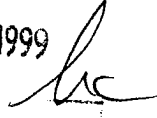


FILED

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SEP 10 1999



CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

JAMES LIMBAUGH, et al.,)

Plaintiffs,)

v.)

LESLIE THOMPSON, et al.,)

Defendants.)

CIVIL ACTION NO. 93-D-1404-N

NATIVE AMERICAN PRISONERS)

OF ALABAMA - TURTLE WIND)

CLAN, et al.,)

Plaintiffs,)

v.)

STATE OF ALABAMA DEPARTMENT)

OF CORRECTIONS, et al.,)

Defendants.)

CIVIL ACTION NO. 95-D-554-N

RECOMMENDATION OF THE MAGISTRATE JUDGE

Presently before the court is the Stipulation filed by the parties on March 5, 1998 and plaintiffs' "Motion for Order" filed on April 27, 1998, construed as a motion for a Rule 54(a) judgment. The court finds that it is appropriate to grant a final judgment as to all of the issues encompassed by the March 5 Stipulation. The issues relating to the wearing of long hair and the use of a sweat lodge are the subject of a separate recommendation. Based on the stipulation which embodies the agreement of the parties on all issues except the sweat lodge and hair length issues, the evidence heard by the

court and the record as a whole, the court makes the following findings and conclusion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court finds, based on paragraph 1 of the March 5 Stipulation, the testimony in the consolidated cases, and the entire record, that the Native American inmates who are parties to this suit are sincere believers in Native American spirituality and are sincere practitioners of Native American Religion.

By stipulation, the plaintiffs are not awarded monetary damages, except that plaintiffs preserve their damage claims as to the sweat lodge and hair length requirements issues. *See* Stipulation at ¶ 26 (March 5, 1998)

The court independently finds that the requirements of the Prison Litigation Reform Act, (PLRA), 18 U.S.C. § 3626(a)(1) *et seq.*, have been met. *See also* Stipulation at ¶ 27 (March 5, 1998) (stipulating that the requirements of the PLRA have been met). Accordingly, the court finds, based on the entire record before the court in the consolidated cases and the additional evidence that the parties anticipated submitting, *see* Stipulation at ¶ 29, that the relief agreed upon by the parties and granted by the court is narrowly drawn, extends no further than necessary to correct violations of the Federal rights of the plaintiffs, and is the least intrusive means necessary to correct the violations of Federal rights. 18 U.S.C. § 3626(a)(1) *et seq.* The relief will not have any adverse impact on public safety or the operation of the criminal justice system. *Id.*

The court also finds, as set out in paragraph 27 of the jointly submitted Stipulation, that the defendants waive the right to challenge any order or the enforcement of any order

entered by the court on the ground that the order fails to comply with the terms of the PLRA. The court also finds, as set out in paragraph 27 of the jointly submitted Stipulation, that defendants have waived a challenge to any award of attorneys' fees on the ground that the plaintiffs have failed to establish the entitlement to such an award under the PLRA. Defendants have, however, reserved the right to argue that the number of hours expended were excessive and/or the expenses were excessive and/or that the hourly rate set forth in the PLRA applies to this case. Stipulation at 9, ¶ 27.

INJUNCTIVE RELIEF

The court concludes, therefore, that the defendants should be enjoined to comply with the following stipulated injunctive relief.

1. ***MEDICINE BAG:***

The term "medicine bag" shall include any object attached to the bag and the string to which it is attached. Native American inmates shall be allowed to have a personal medicine bag to be kept on their person or in their personal property box and when worn outside the ceremonial grounds will be maintained underneath their prison clothing.

The DOC shall permit the outside of the medicine bag to be adorned with colored beads as well as beads which are white or black. The DOC shall not permit beads greater in size than approximately eight (8) millimeters in diameter (the size of a "pony" bead).

Inmates shall be allowed to affix items such as claws, beads, stag buttons and pieces of antlers to their medicine bags with the following restrictions: stag buttons shall be no larger than one and one half inch in diameter; claws shall be no longer than one and

one half inch in length from tip to tip; Doug Bailey shall be allowed to retain the claws currently affixed to his medicine bag provided that the claws are wrapped or covered by leather; arrowheads shall be no larger than one and one half inches in length; antler pieces shall be no longer than one and one half inch long and may not be sharp at the tip. Antlers, claws, and arrowheads must be permanently affixed to the Native American inmate's medicine bag or contained within the medicine bag itself.

The DOC shall not prohibit medicine bags that do not exceed 4" x 4" in size. If the medicine bag is strung from the inmate's neck, it is to be attached with a natural or neutral color leather string or shoelace which could be easily broken if jerked or snatched from the inmate's neck so as not to choke or cause injury to the inmate.

All medicine bags shall be inspected in a proper manner by correctional officers should they decide to do so when the inmate is either entering or exiting a correctional facility and at any time a correctional officer has reasonable cause to believe contraband and/or items which could be used as a weapon are concealed in a medicine bag (see below regarding training of Corrections personnel).

In the event that a dispute arises as to the return of a specific medicine bag, plaintiffs shall have the right to petition the court for its return.

2. ***CONTENTS OF MEDICINE BAG:***

Native American inmates shall be allowed to maintain inside their medicine bag all objects which have a religious significance to the wearer, including, but not limited to, small stones, sand or dirt, feathers, beads, except to the extent that such items are

otherwise prohibited herein (i.e. claws, arrowheads or antlers that exceed the size restrictions set forth herein). Upon reasonable cause and when requested by a correctional officer, a Native American inmate will display all objects in his medicine bag and allow a visual inspection of the inside of the medicine bag as set forth in paragraph 19.

3. ***VEGETATION:***

DOC officials shall permit vegetation similar to that currently allowed on the ceremonial grounds located at Staton Correctional Facility to be grown on the Native American ceremonial grounds. In particular, the inmates shall be allowed to plant and maintain a tree of life (preferably cedar). Additionally, Native American inmates shall be allowed to grow and maintain on the ceremonial grounds one (1) variety of corn and up to eight (8) stalks planted at least one (1) foot apart, one (1) variety of bean and up to eight (8) plants planted at least one (1) foot apart and one (1) variety of squash and up to eight (8) plants planted at least three (3) feet apart on the designated ceremonial grounds. Flowers and gourds shall also be allowed to be grown by the Native American inmates on the ceremonial grounds for ceremonial purposes.

No vegetation other than one tree of life or any presently existing trees of life shall be allowed to grow to a height greater than four and one half feet, and no vegetation shall be planted in such a manner as to obstruct the view of correctional officers or within ten (10) feet of any perimeter fence of the correctional facility or cause any type of fire hazard to any prison building or yard.

4. ***ACCESS AND TIME ALLOWED ON CEREMONIAL GROUNDS:***

Native American inmates shall be allowed access to the ceremonial grounds at all times the prison yard is open to inmates. Additionally, when the prison yard is not open, Native Americans shall have access to the ceremonial grounds at times that the chapel is open or of "chapel call," but not after sunset. Factors that may be considered regarding additional access to the ceremonial grounds are the level of security of the facility, the number of Native American inmates which will use the ceremonial grounds, and the structure of the facility.

5. ***SIZE OF CEREMONIAL GROUNDS:***

Native American inmates shall be allowed to have and maintain a ceremonial ground on each facility in which Native American inmates are incarcerated therein. The size and location of the ceremonial grounds is to be determined by factors such as the specific facility, the availability of space, the level of security of the facility and the number of Native American inmates wanting to use said ceremonial grounds. However, all ceremonial grounds shall be a minimum of 20' x 20'.

Further, the court and parties may re-examine the issue of whether the size of the ceremonial grounds needs to be expanded following the court's ruling on sweat lodges.

6. ***LOCATION OF CEREMONIAL GROUNDS:***

Any correctional facility which has Native American inmates shall have an area designated for use by such Native American inmates as ceremonial grounds. Factors for determining the exact location of the grounds are as follows: judgment of Department

of Correction officials of the most appropriate place for the ceremonial grounds, the security level of the facility, the normal operation of the facility and flow of inmate traffic at the facility.

The Department of Corrections shall make a good faith effort to find an alternative location for the ceremonial grounds at Kilby Correctional Facility and DOC officials shall make a good faith effort to find a location for grounds at other DOC facilities currently without grounds so long as there are individuals at the other facilities who wish to practice Native American Spirituality.

7. ***MEDICINE WHEEL:***

Native American inmates shall be allowed to maintain a medicine wheel, comprised of stones, upon the ceremonial grounds. The size of such medicine wheel will be dictated by the amount of space available for the ceremonial grounds on each facility and the number of Native American inmates which will use it.

8. ***PROVISION OF STORAGE SPACE:***

The Department of Corrections shall permit the Native American groups at each facility to place a box on or adjacent to the ceremonial grounds in which to keep the religious items. The box, similar to that which currently exists on the ceremonial grounds at Staton Correctional Facility, shall be locked by combination lock. Native American inmates and the appropriate DOC officials shall be provided with the combination to such lock.

9. ***FEATHERS:***

The defendants shall not prohibit Native American inmates from possessing feathers for religious and ceremonial use. Feathers must be kept in the personal property box in their cell or dormitory, and the DOC shall not prohibit the use of feathers on the ceremonial grounds or in the areas used for Native American activities at each facility. Inmates shall be allowed to keep and maintain with their personal possessions personal prayer fans for use on the ceremonial grounds.

10. ***MOCCASINS:***

The DOC shall not prohibit Native American inmates from wearing moccasins while on the ceremonial grounds. The DOC may require that the moccasins be kept with the inmate's personal possessions, on the ceremonial grounds, or with the chaplain.

11. ***PRAYER PIPES:***

Native American inmates shall be allowed to keep and maintain a personal prayer pipe in addition to a prayer pipe for use by the group to be kept by the pipe keeper. The personal prayer pipes are to be used only while on the ceremonial grounds. The DOC shall permit inmates, according to each inmate's personal preference, to keep the pipes with the personal possessions of the inmate, at the ceremonial grounds, in the area specifically provided for Native American activities, or with the chaplain. Nothing herein prohibits a correctional officer or DOC official from visually inspecting a prayer pipe when there is reasonable cause to inspect the pipe in the manner set forth in paragraph 19 for the inspection of medicine bags and prayer pipes.

12. ***HERBS:***

The DOC shall permit Native American inmates to purchase the following herbs: Sage, Sweetgrass, Cedar, Kinnickinnick and Tobacco. All herbs, except tobacco, are to be maintained and kept by the chaplain or in the Shift Commander's office.

13. ***DRUMS AND RATTLES:***

The DOC shall permit Native American inmates to have drums and rattles to be used during ceremonies held on the ceremonial grounds. These items are to be maintained and kept either on the ceremonial grounds or with the Chaplain. At no time will these items be used in a manner which disrupts the normal operation of the correctional facility.

14. ***CEREMONIAL ITEMS:***

The DOC shall permit inmates to possess colored ceremonial items, such as arm bands, chokers, and headbands for use in religious practice. The DOC shall require that such items may not be worn, shown or displayed anywhere other than the ceremonial grounds or in the area specifically provided for Native American activities, and then only for the purposes of practicing Native American spirituality. The DOC shall require such items to be kept on the ceremonial grounds.

15. ***CEREMONIAL DAYS:***

The DOC shall permit inmates to celebrate the following sacred days: the Green Corn Ceremony; the Harvest Moon Ceremony; the winter and summer solstices, and the spring and fall equinoxes. The DOC shall require Native American inmates to notify the chaplain or warden or the warden's designee twenty days prior to the observance of

sacred days. The DOC may impose the same work proscriptions on Native American sacred days as work proscriptions observed by the Department for the recognized sacred days of other religions.

16. ***PUBLICATIONS/LITERATURE:***

The DOC shall impose no proscriptions on the cultural and spiritual literature allowed to the Native American inmates and shall not require inmates to purchase literature in a particular month of the year. Cultural and spiritual literature shall be evaluated by the DOC on a case-by-case basis to determine if it poses a legitimate threat to the security of the prison. Such literature shall be obtained through the channels and procedures set forth in the applicable regulations compatible with this provision. Nothing herein obligates the DOC to grant rights to Native Americans that inmates who adhere to other recognized religions will not be granted.

17. ***PURCHASE OF ITEMS:***

The DOC shall impose no proscriptions on ordering religious items by the Native American inmates, provided such items do not constitute a legitimate threat to security. Such items shall be obtained through the channels and procedures set forth in the applicable regulations compatible with this provision.

18. ***TRAINING OF CORRECTIONAL OFFICERS ON INSPECTIONS PROCEDURES:***

Department of Corrections officials shall be taught the proper procedures for inspecting and viewing all Native American items. Specifically, the Department of

Corrections shall train its personnel not to touch the medicine bags or sacred pipes of the Native American inmates. Should an officer believe that it is necessary to inspect the contents of a Native American's medicine bag or sacred pipe, the officer shall bring the inmate to the chaplain's office where the contents of the bag or the pipe can be visually inspected. In the event that the chaplain is not present, the inspection may be performed in the presence of the shift commander.

19. RETENTION OF RELIGIOUS ITEMS ON TRANSFER:

The DOC shall permit inmates to keep and retain their religious items in the event they are transferred from one facility to another. In the event an inmate is transferred he shall be given access to the ceremonial grounds to retrieve his religious items.

20. The DOC shall expunge Doug Bailey's prison record of the disciplinary he received at Kilby Correctional Facility on or about February 5, 1998, for possession of contraband based on the bear claws attached to his medicine bag.

21. The DOC shall not prohibit Native American inmates from maintaining a sacred items box in their personal possession so long as the size of such box allows it to be kept within the inmate's locker box or personal possessions.

22. The religious and ceremonial items which were previously possessed by plaintiffs and do not violate the provisions set forth herein or DOC policy shall be returned. In the event that a dispute arises as to the return of specific items of plaintiffs, plaintiffs shall have the right to petition the court for their return.

23. The DOC shall permit Native Americans to possess personal prayer books and

shall permit Native Americans to keep such books covered with a natural material such as leather or fur so long as the covers slip off easily for review and inspection by correctional personnel.

24. The DOC shall permit plaintiffs to maintain and store a talking stick no larger than two feet long and one inch in diameter on the ceremonial grounds of each prison.

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge as follows:

1. That final judgment be entered in favor of plaintiffs in accordance with the findings and conclusions contained in this recommendation;
2. That based on the Stipulation, the testimony in the consolidated cases, and the entire record, the Commissioner of the Alabama Department of Corrections, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order, be enjoined to comply with the injunctive relief set forth in this recommendation;
3. That nothing herein shall be construed to limit the rights that the defendants may accord to Native Americans, as the defendants are free to exceed the constitutional requirements set out herein;
4. That the court retain jurisdiction of this matter for a period of one year to allow the defendants to modify their policies and practices in accordance with the court's injunction and to demonstrate their compliance with federal law and the orders, decrees, and injunction of this court;

5. That the costs of this proceeding be taxed against the defendants

6. That if the plaintiffs seek to recover fees, costs, and expenses, they be

DIRECTED to file a petition within 30 days of the date of a final order adopting this recommendation.

Done this 10 day of September, 1999.



CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE

CIVIL ACTION NOS. 93-D-1404-N and 95-D-554-N

ORDER

The Clerk of the Court is ORDERED to file the Recommendation of the Magistrate Judge and to serve by mail a copy thereof on the parties to this action. The parties are DIRECTED to file any objections to the said Recommendation within a period of 13 days from the date of mailing to them. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. Nettles v. Wainwright, 677 F.2d 404 (5th Cir. 1982). See Stein v. Reynolds Securities, Inc., 667 F.2d 33 (11th Cir. 1982). See also Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981, en banc), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 10th day of September, 1999.



CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE

ceremonial grounds will be maintained underneath their prison clothing.

The DOC shall permit the outside of the medicine bag to be adorned with colored beads as well as beads which are white or black. The DOC shall not permit beads greater in size than approximately eight (8) millimeters in diameter (the size of a "pony" bead).

Inmates shall be allowed to affix items such as claws, beads, stag buttons and pieces of antlers to their medicine bags with the following restrictions: stag buttons shall be no larger than one and one half inch in diameter; claws shall be no longer than one and one half inch in length from tip to tip; Doug Bailey shall be allowed to retain the claws currently affixed to his medicine bag provided that the claws are wrapped or covered by leather; arrowheads shall be no larger than one and one half inches in length; antler pieces shall be no longer than one and one half inch long and may not be sharp at the tip. Antlers, claws, and arrowheads must be permanently affixed to the Native American inmate's medicine bag or contained within the medicine bag itself.

The DOC shall not prohibit medicine bags that do not exceed 4" x 4" in size. If the medicine bag is strung from the inmate's neck, it is to be attached with a natural or neutral color leather string or shoelace which could be easily broken if jerked or snatched from the inmate's neck so as not to choke or cause injury to the inmate.

All medicine bags shall be inspected in a proper manner by correctional officers should they decide to do so when the inmate is either entering or exiting a correctional facility and at any time a correctional officer has reasonable cause to believe contraband and/or items which could be used as a weapon are concealed in a medicine bag (see below regarding training of Corrections personnel).

In the event that a dispute arises as to the return of a specific medicine bag, Plaintiffs

retain the right to petition the Court for its return.

3. ***CONTENTS OF MEDICINE BAG:***

Native American inmates shall be allowed to maintain inside their medicine bag all objects which have a religious significance to the wearer, including, but not limited to, small stones, sand or dirt, feathers, beads, except to the extent that such items are otherwise prohibited herein (i.e. claws, arrowheads or antlers that exceed the size restrictions set forth herein). Upon reasonable cause and when requested by a correctional officer, a Native American inmate will display all objects in his medicine bag and allow a visual inspection of the inside of the medicine bag as set forth in paragraph 19.

4. ***VEGETATION:***

DOC officials shall permit vegetation similar to that currently allowed on the ceremonial grounds located at Staton Correctional Facility to be grown on the Native American ceremonial grounds. In particular, the inmates shall be allowed to plant and maintain a tree of life (preferably cedar). Additionally, Native American inmates shall be allowed to grow and maintain on the ceremonial grounds one (1) variety of corn and up to eight (8) stalks planted at least one (1) foot apart, one (1) variety of bean and up to eight (8) plants planted at least one (1) foot apart and one (1) variety of squash and up to eight (8) plants planted at least three (3) feet apart on the designated ceremonial grounds. Flowers and gourds shall also be allowed to be grown by the Native American inmates on the ceremonial grounds for ceremonial purposes.

No vegetation other than one tree of life or any presently existing trees of life shall be allowed to grow to a height greater than four and one half feet, and no vegetation shall be planted in such a manner as to obstruct the view of correctional officers or within ten (10) feet of any perimeter fence of the correctional facility or cause any type of fire hazard to any prison building

or yard.

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Native American inmates shall be allowed access to the ceremonial grounds at all times the prison yard is open to inmates. Additionally, when the prison yard is not open, Native Americans shall have access to the ceremonial grounds at times that the chapel is open or of "chapel call," but not after sunset. Factors that may be considered regarding additional access to the ceremonial grounds are the level of security of the facility, the number of Native American inmates which will use the ceremonial grounds, and the structure of the facility.

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Native American inmates shall be allowed to have and maintain a ceremonial ground on each facility in which Native American inmates incarcerated therein. The size and location of the ceremonial grounds is to be determined by factors such as the specific facility, the availability of space, the level of security of the facility and the number of Native American inmates wanting to use said ceremonial grounds. However, all ceremonial grounds shall be a minimum of 20' x 20'.

Further, the parties shall re-examine the issue of whether the size of the ceremonial grounds needs to be expanded following the Court's ruling on sweat lodges.

7. ***LOCATION OF CEREMONIAL GROUNDS:***

Any correctional facility which has Native American inmates shall have an area designated for use by such Native American inmates as ceremonial grounds. Factors for determining the exact location of the grounds are as follows: judgment of Department of Correction officials of the most appropriate place for the ceremonial grounds, the security level of the facility, the normal operation of the facility and flow of inmate traffic at the facility.

The Department of Corrections shall make a good faith effort to find an alternative location for the ceremonial grounds at Kilby Correctional Facility and DOC officials shall make a good faith effort to find a location for grounds at other DOC facilities currently without grounds so long as there are individuals at the other facilities who wish to practice Native American Spirituality.

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9. ***PROVISION OF STORAGE SPACE:***

The Department of Corrections shall permit the Native American groups at each facility to place a box on or adjacent to the ceremonial grounds in which to keep the religious items. The box, similar to that which currently exists on the ceremonial grounds at Staton Correctional Facility, shall be locked by combination lock. Native American inmates and the appropriate DOC officials shall be provided with the combination to such lock.

10. ***FEATHERS:***

The Defendants shall not prohibit Native American inmates from possessing feathers for religious and ceremonial use. Feathers must be kept in the personal property box in their cell or dormitory, and the DOC shall not prohibit the use of feathers on the ceremonial grounds or in the areas used for Native American activities at each facility. Inmates shall be allowed to keep and maintain with their personal possessions personal prayer fans for use on the ceremonial grounds.

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The DOC shall not prohibit Native American inmates from wearing moccasins while on the ceremonial grounds. The DOC may require that the moccasins be kept with the inmate's personal possessions, on the ceremonial grounds, or with the chaplain.

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The DOC shall permit inmates to possess colored ceremonial items, such as arm bands,

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The DOC shall permit inmates to celebrate the following sacred days: the Green Corn Ceremony; the Harvest Moon Ceremony; the winter and summer solstices, and the spring and fall equinoxes. The DOC shall require Native American inmates to notify the chaplain or warden or the warden's designee twenty days prior to the observance of sacred days. The DOC may impose the same work proscriptions on Native American sacred days as work proscriptions observed by the Department for the recognized sacred days of other religions.

17. ***PUBLICATIONS/LITERATURE:***

The DOC shall impose no proscriptions on the cultural and spiritual literature allowed to the Native American inmates and shall not require inmates to purchase literature in a particular month of the year. Cultural and spiritual literature shall be evaluated by the DOC on a case-by-case basis to determine if it poses a legitimate threat to the security of the prison. Such literature shall be obtained through the channels and procedures set forth in the applicable regulations compatible with this provision. Nothing herein obligates the DOC to grant rights to Native Americans that inmates who adhere to other recognized religions will not be granted.

18. ***PURCHASE OF ITEMS:***

The DOC shall impose no proscriptions on ordering religious items by the Native American inmates, provided such items do not constitute a legitimate threat to security. Such

items shall be obtained through the channels and procedures set forth in the applicable regulations compatible with this provision.

19. ***TRAINING OF CORRECTIONAL OFFICERS ON INSPECTIONS PROCEDURES:***

Department of Corrections officials shall be taught the proper procedures for inspecting and viewing all Native American items. Specifically, the Department of Corrections shall train its personnel not to touch the medicine bags or sacred pipes of the Native American inmates. Should an officer believe that it is necessary to inspect the contents of a Native American's medicine bag or sacred pipe, the officer shall bring the inmate to the chaplain's office where the contents of the bag or the pipe can be visually inspected. In the event that the chaplain is not present, the inspection may be performed in the presence of the shift commander.

20. ***RETENTION OF RELIGIOUS ITEMS ON TRANSFER:***

The DOC shall permit inmates to keep and retain their religious items in the event they are transferred from one facility to another. In the event an inmate is transferred he shall be given access to the ceremonial grounds to retrieve his religious items.

21. The DOC shall expunge Doug Bailey's prison record of the disciplinary he received at Kilby Correctional Facility on or about February 5, 1998, for possession of contraband based on the bear claws attached to his medicine bag.

22. The DOC shall not prohibit Native American inmates from maintaining a sacred items box in their personal possession so long as the size of such box allows it to be kept within the inmate's locker box or personal possessions.

23. The religious and ceremonial items which were previously possessed by Plaintiffs and do not violate the provisions set forth herein or DOC policy shall be returned. In the event

that a dispute arises as to the return of specific items of Plaintiffs, Plaintiffs retain the right to petition the Court for their return.

24. The DOC shall permit Native Americans to possess personal prayer books and shall permit Native Americans to keep such books covered with a natural material such as leather or fur so long as the covers slip off easily for review and inspection by correctional personnel.

25. The DOC shall permit Plaintiffs to maintain and store a talking stick no larger than two feet long and one inch in diameter on the ceremonial grounds of each prison.

26. The Plaintiffs agree not to pursue damage claims for the matters referred to herein, except that Plaintiffs preserve their damage claims as to the sweat lodge and hair length requirements issues.

27. The parties stipulate that the requirements of the Prison Litigation Reform Act, (PLRA), 18 U.S.C. § 3626(a)(1) *et seq.*, have been met. The Defendants waive the right to challenge any order or the enforcement of any order entered by the Court on the ground that the order fails to comply with the terms of the PLRA. Defendants further agree to waive a challenge to any award of attorneys' fees on the ground that the Plaintiffs have failed to establish the entitlement to such an award under the PLRA. Defendants reserve the right to argue that the number of hours expended were excessive and/or the expenses were excessive and/or that the hourly rate set forth in the PLRA applies to this case.

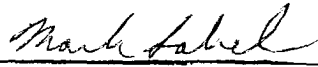
28. The parties hereto were unable to enter stipulations resolving the following issues:

- A. Sweatlodge and its usage and maintenance.
- B. Hair length of Native American inmates.

29. This Stipulation is based on the entire record before the Court in the consolidated

cases and the additional evidence that the parties anticipated submitting.

ENTERED INTO BY THE PARTIES HERETO on this the 5th day of March, 1998.



Mark Sabel (SAB004)
Attorney for the Plaintiffs

OF COUNSEL:

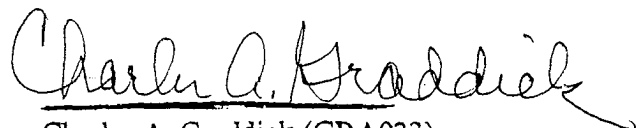
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