IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

THOMAS CAPPS, et al.,
Plaintiff,

vs.

VICTOR ATIYEH,
Defendant.

Friday, 9:00 o'clock a.m.
Portland, Oregon

DECISION OF COURT

Before:

The Honorable James M. Burns, United States District Court Chief Judge.

THE COURT: As will be apparent to you in the next few moments, part of the things I am going to say come from somewhat rough drafts and part will not come from rough drafts and as a consequence, the grammar, obviously, will leave something to be desired. But I am satisfied that a proper discharge of my responsibility certainly calls for announcing a decision on this matter at this time, given the variety of considerations that are involved.

For reasons which I think will become clear to you as we go along here, the remarks which follow when transcribed and filed with the Clerk will be treated as findings and conclusions under Rule 52, although I anticipate that there will be opportunity for the Court itself, as well as other parties to submit, prepare or request, as the case may be, additional findings and conclusions.

And insofar as there may be some difference between the transcribed matter which will be transcribed and filed and findings later to be prepared, submitted or entered, to that extent, of course, I reserve the right to amend what I am going to say at this juncture.

This matter came on for a hearing at the request of the plaintiffs for a preliminary

injunctions against the defendants with respect to the so-called overcrowding issue.

With the consent of the parties and under the provisions of Rule 65(a) the Court treats the issue of overcrowding as having been segregated under Rule 52 and that issue of alleged overcrowding is being treated as having been submitted on the merits as permitted by Rule 65(a)(2).

My findings are based upon the testimony, the exhibits, the interrogatories and the depositions received as evidence in this case. Although an invitation to visit the facilities was extended to the Court, for reasons which I explained yesterday, it seemed to me that it made it unnecessary for me to visit during the time when there is currently a strike going on and the officials involved here are extremely busy in other matters.

Also, for reasons which I explained yesterday, I do not think that any failure on my part to have visited the institutions during the pendency of this case would render any less valid the findings I make, particularly, in view of the various substantial number of times in the past that I have visited both institutions over the good many years in the past, in which, essentially, the basic structure and so on of the

institution has not, essentially, changed.

The record in this case is clear, there has been serious overcrowding at the Oregon State Penitentiary and at the Oregon State Correction Institution.

The Oregon State Penitentiary was designed to house 1,107 inmates. It currently houses 1,476 persons.

I should add at this point that these figures that I am using are based upon the most current, recent information furnished, the 1,476, came, I believe, from Mr. Cupp at the hearing a week or so ago. I am not aware of any change in that, if there has been, I am sure there is some modest change. But for my purposes I use that figure.

The State Correctional Institutional has a design capacity of 476. And they now house 773.

The annex was designed to accommodate 100 to 125. 206 inmates are now housed there.

These conditions have not developed overnight; since January 1977, the monthly population at the penitentiary has not been less than 1,429; and in December, 1979, reached an all-time high of 1,523.

I might add here parenthetically as

well that statement is based upon the Exhibit 1013 that was just discussed. And the evidence otherwise in this case indicates that at one point the high mark was 1,540.

During the same period of time the population at OCI has ranged from 672 to about 775.

To accommodate the increased population, prisoners at each institution have been doubled in cells designed for one inmate and day rooms have been converted into dormitories. When the population at OSP peaked last winter, prisoners in E Block was doubled up in 44 square foot cells, one inmate sleeping on a bunk, the other on a mattress on the floor. Usually, with the one end of the mattress being almost immediately adjacent to the urinal.

These arrangements continued for a period of several months. The exact number is somewhat uncertain in my mind, but the evidence would indicate that those arrangements continued for a period of four to six months. And that the inmates thus affected at one time ranged as high as perhaps 70, 75, although the evidence is here as of the time of the commencement of our hearing in May that particular situation had been alleviated by the measures which have been discussed here by Warden Cupp and the others.

This situation is the result of a very simple phenomenon. If one uses the pipeline analogy, the judges are pouring more prisoners into the pipeline, and the parole board has somewhat tightened the spigot at the other end of the pipeline. At least as of the period of the time near the end of 1979.

Indeed, while the figures are somewhat uncertain, the flurry of interest that was stimulated late last fall resulted from the change in the policy of the parole board which meant that the average sentence served went from approximately 20 to approximately 30 months.

Now, those figures differ slightly depending upon the point at which they appear. They seem to be in the range from 19 to 21 months, and from 29 months to 31 months. But for our purposes here, I think it's fair to make a finding that the change was from 20 to 30 months, obviously, that kind of a mechanism being invoked, the results are not only stark, but clearly apparent to all.

Resuming the pipeline analogy. The pipeline had become swollen to a near bursting point.

One could adopt a number of analogies to describe that situation. The crucial point,

however, is that we are not dealing with quantities of water, but with human beings. Regardless of how depraved their behavior may have been which brought them to that situation, the fact that these human beings have committed criminal acts against society does not render them any less human for Eight Amendment purposes. And certainly it does not deprive them of their Constitutional rights to be free of cruel and unusual or inhumane treatment while they are in prison.

While I have had the benefit of a good deal of expert testimony, and I pause here to express my appreciation to the experts who have appeared or testified or both on both sides for their concerns about the matter and for what seems to me to be their very earnest desire to be of assistance to the parties in this case and to the Court; nonetheless, in my view, whether there was expert testimony or not, one needs only common sense to conclude that overcrowding leads to stress and in the setting of a penal institution, illness, disease, tension, resentment, bitterness, and ultimately violence and brutality.

The only question, of course, is the extent and degree of that. Any one of those conditions, at a particular time, of course, we have had testimony here which has ranged all the way from Mr. Sarver's

prediction in New Mexico, it was just around the corner to the almost diametrically opposed comments that came yesterday from Miss Wheeler, Mr. Pickenare and Mr. Satrine .

In my view, however, that particular aspect is not controlling because the Constitutional issue does not depend, in my view, as I read the case law, upon the maintenance of a particular level or the existence of the particular degree of tension.

And of the other attributes that all of us know as human beings that follow overcrowding, whether it occurs in courtrooms, prisons, bus stops or otherwise.

The superintendents of each institution were aware of the seriousness of the overcrowding situation and of the problems resulting from it, as their monthly reports to the Director of Human Resources revealed.

And I refer now to the Exhibits which are in the record and which consist of the monthly reports from Mr. Sullivan, Mr. Cupp, through the period of time to which we are concerned. They reported that the crowded conditions were producing increase idleness.

In that regard, I note that there is some difference in the actual figures, but, Mr. Cupp's

indication was that the idleness as far as the penitentiary was concerned was something on the rate of 30 to 40 percent and there were slightly different figures there and I note there were some different figures yesterday from the folks that testified.

But again, the precise number or decrease of idleness in that regard, in my opinion, are not controlling.

In addition to idleness, the records indicates that there were more assaults on inmates and staff, growing numbers of disciplinary reports, and an increase in inmate defiance, disturbances, and rumors of riot.

Again, I pause to mention that there is some flurry in this case about whether or not the testimony given by Warden Cupp at his deposition in March was accurate with respect to the number or rates of assaults and the like. It seems quite clear to me that in each instance, however, the conclusions formed by the reporting superintendent, Mr. Sullivan, Mr. Cupp, during that period of time was an accurate conclusion and is an accurate reflection of the facts in each institution as of the time.

Mr. Sullivan, for example, when he was here, earlier, I think in early May, indicated that

he would perhaps recede a little bit from some of those. For my purposes, however, I think the facts set forth in those monthly reports are accurate facts for purposes of making the Constitutional evaluations that I am called upon to make.

Vocational, educational and recreational programs, indeed, all inmate services, were being overtaxed, resulting in a negative affect on morale, both with respect to the prisoner, as well as with respect to the staff.

The testimony of the inmates taken earlier in this case tend to confirm the precipitations expressed by those officials.

Memos between the Corrections Division and the Parole Board in December, 1979, and January, 1980, discussed a variety of mechanisms to alleviate the problem. In particular, in December, late December, Mr. Watson, in a memo which is marked Plaintiff's Exhibit 17, discussed the problem and requested -- and requested considerations be given to three programs or proposals which he believed would produce, at least, some short term reductions. They were, and I will omit any detailed discussion of these, because it's in the record, we talked about it yesterday and all concerned here know of those. They

relate to a change with respect to detainer matters, a reduction in prison terms, based upon recommendations of the superintendent of the institution and an acceleration of the parole release scheduling for an increment of one to two months over the next periods of time. And two of those three were put into place and the third was not.

It seems clear from what the evidence is so far, though this is not entirely precise, but it seems clear that those mechanisms served to reduce what would otherwise have been the count as of now, by about 200 persons.

Mr. Watson spoke to that yesterday and, again, I don't think a finding in precise numbers is necessarily required. However, as of March, at least, whatever affect had then been produced, was quite clearly in the judgment of the responsible officials insufficient, and so we have the Plaintiff's Exhibit 18, which is Mr. Watson's memo of March 21, which was furnished to the Department of Human Resources following the taking of his deposition on March 19th. And at that time the recommendation was made by Mr. Watson and/or as follows:

No. 1, to create additional bed space without either doubling, single-cell or

overcrowding the dormitories; No. 2, parolees would not be returned for revocation while they were awaiting revocation hearings; and, No. 3, that certified sentence orders would be required instead of informal transport orders.

And in each instance a prediction was made with respect to what Mr. Watson then believed would be the affected numbers of the implementation of these programs.

Two of these proposals, of course, that of having the parole revocation cases continue in County Jails and having the committed prisoners not come down until the technically proper sentence and judgment of commitment had been executed, and I don't think anybody really felt otherwise, simply, have an effect of transferring the population problem of the state institutions to the local jails. And, of course, I think it does not need any specific case citations to indicate or suggest that if the count or numbers at a given institution are continually impermissible, it is hardly an answer for that institution to export its unconstitutional overcrowding to another institution.

It might, of course, result in a short-term change of who the lawyers would be arguing the cases. But that is hardly an adequate defense, in

my view, to a claim of unconstitutionality, which is otherwise well taken.

In addition, Mr. Watson had also proposed that the new parole matrix applicable to new prisoners arriving after May of 1980 be applied to the entire prison population. That is, in effect, that it be applied retroactively.

That new matrix serves to change the time served for various offenses in over-simplified terms by reducing the time served for the less serious offenses, categories one through four, letting them remain the same, approximately, for category five and increasing them somewhat for category six and seven, more serious offenses.

Originally it was projected by Mr. Watson that application, retroactive application of this new matrix to all prisoners would result in a reduction of the total population at both institutions by about 200 by the end of this year, December, 1980.

And by 400 to 600 by October of 1981.

And I point out here that Mr. Watson, of course, was careful when he furnished those estimates earlier to indicate that they were, of course, very rough estimates, and understandably there had to be room for a margin of error. I do not in any way suggest

that in that regard he or the other officials here, or in any other regard, have been carrying on in anything, other than the best of faith.

Accordingly to the most recent calculations, however, this mechanism retroactive application would result in a population reduction of a good deal less than that, perhaps about 150, as he said yesterday. This proposal clearly is not an adequate answer to the problem that has existed for a long time at the two institutions.

Indeed, even if the originally projected reduction of 200 were accomplished by the end of the year, it would be too little, too slowly.

What stands out so sharply from the record in this case is that the responsible state officials were well aware, as of late 1979, and early 1980, that with the Court's committing more persons to prison and the parole board releasing fewer from prison, the time was inevitably approaching when the overcrowding would cross the constitutional line, to which there would ineluctably follow a reaction.

It was apparent to those responsible state officials, at that time, had been for some time, a sensible resolution would have been to move ahead -- to have moved ahead as quickly as possible on the

programs previously outlined, at least, in the absence of additional bed space, and additional prison facilities which, of course, could only be provided by legislative action and the appropriation of the funds.

While none of the individual defendants, at any stage in this proceedings are willing to admit in so many words that the conditions that these institutions constituted unconstitutional overcrowding, each was aware, none more painfully so, than Mr. Watson, in his memo of March 21, that the Federal case law strongly suggested that legal conclusion.

The federal judiciary has no great desire to interpose itself between Oregon officials and person confined in the penal institutions of the state. The contrary is the case. This Court believes very strongly in the principles of local governmental control and in the principles of a healthy and cooperative federalism between state and federal sovereigns. Because of the reluctance of federal courts, in general, and the reluctance of this one, in particular, which I think among qualitative terms is much greater than that evidenced by Judge Kane in the Colorado case and the other judges who have spoken to this issue, because of that reluctance to intervene in matters of state prison administration, a great deal of deference

has been generally been accorded to state officials and I think properly should be.

Indeed, I have, in every appropriate way, that I have been able to devise, suggested to the parties to this lawsuit that resolution by agreement be arrived at. But it is obvious that these efforts have failed and one or more defendants, for whatever reason, believes that he or she cannot accept what is abundantly clear to all, namely, that 1,500 prisoners or 1,400 prisoners, for that matter, in an institution designed for 1,100 is simply too many.

The same is true with 776 in an institution designed for 476.

Defendants have cited several recent Supreme Court decisions which reiterate the long-standing policy of the Federal Courts to defer to prison officials. I have read those decisions and to whatever extent they are relevant, I am bound by them.

Nevertheless, the Supreme Court has also stated that this policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims, whether arising in a federal or a state institution.

When a prisoner regulation or practice offends a fundamental constitutional guaranty, federal

courts will discharge their duties to protect constitutional rights.

While neither are invited nor solicited, constitutional issues which arise here are properly before the Court and this Court is not entitled, as I would personally otherwise desire, to turn a deaf ear to them.

This Court is guided by the fact that the United States Supreme Court has not waived in his holding that the Eighth Amendment to the United States Constitution prohibiting the imposition of cruel and unusual punishment is among other things, intended to protect and safeguard a prison inmate from environment where degeneration is probable and self-improvement unlikely because the conditions of confinement inflict needless suffering, whether physical or mental.

Borrowing from Judge Kane in the Ramos v. Lamm, I feel a complete and utterly distaste for having to cross the federal and state boundaries.

Plaintiff have presented substantial and often compelling evidence of existing and continuing constitutional violations in the sense that I have just described and except in fashion as necessary relief deference is no longer possible.

The basis of plaintiff's attack on the

conditions of confinement in a penal institution, of course, is the Eighth Amendment prohibition. The scope of that amendment is broader than a mere prohibition against physical barbarous forms of punishment. It also protects prison inmates from being held in an environment where degeneration is probable and self-improvement unlikely because of the conditions of confinement inflicting needless physical and mental suffering.

For a convicted inmate, confinement is the punishment. If the conditions of that confinement are foul, inhumane, or violative of basic concepts of human decency, that punishment is cruel and unusual.

Neither the Supreme Court nor the Ninth Circuit has defined the circumstances under which crowded conditions constitute cruel and unusual punishment. I am satisfied that Bell v. Wolf, provides some useful guidance for the Court. That case arose, of course, in connection with pre-trial detainees that were there at the Metropolitan Correctional Center in New York for a very short period of time and had little, if any, applicability, in my judgment, to the conditions in a large-scale long-term prison setting where inmates serve lengthy sentences.

I should also say, as far as I am

aware, there is no Ninth Circuit case which provides any particular help in this regard.

I tried to locate, through the Clerk's office in San Francisco, any cases and was unable to do so except I did find some cases where there pending, and a Nevada case, for example, recently had been remanded. But without a written opinion.

In these circumstances, therefore, I must draw guidance from the opinions of other circuits and District Courts, including the Southern District of Ohio; Chapman v. Rhodes; the Northern District of Mississippi, Gates v. Collier, and the other cases in Alabama; Nelson v. Collins, in Maryland; and Battle v. Anderson, in Oklahoma.

One can distill from these opinions that the following considerations are appropriate in determining whether crowding constitutes cruel and unusual punishment:

One, the duration of the prisoner's confinment;

Two, the degree to which the population exceeds the institution's design capacity;

Three, the number of hours per day an inmate must spend in close quarters and the closeness of those quarters;

Four, the affects of the increased population on the prisoners' mental and physical health;

Five, the relative permanency of the crowded conditions.

The evidence presented in this case reveals the following:

Over the past period of time the average stay has risen from 19 to 20 months, to 29 to 31 months;

Two, the population at OSP has exceeded design capacity by percentage ranging roughly from 29 to 38 percent, and OCI roughly, 41 to 61 percent; the amount of time that prisoners must remain in their cells varies from prisoner to prisoner, depending on the availability of employment, education and other activities as well, of course, as the specific rules in each institution which differ somewhat; so that, for example, Mr. Sullivan's testimony was on the average the inmates at OCI are in their cells on the average of about seven, seven and-a-half hours per day, because the number of inmates exceeds many program capabilities, many inmates are idle. Double cells at OSP provide from 22 to 32 square feet per person while those at OCI provide 25.6 to 43 square feet per person.

The standards of the American

Corrections Association state that prisoners that spend no more than 10 hours per day in their cells should be accorded 60 square feet per person and those that spend more than 10 hours a day should be accorded 80 square feet. For those prisoners housed in dormitories or in converted day rooms, no privacy barriers exist.

According to the testimony of one expert, such conditions are no better, and in fact, worse than double celling. The stress resulting from overcrowding has had a deleterious affect on the well-being of the inmates, most noticeably by creating a climate of some degree of tension as shown by the records of the superintendent as well as the other evidence in this case.

Along with their tension, has been a claim of anxiety and fear, both among inmates and staff, the degree of which, of course, is a matter of dispute here. But the evidence in the monthly reports, as well as other evidence in my opinion justifies the findings I am making and have made here today.

That of tension, anxiety, and fear, which if not corrected, may well erupt in violence leading to serious physical harm and death, of course, is the awesome aspect that I think has overcome all of us in this case, and quite clearly, was uppermost in the

minds of administrators, Mr. Watson, Mr. Cupp and Mr. Sullivan.

I may add at this point, that I have known each of those gentlemen professionally for a very substantial number of years. I have nothing but the highest regard for each one personally. I do not believe that any of their actions or conduct in this case were undertaken in bad faith. I think that each one in his own way and from his own official responsibility and point of view is as devoted to the idea of a safe and humane confinement as I believe I am and must be under my duties.

I do not believe that any one of them can take any oath to the Constitution any less mindful of its obligations than I believe that I can and have.

While the witnesses' perception of the degree of tension present varies substantially, there is no doubt in my mind that the facts justify a finding of tension exists, apprehension exists, and existed for a substantial period of time. And I am further of the opinion, and I think the facts justify a finding that to the extent that tension does exist from the overcrowding situation, that subjects not only the inmate but the staff as well, to needless mental

suffering. This overcrowding which has been shown here is not a relatively recent or temporary phenomena. These conditions have persisted for at least three-and-a-half years.

For purposes of this disposition of this aspect of the case, I believe that I do not need to define a specific point at which overcrowding becomes unconstitutional, except to say I find it has been and continues to be for purposes of granting relief in this case. Necessarily, there is a continuum involved. One could not say that housing 1,108 at OSP, 478 at OCI would be unconstitutional. Yet, none would disagree that housing 2,214 at OSP or 950 at OCI would quite clearly be unconstitutional regardless of the superiority of the programs. Somewhere inbetween these points on the continuum, the constitutional line is crossed and has been crossed.

Last winter, when conditions were such that prisoners were sleeping on the floor, that line was crossed -- I am satisfied that line was crossed. While that practice has been discontinued, the number of inmates at that institution has not substantially changed.

The current populations are not close enough to 1,107 or 476 to be constitutionally

permissible.

The number of prisoners at these institutions must be reduced in a sensible manner, but without delay, to the design capacity of each institution. Only in short term emergencies after the jurisdiction of this Court ceases in this matter, may the design capacity be exceeded.

While I declare that the conditions at each of these institutions is unconstitutional, I do not propose to issue an injunction today. It is appropriate that the state defendants be given an opportunity to put their own house in order by presenting a plan that assures immediate acts to bring the corrections system into constitutional compliance with a reasonable and realistic degree of promptness. The efforts which have been underway since late 1979 and early 1980 are bearing some tiny amount of fruit.

But the pace is too slow and cannot constitutionally be tolerated. Neither good will nor lack of financing is a defense to a continuing failure to meet minimum constitutional standards. This Court is sympathetic to the ever-increasing budgetary demands on state taxpayers. Nevertheless, if the State of Oregon wishes to hold inmates in institutions, it must maintain those institutions in a constitituionally permissible

manner. As strongly as I believe in the principle of comity and the preservation of a healthy state/federal relationship, as much as I fear that treading into the morass of supervision of a prison system that was so eloquently described here yesterday, nonetheless, where the state has failed to act to remedy a constitutional violation, I will not refuse to act.

I am granting relief for violations of prisoners' constitutional rights, courts have employed a variety of mechanisms. The type of mechanism used has depended in large part upon whether the court has needed assistance in fact finding and in fashioning a decree, or in implementing and enforcing the decree.

In some over populations, admissions to penal facilities have been forbidden until they reach the design capacity.

In others, graduated reductions to design capacity have been ordered. To assure compliance with Court orders, one system was placed in receivorship. Indeed, it is ironic that in the Alabama case the receivorship consisted of the Corrections Divisions officials and after some considerable period of time that was changed and the receivor appointed was not the corrections officials themselves, but the Governor himself.

In many other cases, the special masters have been appointed to oversee and implement compliance.

One or more of a variety of these remedies may become necessary in this case. However, in ruling as I do here this morning, that I do not issue an injunction here today, I call upon the state, the defendants, to return to this Court in approximately 30 days with their suggestions at what ought to be the language and wording and component of an injunction.

In that regard, I advise the counsel for the defendants that in making this request, I do not, in any way, mean to suggest to you that by participating in this at my request you would be waiving any rights which you may have to appeal this decision.

I do think, however, that it is much more preferable that the parties themselves, with the plaintiff -- consult with the plaintiff, that the parties themselves present a plan which would be incorporated in some kind of injunctive order. And that plan prescribe a method by which reductions ordered here could be achieved with a reasonable and realistic degree of promptness and that plan as well encompass your suggestions with respect to the necessity of any supervising mechanism that you believe to be appropriate

in these circumstances.

Based upon the testimony that was furnished yesterday, and upon the entire record in this case, I am satisfied that there is every likelihood that if you folks talking now specifically to the lawyers, but I include as well, Mr. Sullivan and Mr. Cupp and Mr. Watson, if you folks would exhibit the same degree of integrity and professional responsibility that I think you have exhibited up to this point, that should not be all that difficult to come back in about thirty days with a suggested plan.

Again, I remind all concerned that in doing so, I do not mean to suggest that compliance with that request would constitute any waiver by defendants of their rights to appeal.

I suggest July 30th, we will have a hearing at that time at 8:30 in the morning, at which time these matters can be discussed and such action as is appropriate be taken.

To summarize again, with respect to that, I request the plan submitted be a plan for the expeditious reduction of the population at OSP, its Annex and OCI, to the design capacity of the facilities. The plan include a timetable by which the reduction is to be accomplished and should address the issue of

what, if any, possible -- what supervising mechanisms are appropriate. That the plan also include the necessity of construction of new or additional facilities, of course, it must be born in mind, necessarily, that to the extent that new construction is necessary, the timetable for that, obviously, be consistent, both with the realistic, but also, consistent with the obligations of this Court to enforce the constitutional rights of any person, may he or she be a prisoner or otherwise.

To the extent that the plan is found by the Court to be acceptable, the plan will be incorporated into an appropriate decree of injunctive relief.

As mentioned earlier, on two or three occasions, defendants will not be deemed to have consented to the decree merely by their participation in this plan preparation efforts.

If defendants fail to submit an acceptable plan, I will issue special orders and directions with respect to the matter.

In that regard, I reserve jurisdiction to determine what mechanism, if any, may or ought to be employed to assure the objective of the decree and that they are achieved with the dispatch essential to a problem of such a serious nature.

The use of a daily fine is one tool available to the Court. I should come to that only with the greatest degree of reluctance.

I invite the parties to comment on the appropriateness of various enforcement mechanisms in light of any possible appeal that may be taken. There should be no doubt in anyone's mind what must be done will be done from achieving the necessary reduction as soon as it's realistically possible and prompt.

I reserve jurisdiction to take up the question of availability of attorney's fees with respect to the plaintiffs under Section 1988.

I reserve jurisdiction to enter additional findings as they seem appropriate to me.

I invite both sides to submit proposed findings to the point they believe findings are inadequate, unnecessary, erroneous or otherwise objectionable.

It would help me if proposed findings can be submitted perhaps a few days and maybe a week ahead of July 30th. We will have, of course, promptly as the reporter can manage it, a transcript of these remarks here this morning.

I express my appreciation to all concerned for the ----

I do not address at this time, though I take into account the medical testimony that has been given with respect to the medical services. I do not address this separate claim for medical services per se at the penitentiary. I think it's more appropriate that that be left as a separate claim, treated as a separate claim under Rule 42 and addressed hereafter, particularly, in light of the commendable actions of the Corrections Division to address that problem in the fashion that has been described here already and need not be repeated at this point.

Further, with respect to the other subsidiary issues, the so-called other issues of conditions, I will establish later a schedule for the taking of testimony and disposition of those issues that may seem to be the most appropriate to the needs and demands of the parties and to the schedule of the Court.

I express my appreciation for all concerned ----

(End of proceedings.)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

I, the undersigned, Robert Stimler, Official Court Reporter of the United States District Court, for the District of Oregon, do hereby certify that on the date set forth on the title page of this transcript, I reported in stenotype the proceedings occurred in the transcript appended hereto; that I thereafter caused my stenotype notes to be reduced to typewriting, under my direction, and that the foregoing transcript, consisting of Pages 1 to 30, both inclusive, constitutes a full, true and accurate transcript of said proceedings so reported by me on said date as aforesaid.

DATED at Portland, Oregon, this _____ day of June, 1980.

ROBERT STIMLER
OFFICIAL COURT REPORTER

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