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Expert opinions and standards recommended by government agencies and professional associations are helpful to the Court's constitutional analysis but not determinative in evaluating the specific conditions of confinement. Rhodes v. Chapman, 452 U.S. at 348 n.13, 69 L.Ed.2d at 70 n.13.[5]

Constitutionality Of Double Bunking

Under the federal constitution, the United States Supreme Court has held that "double bunking" or "double celling" of convicted and sentenced prisoners is not per se unconstitutional. Rhodes v. Chapman, 452 U.S. at 348, 69 L.Ed.2d at 70. To the same effect, the Court held in Bell v. Wolfish, 441 U.S. 520, 541, 60 L.Ed.2d 447, 470 (1979) that double celling of pretrial detainees is not per se unconstitutional. In addition to double celling, the Court in those cases looked to such additional factors as the size and contents of the cells, the number of inmates housed in each cell, the average length of a prisoner's stay in the overcrowded conditions, the frequency and length of time inmates are allowed out of their cells, the availability and quality of dayroom and other space available for inmates' use, and the adequacy of plumbing and ventilation facilities. Rhodes v. Chapman, 452 U.S. at 340, 69 L.Ed.2d at 65; Bell v. Wolfish, 441 U.S. at 543, 60 L.Ed.2d at 471. The Court, "employ[ing] common sense, observation, expert testimony, and other practical modes of proof," also "examine[d] the actual effect of challenged

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[5]Numerous professional association standards, setting forth minimal space requirements per prisoner, have been cited by plaintiffs and discussed by some expert witnesses at trial. These include standards set by organizations such as the Department of Justice, the American Public Health Association, the Commission on Accreditation for Corrections and the National Sheriff's Association. The standards recommended variously between 50 and 80 square feet of living space per prisoner, depending on other conditions. See plaintiffs' proposed findings of fact and conclusions of law at 37-39. As the United States Supreme Court commented in Rhodes v. Chapman, 452 U.S. at 348 n.13, 69 L.Ed.2d at 70 n.13 ("'[T]hey simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question.'")

conditions upon the well-being of the prisoners." Rhodes v. Chapman, 452 U.S. at 367 (Brennan, J. concurring) (emphasis in original).[6]

This Court interprets Alaska's cruel and unusual punishment clause, Article I, §12, and due process clause Article I, §7, in a like manner, and holds that under Alaska's Constitution, double celling is not per se unconstitutional. Rather, additional factors, such as those delineated above, must be examined.

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[6]An example of an overcrowded prison situation which did not reach constitutional dimension is the situation considered by the Supreme Court in Rhodes v. Chapman. Conditions there were described as follows:

> SOCF was built in the early 1970's. In addition to 1,620 cells, it has gymnasiums, workshops, schoolrooms, 'dayrooms,' two chapels, a hospital ward, commissary, barbershop, and library. Outdoors, SOCF has a recreation field, visitation area, and garden. The District Court described this physical plant as 'unquestionably a top-flight, first-class facility.'
>
> Each cell at SOCF measures approximately 73 square feet. Each contains a bed measuring 36 by 80 inches, a cabinet-type night stand, a wall-mounted sink with hot and cold running water, and a toilet that the inmate can flush from inside the cell. Cells housing two inmates have a two-tiered bunk bed. Every cell has a heating and air circulation vent near the ceiling, and 960 of the cells have a window that inmates can open and close. All of the cells have a cabinet, shelf, and radio built into one of the walls, and in all of the cells one wall consists of bars through which the inmates can be seen.
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> The 'dayrooms' are located adjacent to the cellblocks and are open to inmates between 6:30 a.m. and 9:30 p.m. According to the District Court, '[t]he day rooms are in a sense part of the cells and they are designed to furnish that type of recreation or occupation which an ordinary citizen would seek in his living room or den.' Each dayroom contains a wall-mounted television, card tables, and chairs. Inmates can pass between their cells and the dayrooms during a 10-minute period each hour, on the hour, when the doors to the dayrooms and cells are opened.
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> . . . .
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> At the time of trial, SOCF housed 2,300 inmates, 67% of whom were serving ... long-term sentences ... . Approximately 1,400 inmates were double celled. Of these, about 75% had the choice of spending much of their waking hours outside their cells, in the dayrooms, school, workshops, library, visits, meals, or

(Footnote Continued)

In general, the Court finds that on the record before it, the single largest and most serious problem facing defendants and DOC is defendants' ability to continue to provide constitutionally adequate housing, staffing and programming resources to Alaska's burgeoning prison population. This difficulty is reflected most clearly in defendants' necessity to double cell or double bunk many of its cells in its institutions in order to keep abreast of the escalating prison population. At

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(Footnote Continued)

showers.

452 U.S. at 341-42 (citations and footnote omitted).

In contrast, the court in French v. Owens, 538 F.Supp. 910 (S.D. Ind. 1982), a post - Rhodes case, found prison conditions in the Indiana Peformatory to be unconstitutionally crowded. The court described the conditions there as follows:

> The cells in G and H cellhouses contain 44 square feet, and cells in J cellhouse contain 47.6 square feet. The cells have three solid walls and a barred front. Each cell contains a sink with cold running water, an uncovered toilet, one or two lockers, and one or two beds. The furniture and fixtures take up half the floor space. The back of each cell contains a 96 square inch grate with 12 to 15 holes in it, which is to serve as a ventilation duct. The grates are not cleaned and are clogged with dirt and lint.
>
> The living quarters do not have adequate positive ventilation systems. The heat comes into the cellhouses in the lower part of the outside walls. There is no mechanism to disperse the heat to the cells. There is no summertime forced-air system to the cells. The cold and hot air systems are inadequate. For the most part the manipulation of the windows and the heating systems in the living quarter is the method of ventilation control. Many of the window opening and closing devices are defective. Consequently many windows must be sealed in the winter, disallowing any opportunity for manipulation when it is found necessary. The cells are too cold in winter and too hot in summer.
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> . . .
>
> In general, in-cell lighting is inadequate.
>
> . . .
>
> Moreover, we find that no cells contain hot water, the plumbing is cracked and dirty to the point that it cannot be made completely clean, and the number of showers in both the cellhouses and dormitories is inadequate ... . The kitchen is unsanitary and cannot be sanitized because of physical deterioration; it would be condemned were it not operated by the State.

(Footnote Continued)

trial, for example, evidence established that the design capacity of CIPT was approximately 180 prisoners (single cell occupancy). When the institution opened in February, 1983, the population at CIPT already exceeded its design capacity. At the time of the July, 1984 hearing, the population of the institution had risen to 282 prisoners. And, with double celling throughout the institution, CIPT's prisoner population was projected, at the July, 1984 hearing, to be 391 prisoners. Indeed, with future expansion, CIPT's population may rise as high as 424. This extraordinary population growth experience of CIPT is, in a sense, reflective of the population pressures and problems faced by defendants throughout the entire Alaska correctional system.

At the same time, expert testimony at trial, by witnesses called by both parties, was nearly unanimous in criticizing the practice of double bunking cells. See, e.g., testimony of T. D. Hutto, 2/6/84, tape G-1475, log numbers 370, 2167,

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(Footnote Continued)

> ... The cell houses contain no day room or equivalent space for exercise/movement/recreation, so the several hundred inmates in idle-hold and administrative segregation, including self-lockups, are required to spend from 20 to 23 hours per day locked in their cells ... . There is inadequate staff supervision to insure the safety of committed individuals.
>
> It is in this environment that we find 336 double cells, providing each occupant with from 22 to 23.8 square feet of space, less that taken up by the beds, the lavatory, and the commode. All dormitories are double bunked, which allows an average of 55.8 square feet per prisoner, less that taken up by the bunks, day rooms, toilets, lavatories and showers. All witnesses, including the defendants' experts, agree that the prison is severely overcrowded and that such overcrowding, in particular the dou lecelling and double bunking, coupled with all of the other conditions in evidence, has caused the confined persons unusual stress, discomfort, aggravation, and pain.
>
> This Court finds that the present overcrowding of the institution, coupled with all of said other conditions, considered as a whole, constitutes cruel and inhuman treatment of its inmates, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

539 F.Supp. at 913-914, 925-926.

2306. Experts explained that double bunking relatively small cells had the effect of increasing tensions between occupants of the cells, further diminishing the limited privacy of prisoners, and making inmate-staff relations more difficult. See, e.g., testimony of Stanley Brodsky, 1/27/84, tape G-1469, log number 2949. Collectively, the effect of double celling on an institution's overall population is, of course, to significantly increase that institution's population. Experts observe that such increases would tax already-strained staffing and programming resources, and could create further tensions and even violence in the institutions. See, e.g., testimony of William G. Nagel, 1/26/84, tape G-1469, log numbers 840, 1072.

Nevertheless, applying the foregoing constitutional analysis to the facts in the instant case, the Court finds and concludes that, except as otherwise noted below, defendants' institutions are not currently unconstitutionally overcrowded. Stated differently, the Court concludes that at present, the current populations in Alaska's institutions, except as noted below, do not presently amount to cruel and unusual punishment or punishment under either the Eighth Amendment and Fourteenth Amendment to the United States Constitution or Article I, §12 and Article I, §7 of the Alaska Constitution. The Court emphasizes that its findings and conclusions in this regard are based on the conditions existing at time of trial. As discussed below, however, the Court has serious concern about the adequacy of defendants' housing conditions in the very near future.

Defendants' Population Projections

At trial, both plaintiffs and defendants presented extensive testimony about future population projections for Alaska's correctional institutions, and defendants' capital improvement plans to meet future requirements.

More specifically, in testimony and exhibits offered at trial, principally by Assistant Commissioner of Corrections Kevin Bruce, defendants projected future growth of inmate populations at Alaska's correctional institutions at the static rate

of 25 net per month, or 300 net per year, for the next three years. Testimony of Kevin Bruce, 2/2/84, tape G-1471, log numbers 2368-2408; testimony of Susan Knighton, 2/13/84, tape G-1496, log numbers 165-431; testimony of Roger Endell, 7/23/84, tape G-1496, log number 1689. The Court is not persuaded that these figures are reliable or realistic for several reasons.

First, defendants' projections stand in striking contrast to the growth pattern actually experienced over the last several years. Commissioner Endell testified as to the "dramatic increase" and "tremendous growth" of prisoners which has made population pressure the most critical problem facing DOC. Testimony of Roger Endell, 2/3/84, tape G-1474, log numbers 1612, 1748. Thus, for example, defendants' Exhibit A shows an increase of from 581 to 1380 inmates, or 138%, in Alaska prison population from 1979 to mid-September, 1983. Moreover, Endell stated that he "definitely" expected this pattern to continue "for quite some time," absent changes in law or policy. Id. at 612.

Defendants' exhibits illustrate that this increase has been geometric, not linear. The monthly DOC Activity Summaries in Exhibit C show these increases in average instate population:

Jan. 1979 - Jan. 1980	34
Jan. 1980 - Jan. 1981	69
Jan. 1981 - Jan. 1982	206
Jan. 1982 - Jan. 1983	315
Jan. 1983 - Nov. 1983	334 [10 months] Id.

Similarly, Exhibit IJ shows increases in total inmate population as follows:

FY 80-81	92
FY 81-82	189
FY 82-83	260
FY 83-84	417[7]

It is not clear to the Court why this geometric trend should now, without explanation, yield to a three year period of static or linear growth.

Secondly, the Court notes apparent inconsistencies in the population statistics presented by defendants. Assistant Commissioner Kevin Bruce testified at trial that the figure of a 25 per month net increase in prison population was drawn from a base period of March, 1982, to March, 1983. Testimony of Kevin Bruce, 2/3/84, tape G-1474, log number 209. This corresponds to the figures in Exhibit C which show an increase of 316 instate inmates for this period. However, the last 12 month period covered by Exhibit C, from November 1982 to November 1983, shows an increase of 360 instate inmates. Id.

Similarly, defendants' Exhibit MH, offered at trial in January 1984, projected a prison population of 1569 by July, 1984. However, DCC Research Analyst Susan Knighton testified on July 13, 1984 that the actual average population in June, 1984 was 1606. Testimony of Susan Knighton, 7/13/84, tape G-1496, log number 416. Moreover, this actual figure reflected in part the release of prisoners through commutation; the average population for May was 1631. Id. at 374.

Additionally, the six month average growth figure of 21.3 for the first half of 1984 cited by Knighton in the July hearings is apparently not even supported by her own monthly

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[7]While this exhibit includes prisoners housed under contract by the FBOP, the number of these prisoners increased only from 163 in January 1980 to 197 in November 1983. See Exhibit C.

figures given in testimony. The figures in fact reflect an average increase of 30 inmates per month.[8] Id.

Such discrepancies suggest that the 25 per month increase forecast made by Assistant Commissioner Bruce at trial is unreliable and perhaps seriously understates future population increases.

Finally, and perhaps most importantly, defendants' figures admittedly have not taken into account the longer incarceration terms mandated by Alaska's presumptive sentencing statutes. See testimony of Kevin Bruce, 2/3/84, tape G-1474, log numbers 256-382; testimony of Roger Endell, Id. at 1612-1673; testimony of Susan Knighton, 7/13/84, tape G-1496, log number 409.

These laws have had a critical impact on growth of prison populations in Alaska. Commissioner Endell noted "a very definite reflection in increase in inmates coming into the system as related to the sentencing practice change," as well as "ample evidence to indicate prisoners are also staying longer." Id.[9] Testimony of Roger Endell, 2/3/84, tape G-1474, log number 1632. However, while effects of presumptive sentencing may be reflected in defendants' projections in the form of increased admissions into correctional institutions, the decreased outflow resulting from longer mandatory incarceration apparently is not.

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[8]Knighton noted the following population changes:

Dec. - Jan.	increase of	75
Jan. - Feb.		57
Feb. - Mar.		57
Mar. - Apr.		10
Apr. - May		11
May - June	decrease of	30 Id.

Net gain: 180. Average: 30.

[9]The Court takes judicial notice of the fact that under Alaska's presumptive sentencing scheme, inmates are generally sentenced to longer periods of incarceration, and will in fact serve longer terms. Under the scheme, inmates must serve all but statutory good time. Thus, for example, an inmate presumptively sentenced for eight years must serve at least six years of his term. In the absence of presumptive sentencing, the inmate might be eligible for parole in 2½ to 3 years.

Without reliable figures on the average duration of mandatory sentences and the number of inmates serving them, any population projection will be speculative and unreliable at best. In particular, the Court finds that defendants' prison population projections do not fully reflect the total future populations resulting from inmates serving longer presumptive sentences. Defendants' figures are derived from a base period of 1982 to early 1983, which was not far removed from the inception of presumptive sentencing in 1980. See testimony of Kevin Bruce, 2/3/84, tape G-1474, log number 209; AS 12.55.125-175. Significantly, the Court notes that no evidence was adduced at trial that the cumulative impact of such longer sentences on prison populations had by that time, or indeed has yet, levelled off.

At the July, 1984 hearing, Commissioner Endell stated his belief that "it is absolutely essential that a scientific research study be undertaken as quickly as possible to evaluate the impact of presumptive and mandatory sentencing statutes." Testimony of Roger Endell, 7/13/84, tape G-1496, log number 1059. The Court agrees, and has ordered defendants to perform just such a study.

Defendants' Future Housing Plans

Much testimony at trial also centered on DOC's plans to meet the rising needs for housing capacity in Alaska's correctional institutions. The Court again finds defendants' evidence unreliable and lacking in credibility, for several reasons.

First, the Court notes that, whatever the future prison population figures may turn out to be, it is undisputed that Alaska's prisons are in a continuing period of unprecedented growth. Moreover, the current situation is such that unacceptable overcrowding beyond the system's maximum capacity is, at times, prevented only through the implementation of the Governor's emergency commutation program. See e.g., testimony of Kevin Bruce, 2/2/84, tape G-1471, log numbers 2624-2651, 2803,

2889. It is against this backdrop that defendants' capital improvements program must be viewed.

In testimony at the July, 1984 hearing, Commissioner Endell acknowledged "there have been delays in nearly all our projects." Testimony of Roger Endell, 7/13/84, tape G-1496, log number 1417. The Court agrees and finds in particular that significant delays have been encountered in the construction of new facilities at Anvil Mountain (Nome), Bethel, and Goose Bay; that renovations in existing institutions such as Wildwood have been slower than anticipated; and that by the time of the July, 1984 hearing, the prospective on-line date of the major new Spring Creek facility at Seward had already been moved back at least six months from the original date forecast at trial in January, 1984. See defendants' Exhibit MH; testimony of Roger Endell, 7/13/84, tape G-1496, log numbers 1384-1428, and 7/23/84, tape G-1496, log numbers 2140-2216.

Such delays may be inherent in the construction process and no fault of the DOC. Nevertheless, the cumulative effect of such construction delays is to exacerbate an already critical housing situation.

Secondly, the Court notes the drastic reduction of DOC's optimistic capital improvements plan offered at trial, in light of the limited funds appropriated to DOC by the 1984 legislature.

Defendants sought funding from the 1984 legislature for an ambitious program of capital improvements, totalling $112,000,000, to be expended over three years. Testimony of Kevin Bruce, 2/2/84, tape G-1471, log numbers 2681. The centerpiece of this program was to be construction of the 704-bed, medium and maximum security Spring Creek facility at Seward. Commissioner Endell testified that the Seward prison was, in the long run, the key to accommodating Alaska's spiraling prison population growth. Testimony of Roger Endell, 2/3/84, tape G-1474, log number 2348.

Completion of the capital improvements projects was to effect widespread improvements in the present filled-to-capacity system. The antiquated and dilapidated Third Avenue and Ridgeview institutions were to be closed early in 1985, if not earlier. Testimony of Kevin Bruce, 2/2/84, tape G-1471, log numbers 2570, 2591; testimony of Roger Endell, 2/3/84, tape G-1474, log number 2995. Double bunking of existing facilities would be ended. Testimony of Kevin Bruce, 2/2/84, tape G-1471, log number 2613. Finally, the approximately 200 Alaska felons currently housed under contract by the FBOP were to be returned to Alaska institutions, as earlier stipulated in this case.[10] Id.; see Settlement Agreement With Respect To Sub-Class C, approved on February 4, 1982.

However, the 1984 legislature approved funding for construction of only a 320 bed prison at Seward, 384 beds less than requested. Testimony of Roger Endell, 7/13/84, tape G-1496, log numbers 611, 788.

As a result, DOC has rescinded its plans to close Third Avenue. Id. at 1106. Ridgeview will remain open in its present capacity for at least three more years. Id. at 1155. Double bunking will be continued and in fact increased, as for example at CIPT. Id. at 1319. The return of Alaska felons in the FBOP is now in doubt. Id. at 907. In short, prospects for real improvement in the status quo are now much bleaker than DOC anticipated at trial.

Yet, despite the foregoing setbacks in construction deadlines and in capital projects funding, DOC still projects increases in bed capacity of 408 in FY 85, 179 in FY 86, and 340 in FY 87. Testimony of Roger Endell, 7/13/84, log numbers 659. Considered together with defendant's 300 per year predicted net increase in inmates for this period, these additions supposedly

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[10] As noted above, the issue of whether defendants have violated this settlement agreement is the subject of another proceeding. The Court expresses no opinion on the merits of this issue.

will create, according to defendants, bed surpluses of 169-209 for FY 85, 69-113 for FY 86, and 134-178 for FY 87. Id.

But even accepting defendants' prison population projections of a net increase of 900 prisoners over 3 years, defendants' present housing expansion plans project a total 3-year increase of only 927 new beds -- barely enough to keep pace with defendants' own projections.

On the basis of the record at trial, the drastic reduction in future housing plans between trial and the July, 1984 hearing, significant construction delays in existing expansion projects, and past difficulties in obtaining requested funding for capital projects from the legislature, the Court is frankly unpersuaded that defendants' future housing plans are credible, and that defendants will in fact be able to accommodate Alaska's burgeoning prison population.

Presumptive Population "Caps" Adopted

In assessing the constitutionality of inmate housing in Alaska's correctional institutions, the Court relies both on its own firsthand observations obtained from its tours of all state prisons and on the extensive testimony and exhibits offered at trial, including the opinions of several expert witnesses. In particular the Court finds the testimony of defense expert T. D. Hutto to be objective and credible, in part because of his in-depth familiarity with Alaska institutions accuired in preparation of a 1982 Consultant's Report on DOC population capacity. See defendants' Exhibit D. The Court also notes that both plaintiffs and defendants have substantially relied upon Hutto's testimony in their proposed findings and conclusions.

As stated above, the Court has applied the "totality of the conditions" test to determine if there is constitutionally impermissible overcrowding in Alaska prisons. Although the Court has found and concluded that defendants' institutions were not, at the time of trial, unconstitutionally overcrowded, the

Court further finds that Alaska institutions are essentially filled to their housing capacities.

Conflicting evidence was presented at trial on the concepts of housing "capacities." Various witnesses testified regarding "design capacity," "operating capacity," "extended capacity," "total capacity" and "emergency capacity." Whatever terminology was used, however, the experts were generally in agreement that in order to effectively operate and administer institutions, prisons should be somewhat less than completely full, i.e., having every single bed in the institution, whether infirmary, segregation or general residential beds, filled. Thus, for example, defendants' expert witness Allen Lee Ault expressed the opinion that maximum capacity should be set at the design capacity of an institution. Testimony of Allen Lee Ault, 2/1/84, tape G-1473, log number 1491. Similarly, defendants' expert, William Nagel, stated his opinion that any use of an institution beyond its design capacity was overcrowding, as was any double bunking. Testimony of William Nagel, 1/26/84, tape G-1473, log number 1072.

However, as Assistant Commissioner Bruce testified, and the example of CIPT noted above indicates, the design capacity of an institution often represents an "optimum" or ideal housing capacity rather than an actual one as extra beds are often installed. See testimony of Kevin Bruce, 2/2/84, tape G-1471, log number 2441.

As expert witness T. D. Hutto noted in his 1982 Consultant's Report,

> An erroneous, but all too persistent myth, is that correctional facility capacities are determined by the number of beds that can be crowded into "X" amount of space and that the number of beds equals population capacity ...
>
> Most experienced correctional administrators would agree that it becomes increasingly difficult to fulfill the institution's obligation to public safety when 95% of the beds are filled and some would place this figure as low as 85%.

> In setting capacities, then, it is necessary to determine the number of beds which the facility and its resources will adequately accommodate and to recognize that capacity is reached prior to the actual filling of all beds.

Defendants' Exhibit C at 2.

Defendants' expert Peter Travisano similarly testified that it is considered preferable to operate an institution at 10-15% below its rated, or total, bed capacity. Testimony of Peter Travisano, 1/24/84, tape G-1466, log number 2727.

In the instant case, defendants offered their own definitions of "operating capacity" and "extended capacity." According to Assistant Commissioner Kevin Bruce, "extended capacity" connotes that circumstance which gives rise to an emergency overcrowding situation and which is "the level at which it becomes increasingly difficult to house inmates." Testimony of Kevin Bruce, 2/2/84, tape G-1471, log numbers 2408-2454. "Extended capacity," according to Bruce, includes multiple bunking or celling wherever possible in residential areas as well as single celling in infirmary and segregation cells. Id. Defendants define "operating capacity" as generally being 95% of "extended capacity." As noted above, a number of experts have set the effective operating level of a prison at significantly less than 95% of its total bed space capacity.

According to defendants' Exhibit MH, offered at trial in January, the "operating capacity" of Alaska's correctional institutions was 1413; the actual population was 1441; and the "extended capacity" was 1487. Id. The Court thus finds that, at the time of trial, Alaska's prison system was thus beyond "operating capacity."

The Court also finds that severe overcrowding has already caused defendants to implement the Governor's emergency commutation plan. See testimony of Kevin Bruce, 2/3/84, log number 2624. Further, approximately 200 Alaskan felons remain housed in the FBCP because there is no room for them in the this

state. See testimony of Roger Endell, 7/13/84, tape G-1496, log number 907.

Not only is Alaska's prison system basically filled to its present capacity, but, as discussed further below, such present capacity is based on some housing situations which the Court and expert witnesses found to be undesirable, and even unconstitutional. Among these undesirable situations are the use of large dormitory-housing arrangements, the double bunking of cells, the use of outdated facilities at Third Avenue and Nome, and the housing of prisoners in nonresidential areas at MCCC and HMCC. Regarding these undesirable housing situations, T. D. Hutto disapproved of double bunking and was critical of the outmoded Third Avenue facility, the dormitories at Lemon Creek, and inadequate staffing at CIPT, Meadow Creek and Ridgeview. Id. at 1258, 2167, 1346, 1168, 1728.

In view of the Court's finding that defendants' facilities are already filled beyond their operating capacities, the Court also finds and concludes that any overcrowding beyond the total regular residential housing capacity or such institutions presumptively presents constitutionally impermissible housing conditions. Moreover, for reasons stated above, the Court finds that the rapid growth in inmate population could give rise to such an unconstitutional situation in the immediate or very near future.

Accordingly, while not ordering reductions in present prison populations, the Court finds and concludes that it is necessary to adopt presumptive population "caps" or ceilings for Alaska's correctional institutions and its state-wide system which may not be exceeded without the permission of the Court. That is, the Court is adopting population caps beyond which housing conditions will be deemed to be presumptively unconstitutional, unless otherwise demonstrated to the Court.

Population caps have been widely recognized as an appropriate equitable remedy to rectify constitutionally problematic housing conditions in prison cases. "[P]opulation

caps ... are ... proper and necessary to afford inmates ... constitutionally adequate conditions of confinement." Benjamin v. Malcolm, 564 F.Supp. 608, 688 (S.D.N.Y. 1983). Indeed, population caps have previously been judicially imposed in Alaska in a prior prison case. Such a limit was set for the 6th and C correctional facility in Anchorage by the Alaska Superior Court in Mosely v. Beirne, Case No. 3AN-76-1899 (Singleton, J.) See also Duron v. Elrod, 713 F.2d 292 (7th Cir. 1983), French v. Owens, 538 F.Supp. 910 (S.D.Ind. 1982), Gross v. Tazewell County Jail, 533 F.Supp. 413 (S.D.W.Va. 1982); testimony of William G. Nagel, 1/26/84, tape G-1469, log numbers 1137-1242.

In setting these presumptive population "caps," the Court has relied on defendants' "FY 84 Current Operating Capacity" figures, as detailed in the DOC capital budget report of July 13, 1984. Plaintiffs' Exhibit 2, 7/13/84 summarized on the following page, for institutions actually in operation as of the July, 1984 hearing. The population caps adopted for each institution reflects the total number of regular residential beds available in each institution (i.e., "general housing" beds), exclusive of "special beds" (such as infirmary beds and administrative or punitive segregation cell bunks) and temporary bedding (such as cots or mattresses on the floor).[11]

As explained more fully in the accompanying order, the Court has adopted such presumptive population caps for each institution and for the entire state-wide prison system on a tentative basis. The parties will be afforded 30 days from the date of this Memorandum Decision to review such figures and submit their responses, supporting or contesting such caps, to the Court. These responses could, for example, suggest expanded housing capacities occasioned by new or remodeled institutions, which have come "on line" since the July, 1984 hearing herein.

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[11] The previous judicially-imposed population caps of 60 for Third Avenue and 100 for 6th & C will remain in effect after reductions for "special beds" have been made.

TABLE OF PRESUMPTIVE POPULATION CAPS

FACILITY	CAPS
Third Avenue C.C.	53[1]
Sixth Avenue C.C.	90[2]
Cook Inlet Pre-Trial	282
Ridgeview C.C.	60
Hiland Mountain C.C.	160
Meadow Creek C.C.	28
Palmer C.C.	231
Palmer Pre-Trial	---[3]
Goose Bay C.C.	---[4]
Wildwood C.C.	186
Spring Creek C.C.	---[5]
Fairbanks C.C.	202
Anvil Mountain C.C. (old Nome)	24
Yukon-Kuskokwim C.C. (Bethel)	---[6]
Lemon Creek C.C.	162
Johnson Center C.C.	10
Ketchikan C.C.	63
TOTALS:	1,551

[1]Court imposed total capacity is 60 (less special beds).

[2]Court imposed total capacity is 100 (less intake cells).

[3]This facility was not open at the time of trial.

[4]This facility was not open at the time of trial.

[5]This facility was not open at the time of trial.

[6]This facility was not open at the time of trial.

Once the Court has reviewed such submissions, a final order will be issued, setting forth the final presumptive population caps for each institution, as well as for the entire system.

Should the population at any institution exceed its population cap for a period of more than 30 days, the Court will require notice and application by defendants for Court approval of such situation to continue. However, notice within such 30 day period that defendants have invoked the Governor's emergency commutation program to reduce prison populations will result in a stay of Court action for a period of up to an additional 30 days. The Court will also consider, upon such application, whether the totality of conditions at any specific institution, such as increased staff or programming or other factors, would permit additional housing beyond the caps without constitutional violation.

Other Areas Of Concern Regarding Overcrowding

In addition to the need for institutional population "caps," and a system-wide "cap," the Court has a number of specific areas of concern relating to the overcrowding issue.

Housing In Non-residential Areas

First, to the extent that the residential areas -- cells and dormitories -- are already or will be filled to capacity, prisoner access to nonresidential areas in the institutions, such as dayrooms, hallways, gymnasiums, classrooms and the like, becomes essential to the constitutional maintenance of such populations. This means, in the Court's view, that prisoner access to such nonresidential areas must be realistic and reasonably frequent. It also means that nonresidential areas may not be constitutionally used for residential purposes. In particular, the Court concludes and orders that defendants may not lawfully use dayrooms, hallways, gymnasiums, etc. for the regular housing of prisoners. As the Second Circuit in Lareau v. Manson, 651 F.2d 96, 100 (2nd Cir. 1981) observed, in holding unconstitutional a double-celled facility where dayroom space

was the only real alternative to inmates' confinement to their cells,

> 'Most inmates therefore spend nearly all of their time either in their cells or the day-rooms.' Thus, there is no real respite for the double-bunked inmate from the pressures of overcrowding.

Other post-Rhodes courts have similarly banned housing inmates in nonresidential areas. As the Court in Inmates of Allegheny County Jail v. Wecht, 565 F.Supp. 1278, 1295 (W.D.Pa. 1983), observed:

> Problems created by overcrowding include increased idleness because recreational and educational facilities have been converted into sleeping areas; increased noise level; increased psychological problems; a decrease in the ratio of staff to inmates; meals being served constantly; privacy becoming nonexistent; mattresses and blankets strewn across floors for people to sleep on; increased fire hazards and increased tensions.

See also Martino v. Carey, 563 F.Supp. 984(d) (D.Ore. 1983) (banning the practice of having inmates sleep on floors).

In this case, evidence was presented at trial of at least two instances in which inmates were housed in nonresidential areas. The first instance involves the housing of a number of male inmates at HMCC in a hallway in the administrative segregation area. Cots were aligned down the center of the hallway for sleeping purposes, while a single open cell provided the only toilet and bathroom for the prisoners. See, e.g., testimony of Francis Sauser, 2/7/84, tape G-1476, log numbers 3109-3165, and 2/8/84, tape G-1477, log numbers 277-315, 391-471; testimony of Allen Lee Ault, 2/1/84, tape G-1473, log number 1137.

The second instance of housing prisoners in nonresidential areas occurred at MCCC, where women inmates were housed in dayroom or activity center areas, in bunk beds, with cloth partitions separating them from the activity area. This circumstance obtained when the Court toured this particular facility in March, 1984.

The Court finds and concludes that both of these housing arrangements were, under Alaska's Constitution, unconstitutionally overcrowded situations. The Court hereby concludes that except in emergency circumstances and as may be specifically approved by the Court, defendants may not house inmates in nonresidential areas. This prohibition has been incorporated into a provision of the accompanying order.

Dormitory Housing

A second area of concern to the Court in connection with the overcrowding issue is defendants' practice of housing inmates at certain institutions in a dormitory arrangement. Specifically, large numbers of inmates are housed presently at Third Avenue, Fairbanks Correctional Center and Lemon Creek in dormitory arrangements. In these dormitories, bunk beds are stacked side by side in most of the available space; very limited bathroom and toilet facilities are available for a large group of people; electric lights, televisions and radios are operating most of the time; inmates are entering and leaving the dormitories periodically; inmates within the dormitories experience difficulty in having uninterrupted sleep; and generally the noise and potential tension levels are high.

Considerable expert testimony at trial held that dormitory housing arrangements are among the least desirable residential arrangements for a correctional institution. See, e.g., testimony of William G. Nagel, 1/26/84, tape G-1469, log number 602; testimony of T. D. Hutto, 2/6/84, tape G-1475, log number 1792; testimony of Peter Travisano, 1/24/84, tape G-1466, log numbers 3035, 3092; testimony of Stanley Brodsky, 1/27/84, tape G-1469, log numbers 2492, 2511, 2600, 2992, 3020. This is so because of the problems and limitations previously indicated, as well as the lack of privacy, the significantly-reduced ability of staff corrections officials to supervise prisoners and activities in such dormitories, and the opportunity for serious violence to occur, including assaultive and sexual assaultive behavior among inmates. Experts stated that indeed, much

inmate-inmate violence and assaultive behavior occurs in dormitory settings. Id.

Evidence regarding violence in dormitories in Alaska's institutions is consistent with the foregoing expert opinion. Specifically, the Court finds that perhaps the single most violent episode involving prisoners, prisoner-staff confrontation, and property destruction occurred at Lemon Creek in a residential dormitory uprising.

On the basis of the foregoing evidence, the Court agrees with the expert opinion to the effect that residential dormitories constitute a highly undesirable, and potentially problematic way of housing inmates. On this record, however, and particularly in view of the relatively low level of serious violence between inmates as well as the relatively high level of prisoner access to space and activities outside of the dormitories, the Court does not conclude that such dormitories are unconstitutional at the present time. Under the totality of circumstances analysis, however, the Court's conclusion could change in the future, if prisoner access to non-dormitory areas and activities were severely restricted and/or if the level of violence within dormitories were significantly increased. The Court therefore urges defendants to consider developing alternate housing means to the dormitory arrangement, and requires defendants to report to the Court regarding defendants' plans to eliminate such housing arrangements in the future. In the order accompanying this Memorandum Decision, the Court has set out such reporting requirement.

Third Avenue And Ridgeview

Yet another area of concern to the Court are two specific facilities, Third Avenue and Ridgeview, and the conditions under which prisoners are housed or maintained therein. Expert testimony at trial from witnesses from both plaintiffs and defendants was nearly unanimous in concluding that Third Avenue is the most undesirable facility or physical plant in Alaska's systems, may well have outlived its usefulness, and should be

closed for residential purposes or transformed into some nonresidential use. For example, defendants' expert witness, William G. Nagel, labeled Third Avenue as "very submarginal" and "a throwback to another era" while recommending its closure. Testimony of William G. Nagel, 1/26/84, tape G-1469, log number 765. See testimony of J. D. Hutto, 2/6/84, tape G-1475, log number 1258; testimony of Peter Travisano, 1/24/84, tape G-1466, log numbers 2332, 3035-56; testimony of Stanley Brodsky, 1/27/84, tape G-1469, log numbers 2275, 2320. The Court notes that in fact, defendants have, in the past, both prior to trial and at trial, proposed closing Third Avenue for residential purposes, and transforming it to administrative use. This plan, however, was dropped, according to Commissioner Endell's testimony at the July, 1984 hearing, as a result of fiscal limitations.

Similarly, experts testified as to the relatively run-down and depressing physical plant or facility at Ridgeview, along with various physical plant problems there. Defendants' expert witness Stanley Brodsky compared this institution to an "old fashioned poorhouse," while Nagel called it "awful" and "a correctional slum." Testimony of Stanely Brodsky, 1/27/84, tape G-1469, log number 2200; testimony of William G. Nagel, 1/26/84, tape G-1469, log number 793. See testimony of T. D. Hutto, 2/6/84, tape G-1475, log number 1679. Again, the Court notes that in the past, defendants had planned to close Ridgeview, and house misdemeanants at the new Goose Bay facility. And again, as of the July, 1984 hearing, Commissioner Endell testified that this plan was likewise abandoned as a result of fiscal considerations.

The Court has inspected both of these facilities, and agrees with the expert opinions that the two institutions may well have outlived their usefulness as residential housing institutions, that they are extremely limited in space for not only housing, but programming and other activities, that the physical plants are undesirable, and that the environments are

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generally depressing. While the Court declines, at the present time and on the present record, to conclude that Third Avenue and Ridgeview are unconstitutional and to require their closure, the Court's conclusion could change in the future as the conditions of such physical plants or facilities continue to deteriorate. In particular, the Court's conclusion regarding Third Avenue is dependent, to some extent, upon the recognition that one of the three original housing dormitories has been transformed into an indoor exercise facility, that a roof exercise facility has been added and that, to a limited extent, some remodeling has provided some additional programming space. The Court therefore urges defendants to reconsider defendants' original plans to close these institutions or transform them into nonresidential purposes. In the accompanying order, the Court has required defendants to report to the Court on their plans to do so in the future.

Punitive And Administrative Segregation Cells

Another concern the Court has regarding overcrowding and housing conditions is the practice of double celling punitive or administrative segregation cells. Unless otherwise specifically authorized by the Court, the Court concludes that housing more than one prisoner in small or moderate sized administrative or punitive segregation cells, where prisoners are "locked down" in such cells for a majority of the day, violates Article I, §12 of the Alaska Constitution. Punitive or segregation cells should, in this Court's view, be limited to one prisoner per cell. To the same effect is the testimony of T. D. Hutto that he would never double bunk a maximum security cell. Testimony of T. D. Hutto, 2/6/84, tape G-1475, log number 1080.

At trial, evidence of multiple occupancy in small or moderate sized administrative or punitive segregation cells at defendants' institutions was presented. Perhaps the single clearest instance of this was the administrative segregation "mod" or module at CIPT, where inmates were double celled and "locked down" for 22 hours a day. The Court concludes that this

particular practice violates the Alaska Constitution, and must be discontinued. In the accompanying order, the Court has incorporated a provision prohibiting multiple occupancy of administrative or punitive segregation cells, except as otherwise specifically reviewed and approved by the Court.

(Old) Nome

Yet another area of concern to the Court is the present Nome Correctional Center. On the basis of the expert testimony presented at trial, along with the Court's own observation during an inspection tour of this facility, the Court finds that the Nome physical plant is extremely old and limited -- indeed, the most limited facility in defendants' system from the standpoint of available space. Although the Court also finds that the superintendent of this facility and her staff have managed the population admirably under the circumstances, the Court would have serious reservations about the continued long term use of this institution for residential purposes. Indeed, defendants' expert Hutto, though noting that the institution works well at present, warned that there is opportunity for everything to go wrong and that the situation could deteriorate overnight. Testimony of T. D. Hutto, 2/6/84, tape G-1475, log number 1529. The Court is, of course, aware that a new correctional facility is in the process of being constructed, and urges defendants to effect a transition to such new facility as soon as practicable.

Costs And Alternatives

In addition to being presented with a population management problem resulting from increased prison population pressures, the Court finds that defendants are also facing growing costs associated with increased administration and housing needs.

More specifically, the Court finds, on the record at trial, that the approximate costs of housing prisoners at permanent facilities or institutions (so-called "hard beds" of "bricks and mortar" institutions) to be approximately $75.00 per

day per prisoner; that the approximate costs of maintaining prisoners at halfway houses or "community residential centers" or "CRCs" (so-called "soft beds") to be approximately $43.00 per day per prisoner; and that the approximate cost of supervising a non-housed prisoner, such as a prisoner released on probation or parole, to be approximately $2.50 per day per prisoner. See testimony of Roger Endell, 2/3/84, tape G-1474, log number 1773; defendants' Exhibit G at 2. (Endell in Exhibit G: FY 83: $75.53, $43.14, $2.82.)

Moreover, the Court finds that DOC's long term operational costs for newly constructed prisons will be very substantial. Testimony at trial established that the ratio of operating costs to capital or construction costs, over 30 years, was approximately 16 to 1. See testimony of Kevin Bruce, 2/3/84, tape G-1474, log number 1210; testimony of William G. Nagel, 1/26/84, tape G-1466, log numbers 961, 1242.

Clearly, the costs of maintaining growing numbers of prisoners in institutional beds over long periods of time -- not to mention the capital costs of constructing new "bricks and mortar" prison facilities to keep abreast of the growing prison population (assuming that such institutions could be constructed rapidly enough) presents defendants with a serious financial burden. As previously mentioned, the problem of accommodating and managing Alaska's burgeoning prison population, from both the sense of available bed space or housing as well as related financial considerations, is, in this Court's view, the single most significant problem confronting DOC and defendant correctional officials for the foreseeable future.

Solutions And Alternatives

Plainly, the solution to the overcrowding problem is, and must be, at least initially committed to the judgment of defendants' correctional administrators, particularly where such administrators have indicated their awareness of these problems and an intention to address them. Among the alternatives presently available to defendants' correctional officials in

remedying the overcrowded institutions problem are the following:

1. The creation of new and/or expanded housing and bed space. In this connection, the Court notes that expansion construction has occurred at Fairbanks Correction Center, Juneau Correction Center and CIPT; that new facilities are being constructed at Nome, Bethel and Seward; and that remodeling activities to create additional bed space were occurring at Goose Bay and Wildwood Correctional Centers. The Court also notes that defendants have considered acquiring additional housing space or bed space through leasing, and that defendants have utilized temporary housing facilities, such as a large mobile home-type trailer at Ketchikan Correctional Center.

2. Expanded use of "halfway houses" or "community residential centers" (CRCs). In this regard, the Court finds that the CRCs used by defendants included the Glenwood Center and Akeela House in Anchorage, the Fairbanks Re-entry Center in Fairbanks, and the Glacier Manor in Juneau. Also at time of trial, defendants had approximately 125 beds available for furloughs by inmates, a significant increase over the approximately 20 halfway house beds available to inmates for furloughs in 1979. The Court further finds that between FY 1980 and FY 1984, defendants had increased their budget for community corrections from $436,000 to $3.6 million, an increase of over 600%. However, the Court also finds that a substantially greater number of prisoners could qualify for halfway house or CRC programs, including work and rehabilitation furloughs, than there exists available bed space in such halfway houses or CRCs. The Court further finds that defendants intend to expand their use of halfway houses or CRCs, and that in particular, Ms. Humphrey Barnett, defendants' statewide Director of Programming, testified that she would like to have additional halfway house facilities added in Bethel, Nome, and Anchorage.

3. Increased use of work and rehabilitation furloughs pursuant to AS 33.30.250 and .260, and regulations promulgated pursuant thereto.[12]

4. Continued use of the executive clemency or commutation program for appropriate prisoners when the total population exceeds the population cap for the system. The Court finds that prior to and during the pendency of this litigation, defendants have utilized this procedure on more than one occasion, and have released screened and eligible prisoners prior to the conclusion of their normal periods of incarceration.

These and other options are presently available to defendants in dealing with the serious problem of overcrowding. The Court fully expects defendants to implement solutions to maintain constituionally acceptable levels of prison populations in defendants' institutions. In any event, this Court intends to monitor the prison population situation in defendants' institutions and system to ensure that Alaska's already full prisons do not become unconstitutionally overcrowded.

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[12] In §V(H) below, pertaining to the constitutionality of certain regulations, the Court has held invalid defendants' restriction of limiting inmates' eligibility for furlough programs to those inmates with six months or less remaining on their sentences.

B. Health Care.

At trial, plaintiffs contended that defendants' health care system was inadequate, and failed to meet applicable federal and state constitutional requirements, as well as statutory requirements. Evidence adduced at trial by plaintiffs in connection with this issue tended to be testimony of certain individual inmates regarding delays and difficulties they experienced in receiving medical treatment which they believed to be necessary in their own cases. There was also some evidence that at certain institutions, corrections officials rather than medical personnel had, at least in the past, been dispensing medications to prisoners, which may have contributed to a mix-up in the provision of appropriate medications for certain individual inmates. Further evidence established significant delays in the provision of medical services, some of which were attributable to limited transportation resources.

Defendants' evidence on this issue included the testimony of Physician's Assistant Wilson, the corrections official in charge of medical services in the Anchorage area, and Dr. Hudson, the contract physician for the Anchorage area, who explained in detail the regular medical services provided to each of the Anchorage area institutions. Institutional superintendents and other medical personnel described medical services and resources available for the other correctional institutions in the state. More detailed findings about such medical coverage are set forth in the findings of fact and conclusions of law issued simultaneously herewith.

Defendants also provided evidence regarding the Anchorage Psychiatric Institute (API) Forensic Services Team, and the psychiatric and psychological services provided to Anchorage area inmates by such Team. Defendants offered other evidence regarding in-house mental health care services offered by defendants, as well as mental health clinics in various areas around

the state under contract with DOC to provide mental health care services to remote area institutions.

Some evidence was offered by the parties on the question of the provision of dental care services, transportation needs, and medical records keeping procedures and needs.

Applicable Law

The parties do not dispute the applicable federal constitutional standard regarding the provision of medical care. That standard is set forth in Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285; 50 L.Ed.2d 251 (1976); and provides:

> Deliberate indifference to serious medical needs to prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.

The United States Supreme Court in Estelle also explains that such "deliberate indifference" is not established through inadvertent omissions to provide medical services, or the negligent provision of such services. Id. at 105-106.

Consistent with the foregoing constitutional standard, inmates under federal law also have a right to receive medically necessitated psychiatric and psychological tr[illegible] Bowering v. Goodwin, 551 F.2d 44 (4th Cir. 1977).

In Alaska, the Alaska Supreme Court has adopted and applied the foregoing holdings in Estelle and Bowering in Rust v. State, 582 P.2d 134, 141-143 (Alaska 1978).

The provision of health care and medical services to inmates in Alaska is further governed by statute. AS 33.30.020 and .050 require the Commissioner to provide for the safety and care of prisoners, and more specifically, to furnish "necessary medical services" to such prisoners.[13]

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[13] AS 33.30.020 provides:

> The commissioner shall establish prison facilities and classify the prisoners in prison facilities. He shall provide for the safety, subsistence, proper government, and discipline of prisoners. He shall establish programs for the treatment, care, rehabilitation and reformation of prisoners.

In Rust, the Alaska Supreme Court interpreted the foregoing statutes in the following way:

> In short, we hold that pursuant to the provisions of AS 33.30.020 and AS 33.30.050 a prisoner in the custody of the Division of Corrections has the right to receive psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty that the prisoner's symptoms evidence a serious disease or injury, that such disease or injury is curable or may be substantially alleviated and that the potential for harm to the prisoner by reason of delay or denial of care could be substantial.[34]
>
> . . .
>
> N.34 provides:
>
> 34. Generally these criteria are to be interpreted and applied in a manner so that prisoners will have the right to receive medical care under circumstances in which a reasonable person would seek medical care.

Id. at 143. (Emphasis added.)

In reviewing the evidence adduced at trial on the health care issue generally, the Court has applied the foregoing federal and state constitutional tests as well as the Alaska statutory requirements set forth above.

Findings And Conclusions

Generally, the Court finds and concludes that defendants' program for providing health care and medical services to

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AS 33.30.050 provides:

> The Commissioner shall detail physicians, nurses, and psychiatrists, or their aides, and laboratory technicians, employed by the department to any prison facility where state prisoners are detained or confined, for the purpose of furnishing necessary medical services, including examinations for communicable and infectious diseases. However, if medical services cannot be furnished by physicians, nurses, psychiatrists, or their aides, and laboratory technicians, regularly employed by the department, the Commissioner may contract with private practitioners located in the area of a prison facility to furnish these services. The cost of contracted services shall be paid out of appropriations made to the department.

inmates throughout the state correctional institutions does not violate federal or state constitutional provisions, or AS 33.30.020 and .050. In so holding, however, the Court is making its findings and conclusions regarding the system as a whole, and not with respect to any individual inmate's claim regarding the possible denial of a right to medical treatment in a particular case. Additionally, the Court also recognizes that the defendants' health care system varies considerably throughout the state.

More specifically, the Court finds and concludes that defendants are providing necessary medical services in a reasonably prompt fashion to its inmates, and are not manifesting deliberate indifference to serious medical needs of Alaskan prisoners. In this regard, the Court finds that the provision of normal medical coverage, sick calls, physician availability, and the like, for the various institutions substantially exceeds the minimal constitutional and statutory requirements. Indeed, the Court finds that the provision of such regular medical services to the institutions in the Anchorage area in particular is exemplary, and a credit to the substantial efforts of Physician's Assistant Wilson, as well as the contract physician, Dr. Hudson.

The Court notes the testimony of Dr. Hudson, however, to the effect that the level of physician coverage to the Anchorage institutions lacks depth or backup resources, and that should the contract physician be unavailable for any extended period of time, the ability to provide ongoing necessary medical coverage may be jeopardized. Plainly, additional backup physician resources would further ensure that defendants' provision of medical care to the Anchorage area institutions will continue to meet the constitutional and statutory requirements.

In the accompanying findings of fact, issued herewith, the Court has also detailed its specific findings with respect to the medical staffing and coverage at each of the correctional institutions throughout the state. Again, the Court generally

finds that such coverage meets the constitutional and statutory requirements.

Areas Of Concern

Although the Court has found no constitutional or statutory violation in this area, the Court has concerns about the following areas of defendants' health care system, in addition to the lack of depth or backup physician resources problem in Anchorage.

One such area of concern to the Court is the delay in the provision of medical services resulting from limited medical transportation resources. As a result of limited transportation officers and vehicles, and as the further result of DOC's dependency, to some extent, on state troopers to transport inmates to medical appointments (which troopers are also busy doing other necessary tasks), the Court finds that significant delays have occurred in the delivery of medical services to inmates where such inmates are required to be transported to clinics, specialists, doctors and the like outside the institutions. In this connection, the Court notes that defendants are aware of the transportation problem, and have requested seven additional corrections officers for transportation purposes in future budgets. With the addition of such additional correctional staff transportation officers, defendants should be able to provide medical services on a more efficient and timely basis.

Another area of concern to the Court is the evidence indicating that in certain instances, non-medical personnel were dispensing medications to inmates, resulting in at least a few instances of mixed up prescriptions. The Court concludes that pursuant to AS 33.30.050, defendants should detail such sufficient physicians, nurses or their aides or technicians for the purpose of dispensing medications to inmates.

A further area of concern to the Court is the defendants' ability to provide adequate mental health care services to inmates, particularly those inmates in more remotely located institutions such as Nome and Ketchikan. Although the Court is

impressed with the performance of the API Forensic Services Team in the Anchorage area institutions, and with the services rendered by psychiatrist Dr. Rothrock in Fairbanks, and although the Court recognizes that defendants have contracts with various mental health clinics around the state, the Court is concerned that defendants have the capacity to provide adequate mental health care services to inmates in the more remotely located institutions.

Similarly, the evidence at trial indicated significant delays in the provision of dental services to inmates. Of all the areas of health care services addressed at trial, the Court finds that the area of dental care services is perhaps the most deficient in the sense that very significant delays have occurred in the provision of normal dental services to inmates needing such services. The Court notes defendants' plans to provide additional dental services both through in-house visits and increased transportation to outside clinics. Nevertheless, although at the present time, the Court cannot conclude that this aspect of defendants' health care program violates constitutional or statutory standards, the Court does find that this is one area in which significant improvement in the delivery of health services is indicated.

Finally, the Court has some concern about the adequacy of staffing or resources for the maintenance of medical records of the inmates. At trial, plaintiffs adduced some evidence to the effect that certain medical charts or records of inmates had been mislaid or lost for periods of time. Dr. Hudson testified that one additional staff person and office resources would considerably facilitate defendants' ability to better maintain control over inmates' medical records. While the state of the trial record in this case, at this time, does not lead this Court to find constitutional or statutory violations resulting from lost medical records, the problems presented by lost or mislaid or mixed up medical records in the delivery of future medical services are obvious. Again, the Court notes this is an area in

which a need for improvement in defendants' health care program is indicated.[14]

C. Search And Seizure Issues

Plaintiffs also assert, in ¶ XIII(30) of their Fourth Amended Complaint, various search and seizure issues regarding defendants' policies and practices concerning cell searches, strip searches or visual body cavity searches, and intrusive body cavity searches. Plaintiffs base such claims on the search and seizure provisions and privacy notions embodied in the federal and Alaska Constitutions.[15]

Additionally, defendants have sought dispositive rulings dismissing such search and seizure claims in defendants' January 23, 1984 Motion For Judgment in Favor of Defendants on Specified Issues, as well as defendants' July 20, 1984 Motion For Judgment on Search and Seizure Issues.

Each claim will be addressed separately below.

1. Cell Searches

Evidence at trial indicated that at many institutions, random cell searches or "shake-down" searches were conducted, typically out of the presence of inmates, and that on occasion, such searches yielded contraband. DOC officials testified that they believed such searches were necessary in order to control the introduction of contraband, such as drugs, weapons or money, into an institution, and in order to maintain security at the institution. Certain inmates testified that they found their

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[14] The health care issue was one of the issues addressed in defendants' January 27, 1984 Motion For Judgment In Favor Of Defendants On Specified Issues. Defendants' motion is granted, to the extent that the Court has held herein that defendants' present health care system does not violate applicable federal and state constitutional standards or state statutory standards.

[15] Although defendants have argued that plaintiffs did not specifically plead any violation of Article I, Section 14 of the Alaska Constitution in their Fourth Amended Complaint, the Court concludes that under Alaska's general notice pleading, the issue of claimed violations of the Alaska Constitution has been adequately alleged in plaintiffs' Fourth Amended Complaint. See Fourth Amended Complaint, ¶¶ X, XII, XIII(30), and XVIII(3).

possessions in a state of disarray after such "shake-down" searches, that they feared corrections officials could "plant" contraband in their absence, and that such incidents led to increased conflicts between inmates and guards.

Plaintiffs contend that as pretrial detainees and convicted prisoners, they retain at least some residual privacy rights under both the federal and Alaska's Constitution. Further, plaintiffs argue that defendants' unannounced cell searches or "shake-down" searches of a prisoner's cell and the contents therein, violate such privacy rights. In this connection, plaintiffs argue that non-disruptive prisoners have a constitutional right to remain in their cells during cell searches to observe officers conducting such searches, as well as a right to an inventory from corrections officials as to personal property seized. See Steinberg v. Taylor, 500 F.Supp. 477 (D.Conn. 1980).

To the extent that plaintiffs' claims are brought under the Fourth and Fourteenth Amendments of the United States Constitution, such claims must fail. Recently, the United States Supreme Court held that a "shake-down" search of a convicted prisoner's locker and cell is not prohibited by the Fourth Amendment nor is the damage to property destroyed during such "shake-down" search violative of the prisoner's due process rights, so long as a post-deprivation remedy exists. Hudson v. Palmer, 52 U.S.L.W. 5051 (U.S. July 3, 1984). Similarly, in Block v. Rutherford, 52 U.S.L.W. 5063 (U.S. July 3, 1984), the United States Supreme Court held that irregular "shake-down" searches of cells of pretrial detainees in the absence of cell occupants did not violate the pretrial detainees' due process rights. See also Bell v. Wolfish, 441 U.S. 520, 557, 60 L.Ed.2d 447, 480 (1979). As a result of these holdings, the Court concludes that plaintiffs' claims of federal constitutional violations fail, and that defendants' aforementioned motions pertaining to such claims are granted.

The question remains, however, whether cell searches violate the due process and privacy rights of pretrial detainees and convicted prisoners under Alaska's Constitution, Article I, Sections 7, and 22, respectively. This Court concludes that random searches of prisoners' or pretrial detainees' cells or rooms in their absence do not violate plaintiffs' residual due process or privacy rights under Alaska's Constitution.

The Court agrees with the analysis set forth in Bell v. Wolfish, supra, that in determining the constitutionality of searches of cells of inmates housed in penal or pretrial detention institutions, courts must balance the "significant and legitimate security interests of the institution against the privacy interests of the inmates." 60 L.Ed.2d at 482. As the Court in Bell explained,

> [G]iven the realities of institutional confinement, any reasonable expectation of privacy [with respect to his room or cell] that a [pretrial] detainee retained necessarily would be of diminished scope.

Id. at 480. Generally, the legitimate security interests of the institution in periodically or even randomly inspecting the cells or rooms of pretrial detainees or convicted prisoners, in order to discover contraband, weapons, or other materials which relate directly to the security of the institution and the safety of the prisoners and guards, must prevail over the inmates' diminished privacy interests in such prison cells or the contents thereof.

Plaintiffs argue, however, that non-disruptive prisoners should be allowed to be present during cell searches to observe such searches, so that the possibility of corrections officials "planting" contraband or weapons would be eliminated and that subsequent confrontations or conflicts between inmates and corrections officials avoided. Similarly, plaintiffs argue that documents seized during such searches should be listed on written inventories and given to inmates, and that certain documents, such as legal writings prepared by the inmates and regarding their cases, should not be seized at all.

While the Court agrees with plaintiffs that policies such as those suggested by plaintiffs and/or ordered by district court in Steinberg v. Taylor, supra,[16] are sensible and may well lead to the diminution of conflicts, arguments and confrontations between inmates and corrections officials, the Court concludes that the promulgation of such policies falls within the defendants' executive discretion, and are not mandated by Alaska's Constitution.[17]

2. Strip Searches -- Visual Body Cavity Searches

Plaintiffs further challenge defendants' practices and procedures pertaining to routine and random "strip searches" and/or visual body cavity searches of pretrial detainees and convicted prisoners.[18]

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[16] The district court in Steinberg v. Taylor, 500 F.Supp. 477, 480 (D.Conn. 1980) required that the following procedural safeguards be provided when seizures of property were made by prison officials:

(a) A brief statement to the inmate of the asserted justification for the seizure.

(b) A notice of the right to respond in some reasonably simple and convenient fashion and assert grounds, if any, why the seizure is claimed to have been unwarranted.

(c) Some suitable opportunity to meet and answer controverted evidence thought to warrant confiscation.

(d) A decision, with reasons, however brief.

[17] The Court is particularly concerned about the seizure and/or destruction of bona fide legal documents prepared by a prisoner in pending or future litigation relating to his case. Plainly, procedures could be developed by which the contents of such legal instruments could be protected from disclosure to officers conducting the cell searches, while still enabling such officers to inspect the box, envelope or container in which such documents are placed for the existence of contraband, cash, weapons and the like.

[18] A "strip search" is a search of an inmate's clothing and body. A male prisoner is required to open his mouth and move his tongue around, up and down and from side to side, removing any dentures, running his hands through his hair, allowing his ears to be visually examined, removing all of his clothes, and lifting his arms to expose his armpits, spreading his fingers to expose the areas between his fingers, lifting his feet, wiggling his toes, lifting his testicles to expose the area behind the testicles and bending over approximately ninety degrees and spreading the cheeks of his buttocks to expose his anus. For females, the procedures are similar to those for the men except they must squat to expose both their anus and vagina. Such

Evidence at trial established that it was DOC's policy to conduct routine strip searches of both pretrial detainees and convicted prisoners. According to such policy, strip searches may be performed without any showing of probable cause or reason to believe that a pretrial detainee or convicted prisoner has drugs or other contraband on his or her person. Implementation of the policy varies somewhat from institution to institution, depending on the individual superintendent or shift supervisor on duty.

The evidence indicated that pretrial detainees and convicted prisoners were sometimes strip searched and subjected to a visual rectal search after such activities as attorney visits, church services, attendance at classes and counseling, contact visits with family and friends, and after using the law library. In addition, strip searches may be performed when a prisoner is moved from one part of an institution to another area of the institution, and when a prisoner returns from outside of the institution, such as following work furloughs.

Defendants' officials testified that such searches were necessary to the maintenance of security in the institutions. Contraband, such as drugs, tools, weapons, money and the like, could be secreted into the institution on the inmate's person, particularly if the prisoner has had a contact with non-prisoners, has been outside the institution (such as on work or educational furloughs) and/or has had access to certain equipment such as tools in workshop or crafts rooms.

Prisoners testified that the strip searches were personally demeaning, humiliating and degrading. Corrections officials and plaintiffs alike testified that such searches were unpleasant. Some plaintiffs testified that as a result of an institution's strip search policy, they were deterred from

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searches were performed by officials of the same sex as the inmate, and usually in a secluded location.

attending religious services and participating in certain classes or activities.

To the extent that plaintiffs' claims are grounded on federal constitutional bases, such claims must be rejected, and defendants' motions granted in this regard. Bell v. Wolfish, supra, 441 U.S. at 558-560, 60 L.Ed.2d 480-482.

As with cell searches, plaintiffs' constitutional claims regarding strip searches and visual body cavity searches are also based on Alaskan constitutional provisions. Plaintiffs specifically argue that pursuant to Reeves v. State, 599 P.2d 727 (Alaska 1979), searches of a detainee or convicted inmate's person must be conducted in the least intrusive or intensive fashion under the circumstances.

Although Reeves involved a pre-incarceration inventory search of an arrestee, the Alaska Supreme Court did observe in that case:

> The search of an arrestee's person should be no more intensive than reasonably necessary to prevent the entry of weapons, illegal drugs, and other contraband or potentially dangerous items into the jail.

Id. at 737. In so holding, the court followed the reasoning of the Hawaii Supreme Court in State v. Kaluna, 55 Hawaii 361, 520 P.2d 51 (1974); Reeves v. State, supra, 599 at 737 n.28.

While the Alaska Supreme Court has not yet addressed the issue of the state constitutional standards for visual body cavity inspections or strip searches of inmates in penal institutions, the Hawaii Supreme Court has done so under its own constitution in State v. Bayaoa, 656 P.2d 1330 (Hawaii 1982). Specifically, in Bayaoa, the Hawaiian Supreme Court noted that Bell v. Wolfish represented the view of a "bare majority of the [United States] Supreme Court" and that Hawaii was free to interpret the protections of its own state constitution more broadly than the United States Supreme Court had construed similar provisions of the United States Constitution. The Hawaii Court held that:

> [I]n order to conduct the more intrusive body searches such as strip searches in non-emergency, non-contact visit situations, prison officials must have a reasonable basis to conclude that contraband is being concealed by inmates on their person. Relying on such a basis, they may conduct the search in a reasonable, non-oppressive manner.

Id. at 1334.

In this Court's view, the due process and privacy provisions of the Alaska Constitution require the same showing before a strip search or visual body cavity search, in a non-emergency, non-contact visitation situation, or other normal circumstance, may be conducted. That is, this Court interprets Article I, Sections 7 and 22 of the Alaska Constitution as requiring prison officials to demonstrate a reasonable basis to conclude that an inmate or pretrial detainee is concealing contraband on their person, in normal circumstances, before such a search may be conducted.[19] As the Hawaiian Supreme Court required in Bayaoa, this Court likewise concludes that such searches must be conducted "in a reasonable, non-oppressive manner" -- meaning at least that the search be conducted in a private location, out of the presence and observation of inmates or officers of the opposite sex, by an officer of the same sex as the inmate, and in a manner least offensive to the prisoner's dignity.

3. Intrusive Body Cavity Searches

Finally, plaintiffs challenge, on federal and state constitutional grounds, defendants' practice of conducting non-consensual, intrusive body cavity searches of pretrial detainees and prisoners.

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[19] In so holding, however, the Court concludes that a reasonable basis may be presumed for strip searches or visual body cavity searches where the inmate or pretrial detainee has conducted contact visitation with non-prisoners, has been released from the institution on an educational or work furlough, is entering the institution for the first time, or is returning from a classroom with tools, and other similar circumstances.

Evidence at trial established that body cavity searches were infrequently conducted, at certain institutions. Not all institutions have conducted body cavity searches. The searches were conducted by medical personnel, in secluded areas, before corrections officials of the same sex as the inmates.

Results from some of such searches were positive. That is, examples of contraband secreted by inmates in their body cavities included a syringe, a roll of cash and money orders totalling $1900, and balloons filled with drugs. And of the three body cavity searches performed on inmates at CIPT since that institution opened in February, 1983, two produced positive results.

Such intrusive body cavity searches are clearly viewed by inmates as being the most offensive violations or intrusions of their persons and personal privacy. Corrections officials, too, find such searches to be the most offensive and unpleasant.

No competent evidence adduced at trial indicated that intrusive body cavity searches, or visual body cavity searches for that matter, were being conducted by defendants for the purpose of harrassing any particular prisoner or groups of prisoners.

At some institutions, defendants have followed a policy that probable cause must exist, or that a search warrant must first be obtained, before an intrusive body cavity search can be conducted. No evidence was adduced at trial to establish that such policy caused significant administrative disruptions or jeopardized institutional security.

To the extent that plaintiffs' claims are again based on federal constitutional grounds, the Court concludes that such claims must fail. While the United States Supreme Court has apparently not yet addressed the issue of the constitutionality of intrusive body cavity searches of pretrial detainees or convicted prisoners, this Court concludes that, pursuant to the rationale regarding visual body cavity searches adopted in Bell v. Wolfish, supra, the United States Supreme Court would hold

that intrusive body cavity searches are not prohibited by due process or privacy notions embodied in the federal Constitution. Again, defendants' motions in this regard must be granted.

Turning to the provisions of the Alaska Constitution, however, this Court concludes that the due process and privacy provisions of Alaska's Constitution require the existence of probable cause that contraband will be found in an inmate's body cavity, before defendants may conduct an intrusive body cavity search of a prisoner.

Clearly, intrusive body cavity searches are the most offensive searches to both prisoners and corrections officials. Such searches violate a prisoner's sense of personal privacy to the maximum degree, and require, therefore, a substantial showing of institutional security interests in order to justify them.[20] As the Hawaiian Supreme Court in Bayaoa observed, body cavity searches "constitute the most objectionable of searches." Id. at 1334 n.7.

In Bayaoa, the Hawaiian Supreme Court cited generally State v. Merjil, 655 P.2d 864, 867 (Hawaii 1982) a border body cavity search case, wherein the court laid out the following prerequisite for such searches under those conditions:

> To conduct a body cavity search, however, there must be a clear indication that contraband will be found ... Also, any such

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[20] The Hawaii Supreme Court in State v. Bavaoa, 656 P.2d 1330, 1334 n.7 (Hawaii 1982) also cited State v. Clark, 654 P.2d 355, 359 n.8 (Hawaii 1982), wherein that Court characterized body cavity searches as follows:

> One court aptly summarized the various described effects of government intrusion into this paramount expectation of privacy as follows:
>
> > 'A search of [this] ... type ... including the visual inspection of the anal and genital areas, has been characterized by various witnesses here, and by judges in some other cases, as demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, [and] signifying degradation and submission ... .' (Citations omitted.)

> intrusive search must be conducted in a reasonable manner.

Id. at 867. (Emphasis added.) Presumably, the "clear indication" standard is a somewhat higher or more stringent standard than the "probable cause" standard adopted here. Such a higher standard may well be justified in the context of that case, where the arrestee was not already a prison inmate but a free individual stopped at the state's border. See also State v. Clark, 654 P.2d 355, 362 n.11 (Hawaii 1982) ("The situation here is different from that of a prisoner entering the main prison. The prison presents special security problems.") See also, Constitutional Limits On Body Searches In Prisons, 82 Colum.L.Rev. 1033 (1982). In the Court's view, a showing of "probable cause" to believe that contraband is being secreted in a prisoner's body cavity is the appropriate standard under Alaska's Constitution, and strikes the proper balance between the most important privacy interest of plaintiffs and the institutions' legitimate security needs.[21] In this regard, defendants' motions are denied.

Further, as the Hawaii Supreme Court held in Merjil, this Court concludes that such searches must be conducted in "a reasonable manner," meaning that such searches should be performed only by a trained medical technician, of the same sex as the inmate, in an appropriate secluded area out of the presence or observation of other prisoners, and in the manner least offensive to the prisoner's sense of personal dignity. Moreover, in view of the intrusive and offensive nature of such searches, the Court further construes "reasonable manner" to mean that the probable cause basis for each body cavity search must be documented and such basis reviewed and approved in writing by a

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[21]The Court notes that this standard has already been followed in certain of defendants' institutions, without undue administrative inconvenience or security risk.

responsible, management-level corrections official at the institution where such search is being conducted.

In the order accompanying the instant Memorandum Decision and Findings of Fact and Conclusions of Law, defendants are ordered to develop regulations and/or written policies and procedures embodying the foregoing holdings.

D. Adequacy Of Staffing.

In ¶XIII(8) of their Fourth Amended Complaint, plaintiffs contend that they have been subjected to unreasonable risks of harm as a result of inadequate supervision and understaffing at defendants' correctional institutions.

Defendants contend that plaintiffs have failed to adduce sufficient evidence to establish constitutional or statutory violations as a result of any understaffing at any institution.

Generally, the Court agrees with defendants' position, and finds and concludes that on the basis of this record, the level of staffing at defendants' institutions has not violated the Eighth Amendment or the Fourteenth Amendment to the United States Constitution, Article I, §7 or 12 of the Alaska Constitution, or AS 33.30.020 and .050. In this regard, the Court grants that aspect of defendants' January 23, 1984 motion.

In so holding, however, the Court emphasizes that its general findings and conclusions are based on the record at trial, and on the level of staffing existing at such time. In this connection, the Court finds that defendants' institutions were, at time of trial, variously understaffed, i.e., not staffed to optimum levels.

More specifically, a report conducted for defendants in late 1982, by defendants' expert, Dr. Allen Ault, purported to identify optimum staffing needs at each of the institutions in Alaska. Dr. Ault recommended 184 total new staff positions (not including new positions needed to staff CIPT or Wildwood). In fiscal year 1984, however, the legislature appropriated funds for slightly less than 50% of the positions recommended by Dr. Ault.

While Dr. Ault had recommended additional positions for each of defendants' institutions, the understaffing situation and needs for additional staff positions were most serious at CIPT. As Assistant Superintendent of CIPT Briggs testified at trial, there were 54 full time and 11 temporary

correctional officers at CIPT when this matter commenced trial. At the time CIPT opened in February of 1983, it was understaffed by 22 positions for its design capacity of 180 prisoners. Briggs testified that to accommodate an inmate population of 225 prisoners at CIPT, CIPT would need an additional 25 correctional officers, 3 additional counselors, 4 clerks, 2 additional cooks, and additional food service help. To accommodate an inmate population of 285, Briggs testified that CIPT would require an additional 40 correctional officers, 3-5 additional counselors, 4-5 additional clerical personnel, 2 additional cooks, and 2 additional food service workers. To accommodate an inmate population of 424 prisoners -- the size to which this Court understands CIPT will ultimately be expanding in the future -- Briggs testified that CIPT would require an additional 56 correctional officers plus additional support staff. Similarly, defendants' expert Hutto also noted the serious understaffing problem at CIPT. Accordingly, the Court finds that while understaffing exists to some degree at all of defendants' institutions, the problem is most seriously presented at CIPT.

Next to CIPT, understaffing and manpower shortages exist to a serious degree at Fairbanks Correctional Center.

The Court further finds that with the double bunking of cells in defendants' institutions, and increases in the prison population in the future, increases in correctional staff positions will be necessary in order to prevent an exacerbation of the understaffing problem.

The importance of maintaining adequate inmate-staff ratios cannot be overemphasized, in this Court's view. One consequence of the understaffing problem is that correctional officials are required to work substantial overtime at most, if not all, of defendants' institutions. Such substantial overtime work can have a negative impact on the correctional officers' morale and job performance, which in turn can have a negative impact on staff-inmate relations.

Nevertheless, the Court concludes that on the basis of this record, plaintiffs have failed to prove, by a preponderance of the evidence, that the understaffing problem rises to the level of a state of federal constitutional or statutory violation -- i.e., amounts to cruel and unusual punishment, undue exposure to security risks or risk of mental, emotional or physical harm, or a right to receive reformation programming or treatment.[22]

E. Training.

In ¶XIII(22) of their Fourth Amended Complaint, plaintiffs claim that they have suffered harm or risk of harm as a result of the lack of adequate screening of correctional staff applicants and the lack of adequate training of correctional staff.

At trial, plaintiffs adduced evidence regarding a number of particular conflicts or confrontations between individual inmates and individual corrections officers generally. Additionally, plaintiffs produced evidence regarding complaints about certain particular corrections officers at a few institutions.

Defendants contend that they have no constitutional or statutory duty to provide psychological screening of the correctional officials, and that on this record, plaintiffs have failed to demonstrate any state or federal constitutional or statutory violation.

Generally, the Court agrees with defendants, and finds plaintiffs' claims regarding inadequate training of corrections staff to be without merit on this record. Specifically, the Court holds that, on the basis of the evidence adduced at trial,

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[22] As Programming Director Susan Humphrey Barnett testified at trial, additional programming and counseling positions would be highly desirable, and would enable defendants to provide more programming opportunities and treatment throughout the institutions. The issue of the Alaska Constitutional and statutory requirements regarding reformation programming is discussed below in §V.(F).

plaintiffs have failed to establish, by a preponderance of the evidence, that defendants' training procedures, policies and activities, or the lack thereof, violate applicable federal or state constitutional provisions, or state statutory provisions.

The principal training function performed for defendants is provided by the Correctional Officers Academy, located in Anchorage. As Chief Training Officer Epperson testified at trial, the Academy has made significant progress since its opening in 1976, and has trained hundreds of correctional officers in subjects such as custodial techniques, criminal justice, crisis management, first aid, stress awareness, use of force, disciplinary procedures, and other issues. The Academy can conduct eight 160 hour training courses per year, with 20 correctional officers in each course. Moreover, the training officer in charge of the Academy has the authority to call new correctional officers in for Academy training to ensure training at the earliest possible opportunity after hiring. Generally, new hires are placed on a probationary status, and are sent to the Academy within the first six months from their date of hire.

In fact, as of January 11, 1984, the evidence at trial established that only 55 of the approximately 487 correctional officers had not yet attended the Academy. And, of these 55, 33 (or 71%) had been recently hired and were employed for a period of 3 months or less. Successful passage from correctional officer I to higher levels of employment can be obtained only through the successful passage of Academy training courses.

The evidence also established that Academy training officers have conducted on-site training sessions at the various institutions, and that at least some institutions had staff training officers. Ideally, in the Court's view, staff training officers should be appointed at each individual institution.

Also, at some institutions, extensive on-the-job training procedures are offered. Certain supplemental courses from the American Correctional Association are also available to correctional officers.

At trial, defendants offered evidence indicating that they were planning to institute Academy retraining for disciplined or suspended correctional officers. The Court finds this to be an appropriate addition to the training program, and will require defendants, subsequent to trial, to specifically advise the Court as to such plans for retraining of disciplined or suspended officers.

To be sure, some evidence was adduced at trial from a number of witnesses suggesting that additional training in various areas would be desirable and useful. Thus, defendants' state-wide Program Director, Susan Humphrey Barnett, testified that retraining of certain staff would be desirable and that training in the area of interpersonal skills would likewise be desirable. Further, Ms. Humphrey Barnett testified that training for probation officers, secretaries, maintenance personnel, cooks and the like would also be useful. Similarly, training in cross-cultural communications and cultural awareness would be very desirable, in view of Alaska's Native and other minority prison populations. In this regard, Father Michael Oleksa testified that in his view, at least 15 hours of cross-cultural communications training would be desirable.

Plaintiffs' evidence on this issue consisted largely of testimony regarding specific problematic instances between particular inmates and particular correctional officials. The evidence does suggest that, at least with respect to a few inmate-staff interactions, conflicts and tensions have existed. It is, in the Court's view, possible that additional training in the areas of cross-cultural awareness, interpersonal skills, communications abilities, stress management and the like, may have prevented or reduced such conflicts, or the risk thereof. However, on the entire record, this Court concludes that plaintiffs have failed to demonstrate, by a preponderance of evidence, that system-wide, defendants' training policies, procedures and activities present a constitutional or statutory violation.

Nor is this Court persuaded that the federal or Alaska Constitutions, or Alaska statutes, require any particular entrance-level screening instrument to be used by defendants in hiring new correctional officers. Plaintiffs argue that defendants should utilize a psychological testing or pre-screening instrument when correctional officers are hired, in an attempt to identify candidates who may be unsuitable for corrections work in areas such as psychological, personality, or emotional makeup. Whatever the desirability of the utilization of such a device might be -- and the Court agrees with plaintiffs that the use of such testing procedures may well be desirable -- the Court concludes that the use of this particular screening device is not mandated by constitutional or statutory authority.[23]

F. Rehabilitative Programming.

Of the various claims and issues presented at trial, plaintiffs presented perhaps the greatest amount of evidence on the issues of overcrowding and rehabilitative programming. With respect to programming, plaintiffs argued that under Article I, §12 of the Alaska Constitution, as well as relevant statutory authority, they had a right to receive rehabilitative treatment and/or programming. Defendants dispute the existence of any constitutional or statutory general right to rehabilitative programming, challenge plaintiffs' standing to raise such issues, contend that the "reformation principle clause" of Article I, §12 of the Alaska Constitution merely sets forth a philosophical goal or objective, and argue that any specific "right to treatment" holdings declared by the Alaska Supreme Court in Alaskan authorities pertain to particular definable and curable medical needs of prisoners.

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[23] The issue of the training of prison staff was one of the issues addressed in defendants' January 23, 1984 Motion For Judgment In Favor Of Defendants On Specified Issues. That motion is granted, consistent with the extent of the Court's findings and conclusions set forth herein.

Additionally, the parties presented numerous witnesses and substantial evidence at trial regarding the programming offerings, or lack thereof, at each of the various correctional institutions which are the subject of this litigation. Plaintiffs' evidence consisted largely of testimony by individual inmates from the various institutions as to their own experiences and observations regarding programming offerings or the lack thereof. Defendants' evidence consisted of corrections officials, including defendants' state-wide Programming Director, Susan Humphrey Barnett, as well as institutional superintendents, and education associates, who explained the particular programming offerings existing at each institution.

With respect to the nature of programs presented, or not presented, plaintiffs adduced considerable testimony at trial, through expert witnesses, regarding the so-called "cognitive deficit" or "cognitive development" theory of rehabilitative programming, as well as the now-discontinued "University Within Walls" ("U.W.W.") college-level programming offerings presented at Alaskan correctional institutions under prior Corrections Director Hatrak.

Defendants likewise presented substantial expert testimony from expert witnesses who had toured most of the Alaskan correctional institutions, and who had examined, among other things, the educational and programming offerings at such institutions. The thrust of defendants' expert evidence was to the effect that numerous "models" or theories of rehabilitative education and programming exist, that no one particular "model" or theory dominates in the literature or field of corrections administration, and that various "models" or theories have been "in vogue" over various periods of time in the history of American correctional administration. Additionally, defendants' experts generally found the quality and quantity of educational and programming opportunities at Alaska's institutions to be high.

Right To Reformation

To begin with, the Court concludes that under federal constitutional law, no right to rehabilitation or reformation is conferred upon prisoners by the United States Constitution. See French v. Heyne, 547 F.2d 994, 1002 (7th Cir. 1976); see generally Marshall v. United States, 414 U.S. 417, 421-22 (1974). Similarly, the Court concludes that the federal Constitution does not confer a right to educational or vocational programs on prisoners, Rhodes v. Chapman, 452 U.S. 337, 348 (1981), Hoptoit v. Ray, 682 F.2d 1237, 1254-55 (9th Cir. 1982), nor does the failure to provide prison educational or rehabilitative programs or work opportunities constitute unconstitutional punishment. Rhodes v. Chapman, supra, 452 U.S. at 348. Likewise, the Court concludes that the federal Constitution does not confer any right to rehabilitation on pretrial detainees, and that the failure to offer such courses does not amount to unconstitutional "punishment" under the due process clause of the Fifth and Fourteenth Amendments. See generally, Bell v. Wolfish, 441 U.S. 520 (1979). If any right to rehabilitation exists, it must be found under state constitutional or statutory law.

Turning to Article I, §12 of the Alaska Constitution, the second sentence of that provision provides:

> Penal administration shall be based upon the principle of reformation and upon the need for protecting the public.

(Emphasis added.)

Defendants argue that this "reformation principle" in Article I, §12 merely states a philosophical goal or objective which is advisory in nature; that common law interpreting the same must be narrowly construed to confer a right to rehabilitative treatment on prisoners demonstrating particular curable medical disabilities; and that in any event, plaintiffs lack standing to raise claims of any right to rehabilitative treatment. Plaintiffs contend that the Alaska constitutional provision confers upon them a generally recognized right to rehabilitation treatment in this jurisdiction, and further

contend that on the record in this case, the only type of rehabilitative programming which would meet such requirement is the so-called "cognitive deficit" theory, programs containing elements of such theory, and/or the prior U.W.W. program.

Initially, the Court notes that the legislative history to the Alaska Constitution regarding the reformation principle of Article I, §12 is not helpful. Equally unhelpful and distinguishable are authorities from other jurisdictions wherein other state supreme courts have considered vaguely similar language and provisions of their respective state constitutions. Nor has the Alaska Supreme Court expressly addressed the particular question of whether Article I, §12 confers a generalized right to rehabilitation or reformation on prisoners. See Rust v. State, 582 P.2d 134, 144 n.35 (Alaska 1978).

Initially, the Court concludes that plaintiffs do have standing to raise the issue of the existence of any right to rehabilitative treatment under Article I, §12 of the Alaska Constitution, and/or under relevant Alaskan statutory authority, such as AS 33.30.020. The Alaska Supreme Court has impliedly recognized such standing in considering the claims of prisoners and holding that individual inmates had the right to receive psychological or psychiatric treatment in particular cases, Rust v. State, supra, as well as treatment with respect to alcohol abuse, Abraham v. State, 585 P.2d 526 (Alaska 1978); see also LaBarbera v. State, 598 P.2d 947, 949 (Alaska 1979).

Turning to the merits of the issue, this Court concludes that Article I, §12 of the Alaska Constitution confers upon prisoners a right to receive, and requires defendant correctional officials to provide, reasonable access to educational, work and rehabilitative or reformational programming during the course of the prisoner's period of incarceration. In this Court's view, correctional officials must, under the reformation principle of the Alaska Constitution, use good faith efforts to provide prisoners with

some form or forms of rehabilitative programming, adopted on a rational basis, and designed to assist prisoners in reforming their criminal conduct and rehabilitating themselves to become useful, contributing members of our society.

Significantly, the Court is not holding that the Alaska Constitutional provision guarantees or assures that any particular prisoner, or groups of prisoners, will in fact be rehabilitated during their period of incarceration. Nor is the Court concluding, as plaintiffs have apparently urged, that any particular model or theory of rehabilitative programming must be provided to all, or any particular individual or groups of prisoners, during their period of incarceration. The Court is holding that correctional officials may not do nothing; that is, defendants must develop and provide to prisoners reasonable opportunities to engage in work programs, educational programs, counseling sessions and/or other types of activities designed to facilitate such prisoners' reformation or rehabilitation.

The Court reaches the same conclusion under applicable Alaskan statutory law. AS 33.30.020 states this obligation more clearly than Article I, §12, and provides in part:

> The Commissioner shall establish programs for the treatment, care, rehabilitation and reformation of prisoners.

(Emphasis added.)

Other statutes also require the defendants to provide adequate medical and mental health care to the prisoners, AS 33.30.050; authorize DOC to "productively employ" prisoners,

AS 33.30.225(a);[24] and authorize DOC's Commissioner to release prisoners for work furloughs, AS 33.30.250(a).[25]

Defendants, however, argue that AS 33.30.260 renders the foregoing statutory and constitutional obligations entirely discretionary, leaving the Commissioner free to provide no such rehabilitative programming. That provision provides, in part:

> The Commissioner may authorize the prisoner to participate in educational, training, medical, psychiatric, or other rehabilitation programs approved by the commissioner.

In the Court's view, AS 33.30.260 pertains to "rehabilitation furloughs," not to the overall constitutional or statutory duty to provide rehabilitative or reformational programming or treatment to prisoners.

Evidence Regarding Programming Offered

Having concluded that plaintiffs have a general constitutional and statutory right to receive, and defendants

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[24] AS 33.30.225. Employment of prison inmates. (a) It is the policy of the state that prisoners be productively employed for as many hours each day as feasible, not to exceed 40 hours per week unless overtime has been specifically approved by the commissioner. The term 'productively employed' includes the following kinds of employment:

(1) routine maintenance and support services essential to the operation of a prison facility;

(2) education including both academic and vocational;

(3) industrial, agricultural, and service activities conducted in accordance with AS 33.32;

(4) public conservation projects including but not limited to forest fire prevention and control, forest and watershed enhancement, recreational area development, construction and maintenance of trails and campsites, fish and game enhancement, soil conservation, and forest watershed revegetation; and

(5) other work performed inside or outside of a prison facility if the work has minimal negative impact on an existing private industry or labor force in the state as determined by the commissioner.

[25] AS 33.30.250. Work furlough. (a) When a person is convicted of a crime and is sentenced to a prison facility, or is imprisoned in the prison facility for nonpayment of a fine, for contempt, or as a condition of probation for a criminal offense, the commissioner may, if the commissioner concludes that the person is a fit subject for a work furlough and is not prohibited from it under (g) of this section, direct that the person be permitted to continue in the person's regular employment, if that is compatible with the requirements of (c) of this section, or may authorize the person to secure employment, unless the court at the time of sentencing has ordered that the person not be granted work furoughs.

have a general duty to provide, some rationally-based rehabilitative or reformational programming to prisoners, the Court next turns to the state of the record at trial to determine whether defendants have complied with such duty.

At trial, plaintiffs advocated one or two particular "models" or theories of rehabilitative programming, namely the so-called "cognitive deficit" theory, and/or a college-level liberal arts educational approach. Expert witnesses such as Ross, Doguid and others explained the tenets of the "cognitive deficit" theory, which holds that criminal conduct is a function of deficits in the reasoning process of an individual, and which may be corrected through the provision of cognitive development or reasoning or analytically-oriented courses and programs. A more specific description of this theory is set forth in the accompanying findings of fact and conclusions of law. To the same extent, the liberal arts college education approach was explained by plaintiffs' witness Nickerson and Dr. Ackley. This program had been utilized under the prior DOC administration headed by Director Hatrak, but was discontinued as a statewide program under Commissioner Endell.

Defendants' evidence, largely in the form of expert testimony, established that over a period of time, numerous methods, models or theories of rehabilitative training and programming have been utilized, designed, studied and considered by correctional officials, administrators and social scientists. As many as 18 such theories, in varying forms, were discussed by the experts at trial. The theories or models included the "confrontational theory," the "medical model," the "safe environment theory," the "work model," the "basic literacy model," the "G.E.D. model," the "life skills model," the "post-secondary education model," the "vocational education model," the "cognitive deficit theory," the "moral reasoning development theory," the "religious educational theory," the "Just Community concept," "behavior modification models," the "phase theory," the "mere confinement theory," the "unpleasant environment theory,"

and a school of thought held by the noted corrections theorist, Robert Martinson, which concluded that "almost nothing works" to reform criminal offenders.

On the basis of the evidence adduced at trial, this Court finds and concludes that no single programming model or theory, or portion or combination thereof, has been proven to be the most efficacious -- let alone the only efficacious -- means of effecting reform or rehabilitation of the criminal offender. In this Court's view, a number of such models, theories or approaches, as well as a variety of mixes thereof, may well be useful in achieving the desired result of reforming or rehabilitating prisoners. Moreover, the Court finds that some of such models and approaches may be useful for certain types of offenders, while other of such models may be useful for other individuals or groups of prisoners. Additionally, the Court finds, on the basis of the expert testimony adduced at trial, that the state of development and sophistication of approaches to rehabilitative or reformational programming is dynamic, evolutionary, and inexact. That is, like social science generally, the subject of rehabilitation and reformation does not lend itself to precise analysis or simplistic cause and effect conclusions.

In determining whether defendants have met their Alaskan constitutional and statutory obligations to provide plaintiffs with reasonable rehabilitation programming opportunities at each of the respective institutions, the Court finds and concludes that generally, on a system-wide basis, defendants have met and are adequately meeting, this requirement. Rather than taking a statewide liberal arts/college level education approach, or the cognitive development theory approach, defendants have, instead, stressed basic education, job and life skills training, and to a more limited extent, work programs, as the system-wide rehabilitative programming approach. In particular, the evidence at trial indicated that defendants have offered various educational and rehabilitation programming, through

local contracts with private companies, on an institution-by-institution basis. Such programs vary from institution to institution, and generally include adult basic education (ABE) at all institutions; opportunities for General Education Development (G.E.D. - high school diploma equivalency), at all institutions; post-secondary and college courses to a limited extent at certain institutions; vocational training at certain institutions; life skills courses (such as financial management, consumer knowledge, job-seeking skills, etc.) at all institutions; substance abuse programs and sex offender therapy at limited institutions; prison industries at a few institutions; and a limited number of institutional jobs (such as maintenance jobs, library positions, cooks' assistants, module helpers, etc.) at each institution.[26] In addition, limited opportunities for work furloughs, and rehabilitation or educational furloughs, are afforded at various institutions.

Idleness

While the foregoing programs have been offered in varying degrees at the various institutions throughout the state, there is, certainly, the opportunity for, and the need for, improvement in the programming offerings in particular areas, as well as at particular institutions. Indeed, nearly all of the experts who testified at trial commented on the substantial problem of "idleness" of the inmates at each institution. Many experts observed, and the Court itself observed during tours of the prison facilities, numerous inmates sitting or lying idly on their bunks or in dayrooms, engaged in no particular activity. Further, expert opinion testimony linked the problem of idleness to increased tensions, conflicts and potential violence in institutions. Experts also found that

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[26] Recreational facilities, equipment and programmings, in the form of gymnasium or exercise opportunities, are also offered at institutions. This subject, however, has been covered in the parties' partial settlement agreement, and was not an issue litigated at trial.

idleness was not conducive to effective rehabilitative programming.

Lack Of Evaluation Study

The Court finds that as of the time of trial, no ongoing evaluation of defendants' rehabilitative programming was in effect. That is, no study or scientific effort had been attempted by defendants to follow up inmates who had been released from Alaskan correctional institutions, determine their rate of recidivism or their lack of future criminal behavior, and compare such results with the rehabilitative programming activities which had been offered to such released inmates. Nor was there any attempt to analyze the efficacy of any particular program, or to continue, modify, or abandon defendants' programs or mix thereof on the basis of demonstrated post-release results. Apparently, institutions throughout Canada are now performing just such ongoing evaluative studies of rehabilitative programming offered at such institutions.

During the trial, however, defendants' witnesses indicated that they were in the process of setting up computerized record-keeping systems, which would enable them to create a sufficient data base from which to begin conducting ongoing, follow-up studies of released inmates. Additionally, defendants' witnesses indicated that they contemplated a three-year follow-up study, the first report from which would be available in 1987 (excluding annual partial reports prior to then). In the Court's view, such an evaluation component to rehabilitation programming is essential to provide defendants with at least some relevant information as to the efficacy or inefficacy of the rehabilitative programming being offered to inmates at defendants' institutions. Accordingly, by separate order, the Court has required defendants to implement and maintain such an ongoing evaluation study.

Areas Of Concern

Generally, the Court finds that, system-wide, and on the basis of the record at trial, defendants are meeting their

constitutional and statutory requirements to provide inmates with reasonable opportunities to engage in rehabilitative programming offerings, which have been developed on a rational basis.[19] Plainly, defendants' correctional officials must be accorded broad latitude to determine both the type and mix of programming offered, as well as the types of inmates or inmate groups which may be more suitable for particular programming offerings. Also, the Court finds that defendants' present state-wide Programming Director, Ms. Susan Humphrey Barnett, is exceptionally well qualified to manage defendants' statewide programming activities, and has demonstrated both professional ability and sensitivity to inmates' needs in this area and during her work as Superintendent of MCCC. Further, the Court is impressed with recent policy changes implemented by defendants, including the elevation of the programming function to a director-level position within the agency, and the conferring of authority on the Programming Director to prevent the transfer of any inmate from one institution to another when such transfer would seriously disrupt educational or rehabilitative programming activities. Evidence established that Ms. Humphrey Barnett in fact invoked such authority on more than one occasion.

Nevertheless, there are wide variations between minimal levels of constitutional and statutory programming offering, and ideal levels of such offerings. While obviously the provision of programming offerings is a function, to some extent, of available resources, the Court finds that, on this record, improvement in programming offerings are indicated in a number of particular areas.

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[19] On this issue, the Court is entering findings of fact and conclusions of law only on the question of the sufficiency of defendants' programming system-wide. Significantly, the Court is not adjudicating any particular inmate's claim that he or she has been denied a right to treatment for alcohol or drug rehabilitation, or for psychiatric or psychological treatment, or the like.

First, as previously noted, the problem of idleness of inmates exists throughout the entire system. Defendants should continue to attempt to reduce such idleness in as many ways as realistically possible.

Second, the Court finds that the programming offerings available for women prisoners at the Fairbanks Correctional Center are deficient or even non-existent. Some programming offerings to this group of prisoners must be provided.

Third, the Court finds that both programming activities, and programming space, at Third Avenue are deficient as well. Indeed, the limitations of the space and programming offerings at Third Avenue have been noted by several expert witnesses, including defendants' expert, Brodsky. Additional programming should be offered at this institution.

In addition, the Court finds that post-secondary educational offerings are extremely limited throughout most institutions, but in particular, are non-existent at the Ketchikan Correctional Center. To the extent indicated by the prisoners at such institution, post-secondary educational opportunities should be provided.

Finally, the Court finds that programming offerings at Cook Inlet Pretrial Facility are likewise extremely limited.[27] As CIPT's population continues to mushroom in the future, programming will have to be increased.

In the accompanying order, the Court has required defendants to submit a report, within 30 days hereof, indicating how defendants intend to improve the programming offerings in the areas indicated above as being deficient.

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[27] Although the pretrial detainees may not have a "right to rehabilitation" treatment, since, by definition, they have not been convicted of any crimes, and therefore, have not demonstrated a need for rehabilitation, the Court concludes that under relevant statutory authority, defendants are obligated to provide at least minimal treatment, care, educational and work opportunities to such pretrial detainees. That is, the Court is construing the term "prisoners" of applicable statutes, to include pretrial detainees. See AS 33.30.020, .050, .225(a),

Denial Of Access To Higher Education

Another area of concern to the Court is defendants' policy which has the effect of denying prisoners access to post-secondary educational courses. That is, the Court finds that defendants had, prior to trial, been following a policy of not permitting prisoners to take any college level, post-secondary educational courses unless such prisoners had (1) a high school diploma or a G.E.D. certificate, and (2) scored at least at the 9th grade functioning level on the Iowa Basic Skills Test.

As of about November, 1983, this policy was revised somewhat, to allow prisoners to take one non-credit post-secondary course initially, and upon successful completion thereof and in the discretion of correctional officials, to take additional non-credit post-secondary courses. Prisoners were, however, still required to have a high school diploma or a G.E.D. certificate, and to have taken the Iowa Basic Skills Test and to have achieved a 9th grade or higher functional level thereon, before being allowed to take such courses. Additionally, inmates scoring below the 9th grade level on the Iowa basic test could, on the recommendation of one of defendants' educational associates or institutional instructors, enroll in a post-secondary credit course, and could continue therewith if they had received a grade of C or better.

The Court finds that under defendants' past policy, and even under defendants' current policy, some inmates are being denied access to post-secondary educational opportunities. Inmate testimony at trial established that even inmates with G.E.D.s or high school diplomas were denied opportunities to take college level courses. Inmate testimony also established that at least certain inmates or groups of inmates seem to have facilitated their own rehabilitation in part through the use of

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and .260.

college level programs, such as creative writing courses, poetry classes, literature courses, analytical reasoning courses and the like.

Additionally, in this regard, the Court finds that there is evidence on the record in this case to the effect that the Iowa Basic Skills Test, while "validated" (meaning that the test in fact measures what it purports to measure), is not "normed" or "normalized" for certain minority groups, specifically including Alaska Natives who constitute a significant percentage of Alaska's prison population. The Iowa Basic Skills Test results may well be inappropriate and unreliable, at least as regards Alaska Native prisoners. Further, the Court finds, on the basis of testimony from several witnesses herein, that approximately 60% of the adult male prisoner population of Alaska's prison system have either high school diplomas or G.E.D. certificates.

In this connection, the Court also finds that the Alaska Community Colleges and the University of Alaska have no similar admission requirements of students similar to defendants' high school diploma or G.E.D. and 9th grade testing results policy. The University of Alaska is a land grant university with an open enrollment policy.

The Court also finds that defendants' educational programming expert and consultant, Dr. T. A. Ryan, testified that she felt that post-secondary educational courses should be available to prisoners on the same basis as "free world" persons who could take courses through the University of Alaska system. To the same effect is the recommendation of defendants' own advisory board of college course providers for prisons, i.e., that the G.E.D./high school diploma requirement for admission to post-secondary education courses be abolished.

Finally, the Court finds that defendants' rationale for maintaining this restrictive policy, essentially to the effect that the policy maximized the likelihood of prisoner success and minimized the risk of failure, is not credible.

Accordingly, the Court concludes that the policy of defendants, requiring prisoners to have both a high school diploma or G.E.D. certificate and to have achieved a 9th grade level of functional ability on the Iowa Basic Skills Test, before taking credit or non-credit post-secondary courses, is arbitrary, irrational, and contrary to the policies embodied in the Article I, §12 of the Alaska Constitution, and relevant Alaskan statutes, including AS 33.30.020, and .260.

The Court notes that the utilization of testing or screening instruments by defendants may, nevertheless, continue to be a useful educational device. That is, the Court finds that at or shortly before trial, defendants' began administering an individual needs assessment test to incoming prisoners for the purpose of determining their rehabilitative potential and needs. The Court finds this approach to be desirable and functional, and urges defendants to continue doing so.

The tests used by defendants for this purpose, however, should, as noted above, be both validated and "normed," meaning that they should in fact measure the matters which they purport to measure, and that they should not be inappropriate for or discriminate against any particular groups of test-takers, such as minority groups and particularly Alaska Natives. And, of course, the tests should be administered in a standardized fashion to all inmates. To the extent that the tests currently being utilized by defendants, including the Iowa Basic Skills Test do not meet these requirements, they should be discontinued or "validated" and "normed."

Detailed findings of fact and conclusions of law regarding the subject of programming, have been issued simultaneously with this Memorandum Decision.

G. Inmates' Access To Files

In ¶ XIII(30) and (36) of their Fourth Amended Complaint, plaintiffs challenge defendants' alleged unreasonable and unnecessary prohibition of or restriction on plaintiffs' access to their prison files, contending that such prohibitions

or restrictions violate plaintiffs' constitutional or statutory rights.[28]

Initially, the Court concludes that plaintiffs failed to adduce competent evidence on this claim, and have failed to establish, by a preponderance of the evidence, that defendants or their officials unreasonably and unnecessarily restricted inmates' access to their files. On the other hand, defendants' evidence, particularly the opinion testimony of Dr. Hudson,

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[28] 7AAC 60.095, now 22 AAC 05.095, provides:

22 AAC 05.095. ACCESS TO PRISONER RECORDS. (a) Except as otherwise provided this section, access to prisoner records is available only to personnel of the department and to individual law enforcement agencies. No file containing prisoner records may leave an institution, unless authorized by the commissioner or court order.

(b) In the absence of any state or federal law to the contrary, the prisoner, his attorney, or the attorney's agent, shall be granted access, upon request, to the prisoner's records in order to prepare for any classification, disciplinary, parole, revocation, or judicial hearings, or appeal from any such hearings, subject to the following:

(1) Access to the following records may be denied:

(A) individual voting records of classification or disciplinary committees and of the parole board;

(B) identity of informants or information given in confidence;

(C) maps, diagrams or diagraphs of the physical layout of the institution or descriptions of security procedure;

(D) any reports, memoranda or other documents prepared specifically for transmittal to the Alaska Department of Law or an attorney retained by the State of Alaska in anticipation of or during the course of litigation;

(E) law enforcement investigative reports and criminal history information; and

(F) any other record where a determination is made by the commissioner, that such information would result in a substantial risk of reprisal, endanger the security of the institution, or disclose the department's position in litigation.

(2) Access to evaluations regarding the prisoner may be denied only if it is determined by the commissioner that the evaluations, if known to the prisoner, could lead to a serious disruption of his instituional adjustment or rehabilitative progress. This paragraph includes, but is not necessarily limited to, the following:

indicated that at least with respect to medical files, allowing inmates access to their medical records and to such things as doctors' or psychiatrists' notes, was not a good idea and could be counterproductive to treatment. In short, defendants prevail on this claim as a result of plaintiffs' failure of proof.

To the extent that the plaintiffs challenge the regulation in effect at the time of trial, 7AAC 60.095, on its face on due process grounds, under state or federal constitutional

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(A) psychiatric or psychological reports;

(B) parole or probation reports;

(C) presentence reports;

(D) staff investigative reports and evaluations;

(E) departmental and interagancy memoranda;

(F) reports concerning personal family life; and

(G) medical records or reports.

(3) Access to the following records may not be denied:

(A) a copy of the judgment and commitment or any other document under which authority the prisoner is being held in custody;

(B) any transcript of court proceedings involving the prisoner including, but not limited to, comments made at the time of imposition of sentence;

(C) time accounting records;

(D) admission records;

(E) custody classification records;

(F) disciplinary or incident reports including final disposition;

(G) recordings of parole, classification, disciplinary or revocation hearings, other than with respect to testimony covered under (1) of this subsection;

(H) mail placed in the prisoner's file pursuant to 22 AAC 05.520(c)(3);

(I) any other record, access to which may not be denied under (1) and (2) of this subsection.

(4) If access to information is denied under (1) or (2) of this subsection, the superintendent shall give notice to the prisoner of the denial by stating, in writing, the title, label, form number or origin of the material and briefly set out the reasons for denial.

grounds, the Court concludes that the regulation is not unconstitutional. Defendants' January 23, 1984 motion, in this regard, is granted.

H. Constitutionality Of Regulations

In ¶ XIII(32) of their Fourth Amended Complaint, plaintiffs challenge certain regulations in effect and followed

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(5) Access to prisoner records under this section may be subject to such necessary and reasonable rules as may be prescribed by the commissioner with respect to time, place and manner of inspection. Any examination of the original documents in a file may be conducted under direct supervision; however, the reproduction of documents is not prohibited if done at prisoner expense.

(6) The institution has a reasonable time, from the time of the prisoner's request for access, in which to compile teh materials from his file for inspection. However, if the prisoner has not been given notice of a classification or disciplinary hearing, in preparation for which he wishes to review his file, early enough so as to allow a reasonable time for inspection of the records, then the institution must either reschedule the hearing or permit inspection of the materials no later than 24 hours before the hearing.

(7) The prisoner shall address all issues regarding his records through use of the procedures developed by the commissioner for prisoner grievances under 22 AAC 05.185. The prisoner may raise issues of inadequate access or request amendment, addition, or deletion of matter contained in his file on the basis that the information is erroneous, deceptive or unnecessary to the functions of the department. The grievance procedure relating to records need not be designed to work within the time frame contemplated by (6) of this subsection, but should attempt to prevent constant relitigation of issues raised by material in the prisoner's file.

(c) Individuals or agencies involved in a research program may have access to prisoner records with the approval of the commissioner, but only if a research program first demonstrates that threats to confidentiality and individual privacy which might be created by the program

(1) have been minimized by methods and procedures calculated to prevent injury or embarrassment to individuals; and

(2) are clearly outweighed by the prospective advantages accruing to the administration of justice (Eff. 9/10/77, Reg. 63)

Authority: AS 33.30.010 AS 33.30.030
AS 33.30.020 AS 33.30.185

by DOC at the time of trial.[29] Each of the challenged regulations will be addressed separately below.

1. Prohibited Conduct (7AAC 60.400(b)(21))

7AAC 60.400(b)(21) defines the following activities as a "major infraction," for which prisoners may be punished:

> [E]ngaging in a group or individual demonstration or activity, excluding abusive or obscene language, involving conduct which would potentially disrupt or interfere with the security or orderly administration of the institution, or undermine authority including, but not limited to, refusing to obey a lawful and proper order of any staff member.

Plaintiffs contend that 7AAC 60.400(b)(21) is unconstitutionally vague. The Court agrees.

The concept of vagueness was first explained in Connally v. General Construction Co., 269 U. S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926).

> [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

Cited in Summers v. Anchorage, 589 P.2d 863, 867 (Alaska 1979).

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[29] In July, 1984, the DOC was given its own AAC Title (Title 22). Therefore, the regulations referred to in the parties' briefs and in this Memorandum Decision have been superseded. The new numbers are as follows:

Work Furlough:	old	7AAC 60.320
	new	22AAC 05.320
Visitation:	old	7AAC 60.325
	new	22AAC 05.325
Prohibited Conduct:	old	7AAC 60.400
	new	22AAC 05.400
Furlough Consideration:	old	7AAC 60.330
	new	22AAC 05.330
Violations of Furlough Conditions:	old	7AAC 60.335
	new	22AAC 05.335

The substance of the regulations and the numbering of subsections, however, remain unchanged.

Three factors must be considered in determining whether an administrative regulation is unconstitutionally vague: (1) whether the regulation is so imprecisely drawn and overbroad that it "chills" the exercise of First Amendment rights,[30] (2) whether the regulation gives inadequate notice of the conduct that is prohibited and (3) whether the imprecise language of the regulation encourages arbitrary enforcement by allowing prison administrators undue discretion to determine the scope of its prohibitions. Id. at 863; see also Storrs v. State, 664 P.2d 547 (Alaska 1983).

Plaintiffs argue that the foregoing regulation is used to punish the exercise of their First Amendment right to freedom of expression;[31] that prisoners have no notice as to what conduct is considered "potentially disruptive" or an interference with prison security or administration; that enforcement is arbitrary because of the amount of discretion left to administrators by the vague regulation. Each contention will be addressed in turn.

First, the regulation in question is specifically focused on "group or individual demonstration or activity." The regulation clearly encompasses the curtailment of the freedom of expression guaranteed by the First Amendment. The contemplated restriction extends beyond setting "time, place, and manner" conditions on expressive conduct, and seemingly extends into the area of substantive restrictions. Heffron v. International Society for Krishna Consciousness, 101 S.Ct. 2559 (1981). This, combined with the vague language in the regulation regarding

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[30] The existence of a statute may "chill" the exercise of First Amendment rights if it may cause others to refrain from constitutionally protected speech or expression. Thus, the Court must consider its possible application to any situation within the scope of the regulation. Broadrick v. Oklahoma, 413 U.S. 601 (1973).

[31] "[P]assing out grievance forms, circulating petitions, or questioning the behavior of officers." (Plaintiffs' Brief, p. 37.)

what expression is punishable, could produce a "chilling effect" on those First Amendment guarantees.[32]

Second, the use of language defining as a "major infraction" "group ... conduct which would potentially disrupt, or interfere with security or orderly administration ... or undermine authority ... .," is plainly void for vagueness. The inadequacy of the regulation is apparent on its face. Clues which would assist a prisoner in determining whether conduct is susceptible to punishment as disruptive or interfering are not present.

Third, in Levshakoff v. State, 565 P.2d 504 (Alaska 1977) the court held that a "statute can be held void for vagueness if, by its imprecision, it confers on judges, jurors, or law enforcement personnel undue discretion in determining what constitutes the crime proscribed by statute." The question is thus, how much discretion rests in administrators and judges to arbitrarily or discriminatorily enforce the regulation.

Courts have recognized that administrative officers should be required "to articulate the standards and principles that govern their discretionary decisions in as much detail as possible." Environmental Defense Fund v. Ruckelshaus, 439 F.2d 584, 598 (D.C. Cir. 1971). Where there are, in essence, no standards governing the exercise of discretion granted by the statute, the lack of specific regulation "permits and encourages arbitrary and discriminatory enforcement." Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972).

In the instant case 7AAC 60.400(b)(21) contains general language which fails to specify with particularly what exact conduct is considered disruptive or interfering or undermining regarding security, orderly administration, or authority. The

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[32] If the regulation has a "chilling effect" inhibiting the exercise of constitutionally protected freedom, it is invalid on its face. Thornbill v. Alabama, 310 U.S. 88, 84 L.Ed. 1093, 60 S.Ct. 736 (1940).

regulation lacks detail to guide an administrator in its enforcement or to protect against arbitrariness or discrimination. The use of this regulation for discipline is so vague as to confer undue discretionary power. As such, the potential for unchecked abuse exists.

Because 7AAC 60.400(b)(21) infringes on First Amendment rights, does not provide adequate notice of prohibited conduct, and does not provide a check on potential arbitrary and discriminatory enforcement, the Court concludes that the regulation is unconstitutionally void for vagueness.

2. Work Furlough (7AAC 60.320(a))

7AAC 60.320(a) provides:

> Upon the recommendation of the classification committee and the superintendent, the director may grant any sentenced prisoner a work furlough in accordance with AS 33.30.250, Sec. 330 of this chapter, and this section.

Plaintiffs argue that 7AAC 60.320(a) and 7AAC 60.330 are both arbitrary and inconsistent with AS 33.30.250, which provides criteria for work furlough participation. Thus, plaintiffs contend, those regulations are invalid as provided by the Alaska Administrative Procedure Act AS 44.62.030.

Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971) cited the standard of review relevant to regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Those factors are: (1) whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency, and (2) whether the regulation is reasonable and not arbitrary.[33]

Generally AS 33.30.250 provides the Commissioner with the power to determine if a prisoner is a "fit subject for a work furlough." However, the Commissioner is specifically

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[33] See also Chevron U.S.A., Inc. v. LeResch, 663 P.2d 973 (Alaska 1983).

prohibited from authorizing work furloughs for prisoners (1) who are identified with large-scale, organized criminal activity, (2) who have serious emotional or personality problems, as determined by the commissioner, and (3) whose presence in the community is likely to evoke adverse public reaction toward the inmates, the institution and the state. AS 33.30.250(g).

The challenged regulations go beyond the statute and impose additional eligibility requirements on prisoners who may be eligible for work furloughs. Specifically, 7AAC 60.330(3) provides that a prisoner is not eligible until the prisoner is within six months of a mandatory or parole release date. This, plaintiffs argue, is an arbitrary requirement which does not bear any relationship to the limitations set out in the statute and which unreasonably limits the number of furloughs granted. The Court agrees.

The regulation goes well beyond the three disqualifying criteria of the statute. Although the statute clearly gives the Commissioner the discretion to determine who is a "fit" subject, the statute defines such fitness, or lack thereof, in terms of risks to the community and the penal institutions -- not in terms of any particular length of time remaining to be served on a prisoner's sentence.

In the Court's view, the six month pre-release requirement is arbitrary and unreasonable, and not rationally related to the objectives of the statute, and inconsistent with AS 33.30.250. Distinguishing between a prisoner, who would, for example, otherwise be suitable for a work furlough but who had seven months remaining on his sentence, and one who was similarly eligible but who had only five months to serve before release, is, in the Court's opinion, simply arbitrary. Accordingly, the regulation is held to be invalid.

3. Visitation Furlough (7AAC 60.325)

AS 33.30.150 was enacted to provide a deserving prisoner permission to visit his/her family under certain

circumstances. The regulation, 7AAC 60.325(b) further defines what group is encompassed in the definition of "family":

> (b) For the purposes of this section, the prisoner's family is deemed to be his father, mother, sister, brother, spouse, son, daughter, step-relationships of the previously mentioned relatives, or any persons having an immediate family relationship with the prisoner during his formative years.

Plaintiffs argue that this regulation refers to "immediate" relationships and thus denies Alaskan Natives access to their extended families in contravention of the purpose of AS 33.30.150, which states generally that a prisoner may "visit with family at a place other than at the place of confinement ... ."

A simple reading of the regulation in question shows that plaintiffs' argument is clearly without merit. The regulation defines immediate family in such a way as to include most everyone who has had a close family relationship with the prisoner, and with whom the prisoner should conceivably expect to visit. The regulation is not vague, arbitrary or inconsistent with the statute.

4. Furlough Violation (7AAC 60.335)

7AAC 60.335 provides:

> If a violation of the conditions of a furlough is alleged, a report must be immediately sent to the director. The director, the superintendent, or the supervising parole/probation officer shall arrange for the immediate return of the prisoner. The prisoner shall appear before the classification committee within seven days for a hearing to determine whether the furlough be continued or terminated.

Plaintiffs argue that 7AAC 60.335, which provides for the immediate return of a prisoner from any type of furlough upon the mere allegation of a violation, is violative of due process because no hearing is held prior to the prisoner's return. Whether a prisoner's claim of due process violation in connection with the return from furlough is cognizable depends on whether the prisoner has a justifiable expectation based on the law or practice which conditioned the return from furlough

upon proof of serious misconduct. If he does have such an expectation, minimum procedures required by the due process clause are necessary to insure that the state-created expectation is not arbitrarily abrogated. Durso v. Rowe, 579 F.2d 1365 (7th Cir. 1978).

The question to be addressed, then, is whether a prisoner has a justifiable expectation to remain in a furlough status program until a hearing is afforded. The program grants furlough status when a prisoner meets certain eligibility criteria and the administration, exercising its discretion, decides that furlough is appropriate. Once furlough is granted, however, the question becomes, does the grantee then have a liberty interest in that furlough?

In Tracy v. Salamack, 440 F.Supp. 930 (S.D.N.Y. 1977) modified, 572 F.2d 393 (2d Cir. 1978) the court analogized removal from a work release program to parole revocation and to loss of conditional release rights which merit due process protection. Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed.2d 484 (1972).[34] The court in Tracy reasoned:

> [L]ike parolees, temporary release participants enjoy a form of conditional liberty: they may spend up to fourteen hours a day outside prison, participating in employment or schooling. Indeed, the very purpose of temporary release is to lessen the shock of returning to society by offering much of the freedom of parole. While the temporary release participant, unlike a parolee, must normally return to his work release facility at night, even this distinction is not overwhelming since overnight and weekend furloughs are commonly available. Plaintiffs also compare their loss to impairment of the interest in conditional release, which was held in Zurak v. Regan, supra, 550 F.2d 86, to require due process protection. Zurak and the parole revocation cases, plaintiffs argue, establish that a broad range of interests in conditional liberty are entitled to the safeguards of the Fourteenth Amendment.

440 F.Supp. at 934.

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[34] See also Durso v. Rowe, 579 F.2d 1365, 1371 (7th Cir. 1978).

The court in Tracy also adopted the entitlement test of Meachum v. Fano, 427 U.S. 215, 49 L.Ed.2d 451 (1976). Entitlement must be determined by looking to the reasonable expectation of the inmate based on a variety of factors, including not only the statute and regulations, but also history and prior practice.[35] Where the practice of the state is to revoke furlough status only upon a showing of misbehavior, there is a reasonable expectation, arising from that practice, of a right to continued participation in the program as long as an offense is not committed.[36] Thus, a prisoner cannot be deprived of the entitlement without due process.

Whether a hearing prior to the return from furlough is required by due process is determined by weighing (1) the importance of the individual interest involved, (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of a prior hearing to that risk, and (3) the governmental interest in employing the challenged procedures (i.e., post-return hearing). Matthews v. Eldridge, 424 U.S. 319 (1976).

The first factor is the importance of the prisoner's interest involved. Furlough enables a prisoner to participate in many activities enjoyed by "free" citizens. The prisoner is released from prison based on an evaluation by the Commissioner that he is capable of returning to society as a responsible member. Under certain conditions the prisoner can be employed, visit with family and participate in educational opportunities. Although subject to restrictions, a prisoner has an expectancy interest in continued conditional liberty. Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed.2d 484, 495 (1972). A person's liberty

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[35] See Durso v. Rowe, 579 F.2d 1365 (7th Cir. 1978). Entitlements can also be created solely by the manner in which a program is administered. Zurak v. Regan, 550 F.2d 86 (2d Cir. 1977); Walker v. Hughes, 558 F.2d 1247 (6th Cir. 1977).

[36] See Holmes v. United States Board of Parole, 541 F.2d 1243 (1976).

interest, even the diminished liberty interest allowed a convicted prisoner on furlough, is an important interest which weighs heavily in a due process balance.

The second factor to be weighed is the risk of an erroneous deprivation of the expectation. The regulation provides for a hearing within seven days of return of the prisoner, to determine whether to continue or revoke the furlough. During that period the prisoner's furlough is effectively revoked until the date of the hearing, for a period of not more than seven days. This possible seven day loss of furlough status causes a temporary stop in visitation, work or education rights. The "temporary" loss could easily jeopardize the prisoner's employment and education on a permanent basis. Jobs could be lost due to the sudden departure of the prisoner employee. Exams, assignments and lectures could be missed for the same reason. The risk of erroneous deprivation is substantial. Under the regulation as written, corrections officials have no choice but to recall, however temporarily, any furloughed prisoner about whom a furlough violation is alleged. This is so regardless of whether the alleged violation is serious, minor or administrative, whether it is intentional or unintentional, and regardless of the source of the allegation and the presence of any opposing reports. This risk could be completely eliminated by the use of a pre-revocation hearing procedure.

The risk of erroneous deprivation of an important personal interest must be balanced against the state's interests in applying its current procedures. The state's main interest is the protection of the public. An immediate revocation of liberty status upon a suspicion that the prisoner violated furlough conditions does serve to protect the public.

Initially, the convicted prisoner was found guilty of a crime against society which justified imposing restrictions on his liberty. He was granted furlough in the belief that he would be able to conduct himself as a responsible citizen. Should this belief prove unfounded, the state's interest in

protecting its citizens dictates that the prisoner again be removed from society. The question is, however, whether the state's interests in affording only a post-return hearing outweigh the prisoner's interests in having a pre-return hearing.

The Court concludes that, absent exigent circumstances which implicate the public safety, a prisoner's liberty interest in furlough status must outweigh the state's interest in administrative convenience. Thus, in non-emergency circumstances, a pre-return hearing must be afforded to a prisoner prior to the revocation of his furlough status and his return to institutionalized status. Since the regulation in question deprives prisoners of their liberty interest in situations which do not implicate the public safety, the Court holds that the regulation violates the due process clause of the Alaska Constitution, Article I, §7. In emergency circumstances involving public safety, however, the State may take action without waiting for a hearing. In such cases the public interest necessarily outweighs the individual's interest.

By separate order, the Court has required defendants to submit, within 30 days, drafts of revised regulations conforming to the foregoing conclusions.

I. Urinalysis Testing Program

In this action, plaintiffs challenge the reliability of the EMIT-st machine and procedure in question, defendants' past practice of failing to preserve urine samples and/or maintain a chain of custody of such samples, and the imposition of disparate sentences given to different inmates at different institutions as a result of positive urinalysis test results. These claims will be addressed separately below.

The evidence in the record indicated that defendants had administered, at some of the institutions throughout the state, urinalysis tests of inmates. Such tests were administered in an attempt to detect whether inmates had been utilizing prohibited drugs, such as marijuana or alcohol. The device utilized in the testing procedures was a machine known as the

EMIT-st, which used a chemical analysis procedure to test for particular drugs in an inmate's urine.

Inmates whose urine was tested and who were found to have utilized prohibited drugs were subjected to disciplinary hearings. Some received different sanctions, including sanctions in the form of loss of statutory "good time."

The record also established that in the past, and up until shortly before the trial herein began, defendants failed to preserve urine specimens for subsequent testing by inmates, failed to maintain such specimens in sealed or protected containers and areas, and generally failed to maintain any "chain of custody" regarding such specimens. Shortly before trial, however, defendants represented to the Court that they had changed such policy, and that now urine specimens of inmates were being sealed, properly stored and identified, and preserved until the conclusion of disciplinary proceedings, to enable an inmate to conduct an independent test of the specimen.

Reliability of EMIT-st Machine And Process

Prior to trial, in December of 1983, the parties cross-moved for summary judgment on certain issues regarding defendants' urinalysis testing equipment, policies and procedures. In its January 3, 1984 Order Regarding Parties' Cross-Motions For Summary Judgment On The Issue Of Defendants' Urinalysis Testing Policies And Procedures, the Court granted defendants' motion and denied plaintiffs' motion regarding the reliability of the EMIT-st machine and process in question. Accordingly, that issue was not litigated at the trial herein.

Defendants' Policies And Practices Regarding The Preservation Of Urine Specimens And Chain Of Custody Thereof

With respect to the issue of defendants' past policies and practices concerning the preservation of urine specimens for retesting, the maintenance of a chain of custody and the like, the Court denied the parties' cross motions for summary judgment on that issue prior to trial.

Shortly before trial herein, however, defendants represented to the Court that such policies and practices had been changed, and that now defendants were following a policy and practice of preserving urine specimens for retesting, identifying such specimens, and maintaining such specimens in a secured area until the conclusion of any possible disciplinary proceeding resulting from a positive test result.

As a result of defendants' changed policies and practices, the issues regarding defendants' past procedures, as well as defendants' current policies and procedures, are moot. In the remedial order issued simultaneously herewith, the Court has required defendants to continue its current policies, and to reduce the same to a written policy memorandum and regulation. See Municipality of Anchorage v. Serrano, 649 P.2d 256 (Alaska 1982) (requiring prosecution in drunk driving cases to make reasonable efforts to preserve breath sample or allow defendant to verify results of breathalyzer tests).

Disparate Sentences

At trial, inmates Eric Holden of HMCC, and Regina Johnson of MCCC, testified that certain inmates had been given different punishments as a result of positive urinalysis test results. Plaintiffs challenged such disparate sentences on due process and equal protection grounds.

The Court has reviewed the record carefully in this regard, and finds and concludes that each inmate's circumstance was distinguishable, that there existed a rational basis for the sentence issued in each case, and that no constitutional violations occurred through the issuance of such differing sentences. Defendants' January 23, 1984 motion is, in this regard, granted in part and denied in part, as set forth herein.

VI. Remedies

As set forth above, the Court has found, in a limited number of areas, statutory or constitutional difficulties with certain of defendants' policies, procedures, regulations, housing conditions and practices. In fashioning appropriate remedies for such statutory or constitutional violations, the Court is mindful of the limited role it should play in remedying problems found in prison environments. As the District Court in Dawson v. Kendrick, 527 F.Supp. 1252, 1281-82 (S.D.W.Va. 1981) succinctly put it:

> It must be noted that certain unconstitutional conditions and practices by their nature bespeak only one constitutionally permissible response. The fashioning of remedies for such "single-edged" unconstitutional conditions and practices are solely within the province of the judiciary and are not amenable to a hands-off approach in fashioning the appropriate remedy. For purposes of example, compare the failure to afford procedural due process safeguards where required with a failure to provide minimally adequate plumbing and plumbing fixtures. The remedy for the former condition is solely a function of constitutional law whereas the latter brings into question state and local housing codes, expert opinion and standards promulgated by various interest groups. Thus, in Bell v. Wolfish, supra, the Court rejected the substitution by the lower courts of their judgment regarding the prison's restrictive policy on the receipt of packages by prisoners, stating that although the trial court's remedy was a reasonable response to the institution's interest in maintaining security, order and sanitation, "[i]t simply [was] not . . . the only constitutionally permissible approach to these problems." 441 U.S. at 554, 99 S.Ct. at 1882. The courts have accordingly abstained from articulating specific remedies to unconstitutional conditions and practices in those instances where a specific remedy is not constitutionally compelled.[n]
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> n. As previously observed, instances where prison officials have failed to comply with court orders requiring the upgrading of conditions of confinement stand as an exception to this principle. See Hutto v. Finney, 437 U.S. at 687, n.9, 98 S.Ct. at 2572, n.9, see generally Comment, Complex Enforcement: Unconstitutional Prison Conditions, 94 Harv.L.Rev. 262, 645-46 (1981).

Generally, where the Court has found constitutional or statutory violations or problems, as for example, in the areas

of programming deficiencies, overcrowded housing circumstances, or unconstitutional regulations, the Court's approach to remedying such violations is to have defendants submit their proposed solutions to such problems to the Court within a reasonable period of time. In this way, defendants, rather than the Court, will in fact be remedying the areas held to be problems. Except for the limited role of monitoring compliance with the prior settlement agreements and with specific constitutional and statutory remedies ordered herein, this Court has no intention of involving itself in the daily administration or management of Alaska's prisons; that responsibility and authority clearly resides with defendants' correctional administrators and officials.

As a result of the Court's findings and conclusions regarding certain statutory and constitutional problems on this record, however, the Court concludes that certain specific remedies are appropriate. A separate order, specifically detailing such remedies in each particular area, has been issued simultaneously with this Memorandum Decision.

In so concluding, the Court also notes that injunctive relief may be appropriate even where a particular practice or condition has been changed or terminated shortly before or during trial proceeding. That is, for the purpose of fashioning appropriate relief, the issue does not necessarily become moot with the changed or terminated policy or practice. See Vitek v. Jones, 445 U.S. 480 (1980); Alee v. Medrano, 416 U.S. 810 (1974) and U. S. v. W. T. Grant, 345 U.S. 629 (1953). Thus, for example, where defendants changed their prior practice regarding urinalysis sampling and testing just prior to trial, and now maintain a policy of identifying and preserving urinalysis samples with positive test results until an inmate disciplinary proceeding has been concluded, the Court has ordered that defendants' current policy should be continued.

In addition to the specific remedies ordered in the accompanying order, the Court intends to continue to use the

services of a Special Master to assist it in monitoring compliance with prior partial settlement agreements herein as well as with the terms of this Decision and the accompanying order.

Finally, the Court and/or its Special Master may, in the future, require defendants to submit periodic compliance reports and/or to advise the Court through competent evidence of the progress being made in addressing problem areas and/or complying with the Court's remedial order, this Decision, and the prior settlement agreements.

VII. Attorneys' Fees And Costs

The issuance of the instant Memorandum Decision, Findings Of Fact And Conclusions Of Law, and accompanying order, marks the end of this lengthy, complex litigation. The Court concludes that, on balance, plaintiffs are the prevailing paries in this litigation. In so concluding, the Court has considered the two extensive partial settlement agreements arising out of this litigation; unilateral changes in policies and practices by defendants occurring in the course of, and prompted by, this litigation; and the fact that both sides to this litigation each prevailed on certain of the issues litigated at trial herein. Clearly, this litigation, in all of its complex variations, has had, and will have, a major impact on defendants' policies and practices in administering Alaska's prison system.

Accordingly, the Court hereby orders plaintiffs' counsel to submit his motion for attorneys' fees within 30 days of this decision. The activities and time for which attorneys' fees may be awarded shall exclude all time and activities already compensated by the partial attorneys' fees award previously issued to plaintiffs herein, shall further exclude time spend in 1983 on unsuccessful settlement negotiations subsequent to the approval of the two partial settlement agreements reached by the parties, but shall include all pretrial and trial activities, commencing in the fall of 1983 and continuing through the 1984 trial proceedings. Plaintiffs' motion for attorneys' fees shall be accompanied by a detailed affidavit by plaintiffs' counsel and/or his assistants, setting forth specifically the time spent on pretrial and trial activities, broken down on a specific item-by-item basis, and accompanied, where possible, by billing sheets or time recording sheets.

The Court also directs counsel for both plaintiffs and defendants to meet and review plaintiffs' motion for attorneys' fees, and supporting documents and materials, immediately after such motion is filed, in an attempt to stipulate, as the parties

have previously done, to an appropriate amount of attorneys' fees. Failing to reach a stipulated sum, however, defendants will have an opportunity to oppose plaintiffs' motion, and plaintiff will have an opportunity to reply to defendants' opposition, in accordance with Civil Rule 77.

Plaintiffs' shall also prepare and submit to the Court within 30 days a final judgment form, which shall incorporate by reference therein this Memorandum Decision, accompanying Findings Of Fact And Conclusions Of Law, and shall leave appropriate spaces on such form for the insertion of figures for attorneys' fees and costs.

Finally, in view of the complex nature of this proceeding, the Court will extend from 10 to 30 days the period of time following the entry of judgment herein within which plaintiffs may file their cost bill pursuant to Civil Rule 79, and may apply to the Clerk of the Court for a hearing regarding the taxation of costs in this proceeding.