



PC-SD-002-001

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
May 7 19  
William F. Bai  
CLE

BERNARD CROWE, et. al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DON R. ERICKSON, et. al., )  
 )  
Defendants. )

CIV. NO. 72-4101

AGREEMENT IN SETTLEMENT  
AND JUDGMENT CONFIRMING  
SETTLEMENT

Plaintiffs filed this lawsuit in November, 1972, pursuant to 42 U.S.C. 1983, et. seq. against the warden, other prison officials and the Governor, challenging certain conditions and practices at the South Dakota State Penitentiary. There are two classes of Plaintiffs sanctioned by Order of this Court. The first class represents all present and future inmates of the South Dakota State Penitentiary. A subclass consists of all present and future Indian inmates. By order of this Court, Plaintiffs were permitted to proceed in forma pauperis.

Plaintiffs' original complaint contained several claims for relief. The complaint was amended and additional relief was requested. With regard to Plaintiffs' First Claim for Relief, the Plaintiffs claimed that penitentiary officials read and censored all incoming and outgoing mail. This issue has been resolved by a Partial Consent Decree filed with this Court in 1975. Plaintiffs' Second Claim for Relief alleged that Plaintiffs were subjected to punishment for violations of prison rules by the Defendants without being afforded the protections of due process of law. This issue was resolved by this Court's Order dated August 23, 1973, as amended by Orders dated November 21st and 23rd, 1973, and December 6, 1974, which Orders were mandated by and are subject to United States Supreme Court decisions and may be modified by the parties upon application of the Court to conform to said decisions.

Since the date of the filing of this lawsuit, Defendants have voluntarily changed many prison practices and procedures, thereby eliminating the need for trial on many of the issues raised by Plaintiffs. Those good faith changes are as follows:

1. THIRD CLAIM FOR RELIEF (Medical Issues). On February 11, 1974, the Defendants hired a full-time nurse. On June 9, 1976, the Defendants hired a full-time nurse to be present on those days at the penitentiary that a medical doctor conducts sick call. Since approximately February 17, 1976, the Defendants ceased charging any inmate for necessary medical treatment. No inmate is presently being charged for any necessary eye glasses or prosthetic devices unless the same have been deliberately destroyed or broken by the inmate. No inmate is presently performing any medical function which is contrary to South Dakota law including the drawing of blood, giving of x-rays or dispensing of medication. At those times when a medical doctor is not physically present at the penitentiary and there is the need for emergency treatment of an injury, such inmate, if the medical need arises, is seen by a medical doctor at the penitentiary or is transported to one of the two local Sioux Falls hospitals for emergency out-patient care. At the present time, the Defendants are approaching the State legislature with a request for appropriations to improve their medical and psychiatric delivery system.

2. FOURTH CLAIM FOR RELIEF (Religious and Cultural Rehabilitation Programs). The Defendants have instituted a program for the religious needs of Native American inmates which include the following: (a) Four medicine men have been selected by the inmates and various Tribal Chairman for the tribes in South Dakota and approved by the warden to conduct sacred pipe ceremonies and services on a regular and special basis. Inmates who desire are permitted and do participate in sacred pipe sessions each Saturday morning, and they are and have been permitted to participate in special ceremonies at unscheduled

times as the spiritual need arises; (b) The Defendant warden has given approval, which has been confirmed by the Board of Charities and Corrections, for the construction of a sweat lodge at the penitentiary for religious purposes; (c) The Defendants have instituted a reevaluation of the religious programming at the penitentiary to consider the allocation of any sums budgeted for religious activities including Indian religious activities; (d) At reasonable intervals, based on the level of inmate acceptance, traditional Indian food may be brought in to the penitentiary by recognized outside groups; (e) Defendants will continue to allow Indian inmates to wear headbands, medicine pouches and other recognized Indian artifacts and paraphernalia, subject to legitimate security requirements.

3. FIFTH CLAIM FOR RELIEF (Work Release). The Defendants have agreed to continue the present policy of providing equal access to work release for all inmates. Included in this program will be the continuing effort of the State to enter into various forms of programs with other governmental entities, including Indian tribes.

4. SIXTH CLAIM FOR RELIEF (Employment). The Defendants will continue to provide for the rehabilitation needs of all inmates by continuing the following employment actions: (a) The program instituted in 1968 will continue at the penitentiary for the training of professional and nonprofessional staff in race relations. The program is aimed at increasing the sensitivity of the penitentiary staff toward the unique cultural differences between the various ethnic backgrounds of the inmate populations. Included in the programming is the utilization of outside individuals who are knowledgeable in the field of racial and ethnic problems; (b) Defendants will continue the development of a written minority hiring program aimed toward additional employment of minority personnel at all levels of security and rehabilitation. Defendants recognize that during the past year approximately twenty-five percent of the inmates

at the penitentiary have been Indians. The State will assign a staff member to direct this minority hiring program. Necessary travel to all parts of the State, including Indian reservations, and announcements of employment availability will be an integral part of this plan.

5. SEVENTH CLAIM FOR RELIEF (Indian Representative on the Board of Charities and Corrections). Since an Indian was appointed to the Board of Charities and Corrections in January, 1973, Plaintiffs' Seventh Claim for Relief will be dismissed. The State agrees that all citizens in this State have a right to equal consideration for appointment to the Board and that competent individuals should continue to be appointed.

6. EIGHTH CLAIM FOR RELIEF (Law Library). The Defendants agree to maintain and keep current the existing law library, which is described in Exhibit A which is attached hereto and incorporated by reference.

In light of the above voluntary changes initiated by the Defendants and their good faith recognition that any program for rehabilitation involves the understanding of the race and culture of the inmate population in order for relevant programs for these prisoners to be developed, the parties now believe they are in a position to enter into an AGREEMENT IN SETTLEMENT AND JUDGMENT CONFIRMING SETTLEMENT, wherein the Defendants, their successors, agents and employees agree in good faith to do the following:

1. With regard to total satisfaction of Plaintiffs' THIRD CLAIM FOR RELIEF, it is agreed that:

(a) Inmates requiring eye glasses will be provided an eye examination and glasses at State expense whenever a prescription or prescription change is deemed necessary by the eye doctor. Replacement or repair costs of issue glasses broken in conjunction with State activities will be borne by the

State. In the event that an inmate wilfully destroys eye glasses or other prosthetic devices supplied by the State, new glasses or devices will be provided at the inmate's expense.

(b) The Defendants will not charge inmates for the cost of any medically necessary treatment or prosthetic devices.

(c) Prisoners or staff will not be permitted to perform any medical or medically related duties which under State law they are not authorized to perform. The Defendants shall request a legal opinion from the Attorney General specifying those medical duties which may be lawfully performed by nonlicensed persons.

(d) Defendants will continue the present policy of not permitting inmates to view medical records of other inmates.

(e) The Defendants agree to maintain their current level of professional medical care staffing. In addition, Defendants agree to make a good faith effort to submit a bill to the State legislature to acquire sufficient appropriations necessary to hire the following medical care staff:

1. One licensed physician's assistant on a full-time basis to be present, working under the doctor's supervision at the institution, whose full-time schedule shall include working evenings and weekends;
2. One licensed clinical psychologist on a full-time basis to develop,

implement and coordinate a psychiatric treatment program;

3. One psychiatrist to work as needed to assist the above mentioned clinical psychologist in said psychiatric treatment program. Such assistance is not to exceed one-half-day per week.

In the event that the Defendants fail in their good faith effort to obtain funds sufficient to obtain the personnel mentioned in paragraph (e) 1. through 3., above by April 15, 1977, the Plaintiffs may apply to the Court for relief without resorting to the administrative remedy referred to at page 11 infra. (This paragraph is not an admission that the foregoing personnel are Constitutionally required.)<sup>1/</sup>

(f) The Defendants agree to maintain a medical department at the penitentiary pursuant to a written set of procedures and protocols which provide for: A procedure to be followed for inmates desiring access to medical personnel, medical job descriptions, medical record keeping, relationships with the security department, instructions as to what guidelines to follow at times when no medical personnel are present at the institution and assurances that at no time will security override medical orders.

(g) The Defendants agree to continue their present policy against the indiscriminate

---

<sup>1/</sup> Nothing herein shall preclude inmates from obtaining outside psychiatric treatment from other sources at their own expense.

crushing of medication of prisoners except with regard to those prisoners who have been found by the disciplinary board to be hoarding medication.

(h) The Defendants agree to continue their policy of the checking of inmates in the adjustment center during each sick call by a qualified medical staff member.

(i) The Defendants agree to provide each prisoner with a routine medical checkup every three years.

2. With regard to total satisfaction of Plaintiffs'

FOURTH CLAIM FOR RELIEF it is agreed that:

(a) The State of South Dakota agrees that Indian religious services will continue to be placed on a level comparable to other religious services and will provide and continue to extend official recognition to Indian religious activities.

(b) The State will continue to provide routine Indian religious ceremonies, including a sweat lodge, pipe ceremonies and medicine men ceremonies.

(c) The State will set aside an amount of money to pay for Indian religious services and activities, which will be comparable by inmate religious preference to the amount currently expended for Catholic or Protestant religious services and activities at the South Dakota State Penitentiary. This agreement does not obligate the Defendants to fund wholly or in part, any religious services and activities should their budget for all religious activities be cut by the Board of Charities and Corrections.

(d) The State will continue to offer a variety of educational courses for the personal advancement of the inmate population. Included in such curriculum will be courses relating to subjects dealing with Indian history and culture. Defendants will look to recognized academic institutions and government agencies, including recognized Indian resource education groups, as resources for assisting them in setting up Indian study courses.

(e) The State of South Dakota will cause all standardized intelligence, intelligence quotient or psychological tests currently utilized in the South Dakota State Penitentiary, for any purpose, to be validated for cultural or racial bias against all inmates and to replace or change those tests found to be invalid. If any of said tests are found to be invalid and thus replaced by new tests, minority inmates will be retested and the previous invalid tests or test results will be removed from their records.<sup>2/</sup>

(f) At reasonable intervals, based on the level of inmate acceptance, traditional Indian food may be brought in to the penitentiary by recognized outside groups.

(g) The State, in order to allow Indian inmates to express their culture and practice their religion, will continue to allow Indian inmates, to wear headbands,

---

<sup>2/</sup>The medical personnel contemplated under paragraph (e), page 5, *supra*, will give proper consideration to explore the validity of standardized psychiatric tests used in evaluate the mental profiles of minority persons.



medicine pouches and other recognized

Indian artifacts and paraphernalia, subject to legitimate security requirements.

(h) The Defendants agree to supplement the social portion of their rehabilitation program by establishing Indian Brotherhood meetings on a basis attendant to the level of inmate and community participation. The Indian Brotherhood meetings shall be open to all interested inmates from the general inmate population. The purposes of the Indian Brotherhood meetings shall include:

1. To provide a social program relevant to Indian culture;
2. To coordinate its activities with Indian religious activities and other activities currently offered by the Defendants; and
3. To augment the existing alcoholism counseling program by coordinating mutually supportive activities.<sup>3/</sup>

The Indian Brotherhood meetings shall be supervised or sponsored by one of the

---

<sup>3/</sup>Based on expert consultation the Defendants acknowledge that alcoholism problems of Indians may be more effectively treated by establishing an environment which may foster spiritual and cultural pride in conjunction with an alcoholism treatment program. Thus, while both the parties stipulate that the present alcoholism program is functioning satisfactorily, they agree that such program may be improved by cultural augmentation, and, to that end, and for purposes of the above paragraph, the Defendants agree to do the following:

A. To obtain culturally relevant alcoholism treatment materials such as, posters, pamphlets and audio-visual materials from the American Indian Commission on Alcoholism and Drug Abuse;

B. To coordinate those social activities of the Indian Brotherhood meetings which relate to alcoholism, with the existing alcoholism counseling program.

Defendants' staff members, and, shall function pursuant to a written charter, by-laws or statement of activities which shall be approved by the warden.

3. In satisfaction of Plaintiffs' FIFTH CLAIM FOR RELIEF the State agrees to continue the present policy of providing equal access, placement on and release to work release for all inmates. Included in this program will be the continuing effort of the State to enter into various forms of programs with other governmental entities, including Indian tribes.

Before any agreement is entered into with the Indian tribes, the extradition of penitentiary inmates from the Indian reservation must be provided for with the appropriate tribal government. In addition, State work release officers must be guaranteed full and complete access to inmates who have been transferred to an Indian reservation.

4. In satisfaction of Plaintiffs' SIXTH CLAIM FOR RELIEF the State will continue to do the following:

(a) The State will continue to maintain a program to sensitize, train and subsequently evaluate prison employees concerning the unique culture of Native American prisoners. Staff relations with Native American prisoners will have an emphasis in this program. Defendants agree that the purpose of the training program for prison staff will be to sensitize them to the rehabilitative need to encourage all inmates, including Native American prisoners, to be proud of their unique culture and race.

(b) Defendants will continue the development of a written minority hiring program aimed toward additional employment of minorities at all levels of security and

rehabilitation. Defendants recognize  
— that during the past year approximately  
twenty-five percent of the inmates at  
the penitentiary have been Indians. The  
State will assign a staff member to direct  
this minority hiring program. Necessary  
travel to all parts of the State, in-  
cluding Indian reservations, and  
announcements of employment availability  
will be an integral part of this plan.

5. Since an Indian has been appointed to the Board  
of Charities and Corrections for over a year, Plaintiffs'  
SEVENTH CLAIM FOR RELIEF will be dismissed. The State agrees  
that all citizens in this State have a right to equal con-  
sideration for appointment to the board and that competent  
individuals should continue to be appointed.

6. In regard to total satisfaction of Plaintiffs'  
EIGHTH CLAIM FOR RELIEF the Defendants agree to maintain and  
keep current the existing law library, as listed in Exhibit A.  
The state will provide periodic workshops to train selected in-  
mates in the fundamentals of legal research.

The parties agree that the provisions contained in  
this document constitute the minimum responsibility required  
under law; and Plaintiffs hereby waive their right to resort  
to the Court to redress alleged violations of said provisions  
without first exhausting the administrative remedy of meeting  
formally and in good faith with the Defendants at the peni-  
tentiary to discuss any implementation or compliance problems  
which they may believe to exist. For purposes of this AGREE-  
MENT IN SETTLEMENT AND JUDGMENT CONFIRMING SETTLEMENT, the  
administrative remedy is defined as a meeting at the prison  
with the warden or his designee, the complaining inmate and  
his counsel, to be scheduled on no less than five (5) working  
days prior written notice. In the event that such meeting

cannot be scheduled within ten (10) working days from the date of said written notice, Plaintiffs will be deemed to have complied with the administrative remedy. All such meetings, if any, shall be conducted in good faith by all parties. The parties waive a hearing on the provisions contained in this AGREEMENT IN SETTLEMENT AND JUDGMENT CONFIRMING SETTLEMENT.

It is agreed that all other claims pertaining to prison conditions as raised in the complaint herein are hereby dismissed with prejudice. It is also agreed that plaintiffs waive any claim they may have to attorneys fees and costs to matters settled herein.

It is further agreed that attorneys for the parties have the consent of their clients to sign this Agreement. The undersigned attorneys represent and warrant that they have the consent of and have been authorized by their clients to sign the foregoing Agreement and that all portions of the Agreement have been explained to the clients by the undersigned.

Dated this 4th day of May 1977.

Walter R. Echo-Hawk

Walter R. Echo-Hawk  
Roy S. Haber  
Bruce R. Greene  
Native American Rights Fund  
1506 Broadway  
Boulder, Colorado 80302  
(303) 447-8760

Attorneys for Plaintiffs

ATTEST:

William J. Franklow  
Clerk

by Margaret (Christopherson)  
Property

William J. Franklow

William J. Franklow  
Attorney General of South Dakota  
Peter H. Lieberman  
Assistant Attorney General  
State Capitol Building  
Pierre, South Dakota 57501  
(605) 224-3215

Attorneys for Defendants

BY THE COURT:

Chief Judge  
Chief Judge

EXHIBIT A

SOUTH DAKOTA STATE PENITENTIARY  
LAW LIBRARY

1. Federal Rules of Criminal Procedure Title 28 US Code
2. Federal Rules Revised 1975 Lawyers Edition
3. Corpus Juris Secundum Vol 1-22-24B
4. Legal Research in a Nutshell, Cohen
5. Basic Criminal Procedure, Kamisar
6. Handbook on Criminal Procedure in the US District Court
7. Criminal Law Handbook, Lafave and Scott
8. Adjudication of Social Issues, Tucker
9. American Legal System, Ford
10. Criminal Procedure, Israel and Lafave
11. Introduction to Criminal Justice, Kerper
12. Legal Rights of the Convicted, Kerper
13. Cases on Corrections, Krantz
14. Model Rules Prisoners Rights
15. Justice in Sentencing, Orland
16. Blacks Law Dictionary 4Ed
17. Dakota Digest Vol 1-12
18. United States Code Annt. Entire Code Available
19. Modern Federal Practice Digest Vol 1-58 and Annual Upkeep
20. Federal Supplement Vol 373-419 and Annual Upkeep<sup>4/</sup>
21. Supreme Court Reporter Vol 73-97 and Annual Upkeep
22. Federal Reporter 2nd Ed 334-542 and Annual Upkeep
23. B.N.A. Criminal Law Reporter and Annual Upkeep
24. Shepards South Dakota Citations and Annual Upkeep
25. Shepards Federal Court Reporter and Annual Upkeep
26. Shepards US Citations Supreme Court and Annual Upkeep
27. West Federal Forms Vol 1-10
28. South Dakota Compiled Laws
29. South Dakota Uniform Probate Code
30. Federal Practice and Procedure Rules Edition Vol 1-6
31. South Dakota Reporter and Upkeep from 1960<sup>5/</sup>
32. Cohen's Handbook of Federal Indian Law
33. Code of Federal Regulations: Title 38, Chapter 1, parts 0-99; Title 41, Chapter 8; Title 20, Chapter 3, parts 400-499.
34. Corrections Court Digest

---

<sup>4/</sup> Any cases required by inmates in the course of their legal research which are found in Federal Supplement volumes 240-372, will be provided by the penitentiary through a xeroxing system to be arranged with the University of South Dakota School of Law. The penitentiary agrees that the cases found in the above named volumes will be readily accessible within a reasonable period of time, upon inmate request.

<sup>5/</sup> The xeroxing system described in footnote 4 above shall also include similar access to all South Dakota Supreme Court cases reported prior to 1960.