

PC-NV-005-008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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

STIPULATED SETTLEMENT AGREEMENT

INTRODUCTION

This is a class action lawsuit which concerns certain conditions of confinement at the Nevada State Prison, a maximum security institution which is part of the Department of Prisons, State of Nevada. The parties presented, and the Court approved, a Stipulated Settlement Agreement on August 19, 1983 (1) 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 three reports summarizing findings and evaluations during the sixteen month period of the Agreement. (2)

The First Progress Report was submitted to the Court and parties on May 11, 1984, followed by the Second Progress Report on October 25, 1984. On the basis of observations and findings made in the first two progress reports the Auditor concluded that the defendants would be unable to be in compliance with the Agreement at the conclusion of the sixteen month monitoring period. Therefore, on the basis of authority vested in the Auditor by the Court, the period of the Agreement was extended for an additional twelve months, with termination of jurisdiction to take place on December 19, 1985. (3) The Third Progress Report was submitted on February 28, 1985. The Fourth Progress Report was submitted on October 12, 1985 and specifically covered the period of March 1, 1985, through September 30, 1985. The report that follows is intended to apprise the Court of the defendants' state

of compliance with all orders issued to date, and will specifically draw to the reader's attention progress made during the past two and one-half months.

The defendants, by the conditions of this Agreement, are required to act immediately to comply fully with the earlier Consent Decree entered in the case of Craig vs. Hocker. (4) 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 section on administrative segregation.

The format of the report will include the verbatim agreements; a discussion section which will incorporate material from observations made on site by the Auditor, interviews with staff and inmates, review of files and records, correspondence and reports submitted by specialists in the areas of fire and life safety, sanitation and medical issues. Each section will conclude with a finding of fact relative to the defendants' compliance with the Agreement.

The writer regrets that some of the material covered in the Fourth Progress Report will be repeated in this report. Since this will be the last report submitted by the Auditor under the conditions set forth in the Stipulated Settlement Agreement it is necessary to indicate the degree of compliance on all agreements. Where the Auditor has previously found the defendants to be in compliance, and where this level of effort has continued, any further discussion would be redundant and a finding of fact will be made with minimal discussion.

The Auditor was both pleased and impressed with the progress towards compliance that has been made in the past several months. There are without doubt many contributing factors, but note should be made that Director Sumner has provided strong leadership and necessary resources; the new Warden, Harold Whitley, has exerted sound administrative techniques to the process of compliance; and the appointment of two new Associate Wardens has brought fresh approaches and effective management to the resolution of problems.

This does not mean that the defendants have accomplished all of the requirements set forth in the Agreement. It does mean that remarkable progress has been made, and the management team now appears to be welded into a cohesive unit with the wit and will to bring about compliance in the reasonable future.

In the reporting process to follow, the Auditor will attempt to highlight changes and improvements as well as draw attention to areas which require further attention.

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 46 new cells / upgrade cells of*
2. Regardless of appropriations levels: *no less than 60 sq' on 3rd + 4th floors*
(a) repair or replace locking devices and systems in said cell *of A-B* blocks and abolish the use of padlocks in all cell blocks throughout *B/locks* 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

The Legislature has provided \$1,127,800 in the 1985-87 Capital Improvement Program which 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 miscellaneous improvements to provide 47 cells in A and B blocks which meet the standards of the American Correctional Association". (5) It is currently estimated that the remodeled cells will be available for use by March, 1987.

The Capital Improvement Program also provides funds to bring the plumbing and electrical facilities of cells currently being used up to approved code requirements.

The defendants have controlled the population of A and B blocks so that it has not exceeded 103 inmates at any time during the reporting period.

Locks and locking systems have been repaired and padlocks are no longer used on cell doors except in the prison infirmary. Some padlocks are still used on tier gates which could present serious problems in case of fire. All officers on duty in A and B blocks now have keys to the tier gates. It is understood that staff are in the process of replacing all padlocks in the infirmary and on tier gates and this should be accomplished by the middle of December.

The defendants have worked diligently to bring A and B blocks into compliance with life/safety and public health codes. Although the writer has suggested numerous changes which are consistent with national standards, a determination of requirements for Nevada institutions falls clearly within the province of the State Fire Marshal's Division, Department of Commerce, and the Health Division, Department of Human Resources. (6) These two agencies list the following deficiencies which had not been corrected at the time of the Auditor's November inspection.

- o Exposed wiring and uncovered electrical panels in plumbing alleys.

- o Standpipes for 1½" fire hose should be installed on each tier level at both ends of plumbing alleys, and preconnected with fire hose. Sufficient fire hose should be available to reach any cell on each tier.
- o Seal all penetrations in CMU boiler room.
- o Accumulation of litter in plumbing alleys should be removed.
- o Shower walls and ceilings need repairs and painting.
- o Fire extinguishers are not at both ends of plumbing alleys. (This was being corrected during the inspection process).
- o Cells are overloaded with combustible materials.
- o Excessive use of extension cords in all cells, with multiple appliances which exceed load limits.

On October 12, 1985, fire evacuation drills were satisfactorily performed on first and second shifts, and on October 13, 1985, were successfully performed on the third shift. All drills were simulated; all Simplex Audible Alarms were checked on the same dates and functioned properly.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with all sections of this Agreement with the following exception:

1. Items of fire, life safety and sanitation set forth in the discussion section.

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 safety 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. Since the Agreement was signed and approved by the Court, several changes have been made in capacity levels. Parties have been asked on numerous occasions to resolve these differences and request the Courts' approval of the new levels. Unfortunately, no action was taken and the Auditor must use the levels established in the Court's Order. On this basis, the defendants have exceeded the critical capacity for the past year. The Court should be aware that additional cells have been made available which brings the prison well within acceptable population levels.

Upon conclusion of this Agreement, staff, recreational programs and other programs are to be in place so that it will be unnecessary for inmates who are double-bunked to be confined to their cells more than twelve hours daily, absent exigent circumstances.

Inmates are double-bunked as follows:

B block.	26 cells
Unit I	48 cells
Unit II	36 cells
Unit III	24 cells
Unit IV	24 cells

Inmates assigned to B block, Units II, III and IV have program opportunities which assure that they are not confined in their cells for more than twelve hours daily. It has been most difficult to determine the amount of time that inmates assigned to Unit I are confined to their cells. This is a protective custody unit and inmates vary tremendously as to their willingness to participate in work, school, recreation and visiting programs. During the past year there has been some decrease in the amount of time inmates are allowed on tiers for recreation purposes. The Director has assured the writer that "tier time" similar to general population units will be resumed, and telephone reports would indicate this has been done. If so, no inmate who wants to participate in programs available, will be confined to a cell for more than twelve hours per day.

FINDINGS REGARDING COMPLIANCE

The defendants are technically not in compliance with Court mandated capacity limits, but have maintained population levels that are reasonable considering the additional bed space that has been developed. ?

On the basis of decisions recently made by the Director the defendants are in compliance with the requirement that inmates who are double-bunked will not be confined to their cells more than twelve 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 service 80-120 inmates initially. In this regard, every effort will be made to develop this program through the Carson or other local or state school district.
 - (d) institute additional vocational programs. An industrial program evaluation will be conducted by the Federal Bureau of Prisons. This study will provide information for the implementation of the overall prison industrial program.
 - (e) establish Alcoholics Anonymous and substance abuse groups."

DISCUSSION

All inmates, not assigned to restricted housing, have the opportunity to be classified to an educational, recreational, physical education or job assignment, albeit the variety of choices are limited. The defendants agreed to specifically provide the following:

- (a) An individual recreation yard to be provided for Units I and IV. Both of these living units were for protective custody cases, but recently Unit IV was converted to a general population unit.

Unit I has been scheduled into the upper yard area and provided equal but separate access to what is provided general population units.

- (b) General population was to be given greater gymnasium use, and this has been accomplished by doubling the amount of time available for gym activities. An additional physical education instructor was hired at the beginning of the current fiscal year which has allowed 7 day a week and evening coverage of the gym. In addition, protective custody inmates now have the same use of the gymnasium as do general population inmates.
- (c) The prison now provides ABE, GED and high school diploma programs through the contracting of services with the Carson City Unified School District. Currently, 95 inmates are involved in classroom programs and represent both general population and protective custody classifications.
- (d) Additional vocational programs have been instituted through the development of audio-visual classes in "Emerging Medical Care" and "Blue Print Interpretation." These programs are shown through the prison's telecommunications system. Planning is currently underway to implement automotive mechanics, auto body and food service classes through the same closed circuit T.V. system. Studies are underway to expand the current prison industry program and Legislators recently toured industry programs in three other states with the Director.

- (e) Alcoholic Anonymous groups are now operating for general population and protective custody inmates. The prison psychologist continues to hold orientation classes in drug abuse. Narcotics Anonymous groups have also been started for general population and protective custody inmates.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with Appendix II. Educational, Vocational, Work and Recreation Opportunities.

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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 has been set forth in earlier reports, the defendants have developed and implemented a new classification system built on the "National Institute of Corrections (NIC) Model" recommended in the Krisberg/Austin Report. They have also reviewed the possibility of implementing a risk assessment program designed by Rans/Fowler, but decided that the cost and program benefit could not justify such an expensive research effort. The Auditor totally supported this decision.

The defendants were asked to review the degree to which "overrides" were used to make a subjective decision instead of following the objective determinations of the classification system. Information has been developed which tabulates the number of inmates who had point scores which would call for placement in medium or minimum security facilities, but on the basis of exceptions were placed at the Nevada State Prison. These "exceptions" are clearly identified in the classification manual and represent factors which

in most systems would add appreciably to the point score. Practically speaking, this is not an override, which is a subjective decision, contrary to an objective point score. The defendants are aware that their classification point system needs refinement and they are currently receiving consultant help from the National Council on Crime and Delinquency in this regard. Even with the valid use of exceptions in the current system, it would appear from the computer data available that a sizable number of inmates currently assigned to the Nevada State Prison could be safely classified to facilities with lower security classifications. This does not mean, however, that the N.I.C. model is not being utilized; it does mean that objective based classification decisions must be built on an evolutionary system that requires constant fine tuning to be truly effective.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with Appendix III - Classification.

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

Defendants have continued to make good progress in the revision of their operations and procedures manual. To date, two hundred six Administrative Regulations have been published, thirty-six are in draft stages and ninety-two have not been written. It should be noted that although ninety-two regulations have not been revised, information has been gathered in order to properly complete them. The majority of the unwritten regulations are in the Fiscal Management series. The defendants continue to revise their operations and procedures manual using and cross referencing Department of Justice standards, ACA standards and applicable state statutes. The defendants have also implemented a Strategic Management Model with Tactical Response System as required by the Agreement.

FINDINGS REGARDING COMPLIANCE

The defendants have not totally rewritten their Administrative Regulations but have made a good faith effort to do so. The remaining ninety-two regulations should be complete within six months.

AGREEMENT

Appendix V - Living Conditions

Anthony Brown

"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

The defendants are generally required to provide adequate food, clothing, shelter, sanitation and personal safety. They are further specifically required to meet standards set by the State Public Health Authority and the

Nevada State Fire Marshal. For reporting purposes these general and specific requirements are combined under the subheads of FOOD, CLOTHING, SHELTER, SANITATION and PERSONAL SAFETY.

FOOD

Menus and records were reviewed; food preparation, serving and clean-up were observed; meals were eaten; and inspections were made on numerous occasions of all food storage, preparation and serving areas. The most recent inspection of the Public Health Sanitarian (October 22, 1985) was reviewed as were inspection reports of culinary areas made by institution staff.

Since the Fourth Progress Report was written many improvements have been made in the feeding operation. The defendants are to be commended for their efforts in this regard, and the progress that has resulted is remarkable. To give a flavor of these efforts, the following changes have been made in the past two months:

- o Entire culinary area was thoroughly washed down and repainted.
- o Exhaust fans for steam kettles, grill and scullery have been repaired.
- o Holes in walls of kitchen and dining rooms have been plastered.
- o Bathroom has been painted, water faucets repaired and towels have been provided.

- o Drains through serving area, kitchen and storeroom have been unplugged and cleaned nightly.
- o Kitchen crews have been reduced by fifty percent so that inmate workers are better supervised and have full time assignments.
- o Drain and septic system has been developed for garbage area at rear of kitchen.
- o Cat trapping program has reduced the population by eleven animals.
- o Hot food carts are used for locked units providing well served and hot meals.
- o Meal hours have been revised so that they clearly meet ACA standards.
- o Plastic gloves and paper hats are worn by food servers, including officers.
- o New cooking equipment has been ordered for the kitchen and should be delivered within the next thirty days. This equipment includes the following:

One Hobart Mixer, 80 qt.

One Hobart Electric Deck Oven

Two Hobart Deep Fat Fryers

One Hobart Electric Grill

One Automatic Coffee Urn

Two Hobart Convection Ovens

One Steam Cooker

Two Hot Carts

- o Food storage, preparation, serving and cleanup areas have been improved from a sanitation standpoint.
- o Medical diets have improved.

Even with the improvements noted, continued progress needs to be made with the following examples being illustrative rather than all inclusive:

- o New "septic" garbage area drain needs to be cleaned daily to be effective.
- o Garbage area ground surface needs to be blacktopped or cemented in order that it can be regularly hosed down and thoroughly cleaned.
- o Garbage dumpsters should be covered and emptied daily.
- o Worn timbers at garbage dock should be replaced.
- o Wind curtains should be provided for garbage area door and the two dining room entrance doors.
- o Floor surface in all culinary areas should be covered with a surface material which is crack free and can be easily cleaned.
- o An additional cook position should be provided in order that adequate civilian employees are available to supervise the food preparation and serving activities.
- o Lights in dish washing room should be fixed (5 out of 6 not working).
- o Inmates in culinary assignments should be provided clean "cooks whites" or "checks" clothing or regular institution clothing on a daily basis.

- ✓ o Hot food carts or a similar food serving method should be instituted in order that infirmary, Federal prisoners and other locked units can receive food at correct temperatures.
- ✓ o New and clean wooden pallets should be provided for the storage of food in the walk-in freezer and refrigerator.
- ✓ o Frozen commercial diet meals should be purchased and stored to be used for medical diets when the regular menu will not provide a meal which meets prescriptive requirements.
- ✓ o Hose bib vacuum breakers are needed for pot sink and dish washing room.
- ✓ o Light shields in kitchen are missing.
- o Cats should be eliminated.
- ✓ o Work tables are cracked and need to be resurfaced or replaced.
- ✓ o Water in dishwasher should be regularly emptied and refilled to eliminate the greasy residue on food trap.
- ✓ o Pitchers for coffee served in the locked units should be returned to the kitchen so that they can be adequately cleaned.

CLOTHING

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Tremendous progress has been made in the laundry and clothing room operation. A new officer has been assigned responsibility for these functions and he has instituted sound procedures which are already showing results. A new inmate crew has been assigned and more effective supply security procedures have been developed. Clothing and supply inventories have shown dramatic growth and a clothing inventory card has been started

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for all inmates. A plan is underway which provides for the clothing officer to inventory supplies in each cell and bring up to complement where property items are short. This process has already been started in the locked units and will eventually incorporate all living units. On the basis of supplies on hand and on order, it should be possible to provide all inmates with a normal complement of clothes, and have an adequate inventory to maintain that complement, by July 1, 1986. That does not mean that all inmates have the necessary number and correct size of clothes at this time. Many inmates have only a single set of clothes and much of the clothing being used is exceedingly worn out or torn. It will take time to issue, replace and build an inventory to accomplish the July 15 goal, but it is possible!

In the meantime, it is necessary that appropriate staff assure that the following actions occur:

- o Living unit staff should inventory each inmate's property, and request additional clothing where shortages exist; and return supplies to the clothing room where excesses exist.
- o Clothing and linens should be regularly provided for patients assigned to the infirmary.
- o Additional supplies should be immediately ordered to assure that sufficient items are available for issue. Particular attention should be given to the following:
 - (1) Pillows
 - (2) Blankets

- (3) Shoes, work
- (4) Winter jackets
- (5) Winter underwear
- (6) Tennis shoes
- (7) Culinary clothing

SHELTER

All new living units (Unit I through Unit VII) meet necessary building standards. Cleaning efforts have markedly improved recently, but there continues to be a need for repainting of cells, shower stalls and common areas. Broken windows have been repaired but cracks in walls and ceilings continue to require maintenance attention.

✧ A and B blocks continue to have deficiencies in electrical, plumbing, ventilation and fire safety areas. These deficiencies will be addressed during the next year with a remodeling project that has been funded by the Legislature. This project will provide sufficient resources to remodel forty-seven unused cells that will then fully meet ACA standards. It will also allow remodeling of existing cells which should bring the remainder of A and B blocks up to sanitation, fire, and life safety codes. This project is in the design planning stage at this time, and construction should be completed by March 1987.

The project should not go out to bid until the State Fire Marshal and the Division of Public Health have approved the working drawings.

SANITATION

Sanitation inspections are regularly carried out by Public Health Sanitarians with the State Health Division, Department of Human Resources. In addition, various prison staff have inspection responsibilities that are carried out on a regular basis. Of recent date, these inspections have been more than paperwork formalities, and mid management and administration have joined in an effort to improve housekeeping and sanitation efforts. Besides inspections required by line staff nurses and living unit sergeants, shift lieutenants and associate wardens are now making regular inspections with appropriate follow-up actions.

The efforts made to meet cleanliness and sanitation standards are recognized, but the following examples are noted to emphasize the need for continued effort:

- o Sanitation recommendations set forth in the section on feeding.
- o All recommendations listed by the State Public Health Sanitarian.
- o Continued pipe leaks and excess debris in plumbing alleys of A, B and C blocks.
- o Shower areas in all living units need more thorough cleaning.
- o Most cells need cleaning of walls and floors and many require repainting.

- o Screens need to be placed on all living units except Unit I.
- o Hot water is not available in some cells, and inmates do not have access to a supply except as an officer might provide it for them.
- o Longer periods of time should be provided to an inmate in a locked unit to adequately clean his cell.

FIRE AND LIFE SAFETY

The State Fire Marshal's Office regularly inspects the prison for fire and life safety conditions. In addition the prison has a safety committee which makes inspections and recommendations on a monthly basis. The prison fire plan has been approved by the State Fire Marshall and county/local fire officials. Regular simulated fire evacuation drills are held, and deficiencies are immediately addressed. The progress that has been made is commendatory. Continued efforts are strongly recommended in the following areas: (see p. 25-26 in 4th report to compare)

- o Combustible materials stored in the cells in A and B blocks should be reduced. noted in 4th
- o Use of extension cords in A and B blocks should be discontinued as soon as electrical remodeling is completed. 4th
- o A secondary exist from A and B block should be developed. 4th
- o A secondary exit from the Education Building should be developed. (It is understood that this has been done since the 4th Auditors last visit). has it? if so, what is meaning of ARB, 4th p 10, saying FM says 2d entrance (see Q's on this)

- o Actual, rather than simulated, fire evacuation drills should be held quarterly for general population units. 4/m
- o Standpipes should be installed at both ends of each tier in A and B blocks, and appropriate lengths of hose should be installed. 4/m
- o All missing cover plates on electrical connection boxes should be replaced. 4/m
- o Budget requests should be submitted to provide double coverage of correctional officers during working hours on all living units. 4/m
- o Careful analysis and review of the use of fire arms by staff should be carried out, to assure that sound safety practices are being followed.

FINDINGS REGARDING COMPLIANCE

The defendants have made good progress over the past two and a half years, but do not yet totally meet the general requirements of the Agreement, or the specific requirements of the State Fire Marshal and the State Public Health Authorities. Compliance requirements have been set forth in the discussion sections.

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

The reader is referred to earlier Progress Reports for detailed description of deficiencies in providing adequate medical services to inmates assigned to the Nevada State Prison. Since the last report the infirmary area has been totally repainted and an enclosed storeroom has been constructed, thus eliminating the unsightly storage of cleaning supplies and miscellaneous equipment.

A policy decision was made this past year to contract to a private vendor the provision of medical services for the entire department. The compliance with this Agreement was to be the responsibility of the contractor. Unfortunately the contract process has been delayed by a bidders' appeal and it will be early next year before a contractor can assume responsibility for medical services and begin working towards compliance with standards set forth in the Agreement. In the meantime there is a void of medical leadership and an extreme shortage of services that can only be provided by a licensed physician.

Recently there was a series of newspaper articles in a Carson City newspaper that took segments of the Auditor's last progress report--often out of context--and depreciated the management efforts of the Department of Prisons to bring about necessary improvements in medical services. These media attacks, coupled with numerous damage suits filed by inmates in Federal and State Courts regarding alleged failure to provide proper medical attention and treatment, has resulted in a situation in which it is very difficult to obtain specialized or emergency medical services for inmates in the Carson Valley area. The cost and difficulty of obtaining liability insurance, and the constant attacks made on all those who provide medical services for inmates has created a crisis in obtaining adequate medical referral care.

The defendants have stipulated that medical services do not currently meet standards set forth in the Agreement. They are fully committed to providing services at acceptable levels, and are confident that with the issuance of a contract to a qualified health care provider that the terms of this Agreement can be met. The Auditor has struggled with the most legitimate way to describe the current level of compliance. Since there are many individual damage claims waiting to be heard in the Courts, any mention of specific cases would appear to be inappropriate. Since examples of services or facilities which do not meet standards are sometimes made the subject of media expose, thus creating even greater difficulty in obtaining community medical assistance, such a listing would not appear to serve any useful purpose.

Parties agree that continued improvement in medical services is required. Efforts should be concentrated on services and facilities that are needed, rather than on further attacks on existing conditions. In that vein, the Auditor wishes to call to the attention of the Court minimum improvements or changes that are required to meet the terms of this Agreement.

1. Compliance with all A.C.A. standards on health care.
2. An infirmary that meets health care standards for sanitation, lighting, ventilation and equipment.
3. Twenty-four hour supervision of the infirmary area by a health care staff member or an assigned infirmary correctional officer.
4. Medical records that meet outpatient health care standards, and inpatient records that are similar to those used in a community hospital.
5. Daily change of linen, towels and sleeping garments for all patients assigned to the infirmary. When a patient is ambulatory, he should receive clean underwear and socks daily and shirt and pants should be changed three times a week.
6. Hot and cold water available to each patient.
7. Weekly sick call rounds of all locked units by a physician.
8. Reduce time spent by nurses in "pill rounds" in order that more time can be devoted to daily sick calls. (E.g., general population inmates come to pill window following meals, etc.).
9. X-rays should only be taken and initially reviewed by a trained staff technician. When it is necessary to have a radiologist's

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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

Window screens have been installed on Unit I and materials are available to install similar screens on Unit II. No materials have been ordered for Units III, IV, V, VI and VII. The repair of broken windows has received a high priority from maintenance staff, but cracked and broken windows still exist in cells and several control rooms. There does not appear to be a vermin or pest control problem in the administrative segregation units.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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. Because of a shortage of staff and resources, maintenance repairs are behind schedule. Maintenance staff should accompany administrators when they make regular inspections in order that priorities can be set on specific projects. The maintenance staff is to be commended for their ingenuity in finding solutions to problems and their dedication to the "work ethic."

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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 preventive 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's Division and the Carson City Fire Department. Additionally, the Department has issued a fire safety and evacuation policy (Administrative Regulation #440) that gives policy and procedural support to the fire safety plan. All equipment has been purchased and installed.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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 previous progress reports, a safety committee has been appointed by the Warden, and is conducting monthly inspections of all administrative segregation units. Although these inspections use Nevada Life Safety Codes as guidelines, there is no indication that the National Fire Protection Association Document #101 or any superseding standards have been used. The Nevada State Fire Marshal assured the Auditor that all National Fire Protection Life Safety Codes have been incorporated into Nevada standards and codes. The Safety Committee held its most recent inspection on November 20, 1985, and listed only minor deficiencies for correction.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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 August 30, 1985, using as standards the Life Safety Code, the Uniform Fire Code, and the Regulations of the State Fire Marshal. The defendants have promptly addressed most deficiencies noted in the reports.

The Fire Marshal noted only minor deficiencies in the administrative segregation units in his last report, all of which have been addressed.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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 simulated fire drills are being conducted at least once every six months. Inmates are concerned that they have not participated in any fire drills. Evacuation procedures are generally simulated when a fire drill is held on a locked living unit. This is a standard and acceptable practice. 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. Each inmate arriving at the prison receives a printed card with fire safety instructions.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

19. 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 (November 25-28, 1985) the units used for the assignment of administrative segregation cases had no exposed electrical wiring or water leakage problem.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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 manufactured at the facility are constructed with 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 ignitable and produce a toxic exhaust fume. Although the institution has a waiver from the Fire Marshal to utilize such containers, the Department should obtain an independent opinion to ascertain if gas released by the burning of such plastic garbage cans would be toxic.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"A. Living Conditions

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

DISCUSSION

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There are no cross-connections between potable and non-potable water in any of the administrative segregation units. All plumbing chases have been personally checked by the Auditor.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B Classification Procedures

1. 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

Prison policy clearly states that administrative segregation will not be used for punishment purposes (13) but in practice it would appear that it often is. Disciplinary detention is limited by Departmental policy to 14 days. Disciplinary segregation, which is used for more serious prison offenses, is limited by the Code of Penal Discipline to a maximum of 180 days. Since many inmates are transferred to administrative segregation following their having served the full time allowed by policy in disciplinary detention and/or segregation, it would seem logical to conclude that administrative segregation is used as continued punishment for the most serious offenders. The reader is reminded that it is within the authority of the Department of Prisons to increase the lengths of stay in both detention programs should they desire to utilize stronger sanctions. The only justification for placement in administrative segregation is that some inmates require closer supervision and separate housing from the general population. The Agreement also calls

for the defendants to make every effort to return administrative segregation inmates to the general population as soon as practical. The Agreement recognizes, and good correction practices support, that some inmates may spend relatively extensive periods of time in administrative segregation.

A review was made of all inmates currently assigned to administrative segregation to determine whether Departmental policy and procedures were being followed, and whether the conditions of confinement appeared to be punitive in nature. The following concerns were an outgrowth of that review.

- o Twenty one (21) inmates have been placed, and continue to be held, in administrative segregation on the basis of confidential or anonymous information. This is a very high ratio of inmates to be classified on the basis of confidential information, particularly in view of the fact that the credibility of the informant often was not clearly established and the current relevance of the information is not indicated.
- o Nineteen (19) inmates are awaiting removal from administrative segregation, some of them for extensive periods of time.
- o Fifteen (15) inmates have no projected release date, but are reviewed weekly. Such a procedure is not in compliance with Departmental policy.
- o Twenty-six (26) inmates have been given no projected release date although this is a departmental requirement.

- o Nineteen (19) inmates are assigned to administrative segregation on a voluntary basis which would appear to be a form of protective custody.
- o Projected release dates are generally set for a minimum of one year and up to six years for some inmates.
- o Conditions of confinement, rules and regulations, program opportunities, feeding, access to legal assistance and visiting are the same for administrative segregation as they are for disciplinary segregation.
- o On the basis of a case record review it would appear that some inmates remain in administrative segregation longer than it is necessary to protect the safety and security of the institution.
- o The classification committee does not always "establish a set schedule of personal and program objectives involving gradual reintegration into the general population" as required by Administrative Regulations (14).
- o Restrictions are placed on inmates in administrative segregation which have not been approved by the Warden or his designee.
- o Significant restrictions are imposed without referring the case to the psychologist within 24 hours, nor does an appropriate number of the institution's medical staff review on at least a twice weekly basis, the medical and/or mental health effects of such restriction. (15)
- o Standard institutional issue clothing is not provided to inmates housed in Unit VII. Orange jumpsuits are provided instead of pants and shirts.

- o Telephone usage is restricted when the rule violation was not directly related to phone use.

FINDINGS REGARDING COMPLIANCE

The defendants have fully met the due process requirements of placing in and removing inmates from administrative segregation. They are currently operating a program under the title of administrative segregation that is as punitive as the one which they operate for disciplinary segregation. One must conclude that inmates are placed in administrative segregation for punishment. It would further appear that inmates are being kept in administrative segregation longer than is necessary to protect the safety and security of the prison.

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

Standard 4201 has been incorporated into Departmental Regulations and Institution Procedure #8. Standard 4201 is quoted here in its entirety because of its importance to the compliance process:

"Written policy and procedure provide for administrative segregation for inmates with serious behavior problems and for inmates requiring protective custody. (Essential)

Discussion: Administrative segregation is used when inmates require close supervision and segregation from the general inmate population, often for relatively extensive periods of time. Administrative segregation may be used to ensure the safety and security of the institution, the inmate, the staff or the general inmate population. Prior to placing an inmate in administrative segregation, a determination should be made of the inmate's potential for causing problems or need for protection and should explore alternatives other than specialized housing, e.g., transfer to another institution, camp or farm. If an inmate is placed in administrative segregation, 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. Care should be taken to ensure that inmates do not see placement in protective custody as desirable."

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The defendants have made strong efforts to hold classification hearings on schedule and provide inmates with the basic due process protections set forth in standards on administrative segregation. As has been set forth in earlier reports, there is an absence of any recorded determination as to the inmate's potential for causing serious problems, and little indication that other alternatives to placement in administrative segregation have been explored. Inmates are not allowed to participate in all institutional programs as required by the ACA standard, but exceptions have been provided in other parts of the Agreement. Although regular reviews are held of all inmates placed in administrative segregation, the hearings appear often to be perfunctory in nature, and there is little indication that efforts have been made to effect a return to general population.

FINDINGS REGARDING COMPLIANCE

The defendants have made progress in meeting necessary classification review schedules, but are not yet in compliance with the substantive elements of this section of the Agreement.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

As has been set forth in previous progress reports, the defendants have developed a written plan for classification which is in conformity with Section 4377 of the ACA Manual of Standards for Adult Institutions (1977 Edition). As was further required in this 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 Administrative Regulation #8, revised on July 10, 1985. (16) Audits made of the classification process and file reviews indicate that the policies and procedures of the Department are, for the most part, being followed. Continued monitoring and attention should be given to the following.

- o Classification to administrative segregation is sometimes made when no disciplinary hearing has been held to make a finding of

fact. Although technically this procedure can be followed, it would be a better practice to determine a serious violation before assignment to administrative segregation, rather than following such placement.

- o Witnesses for the inmate should always be allowed to appear at a classification hearing which is to consider possible placement in administrative segregation. Exceptions to this principle should occur only when the presence of the witness would be unduly hazardous, or the testimony would be redundant in view of what has already been presented.
- o Review by the Director or his designee of confidential files which contain information which justified placement of an inmate in administrative segregation should be made on a regular basis. The Director or his designees should verify, in writing, that the information is still valid, and placement is still appropriate. A notation to this effect should appear in the inmate's working file. Such reviews should initially be completed within two weeks and subsequently at least every 90 days.
- o When information from an anonymous source is used, the Committee or a staff member designated by the Warden, must verify in writing that the source of the information is reliable, and that the Committee may properly consider the information in deciding whether the inmate should be placed in administrative segregation.

FINDINGS REGARDING COMPLIANCE

The defendants have made a good faith effort to comply with the section of the Agreement.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

The defendants have adopted and set forth all of Sections II and III of the Administrative Segregation Model, American Correctional Association, Revised Edition, October, 1979 in their Administrative Regulation #8, revised on July 10, 1985. (17). Since the requirements of these two sections of the Model Act are identical to those set forth in the last Agreement, the discussion section of that Agreement applies equally and will not be repeated here. *i.e. (17) section ?*

FINDINGS REGARDING COMPLIANCE

The defendants have made a good faith effort to comply with the section of the Agreement.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 some of it is of an anonymous nature with little or no documentation as to the credibility of the informant. Inmates are provided with a written summary of the committee's actions, usually in the form of a checklist response. 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 should continue to refine their documentation which supports their actions. General statements continue to be used such as "inmate is a danger", "he is an escape risk" which are not justifications in themselves for segregation. Documentation should support any such statement and justify segregation as the only safe and responsible action. Some inmates who are placed in administrative segregation appear to be

assigned there as an additional penalty beyond what is currently allowed as a punishment in Disciplinary Segregation. No new offenses have occurred while the inmate was in Disciplinary Segregation to justify continued restricted confinement.

FINDINGS REGARDING COMPLIANCE

The defendants are making a good faith effort to comply with this section of the Agreement but need to document more fully their reasons for placing and retaining inmates in administrative segregation.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

The defendants have incorporated all of the policies and procedures required by this Agreement in their Administrative Regulation #8, Revised July 16, 1985. (18) All hearings and due process requirements are provided but there continues to be concern on the Auditor's part that the Classification Committee does not adequately determine whether there is substantial evidence to indicate that the initial reasons for assignment to administrative segregation still exist. The reclassification hearings appear to be perfunctory in nature, and if an inmate has not served a particular period of time, he will not be considered for general population. If time served is the basic requirement for release from administrative segregation, then one must

conclude that such an assignment is for punishment purposes and is in conflict with the Agreement.

Further concern must be expressed for the number of inmates who have had projected release dates, dependent upon acceptable behavior, of one, two, three, four, five and even six years. Review of case law and good correctional practice would indicate, that the burden of proof rests fully with the correctional agency to demonstrate that any inmate retained in administrative segregation for more than a year has committed additional offenses since the original placement, which would support a decision that he continued to be a threat to the safety and security of the prison. On the basis of a case file review of inmates currently assigned to administrative segregation, it would appear that there are a number who have been confined in segregation for more than a year who have not committed additional offenses that would justify their retention.

This matter has been discussed with the Director and he has indicated his personal interest in reviewing the classification actions as they apply to the administrative segregation program. The Director was responsible for assisting in the development of similar program in California, and will bring valuable experience to such a review.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with the technical requirements of this Agreement. They are currently reviewing the concerns expressed by the Auditor with the decision making process with intent to make necessary changes as needed.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

The defendants are holding a hearing at the conclusion of sixty days, and at that time setting a schedule of personal and program objectives involving a planned reintegration into the general population. These objectives were found to relate primarily to behavior, and generally required extensive period of clear conduct before reintegration is considered. Additionally, the writer could find little in the way of substantial evidence set forth in writing by the Classification Committee that inmates retained in administrative segregation would produce serious injury to the inmate or others, or substantially threaten the security of the institution if returned to general population.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with the necessary hearings required in the section of the Agreement, and are in the process of refining the decision making process for administrative segregation.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 all of the requirements set forth in this Agreement in Administrative Regulation #8, Revised July 10, 1985. Careful review of practices would indicate that there continues to be some violations of Departmental policy. These violations appear to be acts of omission, and only require continued supervision and monitoring of line officer activities. Examples of such irregularities are as follows:

- o Restrictions of rights, privileges and amenities are not always approved in advance by the Warden or his designee.
- o Restrictions occur, but written records of such actions are not always maintained.

o Cases were noted where a significant restriction of basic cell furnishings, bedding, or standard institutional issue clothing was made without referring the case to the mental health staff within twenty-four hours, and/or the mental health effects of such restriction on the inmate being reviewed by an appropriate member of the prison's medical staff on at least a twice weekly basis.

FINDINGS REGARDING COMPLIANCE

The defendants policies and procedures are in total compliance with this section of the Agreement. Continued monitoring of some type is required to assure that departmental policy is implemented.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

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

DISCUSSION

The defendants have incorporated all of the policies and procedures set forth in this Agreement in Administrative Regulation #8, Revised July 10, 1985. Practice demonstrates a good faith effort to provide educational programs that meet the minimum requirements set forth in the Agreement. Plans are underway to remodel the exercise areas and the size of one of the

existing areas has been measurably increased. Exercise schedules have been revised in order that inmates can use the areas every other day for approximately four hours. Although progress has been made, the following examples indicate areas which could benefit from further strengthening.

- o Increase the hours of educational telecommunications.
- o Provide additional physical education/recreation equipment for exercise areas.
- o Consider use of tier area for congregate recreation. Inmates exercise together outdoors and some could safely recreate together indoors.
- o Hobbycraft programs in cells should be expanded and encouraged.
- o Work opportunities beyond porter duties should be explored. Some gardening/landscaping projects could be considered, as well as minor in-unit maintenance assignments.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with this section of the Agreement, but should be encouraged to further improve educational, recreational and work opportunities.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

The defendants are now providing three to four hours of outdoor exercise every other day. They now more than meet the goal set by this standard.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 been provided funds by the Legislature to remodel the exercise areas for administrative segregation units to meet the requirements of this Agreement. Supplies have been ordered and, when delivered, construction will be started immediately. Recreation equipment has been ordered, but as of the date of this report was not yet available to the inmates. Innovative approaches must be devised in order that the relatively small exercise areas can be properly utilized. (Eg., use of speed bags, punching bags, chinning bars, rubber horse shoes, shuffle board and weight lifting machines should be considered).

FINDINGS REGARDING COMPLIANCE

The defendants will be in compliance with this section of the Agreement upon the remodeling and building of exercise areas, and the proper equipping of them.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 therefore 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 has made significant progress in the food service areas, but is not yet in compliance with the following standards.

Standard 4227 - Therapeutic diets have not been adequately developed and food served to those requiring medical diets often fails to meet prescriptive requirements.

Standard 4232 - Food delivered to inmates in locked units is now served at appropriate temperatures, but inmates assigned to the infirmary still receive food at temperatures well below acceptable limits.

Standard 4233 - Inmates are still eating meals in cells without a table or stool, although these items of equipment are on order. Inmates are no longer required to eat their noon meals in the exercise area.

Standard 4234 - Although administrative staff are now regularly inspecting the kitchen and dining rooms, similar inspections are not made by medical personnel.

Standard 4235 - Necessary equipment has been ordered but not yet received. The State Health Sanitarian has made some recommendations that have not yet been addressed.

Additional requirements for adequate sanitation in the culinary operation have been set forth in other sections of this report and will not be repeated here.

FINDINGS REGARDING COMPLIANCE

The defendants have made good progress in addressing the various standards set forth in this Agreement, and with continued effort can soon be in compliance.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

The defendants have provided inmates in administrative segregation with the following, all of which are required by the Agreement:

- 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 the same as for inmates in the general population.

The defendants were further required to provide law clerks who would visit administrative segregation units four (4) times per week to assist inmates and make law books and legal supplies available to them. This standard is being met.

Finally, the defendants are required to provide access to other legal resources for inmates in administrative segregation that is similar to the access accorded inmates in the general population. (19)

The use of an untrained inmate "law clerk" to bring supplies and requested legal research material to administrative segregation units cannot be considered "similar access" to that accorded inmates in the general population. Administrative segregation inmates have no direct access to the law library, nor do they have reference material in the locked units which would guide them to the appropriate legal resources required. It is unrealistic to expect inmates confined to a locked unit to know the names of the law books or the specific text that will be needed for research on a given legal problem. Since the inmates in administrative segregation do not have personal access to a law library they are dependent upon the services of inmate "law clerks." These "law clerks" do not have the education, background or training to perform these tasks. Such a "paging system" has been found by the Fourth Circuit to constitute insufficient access unless the prison also gives inmate assistance from legal professionals. (20)

The defendants are currently working on several plans that, if carried out successfully, should bring them into compliance with this Agreement. Mini law libraries are to be placed in each of the administrative segregation units. These mini libraries will include the basic reference documents that are needed in order to knowledgeably request resource materials from the prison law library. It is imperative that inmates have direct access to the mini-library. Unless an inmate is able to personally peruse these documents in their entirety, no change has been made in the current procedure of a "law clerk" hopefully bringing the right reference book to meet a specific need. Secondly, the defendants are in the process of training "law clerks" through the auspices of the state librarians. If such training becomes an ongoing program, and stability and tenure is developed within the "law clerk" group, these services rendered in combination with mini law libraries should provide access similar to that accorded general population inmates.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with five of the requirements set forth in this section of the Agreement and, with the implementation of recommended services, will be in compliance with the remaining requirement.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

15. Provisions 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 direct access to it. Library carts have been constructed and are available for the transportation of books to the locked units. There is some concern that books are not being replaced on a regular basis and that inmates do not have access to the library carts on a set schedule.

At the time of inspection no policy or procedure had been developed on the library cart system. For the cart system to work, regular exchanges of books between the library and the administrative segregation units must be scheduled, and someone in each living unit must be responsible to guarantee that inmates are able to exchange books on at least a weekly basis. Inmates must be able to review what books are available on the cart before making choices.

FINDINGS REGARDING COMPLIANCE

The defendants have made progress towards providing access to a library, but need to formalize and schedule the cart system before compliance can be obtained.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 Administrative Regulation and Institution Procedure #10. In practice it would appear that the policy is being carried out and no grievances have been submitted regarding retention of legal materials. Great care should be taken of legal papers when physical moves are made from one living unit to another or a "shakedown" is held. Inmates have expressed concern that legal materials have been lost or destroyed.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

DISCUSSION

Since the last report the defendants have exerted strong administrative pressure to assure that counselors regularly visit their assigned living units and are available to help each inmate who desires assistance or information.

Although log reviews and reports from counselors now required by the Associate Warden-Program indicate that counselors are visiting the units, one is struck by the brevity of the visits, and the fact that visits are tied into classification or discipline hearings. Inmate perception continues to be that counselors are not there to "help them." Unanswered inmate questions are so numerous that it is obvious that little time is allocated to areas that don't directly relate to classification, discipline or parole. Staff shortages, and a history of counselors not seeing themselves as case workers, will take some time to change, but with continued administrative support progress can be made.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with the technical requirements of this section of the Agreement, but need continued effort to alter paper processing roles into people helping roles.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

A member of the nursing staff makes rounds through the administrative segregation units three times daily. Although the primary objective of these rounds are to deliver medication, it does allow for personal observation of each inmate and a determination whether follow-up services should be provided when health complaints are made. The nurse during these rounds also provides "over the counter" medicines as deemed advisable (e.g., aspirin, cough drops, band aids, etc.).

A physician has not made rounds of the segregation units during the past year or longer, and the absence of these services has seriously dis-
tracted from the level of medical care. This failure to conduct sick call on the units has come about because of a shortage of physicians.

A record of all visits of medical personnel has been maintained on each living unit.

There are no records that demonstrate that the officer in charge of the administrative segregation units is notified when an inmate complains of, or exhibits, an apparent medical/dental or psychological problem at times other than the medical staff member's regular visit. There are no records to indicate that the officer in charge of the administrative segregation unit notifies the medical staff when he has been informed of an inmate requiring medical/dental or psychological services.

FINDINGS REGARDING COMPLIANCE

Detailed information was relayed in earlier sections of this report about medical services and will not be reiterated here. Because of staff shortages, inadequate resources and an inability to adhere to requirements set forth in this section, the defendants are not in compliance with this section of the Agreement.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 currently 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 opinion that the observation/interview is sufficient to spot any serious mental or emotional problems which would require additional evaluation. However, the 90 day routine evaluation is not being carried out.

At a minimum, a written statement should be made every ninety days setting forth the psychologist's observations and impressions.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance regarding the requirement to complete a meaningful evaluation of the status of each person classified to administrative segregation, but are not currently re-evaluating inmates every ninety days.

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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 volunteers.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Classification Procedures

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

All correctional officers have, during the past year, received special training in conflict resolution, emergency procedures and requirements of existing court orders. Staff assigned to administrative segregation units must have completed at least one year of successful experience as a correctional officer and displayed good judgement and emotional control. All officers reporting for duty on administrative segregation units must read past orders and sign that they fully understand them. CPR

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

II. Administrative Segregation, General Provisions

"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

Protective custody classification is used by the Nevada State Prison, and the necessary policies and procedures are clearly outlined in Administrative Regulation #733. This regulation incorporates all of the principles set forth in this Agreement.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Protective Custody, Classification Policies and Procedures

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 Administrative Regulation #733, and the procedures there outlined are carried out in practice. Currently, only Unit I is operated as a Protective Custody unit.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Protective Custody, Classification Policies and Procedures

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 requests 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 and set forth in Administrative Regulation #733. On the basis of a file review practice conforms to policy. Inmates are not required to sign a written statement when they request assignment to protective custody.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Protective Custody, Classification Policies and Procedures

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

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Administrative Segregation, General Provisions

"B. Protective Custody, Classification Policies and Procedures

6. Generally, the policies and practices of protective custody build upon those in administrative segregation set forth in Paragraph I.B., above. Consistent with those policies and procedures set forth in that section and in addition thereto, conditions in protective custody must include:
 - a. At least eight (8) hours minimally of outdoor exercise, weather permitting, with a goal of ten (10) hours per week of outdoor exercise. In the event of inclement weather, a good faith effort shall be made to provide inmates with alternative indoor exercise.
 - b. Educational, vocational, hobby craft, recreational and employment opportunities similar to that in the general population must be made available to inmates in the protective custody unit.
 - c. Opportunity to shower and shave, as in the general population.
 - d. Correspondence identical to the general population.
 - e. Visitation identical to that provided to the general population unless security dictates other provision be made, i.e., a different time, 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

All inmates classified as protective custody are assigned to Unit I. Currently they are able to have at least eight hours of outdoor exercise; use of gymnasium on a schedule similar to general population; educational, vocational and recreational programs similar to general population; opportunity to shower and shave as in the general population; correspondence and visiting

identical to general population; personal property identical to general population; access to legal counsel identical to general population; and work opportunities similar to general population. Only in access to legal resources do we find the defendants failing to meet the requirements of this Agreement. Currently, access to the law library for protective custody inmates is identical to that for administrative segregation inmates. The reasons why the use of "law clerks" to provide access fails to meet minimal requirement was set forth in earlier sections of this report. It is even more difficult to justify, on security grounds, that protective custody inmates should not be allowed use of the law library. They live in a unit directly across the road from the law library and could safely be provided a day for their own use just as they have use of the dining hall, gymnasium, athletic field and education building. The provision of a mini law library in the protective custody unit which is currently planned will be an improvement over current access, but will not adequately meet the requirements of this agreement.

FINDINGS REGARDING COMPLIANCE

The defendants are in compliance with all requirements of this section of the Agreement except adequate access to legal resources.

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 regulations 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 mail;
 - b. Paragraph 2(d) shall be amended as follows: Inspection refers to the checking of the outside of an envelope for proper return address and name and addressee and opening of mail for contraband as set forth in a written list prepared of all contraband. Items in the mail may be removed and observed to the minimum extent possible to ascertain the character of the enclosures;
 - c. Paragraph 4 of the defendants' regulation shall read as follows: 'Incoming general correspondence may be censored if it is found that the contents, taken as a whole or in significant part, fall into one of the following categories:'
 - d. Paragraph 7(b) of the defendants' mail regulation shall be deleted. In its place shall be adopted the II B.I. of the Correspondence Model of the Model Correctional Rules and Regulations, American Correctional Association, revised edition, October, 1979. A copy, Exhibit "G" of the Rule is attached hereto and incorporated herein fully by reference;
 - e. The defendants shall add the following paragraph as 7(d) to their mail regulation: 'reading, opening or inspecting of outgoing mail from inmates shall be prohibited unless prison officials have probable cause documented in writing and submitted to the superintendent of the institution that the letter contains evidence of a crime.'
 - f. Paragraph 8(c) of the defendants' regulations shall be amended to provide that neither the Superintendent nor Director shall have been involved in the initial decision to censor the correspondence;
 - g. A new section shall be added as 8(d) of the defendants' mail regulations. This addition is as follows: If a letter is censored, a written notice, signed by the official authorizing the censorship and stating the reason(s) for censorship shall be given the inmate, advising also, of the right to appeal the censorship decision.

- h. Paragraph 11(a) of the defendants regulations shall be amended to provide that publications received through the U.S. Mail or from an approved vendor, may be excluded only where they present a clear and present danger to the security of the institution, or would cause severe psychiatric or emotional disturbance to the inmate as certified by a psychiatrist or psychologist;
Paragraph 2(a)(5) shall be amended by substituting 'a' for the word 'the' so that the phrase reads 'a state bar association.'

DISCUSSION

Since the last report the defendants have revised their Inmate Mail and Correspondence Regulations #60, dated November 21, 1985 and policy now appears to be in general compliance with this section of the Agreement. Some review and approval of mail between inmates is required, but does not appear to violate the principles set forth in the ACA Model Correspondence Policy.

There continues to be examples of legal mail being opened and mail returned to sender without notification to the inmate that it is being returned, or providing the opportunity to appeal the possibility of such action to the Warden. These incidents appear to be acts of omission.

FINDINGS REGARDING COMPLIANCE

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. This policy now reads as follows:

"Inmates shall have the right to present any issue, including challenging the legality of their conviction or confinement; seeking redress for illegal conditions or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and, asserting against correctional or other government authority any other rights protected by Constitutional or statutory provision or common law."

Concern continues to exist in the minds of many inmates that acts of retaliation will follow any aggressive legal activity which addresses conditions of confinement at the Nevada State Prison. There has been an exceedingly high turnover of law clerks for disciplinary reasons. This has been particularly true for those who are capable and knowledgeable about civil rights actions. In each case, however, there appears to have been a legitimate reason for some disciplinary action. Law clerks should not be removed from their work assignments for a rule violation unless the violation was directly related to their job, or their continued assignment as a law clerk would threaten the safety or security of the prison.

FINDINGS REGARDING COMPLIANCE

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

AGREEMENT

Access to the Judicial Process

"A. Written Policies and Procedures

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 has 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. All changes were incorporated in Administrative Regulation #720, and practice appears to conform with policy.

FINDINGS REGARDING COMPLIANCE

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

CONCLUSION

During the past two and one-half years the Defendants have come into compliance with many of the requirements set forth in the Stipulated Settlement Agreement. Some requirements could not be carried out until the Legislature appropriated sufficient resources, and this has now been done. Personnel have been hired, contracts awarded, equipment ordered and working drawings are being developed for construction projects. With the exception of the remodeling of A and B Block which will not be completed before March 1987, the majority of the agreements which required funding should be fully activated within the next six months.

The defendants have made good progress, but are not yet in compliance with all agreements. The plaintiffs have been patient over the past two and one-half years, and are understandably concerned that the Nevada State Prison is not yet in compliance with some of the critical agreements.

It is the role of an Auditor to report on the state of compliance, not to recommend further action at the point at which jurisdictional decisions must be made. Considering this role limitation, the Auditor reports to the Court as follows:

- o The defendants are in compliance with 34 agreements.
- o The defendants have made good progress and are in partial compliance with 18 agreements.
- o The defendants are not in compliance with 5 agreements.

o Agreements in which compliance is only partial or has not been reached represent such critical conditions of confinement as:

- a) medical services.
- b) sanitation.
- c) clothing.
- d) administrative segregation.

Respectfully submitted,

Allen F. Breed

ALLEN & BREED

Court Auditor

December 13, 1985

NOTES

1. Shapley v. O'Callaghan (CV-R-77-221-ECR), Order, August 22, 1983.
2. Shapley v. O'Callaghan (CV-R-77-221-ECR), Order, February 8, 1984.
3. Shapley v. O'Callaghan (CV-R-77-221-ECR), Stipulation, March 18, 1984.
4. Craig v. Hecker (CU-R-2662-BRT), Consent Decree, July 18, 1980.
5. Nevada State Public Works Board, Capital Improvement Program, 1985-1987.
6. Conferences with officials in the State Fire Marshal's Office have clearly indicated that, under Nevada codes, A and B cellblocks do not require sprinkling systems. The remodeling that is schedule of the ventilation system will provide smoke detectors and smoke removal which will meet fire and life safety requirements. The question of a secondary exit for this building is under discussion, and the reactivation of a former exit would clearly meet all requirements. Under the wording of the Agreement, state and local fire and life safety standards must be met in A and B blocks, and not higher standards set by such groups as the National Fire Protection Association.
7. Nevada Revised Statute, Section 209.321. Transfer of offenders for psychiatric observation or treatment.
8. Ibid.
9. Taylor vs. Wolff, Auditor's Third Progress Report, October 1, 1985.
10. Ibid.
11. American Correctional Association Standards for Adult Correctional Institutions, Second Edition, 1981.
12. State Fire Marshal Division Report, August 30, 1985.
13. Administrative Regulation #8 (Revised), July 10, 1985.
14. Ibid.

15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Quotation from Agreement B. Classification Procedures, Paragraph 14, sub paragraph e; underlined by Auditor for emphasis purposes.
20. Williams vs. Leeke, 583 F 2d 1336.