

CONSENT DECREES

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Dec 18 12 52 PM '87
CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

ROBERT K. CELESTINEO and)
MICHAEL V. COSTELLO, for)
themselves and all others)
similarly situated,)

Plaintiffs,)

vs.)

BOB MARTINEZ, in his official)
capacity as Governor of the State)
of Florida, and RICHARD L.)
DUGGER, in his official capacity)
as Secretary of the Department)
of Corrections,)

Defendants.)

CASE NOS. 72-109-Civ-J-14
72-94-Civ-J-14

Costello v. Wainwright



PC-FL-001-006

CONSENT ORDER

The parties to this litigation have consented to the entry of an injunctive order relative to the operation of the Martin Correctional Institution and the health services system of the Department of Corrections. In addition, defendant Dugger admits to violations of the Health Care Settlement Agreement and has agreed not to object to the entry of an order finding him in contempt for the commission of said violations. These admissions are made for use in this cause only for injunctive and contempt purposes. They are not admissions for any purpose in other litigation against defendant Dugger, his officers or agents, or the Department of Corrections, whether for damages or for

equitable relief. This Consent Order results from proceedings on two motions filed by the plaintiffs, and defendant's response thereto. The relevant motions and responses are the Motion for Emergency Equitable Relief Regarding Martin Correctional Institution and Motion for Contempt; Plaintiffs' Motion for Emergency Equitable Relief Regarding Inmates Providing Medical Care to Inmates, filed November 18, 1987; and defendant Dugger's Response to Plaintiffs' Motion for "Emergency" Equitable Relief Regarding Martin Correctional Institution. Additionally, this Order is premised on the Stipulation of Policy Re: Use of Inmates for Direct Patient Care,^{1/} filed November 19, 1987, by defendant Dugger, the Court's Medical Survey Team's interim report on Martin Correctional Institution, filed October 22, 1987, and defendant Dugger's response thereto, filed December 4, 1987.

Defendant Dugger's Response stated that corrective action had been voluntarily taken on various deficiencies set forth in a Field Report of a Department of Corrections team which reviewed Martin Correctional Institution, from August 31, 1987, to September 4, 1987. At page 5 of the Response, defendant Dugger invited a revisit by the Court's Medical Survey Team "to observe and report on corrective action subsequent to their August 9, 1987, visit and subsequent to the August 31, 1987, staff

1/ Said Stipulation was offered prior to defendant's knowledge that the plaintiffs had filed a motion seeking an injunction prohibiting the use of inmates for direct patient care.

assistance team visit and to determine if deficiencies remaining, if any, are reasonably attributable to this defendant."

The special master has conducted six separate proceedings relating to these motions: a Status Conference held at Ocala, Florida, on November 19, 1987; a Status Conference held at Tallahassee, Florida, on November 20, 1987; a Status Conference held on December 5, 1987, in Gainesville, Florida; a Status Conference held on December 9, 1987, in Jacksonville, Florida; a Status Conference held in Atlanta, Georgia, on December 13, 1987; and a Status Conference held on December 14, 1987, in Tallahassee, Florida.

Pursuant to the request of the parties at the Status Conference of November 20, 1987, the special master requested the Court's Medical Survey Team to review the medical care at the Martin Correctional Institution. This survey was conducted on December 1-3, 1987. Pursuant to agreement of the parties, the Survey Team was debriefed on December 5, 1987. The December 5 transcript reflects this debriefing.

Additionally, the Court bases this Consent Order upon the pleadings filed, the transcripts of the status conferences which have been filed, the admissions of defendant, as reflected herein, and upon the recommendations of the special master and the monitor.

The parties have also agreed that inmate health care workers have been impermissibly utilized at the Martin Correctional Institution, the Reception and Medical Center, the Florida Correctional Institution and the Avon Park Correctional

Institution in violation of established Departmental policy, as reflected in Stipulation of Policy Re: Use of Inmates for Direct Patient Care, filed November 19, 1987, and in violation of the Eighth Amendment of the United States Constitution.

Defendant Dugger hereby admits to violation of the Health Care Settlement Agreement, filed July 27, 1981, and made an Order of this Court on November 2, 1981, in the following specifics:

1. As said agreement relates to the provisions of medical care to inmates in confinement as recently as December 3, 1987;
2. In that adequate access to health care by licensed, medical personnel has not been provided at Martin Correctional Institution as recently as December 3, 1987.
3. In that policies and procedures established by the Central Office were not implemented and followed.

Notwithstanding the contrary policy of the Department, defendant Dugger acknowledges that, during the course of the mastership, inmates were permitted to provide medical care at Martin Correctional Institution, Avon Park Correctional Institution, the Reception and Medical Center and Florida Correctional Institution.

Defendant Dugger shall not object to this Order finding him in contempt for violation of the Consent Order, entered November 2, 1981, approving the Health Care Settlement Agreement. However, defendant Dugger reserves the right to present mitigating evidence to contest the magnitude or necessity of the sanctions,

if any, that the special master may recommend be entered by the Court.

Defendant Dugger assures the Court and the plaintiffs that he has the financial resources and authority to fully implement all injunctions agreed to in this Order except for those injunctions requiring defendant Dugger's best efforts to obtain additional appropriations which are found in subparagraphs 3(e), 3(n), 3(o), 3(r), and 3(pp), infra. For these items, the Secretary shall use his best efforts to obtain the necessary funding from the Legislature. Defendant Dugger shall immediately inform the Court and the plaintiffs of any conditions or impediments which prevent him from implementing the injunctions entered herein or any of the Orders entered in this litigation. In such event, the special master, without prejudice to the parties' rights, within the limits of the Order of Reference, shall determine the appropriate further proceedings, if any, that are necessary.

Defendant Dugger hereby agrees to the entry of an order joining him, in his individual, as well as in his official, capacity as a party defendant in this action. Defendant Dugger further stipulates that the course of this proceeding shall be regarded as if the Secretary of the Florida Department of Corrections has been a party to this action since its initiation, in both his individual and official capacities.

Defendant Dugger specifically acknowledges that these injunctions are entered pursuant to the Court's inherent power of contempt as a remedy for the contemptuous conduct admitted herein and that this Order shall in no way limit the Order of Reference previously entered by the Court.

Defendant Dugger has also consented to the entry of this remedial order. Unless otherwise indicated, all injunctive orders entered herein apply to the entire system of health care within the Department of Corrections.

Therefore,

IT IS HEREBY ORDERED, ADJUDICATED and ADJUDGED, that:

1. Defendant Dugger is hereby found to be in civil contempt of this Court's Order entered November 2, 1981, approving the Health Care Settlement Agreement.
2. IT IS FURTHER ORDERED that the special master shall submit a report and recommendation on the sanction or sanctions, if any, to be imposed.
3. Defendant Dugger is hereby permanently enjoined from failing or refusing to comply with the following specific injunctions. Such compliance shall be a process which is consistent with subparagraph 3(q) herein. The enumerated injunctions apply to the entire Department of Corrections' health care system unless specifically limited to the Martin Correctional Institution:

a. Utilizing inmates in the provision of any type of health care in the Florida Department of Corrections, except that inmates may continue to be used in housekeeping, food service and laundry functions and as assistants to physically handicapped inmates. A ~~dated~~ protocol for the utilization of inmates in these functions shall be developed. The protocol shall be written within twenty (20) working days and filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.

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b. Beginning immediately, Defendant Dugger shall enforce the medical protocols in place at all institutions which are not inconsistent with the Health Care Settlement Agreement or the Eighth Amendment of the United States Constitution and the Orders of this Court. Within thirty (30) days after the entry of this Order, and each thirty (30) days thereafter and for a period of twelve (12) months, the Regional Medical Directors shall personally certify the extent to which protocols have been complied with in their

respective regions during the preceding thirty (30) days. Said certification shall be made upon personal knowledge subject to contempt.

- c. Over-the-counter medication, such as aspirin or an aspirin substitute, shall be made available in all housing units, including confinement and general population, within sixty (60) days of the date of this Order. A detailed protocol, listing the exact medications made available and the procedures for their use and control, shall be written within thirty (30) days and filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.
- d. Without unreasonable delay, all inmates requiring non-routine or urgent x-rays shall have x-rays taken at an appropriate community hospital, or other site. Routine x-rays may still be handled at the institution where such inmates are housed, provided any abnormalities are immediately reported to the Chief Health Officer. All routine x-rays shall be furnished within a reasonable period

of time, as indicated by the medical condition.

e. At all institutions at which 600 or more inmates are housed and which house any inmates classified as medical grades III or IV, registered nursing coverage shall be provided 24 hours per day, 7 days per week./2/ If, due to his inability to employ sufficient numbers of registered nurses, Defendant Dugger is unable to provide 24-hour, registered nursing coverage, he shall provide, at a minimum, 16 hours per day of registered nursing coverage at said institutions. During the eight hours when a registered nurse is unavailable, the following precautions shall be taken:

- (1) Any individual requiring twenty-four (24) hour registered nursing care shall either be hospitalized or transferred to a facility where 24-hour registered nursing coverage is available.
- (2) After hours, i.e., other than during scheduled infirmary hours, telephone

/2/ Subparagraph 3(e) above is specifically applicable to Martin Correctional Institution.

calls received from confinement or general population relative to sick call or other medical requests shall be processed by the medical technicians, in accordance with Departmental protocols. Requests which require any medical evaluation or treatment exceeding that authorized by the Departmental Certified Medical Technician protocols shall be referred by the medical technician on duty to a licensed, medical professional at the registered nurse level or above who shall be on call for this purpose. Only a licensed medical professional at the registered nurse level or above shall make the evaluation. The medical technician shall not have the authority to decline to see an inmate.

Defendant Dugger shall use his best efforts to fill all nursing positions at said institutions necessary to provide 24-hour registered nursing coverage. In the interim, at least a Correctional Medical Technician - certified - or a licensed medical provider shall be on duty at all times.

- f. Within one hundred twenty (120) days of the date of this Order, each inmate and his record at the Martin Correctional Institution shall be reviewed by a physician and receive a physical examination of the scope required by his presenting symptoms, as determined by the reviewing physician. For each inmate, a problem list and a treatment plan shall be prepared. Indicated health care treatment shall be provided in accordance with the standard set forth in subparagraph 3(x), infra. Notice shall be provided of the identity of the service providers or corporations involved as soon as these identities are known.
- g. At the direction of the special master, the Court's Medical Survey Team shall review the physical examinations, record review, problem lists, and treatment plans referred to in the preceding subparagraphs 3(f) and in subparagraph 3(s), infra, to determine the adequacy of the same.
- h. The Chief Health Officer and Chief Nurse of the Martin Correctional Institution shall have 120 days to provide such education and training of their staff as may be necessary to bring health care delivery at Martin

Correctional Institution into compliance with the Department of Corrections protocols and procedures. Additionally, within this period of time, defendant Dugger shall make any necessary alterations in the maintenance or storage of health care records at Martin Correctional Institution to make said record system consistent with the standard set forth in subparagraph 3(x), infra.

- i. In all institutions other than Martin Correctional Institution, the Chief Health Officers shall have 180 days to provide such education and training of their staff as may be necessary to bring health care delivery at their respective institutions into compliance with the Department of Corrections new and existing protocols and procedures. Additionally, within this period of time, the defendant Dugger shall make any necessary alterations in the maintenance or storage of health records at each institution to make such record maintenance and storage consistent with the standard set forth in subparagraph 3(x), infra.
- j. On a fifteen (15) day basis for 120 days, the Chief Health Officer of Martin Correctional Institution shall report, in narrative detail

and under oath, the progress made towards obtaining complete compliance with Departmental policy and procedure and the Health Care Settlement Agreement.

- k. By December 31, 1987, defendant Dugger shall establish at Martin Correctional Institution chronic disease followup clinics, in accordance with the Central Office protocols, in at least the areas of tuberculosis, seizure disorders, hypertension, diabetes and such other areas as are medically indicated. Notification of the implementation of protocols shall be given to the plaintiffs and the Court upon their implementation. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.
- l. Within one hundred eighty (180) days of the date of this Order, defendant Dugger shall establish at all other Department of Corrections facilities chronic disease followup clinics, in accordance with the Central Office protocols, in at least the areas of tuberculosis, seizure disorders, hypertension, diabetes and such other areas as are medically indicated. The protocols

shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.

m. If the defendant Dugger wishes to amend the protocols and procedures currently in place in the Department, he may do so. However, either before implementation or simultaneously with implementation, defendant Dugger shall give written notice to the special master, the monitor and counsel for the plaintiffs. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.

n. Within twenty (20) days, defendant Dugger shall submit a plan to increase the amount of medical space at Martin Correctional Institution to conform to the minimum guidelines established in defendant's amended Comprehensive Health Services Plan, proposed Vol. II, November 23, 1987. Defendant Dugger admits that the space currently provided is inadequate in that the space does not meet the Department's own standard. However, no injunctive order regarding the construction

of additional space shall be entered at this time.

- o. Within 180 days, defendant Dugger shall submit a plan to increase the amount of medical space at the other major institutions to conform with the minimum guidelines established in defendant's amended Comprehensive Health Services Plan, proposed Vol. II, November 23, 1987. Said Plan shall be prioritized as to the institutions which shall be addressed. Defendant Dugger admits that the space currently provided in a number of defendant's institutions, as reflected in the proposed Comprehensive Health Services Plan, proposed Vol. II, November 23, 1987, is inadequate in that the space does not meet the Department's own standard. However, no injunctive order regarding construction of additional space shall be entered at this time. Nevertheless, defendant shall exert his best efforts to obtain appropriate funding to make the renovations required by this subparagraph and subparagraph 3(o) above.

- p. The Court's Medical Survey Team shall re-audit the Martin Correctional Institution 120 days from the date of this Order and thereafter at the direction of the special master.
- q. Defendant Dugger shall take whatever action is necessary to make the Assistant Secretary for Health Services "the ultimate authority in the Department for health care decisions."
- r. All correctional medical technician (CMT) positions shall be filled only with licensed practical nurses or with a health professional with a higher level of licensure. If, due to his inability to employ licensed practical nurses, defendant Dugger is unable to fill such positions with licensed practical nurses, he may fill such positions with Correctional Medical Technicians-Certified. A Correctional Medical Technician-Certified shall be a licensed practical nurse with two years of experience in providing health support services in a hospital, clinic, infirmary, nursing or convalescent home, or a certified Emergency Medical Technician or certified Paramedic with two years of experience in providing health support services in a

hospital, clinic, infirmary, nursing or convalescent home, or ambulance or rescue service.

Defendant Dugger shall use his best efforts to fill all such positions with licensed practical nurses or health professionals with a higher level of licensure. Defendant Dugger shall offer certification training to non-certified CMT's presently employed. Non-certified applicants for CMT shall not be hired after the date of this Order. The CMT position shall be eliminated from the Department of Corrections' personnel listings as incumbents leave the system through attrition.

- s. Within one hundred twenty (120) days of the date of this Order, each inmate who has been transferred from Martin Correctional Institution within the sixty (60) days (October 1, 1987, through December 1, 1987) who was housed at Martin Correctional Institution for 14 days or more shall be reviewed by a physician and receive a physical examination of the scope required by his presenting symptoms, as determined by the reviewing physician. For each inmate, a problem list and a treatment plan shall be

prepared. Indicated health care treatment shall be provided in accordance with the standard set forth in subparagraph 3(x), infra. Within ten (10) business days of the date of this Order, a document reflecting all transfers from Martin Correctional Institution within the relevant time period shall be furnished to the Monitor.

t. Within ninety (90) days of the date of this Order, procedures to assure adequate access to health care, including sick call, shall be developed and implemented at the Martin Correctional Institution. The procedures shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.

u. Within ninety (90) days of the date of this Order, procedures to assure adequate access to health care, including sick call, shall be developed and implemented at all Department of Corrections facilities. The procedures shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections

with the Court. The special master shall resolve such objections.

- v. New policies with regard to the utilization of medical technicians at the Martin Correctional Institution shall be developed and implemented within ninety (90) days of the date of this Order. The policies shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.
- w. New policies with regard to the utilization of medical technicians at all Department of Corrections facilities shall be developed and implemented within ninety (90) days of the date of this Order. The policies shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.
- x. The system for the delivery of health care provided by defendant Dugger shall be in accordance with the commonly accepted standards within the professional health community at large. Individual instances of

delivery of health care to an inmate falling below the commonly accepted standards within the professional health community at large are not, per se, a violation of this Consent Order or the 1981 Health Care Settlement Agreement.

The preceding sentence is not intended to abridge or in any way limit any inmate's right to bring an individual damage action or actions for any other relief.

The scope of the interim/3/ and final surveys of the Medical Survey Team/4/ shall be limited to ascertaining the progress in the implementation of the terms of the Health Care Settlement Agreement; the Comprehensive Health Services Plan of June 30, 1982; compliance with this Order; the other orders in this cause; and ascertaining at the time of such surveys whether the health care delivery system, or any part thereof, operates in a manner that constitutes systematic or deliberate indifference to the

/3/ No additional Court-approved charge shall be required except for the final survey.

/4/ This Order does not contemplate or address in any way the outstanding mental health issues in this cause.

serious medical needs of inmates. This subparagraph 3(x) or any other part of this Order in no way modifies the Order of Reference previously entered by the Court.

- y. All Departmental rules, regulations, policies, procedures and health plans relating to or governing health care shall be drafted and enforced by the defendant Dugger, consistent with the standard set forth in subparagraphs 3(q) and 3(x) above.
- z. Within sixty (60) days of the date of this Order, defendant Dugger shall review and develop such policies and procedures which shall ensure the ongoing evaluation of the Chief Health Officers and the complete implementation of Departmental policies and procedures at each Departmental facility. The policies and procedures shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections. The special master and monitor are directed to closely monitor defendant's implementation of the management review system which shall assure all parties

concerned that Departmental policy and procedure are, in fact, being implemented.

- aa. The Chief Health Officer at Martin Correctional Institution shall receive adequate direction and training from the Central and Regional Offices. A summary of that direction and training shall be submitted to the Court within forty-five (45) days of the date of this Order. Special attention shall be given to quality assurance and sick call screening protocols and supervision.
- bb. Defendant Dugger shall take all possible steps to fill existing health care vacancies at Martin Correctional Institution as expeditiously as possible. Until all positions are filled, defendant's agent, the Bureau Chief for Personnel of the Department of Corrections, shall submit, on a fifteen (15) day basis and under oath, a report on his efforts to fill these positions.
- cc. Within thirty (30) days, all medical technicians shall be trained in using protocols and shall be supervised pursuant to such protocols.

- dd. Confinement screening shall be performed at a consistent time each day. The medical representative (MD, PA, RN, LPN, CMT) shall have his or her presence announced and shall have individual contact with each inmate.
- ee. Sufficient staff shall be available at all times to escort inmates to the medical unit or to outside medical care when needed.
- ff. Controlled substances shall be stored under double lock at Martin Correctional Institution.
- gg. Beginning immediately, there shall be separate infirmary records, with physician/clinical associate admission, progress and discharge notes for each infirmary admission.
- hh. Within thirty (30) days of the date of this Order, the isolation rooms at Martin Correctional Institution shall be retrofitted for suicide watch.
- ii. Within ninety (90) days of the date of this Order, the isolation rooms at all Department of Corrections facilities shall be retrofitted for suicide watch.
- jj. CPR trained and certified health care staff shall be present on each shift and designated to respond to emergencies.

kk. Within ninety (90) days of the date of this Order, all health care staff shall be CPR-trained and certified. Said certification shall be obtained for new members of the health care staff and maintained for existing members of the health care staff.

ll. Within thirty (30) days of the date of this Order, one-way breathing masks or Ambu bags for the administration of CPR shall be located at appropriate locations throughout the Martin Correctional Institution.

Placement of the masks or Ambu bags shall be reflected in a protocol. The protocol shall be filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any objections with the Court. The special master shall resolve such objections.

mm. Within one hundred eighty (180) days of the date of this Order, one-way breathing masks or Ambu bags for the administration of CPR shall be located at appropriate locations throughout all Department of Corrections facilities. Placement of the masks or Ambu bags shall be reflected in a protocol which shall be filed with the Court. Within twenty (20) working days after receipt, plaintiffs

shall file any objections with the Court.
The special master shall resolve such
objections.

nn. Within twenty (20) days of the date of this
Order, a protocol shall be written and
training provided for the use, maintenance
and inventory of the crash cart and the
emergency response procedure at Martin
Correctional Institution. The protocol shall
be filed with the Court and counsel. Within
twenty (20) working days after receipt,
plaintiffs shall file any objections with the
Court. The special master shall resolve such
objections.

oo. Within ninety (90) days of the date of this
Order, a protocol shall be written and
training provided for the use, maintenance
and inventory of the crash cart and the
emergency response procedure at all
Department of Corrections facilities. The
protocol shall be filed with the Court and
counsel. Within twenty (20) working days
after receipt, plaintiffs shall file any
objections with the Court. The special
master shall resolve such objections.

pp. All sanitation deficiencies in the kitchen area at Martin Correctional Institution which do not require additional appropriations and which are cited in the report of the Medical Survey Team of August 9-11, 1987, and in the October 9, 1987, exit interview with the Departmental review team, shall be corrected within thirty (30) days of the date of this Order. To the extent the cost exceeds existing appropriations, defendant Dugger shall use his best efforts to obtain the necessary funding from the Legislature.

qq. A formal review of each death shall be done by the medical staff as part of the quality assurance program.

rr. Within five (5) ^{working} days of the date of this Order, a protocol for the appropriate distribution of keys to the emergency room and crash cart at Martin Correctional Institution and access thereto shall be developed and implemented. The protocol shall be ~~written~~ filed with the Court and counsel. Within twenty (20) working days after receipt, plaintiffs shall file any

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WAS, SJS, DAS
12-18-87

objections with the Court. The special master shall resolve such objections.

DONE AND ORDERED at Jacksonville, Florida, this 18 of Dec, 1987.


SUSAN H. BLACK,
United States District Judge

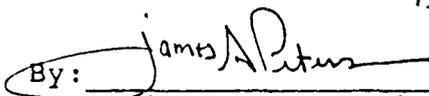
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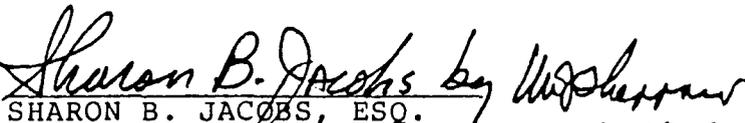

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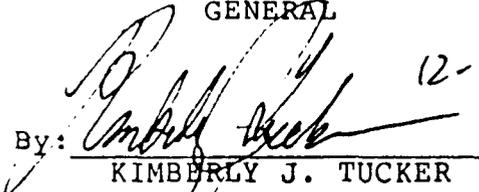
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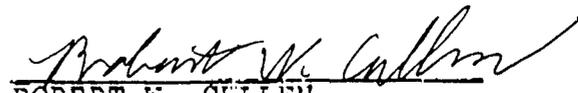
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