

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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| JAMES E. PHILLIPS, et al., |) | |
| |) | |
| Plaintiffs |) | |
| |) | |
| vs. |) | CV-R-77-221-ECR |
| |) | |
| RICHARD BRYAN, et al., |) | <u>STIPULATED SETTLEMENT</u> |
| |) | |
| Defendants |) | <u>AGREEMENT</u> |

First Report of the Independent Monitors

On May 20, 1988, the Court entered an order approving the Stipulated Settlement Agreement (Agreement) in the above referenced matter. Section I of the Agreement provided for the appointment of independent monitors whose task it would be to "observe and report upon compliance with the terms of this Agreement". It further directed the monitors to "prepare a joint report broadly regarding compliance and specifically with respect to discrete sections of this Agreement". This Report is in response to that directive.

In organizing the report we should like first to address those specific areas which were to be completed at this first six-month interval following the entry of the court's order. We will then discuss, in broader terms, some of the other issues which we believe ought to be raised, even though their completion date is still in the future.

Shapley v. O'Callaghan



PC-NV-005-013

Staff Training

In the introductory section of the Agreement, paragraph 6 requires that "all NSP staff shall receive training and orientation in the meaning of the Agreement and its implementation as it applies to their position". It appears to the monitors that the State has complied with that requirement. We were provided copies of the training schedules and rosters indicating that attendance was mandatory. We also received copies of memos ordering officers who had missed previously scheduled training sessions to attend make-up sessions. New officers are required to view a video tape of the Attorney General's full presentation and are provided printed materials, also developed by the Attorney general's office. As we toured the Nevada State Prison on December 6th and 7th, we randomly inquired of corrections officers whether they had received the required training regarding the Phillips Agreement and they informed us, without exception, that they had.

The monitors certify that the State is in compliance with this provision of The Agreement.

Population

Section II of the Agreement deals with allowable inmate populations at NSP under a variety of circumstances. The completion date for compliance was set for six months following the entry of the court's order, November 20, 1988. The population at NSP at the time of our visit in early December was Dec. 5 - 703, Dec. 6 - 693, and Dec. 7 - 683.

The agreement allows the Prison to operate for as long as 90 days at "emergency capacity", i.e. 140% of design capacity. At the time of the Agreement that "emergency capacity" was 647. Since the Agreement, however, Unit 8, a new 64 bed housing unit, has been built and occupied. Applying the same "140% of capacity" standard to the new unit and adding that to the previous total would give a current "emergency capacity" of 736 inmates at NSP.

Thus the defendants were below the "emergency capacity" of 736 inmates at the time of our visit. Nor had they operated at a population in excess of the "operating capacity" which, adjusted for the new construction, is 657, for longer than 90 days. Despite the fact that the population at NSP was significantly higher than it had been at the time of our visit last summer, a review of the count sheets since that time has convinced us that the State has remained within the population limits established by the Agreement.

The monitors find, then, that the defendants are in compliance with the numerical requirements of Section II of the Agreement regarding population.

It is more difficult, however, to precisely quantify "the impact of the increased population on defendants' ability to provide for adequate shelter, clothing, sanitation, food, medical care, personal safety and education, work and recreation opportunities". Indeed, many of those areas will be subject to

further scrutiny on future visits, particularly those which will utilize the specialized expertise of the consultants which the Agreement envisions.

It is especially difficult to prospectively assess the adequacy of support systems and services given the changing nature of NSP's mission. With the opening of the new maximum security facility at Ely in July 19 1989, one can anticipate major changes in the composition of the population, security requirements, and operations at the Nevada State Prison.

Our hesitancy to definitively state that the population numbers, and the availability of sufficient infrastructure and support services is in compliance, is not based on any suspicion that the Director, the Warden or other state officials plans to take advantage of the letter of the agreement to the detriment of its spirit. On the contrary, we found Director Sumner and his staff to be cooperative and open to suggestions and ideas from the monitors. As new beds come on line statewide, over the next twelve months, there should be enough flexibility to balance an appropriate population with an acceptable level of services as new operational procedures involve at NSP. It seems prudent to the monitors to allow that to occur.

Administrative Segregation, General Provisions

Section VI of the Agreement requires that a number of issues relating to Administrative Segregation be resolved by the time of this report. These requirements are contained primarily in Appendix A of the Agreement. The defendants have addressed the

issues raised in Appendix A and have incorporated them into Policy #8 which was issued June 7, 1988, and is attached to this report as Exhibit I. In the opinion of the monitors this policy adequately responds to the requirements of Appendix A and the policy is in conformity with the Agreement.

At the time of our visit there were 22 inmates confined in Administrative Segregation, a drastic reduction in the numbers confined previously. All seemed to be confined in accordance with the policy and Appendix A of the agreement except one, who was being held in violation of the policy. When we notified the Director of the problem he indicated that he would be moved as soon as a suitable placement could be found. He was, in fact, transferred out of Administrative Segregation 14 days later.

We did a paper review of the status of all 22 Administrative Segregation inmates and did a spot check of the central files to cross-check the accuracy of the information provided. In addition we interviewed 4 Administrative Segregation inmates, three randomly selected and one who asked to see us. We found no indication that the policy on Administrative Segregation was not being followed.

The Administrative Segregation inmates are now being housed in the new Unit 8. The design of the unit is a considerable improvement over the other modular units at NSP and it appears to be a more desirable housing situation from the inmates' perspective.

The monitors find that the State is in compliance with Section VII, 44(d) of the Agreement and with Appendix A.

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Other Issues

The major items scheduled for completion at the time of this Report have been discussed above. In the course of our tours of NSP, however, a number of issues came to our attention, either through our own observation or in discussions with staff and inmates. Some of these concerns relate directly to items covered by the Agreement but which are not yet completed; others may be less clearly addressed by the Agreement or fall in the "not to be monitored" sections of it. The monitors agreed, with the concurrence of the Director and the Warden, that these issues ought to be raised with officials at NSP so that further investigation or appropriate remedial action might occur. The monitors' experience has been that, as long as an environment of good faith exists, this type of informal interaction can be productive and helpful to all concerned.

In addition to information shared in close-out interviews with the Director, the Warden and his staff and the Compliance Monitor, we should like to comment briefly here on several of our observations.

Medical and Dental Services

During our initial visit to NSP in August of 1988, the monitors were impressed by the dedication and attitude of the NSP physician, Dr. Harrison. This recent visit has confirmed that first impression. We encountered virtually no complaints about

medical care; it appears that Dr. Harrison's availability and response to inmate complaints has made a significant difference in health services at NSP. The effectiveness of a prison doctor can often be measured by whether the medical service is credible to the inmates. That now seems to be the case at NSP.

It appears that the Infirmary is in as good condition as it can be. The nature of the physical environment, however, is such that the unit simply does not look like a clean, appropriate medical unit. The Warden's plan to install a new floor will certainly help, but we would encourage the NSP administration and medical staff to continue to search for ways to provide a more suitable physical setting for the delivery of health services.

We were pleased to meet during our visit with Dr. George Kaiser, the newly hired Medical Director for the Department of Prisons. As the Department continues to expand, effective Central Office direction of medical services will be essential in order that the standards necessary for compliance are maintained at NSP.

Although progress clearly has been made at NSP, it is the opinion of the monitors that the Medical Director and his staff should be allowed as much time as possible to take whatever steps are necessary to gain full compliance in the medical area. It is our intention, therefore, to obtain the services of an expert consultant after the May 20, 1989, completion date so that the medical expert's review can either coincide with, or follow, our inspection. By then all of the necessary compliance steps will

have been taken and we will be in a good position to evaluate compliance and report our findings.

In a related area, we heard a number of complaints about the availability of special diets, menu items consistently not being served, and the overall healthfulness of the menu itself. Again, a new Dietician had just been hired at the time of our visit and steps were already being taken to resolve these problems. We are hopeful that these issues will be well in hand at the time of our next visit.

General Prison Living Conditions and Activity Areas

The monitors reviewed inspection reports by the State Fire Marshall and State Health Inspector and it generally appears that there have been appropriate and timely responses to items needing attention.

The Department has recently prepared a voluminous maintenance manual, and although time constraints did not allow a detailed review of the manual, it seems a good step toward a more effective preventive maintenance program. The monitors remain concerned about the number of maintenance positions allocated to NSP and whether they will be sufficient to handle the demands of an aging physical plant.

The renovation of A and B Blocks appear to be proceeding on schedule. A serious problem exists, however, in that hot water will not be piped to the cells and that the only thing available for normal washing and shaving needs is a single mop basin located next to the shower. This is clearly inadequate and will

need to be resolved before our next visit and the review by a consultant sanitarian. The Director indicated that the problem would be resolved.

Our inspection of the kitchen and dining areas during this visit were admittedly cursory, but did reveal that the dishwashing machine was old and woefully undersized for the volume of dishes it is required to process every day. We were advised that a larger replacement unit has been ordered. We received numerous complaints about dirty dishes and utensils on the serving line but did not observe that on the day of our visit.

The renovated kitchen floor was a big improvement, but we noted that defects are already beginning to appear. The food storage and preparation areas, of course, remain very small and crowded.

Although it was not the focus of our inspection this trip, we did notice several areas of the institution which lacked insect screens on the windows. This also should be looked into before our next visit.

As in the medical area, we intend to obtain the services of an expert consultant in the area of environmental health and safety to supplement our own observations and inspection.

Excessive Use of Force

The monitors have been receiving monthly reports regarding incidents where force is used. The agreement calls for us to measure NSP's use of force against "constitutional and generally

accepted correctional standards for the use of force". We will attempt to develop such a standard, based on practices in other, similar custody prisons, which can be used to assess what level of force is justifiable, and under what circumstances. The monitors remain concerned about frequently voiced inmate complaints that there are officers who point weapons or chamber rounds on the slightest pretext. This is especially disturbing when an individual officer's name comes up consistently. As we continue to receive information on the use of force we will attempt to analyze the data to determine whether patterns emerge and additional intervention might be necessary.

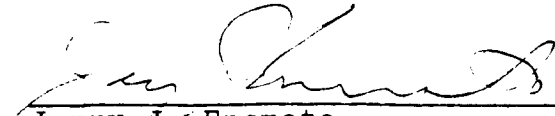
Classification

During our visit to NSP we met briefly with Jim Austin of NCCD who is conducting the validation analysis of the State's classification system. Work on that project is continuing on schedule and we should have the information to make recommendations for modification, if necessary, in time for the completion date of May, 1989.


Conclusion

We should like to note, in closing, the cooperation we have received from all whom we have dealt with, both in Central Office and at the Nevada State Prison. We thank especially Director George Sumner, Warden H. L. Whitley and his staff, and Ms. Mary Long, the Compliance Monitor. We hope that a collaborative

effort can continue and bring improved conditions for all who
live or work at NSP.



Jerry J. Enomoto
2/20/89



Patrick D. McManus
2/10/89