

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BILLY SHAPLEY, et al.,

PLAINTIFFS

VS.

MICHAEL O'CALLAGHAN, et al.,

DEFENDANTS

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

AUDITOR'S THIRD PROGRESS REPORT

ON COMPLIANCE WITH

STIPULATED AGREEMENT

Shapley v. O'Callaghan



PC-NV-005-006

INTRODUCTION

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, and the Second Progress Report was submitted on October 25, 1984. This should be considered as the Third Progress Report, with two additional reports to be submitted - one in August and the final report in December, 1985.

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

The reader is again 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 of the report will include the verbatim agreements, a discussion section which will include recommendations where deemed appropriate, and a finding of fact relative to compliance with the Agreement.

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

Although no appropriation has been made which addresses this Agreement, the Legislature is now considering a recommended capital improvements program submitted by the Nevada State Public Works Board in the amount of \$1,291,500 to renovate Cell Blocks A and B at the Nevada State Prison. This project will allow for the replacement of antiquated plumbing; electrical fixtures and lines; new cell fronts and doors; new security windows and screens; new shower facilities; enlarged water storage capacity and numerous miscellaneous improvements to provide 47 cells meeting the standards of the American Correctional Association. It would appear that this project will receive favorable Legislative consideration, and remodeling and renovations could begin before the end of the calendar year. Until such time as the necessary reconstruction has been completed the population of A and B Blocks must be limited to 103 inmates. Review of population records since the Second Progress Report would indicate that the defendants are no longer exceeding the population limits during periods of overcrowding.

As has been set forth in earlier reports the defendants have eliminated the use of padlocks on individual cells and the locking devices and systems have been adequately repaired.

Finally, the defendants are required to operate A and B Blocks consistent with life/safety and public health codes. The prison has written policies and procedures which clearly address fire, life safety and public health issues. Regular inspections are held by institution personnel, the Health Division of the Department of Human Resources and the State Fire Marshal's office.

On January 11, 1985, James E. Pierce, R.S. Public Health Sanitarian III, performed a health inspection of the Nevada State Prison. His report dated January 14, 1985, indicated that A and B Cell Blocks met minimum health requirements, with the exception of the continued need to repair plumbing leaks, replace tiles and repaint the showers on all three floors.

The writer's inspection of A and B Blocks made on February 7 and 11, 1985, would indicate the following:

1. Housekeeping standards have improved, particularly on first and second floors. Inmate possessions still seriously overload the cells from a fire hazard standpoint.
2. Every other radiator has been disconnected, which causes a serious heat loss during cold weather.
3. Windows need to be repaired again so that they can be closed during inclement weather. Screens need to be installed on all windows.
4. All windows on vacant fourth floor should be closed and secured, and radiators disconnected.
5. Showers on all floors need to be more thoroughly cleaned as well as adequately repaired.
6. Evacuation routes have been clearly painted and inmates informed as to procedures. Regular fire inspections and drills have been held.
7. A number of electrical boxes with exposed wiring were observed.
8. Craft materials have generally been eliminated from the cells and an excellent hobby craft shop has been developed for the use of inmates in A and B Blocks.

The defendants have made progress during the reporting period, but many of the fire and life/safety issues must be addressed through capital expenditures and an adequate preventive maintenance program.

Compliance could be expedited if institution personnel would utilize an inspection form that would incorporate deficiencies identified by the Fire Marshal, Sanitarian and the Court Auditor.

FINDINGS OF FACT

The defendants have repaired or replaced all locking devices and systems and have not allowed the population in A and B Blocks to exceed 103 inmates. Although much improvement has been made

in sanitation, fire and life safety factors, these living units are not yet in compliance with required codes.

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.
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 not 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 Attorney General's office for transmittal to the Court, but no action has been taken by that office to have the population limits changed

The defendants have increased their capacity by double-

celling some units and have indicated plans that would require additional double occupancy of some cells. Since the Agreement specifically sets limits on various capacity levels, it will be necessary for the defendants to share their plans with the plaintiffs and have such new agreements as may be reached legitimized by the Court.

A careful review was made of actual time out of cells for those inmates who are double-bunked. Currently three wings in Unit I and two wings in Units II, III and IV are double-bunked. There continues to be wide variations between Units I, II, III and IV as to their operating procedures as well as schedules from day to day. However, even if one includes all of the potential "tier time", the time out of cells seldom exceeds 8 hours per day. The reader will recall that the Agreement calls for a minimum of 12 hours per day out of the cell, absent exigent circumstances.

Much could be done to address this requirement that doesn't involve additional expenditures. Count periods could be dramatically reduced; greater use could be made of outside exercise areas; increased use of tier time; expansion of gym schedule through the use of correctional officer coverage and expansion of programs through the use of volunteers. Obviously, the prison crucially needs additional program resources. The Auditor is particularly pleased to record that the Governor's budget calls for a fulltime educational coordinator and a full-time recreation specialist. If these positions are approved by the Legislature, there can be an outstanding level of improvement made in the educational and recreational opportunities for inmates. However, in the meantime, through scheduling changes, the Agreement could be minimally met.

FINDINGS OF FACT

The defendants are in compliance with capacity limitations established by the Agreement. There continues to be a need for parties to agree on additional capacity that has come about due to remodeling or new construction. These new capacity figures

should be shared with the Court in order that an ammendment can be made to the Agreement. Any additional increase in the capacity of the prison should await Court approval.

The defendants are not in compliance with the requirement that inmates who are double-bunked shall not "be confined in 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 ititially. 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 Annoymous and substance abuse groups."

DISCUSSION

Progress towards providing greater opportunities for inmates to participate in work, educational, vocational, recreational and physical education programs has been set forth in earlier reports. The defendants have made notable efforts to develop and improve programs with limited, and often no additional, resources. In spite of these efforts, the majority of the inmates assigned the Nevada State Prison have limited educational and meaningful work programs available to them.

Specifically, the defendants were required to accomplish the following:

(a) Units I and IV were to have individual recreation yards. These have been completed. Unit IV is no longer a protective custody living unit, and therefore uses the large recreation yard provided for the general population.

(b) General population was to be given greater gymnasium usage. Although a revised gymnasium schedule was developed, it does not provide for increased usage by the general population, although it does make a fairer allocation to the individual living units.

(c) The prison was to provide an ABE, GED or high school diploma program to serve 80-120 inmates initially. Such a program was instituted with the financial support of the Carson City School District and currently has between 90 and 100 inmates enrolled. An experimental closed circuit educational T.V. program was started for inmates confined in administrative segregation units. This program operates approximately three hours per day, four to five days per week, and currently has 27 inmates enrolled.

The Correctional Education Association made an on-site review of the education programs at the Nevada State Prison during August, 1984, and made a number of recommendations for possible action in the future.

(d) The prison was to institute additional vocational programs and request the Federal Bureau of Prisons to conduct an industrial evaluation for possible implementation. Although staff from the Bureau of Prisons visited the N.S.P. and reviewed the vocational programs, no written report or recommendations were received. No new vocational programs have been instituted since the Agreement was signed.

(d) Lastly, the defendants were to establish Alcoholics Anonymous and substance abuse groups. No groups relating to alcohol or substance abuse have been established. The prison psychologist continues to operate a general drug abuse discussion group.

One must recognize that the defendants have not received any additional resources for program purposes since the Agreement was

approved by the Court. The Legislature is now reviewing the Department of Prison's request for an Educational Coordinator and a Recreational Specialist. If these positions are approved, it should greatly assist the defendants in their compliance with this section of the Agreement.

FINDINGS OF FACT

Appropriate classification procedures are in operation, but insufficient resources prevent the defendants from being in compliance with the requirement to assign each inmate to a job and/or the opportunity to participate in an educational, vocational, recreational or physical education program.

The defendants are in compliance with the requirements that protective custody units be provided separate recreation yards and that the prison provide a GED/high school diploma program serving initially between 80-120 inmates.

The defendants are not in compliance with the requirements that the general population have greater gymnasium usage; that additional vocational programs be instituted; and that Alcoholics Anonymous and substance abuse programs be instituted.

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 Classification 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

As was reported in the October 25, 1984, report (Second

Progress Report) the "NIC Model Classification System" has been instituted and is in operation. A file review was made and the necessary documentation is being made and the system appears to be operationally sound. Staff badly need training in the theory and mechanism of the program, and there appears to be little understanding of the point system used in determining security classification scores. There also appears to be an excessive use of the "override" which allows for an administrative change in the classification when the scores received do not reflect the seriousness of the offense or the dangerousness of the offender. The Department should make a study of the number of "overrides" and reasons set forth to determine whether the basic classification system is being subverted.

The risk assessment evaluation was performed by Rans/Fowler and as the Auditor commented in his last report, it is not recommended that a risk assessment be carried out at this time.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

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

It had been hoped by the defendants that their operations and procedures manual would be completed by January 1, 1985.

Unfortunately, staff shortages coupled with a slow review process by the Attorney General's office has lengthened the revision schedule. Manual sections completed meet cross referencing standards and have been done in a highly professional manner. The auditor continues to be concerned that sections of the manual have been marked as confidential and therefore not available to inmates. In reviewing the various sections the Auditor could find no policy or procedure that had security elements which would prohibit their review by inmates.

The Department continues to utilize the "Strategic Management Model with Tactical Response System" and a memorandum to that effect went out to all managers over the signature of the Director.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

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 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

Utilizing the format of previous progress reports, the Auditor will discuss both general and specific requirements of this section under the sub-headings of food, clothing, shelter, sanitation and fire and personal safety.

Food

Menus were reviewed, meals observed and an inspection was made of all food storage, preparation and serving areas. Food is well prepared, dietically adequate and generally served in conditions that are sanitary. As has been reported earlier by the Auditor and the Public Health Sanitarian, the ovens, grills, freezer, refrigerators, warmers, pressure cookers, preparation tables and garbage disposal systems are antiquated, and unable to be properly maintained and should be replaced. The reporter understands that the majority of these items have been included in the Governor's Budget which is currently being reviewed by the Legislature. Besides the replacement of old equipment, the interior of the kitchen needs to be completely refinished, wind screens need to be installed on all doors, and the garbage disposal area needs to be properly drained and refinished with a hard smooth surface.

the Health Division of the Department of Human Resources inspected the culinary section on January 11, 1985, and reported additional deficiencies as follows:

1. Broken light shield behind the hood
2. Block walls inside the dish area needed cleaning
3. Ceiling over the front cooking area needed repair and cleaning

4. Paper cups should be kept 6" off of the floor in store-rooms
5. Back dock needed a drain for washwater and vacuum breakers on the hose bibs

Medical diets continue to be a problem. Unfortunately, there has been an absence of a fulltime physician for several months and the normal prescribing of a medical diet has fallen by the wayside. It is imperative that with a doctor now on staff that a regular procedure be instituted and followed for medical diets. The State Dietician should provide very clear instructions as to what will and will not be included in all diets prescribed by the medical staff. This decision cannot be left to the individual discretion of the cook on duty. A regular procedure should be established which will guarantee that nursing staff make regular spot checks to assure that a prescribed diet is actually being served to a given inmate. Additional food items must be stored in the kitchen in order that the cook on duty can adjust his menu to the needs of special diet requirements.

Food continues to be transported to the locked units in serving trays that do not keep the food items sufficiently warm. Inmates and staff serving the food to occupants of locked cells are not regularly washing their hands, using plastic gloves or wearing a serving hat.

Food trays served to inmates locked in the protective custody unit are pushed under the door as serving openings have not been cut and framed into the doors. This is a totally unsanitary procedure and should be immediately discontinued. It is difficult to understand why protective custody inmates are not being served their meals in the prison dining room since they educate, recreate and exercise together. The total gun coverage between the living unit and the dining room, and within the dining area itself, should provide sufficient protection and security. The Auditor must again comment on the absence of clean uniforms for culinary workers. The lack of any type of uniform is particularly unsanitary since the overall shortage of institution

clothing prohibits regular clothing changes. Inmates come directly from exercise to the kitchen without any change of garments. Often the inmate working in the culinary section will have worn the same clothes for three or more days.

The time between the dinner hour and breakfast exceeds the maximum time permitted by all institution standards. Although inmates in the locked units are getting an evening snack those in general population are provided nothing. Either the time between meals should be shortened to meet standards or an evening snack should be provided all inmates.

The dishwasher is inadequate in size to handle the current population workload. Trays are not coming out clean even though the water temperature is being kept up. It will be necessary to drain the machine and refill several times during the washing period to obtain clean products. This will lengthen the washing period rather dramatically, but the only alternative is to purchase a dishwasher capable of handling the increased workload.

Clothing

There continues to be a serious shortage of clothing both as to quantity and sizing. Inmates are allowed to send clothing to the laundry for washing once a week. Since they are provided only three sets of clothing it is not possible to change to clean clothes three times a week as required by the Agreement. The laundry equipment is totally inadequate to handle the workload of the institution and additional wash cycles would not be possible with present equipment. It is understood that new laundry equipment has been placed in the Governor's budget which is currently being reviewed by the Legislature.

The Auditor toured the laundry and clothing storage room during February and found the supplies to be so deficient that replacements of damaged or worn out clothing could not be made. The only new shirts in stock were in sizes 18½ to 22½. There

were no pants in sizes 30", 32" or 34" waist. There were less than twenty pair of used shoes and there were no new shoestrings for issue.

Although the prison has instituted an excellent mattress replacement policy, it was found that used mattresses (even cotton covered ones) are being reissued without being sanitized in violation of the policy.

Currently only one blanket is being issued, which is insufficient bed covering for a cold weather climate. This is particularly true as the blankets issued are often threadbare and have little warmth value. Pillows are not regularly issued and there is currently no provision for sanitizing after use.

Shelter

All new and remodeled sections of the prison meet necessary standards. There continues to be serious deficiencies in A and B Blocks from the standpoint of electrical, plumbing, heating, ventilation and fire safety. These deficiencies have been recognized by the defendants and necessary funds have been placed in the Governor's budget for repair and remodeling. This capital outlay expenditure is currently under review by the Legislature.

Sanitation

Inspections are being made on a regular basis although there appears to be some lack of coordination as to who is basically responsible for inspections and follow-up requirements. The institution was inspected by the Public Health Sanitarian on January 11, 1985, and no serious deficiencies were noted. Shower areas continue to need better cleaning and most of them require some patching and general painting. Torn shower curtains should be replaced. The institution needs to be regularly painted and this would appear to be work that could be performed by inmates rather than maintenance personnel.

Fire and Personal Safety

The State Fire Marshal's office made an inspection of the prison on Tuesday, February 26, 1985. Specific details of the findings of this inspection were set forth in an earlier part of the report (page 4) and will not be repeated here. The Fire Marshal's office is pleased with the progress being made by the defendants and feels that the Safety Committee has been particularly responsive to recommendations made regarding fire safety.

Although the Agreement calls for semiannual inspections by the State Fire Marshal, they have actually occurred quarterly, or oftener if a specific complaint has been filed.

The Auditor agrees with the Fire Marshal, and on the basis of a total institution inspection, there were few fire or life safety hazards that were identified and that were not being addressed.

The defendants should continue to reduce the fire load that exists in cells located in A and B Blocks. Not only is every available square foot of cell space filled with wooden furniture, paper and other easily ignitable materials, but many of the cell fronts are covered with cloth or other non-fire retardant materials. Compounding these conditions, many inmates have overloaded household type extension cords with various electrical appliances. It is recognized that fire proof locker boxes are on order and should soon be available, and that this would be a logical time to reduce the fire load in cells. However, it is recommended that the safety committee work with the inmates in a program of voluntarily reducing the materials in each cell and conforming to an electrical code established by the prison.

An actual, not simulated, fire drill should be held late some night to determine whether the inmates in A and B Blocks can be awakened and removed from the building in a relatively short period of time. Because of the potential fire hazards and problems in evacuation from this building, an actual fire evacuation drill should be held routinely.

As has been mentioned in earlier reports, the Auditor continues to be concerned about the inadequate numbers of custody staff on general population living units. All units should have a minimum of two posts of correctional officers during waking hours and anything less than this fails to address necessary security and safety standards.

The construction and now use of a gun cage in the prison dining room has created concern and anxiety both for staff and inmates. Although the placement of this gun cage was to increase security and safety, the perceived danger of firing a weapon in a small, closed space may create more problems than the value received. The officer stationed in the cage is armed with a riot shotgun which, if used, would endanger the lives of all who were present in the dining room. The building is of stone or concrete construction and the shotgun pellets would ricochet around the room regardless of the direction in which it was fired. Serious consideration should be given to arming the correctional officer with a stun gun and tear gas rather than a shotgun.

FINDINGS OF FACT

The defendants are currently not in compliance with feeding standards, clothing requirements, personal safety, and some aspects of fire safety, shelter and sanitation.

The defendants are in compliance with the requirements to promulgate and maintain a fire plan in conformity with State and local fire codes; have such a fire plan monitored by the Nevada State Fire Marshal; and have quarterly inspections of the entire institution in accordance with State and local public health codes and regulations, by the state Public Health Authorities.

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

Since the last progress report there has been no medical doctor available to the prison except on an emergency basis. This has meant that many inmate requests for medical services have not been addressed. The medical staff, under the leadership of Ms. Teri Ignacio, R.N., have done an excellent job of meeting medical emergencies through the use of consultant services and civilian emergency medical care in Carson City. Effective February 11, 1985, a full-time qualified physician is now on duty and it is hoped that medical backlogs can be quickly addressed.

As has been reported previously, there is only sixteen hour nursing coverage, although call-back services are available in an emergency. For all practical purposes, however, nursing services during the night hours are provided by inmate helpers. Such a procedure is in conflict with American Medical Association and American Correctional Association standards.

The physical condition of the infirmary and small clinic are totally inadequate for health care services. The conditions are noisy; difficult to keep clean; there is constant correctional officer foot traffic through the treatment areas; walls, ceilings and floors are of a surface and condition that makes it impossible to keep them sanitary; equipment for food storage and diet preparation is antiquated, poorly maintained and often inoperable. The infirmary should be completely remodeled, or better, moved to a different location. Even though there are certain security benefits from having the infirmary located adjacent to the prison's control center, the disadvantages far

outweigh any value. There are not a lot of options available, but immediate remedial attention must be given to the current sub-standard conditions.

If the infirmary is continued in its present location, the following minimum repairs and remodeling should be carried out:

1. Tile installed on all floors.
2. Wall and door constructed between 7 post and infirmary.
3. Storage area enclosed with solid walls.
4. Stove, regrigerator and blender replaced; micro-wave oven installed.
5. Repaint entire unit.
6. Replace antiquated and sub-standard plumbing.
7. Adequately screen all windows.
8. Spot accoustical tile on some walls and ceiling to reduce noise.

Immediate attention should be given to the continued use of inmates, which allows them to examine patients, take X-rays, change dressings, perform some treatment services and have access to medical records. Not only are such acitvities in direct conflict with appropriate standards, but also allows for possible extortion, medical malpractice and places the prison in a totally indefensible position as to liability.

the Auditor reviewed the medical and health care services, using the ACA Medical Standards, and found the defendants not to be in compliance with the following:

- | | |
|-----------------|---|
| Standard 2-4276 | Require nursing services on a full-time basis, and all inmate/patients within sight or sound of a staff person. |
| Standard 2-4278 | Firs aid kits are available in designated areas of the facility based on need. |
| Standard 2-4288 | Inmates are not to be used for the following duties: performing direct |

- patient care services; handling or having access to health records; and, operating equipment for which they are not trained.
- Standard 2-4302 Require that persons over 50 years of age shall be given an annual examination. All other inmates should receive thorough physical examinations at least biennially.
- Standard 2-4303 A program of health education is provided to inmates.
- Standard 2-4305 Written policy and procedures make available chronic and convalescent care to inmates.
- Standard 2-4306 Written policy and procedures require the gradual detoxification from alcohol, opiates, stimulants, hypnotics, which will be under medical supervision.
- Standard 2-4307 Written policy and procedures guide the clinical management of chemically dependent inmates.
- Standard 2-4308 Written policy and procedure require that medical and dental prostheses and orthodontic devices are provided when the health of the inmate would otherwise be adversely affected.
- Standard 2-4309 Written policy and procedure govern the use of elective surgery.
- Standard 2-4319 Written policy and procedure uphold the principle of confidentiality of the health records.

The American Correctional Association has fifty-two standards for medical and health care service. The N.S.P. is in compliance with all but thirteen standards, and even some of these they are adhering to, but have not yet developed the necessary written policy and/or procedures.

Psychiatric care is reported on fully in progress reports submitted to the Court in re Taylor vs. Wolff.

FINDINGS OF FACT

Nursing staff are to be commended for the level of service they are providing under very adverse conditions. Even with their good faith effort, the defendants are not in compliance with this section of the Agreement.

The remaining agreements were incorporated into the Shapley decision from the consent decree entitled CRAIG VS. HOCKER, CU-R-2662-8R

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

One must review this section with a full understanding of the workload of the institution psychologist. Besides being the only mental health professional for the Nevada State Prison, he is also the only mental health professional for the Women's Prison. He has been assigned by the Director as Coordinator of all mental health services for the Department of Prisons, and is also the compliance coordinator for the department in the mental health consent decree entitled Taylor vs. Wolff. Any one of these duties would be more than a fulltime assignment. This particular section of the Shapley consent decree requires that the 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". The key elements of this requirement are the terms a meaningful evaluation and serious mental health needs. The psychologist does promptly evaluate all inmates who are placed in the administrative segregation unit as to their mental health needs. He, or his inmate clerk, administer and score a C.A.Q. (Clinical Analysis Questionnaire). The psychologist personally interprets all of the questionnaire, but is able to interview not more than 30 to 35% of the inmates. On the basis of a case file review, results of the questionnaire, an interview with some of the inmates and an observation of all inmates during the classification hearings, the psychologist makes an evaluation of the mental health needs.

The psychologist has been able to evaluate all inmates placed in administrative segregation. Considering his workload, this would not be possible except by a professional commitment that exceeds all normal expectations. The psychologist would be the first to admit, however, that the evaluations are based primarily on a single written instrument, that some inmates may not perform accurately due to reading deficiencies and that the inability to interview in depth two-thirds of the inmates causes some concern about the "meaningfulness" of the evaluation. The psychologist strongly believes that his evaluations are bringing to the surface those inmates who have serious mental health needs.

Of perhaps greater concern is an acceptable definition of "serious mental health needs". All too often mental health needs are determined by the availability of services! If few services are available then mental health symptoms begin to look like behavioral disorders and are handled accordingly. There are few mental health services available to the N.S.P., and these facilities tend to make their resources most difficult to utilize. The State of Nevada does operate a small treatment facility for the criminally insane named Lake Crossing. This high security, richly staffed facility takes few of the Department of Prison's mentally ill inmates, and when they do, it appears that through

the administering of psychotropic medication the inmates are soon diagnosed as "in remission", and returned to the prison where their symptoms of mental illness quickly resume.

The only other services available to the inmate who is mentally ill is a twenty bed Special Treatment Unit operated within the confines of the N.N.C.C. This unit has only a part-time psychiatrist, a part-time psychologist and utilizes inmate ward technicians for program services and control. The program provides little in the way of mental health services and is currently under court order for substandard conditions in the case of Taylor vs. Wolff. When an inmate becomes disruptive in the special Treatment Unit he is transferred to the Nevada State Prison for security and control reasons and placed in administrative segregation! The cycle of psychotic symptoms which, because of inadequate services become defined as behavior symptoms, causes one to be concerned about the degree to which inmates in the Nevada State Prison are receiving all needed mental health care.

FINDINGS OF FACT

The psychologist is evaluating each inmate confined in administrative segregation to determine if their mental health needs are being met, and to this degree, the defendants are in compliance with this section. It is the Auditor's opinion, however, that some inmates are not confined in appropriate housing where they have the opportunity to receive all needed mental health care.

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

Previous progress reports spelled out in detail that inmates assigned to administrative segregation were confined in cells that meet square footage requirements.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 other activities. Lighting in the cells shall be both occupant and centrally controlled. Natural lighting shall also be available from a source within twenty (20) feet of each room or cell in the unit."

DISCUSSION

Lighting in all cells is both occupant and centrally controlled. The light levels are within the thirty foot candle range and natural lighting is available within twenty feet of each cell.

There is no task oriented lighting and this requirement was to be negotiated between parties as to the need. The situation

had still not been resolved when the Auditor discussed the matter with parties in mid February.

FINDINGS OF FACT

The defendants are in compliance with the light levels and controls in administrative segregation units, but are not in compliance with the requirement to have 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 thereto. 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

Since the last report the Auditor has not been provided as requested with temperature readings for the living units that would indicate that temperatures are appropriate in the summer (66-80 degrees) and winter (61-75 degrees). The writer again requests confirmation as to the circulation of at least 10 cubic feet of outside or recirculated filtered air per minute per occupant.

The lack of clothes hooks, lockers or storage continues in all cells. Lack of desk and stool in all units except VII continues to exist. This equipment has been submitted in the Governor's budget to the Legislature and is currently under review.

The defendants should evaluate their remodeling program to assure that hot water is brought to the cells in C. block.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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

The issuance schedule required by this section is being met with the exception that only one (1) blanket is issued. The blankets have been washed so many times that some are thread-bare and provide little warmth. Linens are not always exchanged on a weekly basis because of laundry equipment breakdowns and insufficient supplies. The mattress policy as discussed in earlier reports is an excellent one, but is not always being followed. Mattresses, including cotton covered ones, are being reissued without being disinfected. Pillows are not being cleaned or disinfected.

FINDINGS OF FACT

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

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 minimally adequate in appearance with the exception of Unit VII. In that unit an orange 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 and the inability of inmates to have access to irons. As has been mentioned earlier, the clothing inventory is so low that it is seldom possible to outfit an 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 properly fitted shoes. There are also insufficient supplies of clothes to be able to meet the Agreement requirement of three (3) exchanges per week.

Consideration should be given to allow inmates to use an electric iron in their cell or while on tier assignment, in order that they can improve the appearance of their clothes. This need is of particular importance when inmates have visits, appear before the parole board or go for outside medical consultation.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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, which is in the Governor's budget and is currently being reviewed by the Legislature. There is also a need for a massive 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 section of the 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.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

A written housekeeping plan has been developed, inspections are held, and a procedure has been developed for the procurement of housekeeping equipment and supplies. There continues to be a lack of coordination in the inspection and accountability process which needs to be carefully reviewed by administration.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 has been designated as the qualified person to oversee health and sanitation conditions.

This responsibility has been delegated to the nurse on duty, who makes a weekly inspection. Although this procedure went into effect during the month of September, 1984, I could find no reports to indicate the progress being made. It is the understanding of the Auditor that the inspections are being made.

FINDINGS OF FACT

A good faith effort has been made to establish accountability and establish an inspection process. Until the inspection reports can be reviewed, it is not possible to find the defendants in compliance with this section of the Agreement.

AGREEMENT

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

DISCUSSION

As was set forth in previous reports, there appears to be agreement with this requirement, although 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. Action should be immediately taken to clarify who has responsibility for this cleaning activity.

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. Once again, there appears to be a breakdown in the documentation process. Few of the units had any record of these daily inspections, although there were log indications that such inspections were being carried out. The Warden's memo should be re-issued and an administrative follow-up instituted to assure compliance.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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 were developed, and necessary materials ordered and are now on hand. No schedule for construction has yet been established. The new living units and the remodeled "C" Block, which are used for administrative segregation do not have any structural defects which allow rodents to enter. A vermin and pest control program is in operation and appears to be effective.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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 a review of the document that the manual clearly meets the requirements of this Agreement.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 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.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

As was set forth in the last progress report, a safety committee has been appointed by the Warden, and is conducting

inspections of the administrative segregation units on a regular basis, utilizing as their standards the institution fire plan, the Life Safety Code, and the State Fire Marshal's Regulations.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

The State Fire Marshal is inspecting the prison at least twice a year and oftener when "complaint inspections" are required. The last inspection was performed on February 26, 1985. Using as standards the Life Safety Code, the Uniform Fire Code, and the Regulations of the State Fire Marshal.

As was reported in detail on page 4 of this report, the State Fire Marshal's office is pleased with the progress that the defendants have made in correcting situations that do not comply with fire safety standards or the Life Safety Code. There are a number of relatively minor corrections which must still be made and the completion of an adequate ventilation system in the old cell block areas is also required.

FINDINGS OF FACT

Good progress is being made, but the defendants are not yet in compliance with this section of the 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

Regular fire drills are being conducted at least once every six months. A written handbook was developed for inmates explaining fire safety and evacuation procedures. Evacuation routes have been painted on the walls near the floor level as approved by the State Fire Marshal.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 Underwriter's Electrical Code."

DISCUSSION

At the most recent inspection (February, 1985) the units used for the assignment of administrative segregation cases had no exposed electrical wiring or water leakage problems. Previous problems with water leakage in the pipe chases of "C" Block appear to have been adequately addressed.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

AGREEMENT

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

DISCUSSION

The State Fire Marshal has officially reported 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's 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. Although the institution has a waiver from the Fire Marshal to utilize such containers, they should carefully think through the security issues involved.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

AGREEMENT

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

DISCUSSION

There are no cross-connections between potable and non-

potable water systems in any of the administrative segregation units. All plumbing chaseways have been personally checked and necessary vacuum breakers were on appropriate lines.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

There continues to be a great deal of confusion as to terminology, standards and actual operating procedure in regard to the use of administrative segregation. The American Correctional Association recognizes only three forms of segregation. The term "segregation" is defined as "the confinement of an inmate in an individual cell that is separate from the general population". The three forms of segregation are:

Administrative Segregation

"A form of separation from the general population when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution. Inmates pending investigation for trial on a criminal act or pending transfer can also be included."

Disciplinary Detention

"A form of separation from the general population in which

inmates committing serious violations of conduct regulations are confined by the disciplinary committee for short periods of time to individual cells removed from the general population. Placement in detention may only occur after an impartial hearing has established that there was a serious violation of conduct regulations and that there is no adequate alternative disposition to regulate the inmate's behavior."

Protective Custody

"A form of separation from the general population for inmates requesting or requiring protection from other inmates."

To this list, the Nevada Department of Prisons has added a fourth category entitled Disciplinary Segregation. Director Vernon Housewright, in a memorandum to all staff, dated August 20, 1984, defined this category as follows: "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)".

Recently the prison staff has made a valiant effort to separate out these various segregation categories and place them together in separate living units or separate wings of living units. Until this process has been completed it will be difficult to determine the specific procedures under which administrative segregation units operate.

The defendants are to be commended for establishing the due process procedures under which decisions regarding administrative segregation are made. They have also made a good faith effort to establish program objectives for those inmates assigned to administrative segregation. One could be understandably concerned about the general nature of the program objectives, and the extensive length of time before consideration of return to general population will be made, but a system of objectives with time lines has been established.

There is still serious concern that some of the inmates in administrative segregation are there for punishment reasons. Even if a serious offense has been committed the decision to place in administrative segregation for several years must be seen as punishment since none of the review and recording processes in the classification minutes indicates how the inmate continues to be a "serious threat to life, property, self, staff or other inmates or to the security or orderly running of the institution". If an inmate assaults another person, one could justify a punishment sanction by placing him in Disciplinary Segregation for 180 days. At the end of that time, however, the inmate should not be moved to administrative segregation unless information of a reliable nature clearly indicates that he continues to be a danger, etc.

The reasons for placement in administrative segregation are still often nebulous and dependant upon confidential information which is not in the inmate's file. Every attempt should be made to establish concrete specificity as to reasons for placement in administrative segregation. When confidential material is used a notation to that effect should always be in the file and appropriate notations made that the Director/Warden is regularly reviewing this information as to its current applicability.

FINDINGS OF FACT

The defendants are making good efforts to separate out their various segregation categories. Until this process is completed it will not be possible to determine whether administrative segregation is used as punishment. At this time the defendants are not in compliance with this section of the Agreement.

AGREEMENT

"2. The defendants hereby adopt Standard 4201 from the Manual "Standards for Adult Correctional Institutions", 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".

As was set forth in earlier progress reports, the defendants have developed the necessary policies and procedures to be in compliance with ACA Standard 4201 (1977 Edition).

Once again, the defendants are to be commended for instituting a procedure which requires the setting of objectives for all inmates with the goal of terminating the segregated 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 the safety of others. As was mentioned earlier in this report, the objectives set for inmates appear to be too general and the length of time before consideration of release appears to be excessive, but a responsible review process has been instituted. It still does not appear that the defendants are exhausting all alternatives other than segregated housing as is required in ACA Standard #4201. Case file reviews indicated that continued placement in administrative segregation was often for acts that had been committed years before and there were no notations that other alternatives had been explored or the reasons for their rejection.

Finally, the inmates in administrative segregation are not allowed to participate in all institution programs. In fact, except for a few porter jobs and a limited I.V. education program, there are no educational, physical education, religious, vocational, counseling or work programs for administrative segregation inmates.

FINDINGS OF FACT

The defendants have made much progress in this area, but are not in compliance with this section of the Agreement.

AGREEMENT

"3. Consistent with Section 4377 of the Manual of Standards for Adult Correctional Institution 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 conduct or behavior which could result in such a transfer."

DISCUSSION

As has been 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, the defendants have also revised their classification program to be in conformity with the NIC Model. The procedures for classification of an inmate to administrative segregation are set forth in D.O.P. Informational Bulletin #84-20. Audits made of the classification process and file reviews indicated that the policies and procedures of the Department are being followed.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

As has been previously reported, 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. The defendants have made a good faith 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 when there is no documented evidence that reasonable cause existed to believe that they were an immediate danger to themselves or to others or to the security of the institution.

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. Continued use of anonymous informants where there is no documentation in the file that the necessary review has been made by the Director.

4. The requirement that a file review be made by the Director of the use of anonymous informants has been delegated to the Warden, which does not appear to be in conformity with the Model Act.

The Warden is to be commended for taking a strong position of insistence that classification procedures be closely followed.

Associate Warden John Ignacio has been most loyal in his attendance at administrative segregation classification meetings , which has given strong management support to the program.

FINDINGS OF FACT

The defendants continue to make good progress in this area, but are not yet in total compliance with this section of the Agreement.

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 the classification committee and regularly sits on hearings which involve a transfer or review of status in the administrative segregation units.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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

Decisions are reached upon information which has been presented at the classification committee meeting, although much of it is of an anonymous nature with little or no documentation. Inmates are provided with a written summary of the committee's actions. Review of these forms indicates that little information is given to the inmates that would demonstrate the necessity for segregation. The defendants have diligently worked towards compliance with this section, but must continue to refine their documentation which supports their actions. General statements such as "inmate is a danger", "he is an active gang leader", "he is an extortionist", "he is an escape risk" are not justifications in themselves for segregation, unless documentation exists to support the statement, and the magnitude of the charge requires segregation as the only safe and responsible action.

FINDINGS OF FACT

The defendants are to be commended for the progress they have made with this section and encouraged to further refine and document the reasons for their classification decisions. The defendants are not in total compliance with this section of the 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. Case file reviews indicate that these hearings 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. At each review the classification committee has the responsibility to determine whether there is substantial evidence to indicate that the initial reasons for placement into administrative segregation still exist. It would appear, from observation and case file reviews, that once an inmate is placed in segregation he will remain there for a set period of time. Scheduled reviews appear to be a paperwork requirement that is faithfully carried out rather than a careful redetermination as to the need for continued segregation. This area of the classification process will be closely reviewed in the months ahead to determine whether the committees are making a reassessment of the situation or are just complying with procedural requirements.

FINDINGS OF FACT

Although the defendants are making a good faith effort, they are not in total compliance with this section of 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

A set of personal and program objectives are now being established for all inmates placed in administrative segregation who remain there for more than sixty days. The defendants have carefully reviewed each case and have established a gradual schedule for reintegration into the general population. Even as the Auditor commends the defendants for their efforts in this regard, he must caution the continued use of very general program objectives and extensive periods of time before reintegration into the general population is allowed. The statement, to maintain "a clean record for the next three years" would appear on the surface to be punishment, rather than a schedule of personal and program objectives. The intent of this section of the Agreement was that specific objectives would be established for each inmate which, when reached, would indicate and support a return to the general population. Additionally, a plan of programs and activities would be developed which would assist the inmate in working towards his objectives. Although a "clean record" can be one objective, it should not be the only one. Also, if one wants to avoid using administrative segregation as punishment, a very careful evaluation must be made as to how long a clean record should be required to support a change in behavior and/or attitude.

At the risk of also generalizing, the Auditor will set forth a hypothetical set of personal and program objectives for an inmate placed in administrative segregation for continued gang activity.

<u>Goals or Objectives</u>	<u>Time or Content Requirements</u>
Clean discipline record	6 months
Cooperative attitude with staff	6 months

<u>Goals or Objectives</u>	<u>Time or Content Requirements</u>
Participation in education program at grade level	3 units
Participation in work program (close supervision)	3 months
Participation in work program (general supervision)	3 months
Complete self-help counseling module on interpersonal relationships	1 module
Progress through six levels of an individual exercise program	6 levels

There is great difficulty in tailoring a program of objectives even for a hypothetical inmate, and it is fully recognized that with the limited resources available to the N.S.P. that such an activity takes great effort and creativity. It is imperative, however, that greater specificity be provided in terms of objectives for administrative segregation inmates in their re-integration process back to the general population.

FINDINGS OF FACT

The defendants are making a good faith effort, and with a greater degree of specificity in setting objectives they should soon be in compliance with this section of the 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 units 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.
5. When an inmate is moved to administrative segregation his property is often not immediately inventoried and placed in safe keeping. Personal property is often left in an unlocked cell following a transfer and other inmates take possession. Currently, inmates perceive serious problems in terms of property accountability.

FINDINGS OF FACT

The defendants' policies and procedures are in total compliance with this section. There continues to be, however, a practice of not closely adhering to these procedures, which causes the defendants to be not in compliance with this section of the Agreement.

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 principles enumerated in this section have been totally incorporated into Departmental and Prison policies. In practice, closed circuit T.V. was recently installed in all administrative segregation units and currently broadcasts a general GED program approximately three hours per day, four to five days a week. As of February there were 29 inmates participating in this program. There are no other educational programs. There are 15 inmates who have porter duties, which is the only work program. There are no vocational development opportunities, religious worship activities or physical education programs. Inmates are allowed to exercise in small fenced areas for approximately four to five hours every fourth day. Outside of some weights, there is no recreation equipment available. No provision is made for any other type of recreational activity (e.g. games, music, hobby crafts, etc.).

The defendants are to be commended for instituting the T.V. educational program. It can be broadened with limited fiscal augmentation and such efforts should be given the highest priority. Continued efforts must be made to broaden recreational and work opportunities if compliance is to be reached.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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

As was indicated in previous reports, 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, muddy ground in the winter and no shade during hot summer weather is contrary to good correctional and public health practices. If an inmate has to go the bathroom he has the choice of doing it in the exercise pen (odor would indicate this is the option normally chosen) or request a return to his cell (which then terminates his exercise activity for that four day period).

FINDINGS OF FACT

Although the current schedule ignores professional standards, the defendants are in compliance with this section of the 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 not yet provided tables, benches, toilets or drinking water for the various exercise areas. These items are in the governor's budget which is currently being reviewed by the Legislature. Recreational equipment has been ordered, but has not yet been distributed to the exercise areas.

All inmates' exercise areas meet the Agreement's size requirements except Unit VII. That unit has three (3) exercise pens 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 all exercise areas, and that a hard surface be installed to reduce the muddy conditions of winter.

FINDINGS OF FACT

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

AGREEMENT

"13. Sections 4223 through 4236 of the Manual of Standards for Adult Correctional Institutions, 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. The prison was in compliance with all standards but the following:

- | | |
|---------------|--|
| Standard 4227 | Therapeutic diets have not been adequately developed and food served to those on medical diets seldom meets prescriptive requirements. |
| Standard 4232 | Food served to inmates in locked units is not always served at appropriate temperatures. |
| Standard 4233 | All meals are eaten in cells with no stool and, in most cases, no table. Noon lunches served to inmates in exercise pens must be eaten sitting on the ground. |
| Standard 4234 | Administrative and medical personnel are not making weekly inspections. |
| Standard 4235 | State Health Inspector recommends replacement of all food service equipment. The majority of this equipment has been placed in the Governor's budget for replacement, and the Legislature is currently reviewing this request. |

The defendants continue to make progress towards compliance, but must yet address the following issues:

1. Replace current outmoded and damaged food service equipment.
2. Resurface all kitchen and serving area with materials that can be sanitarilly maintained.
3. Resurface and properly drain the kitchen garbage area.
4. Clothe food service workers in some type of clean uniforms.

5. Use electric hot carts for transportation of food to locked units.

6. Cut food serving opening in doors of protective custody cells if inmates are not fed in the prison dining hall.

7. Shorten period to acceptable standards between dinner and breakfast.

8. Drain water in the dishwasher after every 200 trays.

9. Install screen doors and wind curtains on all kitchen/dining room entrances.

10. Insist that all food servers (inmates and staff) use plastic gloves and wear hats or hair nets.

11. Comply with all remaining ACA feeding standards.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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

Inmates in administrative segregation are provided the following conditions:

1. Correspondence as provided to the general population.

- b. Showers and shaving five times per week.
- c. Hair grooming and barbering.
- d. A minimum of two (2) hours visitation per week.
- e. Access to legal counsel which is the same as for inmates in general population.

The Auditor continues to feel that administrative segregation inmates do not have access to other legal resources similar to the access accorded inmates in the general population. Granted there is an untrained "law clerk" assigned to each administrative segregation unit who visits the unit four times per week to assist inmates and make law books and legal supplies available to them upon request. General population inmates, however, have direct access to the law library and are therefore able to perform their own research. This is a decided difference and cannot be ignored. Administrative segregation inmates have no direct access to the law library, have no reference material in their locked units that could assist them in determining what information is available and are unable to obtain assistance in this respect from a person trained in the law. The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

The Honorable Bruce R. Thompson, U.S. District Judge, stated in his memorandum opinion in the case of Craig vs. Hocker:

"The law is that the state must provide a prisoner with reasonable access to adequate legal reference materials. The state's interest in curtailing expense is not an excuse." Craig, Supra; p. 668.

It is completely unrealistic to expect inmates confined in administrative segregation to know the names of the law books they will need for research on a legal problem so that they can request them from the "law clerk". Such a "paging" system has been found by the Fourth Circuit to constitute insufficient access unless the jail or prison also gives inmates assistance from legal professionals. Williams v. Leeke, 583 F2d 1336.

Since the inmates in administrative segregation do not have any personal access to the law library they are dependant upon the services of inmate "law clerks". Unfortunately, although the majority of the current "law clerks" wish to render adequate service to inmates in administrative segregation, they do not have the education, background or training to perform these tasks. At best they provide good messenger service, but all too often they recommend the wrong course of action, improperly prepare legal papers and bring irrelevant reference material to the inmates' cells.

To meet the conditions of this section of the Agreement the defendants must more adequately address the issue of access to legal resources. By way of suggestions some improvements might be made by:

1. Providing "mini law libraries" in each of the administrative segregation units. These libraries would include basic reference documents, the U.S. and Federal Shepards Citations, Prisoner Self-Help Litigation Manual, Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Descriptive Word Index, and appropriate State of Nevada reference material;
2. INmates should not be appointed as "law clerks" unless their education and general intelligence will allow them to learn the intricacies of para-legal assignments.
3. Law clerks should receive basic training in the para-legal matters before attempting to help other inmates. In-service training should also be provided all law clerks on a regular basis. An attorney should be available at least by phone to answer law clerk's technical questions.
4. Law clerks should be allowed to remain in the law library on an "out count" basis in order that they will have sufficient time to carry out their research.
5. Law clerks should not work on their own legal matters during the regular work week. The library should be open on weekends and evenings for the use of law clerks to do their own legal work.
6. At least one day a week the law library should be reserved for protective custody inmates.

7. Copy charges of 20 cents per page is prohibitively expensive and should be reduced to actual costs.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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. It is located in the academic school quarters, and only those students attending school have access to it. Library carts are now being constructed and should soon be available for the transportation of books to the locked units.

FINDINGS OF FACT

The defendants are not currently in compliance with this section of the 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 and no grievances have been submitted regarding retention of legal materials.

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

A counselor has been assigned to each of the administrative segregation units and prison policy calls for visits to the units five days per week. The logs maintained in the units do not reflect daily visits. In fact, most visits appear to correspond with meetings of the classification committee or disciplinary committee. Inmates feel they have great difficulty talking to their counselors except at meetings. Administration should closely review the work schedules to determine whether more time of the counselors could be spent on the living units to assure that they are "available to help each inmate who desires assistance or information".

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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

During the report period there was no physician on regular duty at the prison. Emergency care was provided by local physicians in Carson City, but it was not possible to have a sick call on the administrative segregation units. A full time physician has now been employed and it is expected that the conditions of this section of the Agreement can be complied with in the future.

FINDINGS OF FACT

The defendants have not been in compliance with this section of the 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

The issue of completing "a meaningful evaluation" was addressed earlier in this report and will not be repeated here. An evaluation of all inmates confined in administrative segregation is made by the institution psychologist within 30 days of the inmate's assignment to the unit. The Agreement further calls for an evaluation every ninety days thereafter. The psychologist does not have time to make a further evaluation which requires any

testing or interviews. He does observe all inmates at regular classification committee hearings and sets forth his clinical impressions based on the committee interview.. It is the writer's judgement that, considering resources available, the observation/ interview is sufficient to spot any serious mental or emotional problems which would require additional evaluation.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

AGREEMENT

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

DISCUSSION

Visitation by religious personnel is allowed and currently Father Dave, contract Chaplain from St. Teresa of Avila Church, has been encouraging the participation of more volunteers.

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 is no special selection or training of officers assigned to administrative segregation. All correctional officers recieved special training during the past six 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. As has been reported in earlier reports, special training should be given to staff who regularly work in administrative segregation units.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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 from 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.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 not for the purpose of punishment."

DISCUSSION

The principles set forth in this Agreement are incorporated in the Department's policy, A.R.#733, and the procedures there outlined are carried out in practice. Currently, only Unit I is operated as a Protective Custody unit.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

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 section of the 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

Case file review gave no indication that this Agreement was not being met. Few, if any, inmates are placed in protective custody on an involuntary basis.

FINDINGS OF FACT

The defendants are in compliance with this section of the Agreement.

AGREEMENT

"6. Generally, the policies and practices of protective custody build upon those in administrative segregation set forth in Paragraph I.8., 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, place, etc.
- 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

Protective custody cases are now all assigned to Unit I. They are able to attend school, have some work opportunities, utilize the gymnasium, have contact visits, participate in religious services, recreate in a large exercise area, and generally experience conditions of confinement similar to those of the general population. Exceptions to the similarity are that protective custody inmates do not have direct access to the law library and are forced to eat their meals in their cells. It would be hoped that at least one day a week could be reserved for law library use by protective custody inmates and that these inmates could be scheduled into the prison dining room for meals.

FINDINGS OF FACT

The defendants are not in compliance with this section of the 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 reasons(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 little 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. Some inmates had expressed concern that their legal mail had been opened. In checking these incidents, it would appear that the openings had occurred by accident and was not a regular procedure.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 continues to be 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 should 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.

The writer would continue to urge the defendants to strongly support and maintain their policies on access to the judicial process.

FINDINGS OF FACT

The defendants are in compliance with this section of the 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 were amended as required by this Agreement, and the changes were 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 section of the Agreement.

CONCLUSION

Warden George Sumner has continued to provide outstanding leadership and commitment to the implementation of this Agreement. He and his staff continue to receive the encouragement and support of Departmental Director Vernon Housewright.

Much of the remaining compliance requirements are dependent upon fiscal support from the Governor and the Legislature. If

this assistance is not forthcoming during the current legislative session, it will not be possible for the defendants to comply with some of the most critical issues addressed by this Agreement.

I would again commend the dedication and loyal support of the prison demonstrated by Ms. Mary Stewart and Lt. Miles Long, who have acted as compliance coordinators.

Respectfully submitted,


Allen F. Breed
Court Auditor

February 28, 1985