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Approved 1/22/85

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Witke v. Crowl



PC-ID-002-003

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
MOSCOW DIVISION

LOIS WITKE, et al.,)
)
 Plaintiffs,)
)
 v.) C.A. No. 82-3078
)
 C.W. CROWL, et al.,)
)
 Defendants.)

STIPULATED SETTLEMENT AGREEMENT

On September 9, 1982, the plaintiffs in this class action lawsuit filed their complaint alleging violations of the United States and Idaho Constitutions and Statutes. The parties herein now waive hearing and agree to the submission of this Stipulated Settlement Agreement to the court for its review and approval.

It is agreed by and between the parties as follows:

L. This agreement is entered into as a settlement of an existing dispute between the plaintiffs, individually and for those similarly situated, and the defendants as to the appropriate policies, procedures and practices necessary to

operate the North Idaho Correctional Institution women's section in a manner which will satisfy federal and state constitutional and statutory standards. The agreement additionally provides for specific, definable and good faith efforts to be made by the defendants to achieve certain goals for implementing and enforcing these standards, within specified periods of time. This agreement satisfies and resolves the claims of the class of plaintiffs, excepting only any attorneys fees and costs of plaintiffs' counsel.

2. The class of plaintiffs agree that they shall seek no further declaratory or injunctive relief from the acts, practices or omissions alleged in the pleadings, save and except to enforce the provisions of this agreement.

Correspondingly, the defendants agree not to raise any defenses previously alleged in the pleadings but may object and raise defenses as to whether and to what extent they have met the terms and conditions of this agreement.

3. The plaintiffs brought this suit as a class action seeking to represent members of the class for purposes of securing declaratory and injunctive relief. For purposes of this agreement, the class shall be those persons which the court has previously identified and certified as members of the class pursuant to its order dated May 26, 1983, consistent with Rule 23, Fed. R. Civ. P. See Attachment A. The parties agree that this class, for the purpose of this settlement, includes those women committed to the Idaho Department of Corrections and incarcerated in an Idaho correctional facility including the

North Idaho Correctional Institution at Cottonwood, Idaho, the Idaho State Correctional Institution at Orofino, Idaho, and any community work center in Idaho.

4. The defendants agree to operate all institutions housing class members in a manner consistent with the terms of this agreement, and the Constitutions and laws of the state of Idaho and of the United States.

However, this agreement in no way constitutes an adjudication or finding of any present or past unlawful practice by the defendants, it being fully understood that the defendants unequivocally deny that any such acts or practices exist or have occurred.

5. In the event any provision of this agreement results in ambiguous interpretation or misunderstanding between the parties, the party complaining of such misunderstanding shall notify the parties by mail. The parties shall have sixty (60) days following receipt of notification to resolve the problem. If the parties are unable to reach agreement within sixty (60) days, the issue shall be submitted to the auditor for resolution. No attorneys fees or costs shall be awarded for such clarification if resolved without court intervention.

In the event any provision of this agreement is held unlawful by a court of competent jurisdiction, all other provisions of this agreement shall remain in effect and only the rights and/or obligations established in the voided portion shall be extinguished.

6. The parties agree to retain an independent auditor, who shall be a person acceptable to both parties, to observe and report upon compliance with the terms of this agreement, and to give advice and recommendations to either party upon request. The parties have agreed to the appointment of Allen F. Breed as auditor. If in the future the parties are unable to agree upon an individual to serve as auditor, each party will submit the names of three (3) persons willing to serve in this capacity to the court. The court will then appoint the auditor from this proffered list.

Fees and expenses of the auditor will be borne by the defendants, and will be limited to a schedule agreed upon by the auditor and the defendants.

In carrying out the auditor's duties, consistent with the legitimate requirements of security, the auditor shall:

a. have unobstructed access to staff, inmates or other knowledgeable persons for interviews or written communication regarding conditions within the institution. Such interviews or other communications may be held in private, and the names of those interviewed may be held in confidence by the auditor if requested by the individual interviewed, or if the auditor believes that release of such information poses a substantial risk to the person interviewed. The auditor shall not include in any report information gained from anonymous sources unless that information has been otherwise substantiated. Any names of persons interviewed withheld from the defendants will likewise be withheld from plaintiffs;

The Director of the Idaho Department of Corrections shall be given the content or nature of such interviews or communications in a manner which shall preserve the confidentiality of the source of the information;

b. Have complete and unobstructed access to files, records, reports, memoranda or other documents within the defendants' custody for purposes of compliance with the terms of this agreement;

c. Have the authority to retain experts to evaluate the technical areas of medical-psychiatric care, sanitation, and fire safety when such assistance becomes necessary to adequately assess compliance. Local experts will be used when available, and if local experts are not available, experts from the National Institute of Corrections will be used. The experts' fees and costs will be paid by the defendants and will be limited to standard NIC fees plus reasonable expenses;

d. Have unobstructed access to tour and inspect the institutions. Ordinarily the auditor will inform the Director of Corrections of his plans to visit the institutions, but may visit unannounced if necessary.

e. Not be subject to dismissal except upon agreement of both parties, or by the court upon motion of one of the parties and a showing of good cause.

7. The auditing period shall continue for 24 months from the date of the approval by the court of this Stipulated Settlement Agreement. During that time the auditor shall prepare five (5) reports summarizing the auditor's findings and

evaluations. Copies of such reports shall be provided to counsel for the parties and the court.

8. Counsel for plaintiffs will be provided with notice of all communications between the auditor and defendants, notice of all visits by the auditor, and notice of all types of the material required by and/or delivered to the auditor by the defendants. Counsel for the defendants will be provided with notice of all communications between the auditor and plaintiffs' counsel. Counsel for the plaintiffs and defendants will also be given a summary of all materials reviewed by the auditor. Upon request by counsel for the plaintiffs, the defendants will provide copies of any documents reviewed by the auditor that would be otherwise relevant and discoverable under the Federal Rules of Civil Procedure.

9. The auditor, with the agreement of both parties, shall have authority to extend the auditing period for an additional twelve (12) months to allow for compliance, in which case the auditor will prepare two (2) more reports of findings and evaluations.

10. After six months, following the date of the approval of this agreement, and at the end of each subsequent six month period thereafter, the defendants will file with the court, the auditor and the plaintiffs a comprehensive plan outlining the means by which they intend to comply with the terms of this agreement.

11. This agreement resolves all the issues raised in the pleadings in this case with the exception of attorneys' fees and costs.

Attached hereto are appendices which are incorporated as part of this Settlement Agreement and which specify the particular relief contemplated by this Agreement. Appendices I through XXII are not subject to modification. Appendices a-i, incorporated herein by reference, represent present policies of the Idaho Department of Corrections. The Defendants may modify these policies at any time unless the plaintiffs can show that such modification will result in a substantial detriment to the plaintiff class. However, the defendants may modify these policies, regardless of a detrimental effect to the plaintiff class, upon a showing that such modifications are essential to the operation of the institution.


12. The parties agree that this Stipulated Settlement Agreement will be honored and fulfilled in the utmost good faith and that, should either party breach any portion of the Agreement, at any time, the other party may seek enforcement upon motion to the court.

13. The parties agree and stipulate that this action may be dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41, upon full performance, as certified by the auditor, by all parties to this Stipulated Settlement Agreement.

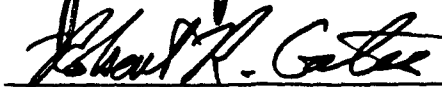
14. The effective date of this Stipulated Settlement Agreement is the date on which it is approved by this Court.

DATED this 31 day of August, 1984.

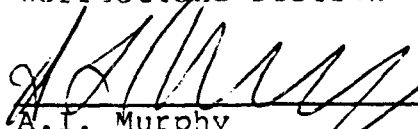
BY DEFENDANTS:



Jim Jones
Attorney General
State of Idaho

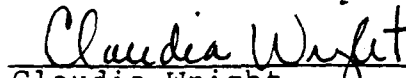


Robert R. Gates
Deputy Attorney General
Corrections Section

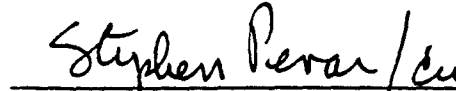


A.I. Murphy
Director of Corrections
State of Idaho

BY PLAINTIFFS:



Claudia Wright
ACLU National Prison Project



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