

365 / 14 MONTHS

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TOM CAPPS, et al.,
Plaintiffs,) Civil No. 80-141

v.

VICTOR ATIYEH,
Defendant.

O P I N I O N

JOE WEST, et al.,
Plaintiffs,

v.

VICTOR ATIYEH, et al.,
Defendants.

Civil No. 80-6014

This matter came on for hearing at the request of plaintiffs for injunctive relief requiring defendants to reduce the inmate population at Oregon State Penitentiary, the Farm Annex, and Oregon State Correctional Institution to the design capacity of each facility; restraining defendants from housing more than one inmate in cells designed for single occupancy; and restraining defendants from housing inmates under conditions which provide less than 50 square feet of floor area per inmate. The basis of plaintiffs' complaint and request for relief is set forth in Findings of Fact and Conclusion of Law which are being filed with this

Page 1 - OPINION

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opinion.

The severity of the overcrowded conditions at these facilities was recognized by the responsible corrections officials before these actions were filed. In December, 1979, the Administrator of the Corrections Division made three proposals to the Parole Board by which the crowded conditions at the prisons could be mitigated. In January, 1980, the Parole Board agreed to consider all prisoners against whom detainers had been lodged for possible release to and further incarceration by the authorities that had lodged the detainers. It also agreed to accelerate by two months the release dates of certain lesser offenders who, in the Board's judgment, would be least likely to commit further crimes upon their release. While these actions resulted in the release of 224 prisoners, because of new commitments to the prisons, the net population reduction was insignificant.

Three additional proposals were made in March, 1980, by the Administrator of the Corrections Division to his superior in an effort to reduce the prison population. None was immediately adopted.

Efforts to arrive at settlement through the use of a mediator were made on June 3-5, 1980, but proved unsuccessful.^{1/}

On June 27, 1980, I issued a bench ruling, supplemented or supplanted by written Findings of Fact and Conclusions of Law, declaring that the overcrowded conditions at OSP, the Annex, and OSCI violate the Eighth Amendment of the United States Constitution, as applicable to the states through the Fourteenth Amendment. The matter addressed here is the proper form of injunctive relief.

////

1 REMEDIAL POWERS

2 Federal courts have extensive powers in fashioning
3 relief for constitutional violations. A wide range of
4 approaches have been used by courts in remedying unconsti-
5 tutional overcrowding at prisons, including limiting the
6 prison population to design capacity and prohibiting the ac-
7 ceptance of new prisoners until that goal is reached, Pugh
8 v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976), aff'd in part and
9 and modified in part sub nom., Newman v. Alabama, 559 F.2d
10 283 (5th Cir. 1977); Costello v. Wainwright, 397 F.Supp. 20
11 (M.D. Fl. 1975), aff'd, 525 F.2d 1239, on rehearing vacated
12 and remanded, 539 F.2d 547 (5th Cir. 1976), rev'd and remanded,
13 430 U.S. 325, 97 S.Ct. 1191, 51 L.Ed.2d 372 (1977); and
14 Williams v. Edwards, 547 F.2d 1206 (5th Cir. 1977); reclassi-
15 fication of prisoners to reduce the population at maximum
16 security facilities, Palmigiano v. Garrahy, 443 F.Supp. 986
17 (D. R.I. 1977), remanded on other grounds, 599 F.2d 17 (1st
18 Cir. 1979); accelerating parole dates and construction of
19 new facilities, Johnson v. Levine, 450 F.2d 1378 (4th Cir.
20 1978); and imposing specific cell space requirements, Gates
21 v. Collier, 390 F.Supp. 482 (N.D. Miss. 1975), aff'd, 525
22 F.2d 965 (5th Cir. 1976); Battle v. Anderson, 447 F.Supp. 516
23 (E.D. Ok. 1977), aff'd, 564 F.2d 388 (10th Cir. 1977); and
24 Palmigiano v. Garrahy, supra.

25 When I issued my bench ruling, I indicated (or tried
26 my best to indicate) the extreme reluctance of this court to
27 intervene in the administration of state prison facilities.
28 The reasons for this reluctance are two-fold. The first is
29 the traditionally strong belief of this court in the prin-
30 ciples of comity and the necessity of preserving a healthy
31 state-federal relationship. Second is the recognition that
32 the problems of the criminal justice system are complex and
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1 not readily susceptible to resolution by judicial decree.
2 Particularly is this so where legislative action or voter
3 approval (or both) may be necessary to accomplish specific
4 objectives.

5 This court is sympathetic to the ever increasing
6 demands made on citizens of the state to deal with social
7 problems. The court is also aware of the efforts already
8 made by prison administrators and the Parole Board to miti-
9 gate the problem. But good will, political considerations
10 or budgetary constraints do not define the scope of consti-
11 tutional protections nor the duty of the courts to assure
12 those protections to all persons who possess them. As
13 stated on June 27, if the state seeks (as it must) to oper-
14 ate a prison system, it must do so in a constitutionally
15 permissible manner.

16 I also stated, however, that I believed it was appro-
17 priate that the state be given an opportunity to put its own
18 house in order. Therefore, rather than issuing a decree of
19 injunctive relief, I asked that defendants submit by July
20 30, 1980, a plan by which with reasonable and realistic im-
21 mediacy, the populations at each facility could be reduced
22 to design capacity. Defendants were asked to have their
23 plan include both the means by which and a time table when
24 the reductions were to be accomplished, and for the plan to
25 suggest mechanisms by which compliance with a decree of in-
26 junctive relief could be assured.

27 THE PLAN

28 The plan submitted by the defendants contemplates
29 four short-term administrative actions, one short-term legis-
30 lative action, and several long-term legislative actions.
31 They are essentially as follows:

- 32 (1) The Parole Board will retroactively apply the

1 new parole matrix. The new matrix originally applicable to
2 prisoners committed after May 1, 1980, essentially lengthens
3 time for persons convicted of the most serious offenses and
4 shortens time for persons convicted of the more minor
5 offenses. The defendants estimate that application of the
6 matrix to persons committed before May 1, 1980, will result
7 in the release of 150 persons by October, 1980.

8 (2) The prisons will no longer accept persons
9 accused of parole violations prior to their parole revoca-
10 tion hearings. The defendants estimate this will reduce the
11 demand for beds by 120 by December, 1980. These persons,
12 however, would not necessarily be released from custody but
13 rather would ordinarily be held in county jails until the
14 date of their parole revocation hearings. It should be
15 noted that, if implemented, this procedure would transfer in-
16 mates from the overcrowded state prisons to county jails
17 which may already be, or as a result of the transfers, could
18 become overcrowded. Clearly, the appropriate solution to a
19 problem of a constitutional dimension is not achieved by a
20 mere shift of the situation from one level of government to
21 another.

22 (3) The capacity of the prison forest camp will be
23 expanded by reactivating vacant cabins. This would provide
24 an additional 20 beds by December, 1980.

25 (4) The Corrections Division will transfer 25
26 women prisoners from the Corrections Division Release Center
27 to a vacant work release center, freeing the space in which
28 they are being housed for use by 75 male inmates. This
29 action could be accomplished by October, 1980.

30 The combined effect of these actions would be to
31 either remove from or refuse to accept into the crowded
32 facilities a total of 365 persons by December, 1980. The
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1 actions, however, would not necessarily result in a net
2 population reduction of 365 because new commitments may well
3 exceed normal releases.

4 (5) The defendants have also sought (and have now
5 achieved) legislative modification of ORS 429.165, which
6 would permit prisoners to be granted temporary leave for up
7 to 90 days to search for and secure jobs immediately prior
8 to their release on parole.

9 Currently about 225 inmates are apparently eligible
10 for work release prior to their parole. But the Corrections
11 Division can accommodate only 100 persons at its residential
12 work release centers. The Division believes that persons
13 eligible for work release need not be detained in residen-
14 tial centers but rather can return to their homes, provided
15 they are under close supervision. The plan provides that,
16 upon amendment to ORS 429.165, the Correction Division will
17 close the residential work release centers and release the
18 225 inmates eligible for work release to their homes. The
19 current staff at the work release centers would then super-
20 vise the persons released. The net impact of the measure
21 would be to free an additional 125 beds at the prisons.^{2/}

22 (6) The defendants also propose a long-term construc-
23 tion and financing program. The defendants submitted to the
24 Special Session of the legislature a joint resolution that
25 the state constitution be amended to authorize \$120 million
26 in bonded indebtedness for the construction or improvement
27 and operation of state, regional or county correction
28 facilities. This measure would require voter approval,
29 which will be sought in November, 1980. The proposed plan
30 includes construction and operation of three minimum
31 security forest work camps to house a total of 150 inmates;
32 additions to county jails totaling 600 beds, which would be
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1 used by the state until the counties required their use; and
2 construction of two regional correctional facilities, which
3 would provide an additional 1070 beds. These measures would
4 be implemented between 1982 and 1986.

5 This part of the plan, as it emerged from the legis-
6 lature, provided for bonding authority of \$.81 million rather
7 than \$120 million.^{3/} The record is not clear, of course, as
8 to the extent to which new construction would be available
9 given the legislative action. And the plan presented contem-
10 plated that legislation implementing the bonding authority
11 (if voter approval occurs) would be required--and sought--
12 from the 1981 regular session.

13 The construction of more large prisons or jails is
14 a fairly traditional response to the seemingly intractable
15 problems of criminal behavior. It is, however, only one of
16 a variety of responses society can make to these vexing
17 difficulties. Community corrections and a variety of other
18 methods are also available. The decision as to which method
19 is the most appropriate at a particular time is, of course,
20 for the state, not the federal judges, at least on this
21 record, and at this time.

22 INJUNCTIVE RELIEF

23 I do not believe it is necessary for the court to
24 endorse any one or all of the proposals outlined by the
25 defendants. The plan sets forth what appear to be good
26 faith steps to achieve the necessary reductions with a
27 reasonable and realistic degree of promptness. If fully and
28 expeditiously implemented, the short-term actions seem
29 likely to produce a population reduction of about 500 by the
30 end of the year.

31 In the order of injunctive relief to be issued
32 Page 7 - OPINION

1 today, the court will require that a reduction of the total
2 population at the three facilities by 500 persons be accom-
3 plished by December 31, 1980, together with a further reduc-
4 tion of at least 250 by March 31, 1981. The order will not
5 direct the state to adopt any particular methods to achieve
6 this goal.^{4/} However, to assure that progress toward that
7 goal is being made, defendants will be ordered to report
8 monthly, commencing on September 1, 1980, on the number of
9 persons housed at each facility and the steps that have been
10 taken and remain to be taken to meet the deadlines imposed.^{5/}
11 Appointment of a special master or the use of other enforce-
12 ment mechanisms does not appear necessary at this time in
13 view of the good faith the relevant officials have demon-
14 strated to date. The defendants are to be congratulated for
15 their forthright and ungrudging cooperation with the court
16 in this matter.

17 The court will retain jurisdiction over this entire
18 matter so as to insure full and realistically prompt reali-
19 zation of the relief ordered. Specifically, I retain juris-
20 diction to amend the injunctive order so as to require adop-
21 tion of any one or more of the particular steps proposed, as
22 well as adoption of any other remedial method that may seem
23 to be called for by the circumstances.

24 The parties will be asked to appear for a status
25 report in early December, 1980, the specific date and time
26 for which will be set in the future. The matter will be ad-
27 dressed at an earlier date upon a sufficient showing by
28 either party of circumstances which substantially affect the
29 reduction process.

30 Plaintiffs' counsel are entitled, pursuant to 42 U.S.C.
31 § 1988, to an award of reasonable attorneys' fees. The par-
32 ties are encouraged to reach agreement on the appropriate
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amount, bearing in mind the remedial purpose of the civil rights statutes and the factors listed in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). If the parties are unable to reach agreement, the court will hear and decide the matter at the plaintiffs' request.

The complaint in these actions raised additional issues relating to conditions at these institutions. The relief to be ordered may to some degree remedy some of the other conditions complained of. As indicated in the Findings and Conclusions, filed today, the claim which plaintiffs present as to the conditions relating to medical services at OSP has not, in and of itself, been heard, and, therefore, of course, has not been ruled upon. Deferral of this, and all other claims seems appropriate at this time. If counsel for plaintiffs determine that any or all of the remaining claims ought to be pressed, they should so advise opposing counsel and the court, and a conference will be arranged on short notice so that all such matters may be discussed.

DATED this 22nd day of August, 1980.

James M. Buckley
Chief U.S. District Judge

FOOTNOTES

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1/ In this regard, I express my deep appreciation to Mr. Alan Breed, Director of the National Institute of Corrections. Mr. Breed came to Oregon on very short notice, at my request. He cheerfully interrupted a very busy schedule. While his efforts at that time (and on an earlier similar mission) did not produce a full settlement, I am satisfied that his efforts made a significant contribution. I am satisfied that his efforts were useful in promoting a climate which contributed to the thoroughly professional way in which counsel for the opposing parties conducted this difficult litigation.

2/ I note that this proposal, of course, while expected to produce a reduction of about 225 by December, 1980, also involves, in effect, a "loss" of 100 beds in the existing work release centers, since center staff will be occupied in supervision of those released. Given that space requirements are the crucible of this entire problem, I urge the defendants to make extra efforts, perhaps through the Emergency Board, to take on the extra staff required to be able to keep the centers open. Thus, with perhaps more careful scrutiny of those possibly eligible, this "loss" of 100 beds would not occur, making the net reduction 225. For reasons explained in the text, at this time I am not ordering that defendants invoke any particular part of their plan. Of course, I retain jurisdiction to do so, should circumstances warrant.

3/ As I understand the matter, the measure (HJR53) authorizes a bonding total consisting of 4/35 of 1% of the true cash value of all taxable property in the state. Thus, over the ten year life of the measure, as total true cash value increases--whether due to inflation, or the creation of taxable property, or both--so also, by the specified percentage, would the bonding availability. Presumably, much, or most, of the increase would be a "wash," since it seems likely that costs of construction will generally parallel the increase in true cash value.

4/ I have, however, included a specific provision (see Order, para. 5) enjoining repetition of the mattress on the floor practice.

5/ I will ask counsel to meet with me in mid September to discuss the nature of the material to be included in the monthly report. I retain jurisdiction, of course, to amend the injunctive order in this, as well as any other respect, as the circumstances warrant.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TOM CAPPS, et al.,
Plaintiffs,
v.
VICTOR ATIYEH,
Defendant.

Civil No. 80-141

JOE WEST, et al.,
Plaintiffs,
v.
VICTOR ATIYEH, et al.,
Defendants.

Civil No. 80-6014

FINDINGS and
CONCLUSIONS

I. INTRODUCTION.

These actions, brought pursuant to 42 U.S.C. § 1983, challenge the constitutionality of conditions at the Oregon State Penitentiary (OSP); its satellite facility, the Farm Annex; and the Oregon State Correction Institution (OSCI). Plaintiffs are persons incarcerated at these institutions. Defendants are the Governor, the Administrator of the Corrections Division, the superintendents of these institutions, and the members of the Board of Parole. Plaintiffs seek declaratory and injunctive relief.

The action denominated Capps v. Atiyeh, No. 80-141,
Page 1 - FINDINGS and CONCLUSIONS

1 was filed on January 29, 1980, by several inmates at OSP
2 on behalf of all the prisoners at OSP. I appointed
3 Prisoners Legal Services of Oregon (PLSO) to represent
4 plaintiffs; PLSO later, on March 19, 1980, filed a complaint
5 denominated West v. Atiyeh, No. 80-6041, setting forth alle-
6 gations similar to those set forth in the Capps complaint,
7 was filed on behalf of all prisoners incarcerated at OSP,
8 the Annex, and OSCI.^{1/} These cases have been consolidated
9 pursuant to Fed.R.Civ.P. 42(a). West v. Atiyeh has been
10 certified as a class action under Fed.R.Civ.P. 23(a) and
11 (b)(2). The class consists of all persons who are or will
12 be incarcerated at the three facilities.

13 The complaints in these cases allege, inter alia,
14 that severe overcrowding at these institutions has resulted
15 in conditions likely to cause the physical and mental deteri-
16 oration of the inmates. With the consent of the parties,
17 the issue of whether these penal institutions are unconsti-
18 tutionally crowded was segregated, pursuant to Fed.R.Civ.P.
19 42(b). It is treated as having been submitted on the merits
20 as permitted by Rule 65(a)(2), Fed.R.Civ.P.

21 Testimony was taken from three inmates at OSP, four
22 of the defendant corrections officials, and eight expert
23 witnesses. The factual testimony was credible; with only a
24 few exceptions it was uncontradicted. My findings are based
25 on this testimony and on the photographic and documentary
26 exhibits, answers to interrogatories, and depositions
27 received in evidence. Although I wasn't able to visit the
28 facilities earlier in the proceedings, I was able to visit
29 OSP and OSCI briefly on August 8, 1980, and, of course, I
30 have visited each a number of times in past years.

31 On June 27, 1980, I issued a bench ruling in favor
32 of plaintiffs holding that the conditions at each institu-
Page 2 - FINDINGS and CONCLUSIONS

1 tion violated the Eighth Amendment's prohibition against
2 cruel and unusual punishment. The following supplements,
3 and, to the extent directly inconsistent, supplants that
4 oral opinion and constitutes further findings of fact and
5 conclusions of law, pursuant to Fed.R.Civ.P. 52.

6 II. FINDINGS OF FACT.

7 A. The facilities.

8 The Oregon State Penitentiary is a maximum security
9 prison^{2/} located in Salem, Oregon. It comprises 22 acres and
10 is surrounded by a reinforced concrete wall averaging 25
11 feet in height. Prisoners are housed in five units. One of
12 these cell blocks was built in 1929, two in the early
13 1950's, and the newest in 1964.

14 C Block, the oldest housing unit, has 157 cells of
15 60 square feet each. Sub-C, essentially a basement of C
16 Block, contains 39 cells of 56.5 square feet each. Each
17 cell contains two metal bed frames suspended from the wall,
18 which occupy about one-third of the total cell area. An
19 open toilet and a sink are provided in each cell. The
20 remaining furnishings consist of shelves, a table that folds
21 down from the wall, and two stools.

22 D and E Blocks each contain 400 cells of 44 square feet
23 each. The beds in these cells occupy about one-half of the
24 total cell area. The cells are furnished similarly to those
25 in C Block.

26 A Block contains 111 cells of 64.5 square feet.
27 The cell furnishings differ from those in the other other
28 blocks only in that about 90 of the cells contain double
29 bunk beds.

30 The total single-cell capacity of OSP is 1107.^{3/} In
31 addition, the facility has 46 cells of 48 square feet each
32 in the Psychiatric Security Unit, 90 cells in the Segre-

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gation Unit, and 20 beds in the infirmary.

The Farm Annex is a 2089-acre dairy farm for prisoners requiring only minimum custody. It was originally designed to house about 125 prisoners in two floors of open dormitories.

OSCI is designed generally for youthful first-offenders convicted of less serious offenses.^{4/} The facility was built in 1959 and is in excellent repair. There are five cell blocks. Unit 1 has 64 cells of 51.3 square feet each; Unit 2, 63 cells of 51.3 square feet; Unit 3, 67 cells of 67.8 square feet; Unit 4, 101 cells of 65 square feet; and Unit 11, 101 cells of 51.9 square feet. Unit 13 is a 3732-square-foot dormitory originally designed to hold 80 beds. The design capacity is thus 476. In addition to these cells, 48 cells of 51.9 square feet each are contained in Unit 5, the disciplinary unit, and 10 beds are provided in the infirmary.

Both OSP and OSCI provide medical, dental, psychiatric and counseling services. Each maintains educational and vocational training programs and provides jobs for the inmates while they are incarcerated. Inmates may also participate in religious services, physical exercise, hobbies and games, approved inmate clubs; receive visitors; and make use of the legal and general libraries.

Defendants' three expert witnesses, each of whom were experienced in penal administration, were favorably impressed with the institutions, uniformly ranking them among the best in the nation. Yet each witness also recognized that a problem existed, which is the focus of issue thus far tried in this lawsuit--overcrowding.

B. Population and Cell Spate

OSP has a single-cell capacity of 1107. In June,

1 1980, when hearings were held on this issue, it housed 1476
2 persons. As of July 18, 1980, it housed 1488. OSCI has a
3 design capacity of 476. It housed 773 inmates in June and
4 790 in July (803 on July 30). The Annex, designed to accom-
5 modate 125 prisoners, housed 206 persons in June and 212 in
6 July.

7 Since January, 1977, the monthly population at OSP
8 has not been less than 1406 and in January, 1980, reached
9 1560 inmates. During the same period, the monthly popula-
10 tion at OSCI ranged from 672 to 766. The greatest number of
11 inmates held at one time at OSCI was 803. As the Admini-
12 strator of the Corrections Division put it, the prisoners
13 were "packed to the rafters."

14 These seriously crowded conditions resulted from a
15 very simple phenomenon. Courts have been committing more
16 convicted felons to prison while the Parole Board has been
17 requiring prisoners to remain in custody for longer periods
18 of time. Over the last two years, the average prison term
19 set by the Parole Board has increased from 19 to 29 months.
20 With this increase in the average term set, there has been a
21 concomitant increase in the average time served. The
22 average prison term has increased from 18 months in 1975-77
23 to about 24 months in late 1979-early 1980.

24 To accommodate the swollen prison population,
25 inmates were doubled up in cells,^{5/} more beds were placed in
26 the dormitories,^{6/} and dayrooms were converted to dormitor-
27 ies.^{7/} From time to time, cells in the Psychiatric Security
28 Unit, the Segregation Unit, and the infirmary have been used
29 by nondisruptive or healthy inmates.

30 When the population at OSP peaked during the winter
31 of 1979-80 prisoners in E Block were doubled up in the
32 block's 44-square-foot cells, one inmate sleeping on a bunk,

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1 the other on a mattress spread on the floor next to the open
2 toilet. Testimony and photographs made clear that an inmate
3 would have to stand on his roommate's mattress to use the
4 toilet. At times, as many as 76 inmates were required to
5 sleep on the floor in this manner. Between October 15,
6 1979, and February 15, 1980, there were approximately 4990
7 instances in which inmates were so housed.

8 The cells currently doubled at OSP provide from 30
9 to 32.5 square feet per person. The doubled cells at OSCI
10 provide from 26 to 34 square feet per person. The Unit 13
11 dormitory at OSCI provides 43 square feet per person. The
12 Farm Annex provides an estimated 20 square feet per person.

13 The average prisoner at OSP is required to spend 11
14 hours per day in his cell in the summer and 12-1/2 hours per
15 day in the winter. At OSCI, the average prisoner is
16 required to spend seven to nine hours per day in his cell.
17 The actual amount of time prisoners spend in their cells
18 varies from inmate to inmate depending on the availability
19 of employment, education, training, and other program
20 activities.

21 The cell space accorded inmates at these institu-
22 tions falls far below the areas recommended by professional
23 standards. The August, 1977, standards of the American
24 Correctional Association require that 60 square feet of cell
25 space be accorded prisoners spending no more than 10 hours
26 per day in their cells, and that 80 square feet of cell
27 space be accorded prisoners spending more than 10 hours per
28 day in their cells.^{6/} Dr. Verne Cox, Professor of
29 Psychology at the University of Texas at Arlington, testi-
30 fied that when prisoners are housed in open dormitories
31 without privacy barriers, even 60 square feet per person is
32 inadequate to avoid adverse physical and mental effects.

Page 6 - FINDINGS and CONCLUSIONS

1 The American Public Health Association requires 60 square
2 feet per person in single cells and a minimum of 75 square
3 feet per person in dormitories.^{9/} The draft Federal
4 Standards for Corrections require that dormitory living
5 units house no more inmates than can be safely and effec-
6 tively supervised in a setting which provides at least 60
7 square feet per inmate.^{10/} The National Sheriffs'
8 Association Standards require 70 to 80-square-foot single
9 occupancy cells.^{11/} And the United States Army, never known
10 for "coddling," adheres to a 55-square-foot standard for
11 confinement of prisoners.^{12/}

12 C. Effects of Crowding.

13 Overpopulation at these facilities has had a nega-
14 tive effect on nearly every aspect of the inmates' lives in
15 these institutions. Clearly, it has increased the health
16 risks to which prisoners are exposed. Inmates sleeping on
17 the floor of E Block were exposed to the health hazards
18 associated with close contact with toilet facilities. Accord-
19 ing to the expert medical witnesses, inmates doubled in
20 cells or sleeping in large open dormitories in close prox-
21 imity to other inmates face an increased risk of com-
22 munication of contagious diseases. Each of the 1400 or more
23 inmates who line up for meals three times a day in the OSP
24 dining room, which can seat only 440 persons, risk the cre-
25 ation or aggravation of gastric illnesses by eating
26 hurriedly (eating time has been reduced to 20 minutes) in a
27 noisy, crowded, stressful environment.

28 Inmates at OSP who are already ill or injured are
29 less likely to receive proper medical care because of the
30 overcrowding. The decision whether an inmate will be seen
31 by a physician is routinely made by a medical technician

1 after listening to the inmate's complaint through a medica-
2 tion dispensing window. OSP's chief medical officer, a pri-
3 vate physician on contract to the prison, spends only 1-1/2 "
4 to 2 hours a day at the prison, during which he must both
5 examine and treat patients. In his absence, a registered
6 nurse, seven medical technicians with varying levels of exper-
7 ience, and inmates themselves, minister to the inmates' medi-
8 cal needs, without the benefit of any written policies, pro-
9 cedures or guidelines from the physician.

10 Dr Richard Della Pena, a nationally recognized
11 expert in penal health care, testified that to adequately
12 meet the needs of OSP's prison population, the equivalent of
13 two full-time physicians would be necessary. He further
14 testified that the procedures followed by the OSP infirmary
15 fall far below the proper standards of medical care for
16 penal institutions. It was also his opinion that the
17 housing of healthy inmates in the OSP infirmary was disrupt-
18 tive of efforts to treat and isolate ill inmates. His con-
19 clusions were shared by Dr. Thomas Gualitieri, a psychiatrist
20 associated with the University of North Carolina Medical
21 School, who testified that the practice of administering psy-
22 chotropic drugs in the absence of a physician was extremely
23 dangerous to the health of the inmates.^{13/}

24 The ability of the institutions to deal with the
25 mental health problems of the prisoners is similarly impeded.
26 The former Chairman of the Parole Board stated in his depo-
27 sition that the Corrections Division's psychiatric services
28 have not increased with the population and are insufficient
29 to meet the needs of the prison population.

30 The rehabilitation efforts of these institutions
31 also have been hampered by overcrowding. While OSP and OSCI
32 each have ten counselors to assist inmates, inmates testified
Page 8 - FINDINGS and CONCLUSIONS

1 that counselors are not able to effectively handle their
2 swollen caseloads. Prisoners at OSP testified that inmates
3 interested in particular educational or vocational training
4 programs cannot be accommodated. The Superintendent of OSCI
5 testified that that facility's academic programs could serve
6 only 41% of the population and the vocational training
7 programs could accommodate only 20% of the inmates. The Super-
8 intendent of OSP stated that idleness was far too great at
9 that facility. Currently, about 350 inmates at OSP and 90
10 inmates at OSCI are idle.

11 According to the testimony of Dean Norval Morris,
12 of the University of Chicago Law School, overcrowding at the
13 levels that exist at OSP and OSCI undermines the initiative
14 of inmates to seek self-improvement and prevents their reha-
15 bilitation.

16 The problems associated with overcrowding naturally
17 create feelings of frustration among inmates. At the same
18 time, overcrowding diminishes the opportunities for inmates
19 to effectively deal with their frustration. The doubling of
20 cells and decreased living space in dormitories results not
21 only in a loss of area for free movement but also of what-
22 ever modicum of privacy and quiet a prison affords. Visi-
23 tation periods have been shortened so that more prisoners
24 can receive visitors. Lines at canteens have grown longer
25 and longer. Recreation areas sometimes cannot accommodate
26 all inmates desiring to use them. Rather than serving as an
27 arena for the release of tension, the prison yard has become
28 a breeding ground for conflict as more inmates compete for
29 the use of a limited amount of space and equipment. In-
30 mates testified that they were reluctant to use the yard at
31 OSP for fear they would be caught up in a violent distur-
32 bance.

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1 Indeed, the increased potential for violence is one
2 of the most significant effects of overcrowding. The fric-
3 tions which naturally attend being forced to live in close
4 proximity to many other persons over long periods of time,
5 when combined with the other stress and frustration-produc-
6 ing conditions of the institutions, generate tension, bitter-
7 ness, resentment, and result in a general deterioration of
8 morale which increases the threat of violence. Dr.
9 Gualitieri testified that severe overcrowding prevents the
10 development of appropriate social skills and leads instead
11 to aggressive, violent, and destructive behavior patterns.
12 Dr. Cox testified that studies of penal institutions reveal
13 that overcrowding leads to depression, tension, and
14 increases in disciplinary infractions, assaults and suicide
15 attempts. The Superintendent of OSP stated that large numbers
16 of inmates and high proportions of idleness significantly
17 increase the probability of violence.

18 These effects are being manifested at these insti-
19 tutions. Robert Sarver, a former warden, and now a professor
20 at the Graduate School of Social Work and the Law School at
21 the University of Arkansas at Little Rock, characterized the
22 mood of OSP inmates as pervaded by a "hopeless feeling, air
23 of frustration, [and] fear of personal safety."

24 The effect on staff morale is equally deleterious.
25 The former Chairman of the Parole Board stated that communi-
26 cations between guards and inmates had deteriorated. He and
27 the inmates stated that as the staff has become overburdened,
28 their tempers have grown shorter and they have become less
29 tolerant and more punitive, thereby increasing the friction
30 between staff and inmates.

31 While the potential for disturbance at the prisons
32 has been growing, the ability of the institutions to protect

1 inmates from harm has been decreasing. The former Chairman
2 of the Parole Board stated that efforts to classify pri-
3 soners so as to separate the first-time or nondangerous
4 offender from the seasoned or dangerous offender has been
5 compromised by the lack of available space. In his opinion,
6 overcrowding has increased the likelihood that inmates will
7 suffer physically at the hands of other inmates. According
8 to Dean Morris, double celling and dormitory housing them-
9 selves increase the opportunity for assault among inmates.
10 And the larger population overtaxes the ability of security
11 staff to protect inmates from harm of threats of harm.^{14/}
12 Robert Sarver testified that the number of guards at OSP was
13 inadequate to assure the safety of inmates.

14 These hazards and effects of overcrowding were recog-
15 nized by the superintendents of each institution. Their
16 monthly reports recited that overcrowding was resulting in
17 increased idleness; more assaults on inmates and staff;
18 growing numbers of disciplinary reports; an increase in
19 inmate defiance, disturbances, and rumors of impending or
20 possible riot; and an overall negative effect on morale.

21 The administrators' perceptions of the problems and
22 level of tension within the institutions were echoed by the
23 inmates who testified. Each voiced concerns for his per-
24 sonal safety and fear of a disturbance. The testimony of
25 the expert witnesses varied substantially with respect to
26 the level of tension present at the prisons. Robert Sarver
27 stated that a "definite air of hostility and tension"
28 existed at OSP which approximated the level present at the
29 New Mexico State Prison prior to the tragic riot of 1980.^{15/}
30 In contrast, Martha Wheeler, former chief of the Ohio
31 Division of Institutional Services, and defendants' other
32 expert witnesses testified that tension was remarkably low,
Page 11 - FINDINGS and CONCLUSIONS

1 in fact, barely perceptible. I believe the testimony and
2 reports of those individuals present on a day-to-day basis
3 and most familiar with the institutions is the most reliable
4 assessment of the level of tension at these facilities.
5 Based on that testimony, the evidence is clear that tension
6 does exist, that it has increased with the overcrowding, and
7 that it is of a serious nature.^{16/}

8 The negative psychological effects of overcrowding
9 may not be limited to the duration of the prisoners' confine-
10 ment. According to Dr. Gualitieri, the aggressive behavior
11 patterns that develop among prisoners as a result of over-
12 crowding remain after the prisoners have been released into
13 society.

14 CONCLUSION

15 Overcrowding at OSP, the Annex, and OSCI far
16 exceeds the level of applicable professional standards; has
17 increased the health risks to which inmates are exposed; has
18 impinged on the proper delivery of medical and mental health
19 care; has reduced the opportunity for inmates to participate
20 in rehabilitative programs; has resulted in idleness; has pro-
21 duced an atmosphere of tension and fear among inmates and
22 staff; has reduced the ability of the institutions to pro-
23 tect the inmates from assaults; and is likely to produce
24 embittered citizens with heightened antisocial attitudes and
25 behavior.

26 CONCLUSIONS OF LAW

27 It is well-settled that "the Constitution does not
28 stop at the prison gate, but rather inures to the benefit of
29 all, even to those citizens behind prison walls." Battle v.
30 Anderson, 447 F.Supp. 516, 524 (E.D. Ok. 1977), aff'd, 564
31 F.2d 388 (10th Cir. 1977). See Bell v. Wolfish, 441 U.S.

1 520, 545, 97 S.Ct. 1861, 1877, 60 L.Ed.2d 447 (1979); Wolff
2 v. McDonnell, 418 U.S. 539, 555-56, 94 S.Ct. 2963, 2974, 41
3 L.Ed.2d 935 (1974); and Cruz v. Beto, 405 U.S. 319, 321, 92
4 S.Ct. 1079, 1081, 31 L.Ed.2d 263 (1972).

5 In a host of decisions, particularly during the
6 last decade, federal courts have recognized challenges to
7 the conditions of prison confinement as valid constitutional
8 claims. See, e.g., Estelle v. Gamble, 429 U.S. 97, 97 S.Ct.
9 285, 50 L.Ed.2d 251 (1976); Chapman v. Rhodes, 434 F.Supp.
10 1007 (S.D. Ohio 1977), aff'd, ___ F.2d ___ (6th Cir. 1980);
11 Stewart v. Rhodes, 473 F.Supp. 1185 (S.D. Ohio 1979), aff'd
12 ___ F.2d ___ (6th Cir. 1980); Ramos v. Lamm, 485 F.Supp. 122
13 (D. Col. 1979); Palmigiano v. Garrahy, 443 F.Supp.956 (D. R.I.
14 1977), remanded on other grounds, 599 F.2d 17 (1st Cir. 1979);
15 Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976), aff'd in part
16 and modified in part sub nom., Newman v. Alabama, 558 F.2d
17 283 (5th Cir.), remanded on other grounds sub nom., Alabama v.
18 Pugh, 438 U.S. 780, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1978);
19 Battle v. Anderson, 376 F.Supp. 402 (E.D. Ok. 1974), 447
20 F.Supp. 516 (E.D. Ok. 1977), aff'd 564 F.2d 388 (10th Cir.
21 1977); Gates v. Collier, 349 F.Supp. 881 (N.D. Miss. 1972),
22 aff'd, 501 F.2d 1291 (5th Cir. 1974); Holt v. Sarver, 309
23 F.Supp. 362 (E.D. Ark. 1970), aff'd, 442 F.2d 304 (8th Cir.
24 1971).

25 Central to the decisions noted above and to this
26 decision is the ambit of the Eighth Amendment's proscription
27 against the infliction of cruel and unusual punishment. Fed-
28 eral courts have not viewed the Eighth Amendment as static
29 but rather as drawing "its meaning from evolving standards
30 of decency that mark the progress of a maturing society."
31 Trop v. Dulles, 356 U.S. 86, 101, 78 S.Ct. 509, 598, 2
32 L.Ed.2d 636 (1958). Indeed, the touchstone of the Eighth
Page 13 - FINDINGS and CONCLUSIONS

1 Amendment is "nothing less than the dignity of man.." Id.
2 The amendment thus prohibits not merely physically barbarous
3 punishment but any penal measures "that transgress today's"
4 broad and idealistic concepts of dignity, civilized
5 standards, humanity and decency." Hutto v. Finney, 437
6 U.S. 678, 685, 98 S.Ct. 2568, 2571, 57 L.Ed.2d 522 (1978)
7 (quoting Estelle v. Gamble, 429 U.S. 97, 102, 97 S.Ct. 285
8 290, 50 L.Ed.2d 257 (1976)). The Supreme Court has recently
9 stated that the infliction of unnecessary suffering is in-
10 consistent with contemporary standards of decency and there-
11 fore proscribed by the Eighth Amendment. Estelle v. Gamble,
12 429 U.S. at 103, 97 S.Ct. at 290.

13 In determining whether the conditions of which plain-
14 tiffs complaint constitute cruel and unusual punishment,
15 this court, like others before it, must be guided by the
16 fact that the Eighth Amendment is intended to protect inmates
17 from an environment where degeneration is probable and self-
18 improvement unlikely because of conditions which inflict need-
19 less physical or mental suffering. Battle v. Anderson, 64
20 F.2d at 392-93; Ramos v. Lamm, 485 F.Supp. at 131-32.

21 In several recent decisions, the Supreme Court has
22 reiterated the long-standing policy of the federal courts to
23 defer to the judgment of penal officials in matters of prison
24 administration. Bell v. Wolfish, 441 U.S. at 520, 99 S.Ct.
25 at 1878-79; Jones v. North Carolina Prisoners' Union, Inc.,
26 433 U.S. 119, 128, 97 S.Ct. 2532, 2539, 53 L.Ed.2d 447
27 (1979); Procunier v. Martinez, 416 U.S. 396, 404-05, 94
28 S.Ct. 1800, 1807-08, 40 L.Ed.2d 224 (1974). Nevertheless,
29 the court has also stated that

30 " . . . a policy of judicial restraint cannot
31 encompass any failure to take cognizance of
32 valid constitutional claims whether arising in
a federal or state institution. When a prison
regulation or practice offends a fundamental

1 constitutional guarantee, federal courts will
2 discharge their duty to protect constitutional
3 rights."

4 Procunier v. Martinez, 416 U.S. at 405-06, 94 S.Ct. at 1807-08.

5 While neither invited nor solicited, constitutional issues
6 are properly¹ before the court and this court may not turn a
7 deaf ear to them.

8 The Supreme Court has never addressed the question
9 of under what circumstances overcrowded conditions consti-
10 tute cruel and unusual punishment. The Court's decision in
11 Bell v. Wolfish, supra, that the Eighth Amendment is not vio-
12 lated by double-celling of pretrial detainees for no more
13 than 60 days is not controlling here. The institution whose
14 conditions were challenged in Wolfish differs significantly
15 from the OSP, the Annex, and OSCI. Each of the latter are
16 institutions of long-term confinement, at which the mean
17 time served is 24 months. As the Supreme Court noted in
18 Hutto v. Finney, a "filthy, overcrowded cell and a diet of
19 'grue' might be tolerable for a few days and intolerably
20 cruel for weeks or months.."

21 As neither the Supreme Court nor the Ninth Circuit
22 has defined the contours of unconstitutional overcrowding in
23 the context of long-term prison facilities, I must draw gui-
24 dance from the opinions of other courts which have addressed
25 the question. E.g., Chapman v. Rhodes, supra; Ramos v. Lamm,
26 supra; Palmigiano v. Garrahy, supra; Pugh v. Locke, supra;
27 Johnson v. Levine, 450 F.Supp. 648 (D. Md., aff'd in part and
28 remanded, 588 F.2d 1378 (4th Cir. 1978); Gates v. Collier, 423
29 F.Supp. 732 (N.D. Miss. 1974), aff'd, 548 F.2d 1241 (5th Cir.
30 1976); and Battle v. Anderson, supra.

31 While no single factor is dispositive, the following

32 ////

Page 15 - FINDINGS and CONCLUSIONS

1 considerations can be distilled from these opinions as being
2 significant in determining whether crowding constitutes
3 cruel and unusual punishment: (1) the duration of the prisoners'
4 confinement; (2) the degree to which the population exceeds
5 the institution's design capacity; (3) the size of the inmates'
6 quarters and the number of hours per day the inmates must
7 spend in those quarters; (4) the effects of the increased
8 population on the prisoners' mental and physical health; and
9 (5) the relative permanency of the crowded conditions.

10 OSP, the Annex, and OSCI are institutions of long-
11 term confinement at which the populations currently exceed
12 design capacity by from 34% to 70%. The doubled cells at
13 OSP provide only from 30 to 32.5 square feet per person;
14 those at OSCI provide from 25.66 to 34 square feet per person.
15 The dormitories provide from an estimated 20 square feet to
16 43 square feet per person, and no privacy barriers are pro-
17 vided. Inmates at these facilities are required to spend
18 from 7 to 9 to 12 hours per day in their cells, but the actual
19 amount of time a prisoner spends may well be much higher
20 than this, depending on the availability of activities outside
21 the cell.

22 The evidence in this case as set forth in the find-
23 ings of fact is replete with example of the deleterious ef-
24 fects of overcrowding on prisoners' mental and physical health.
25 Inmates have increased health risks, diminished access to es-
26 sential services; fewer opportunities to engage in rehabili-
27 tative programs; too little of the privacy and quiet essential
28 for psychological well-being; and too much exposure to other
29 prisoners in confined spaces. Overcrowding has resulted in
30 a climate of tension, anxiety and fear among both inmates
31 and staff--which, if not corrected, may well erupt in vio-
32 lence, leading to serious physical harm and death. It is
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clear that the plaintiff inmates have been subjected to conditions in which their degeneration is probable and their self-improvement unlikely.

These conditions are not a relatively recent or temporary phenomenon but have persisted for at least 3-1/2 years.

Based on these considerations, I conclude that the conditions present at these institutions constitute cruel and unusual punishment and are constitutionally impermissible.

DATED this 22nd day of August, 1980.

James M. Burns
Chief U.S. District Judge

FOOTNOTES

1/ The court has received a substantial number of "motions," letters, and other similar communications from various inmates following the June 27 oral opinion. Some of these are bulky; many are repetitious. The amount of these papers is such that I have been unable, due to other demands on my time, to arrange for sending copies along to counsel. Counsel for plaintiffs will no doubt wish to review these, to see if any form the basis for possible amendment to the complaints already filed. I will arrange a time in early September for counsel to meet with me to review and discuss these matters. The findings and conclusions, and the opinion filed today have been based on the record made, and not upon any of these communications.

2/ Inmates sentenced to the custody of the institutions at issue in this case stand convicted of one or more felonies which may be broken down into four classes. The maximum penalty for a Class A felony is 20 years; a Class B felony, 10 years; a Class C felony, 5 years; and an UnClassified felony, life. The table below shows the proportion of each institution's population by felony class. In cases where incarceration resulted from more than one sentence, the most serious crime of which the inmate was convicted is listed.

	U	A	B	C
OSP	8%	45%	12%	35%
OSCI	1%	48%	12%	39%

The same prisoners also may be classified by the type of crime of which they were convicted--crimes against persons, crimes against property, or statutory offenses.

	Person	Property	Statutory
OSP	59%	32%	9%
OSCI	44%	52%	4%

3/ Insofar as the plan presented to the court on July 30 (Defendants Ex. 1021) may be regarded as a contention by defendants that the design cap-city of OSP is 1264, rather than 1107, such contention is rejected.

4/ See note 1, *supra*.

5/ At OSP, 357 inmates are doubled in the 60-square-foot cells of C Block and 209 are doubled in the 65-square-foot cells of A Block.

At OSCI, 126 inmates are doubled in the 51-square-foot cells of Unit 1; 124 are doubled in the 51-square-foot cells of Unit 2; 128 are doubled in the 68-square-foot cells of Unit 3.

6/ The Unit 13 dormitory at OSCI houses 86 inmates. Each inmate thus has about 43 square feet of living space. Robert Sarver, one of plaintiffs' expert witnesses, estimated that the inmates housed in the dormitories of the Farm Annex have perhaps only 20 square feet per person.

7/ At OSCI, the dayrooms of Unit 1 and Unit 2 each were converted to dormitories for 10 inmates who share a toilet and a sink in a cell vacated for their use. The dayrooms of

1 Units 3 and 4 each house 22 men who share two toilets and a
sink. The dayroom of Unit 11 houses 23 men who share two
2 toilets.

3 8/ Manual of Standards for Adult Correctional Institutions,^H
American Correctional Association Commission on Accreditation
4 for Corrections, Standard 4142.

5 9/ Standards for Health Services in Correctional Institu-
tions, American Public Health Association, Washington, D.C.,
6 1976.

7 10/ Federal Standards for Corrections (Draft), U.S. Depart-
ment of Justice, Washington, D.C. June, 1978.

8 11/ Jail Architecture, National Sheriffs' Association,
9 Washington, D.C., 1975.

10 12/ Report of the Special Civilian Committee for the Study
of the United States Army Confinement System (1970), as
11 reported in Chapman v. Rhodes, 434 F.Supp. 1007, 1021 (S.D.
Ok. 1977).

12 13/ While the medical conditions claim, per se, was not
13 tried, this evidence came in and is entitled to be con-
sidered as a part of the overcrowding claim. The Correc-
14 tions Division is aware of deficiencies in this regard at
OSP, and was, during the hearings, in the process of pre-
15 paring a program designed to remedy these deficiencies.
Hence, I make no ruling, and express no opinion on the
16 medical conditions claim as such, and I weigh this evidence
in light of the fact that the defendants themselves will
17 have an opportunity to present evidence if and when that
claim is tried.

18 14/ The inmates to security staff ratio at OSP is 112:1
19 from midnight to 8:00 A.M.; 33:1 from 8:00 A.M. to 4:00
20 P.M.; and 60:1 from 4:00 P.M. to 12:00 P.M.

21 At OSCI, the inmate to security staff ratio for the same
periods are 55:1, 15:1, and 30:1.

22 15/ Indeed, the reports of tension at OSP were sufficiently
23 convincing that members of the Parole Board were motivated
in the spring of 1980 to move their meetings to a site out-
24 side OSP, for fear they would be taken hostage in the event
of a disturbance at OSP.

25 16/ It is interesting to note, in view of the testimony of
26 the witnesses for the defendants, on June 26, that the level
of tension was remarkably low, that in less than 24 hours
27 after the June 27 oral opinion, violence, indeed, erupted at
OSP in a way which resulted in the discharge of firearms and
28 injury to one or more prisoners. A discussion of this epi-
sode may be found in the deposition of Supt. Cupp, taken
29 after the June 27 oral opinion, and before the July 30
hearing. While perhaps no one can say that such violence,
30 or any other violent episode was produced by the
overcrowding, it seems clear from the evidence that violence
31 is certainly a concomitant of overcrowding. And it is in-
dubitably clear that violence, when unfortunately it breaks
32 out, is substantially related to the tension and unrest,
regardless of the particular levels which may then exist.

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Several of the "motions" and other communications referred to in footnote 1 contain allegations concerning this episode. Thus it is important to emphasize that nothing stated here, or elsewhere in these findings and conclusions, is intended to express any opinion on the propriety of actions taken by Supt. Cupp, or his staff during this episode.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TOM CAPPS, et al.,
Plaintiffs,
v.
VICTOR ATIYEH,
Defendant.

Civil No. 80-141

O R D E R

JOE WEST, et al.,
Plaintiffs,
v.
VICTOR ATIYEH, et al.,
Defendants.

Civil No. 80-6014

These consolidated cases came before the court on plaintiffs' request for declaratory and injunctive relief with respect to crowded conditions at OSP, the Farm Annex, and OSCI. Based on the pleadings, record and proceedings in the case, the court ruled that the current population levels and resulting conditions of confinement at these facilities violate plaintiffs' right to be free from cruel and unusual punishment, as guaranteed by the Eighth and Fourteenth Amendments. In accordance with and based upon the Findings of Fact and Conclusions of Law, and the Opinion filed today, the following order of injunctive relief is issued to ensure

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that the unconstitutional conditions are expeditiously remedied.

It is ORDERED and DECREED that:

1) Defendants reduce the population at the Oregon State Penitentiary, the Farm Annex, and the Oregon State Correctional Institution to the design capacity of the facilities as set forth below:

OSP - 1107

Farm Annex - 125

OSCI - 476

2) To accomplish these reductions, the defendants, may in their discretion, employ any of the methods set forth in the proposed plan presented to the court and summarized in the opinion filed today, or any other constitutionally permissible methods they may develop.

3) The methods used must result in the reduction of the total population at OSP, the Farm Annex, and OSCI by 500 persons by December 31, 1980, and a further reduction of 250 more persons by March 31, 1981, for a total reduction of 750 persons by that date.^{1/}

4) Beginning September 5, 1980, and on the 5th day of each month thereafter, defendants shall supply plaintiffs' attorneys and this court with a compliance report indicating the number of prisoners housed at each facility as of the first day of the month and setting forth the steps taken and the steps defendants contemplate taking to meet the deadlines set forth above.

5) Effective immediately, defendants shall not detain, hold, or incarcerate inmates in such a manner as to require them to sleep or lie on mattresses placed on the floor of any cell or living area. If any emergency arises in which compliance with this paragraph cannot reasonably be

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met, defendants are to notify this court and plaintiffs' counsel immediately by telephone, and, in no event, no later than 12 hours after such noncompliance occurs. A speedy hearing will then be scheduled.

6) The parties are ordered to appear before the court for a status report in December, 1980, at a date and time to be set by the Clerk of the Court, to determine what further orders may be necessary with respect to this matter.

7) This court retains jurisdiction over this matter to ensure prompt and full compliance with this order and to enter further remedial orders as necessary.

DATED this 22nd day of August, 1980.

James M. Burns
Chief U. S. District Judge

1/ The reductions thus ordered are reductions from the total number of prisoners at all three institutions as of July 30, 1980. Prisoners not actually present (such as those on escape status, out to court, and otherwise not normally counted in the daily count at the three institutions) will not be included. I reserve jurisdiction here as well to amend the order as circumstances may warrant, and will, of course, consider any amendment suggested by counsel in this or any other respect after suitable notice to the other side and a hearing on the matter as may be appropriate.