

**Hamid R. Kashani**

Attorney at Law

445 North Pennsylvania Street, Suite 600  
Indianapolis, Indiana 46204-1806  
317/ 632-1000  
Fax: 317/ 632-5520  
Electronic: [HKashani@aol.com](mailto:HKashani@aol.com)

July 1, 1997

Mr. David A. Arthur  
Office of Indiana Attorney General  
Indiana Government Center South  
402 W. Washington Street, 5th Floor  
Indianapolis, Indiana 46204-2770

Re: *Anderson v. Bayh*, N.D. Ind., No. 3:83cv00481AS

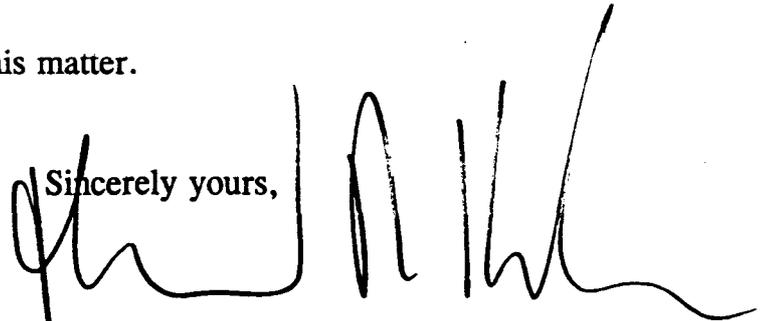
Dear Mr. Arthur,

This letter confirms the substance of our telephone conference of June 23, 1997. On that date, you advised that the Executive Committee of the Department of Correction has decided not to enter into a settlement agreement with the ACLU regarding this case. The DOC Executive Committee has further decided to seek termination of the Agreed Entry.

Because Defendants are withdrawing their consent to settle this matter, the legal issues pertaining to the Agreed Entry we recently negotiated have become moot. As a result, I believe it would be proper for us to advise the Court accordingly and withdraw our motion for the approval of the new Agreed Entry. We plan to do so, unless I hear from you differently.

Thank you for your cooperation in this matter.

Sincerely yours,



Hamid R. Kashani

cc: Mr. Eric Balaban  
Mr. Randall Koester

Anderson v. Bayh



PC-IN-002-012

To: Anderson File

From: EGB

Date: May 11, 1977

Re: Draft contract / contract order for  
Agreed Entry sent to H. Koshari

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

ROGER W. ANDERSON, et al.,	)	
Plaintiffs,	)	
	)	No. 3:83cv0481AS
v.	)	
	)	<u>Class Action</u>
EVAN BAYH, et al.,	)	
Defendants.	)	

**CONSENT ORDER**

Upon consideration of the parties' Joint Motion for Entry of Consent Order, the entire record, and the agreement of the parties, it is

ORDERED that plaintiffs' Motion for Contempt, filed with this Court on May 24, 1995, is hereby withdrawn. It is

FURTHER ORDERED that 14 days after the date of entry of this Order, the Agreed Entry in this case, approved by this Court on April 4, 1989 ("Agreed Entry"), shall be stayed in its entirety in light of the Agreement the parties have entered, attached as Schedule 1 to this Order ("Agreement"). It is

FURTHER ORDERED that the above-mentioned stay of the Agreed Entry shall not take effect or shall cease, and the Agreed Entry shall remain or again become effective, if plaintiffs show that defendants have failed to comply substantially with the Agreement, and that their failure to comply poses an imminent risk of harm to the plaintiff class. In the event that the stay does not take effect or ceases, the parties shall retain all rights and defenses that they possessed before entry of this Order. Defendants shall not be held in contempt for violating any provision

of the Agreed Entry that is inconsistent with a provision of the Agreement, if defendants show that they are substantially complying with the relevant provision of the Agreement.

IT IS SO ORDERED

\_\_\_\_\_  
United States District Judge

Dated: \_\_\_\_\_

## AGREEMENT

The undersigned parties through their authorized counsel enter into the following Agreement.

### **I. Introduction**

The parties agree that settlement of the plaintiffs' Motion for Contempt, dated May 26, 1994, currently pending before the United States District Court for the Northern District of Indiana, in the best interest of all concerned. THEREFORE, in full settlement of the plaintiffs' motion for contempt, and in consideration of the mutual undertakings contained in this Agreement, the parties agree to be bound by and to comply with the following provisions:

### **II. Definitions**

"Plaintiffs" means all present and future prisoners housed at the Westville Correctional Center (WCC).

"Defendants" means all defendants in Anderson v. Bayh, CA No. 3:83cv00481AS, their officers, agents, agencies, employees, successors, and all those acting in concert or participation with them.

"Parties" means plaintiffs and defendants, as those terms are defined above.

### **III. Terms**

#### **A. Compliance with Agreed Entry.**

The defendants shall comply and be bound by Sections I-XI of the Agreed Entry appended to this Agreement as Attachment 1 ("Agreed Entry"), and by the Letter Agreement between the parties dated July 14, 1995, appended to this Agreement as Attachment 2.

#### **B. Consent to Jurisdiction.**

The parties consent to the jurisdiction of the Superior Court for Marion County, IN ("Superior Court") for any proceeding regarding this Agreement. The parties agree that the Superior Court's jurisdiction regarding this Agreement shall be exclusive. The parties further agree that the Superior Court constitutes a "state court" within the meaning of 18 U.S.C. § 3626(c)(2)(B).

C. Enforcement.

The parties acknowledge that the remedy at law for any breach, or threatened breach, of any provision of this Agreement likely would be inadequate. The parties agree that in addition to any other rights and remedies which they may have, they are entitled to equitable and injunctive relief from the Superior Court to compel specific performance, or restrain noncompliance, with the provisions of this Agreement. In any action for specific performance or injunctive relief before the Superior Court, the parties waive the claim or defense that a remedy at law alone is adequate.

D. Liquidated Damages.

The parties recognize and agree that it would be difficult to determine with certainty the damages arising from any breach of the provisions in this Agreement. The parties also recognize and agree that any such breach could cause irreparable harm to the plaintiffs that cannot adequately be compensated solely through money damages. Therefore, if the Superior Court determines that the defendants have failed to comply with any provision of the Agreement, the defendants shall pay liquidated damages of \$ 100.00 a day for each day thereafter that they continue to breach this Agreement, unless otherwise ordered by the Superior Court.

Liquidated damages shall be assessed against the defendants in addition to, and independent of, any other relief ordered by the Superior Court to enforce this Agreement.

Liquidated damages are intended as damages and not as a penalty or fine. Any damages paid by the defendants under this Agreement shall be deposited in a damage fund established by the defendants. The Superior Court shall determine when, how, and to whom monies from the damage fund are disbursed after consulting with the parties.

E. Modification.

The parties may modify any or all of the provisions of this Agreement. Modifications must be in writing and signed by all parties to be effective. No modification shall be construed to invalidate any portion of this Agreement, except to the extent expressly provided in the modification. After a modification has been entered by all parties, it shall be deemed to be incorporated by reference into this Agreement. The methods of enforcement of the modification shall be the same as the methods set forth in this Agreement. Provision C of Section XI of Agreed Entry is superseded by the this provision, and shall have no effect.

F. Effective Date.

This Agreement shall be effective once both parties have executed the Agreement.

G. Term.

Unless earlier terminated in accordance with Section G.1. of this Agreement, this Agreement shall continue in effect for a term of four years.

1. Early Termination.

Not less than two (2) years from the effective date of this Agreement, the defendants may bring a motion in Superior Court to terminate this Agreement upon a showing of substantial compliance, and that noncompliance is not likely to recur. Provision A of Section XI of Agreed Entry is superseded by the this provision, and shall have no effect.

H. Assignment.

The defendants may not assign or otherwise transfer any or all of their obligations under this Agreement without the prior written consent of the plaintiffs. Any attempted assignment or delegation of rights, obligations or duties by the defendants of their obligations under this Agreement will be void without the plaintiffs' written consent.

The defendants shall provide the plaintiffs with written notice of their intention to assign any or all of their obligations under the Agreement. This notice will disclose whether the defendants' assignee has agreed to be bound under this Agreement to the same extent as the defendants. Plaintiffs will provide written consent to or rejection of the proposed assignment within 10 days of receipt of the defendants' notice. If the defendants' assignee agrees to be bound under this Agreement to the same extent as the defendants, the plaintiffs shall not unreasonably withhold consent to the assignment. In the event of assignment, the defendants shall use their best efforts to ensure compliance with the terms of this Agreement by the assignee.

I. Benefit.

This Agreement shall be binding on the parties and shall inure to the benefit of the respective successors and permitted assigns of each party. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

J. Governing Law.

This Agreement shall be interpreted in accordance with the law of the State of Indiana.

K. Severability.

In the event that any court of competent jurisdiction determines that any provision, or any portion of any provision, contained in this Agreement is unenforceable in any respect, then that

provision shall be deemed limited to the extent that the court determines that it is enforceable, and as so limited shall remain in force. In the event that any provision is held to be unenforceable, the remaining provisions of this Agreement nevertheless shall remain in force.

L. Fees and Costs.

The parties agree to be bound by the Agreed Entry Regarding the Attorneys' Fees and Expenses, appended to this Agreement as Attachment 3 ("Fees Entry"). The parties further agree that plaintiffs' counsel shall be compensated at an hourly rate of \$ \_\_\_\_\_ for future monitoring described in paragraph 1 of the Fees Entry.

M. Signatures and Execution of the Agreement

The undersigned have the authority to bind the parties to the terms of this Agreement, and have executed this Agreement to be effective as of the last date listed below.