NEBRASKA LEGISLATIVE COUNCIL

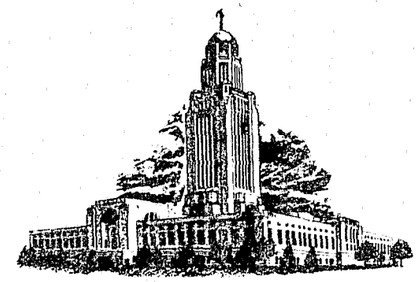
COMMITTEE REPORT NO. 218, VOL. II

# REPORT OF THE NEBRASKA LEGISLATIVE COUNCIL COMMITTEE ON JUDICIARY PRISONER'S RIGHTS

DECEMBER, 1974

# State of Nebraska

## LEGISLATIVE COUNCIL



STATE CAPITOL, LINCOLN 68509

December, 1974



TO THE MEMBERS OF THE
NEBRASKA LEGISLATIVE COUNCIL

Ladies and Gentlemen:

The accompanying report was prepared by the Legislative Council Committee on Judiciary, composed of the following members: Senator Roland Luedtke, Chairman; Senator Leslie Stull, Vice Chairman; and Senators Wally Barnett, Terry Carpenter, Ernie Chambers, John DeCamp, Richard Fellman, and Blair Richendifer. Upon the resignation of Senator Terry Carpenter, Senator Charles Davey was appointed to serve on the committee.

Respectfully submitted,

Jack W. Rodgers
Director of Research

EXECUTIVE BOARD:
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John Savage, Vice Chairman
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Loran Schmit
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# INTERIM STUDY ON PRISONER'S RIGHTS

The 1974 United States Supreme Court decision, Wolff v. McDonnell, -U.S.-, 94 S.Ct.2963 (1974), prompted this inquiry into the status of procedural safeguards implemented at the Nebraska Penal and Correctional Complex in disciplinary proceedings.

This case involved an action by several inmates in that institution challenging certain practices, rules and regulations in effect at that time. To be more specific, the inmates alleged that procedures followed at disciplinary proceedings violated due process, that the inmates legal assistance program did not meet constitutional standards, and that the regulations governing inmates mail were unconstitutionally restrictive.

The courts ruling does not require that "total" due process standards be met in the penal context, however, certain minimum requirements have been prescribed.

The following is a brief synopsis to clarify the holdings of the court in the Wolff case.

## I. DUE PROCESS - DISCIPLINARY PROCEEDINGS

By statute, Nebraska has established a procedure through which inmates can receive a shortened sentence through accum-

ulation of credits for good behavior. The statute also provides that this "good time credit" is to be forfeited only for serious misbehavior. The inmates argued that any revocation of this statutory right to "good time credit" must be in compliance with strict due process standards the Court recently made mandatory in parole and probation revocation proceedings. (See generally: Morrissey v. Brewer, 408 U.S. 471 (1972), Gagnon v. Scarpelli, 411 U.S. 778 (1973).

While agreeing in principle, the Court did not extend the entire holdings of Morrissey and Scarpelli to disciplinary proceedings within the penal complexes themselves. However, the court did reason that Nebraska, "having created the right to good time and recognizing that its deprivation is a sanction authorized only for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within the 14th amendment "liberty", to entitle him to those minimum procedures required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated. Consequently, the Court ruled some Nebraska procedures constitutionally deficient.

A. Written Notice

The Court held that an inmate must receive a written notice of the charges against him at least twenty four (24) hours before he is to appear before the "adjustment committee". This will allow the inmate an opportunity to marshall the facts and allow him to prepare a defense.

B. Written Statement

To protect the inmate against any possible collateral consequence based upon a misunderstanding of the nature of the original proceeding, there must also be a written statement by the factfinders as to the evidence relied on and the reasons for the disciplinary action.

C. Calling of Witnesses - Evidence

The Court held, the inmate facing the disciplinary proceeding should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so "will not be unduly hazardous to the institutional safety or correctional goals". This ruling necessarily leaves an area of discretion in which prison officials may determine which witnesses might precipitate an unduly hazardous situation potentially harmful to institutional safety. However, while not directly prescribing it, the Court does say that it would be useful for the "Committee" to state its reasons for refusing to call a witness; possibly in writing.

D. Confrontation of Witnesses

While the Court declined to hold that inmates have the right to confront and cross examine witnesses in every case, they did note that it is allowed in twenty eight (28) of the states and left the implementation of this procedure to the discretion of the individual states.

E. Legal Assistance

Inmates do not have a right to either retained or appointed counsel in disciplinary proceedings. However, the Court did stipulate that where an illiterate inmate is involved, or the charges are so complicated that its unlikely that the inmate "will be able to collect and present the evidence necessary for an adequate comprehension of the case", that he should be able to seek the aid of another inmate or "to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff".

Where civil rights actions are involved rather than disciplinary proceedings, the states must make available the same type of legal assistance provided in the preparation of habeas corpus petitions. That "unless and until the state provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, inmates could not be barred from furnishing assistance to each other". See eg., Johnson v. Avery, 393 U.S. 483 (1969).

II. INSPECTION OF INMATE MAIL

By the time this case reached the Supreme Court, Nebraska had already conceded that it could not constitutionally open and read mail from attorneys to their inmate clients. The Court did rule that such mail could be opened to be checked for contraband, but only in the presence of the inamte. The state may require the attorney's name and address appear on the communication. Also, a lawyer desiring to correspond with a prisoner may be required first to identify himself and his client to prison officials to ensure that letters marked "privileged" are actually from members of the Bar.

III. RETROACTIVITY

The Court did note that some of the newly extended procedural safeguards may affect the fact finding process, but because of the possible burden on the administration of all prisons in the country, the standards are applicable only to future proceedings.

## SUMMARY

While the Court does extend to prison inmates the benefit of certain constitutional safeguards to a greater extent than ever before, the Court appears unwilling to extend "total" due process standards. Pervading the entire decision is the idea that this area of law is in a state of flux, constantly evolving and that to lay down "hard" rules in this area may stifle that growth. The Court then, leaves wide discretion with the states, that they may experiment in these regards, and this area of law continue to expand.

There are currently no Nebraska statutes which deal directly with the various aspects of prisoner rights which were at issue in the Wolff decision. Any proposed legislation in this area would not conflict with any existing statutes with the possible exception of Neb.Rev.Stat. 83-1,107 which together with related statutes comprise the Nebraska good time laws. Nebraska's good time laws are currently under study with revision in mind at the request of Nebraska prison officials. This study will be the subject of a future report.

The primary focus of this report will be on the actions taken by other states in the area of prisoner's rights after the Wolff decision. Of special interest is the Pennsylvania Consent Decree reproduced in Appendix A. The Decree had its origins in a suit instituted against the Commonwealth in the U.S.District Court for the Eastern District of Pennsylvania by the Imprisoned Citizens Union, et.al., citing the Wolff case. The plaintiffs and defendants having indicated their willingness to consent to an entry of judgment, a consent decree was prepared as of November 1, 1974. We were fortunate in procuring a copy of this decree shortly before this report went to printing.

Also in response to the Wolff decision, a Special Masters' Report was issued in the United States District court for the middle District of Louisiana. You will find this Report reproduced in Appendix B.

These reports are most significant because they show the impact that the Wolff decision has had on the concept of prisoner rights in our sister states.

Reproduced in Appendix C is a presentation made by Dr. Hubert Clements at last years Nebraska Citizens Conference on Corrections. Dr. Clements is the Deputy Director, South Carolina Department of Corrections and a leading national authority on prisoner's rights. He has published several books on the subject and his presentation, "Emerging Rights of the Confined" provides valuable insights into this area.

To facilitate our study of prisoners rights, inquiries were made of the various states requesting information regarding recent or planned legislation in this area. The purpose of these inquiries was to determine what type of response the states were making to the recent Supreme Court decisions, (including the Wolff decision) affecting the rights of prison inmates. We were particularly interested in type of law utilized to govern due process standards in disciplinary proceedings.

The response to these inquiries, while less than overwhelming, was nonetheless adequate to give us a reasonable basis upon which to determine the manner in which our sister states are acting in this area. Twenty seven states responded to our inquiry. Of these states, all but six have been active

in this area within the past two years, and of those six, four states had existing legislation which either met or surpassed the recent Supreme Court guidelines.

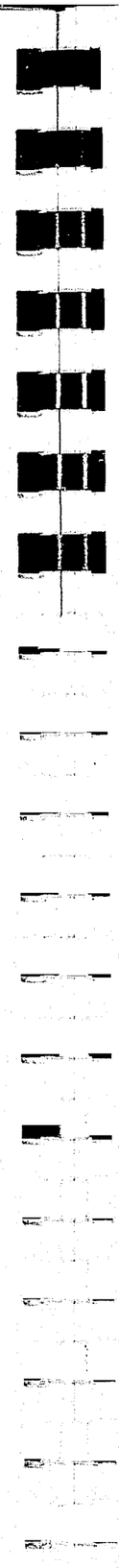
Five of the responding states govern procedures in disciplinary proceedings by statute, thirteen states utilize administrative regulations, and the remaining nine use a combination of each.

The states more recently active in this area have tended to utilize the statutory approach, either exclusively, or in conjunction with administrative regulations. If there is any discernible trend, it would be that states are presently more likely to use the statutory method to deal with prisoner rights than they were a few years ago.

Of the states that responded, eight states are in compliance with the Supreme Court guidelines. The standards of seven states surpass the Supreme Court guidelines. The standards of two of the responding states are deficient. Seven of the states are currently revising their procedures to bring them into compliance with the Supreme Court guidelines and most have indicated that their new procedures will surpass the minimum requirements.

On the following pages is a state by state breakdown which includes the manner by which the responding states govern disciplinary procedures in their correctional institutions, and their degree of compliance with current Supreme Court guidelines.

| States Responding | | Disciplinary Procedures Governed by Statute/Admin. Reg. |
|---|---|---|
| 1. | Alaska | Statute/Admin.Reg. |
| 2. | Arizona | Admin.Reg. |
| 3. | Arkansas | Admin. Reg. |
| 4. | Colorado | Statute/Admin.Reg. |
| 5. | Connecticut | Statute |
| 6. | Delaware | Statute/Admin.Reg. |
| 7. | Georgia | Admin.Reg. |
| 8. | Illinois | Statute |
| 9. | Indiana | Statute |
| 10. | Kansas | Admin. Reg. |
| 11. | Kentucky | Admin. Reg. |
| 12. | Louisiana | Admin. Reg. |
| 13. | Massachusetts | Admin. Reg. |
| 14. | Montana | Admin. Reg. |
| 15. | New Mexico | Statute/Admin.Reg. |
| 16. | North Carolina | Admin. Reg. |
| 17. | North Dakota | Statute |
| 18. | Ohio | Admin. Reg. |
| 19. | Oklahoma | Admin. Reg. |
| 20. | Oregon | Statute |
| 21. | South Carolina | Statute/Admin. Reg. |
| 22. | South Dakota | Statute/Admin. Reg. |
| 23. | Tennessee | Admin. Reg. |
| 24. | Texas | Statute/Admin. Reg. |
| 25. | Virginia | Statute/Admin.Reg. |
| 26. | West Virginia | Statute/Admin. Reg. |
| 27. | Wis consin | Admin. Reg. |
| * | Nebraska | Admin. Reg. |



| States Responding | State's Compliance with Supreme Court Guidelines |
|---|---|
| 1. Alaska | Insufficient Data |
| 2. Arizona | Surpass Sup.Ct.Guidelines |
| 3. Arkansas | In Compliance |
| 4. Colorado | Under Revision |
| 5. Connecticut | In Compliance |
| 6. Delaware | Insufficient Data |
| 7. Georgia | Under Revision |
| 8. Illinois | Surpass Sup.Ct.Guidelines |
| 9. Indiana | Under Revision |
| 10. Kansas | Surpass Sup.Ct.Guidelines |
| 11. Kentucky | Deficient |
| 12. Louisiana | In Compliance |
| 13. Massachusetts | Surpass Sup.Ct.Guidelines |
| 14. Montana | In Compliance |
| 15. New Mexico | Under Revision |
| 16. North Carolina | In Compliance |
| 17. North Dakota | In Compliance |
| 18. Ohio | Surpass Sup.Ct.Guidelines |
| 19. Oklahoma | Deficient |
| 20. Oregon | In Compliance |
| 21. South Carolina | Under Revision |
| 22. South Dakota | Insufficent Data |
| 23. Tennessee | Surpass Sup.Ct.Guidelines |
| 24. Texas | Under Revision |
| 25. Virginia | In Compliance |
| 26. West Virginia | Under Revision |
| 27. Wisconsin | Surpass Sup.Ct.Guidelines |
| * Nebraska | Under Revision |

## CONCLUSION

Nebraska currently has no statutory law which governs due process standards to be applied in disciplinary proceedings at the Nebraska Penal and Correctional Complex. These procedures are now governed by administrative regulations formulated by the prison authorities themselves. These provisions are currently under revision by prison authorities, and unfortunately, were not available by the time this report went to printing. It is, therefore, impossible at this time to offer any comparisons between the Nebraska standards and those of the Supreme Court or the other states. It would be equally useless to point out the inadequacies of the past Nebraska standards.

One thing is certain when comparing the data received from other areas of the country, the states are active in this area. The trend seems to indicate an increased willingness to promulgate definitive due process standards by statute, rather than administrative regulation. Whether it is condusive for Nebraska to enact legislation in this area or continue to utilize administrative regulations will depend mainly upon an analysis of the revisions now being made of administrative regulations by the Nebraska prison authorities. This should be possible before the first of the year.

APPENDIX A

PENNSYLVANIA CONSENT DECREE

This decree was a response to the Wolff case, instituted in the U.S. District Court for the Eastern District of Pennsylvania.

D R A F T
(November 1, 1974)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| IMPRISONED CITIZENS UNION, et al. | : | |
| | : | CIVIL ACTION |
| | : | Nos. 70-3654 |
| vs. | : | 71-513 |
| | : | 71-1006 |
| | : | 72-2030 |
| MILTON SHAPP, et al. | : | 70-2545 |

CONSENT DECREE

The parties hereto are mutually desirous of disposing of as many of the issues raised by this suit as possible without further litigation, and for that reason plaintiffs and defendants are willing to consent to the entry of the following judgment. The plaintiffs acknowledge that defendants already have instituted voluntarily many of the programs and procedures described herein. This Consent Decree shall in no way be interpreted as an admission by defendants of any violation of state or federal law.

The court being fully advised in the premises, and having conferred with the parties and their attorneys herein, having reviewed all aspects of this case to date, having fully considered the desirability of disposing of the matters contained herein by means of a consent judgment and knowing the same to be freely agreed to by the plaintiffs and defendants herein as is evidenced by their signatures and/or the signatures of their counsel hereto does HEREBY ORDER, ADJUDGE AND DECREE that the following judgment be and the same is hereby entered as the judgment of this court in this matter.

I. CODE OF CONDUCT

Defendants will promulgate a Code of Conduct covering all aspects of institutional life relating to the conduct of residents and the conduct of custodial and administrative personnel.

A. Said Code must specify inter alia, the type of punishment to be imposed for the infraction of any regulation contained therein. Where such punishment is the removal of a resident from the general population of the prison wherein he is confined, the Code shall provide for a mandatory periodic review by the sentencing panel, but no longer than thirty (30) days or after one half of the sentence is served, or whichever is less. Defendants acknowledge that the primary aim of segregation from the general prison population is to allow inmates to control their behavior so that they may be returned to the general population without further danger to the staff, other inmates or the segregated inmates themselves. Defendants' policy is to return segregated inmates to the general population as soon as such inmates have so mofidied their behavior.

B. Said Code must specify inter alia the type and nature of a prisoner's conduct that would constitute an infraction of the Code, and such conduct must be defined so as to apprise the prisoner of the conduct that is prohibited. No conduct will be punished unless it constitutes an infraction of the Code.

C. Following approval by the court said Code shall be reproduced in full and distributed to the entire inmate population of all state correctional institutions and to all custodial and administrative personnel of said institutions. The Bureau will continue to distribute the Code to new inmates and staff.

II. CODE OF PROCEDURE

Following approval of the Consent Decree, defendants shall amend Administrative Directive BC-ADM 801, Adjustment of Behavior, to provide that all residents charged with a violation of the Code of Conduct which is or may be punishable by the loss of any privilege, [imposition of money damages] or punitive change of population status (including punitive transfer to another institution) shall have the following rights:

A. Written notice of the charges against the resident;

B. A hearing before an impartial panel, which panel shall not include any participants in the incident or incidents from which the charges arise;

C. The right to question witnesses presented in support of the charges, provided however, that the right shall be limited to the resident who is charged;

D. The right to call witnesses in his or her own defense, provided however, that no resident shall have the right to compel testimony from any other resident who does not wish to testify;

E. Adequate opportunity to prepare a defense;

F. The right to assistance and advice in preparing and presenting a defense from any resident in general population or staff member at the institution where the hearing is held, provided that such resident or staff member is willing to serve in such an advisory capacity for the resident so charged;

G. The right to a decision based upon a preponderance of the evidence, and, if said decision is adverse to the resident, the right to written notice of the decision accompanied by a summary of the reasons in support thereof;

H. A written summary of the hearing. Inmates shall have the right to submit a concise summary of the hearing which summary shall be made a permanent part of the file.

III. MINOR INFRACTION PROCEDURE

Notwithstanding any of the provisions of Paragraph II of this Consent Decree, the defendants shall also establish a Minor Infraction Procedure whereby the defendants may permit the resident to accept a minor summary punishment for a less serious violation of the Code of Conduct rather than proceed to a hearing on a more serious charge.

IV. HEALTH CARE

Defendants agree to the continuation or, if not already in effect, the implementation of the Health Care provisions contained in Appendix A of this Consent Decree within the period of time specified in said Appendix A.

V. COMPLIANCE WITH ADMINISTRATIVE DIRECTIVES

Defendants shall comply with the regulations of the Bureau of Correction (hereinafter the "Administrative Directives") and the amendments and additions thereto.

Defendants shall expend their best efforts to assure compliance with this Consent Decree and with the Administrative Directives and the amendments and additions thereto by all institutional staff members, and all other persons subject to defendants' jurisdiction.

VI. MAIL

A. Administrative Directive BC-ADM 803 Resident Mail Privileges, shall be amended to provide:

"Correspondence or other writings containing threat[illegible] ing libelous or obscene material are prohibited. A breach of the above regulation may result in action being taken under Section IV of this Directive. Material shall not be deemed libelous solely because it is critical of the prison system, prison administrators or prison employees or because it contains disrespectful or derogatory comments about the prison system, prison administrators or prison employees."

B. Defendants agree to permit prisoners to [illegible] freely with the news media. Such correspondence may be [illegible] only if it can be shown to constitute an attempt to have [illegible] of the news media assist in transferring contraband, participation in escape attempts, or instigating a riot within the institution.

C. Defendants shall amend the aforesaid Administrative Directive to permit non-privileged, outgoing mail to be sealed and placed directly in the mail boxes provided in each housing unit except that defendants reserve the right to "spot-check" such outgoing mail where there exists a reasonable belief that security is being impaired by such mail or that such mail is being used in the commission of a crime. Inmates shall be given the opportunity to be present when their privileged mail is "spot-checked", except in circumstances where the inmate's presence would create a security risk or interfere with an on-going investigation of alleged criminal activity.

A log shall be kept of such instances where such outgoing mail is spot-checked and the resident whose mail is being spot-checked shall be notified immediately, unless such notification would jeopardize investigation of criminal activity in which case he or she shall be notified at the completion of the investigation. Pursuant to this

change in regulation, postage-free envelopes shall be substituted for postage-free letterheads.

Notwithstanding the above, the sending of outgoing mail which violates BC-ADM 803 constitutes an abuse of the mail privilege, and proceedings may be instituted under the applicable provisions of the Code of Conduct against residents who so abuse the mail privileges.

D. Residents shall continue to refrain from writing to persons who have indicated that they do not wish to receive mail from such residents, provided however, that this regulation shall not be interpreted to restrict the right of residents to correspond with public officials with respect to the latter's official duties.

E. Defendants shall notify the sender of mail which is non-deliverable pursuant to BC-ADM 803 that such mail is non-deliverable, and such mail shall be returned to the sender.

VII. PUBLICATIONS

An amended BC-ADM 814 Administrative Directive on Incoming Publications shall be promulgated as follows:

A. PURPOSE

It is the policy of the Bureau of Correction to give wide latitude to residents in selecting publications and subscribing to periodicals in order that educational, cultural, informational, religious, legal and philosophical needs of individuals will be satisfied.

It is the purpose of this Directive to establish procedures regarding incoming publications which shall be applicable to all institutions in the Bureau of Correction.

B. SCOPE

The procedures outlined in this Directive shall cover the purchase and/or receipt of all outside publications including legal publications, fiction and non-fiction books, paper-backs, correspondence courses, training manuals, reference materials, magazines, newspapers, religious tracts and pamphlets.

C. GENERAL PROCEDURES

1. All publications shall be mailed directly from the original source, e.g., publisher, magazine distributor, department store or book store, with the exception of small letter-size pamphlets which may be received in regular correspondence from family, friends or religious advisor.

2. The staff committee shall rule on resident requests to receive publications within ten (10) days after receiving such publication and shall immediately communicate its decision to the resident, with the reasons for the decision if the publication is disapproved.

3. Residents shall have the right to appeal to the Superintendent any staff committee decision disapproving publication. The Superintendent shall communicate his decision to the resident within fifteen (15) days after receiving such an appeal.

4. Should the Superintendent concur with the staff committee's disapproval, a resident may appeal to the Commissioner of Correction who shall evaluate the publication in conjunction with the Office of the Attorney General. The findings of the Commissioner and the Attorney General shall be communicated to all institutions, and the Commissioner's decision shall be communicated to all residents.

D. CRITERIA

1. Requests shall be approved unless the publications contain one or more of the following:

a. Information regarding the manufacture of explosives, incendiaries, weapons or escape devices; or

b. Instructions regarding the ingredients and/or manufacture of poisons or drugs; or

c. Writings which advocate violence, insurrection or guerrilla warfare against the government or any of its institutions or which creates a clear and present danger within the context of the correctional institution; or

d. Writings which are libelous; or

e. Judicially defined obscenity.

2. No publication shall be prohibited solely on the basis that such publication is critical of penal institutions in general, of a particular institution, of a particular institutional staff member, of an official of the Bureau of Correction or of a correctional or penological practice in this or in any other jurisdiction.

3. The above Criteria should not be interpreted so broadly as to affect recognized textbooks in chemistry, physics or the social sciences.

E. POSSESSION OF PUBLICATIONS

1. A reasonable quantity of reading materials shall be permitted to be retained by an inmate. Neatness and good order should be of primary concern rather than a specified number of publications. Excessive quantities shall be disposed of by amicable agreement with the resident if possible. The following shall be considered as a guide:

a. Newspaper - no more than one week's accumulation.

b. Magazines - no more than 10 in possession.

c. All authorized school books.

d. All legal materials necessary for research or preparation of case.

e. Other books in reasonable quantities.

2. Publications approved for an inmate at one institution shall also be approved by any other institution to which the inmate may be transferred.

VIII. SPEAKERS

Defendants agree to permit prisoners to invite persons who are representative of organizations to speak to prisoners or groups of prisoners provided that the person so invited may be limited to persons whose presence does not present a clear and present danger to the security and good order of the institution or the safety of the residents or staff. No person's presence shall be deemed to create a clear and present danger solely because officials of the Commonwealth, or the Bureau of Correction, or the individual institution disagree with such person's personal views or philosophy.

IX. USE OF FORCE

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing use of force by staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix B, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

X. BASIC ISSUE

A. An Administrative Directive governing the basic issue to be distributed to residents upon admission and replacement thereof upon need shown shall be promulgated to provide at a minimum for the following items:

(1) Administrative Directives Manual (Handbook)

(2) Ten (10) Free Letterheads

(3) Pencil

(4) Underclothing

(5) Socks

(6) Shoes

(7) Trousers

(8) Belt

(9) Shirts

(10) Handkerchief

(11) Towel

(12) Sheets

(13) Pillowcase

(14) Blanket

(15) Drinking Cup

(16) Soap

(17) Toothpaste or Toothpowder

(18) Toothbrush

(19) Safety Razor

(20) Razor Blades

(21) Shaving Brush or Brushless Shavecream

(22) Comb

(23) Necessary material and substances for cleaning cells

B. Defendants further agree that they will not charge residents for these items.

C. Defendants agree not to deprive any resident of any of the above items unless the possession of any such item by a particular resident or residents presents a clear and present danger to the security of the institution or a clear and present danger to the safety of the resident or others within the institution.

XI. USE OF RESTRAINTS

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing use of restraints by staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix C, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XII. USE OF MACE

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing use of mace by staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix D, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XIII. SEARCHES OF RESIDENTS AND CELLS

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing searches of residents and cells by

staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix E, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XIV. VISITING PRIVILEGES

Bureau of Correction's Administrative Directive BC-ADM 812, Resident Visiting Privileges, shall be amended as follows:

A. Specific provisions will be added to enable residents to visit with visitors not on the residents' approved list who may come from substantial distances at infrequent intervals to visit the resident.

B. The number of approved visitors which each resident may designate in advance shall be increased to twenty (20). Residents who can show that they have more than twenty regular visitors may add additional names to their approved lists. Members of a single family living at the same address shall continue to be counted as one visitor for this purpose.

C. The provisions governing frequency of visits shall be amended to allow visits at least as frequently as one per week. Additional visits may be permitted unless the resident's program status makes it impractical.

XV. HOUSING

A. Within both the fulfillment of sound objectives for the Bureau of Correction and the operating budget of the Bureau, defendants shall expend their best efforts on a priority basis to equip and furnish all cells within the subject institutions which are used to house residents on a daily basis to a similar extent and in a similar manner. The objectives of this program are to:

(1) provide the maximum amount of artificial illumination for each cell which the electrical system of the particular institution can safely maintain;

(2) where not already provided, provide individually controlled toilet facilities for each cell;

(3) where not already provided, provide individually controlled hot and cold running water for each cell;

(4) provide a writing desk and chair for each cell, except to the extent that the security of the institution dictates otherwise; and

(5) provide the maximum amount of natural illumination and ventilation for each cell within the inherent limitations of the physical structures of the subject institutions.

B. Defendants shall continue to refrain from using the following cells for the housing of residents, unless defendants first obtain court approval for the use of such cells:

(1) the cells located in the east wing of the basement of the Rockview Institution;

(2) the two phychiatric cells in the hospital area and the "big cell" at the Huntingdon Institution;

(3) the cells located in the rotunda basement and the cells located in the basement of the Behavior Adjustment Unit at the Pittsburgh Institution; and

(4) the "sweat-box" cells at the Dallas Institution

XVI. TRANSFER OF RESIDENTS.

When a resident has been temporarily transferred from one institution to another institution within the Commonwealth's correctional system for any purpose except punishment of the resident, defendants shall endeavor, subject to changes in the resident's training program, to place such residents in the same or similar institution job at the same or similar wage, both at the transferee institution and at the transferor institution when the resident is returned.

XVII. CIVILIAN CLOTHING

Defendants shall permit residents to wear civilian clothing when residents are housed in general population except to the extent that the Superintendent of each institution requires institutional issue to be worn for work. However, defendants reserve the

right to require residents to wear specific articles of clothing issued solely for the purpose of visitation during a resident's presence in the visiting areas of the institution. Furthermore, defendants reserve the right to impose reasonable regulations with respect to civilian clothing on the basis of safety, sanitary and security considerations.

XVIII. USE OF RESIDENTS' RECORDS

Defendants agree that they will take no action against any resident because of such resident's participation in this or any other civil litigation, nor will defendants make any adverse recommendation against any resident to the Parole Board, Board of Pardons or any other agency because of such resident's participation in this or any other civil litigation.

XIX. RIGHT TO AMEND ADMINISTRATIVE DIRECTIVES.

Defendant Commissioner of Correction reserves the right to amend, suspend, alter or modify any of the Administrative Directives and the additions and amendments thereto as provided in this Decree, and plaintiffs reserve their right to contest in this Court any such amendment, suspension, alteration or modification of the provisions of this Consent Decree. For a period of three (3) years following the Court's approval of this Consent Decree, defendant Commissioner of Correction shall not amend, suspend, alter or modify any Directive, rule or regulation covered by this Decree without first advising counsel for plaintiffs of his or her intention in this regard and providing counsel with fifteen(15) days notice prior to issuing any such Directive, rule or regulation within which plaintiffs may move this Court to prohibit the proposed amendment or modification. If

plaintiffs object to any such proposed amendment or modification, defendants shall not institute the proposed change without first obtaining approval of this Court upon good cause shown.

Plaintiffs also reserve the right to contest in this Court, at any time, by any appropriate legal proceeding, any institution or system wide pattern of failure or refusal by defendants or their agents or employees to follow the provisions of this Consent Decree.

XX. PLAINTIFFS' ACCEPTANCE OF ADMINISTRATIVE DIRECTIVES

Plaintiffs accept the Administrative Directives and the amendments and additions thereto as provided in this Decree as a complete statement as of the date of this Decree of their rights and privileges in those areas covered by this Decree.

XXI. REPORT

Within ninety (90) days of the approval of this Consent Decree, defendants shall submit to the Court and counsel for plaintiffs a written report of any new procedures, directive, etc. which are intended to effectuate the provisions of the Decree.

XXII. CONSENT DECREE - NO ADMISSION

This Decree shall not operate as an admission on the part of defendants of the truth or any of the allegations of plaintiffs' Complaint. Plaintiffs agree that failure by defendants to comply with the provisions of this Decree occurring prior to the entry of this Decree shall not in and of itself create a cause of action in any party. Plaintiffs reserve their rights to sue for alleged violations of state or federal law.

XXIII. VIOLATION OF DECREE

This Decree shall not create a private cause of action in any individual against any of the defendants. Nor, except as provided in paragraph XIX above, shall this Decree provide a basis for contempt proceedings. Nor shall any of the defendants be liable to any individual for damages for failure to comply with this Decree unless the alleged failure constitutes a violation of state or federal law, or unless the Court imposes such damages as part of a contempt proceeding pursuant to this Decree.

XXIV. PLAINTIFFS' APPROVAL OF DECREE

The Court shall not approve this Decree until plaintiff class has been notified of the proposed Decree and members of the class have been given the opportunity to submit to the Court any objections to the provisions contained therein.

XXV. DEFENDANTS' APPROVAL OF DECREE

The Court shall not approve this Decree until the Attorney General of the Commonwealth of Pennsylvania and the Commissioner of Correction have agreed in writing.

XXVI. NOTICE

APPENDIX A
to
CONSENT DECREE

HEALTH CARE PROVISIONS

It is understood and agreed by and between plaintiffs and defendants that although defendants will attempt to implement those provisions of Appendix A which are not already in effect within ninety (90) days of the date of the approval of this Consent Decree, there may be some provisions which require either additional funding or major construction or both, which cannot be implemented within the ninety (90) day period. As to such provisions, defendants agree to treat the implementation of these programs and procedures as a priority item and to implement them as soon as reasonably possible.

1. Defendants will make special diets available to all inmates when such diets are prescribed by the institution's physician.

2. Defendants will not use isolation cells for long term detention of psychiatric cases. Defendants will, as soon as possible, transfer such cases to community mental health facilities or other mental health hospitals whenever a determination is made that special housing of psychiatric cases is necessary. For emergency psychiatric problems, when a prisoner must be isolated pending transfer, the room used for such isolation will meet accepted standards for such facilities, and the patient will be kept under appropriate supervision by health professionals or properly trained custodial staff or personnel.

3. Defendants will continue their policy of not permitting medically unnecessary surgical procedures and medical treatment. The prescription of placebos and the use of tranquilizer drugs will continue to be done only under the strict supervision of a physician.

4. At all Bureau of Correction facilities which provide inpatient treatment for inmates, the Bureau shall provide twenty-four (24) hour medical care to such inmates. The standards for training and qualification of medical personnel such as inmate nurses and staff personnel working in such hospitals will be developed and implemented by the Bureau in consultation with outside professional sources.

5. There will be a daily sick call at all institutions by a properly trained health professional.

6. The Bureau will continue its policy of permitting all residents, no matter where they are housed in the institution, to have access to health professionals at the institution.

7. All medicines prescribed and given to inmates shall be properly labeled and identified. Medication shall be ground, pulverized or delivered in a fluid suspension only at the direction of the inmate's physician.

8. Institutions' physicians have been and will continue to be authorized to make the final decisions regarding medical treatment for inmate patients.

9. Prosthetic devises, including but not limited to dentures and hearing aids, shall continue to be furnished free of

charge to the inmates with the exception of eyeglasses. With respect to eyeglasses, the Bureau of Correction will pay the cost of the prescription ground lens in a standard plastic frame. However, if the inmate desires a more expensive framing, the difference between the total price and the Bureau's allotment will be deducted from the inmate's institution account.

10. At each institution a physician will conduct a monthly inspection of all food preparation and food storage spaces, the institution hospital and infirmary, and all other facilities connected with health care and health care delivery. The physician shall submit a report of his inspection to his superintendent immediately after his inspection, and these reports shall be maintained at each institution.

11. All persons who handle food at any institution shall be inspected daily by the steward in charge of the section. Any evidence that any such person is or may be suffering from a communicable disease shall be immediately reported to the medical dispensary and to the superintendent.

12. The Bureau of Correction will continue its attempts to obtain funds for a program which will enable the Bureau to provide every inmate with a full medical evaluation. The purpose of such evaluation shall be to determine the present health status of each inmate and to establish an appropriate plan of treatment for any medical problems which are diagnosed as the result of the evaluation.

13. The Bureau of Correction will establish a uniform sick-call procedure in each institution which will continue to permit

inmates to have immediate medical attention in emergency situations and which will permit inmates to see a health care professional within twenty-four (24) hours following request for routine medical care.

14. Each institution which does not already employ a full-time institutional pharmacist shall employ a registered pharmacist from the area on a part-time-consultant basis for the purpose of advising the institution staff on the proper manner of handling the prison pharmacy.

15. The Bureau of Correction will develop and implement a plan for the regular inspection of food preparation and medical facilities within each institution by public health personnel or other experts not directly related to the prison system.

16. The Bureau of Correction will establish and implement a plan for handling intake physical examinations of all new inmates and for providing follow-up treatment when appropriate.

17. The Bureau of Correction will develop and implement a medical record system that will provide for uniformity of records throughout the state and will protect the inmate's right to confidentiality of such records.

18. The Bureau of Correction will continue its procedures for handling dental care of inmates stressing the preventative aspects of such care.

19. The Bureau of Correction will continue to develop and implement plans for adequate staff training programs for health professionals and custodial officers assigned to work in the prison health system. This program has included and will continue to include a training program directed at enabling institutional health professionals and custodial personnel in recognizing emergency health problems and providing emergency health care.

20. The Bureau of Correction will continue to utilize the Governor's Health Task Force as a civilian resource outside the prison system in order to regularly evaluate the quality of health care being delivered within the prison system.

APPENDIX B
to
CONSENT DECREE

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USE OF FORCE

An Administrative Directive governing the Use of Force shall be promulgated as follows:

A. Force may only be used against a resident in one of the following situations:

(1) A staff member may use force against a resident when he reasonably believes such force is necessary for self-defense, in order to protect himself from bodily harm.

(2) A staff member may use force against a resident when he reasonably believes such force is necessary for the defense of others, in order to protect others from bodily harm.

(3) A staff member may use force against a resident when he reasonably believes such force is necessary for the defense of property, in order to protect such property from damage or destruction.

(4) A staff member may use force against a resident when he reasonably believes such force is necessary to prevent the escape of a resident or to recapture an escaped resident.

B. A staff member may not use any greater force against a resident than is necessary to protect himself, to protect others or to protect property.

C. A staff member may not use force against a resident for purposes of punishment or revenge.

D. A staff member may only use deadly force against a resident, i.e. force which could reasonably be expected to result in death, when such force is necessary to prevent death or serious bodily harm to himself or to another person.

E. A staff member may not use deadly force to protect

D R A F T
November 1, 1974

APPENDIX C
to
CONSENT DECREE

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USE OF RESTRAINTS

Within ninety (90) days after approval of the Consent Decree, an Administrative Directive governing the Use of Restraints shall be promulgated as follows:

A. Instruments of restraint shall never be applied as punishment.

B. Instruments of restraint designed to inflict pain or humiliation shall never be used.

C. Except as otherwise provided herein, instruments of restraint may only be used as a precaution against escape or as a protection against a resident injuring himself or other persons.

D. Instruments of restraint may be used on medical grounds at the direction of a medical officer.

E. Instruments of restraint may be used when a resident is confined in a cell only on medical grounds at the direction of a physician, or by order of the superintendent or his designated representative, if the physician is unavailable, if other methods of control fail in order to prevent a resident from injuring himself or other persons or from damaging property. The superintendent or his designee shall immediately consult a medical officer as well as promptly reporting the use of such restraint to the Commissioner of Correction.

property from destruction or damage. A staff member may only use deadly force to protect property from destruction or damage where the staff member reasonably believes that the destruction or damage of property will result in death or serious bodily harm to a person.

F. Deadly force may not be used if some lesser degree of force will likely safeguard against death or serious bodily harm.

G. A staff member may use deadly force against a resident to prevent an escape or to recapture an escaped resident in conformity with state law. However, a staff member may not use deadly force to prevent an escape or to recapture an escaped resident if some lesser degree of force will likely prevent the escape or enable recapture of an escaped resident.

D R A F T
November 1, 1974

APPENDIX D
to
CONSENT DECREE

USE OF MACE

The following procedures shall be standard policy for the use of chemical Mace at all state correctional institutions:

A. When to be Used.

The use of Mace shall be restricted to such instances where a resident barricades or arms himself and cannot be approached without definite danger to personnel or to himself and when it is determined that a delay in apprehension would constitute a serious hazard to the resident or other persons or result in a major disturbance or property damage. Mace may also be used in situations where the use of force is permissible as provided by Paragraph XII of this Consent Decree.

B. Availability and Storage

1. Mace shall not be carried by personnel except as specifically provided herein. It shall be stored in a secure area of the control center, accessible to authorized personnel only.

2. If in the opinion of the Superintendent (or, in his absence, the highest ranking prison official present and available), a scheduled or unscheduled gathering of residents, general institution climate or the conditions in a specific area of the institution, present a danger to staff or other residents, the Superintendent or such official may decide to arm officers with Mace. In these instances, the Superintendent or such official shall supervise the issuing of

the Mace and its collection and storage when the danger subsides.

3. When residents are to be transferred to other institutions, court, hopsital or other authorized movement outside the institution, and a determination has been made that the residents involved present a danger to staff or other residents, the decision to carry Mace may be made.

4. The officer-in-charge of the Behavior Adjustment Unit, with the approval of the Superintendent, or such other official as described in sub-paragraph 2 herein, shall determine the need for carrying concealed Mace or the use thereof during the movement of residents for exercise, bathing, and similar activities based upon the physical facilities, type and attitude of the resident involved, and the personal safety of himself and of his fellow officers.

C. How to be Used.

1. Mace shall not intentionally be directed at the eyes so that it results in a stream hitting the eye but rather administered in a short burst aimed at the face. Permanent eye damage may result when the spray is directed into the eyes.

2. Mace shall not be dispensed at ranges closer than four (4) feet.

3. Mace shall not be used in small rooms where there is no ventilation except in extreme cases and then all personnel and residents must be evacuated immediately, for severe damage may result from prolonged inhalation of Mace.

4. When using Mace, the stream should be in a short burst, of approximately two (2) seconds in duration. If control is not

achieved within fifteen (15) seconds after the first firing, a second burst may be fired.

D. Medical Staff Role

1. Except when the circumstance requires immediate action, the Medical Staff shall be contacted prior to the use of Mace to determine whether or not the resident has any disease or condition that would make the use of Mace particularly dangerous.

2. If the resident has respiratory or cardiovascular disease, chronic dermatitis or psychosis, Mace may be extremely harmful. Use of it on any resident with any of these diseases is prohibited except in the most exigent of circumstances where to refrain from its use could cause death and other lesser means to subdue the resident have been considered or attempted and determined to be ineffective. Also, if the resident is already known by the psychiatrist, the psychiatrist should, whenever possible, be consulted regarding the best method of managing a resident.

3. The resident's eyes shall be flushed with cold water when possible, within five (5) minutes after exposure. All exposed surfaces shall be washed and contaminated clothing shall be changed.

4. The resident shall be examined immediately by a member of the medical staff and at twenty-four (24) hour intervals for a minimum of fourteen (14) days.

E. Reporting Use of Mace

In all cases where Mace is used, a full written report of the circumstances including medical reports, shall be submitted to

the Superintendent and forwarded to the Commissioner of Correction.

F. Training

All personnel shall receive training in the proper use of mace at the training schools or duing the institutional orientation phase. Training shall include the review of the directive and actual use of Mace canniste·s.

D R A F T
NOVEMBER 1, 1974

APPENDIX E
to
CONSENT DECREE

SEARCHES OF RESIDENTS AND CELLS

An Administrative Directive governing searches shall be issued by the Commissioner of Correction to the Superintendents of the subject institutions for distribution to all institutional staff members and provide substantially as follows:

A. Purpose

The introduction or presence of weapons or other contraband can have a serious or dangerous effect on the security and proper management of a correctional institution. Of concern also is that searches for such contraband be appropriately conducted to avoid indignities to and harassment of the person searched. Accordingly, it is the purpose of this directive to establish guidelines for the searching of residents and their cells to reduce contraband and to insure that searches are properly conducted.

B. Types of Search

1. Strip Search:

a. A strip search shall be conducted only upon the following circumstances:

(1) Before and after every contact or open visit.

(2) Upon residents' return from outside activities, supervised outside leave and furloughs.

(3) Upon reception, return from court and return after resident has left the institution reservation for any other reason.

(4) Following activities where residents have mingled freely with outside groups, particularly where there are large numbers of people under minimal supervision.

(5) Periodically for residents in a trusty status who have the freedom to move in and out of the gate areas.

(6) When a resident is reasonably suspected to be involved in an escape plot or to be in possession of contraband.

b. Strip searches shall be conducted in an area separate from other residents and to assure privacy and minimum embarrassment. Female residents shall be searched by female correctional personnel and males, by male correctional personnel. At no time (except for c (2) below) shall it be necessary for a staff person to place his hand(s) on the resident. The search shall be conducted in a tactful, professional manner.

c. The following specific procedures shall be utilized in conducting the strip search:

(1) Have resident remove all clothing.

(2) Examine resident's head. You may run a finger or a large, wide-toothed comb through the hair:

(3) Using a flashlight, look behind the ears, into the mouth, under the tongue, and into nostrils.

(4) Request resident to lift arms and then carfully examine armpit area.

(5) Request resident to open hands and carefully examine backs, palms and between fingers.

(6) Look over resident's body. If pieces of tape or bandages are present, have resident remove them and replace with fresh ones [Removal and replacement by medical staff when originally applied by medical staff. wherever practicable].

(7) Using a flashlight, examine resident's groin area.

(8) Require resident to turn around, bend over and spread buttocks. Then, with flashlight, examine buttocks for contraband.

(9) Require resident to lift the feet so that you can examine soles and between the toes carefully.

(10) Carefully search each item of clothing before being returned to the resident or placed in storage.

2. Frisk Search

a. Residents may be frisked at random, particularly under the following circumstances:

(1) when a resident is a known contraband or weapons carrier; or

(2) when a resident is reasonably suspected of carrying contraband in a specific instance.

b. Frisk searches may be conducted in any area of the institution. However, if possible, some decree of privacy shall be afforded. They shall be conducted in a professional manner with tact and proper attitude displayed.

c. The following procedures shall be utilized in conducting the frisk search:

(1) The resident shall remove all items from pockets and place them in a hat or on a shelf, desk, or other suitable place. They should be placed in an area away from the resident. These items shall be examined to assure that they are not contraband.

(2) The resident shall stand still with feet apart and arms extended outward.

(3) Run the resident's shirt collar between the fingers, carefully feel for small hidden wires, hacksaw blades, etc.

(4) Move the hands downward, running them over the shoulders, down the outside of the resident's arms to the shirt cuffs. Then move the hands up the inside of the arms to the armpits.

(5) Then run the hands down the shirt front, checking the pocket, and stop at the resident's belt line.

(6) Check the waistline by running the fingers around the waistband, feeling for small articles.

(7) From the waistline, run the hands down the resident's buttocks, all the time feeling the places that might contain contraband.

(8) Then move both hands to one leg and run them carefully down the leg. At the bottom of the leg, make a point of checking the trouser cuff for concealed articles. Repeat the process on the other leg.

(9) As the last step to the frisk search, run the hand over the resident's lower abdomen and crotch carefully, looking for concealed articles that may be taped to these areas.

3. Internal Examination or Search

Internal examinations shall be conducted only by a medical doctor or registered nurse, within the confines of the institution dispensary or hospital.

4. In all instances where an inmate's cell is searched, the inmate shall be given the opportunity to be present unless his presence would present an immediate threat to security, or where the search takes place under emergency conditions or where the inmate's presence would impair an ongoing investigation of criminal activity or violation of institutional regulations.

APPENDIX F

SPECIAL MASTER'S REPORT

Also in response to the Wolff decision, this report was issued in the United States District Court for the Middle District of Louisiana.

CHARLES H. BANTA
CLERK

ROOM 300 - 707 FLORIDA ST.
BATON ROUGE, LOUISIANA
70801

U. S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
FILED AUG 29 1974
CHARLES H. BANTA
CLERK

JOHN E. RALPH

versus

HAYDEN DEES, ASSOCIATE WARDEN, ET AL

CIVIL ACTION

NO. 71-94

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NOTICE TO ATTORNEYS

Pursuant to FRCP, Rule 53 (e) (1), you are hereby notified of the filing on August 28, 1974, of the report of the Honorable Frank J. Polozola, Special Master, in the captioned matter.

August 29, 1974.

CLERK

# CONTINUED

# 1 OF 2

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JOHN E. RALPH

VERSUS

HAYDEN DEES, ASSOCIATE WARDEN, ET AL.

CIVIL ACTION

NUMBER 71-94

SPECIAL MASTER'S REPORT

This suit involves the validity of the prison disciplinary procedures used at the Louisiana State Penitentiary at Angola, Louisiana. The United States Magistrate was appointed Special Master in this matter on November 2, 1973. Now, after carefully considering the pleadings, depositions, stipulations of counsel, and the jurisprudence, I submit the following findings of fact, conclusions of law and recommendations:

Findings of Fact

I. History of the Case

This suit was originally filed in proper person by John E. Ralph, an inmate at the Louisiana State Penitentiary at Angola, Louisiana, pursuant to 42 U.S.C. §1983. Named as defendants in this suit are Hayden Dees, formerly an Associate Warden at the prison; C. Murray Henderson, the Warden; Louis M. Sowers, the former Director of the Louisiana Department of Corrections; and A. J. Lyons, Douglas L. Manship, H. C. Peck, and J. L. Walker, who were or are members of the Louisiana Board of Corrections. On June 28, 1973, Elayn C. Hunt, the present Director of the Louisiana Department of Corrections, was substituted as a party-defendant herein. Jurisdiction is alleged under 28 U.S.C. §1343, 2201 and 2202.

After the original complaint was filed, the Court appointed counsel to represent petitioner in this case. Thereafter, an amended and substituted complaint was filed on petitioner's behalf. In the substituted and amended complaint filed in this matter, petitioner contended he was subjected to cruel

and unusual punishment in violation of his rights guaranteed by the Eighth Amendment to the United States Constitution because of:

(1) confinement in the Louisiana State Penitentiary under punitive segregation conditions;

(2) use of inmate guards in the maximum security areas of the prison;

(3) confinement in punitive segregation for indefinite periods of time; and

(4) the procedures governing disciplinary actions within the prison.

By way of relief, petitioner sought to declare unconstitutional and to restrain the defendants from the practice of confining petitioner and other inmates in punitive segregation and from imposing upon him disciplinary measures without complying with minimal standards of due process and fair play. Petitioner also sought monetary damages.

This action was then consolidated with the case of Abner Lynch, et al. v. C. Murray Henderson, et al., Civil Action Number 71-123 on the docket of this Court. However, the order consolidating the cases was later rescinded. Therefore, the only issues now before the Court are those issues raised in the Ralph suit.

After this suit was instituted, meetings were held at the Court's request between officials of the Louisiana Department of Corrections, a panel of prisoners representing the prisoner population of the Louisiana State Penitentiary at Angola, Louisiana, and representatives of the Conflict Resolution Program of the Department of Justice. As a result of these meetings, certain agreements were reached by the above parties concerning grievance and disciplinary procedures to be used at the Angola prison. Other agreements were also reached on matters not involved in this lawsuit.

A pre-trial conference was held on November 5, 1973. At this pre-trial conference, the parties submitted for approval a "Joint Stipulation, Proposed Findings of Fact, Conclusions of Law and Judgment." In essence, the parties now request the Court to issue a declaratory judgment pursuant to 28 U.S.C. 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, approving proposed rules and regulations pertaining to disciplinary proceedings and use of segregated confinement at the Louisiana State Penitentiary at Angola.

According to the joint stipulation submitted by the parties, all other relief requested in the complaint, including injunctive relief and monetary damages, has been abandoned by petitioner. Thus, the only issue now before the Court is whether or not the proposed rules and regulations submitted by the parties satisfy the due process requirements of the United States Constitution and the guidelines set forth by the United States Supreme Court in Wolff, Warden v. McDonnell, _____ U.S. _____ (1974).

II. Background and Statistical Information

The rules and regulations pertaining to disciplinary and grievance procedures and lockdowns, which the parties seek to have approved herein, were implemented at the Louisiana State Penitentiary in March of 1973. At my request, the prison officials have submitted to the Court certain statistical information regarding the hearings conducted at the prison. According to these reports, approximately 6,000 disciplinary hearings have been held during the period of March 15, 1973, through June 15, 1974. During this same period of time, there have been 104 appeals taken from the 6,000 hearings. Of the appeals taken, 33 were granted in whole or in part, and eight appeals were pending.

In addition to reviewing the above statistical information, I have also personally attended and observed the hearings conducted at Angola and reviewed some of the decisions rendered by the Director on appeal. From my personal observations, it is apparent that the prison officials are following the proposed regulations.

III. Findings of Fact Agreed to by the Parties

The parties have submitted to the Court the following proposed findings of fact which the parties have agreed to and which, by stipulation and agreement of the parties, are accepted by the Court:

A. Parties

1. The plaintiff, John E. Ralph, is a fifty-two (52) year old citizen of the United States, presently incarcerated in the Louisiana State Penitentiary at Angola, Louisiana. He brought this action in his own behalf against Hayden Dees, Associate Warden; C. Murray Henderson, Warden; Louis M.

Sowers, former Director of the Louisiana Department of Corrections; A. J. Lyons, Douglas L. Manship, H. C. Peck, and J. L. Walker, members of the Louisiana Board of Corrections of the Louisiana Department of Corrections.

2. Defendant Hayden Dees was the Associate Warden for Custody at the Louisiana State Penitentiary at the time this lawsuit was instituted. He had responsibility for the supervision and administration of all phases of prisoner management and security.

3. Defendant C. Murray Henderson is Warden of the Louisiana State Penitentiary at Angola. As such, he is in charge of the Louisiana State Penitentiary and serves directly under the Director of the Louisiana Department of Corrections. Defendant Henderson is responsible for the administration of departmental rules and regulations and the supervision of the daily operation of the penitentiary.

4. Defendant Louis M. Sowers is a former Director of the Louisiana Department of Corrections. Defendant Sowers occupied the position of Director at the time this action was filed. He was charged by Louisiana statute with responsibility for the supervision and administration of all correctional institutions in Louisiana, including the Louisiana State Penitentiary at Angola where the plaintiff is confined. Defendant Sowers was responsible for promulgating rules and regulations for maintaining order and discipline within the Louisiana State Penitentiary at Angola. Included within this rule-making authority was the ability to promulgate and adopt procedural rules and regulations pertaining to the imposition of discipline within the institution and rules and regulations concerning the use of segregated confinement and conditions existing in segregated confinement.

5. Defendant Elayn C. Hunt, present Director of the Louisiana Department of Corrections, was substituted as a party defendant to this action on June 28, 1975. She is charged with the same statutory responsibility and authority as set forth in paragraph 4 above.

6. Defendants A. J. Lyons, Douglas L. Manship, H. C. Peck, and J. L. Walker were sued in their capacities as members of the Louisiana Board of Corrections of the Louisiana Department of Corrections. Presently, only

defendant H. C. Peck remains a member of the Board of Corrections.

B. Plaintiff Ralph

1. On approximately March 16, 1970, plaintiff Ralph was placed in confinement in a section of the Louisiana State Penitentiary known as Cellblock C Lockdown. This is a maximum security cellblock in the Louisiana State Penitentiary which is used to segregate certain prisoners from the general prisoner population of the Louisiana State Penitentiary. Cellblock C Lockdown is composed of a number of two-man cells, each of which measures approximately six (6) feet in width by nine (9) feet in depth. Each cell contains two (2) bunk beds, one (1) toilet, one (1) lavatory sink, and two (2) prisoners and their personal belongings. Plaintiff remained constantly confined in Cellblock C Lockdown from approximately March 16, 1970, until approximately March 24, 1971, a period in excess of one year.

2. On approximately March 24, 1971, plaintiff Ralph was transferred from Cellblock C Lockdown to another place of punitive segregation known as C.C.R. (also referred to as C.C.R. Lockdown). He remained confined in C.C.R. through the time this lawsuit was filed. C.C.R. is an area of the Louisiana State Penitentiary which, along with Cellblock C Lockdown is used to segregate certain prisoners from the general prisoner population. C.C.R. is a maximum security cellblock located in the same wing of the building which housed Death Row inmates and is located directly above Death Row.

3. While confined in C.C.R., plaintiff was kept in solitary confinement in a cell which measured six (6) feet in width by nine (9) feet in depth. All other inmates who have been and are being confined in C.C.R. are kept in solitary confinement in cells of the same dimensions.

4. While confined in C.C.R., plaintiff and all other persons so confined were under the control and supervision of inmate guards who were selected without the benefit of psychological testing and evaluation and were given no training related to the handling of prisoners or the use of firearms.

5. Plaintiff was confined in punitive segregation in Cellblock C Lockdown for a total period in excess of one and one-half years under conditions far more onerous than those to which he was originally sentenced.

Prior to the imposition of such punitive segregation, plaintiff was not provided notice, either oral or written, of the nature of any alleged rule infractions or violations which caused defendants or their agents to transfer him to punitive segregation custody. Plaintiff was not afforded a hearing at which a finding could be made based upon facts rationally determined as to whether he was guilty of an institutional rule violation. Plaintiff was unaware of the existence of any written rules or regulations governing the conduct of prisoners incarcerated in the Louisiana State Penitentiary. Plaintiff was, therefore, unable to make a prior determination of what conduct constituted a breach of prison disciplinary rules and what penalties would result from a breach of those rules.

6. Plaintiff was confined in punitive segregation for an indefinite period of time; no date had been fixed for his return to the general prisoner population.

7. Plaintiff was originally sentenced to a full term of imprisonment which, under the provisions of Louisiana Revised Statutes, Title 15, Sections 571.3 and 571.4, set the earliest date of discharge from the institution at February 25, 1974. Because of disciplinary actions taken on May 1, 1969; May 4, 1969; August 1, 1969; November 30, 1969; and March 24, 1971, by defendants or their authorized agents, plaintiff forfeited eight months of good time.

8. Prior to the actions taken on May 1, 1969; May 4, 1969; August 1, 1969; and November 30, 1969, relative to the forfeiture of plaintiff's good time plaintiff was not provided notice, either oral or written, of the nature of any alleged rule infractions or violations which caused defendants or their agents to impose such sanctions; nor was plaintiff afforded a prior hearing at which a finding could be made based upon facts rationally determined as to whether he was guilty of an institutional rule violation.

9. On March 24, 1971, plaintiff was brought before a prison disciplinary board composed of prison security officers and was informed that he was being deprived of 90 days of good time. He was not given adequate, timely written notice of the charges being brought against him; he was not permitted

to confront his accusers; he was not permitted to cross-examine adverse witnesses; he was not permitted to present evidence and examine witnesses in his own behalf; he was not permitted to speak in his own defense; he was not permitted to retain counsel or counsel substitute; the hearing was not conducted by an impartial hearing body but rather by prison security officers who were concerned with the actual, daily supervision and control of prisoners and who develop biases and prejudices toward individual prisoners.

C. General

1. The parties inform the Court of the negotiated agreements reached between officials of the Louisiana Department of Corrections and a selected panel of prisoners representing the prisoner population of the Louisiana State Penitentiary, relative to recurring complaints by prisoners of violations of their federal civil rights in the conduct of disciplinary proceedings and in the provision of medical services to the prisoner population by the prison authorities. Among the prisoners' complaints relevant to the case at bar, which gave rise to this Court's request that the Conflict Resolution Program of the Department of Justice act as mediators between the parties to the negotiations, which complaints were noted and resolved by agreement, were:

> (a) the imposition of lockdown confinement, including administrative lockdown, punitive segregation and solitary confinement, loss of good time, and/or other punitive sanctions for acts not published and distributed in a code of penal regulations of the prison.
>
> (b) the imposition of such lockdown confinement and punitive segregation and/or other punitive sanctions under procedures which did not comport with minimal due process standards and which were not published, distributed or uniformly followed.
>
> (c) confinement of prisoners in lockdown areas of the penitentiary were they were deprived of:
>
> (1) receipt of any correspondence;
> (2) origination of correspondence to courts and counsel;
> (3) visits from family while confined in punitive segregation or isolation;
> (4) adequate clean clothing;
> (5) adequate facilities for personal hygiene;
> (6) adequate diet;
> (7) adequate light in the corridors to illuminate their cells;

(8) adequate ventilation and seasonally required heating or cooling;
(9) adequate bedding and appropriately sanitized bedding and mattresses.

(d) other opprobrious conditions existing in lockdown and punitive segregation areas where:

(1) cells were frequently overcrowded;
(2) prisoners were additionally punished for communicating with other prisoners in adjacent cells or in other cells on isolation tiers without any relationship existing between the form and content of such communications and the requirements reasonably necessary to preserve order therein.

(e) confinement of prisoners in lockdown or punitive segregation areas of the penitentiary where:

(1) prisoners were being indefinitely locked down in cell units without benefit of a hearing or a statement of reasons for such transfer to harsher conditions of confinement;

(2) prisoners were being deprived of the same opportunities for personal contact with their visitors as were enjoyed by other prisoners in the general population without any rational relationship to legitimate security requirements.

(f) prisoners were being confined in administrative lockdown without a prompt hearing for alleged infraction of disciplinary regulations and were being kept in such confinement pending a hearing without any determination that such confinement was necessary to preserve the security or order of the institution or were being kept in such confinement without a hearing after any reasonable basis therefor had ceased to exist.

(g) prisoners were being confined in isolation cells at a facility known as C.C.E. (the "Red Hats") under extremely harsh conditions. The institutional officials agreed to terminate the use of C.C.E. except in cases requiring the emergency isolation of large numbers of prisoners.

IV. Additional Findings of Fact Made by the Special Master

Although the parties have stipulated and agreed to the findings of fact previously set forth in this report, there are additional findings of fact which should be and are hereby made by the Court:

A. The Use of Inmate Guards

1. The practice of using inmate guards at the Louisiana State Penitentiary was discontinued on July 15, 1973. Since that time and at the present time, inmate guards are not being used by prison officials at the Louisiana State Penitentiary at Angola, Louisiana.

B. Applicability of the Rules and Regulations Pertaining to Disciplinary Procedures and Lockdown

1. The rules and regulations pertaining to disciplinary procedures and lockdown which the Louisiana State Penitentiary at Angola have been using and which the parties seek to have approved by the Court are only applicable to that institution.

2. During the period of March 15, 1973, through June 15, 1974, there have been approximately 6,000 disciplinary hearings held at the Louisiana State Penitentiary at Angola, Louisiana. From these hearings, 104 appeals have been taken, of which 33 were granted in whole or in part, and eight are pending.

3. All disciplinary hearings are conducted in facilities located at the Louisiana State Penitentiary at Angola, Louisiana.

4. In 1971 certain rules and regulations pertaining to procedural process were set forth by the Court in Sinclair v. Henderson, 331 F.Supp. 1123 (E.D., La., 1971). The rules and regulations sought to be approved herein far exceed the minimum requirements set forth in the Sinclair decision.

Conclusions of Law

I. Jurisdiction

This suit was filed pursuant to 42 U.S.C. §1983. The Court has jurisdiction under 28 U.S.C. §1343. The Court also has jurisdiction to grant declaratory relief under 28 U.S.C. §2201 and §2202 and Rule 57 of the Federal Rules of Civil Procedure.

Furthermore, since the rules and regulations sought to be approved herein and which are now being used at the Angola prison are only applicable to the Louisiana State Penitentiary at Angola, Louisiana, there is no need to convene a three judge Court herein. Only a local rule is involved and not a state wide rule or regulation; therefore, a single judge has jurisdiction to hear this case. Wolff v. McDonnell, ____ U.S. ____, 94 S.Ct. 2963 (1974); Board of Regents v. New Left Education Project, 404 U.S. 541, 92 S.Ct. 652, 30 L.Ed.2d 697 (1972).

II. Procedural Due Process

A. In General

Lawful imprisonment necessarily makes unavailable to inmates

many rights and privileges of the ordinary citizen. It is, however, clear that although a prisoner loses many of his constitutional rights when he enters prison, he retains certain basic ones. Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969). Prisoners have been held to enjoy substantial religious freedom under the First and Fourteenth Amendments. Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). He retains his right of access to the Courts. Johnson v. Avery, supra. Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from discrimination based on race. Lee v. Washington, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 212 (1968). Furthermore, a prisoner may also claim the protections of the Due Process Clause and, therefore, may not be deprived of his life, liberty or property without due process of law. Wolff v. McDonnell, supra.; Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). However, prison "disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 94 S.Ct. at 2975. In reaching the "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application," the United States Supreme Court has recently set forth guidelines that must be followed by the prisons in conducting disciplinary hearings. Cf. Wolff v. McDonnell, supra. The Supreme Court was careful to note the problems prison authorities have and refused, as does this Court, to place on prison officials "an inflexible constitutional straight jacket" that would "very likely raise the level of confrontation between staff and inmate and make more difficult the utilization of the disciplinary process as a tool to advance the rehabilitative goals of the institution." Id., at 94 S.Ct.at 2978. Thus, the Supreme Court stated in the Wolff case:

> "Prison disciplinary proceedings, on the other hand, take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so. Some are first offenders, but many are recidivists who have repeatedly employed illegal and often very violent means to attain their ends. They may have little regard for the safety of others or their property or for the rules designed to provide an orderly and reasonably safe prison life. Although there are very many varieties of prisons with different degrees of security, we must realize that in many of them the inmates are

closely supervised and their activities controlled around the clock. Guards and inmates co-exist in direct and intimate contact. Tension between them is unremitting. Frustration, resentment, and dispair are commonplace. Relationships among the inmates are varied and complex and perhaps subject to the unwritten code that exhorts inmates not to inform on a fellow prisoner.

"It is against this background that disciplinary proceedings must be structured by prison authorities; and it is against this background that we must make our constitutional judgments, realizing that we are dealing with the maximum security institution as well as those where security considerations are not so paramount. The reality is that disciplinary hearings and the imposition of disagreeable sanctions necessarily involve confrontations between inmates and authority and between inmates who are being disciplined and those who would charge or furnish evidence against them. Retaliation is much more than a theoretical possibility; and the basic and unavoidable task of providing reasonable personal safety for guards and inmates may be at stake, to say nothing of the impact of disciplinary confrontations and the resulting escalation of personal antagonisms on the important aims of the correctional process." Wolff, 94 S.Ct. at 2977.

The above considerations along with the necessity to maintain an acceptable level of personal security in the institution, must be taken into account in determining whether the disciplinary rules and regulations proposed by the parties herein meet the minimum requirements of procedural due process.

B. Specific Requirements of Procedural Due Process

Due process in a prison disciplinary hearing requires the following:

1. Notice

"We hold that written notice of the charges must be given to the disciplinary action defendant in order to inform him of the charges and to enable him to marshall the facts and prepare a defense. At least a brief period of time after the notice, no less than 24 hours, should be allowed to the inmate to prepare for the appearance before the" disciplinary board. Wolff, 94 S.Ct. at 2979.

2. Reasons for Judgment

"We also hold that there must be a 'written statement by the factfinders as to evidence relied on and reasons for the disciplinary action.'" Wolff, 94 S.Ct. at 2979.

3. Witnesses

"We are also of the opinion that the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. Ordinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution."

* * * * *

"Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the Committee to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity or the hazards presented in individual cases." Wolff, 94 S.Ct. at 2979, 2980.

4. Assistance

The inmate does not have a constitutional right "to either retained or appointed counsel in disciplinary proceedings."

Furthermore, where an "illiterate inmate is involved, however, or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate." Wolff, 94 S.Ct. at 2982.

5. Impartiality of Board

The board conducting the disciplinary hearing shall be impartial.

6. Serious Misconduct

The rules set forth herein only apply in cases involving "serious misconduct." Wolff, 94 S.Ct. 2974, 2975.

Due process in a prisonal disciplinary proceeding does not require:

1. Confrontation and Cross-Examination of Witnesses

"Confrontation and cross-examination present greater hazards to institutional interests.[17] If confrontation and cross-examination of those furnishing evidence against the inmate were to be allowed as a matter of course, as in criminal trials, there would be considerable potential for havoc inside the prison walls. Proceedings would inevitably be longer and tend to unmanageability. These procedures are essential in criminal trials where the accused, if found guilty, may be subjected to the most serious deprivations, Pointer v. Texas, 380 U.S. 400 (1965), or where a person may lose his job in the society Greene v. McElroy, 360 U.S. 474, 496-497 (1959). But they are not rights universally applicable to all hearings. See Arnett v. Kenne , supra. Rules of procedure may be shaped by consideration of the risks of error. In re Winship, supra, 397 U.S. 358, 368 (1970) * * * and should also be shaped by the consequences which will follow their adoption. Although some States do seem to allow cross-examination in disciplinary hearings,[18] we are not apprised of the conditions under which the procedure may be curtailed; and it does not appear that confrontation and cross-examination are generally required in this context. We think that the Constitition should not be read to impose the procedure at the present time and that adequate bases for decision in prison disciplinary cases can be arrived at without cross-examination." Wolff, 94 S.Ct. at 2980.

2. Retained or Appointed Counsel

"At this stage of the development of these proceedings we are not prepared to hold that inmates have a right to either retained or appointed counsel in disciplinary proceedings." Wolff, 94 S.Ct. 2981, 2982.

C. The Constitutionality of the Disciplinary Rules and Regulations Sought to be Approved Herein

The proposed rules and regulations which the parties seek to have approved herein and which are now being used at the Louisiana State Penitentiary at Angola, Louisiana, meet or exceed the minimum constitutional requirements set forth by the United States Supreme Court and required by the Due Process Clause of the Constitution with one exception. As proposed in the stipulation filed herein, the regulations failed to provide that there be a "written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action." Therefore, this additional regulation has been added by the Court to the regulations submitted by the parties. In all other respects, the proposed regulations as set forth hereinafter in this report are constitutionally valid.

D. Retroactivity of the Rules and Regulations

The rules and regulations sought to be approved herein have been followed in part by the prison officials since March 7, 1973. Since that time over 6,000 disciplinary hearings have been held. To hold that the rules and regulations approved herein shall be applied retroactively would place an unnecessary and unfair burden on prison officials and on the administration of the prison at Angola. It is my opinion "that error was not so pervasive in the system under the old procedures to warrant this cost or result." Wolff, 94 S.Ct. at 2983. Therefore, this decision shall only be retroactive to June , 1974, the date of the decision rendered by the United States Supreme Court in Wolff v. McDonnell, supra.

Recommendations

For the foregoing reasons, it is my recommendation that:

(a) A declaratory judgment be rendered herein pursuant to 28 U.S.C. §2201 and §2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Rules and Regulations for Disciplinary Hearings and Lockdown for the Louisiana State Penitentiary at Angola, Louisiana, satisfy the minimum constitutional requirements set forth by the United States Supreme Court in Wolff v. McDonnell, supra., and required by the Due Process Clause of the

United States Constitution.

(b) The Court approve the following Rules and Regulations for Disciplinary Hearings and Lockdown for the Louisiana State Penitentiary at Angola, Louisiana:

RULES AND REGULATIONS FOR DISCIPLINARY HEARINGS
AND LOCKDOWN AT THE LOUISIANA STATE PENITENTIARY AT ANGOLA, LOUISIANA

I. Lockdown

A. General Provisions

1. Definitions

a. Lockdown is confinement where an inmate is confined to a cell. Lockdown is divided into three categories, administrative lockdown, extended lockdown, and isolation.

b. Administrative lockdown is confinement in a cell while the inmate awaits a hearing to determine whether he has committed an infraction of the disciplinary regulations or whether it shall be necessary to transfer him to a lockdown cell.

c. Extended lockdown is the condition of lockdown which is imposed upon an inmate at his request or after a hearing before the disciplinary board.

d. Isolation is confinement in a cell in which the inmate's physical liberty is absolutely limited.

2. It shall be the policy of the Louisiana State Penitentiary to keep as many men as possible living in the general population and assigned to meaningful work. Longterm confinement in cells is not in the best interest of the penitentiary or its population. An inmate may only be placed in lockdown for one of the following reasons:

a. when the inmate makes a written request for such confinement;

b. for the inmate's own protection;

c. when the inmate is physically dangerous to himself or other persons;

d. when the inmate is a serious escape threat;

e. as a result of a disciplinary infraction which prescribes such incarceration as a permissible punishment.

3. Notification. Every inmate who is placed on lockdown shall be notified in writing of the reasons why he has been placed in lockdown. A copy of this notification shall be placed in the inmate's official prison record.

B. Administrative Lockdown

1. Duration. Administrative lockdown shall be followed by a hearing before the Disciplinary Board no later than 72 hours after the inmate has been placed in lockdown, except that in the event of a three-day holiday or when the inmate is being returned to the Louisiana State Penitentiary from satellite penal institutions that period may be reasonably extended.

2. Continuance. Upon presenting a reasonable showing of need for a continuance in order to prepare for the hearing, the Disciplinary Board shall grant the same for a period not to exceed five days.

3. Credit for Time Served. The period of confinement in administrative lockdown shall be credited toward service of the sentence imposed by the Disciplinary Board.

C. Extended Lockdown

1. Hearings. Before an inmate may be involuntarily transferred to extended lockdown, he shall first be placed in administrative lockdown and given a procedurally correct hearing as provided in the rules governing administrative lockdown and disciplinary procedures set forth herein. An inmate may waive his right to be placed in administrative lockdown before being placed in extended lockdown, but shall do so in writing, a copy of which shall be placed in the inmate's official prison record.

2. Review. Each inmate confined in extended lockdown shall be given a periodic review, at least once every 90 days, to determine whether the conditions which originally made it necessary to place him in lockdown have ceased to exist. In determining whether the inmate should be released from lockdown, he should be personally interviewed. Recommendations from officers in charge of his custody and the views of all other employees who have had contact with

inmate should be taken into consideration. Each periodic review shall be noted in the inmate's official prison record.

3. Work Assignments. Upon release from lockdown, primary emphasis shall be placed on classifying the inmate to a job assignment and an environment to which he is most suited -- physically, intellectually, and emotionally.

D. Isolation

1. Duration. No inmate shall be confined in isolation for a period exceeding ten consecutive days, nor shall any inmate be confined in isolation for more than 20 days of each calendar month.

2. Hearings. Before an inmate may be involuntarily transferred to isolation, he shall first be placed in administrative lockdown and given a procedurally correct hearing as provided in the rules governing administrative lockdown and disciplinary procedures set forth herein.

3. Rights. Inmates confined in isolation cells shall have the following rights:

a. to receive correspondence consistent with the established rules of the institution;

b. to originate correspondence only to communicate with the Courts and legal counsel;

c. inmates shall be allowed to communicate by telephone (collect) with their families and legal counsel in emergency situations;

d. inmates shall be permitted to have visitors in keeping with necessary security precautions;

e. inmates shall be issued clean clothing daily;

f. inmates shall be allowed to take daily showers;

g. inmates shall be allowed toothpaste, toothbrushes, soap, towels, and toilet paper. If any inmate is unable to afford the expense of purchasing these items, the institution shall provide them to the inmate;

h. inmates shall be provided three meals which shall comply with American Correctional Association standards;

i. corridors shall be adequately lighted;

j. inmates shall be provided clean mattresses, mattress covers, and blankets;

k. isolation cells shall not be occupied by more than three persons except in emergency situations of severe overcrowding.

II. Disciplinary Procedure

A. In General

1. Amendments. The following rules pertaining to disciplinary procedures shall be followed, and shall be subject to amendment only in accordance with LSA-R.S. 49:953 and 49:954 of the Louisiana Administrative Procedures Act as more fully set forth in these rules.

2. Purpose. The rules set forth herein shall govern the imposition of discipline upon inmates. These rules are designed to protect the rights of all inmates and to insure that discipline is imposed fairly and efficiently within the institution. It shall be the prerogative of any inmate to waive any of the rights guaranteed in these rules.

3. Disciplinary Board.

a. The Disciplinary Board shall consist of three members. The Chairman of the Disciplinary Board shall be either the Warden, Deputy Warden, Associate Warden for Custody, Associate Warden for Classification, or Associate Warden for Treatment.

b. The other two members of the Disciplinary Board shall be appointed by the Warden and may be selected from treatment, administration, and custody. The Warden shall also appoint as many alternate members from the above stated categories as he feels necessary to the proper functioning of the Board. The members and alternates must broadly represent the primary areas of correctional treatment. It shall be the policy of the institution that the members of the Disciplin...

Board be selected from the highest levels of departmental authority consistent with the efficient operation of the institution.

c. No person may sit on the Disciplinary Board if he was in any way involved in the incident which was the cause of the disciplinary action.

d. Each member of the Disciplinary Board shall be impartial. Personal bias on the part of any member against an inmate appearing before the Disciplinary Board shall cause that member to be disqualified from any hearing concerning the inmate against whom he is biased.

e. A minimum of two votes shall be required for any decision by the Disciplinary Board.

f. The chairman will appoint an investigation officer, who shall not be a regular member of the Board.

g. The Disciplinary Board shall conduct hearings in all major infractions in accordance with the rules and regulations set forth herein.

4. Disciplinary Officer.

a. The Chief of Security or his designated representative shall serve as Disciplinary Officer. It shall be his duty to hear and adjudicate all minor infractions.

b. The shift supervisor or his designated representative shall be responsible for reviewing disciplinary reports on his shift. If a report is considered appropriate by the shift supervisor or his designated representative, it shall be sent to the Disciplinary Officer.

c. All hearings before the Disciplinary Officer shall at a minimum provide the accused inmate the opportunity to speak in his own defense.

d. All decisions of the Disciplinary Officer shall be based upon the evidence presented at the hearing.

c. The Disciplinary Officer shall document violations, hold hearings on minor offenses, and certify major offenses to the Disciplinary Board.

f. The Disciplinary Officer shall have the authority to issue official reprimands and assign extra duty after having afforded the inmate an opportunity for a procedurally correct hearing. Any offense which is heard by the Disciplinary Officer shall be considered a minor offense. No offense shall be heard by the Disciplinary Board which has been previously heard by the Disciplinary Officer. The Disciplinary Officer shall not certify minor offenses to the Disciplinary Board.

g. An inmate may appeal to the Disciplinary Board from any decision of the Disciplinary Officer. Appeals must be taken immediately upon conclusion of the hearing before the Disciplinary Officer. Execution of sentence shall be suspended pending decision of the appeal.

5. Disciplinary Reports.

a. No inmate shall appear before the Disciplinary Officer or the Disciplinary Board unless a disciplinary report or incident report is filed against him.

b. No disciplinary report shall be filed against an inmate solely on the basis of information supplied by another inmate.

c. All disciplinary reports and incident reports shall be written and shall be delivered to the inmate no later than 24 hours prior to any disciplinary hearing.

d. Each disciplinary report shall contain:

(1) the name and number of the inmate;

(2) the specific prison regulation allegedly violated;

(3) an accurate description of the offensive behavior alleged;

(4) the time and location of the alleged offense;

(5) the name of the officer writing the report.

(6) the names of all witnesses except those who wish to remain anonymous.

6. Hearings - Major Offenses.

a. At the commencement of each hearing before the Disciplinary Board, each accused inmate shall be orally informed of the following:

(1) the rule violation of which the inmate stands accused;

(2) the possible pleas (guilty, not guilty, guilty with a statement) available to the accused;

(3) that the inmate has the right to remain silent--there shall be no presumption of guilty upon exercising this right;

(4) that anything which the inmate says in the hearing may be used against him in a subsequent criminal proceeding;

(5) that the inmate has the right to call witnesses, present evidence in his own behalf and to cross-examine his accusers;

(6) that the inmate has the right to counsel or counsel substitute.

b. At all hearings before the Disciplinary Board, the accused inmate shall be allowed to present all evidence in his behalf which is relevant and competent. The inmate shall be allowed to present oral testimony, call witnesses, present written statements and physical evidence. The Disciplinary Board may exclude evidence which is not relevant, which is not competent and/or which is repetitive.

c. Inmates shall have the right to confront and cross-examine their accusers.

d. No inmate shall be compelled to testify at any disciplinary hearing.

e. All decisions of the Disciplinary Board shall be based upon the evidence presented at the hearing.

f. In those instances when information from a confidential informant is used at a disciplinary hearing based upon

a disciplinary report filed against the inmate, t
following rules will apply before an inmate can
found guilty of a rule infraction:

(1) The inmate shall have the right to cross-examine the person offering the information to determine the reliability of the informant;

(2) The Board shall produce evidence to corroborate the statements of the confidential informant;

(3) The Board shall consider the charged inmate's past behavior to determine if a pattern of conduct exists which would support the charges against him.

g. In those instances when information from a confidential informant is used at a disciplinary hearing based upon an incident report filed against the inmate, the following rules will apply before an inmate can be found guilty of a rule infraction:

(1) The inmate shall have the right to cross-examine the person offering the information to determine the reliability of the informant;

(2) The Board shall consider the charged inmate's past behavior to determine if a pattern of conduct exists which would support the charges against him.

h. Each inmate adjudged guilty of the violation charged shall be presented with a written statement by the Board as to the evidence relied on and reasons for the disciplinary action.

i. At all hearings before the Disciplinary Board, the accused inmate shall be entitled to the assistance of counsel or counsel substitute. The counsel or counsel substitute shall assist the inmate in the preparation of his case before the Disciplinary Board.

j. Upon written request, the inmate shall be given a finalized copy of the signed disciplinary report that is placed in his file.

k. In the event that an inmate or administrative official needs additional time to prepare his case, upon

presentation of a reasonable need for a continuance, the Disciplinary Board shall grant the same for a period of up to five days.

l. A complete verbatim recording of each hearing before the Disciplinary Board shall be made and preserved for a period of not less than 15 days from the day of the hearing. This recording shall be available for use in those cases where an appeal is taken.

m. The foregoing rules and regulations shall not be used to compromise or infringe upon any of the protections contained in the Fourth and Fifth Amendments to the United States Constitution.

7. Appeals.

a. The inmate shall have the right to petition the Director of the Department of Corrections to review the finding of the Disciplinary Board. Petitions for review must be filed within one week of the disciplinary hearing.

b. Upon written request of the inmate, it is within the discretion of the Disciplinary Board to grant a hearing in any particular case.

c. Each inmate shall be advised after each disciplinary hearing of his right to appeal and his right to request a rehearing.

8. Expungement of Records.

a. Any inmate found not guilty at the hearing or rehearing or whose conviction is reversed shall have all mention of the charges expunged from his permanent record immediately.

III. Miscellaneous Provisions

A. Emergency Situations. In the event of emergency situations which seriously threaten the security of the institution, the Warden or his delegate may suspend any and all rules and regulations until the emergency has ceased.

APPENDIX C

DR. HUBERT CLEMENTS - DISCUSSION

EMERGING RIGHTS OF THE CONFINED

Presentation made by Dr. Hubert Clements at last years Nebraska Citizens Conference on Corrections.

DR. HUBERT CLEMENTS - DISCUSSION

EMERGING RIGHT OF THE CONFINED

QUESTION: What is the physical make-up of the disciplinary committee of your institution? Who serves on it?

DR. CLEMENTS: The disciplinary committee at our institution is chaired by one of the deputy wardens from the institutions. We have a number of people from special treatment areas, it might be a social worker, it might be a chaplain, it might be a psychologist, it might be a teacher, it might be someone from our correctional institutional program. We might have a correctional officer who is not involved in this particular incident in question on the committee. The Ombudsman is always there. We have inmate representatives who are there, both to guide the administration and to assist the inmates.

QUESTION: You mentioned earlier in your comment about your ticket and the highway patrolman and his superior sitting on your court. Are you anticipating that you would have a non-institutional correctional committee in the future?

DR. CLEMENTS: Not if I can help it. What we are anticipating is to employ a legally trained, experienced hearing officer who would be much like the administration officers in the federal government, who would hear the facts and render a decision that would be like the other administrative hearings. The evidence would be reported, written records would be kept, documentation of the findings in the case. One of the things that we're

finding has been extremely difficult is in the documentation of what actually happened. We're finding most of our cases or a large percentage of our cases are being thrown out before they even reach the adjustment committee hearings, anymore, because there is no basis of fact, somebody heard, somebody thought they heard, somebody thought they saw a particular incident and we just never get to the adjustmen hearings anymore. This presents some real problems, we have one group of inmates that come from a particular locality that commit burglaries, strong armed robberies and assaults in institutions and it is extremely difficult to get evidence on them. We had some of them locked up for a while, went before the adjustment committee and found there was no documentable evidence. We had to release them. The inmates didn't want them released, the administration didn't want them released but until we're better able to document the problems, we really didn't have much alternative.

QUESTION: Have you had any experience with inmates on adjustment committee and how do you feel about that? Second question. Since you believe in taxing, inmates paying taxes, then do you also believe in them having the right to vote?

DR. CLEMENTS: In responding to your first question, we have tried inmates on adjustment committees in the past and we've had several rather serious altercations as a result of it, where the inmate who was found guilty, assaulted the inmate who was on the adjustment committee. Basically I'm opposed to that.

I don't think it's necessary. I'm primarily opposed to either the correctional staff or the inmate serving on the adjustment committee. I think there should be an impartial hearing officer who answers to the head of our system. I do not advocate having the policies or the practices of our institutions governed by outside individuals unless we have demonstrated our inability to do so. We are employed by the taxpayers of the State and under the statutes of our State to provide for the care and treatment of individuals who are confined. If we don't do it, rather than say we're going to get some volunteers in to tell you how to di it, I think before they do that, they ought to fire me, and get somebody in who can do it. I want to do what needs to be done.

About the right to vote? This is one of the difficult kinds of situation because you're kind of damned if you do and damned if you don't. I would preface my comments on saying this is not the official position of my professional organization, not the official position of my director or my assistant, it's my personal opinion, I think if we're going to prepare people for constructive citizenship then the right to vote certainly goes along with that.

QUESTION: What is the turnover rate of the corrections personnel? What type of in-service training do you require?

DR. CLEMENTS: The turnover rate among our personnel and correctional officers varies from institution to institution and with the time of

year and whether or not we've just had a disturbance in our institutions. I might say that in our system right now, we have thirty-five hundred inmates and we're operating right now eighteen institutions. Half of those inmates are confined in one institution. The turnover rate there is about eighty percent a year. That's not eighty percent of the people turning over but some people turn over rather rapidly. As far as many of our institutions, the turnover rate is almost zero. As far as in-service training, we have a state certification requirement that requires the same number of hours of training for correctional officers that is required of law enforcement officers in the state. We began this program a year ago. The correctional officer must complete one hundred sixty hours minimum training at our academy which is our state criminal justice academy. We have our training staff there. He must also receive favorable evaluations for his on the job performance. The we have certification beyond that for people applying for supervisory positions. We expect the basic minimum training to increase by at least twenty hours in a year.

QUESTION: How far has your system gone in providing meaningful employment for the inmates outside of the institution?

DR. CLEMENTS: We've had since 1968 what we think to be one of the more effective work release programs in the country. We have now ten percent of our total population in work release every day.

We have funds made available by the Legislature during the last session that we will double that number within the next eighteen months. We're right now starting a new program at the request of the private sector where we will be busing inmates out of the penitentiary proper, to work on a day to day basis. These will be people who have not quite four months left to go or who are still twelve months away from work release eligibility.

QUESTION: What are the requirements for the hiring of correctional officers?

DR. CLEMENTS: Well, that's depending on how critical our needs are at that particular time. Some days, you know, we check his legs and if he has two and his arms and he has two, we figure he's all right. Basically our requirements are that he must have at least a high school education. This is an area of real concern to us because we don't know how to select people who will function effectively as correctional officers. We stopped any type of psychological testing because we've been unable to demonstrate any correlation between the findings of psychological tests and performance on the job. We're still working at it because we've had some real difficulty where we recruited people who were peers of the many individuals in confinement as correctional officers. It's been very difficult for them to identify with the administration rather than with their friends who are serving time.

QUESTION: What is the salary of your corrections officers?

DR. CLEMENTS: We start them now at six thousand dollars a year and at the end of the six month training period, if he successfully completes that and is certified, he goes to sixty-five hundred dollars. Every twelve months thereafter he is eligible for an increase up to ten percent.

QUESTION: Dr. Clements, before you leave the work release, who determines who goes out on work release and who is responsible for that individual on work release?

DR. CLEMENTS: That is a separate division within the department. We do our own screening, we have psychological evaluations done by outside consulting psychologists and we check with the local law enforcement people to see if they will agree to have that person come back in to their community and work and we operate the centers ourselves. The success of our work release program has not been a magic formula, that's not how it operates. The key is in preparation of the community for the establishment of the center. We never open a center in under eighteen months. We have centers operating in the populous areas of the state. Once we determine that there's a sufficient number of inmates from that community going back to that community, we begin working with the community. We go to the city fathers, we talk to them about what we are doing. We talk to the local legislative delegation, explain to them what we're doing. We talk to the employers in the area,

explain to them what we're doing. We talk to the media people, we have several meetings with them. And, we talk to law enforcement people. Once they realize that these are their people, and they're coming back to that community and it's a matter of do you want us to give him a one way ticket home when his sentence expires or do you want him to come back into your community, get stabilized, get a job, let you know where he's working and where he's living. Which do you prefer? We have no difficulty at all with that. We could place twice as many people tomorrow on work release as we now have facilities for. We try to put a person in a center that's close enough to his home that once he's released he can continue working that job.

QUESTION: Does the administration itself make that decision, or does it have to go to the Parole Board?

DR. CLEMENTS: The parole board has no involvement in it whatsoever. We are in essence taking the risk for the parole board in that we put the person back out into the community on partial release prior to his coming up for parole and about seventeen percent of the people that go in to the work release program are removed from the program for a number of reasons. Some because they refuse to work, some because they get drunk, things of this sort, and they're carried back into the institution.

QUESTION: Would you explain the effect of your Ombudsman program?

DR. CLEMENTS: We've had the Ombudsman program for about eighteen months now. We started it under a Federal discretionary grant. We talked about it for about eighteen months before we started it and the initial reaction was we had enough grievances, we have enough bitching and complaining going on without legitimizing and giving them somebody to specifically go to and bitch about. But what we're finding is not only has it reduced the number of grievances coming to us at the upper levels of the administration but, it has placed the responsibility on both the Ombudsman and the line level administrative officers to work out any problems that exist. The institutional people are in support of it and in the eighteen months it's been there, we've only had two incidents where the Ombudsman and the cognizant administrative or institutional persons did not work out. The problem is resolving. They came to us and said here's what we did to correct this problem. Twice in eighteen months. Invariably the inmate comes to them talking about problems of food and things of this sort. We deal with those problems with counsels, they talk about personal ego kinds of problems they have. We're expanding that program. It's been a real boon to the administration. We have an attorney who heads up that program.

QUESTION: What criteria do you use for placing men on work release programs? Do you have a limit to the amount of time they can be on the program?

DR. CLEMENTS: We have two programs with work releases and we're starting a third one. The ones that operate out of our community centers, we have two, one is the last ninety days, the other is the last year of a person's sentence prior to parole eligibility. The basic criterion is that if a person has a sentence in excess of five years, he must be within one year of parole eligibility. If he has a sentence of under five years, he must have completed service of twenty-five percent.

QUESTION: Can the inmates bring in outside counsel? What about those that can't afford outside counsel?

DR. CLEMENTS: In answer to your first question, yes, they can bring in outside counsel as a result of a court decision handed down about three months ago. We have several forms of legal assistance. One, we have senior law students who work for our Ombudsman that can provide some assistance. We have the corrections clinic from the University of South Carolina School of Law that comes in and works with them and has been working with them for about five years. They can also request assistance from the local public defender's office and now if they have the funds, they can retain private counsel. We expect that the next step will be the inmate will say, since I don't have the funds, my rights have been violated. The natural results is that in some ways they'll be provided so they will have legal counsel as well.

QUESTION: Do you have a drug program in your larger institutions and in your smaller institutions and how successful is it?

DR. CLEMENTS: I'm glad you asked that. Yes, we have a drug program that is in it's third year now. It was initially funded the first two years from OEO and is now being funded by the National Institute of Mental Health. We have a staff of fifty-one people who work exclusively with drug abusers. They work with them from intake service to the regular institutions and we have drug programs back in our work release centers that work with them after they're placed on work release. We have follow up people who work in the communities following up the people who were known to have drug problems and went through the program with those who had drug problems or didn't, it didn't make any difference.

QUESTION: What are your feelings about this program?

DR. CLEMENTS: Sure is a whole lot better than nothing. It's too early in the game. The indications are that it's working quite well. Five years ago when I came to the department, we were averaging one drug law violation committment per month we're now getting in excess of four hundred a year. Control band in institutions has really been a difficult situation. Almost invariably when there are incidents of violence, there is either alcohol or drugs involved.

QUESTION: What type of treatment procedure do you have for the alcoholic?

DR. CLEMENTS: Very limited. We have three part time counselors and we d rather heavily on Alcoholics Anonymous. We tried to get federal money for that program and somehow it just hasn't happened,

We haven't been able to put together a viable program at this point.

QUESTION: What is the minimum wage at your institution for inmates?

DR. CLEMENTS: The maximum that an inmate can earn who is not on work release is about forty dollars a month. The average pay is about twelve dollars a month.

QUESTION: What do they earn on work release?

DR. CLEMENTS: We have them earning anywhere from, for some of the severely retarded whatever the basic minimum is, I think it's a dollar sixty an hour in sheltered kinds of situations, to people who are making seven or eight dollars an hour, to people who are making seven or eight dollars an hour, to people who are in executive positions who are making more than I am making. Whatever the going rate is for the job he does is what he gets paid.

QUESTION: Do men on work release handle their own finances or does the institution handle them?

MR. CLEMENTS: We have a trust fund set up. The inmate is paid, he turns his pay over to the superintendent of the work release center. He can draw fifteen dollars a week or he's given fifteen dollars a week for his own spending money. He can send an allotment home to his family if he has a family. The remainder is placed in a trust fund and the interest going back into his own account. It is there for egg money when he is released.

If he has a particular need or desire to spend money or something, he wants to buy a stereo for his room or he wants to buy a tombstone for his father's grave or whatever the case might be, it's rare that the request is denied. They're just funds. The only basic requirement is he must have a minimum of one hundred dollars in his account the day he's released.

QUESTION: Can you give a reason for controlling his money in that manner?

DR. CLEMENTS: Well, I'm not sure there is a real solid rationale for it. Other than they do pay us four dollars a day for room, board and transportation that we get, that's twenty-eight dollars a week he pays, and other than that, I'm not sure there is a basic rationale. We assume they're not responsible enough to handle their money. I think when you look at that, it's a little on the ludicrous side.

QUESTION: What is the recidivism rate at your institutions?

DR. CLEMENTS: I can't tell you about institution by institution and I can't tell you for our system exactly because the statistical reporting systems across the country are just not that accurate I can tell you that since 1966 that our people leaving our system and coming back to our system, we have about fifteen and one-half percent. This is overall, if you look at the individual programs, those who go through work release, those who don't go through anything, the incident is much higher. Those who go through the ninty day work releases is lower and the ones that go through the twelve month work release

program is even lower.

QUESTION: What type of provisions are made for those inmates who are mentally disturbed?

DR. CLEMENTS: Well, individuals who are considered to be severely emotionally disturbed, if we can document that sufficiently, and they're not extremely violent, then they can be transferred to the State Mental Health Department. Those who are not, those who are in for psychiatric observation and others, are housed in a cell block, which they always have been. Those who are severely retarded are housed in that cell block. This is not as it should be but it is the only way we can manage to protect them and protect the other inmates in the population. They're under the care of a psychiatrist, it's just a plain old cell block.

QUESTION: Do you have some type of psychological evaluation process?

DR. CLEMENTS: No, let me share something with you. It's a little bit on the embarrassing side. But we've been leaning pretty heavily on the Department of Mental Retardation in our State to assist us in the critical retarded individuals. And, our director, in his testimony before the legislative committees in several consecutive years made a plea for this. The newspapers have been supporting us in it. The Austin Wolff Society which is a local non-profit organization in the area for offender treatment has been supporting us on it. So we did a little study and we took the records of fifty inmates who according to our

evaluations system had I.Q.'s below fifty. And since you were talking about classification earlier today, I think this is something you don't want to happen to you. Twenty-seven of these people were still in the system. We sent the records to the Department of Mental Retardation to look at. The head of that institute called the head of my agency and said, "We've got a little problem here." And he naturally assumed he was very defensive, we'd been leaning on him, and said, "You know, your records don't make very good sense. You have in one place in the record on this particular individual that he has a tenth grade education. You have another place in your record the classification committee has said that on the basis of his diagnostic evaluation process that he's recommended for any academic or vocational training that he should desire to participate in. If you don't think that's a little embarrassing, try it. We pull those twenty-five individuals and administer individual psychological tests to them and of the twenty-five, only two had I.Q.'s below fifty and they were within four points of that and a standard error of measurement on the test would indicate by chance they would be above fifty. Often times on the basis of what is written in a record, we assume that people know what it means. And it isn't. Now, you go into an institution and they have a person kind of segregated. What's the problem? If you will excuse the vernacular, they say he's a queer. You said how do you know and they found it out when he came through the diagnostic center. I said show me his record. He was given

a psychological test and the profile said he had latent homosexual tendencies. I suspect a good many men have these tendencies. Anybody who's not doing any laboring work or farm work or something of this sort, just says you're a little bit more like women than you are like guys who do heavy manual labor. But it was a gross misinterpretation of data so at this point we're not using psychological evaluation for any purpose whatsoever. I would rather not have information than to label a person forever on the basis or erroneous information. I think it should be illegal and it's certainly unethical and immoral.

QUESTION: Do you have inmate representatives or an inmate council?

DR. CLEMENTS: Do we have an inmate council? The answer is yes. We have representatives elected from each living area by the inmates that live in that area. The inmate council is chaired by an elected official of the inmate council. The Warden and I attend to represent the Director. The inmate council has probably been in the past the most controversial issue in correctional administration. Many an administrator has said, "I was elected, I was hired to do this job, and I'm not going to let the inmates tell me how to run the institutution," that's not the point. The most constructive changes that occured in our major institutions in the last year have been changes that were called to the attention of the administration by the Inmate Council. Where the Inmate Council instead of just being a vigilance group, the director said, "O.K. if there is a

problem, you come up with the recommendation of how to resolve it." They've been responsible, and in every case that they've presented a legitimate need, with a legitimate alternative that can be handled within the resources that we have, we then implement it. Giving the Inmate Council credibility with the other inmates has given the administration creditability and certainly has taken a tremendous work load off of us. We're very pleased about that. The Inmate Council works as well as the administrators of that institution expect it will work. If they are forced to put in a council and they don't believe it will work, they can prove to you in very short order that it won't work. If they believe that it will work. It will work. We have to have fairly clear guidelines so that the inmates realize that they don't run the institution. That they are an advisory group. And it works beautifully. So far.

QUESTION: What authority do you have in your system?

DR. CLEMENTS: I have authority and responsibility for any changes in eighteen institutions, any programs, any employees.

IN CLOSING JUST LET ME SAY, OUR prisons got to be the way they are over a long period of time, and they're going to change. It will take deep continuous commitment on the part of everybody involved for a long period of time. Thank you very much.

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