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U. S. DISTRICT COURT  
DISTRICT OF ARIZONA

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

EDDIE WILLIE TAYLOR, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 STATE OF ARIZONA, et al., )  
 )  
 Defendants. )

NO. CIV 72-21 PHX-WPC

GEORGE YANICH, JR., et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 STATE OF ARIZONA, et al., )  
 )  
 Defendants. )

NO. CIV 72-58 PHX-WPC

JUDGMENT AND ORDER

This matter having duly come on for consideration,  
and the Court having heard evidence and argument, having  
read briefs, and having considered stipulations, does now  
order and adjudge as follows:

I. The Substantive Rules of the Prison, for Violation  
of Which Discipline May be Imposed.

1. The defendants, in consultation with the  
plaintiffs, shall prepare and submit revised rules.
2. This submission shall be made within ninety days  
of this order.
3. The plaintiffs shall present exceptions, if any

1 there be, to the proposed rules within thirty days thereafter,  
2 or shall waive exceptions.

3 4. This Court will then adjudicate any appropriate  
4 issues, and will declare the resultant rules as generally  
5 suitable for use and application until changed.

6 II. Procedural Rules For the Administration of  
7 Discipline Within the Prison.

8 A. General Provisions.

9 1. Definition: Disciplinary proceedings may involve  
10 matters of two types: first, those which may result in a loss  
11 of good time by virtue of possible penalty by being placed in  
12 segregation; and, second, those which may result in a reprimand  
13 or other discipline such as minor loss of privilege but not a  
14 loss of good time.

15 2. Application: These rules apply only to the first  
16 category.

17 3. Definition: segregation is defined as isolation,  
18 adjustment center or administrative segregation confinement.

19 4. Application: These rules, except as otherwise  
20 noted, apply only to the first two categories of segregation.  
21 However, scrupulous care is to be taken to insure that  
22 administrative segregation does not become disciplinary  
23 segregation.

24 5. Library privileges shall be allowed to all inmates  
25 except those in strict disciplinary isolation, a minimum of two  
26 times each week for a minimum of two hours at a time. Provided,  
27 that these privileges shall not be construed to require that the  
28 prison authorities provide a guard for any inmate who may be in  
29 segregation for his own protection.

30 B. Disciplinary Committee.

31 1. Disciplinary charges shall be heard in the first  
32 instance by a disciplinary board, which shall be of a balanced

1 composition. It shall consist of three members. One of the  
2 members shall be from the staff of Custody, and one from the  
3 staff of Care and Treatment. Where possible, the third member  
4 shall be an employee not subject to the jurisdiction of Custody.

5 2. No person shall serve on the board who has been  
6 involved in the making or investigation of the charge.

7 C. Notice.

8 1. Any inmate who is charged with an offense which  
9 may result in discipline shall be given within five days of  
10 the offense a written notice thereof describing with reasonable  
11 precision the offense and the manner of its commission.

12 D. Hearing, Counsel, Confrontation.

13 1. The hearing under such a charge shall be held  
14 within five working days after the notice has been received, and  
15 for this purpose a working day is defined as the days Monday  
16 through Friday, excluding state or national holidays.

17 2. Any inmate charged with a disciplinary offense  
18 shall be entitled to have private counsel, if he is able to  
19 obtain it, or to designate an inmate or member of the staff  
20 willing to serve in this capacity as counsel. For purposes of  
21 preparation, the inmate shall be given reasonable opportunity  
22 to consult with a person named as his counsel.

23 3. At a hearing involving a disciplinary penalty,  
24 an inmate is entitled to hear the witnesses against him.

25 4. The inmate's private counsel or staff member  
26 counsel will be entitled to examine such witnesses.

27 5. If the inmate is either representing himself  
28 or is represented by a fellow inmate, he shall present his  
29 questions through an officer designated by the defendants,  
30 who will have the duty of asking them. The Court retains  
31 jurisdiction to review this procedure within six months to  
32 determine that it is operating properly.

1           6. Inmates in disciplinary proceedings will have  
2 the right to call as witnesses either other inmates or employees  
3 who may be supposed to have knowledge of the matter under  
4 consideration. This shall be subject to the power of the  
5 disciplinary board to make appropriate orders to prevent  
6 cumulative or irrelevant testimony. Such witnesses shall be  
7 examined in the same manner as witnesses on cross-examination.

8           E. Decision.

9           The board may:

10           1. Conclude that the inmate is not found guilty of the  
11 offense, in which case no record of the matters shall be retained  
12 in his file.

13           2. Conclude, whether the inmate is found guilty or  
14 not, to refer him for treatment.

15           3. Conclude that the inmate is guilty and impose  
16 a penalty not to exceed 15 days disciplinary segregation.

17           4. Conclude that the inmate is guilty and either  
18 reprimand him or impose some loss of privilege or other penalty  
19 which does not involve loss of good time; provided, that no  
20 such penalty shall deprive the inmate of food or exercise.

21           F. Appeal.

22           1. Each disciplinary hearing shall be recorded by  
23 a mechanical transcription device.

24           2. The inmate may request an appeal at any time  
25 from the end of his hearing to 48 hours thereafter, and shall  
26 be given an appropriate form for this purpose.

27           3. Appeal shall be to an officer designated for  
28 this purpose by the Department of Corrections. Minutes of the  
29 hearing shall be transmitted to the officer, who shall also  
30 have access to the recording.

31           4. Unless the board suspends execution of the penalty  
32 pending appeal, the inmate may be kept in disciplinary

1 segregation pending the outcome of the appeal, if he takes one,  
2 but for not longer than the period of his disciplinary sentence.

3 5. The Court retains jurisdiction for six months to  
4 review the operation of the appeal system.

5 G. Disciplinary Segregation.

6 1. No inmate will be held in segregation pending a  
7 disciplinary trial for more than five working days after notice.

8 2. No person shall be given a penalty of segregation  
9 for disciplinary purposes exceeding 15 days.

10 3. It is recognized that the adjustment center may be  
11 used for purposes of care and treatment as distinguished from  
12 discipline. If this is done, the inmate is to be given a clear  
13 written statement of when his disciplinary penalty terminates  
14 and when his care and treatment begins. All persons receiving  
15 adjustment center care for purposes of care and not for purposes  
16 of discipline are to have treatment on a regular basis. All  
17 persons in any form of confinement shall receive medical care  
18 as needed.

19 4. All inmates in segregation, whether isolation or the  
20 adjustment center, shall receive three meals a day.

21 5. All persons in the adjustment center shall have  
22 showers available a minimum of three times a week, and showers  
23 shall be made available to persons in isolation as facilities  
24 are available with due regard to the determination of the new  
25 prison administration as to security.

26 A. Plaintiffs' Proposal.

27 1. All inmates in segregation shall be offered a  
28 regular one hour daily exercise period.

29 B. Defendants' Position.

30 1. All inmates in segregation shall be offered,  
31 whenever the staff is sufficient to permit it, a one hour  
32 exercise period a minimum of three times weekly.

1           6. To insure that disciplinary segregation is not  
2 continued beyond the time limits set herein, classification of  
3 the inmate to a new duty or status must be completed within  
4 15 days or less from the institution of the disciplinary penalty.

5 III. Past and Existing Imposition of Discipline.

6           1. The principles of part II of this order shall be  
7 applied within 15 days to all inmates experiencing discipline  
8 at the time of this order. Specifically, any persons held in  
9 segregation pending charges will be charged within that time;  
10 and pending classification will be classified; any existing  
11 penalties will expire.

12           2. All inmates who have lost good time by virtue of  
13 disciplinary proceedings other than that forfeited by the Board  
14 of Pardons and Paroles within the past 30 months shall have  
15 their good time restored.

16           3. To carry this order out, each side is instructed to  
17 name one person to form an audit committee and the two persons  
18 thus named may name a third person. This committee shall review  
19 all disciplinary records of the state prison and shall report  
20 to the Court in the form of an order adjusting good time. The  
21 order adjusting good time shall become an appendage to and a  
22 part of this judgment when approved by the Court. The order as  
23 made shall be res judicata as to the rights of the parties.

24           4. As an exception to this order, the Court excludes  
25 such disciplinary penalties as have been given for refusal to  
26 work, and good time shall not be generally restored in those  
27 instances, except where the committee finds extenuating  
28 circumstances.

29           5. As a further clarification, this restoration shall  
30 apply only to those inmates who were on two-for-one time at  
31 the time the penalty was imposed.

32           6. As a practical matter, the Court cannot eliminate

1 from the records all traces of the episodes as to which good time  
2 is restored under this order, but all persons dealing with the  
3 records for any purpose are admonished not to take these episodes  
4 into account for any purpose whatsoever.

5 IV. Segregation Pending Criminal Charge.

6 A. Plaintiffs' Proposal.

7 An inmate whom the prison authorities may desire to  
8 be subject to proceedings in the state courts by the county  
9 attorney for some act committed in the prison may be held in  
10 segregation for the same length of time, ten working days, pending  
11 arraignment in the state court as he might otherwise be held  
12 pending a hearing within the prison for violation of its rules.

13 B. Defendants' Position.

14 When an inmate is suspected by the prison officials  
15 of an offense which is also triable under the criminal laws  
16 of the State of Arizona, the officials may place the  
17 suspected inmate in segregation while investigating the  
18 details of the such suspected offense for a period not to  
19 exceed sixty days, during which time they must complete  
20 their investigation and refer the matter to the local  
21 county attorney, failing which the prisoner must be returned  
22 to his original assignment and placed in the population.  
23 If, after having referred the matter to the local county  
24 attorney for criminal prosecution, a criminal charge has  
25 not been filed by the local county attorney within a period  
26 of thirty days from the date of referral then the prison  
27 officials must at the end of said thirty day period return  
28 said inmate to his original position in the prison population.  
29 If a charge has been filed by the county attorney within said  
30 thirty day period, the prison officials may detain the  
31 suspected inmate in segregation until the conclusion of the  
32 criminal proceedings in the local Superior Court.

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V. Count IV of the Complaint.

This Count is dismissed without prejudice.

The defendants shall appropriately advise all members of the class of the contents of this order.

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_,  
197\_\_\_\_.

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DEC 14 1972

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OUR FILE NUMBER  
95068 001

EDWIN BEAUCHAMP (1916-1964)

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WALTER CHEIFETZ	CHARLES CREHORE
PAUL R. MADDEN	ROBERT C. KELSO
JOSEPH E. MCGARRY	LYMAN A. MANSER
A. GORDON OLSEN	D. W. GRAINGER
JEREMY E. BUTLER	GERALD K. SMITH (ON LEAVE)
DAVID L. GROUNDS	MONROE G. MCKAY
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SALLY S. NEELY	T. MICHAEL DAGGETT

December 14, 1972

The Honorable William P. Copple  
Federal Building  
Phoenix, Arizona 85025

Dear Judge Copple:

Attached herewith is the suggested draft order as submitted by Mr. Dixon and by me, as you have directed. It is to be understood that this is submitted by both sides in accordance with your instructions, and that to the best of our ability, it carries out the various rulings which you have previously made. It is further understood that all reservations and exceptions previously made are not waived by either side by the making of this joint submission.

There are in the draft two points which remain in dispute between us.

I. Exercise

The first of these is paragraph II G, Section A and B, following No. 5, on page 5, concerning exercise. You will observe that the state makes one proposal and the plaintiffs make a different one. So that you will not be flooded with paper, we briefly note here the position of the parties.

A. Position of the Prisoners as to Exercise: We have already given you countless cases holding that it is at the absolute hard core of the constitutional right that prisoners be allowed reasonable regular exercise. Where we are hopelessly at odds with the State is the notion that the Constitution is to be bent to fit the convenience of State staffing. Our most vigorous opposition is to the passage which provides that people are to get exercise "whenever the staff is sufficient to permit it." Let us not allow the amiability with which we proceed to obscure the hard line of the position we hold: If the state prison in Arizona can't meet the requirements of the Constitution of the United States, then the State Prison is to change. If they need more staff, let them get more staff. If they can't do that, then let them hold fewer prisoners. They have a job

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LAWYERS

The Honorable William P. Copple  
United States District Court  
Re: Proposed Judgment and Order  
December 14, 1972  
Page 2

to do and should do it according to the Constitutional standards. Their job is to provide the requisite staff. We submit that by all of the decisions, exercise is a Constitutional requirement, and it is not made dependent upon the budgetary problems of the prison.

B. Position of the State as to Exercise: It is the position of the State, briefly, that a one hour exercise period three times a week will meet with any reasonable Constitutional interpretation. Furthermore, the insertion of the clause "when the staff is sufficient," although carrying its own hazards, nevertheless, should not be construed prospectively as a ruse or a method of avoiding the Constitutional duty which is freely entered into at this point.

II. Segregation Pending Charge

The remaining matter is the difference between the parties as to the matter covered under the heading "IV." In respect to this branch of the matter, counsel for the petitioners have filed a memorandum and stand on it, making only a brief addition here. The State reserves the right to file its own memorandum. Oral argument is requested by counsel for the petitioners on this one subject only; there is nothing else in the document which would require this.

The State prefers to reserve its entire statement for memorandum. The prisoners, having submitted a legal memorandum, wish to add only this observation: The proposal now offered by the State can nullify everything which has been accomplished so far in this case. We are not dealing with a speculative matter. What is now being proposed is exactly what was done to Taylor, a matter of holding him ninety days to consider whether he was to be charged with anything at all. It is our flat and categorical position that the prisoners are entitled to the same basic constitutional rights as other people, within the confines and limits of the circumstances in the situation that they are not subject to bail. The fact that they are not subject to bail should not in any way whatsoever reduce their entitlement to speedy arraignment if they are to be charged with an offense. We wish to make clear that we regard the concession of ten working days, which can amount to two weeks, as in itself far below constitutional standards. This is an offer made solely in compromise, and we would otherwise insist that the prisoners are as much entitled to a prompt

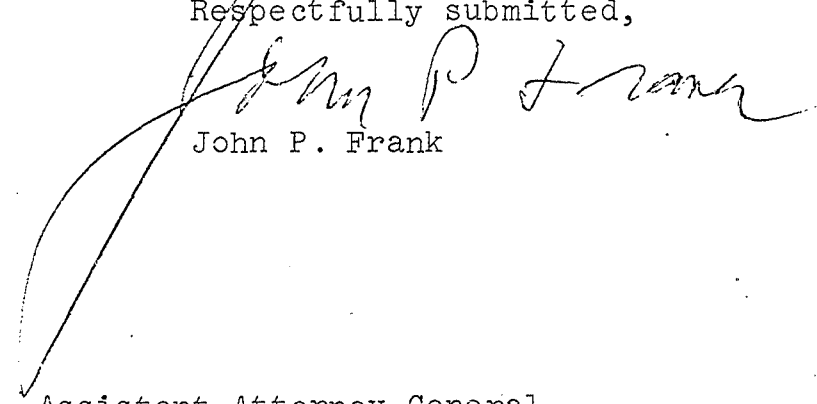
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LAWYERS

The Honorable William P. Copple  
United States District Court  
Re: Proposed Judgment and Order  
December 14, 1972  
Page 3

arraignment as anyone else in the society.

The foregoing letter and attachment have been prepared in the presence of Mr. Dixon, and where it purports to speak for him has been dictated by him. I am authorized as a matter of convenience to transmit it to the Court for both sides.

Respectfully submitted,



John P. Frank

JPF:lw

Enclosure: Judgment

cc: Mr. William P. Dixon, Assistant Attorney General  
Mr. George Yanich, Jr.  
Mr. Daniel F. Norton  
Mr. Eddie W. Taylor