



PC-DE-001-002

SETTLEMENT AGREEMENT

WHEREAS, there is currently pending a class action lawsuit in the Delaware Chancery Court, Dickerson et al. v. DuPont et al., C.A. No. 10256, filed against the State of Delaware, its Department of Correction (the Department) and various State officials on behalf of prisoners currently incarcerated by the Department in which the prisoners are represented by Community Legal Aid Society, Inc. (Legal Aid) and the National Prison Project of the American Civil Liberties Union (ACLU); and

WHEREAS, the terms of this agreement encompass the four major prisons operated by the Department: the Delaware Correctional Center (DCC), the subject of the Complaint in this action, as well as the Multi-Purpose Criminal Justice Facility (Gander Hill), the Sussex Correctional Institution (SCI) and the Women's Correctional Institution (WCI) and that accordingly, the Complaint shall be amended to include these three additional prisons; and

WHEREAS, for the purposes of this settlement, the members of the class shall be defined as all persons who are incarcerated or detained at DCC, Gander Hill, SCI and WCI, as of the date the settlement notice is distributed plus 5 business days and the Complaint shall be amended accordingly; and

WHEREAS, the parties in this case, through their respective attorneys, have been engaged in extensive negotiations regarding the proposed settlement of this action; and

WHEREAS, an agreement between the defendants and Legal Aid and the ACLU has been reached regarding the proposed settlement of the pending action; and

WHEREAS, a notice of the proposed terms of this agreement will be given to all prisoners of the 4 institutions described above;

IT IS THEREFORE AGREED by the undersigned counsel for the parties that the following constitutes their full and complete understanding regarding the proposed settlement of the pending action; and

IT IS FURTHER AGREED that the pending litigation will be dismissed with prejudice at the end of three years from the effective date of the agreement (and remain inactive during the interim) if the defendants comply with the following terms of the settlement:

I. OVERCROWDING

Gander Hill

1. By November 30, 1988, the defendants will permanently eliminate housing inmates in the non-housing areas at Gander Hill which consist of the 8 classrooms and 2 multi-purpose rooms.

2. The defendants agree that a goal (not an undertaking) for further reductions will be the removal of up to 40 inmates from double bunking.

SCI

3. By January 31, 1989, the defendants will permanently remove all inmates from non-housing areas at SCI. For purposes of this agreement, the non-housing area consists of Receiving 4. In pursuit of the January 31, 1989 deadline, the defendants will reduce the number of inmates in the general receiving area, which consists of Receiving 1, 2, 3 and 4, by 15 to a maximum of 35 inmates by November 30, 1988.

4. By November 30, 1988, the defendants will install single beds (not double-bunked) in the receiving area so that inmates will not be sleeping on mattresses on the receiving area floor.

5. The removal of the remaining inmates in Receiving 4 will be accomplished by January 31, 1989, the date the new 200 bed facility at SCI opens, which will result in the relocation of the entire receiving area.

WCI

6. The defendants will take the following action by November 30, 1988: a) the permanent removal of the 2 inmates currently housed in the beauty parlor of Banton Building; b) the permanent removal of one inmate from each of the 14 multiple resident rooms in Banton Building; c) the permanent removal of 4 inmates from A Dorm in Banton Building which currently houses 8 inmates; and d) the permanent removal of 3 inmates from C Dorm in Banton Building which currently houses 6 inmates. There shall be a transfer of 23 inmates to the women's work release unit at Plummer House in New

Castle County which the defendants will expand from a capacity of 20 to 48 women inmates by November 30, 1988.

7. By January 31, 1989, a unit with the capacity for 32 women will be established in the new 200 bed facility at SCI which will house both work release inmates and SENTAC Level IV sentenced inmates from Sussex County.

8. The major long term response to overcrowding at WCI will be through the construction of a new 200 bed facility on the present grounds of WCI unless the plaintiffs and defendants agree upon a mutually acceptable alternate location by January 31, 1989. The funding for this construction project has already been budgeted and approved. The defendants agree that this building, regardless of the location ultimately agreed upon, will be completed by December 31, 1991. The completion of this building will increase the total capacity for housing women throughout the State to 280 prisoners.

DCC

9. By November 30, 1988, triple bunking in cells that were originally intended for one inmate will be permanently eliminated at DCC.

10. The goal (not an undertaking) for further reductions will be the removal of inmates from two 50 bed dormitories that were originally intended as space for prison industry programs.

11. The next priority (not an undertaking) at DCC will be the reduction of double bunking.

II. MEDICAL

12. The defendants agree to commit an additional \$650,000 in fiscal year 1989 (FY89), July 1, 1988 - June 30, 1989, to the Department's budget for health care services for prisoners. This funding will provide an additional 16 staff positions in FY89. These positions are included in the recommendations made by Dr. Steven Safyer, the Deputy Director of Montefiore-Rikers Island Prison Health Services in his report (May 12, 1988) on the health care in Delaware's prison system, Attachment A. The 16 staff positions to be added and filled by June 30, 1989 are as follows:

- 1 clinical psychologist
- 4 mental health workers
- 1 mental health secretary

- 1 physician
- 3 registered nurses
- 2 nurse practitioners or physicians assistants

- 1 dentist
- 1 dental hygienist
- 1 dental assistant

- 1 dietician

13. For FY90, the defendants agree to request the necessary funds for half of the costs of a Psychiatric Director position (full time) and to fill that position by June 30, 1990. Also, the defendants will fund and hire a full time x-ray technician by June 30, 1990.

14. For FY90, the defendants agree to add to the Governor's Recommended Budget 8 more staff positions drawn from Dr. Safyer's

recommendations for additional medical, including psychiatric as well as dental personnel for the prison health care system.

15. For FY91, the defendants agree to add to the Governor's Recommended Budget another 6 positions from Dr. Safyer's list of recommended medical and dental positions.

16. The defendants will have discretion in selecting the specific 8 positions for FY90 and 6 positions for FY91 from Dr. Safyer's remaining list of 17 staff positions which he recommends be added. The parties agree to discuss and reevaluate the level of health care in the prison system prior to the drafting of the Governor's Recommended Budgets for FY90 and FY91 and, if there is mutual agreement, the defendants will add the remaining 3 positions from Dr. Safyer's list before the end of FY91. If circumstances warrant, the parties may mutually agree to deviate from the specific staff positions recommended by Dr. Safyer in the course of improving health care services in FY90 and 91. The parties understand that, notwithstanding the staff positions contained in the Governor's Recommended Budgets for FY90 and FY91, the defendants cannot commit the General Assembly to fund these positions for those years.

17. By June 30, 1989, defendants will establish a mental health observation unit at Gander Hill consisting of twenty beds (one pod).

18. By June 30, 1990, the defendants will establish a second special needs housing unit at either DCC or SCI. The Commissioner

of Correction will determine the location of the unit and the nature of the special needs population (ie. mentally retarded, mentally ill, etc.) who will be housed in it.

19. As a result of the Department's increased medical budget, the defendants agree to apply for continued medical accreditation through the National Commission on Correctional Health Care by October 31, 1988.

III. ENVIRONMENTAL

20. The defendants agree to allocate \$350,000 for maintenance projects during FY89 based on the environmental inspection report of the Delaware prison system prepared by Robert Powitz, Ph.D., M.P.H., a sanitarian and professor at Wayne State University. (See Dr. Powitz's report, Attachment B.) The specific projects which will be completed by the defendants by June 30, 1989 at the 4 prisons encompassed by the terms of this agreement are as follows:

DCC

- Repair kitchen serving line
- Install vacuum breakers on water lines to the steam jacket kettles in the kitchen
- Install pot washer sanitizer in kitchen
- Install dishwashing room windows
- Install lighting in C Building to provide 20 foot candles of light at each bunk
- Install windows and ventilators in C Building showers
- Replace all inmate toilets in B Building Receiving Room

- Improve lighting in B Building Receiving Room to insure 20 foot candles of light at each bunk
- Replace all missing shower heads in dormitories
- Improve lighting in dormitories (T1 and T2) to insure 20 foot candles of light at each bunk

Gander Hill

- Repair roof/expansion joint
- Conduct engineering study to be shared with Dr. Powitz regarding ventilation in the entire institution
- Improve lighting in cells to ensure 20 foot candles of light at each bunk
- Repair all exit lights that are out
- Eliminate roach infestation by crack and crevice treatment
- Insure that the hot water temperature in cells does not exceed the recommended maximum temperature of 120 F.
- Paint housing pods

SCI

- Correct hot water temperature in Minimum II by installing two 80 gallon hot water heaters
- Conduct engineering study to be shared with Dr. Powitz regarding ventilation in Minimum II bathroom and Receiving 1, 2 and 4 and infirmary.
- Improve lighting on A & B tiers (Minimum I) to insure 20 foot candles of light at each bunk
- Repaint Minimum II bathroom and shower

- Replace Minimum II floor tiles
- Replace light fixtures in Minimum I shower area
- Install antisiphon device on water line to steam jacket kettle in kitchen
- Install new water filter on ice machine monthly
- Install vacuum breaker on fill line to coffee urn
- Install backsiphonage protection on scullery sinks
- Install 6 new light fixtures in the infirmary

WCI

- Replace chipped lavatories and toilets in Banton Building
- Replace water fountain in Banton Building
- Install fire alarm systems in Banton, Holly and Maple Buildings.
- Install 18 battery operated emergency light kits for Banton, Holly and Maple Buildings
- Correct stained ceiling tiles in Banton, Holly and Maple Buildings
- Make an operational change at WCI to assure that prisoners are not routinely prohibited from using available bathrooms and showers simply to assure easier supervision.
- End the current limitations on the issuance of toilet paper and sanitary napkins for WCI prisoners.

21. The Department also agrees to clean and balance the ventilation systems at all four institutions by June 30, 1989. By that same date, it also agrees to insure that the amount of

ventilation (fresh air or recirculated filtered air) shall be in accordance with the American Correctional Association's ventilation standards.

22. The Department will replace all non-fire retardant mattresses with fire retardant mattresses by June 30, 1989 and will insure that all mattresses are clean and usable.

23. The defendants agree to seek additional funds in the FY89 Bond Bill to cover the renovations of E Building, A Wing at DCC. These renovations will include the replacement of toilets, sinks and mirrors; the installation of light fixtures that will provide 20 foot candles of light at each bunk, and locks, wiring, windows and screens; as well as painting. The Department will complete the renovations in E Building listed in this paragraph by June 30, 1990.

24. The Department agrees to address the overall plumbing needs of DCC by insuring that the American Correctional Association's standards for toilets (i.e., ratio of one toilet for every eight inmates) and for sinks (i.e., ratio of one sink for every six inmates) are met within three years from the effective date of this agreement.

25. The defendants agree that by June 30, 1989, they will hire a qualified sanitarian whose primary responsibilities in the Department will include the ongoing monitoring of the environmental conditions at all of the institutions operated by the Department to insure that health and safety standards are met.

IV. LEGAL ACCESS

26. In FY89, the defendants will add \$115,000 to the Department's budget to address the legal access needs of prisoners according to the following terms:

27. The defendants will provide \$64,000 for augmenting the law library collections at WCI, SCI, Gander Hill and, if necessary, at DCC. The books to be purchased will be drawn from the list compiled by the Department, Attachment C. Additionally, the defendants agree to purchase the most recent "Prisoners' Self-Help Litigation Manual" for each of the law libraries at the 4 prisons.

28. The defendants will also provide \$36,000 to hire a full-time library technician at SCI and a full-time paralegal to assist illiterate prisoners with legal research. This paralegal will be based at DCC but will have the responsibility of assisting illiterate prisoners throughout the State. The defendants agree to fill these positions as soon as possible but no later than June 30, 1989.

29. The defendants will allocate \$15,000 for contractual services to provide for attorney supervision of staff paralegals in their provision of assistance to prisoners. The defendants agree to contract for these services as soon as possible but no later than June 30, 1989.

30. In FY89, the defendants will also create and fill a position for an inmate librarian at WCI and will add a third inmate librarian at DCC. These positions will be filled as soon as

possible but no later than June 30, 1989. The defendants will provide 40 hours of legal training to all inmate librarians and will supplement this training periodically.

31. In FY90, the defendants will request funding sufficient to complete the necessary law library collections identified in Attachment C.

32. The defendants also agree that inmates will be assured access to the law libraries at each of the four institutions. Said law libraries shall be open for a minimum of six hours a day, five days a week. In addition, the law library at DCC will be open one evening a week. At SCI, the minimum time for the library hours will include Saturday and/or an evening to accommodate the schedules of work release inmates.

V. MONITORING

33. The Department will continue its practice of having its food services operations inspected by State Public Health Department sanitarians.

34. The defendants will assure that the food services operation in each of its institutions receives a minimum inspection score of 70 and that all 4 and 5 point violations are corrected within 30 days subject to necessary delays for equipment repair or replacement.

35. The defendants agree that the law libraries will be inventoried on a semi-annual basis using a standardized inventory form to be provided by plaintiffs.

36. With regard to the hiring for new positions provided for in paragraphs 12, 13, 14, 15, 16, 24, 27, 28 and 29 of this agreement, the Department and/or its agent, Correctional Medical Services (CMS) shall exercise due diligence in the recruitment and hiring of qualified personnel to fill these positions by the deadlines specified herein. However, it will not constitute a violation of this agreement if the Department (including its agent, CMS) is unable to fill any particular position with a qualified person by the specified deadline if it can demonstrate that it exercised diligent efforts to do so. Similarly, if any position is filled but the employee resigns thereafter, there shall be no violation of this agreement if the Department (including its agent, CMS) exercises due diligence in its efforts to refill the position.

37. In order for plaintiffs to determine the adequacy of the Department's recruitment and hiring efforts, the defendants agree to provide plaintiffs with monthly employment summaries for the positions covered by this agreement which will include but not be limited to the following information for the positions covered by this agreement: advertising efforts including identification of the publications used, the number of applicants for each position and the number of those interviewed for each position along with the recruitment procedures and proposed timetable for filling any remaining vacant positions.

38. As of the effective date of this agreement, the Department will begin providing periodic reports related to compliance with this agreement to counsel for the plaintiffs, including the following reports with the frequency of reporting noted below:

- population reports (with non-housing areas designated, if in use) - monthly
- medical audit reports - monthly
- prisoners' medical grievances - monthly
- medical accreditation reports - as generated
- food services reports (by Delaware Division of Public Health) - monthly
- water quality reports (by Delaware Division of Public Health) - monthly
- status reports on recruitment and hiring for positions covered by this agreement - monthly
- prison sanitarian's reports (by the Department's qualified sanitarian to be hired as part of this agreement) - quarterly (or more often, if so generated)
- law library inventories - semi-annually

39. For the purpose of monitoring this settlement, the Department agrees to permit meetings of representatives of Legal Aid and the ACLU with groups of inmates of no more than 10 inmates at a time on a monthly basis at the four institutions addressed in this agreement. This provision will, in no way, interfere with the right of plaintiffs' counsel to meet with their clients on an

individual basis.

VI. IMPLEMENTATION

40. This settlement contemplates action over three fiscal years - FY89, 90 and 91. The defendants promise to work in good faith to implement the actions contemplated in this settlement but the parties understand that the defendants cannot commit the State of Delaware to any activities in fiscal years after FY89.

41. If the defendants achieve and maintain compliance with this settlement, the plaintiffs agree that the pending litigation, including Anderson v. Redman, 429 F.Supp. 1105 (D.Del. 1977), stay ordered, 480 F.Supp. 830 (D.Del. 1979), will be dismissed with prejudice after three years from the effective date of this agreement. The effective date will be the date the Order approving the final Settlement Agreement is signed by the Court. Further, during the time period covered by this agreement (three years from its effective date), plaintiffs' counsel will not proceed with litigation in either the State or Federal Court on the subjects addressed by the Complaint and by this agreement. The litigation contemplated by plaintiffs' counsel should the defendants fail to comply with this agreement includes the revival of this action, the commencement of a new action in either State or Federal Court, and/or the initiation of enforcement proceedings.

42. If the defendants, despite their good faith efforts, fail to comply with the terms of this agreement, plaintiffs' counsel will, from and after the date of such non-compliance, no longer be obligated to refrain from litigation on the issues covered by this settlement agreement and Complaint and to dismiss the pending litigation after three years. However, there are two exceptions to the above-described standard for defendants' compliance with this agreement. First, the defendants will be permitted to raise "good faith efforts" as a defense if the WCI construction deadline in paragraph 8 is not met. Second, the defendants will have the defense of "due diligence" available to them as described in paragraph 35, if they are unable to comply with the hiring deadlines contained in paragraphs 12, 13, 14, 15, 16, 24, 27, 28 and 29.

43. All members of the class are barred from instituting litigation on any of the matters covered by this agreement. This bar shall apply to the issues addressed by the Complaint and this agreement only, but not to other issues that were not raised but could have been raised in this action. No party, including any member of the class, may introduce this settlement for any purpose in any other litigation. Any party, however, may cite this agreement to preclude litigation concerning the matters contained in this agreement. This agreement does not constitute any admission of fact by defendants should there be subsequent litigation. The defendants have entered into this agreement

without acknowledging the merits of the allegations contained in the pending class actions referenced in this agreement.

44. Any member of the class who chooses to opt out of the class will not be barred from instituting litigation regarding the issues addressed by the Complaint and this agreement.

45. In consideration of the defendants' agreement to this settlement, Legal Aid and the ACLU waive any right to attorneys' fees and costs with regard to work performed in connection with this litigation, including the negotiation process. This waiver shall not apply, however, if the defendants fail to comply with the terms of this settlement and Legal Aid and/or the ACLU initiate further proceedings in this Court because of such violation.

W. Laird Stabler

W. Laird Stabler, III
Counsel for the Governor

Charles M. Oberly, III

Charles M. Oberly, III, Attorney General
Richard W. Hubbard, Deputy Attorney General
Counsel for the Department of Correction

Neilson Himelein
for Alvin J. Bronstein

Elizabeth Alexander
Mark Lopez
ACLU National Prison Project
Counsel for Plaintiffs

Mary McDonough / Neilson Himelein

Mary McDonough
Neilson Himelein
Community Legal Aid Society, Inc.
Counsel for Plaintiffs

Of Counsel: ACLU - Delaware Affiliate

Mary McDonough for
by Ben T. Castle
Cooperating Attorney

DATED: 11/21/88

On April 24, 1988 beginning at 6:00 pm an environmental health and safety evaluation was conducted at the Women's Correctional Institution in Claymont, Delaware.

Lt. S. Parry conducted the tour and we were accompanied by Elizabeth Alexander, Esq. from the ACLU National Prison Project.

A significant portion of this institution was overcrowded, lacked the necessary facilities to maintain a healthful, safe and stress-free environment, and showed signs of deterioration and poor maintenance.

X The institution is made up of three occupied buildings that house approximately 50 inmates over the rated capacity of 149. The food service area is in a separate building; meals are carted to the housing units.

Banton:

There were eight inmates in A Dorm, a unit which can comfortably house two. The beauty parlor was used as dormitory space; one inmate was forced to sleep on the floor. Room A3 had three occupants in an area designed for one. There was no hot water in the lavatory and the toilet was badly chipped and uncleanable. In the overcrowded areas, the minimum distance of 6 feet was not maintained between the centers of adjoining beds.

Housekeeping supplies were not properly stored. Mops were not airdried and supplies were not being maintained in a clean condition.

The water fountain was not operational.

The walls in the serving/recreational area were in poor repair and the food supply storage was both inadequate and unsanitary.

Emergency lighting was not operational and many emergency exit lights were not illuminated. Many of the fire extinguishers were blocked and inaccessible. The entire building is neither sprinklered nor provided with smoke alarms.

The single toilet serving this area was unvented and the hot water was measured at 150°F which can cause scalding.

Hose connections to the outside are not protected against backsiphonage.

There was no facility to protect toilet paper in the

C wing; the paper was stored on the floor. Two sinks were not operational and the hot water service was not working.

Holly:

The fire protection deficiencies were similar to Banton. In addition, the emergency egress doors were not posted.

The rooms which were designed to house a single inmate, currently were doubled occupancy. A piece of string was attached to all doors to provide egress and is totally inadequate in the event of an emergency.

Of the four bathrooms in this building housing 32 inmates, only two were available for use. Of those not available, one is designated for personnel use only and the other is a "spare". This results in double the recommended population per toilet. The wall in one of the showers was in poor repair and thereby uncleanable.

There was extensive evidence of roof leaks throughout the building. Mattresses and pillows were not of fire retardant material.

Maple:

Apparently, the inmates in this building are only issued twenty sanitary napkins per month. Reportly, the contract commissary is oftentimes in short supply of personal hygiene items.

The A wing toilet had neither toilet paper nor shower curtain. Ventilation is inadequate to remove odors and condensate.

Kitchen:

By enlarge, the kitchen was being maintained in a sanitary condition. The following deficiencies were noted:

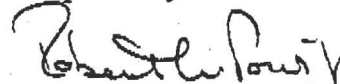
The door tracks in the ice machine were heavily soiled and ice scoop was not protected.

Equipment drains not protected against backsiphonage by an appropriate air gap.

Food products not properly stored off the floor. Storage shelves not of impervious washable materials; shelf paper and drawer liners were used.

A cart with three inch wheels is used to transport food from the kitchen to the domicile areas. Provisions for maintaining proper temperatures during transit were totally inadequate.

Respecfully submitted,



Robert W. Powitz, Ph.D., M.P.H.
Consulting Sanitarian

On April 25, 1988 beginning at 7:00 a.m., an environmental health and safety evaluation was conducted at the Multipurpose Criminal Justice Facility (Gander Hill) in Wilmington, Delaware. Capt. J. Booker conducted the tour and we were accompanied by Elizabeth Alexander, Esq. from the ACLU National Prison Project.

The entire facility is housed under a single roof. At the time of this evaluation, the census was 762, which is 402 over capacity. Inmates were being quartered in multipurpose rooms and classrooms. In the majority of cases, less than six foot separation between the centers of adjoining bunks are being maintained. As a result of the crowding space available to individual inmates was less than 41 ft²/333ft³; this is 39ft²/167ft³ below the recommended standards to prevent secondary infections.

The ratio of inmates to toilets was well above the recommended 1:8. In the classroom dormitories, the inmate/toilet ratio was 1:22 and in the multipurpose rooms, the ratios were 1:19 and 1:26. Additionally, showers were not available to inmates housed in these areas. Apparently, when time permits, inmates must be taken to the intake areas for showers. Body odors were quite noticeable in these facilities. Reportedly, exercise yard is an infrequent experience for these inmates, in part to the logistics of their housing conditions and the potential compromise to security in moving these individuals.

The building roof leaks in several places and the kitchen is used far beyond its design capacity, as a result, both sanitation and safety are compromised.

Even though this facility is relatively new, the crowded conditions and heavy use are taking their toll on the physical plant. There are ample signs of deterioration and the facilities, as designed, are unable to maintain adequate levels of ventilation and sanitary facilities.

This was the only facility in which a roach infestation was noted.

Although fire protection was adequate, there were several exit lights out and emergency evacuation route were not posted. This is extremely important in a large multipurpose facility such as this one and especially where there is no orientation to the outside.

Mattresses and pillows were neither fire retardant materials nor were they cleanable. Many blankets were severely frayed and thread-bare.

Several specific deficiencies noted by area include the following:

Food Service:

Garbage improperly stored prior to disposal resulting in unsanitary, orderiferous and insect attracting conditions.

Food products were improperly stored on wooden dunnage and milk cartons. Adequate sanitation could not be maintained. Storage racks were lined with shelf-paper which provides roach harborage.

The cooking facilities were extremely crowded and unsafe. The chronic wet conditions and lack of workspace around the cooking equipment can result in a serious accident. Inmates cooks were permitted to wear canvas shoes which offer no protection in the event of a hot spill.

There were no vacuum breakers or backflow prevention devices on the hosebibbs in the cart washing, and main kitchen areas. The dishwasher was not protected against cross-connection.

Cleaning supplies were being stored in the food preparation area; a roach infestation was evident and the ceiling was in poor repair.

Modular Housing Pods:

Cells designed for single occupancy house two inmates.

The 7"x7" ventilation intake and exhaust louvers are approximately 18 inches apart and offer no real air exchange for the cell. The intake velocity measured in Cell 7, 1C was 40 lfpm, yielding an air exchange rate of 3.8 per hour under ideal conditions.

The lighting was measured at 8 foot candles at bunk height, this is not an adequate level for reading.

The hot water temperature was measured at 144°F, which could result in scald injury.

Two showers serve forty inmates. The ventilation within the shower rooms is poor; they were not maintained in a sanitary condition, and, there was extensive corrosion on the shower room doors.

Housekeeping supplies were heavily soiled and improperly maintained.

The walls throughout this facility were of bare cinder block construction. The blocks were not sealed and uncleanable. As a result, the walls were showing signs of heavy soiling.

Infirmmary:

There are two observation rooms with only a squat hole and no toilet facilities. Sanitation was poor and there was a strong malodor in these rooms.

The shower room was poorly drained and vented. The chronic pooling of water constitutes both a septic condition and slip and fall hazard.

There is no routine dental screening for the inmates.

Booking and Receiving:

The 8 to 4 shift will not permit inmates to have mattresses. Seating in the holding cells is inadequate resulting in inmates sleeping on the bare floor. Reportedly, inmates can remain in these cells for up to sixteen hours.

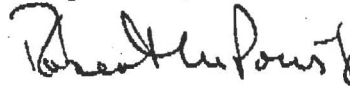
All inmates are sprayed with a 0.3% pyrethrum insecticide upon admission regardless if they have ectoparasites or not. The spray will not control the most common head lice. Subjecting inmates to unnecessary pesticides and indeed, one to which a significant segment of the population has an allergic reaction to is both unsafe and illadvised.

A phenolic disinfectant is used for cleaning. This type of chemical does not counteract odors, it is innocuous in the environment and improper handling can result in a severe dermatitis.

Barbering:

The barbering kit consists of a sheet, brush and clipper. Sanitizers and sanitary neck papers are not used. Inadequate attention to cross infection can result in mycotic or persistent bacterial skin infections.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert W. Powitz". The signature is written in a cursive style with a large, stylized initial "R".

Robert W. Powitz, Ph.D., M.P.H.
Consulting Sanitarian

On April 25, 1988 an environmental health and safety evaluation was conducted at the Delaware Correctional Center, located in Smyrna, Delaware. This facility has a capacity of 1300 inmates and was housing 1100 inmates at the time of this inspection. It consists of nine buildings, primary cell block configuration with two dormitories of fifty inmates each. Food service is not centralized. There are three kitchens, one for each security level.

As a result of this inspection, the following environmental health and safety deficiencies were noted.

Food Service - Medium Security:

Dining Hall. The drink station was heavily stained and of poor sanitary design. Ice is held unprotected in a large vat.

Serving Line. The floor in the serving line was in poor repair, uncleanable and an accident hazard. Inmates use food holding and preparation counters as seating during periods of inactivity.

There were no thermometers in the walk-in refrigerators. The condenser in the vegetable holding box was not working and there was evidence of a roach infestation.

The hood over the steam jacket kettles had neither filters nor adequate lighting. Food was being stored on the floor during preparation.

There were no vacuum breakers on the water lines to the steam jacket kettles.

Smoking is not restricted in the kitchen area.

The oven is heavily soiled with spillage and burned on grease.

Cooking utensils were cracked and uncleanable; mixing paddles have been welded and their seams were not smooth and cleanable. Cooking pans were heavily dented, cracked and uncleanable.

No sanitizers were being used in pot washing. The pot washing sink fill lines are not protected against potential backsiphonage.

Outerwear was being stored in the food preparation area.

Serving utensils were improperly stored and not protected against contamination.

The walls of the facility were not cleanable or clean.

Auxiliary.

Equipment was not maintained in a clean condition.

The dishwashing room windows were not screened and protected against flies.

C Building: A Cell Right 1 was surveyed.

Hot water was measured at 140°F.

The intake air vents were blocked. There was no ventilation in the cell.

The lighting was so positioned that the lower bunk does not receive any light.

Cell lighting throughout the building was in general poor repair and hazardous. Wires are unprotected and light bulbs were shielded by paper which had become scorched with heat.

The showers were extremely poorly vented.

Overall environmental conditions were below standards.

B Building.

Receiving Room. The enameled toilet was badly chipped and uncleanable.

Ticking mattresses were in poor repair, heavily soiled and not fire retardant.

A hose serving the shower room had no cross-connection protector. The area behind the shower was heavily soiled and septic.

Overall lighting was poor and ventilation inadequate to remove malodors.

E Building.

Inmates are locked in without access to toilets for extended periods of time.

A Wing. All cell lighting was inadequate and in poor repair. There was extensive peeling paint, the ceiling leaked and the cells showed evidence of very poor sanitation practices.

Infirmary:

D Ward. Extremely crowded with less than recommended space between beds for infection control and safety.

Ram Room was extremely malodorous. The sanitation was poor around the squathole.

Ice in the nutrient kitchen was protected from contamination, the ice machine was used to store drinks.

Dormitories.

The showers had several spray heads missing.

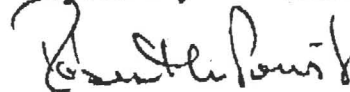
Many beds were in very poor repair and offered no support to its occupant.

The rooms were extremely noisy with no sound attenuation devices present.

Many lights above the bunks were in poor repair or missing. Central room lights were inadequate.

The maximum and minimum security facilities were in good repair and sanitary. There were no visible deficiencies.

Respectfully submitted,



Robert W. Powitz, Ph.D., M.P.H.
Consulting Sanitarian

On April 26, 1988 at 9:00 am, an environmental health and safety evaluation was conducted at the Sussex Correctional Institution in Georgetown, Delaware. Capt. Herman Parsons conducted the tour and we were accompanied by Elizabeth Alexander, Esq. from the ACLU National Prison Project.

The facility is located in a rural setting and is made up of close, medium, minimum custody and work release facilities. The design capacity is 383 and at the time of our visit, the population was 412.

The following deficiencies were noted as a result of this inspection:

Minimum II:

There were several ceiling leaks on the north side of the building.

The exhaust ventilation in the toilet is inadequate to remove odors and condensate.

Paint is peeling, floor tile is broken and there were several rough, uncleanable surfaces which were heavily soiled.

Hot water was measured at 130°F; 10° above recommended maximum.

The ice machine was soiled and the scoop was stored in the machine thereby not protecting against contamination.

Minimum I:

Barbering facilities did not include sanitary neck papers or sanitizers.

In C tier, several beds were less than six feet apart when measured from the center of the beds. The area appeared crowded. There was no lighting in the shower area.

The lighting on A tier was extremely poor. Only six lights out of twelve were functional on both the east and west sides.

B tier had no perimeter lights for reading and only two 40 watt fluorescent lamps to illuminate the room.

Protective Custody:

Inadequate cell space necessitated an inmate to sleep in the hall and share the toilet in one cell.

Reportedly, food delivered to this area is not maintained at proper temperatures; hot foods are not kept hot.

Receiving No.2.

There were four inmates housed in single cells; eight inmates were sleeping on the floor. The ventilation was inadequate and the area heavily soiled. No pillows were issued to the inmates.

Receiving No. 1.

This area was in the poorest condition of any visited. Of the four single cells, only three had working plumbing four inmates had to sleep in the corridor outside of the cells and immediately adjacent to the shower. An additional, four inmates quartered in the receiving area sally/service port. The density of inmates to floor space was less than 25 ft². The shower ventilation was extremely poor. The single exhaust to the area was inadequate and the single supply both inaccessible to provide cross-flow ventilation and maintain a satisfactory air exchange.

Receiving No. 4.

This area consisted of three rooms with no windows, no daylight orientation and inadequate ventilation. The twenty two inmates shared two toilets and one heavily soiled shower whose exhaust was not functional.

The ice machine serving the receiving area was unclean with mold buildup on the door. The prefilters had not been changed and were heavily soiled and laden with microbial life as evidenced by the visible glycocalyx buildup on the filter surface.

The water in this facility appears to be slightly acid. As a result, there is considerable evidence of copper leaching and discoloration.

Kitchen:

The water line to the steamjacket kettle was not protected against backsiphonage. The floor drain did not have an airgap of 2' above the flood rim.

The two walk-in refrigerators did not have adequate thermometers to monitor temperature.

Food was not being stored off the floor. Wooden uncleanable dunnage was being used.

The two reach-in freezers did not have adequate thermometers to monitor temperature.

Dry goods were being stored in the kitchen on wood pallets; thereby subject to splash and uncleanable.

Food was being stored in the ice machine contaminating the ice. The water filters on this machine had not been changed and were heavily soiled.

There was no vacuum breaker on the fill line to the coffee urn.

Plastic milk crates were being used for dunnage in storage. These do not permit adequate cleaning.

Approved sanitizers were not being used in the pot washing area.

Drink cups were being stored on the floor and not protected.

Kraft paper was being used as shelf liners.

There was no soap at either the kitchen handwashing facility or in the inmate toilet.

Potentially hazardous foods (eggs) not held under proper refrigeration. Frozen foods not properly thawed in refrigerator or under running water.

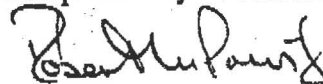
There was no backsiphonage protection on the scullery sink.

Infirmary:

The infirmatory dormitory contains four beds with no space around them in the event of a medical emergency. The space between beds was inadequate to protect against secondary infection. The single bulb lighting fixture provides only six foot candles at bed heights. The ventilation within this room was inadequate to moderate temperature and remove malodors.

I feel that the conditions which were seen in the receiving area were poor and extremely hazardous to health safety and well-being. The lack of sanitary facilities, poor environmental controls and overcrowding will contribute significantly to stress, infectious disease and accidents. It is strongly recommended that the conditions be ameliorated as soon as possible.

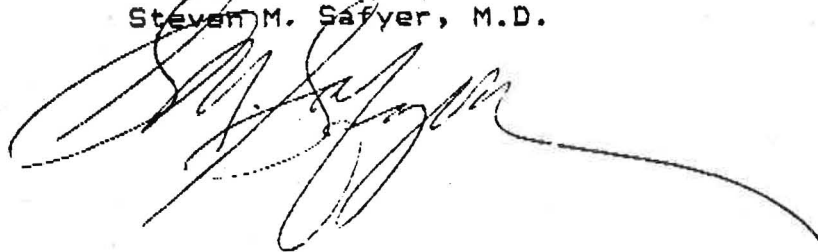
Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert Powitz", written in a cursive style.

Robert Powitz, Ph.D., M.P.H.
Consulting Sanitarian

Recommendations for the Delaware
Department of Corrections Health Services
(Correctional Medical Systems)

Submitted 5/12/88
Steven M. Safyer, M.D.

A handwritten signature in dark ink, appearing to read 'S. Safyer', with a long horizontal flourish extending to the right.

I have been asked to make recommendations for the Health Services of the Delaware Department of Corrections provided for by contractual arrangement with Correctional Medical Systems (CME). Their recommendations are based upon a two day site visit (5/3/88 & 5/4/88) to the four major facilities in the system: Delaware Correctional Center (DCC), Sussex Correctional Institution (SCI), Multi Purpose Criminal Justice Facility (MPCJF), and Women's Correctional Institution (WCI). The visit, although brief, was well planned and coordinated by the American Civil Liberties Union/National Prison Project and Community Legal Aid Society for Delaware who together requested my services. It was clear that we received the utmost concern and attention by the Delaware Department of Correction and Correctional Medical Systems. All agencies were extremely professional and made my visit quite productive by arranging for interviews, tours, preparing relevant documents and pulling medical charts for review. I also would like to thank the inmate/patients who were helpful and articulate about their needs.

The following are my recommendations in a concise format. I have been asked to provide this information as such with a more extensive review to follow.

Systemwide Recommendations

1. Central office staffing
 - a) Hire F/T Medical Director - this person should be 100% administrative and be Board Certified in Internal Medicine. Whatever is needed (i.e. increased salary, benefits, hospital/academic appointment, etc.) should be obtained. There is a distinct lack of medical-clinical leadership that impacts on every area of the program.
 - b) Establish a Director of Mental Health Services (1FTE). This person should be a Board Certified Psychiatrist. The position should be 50% clinical and 50% administrative.
 - c) The Director of Dental Services should split his time 50% clinical and 50% administrative.
 - d) All Director level people should have FT secretaries.
 - e) Hire a FT Infection Disease Nurse.

2. Establish 24 hour coverage in all four facilities (RN or LPN is acceptable).

3. Intake

- a) The receiving room screen must include full vital signs and direct physical exam where needed (i.e chest exam if increased respiratory rate).
- b) Full intake (by MD, PA, or NP) within seven days.
- c) Urine pregnancy test on all female admissions.

4. Annual update of history and physical on sentenced population.

5. Sick Call

Provided Monday-Friday for all four facilities. 100% access for all inmates within 24 hours. Physician present during 8-4 sick call (except WCI, see below). Triageing should only be done as part of an encounter (history, vital signs, physical exam, etc.), not via request slips.

6. Emergencies

- a) Current ACLS Training for all physicians, physician assistants, nurse practitioners and Head nurses.
- b) Establish standard ACLS "crash carts" and maintain the defibrillators that are present (all four clinics should have one).
- c) Establish a log system for daily shift checks of oxygen and defibrillator charge. Following each emergency and monthly, the emergency medicines should be checked (date, stock, etc.) and replaced when appropriate.

7. Equipment

- a) Obtain hand held Peak Flow Meters in all clinics. Train staff on use.
- b) An electro dessicator for wart removal should be available in the clinics.

8. Consultants

- a) The Medical Director should hire and fire consultants maintain up- to- date credentials, and have periodic meetings with them.
- b) Procedures and consultations that require Central Office approval (Medical Director) should be processed within 2 days of request.

9. Referral Hospitals

The Medical Director should visit the facilities periodically and maintain liaison. The Medical Director should seek attending priveledges so that he can participate in the care of hospitalized inmates.

10. Vaccinations

Pneumovacs, Flu, Tetanus, and Heptavacs should be provided for where medically indicated.

11. Infirmaries

- a) Separate mental observation units from the medical areas.
- b) There is no place for physical restraints (drug withdrawal or psychosis) in this type of facility. Any inmate requiring clinical restraint needs acute hospitalization. Abolish the "Ram Rooms" immediately.

12. Policy and Procedure Manual

- a) Complete the update occurring now by September 1, 1982.
- b) The Medical Director should review and update the manual yearly.

13. Quality Assurance

- a) All clinical directors should be on the Central QA Committee and attend the regional MAC meetings.
- b) Establish a Mortality and Morbidity Committee and an Infection Disease Committee.
- c) Move toward the JCAH style system of tracking indicators as opposed to chart reviews and audits.

14. Medical Supervision

- a) This should be organized and directed by the medical director and carried out by the chief physician at each site.
- b) The clinic chief physician should do chart reviews (with chart note) on all intakes, chronics (quarterly) and abnormal labs, x-rays and consults.
- c) The medical director should keep credential files on all clinical staff.
- d) Establish "medical libraries" at each clinic. This should include major medical texts for ambulatory and surgical care. The medical director should have access to a medical library so that journal articles can be easily obtained.
- e) Physicians and physician extenders should have dedicated weekly time to organized CME along with time off with financial support for CME conferences.

15. Chart System

Utilize the probelm list (presently underutilized).

16. Laboratories

Each clinic should have a hemocytometer (to hand spin hematocrits), microscope, and gram stain material.

17. Dental

- a) Upgrade equipment (especially WCI & DCC)
- b) Install the panographic x-ray machine.
- c) Staffing (see below)
- d) Increase preventative work
- e) Complete dental screen within 7 days

18. Guaranteed abortions where indicated.

19. Renew National Commission Accreditation. Plan for JCAH Accreditation within 5 years.

20. HIV Disease

- a) Establish a truly voluntary, confidential, pre and post test counselling program. The present system is haphazard, not confidential and where "clinically based" not always medically necessary.
 - b) Provide condoms.
 - c) Make preventive education (groups, videos, literature) available (systematically to all inmates).
21. Finalize the rape protocol.

22. Physician Extenders

- a) Utilize physician assistants and nurse practitioners (see below, staffing). By increasing M.D. presence there should be no legal problem with utilizing physician extenders. (PA's must have physicians on-site in order to work in Delaware).

23. Mental Health

- a) Restructure with a psychiatrist as a F/T director of the program.
- b) Establish mental observation (dorms) units in each facility for intermediate level care.
- c) Acutely psychotic patients should be admitted to a psychiatric facility with a locked ward.
- d) Resolve the credentialing issue with the state surrounding the "mental health workers" they should be clinically trained with masters degrees (i.e. MSW).
- e) Staffing: (systemwide) 1 FTE psychiatrist as director (50/50 clinical; administrative) 2 FTE psychiatrists, 2 FTE psychologists, (clinical PhD's) 10 mental health workers. This staff should be divided between upstate and Downstate.
- f) Maintain Dr. Raskin as a consultant psychiatrist to the director and mental health unit.

24. Environment

- a) End the gross overcrowding present in all facilities.
- b) Establish usable exercise areas ("yard and gym") so that all inmates can have daily exercise.
- c) Establish more work and recreation activities.

25. Punitative Segregation Units

- a) 7 days a week visits by nurses
- b) 1 day a week visit by physician or physician extenders.

26. Air conditioners in all clinical and infirmary areas.

27. The major outstanding (unfilled positions) need to be filled by 7/1/88.

II FACILITY RECOMMENDATIONS

DCC

1. Staffing

- a) physicians - 2 FTE. One of the physicians should be present M-F/8-4 and be able to act as a chief physician (BE/BC primary care specialty) providing local supervision and clinical leadership.
- b) physician extenders - 2 FTE nurse practitioners and or physician assistants.
- c) Nursing - current level is adequate. If fully staffed. (10.8 RN's, 4.6 LPN, 1 M.A.)
- d) Mental Health (see above section I/23)
- e) Dental - 2 FTE Dentists, 2FTE Dental Assistants, 2 FTE hygienists.

2. Clinic

- a) Treatment exam room has poor design. Need to establish cuticles to provide clinical privacy.
- b) Infirmary and clinic where too hot with poor ventilation.
- c) Dental equipment antique.
- d) Radiology equipment similar vintage.

3. Environment

The population seemed extremely crowded and tense.

SCI**Staffing**

- a) Physicians - 1 FTE physician ("chief level", see above).
- b) Physician extenders - 1FTE NP or PA.
- c) Nursing - fill current level (4 RN's 4 LPN's).
- d) Mental Health (see above, section I/23).
- e) Dental - 1 FTE Dentist, 1 FTE Dental Assistant, 1 FTE Dental Hygienist.

2. Intake

Completion of intake seemed the longest in this facility. (greater than 2 weeks).

3. Emergencies

The receiving hospital is about 1/2 hour away (25 miles). ACLS trained people with equipment on site 24 hours a day is especially important at this facility.

Environment**4.**

Men had been sleeping for more than a week (wall to wall) in the receiving room area.

MPCJF**Staffing**

- a) Physicians - 1.5 FTE (1 FTE (1 FTE "chief level").
- b) Physician extenders - 2 FTE (NP or PA)..
- c) Mental Health - (see above section I/23)
- d) Dental - 2 FTE Dentists, 2 FTE Dental Assistants, 2 Dental Hygienists.

WCI1. Staffing

- a) Physician - .5 FTE
- b) Physician extenders - 1 FTE nurse practitioner (nurse practitioner can act clinically in absence of F/T physician, which is different than P.A.'s in Delaware).
- c) Nursing - maintain same day level. Increase staff so that there is 24 hours nurse coverage. (2.8 FTE nurses, RN, or LPN)
- d) Mental Health - (see above section I/23)..
- e) Dental - 60% FTE Dentist (3 times per week), 30% FTE Dentist Assistant (3 times per week), and 1 FTE Dental Hygienist.

Environment

- 2. This was a dramatically overcrowded facility with inadequate exercise and recreation areas.. Building needs to be rebuilt.

Infirmery

- 3. Establish 5 infirmery beds.

III CURRENT STAFFING (BY CONTRACT, NOT
NECESSARILY FILLED POSITIONS)
AND PROJECTED RECOMMENDATIONS

<u>Position</u>	<u>FTE/contract</u>	<u>FTE/recommendations</u>	<u>Increase FTE</u>
Administrator	1.0	1.0	
Medical Director	1.0	1.0	
Director of Nursing	1.0	1.0	
Staff Development Coordinator	1.0	1.0	
Director Mental Health (psychitrist)	0	0.5	0.5
Director Dental Services (Dentist)	0	0.5	0.5
Infectious Disease Coordinator (RN)	0	1.0	1.0
Secretaries	5.0	9.0	4.0
<u>Nurses</u>			
RN	25.5	> 40 total	3
LPN	15.0	42.8	2.8
Medical Assistants	2.0	2.0	
Physicians	3.625	5.0	1.375
Dentists	3.0	5.6	2.6
Dental Assistant	3.0	5.6	2.6
Dental Hygientists	0	6.0	6.0
Physician extenders (NP or PA)	0	6.0	6.0
<u>Mental Health</u>			
Psychitrists	1.0	2.0	1.0 50% director clinical
PhD psychologists	1.0	2.0	1.0
Mental health workers	8.0	10.0	2.0
Charge records clerk	1.0	1.0	
X-ray tech	?	1.0	?
Dietitan	1.0	1.0	
Pharamacist	1.5	1.5	

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RANDOLPH DICKERSON, et al.,

Plaintiffs,

v.

MICHAEL N. CASTLE, Governor
of the State of Delaware, et al.,

Defendants.

*
*
*
*
*
*
*
*
*
*

Civil Action No. 10256

ORDER

In connection with plaintiffs' memorandum in support of the proposed Settlement Agreement that is scheduled to be filed with the Court by November 18, 1988,

IT IS HEREBY ORDERED this _____ day of November 1988 that:

1. The Register in Chancery shall immediately forward copies of the following objections received from class members to the Governor's counsel, W. Laird Stabler III, and to plaintiffs' counsel, Neilson C. Himelein: Docket entries 99 (G. Mamenko); 101 (W. Roach); 151 (F. Bryan); 176 (D. Shepard); 219 (J. Waller); 234 (A. Harley); 333 (J. Gibbs); 346 (R. Hall); and 357 (D. Yost).

2. Counsel for plaintiffs shall forward to the Register in Chancery the opt out requests and objections that were sent by class members to Community Legal Aid Society instead of to the Register.

3. Counsel for plaintiffs shall also forward to counsel for defendants copies of the objections they have received including the following, which have also been filed with the Register: Docket entries 281 (T. Ross); 297 (W. Roach); 343 (G. Iverson); 344 (J. Riley); 345 (M. Rahim, et al.); and 358 (A. Tatman, et al.).

Vice Chancellor