

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

THE UNITED STATES OF AMERICA, Plaintiffs,

v.

THE STATE OF LOUISIANA, et al, Defendants.

Civil No. 98-947-B-1

Williams v. McKeithen



PC-LA-001-022

UNITED STATES' JENA AGREEMENT

## INTRODUCTORY STATEMENTS

The United States has filed a Motion for Preliminary Injunction in *United States of America v. State of Louisiana, et al.*, Civil Action Number 98-947-B-1 on March 30, 2000.

For purposes of this Agreement, "Private Plaintiffs" refers to the putative class of plaintiffs appearing as plaintiffs in *A.A., et al., v. Wackenhut Corrections Corporations*, CA00-246-CMI. The parties agree that class certification has not been ordered and that this Agreement does not address or affect the issue of class certification.

For purposes of this Agreement, "Defendants" refers collectively to Wackenhut Corrections Corporation, Warden Salvador Godinez, the State of Louisiana, Richard Stalder, Secretary of the Department of Public Safety and Corrections, and The Honorable Murphy "Mike" Foster, Governor of the State of Louisiana, with the understanding that Governor Foster's obligations under this Agreement have been delegated to the Secretary of the Department of Public Safety and Corrections.

Private Plaintiffs have filed a Motion for Preliminary Injunction which seeks various injunctive relief, including relief to address alleged conditions of confinement at the Jena Juvenile Justice Center.

Agreement has been reached among Private Plaintiffs, the United States, and the Defendants for the purpose of resolving preliminary injunctive relief sought by the United States in *United States v. State of Louisiana*, and by the Private Plaintiffs in *A.A. v. Wackenhut*.

This United States' Jena Agreement (the "Agreement") is entered with the express purpose of resolving demands for preliminary injunctive relief asserted by the United States regarding conditions at Jena Juvenile Justice Center. This Agreement is a private settlement Agreement entered into for the sole purpose of resolving the Motion for Preliminary Injunction. The parties acknowledge that the Jena Interim Agreement entered on November 6, 1998 has terminated. The Defendants' obligation to comply with the substantive provisions of this Agreement shall expire and shall be of no further effect after July 15, 2000. The United States and Defendants in this action do not hereby relinquish any rights which any party may have regarding the claims asserted or defenses to such claims in these lawsuits after July 15, 2000.

The United States and Defendants agree to entry of an order conditionally dismissing the United States' claims for preliminary injunctive relief. The Governor of the State of Louisiana has delegated to the Secretary of the Department of Public Safety and Corrections responsibility to assure compliance with this Agreement, and the Governor discharges his responsibility under this Agreement by conferring on the Secretary this responsibility.

Certain obligations assumed by Defendants in this Agreement may, at various points in time, be under the exclusive control of either Wackenhut or the State. The parties recognize that, in defense to any action to enforce this Agreement, either Wackenhut or the State may assert as a defense its lack of control over the circumstances giving rise to the alleged violations of the Agreement.

The Defendants deny the allegations on which the United States' Motion for Preliminary Injunction is based. The parties

acknowledge that the State did not assume interim operational control until after this action or the motion for preliminary injunction was filed. In order to promote settlement of the broader litigation regarding conditions in juvenile facilities pending in United States v. Louisiana, however, Defendants and the United States enter this Agreement.

If the United States believes that Defendants have violated the commitments made in this Agreement, then, subject to opportunity to cure provided below, the United States may move to reopen the Motion for Preliminary Injunction.

The United States agrees to provide written notice to all Defendants of any alleged violations of this Agreement, and the United States agrees to provide Defendants a ten (10) day period from receipt of written notice in which to cure such alleged violations before United States takes any action based upon such alleged violations except as provided in paragraph 43, below. It is Defendants' responsibility to produce evidence to United States within the ten (10) day cure period to demonstrate that such alleged violations have been cured. The United States' motion to reopen shall be filed no later than August 1, 2000.

Private Plaintiffs have agreed not to reopen their claim for preliminary injunctive relief or move to enforce this Agreement if the United States files a motion to reopen its preliminary injunction. Further, should the United States file a motion to reopen after Private Plaintiffs have filed a motion to reopen or a motion to enforce this Agreement, then Private Plaintiffs agree to dismiss their motion.

1. Upon execution of this Agreement, the Defendants shall house no more than 232 juveniles at Jena.
2. Upon execution of this Agreement, the Defendants shall house no more than 40 juveniles in each of the four open units, Eagle C and D and Falcon C and D, except that Defendants may house up to 48 juveniles in one of these units in order to facilitate a substance abuse therapeutic community, so long as the aggregate population of these four units does not exceed 160 juveniles. Defendants may house one additional juvenile in each of these units on a temporary basis in a float bed that will remain, for the most part, free in order to facilitate the transfer of juveniles within the facility.
3. Upon execution of this Agreement, the Defendants shall house no more than 24 juveniles in each of the three units Eagle A, Eagle B, and Falcon B.
4. The 12 single-cell disciplinary beds on Falcon A shall not be counted for purposes of calculating the population at Jena.
5. Within 14 days of the execution of this Agreement, the Defendants shall comply with the following security staffing requirements at all times juveniles are present except as provided below:

Eagle A 2

Eagle B 2

Eagle C 3

Eagle D 3

Falcon A 2

Falcon B 2

Falcon C 3

Falcon D 3

Notwithstanding the above, staff assigned to these units must be able to supervise juvenile movement including out-of-unit activities on a proportional staff/juvenile basis.

Defendants shall ensure that Falcon building is supervised by an on-site Lieutenant at all times the juveniles are in the building and that Eagle building is supervised by an on-site lieutenant at all times the juveniles are in the building. Non-security personnel shall not be used as substitutes for security staff to meet the requirements of this paragraph.

6. In the event that Wackenhut re-assumes operational control of the facility during the life of this Agreement, the following provision concerning the use of overtime shall apply, within 20 days of assuming control. Except for emergency situations, overtime for correctional security staff will be limited to 12 hours of unscheduled overtime pay per pay period. In the event of the need for overtime hours, volunteers will be utilized prior to the use of mandated overtime.

7. [Intentionally blank]

8. Within fifteen (15) days of the execution of this Agreement, the Defendants shall ensure that there are at least two fully operational telephones in each of the housing units, at least one operational telephone in each counselor office, and at least one operational telephone in the infirmary that juveniles may use to place a PZT call. The Defendants shall ensure that a maintenance order is placed within one business work day for every juvenile telephone that is in need of repair and will make best efforts to ensure that the phone is repaired as soon as possible.

9. Within five (5) days of the execution of this Agreement, Defendants shall ensure that the telephone numbers of the PZT Hotline, attorneys of record in this case, and facility investigators, are posted clearly next to each juvenile and infirmary telephone. Defendants shall post a sign asking the juvenile to speak clearly and spell his name if he gets a recording. Within 5 days, the "attorney contact" flier shall be posted next to the juvenile phones in living areas and infirmary.

10. [Intentionally blank]

11. Within ten (10) days of the execution of this Agreement, the Defendants shall require all mandatory child abuse reporters, as defined in Louisiana Children's Code article 603, at the facility to acknowledge their obligation in accordance with state law to report suspected child abuse and inform all mandatory reporters of the office and telephone number to which such suspected abuse should be reported. Defendants' obligation under this section will be discharged upon obtaining employees' signatures acknowledging their understanding.

If the Louisiana Department of Social Services contacts the Defendants regarding an allegation of abuse, the Defendants will insure that the allegation has been, or is being investigated.

12. Within ten (10) days of the execution of this Agreement, the Defendants shall require each employee and contractor at the facility to acknowledge, in a signed statement, their awareness of their obligation to report suspected physical, emotional, verbal, or sexual abuse of juveniles to their supervisors, and to the PZT Hotline, where appropriate.

Within fifteen (15) days of the execution of this Agreement, the Defendants shall submit to the Court Expert, to the Private Plaintiffs, and the United States, copies of the signed statements referenced above. Employees who are on leave and contractors who are on vacation and unavailable during this time period will acknowledge their understanding of the obligations set forth previously and sign such statement of understanding upon their return to work. The signed statements shall include an affirmative statement that the employee or contractor intends to abide by the abuse reporting obligations. A copy of each such signed statement shall be placed in the personnel file of the signatory to the statement.

13. [Intentionally blank]

14. Within thirty (30) days of the execution of this Agreement, the State shall complete criminal background checks on all existing staff, and will complete criminal background checks on all prospective employees, including checking with the National Crime Information Center and the Louisiana Computerized Criminal History system. The Defendants shall complete the above checks on all prospective employees before they have any contact with juveniles. Additionally, finger prints of all employees, existing and prospective, shall be submitted to the State Police in accordance with the Louisiana Child Protection Act. Within (45) days of this Agreement, the Defendants shall take appropriate action to protect the welfare and safety of the juveniles based upon the information obtained from the checks. During the Private Plaintiffs' and the United States' compliance tour, Defendants shall provide to the United States evidence of the specific personnel action taken regarding any employees with criminal convictions. Defendants will not disclose names of individual employees.

15. Within twenty (20) days of the execution of this Agreement, the State shall assign one full-time qualified investigator to work at Jena, who shall report directly to the Assistant Secretary of the Office of Youth Development. DPS&C investigators shall conduct all PZT-related investigations.

16. Within thirty (30) days of the execution of this Agreement, the DPS&C shall conduct investigations of the four staff remaining at Jena as of April 10, 2000 with several allegations of abuse filed against them identified on page 21 of Dr. Nancy

Ray's February 2000 report. The investigators shall recommend whether these four staff should continue to be employed at Jena. The Court Expert, Private Plaintiffs, and the United States shall be provided with the outcome of these investigations and an explanation if the recommendations are not followed. The names of the individual staff members shall be maintained confidential by all parties.

17. Within thirty (30) days of the execution of this Agreement, Defendants shall ensure that all PZT Hotline complaints and all allegations of abuse (including sexual victimization) in ARPs or grievances or otherwise reported in writing or orally by juveniles or staff, are accepted and investigated by the DPSC state investigators. Each such investigation shall be recorded on a log. In cases where a youth withdraws an allegation, the investigators shall record the investigation on the log, conduct a preliminary investigation to determine the circumstances and reasons for the withdrawal, and in cases where it is warranted, complete the investigation of the abuse allegation. In no case shall an investigator do an investigation on an incident in which he or she was personally involved.

18. Upon execution of this Agreement, all employees or contractors against whom physical abuse or sexual misconduct is substantiated by the Defendants shall be appropriately disciplined. Where significant physical abuse or sexual misconduct is substantiated, or where there is a pattern of substantiated abusive behavior, the employee or contractor shall be terminated and shall not knowingly be employed at another State juvenile facility.

19. Upon execution of this Agreement, any staff member at Jena under investigation for physical abuse or sexual misconduct shall be separated from any contact with juveniles or placed on leave if the Defendants have a reasonable basis to believe that abuse or sexual misconduct warranting termination of employment may have occurred.

20. Within thirty (30) days of the execution of this Agreement, the Defendants shall instruct all staff on less restrictive non-physical responses that staff should employ to respond to juveniles' common behavior problems.

21. Within 45 days of execution of this Agreement, use of force by staff on juveniles at Jena shall only be used as defined below:

1. Employees will take all reasonable steps to minimize situations requiring a use of force and to minimize the amount of force used in those situations. When possible, actions other than use of force, such as staff presence, verbal directions and warning, crisis intervention techniques, and passively removing a juvenile from an area of group activity without the use of physical handling, will be used.

2. Force will be used only as a last resort to control the juveniles;

3. The amount of force used will be proportional to the threat to which it is a response and cease when the resistance ceases;

4. Force may be used only:

1. To prevent an escape;

2. To prevent an act which could result in death or severe bodily harm to the juvenile or another person;

3. To defend one's self or others against a physical assault;

4. To separate participants in a fight;

5. To prevent substantial damage to property; and

6. When necessary, to enforce legal orders and instructions.

5. Whenever possible, force will not be used against juveniles with mental illness or mental retardation before appropriate medical, mental health, or counseling personnel can be called to the scene;

6. The first action taken to gain control will be direct, verbal instructions to cease the behavior, unless the employee perceives that life or health will be jeopardized, or that there is a substantial threat to security.

7. When determining the need to use force, factors to be considered include but are not limited to: lack of appropriate response to repeated direct orders and other efforts to temper the situation, severity of the situation and/or behavior, threat to self or others and disruption to the unit or program.

22. By the 10<sup>th</sup> of each month, the Defendants shall provide copies to the Court Expert, the Private Plaintiffs, and the United States of every Unusual Occurrence Report (UOR), Use of Force Report (UOF) and Accident/Injury Report (A&I) pertaining to a use of force during the preceding month. Collectively, the reports will include: (a) the date and time the force was used; (b) the identity of the staff using the force; (c) the identity of the juveniles on whom force was used; (d) the circumstances and justification for the use of force; (e) whether the juvenile was restrained; (f) an account of the other staff interventions utilized during the same incident, including the order in which they were used; (g) the date and time the juvenile was evaluated by medical staff; and (h) the results of the medical evaluation. A copy of the A&I shall be placed in the file of the juvenile against whom the use of force was employed.

23. Upon execution of this Agreement, the only chemical agent that Jena shall keep or employ shall be 100% OC spray. Gas grenades shall neither be kept nor used at Jena. Only the Warden, Deputy Warden or Assistant Warden, or when they are not present at the facility, the highest ranking officer at the facility, shall be permitted to authorize the use of the spray. The authorizing Warden or officer must be present at the use of the spray. They may not delegate this authority to any other person. Only employees specifically trained in the use of chemical spray shall be permitted to use the spray. The chemical spray shall not be intentionally sprayed in the face of any juvenile. Employees shall be trained to not intentionally spray juveniles in the face. The Defendants shall ensure that the Warden, Deputy Warden or Assistant Wardens are trained in the correct use of these sprays to prevent excessive exposure, the hazards associated with such sprays, and the first aid response to exposure situations. All use of chemical agents at Jena shall be videotaped, with sound recording, and the tape of the incident shall be maintained for the duration of this Agreement for inspection by the Private Plaintiffs, the United States, and the Court Expert. The Defendants shall ensure that the chemical spray is only used under the following terms:

a. Chemical agents shall not be used except under the conditions set forth below and with prior approval, after personal observation of the situation, from the Warden, Deputy Warden or Assistant Warden if one of these officials is at the facility. If the Warden, Deputy or Assistant Warden is not at the facility, prior approval may be given, after personal observation of the situation, by the highest ranking security officer on duty at the facility. However, such approval shall not be required in the case of a large-scale disturbance (such as an attempted mass escape) that poses an imminent danger to the public, staff or other juveniles, so long as in such an event the Warden, Deputy or Assistant Warden is notified as soon as practicable.

b. Chemical agents shall only be authorized when:

1. A juvenile is posing a direct and immediate threat of injury to staff or another juvenile;
2. The juvenile is creating a sustained disturbance that jeopardizes the effective monitoring and supervision of the unit to the extent that the safety of juveniles or staff is endangered, which persists despite efforts to de-escalate without the use of chemical agents, and the use of chemical agents is the only means to avoid a physical confrontation that would likely result in injury to juveniles or staff; or
3. The use is necessary to prevent an escape.

The Defendants shall ensure that exposed juveniles are seen by medical staff whenever spray is used. The Defendants shall ensure that juveniles with known chronic respiratory conditions (including asthma) are not subjected to chemical spray. However, this shall not prohibit the use of chemical spray when it is necessary to prevent or quell a large scale disturbance where such juveniles are present. In no event shall staff use a chemical spray as punishment, discipline, retaliation, for the purpose of inflicting pain, for staff's convenience, or after handcuffs have been applied.

24. In every instance that chemical spray is used, the Defendants shall provide copies of every UOR, UOF and A&I involving the use of chemical spray to the Court Expert, the Private Plaintiffs, and the United States by the 10<sup>th</sup> of the month for the preceding month. Collectively, the reports will include: (a) the date and time the spray was used; (b) the identity of the staff using the spray; (c) the identity of the subject(s); (d) the circumstance and justification for use of force; (e) the estimated

amount of spray used on the juvenile(s); (f) the observed results; (g) an account of the other staff interventions utilized during the same incident, including the order in which they were used; (h) the decontamination measures taken; (i) the date and time the juvenile(s) was evaluated by medical staff; (j) the results of the medical evaluation(s); and (k) the results of the investigation. A copy of the A&I shall be placed in the file of the juvenile against whom the chemical restraint was used.

25. Within ten (10) days of the execution of this Agreement, Defendants shall not use mechanical restraints except under the following circumstances. The use of mechanical restraints shall be limited to the minimum period of time necessary to enable the juvenile to gain control of his behavior. When a handcuff belt is not used, handcuffs shall be applied behind the back in a manner to minimize the risk of injury to the juvenile and the staff person responsible for supervising.

Defendants shall not use mechanical restraints except under the conditions set forth below:

- a. For transportation of juveniles outside the facility, Defendants may use handcuffs, leg irons, and/or handcuff belts;
- b. For movement of juveniles within the facility, no mechanical restraints shall be used except under the following conditions. Handcuffs and/or a handcuff belt may be used if the facility has documented that the juvenile poses a current escape risk or has engaged in a recent pattern of assaultive behavior toward staff or other juveniles, as determined and authorized by a ranking security shift supervisor. Leg irons may only be used for transportation within the facility if the conditions of subparagraph (d) are met;
- c. For movement of juveniles within the facility to transport a juvenile from general population to a restrictive housing area after a fight or other serious incident, handcuffs and/or a handcuff belt may be used;
- d. For control of a juvenile who, after less restrictive measures have not been successful, continues to engage in aggressive or assaultive behavior that is a clear and present danger to the juvenile, another juvenile, staff, or the security of the facility, a handcuff belt, and/or leg irons may be used. In this instance, such use of mechanical restraints shall require continuous one-on-one physical supervision and must be approved by the ranking supervisor (Captain or higher) on duty at the facility. The staff person shall ensure that the physical needs of the juvenile are met promptly;
- e. For intra-facility movement of the approximately 12 juveniles at any given time in administrative segregation for disciplinary reasons, handcuffs and/or a handcuff belt, may be used.

Although a routine medical examination after the use of mechanical restraint is not required, immediate medical treatment shall be provided if there is a visual indication of an injury or if the juvenile identifies a specific medical complaint.

No other forms of mechanical restraints may be used (including 4 or 5 point restraints). This, however, does not apply to medical or mental health restraints ordered by a medical or mental health professional.

26. Medical/mental health restraints shall not be used at Jena unless specifically ordered by the physician or psychiatrist. Soft restraints, rather than metal mechanical restraints, shall be utilized for this purpose. There shall be no standing orders for medical/mental health restraints. This does not apply to any order by a physician or psychiatrist that is issued in response to an individual juvenile's current medical or mental health condition. Medical/mental health restraints shall be used only in the infirmary under constant supervision and conducted according to current accepted professional standards on medical restraints. The log documenting the monitoring of each use of medical/mental health restraints shall be copied and reported by the 10<sup>th</sup> of the month to the Court Expert, Private Plaintiffs, and the United States for all such uses of restraint during the preceding month.

27. [Intentionally blank]

28. Every use of a mechanical restraint, other than as authorized under 25(a) & (e), shall be documented. The use of mechanical restraints shall be documented on a UOR or in a log maintained for this purpose. Documentation to reflect compliance with 25(b), (c) and (d) shall describe the behavior of the juvenile with sufficient particularity to enable a reviewer to determine independently whether the above requirements of Paragraph 25 have been complied with (i.e., the documentation shall not simply restate, paraphrase or refer to the above conditions warranting use of mechanical restraints). The UORs and/or the logs described above shall be made available during the compliance tour. Defendants will accommodate Private Plaintiffs' and the United States' reasonable requests for copies of specific UORs or logs.

29. Within thirty (30) days of the execution of this Agreement, the following suicide hazards shall be eliminated: elimination of the risk posed by the bar in windows throughout the facility, including in the medical isolation rooms, replacement or repair of all hanging appurtenances on any and all beds, elimination of the holes in the beds on Falcon A, and elimination of the risk posed by the knobs in the showers for juveniles with disabilities. Wackenhut will hire a consultant to assess the hanging risks posed by the cell doors in the infirmary and in Falcon and Eagle A and B and, as soon as practicable, implement any recommendations made by the consultant to eliminate suicide risks posed by the doors. Wackenhut will replace shower heads in the eight handicap accessible showers with fixtures that are more suicide resistant if such shower heads can be found. Alternatively, Wackenhut will develop a plan for detachable shower heads.

30. Suicide watch shall only be conducted with adequate staff supervision. All beds in the infirmary will be used on a priority basis for suicide watch unless the medical needs of another juvenile take priority as determined by a physician. In addition to the infirmary beds, an additional two suicide-resistant cells will be designated as overflow for suicide watch.

31. By the 10<sup>th</sup> of each month, the Defendants shall provide copies of logs and or reports/documentation to the Court Expert, the Private Plaintiffs, and the United States of each time that an juvenile was placed on suicide watch during the preceding month. Collectively, this information will include: (a) the date, time and place the suicide watch was initiated; (b) the reason the suicide watch was initiated; (c) the identity of the juvenile on suicide watch; (d) the name of the person authorizing the suicide watch and the terms and conditions of the suicide watch that was authorized; (e) the length of time the juvenile was on suicide watch; (f) the dates and times that the juvenile was evaluated by mental health professionals and medical staff (not including nurses) while on suicide watch; and (g) the results of the mental health and/or medical evaluations. Appropriate documentation of the suicide watch shall be placed in the file of the juvenile on suicide watch.

32. Locking a juvenile in a room for prolonged periods of time, except during sleeping hours (cell restriction), shall only occur in three contexts at Jena -- administrative segregation, protective custody, and removal from regular programming. Use of isolation in these contexts shall be governed by the following requirements:

#### A. Administrative Segregation

1. A juvenile can be placed in the 12 bed administrative segregation unit only when his continued presence in general population poses a threat to the safety of the juvenile, staff or other juveniles or is a substantial threat to the security of the institution. This includes activities that are destabilizing or highly disruptive to programming.

2. Juveniles living in dormitories may only be placed in administrative segregation pending a hearing on their disciplinary charge. Juveniles engaging in suicidal or self-mutilating behavior shall not be held in administrative segregation for behaviors resulting from their conditions.

3. The Defendants shall ensure that only a staff member of the rank of Lieutenant or higher places a juvenile in administrative segregation. The staff placing a juvenile in administrative segregation shall obtain the approval of the Warden or the Warden's designee as soon as possible.

4. Staff shall make visual contact with each juvenile in administrative segregation at least every 15 minutes (or more, depending upon the juvenile's emotional state) and otherwise monitor the condition of each juvenile. Staff shall record essential information about each juvenile in administrative segregation. Staff shall alert mental health staff if a juvenile begins to exhibit symptoms of a deterioration in emotional state while in cell restriction in accordance with the guidelines set forth in subparagraph 32(A)(9).

5. Disciplinary hearings shall be held every weekday and on Saturday. A juvenile's disciplinary hearing shall be held within 24 hours or at the first scheduled hearing after the disciplinary writeup. Juveniles may not be subjected to cell restriction as a penalty resulting from a disciplinary hearing.

6. Juveniles in administrative segregation may be held in isolation for a few hours until calm. Staff shall make all efforts to assist the juvenile in regaining control of his behavior. When the juvenile is calm, he shall be permitted out of his cell to participate in alternative programming in the administrative segregation unit for at least seven and a half hours a day until he receives

his disciplinary hearing. The daily time out of cells shall occur regardless of whether there is any planned or scheduled programming available to the juvenile.

7. Alternative programming for juveniles in administrative segregation may only be ended if the juvenile engages in the behaviors listed in subparagraph 32(C)(3).

8. A juvenile in administrative segregation shall be routinely provided with reading and writing materials unless his current behavior indicates that possession of such materials would be a danger to the health of the juvenile or others.

9. Juveniles with mental retardation (IQ of 70 or below) or serious mental illness including but not limited to: clinical depression, juveniles with an Axis I diagnosis, or a history of suicidal ideation or self mutilation shall be interviewed, assessed, and treated about three hours after being placed in administrative segregation if the juvenile is still in cell restriction. The assessment shall be conducted by the highest ranking mental health professional on site at the facility. In the event that there are no mental health professionals at the facility, the assessment shall be conducted by the highest ranking medical professional on site at the facility. Nurses who may conduct the assessment shall be trained to recognize the signs and symptoms of a juvenile experiencing exacerbation of his mental condition due to the effects of isolation. If a nurse determines that a juvenile is presenting symptoms of an exacerbated mental condition due to being held in isolation, the nurse shall confer with on-call mental health professionals, who shall decide a course of treatment for the juvenile. The mental health professionals shall determine what the course of treatment is for such juveniles held in cell restriction, including, if applicable, release from isolation for mental health reason, if they are no longer a danger to others, or, if the juvenile is determined to be fit to remain in isolation, the frequency of re-assessment of the effects of isolation on the juvenile.

#### B. Protective Custody

1. Juveniles in protective custody shall be reviewed, assessed and treated by mental health professionals at least once daily.

2. Juveniles in protective custody shall be permitted to be out of their cells for at least seven and one half hours a day and participate in programming (including recreation) each day.

3. Alternative programming for juveniles in protective custody may only be ended if the juvenile engages in the behaviors listed in subparagraph 32(C)(3).

#### C. Removal from Regular Programming

1. Defendants may not assign a juvenile to cellblock housing without a hearing.

2. A juvenile who is housed in a cellblock, other than Falcon A, may be removed from programming and placed in his assigned cell only in accordance with paragraph 32(C)(3) and shall have opportunities to rejoin programming in accordance with paragraph 32(C)(4) The daily time out of cells shall occur regardless of whether there is any planned or scheduled programming available to the juvenile.

3. Alternative program participation may only be ended if the juvenile engages in:

- i. Repeated failure to follow orders, where the failure to comply is destabilizing;
- ii. Repeated interference with staff or other juveniles' duties;
- iii. Improper sexual behaviors;
- iv. Fighting;



- v. Substantial destruction of property; or
- vi. Violent conduct that creates an imminent danger to other juveniles or staff.

The decision to remove a juvenile from programming shall be approved by a ranking security staff member Lieutenant or higher and documented in a log.

4. If a juvenile is removed from programming before noon, the juvenile shall be evaluated by a ranking security shift supervisor before evening recreation to determine whether the juvenile can be permitted to participate in evening recreation. The juvenile shall be permitted to participate in evening recreation unless the ranking security shift supervisor determines that, based on documented interim behavior, the juvenile is likely to engage in conduct described in Part 32(C)(3) and documents the basis for his belief in a log maintained for this purpose. Provided, however, that every juvenile shall be permitted an opportunity to participate in programming at the beginning of each day. e. Juveniles with serious mental retardation (IQ of 70 or below) or mental illness including but not limited to: clinical depression, juveniles with an Axis I diagnosis, or a history of suicidal ideation or self mutilation and who are assigned to a cellblock, other than Falcon A, who have been removed from regular programming shall be reviewed, assessed and treated as soon as possible after they have been denied the opportunity to participate in three consecutive opportunities for programming. For example, a juvenile who is not permitted to participate in afternoon, evening, and the following morning's alternative programming shall be reviewed as soon as possible following the denial of the juvenile's opportunity to participate in the morning programming. Such review shall be in accordance with the protocols established in subparagraph 32(A)(9). Subsequent to such review and assessment, a mental health professional may release the juvenile from cell restriction if necessary for mental health reasons and if the juvenile is not currently a danger to others.

33. By the 10<sup>th</sup> of each month, the Defendants shall inform the Court Expert, the Private Plaintiffs, and the United States in writing of each use of administrative segregation, protective custody and removal from regular programming (collectively, "cell restriction") during the preceding month, including: (a) the date, time and place of the use of cell restriction; (b) the duration of its use; (c) the identity of the staff authorizing the cell restriction; (d) the identity of the juvenile placed on cell restriction; (e) a copy of the disciplinary board's report; (f) the observed results; and (g) any mental health referral, if indicated. A copy of the disciplinary report shall also be placed in the files of the juveniles who were placed in cell restriction.

34. The Defendants shall not use group discipline/punishment as a sanction for the conduct of individual juveniles.

35. The Defendants shall not use corporal punishment, including but not limited to the practice of making juveniles lie face down on the floor with their head and feet elevated.

36. The Defendants shall not ticket or otherwise discipline juveniles for suicidal behaviors. The Defendants shall not discipline juveniles for self-mutilating behaviors, where those behaviors result from a mental health disorder, mental illness or anxiety or fear over the juvenile's safety. No juvenile shall be disciplined for self-mutilation unless a psychiatrist or psychologist diagnoses malingering based on reasons other than anxiety or fear over the juvenile's safety. In this context, self-mutilation does not include tattooing, body piercing, or similar conduct. Obvious self-mutilations will not result in disciplinary writeups.

37. Defendants, in conjunction with the mental health professionals at Jena and Swanson Correctional Center for Youth, will review juveniles with mental disabilities, including mental illness and mental retardation, to determine whether any juvenile shall be transferred to a DPS&C mental health treatment facility in accordance with the State's classification structure. The Department of Justice and Private Plaintiffs shall provide, from time to time during the life of this Agreement, names of juveniles they recommend for such a review, and Defendants will review these juveniles.

38. The Defendants shall exercise their best efforts to obtain the services of a board eligible child and adolescent psychiatrist in the event the contract with the individual currently in that position is terminated.

39. During the term of this Agreement, the Defendants shall exercise their best efforts to obtain the services of a pediatrician with experience in adolescent medicine to provide quality assurance and consultative services to the current physician at

Jena.

40. Within thirty (30) days of the execution of this Agreement, the Defendants shall ensure that all employees, current and prospective, have been screened for tuberculosis and that 25% of the employees are selected randomly and screened each quarter for illegal drugs in their urine.

41. Upon execution of the Agreement, the Defendants shall provide for at least one hour of outdoor exercise, weather permitting, including weekends and holidays to each juvenile confined at Jena except for:

a) when contra-indicated for medical reasons;

b) juveniles in administrative segregation who continue to present an immediate danger to others;

c) Juveniles who are housed in a cellblock, other than Falcon A, and who have been removed from programming in accordance with Paragraph 32(C)(3) and who have not been returned to programming in accordance with Paragraph 32(C)(4).

Utilization of provision (b) shall require the approval of the Warden/Deputy Warden, or Assistant Warden. In the absence of the Warden/Deputy Warden or Assistant Warden, application of provision (b) may be authorized only by the highest ranking officer at the institution; and

The Defendants shall maintain information in logbooks in dormitories, cellblocks, school and the infirmary to record outdoor exercise activities.

42. Upon execution of this Agreement, the Defendants shall provide each juvenile with sufficient clean clothing and shoes at Defendants' expense. The Defendants shall immediately implement a documented daily unit monitoring system to ensure that each juvenile has adequate clothing and shoes every day.

43. Compliance with the terms of this Agreement shall be monitored by the Court expert in *Williams v. McKeithen*. The Court Expert in *Williams v. McKeithen* may initiate and receive ex parte reports from an expert selected and paid for by the State, and an expert selected and paid for by Wackenhut.

The State shall bear all costs incurred by the Court Expert, including, but not limited to fees and expenses (e.g. for site visits, administrative costs, and report writing, and telephone calls made for consultation.)

The Court Expert shall be permitted to initiate and receive ex parte communications from attorneys for all parties.

In order to monitor compliance with this Agreement, the Court Expert shall have reasonable access to all facilities, juveniles, staff and documents. The Court Expert shall have the right to conduct confidential interviews with staff and juveniles.

In order to monitor compliance with this Agreement, the United States and its two experts may conduct one tour of the Jena Juvenile Justice Center between June 15 and July 15, 2000, at a time mutually agreed by the parties. The site tour shall be conducted between 8:30 a.m. and 9:00 p.m. and shall be concluded within a single three day period. Documents shall be requested only during normal business hours. During the United States' tour, the United States and its experts shall have reasonable access to all facilities and documents. The State Defendants and Wackenhut will cooperate in scheduling interviews with staff of the facility, during this tour, provided that counsel for State Defendants and Wackenhut are present. Private Plaintiffs and the United States shall be able to conduct private interviews with juveniles. Defendants' attorneys and experts shall conduct interviews with juveniles only in the presence of juveniles' counsel. Juveniles' counsel will cooperate in scheduling juvenile interviews with Defendants' attorneys and experts. The United States' reports arising out of this tour shall be initially distributed to Defendants' counsel and the court expert. The parties shall simultaneously file all reports assessing compliance with this Agreement into the court record 14 days after the reports have been distributed. This provision shall not, however, prevent the United States from filing reports into the record in order to address dangerous or life threatening conditions (such as violation of suicide hazards) after the United States has given Defendants verbal notice of the dangerous or life threatening condition and a copy of the report and provided that Defendants shall have 24 hours to attempt to resolve the dangerous or life threatening condition.

The Defendants shall make reasonable efforts to promptly provide any document related to compliance with this Agreement

reasonably requested by the Court Expert, Private Plaintiffs, or the United States within 14 days. Defendants shall cooperate with Private Plaintiffs' or the United States' reasonable requests to take photographs within the facility or to scan existing photographs. This shall not include, however, documents or portions of documents that are subject to attorney-client or work product privilege.

44. [Intentionally blank]

45. [Intentionally blank]

46. In addition to the information required in the above paragraphs to be provided by the 10<sup>th</sup> of the month to the Court Expert, the Private Plaintiffs, and the United States, the Defendants shall also provide copies of the following documentation on a monthly basis: (a) all accident and injury reports, (b) all ARPs or grievances filed; (c) all Unusual Occurrence Reports and (d) the investigation log and all investigations completed during the preceding month, including all preliminary investigations. This obligation does not alter or limit any obligation that exists separate and apart from this Agreement requiring the State to provide reports or other information to the Court, the Court Expert, or Private Plaintiffs' counsel in Williams.

47. The names of all individual juveniles and staff members shall be maintained confidential by all parties to this Agreement.

Agreed to by this \_\_\_\_\_ day of April 2000:

UNITED STATES DEPARTMENT OF JUSTICE

Bill Lann Lee  
Acting Assistant Attorney General  
Civil Rights Division

Steven H. Rosenbaum  
Chief  
Special Litigation Section

Robinsue Frohboese  
Deputy Chief  
Special Litigation Section

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Judith C. Preston  
Iris Goldschmidt  
Trial Attorneys  
Special Litigation Section

WACKENHUT CORRECTIONS CORPORATION

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Amber D. Martin  
Director, Contract Compliance

RICHARD L. STALDER, Secretary, Department of Public Safety & Corrections, HONORABLE MURPHY "MIKE" FOSTER, Governor, State of Louisiana

RICHARD P. IEYOUB  
Attorney General  
State of Louisiana

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Richard A. Curry  
*Special Assistant Attorney General*

Dan E. West