that various sections of the new manual are not being made available to inmates. Since the manual is basically built on policy and procedures set forth in other manuals which are available to inmates, it does not appear consistent to label numerous sections as confidential. It is obvious that certain institution procedures which spell out in detail escape and disturbance plans should not be made available to inmates. The general policies and procedures of institutions, however, should be made available to all.

The Director has instituted a strategic management model and it is being used for response to all administrative decisions.

FINDINGS OF FACT

The defendants are making excellent progress toward compliance and should be in compliance with this section by January 1, 1985.

AGREEMENT

Appendix V - Living Conditions

"Defendants agree to provide adequate food, clothing, shelter, sanitation and personal safety. In order that this provision is implemented, defendants agree to the following:

A. Sanitation

Defendants agree to quarterly inspections of the entire institution in accordance with state and local public health codes and regulations by the State Public Health Authorities. Any exceptions to the requirements of the code, statutes and regulations noted by the Health Inspector will be handled in the following manner:

1. Where the regular maintenance budget permits, an immediate work order will be issued and performed.
2. Where a work order exceeds the regular maintenance budget, such repair may be postponed until the next appropriations period, absent exigent circumstances requiring immediate repair. In the event of exigent circumstances of a life/safety nature, as certified by the Public Health authority, an emergency appropriation shall be immediately requested if funds are not available. See ACA standards.

B. Fire Safety

Defendants agree to promulgate and maintain a fire plan dated October 26, 1982, for the Nevada State Prison which will be the governing document for fire safety. State and local fire codes will be observed. Such fire plan and codes will be monitored by the Nevada State Fire Marshal on a regular basis and regular inspections and reports will be made by the Nevada State Fire Marshal's office. Further, the Fire Marshal will direct all fire code violations and deficiencies in compliance to the Director of Prisons for immediate corrective action."

DISCUSSION

As was set forth in the first progress report a review of this section of the agreement must be done both from the specific requirements set forth regarding sanitation and fire safety inspections, and the more global requirements that the defendants provide adequate food, clothing, shelter, sanitation and personal

safety.

First, the specific requirements:

Sanitation

Quarterly inspections have been made by Public Health Sanitarians with the most recent being on September 21, 1984. Exceptions noted by the Health Inspector are addressed by the institution in the form of a work order. Where work orders exceed the regular maintenance budget, they are continued into the next fiscal year or incorporated into the next budget for legislative review and action.

What appears to be missing is a master maintenance and construction plan that lists all of those sanitation and fire/life safety projects with appropriate priorities established by prison administration. One could then review the total list and determine what progress is being made and where additional resources must be obtained. It is very apparent that the defendants are attempting to comply with this Agreement, but their resources are limited and their planning efforts are not focused.

Where projects required by the Public Health officials exceed budgetary resources, there should be a joint (Department of Human Resources - Department of Prisons) budget presentation made to the legislature.

Fire Safety

Regular inspections of the Nevada State Prison are made by the State Fire Marshal Division with the most recent review being made on May 17, 1984. The inspections made use as standards the Life Safety Code, the Uniform Fire Code and Regulations of the State Fire Marshal.

The defendants have developed and implemented a fire safety plan which has been approved by the State Fire Marshal Division.

The most recent fire inspection identified a number of exceptions to the code which have been addressed through work orders

or incorporated into the budget process. The need for a master maintenance plan mentioned earlier applies equally to the projects required under fire/life safety.

Specifically there is still a need to address immediately such code exceptions as open electrical boxes with exposed wiring, fire drills, wall space covered with paper of one variety or another, extension cords hanging from overhead incandescent light fixtures, and continued use of plumbing chases for storage.

General comments regarding the adequacy of food, clothing, shelter, sanitation and personal safety follow:

Food

A review of the menus would indicate that the meals are nutritionally well planned and observation of the feeding process would indicate that the food is adequately prepared and served.

As recommended by Mr. Max C. Montgomery, Supervisor, Public Health Engineering and Sanitation, Consumer Health Protection Services, "the culinary unit should be completely redone. The interior should be refinished with a modern finish. The ovens, grills, freezer, refrigerators, warmers, pressure cookers, preparation tables and dining room tables should be replaced."

There is no question that the Nevada State Prison is operating with antiquated feeding equipment in an area that has been poorly maintained over time. Until the Legislature can address this issue with appropriate funds it is imperative that the Prison give the highest possible priority to code exceptions that have been identified in the culinary operation.

Attention must immediately be given to the excessive flies in both the kitchen and dining room. Much of this problem (which will be basically eliminated during winter weather) comes from open doors which have no wind curtains to reduce fly penetration. General housekeeping standards can be improved and special attention should be given to floors, drains and food preparation

equipment. Greater attention should also be given to the cleaning of food trays. Also, attention must be given to the provision of adequate diets that meet medical and religious requirements. The Auditor carefully reviewed medical diets that had been prescribed by a physician and found that the meals served did not meet the physician's standards. A qualified dietician should be obtained on a contract basis who could develop standard diets that would meet necessary medical, nutritional and religious requirements. Additional food supplies should be stored in the kitchen that could be used to augment/supplement or replace the regular menu as diet requirements would dictate.

There continues to be a serious problem in transporting food to the locked living units in such a fashion that it can be served at appropriate temperatures. It is understood that food carts have been requested in the next fiscal budget, but this is an issue that must be addressed immediately. If sufficient funds can't be obtained for food carts, the possible use of microwave ovens on each locked unit should be considered as a less costly approach.

During the last inspection it was noted that inmate servers used hats or hair nets and plastic gloves when serving food, but that staff who served food in the locked units did not follow this required procedure!

Inmate workers in the kitchen are not provided culinary uniforms. In fact, they use the same clothes that they work and recreate in, often without having an opportunity to shower or put on a clean exchange. There is such an acute shortage of clothing that it is not currently possible for inmates to be dressed in clean clothes before they report to the kitchen for work.

Although a sandwich is now being provided to inmates in the locked units as an evening snack to bridge the long period between dinner and breakfast, no such "extra meal" is provided the general population. Either provision should be made to provide

an evening snack for all inmates or serious consideration should be given to shortening the time between dinner and breakfast.

Clothing

As was pointed out in the first progress report, there is a serious shortage of laundry equipment. Prison officials have requested an additional washer and two dryers, but action on this request must wait for budget approval. In the meantime, it is not possible to meet minimal clothing exchange schedules with the existing equipment and inventory. During the Auditor's last visit it was noted that there were only 8 pair of new pants and 33 pairs of shoes in the storeroom! The shortage of clothing not only prohibits necessary changes, but issuing inmates appropriate sized pants, shirts and shoes is a near impossibility. The shortage extends to sheets, pillow cases and blankets, none of which are exchanged on a regular schedule that meets standards.

The prison has adopted a new mattress policy which assures that only one inmate will use the mattress unless it is totally sterilized. The policy actually calls for the destruction of the mattress at the time of discharge or transfer, and each new arrival receives his own new mattress. There are still some problems with the actual destruction of old mattresses, and a number were found stored in various parts of the institution.

To be able to meet acceptable standards of clothing exchange, it will be necessary to immediately provide the prison additional laundry equipment and an adequate inventory. If this is not done, it will not be possible for the defendants to comply with this section of the Agreement.

Shelter

All new and remodeled sections of the prison meet necessary standards for institution living units.

Sanitation

Inspections on a regular basis have been instituted and

housekeeping standards in general have improved. Shower areas throughout the institution need hard cleaning, patching and paint. There is a critical need to paint nearly the entire institution, and it is difficult to motivate inmates towards better housekeeping when they note the deficiencies in plant maintenance.

Personal Safety

The absence of adequate numbers of staff on general population living units continues to create serious custody and safety conditions. There should be a minimum of double coverage on any living unit when inmates are let out of their cells for any purpose. One also must be concerned about how often inmates are checked inside of their cells as a guard against serious illness, suicide and escape.

The design of the new living units is contrary to all good correctional practices, and can now only be compensated for by providing sufficient staff to properly supervise the inmates. The Department has submitted budget proposals for additional security staff.

FINDING OF FACT

The defendants have made progress in their efforts to improve general conditions of confinement. They currently lack the necessary resources, and therefore have been unable to comply with this section of the Agreement.

AGREEMENT

Appendix VI - Medical and Psychiatric Care

"Defendants agree to an adequate medical delivery system which meets the day to day and emergency medical needs of inmates. This medical care system shall meet the ACA standards for medical care of inmates."

DISCUSSION

Mrs. Terri Ignacio, Medical Services Administrator, continues in her efforts to provide an adequate level of medical care to the inmates at the Nevada State Prison. Nursing services are excellent, but the budget only provides sixteen (16) hour coverage, when twenty-four (24) hour coverage is necessary. There is currently a critical shortage of adequate service at the Physician level, also. Additionally, the physical conditions of the infirmary and small clinic are totally inadequate to meet the needs of the institution. The medical facilities are located adjacent to Post #7, which is the central control point for the prison. The conditions are noisy; difficult to keep clean; there is constant correctional officer foot traffic through the treatment areas; walls and floors in a condition which makes them impossible to keep sanitary; and an infirmary that is less like a hospital than the prison lock-up unit. The medical unit should be moved to larger and less congested quarters. This may not be possible considering the options available, but should be seriously considered. An alternative would be to move Post #7 to a different location. If the infirmary is not moved, then extensive repairs and remodeling should be done which would include, but not be limited to, the following:

1. tile on the floors.
2. painted throughout.
3. storage areas enclosed with walls.
4. gate from Post #7 to clinic that should not be passed except for medical reasons.

The writer reviewed the medical operation using the ACA Medical Standards and found the following:

Standard 2-4271	In compliance
Standard 2-4272	In compliance
Standard 2-4273	In compliance
Standard 2-4274	In compliance
Standard 2-4275	In compliance
Standard 2-4276	Not in compliance
Standard 2-4277	In compliance
Standard 2-4278	Not in compliance

Standard 2-4279	In compliance
Standard 2-4280	In compliance
Standard 2-4281	In compliance
Standard 2-4282	In compliance
Standard 2-4283	In compliance
Standard 2-4284	In compliance
Standard 2-4285	Not in compliance
Standard 2-4286	Not in compliance
Standard 2-4287	In compliance
Standard 2-4288	Not in compliance
Standard 2-4289	In compliance
Standard 2-4290	In compliance
Standard 2-4291	In compliance
Standard 2-4292	In compliance
Standard 2-4293	In compliance
Standard 2-4294	In compliance
Standard 2-4295	In compliance
Standard 2-4296	In compliance
Standard 2-4297	In compliance
Standard 2-4298	In compliance
Standard 2-4299	In compliance
Standard 2-4300	In compliance
Standard 2-4301	In compliance
Standard 2-4302	In compliance
Standard 2-4303	Not in compliance
Standard 2-4304	In compliance
Standard 2-4305	Not in compliance
Standard 2-4306	Not in compliance
Standard 2-4307	Not in compliance
Standard 2-4308	Not in compliance
Standard 2-4309	Not in compliance
Standard 2-4310	In compliance
Standard 2-4311	In compliance
Standard 2-4312	In compliance
Standard 2-4313	In compliance
Standard 2-4314	In compliance
Standard 2-4315	In compliance
Standard 2-4316	In compliance

Standard 2-4317	In compliance
Standard 2-4318	In compliance
Standard 2-4319	Not in compliance
Standard 2-4320	In compliance
Standard 2-4321	In compliance
Standard 2-4322	In compliance

Out of the fifty-two (52) standards the medical services at the prison are in compliance with all but twelve (12). A number of these standards are actually being followed, but require written policies and procedures which currently do not exist.

There have been a number of complaints regarding medical services which basically fall into the following categories:

1. Disatisfaction with diagnosis and/or treatment prescribed by the prison physician.
2. Inability to obtain referral to an outside specialist.
3. Failure to receive diet prescribed by medical services.

The absence of a full time physician at the prison is impacting on all of the medical services. Until this void is filled, the medical section cannot provide an adequate level of medical care.

Psychiatric care is reported on fully in progress reports submitted in re Taylor vs. Wolff and will not be repeated here.

FINDINGS OF FACT

Although continued progress is being made, the defendants are not in compliance with this section of the Agreement.

The remaining Agreements were incorporated into the Shapley case from the Consent Decree entitled Craig vs. Hocker CU-R-2662-BRT.

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

Provisions of Part 1.A. shall apply equally to the inmates in protective custody.

1. Within ninety (90) days of the Order herein, the institution psychologist will complete a meaningful evaluation of each inmate confined in administrative segregation to determine if there are persons confined there who have serious mental health needs which are not being met. Upon identification of such persons, they will be immediately removed from their living area and confined in appropriate housing where they will have an opportunity to receive all needed mental health care."

DISCUSSION

A case file review was done and it would appear that within ninety (90) days of placement in administrative segregation the prison psychologist does make an evaluation to determine the mental health needs of those confined. Because there is only one mental health staff member assigned to the institution who has enumerable duties, it is questionable that all serious mental health needs are being met. Since this is the primary element to be evaluated in the Taylor vs. Wolff case, a detailed analysis will be made at the time of the second progress report on the Taylor case.

FINDING OF FACT

The defendants are in compliance with the requirement to have the institution's psychologist evaluate those inmates placed in administrative segregation within a ninety (90) day period. A determination as to whether mental health needs are being met is to be deferred to the next progress report on Taylor vs. Wolff.

AGREEMENT

"2. By October 1, 1981, any person housed in a living area for more than ten (10) hours a day shall be provided with at least eighty (80) square feet of living space within that area. The defendants, however, shall be permitted to use the existing cells in administrative segregation until said date, provided that they comply with the remaining terms of this Order. In the event that problems occur creating the possibility the defendants may fail to meet the deadline of October 1, 1981, the defendants shall immediately notify counsel for plaintiffs in writing of all the reasons therefor and if the parties are unable to agree upon an extension of time to complete the work necessary to bring the living space into conformity with the size as prescribed in this paragraph, the defendants may petition the Court for additional time to complete the provisions of this paragraph."

DISCUSSION

All the inmates assigned to administrative segregation or protective custody are confined to their cells for more than ten (10) hours a day. The size of cells in Units I, V and VI are 79.4 square feet. Unit VII varies from a low of 79.8 square feet to 81.5 square feet. "C" Block cells are 80 square feet in the death row section. All protective custody and administrative segregation inmates are assigned to the units listed above. Although some cells are fractionally below the square foot standard set in the Agreement, they are of a size and design that clearly complies with the intent of the Agreement.

FINDING OF FACT

The defendants have complied with this Agreement.

AGREEMENT

"3. The defendants shall provide lighting throughout the administrative segregation unit of at least thirty foot candles. Additionally, the defendants shall provide task oriented lighting in each cell for reading, writing and

DISCUSSION

Lighting in all cells is both occupant and centrally controlled. As was reported in the First Progress Review, the light level varies from a low of 22.7 to a high of 38.5 foot candles. The low readings reflect cells in which inmates have covered their windows or colored their lights. In most cases an illumination of thirty (30) foot candles is brighter than most inmates want. Natural lighting is available from a source within 20 feet of each cell.

The writer requested in the last report that parties negotiate regarding the standard requiring "task oriented lighting" in all cells. The Attorney General's office has corresponded with plaintiff's attorney on this matter. Since no report has been received from parties I must conclude that such a standard is still required - and does not exist.

FINDINGS OF FACT

The defendants are in compliance with all sections of this Agreement with the exception of task oriented lighting in each cell.

AGREEMENT

"4. Each cell or room in administrative segregation will comply with Section 4143, American Correctional Association's Standards for Adult Correctional Institutions, August, 1977 Edition. The Standards and Comments, Exhibit A, are incorporated herein and a copy attached hereto. The defendants shall also provide adequate heating and cooling to provide temperatures within the normal comfort range. The steps necessary to effectuate the terms of this paragraph shall be completed by October 1, 1981."

DISCUSSION

There has been no change since the last progress report and certain conditions must be addressed before the defendants are in compliance. Of particular concern is the lack of hot water to the cells in "C" Block, lack of clothes hooks, lockers or storage containers in all cells, lack of a desk and stool in all units except VII, and a lack of any documentation by a qualified source that:

1. circulation is at least 10 cubic feet of outside or recirculated filtered air per minute per occupant;
2. temperatures are appropriate in the summer (66-80 degrees), and winter (61-75 degrees) comfort zones; and
3. noise levels that do not exceed seventy (70) decibels in daytime and forty-five (45) decibels at night.

It is recognized that the defendants attempted during the past reporting period to obtain temperature readings in the living units. Thirty-eight (38) thermometers were purchased and installed in the tier area of the units. Most of these thermometers were damaged or destroyed by inmates. One solution would be to purchase several constant recording thermometers that could be used by the shift lieutenant to take readings periodically as he tours the institution.

The defendants have requested necessary funding to purchase desks, stools, coat hooks and storage containers, but this will require legislative approval. Strong documentation based on professional standards will be required to assure consideration for funding.

FINDINGS OF FACT

The defendants are not in compliance with all of the elements of this Agreement.

AGREEMENT

"5. Every inmate in administrative segregation shall be provided with a sanitary mattress and two (2) sheets, two (2) blankets, a pillow and pillow-case. Linen shall be exchanged at least weekly and blankets, pillow and mattress shall be cleaned on a routine basis and maintained in a sanitary condition. Mattress and mattress covers will be disinfected and cleaned before re-issuance."

DISCUSSION

Issuance of supplies as set forth in this Agreement are being met with the exception of each inmate receiving two (2) blankets. There is apparently a shortage of blankets which has not allowed all inmates to have two blankets. Additional blankets have been ordered and should be available for the winter months. At this time there is no specific schedule for the washing of blankets and, this coupled with the shortage has meant that long periods of time go by between washings. The defendants should set up a regular schedule and wash all of the blankets unit by unit.

There is also an inventory shortage of sheets and pillow cases which does not allow for sufficient supply to make an exchange should the laundry be unable to meet its regular schedule. It was also noted that some inmates do not have pillows.

Institution Procedure #39, issued on July 26, 1984, provides that each inmate shall receive a new mattress upon his arrival and keep that mattress until he leaves, at which time it is to be destroyed. This is an excellent policy and careful monitoring should be established to assure that the procedures are carried out. Since many of the inmates remain at the prison for long periods of time, and there is currently no provision for the use of mattress covers, the new policy should be amended to provide for a regular replacement factor or the cleaning and disinfecting of existing mattress.

FINDINGS OF FACT

The defendants have made a good faith effort to comply with this Agreement, and with a modest increase in their inventory will be able to do so.

AGREEMENT

"6. All inmates in administrative segregation shall be provided clothing that is properly fitted, climatically suitable, durable, economical, easily laundered and repaired and presentable. The clothing will include outer garments, undergarments, shoes, and socks. Accordingly, all inmates in administrative segregation shall be provided sufficient clothes at least three (3) times per week except for coats, jackets and shoes. Additional clothes may be provided for work and recreation."

DISCUSSION

Clothing that is issued to administrative segregation inmates is adequate in appearance with the exception of Unit VII. In that unit a coverall is used as an outer garment which might be satisfactory for disciplinary detention, but hardly meets minimum standards for administrative segregation. American Correctional Association standards regarding special management inmates states that they "should be clothed like other inmates".

The appearance of some clothing leaves much to be desired because of improper sizing of garments. As has been mentioned earlier, the clothing inventory is so low that it is not always possible to outfit a new inmate in clothing that meets his size requirements. There is also an acute shortage of shoes to the extent that some administrative segregation inmates do not have any outdoor footwear. There are also insufficient supplies of clothes to be able to meet the Agreement requirement of three (3) exchanges per week.

There is no provision for ironing of any clothes at the laundry, which means that an inmate is unable to make a neat and presentable appearance. This particularly bothers some inmates in terms of their visits with family members. Consideration should be given to allowing inmates to use an electric iron in their cells or while on tier assignment in order to improve the appearance of their clothes.

FINDINGS OF FACT

Serious shortages of clothing has not made it possible for the defendants to provide garments that are properly fitted, clean and presentable. The defendants are therefore not in compliance with this Agreement.

AGREEMENT

"7. The storage of clothing, linen, and bedding shall exceed that required for the unit's population. Inmates shall not be left without clothing while clothes are being laundered, cleaned or mended."

DISCUSSION

Inmates are not left without clothing while clothes are being laundered, cleaned or mended, but they do not have sufficient clothing to have an exchange three (3) times per week. There is a need for additional laundry equipment and a buildup in the clothing inventory in order that adequate clean, properly fitted clothing can be provided to the inmate population.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"8. Each inmate shall be provided with adequate amounts of necessary personal hygiene items and two clean towels which are exchanged at least twice per week. Cigarettes and/or tobacco may be provided indigent inmates in administrative segregation, with the use of inmate store funds (ISF) upon approval by the Inmate Committee which administers the use of those funds. Inmates shall also be permitted to purchase cigarettes and/or tobacco with the use of their own funds."

DISCUSSION

Supplies set forth in this Agreement are being provided. Cigarettes and/or tobacco are not being provided for indigent inmates although administrative segregation inmates are permitted to purchase tobacco supplies with their own funds. There continues to be a severe restriction on the issuance of matches which should be addressed, but does not fall within the purview of this Agreement.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"9. A written routine daily housecleaning plan will be executed which includes at least the areas to be cleaned and each area in maximum housing,

the specific person or persons assigned to clean each area, and a procedure for procurement and maintenance of housekeeping equipment and supplies.

DISCUSSION

Administrative Regulation #490 and Institution Procedure #17 clearly speak to the Agency's policy and procedures regarding compliance with this Agreement. A written housekeeping plan has been developed and an inspection schedule is being carried out. The procedure for procurement and maintenance of housekeeping equipment and supplies is also clearly set forth in writing.

FINDINGS OF FACT

The defendants are clearly in compliance with this Agreement.

AGREEMENT

"10. A qualified person familiar with health and safety standards and practices will oversee health and sanitation conditions in the administrative segregation unit."

DISCUSSION

The Health Services Coordinator, Ms. Terri Ignacio, R.N., has been designated as the qualified person to oversee health and sanitation conditions in all of the administrative segregation units. Weekly inspections are made by a nurse of Units I, V, VI, VII and C Block, with an elaborate check list which adequately covers all areas of safety, sanitation and health. The inspection form is provided to the Warden and the Health Services Coordinator

for their review and follow up. This procedure went into effect during the month of September, 1984, and sufficient time has not passed to determine its effectiveness.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"11. Cleaning activity will be supervised at all times by a particular, assigned civilian staff."

DISCUSSION

Although there appears to be agreement with this requirement, no administrative action has been taken to appoint a particular civilian staff member to supervise the cleaning activity. The use of the term "supervise" would indicate that the person assigned should be one who has responsibility for inmate activities. One might consider making this responsibility part of the post orders of a correctional officer assignment. Logically this could not be the correctional officer who is assigned to the unit control station, as he/she is in no position to supervise inmates in their cleaning activities. Where two officers are assigned to a unit it would be possible to give this responsibility to the second post.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"12. A written check list will be utilized for a daily inspection to be done of all areas in the administrative segregation unit by a specific employee to ensure that all areas are clean and sanitary. The employee will sign the document certifying that he/she conducted the inspections and that the report is accurate."

DISCUSSION

A written check list was developed and the requirement of a daily inspection was set forth in a memorandum to staff by the Warden dated August 30, 1984.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"13. Screens will be maintained on all windows, window panes will be continually maintained in all areas. Structural defects which allow rodents to enter the unit will be cured and an effective vermin and pest control program will be implemented by October 1, 1981."

DISCUSSION

Currently there are no screens on windows. The replacement of broken window panes is being carried out in an expeditious manner. Plans and a model for window screens has been developed and funds have been requested through the budgetary process.

A vermin and pest control program has been in operation for some time through contract with a private vendor. A review of that contract should be made with the objective of upgrading services for the culinary facility.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"14. By December 15, 1980, a comprehensive, written maintenance manual and inspection checklist for the inspection and maintenance of equipment systems within the administrative segregation unit, will be prepared and utilized."

DISCUSSION

A written maintenance manual and checklist for inspections was completed during the month of August, 1984, and is currently being used. It would appear from review of the document that the manual clearly meets the requirements of this Agreement.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"15. a comprehensive fire safety plan will be drafted for the maximum

housing unit by October 1, 1980. The plan shall include specific provisions for adequate fire protection services, the specific equipment, such as extinguishers and fire hoses, to be located at specific appropriate places within the institution and inspection and preventative maintenance schedules for said equipment, the specific responsibilities of staff and prisoners in the event of fire, and the training to be given staff and prisoners in fire safety. The plan shall be certified by the State Fire Marshal or other qualified authority as adequately providing for the safety of inmates in the administrative segregation unit. Further, the necessary equipment to ensure compliance with the plan shall be purchased and deployed by a date set by the parties."

DISCUSSION

The Department has developed a comprehensive fire safety plan that has been approved by the State Fire Marshal Division and the Carson City Fire Department. Additionally, the Department has issued a fire safety and evacuation policy (A.R.#440) that gives policy and procedural support to the fire safety plan.

A recent fire incident at the prison points out a need for the N.S.P. Fire Plan and the Department of Prisons Administrative Regulation #440 to provide for specific instructions that will identify a given staff member or post to respond to the initial fire incident area with a fire extinguisher and take suppressive action. Currently, these plans show that intent, but do not specify who or what suppression actions should be done.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"16. An inspection of the administrative segregation unit shall be conducted on a regular and periodic basis by the safety committee, or its

designate, to ensure that the unit meets fire safety and prevention standards including those provided by the Life Safety Code (1976, National Fire Protection Association Document No. 101, or any superseding standards promulgated by the Association)."

DISCUSSION

A safety committee has been appointed by the Warden, and has instituted weekly inspections of all housing units, classrooms and towers with appropriate work orders being submitted on sub-standard areas. The committee uses as their standards, the Life Safety Code and the State Fire Marshal's Regulation. The committee is composed of Sgt. J. Holmes, Correctional Officer M. Budge and Chief of Maintenance L. Clapper, and they are to be commended for their interest and commitment to improving fire/life safety at the prison.

Of final note, mention should be made of an excellent pocket size pamphlet on Fire Safety that was distributed to all inmates on August 31, 1984.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"17. The unit will be inspected at least twice a year by the State Fire Marshal or other qualified fire safety expert who shall prepare a written report of the fire safety inspection including any findings and recommendations or corrections. If the unit in any way does not meet the fire safety standards or the standards of the Life Safety Code, curative actions shall be immediately taken."

DISCUSSION

Although the Agreement calls for at least two inspections a year by the State Fire Marshal, experience would indicate that the institution is fully inspected quarterly and oftener when "complaint inspections" are required. The last inspection was performed on May 17, 1984, using as criteria the Life Safety Code, the Uniform Fire Code, and Regulations of the State Fire Marshal. The inspection also addressed the State requirements for a "Retrofit Ordinance Survey" which requires modifications to existing structures to meet requirements for exiting and life safety. The Fire Marshal feels that these requirements are, for the most part, already completed or in process. Remaining projects which would alleviate smoke and fire potential through the use of negative-pressure air flow into the plumbing shafts under fire conditions, are being studied and specific remedial projects are being developed by the State Fire Marshal Division and the State Public Works Board.

It is the conclusion of the State Fire Marshal that the Nevada State Prison has an excellent Fire Safety Plan, adequate fire protection equipment and has that equipment under a required maintenance agreement.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"18. Regular fire drills will be conducted at least once every six (6) months involving all staff assigned to the unit. A written handbook shall be provided the inmates containing explicit instructions approved by the State Fire Marshal for prompt evacuation of the unit in the event of fire or other catastrophe. Each inmate shall have explained to him the contents

of the handbook and evacuation routes shall be painted on the floor of the cellhouse. Prison officials shall develop an evacuation plan which will establish as its goal, the prompt evacuation of the unit in a safe manner."

DISCUSSION

With the completion of the prison fire plan, regular fire drills were commenced in September, 1984. An evacuation drill was performed on the 2nd shift on September 18 and on the 1st and 3rd shifts on September 20, 1984. It is planned that at least simulated fire evacuation drills will be held every six (6) months. A written pamphlet on inmate fire safety has been developed and issued to all inmates. Evacuation routes have been painted on the floors or walls of all inmate housing units.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"19. Any exposed electrical wiring and water leakage problems will be forthwith cured. In addition, the unit shall meet the standards required by state and local law and the Underwriters Electrical Code."

DISCUSSION

The new living units used for administrative segregation have no exposed electrical wiring nor water leakage problems. With the remodeling of "C" Block and its recent reactivation, it will be necessary to carefully check that extension cords are

not being plugged into overhead incandescent light bulb fixtures instead of directly to wall outlets. At the last inspection there was evidence of some water leakage in the pipe chases on "C" Block and necessary work orders had been submitted.

FINDINGS OF FACT

If a review of "C" Block finds that code requirements are being met, the defendants will be in compliance with this Agreement.

AGREEMENT

"20. Mattresses and trash containers will be made of materials which meet fire safety standards."

DISCUSSION

The State Fire Marshal in his report dated June 18, 1984, stated that "mattresses throughout the facility are constructed at the prison using State Fire Marshal approved materials". Trash containers which are accessible to the prisoners are of a plastic material which is under a waiver from the State Fire Marshal Office. It is generally not good policy to use plastic trash containers in a prison as they are easily ignitable and produce a toxic exhaust fume. The institution currently has a waiver from the Fire Marshal to utilize such containers, but should carefully think through the security issues involved.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"21. No cross-connections will exist between the potable and non-potable water systems."

DISCUSSION

There are no cross-connections that exist between potable and nonpotable water systems in any of the new living units. Since "C" Block was reactivated, the Auditor must again express his concern as to whether vacuum breakers have been installed to prevent possible contamination of potable water. A plumbing specialist should be required to inspect the current system and give a report as to his findings to the Warden and the Court Auditor.

FINDINGS OF FACT

Until a final determination has been made regarding the possibility of cross connections between potable and non-potable water in the "C" Block water system, the Auditor cannot certify to compliance with this Agreement.

AGREEMENT

B. Administrative Segregation; Classification Procedures

"Administrative segregation classification is used when inmates require closer supervision and separate housing from the general population. Every effort shall be made to return administrative segregation inmates to the general population as soon as practical, but some inmates may spend relatively extensive periods of time in this status. Administrative segregation classification is not for the purpose of punishment. This policy statement has no application to those inmates confined in disciplinary segregation."

DISCUSSION

This Agreement covers a policy statement which basically incorporates two principles: (a) Administrative segregation is not for punishment and (b) every effort shall be made to return administrative segregation inmates to the general population.

One gets the distinct impression that, until recently, administrative segregation at N.S.P. has been used for punishment. In fact, the majority of the inmates currently confined in administrative segregation have been placed there because of a specific offense they have committed while assigned to the maximum security prison. The prison, by policy, limits the use of disciplinary detention to a maximum of fifteen (15) days. The procedure on serious offenses is to place an inmate in disciplinary detention for fifteen days and then in administrative segregation for one hundred eighty (180) days.

A clarification of terminology regarding segregation was made by Director Vernon Housewright in a memorandum to all staff dated August 20, 1984. The following definitions will evidently be utilized in the future:

"Administrative Segregation

This type of segregation is used for those inmates who would pose a serious threat to life, property, self, staff or others or to the security or orderly running of the institution if the inmate remained in the general population. This type of segregation is a classification committee decision and is never used as punishment.

Disciplinary Segregation

This type of segregation is a disciplinary committee decision and follows the rigidly imposed rules of the Code of Penal Discipline. (Cannot exceed 180 days for a major violation).

Disciplinary Detention

This form of separation from the general population is also a disciplinary committee decision and will be imposed only by following the strict rules of the Code of Penal Discipline. (At a maximum, an inmate can only receive fifteen (15) consecutive days.)

The terms "punitive segregation" and "punitive detention" will no longer be used in the Department of Prisons.

Consequently, in the future, there will be no need to use administrative segregation as punishment since the category Disciplinary Segregation has been developed for that purpose. It should also be recognized that all the Department of Prison policy statements regarding administrative segregation clearly state that it will not be used for punishment.

Even with the recent clarification of terminology there is some concern with the practice at the Nevada State Prison as compared to recognized professional standards. In the glossary which is a part of the ACA Standards for Adult Correctional Institutions, Segregation is defined as "the confinement of an inmate to an individual cell that is separated from the general population. There are three forms of segregation: administrative segregation, disciplinary detention and protective custody." The Department of Prisons in establishing a fourth category of Disciplinary Segregation, has confused the issue of when to use disciplinary detention and administrative segregation. Obviously, this latter category is being used as long term disciplinary detention. In doing so, therefore, it is necessary that inmates placed in disciplinary segregation be separated from those in administrative segregation. At this time, the prison intermingles the two groups and treats them identically.

There has been a recent effort to return administrative segregation inmates to the general population. In making a case file review of those inmates currently assigned to administrative segregation, there was little documentation in some cases as to the reasons for long term confinement. Obviously such terms as "gang member", trouble maker", "extortionist" are in themselves insufficient grounds to deprive an individual of program and normal living conditions within a maximum security prison. I am sure that there are justifiable grounds behind the decisions that have been made. There is, however, a lack of documentation that can be reviewed. Also, although it is recognized that some inmates may spend relatively extensive periods of time in administrative segregation, this should not detract from the importance of setting goals and objectives towards release which

can be used for motivational purposes.

There is extensive policy coverage of administrative segregation issues covered in D.O.P. Bulletin #8-20 dated June 12, 1984, and Institution Procedures Bulletin #8 dated August 10, 1984. The D.O.P. Bulletin has not yet been made a part of the Administrative Regulations, although approval from the Attorney General and the Prison Board have been obtained. This should be done as soon as possible.

FINDINGS OF FACT

As soon as the Department separates those confined in administrative segregation from those inmates confined in segregated quarters for punishment reasons, the defendants will be in compliance with this Agreement.

AGREEMENT

"2. The defendants hereby adopt Standard 4201 from the Manual "Standards for Adult Correctional Institution", August, 1977 Edition and the Comments thereto. A copy of the Standard and Comments, Exhibit B, are attached hereto and incorporated herein by reference as if set forth fully below."

DISCUSSION

The standard quoted in the Agreement calls for written policies and procedures which guarantee certain due process protections for an inmate before placement in administrative segregation, and when such an assignment is made that, "the inmate should be housed in an individual room that provides safety and comfort and should be allowed to participate in all institution programs. Each case should be reviewed frequently with the goal of terminating the separate housing assignment as soon as possible".

The defendants have developed policies and procedures (D.O.P. Information Bulletin #84-20 and I.R. #8) which cover the basic requirements of ACA standard 4201 (1977 Edition) with one notable exception. In both policy statements there is a waiver clause which reads, "If the Administrative Segregation Classification Committee documents substantial evidence that moving the inmate from administrative segregation to general population would be hazardous or produce serious injury to the inmate or to others, then reintegration is not required".¹

Where documented evidence would indicate that an inmate should not leave administrative segregation, the defendants are justified in such continued placement. To be in compliance with ACA Standard #4201 (1977 Edition), however, defendants are still required to set objectives for all inmates with the goal of terminating the separate housing assignment as soon as there is no longer a substantial risk to the security or order of the institution, the safety of the inmate or others. Current policy and practice does not require such planning and setting of objectives for a number of the inmates currently assigned to administrative segregation.

Concern must also be expressed that ACA Standard #4201 (1977 Edition) calls for a process prior to placing an inmate in administrative segregation that requires exhaustion of alternatives other than specialized housing (e.g. transfer to another unit, institution or camp) and if placed in segregation that the inmate should be allowed to participate in all institution programs. Case file review seldom indicated that the inmate in question was a "serious threat to the life/safety of others, himself or the institution". Further, there is seldom any indication that other alternatives were explored and the reasons for their rejection given. Finally, most inmates in administrative segregation are not involved in education programs, religious programs, gymnasium programs nor any of the regular prison recreational activities.

¹ Underlined by author for emphasis.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"3. Consistent with Section 4377 of the Manual of Standards for Adult Correctional Institutions of the American Correctional Association, August, 1977 Edition, the defendants shall submit by August 1, 1980, Defendants' written plan for classification. Said plan shall set forth all the criteria which may result in the transfer of inmates to administrative segregation. Said criteria shall be drafted with sufficient specificity to give inmates forewarning of all the conduct or behavior which could result in such a transfer."

DISCUSSION

As was previously reported, the defendants developed a written plan for classification which was in conformity with Section 4377 of the ACA Manual of Standards for Adult Institutions (1977 Edition). As was required in the Agreement entered into in the case of Shapley vs. O'Callaghan, the defendants have revised their classification program to be in conformity with the NIC Model. The defendants progress in implementing this new classification system was discussed earlier in this report. The procedures for classification of an inmate to administrative segregation are set forth in D.O.P. Informational Bulletin #84-20.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"4. Sections II and III of Administrative Segregation Model, the Model Correctional Rules and Regulations of the American Correctional Association Correctional Project, revised edition October, 1979, shall hereby be adopted and followed by the defendants. A copy of said procedures, Exhibit "C", is attached hereto and fully incorporated herein by reference."

DISCUSSION

The policies and procedures set forth in the ACA Administrative Segregation Model (revised edition Oct., 1979) have been adopted by the defendants and are clearly set forth in D.O.P. Information Bulletin #84-20 and N.S.P. Procedure Bulletin #8. Since the last report the defendants have made an obvious effort through formalized training programs and supervision to assure that the procedures are carried out according to policy. There continue to be, however, violations of the procedures that require additional administrative attention. Case file reviews indicated that:

1. Inmates are sometimes placed in administrative segregation without notice or a hearing.
2. Inmates are sometimes placed in administrative segregation on an emergency basis but are not reviewed by the classification committee within three (3) working days. If extensions to the three (3) day rule have been given there is no documented evidence to that fact in the file as required.
3. Inmates are sometimes placed in administrative segregation on an emergency basis where there is no documented evidence that reasonable cause existed to believe he was an immediate danger to himself or to others or to the security of the institution.
4. Continued use of anonymous informants where the necessary file review has not been made by the Director.

The Warden is to be commended for taking an active role as Chairman of the Classification Committee or designating one of the Associate Wardens to take his place. This use of administrative

time and talent has markedly improved the classification review process as it impacts on the use of administrative segregation.

FINDINGS OF FACT

The defendants have made a good faith effort to comply with this section of the Agreement. Additional review and supervision of procedures should bring total compliance.

AGREEMENT

"5. The institution's psychologist shall sit on and be a member of each classification hearing involving a transfer or a review of status in administrative segregation."

DISCUSSION

The institution psychologist is a member of each classification hearing involving a transfer to or a review of status in administrative segregation. Since there is only one psychologist who also acts as the psychologist for the Women's Prison and is Departmental Mental Health Coordinator, there are obviously times when attendance at classification hearings is not possible. Counseling staff should be responsible to see that a recommendation from the prison psychologist is always made available to the Classification Committee.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT.

"6. The classification committee shall reach a decision based upon information presented at the meeting and shall provide the inmate with a written decision which states the reasons and basis for the committee's decision and which summarizes the information presented to and considered by the committee. The decision shall be based on substantial, credible information which demonstrates the necessity for segregation. The decision shall also state the reasons for the committee's decision excluding the testimony of any witness offered by the inmate."

DISCUSSION

The principle set forth in this Agreement are fully incorporated in the defendants' policies and procedures and extensive training has been given to staff to upgrade the quality of hearings and reports.

On the basis of a random file review the Auditor continues to have concern that the reasons for assignment to or retention in segregation are not fully substantiated with factual evidence. A form (Administrative Segregation Form #2A) is used to provide the inmate with a copy of the decision and by its very design precludes much information. Unfortunately, the files often revealed that this was the only information available on the action taken.

The defendants are diligently working to make the classification process fair and understandable, and it is believed that continued training will bring about compliance with this Agreement.

FINDINGS OF FACT

The defendants are making a good faith effort, but are not yet in full compliance with this Agreement.

AGREEMENT

"7. A classification committee shall review the status of each inmate at least every seven (7) days for the first two months and at least every thirty (30) days thereafter. More frequent reviews may be scheduled based on the request of the case manager or the inmate. At each review, the classification committee shall determine whether there is substantial evidence to indicate that the initial reasons for classification into administrative segregation still exist. If they do not, the inmate shall be reclassified out of administrative segregation status. The inmate shall be permitted to appear before the classification committee at each review and make a statement. In cases where the inmate refuses to appear, the committee chairman shall sign the classification sheet and the specific reasons for the inmate's absence and make an evaluation for the inmate's classification/institutional file."

DISCUSSION

Departmental and prison policies require that the classification committee review the status of each inmate at least every seven (7) days for the first two (2) months and at least every thirty (30) days thereafter. A case file review indicated these hearing are taking place.

The defendants have made a good faith effort to incorporate some goals and objectives for those inmates assigned to administrative segregation. This has allowed the review hearing to be more than perfunctory in nature. There are still some inmates in segregation for whom no plans, even of a long range basis, have been made. It is believed that this failure to set any goals or to carry out a hearing that attempts to determine whether there is substantial evidence to indicate the original reasons for classification to segregation still exist, fails to fully comply with the Agreement.

FINDINGS OF FACT

The defendants are not in compliance with the Agreement.

AGREEMENT

"8. In each case of an inmate classified to administrative segregation involuntarily for over sixty (60) days, the classification committee shall establish a set schedule of personal and program objectives involving gradual reintegration into the general population, the completion of which shall result in the inmate's reclassification from administrative segregation within an additional sixty (60) days. However, if the classification committee documents substantial evidence that reclassification from administrative segregation would produce serious injury to the inmate or others or substantially threaten the security of the institution, then reintegration ~~is not required~~."

DISCUSSION

The defendants have adopted policies and procedures which clearly comply with all of the requirements of the Agreement. In practice they have been carrying out their procedures in a professional manner.

A point of confusion exists because the final sentence of the Agreement appears to conflict with an earlier Agreement. This Agreement reads, "if the classification committee documents substantial evidence that reclassification from administrative segregation would produce serious injury to the inmate or others or substantially threaten the security of the institution, then reintegration is not required".¹ This sentence is interpreted by the auditor to mean that an inmate does not have to be released if evidence can support that he is a danger. It does not preclude, however, the responsibility of the defendants to "review the case frequently with the goal of terminating the separate housing assignment as soon as possible". (ACA Standard 4201, 1977 Edition). Therefore a set of personal and program objectives should be set for all inmates in administrative segregation regardless of how long they may have to stay.

¹ Underlined by author for emphasis.

FINDINGS OF FACT

With the inclusion of personal and program objectives for all inmates assigned to administrative segregation, the defendants will be in compliance with this Agreement.

AGREEMENT

"9. Paragraph IX of the Administrative Segregation section of the Model Correctional Project, American Correctional Association, revised edition October 1979, are adopted and shall be followed with the additional following amendments:

- (a) Paragraph IX B shall require that the institution and segregation unit disciplinary rules shall be in writing;
- (b) For Paragraph IX B, the term "substantial" shall be deleted;
- (c) An additional paragraph to Section IX shall be as follows:

C. Whenever property is removed from the inmates, the removal will be documented in writing and the property will be stored in a safe place and an inventory maintained to ensure its return to the inmate. Where property shall be removed for a long period of time, arrangements will be made for the inmate to ship the property out of the institution."

DISCUSSION

The defendants have incorporated into D.O.P. Information Bulletin #84-20 and Institution Procedures Bulletin #8 all of the principles and procedures set forth in this Agreement. There continue to be examples of staff having not closely adhered to these procedures. For example:

1. Restriction of rights, privileges and amenities are not always approved in advance by the Warden or his designee.
2. Written records are not always made of restrictions.
3. Significant restrictions are not always reported within twenty-four (24) hours to the prison psychologist.
4. Restrictions are imposed without a disciplinary hearing.

FINDINGS OF FACT

The defendants are in compliance in so far as their policy and procedures are concerned, and a good faith effort is being made to be in compliance in practice.

AGREEMENT

"10. Prisoners classified to administrative segregation may be denied or removed from programs, jobs, activities, including hobby craft, canteen privileges and activities in accordance with the provisions in Paragraph 8 and 9, above. Notwithstanding those provisions, however, every inmate in administrative segregation shall receive an opportunity for educational opportunities including a GED degree, high school classes, and a high school diploma. College correspondence courses shall be made available at the inmate's expense. The inmates in administrative segregation shall also be provided the opportunity for vocational development consistent with their status in administrative segregation, according to a plan to be developed by the defendants herein.

Inmates shall be afforded the opportunity for work within the administrative segregation unit. The defendants shall develop a written plan providing for such work opportunities within the confines of the administrative segregation unit. In the interim, good faith efforts will be made to provide additional, programmed activities including educational, vocational, and employment opportunities for the inmates housed in the administrative segregation unit."

DISCUSSION

The defendants have incorporated all of the principles set forth in this Agreement in D.O.P Information Bulletin #84-20.

During the past report period the defendants have provided approximately 2 hours per week of closed circuit T.V. educational programming for Unit VII, but there is no other academic or vocational opportunities for administrative segregation inmates. Inmates are not involved in any type of vocational development, nor have the defendants developed any plan to do so. Inmates who are assigned to Unit VII are not allowed to work, and only one or

two inmates are allowed to perform porter type duties in the other segregation units. The defendants have not developed a written plan for involving inmates in a work program. One must conclude that a good faith effort has not been made to provide additional programmed activities including educational, vocational, religious and employment opportunities for the inmates housed in the administrative segregation units.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"11. Inmates in administrative segregation shall be provided a minimum of eight (8) hours per week of outdoor exercise, absent inclement weather, with ten (10) hours of outdoor exercise per week established as a goal."

DISCUSSION

The defendants continue to meet the minimum hourly requirements for outdoor exercise. The current scheduling of outdoor exercise allows for only two exercise periods each week. The American Correctional Association standard calls for a minimum of 1 hour per day, five days per week. The current practice of utilizing long periods of exercise with little in the way of recreation equipment, no toilet, no drinking water, no bench to sit on, and no shade during hot summer weather is contrary to good correctional and public health practices.

FINDINGS OF FACT

Although the current scheduling of outdoor exercise ignores professional standards, the defendants are in compliance with this Agreement.

AGREEMENT

"12. A reasonable amount of recreational equipment shall be made available in each exercise area. At the time the renovation of the cellhouse is completed, the defendants shall have expanded the exercise area to provide that each exercise area shall be at least 50 feet by 50 feet."

DISCUSSION

The defendants have purchased a large supply of recreational equipment, but have not yet provided tables, benches, toilets or drinking water for the various exercise areas. All inmate's exercise areas meet the Agreement's size requirements except Unit VII. That unit has three (3) exercise cages with each being approximately 10'6" by 33'4" in dimension. The defendants have attempted to negotiate with the plaintiffs regarding the necessity of having exercise areas that are 50' by 50', but as of the writing of this report no agreement has been reached.

It is imperative that some type of toilet facilities be made available within the exercise area. An inmate who needs to urinate now has the choice of returning to his cell and forfeiting the remainder of his exercise period, or relieving himself in the exercise yard. Rather than lose their outdoor exercise, most inmates are urinating in the yard causing an unsanitary and odoriferous condition.

AGREEMENT

"13. Sections 4223 through 4236 of the Manual of Standards for Adult Correctional Institution, American Correctional Association, August 1977 Edition, and the Comments thereto are hereby adopted as minimum standards for compliance. Further, whenever, in the Standards and Comments, terms such as can, should or may, and the like are used, each must be read as "shall" and, thus, the term "shall" is to be substituted therefor in each instance. A copy of Exhibit "E" of the Standards and Comments are attached hereto and fully incorporated herein."

DISCUSSION

All principles set forth in the ACA standards 4223 through 4236 have been incorporated in the Department's and Prison Food Service Manuals. A review of all standards was made with the following results:

4223 - In compliance

4224 - In compliance

4225 - Not applicable

4226 - In compliance

4227 - Not in compliance. Therapeutic diets have not been developed, and food served to those on specific diets seldom meets prescriptive requirements.

4228 - In compliance

4229 - In compliance

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

- 4230 - In compliance for Administrative Segregation if evening snack is served regularly as set forth in I.R.#36.
- 4231 - In compliance since the discontinuance of the "disciplinary loaf".
- 4232 - Not in compliance. Food served to inmates in locked units is not always served at appropriate temperatures.
- 4233 - Not in compliance. All meals are eaten in cells with no stool and generally no table. No effort is made to have small groups of inmates eat together.
- 4234 - Not in compliance. Administrative and medical personnel are not making weekly inspections.
- 4235 - Not in compliance. State Health Inspector recommends replacement of all food service equipment.
- 4236 - In compliance.

The defendants have continued to make progress in improving food service programs. Efforts should be made to adequately clothe inmate food service workers, obtain hot food carts to assure that locked units receive food at appropriate temperatures, and institute weekly inspections by administrative and medical personnel.

Of special concern is the placement of a gun cage in the dining hall. It is recognized that this administrative decision to utilize potential firepower in the dining hall was to increase the number of inmates who could use the facility, and to improve the overall safety of staff and inmates. However, the small size of the dining room and the stone/concrete construction of the building makes the use of either a riot gun or rifle an extremely hazardous operation. The angle of fire is extremely limited, and the ricochet potential is great, thus almost assuring the injury of innocent people.

Some inmates expressed great fear that an excitable correc-

tional officer on duty in the gun cage could create a riotous condition by the threatening or actual use of a gun in such crowded quarters. Some questioned whether they could go to the dining hall because of their fear of what might occur.

The placement of an armed officer in the control post of the dining hall should be very carefully evaluated.

FINDINGS OF FACT

The defendants have made good progress, but are not yet totally in compliance with this Agreement.

AGREEMENT

"14. Inmates in administrative segregation shall also be provided the following:

- a. Correspondence as provided to the general population;
- b. Showers and shaving five (5) times per week;
- c. Hair grooming and barbering;
- d. A minimum of two (2) hours visitation per week;
- e. Access to legal counsel shall be the same as for inmates in the general population. Access to other legal resources for the inmates in administrative segregation will be provided similar to the access accorded inmates in the general population:
 - (1) There shall be a law clerk assigned to the maximum housing unit who shall visit the unit four (4) times per week, to assist inmates and make law books and legal supplies available to them upon request."

DISCUSSION

The inmates in administrative segregation are permitted correspondence as provided to the general population, showers and shaving five (5) times per week, hair grooming and barbering, and a minimum of two (2) hours of visitation per week.

Inmate access to the judicial process is well spelled out in A.R.#720, A.R.#722, I.P.#10 and I.P.#35, and fully meets the requirements of this Agreement.

There continues to be concern in the writer's mind that inmates in administrative segregation are not provided access to legal resources similar to that accorded inmates in the general population. Basically, inmates in administrative segregation are not allowed access to the law library, nor do they have reference material in their locked units, which would make them aware of what documents they would need from a law library. The use of an untrained inmate law clerk who visits the segregation unit hardly meets the test of "access". Other prisons have addressed this problem in one of several ways:

1. Inmates in segregation are allowed access to the law library on a scheduled basis.

2. Basic law libraries are established in the locked segregation units which provide sufficient reference material to enable an inmate to determine what volumes he needs sent from the main law library.

3. Inmate law clerks are sufficiently trained to be able to do basic reference and literature searches and are under professional supervision.¹ If this model was followed, sufficient

¹It is recognized that staff from the Attorney General's Office is currently giving some training to inmate law clerks. Commendable and necessary as such training is, it does not qualify the current group of inmate law clerks to provide adequate legal assistance to those who are unable to have access to a law library themselves. Basic case law in this respect is clearly set forth in Bounds vs. Smith, 97S.Ct.1491, 430U.S.817(1977), which states: "Access to the courts requires prison authorities to assist inmates in preparation and filing of meaningful legal papers by providing prisons with adequate law libraries or adequate assistance from persons trained in the law".

training of inmates who are qualified to be law clerks would be necessary, supervision would be required and the law clerks would have to spend a great deal more time in the segregation units and the law library than they currently do.

In addition to the issue of access, it should be noted that the law library still has reference material that is missing, although much of it is now on order. There is an inequity between the copy charges made at the women's prison (.05) and the twenty cent charge made at the Nevada State Prison. The capacity limit of thirty (30) inmates for the law library, which is reached almost daily, should give consideration to the possible expansion of that facility into the old Lifer's canteen or into other larger quarters. One cannot justify turning away inmates who desire to do legal research because the law library is crowded.

FINDINGS OF FACT

The defendants are in compliance with all of the sections of this Agreement with the exception of "access to other legal resources".

AGREEMENT

"15. Provision will be made for prisoners in administrative segregation status to have access to the general library or a library cart to check out as many as five (5) books at least every seven (7) days."

DISCUSSION

The prison has established a general library since the last report. It is located in the academic school quarters, and only those students attending school have access to it. It is planned,

and necessary funds for equipment have been placed in the next fiscal budget, for the purchase of library carts to service the segregation living units.

FINDINGS OF FACT

The defendants are currently not in compliance with this Agreement.

AGREEMENT

"16. Inmates in administrative segregation status will be allowed to retain in their personal living area a minimum of five (5) law books and all legal papers."

DISCUSSION

From a policy standpoint this Agreement is covered in A.R.#722 and I.P.#10. In practice it would appear that the policy is being carried out.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"17. A caseworker or counselor shall be assigned to the administrative

segregation unit of the prison who will visit the unit five (5) days per week and will be available to help each inmate who desires assistance or information."

DISCUSSION

Since the first progress report, all vacant counseling positions at N.S.P. have been filled, relieving much of the casework backlog. A specific counselor has been assigned to each of the segregation units and is required to visit their units five (5) days per week. There is expressed concern on the part of some inmates that they seldom see their counselor, and assume that daily visits are not being made. The Auditor was unable to determine from unit logs whether daily visits are being made, as officers informed me that sometimes counselors neglect to sign in. One would also question the value of a visit that is five (5) minutes in length. One way to address this issue would be to assign the counselors to offices in the living units.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"18. A representative of the medical staff, e.g. at least at the level of licensed practical nurse, shall make rounds through the administrative segregation unit on a daily basis. A physician shall conduct sick call in the administrative segregation unit, at least once a week. A record of all visits by medical personnel shall be maintained. Should an inmate in administrative segregation complain of or exhibit an apparent medical/dental or psychological problem at times other than the medical staff member's visit, the officer in charge of the administrative segregation unit shall be notified and shall immediately notify the medical staff. Such notifications and actions shall be recorded."

DISCUSSION

All the criteria set forth in this Agreement are being met on a regular basis. Because of a shortage of medical doctors it has not always been possible for a physician to conduct a sick call on the unit, but emergency reviews are made at the infirmary. In a spot check of records it appeared that proper documentation is being made.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"19. A qualified clinical psychologist or psychiatrist shall interview in person and complete a meaningful evaluation of the status of each person classified to administrative segregation within thirty (30) days of assignment to that unit. Thereafter, said evaluation shall be completed for the inmates every ninety (90) days."

DISCUSSION

There is a qualified psychologist at the prison who has carried out the requirements of this Agreement.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"20. Visitation by religious personnel to inmates assigned to administrative segregation will be encouraged and allowed."

DISCUSSION

Visitation by religious personnel appear to be allowed and currently Father Dave, contract Chaplain from St. Teresa of Avila Church, has been encouraging the participation of more volunteers. It should be noted, however, that there are no religious services for those in administrative segregation.

FINDINGS OF FACT

The defendants are in compliance with the visitation requirements of this Agreement.

AGREEMENT

"21. Correctional officers assigned to the administrative segregation unit of the prison should be tolerant and trained to meet the needs of inmates so classified. Each supervisor will supervise and evaluate the on-the-job performance of employees assigned to the administrative segregation unit of the prison."

DISCUSSION

There does not appear to be any special training or selection of officers assigned to administrative segregation. All correctional officers received special training during the past three months in conflict resolution, emergency procedures and the requirements of existing Court Orders. Ongoing supervision and

evaluation of all employees is required by Departmental personnel policies.

Under this Agreement it would appear that additional training should be provided those officers who regularly are assigned to administrative segregation units.

FINDINGS OF FACT

The defendants have made a good faith effort, but are not totally in compliance with this Agreement.

AGREEMENT

"22. The superintendent will designate an official to be responsible for the administration and operation of the administrative segregation section of the prison who will monitor and evaluate the entire program in the area as often as necessary to ensure compliance with all applicable policy statements."

DISCUSSION

The Warden has assigned Associate Warden George Deeds as being responsible for the administration and operation of the administrative segregation units. A procedure bulletin I.P.#38 has been issued which requires that all lock-up units be toured at least once each shift by a supervisorial level employee and special attention should be focused on health, sanitation, security and safety issues.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"23. A systematic record system will be maintained for all inmates assigned in the maximum housing section of the prison. A general activity log will be maintained for inmates and activities within such areas. In addition, a log will be maintained for all personnel entering for inspection and treatment of each inmate."

DISCUSSION

All records required by the Agreement are being maintained and were current at last review.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

B. Protective Custody, Classification Policies and Procedures

1. This classification is used when inmates require removal from the general population of the prison because of the threat confinement in the general population poses to the health and safety of the inmate which requires prison officials to protect the inmate from the environment and pressures of the general population. This situation may result for many reasons including the size, age, intelligence, disability, and infirmity of the inmate, or the inmate, with or without fault, is faced with an enemy situation in the general population requiring protection."

DISCUSSION

A protective custody classification is used by the Nevada State Prison, and the necessary policies and procedures are clearly outlined in A.R.#733.

AGREEMENT

"23. A systematic record system will be maintained for all inmates assigned in the maximum housing section of the prison. A general activity log will be maintained for inmates and activities within such areas. In addition, a log will be maintained for all personnel entering for inspection and treatment of each inmate."

DISCUSSION

All records required by the Agreement are being maintained and were current at last review.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

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DISCUSSION

A protective custody classification is used by the Nevada State Prison, and the necessary policies and procedures are clearly outlined in A.R.#733.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"2. Every effort shall be made, however, to return the inmate to the general population as soon as practical, but some inmates may spend relatively extensive periods of time in this status. The assignment to protective custody is no for the purpose of punishment."

DISCUSSION

The principles set forth in this Agreement are incorporated in the Department's policy position A.R.#733, and the procedures there outlined are carried out in practice. Since the writer's last visit to the prison it is understood that Unit VI has been converted to an additional administrative segregation unit.

FINDINGS OF FACT

The defendants are in compliance with this Agreement if Unit VI is no longer a protective custody unit.

AGREEMENT

"3. An inmate may be placed in this section of the prison on a voluntary basis if the inmate believes that housing in the general population places the inmate in jeopardy of serious bodily harm and request placement in protective custody. Inmates requesting assignment to protective custody may be required to sign a written request slip, stating their desire for assignment to such housing or classification. Inmates requesting assignment to protective custody may be placed therein, immediately without waiting for any formal hearing before a classification committee."

DISCUSSION

The principles and procedures required by this Agreement are incorporated into the Department's policy set forth in A.R.#733, and practice conforms to policy. Inmates are not required to sign a written statement when they request assignment to protective custody.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"4. Any inmate who has voluntarily placed himself in protective custody will be classified within five (5) working days of a request to be reclassified. Upon reviewing a reclassification request, the inmate may be required to remain in protective custody in accordance with the procedures and standards, below.

5. Where an inmate is involuntarily placed or retained under protective custody, the procedural safeguards prescribed for the transfer or classification of inmates to administrative segregation shall be followed. Where an inmate is involuntarily transferred in the first instance into protective custody, the classification committee shall make a finding based upon clear and convincing evidence that an inmate is a victim of a violent act and there is clear and convincing evidence that if he remains in the general population he will be subjected to an additional violent act or the inmate's safety is jeopardized by an immediate life-threatening conflict with other inmates in the general population requiring temporary separation from the general population because he cannot otherwise be provided with adequate protection. Where an inmate is being required to remain in protective custody only upon a finding by the classification committee based upon a preponderance of the evidence, that the inmate will be subjected to additional violent acts or the inmate's safety will otherwise be jeopardized by an immediate life-threatening conflict with other inmates in the general population requiring continued separation from the general population because the inmate cannot otherwise be provided with adequate protection if he were returned to the general population."

DISCUSSION

The principles and procedures required by this Agreement have been incorporated into the Department's policy Manual in A.R.#733. Practice appears to generally conform to policy, although the following notation was found in one inmate's case file: "_____ will remain in Protective Custody at the counselor's discretion due to receiving two (2) kites on the individual's life." The prison staff state that no inmates are currently confined in protective custody on an involuntary basis, and the above case may be "the exception that proves the rule"!¹

FINDINGS OF FACT

The defendants have made a good faith effort and appear to be in compliance with this Agreement.

¹Information has been called to the writer's attention that since his last visit to the institution in late September, inmates who had been assigned to Unit VI, a protective custody unit, have been reclassified to some new category described as "Close-Lockup". Whether such action has been taken will be reviewed at the time of the auditor's next visit to the Nevada State Prison. Inmates have been advised that if they feel they have been reclassified inappropriately or without necessary due process protections, they should appeal the decision using the institution grievance procedure. If, however, their classification continues to be "protective custody", they should receive the program opportunities and conditions of confinement set forth in this Agreement.

AGREEMENT

"6. Generally, the policies and practices of protective custody build

upon those in administrative segregation set forth in Paragraph I.B. above. Consistent with those policies and procedures set forth in that section and in addition thereto, conditions in protective custody must include:

a. At least eight (8) hours minimally of outdoor exercise, weather permitting, with a goal of ten (10) hours per week of outdoor exercise. In the event of inclement weather, a good faith effort shall be made to provide inmates with alternative indoor exercise.

b. Educational, vocational, hobby craft, recreational and employment opportunities similar to that in the general population must be made available to inmates in the protective custody unit.

c. Opportunity to shower and shave, as in the general population.

d. Correspondence identical to the general population.

e. Visitation identical to that provided to the general population unless security dictates other provision be made, i.e., a different time or place.

f. Access to legal resources and legal counsel identical to the general population, unless security dictates other provisions be made, i.e., other time, place, etc.

g. Inmates classified protective custody may retain their personal property as permitted in the general population.

h. As a general rule in all other respects conditions in protective custody shall approximate a replication of conditions and policies in the general population of the prison."

DISCUSSION

Historically, protective custody inmates have been confined in Unit I and Unit IV. During the month of August, 1984, the inmates assigned to Unit IV were moved to Unit VI. Currently, then, all protective custody cases are placed in either Units I or VI, and this is where the similarity ceases. For all practical purposes the protective custody inmates in Unit VI are handled exactly like administrative segregation cases. They have no academic or vocational education, and, other than a porter assignment, have no work opportunities; do not participate in religious services; are unable to visit the law library; do not use the gymnasium; their outdoor activities take place in a relatively small exercise pen; and actual time out of cells is limited to a ten (10) minute shower each night, thirty (30) minutes tier time every other day, and four (4) hours of yard time every fourth day. In effect, this means that on the average, inmates in Unit VI are locked up in their cells 22½ hours per day. One could not under any circumstance describe the conditions of confinement as

a replication of conditions in the general population of the prison.

Protective custody inmates assigned to Unit I, however, are able to attend school, have work opportunities, utilize the gymnasium, participate in religious services and recreate in a large exercise area. The inequity of conditions between Unit I and Unit VI is obvious and needs to be addressed.

In summary, inmates assigned to Unit I have generally all of the conditions set forth in sub-paragraphs (a) through (h). Inmates assigned to Unit VI meet the requirements as follows:

- a. Incompliance with Agreement although the outdoor exercise periods do not meet the ACA requirements of one (1) hour per day at least five (5) days per week.
- b. Not in compliance - no program opportunities are provided.
- c. Not in compliance - only 10 minutes per day for showers.
- d. In compliance - (correspondence).
- e. In compliance - (visitation).
- f. Not in compliance - no access to library or to persons trained in the law.
- g. In compliance - (personal property).
- h. Not in compliance - use of telephone only once a month as against weekly or, for some general population inmates, daily; must be in handcuffs for telephone calls; handcuffs and leg irons for movement; no religious programs.

FINDINGS OF FACT

The defendants are not in compliance with this Agreement.

AGREEMENT

"Inmate Correspondence"

A. Policies and Procedures Governing Inmate Correspondence

1. The defendants' mail regulations, a copy, exhibit "F", of which is attached hereto, are to be amended as described below. Any mail regulation which the defendants might adopt in the future must also include the following:

a. Paragraph 2(e)(1) shall be amended as follows: Censorship of mail includes the reading of mail, excepting that which is seen during the course of the inspection of the mail;

b. Paragraph 2(d) shall be amended as follows: Inspection refers to the checking of the outside of an envelope for proper return address and name and addressee and opening of mail for contraband as set forth in a written list prepared of all contraband. Items in the mail may be removed and observed to the minimum extent possible to ascertain the character of the enclosures;

c. Paragraph 4 of the defendants' regulation shall read as follows: "Incoming general correspondence may be censored if it is found that the contents, taken as a whole or in significant part, fall into one of the following categories:

d. Paragraph 7(b) of the defendants' mail regulation shall be deleted. In its place shall be adopted the II.B.I. of the Correspondence Model of the Model Correctional Rules and Regulations, American Correctional Association, revised edition, October, 1979. A copy, Exhibit "G" of the Rule is attached hereto and incorporated herein fully by reference;

e. The defendants shall add the following paragraph as 7(d) to their mail regulation: 'reading, opening or inspecting of outgoing mail from inmates shall be prohibited unless prison officials have probable cause documented in writing and submitted to the superintendent of the institution that the letter contains evidence of a crime.'

f. Paragraph 8(c) of the defendants' regulations shall be amended to provide that neither the Superintendent nor Director shall have been involved in the initial decision to censor the correspondence;

g. A new section shall be added as 8(d) of the defendants' mail regulations. This addition is as follows: If a letter is censored, a written notice, signed by the official authorizing the censorship and stating the reason(s) for censorship shall be given the inmate, advising also, of the right to appeal the censorship decision.

h. Paragraph 11(a) of the defendants' regulations shall be amended to provide that publications received through the U.S. Mail or from an approved vendor, may be excluded only where they present a clear and present danger to the security of the institution, or would cause severe psychiatric or emotional disturbance to the inmate as certified by a psychiatrist or psychologist;

Paragraph 2(a)(5) shall be amended by substituting 'a' for the word 'the' so that the phrase reads 'a state bar association'."

DISCUSSION

All the principles and procedures required by this Agreement have been incorporated into the Department's policy manual (A.R.#750).. The defendants prepared an extensive check list to use in determining compliance with the procedures, and no evidence has been produced to indicate that there are any problems. The writer reviewed grievances submitted and found none that related to correspondence issues covered by this Agreement.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

AGREEMENT

"Access to the Judicial Process

A. Written Policies and Procedures.

1. Section 4280 of the Manual of Standards for Adult Correctional Institutions and Comments thereto, of the American Correctional Association, August 1977 edition, shall hereby be adopted. The term "should" in the Comments, however, shall be deleted and the term "shall" substituted therefor. A copy, Exhibit "H" of the Standard and Comments are attached hereto and incorporated herein by reference."

DISCUSSION

The defendants have incorporated Section 4280 of the Manual of Standards for Adult Correctional Institutions and Comments thereto (August 1977 edition) in its entirety in their Administrative Regulation #720. They have also substituted the term "shall" for "should" in their policy statement.

There is concern on the part of some inmates that they have been disciplined or punished simply because they have instituted, maintained or given assistance to other inmates in legal proceedings. If this is true it would be in violation of the Department's policy. Inmate perceptions of retaliation for involvement in legal proceedings are strong, but tangible evidence is minimal at best. One could be concerned about the high dismissal rate of law clerks who have aggressively pursued their duties, but in every case some violation of institution rules was used as justification. At this juncture the writer would only urge the defendants to strongly support and maintain their policies on access to the judicial process.

FINDINGS OF FACT

The defendants are making a good faith effort to comply with this Agreement.

AGREEMENT

"2. The defendants' rules and regulations on legal services shall be further amended, as per below. Said regulations, Exhibit "I" are attached hereto.

a. Paragraph 2 and Paragraph 5(a) of the regulations, and in all other appropriate places, said regulations shall be amended to add the term "para-legal" as a part of the definition of an attorney's authorized representative(s)."

b. Paragraph 5(c) of the Defendants' regulations shall be amended as follows: 'An attorney shall be required to furnish proper identification for visits by presenting evidence he/she is a member of a state bar. If prior to the initial meeting between an attorney and inmate, prison officials, for some articulable and justifiable reason, believe that the visit by said attorney was not requested by the inmate, his/her family, or a person acting for and on behalf of the inmate, prison officials may require a showing that the visit was so requested. Any of the following will be deemed sufficient to make a showing:

1. A written confirmation by the inmate of the request.
2. Production of the part of a written document of the inmate making the request for the visit.
3. Any other credible information which would establish that the attorney has responded to a request for visit by the inmate, his or her family, a person acting for the inmate and on his behalf.'

c. Paragraph 5(e) of defendants' regulations shall be amended by deleting the phrase, 'so far as possible'.

d. Section 5 of the defendants' regulations on legal services shall be amended by adding a new section, 5(f) which shall read as follows: 'Any inmate has the right to consult with an attorney of his or her own choosing under reasonable regulations providing for the security of the institution and the safety of the inmate population and staff.'

e. Whenever the term 'attorney' is used in the defendants' legal services regulations or the provisions herein, the term shall be read as including the attorney's authorized representative(s).

f. The defendants' legal services regulation shall be amended to add the following paragraph: 'It shall be the decision of the inmate whether or not to conduct an attorney/client interview. Where an attorney and/or the attorney's authorized representative or agent requests to see an inmate and an inmate refuses the attorney/client interview, that fact will be communicated to the attorney and/or authorized representative or agent in writing, signed by the inmate, immediately upon the refusal, upon a form provided by prison officials which shall include an indication that the inmate was aware that an attorney/client interview had been requested, that he understood, by name, the person requesting the attorney/client interview with the inmate, and a statement that the inmate refused the visit.'"

DISCUSSION

The defendants policy, rules and regulations on legal services was amended verbatim as required by this Agreement, and is totally incorporated in A.R.#720. The writer has found nothing to indicate that the regulations are not being carried out.

FINDINGS OF FACT

The defendants are in compliance with this Agreement.

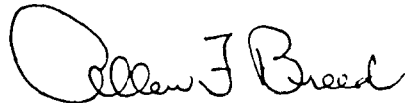
The remaining sections of the Consent Decree have to do with interpretation, implementation, objections, and procedures for application of relief. The time frames of the Craig vs. Hocker Decree are no longer relevant, and the Agreements in their totality have been incorporated into the Shapley vs. O'Callaghan decision. In future reports this section of the Decree will not be reviewed.

CONCLUSION

The defendants are to be commended for the progress towards compliance made during the last four (4) months. Warden George Sumner has provided outstanding leadership and commitment to the implementation of the Agreement. He has received total support and encouragement from Departmental Director Vernon Housewright. The future success of compliance is to a great extent dependent upon the Legislature's response to budgetary requests. Without the necessary fiscal resources, the Department of Prisons will be unable to comply with the Agreements made by the defendants and the plaintiffs, and ordered by the Federal Court.

Special mention should be made of the outstanding work of Lt. Miles Long and Ms. Mary Stewart, who together have coordinated the prison's compliance efforts, and whose enthusiasm to accomplish the many difficult tasks has been contagious to all.

Respectfully submitted,

A handwritten signature in cursive script, reading "Allen F. Breed". The signature is written in dark ink and is positioned above the printed name and title.

Allen F. Breed
Court Auditor

October 25, 1984