IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Respondent,	)	
	)	
v.	)	**No. E2000-00712-SC-DDT-DD**
	)	
NICHOLAS TODD SUTTON	)	**(CAPITAL CASE)**
	)	
Petitioner.	)	

NICHOLAS TODD SUTTON'S RESPONSE IN OPPOSITION TO STATE'S MOTION FOR EXPEDITED EXECUTION DATES AND REASONS WHY NO EXECUTION DATE SHOULD BE SET

Petitioner, Nicholas Todd Sutton, moves this Court to deny the State's *Motion to Set Execution Dates* and stay the setting of an execution date for the duration of his reopened state post-conviction proceedings so that he can (1) be given a full opportunity to litigate the constitutionality of the newly proposed lethal injection protocol, (2) obtain review of the claims raised in his reopened post-conviction proceedings, and (3) present a petition for clemency to the Governor of the State of Tennessee. The State asks the Court to schedule executions approximately every eleven days in the upcoming months. This is an extraordinary deviation from the previous precedent of this Court under circumstances that the State could have avoided.

SYNOPSIS OF RELEVANT FACTS REGARDING THE NEW EXECUTION PROTOCOLS

In October and December 2013, the State of Tennessee moved this Court, pursuant to Tennessee Supreme Court Rule 12.4, to set execution dates for eleven death row inmates. Mr. Sutton was among the eleven inmates. In response to the State's motions, this Court

subsequently set the eleven execution dates between January 2014 and March 2016.[1] Mr. Sutton's execution date was the ninth scheduled.

Mr. Sutton, along with other death sentenced inmates, subsequently brought declaratory judgment action seeking to have the State's lethal injection protocol, which used compounded pentobarbital, declared unconstitutional. *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017). The Court stayed all execution dates pending disposition of the lawsuit.

On March 28, 2017, this Court held, *inter alia*, that the pentobarbital lethal injection protocol did not violate the Eighth Amendment. *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017). The United States Supreme Court subsequently denied certiorari on November 27, 2017 and January 8, 2018. *See West v. Parker*, 138 S.Ct. 476 (2017); *Abdur'Rahman v. Parker*, 138 S. Ct. 647 (2018).

On September 7, 2017,[2] the State's contractor, a for-profit pharmaceutical supplier, told the State of Tennessee that midazolam "does not elicit strong analgesic effects," and that inmates "may be able to feel pain from the administration of the second and third drugs" in a three-drug protocol. *See* Attachment 2. That is, the State was put on notice that if they use midazolam in

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[1] *See State v. Billy Ray Irick*, No. M1987–00131–SC–DPE–DD, Order (Tenn. filed Oct. 22, 2013); *State v. Edmund Zagorski*, No. M1996–00110–SC–DPE–DD, Order (Tenn. filed Jan. 31, 2014); *State v. Stephen Michael West*, No. M1987–00130–SC–DPE–DD, Order (Tenn. filed Dec. 17, 2014); *State v. Donnie Edward Johnson*, No. M1987–00072–SC–DPE–DD, Order (Tenn. filed Dec. 17, 2014); *State v. Olen E. Hutchison*, No. M1991–00018–SC–DPE–DD, Order (Tenn. filed Dec. 17, 2014); *Charles Walton Wright v. State*, No. M1985–00008–SC–DDT–DD, Order (Tenn. filed Jan. 31, 2014); *State v. David Earl Miller*, No. E1982–00075–SC–DDT–DD, Order (Tenn. filed Dec. 17, 2013); *Abu-Ali Abdur' Rahman (formerly known as James Lee Jones) v. State*, No. M1988–00026–SC–DPE–PD, Order (Tenn. filed Jan. 31, 2014); *State v. Nicholas Todd Sutton*, No. E2000–00712–SC–DDT–DD, Order (Tenn. filed Dec. 17, 2013); *State v. Lee Hall, a/k/a Leroy Hall, Jr.*, No. E1997–00344–SC–DDT–DD, Order (Tenn. filed Aug. 12, 2014); *and Donald Wayne Strouth v. State*, No. E1997–00348–SC–DDT–DD, Order (Tenn. filed Apr. 08, 2014).

[2] *See Chronology of Events Relevant to State's Motion to Expedite Execution Dates* (Attachment 1).

place of a true anesthetic in a three-drug protocol, a condemned inmate will suffer severe pain during execution.[3]

Despite this warning, on October 18, 2017, the State began the process of procuring midazolam for use in executions; ultimately purchasing midazolam that expires on June 1, 2018.

On October 26, 2017, one of the State's drug suppliers,[4] emailed the Tennessee Department of Correction, and stated, "I will have my pharmacist write up a protocol." Attachment 3.

On November 28, 2017, one of the drug suppliers sent another email that contained "revisions to the protocol." Attachment 4.

On January 8, 2018, the State promulgated a new lethal injection protocol that retained the one-drug pentobarbital protocol and added a midazolam-based, three-drug lethal injection protocol: Tennessee's Midazolam Option.[5] Apparently, this is the protocol drafted for the State of Tennessee by the for-profit supplier of drugs that are to be used in the proposed executions.

On January 11, 2018, the State filed Notices requesting nine executions. Five days later, on January 16, 2018, and only in response to a public records request, the State disclosed their amendment of the 2015 lethal injection protocol and the adoption of the Midazolam Option.[6] No formal announcement was made alerting the public to the new protocol. However, in its Motion to Set Execution Dates, filed on February 15, 2018, the State, for the first time, announced its

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[3] Recently, "botched" executions in Arizona, Oklahoma and Ohio also put the State of Tennessee on notice that midazolam is not an anesthetic, does not render inmates insensate to pain, and is grossly inappropriate for use in lethal injection executions.

[4] It is not known whether this is the same supplier who had warned Tennessee that midazolam would not work, or a different drug seller.

[5] That is, the State bought the midazolam first, and created a mechanism to use it, second. With both actions being preceded by a warning from their supplier that midazolam was not effective.

[6] This disclosure came in response to a public records request submitted by counsel for Abdur'Rahman, Johnson, Wright, and Zagorski. This request had been pending since November 6, 2017.

intention to execute inmates using the Midazolam Option, and not with the single-drug pentobarbital protocol.

On January 18, 2018, this Court ordered the Warden of the Riverbend Maximum Security Institution to execute Billy Irick's death sentence on August 9, 2018. *Irick*, No. M1987–00131–SC–DPE–DD, *Order*.

On February 15, 2018, the State again moved this Court to set execution dates for eight of the above referenced inmates.[7] *Sutton*, No. E2000-00712-SC-DDT-DD, *Motion to Set Execution Dates*. Citing "the ongoing difficulty in obtaining the necessary lethal injection chemicals" for an entirely new three drug lethal injection protocol that, at the time, was less than six weeks old, the State moved this Court to schedule eight executions before June 1, 2018. *Id.* at 1–2.

On February 16, 2018, this Court issued orders granting each of the eight inmates until March 1, 2018 to respond to the State's motion.

The State purchased midazolam in October of 2017 that would only be effective until June 1, 2018. This purchase was made while executions were on hold awaiting the United States Supreme Court's resolution of *Abdur'Rahman v. Parker*, Case No. 17-6068. The State knew that they would have very little time between a possibly favorable Supreme Court ruling, and the expiration of their midazolam. The State was aware that (1) applications for executive clemency will not be entertained until after execution dates are set, (2) this Court's practice has been to permit at least three months for the Governor to consider such applications, (3) this Court has traditionally scheduled executions many weeks or months apart, and (4) this Court's precedent demands a full and fair constitutional adjudication of substantively new execution protocols. Yet they purposefully kept their plans under wraps.

[7] Olen Hutchison and Donald Strouth passed away in October 2014 and May 2015, respectively.

The State's decision to add the Midazolam Option to its lethal injection protocol (after purchasing it first, and despite being warned of its dangers), and to accept midazolam with a June 1, 2018 expiration date does not create an exigency warranting an unprecedented rush to execution.

The fact that the protocol that would be used to execute Mr. Sutton was written, not by State actors, but by the supplier who profits from the sale of the protocol drugs,[8] is yet another reason not to set his execution.

Mr. Sutton should be given a full opportunity to litigate his post-conviction claims and the constitutionality of the newly proposed lethal injection protocol without the extraordinary pressure of eight execution dates in a compressed, three-month timeframe. Mr. Sutton and all similarly situated inmates, should also be given adequate time to present petitions for clemency to the Governor of the State of Tennessee.

In sum, the State is asking this Court to schedule an execution approximately every eleven days between March 1 and May 31, 2018. The backdrop of this extraordinary action by the State—requesting that this Court unnecessarily and unduly pose great stress and burdens on Correction employees, counsel for the parties, the Court itself, the families of the victims, and the families of those the State seeks to execute—is of critical importance.

For all of these reasons, the *Motion to Set Execution Dates* should be denied.

[8] In the State's response to public records requests, they have been less than illuminating about the process used to produce the current protocol. However, the emails that were produced are the only documents provided that detail any part of the drafting procedure. Thus, Mr. Sutton relies on them as the best evidence of how the Midazolam Option came to be.

I. PRINCIPLES OF *STARE DECISIS* AND ESTABLISHED PRECEDENT REQUIRE A FULL AND FAIR ADJUDICATION OF THE MERITS OF THE NOW-PENDING DECLARATORY JUDGMENT ACTION THAT WAS FILED EXPEDITIOUSLY (27 BUSINESS DAYS) AFTER THE TENNESSEE MIDAZOLAM OPTION WAS DISCLOSED TO COUNSEL FOR ABDUR'RAHMAN, JOHNSON, WRIGHT AND ZAGORSKI.

The State's request for relief is foreclosed by binding Tennessee precedent. This Court's precedent establishes that:

> The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision.

State v. West, No. M1987-000130-SC-DPE-DD, Order p.3 (Tenn. Nov. 29, 2010). This Court has held true to the principles announced in *West. See e.g.*, *State v. Strouth*, No. E1997-00348-SC-DDT-DD, Order, p. 3 (Tenn. Apr. 8, 2014) ("Mr. Strouth is correct that currently, there is no controlling law in Tennessee on the constitutionality of the use of the single drug, Pentobarbital, to execute a death row inmate... Accordingly, the Court will set Mr. Strouth's execution for a future date that will allow plenty of time for resolution of the declaratory judgment action in the state courts.").

The State's *Motion* fails to acknowledge the holding in *West*. Further, the State's *Motion* does not provide a single case to give this Court a reason to depart from the principles of *stare decisis*. "The power of this Court to overrule former decisions 'is very sparingly exercised and only when the reason is compelling.'" *In re Estate of McFarland*, 167 S.W.3d 299, 306 (Tenn. 2005) *quoting Edingbourgh v. Sears, Roebuck & Co.*, 206 Tenn. 660, 337 S.W.2d 13, 14 (1960). As this Court has held, "The sound principle of *stare decisis* requires us to uphold our prior precedents to promote consistency in the law and to promote confidence in this Court's

decisions." *Cooper v. Logistics Insight Corp.*, 395 S.W.3d 632, 639 (Tenn. 2013). This Court does not deviate from precedent on the basis of speculative "uncertain[ty]." State's *Motion To Set Execution Dates*, p. 2.

II. THE STATE'S PROFESSED URGENCY TO SCHEDULE EXECUTIONS PRIOR TO JUNE 1, 2018 IS A MANUFACTURED AND AVOIDABLE CRISIS THAT DOES NOT JUSTIFY ABRIDGING MR. SUTTON'S RIGHT TO FULLY CHALLENGE THE MIDAZOLAM OPTION.

A. The State Manufactured A Crisis To Support Its Request For Executions Prior To June 1, 2018 To Prevent The Due Process Hearing Required By Court Precedent From Ever Taking Place.

Midazolam is the most controversial, dangerous drug ever to be used in a lethal injection protocol in the State of Tennessee. Of the seven states to use midazolam in a lethal injection, three have abandoned its use. The State of Arizona has agreed to never again use any benzodiazepine, including midazolam, or a paralytic in a lethal injection. *First Amendment Coalition of Arizona, Inc., et al. v. Ryan, et al.*, Case No. 2:14-CV-01447-NVW-JFM, Stipulated Settlement Agreement, Docket Entry No. 152 (D. Ariz. Dec. 19, 2016)(Attachment 5)(midazolam); *First Amendment Coalition of Arizona, Inc., et al. v. Ryan, et al.*, Case No. 2:14-CV-01447-NVW-JFM, Stipulated Settlement Agreement, Docket Entry No. 186 (D. Ariz. June 21, 2017)(Attachment 6)(paralytic).

Midazolam—a sedative with no analgesic properties—is a completely different class of pharmaceutical than the barbiturates sodium thiopental and pentobarbital. Unlike sodium thiopental and pentobarbital, midazolam does not render the inmate unaware or insensate to severe pain. The Supreme Court has held: "It is uncontested that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the pancuronium bromide and pain from the administration of potassium chloride." *Baze v. Rees*, 553 U.S. 35, 53 (2008). The Davidson County Chancery

Court agreed with Chief Justice Roberts' opinion in *Baze* in the 2010 *West v. Ray* litigation. *See West v. Ray*, Case No. 10-1675-I, *Order* (Davidson County Chancery Court November 22, 2010). The Chancellor's opinion in the 2010 *West* litigation remains undisturbed. Similarly undisturbed is the opinion of the Davidson County Chancery Court in the 2005 *Abdur'Rahman v. Bredesen* litigation that Pavulon (a paralytic similar to the one used in the new Midazolam Option) serves no purpose in an execution. *Abdur'Rahman v. Bredesen*, 181 S.W. 3d 292, 307 (Tenn. 2005) (noting that "the Chancellor correctly observed that the State failed to show a legitimate reason for the use of Pavulon in the lethal injection protocol[.]")

When Tennessee last used a three-drug protocol, it was found to be unconstitutional unless the State implemented sufficient checks to ensure that the inmate would be unable to experience suffocation and pain. Those necessary checks are absent from Tennessee's Midazolam Option.

The State knew, or reasonably should have known, when it chose to change its lethal injection protocol and add a Midazolam Option that its new protocol would be challenged in court. They also knew that the challenge would have merit because they were warned by their pharmacist that midazolam does not work like sodium thiopental or pentobarbital. In a September 7, 2017 email, the supplier wrote "Here is my concern with midazolam, being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium Chloride especially." Attachment 2. The State knew that counsel for Abdur'Rahman, *et al.*, submit requests for public records regarding execution drugs (among other information) on a routine basis. *See* Attachment 7, *Chronology of Public Records Requests During Past Six Months*. Despite producing public records on November 6, 2017, TDOC did not provide any records regarding a change in the

lethal injection protocol to include a Midazolam Option or regarding TDOC's attempts to procure midazolam until January 16, 2018. *See* Attachments 1, 7.

On October 18, 2017, TDOC was told that the midazolam it was purchasing expired on June 1, 2018. Attachment 8, Email. TDOC moved forward with the purchase of midazolam they knew would expire before any challenge to its use could be litigated in court. Emails, W-9's, invoices and photographs of the drugs purchased demonstrate that the State knew well in advance of January 8, 2018, that it intended to use Tennessee's Midazolam Option to execute Mr. Sutton. Yet, despite public records requests made throughout that time, the State failed to notify undersigned counsel of any intent to implement a new lethal injection protocol.

The State's decision to withhold this information from defense counsel appears intentional and calculated to gain a litigation advantage. The State seeks to avoid a trial on the merits of any challenge to Tennessee's Midazolam Option. To do so, they seek to cut off Mr. Sutton's access to the courts by executing him before he has a chance to present his proof.

On January 18, 2018, just two days after learning of Tennessee's Midazolam Option, Mr. Sutton told this Court that he intended to challenge the new protocol but required time to consult with experts; Mr. Sutton additionally stated he would file a challenge on or before February 20, 2018—a deadline that Mr. Sutton met. The State delayed until February 15, 2018 to tell this Court that its midazolam supply expires on June 1, 2018.

Importantly, and fatal to their request for expedited execution dates, the State does not say that they will be unable to obtain the drugs necessary to carry out executions after June 1, 2018. Rather, the State alleges that their ability to do so is "uncertain." State's *Motion To Set Execution Dates*, p. 2. Such vague and unsupported allegations are not enough to overturn Tennessee precedent, particularly where the State could have informed Mr. Sutton months earlier that it intended to adopt a new lethal injection protocol that adds a Midazolam Option. Under the

circumstances, Mr. Sutton has acted with extreme diligence, expediency and transparency. The same cannot be said for the State. *See* Attachment 1.

B. The State's Vague and Unsupported Representation To The Court About Its Efforts to Obtain Pentobarbital Is Inconsistent With The Proof In The Record, Their Own Representations To The United States Supreme Court, Their Representations To The Public And The Fact That Executions Using Pentobarbital Continue To Be Carried Out.[9]

In its motion, the State tells the court: "The Department's supply of pentobarbital expired while the West proceeding was pending." State's *Motion to Set Execution Dates*, p. 2. This cannot be true. TDOC's numerous responses to Tennessee Public Records Act requests make clear that TDOC never received any pentobarbital (compounded or otherwise) from its supplier(s) and never had any in its possession, thus there was none to expire. The reason TDOC never had pentobarbital is because the 2015 lethal injection protocol, current Protocol A, uses compounded pentobarbital. According to the USP,[10] high-risk sterile compounds, which compounded pentobarbital is, have a beyond use date of 24 hours at controlled room temperature or three days refrigerated. *See West, et al. v. Schofield, et al.*, Case No. M2015-01952-COA-R3-CV, Technical Record, Trial Exhibits 5, 6. Testimony from State agents during the previous *West* litigation established that the TDOC had a signed contract with a pharmacist who assured that s/he could obtain the active pharmaceutical ingredient necessary to compound pentobarbital and that the compounder was ready, willing, and able to manufacture and distribute compounded pentobarbital to TDOC upon the setting of an execution date. *See, e.g., West, et al. v. Schofield, et al.*, Case No. M2015-01952-COA-R3-CV, Technical Record, Transcript, Volume III, pp. 823-

[9] Although this Court does not resolve factual disputes, and Mr. Sutton is not requesting that the Court do so, the following facts are asserted in response to the State's representation regarding pentobarbital. The truth will ultimately be determined in the pending Chancery Court proceedings.

[10] The United States Pharmacopeia sets the world industry standards to "ensure the quality, safety, and benefit of medicines and foods." http://www.usp.org/about (last checked February 28, 2018).

24; *Id.*, Trial Exhibit 54. On March 2, 2017, Debra Inglis, TDOC legal counsel, told reporters that TDOC was able to obtain the drugs necessary for an execution "as needed." Boucher, *Lethal injections stalled*, The Tennessean, March 3, 2017, p. A3; 2017 WLNR 6714205.

Counsel for Abdur'Rahman, Johnson, Wright and Zagorski have consistently requested public records from TDOC. Attachments 1, 7. TDOC has not produced a document indicating that the compounder has withdrawn from the contract with TDOC. TDOC has not produced a document establishing that they are unable to obtain compounded pentobarbital. On November 13, 2017, the State continued to defend the compounded pentobarbital protocol in the United States Supreme Court. *Abdur'Rahman, et al. v. Parker, et al.*, No. 17-6068, Brief in Opposition. That the State did so indicates that they were confident in their ability to obtain pentobarbital as recently as November 13, 2017.

Public records productions by TDOC, which the State represents are full and accurate as of January 10, 2018, provide no evidence that TDOC is unable to obtain compounded pentobarbital.[11] In fact, documents produced on January 16, 2018 contain a contract signed December 4, 2017 with an individual who agreed to compound drugs for lethal injections in Tennessee. Attachment 9, Pharmacy Services Agreement, Article 1, §1.2.

The State's new protocol, which retained pentobarbital and added a Midazolam Option, is dated January 8, 2018. Texas was prepared to carry out an execution using pentobarbital on February 22, 2018, but the defendant in that case was granted executive clemency hours before the execution was carried out. Georgia is set to carry out an execution using pentobarbital on March 15, 2018. Thus, the State's bald assertion that their ability to obtain pentobarbital is

[11] Despite requests to the contrary, when TDOC finally answers public records requests they only do so as of the date of the letter requesting the records. A February 2, 2018 public records request remains unanswered.

uncertain does not justify their request to schedule Mr. Sutton's execution prior to June 1, 2018, and to choose the Midazolam Option, without ever giving Petitioner an opportunity for the due process hearing this Court's precedent demands.

C. The State's Argument That The Pharmaceutical Companies Are Acting At The Behest Of Death Penalty Opponents Is A Baseless Conspiracy Theory.

Multi-billion dollar pharmaceutical companies do not act at the behest of small, non-profit, death penalty abolitionist groups. These businesses act at the behest of their stockholders and pursuant to their business model. These private businesses do not have a stake or a position on how or whether Mr. Sutton lives or dies. Mr. Sutton has no control over these Fortune 500 companies. Nor does Mr. Sutton have control over the actions of small, non-profits.

The truth is that the pharmaceutical companies have always objected to their drugs being misused in lethal injections. When states began to use branded drugs in lethal injections, those companies simply enforced their contracts, as any business would.

The fact that the business concerns of multi-billion dollar companies collide with the State's interest in misusing those companies' drugs is not the fault of Mr. Sutton. The actions of individuals on either side of the death penalty debate are irrelevant to Mr. Sutton's right to due process and the rule of law. Such actions do not provide a reason to cast aside *stare decisis* and set execution dates before Mr. Sutton has an opportunity to fully and fairly litigate his case against the new lethal injection protocol.

III. TENNESSEE COURTS ARE TO BE CONCERNED WITH DUE PROCESS AND THE RULE OF LAW.

The February 22, 2018 botched and non-execution of Doyle Hamm in Alabama[12] demonstrates why it is essential to fully and fairly litigate challenges to risky protocols such as

[12] https://www.reuters.com/article/us-alabama-execution/alabamas-aborted-execution-was-botched-and-bloody-lawyer-idUSKCN1G90Y2 (last checked February 28 2018).

the Tennessee Midazolam Option in a courtroom environment without the extreme pressure of compressed execution schedules. The constitutionality of the Midazolam Option must be adjudicated in a forum that is free from the immense time pressure the State seeks to impose.

The cases cited by the State in their motion arise in a stay-posture where the defendants faced a higher burden than the one governing Mr. Sutton's pending lawsuit in Chancery Court. Moreover, the cases cited by the State do not change the fact that this Court has always held that lethal injection challenges must be fairly adjudicated on their own, unique facts in Tennessee.[13] Fair adjudication means a trial with a full record addressing the merits. "The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision." *State v. West*, No. M1987-000130-SC-DPE-DD, Order p.3 (Tenn. Nov. 29, 2010). The State's motion implicitly admits that there is no time to meet the requirement of a fully developed record if eight executions are to be conducted by June 1, 2018. The State's motion fails on the basis of precedent alone.

Indeed, this Court's precedent establishes that Mr. Sutton is entitled to sufficient notice and time to challenge the Tennessee Midazolam Option that this State's courts have never reviewed. This Court previously acknowledged that Mr. Sutton has a "legitimate . . . right to and need for notice" regarding significant changes in lethal injection protocols. *West v. Schofield*,

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[13] Mr. Sutton's lawsuit cannot be dismissed by reference to cases decided in other jurisdictions in the context of appeals from the preliminary injunction proceedings respecting protocols which are not identical to the Tennessee Midazolam Option. Tennessee courts decide what is constitutional in Tennessee after a full and fair hearing. Further, the State overstates the Supreme Court's holding in *Glossip v. Gross*, 135 S.Ct. 2726 (2015). *Glossip* did not hold that any lethal injection protocol using midazolam is constitutional. Rather, in the context of an appeal from the denial of a preliminary injunction in a federal court action, it was found that the lower court did not commit clear error. *Id.* at 2740-41.

468 S.W.3d 482, 494 (Tenn. 2015) (interlocutory appeal holding challenge to electrocution unripe but guaranteeing sufficient notice and time to challenge any change to the protocol).

SYNOPSIS OF RELEVANT FACTS REGARDING THE REOPENED STATE POST-CONVICTION PROCEEDINGS

On June 8, 2016, Mr. Sutton filed a *Motion to Reopen Petition for Post-Conviction Relief* in the Criminal Court for Morgan County in light of new substantive United States Supreme Court law, as decided in *Johnson v. United States*, 135 S.Ct. 2551 (2015), and held to be retroactive in *Welch v. United States*, 136 S.Ct. 1257 (2016).

On October 3, 2016, the post-conviction court found that Mr. Sutton had raised a colorable claim for relief regarding the application of *Johnson* to his challenge to the prior violent felony conviction aggravating factor. The post-conviction court ordered that the original post-conviction proceedings be reopened, and directed counsel to investigate all possible constitutional claims for relief and file an amended petition. *See Preliminary Order Regarding "Motion to Reopen Post-Conviction Petition"* (Attachment 10).

On February 2, 2017, Mr. Sutton filed an *Amended Petition for Post-Conviction Relief* raising nine claims for relief. *See Amended Petition for Post-Conviction Relief* (Attachment 11).

On January 11, 2018, the State filed a *Notice* advising this Court that in light of denial of the petitions for writ of certiorari in *West* and *Abdur'Rahman*, it may issue an order scheduling Mr. Sutton's execution date.

On January 18, 2018, Mr. Sutton filed a *Motion to Defer the Setting of an Execution Date* because his original post-conviction proceedings have been reopened and, as a result, he has not completed the "standard three-tier appeals process."

On January 31, 2018, this Court denied Petitioner's *Motion to Defer the Setting of an Execution Date* finding that Mr. Sutton presented no legal basis for deferring the setting of an

execution date. In issuing its *Order*, however, the Court incorrectly noted that Mr. Sutton has a motion to reopen his post-conviction proceedings pending before the post-conviction court. In fact, the post-conviction court has already found that Mr. Sutton has stated a colorable claim for relief and ordered that the original post-conviction proceedings be reopened.

The State's *Motion to Set Execution Dates* before June 1, 2018 was made even though the State is aware that Mr. Sutton's original post-conviction proceedings have been reopened and there are nine claims pending before the post-conviction court. He has not been afforded any post-conviction review of these claims and is entitled to post-conviction review of his convictions and death sentence, and the *Motion to Set Execution Dates* should be denied in order to permit him to obtain that review.

IV. THE SETTING OF AN EXECUTION DATE VIOLATES THIS COURT'S RULES BECAUSE IT IS PREMATURE AT THIS TIME.

The United States Supreme Court has repeatedly emphasized that the death penalty, because of its unquestionably unique severity, finality and irrevocability, is qualitatively different from any other punishment. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion). As a result, Tennessee courts have an overwhelming public interest in insuring that capital punishment in this State comports with the Constitution and "conforms with contemporary standards of decency." *State v. Black*, 815 S.W.2d 166, 189 (Tenn, 1991).

A request to set an execution date is improper if filed before the conclusion of the appellate process. Tennessee Supreme Court Rule 12.4(A) requires that such request "shall be premature" unless the Attorney General demonstrates that "the standard three-tier appeals process" is completed. The *Amended Petition* is <u>not</u> a second or successive petition. The state post-conviction proceedings have been reopened and the pending claims are part of the initial post-conviction proceedings.

Assuming *arguendo* that this Court finds that the *Amended Petition* is a successive or second petition, it should defer the setting of an execution date because a court of competent jurisdiction found that the *Motion to Reopen Petition for Post-Conviction Relief* met the requirements set forth in Tenn. Code Ann. §40-30-117. *See* Tenn. Code Ann. §40-30-120(b) ("[N]o court may stay the execution unless a court of competent jurisdiction first finds that a motion to reopen that meets the requirements set out in §40-30-117 has been granted."). Mr. Sutton's post-conviction proceedings were reopened because of the new substantive rule of constitutional law announced by the United States Supreme Court in *Johnson v. United States*, 135 S.Ct. 2551 (2015), and held to be retroactive in *Welch v. United States*, 136 S.Ct. 1257 (2016). *See* Attachment 10; Tenn. Code Ann. §40-30-117(a)(1).

Moreover, a court of competent jurisdiction directed counsel to investigate all possible constitutional claims for relief and file an amended petition. Thus, nine claims which raise serious constitutional concerns are pending before the post-conviction court and there is a "significant possibility" that the reopened post-conviction proceedings will result in Mr. Sutton's death sentence being vacated. *See* Tenn. Code Ann. §40-30-120(c). A "significant possibility that the death sentence will be invalidated" is no more onerous than the standard that Mr. Sutton has already met in order to reopen his post-conviction proceedings. In granting Mr. Sutton's *Motion to Reopen Petition for Post-Conviction Relief*, the post-conviction court found that Petitioner has stated a colorable claim for relief that "is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized at the time of the trial." *See* Attachment 10; Tenn. Code Ann. §40-30-117(a)(1).

Furthermore, in addition to ordering Mr. Sutton to file a petition, the post-conviction court indicated that the parties will file supplemental briefs, that it would consider Petitioner's requests for expert assistance in support of the claims, and that it would schedule oral argument

and an evidentiary hearing to allow him to present evidence in support of his claims. Surely, the post-conviction court would not waste its time, or State resources, if there were not a significant possibility that a least one of the nine claims might cause the death sentence to be invalidated. Moreover, given the likelihood of extensive litigation before the post-conviction court, if an execution date is set, "there is a significant possibility that the death sentence would be carried out before consideration of the petition is concluded." *See* Tenn. Code Ann. §40-30-120(c).

Therefore, there is no legal basis to schedule an execution date because the state post-conviction process is ongoing. While an execution date may have been set before, the reopening of the post-conviction proceedings has changed the circumstances such that setting an execution date is no longer proper under the Tennessee statute.

Mr. Sutton has not completed the "standard three-tier appeals process." He is entitled to pursue post-conviction relief and the original post-conviction proceedings are pending. The post-conviction court found that "(Mr. Sutton) has stated a colorable claim for relief as it relates to *Johnson v. United States*" and directed undersigned counsel to "investigate all possible constitutional grounds for relief for the purpose of filing an amended petition." *See* Attachment 10.

Should this Court set a premature execution date, it would deprive Mr. Sutton of the opportunity to vindicate his right to a meaningfully counseled post-conviction petition under the Post-Conviction Procedure Act, Tenn. Code Ann. §40-30-101 *et seq*, and prevent full review of his claims in violation of his due process rights. The Court cannot render the right to post-conviction meaningless by permitting an execution prior to the time in which a properly filed post-conviction petition can be fully litigated.

The setting of an execution date would also deprive Mr. Sutton of his due process right to meaningful access to the courts, which is guaranteed by the Fourteenth Amendment to the

United States Constitution. *See Murray v. Giarratano*, 492 U.S. 1 (1989) (Kennedy, J., concurring) (meaningful access to courts is required); *Bounds v. Smith*, 430 U.S. 817, 823 (1977) (An indigent defendant must be provided with an "'opportunity to present his claims fairly.' . . . 'Meaningful access' to the courts is the touchstone." (*quoting Ross v. Moffit*, 477 U.S. 600, 611-12, 615-16 (1974)).

The Court should also refrain from setting a premature execution date under the reasoning of the United States Supreme Court in *Lonchar v. Th*omas, 517 U.S. 314 (1996). The Court, in vacating an order denying a stay of execution to a petitioner whose initial habeas petition was pending, declared:

> if the district court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot. That is, if the district court lacks authority to directly dispose of the petition merits, it would abuse its discretion by attempting to achieve the same result indirectly by denying a stay.

Id. at 320. As explained further, now that the post-conviction proceedings have been reopened, the post-conviction court cannot dismiss Mr. Sutton's *Amended Petition* without addressing its merits and it would be an abuse of discretion "by attempting to achieve the same result indirectly by denying a stay." *Id.*

Obviously, the execution of a petitioner who has not had an opportunity for his properly filed claims to be adjudicated violates his state statutory right to such review, as well as, his rights under the federal and state constitutions.

V. SCHEDULING EXECUTION DATES ON AN EXPEDITED BASIS UNDULY BURDENS AND/OR DENIES MR. SUTTON FAIR ACCESS TO MEANINGFUL CLEMENCY PROCEEDINGS.

Mr. Sutton has a statutory and constitutional right to seek executive clemency. As the United States Supreme Court has observed

> Executive clemency has provided the "fail safe" in our criminal justice system. K. Moore, Pardons: Justice, Mercy, and the Public Interest 131 (1989). It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence. In his classic work, Professor Edwin Borchard compiled 65 cases in which it was later determined that individuals had been wrongfully convicted of crimes. Clemency provided the relief mechanism in 47 of these cases; the remaining cases ended in judgments of acquittals after new trials. E. Borchard, Convicting the Innocent (1932). Recent authority confirms that over the past century clemency has been exercised frequently in capital cases in which demonstrations of "actual innocence" have been made. See M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* 282-356 (1992).

Herrera v. Collins, 506 U.S. 390, 415 (1993). The Court reaffirmed the importance of clemency in *Harbison v. Bell*, 556 U.S. 180, 192 (2009)("As this Court has recognized, however, '[c]lemency is deeply rooted in our Anglo–American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.' *Herrera v. Collins*, 506 U.S. 390, 411–412, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993) (footnote omitted).").

In the modern era, the State of Tennessee has executed six men.[14] Two men and one woman facing imminent execution have received executive clemency.[15] Thus, in this state, fully one-third of defendants who completed the standard three-tier process and who were facing execution were found to be worthy of a life sentence.

A request for executive clemency in a capital case will not be considered by the executive branch until all litigation is exhausted. An effective case for clemency cannot be cobbled together in a matter of days. Moreover, expediting eight executions before June 1, 2018, prevents a careful, thorough and meaningful consideration of Mr. Sutton's clemency request. Forcing Mr. Sutton to seek clemency while at the same time litigating the Tennessee Midazolam Option under an extremely compressed timeline alongside seven other inmates is the equivalent of

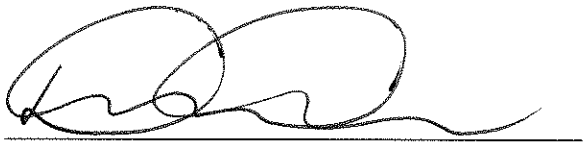
[14] Robert Coe, Sedley Alley, Philip Workman, Daryl Holton, Stephen Henley, Cecil Johnson.
[15] Michael Boyd, Edward Harbison, Gaile Owens.

denying all inmates a legitimate opportunity to pursue clemency. Such a compressed timeframe is also extremely disrespectful to Governor Haslam, who would be expected to make eight life or death decisions in mere weeks.[16] This is a separate and untenable injustice that would result if expedited execution dates are set.

CONCLUSION

Wherefore, Nicholas Todd Sutton respectfully requests that the Court deny any request to set an execution date and stay Petitioner's execution for the duration of his reopened state post-conviction proceedings so that he can litigate the constitutionality of the new lethal injection protocol, complete the standard three-tier appeals process and present a petition for clemency.

Respectfully submitted,



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Office: (615) 741-9331
Fax: (615) 741-9430

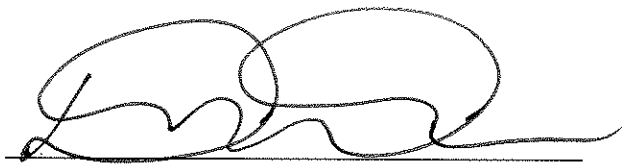
Counsel for Petitioner Nicholas Todd Sutton

[16] Governor Haslam's two predecessors were asked to make only one-more clemency determination (nine), during the sixteen-years they held office.

Certificate of Service

I hereby certify that on this 1st day of March, 2018, a copy of the foregoing document is being hand-delivered to the Court and being sent via first-class mail, postage prepaid to:

Jennifer L. Smith
Deputy Attorney General
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207



Deborah Y. Drew

Attachment 1

CHRONOLOGY OF EVENTS RELEVANT TO
STATE'S MOTION TO EXPEDITE EXECUTION DATES

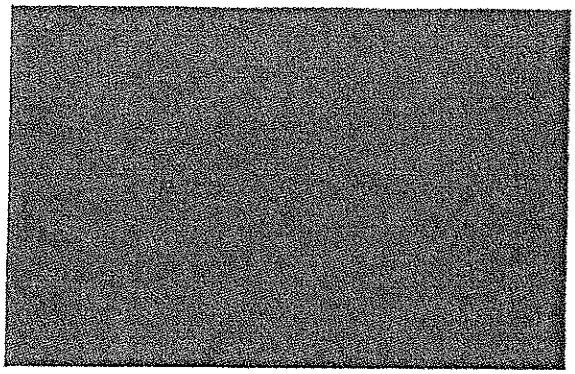
Date	Event
9/7/2017	Drug Supplier Emails TDOC stating ""Here is my concern with midazolam, being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium Chloride especially."
9/12/2017	TPRA Request sent to TDOC by counsel for *Abdur'Rahman, et al.*
10/18/2017	Drug Supplier emails TDOC a list of drugs that they have provided, indicating a June 1, 2018 expiration date, and inquiring about TDOC DEA license.
10/26/2017	Drug Supplier emails first invoice for midazolam.
10/26/2017	Drug Supplier emails TDOC "I will have my pharmacist write up a protocol."
11/1/2017	Drug Supplier emails second invoice for midazolam and signed W-9
11/06/2017	Response to 9/12/2017 TPRA request received. Despite request that response be current as of date of response, TDOC produces documents only up to September 7, 2017. "As has become your practice, you ask for records as of the date of your request, as well as the date of my response. In responding to your request I must request records from multiple sources, and necessarily must include a cut-off date in such requests. Accordingly, I will respond as of the date of your request only. As you are aware, the TPRA does not require that I do more."
11/06/2017	TPRA Request sent to TDOC by counsel for *Abdur'Rahman, et al.*
11/07/2017	TDOC sends email to drug supplier which asks "Any more product come in?"
11/08/2017	TDOC sends copy of Deberry Special Needs DEA license to Drug Supplier.
11/04/2017	Drug Supplier sends photos of the drugs to TDOC.
11/27/2017	Drug Supplier emails third invoice for midazolam.
11/28/2017	Drug Supplier sends email with attachments "Edited Protocol.pdf" and "TN Agreement –Executed.pdf."
12/4/2017	Pharmacy service agreement signed by Tony Parker; date agreement signed by Drug Supplier is unknown because of redaction.
12/5/2017	TPRA Request sent to TDOC by counsel for *Abdur'Rahman, et al.*
12/14/2017	Drug Supplier emails fourth invoice for midazolam.
12/21/2017	TDOC legal counsel sends letter to counsel for *Abdur'Rahman, et al.* stating that TDOC will respond to TPRA requests from 11/6/2017 and 12/5/2017 by 01/15/2018.
12/28/2017	Drug Supplier emails fifth invoice for midazolam.
01/08/2018	Petition for Writ of Certiorari in *Abdur'Rahman v. Parker*, No. 17-6068 is denied.

CHRONOLOGY OF EVENTS RELEVANT TO STATE'S MOTION TO EXPEDITE EXECUTION DATES

Date	Event
01/08/2018	TDOC adopts new lethal injection protocol adding the Midazolam Option
1/10/2018	TPRA Request sent to TDOC by counsel for *Abdur'Rahman, et al.*
1/11/2018	State Attorney General files Notice with the Tennessee Supreme Court regarding the denial of certiorari in *Abdur'Rahman*. No mention of problems with drug supply; no mention of new protocol. Service is by mail. The motions were filed late in the day Thursday. The following Friday state offices and many businesses in Nashville are closed due to inclement weather. The next business day is Tuesday, January 16, 2018 due to Martin Luther King Day.
1/16/2018	Response to 11/06/2017 and 12/05/2017 TPRA requests is received. Despite request that response be current as of date of response, TDOC produces documents only up to December 4, 2017, plus the new protocol containing the Midazolam Option. This is the first notice to any person working on behalf of Tennessee Death Row Inmates that TN had adopted a new lethal injection protocol.
01/18/2018	Abdur'Rahman, Johnson, Hall, Irick, Miller, Sutton, Wright, West, and Zagorski each file notice with the Tennessee Supreme Court of their intent to challenge the new Midazolam Option in Chancery Court and state that such Complaint will be filed in thirty days.
01/18/2018	Tennessee Supreme Court sets August 9, 2018 execution date for Billy Ray Irick.
02/02/2018	Response to 01/10/2018 TPRA request is received. Despite request that response be current as of date of response, TDOC produces documents only up to January 3, 2018. This heavily redacted response did not provide any additional relevant information.
02/02/2018	TPRA Request sent to TDOC by counsel for *Abdur'Rahman, et al.*
02/15/2018	State Attorney General files Motion asking Tennessee Supreme Court to set expedited execution dates for Abdur'Rahman, Johnson, Hall, Miller, Sutton, Wright, West, and Zagorski. Motion indicates that the State intends to use the Midazolam Option to execute the named inmates.
02/15/2018	Counsel for Abdur'Rahman, Johnson, Hall, Miller, Sutton, Wright, West, and Zagorski file notice with Tennessee Supreme Court that they intend to respond to State's motion for expedited execution dates within 14 days and that they will file Complaint in Chancery Court on February 20, 2018.
02/20/2018	Abdur'Rahman, Johnson, Hall, Irick, Miller, Sutton, Wright, West, and Zagorski and others file 16 count, 92 page complaint in Davidson County Chancery Court challenging the Midazolam Option.

Attachment 2

The places that it is readily available from do they have disclaimer requirements like what [redacted] hit us with on the Pento?



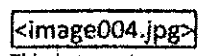
From: [redacted]
Sent: Thursday, September 07, 2017 12:58 PM
To: [redacted]
Subject: RE: Updtae

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello [redacted]

That stuff is readily available along with potassium chloride. I reviewed several protocols from states that currently use that method. Most have a 3 drug protocol including a paralytic and potassium chloride. Here is my concern with Midazolam. Being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium chloride especially. It may not be a huge concern but can open the door to some scrutiny on your end. Consider the use of an alternative like Ketamine or use in conjunction with an opioid. Availability of the paralytic agent is spotty. Pancuronium, Rocuronium, and Vecuronium are currently unavailable. Succinylcholine is available in limited quantity. I'm currently checking other sources. I'll let you know shortly.

Regards,



Attachment 3

[redacted]

From: [redacted]
Sent: Thursday, October 26, 2017 4:16 PM
To: [redacted]
Subject: Re: Additonal Info

Can you shoot me a W9 so I can get that to fiscal?

Sent from my iPhone

On Oct 26, 2017, at 3:30 PM, [redacted] wrote:

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

[redacted]

I will have my pharmacist write up a protocol. All drugs are required to be stored in a secured location at room temperature (between 15 and 30 degrees celcius).

Attached is the current invoice along with our Pharmacy Services Agreement. Please review the agreement and let me know if you have any concerns or questions. We will also need the address along with a copy of the current DEA and pharmacy/state license for the facility where we will be shipping the medication to.

There is another shipment arriving tomorrow with 8 Midazolam and 4 Vecuronium sets on board. I will get you the particulars when it arrives. Thanks Kelly. Let me know if I can be of further assistance.

Regards,

[redacted]

From: [redacted]
Sent: Thursday, October 26, 2017 1:43 PM

Attachment 4

[redacted]

From: [redacted]
Sent: Tuesday, November 28, 2017 12:48 PM
To: [redacted]
Subject:
Attachments: Edited Protocol.pdf; TN Agreement - Executed.pdf

[redacted]

[redacted]

Attached is the executed agreement and revisions to the protocol. Only one change was noted. Where the potassium chloride is concerned, in order to reach the required dose you need 120ml. Using 50cc syringes would only allow for 100ml necessitating the need for a third syringe with 20ml. You can eliminate the third syringe by using two 60cc syringes in place of the 50cc. One thing to note is that each 10mg Vecuronium vial will need to be reconstituted with 10ml of bacteriostatic water before use, which we will provide. Did you all want us to provide you with the syringes and needles?

[redacted]

Regards,

Attachment 5

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Counsel for Defendants
[additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

First Amendment Coalition of Arizona, Inc.; Charles Michael Hedlund; Graham S. Henry; David Gulbrandson; Robert Poyson; Todd Smith; Eldon Schurz; and Roger Scott,

Plaintiffs,

v.

Charles L. Ryan, Director of ADC; James O'Neil, Warden, ASPC–Eyman; Greg Fizer, Warden, ASPC–Florence; and Does 1-10, Unknown ADC Personnel, in their official capacities as Agents of ADC,

Defendants.

Case No. 2:14-cv-01447-NVW-JFM

STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER FOR DISMISSAL OF CLAIM ONE

Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson, Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, "Plaintiffs,"), and Defendants Charles L. Ryan, Director of the Arizona Department of Corrections ("ADC"); James O'Neil, Warden, ASPC–Eyman; and Greg Fizer, Warden, ASPC–Florence (collectively, "Defendants"), hereby stipulate and agree as follows:

WHEREAS, Claim One of Plaintiffs' Second Amendment Complaint ("Claim One") challenges ADC's intended use of lethal injection drug Protocol C that consists of midazolam, which belongs to a class of drugs called benzodiazepines, followed by a paralytic (vecuronium bromide, rocuronium bromide, or pancuronium bromide), and potassium chloride under the Eighth Amendment;

WHEREAS, Defendants contend that ADC's previous supplier of midazolam no longer provides the drug for use in lethal injection executions and that ADC's supply of midazolam expired on May 31, 2016;

WHEREAS, ADC has removed Protocol C, the three-drug combination beginning with midazolam that Plaintiffs' challenge in Claim One, from Department Order 710;

WHEREAS, Defendants hereby represent, covenant, and agree, and Plaintiffs and Defendants (collectively, the "parties") intend, that ADC will never again use midazolam, or any other benzodiazepine, as part of a drug protocol in a lethal injection execution;

WHEREAS, Plaintiffs contend that they have incurred in excess of $2,080,000 in attorneys' fees and costs in litigating this action;

WHEREAS, the parties agree that, because of the above-described circumstances, resolution of Claim One—without further litigation, without any admission of liability, and without any final adjudication of any issue of fact or law—is appropriate and will avoid prolonged and complicated litigation between the parties;

WHEREAS, the parties intend this stipulated settlement agreement to be enforceable by, and for the benefit of, not only the Plaintiffs but also all current and future prisoners sentenced to death in the State of Arizona ("Condemned Prisoner Beneficiaries"), who are express and intended third-party beneficiaries of this stipulated settlement agreement and who are entitled to all rights and benefits provided to Plaintiffs herein, and who, upon any showing that ADC intends to use midazolam, or any other benzodiazepine, in an execution or in an execution protocol, may continue this action as substituted plaintiffs pursuant to Rule 25(c) of the Federal Rules of Civil Procedure;

WHEREAS, the parties intend this stipulated settlement agreement to bind Defendants, ADC, and any of Defendants' successors in their official capacities as representatives of ADC, who, in the event that any Plaintiff or Condemned Prisoner Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure, will be deemed to have been automatically substituted as defendants in this action pursuant to Rule 25(d) of the Federal Rules of Civil Procedure;

WHEREAS, the parties intend and agree that, upon any breach of this stipulated settlement agreement, (a) any Plaintiff or Condemned Prisoner Beneficiary has standing and the right to move to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure, and (b) an order shall issue permanently enjoining ADC from using midazolam, or any other benzodiazepine, in an execution or in an execution protocol;

WHEREAS, in the event that any Plaintiff or Condemned Prisoner Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the parties agree that Defendants, ADC, and/or any of Defendants' successors in their official capacities as representatives of ADC waive all objections to this Court's reopening of this proceeding, including on the basis of timing, ripeness, mootness, or the standing of the moving parties;

WHEREAS, in the event that this stipulated settlement agreement is breached through ADC's use or intent to use a benzodiazepine in an execution or in an execution

protocol, and any Plaintiff's or Condemned Prisoner Beneficiary's motion to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not granted for reasons related to the moving parties' standing or the Court's jurisdiction, Defendants consent to the entry of an order in a separate action by a Plaintiff or a Condemned Prisoner Beneficiary for breach of this agreement that permanently enjoins ADC from using midazolam, or any other benzodiazepine, in an execution or in an execution protocol.

IT IS THEREFORE STIPULATED AND AGREED that:

(1) Claim One of Plaintiffs' Second Amended Complaint is dismissed, without prejudice.

(2) Upon any showing by any Plaintiff or Condemned Prisoner Beneficiary that ADC intends to use midazolam, or any other benzodiazepine, in an execution or in an execution protocol, Claim One shall be reinstated and reopened pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, and, based on the agreement and consent of the parties granted herein, an injunction shall issue in this action or in a separate action for breach of the parties' stipulated settlement agreement permanently enjoining ADC from using midazolam, or any other benzodiazepine, in an execution or in an execution protocol.

(3) Plaintiffs agree not to seek their attorneys' fees and costs incurred in litigating Claim One unless Defendants or ADC breach this stipulated settlement agreement, in which case Plaintiffs shall be entitled to seek an award of their reasonable attorneys' fees and costs incurred in litigating Claim One, in an amount to be determined by the Court, either in this action or in a separate action for breach of the parties' stipulated settlement agreement. In that circumstance, Plaintiffs shall also be entitled to seek to collect their reasonable attorneys' fees and costs incurred in moving to enforce this stipulated settlement agreement.

Dated: December 19, 2016

Sidley Austin LLP

s/ *Mark E. Haddad*
Mark E. Haddad
Attorneys for Plaintiffs Charles Michael Hedlund; Graham S. Henry; David Gulbrandson; Robert Poyson; Todd Smith; Eldon Schurz; and Roger Scott

Dated: December 19, 2016

Office of the Arizona Attorney General

s/ *Jeffrey L. Sparks*
Jeffrey L. Sparks
David Weinzweig
Lacey Stover Gard
John Pressley Todd

Attorneys for Defendants

I, Mark Haddad, hereby attest that counsel for Defendants, Jeffrey L. Sparks, authorized the use of his signature on, and concurred in the filing of, this document, on December 19, 2016.

s/ *Mark E. Haddad*
Mark E. Haddad

* * *

ORDER

IT IS SO ORDERED.

DATED this ___ day of _____, 2016.

Neil V. Wake
United States District Judge

Attachment 6

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[additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

First Amendment Coalition of Arizona, Inc.; Charles Michael Hedlund; Graham S. Henry; David Gulbrandson; Robert Poyson; Todd Smith; Eldon Schurz; and Roger Scott,

Plaintiffs,

v.

Charles L. Ryan, Director of ADC; James O'Neil, Warden, ASPC–Eyman; Greg Fizer, Warden, ASPC–Florence; and Does 1-10, Unknown ADC Personnel, in their official capacities as Agents of ADC,

Defendants.

Case No. 2:14-cv-01447-NVW-JFM

STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER FOR DISMISSAL OF CLAIMS SIX AND SEVEN

Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson, Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, "Plaintiffs"), and Defendants Charles L. Ryan, Director of the Arizona Department of Corrections ("ADC"); James O'Neil, Warden, ASPC–Eyman; and Greg Fizer, Warden, ASPC–Florence (collectively, "Defendants"), hereby stipulate and agree as follows:

WHEREAS, on December 22, 2016, this Court entered an Order for Dismissal of Claim One (ECF No. 155) based on the December 19, 2016 Stipulated Settlement Agreement (ECF No. 152) between Plaintiffs and Defendants (collectively, the "parties");

WHEREAS, Claim Six and Claim Seven of Plaintiffs' Second Amended Complaint ("SAC") (ECF No. 94) and Plaintiffs' Supplemental Complaint (ECF No. 163) challenge the ADC's reservations of excessive discretion in its execution procedures, and Defendants' past and proposed future exercises of that discretion, including through "last-minute deviations from critical aspects of its announced execution process," May 18, 2016, Order Granting in Part and Denying in Part Defendants' Motion to Dismiss SAC at 13 (ECF No. 117), as violative of the Eighth and Fourteenth Amendments;

WHEREAS, Defendants intend to resolve the deficiencies Plaintiffs allege through their permanent repudiation of certain provisions contained in past versions of the ADC's execution procedures, as set forth herein, and through the adoption of a new set of execution procedures reflecting those changes;

WHEREAS, Defendants' execution procedures have, in the past, stated that "[t]his Department Order outlines internal procedures and does not create any legally enforceable rights or obligations," *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, at p.1 (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that Defendants and the ADC will remove from the ADC's current execution procedures the sentence—"[t]his Department Order outlines internal procedures and does not create any legally enforceable rights or obligations"—and that Defendants and the

ADC will never again include such language or substantially similar language in any future version of the ADC's execution procedures (together, "Covenant No. 1");

WHEREAS, Defendants' execution procedures have, in the past, granted the Director of the ADC (the "ADC Director") the discretion to change any of the timeframes set forth in the execution procedures based on the ADC Director's determination that there has been an "unexpected or otherwise unforeseen contingency," *e.g.* Ariz. Dep't of Corr., Dep't Order 710 ¶ 1.1.2.3 (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that the ADC Director shall henceforth have the authority to change timeframes relating to the execution process only when those timeframes correspond to minor or routine contingencies not central to the execution process; that timeframes that *are* central to the execution process include, but are not limited to, those relating to execution chemicals and dosages, consciousness checks, and access of the press and counsel to the execution itself; and that Defendants and the ADC will never again include provisions in any version of the ADC's execution procedures that purport to expand the ADC Director's discretion to deviate from timeframes set forth in the execution procedures beyond those relating to minor or routine contingencies not central to the execution process (together, "Covenant No. 2");

WHEREAS, Defendants' execution procedures have, in the past, granted the ADC Director the discretion to change the quantities or types of chemicals to be used in an execution at any time that he determines such a change to be necessary, even after a warrant of execution has been sought, *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.6 (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that the ADC Director shall henceforth have the authority to change the quantities or types of chemicals to be used in an execution after a warrant of execution has been sought only if the Director, the ADC, Defendants, and/or their counsel, (1) notify the

condemned prisoner and his/her counsel of the intended change, (2) withdraw the existing warrant of execution, and (3) apply for a new warrant of execution; and that Defendants and the ADC will never again include provisions in any version of the ADC's execution procedures that permit the ADC Director or the ADC to change the quantities or types of chemicals to be used in an execution after a warrant of execution has been sought without also withdrawing and applying through counsel for a new warrant of execution (together, "Covenant No. 3");

WHEREAS, Defendants' execution procedures, in the past, have not expressly limited the ADC Director's discretion regarding the use of quantities and types of chemicals to only those quantities and types of chemicals set forth in the ADC's execution procedures;

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that the ADC Director's discretion to choose the quantities and types of chemicals for an execution shall be limited to the quantities and types of chemicals set forth expressly in the then-current execution procedures; that the quantities or types of chemicals that may be used in an execution may be modified only through the formal publication of an amended set of execution procedures; and that any future version of execution procedures will expressly reflect this limitation of discretion (together, "Covenant No. 4");

WHEREAS, Defendants' execution procedures, in the past, have required that, if any compounded chemical is to be used in an execution, the ADC shall obtain it from only a "certified or licensed" compounding pharmacist or compounding pharmacy, but the ADC's most recent version of its execution procedures has removed that limitation in lieu of a requirement that the ADC provide a "qualitative analysis of any compounded or non-compounded chemical to be used in the execution . . . within ten calendar days after the state seeks a Warrant of Execution," *compare* Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.2 (Oct. 23, 2015), *with* Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.2 (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that the ADC shall provide, upon request and within ten (10) calendar days after the State of Arizona seeks a warrant of execution, a quantitative analysis of any compounded or non-compounded chemical to be used in an execution that reveals, at a minimum, the identity and concentration of the compounded or non-compounded chemical; that ADC will only use chemicals in an execution that have an expiration or beyond-use date that is after the date that an execution is to be carried out; that, if the chemical's expiration or beyond-use date states only a month and year (*e.g.*, "May 2017"), ADC will not use that chemical after the last day of the month specified; and that all future versions of the ADC's execution procedures shall include these requirements (together, "Covenant No. 5");

WHEREAS, Defendants' execution procedures have, in the past, permitted the use of a three-drug lethal-injection protocol using: (1) a barbiturate or a benzodiazepine as the first drug, (2) a paralytic such as vecuronium bromide, pancuronium bromide, or rocuronium bromide (collectively, "Paralytic") as the second drug, and (3) potassium chloride as the third drug; *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.2 at Chart C (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that Defendants and the ADC will never again use a Paralytic in an execution; and that Defendants and the ADC consequently will remove their current three-drug lethal-injection protocol from the current and any future version of the ADC's execution procedures (together, "Covenant No. 6");

WHEREAS, Defendants' execution procedures have, in the past, provided for prisoners or their agents to purchase and/or supply chemicals for use in the prisoner's own execution, *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.1 (Jan. 11, 2017);

WHEREAS, Defendants hereby represent, covenant, and agree, and the parties intend, that Defendants and the ADC shall remove from the ADC's execution procedures

any provision that purports to permit prisoners or their agents to purchase and/or supply chemicals for use in the prisoner's own execution, and that Defendants and the ADC will never again include any such provision or any substantially similar provision in any future version of the ADC's execution procedures (together, "Covenant No. 7");

WHEREAS, the parties agree that the version of Department Order 710 published on June 13, 2017 fully satisfies Covenant Nos. 1 through 7;

WHEREAS, Plaintiffs contend that they have incurred in excess of $2,350,000 in attorneys' fees and costs in litigating this action since its inception, and have incurred in excess of $280,000 in attorneys' fees and costs in litigating this action since this Court's December 22, 2016, Order dismissing Claim One without prejudice (ECF No. 155);

WHEREAS, the parties agree that, because of the above-described circumstances, resolution of Claim Six and Claim Seven—without further litigation, without any admission of liability, and without any final adjudication of any issue of fact or law—is appropriate and will avoid prolonged and complicated litigation between the parties;

WHEREAS, the parties intend this Stipulated Settlement Agreement to be enforceable by, and for the benefit of, not only the Plaintiffs but also all current and future prisoners sentenced to death in the State of Arizona ("Condemned Prisoner Beneficiaries"), who are express and intended third-party beneficiaries of this Stipulated Settlement Agreement and who are entitled to all rights and benefits provided to Plaintiffs herein, and who, upon any showing that any of the Defendants, any of the Defendants' successors in their official capacities as representatives of the ADC ("Defendants' Successors"), or the ADC has violated or intends to violate any of Covenant Nos. 1 through 7 may continue this action as substituted plaintiffs pursuant to Rule 25(c) of the Federal Rules of Civil Procedure;

WHEREAS, the parties intend this Stipulated Settlement Agreement to bind Defendants, the ADC, and Defendants' Successors, who, in the event that any Plaintiff or Condemned Prisoner Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of

the Federal Rules of Civil Procedure, will be deemed to have been automatically substituted as defendants in this action pursuant to Rule 25(d) of the Federal Rules of Civil Procedure;

WHEREAS, the parties intend and agree that, upon any breach of this Stipulated Settlement Agreement, (a) any Plaintiff or Condemned Prisoner Beneficiary has standing and the right to move to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure, and (b) an order shall immediately issue permanently enjoining the ADC from violating Covenant Nos. 1-7;

WHEREAS, in the event that any Plaintiff or Condemned Prisoner Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the parties agree that the Defendants, the ADC, and Defendants' Successors waive all objections to this Court's reopening of this proceeding, including on the basis of timing, ripeness, mootness, or the standing of the moving parties;

WHEREAS, in the event that this Stipulated Settlement Agreement is breached through an actual or intended violation of any of Covenant Nos. 1 through 7 by Defendants, Defendants' Successors, or the ADC, and any Plaintiff's or Condemned Prisoner Beneficiary's motion to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not granted for reasons related to the moving parties' standing or the Court's jurisdiction, Defendants, Defendants' Successors, and the ADC consent to the entry of an order in a separate action by a Plaintiff or a Condemned Prisoner Beneficiary for breach of this agreement that permanently enjoins Defendants, Defendants' Successors, and the ADC from engaging in any conduct that violates any of Covenant Nos. 1 through 7.

IT IS THEREFORE STIPULATED AND AGREED that:

(1) Claims Six and Seven of Plaintiffs' Second Amended Complaint and Supplemental Complaint are dismissed, without prejudice.

(2) The parties do not hereby intend to settle, and Plaintiffs instead expressly

reserve their right to appeal, other claims that were dismissed by the Court's May 18, 2016, Order, including Claims 3, 4, and 5, which challenge various aspects of the ADC's execution procedures on First Amendment grounds.

(3) Upon any showing by any Plaintiff or Condemned Prisoner Beneficiary that any of the Defendants, any of the Defendants' Successors, or the ADC intend to engage in or have actually engaged in any of the following conduct (together, the "Prohibited Conduct"):

(a) adopt language in any future version of the ADC's execution procedures that purports to disclaim the creation of rights or obligations;

(b) grant the ADC and/or the ADC Director the discretion to deviate from timeframes set forth in the ADC's execution procedures regarding issues that are central to the execution process, which include but are not limited to those relating to execution chemicals and dosages, consciousness checks, and access of the press and counsel to the execution itself;

(c) change the quantities or types of chemicals to be used in an execution after a warrant of execution has been sought without first notifying the condemned prisoner and his/her counsel of the intended change, withdrawing the existing warrant of execution, and applying for a new warrant of execution;

(d) select for use in an execution any quantity or type of chemical that is not expressly permitted by the then-current, published execution procedures;

(e) fail to provide upon request, within ten (10) calendar days after the State of Arizona seeks a warrant of execution, a quantitative analysis of any compounded or non-compounded chemical to be used in an execution that reveals, at a minimum, the identity and concentration of the compounded or non-compounded chemicals;

(f) use or select for use in an execution any chemicals that have an expiration or beyond-use date that is before the date that an execution is to be

carried out; or use or select for use in an execution any chemicals that have an expiration or beyond-use date listed only as a month and year that is before the month in which the execution is to be carried out;

(g) adopt or use any lethal-injection protocol that uses a paralytic (including but not limited to vecuronium bromide, pancuronium bromide, and rocuronium bromide); or

(h) adopt any provision in any future version of the ADC's execution procedures that purports to permit prisoners or their agents to purchase and/or supply chemicals for use in the prisoner's own execution; then

Claims Six and Seven shall be reinstated and reopened pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, and, based on the agreement and consent of the parties granted herein, an injunction shall immediately issue in this action or in a separate action for breach of this Stipulated Settlement Agreement permanently enjoining Defendants, Defendants' Successors, and the ADC from engaging in any of the Prohibited Conduct.

(4) Plaintiffs agree not to seek their attorneys' fees and costs incurred in litigating Claims Six and Seven unless Defendants, Defendants' Successors, or the ADC breach this Stipulated Settlement Agreement, in which case Plaintiffs shall be entitled to an award, either in this action or in a separate action for breach of this Stipulated Settlement Agreement, of their reasonable attorneys' fees and costs incurred in litigating this action from its inception through the effective date of this Stipulated Settlement Agreement, as determined by the Court after briefing by the parties. In that circumstance,

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Plaintiffs shall also be entitled to seek to collect their reasonable attorneys' fees and costs incurred in moving to enforce this Stipulated Settlement Agreement.

IT IS SO STIPULATED.

Dated: June 21, 2017

Sidley Austin LLP

s/ Mark E. Haddad
Mark E. Haddad

Attorneys for Plaintiffs

Dated: June 21, 2017

Office of the Arizona Attorney General

s/ Jeffrey L. Sparks
Jeffrey L. Sparks

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2017, I electronically filed the foregoing **Stipulated Settlement Agreement and [Proposed] Order for Dismissal of Claims Six and Seven** by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Barbara Cunningham
Barbara Cunningham
Legal Secretary

Attachment 7

Chronology of Public Records Requests

Request Date	Response Date	Timeframe of Documents Actually Produced
September 12, 2017	November 6, 2017	February 15, 2017- September 7, 2017
November 6, 2017 & December 5, 2017	January 16, 2018	October 17, 2017- December 4, 2018
January 10, 2018	February 2, 2018	October 26, 2017 - January 3, 2018
February 2, 2018	No Response Received	

Attachment 8

[redacted]

From: [redacted]
Sent: Wednesday, October 18, 2017 11:01 AM
To: [redacted]
Subject: Re: Question

I believe we do I will double check on it.

Sent from my iPhone

On Oct 18, 2017, at 10:47 AM, [redacted] wrote:

> Good morning [redacted]
>
> Below is a list of what has been received from our suppliers
>
> Midazolam – 1000mg, Lot: [redacted] EXP: 1June2018
>
> Vecuronium – 200mg, Lot: [redacted] EXP: 12/18
>
> Potassium Chloride – 2000mEq, Lot: [redacted] EXP: 1May2018
>
> I'm working on revising the BAA and agreement. I should have it to you by the end of the day. Do you all have a DEA license?
>
> Regards,

[redacted]

From: [redacted]
Sent: Wednesday, October 18, 2017 8:33 AM
To: [redacted]
Subject: RE: Question

I got some info re: the test .... Let me know if there is a good time to call and fill you in. thx

Attachment 9

PHARMACY SERVICES AGREEMENT

This PHARMACY SERVICES AGREEMENT ("Agreement") is being made and entered into by and between [redacted] ("Pharmacy") and _____ ("Department") on this 21 day November, 2017, and is being made for the purposes and the consideration herein expressed.

WITNESSETH:

WHEREAS, Pharmacy is [redacted] that provides controlled substance and compounded preparations to practitioners for office use; and

WHEREAS, Department is a State of Tennessee governmental agency that is responsible for carrying out sentences of death by means of lethal injection; and

WHEREAS, Department desires to engage Pharmacy to provide Department with certain controlled substances and/or compounded preparations for lethal injection administration by the Department to those individuals sentenced to death; and

WHEREAS, Pharmacy and Department have agreed to enter into this Agreement setting forth the terms under which Pharmacy will provide certain controlled substances and/or compounded preparations to Department for use in lethal injection.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Pharmacy and Department hereby agree as follows:

Article 1
SERVICES

1.1 Controlled substance. Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested controlled substance. Quantities of the controlled substance shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the controlled substance and is reasonable considering the intended use of the controlled substance and the nature of the services offered by the Department. For controlled substance, Pharmacy shall dispense all drugs in accordance with applicable licensing regulations adopted by the [redacted] and the United States Food and Drug Administration that pertain to pharmacies dispensing controlled substance.

1.2 Compounding Preparations. Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested compounded preparation. Quantities of the compounded preparation shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the compounded preparation and is reasonable considering the intended use of the compounded preparation and the nature of the services offered by the Department. For compounded preparations, Pharmacy shall compound all drugs in a clean sterile environment in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In addition, Pharmacy shall compound all drugs in accordance with applicable licensing regulations adopted

by the [redacted] that pertain to pharmacies compounding sterile preparations.

1.3 Limitation on Services. Pharmacy shall only provide controlled substance and compounding preparations that it can prepare to ensure compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In the event Department requests a controlled substance or compounded preparation which Pharmacy is not able to fill, Pharmacy shall notify Department.

1.4 Recalls. In the event that Pharmacy determines that a recall for any controlled substance or compounded preparation provided hereunder is warranted Pharmacy shall immediately notify Department of the medication and/or preparations subject to the recall. Pharmacy shall instruct Department as how to dispose of the medication or preparation, or may elect to retrieve the medication or preparation from Department. Pharmacy shall further instruct Department of any measures that need to be taken with respect to the recalled medication or preparation.

Article 2
OBLIGATIONS OF DEPARTMENT

2.1 Written Requests. All requests for controlled substances and compounded preparations must be in writing and sent to Pharmacy via electronic mail or facsimile. The following shall appear on all requests:

A. Date of request;
B. FOR COMPOUNDED PREPARATIONS ONLY: Name, address, and phone number of the practitioner requesting the preparation;
C. Name, strength, and quantity of the medication or preparation ordered; and
D. Whether the request needs to be filled on a STAT basis.

2.2 Use of Controlled Substance and Compounded Preparations. Department agrees and acknowledges that all controlled substance and compounded preparations provided by Pharmacy may only be used by Department in carrying out a sentence of death by lethal injection and may not be dispensed or sold to any other person or entity. Department assumes full responsibility for administering any controlled substance or compounded preparations.

2.3 Recordkeeping. Department agrees to maintain records of the lot number and beyond-use date of a controlled substance or compounded preparation to be administered or administered by Department that was prepared by Pharmacy. Department agrees to maintain inventory control and other recordkeeping as may be required by applicable federal and state laws and regulations.

Article 3
TERM AND TERMINATION

3.1 Term. The Effective Date of this Agreement shall be the date first specified above. The term of this Agreement shall be for a period of one (1) year unless sooner terminated by either party pursuant to the terms and provisions hereof. If this Agreement is not terminated by either party prior to the anniversary date of this Agreement or any renewal term, this Agreement shall automatically renew for an additional one (1) year term.

3.2 Termination.

A. Either party to this Agreement may terminate this Agreement, with or without cause, by providing the other party sixty (60) days prior written notice of said termination.

B. Pharmacy may immediately terminate this Agreement in the event of any of the following:

1. Department ceases to provide professional services for any reason.

2. Department's professional license is revoked, terminated, or suspended.

3. Department declares bankruptcy.

4. Department fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.

C. Department may immediately terminate this Agreement in the event of any of the following:

1. Pharmacy's professional license is revoked, terminated, or suspended.

2. Pharmacy is excluded or debarred from participation in the Medicare and/or Medicaid programs for any reason.

3. Pharmacy declares bankruptcy.

4. Pharmacy fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.

Article 4
REPRESENTATION

4.1 Representation by TN Attorney General. The Tennessee Attorney General's Office will represent or provide representation to Pharmacy in any civil lawsuit filed against Pharmacy for its acts or omissions arising out of and within the scope and course of this agreement except for willful, malicious or criminal acts or omissions or for acts or omissions done for personal gain. Any civil judgment leveled against Pharmacy arising out it's acts or omissions pursuant to this agreement will be reimbursed by the State in accordance with the terms of T.C.A. § 9-8-112. The Attorney General's Office will advocate before the Board of Claims for full payment of any judgment against Pharmacy arising out of a civil lawsuit in which the Attorney General's Office represents or provides representation to Pharmacy.

Article 5
Miscellaneous

5.1 Amendment. This Agreement may be amended only by mutual agreement and reduced to writing and signed by both parties hereto.

5.2 Payment. Pharmacy agrees to submit invoices within thirty (30) days after rendering services and/or providing controlled substances or compounded preparations to: TDOC Fiscal Director, Rachel Jackson Building, 6th Floor, 320 6th Avenue North, Nashville, Tennessee, 37243. Department agrees to pay an annual fee to Pharmacy in the amount of $5,000.00 (five thousand dollars).

5.3 Captions. Any caption or heading contained in this Agreement is for convenience only and shall not be construed as either broadening or limiting the content of this Agreement.

5.4 Sole Agreement. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

5.5 Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The parties hereto expressly agree that this Agreement is executed and shall be performed in Davidson County, Tennessee, and venue of all disputes, claims and lawsuits arising hereunder shall lie in Davidson County, Tennessee.

5.6 Severability. The sections, paragraphs and individual provisions contained in this Agreement shall be considered severable from the remainder of this Agreement and in the event that any section, paragraph or other provision should be determined to be unenforceable as written for any reason, such determination shall not adversely affect the remainder of the sections, paragraphs or other provisions of this Agreement. It is agreed further, that in the event any section, paragraph or other provision is determined to be unenforceable, the parties shall use their best efforts to reach agreement on an amendment to the Agreement to supersede such severed section, paragraph or provision.

5.7 Notice. Any notices under this Agreement shall be hand-delivered or mailed by certified mail, return receipt requested to the parties at the addresses set forth on the signature page of this Agreement, or such other addresses as the parties may designate to the other in writing from time to time.

5.8 Agreement Subject to State and Federal Law. The parties recognize that this Agreement, at all times, is subject to applicable state, local and federal laws including, but not limited to, the Social Security Act and the rules, regulations and policies adopted thereunder and adopted by the [redacted] as well as the public health and safety provisions of state laws and regulations. The parties further recognize that this Agreement shall be subject to amendments of such laws and regulations, and to new legislation. Any such provisions of law that invalidate, or otherwise are inconsistent with the terms of this Agreement, or that would cause one or both of the parties to be in violation of the laws, shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of applicable laws and regulations.

5.9 Compliance With All Applicable Laws. The parties hereto hereby acknowledge and agree that each party shall comply with all applicable rules regulations, laws and statutes including, but not limited to, any rules and regulations adopted in accordance with and the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties hereby specifically agree to comply with all privacy and security rules, regulations and provisions of HIPAA and to execute any required agreements required by all HIPAA Security Regulations and HIPAA Privacy Regulations whether presently in existence or adopted in the future, and which are mutually agreed upon by the parties. In addition, in the event the legal counsel of either party, in its reasonable opinion, determines that this Agreement or any material provision of this Agreement violates any federal or state law, rule or regulation, the parties shall negotiate in good faith to amend this Agreement or the relevant provision thereof to remedy such violation in a manner that will not be inconsistent with the intent of the parties or such provision. If the parties cannot reach an agreement on such amendment, however, then either party may terminate this Agreement immediately. This section shall survive the termination of this Agreement.

5.10 Referral Policy. Nothing contained in this Agreement shall require, directly or indirectly, explicitly or implicitly, either party to refer or direct any patients to the other party.

5.11 Assignment. This Agreement is not assignable without the other party's prior written consent.

5.12 Independent Contractor Status. In performing their responsibilities pursuant to this Agreement, it is understood and agreed that Pharmacy and its pharmacists and other professionals are at all times acting as independent contractors and that the parties to this Agreement are not partners, joint-venturers, or employees of one another.

5.13 Non-Waiver. No waiver by one of the parties hereto of any failure by the other party to keep or perform any provision, covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant or condition.

5.14 Counterparts/Execution. This document may be executed in multiple counterparts, each of which when taken together shall constitute but one and the same instrument. In addition, this Agreement may be executed by facsimile or electronic signature, which shall constitute an original signature.

5.15 No Third-Party Beneficiaries. No provision of this Agreement is intended to benefit any third party, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect hereto.

5.16 Confidentiality. Both parties agree to keep this Agreement and its contents confidential and not disclose this Agreement or its contents to any third party, other than its attorneys, accountants, or other engaged third parties, unless required by law, without the written consent of the other party.

IN WITNESS WHEREOF, the parties have hereunto caused their authorized representatives to execute this Agreement as of the date first set forth above.

[redacted]

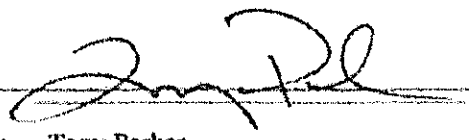
By: [redacted]

Name: [redacted]

Title: [redacted]

Date: [redacted]

Address: [redacted]

By: 

Name: Tony Parker

Title: TDOC Commissioner

Date: 12/4/17

Address: 320 6th Ave. North, 6th Floor
Nashville, TN 37243

Attachment 10

IN THE CRIMINAL COURT FOR MORGAN COUNTY, TENNESSEE

NICHOLAS TODD SUTTON, Petitioner	)	
v.	)	No. 7555 (CAPITAL CASE) (POST-CONVICTION)
STATE OF TENNESSEE, Respondent.	)	(MOTION TO REOPEN)

PRELIMINARY ORDER REGARDING "MOTION TO REOPEN POST-CONVICTION PETITION"

I. Introduction

This matter is before this Court on Petitioner's June 8, 2016, motion to reopen his petition for post-conviction relief. Petitioner, Nicholas Todd Sutton, by and through counsel, has filed this motion to reopen pursuant to Tenn. Code Ann. § 40-30-117(a)(1) claiming he is entitled to relief in this petition based upon new rules of law as announced in (1) Justice Breyer's dissent in Glossip v. Gross, 576 U.S. ___, 135 S. Ct. 2726 (2015), (2) the majority opinion in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015), and (3) the majority opinion in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2251 (2015). The State filed its response on September 15, 2016, seeking summary denial of the motion to reopen. After reviewing the motion and the relevant authorities and for the reasons stated within this order, Petitioner's Motion To Reopen filed on June 8, 2016, is hereby DENIED IN PART AND GRANTED IN PART.

II. Procedural History

Trial

In 1986, Petitioner was convicted of the January 15, 1985, first degree murder of Carl Estep. At the time of the offense, Petitioner, his codefendants,[1] and the victim

[1] One codefendant was found not guilty and another was found guilty and received a life sentence.

were all inmates at the Morgan County Regional Correctional Facility. Estep was stabbed, in his cell, thirty-eight times in the chest and neck and nine of the wounds were potentially fatal. State v. Sutton, 761 S.W.2d 763 (Tenn. 1988). Two homemade knives were found near his body and a third was found under his lamp. Id. The jury found the following aggravating circumstances beyond a reasonable doubt in sentencing Petitioner to death for the murder:

> (1) The defendant was previously convicted of one (1) or more felonies that involved the use of threat or violence; and
>
> (2) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of the mind.
>
> (3) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.

See Tenn. Code Ann. § 39-13-204(i)(2), (5) and (8) (1982).

On appeal, the Tennessee Supreme Court affirmed both his convictions and sentences. State v. Sutton, 761 S.W.2d 763 (Tenn. 1988), cert. denied, 497 U.S.1031 (1990).

Post-Conviction

Petitioner subsequently filed his first petition for post-conviction relief on December 14, 1990, and amended it on January 2, 1992. Following a hearing held from October 9, 1996, to October 14, 1996, the petition was denied by the trial court's order on October 23, 1996. The trial court's denial was affirmed on appeal. Nicholas Todd Sutton v. State, 1999 WL 423005 (Tenn. Crim. App. June 25, 1999),perm. app. denied, (Tenn. Dec, 20, 1999), cert. denied, 530 U.S. 1216 (2000).

Federal Habeas Corpus Proceedings

Petitioner filed an unsuccessful petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and the trial court's denial of relief was affirmed on appeal. Sutton v. Bell, 645 F.3d 752 (6th Cir. 2011), cert. denied, 132 S. Ct. 1917 (2012).

III. Applicable Law: Motions to Reopen

The Tennessee Supreme Court has summarized the statutes governing motions to reopen:

> Under the provisions of the Post-Conviction Procedure Act, a petitioner "must petition for post-conviction relief ... within one (1) year of the final action of the highest state appellate court to which an appeal is taken ... ." Tenn. Code Ann. § 40-30-202(a). Moreover, the Act "contemplates the filing of only one (1) petition for post-conviction relief." Tenn. Code Ann. § 40-30-202(c). After a post-conviction proceeding has been completed and relief has been denied, ... a petitioner may move to reopen only "under the limited circumstances set out in 40-30-217." Id. These limited circumstances include the following:
>
> > (1) The claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional right that was not recognized as existing at the time of trial; or
> >
> > (2) The claim in the motion is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or
> >
> > (3) The claim in the motion seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid; and
> >
> > (4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.

(Citing Tenn. Code Ann. § 40-30-217(a)(1)-(4))(now Tenn. Code Ann. § 40-30-117(a)(1)-(4)). The statute further states:

> The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise. Except as specifically provided in subsections (b) and (c) [of section 102],

> the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period. Tenn. Code Ann. § 40-30-102(a).

Harris v. State, 102 S.W.3d 587, 590-91 (Tenn. 2003). Johnson was decided June 26, 2015, so Petitioner's motion is timely.

The post-conviction statutes further provide that

> a new rule of constitutional criminal law is announced if the result is not dictated by precedent existing at the time the petitioner's conviction became final and application of the rule was susceptible to debate among reasonable minds. A new rule of constitutional criminal law shall not be applied retroactively in a post-conviction proceeding unless the new rule places primary, private individual conduct beyond the power of the criminal law-making authority to proscribe or requires the observance of fairness safeguards that are implicit in the concept of ordered liberty.

Tenn. Code Ann. § 40-30-122. Furthermore, as Petitioner asserts, the United Supreme Court's opinion in Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718, 729 (2016), provides that "when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule."

A motion to reopen "*shall be denied* unless the factual allegations, if true, meet the requirements of [Tenn. Code Ann. § 40-30-117](a)." Tenn. Code Ann. § 40-30-117(b) (emphasis added).

IV. Analysis

Petitioner's Claims under Glossip v. Gross Dissent

In Glossip v. Gross, 135 S. Ct. 2726 (2015), the Supreme Court concluded Oklahoma's three-drug lethal injection protocol did not violate the Eighth Amendment's protection against cruel and unusual punishment. Four justices wrote a dissent addressing the particular controversy at issue in Glossip (namely, the constitutionality of Oklahoma's lethal injection protocol), but in a separate dissent, joined by Justice Ginsburg, Justice Breyer argued for a reexamination of whether the death penalty itself should be held to be unconstitutional. See id. at 2755-80 (Breyer, J., dissenting). This

dissent forms the basis for one of Petitioner's issues in the current motion to reopen. Specifically, Petitioner argues on page 15 of his motion to reopen,

> In Glossip v. Gross, 576 U.S. _____, 135 S. Ct. 2726 (2015) (Breyer, J., dissenting), Justices Breyer and Ginsburg have concluded that the death penalty likely constitutes a prohibited cruel and unusual punishment, which violates the Eighth and Fourteenth Amendments (and in turn violates Article I sections 10 and 16 of the Tennessee Constitution). Mr. Sutton relies on these arguments and evidence contained and discussed in Justice Breyer's dissent in support of his discussion that the death sentence in this case is unconstitutional.
>
> As Justice Breyer has explained, the death sentence is unconstitutional as applied to Mr. Sutton because it is: unreliable; arbitrary; involves excessive delays and fails to serve any legitimate penological objective; and highly unusual or rare. Mr. Sutton specifically relies upon Justice Breyer's analyses and conclusions as they apply with equal force to Tennessee's death penalty scheme and to the death penalty as specifically applied to Mr. Sutton.

(Footnotes omitted).

Initially, it is this Court's determination the Glossip dissent is not a "final ruling of an appellate court" that would entitle Petitioner to relief. The final ruling of the Supreme Court in Glossip affirmed Oklahoma's lethal injection protocol. Justice Breyer's separate dissenting opinion has no precedential value and cannot be considered "a new substantive rule of constitutional law [which] controls the outcome of a case[.]" Montgomery, 136 S. Ct. at 729 (describing a new substantive rule of constitutional law as one that controls the outcome of a case). In short, Petitioner's Glossip claim must be denied because "the facts underlying the claim, if true, would [not] establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced." Tenn. Code Ann. § 40-30-117(a)(4). See also Edmund Zagorski v. State, No. M2016-00557-CCA-R28-PD, slip op. at 2 (Tenn. Crim. App. May 4, 2016) (order denying relief in appeal of motion to reopen decision based upon Obergefell opinion and Glossip dissent), perm. app. denied, (Tenn. Aug. 18, 2016).

Petitioner's general assertions concerning the death penalty in Tennessee being unreliable, arbitrary, cruel, and highly unusual or rare are hardly new. Mindful of evolving standards of decency, the United States Supreme Court has concluded that executing certain classes of persons—such as the intellectually disabled[2] and persons committing capital offenses as juveniles[3]— are unconstitutional. However, both the federal and state supreme courts have repeatedly concluded the death penalty itself

[2] See Atkins v. Virginia, 536 U.S. 304 (2002).
[3] See Roper v. Simmons, 543 U.S. 551 (2005).

does not violate the United States and Tennessee constitutions. E.g. Glossip v. Gross, 135 S. Ct. 2726 (2015)(majority opinion); and Keen v. State, 398 S.W.3d 594, 600 n.7 (Tenn.2012). Whatever arguable merit the concerns set forth in the dissent in Glossip may or may not have, binding precedent, which is clearly contained in the majority opinion of the same case, requires this Court to find Petitioner's claims here do not rely upon a new substantive rule of constitutional law as required by the statute.

Petitioner's Claims Under Obergefell v. Hodges

Petitioner also asserts he is entitled to relief under the United States Supreme Court's opinion in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015), which concluded the right to marry is a fundamental right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment and, therefore, is guaranteed to all couples regardless of sex. Specifically, Petitioner argues "[j]ust as no state can deny the fundamental right to marry, *a fortiori*, no state can deny the fundamental right to life, which is *the* fundamental human right and provides the predicate for the exercise of all other rights." (Motion to Reopen, page 26). He asserts Obergefell and the Fourteenth Amendment require that his death sentence must be struck down. This Court disagrees.

The government's inability to deny any person his fundamental rights under the state or federal constitution is hardly a novel concept. Petitioner's assertion the death penalty denies him his fundamental right to life is also not a new claim as numerous death row inmates have raised the claim in Tennessee's courts, and both the Tennessee Supreme Court[4] and the Court of Criminal Appeals[5] have denied these

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[4] See State v. Mann, 959 S.W.2d 503, 536 (Tenn. 1997) (appendix); and State v. Bush, 942 S.W.2d 489, 524 (Tenn. 1997) (appendix). See also State v. Freeland, 451 S.W.3d 791, 825 (Tenn. 2014) (appendix); State v. Sexton, 368 S.W.3d 371, 427 (Tenn. 2012) (appendix); State v. Hester, 324 S.W.3d 1, 80 (Tenn. 2010); State v. Holton, 126 S.W.3d 845, 871-72 (Tenn. 2004) (appendix); and Nichols v. State, 90 S.W.3d 576, 604 (Tenn. 2002).

[5] See Cauthern v. State, 145 S.W.3d 571, 629 (Tenn. 2004). See also Robert Faulkner v. State, No. W2012-00612-CCA-R3-PD (Tenn. Crim. App. Aug. 29, 2014); Akil Jahi a.k.a. Preston Carter v. State, No. W2011-02669-CCA-R3-PD (Tenn. Crim. App. Mar. 13, 2014); David Ivy v. State, No. W2010-01844-CCA-R3-PD (Tenn. Crim. App. Dec. 21, 2012); Steven Ray Thacker *v. State*, No. W2010-01637-CCA-R3-PD (Tenn. Crim. App. Mar. 23, 2012); Gerald Lee Powers *v. State*, No. W2009-01068-CCA-R3-PD (Tenn. Crim. App. Feb. 22, 2012); John Michael Bane *v. State*, No. W2009-01653-CCA-R3-PD (Tenn. Crim. App. July 21, 2011); Christa Gail Pike v. State, No. E2009-00016-CCA-R3-PD (Tenn. Crim. App. Apr. 25, 2011); Vincent Sims v. State, No. W2008-02823-CCA-R3-PD (Tenn. Crim. App. Jan. 28, 2011); Detrick Cole v. State, No. W2008-02681-CCA-R3-PD (Tenn. Crim. App. Mar. 8, 2011); Perry Anthony Cribbs v. State, No. W2006-01381-CCA-R3-PD (Tenn. Crim. App. July 1, 2009); Tyrone Chalmers v. State, No. W2006-00424-CCA-R3-PD (Tenn. Crim. App. June 25, 2008); Anthony Darrell Hines v. State, No.

claims. Petitioner argues Obergefell's conclusions regarding fundamental rights, human dignity, and the prohibition against the diminishment of one's personhood apply in all circumstances, not just the right to marry. However, this Court is not aware of any state or federal appellate opinion extending Obergefell to criminal law in general or capital punishment in particular. The Obergefell opinion does not state explicitly that the Supreme Court's holding applies to areas of the law beyond the right to marry.

In addition and as previously referred to above, the Court of Criminal Appeals has already denied relief in a similar case. In October 2015, Edmund Zagorski, convicted in Robertson County of two counts of first degree murder and sentenced to death,[6] filed a motion to reopen his post-conviction proceedings based upon the Obergefell opinion and the Glossip dissent discussed above. The post-conviction court denied the motion following a hearing, and on appeal the Court of Criminal Appeals affirmed the trial court:

> The Appellant argues that his post-conviction petition should be reopened in light of the United States Supreme Court's ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and Justice Breyer's dissenting opinion in *Glossip v. Gross*, 135 S. Ct. 2726 (2015). The *Obergefell* case held that "same-sex couples may exercise the fundamental right to marry" and that "under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and liberty." *Obergefell*, 135 S. Ct. at 2604-05. The Appellant argues that the death penalty, which has been imposed against him, "denies his fundamental right to life, denies him inherent human dignity, and unconstitutionally diminishes his personhood — all of which are prohibited by *Obergefell*." The death penalty, however, has not been ruled unconstitutional by the United States Supreme Court or the Tennessee Supreme Court. Accordingly, the trial court did not abuse its discretion in holding that *Obergefell* simply has no bearing on the Appellant's case. Moreover, the Appellant's reliance upon a dissenting opinion in *Glossip* offers him no avail. In order to succeed in reopening a previously filed petition, the claim asserted must be "based upon a final ruling of an appellate court." § 40-30-117(a)(1). The majority opinion in *Glossip* concluded that the method of execution utilized by the State of Oklahoma does not constitute cruel and unusual punishment under the Eighth Amendment. 135 S. Ct. at 2731. Accordingly, the trial court did not abuse its discretion in denying relief to the Appellant based upon his reliance on Justice Breyer's dissent.

M2006-02447-CCA-R3-PC (Tenn. Crim. App. Jan. 29, 2008); James A. Dellinger v. State, No. E2005-01485-CCA-R3-PD (Tenn. Crim. App. Aug. 28, 2007), aff'd in part, rev'd in part on other grounds, 279 S.W.3d 282 (Tenn. 2009); William R. Stevens v. State, No. M2005-00096-CCA-R3-PD (Tenn. Crim. App. Dec. 29, 2006); Farris Genner Morris, Jr., v. State, No. W2005-00426-CCA-R3-PD (Tenn. Crim. App. Oct. 10, 2006); David Keen v. State, No. W004-02159-CCA-R3-PD (Tenn. Crim. App. June 5, 2006); Kevin B. Burns *v. State*, No. W2004-00914-CCA-R3-PD (Tenn. Crim. App. Dec. 21, 2005); Kennath Henderson v. State, No. W003-01545-CCA-R3-PD (Tenn. Crim. App. June 28, 2005); Byron Lewis Black v. State, No. 01C01-9709-CR-00422 (Tenn. Crim. App. Apr. 8, 1999); State v. Ricky Thompson, No. 03C01-9406-CR-00198 (Tenn. Crim. App. Jan. 24, 1996).

[6] See State v. Zagorski, 701 S.W.2d 808 (Tenn. 1985).

> Finally, the Appellant's reliance on *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), is misplaced. The Supreme Court held that "when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." *Id.* at 729. The issue in *Montgomery* dealt with juvenile offenders sentenced to life without the possibility of parole. As the trial court correctly noted, however, "the death penalty for the [Appellant] has not been eliminated" in this case. Again, the death penalty is currently a constitutionally acceptable form of punishment in this state and country.
>
> For these reasons, the trial court did not abuse its discretion in denying the motion to reopen. The Appellant's application for permission to appeal is, therefore, denied.

Edmund Zagorski v. State, No. M2016-00557-CCA-R28-PD, at page 2 (Tenn. Crim. App. May 4, 2016) (order denying relief in appeal of motion to reopen decision), perm. app. denied, (Tenn. Aug. 18, 2016).

Under existing precedents, this Court must conclude that while Obergefell indeed states a new rule of constitutional law related to same-sex marriage, that new rule does not alter the long-standing precedent under which the death penalty does not deny an inmate his fundamental right to life. Obergefell does not entitle Petitioner to relief, and, therefore, the motion to reopen should be denied as to this issue.

Petitioner's Johnson Claims and Relevant Case Law

Petitioner argues he is entitled to relief pursuant to what he claims is a new rule announced in Johnson v. United States, 135 S. Ct. 2551 (2015). Specifically, Petitioner claims the language of the prior violent felony aggravating circumstance in Tennessee's capital sentencing statute, Tenn. Code Ann. § 39-2-203(i)(2)(1982), is unconstitutionally vague under Johnson.

In Johnson, the United States Supreme Court summarized its precedent relevant to vagueness challenges to criminal statutes:

> The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357–358, 103 S. Ct. 1855, 75 L.Ed.2d 903 (1983). The prohibition of vagueness in criminal statutes "is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law," and a statute that flouts it "violates the first essential of due process." *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70

> L. Ed. 322 (1926). **These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences.** *United States v. Batchelder,* 442 U.S. 114, 123, 99 S. Ct. 2198, 60 L.Ed.2d 755 (1979).

Johnson, 135 S. Ct. at 2556-57 (emphasis added).

The Tennessee Supreme Court recently summarized its own longstanding vagueness standards as follows:

> "'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.'" *State v. Pickett,* 211 S.W.3d 696, 704 (Tenn. 2007) (quoting *Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972)). By virtue of the Due Process Clause of the Fourteenth Amendment to the Federal Constitution and article I, section 8 of the Tennessee Constitution, a criminal statute cannot be enforced when it prohibits conduct " 'in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.' " *Id.* (quoting *Leech v. Am. Booksellers Ass'n,* 582 S.W.2d 738, 746 (Tenn. 1979)). The primary purpose of the vagueness doctrine is to ensure that our statutes provide fair warning as to the nature of forbidden conduct so that individuals are not "held criminally responsible for conduct which [they] could not reasonably understand to be proscribed." *United States v. Harriss,* 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989 (1954). In evaluating whether a statute provides fair warning, the determinative inquiry "is whether [the] statute's 'prohibitions are not clearly defined and are susceptible to different interpretations as to what conduct is actually proscribed.' " *Pickett,* 211 S.W.3d at 704 (quoting *State v. Forbes,* 918 S.W.2d 431, 447–48 (Tenn. Crim. App. 1995)); *see also State v. Whitehead,* 43 S.W.3d 921, 928 (Tenn. Crim. App. 2000).
>
> A second, related purpose of the vagueness doctrine is to ensure that our criminal laws provide "minimal guidelines to direct law enforcement." *State v. Smith,* 48 S.W.3d 159, 165 (Tenn. Crim. App. 2000) (citing *Forbes,* 918 S.W.2d at 448). The vagueness doctrine does not permit a statute that "authorizes and encourages arbitrary and discriminatory enforcement," *State v. Harton,* 108 S.W.3d 253, 259 (Tenn. Crim. App. 2002) (citing *City of Chicago v. Morales,* 527 U.S. 41, 56, 119 S. Ct. 1849, 144 L.Ed.2d 67 (1999)), which typically occurs when a statute "delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis," *Davis–Kidd Booksellers, Inc. v. McWherter,* 866 S.W.2d 520, 531 (Tenn. 1993) (citing *Grayned,* 408 U.S. at 108–109, 92 S. Ct. 2294).
>
> Despite the importance of these constitutional protections, this Court has recognized the "inherent vagueness" of statutory language, *Pickett,* 211 S.W.3d at 704, and has held that criminal statutes do not have to meet the unattainable standard of "absolute precision," *State v. McDonald,* 534 S.W.2d 650, 651 (Tenn. 1976); *see also State v. Lyons,* 802 S.W.2d 590, 592 (Tenn. 1990) ("The vagueness doctrine does not invalidate every statute which a reviewing court believes could have been drafted with greater precision, especially in light of the inherent vagueness of many English words."). In evaluating a statute for vagueness, courts may consider the plain meaning of the statutory terms, the legislative history, and prior judicial interpretations of the statutory language. *See Lyons,* 802 S.W.2d at 592 (reviewing prior judicial interpretations of similar

statutory language); *Smith*, 48 S.W.3d at 168 ("The clarity in meaning required by due process may . . . be derived from legislative history.").

State v. Crank, 468 S.W.3d 15, 22-23 (Tenn. 2015).

Johnson addressed the federal Armed Career Criminal Act (ACCA), which provides for more severe sentences if a person convicted of being a felon in possession of a firearm has three or more convictions for a "violent felony." See 18 U.S.C. § 924(e)(1). The ACCA defines "violent felony" in pertinent part as:

> any crime punishable by imprisonment for a term exceeding one year . . . that—
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another.*

18 U.S.C. § 924(e)(2)(B) (emphasis added). Mr. Johnson argued the portion of the statute emphasized above, known as the "residual clause," was unconstitutionally vague. The Court agreed with Mr. Johnson and held:

> Deciding whether the residual clause covers a crime thus requires a court to picture the kind of conduct that the crime involves in "the ordinary case," and to judge whether that abstraction presents a serious potential risk of physical injury. *James, supra,* at 208, 127 S. Ct. 1586.[7] The court's task goes beyond deciding whether creation of risk is an element of the crime. That is so because, unlike the part of the definition of a violent felony that asks whether the crime "has *as an element* the use . . . of physical force," the residual clause asks whether the crime "*involves conduct*" that presents too much risk of physical injury. What is more, the inclusion of burglary and extortion among the enumerated offenses preceding the residual clause confirms that the court's task also goes beyond evaluating the chances that the physical acts that make up the crime will injure someone. The act of making an extortionate demand or breaking and entering into someone's home does not, in and of itself, normally cause physical injury. Rather, risk of injury arises because the extortionist might engage in violence *after* making his demand or because the burglar might confront a resident in the home *after* breaking and entering.
>
> We are convinced that the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges. Increasing a defendant's sentence under the clause denies due process of law.
>
> . . .
>
> Two features of the residual clause conspire to make it unconstitutionally vague. In the first place, the residual clause leaves grave uncertainty about how

[7] James v. United States, 550 U. S. 192, 127 S. Ct. 1586, 167 L. Ed. 2d 532 (2007).

> to estimate the risk posed by a crime. It ties the judicial assessment of risk to a judicially imagined "ordinary case" of a crime, not to real-world facts or statutory elements. How does one go about deciding what kind of conduct the "ordinary case" of a crime involves? "A statistical analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct?" *United States v. Mayer,* 560 F.3d 948, 952 (9th Cir. 2009) (Kozinski, C.J., dissenting from denial of rehearing en banc). To take an example, does the ordinary instance of witness tampering involve offering a witness a bribe? Or threatening a witness with violence? Critically, picturing the criminal's behavior is not enough; as we have already discussed, assessing "potential risk" seemingly requires the judge to imagine how the idealized ordinary case of the crime subsequently plays out. *James* illustrates how speculative (and how detached from statutory elements) this enterprise can become. Explaining why attempted burglary poses a serious potential risk of physical injury, the Court said: "An armed would-be burglar may be spotted by a police officer, a private security guard, or a participant in a neighborhood watch program. Or a homeowner ... may give chase, and a violent encounter may ensue." 550 U.S., at 211, 127 S. Ct. 1586. The dissent, by contrast, asserted that any confrontation that occurs during an attempted burglary "is likely to consist of nothing more than the occupant's yelling 'Who's there?' from his window, and the burglar's running away." *Id.*, at 226, 127 S. Ct. 1586 (opinion of SCALIA, J.). The residual clause offers no reliable way to choose between these competing accounts of what "ordinary" attempted burglary involves.
>
> At the same time, the residual clause leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony. It is one thing to apply an imprecise "serious potential risk" standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction. By asking whether the crime "*otherwise* involves conduct that presents a serious potential risk," moreover, the residual clause forces courts to interpret "serious potential risk" in light of the four enumerated crimes—burglary, arson, extortion, and crimes involving the use of explosives. These offenses are "far from clear in respect to the degree of risk each poses." *Begay,* 553 U.S., at 143, 128 S. Ct. 1581.[8] Does the ordinary burglar invade an occupied home by night or an unoccupied home by day? Does the typical extortionist threaten his victim in person with the use of force, or does he threaten his victim by mail with the revelation of embarrassing personal information? By combining indeterminacy about how to measure the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify as a violent felony, the residual clause produces more unpredictability and arbitrariness than the Due Process Clause tolerates.

Johnson, 135 S. Ct. at 2557-58.

Petitioner urges this Court to conclude Johnson announces a new constitutional rule of law which would require his death sentence to be set aside. He argues the prior violent felony aggravating circumstance applied in his case is analogous to the ACCA residual clause; just as the residual clause was beset by unconstitutional "arbitrariness and unpredictability," so too does Petitioner argue that the pre-1989 (i)(2) aggravating

[8] Begay v. United States, 553 U.S. 137, 128 S. Ct. 1581, 170 L. Ed. 2d 490 (2008).

circumstance must be set aside as unconstitutionally vague. Absent the unconstitutional aggravating circumstance, Petitioner argues, his death sentence must be set aside.

The statutory aggravating circumstance used in Petitioner's case was later amended to read "The defendant was previously convicted of one (1) or more felonies, other than the present charge, *whose statutory elements* involve the use of violence to the person." Tenn. Code Ann. § 39-13-204(i)(2) (effective November 1, 1989)(emphasis added). Challenges to the current version of the (i)(2) aggravating circumstance would, in this Court's opinion, fail to state a claim in a motion to reopen, as the Court in Johnson concluded its decision is limited to the residual clause and its "decision does not call into question application of the Act to ... the remainder of the Act's definition of a violent felony", including the "elements test" provision of the federal act.[9] Johnson, 135 S. Ct. at 2562.

The pre-1989 version of the statutory aggravating circumstance applicable to the present case, however, had no such "elements test" language, but rather contained language which arguably was similar to the federal statutory clause recently found unconstitutionally vague in Johnson.[10]

It appears the death penalty statute under which Petitioner was sentenced and case law interpreting the statute may have offered little guidance to judges in determining whether an offense involved "the use or threat of violence to the person" and was, therefore, appropriate for the jury's consideration.[11] This alleged lack of guidance regarding the trial court's application of the pre-1989 prior violent felony conviction statutory aggravating circumstance forms part of the Court's basis for concluding Petitioner's motion states a colorable claim for relief. This Court notes that

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[9] The "elements test" provision is the portion of the federal act which included the definition of violent felony as "any crime punishable by imprisonment for a term exceeding one year . . . that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another." This portion of the act was expressly omitted from the Johnson decision finding the residual clause unconstitutional.

[10] The relevant language in the ACCA was a crime punishable by more than one year that "otherwise involves conduct that presents a serious potential risk of physical injury to another", and the language in the applicable Tennessee (i)(2) aggravating circumstance was "one or more felonies, other than the present charge, which involve the use or threat of violence to the person."

[11] Of note, case law in effect at the time of trial instructed presiding judges to define vague terms "heinous, atrocious, or cruel," see State v. Williams, 690 S.W.2d 517, 533 (Tenn. 1985), and to define the elements of any felony upon which the "felony murder" aggravator was based, see State v. Moore, 614 S.W.2d 348, 350-51 (Tenn. 1981). There was no similar requirement that the trial judge instruct the jury as to the elements of any previous violent felonies upon which the State sought imposition of the prior violent felony conviction aggravator, nor was there a requirement that the trial judge define "violence" or "use or threat of violence."

the finding of a colorable claim here is not a finding that the language is unconstitutionally vague. "A colorable claim is a claim, in a petition for post-conviction relief, that, if taken in the light most favorable to petitioner would entitle petitioner to relief under the Post-Conviction Procedure Act." Tenn. S. Ct. R. 28, Section 2(H). The parties will be required to fully brief and argue this issue before this Court.

The relative lack of guidance regarding the trial court's application of the pre-1982 prior violent felony conviction statutory aggravating circumstance forms part of the Court's basis for concluding Petitioner's motion states a colorable claim for relief. The Court's conclusion is also based upon the differing conclusions federal and state courts have reached in applying the Johnson holding to non-ACCA cases. As Petitioner points out in his motions, some courts have applied Johnson to conclude statutes with language similar to the ACCA residual clause are unconstitutionally vague. See, e.g., United States v. Calabretta, ___ F.3d ___, No. 14-3969, 2016 WL 3997215 (3d Cir. July 26, 2016) (Federal Sentencing Guidelines language stating in part that "crime of violence" is "burglary of a dwelling, arson, extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another" is unconstitutionally vague); United States v. Pawlak, 822 F.3d 902, 905-06 (6th Cir. 2016) (also concluding sentencing guidelines language similar to ACCA residual clause is unconstitutionally vague); In re Smith, ___ F.3d ___, No. 16-14000-J, 2016 WL 3895243 (11th Cir. July 18, 2016) (18 U.S.C. § 924(c)(3)(B), defining violent felony in part as felony "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense", "might be" unconstitutionally vague; case resolved on grounds unrelated to residual clause); Dimaya v. Lynch, 803 F.3d 1110, 1112-20 (9th Cir. 2015) (18 U.S.C. § 16(b), defining "crime of violence" in part as "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the defense," is unconstitutionally vague).

However, other federal and state courts have issued post-Johnson opinions on non-ACCA statutes concluding that the statutes are not unconstitutionally vague. See, e.g, United States v. Gonzalez-Longoria, ___ F.3d ___, No. 15-40041, 2016 WL 4159127 (5th Cir. Aug. 5, 2016) (18 U.S.C. § 16(b), cited above, not unconstitutionally vague; § 16(b) language does not present same level of uncertainty as ACCA residual

clause and § 16(b) has not been beset by same level of litigation as ACCA residual clause); United States v. Hill, ___ F.3d ___, No. 14-3872-cr, 2016 WL 4120667 (2d Cir. Aug. 3, 2016) ("crime of violence" as defined in 18 U.S.C. § 924(c)(3)(B) not unconstitutionally vague); United States v. Taylor, 814 F.3d 340 376-79 (6th Cir. 2016) (18 U.S.C. § 924(c)(3)(B), cited above, not unconstitutionally vague; its definition of "crime of violence" is narrower than ACCA definition of "violent felony"); United States v. Matchett, 802 F.3d 1185, 1193-96 (11th Cir. 2015) (vagueness doctrine does not apply to advisory sentencing guidelines); People v. Graves, 368 P.3d 317, 324-29 (Colo. 2016) (public indecency statute not unconstitutionally vague; "lewd" was term had plain meaning that could be easily understood); People v. McCoy, ___ P.3d ___, No. 11CA1195, 2015 WL 3776920 (Colo. Ct. App. June 18, 2015), as modified, (Colo. Ct. App. Dec. 3, 2015) (state statute criminalizing unlawful sexual contact and not containing language similar to ACCA residual clause not unconstitutionally vague; appeals court insisted Johnson holding was narrow and "did not explicitly overrule non-ACCA cases that decided vagueness challenges under the vague-in-all-its applications standard."); State ex rel. Richardson v. Green, 465 S.W.3d 60, 63-67 (Mo. 2015) (en banc) (Missouri statute allowing for sentence reduction if voluntary manslaughter "did not involve violence or the threat of violence" not unconstitutionally vague; state statute related to defendant's particular crime and not "idealized ordinary case of the crime" contemplated by Johnson); Joe Billy Russell v. State, No. M2015-02101-CCA-R3-PC (Tenn. Crim. App. August 22, 2016)(No Johnson vagueness issue for Tennessee evading arrest in a motor vehicle with risk of death or injury to a third party statute).

V. Conclusion

For the reasons stated above, the Court concludes

(1) Petitioner has failed to state a colorable claim as it relates to Justice Breyer's dissent in Glossip v. Gross, 576 U.S. ___, 135 S. Ct. 2726 (2015), and the majority opinion in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015); and

(2) Petitioner has stated a colorable claim for relief as it relates to Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2251 (2015).

In light of this conclusion, this Court hereby ORDERS the following:

1. Petitioner is indigent under the standards of Tennessee Code Annotated section 40-14-201. Accordingly, the Court appoints Christine Madjar and Deborah Drew of the Office of the Post-Conviction Defender, 404 James Robertson Parkway, Suite 1100, Nashville, TN 37219, to represent him in these proceedings.

2. Counsel is hereby directed to review the petition, consult with petitioner, and investigate all possible constitutional grounds for relief for the purpose of filing an amended petition, if necessary. In addition to addressing the issues raised by cases such as those cited in this Court's order, the Court directs Petitioner's counsel to address whether the application of an unconstitutional or otherwise improperly applied statutory aggravating circumstance may be deemed "harmless error." See State v. Howell, 868 S.W.2d 238 (Tenn. 1993). Counsel may also raise any additional issues counsel deems necessary. Such amended petition shall be due no later than sixty (60) days from the filing of this order. In the alternative, counsel may file a pleading asserting no amended petition shall be filed.

3. The State shall file an answer or other responsive pleading no later than forty-five (45) days after the filing of the amended pleading or filing that no amended petition shall be filed. The State's answer should address both Petitioner's motion to reopen and any amended pleading which may be filed. In addition, the State shall disclose all that is required to be disclosed under Rule 16 of the Tennessee Rules of Criminal Procedure, to the extent relevant to the grounds alleged in the petition/motion, and any other disclosure required by the state or federal constitutions.

4. This Court will contact the parties in order to set a hearing in this case.

IT IS SO ORDERED this the 3rd day of October, 2016.

Jeffery H. Wicks
Criminal Court Judge

CERTIFICATE OF SERVICE

I, Pamela Keck / Barbara Cox, Clerk, hereby certify that I have mailed a true and exact copy of same to Christine Madjar and Deborah Drew of the Office of the Post-Conviction Defender, 404 James Robertson Parkway Suite 1100, Nashville, TN 37219, and counsel of record for the State, DA Russell Johnson and ADA Bob Edwards, this the 04 day of October, 2016.

Attachment 11

IN THE CRIMINAL COURT FOR MORGAN COUNTY
AT WARTBURG, TENNESSEE

NICHOLAS TODD SUTTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 7555
	)	(POST-CONVICTION)
STATE OF TENNESSEE,	)	
	)	(CAPITAL CASE)
Respondent.	)	

Amended Petition for Post-Conviction Relief

Petitioner Nicholas Todd Sutton, through counsel, sets forth the following claims for post-conviction relief under Tennessee Code Annotated § 40-30-101 *et. seq*. This amended petition fully incorporates by reference all claims alleged in the Motion to Reopen Petition for Post-Conviction Relief filed on June 8, 2016. This petition also incorporates by reference the identifying information for Petitioner, including his current address and Tennessee Department of Corrections number.

Introduction

To obtain post-conviction relief, a petitioner must show that his conviction or sentence is void or voidable because of the abridgment of a constitutional right. Tenn. Code Ann. § 40-30-103. Although the petitioner bears the burden of proving factual allegations by clear and convincing evidence, the petitioner does not have the burden of proving entitlement to relief by clear and convincing evidence. *Dellinger v. State*, 279 S.W.3d 282, 294 (Tenn. 2009).

Statement of the Case

Nicholas Todd Sutton, TDOC No. 89682, is in custody under a sentence of death at Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee, 37209-1048.

Mr. Sutton was an inmate at Morgan County Regional Correctional Facility (MCRCF) in Morgan County, Tennessee when he and two other inmates were charged with murder for the stabbing death of inmate Carl Estep. *State v. Sutton*, 761 S.W.2d 763, 764-65 (Tenn. 1988). The jury convicted Mr. Sutton of premeditated murder and found the following aggravating circumstances: 1) Mr. Sutton had been previously convicted of one or more felonies, other than the present charge, which involved the use or threat of violence to the person, T.C.A. § 39-2-203(i)(2) (repealed); 2) the murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind, T.C.A. § 39-2-203(i)(5) (repealed); and 3) the murder was committed while the defendant was in a place of lawful confinement, T.C.A. § 39-2-203(i)(8) (repealed). The jury was not presented evidence of Mr. Sutton's horrific childhood, *see Sutton v. Bell*, 645 F.3d 752, 767-768 (6th Cir. 2011) (Martin, J., dissenting), or the abhorrent prison conditions he endured prior to the homicide. *See, Sutton v. State*, 1999 WL 423005 (Tenn. 1999). The jury sentenced Mr. Sutton to death. *State v. Sutton*, 761 S.W.2d at 764.

The convictions and sentence were upheld on direct appeal. *State v. Sutton*, 761 S.W.2d 763 (Tenn. 1988). Post-conviction relief was denied by the state courts. *Sutton v. State*, 1999 WL 423005. The federal courts denied habeas corpus relief. *Sutton v. Bell*, 645 F.3d 752. Despite numerous inmate homicides in Tennessee prisons over the past thirty years, Mr. Sutton is the only person sentenced to death in Tennessee for the killing of a prison inmate.

On June 8, 2016, Mr. Sutton filed a Motion to Reopen Post-Conviction Proceedings in light of new substantive Supreme Court law, as decided in *Johnson v. United States*, 135 S.Ct. 2551 (2015), and held to be retroactive in *Welch v. United States*, 136 S.Ct. 1257 (2016). In that motion, he also raised additional claims pursuant to the holding in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) and Justice Breyer's dissent in *Glossip v. Gross*, 135 S.Ct. 2726 (2015) (Breyer, J., dissenting). On October 4, 2016, this Court found that Mr. Sutton had raised a colorable claim regarding his challenge to the prior violent felony conviction aggravating factor and granted his motion in part. The motion was denied as to the remaining claims. This Court directed Mr. Sutton's counsel to file an amended petition within sixty days of the Preliminary Order. Upon granting Petitioner's Unopposed Motion for Extension of Time, this Court ordered counsel to file an Amended Petition on or before February 2, 2017.

Claims for Relief

I. Mr. Sutton's Death Sentence is Based on an Unconstitutionally Vague Aggravating Circumstance, the Prior Violent Felony Conviction Aggravator.

Mr. Sutton's death sentence is invalid because one of the aggravating circumstances found by the jury, the prior violent felony conviction aggravator, is unconstitutionally vague. *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551 (2015); *Welch v. United States*, ___ U.S. ___, 136 S.Ct. 1257 (2016) (holding that *Johnson* is retroactive). The statutory language of the prior violent felony aggravator in effect at the time of Mr. Sutton's crime (Tenn. Code Ann. § 39-2-203(i)(2)) is materially the same as the language of the sentencing statute in *Johnson* that the Supreme Court found to be unconstitutionally vague. *See Johnson*, 135 S.Ct. at 2555-57. Accordingly, the *Johnson* Court's vagueness analysis applies with equal force to the sentencing factor in Mr. Sutton's case and invalidates it as the basis for his death sentence.

A death sentence which rests, in whole or in part, upon an unconstitutionally vague aggravating factor is inherently invalid. *Godfrey v. Georgia*, 446 U.S. 420, 427-28 (1980). Mr. Sutton's death sentence, therefore, stands in violation of Article I, §§ 6, 8, 9, 10, 16, 17, and 32 and Article XI, § 16 of the Tennessee Constitution, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. In light of the unconstitutionality of this aggravating factor, this Court must vacate Mr. Sutton's death sentence.

A. Void-For-Vagueness Doctrine and the Holding of *Johnson v. United States.*

The Fifth Amendment guarantees that no person shall be deprived of life, liberty, or property without due process of law. It follows that the Constitution prohibits vague laws. A statute so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement, violates the fundamental principles of justice embraced in the conception of due process of law. *Johnson*, 135 S.Ct. at 2556-57; *Kolender v. Lawson*, 461 U.S. 352, 357-358 (1983). The void-for-vagueness doctrine applies not only to statutes defining elements of crimes, but also to statutes fixing sentences. *United States v. Batchelder*, 442 U.S. 114, 123 (1979).

Such vagueness, in the death penalty context, violates not only the Fifth and Fourteenth Amendments but also the Eighth Amendment and Article I, §§ 8 and 16 of the Tennessee Constitution. *See Maynard v. Cartwright*, 486 U.S. 356, 363-64 (1988). The United States Supreme Court has consistently held that, because the death penalty is uniquely different than all other punishments, the Eighth Amendment's prohibition on cruel and unusual punishment requires heightened procedural safeguards. This heightened due process includes fair notice and a fair and reliable decision-making process, and commands that death sentences be free from arbitrariness and capriciousness. *See, California v. Ramos*, 463 U.S. 992, 998-999 (1983);

Gardner v. Florida, 430 U.S. 349, 357-358 (1997); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Maynard v. Cartwright*, 486 U.S. 356 (1988); *Lankford v. Idaho*, 500 U.S. 110 (1991); *Van Tran v. State*, 66 S.W.3d 790, 807 (Tenn. 2001); and *Howell v. State*, 151 S.W.3d 450, 462-463 (Tenn. 2004). It is axiomatic that a sentence of death which rests, in whole or in part, upon an unconstitutionally vague aggravating factor is invalid. *Godfrey v. Georgia*, 446 U.S. 420, 427-28 (1980).

In *Johnson*, the United States Supreme Court held that when a statute permits increasing a sentence due to a defendant's prior convictions but the requirements for determining what prior convictions justify such an enhancement are vague, the enforcement of that statute violates due process. *Johnson*, 135 S.Ct. at 2557. The specific statute the Court considered was the federal Armed Career Criminal Act (ACCA), and the Court concluded that the language of the residual clause of the ACCA was unconstitutionally vague. *Id.* at 2563. The ACCA provided for a sentencing enhancement if a defendant had prior "violent felony" convictions. *Id.* at 2555. The residual clause of the ACCA defined a "violent felony" as "any crime punishable by imprisonment for a term exceeding one year . . . that . . . involves conduct that presents a serious potential risk of physical injury to another . . . ." 18 U.S.C. § 924(e)(2)(B) (2015). The Supreme Court found that this language violated the Constitution by "den[ying] fair notice to defendants and invit[ing] arbitrary enforcement by judges." *Johnson*, 135 S.Ct. at 2557.

Johnson's core holding is that when a sentence enhancement is based on a prior conviction, an after-the-fact inquiry into whether the conduct involved in that conviction qualifies as a violent felony—as opposed to limiting the inquiry to the statutory elements of the prior conviction—is unconstitutional. *Johnson*, 135 S.Ct. at 2563. The act of looking beyond the elements of the prior conviction and basing the sentencing enhancement on what the prior

offense "involved" leads to arbitrary results and fails to give ordinary people fair notice of the conduct the sentencing enhancement punishes. *Johnson*, 135 S.Ct 2551, 2556-59; *see also Mathis v. United States*, 136 S.Ct. 2243, 2251 (2016) ("It is impermissible for 'a particular crime [to] sometimes count towards enhancement and sometimes not, depending on the facts of the case.'" (quoting *Taylor v. U.S.*, 495 U.S. 575, 601 (1990))).

B. The *Johnson* Holding Is Not Limited to the ACCA but Applies to Other Federal and State Sentencing Laws.

The ruling in *Johnson* has been applied to instances outside of the ACCA. Several federal circuit courts (1st, 4th, 6th, 7th, 8th, 9th) and state courts have applied the *Johnson* decision to other federal laws and state laws. In *U.S. v. Shuti*, 828 F.3d 440 (6th Cir. 2016), the Sixth Circuit described the *Johnson* decision as "a pathmarking decision" and "no doubt a sea-change, with far-reaching precedential effects." *Shuti*, 828 F.3d at 444. Several circuit courts have extended the *Johnson* holding beyond the ACCA to render provisions of the federal Sentencing Guidelines definition of crime of violence. *See U.S. v. Hudson*, 823 F.3d 11 (1st Cir. 2016); *U.S. v. Martinez*, 821 F.3d 984 (8th Cir. 2016); *In re Hubbard*, 825 F.3d 225 (4th Cir. 2016); *U.S v. Pawlak*, 822 F.3d 902 (6th Cir. 2016).[1]

In *U.S. v. Shuti*, 828 F.3d. 440, *U.S. v. Vivas-Ceja*, 808 F.3d 719 (7th Cir. 2015), rehearing en banc denied 3/14/16), and *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015) (cert. granted 9/29/16), the Sixth, Seventh, and Ninth Circuits extended the *Johnson* holding beyond sentencing laws and applied the holding to immigration laws.[2] The *Shuti* court noted that

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[1] In *Beckles v. U.S.*, 616 Fed.Appx. 415 (11th Cir. 2015), cert. granted 6/27/2016, the Eleventh Circuit declined to invalidate as void for vagueness the federal Sentencing Guidelines' definition of "crime of violence." The Eleventh Circuit had affirmed the district court's ruling denying relief. The Supreme Court vacated the decision and remanded back to the Eleventh Circuit to reconsider in light of the *Johnson* decision. The Eleventh Circuit again reaffirmed the district court's denial of relief and the Supreme Court granted certiorari review.

[2] In *U.S. v. Taylor*, 814 F.3d 340, 375-376 (6th Cir. 2016), rehearing en banc denied 5/09/16, the Sixth Circuit declined to invalidate a sentencing law provision based on *Johnson*, though the provision's language was almost identical to the language held to be vague in *Vivas-Ceja*, *Shuti*, and *Dimaya*.

although the text of the immigration provision in question was not a perfect match to the ACCA language invalidated in *Johnson*, the provisions undeniably bore a textual resemblance. *Shuti*, 828 F.3d at 446. Both the Immigration and Naturalization Act (INA)'s "crime of violence" definition and the ACCA's residual clause definition of "violent crime" require such wide-ranging inquiry that they are unconstitutionally vague. *Id.* at 441. Similarly, in *Dimaya*, the Ninth Circuit held that because the INA's "crime of violence" definition was similar to that of the ACCA, the INA provision was unconstitutional. *Dimaya v. Lynch*, 803 F.3d at 1114. In *Vivas-Ceja*, the Seventh Circuit found to be vague a clause that included language of a felony that by its nature involved a substantial risk of physical force. The court held that the language at issue, though not identical, is materially the same as the ACCA's residual clause: "by its nature" and "otherwise involves conduct" are synonymous; any difference between the two phrases is superficial. *Vivas-Cejas* 808 F.3d at 722.

Each of these courts rejected various arguments that *Johnson* could not be extended to these immigration laws because those laws' provisions were not identical to the ACCA's residual clause. The *Shuti* court rejected the government's attempt to "seek refuge in a few textual differences." *Shuti* at 448. The court also rejected the government's argument that the *Johnson* holding was dependent on the ACCA's residual clause having a list of enumerated felonies. In fact, a provision is broader and therefore vague when it does not include a list of enumerated felonies. *Id.* at 441. The Seventh Circuit also rejected the argument that the enumerated list of felonies was what made the ACCA's residual clause problematic, and also refused to hold that conflicting case law is a necessary condition to the vagueness determination. *Vivas-Cejas*, 808 F.3d. at 723.

State courts have also considered the effect of the *Johnson* holding on state statutes. The Supreme Judicial Court of Massachusetts invalidated the residual clause of the state's armed career criminal sentencing statute. *Commonwealth v. Beal*, 52 N.E.3d 998, 1006-07 (Mass. 2016). In *State v. Davis*, 2016 WL 1735459 (Del. Super. Ct., Apr. 26, 2016) and *State v. Chambers*, 2015 WL 9302840 (Del. Super. Ct., Dec. 16, 2015), Delaware courts ultimately decided that the *Johnson* holding did not invalidate a provision in the state's habitual offender statute. However, the courts applied the *Johnson* decision in its analysis to decide the merit of the void-for-vagueness challenge. In *Commonwealth v. Guess*, 2016 WL 1533520 (Pa. Super. Ct. Apr. 14, 2016), a Pennsylvania state court also applied the *Johnson* holding in deciding the merits of a void-for-vagueness challenge to a state sentencing statute.

Although the Tennessee Court of Criminal Appeals analyzed *Johnson*'s applicability to a Tennessee state law in *Russell v. State*, 2016 WL 447 2861 (Tenn. CCA Aug. 22, 2016) (unpublished), the court's decision upholding the challenged law is clearly distinguishable and not applicable to this case. In *Russell*, on appeal of the denial of his post-conviction petition, the petitioner argued that his conviction under Tenn. Code Ann. § 39-16-603(b)(3), evading arrest in a motor vehicle and creating a risk of death or injury to third parties, was unconstitutional because the statute was void for vagueness. *Russell*, 2016 WL at *2. At issue was the statute's language involving "risk of death or injury." *Id.* The *Russell* court distinguished *Johnson* by first noting that, under *Johnson*, applying similar statutory language of "involving risk" to real-world facts does not raise concerns of vagueness because such an application does not invite arbitrariness by courts. *Russell* at *3.

At the heart of the matter is the distinction that the statute at issue in *Russell* is an *offense* statute that applies to currently charged crimes, which by definition must be applied to the

specific facts of the case. The legislature clearly intended for courts to look at the underlying facts involved in offenses that are currently being prosecuted. Mr. Sutton's case, like *Johnson*, involves a *sentencing* statute, which was to be applied in the abstract and not in consideration of the facts of a specific case. *Russell* at *3-4. Furthermore, unlike the Tennessee prior violent felony conviction aggravator and the ACCA's residual clause, the evading arrest statute is specific to the crime of evading arrest. The prior violent felony conviction aggravator and ACCA residual clause refer to a vast open field of possible felonies, inviting arbitrariness and confusion to the ordinary offender as to which felonies fall within the parameters of the laws.

The *Johnson* Court rejected treating offense statutes and sentencing statutes the same in this regard. Citing *Taylor v. State*, 495 U.S. 575, 602 (1990), the *Johnson* Court pointed out the utter impracticability of requiring a sentencing court to reconstruct, long after the original conviction, the conduct underlying that conviction—the practical difficulties and potential unfairness of a factual approach are daunting. *Johnson*, 135 S.Ct. at 2562. More problematic are the serious Sixth Amendment concerns raised by a sentencing judge finding facts that increase a maximum penalty. *Mathis v. United States*, 136 S.Ct. at 2252; *see also Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Also inapplicable is *State ex rel Richardson v. Green*, 465 S.W.3d 60 (Mo. 2015), also relied on by the State in its Response to Petitioner's Motion to Reopen Petition for Post-Conviction Relief. (State's Response at 6.) The court in *Richardson* distinguished the case at hand from *Johnson* and other federal cases that analyzed the ACCA residual clause because ACCA is a sentence-*enhancing* statute that, in order to provide due process, must provide adequate notice to the ordinary person who may have his or her sentence enhanced and also must

not result in arbitrary sentencing enhancement by courts. *Id.* at 65-67. The *Richardson* Court emphasized that the statute at issue was a sentence-*reducing* statute. *Id.* at 65.

C. The Prior Violent Felony Aggravator Invited Arbitrary Application By the Courts and Failed to Provide Fair Notice.

Per *Johnson*, the prior violent felony conviction aggravating circumstance in effect at the time of Mr. Estep's homicide in 1985 was unconstitutionally vague. A sentencing statute is void for vagueness if it fails to give ordinary people fair notice of the conduct it punishes or invites arbitrary application by the courts. *Johnson*, 135 S.Ct. at 2556-57. The prior violent felony conviction aggravator in T.C.A. 39-13-203(i)(2) (repealed) read: "The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person[.]" The clause in question, "involves the use or threat of violence," operates in the same way that the residual clause in the ACCA operated: "or otherwise involves conduct that presents a serious potential risk of physical injury to another." The language of Tennessee's prior violent felony conviction aggravating factor is materially the same as the language of the ACCA residual clause that the *Johnson* Court declared to be unconstitutionally vague. Any minor differences have no impact on the constitutional analysis. *See, e.g., Dimaya*, 803 F.3d at 1120. Both of these statutes contain vague plain language.

In the ACCA, the residual clause was preceded by an enumerated list of crimes that might not involve violence. The clause then asked whether the prior violent felony conviction "involves conduct" that presents too much risk of physical injury. *Johnson* at 2557. This language is unconstitutionally vague because it "leaves grave uncertainty about how to estimate the risk posed by a crime" and it "leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony." *Id.* at 2557. Similarly, the language of Tennessee's prior violent felony aggravator begins with a broader indeterminate group of offenses that might not involve

violence, i.e., "one or more felonies." Tenn. Code Ann. § 39-2-203(i)(2). It then asks a purportedly narrowing question similar to that in the residual clause: whether the prior conviction "involved the use of violence[.]" *Id.* Like the language of the residual clause, this language leaves grave uncertainty about how a conviction qualifies as a prior violent felony under the statute.

The language of the prior violent felony conviction aggravator is not plain and its vagueness has led to arbitrary application by courts. The statute requires that the felony underlying the conviction *involve* the use of violence to the person[.]" Tennessee courts have arbitrarily interpreted the aggravator, lending confusion to its application. Some courts have invalidated the aggravator because the use of violence was not clear from the conviction while other courts reached into the facts underlying the conviction in an attempt to find indications of violence.

Tennessee courts' arbitrary application of the prior violent felony conviction violates due process. *Johnson*'s core holding is that when a sentence enhancement is based on a prior conviction, an after-the-fact inquiry into whether the conduct involved in that conviction qualifies as a violent felony—as opposed to limiting the inquiry to the statutory elements of the prior conviction—is unconstitutional. *Johnson*, 135 S.Ct. at 2557, 2562. The act of looking beyond the elements of the prior conviction and basing the sentencing enhancement on what the prior offense "involved" leads to arbitrary results and fails to give ordinary people fair notice of the conduct the sentencing enhancement punishes. *Id.* at 2556-59; *see also Mathis v. United States*, 136 S.Ct. at 2251 ("It is impermissible for 'a particular crime [to] sometimes count towards enhancement and sometimes not, depending on the facts of the case.'" (quoting *Taylor v. United States*, 495 U.S. at 601).

By the use of the language "previous conviction" of a crime, the legislature indicates that a sentencer should consider only whether the defendant has been convicted of crimes falling within certain categories. *Id.* at 2252; *Taylor*, 495 U.S. at 600. Legislative bodies understand that if they want to direct sentencers to underlying facts, they craft laws that use the phrase "offense committed" instead of "convicted." *Mathis*, 136 S.Ct. at 2252. Moreover, legislatures use elements-focused language to avoid unfairness to defendants. That is because "non-elemental fact" in the records of prior convictions are prone to error precisely because their proof is unnecessary:

> At trial, and still more at plea hearings, a defendant may have no incentive to context what does not matter under the law; to the contrary, he "may have good reason not to"—or even be precluded from doing so by the court. When that is true, a prosecutor's or judge's mistake as to means, reflected in the record, is likely to go uncorrected. . . . Such inaccuracies should not come back to haunt the defendant many years down the road by triggering a lengthy mandatory sentence.

Id. at 2253, quoting *Descamps v. United States*, 133 S.Ct. 2276, 2288-2289 (2013). The emphasis on convictions indicates legislatures' intent to enhance punishment based on the fact that a defendant has been convicted of crimes falling within certain categories, not based on the facts underlying the conviction. Going beyond statutory elements for years-old and many times decades-old convictions that were based on guilty pleas involves the "wide-ranging inquiries" that result in arbitrary application of the law. *Johnson* at 2564, 2556-59.

Tennessee law, however, establishes that the reach of the prior violent felony aggravator with which Mr. Sutton's jury was charged (like the residual clause invalidated in *Johnson*) is *not* limited to an examination of the statutory elements or other generic definition of the felony without regard for the facts of the prior conduct. *State v. Moore*, 614 S.W.2d 348 (Tenn. 1981); *State v. Sims*, 45 S.W. 3d 1 (Tenn. 2001). In *Moore*, the defendant previously had been convicted of second degree burglary and arson, arising from the same incident, and the trial judge

instructed the jury on the prior violent felony conviction aggravator. The jury found two aggravating circumstances, including the prior violent felony aggravator, and sentenced Moore to death. *Moore*, 614 S.W. 2d at 350-351.

At the time of Moore's capital crime, the prior violent felony conviction read: "the defendant was previously convicted of one or more felonies, other than the present charge, which involves the use or threat of violence to the person." Tenn. Code Ann. § 39-2404(i)(2). This language is the same as the statute in effect at the time of Mr. Sutton's crime. During the sentencing phase of trial, the trial court instructed the jury that, as a matter of law, arson was a crime which involves the use or threat of violence to the person. On direct appeal, the Tennessee Supreme Court found the trial court erred because the crimes of arson and second degree burglary could be committed under circumstances not involving such use or threat. *Moore*, 614 S.W.2d at 351. The *Moore* Court invalidated the prior violent felony aggravator because the record did not reflect such use or threat of violence. The court then announced that it was "incumbent upon the State, when relying upon a conviction of what are essentially crimes against property, to show that there was in fact either violence to another or the threat thereof." *Id.*

Although the *Sims* Court considered the amended version of the prior violent felony conviction aggravating circumstance, in support of its holding it referred to the *Moore* Court's announcement of reaching down to consider the facts underlying prior convictions. In *Sims*, the defendant previously had been convicted of aggravated assault, and the prosecution wished to rely on the amended prior violent felony aggravator to enhance the defendant's sentence. *Id.* at 10 (quoting Tenn. Code Ann. § 39-13-204(i)(2)). However, the indictments against the defendant for his prior convictions of aggravated assault charged him solely with putting others in fear of

imminent bodily harm, not with violence to the person. *Sims*, 45 S.W.3d at 11. Thus, when the defendant pleaded guilty to the crimes charged in the indictment, he pleaded guilty to crimes whose statutory elements involved putting others in fear, not violence to the person. *Id.* As a result, the defendant was not previously convicted of a crime that involved violence to other persons. *Id.*

Because the offense of aggravated assault potentially could involve violence to the person, despite the elements of the crimes listed in the indictments, the trial court conducted an examination of the defendant's conduct (as described in the affidavits of complaint) to determine whether the defendant's conduct might have involved the use of violence to the person. *Id.* The court determined that the facts described in the affidavit of complaint involved violence to the person. *Id.* The judge then allowed the State to rely on the prior violent felony aggravator and instructed the jury that the defendant's prior convictions were for "felonies involving the use of violence to the person." *Id.*

On direct appeal, the defendant challenged the trial court's interpretation of the prior violent felony aggravator. *Id.* at 10-12. The defendant argued that the interpretation of the statute should be limited to the elements of the prior conviction only: "Sims asserts that the statutory definition of the prior violent felony aggravator only permits an examination of the statutory elements of the felony without regard for the facts in a particular case." *Id.* at 11. The Tennessee Supreme Court rejected this interpretation. *Id.* at 11-12. Instead, the court held that if the statutory elements of a generic prior conviction may be satisfied with or without proof of violence, then the trial judge "must necessarily examine the facts underlying the prior felony" to determine whether the prior conviction satisfies the prior violent felony aggravating circumstance:

> Although the legislature has amended the language of § 39-13-204(i)(2) to require that the statutory elements of the prior felony involve the use of violence to the person, we find the approach taken in [*State v. Moore*, 614 S.W.2d 348, 351 (Tenn. 1981),] helpful in reaching a decision in this case.
>
> In determining whether the statutory elements of a prior felony conviction involve the use of violence against the person for purposes of § 39-13-204(i)(2), we hold that the trial judge must necessarily examine the facts underlying the prior felony if the statutory elements of that felony may be satisfied with or without proof of violence.

Id.

The Court reached this conclusion in spite of the amendments to the prior violent felony aggravating circumstance, ostensibly requiring that the statutory *elements* of the prior felony involve the use of violence to the person. *Id.* As a result, even though the statutory elements of the prior violent felonies purportedly supporting the application of the aggravating circumstances to the defendant in *Sims* specifically did not involve the use of violence to the victim, the Court held that the conduct of the offense nonetheless supported the application of the aggravating circumstance. *Id.* at 12.

The *Sims/Moore* procedure is the very kind of procedure *Johnson* prohibits. The act of looking beyond the elements of the prior conviction and basing the sentencing enhancement on what the prior offense "involved" leads to arbitrary results and fails to give ordinary people fair notice of the conduct the sentencing enhancement punishes. *Johnson*, 135 S.Ct. at 2556-59; *see also Mathis*, 136 S.Ct. at 2251 ("It is impermissible for 'a particular crime [to] sometimes count towards enhancement and sometimes not, depending on the facts of the case.'" (quoting *Taylor*, 495 U.S. at 601). Like the residual clause in *Johnson*, the language of the statute with which Mr. Sutton's jury was charged is vague. Black's Law Dictionary defines "vague" as follows: "Imprecise or unclear by reason of abstractness; not sharply outlined; indistinct; uncertain." Black's Law Dictionary (10th ed. 2014). "A statute is void for vagueness if it is so vague, indefinite, and uncertain that persons must speculate as to its meaning." *State v. James Stacey*

Carroll, No. W2001-01464-CCA-R3-CD, 2002 WL 1841627, at *4 (Tenn. Crim. App. Aug. 9, 2002). The enforcement of a law increasing a sentence based on vague requirements for such an enhancement violates due process because it fails to give ordinary people fair notice of the conduct to which it applies and invites arbitrary enforcement. *Johnson*, 135 S.Ct. at 2556-63. The language of the amended violent felony aggravator satisfies this definition.

The language of the prior violent felony conviction statute failed to give proper notice to the ordinary person as to what crime or crimes could be considered as prior violent felony convictions for the purpose of enhancing a first degree murder sentence to life without the possibility of parole or death. The definition of what prior conduct constitutes "involving the use of violence" is imprecise, unclear, not sharply outlined, indistinct, and uncertain, such that a reasonable person must speculate as to its meaning. As the majority in *Johnson* reiterated, it is of no consequence that some defendants had notice—if the statute fails to give adequate notice to the ordinary person that particular crimes qualify as prior violent felony convictions then the statute fails across the board to give adequate notice. *Johnson* at 2560-61. Justice Scalia, writing for the majority in *Johnson*, emphasized, "our *holdings* contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp." *Id.* The majority in *Johnson* rejected the dissent's argument that a statute is void for vagueness only if it is vague in all applications. *Id.* at 2561.

In Mr. Sutton's case, the prior violent felony aggravator cannot be saved from a void-for-vagueness determination because his prior violent felony conviction was for murder, which by definition involves the use of violence. Because there were felonies to which the prior violent aggravator could have been and was applied, even though those felonies were not by definition violent (did not contain use of violence as a statutory element), the statute remains vague and

cannot be applied in any case, including Mr. Sutton's. Petitioner's death sentence violates due process of law and the prohibition on cruel and unusual punishment because at the time of the homicide, the statute failed to give the ordinary citizen fair notice as to what felony convictions qualified as violent.

In the State's Response to Petitioner's Motion to Reopen Petition for Post-Conviction Relief, the State declares that "[a] fair reading of either the then existing language or the currently existing language would lead to the conclusion that the prior felony or felonies would have to include, in the statutory definition of the offense or otherwise, an element of the use or threat of violence. The new version includes a specific requirement that the use or threat of violence be a statutory element of the prior offense." (State's Response at 4.) The fact that the State has interpreted the language of the statute one way—that is not constitutionally vague and clearly limited by statutory elements that do not allow consideration of case facts—while the Tennessee Supreme Court has interpreted the same language in another demonstrates the vagueness of the statute. Each statute, by invoking an "involves" standard as opposed to an elements-only inquiry, engenders uncertainty as to what prior convictions enhance or increase a defendant's sentence.

D. The Harmless Error Analysis Cannot Be Applied in This Instance.

In a weighing state—one whose capital sentencing scheme requires the sentencer to weigh aggravating and mitigating factors—such as Tennessee, it is constitutional error for the jury to give weight to an unconstitutionally vague aggravating factor, even if that jury also weighed other, valid aggravating factors. *Richmond v. Lewis*, 506 U.S. 40, 46-47 (1992); *see also Stringer v. Black*, 503 U.S. 222, 229-232 (1992), Tenn. Code Ann. § 39-13-204(e)(1). A vague aggravating factor used in the weighing process creates the possibility of arbitrariness and the

risk that the jury will treat the defendant as more deserving of the death penalty than he might otherwise be by relying upon the existence of an illusory circumstance. *Stringer* at 235-236. Here, Mr. Sutton's jury gave weight to an unconstitutionally vague aggravator—the prior violent felony conviction aggravating circumstance.

To meaningfully conduct a harmless error analysis, the reviewing court must completely examine the record for the presence of factors that potentially influenced the sentence, including but not limited to the following: 1) the number and strength of remaining valid aggravating circumstances; 2) the prosecutor's argument at sentencing; 3) the evidence admitted to establish the invalid aggravator; and 4) the nature, quality and strength of mitigating evidence." *State v. Howell*, 868 S.W.2d at 260-261. As for the first factor, the jury found two other aggravating factors: 1) prison killing; and 2) heinous, atrocious and cruel killing. Regardless of these remaining aggravators, the process by which the jury weighed the aggravating and mitigating circumstances is unknown, as is how much weight the jury gave each aggravating factor.

As for the second and third *Howell* factors, the jury was presented with evidence that Mr. Sutton previously had been convicted of first degree murder, the basis for the unconstitutionally vague prior violent felony conviction aggravator. A prior murder is the most prejudicial evidence a capital sentencing jury can hear. The Capital Jury Project found that over 70% of the capital jurors interviewed believed that death was the only appropriate sentence for a case involving "murder by someone previously convicted of murder." Christopher Letkewicz, *Stacking the Deck in Favor of Death: The Illinois Supreme Court's Misinterpretation of Morgan v. Illinois*, 2 DePaul J. for Soc. Just. 217, 231 (2009). Moreover, most jurors consider a violent criminal history as an indicator of future dangerousness. *See* Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What do Jurors Think?*, 98 Colum. L. Rev 1538, 1560 (1998).

52.8% of jurors in Stephen Garvey's study reported they were more likely to vote for death based on the defendant's history of violent crime, making it one of the most powerful aggravators. *Id.* at 1559. In fact, a Capital Jury Project study of jurors who served on capital cases in Tennessee found that 39.6% of those jurors deliberated under the erroneous belief that the death penalty was required if the defendant would be dangerous in the future. William J. Bowers & Wanda D. Foglia, *Still Singularly Agonizing: Law's Failure to Purge Arbitrariness from Capital Sentencing*, 30 Crim. L. Bull. 51, 72-73 (2003).

Additionally, the State, committing misconduct, improperly argued Mr. Sutton's future dangerousness based on his having a prior murder conviction. *Sutton v. State*, 1999 WL 423005 *26-27 (Tennessee Supreme Court finding that the State's future dangerous argument was "obviously inappropriate"). The State argued:

> [A]nd what do we do to protect the Carl Esteps? What do we do? If a person is already in the penitentiary already serving time for armed robbery or a life sentence for murder, what is the next step? (p. 2632) What are you going to do to Nick Sutton, give him a life sentence? Will that prevent another Carl Estep?

(Vol. XXVII at 2633.) That argument continued during rebuttal: "Ladies and gentlemen, we suggest to you that persons who are armed robbers and first degree murderers are already conditioned to kill people." (Vol. XXVII at 2647.) This improper argument heightened the prejudicial impact of the prior murder evidence on the jury. In fact, as foreperson Billy Dyer recalls:

> Some of the female jurors were reluctant to give the death penalty. I assured them Nick Sutton was very dangerous and would be more secure on death row, and that the State of Tennessee was unlikely to execute him.

(Attachment 1.)

As to the fourth *Howell* factor, the nature, quality, and strength of the mitigating evidence, Mr. Sutton's defense counsel presented limited testimony of a family who had known

Mr. Sutton since his high school years and regularly visited him in prison. *Sutton v. State*, 1999 WL 423005. The inadequate presentation of mitigating evidence on Mr. Sutton's behalf was not due to a dearth of mitigation but to his trial counsel's dismal representation of his client. As Judge Martin wrote in his dissent from the Sixth Circuit's affirmance of the denial of Mr. Sutton's federal habeas corpus petition:

> Nicholas Sutton's childhood was horrific. The undisputed facts elicited at his habeas hearing in the district court from a licensed clinical psychologist who had evaluated Sutton, Dr. Gillian Blair, showed "an unstable, often violent and threatening home life where the supervision and structure were inadequate." His brutal, mentally-ill father held Sutton and his mother at gun point during a stand-off with the police. When Sutton's father later died of hypothermia and exposure while Sutton was a child, the death was never explained to him. Sutton was also abandoned by his mother before the age of one and by his maternal grandparents at the age of two. His paternal grandfather died when Sutton was only seven or eight and he was raised by his paternal grandmother alone. He was shot in the eye at the age of nine, suffered several head injuries during his teenage years and was shot in the knee at sixteen. By the time he was an adolescent, he used a "wide variety of drugs" and sold drugs to earn money. He was sent to live with his aunt and uncle in Knoxville for high school because of his juvenile problems and drug abuse, but his lack of an education was not addressed, and he dropped out of high school during the eleventh grade. Though he joined the Navy at the age of seventeen, he was unable to adjust to military life because he was overwhelmed by the training and could not cope with the emotional pressure. Shortly after enlisting, Sutton received an honorable discharge.
>
> . . .
>
> Sutton's trial counsel did not present any of this evidence at the penalty phase of Sutton's trial—not because he made a tactical trial strategy decision . . . but because trial counsel simply did not deign to ask his client. A thorough inquiry into a client's childhood and background is high on an attorney's list of things to do when defending a capital case, along with "show up," "wear a suit," and "stay awake." Sutton's counsel's failure to make this basic inquiry constitutes ineffective assistance of counsel *per se*.

Sutton v. Bell, 645 F.3d 752, 767-768 (6th Cir. 2011) (Martin, J., dissenting).

In his concurring opinion in *Howell*, Chief Justice Reid warned of the speculative and subjective nature of the harmless error analysis:

> [A]n appellate court is ill-equipped to evaluate the effect of a constitutional error on a sentencing determination. Such sentencing judgments, even when guided and channeled,

> are inherently subjective, and the weight a sentencer gives an instruction or a significant piece of evidence that is later determined to violate a defendant's constitutional rights is nowhere apparent in the record. . . . The threat of an erroneous harmless-error determination thus looms much larger in the capital sentencing context than elsewhere.

Howell, 868 S.W.2d at 269-270, (Reid, C.J. concurring), quoting *Satterwhite v. Texas*, 486 U.S. 249, 262 (Marshall, J. dissenting). In Mr. Sutton's case, not only would a harmless error analysis be speculative and subjective, but a miscarriage of justice by allowing his death sentence to stand after his jury was deprived of what is considered to be powerfully compelling mitigation. *Skipper v. South Carolina*, 476 U.S. 1, 4, (1986) (death sentence cannot stand where sentencing jury impeded from considering all of defendant's relevant characteristics and record); *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982) (the sentencing jury may not refuse to consider or be precluded from considering any relevant evidence in mitigation); *Lockett v. Ohio*, 438 U.S. 586, 605 (1978) ("[T]he risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty . . . is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments."). Additionally, the jury was deprived of pertinent evidence regarding the inhumane conditions, including high levels of inmate-on-inmate violence, that Mr. Sutton suffered during his incarceration at Brushy Mountain Prison and Morgan County Regional Correctional Facility, which exacerbated Mr. Sutton's compromised mental state at the time of Mr. Estep's homicide. See Claim Four.

It also would be a miscarriage of justice to apply the harmless error test thirty years after Mr. Sutton's sentencing hearing in which the prosecutor improperly argued Mr. Sutton's future dangerousness and the likelihood he would kill additional inmates. For the last thirty years, Mr. Sutton has been a model prisoner, having received his last disciplinary write-up—for a non-violent infraction—more than twenty-five years ago. Mr. Sutton holds one of two coveted maintenance jobs where he is housed in Unit 2 at Riverbend Maximum Security Institution. As

the maintenance worker, he has access to a variety of tools that are classified by the prison as Class A weapons. He holds the job because the prison administration acknowledges that he is a trusted, model prisoner with a near pristine three decades long disciplinary record. In the interest of justice, this Court must forego a harmless error analysis and remand to the trial court for a constitutionally adequate resentencing hearing.

In several capital cases in which one or more aggravating factors were invalidated on appeal, the Tennessee Supreme Court set aside the death sentences and remanded for new sentencing hearing precisely because it found a harmless error analysis to be too speculative. *See, e.g., State v. Moore*, 614 S.W.2d 348 (Tenn. 1981), (one of two aggravating factors invalid); *State v. Pritchett*, 621 S.W.2d 127 (Tenn. 1981) (one of two aggravating factors invalid); *State v. Teague*, 645 S.W.2d 392 (Tenn. 1983); *State v. Terry*, 813 S.W.2d 420, 424-5 (Tenn. 1991) (noting the harmless error analysis is difficult to sustain in the absence of written finding by the jury concerning mitigating circumstances); *Sparks v. State*, 1992 WL 361025 (Tenn. 1992) (unreported) (court disinclined to speculate with harmless error analysis despite the remaining aggravating factor—prior violent felony conviction aggravator, for which the State presented evidence of three robbery convictions). Adding to the speculative nature of a harmless error analysis in this case is the questionable validity of the two remaining aggravating factors, which Mr. Sutton asks this Court to also set aside: 1) the prison killing aggravator, invalid for its arbitrary and discriminatory application; and 2) heinous, atrocious and cruel killing, because the jury was deprived of critical evidence of inhumane prison conditions, which caused or exacerbated Mr. Sutton's Post-Traumatic Stress Disorder, and resulted in Mr. Estep's death. See Claims Four and Eight.

Even if the court finds that valid aggravating factors remain in this case, Mr. Sutton's Sixth Amendment right to a jury trial prohibits a reviewing court's harmless error analysis or reweighing the aggravating and mitigating evidence. *Hurst v. Florida*, 136 S.Ct. 616 (2016). A reviewing court cannot apply a harmless error analysis because the holding in *Hurst* mandates that only juries, not judges, weigh aggravating and mitigating circumstances. *Hurst*, 136 S.Ct. at 619; *Hurst v. State*, No. SC12-1947, 2016 WL 6036978 (Fla. Oct. 14, 2016). Prior to its ruling in *Hurst v. Florida*, United States Supreme Court precedent permitted a trial or appellate court in a weighing state (one which requires the capital sentencer to weigh aggravating and mitigating factors) to reweigh aggravating and mitigating factors or apply the harmless error analysis. *Clemons v. Mississippi*, 494 U.S. 738 (1990); *Richmond v. Lewis*, 506 U.S. at 49 (where the death sentence has been infected by an unconstitutionally vague aggravating factor, the state reviewing court must actually perform a new sentencing calculus).

In applying the harmless error analysis to the weighing of aggravating and mitigating factors, the *Clemons* court held that a reviewing court's reweighing of remaining aggravators against mitigation after invalidating one or more aggravators did not violate the Sixth Amendment. In so holding, the *Clemons* court relied on rulings in *Spaziano v. Florida*, 468 U.S. 447 (1984) and *Hildwin v. Florida*, 490 U.S. 638 (1989), that the Sixth Amendment does not give a defendant the right to have a jury determine the appropriateness of a capital sentence, or require the jury to specify the aggravating factors supporting the death verdict, or even require a jury to sentence a capital defendant. *Clemons*, 494 U.S. at 745–46.

The *Hurst* rule is a new, substantive departure from Supreme Court precedent that permitted a judicial weighing determination of aggravation and mitigation. *Hurst* makes clear that, under the Sixth Amendment, all facts supporting an enhanced or increased sentence,

including the sufficiency of aggravating circumstances and the relative weight of aggravating and mitigating circumstances, are elements of the crime that must be found by a jury, not a judge. *Hurst*, 136 S.Ct. at 621-622. The Supreme Court in *Hurst* explicitly overruled the critical cases on which *Clemons* relies:

> We expressly overrule *Spaziano* and *Hildwin* in relevant part. *Spaziano* and *Hildwin* summarized earlier precedent to conclude that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury." *Hildwin*, 490 U.S. at 640-41. Their conclusion was wrong, and irreconcilable with *Apprendi*.

Hurst, 136 S.Ct. at 623. The *Hurst* Court found that "[t]ime and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*." *Id.* at 624. *Spaziano* and *Hildwin* are the underpinnings of the appellate reweighing doctrine in *Clemons* and they can no longer support the constitutionality of appellate reweighing in capital cases.

In Mr. Sutton's case, only a jury can find the existence of an aggravating circumstance (proven beyond a reasonable doubt) and that the aggravating circumstance or circumstances were not outweighed by mitigating circumstances.[3] Mr. Sutton's death sentence, therefore, must be vacated.

II. Petitioner's Conviction and Death Sentence Should Be Vacated Because He Was Visibly Shackled and Handcuffed During His Capital Trial and Sentencing.

Nicholas Sutton's rights to due process, an impartial jury and freedom from cruel and unusual punishment were violated when he was forced to appear before the jury wearing visible shackles and handcuffs. There was no showing that shackling and handcuffing were justified by an essential state interest, alternatives were not explored, and steps were not taken to minimize the prejudicial effect of the restraints. Petitioner's conviction and death sentence must be vacated because the appearance of Mr. Sutton in chains was inherently prejudicial, undermined his

[3] The statute under which Mr. Sutton was sentenced did not provide a burden of proof for the weighing determination. Tenn. Code Ann. § 39-2-203(g) (repealed).

constitutional rights, eroded the presumption of innocence, and tipped the scales in favor of conviction and the imposition of a death sentence.

The shackling and handcuffing of a defendant is an "unmistakable indication[] of the need to separate a defendant from the community at large." *Holbrook v. Flynn*, 475 U.S. 560, 569 (1986). The Supreme Court has noted that "no person should be tried while shackled and gagged except as a last resort" because "the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant" and "the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." *Illinois v. Allen*, 397 U.S. 337, 344 (1970).

The Supreme Court has held that "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." *Deck v. Missouri*, 544 U.S. 622, 629 (2005). This is because "shackling undermines the presumption of innocence and the related fairness of the proceeding" and "can interfere with the accused's ability to communicate with his lawyer." *Id.* at 630-31. The use of shackles also "undermine[s] the[] symbolic yet concrete objectives" of "[t]he courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment." *Id.* at 632.

Shackling is equally prejudicial during the penalty phase of a capital trial as during the guilt-innocence phase. The Supreme Court has stated that "shackles at the penalty phase threaten related concerns" as shackles at the guilt-innocence phase because "[a]lthough the jury is no longer deciding between guilt and innocence, it is deciding between life and death," and "[t]hat

decision, given the severity and finality of the sanction, is no less important than the decision about guilt." *Deck*, 44 U.S. at 632 (citations and quotations omitted).

Shackling is so inherently prejudicial that "where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation," and instead "[t]he State must prove 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.'" *Deck*, 544 U.S. at 635 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).[4] That is a hurdle that is almost insurmountable.

These due process requirements were violated throughout Mr. Sutton's trial. Trial counsel filed a pre-trial motion asking that the Tennessee Department of Corrections not bring Petitioner "within the presence of any juror or prospective juror while he is visibly wearing any physical restraints . . . ." Vol. II at 290. The trial court denied the motion on the grounds that being shackled would not prejudice Petitioner "since it will [be] a matter of proof that [he is an] inmate[]." Vol. VII at 272. It appears that some attempt was made to conceal the shackles because during the second day of jury selection, codefendant's counsel objected to Mr. Sutton and his codefendants being moved around in shackles and handcuffs past doorways through which prospective jurors could see them:

> Mr. Fox: We have gone to great extents to insure that these defendants are not paraded in front of jurors or potential jurors in their chains and lockup. It is my understanding that someone in charge directed that at least one or more of these prisoners be paraded out the front door a moment ago, when there were alternative routes they could have taken, in front of potential jurors. And that it was called to that official's attention before they were taken out the door and he said, "Take them anyway in handcuffs and chains."

[4] In discussing the "inherent prejudice" resulting from shackling a defendant, the Supreme Court noted, like the consequences of compelling a defendant to stand trial while medicated, the negative effects that result from shackling "cannot be shown from a trial transcript." *Deck*, 544 U.S. at 635.

> And we would like some admonishment that that is not to occur, Your Honor.

Vol. XII at 930. In response, the trial court instructed the prosecution and guards to: "Keep the prisoners away from the jurors as much as possible out of the chains and so forth." *Id.* Despite this admonition, the jury was not instructed to disregard the shackles. Thus, sufficient steps were not taken to minimize the prejudicial effect of the shackling and handcuffing, and the jury observed Mr. Sutton in restraints throughout the trial.[5]

The perceived threat caused by shackling and handcuffing Mr. Sutton was so great that, more than 30 years later, at least one juror remains traumatized by the experience of having served on Mr. Sutton's jury. Juror Nancy Koger Jeffers reports:

> I was scared to death that Mr. Sutton or another defendant would come after me or my family. For at least two months after the trial, I would wake up in the middle of the night, get my children out of bed and drive to my mother's house. I couldn't feel safe in my own home. Even though the trial was thirty years ago, I am still affected by it. I will always carry the emotional trauma of this case.
>
> A big cause of my fear was how heavily guarded the courthouse and courtroom were. Although we were told that the security was because it was a murder case, I knew it had to be really bad to call for that much security. The courtroom was small and crowded with several guards. Mr. Sutton and his co-defendants wore heavy chains. Other than this being a murder case, the heightened security was never explained to us.
>
> I recall during the trial when the prosecutors placed the shanks/homemade knives on the defense counsel's table, within reach of the defendants. I could not believe he did that. I reacted in shock but told myself that hopefully, the defendants could not reach any of the weapons since they were chained.

Affidavit of Nancy Koger Jeffers. (Attachment 2.)

[5] During a bench conference at the start of the penalty phase, the prosecution informed the trial court that "the Defendants are still handcuffed." Vol XXV at 2465.

Ms. Koger Jeffers is not the only juror that recalls the shackling and handcuffing of Mr. Sutton in vivid detail. At least three other jurors have similar memories. Jury Foreperson Billy Dyer recalls that Mr. Sutton was "well-secured and shackled in the courtroom. There was hand-cuffing in front, not behind the back." Affidavit of Billy Dyer. (Attachment 1.) Juror Johnny Lively states that "[t]here was a lot of courtroom security throughout the trial" and Mr. Sutton "wore leg shackles." Affidavit of Johnny Lively. (Attachment 3.) Juror Diana Cagley remembers:

> There was a lot of courtroom security during the trial. The defendants were shackled and the attorneys were not allowed to lay down pens or pencils on the table. That told me something about the defendants. Armed guards were everywhere and Judge Eblen did not let anyone leave the courthouse until the jury had been escorted back to the jail and we had called our families.

Affidavit of Diana Cagley. (Attachment 4.)

[T]here is a legal presumption against the use of visible restraints in court that flows from due process guarantees to a fair trial." *Mobley v. State*, 397 S.W.3d 70, 100 (Tenn. 2013). "The use of visible restraints undermines the physical indicia of innocence and the related fairness of the fact-finding process." *Id.* Accordingly, when shackles and handcuffs "inadvertently become[s] visible to the jury, the trial court should give cautionary instructions that it should in no way affect the jury's determinations." *Id.* at 101. Again, the jurors received no such instruction.

The shackling and handcuffing of a defendant "almost inevitably affects adversely the jury's perception of the character of the defendant." *Deck*, 544 U.S. at 633. Here, Mr. Sutton was on trial for murder and his propensity for violence was a critical issue in both the guilt-innocence and penalty phases. The appearance of a defendant in chains implies to a jury, as a matter of common sense, that court authorities consider the defendant a danger to the community and a

threat to those in the courtroom, and the defendant possesses the character of someone who would commit the charged offense. As a result, in finding Petitioner guilty, the jury likely relied upon the improper inference that Petitioner was a violent person as evidenced by the visible shackles and handcuffs.[6]

In the penalty phase of a capital trial, the jury knows that the defendant is a convicted murderer, "[b]ut the extent to which he continues to be dangerous is a central issue the jury must decide in determining his sentence." *Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir. 1994). If the jury is led to believe that the defendant is so dangerous that shackles and handcuffs are required to secure the courtroom against his actions, it is likely to conclude that the safety of other inmates and the prison staff can only be ensured by executing him. When a defendant is shackled and handcuffed, "a jury might view the shackles as first hand evidence of future dangerousness and uncontrollable behavior which if unmanageable in the courtroom may also be unmanageable in prison, leaving death as a proper decision." *Elledge v. Dugger*, 823 F.2d 1439, 1450 (11th Cir. 1987). The jurors here likely viewed Mr. Sutton as a future danger due to the shackles and handcuffs and relied upon that improper inference in reaching a death sentence.

Because the sight of shackles and handcuffs inherently implies that the person is a danger to the community, "the use of [restraints] can be a "thumb [on] death's side of the scale." *Deck* at 633 (quoting *Sochor v. Florida*, 504 U.S. 527, 532 (1992); citing *Riggins v. Nevada*, 504 U.S. 127, 142 (1992) (Kennedy, J., concurring in judgment) (through control of a defendant's appearance, the State can exert a "powerful influence on the outcome of the trial")). Therefore, trial courts cannot routinely place defendants in shackles and handcuffs during a criminal trial,

[6] "[O]ne accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial." *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978).

unless in the judge's discretion there are special circumstances that call for restraint. *Id.* As the Supreme Court has clearly stated,

> the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, unless that use is "justified by an essential state interest"—such as the interest in courtroom security—specific to the defendant on trial.

Deck, 544 U.S. at 635 (quoting *Holbrook*, 475 U.S. at 568-69).

To justify the use of restraint during a criminal trial, the determination "must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial." *Id.* at 633. There is nothing in the trial record to justify the use of physical restraints on Petitioner—no indication that Mr. Sutton was an escape risk or posed a danger to those in the courtroom. The sole reason Petitioner was shackled and handcuffed was because he was incarcerated at the time of trial. That is not a special circumstance that calls for the use of restraints. The facts of this case are no more exceptional than the facts in cases where improper shackling has been found. *See, e.g., Deck*; *United States v. Haynes*, 729 F.3d 178 (2d Cir. 2013); *Lakin v. Stine*, 431 F.3d 959 (6th Cir. 2005). In addition, the trial court failed to determine whether, even if heightened security measures were justified—which they were not—what if any lesser measures could be used to ensure security without resorting to highly prejudicial handcuffing and shackling. Moreover, there was no hearing to determine whether a specific justification existed for heightened security, alternatives were not explored, and steps were not taken to minimize the prejudicial effect of the restraints.

Although the prejudice caused by shackling and handcuffing Mr. Sutton is clear, since there was no adequate justification for Petitioner to be restrained, Mr. Sutton "need not demonstrate actual prejudice to make out a due process violation." *Deck*, 544 U.S. at 635. This is so because the use of handcuffs and shackles is inherently prejudicial. *Id.* (citations omitted).

Accordingly, when the trial court ordered Mr. Sutton to be chained throughout his trial, when it was not justified by an essential state interest, it was a violation of his rights to due process, an impartial jury and freedom from cruel and unusual punishment.

This error could not be and was not harmless. The presence of shackles and handcuffs in and of themselves connoted dangerousness, a non-statutory aggravating factor, and the trial court did nothing to dispel that. Therefore, because it cannot be established that the shackling and handcuffing of Mr. Sutton "did not contribute to the verdict [and sentence] obtained," *id.* at 635 (quotation marks omitted), this Court should grant Petitioner a new trial.

Counsel also failed to interview the jurors in preparing the Motion for New Trial. If counsel had done so, he could have proffered evidence, now presented in this proceeding, of at least four jurors who saw Mr. Sutton shackled in the courtroom and how the shackling undermined the presumption of innocence and the fairness of Mr. Sutton's trial. Had counsel presented this evidence, it is reasonably likely that the Motion for New Trial would have been successful. At a minimum, counsel would have preserved the issue for appellate review. *See Virgin Islands v. Forte*, 865 F.2d 59, 62-64 (3d. Cir. 1989) (stating that "had the objection been made [defendant] would have been successful on appeal"). Petitioner is entitled to relief.

III. Petitioner's Death Sentence Must Be Reversed Because He Was Deprived of a Fair and Impartial Jury; Counsel Provided Ineffective Assistance During Jury Selection.

It is well settled that the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 9 of the Tennessee Constitution "guarantee a defendant on trial for his life the right to an impartial jury." *Ross v. Oklahoma*, 487 U.S. 81, 85 (1988); *Irvin v. Dowd*, 366 U.S. 717, 722 (1961); *Hyatt v. State*, 430 S.W.2d 129 (Tenn. 1967). Impartiality means a jury comprised of "nothing more than 'jurors who will conscientiously apply the law and find the facts.'" *Lockhart v. McCree*, 476 U.S. 162, 178 (1986) (quoting *Wainwright v. Witt*,

469 U.S. 412, 423 (1985)). "Due process means a jury capable and willing to decide the case solely on the evidence before it." *Smith v. Phillips*, 455 U.S. 209, 217 (1982).

Since the United States Supreme Court's landmark decision in *Witherspoon v. Illinois*, 391 U.S. 510 (1968), it has been established that the Sixth Amendment right to an impartial jury is violated when a jury is empaneled that is "uncommonly willing to condemn a man to die." *Id.* at 521. Such a jury exists when jurors are permitted to serve despite pro-death biases that substantially impair their ability to impose a life sentence. The right to an impartial jury carries with it the right to identify and exclude jurors whose pro-death views disqualify them from jury service. In this case, Mr. Sutton was denied an impartial jury when the voir dire failed to identify and exclude biased pro-death jurors.

A. The Law of Life-Qualification.

In *Adams v. Texas,* 448 U.S. 38, 45 (1980), the Supreme Court held that "a juror may not be challenged for cause based on his views about capital punishment unless those views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." The standard for determining juror partiality is no different in a capital case than in any other case. *Witt*, 469 U.S. at 423 ("there is nothing talismanic about juror exclusion" in capital cases). Just as a juror whose views cause substantial impairments in his or her ability to consider the death penalty must be excluded for cause, a juror whose views cause substantial impairments in his or her ability to consider a life sentence must be excluded for cause. *Morgan v. Illinois*, 504 U.S. 719 (1992). It is reversible error if such a juror is actually empaneled.

It has long been established that jurors should be excused for cause if they harbor a bias towards death that impairs their ability to follow the law in capital sentencing proceedings. As

early as 1919, the United States Supreme Court had determined that jurors who would automatically impose a death sentence because they "were in favor of nothing less than capital punishment in cases of conviction for murder in the first degree" were unqualified to serve in a capital case. *Stroud v. United States*, 251 U.S. 15, 20-21 (1919).

The Supreme Court has repeatedly held that jurors who would automatically impose a death sentence must be excused for cause; that death-qualification and life-qualification are part of the same inquiry; and that the inquiry into both of these forms of exclusions for juror bias in capital sentencing are a subset of the general rule of law that governs exclusions for juror bias in every other setting. *Wainwright v. Witt*, 469 U.S. 412 (1985); *Adams v. Texas*, 448 U.S. 38 (1980); *Witherspoon v. Illinois*, 391 U.S. 510 (1968).

In *Ross v. Oklahoma*, then-Chief Justice Rehnquist, citing *Witherspoon*, held that a juror who would not consider a life sentence was unqualified to serve in a capital case. In *Ross*, the trial court denied a challenge for cause to a potential juror named Huling who indicated during voir dire that if the jury found the defendant guilty, "he would vote to impose death automatically." *Ross*, 487 U.S. at 84. Defense counsel therefore used a peremptory strike against the juror. The Supreme Court specifically held that automatically voting for death, just as automatically voting for life, would "prevent or substantially impair the performance of his duties as a juror," and thus the trial court erred in denying the challenge for cause. The availability and use of a peremptory challenge by the defense, however, rendered the court's error harmless. The Court unequivocally stated:

> Had Huling sat on the jury that ultimately sentenced petitioner to death, and had petitioner properly preserved his right to challenge the trial court's failure to remove Huling for cause, the sentence would have to be overturned.

Id. at 85 (citing *Adams*, 448 U.S. at 45). Thus, any juror whose views created a substantial impairment to his or her consideration of factors that could result in a life sentence should be excused for cause.

In *Morgan v. Illinois*, the Supreme Court explained that the reason "[a]ny juror who states that he or she will automatically vote for the death penalty without regard to the mitigating evidence" is biased, is because that juror has expressed "an intention not to follow the instructions to consider the mitigating evidence and to decide if it is sufficient to preclude imposition of the death penalty." *Morgan*, 504 U.S. at 738. "[S]uch a juror will not give mitigating evidence the consideration that the statute contemplates," *id.*, is not impartial, and should be excused for cause. *See also id.* at 738-39 (a factfinder who would "impose the death penalty without regard to the nature or extent of mitigating evidence . . . is refusing in advance to follow the statutory direction to consider that evidence"). The court further explained that "[a]ny juror to whom mitigating factors are. . . irrelevant should be disqualified for cause, for that juror has formed an opinion concerning the merits of the case without basis in the evidence developed at trial." *Id.* at 739.

Although life-qualification is often spoken of in terms of excluding jurors who would automatically impose a death penalty, *Morgan*'s statement that such a juror "will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do" makes clear that automatic opposition to a life sentence, like automatic opposition to a death sentence, is sufficient *but not necessary* to exclude a juror for cause. Any substantial impairment in the juror's ability to properly consider the evidence of aggravating and mitigating circumstances as the instructions and the law requires mandates that the juror be excused for cause. The question of excludable pro-death bias under *Morgan* and *Ross* thus

applies at each step in the decision-making process that implicates the juror's willingness and ability to consider and give mitigating effect to constitutionally relevant mitigating evidence.

Thus, there are at least ***four*** distinct types of life-impaired jurors who should be excused under *Adams* and *Morgan*. These include: (1) jurors who would automatically vote for death or have substantial difficulty ever considering a life sentence; (2) jurors who, while holding open the possibility of imposing a life sentence, would shift the burden of persuasion from the State to the defense; (3) jurors who have substantial impairments in their ability to consider and give effect to constitutionally relevant mitigating evidence; and (4) jurors who would put an inappropriate thumb on the scales of death by considering impermissible, non-statutory aggravating factors as a basis to impose a death penalty.

B. Multiple Jurors Were Substantially Impaired in Their Ability to Consider a Life Sentence in this Case.

The jury selection in this case was inadequate to ferret out jurors whose views in favor of the death penalty substantially impaired their ability to consider the life-sentencing option. At least three jurors, including the jury foreperson, were clearly substantially impaired in their ability to give effect to mitigating evidence and consider a sentence other than death. Automatic death-voting jurors "by definition are ones who cannot perform their duties in accordance with law." *Morgan*, 504 U.S. at 735.

Jury Foreperson Billy Dyer was an automatic death-voting juror who should have been excused for cause. He "believe[s that] the death penalty is the correct punishment for any premeditated murder that is not accidental." Affidavit of Billy Dyer. (Attachment 1.) Juror Diana Cagley stresses that "the death penalty is the correct punishment for murder, if there is no doubt as to guilt, because the Bible says if you take a life you must give your own." Affidavit of Diana Cagley. (Attachment 4.) Juror Johnny Lively concurs that "the death penalty is the appropriate

punishment for premeditated murder and that the principle of 'an eye for an eye' applies." Affidavit of Johnny Lively. (Attachment 3.)

While the State is entitled to a jury comprised of individuals willing to consider the death penalty, it is not entitled to one containing jurors who will automatically vote for death in every case. *Morgan*, 504 U.S. at 729. The inclusion of a juror who would automatically vote for death is a structural error mandating reversal without regard to prejudice. *Morgan*, 504 U.S. at 729; *Gray v. Mississippi*, 481 U.S. 648, 666-67 (1987). Sentencing jurors cannot refuse to consider and give effect to an entire class of mitigating evidence. "The sentencer . . . may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration." *Eddings v. Oklahoma*, 455 U.S. 104, 114-15 (1982). Deeming mitigating evidence irrelevant violates this basic tenet by effectively excluding the evidence from the juror's consideration, even if they invoke the mantra at voir dire that they will consider and weigh the evidence.

For all of these reasons, Mr. Sutton was denied an impartial jury in violation of *Stroud, Witherspoon* and their progeny. The seating of even one automatic death-voting juror is grounds for reversal. *Morgan*, 504 U.S. at 729; *Ross*, 487 U.S. at 85. Petitioner's jury contained at least three substantially impaired jurors.

C. Counsel was Ineffective for Failing to Life-Qualify the Jury.

Where a juror harbors prejudice against the defendant or in favor of the prosecution the impartiality of a jury is violated. *See, e.g., Turner v. Murray*, 476 U.S. 28 (1986) (court must allow voir dire on racial prejudice); *Ristaino v. Ross*, 424 U.S. 589, 596 (1976) (same). In order to adequately protect the right to an impartial jury, there must be "an adequate voir dire to identify unqualified jurors"—"[w]ithout an adequate voir dire the trial judge's responsibility to

remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." *Morgan*, 504 U.S. at 729-30. Accordingly, counsel's failure to life-qualify the jury was deficient and denied Mr. Sutton his rights to an impartial jury, due process and effective assistance.

The requirement of adequate voir dire takes on even greater importance in a capital case, because of the "the qualitative difference of death from all other punishments," *California v. Ramos*, 463 U.S. 992, 998-99 (1983), and because capital juries are required to make a "highly subjective 'unique individualized judgment regarding the punishment that a particular person deserves,'" *Caldwell v. Mississippi*, 472 U.S. 320, 340-41 n.7 (1985). Moreover, "[b]ecause of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for . . . prejudice to operate but remain undetected." *Turner*, 476 at 35. Thus, adequate voir dire of potential jurors becomes even more important. Counsel's ineffectiveness denied Petitioner essential protections.

Trial counsel did not examine a single prospective juror in order to discern whether they had any impairments in their ability to impose a life sentence or if they would impose a death sentence in circumstances in which a life sentence was legally required. Counsel should have life-qualified the jury and could have no reasonable basis for failing to do so. Counsel was deficient in failing to request the full life-qualification inquiry to which Petitioner was entitled.

Trial counsel also failed to request life-qualification questioning on the types of mitigating evidence that were presented in this case. The Eighth Amendment unquestionably prevents the sentencer from refusing to consider or give full effect to relevant mitigating evidence offered by the defense. *E.g.*, *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989); *Hitchcock v. Dugger*, 481 U.S. 393, 394 (1987); *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982). Any juror

who would have substantial difficulty considering relevant evidence concerning a defendant's background, character, or record, or the circumstances of the offense to be mitigating, or would have substantial difficulty giving appropriate weight to that evidence, or would treat this evidence as aggravating rather than mitigating will "fail in good faith to consider the evidence of. . . mitigating circumstances as the instructions require [them] to do." *Morgan*, 504 U.S. at 729. Counsel should have conducted life-qualification voir dire to uncover this type of juror bias.

Counsel could not have had any reasonable basis for failing—more than sixty-six years after *Stroud v. United States*—to insist upon life-qualifying the jury. As a result, jurors were empaneled who automatically voted for a death sentence and were unable to properly consider the evidence in aggravation and mitigation. Due to counsel's obvious failing, Mr. Sutton's capital sentencing proceeding was infected with pro-death penalty bias that is "unacceptable in light of the ease with which that risk could have been minimized." *Turner*, 476 U.S. at 36. Accordingly, Petitioner's jury had substantial impairments in finding and considering mitigating evidence and returning a life verdict.

Petitioner was clearly prejudiced by trial counsel's deficient performance. Had counsel life-qualified the jury, he could have had three automatic death-voting jurors removed for cause and ensured that Mr. Sutton's sentence was not decided by a jury that was "uncommonly willing to condemn a man to die." *Witherspoon*, 391 U.S. at 521. It is reasonably likely that Mr. Sutton would have been sentenced to life had counsel performed effectively, or at minimum, counsel would have preserved the issue for appellate review. *See Virgin Islands v. Forte*, 865 F.2d 59, 62-64 (3d. Cir. 1989) (stating that "had the objection been made [defendant] would have been successful on appeal").

Counsel also failed to interview the jurors in preparing the Motion for New Trial. If counsel had done so, he could have proffered evidence, now presented in this proceeding, of at least three jurors who were clearly substantially impaired in their ability to give effect to mitigating evidence and consider a sentence other than death. Had counsel presented this evidence, it is reasonably likely that the Motion for New Trial would have been successful. Petitioner is entitled to relief.

IV. Trial Counsel Rendered Ineffective Assistance by Failing to Develop and Present Mental Health Evidence Establishing Diminished Capacity that Would Have Negated Premeditation and the Heinous, Atrocious and Cruel Aggravating Circumstance.

Mr. Sutton's jury was deprived of hearing evidence of Mr. Sutton's mental illness and cognitive impairments that would have established his diminished capacity at the time of Mr. Estep's homicide. Trial counsel's failure to investigate and develop the factual basis for Mr. Sutton's substantial mental impairments as well as his failure to consult with and present testimony by a mental health professional violated Mr. Sutton's Sixth Amendment right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975).

Defense counsel have a duty to investigate and prepare for both guilt and penalty phases of a capital trial. *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). A criminal defense attorney "must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be developed." *Baxter v. Rose*, 523 S.W.2d 930, 933 (Tenn. 1975). Mr. Sutton's trial counsel failed to conduct a minimally competent investigation into the alleged offense and Mr. Sutton's life history, and failed to present relevant evidence supporting his defense at trial and sentencing. Counsel's failures regarding the investigation and presentation of relevant evidence

were objectively unreasonable and constituted deficient performance. As Judge Martin wrote in his dissent on appeal from denial of habeas corpus relief:

> Sutton's trial counsel did not present any of this [life history and mental health] evidence at the penalty phase of Sutton's trial—not because he made a tactical trial strategy decision that the evidence would be unhelpful or would, as the state courts mused, potentially open the door to introduction of other damaging evidence, but because trial counsel simply did not deign to ask his client. A thorough inquiry into a client's childhood and background is high on an attorney's list of things to do when defending a capital case, along with "show up," "wear a suit," and "stay awake." Sutton's counsel's failure to make this basic inquiry constitutes ineffective assistance of counsel *per se*.

Sutton v. Bell, 645 F.3d 752, 768 (6th Cir. 2011) (Martin, J., dissenting).

Although Mr. Sutton's post-conviction counsel failed to thoroughly develop evidence of Mr. Sutton's mental illness and cognitive impairments, counsel did present some information to the post-conviction court, including testimony by Dr. Gillian Blair, a psychologist. Mr. Sutton suffered through a horrific childhood wrought with instability and violence. He was abandoned by his mother while still an infant. A year later, he was then abandoned by his maternal grandparents. His father was severely mentally ill and brutally violent towards Mr. Sutton and other family members. Petitioner also suffered several head injuries throughout childhood, including having been shot in the eye at age nine. By early adolescence, he self-medicated with a variety of street drugs. Although he enlisted in the military at age seventeen, he was honorably discharged shortly thereafter because he could not emotionally handle the stress of military training, given the psychological toll of his chaotic, abusive childhood. *Sutton v. Bell*, 645 F.3d at 767-78. However, given post-conviction counsel's inability to adequately investigate Mr. Sutton's life history and conduct a minimally competent evaluation as to Mr. Sutton's mental and cognitive impairments, the courts that have reviewed Mr. Sutton's case have continued to be

deprived of crucial evidence that goes to the fundamental fairness of his conviction and sentence of death.

Mr. Sutton was incarcerated at Brushy Mountain Prison (BMP) in 1980 at the age of nineteen, after his conviction of first degree murder of his paternal grandmother. At the time of his three-year incarceration at BMP, the prison was notoriously violent. Mr. Sutton was then moved to Morgan County Regional Correctional Facility (MCRCF) which, at the time, was overcrowded and experiencing escalating violence. The abhorrent prison conditions exacerbated Mr. Sutton's mental illness, causing him to grow hypervigilant and be incapable of accurately perceiving threats and the need for self-defense. See, Claim 7.

Evidence of Mr. Sutton's mental state at the time of the crime should have been a crucial issue in the case. Had evidence been presented that Mr. Sutton had been experiencing symptoms of a mental disorder at the time of the incident, the jury would have considered that his diminished capacity could have negated premeditation. Had defense counsel allowed the jury to consider the multiple stab wounds in this case within the context of Mr. Sutton's mental impairments, the jury likely would have given little weight to the notion that the wounds were intentionally inflicted as part of a preconceived plan.

Likewise, evidence of Mr. Sutton's fragile mental state would have explained the multiple stab wounds to Mr. Estep's body that presumably formed the basis for the heinous, atrocious, and cruel aggravating circumstance. Tenn. Code Ann. § 39-2-203(i)(5). Had trial counsel investigated and developed information about Mr. Sutton's compromised mental state, resulting from his traumatic childhood and inhumane treatment while incarcerated in Tennessee state prisons, counsel could have offered substantial mental health evidence to counter the State's argument that Mr. Estep's killing involved torture or depravity of mind. Without question, the

evidence of Mr. Sutton's mental defect and disease would have served to neutralize the aggravating circumstance advanced by the State and functioned as mitigating evidence on behalf of Mr. Sutton.

A conviction requires the unanimous vote of all 12 jurors—even one vote recognizing the State's failure to prove an element of first degree murder (in this case premeditation) is sufficient to defeat a first degree verdict. There is a reasonable probability, had trial counsel conducted a minimally adequate investigation and uncovered the evidence identified in post-conviction, that one juror might have voted differently. *See Davidson v. State*, 453 S.W.3d 386, 405 (Tenn. 2014) ("At least one member of the jury could have decided that Mr. Davidson was less morally blameworthy (and thus undeserving of death) in light of his lifelong history of psychosis, [and] his frontal lobe dysfunction . . . ."). As the Tennessee Supreme Court recognized in *Davidson*, evidence of cognitive impairments and mental illness contextualizes and humanizes a defendant—regardless of other unsavory behavior or previous criminal offenses.

In assessing prejudice in this case, it is important to consider how the *Strickland* prejudice standard has been clarified by state and federal courts. First, "a reasonable probability" is not synonymous with "more likely than not"—Petitioner need not establish that the probability of a different outcome was greater than 50% (the "preponderance" standard). *Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *see also Pylant v. State*, 263 S.W.3d 854, 875 (Tenn. 2008) ("We emphasize...that the test for prejudice under *Strickland* is not an inquiry into the sufficiency of the State's evidence adduced at trial. Indeed, '[t]he result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.'") (quoting *Strickland*) (emphasis added).

Second, in determining whether there is a reasonable probability of a different outcome, the Court must put itself in the shoes of the jurors, not simply rely on its own judgment. *See, e.g., State v. Rodriguez*, 254 S.W.3d 361, 372, 374-75 (Tenn. 2008) (warning courts against becoming "a second jury" in determinations of harmless error, which is akin to *Strickland* prejudice analysis). A reasonable probability exists that the evidence would have affected at least one juror's appraisal of Mr. Sutton's culpability.[7] Under Tennessee's statutory sentencing protocol, each juror would have been required to consider the mitigating evidence. The reasonable probability of a different result undermines confidence in the outcome actually reached at sentencing.

V. The State Committed Prejudicial Prosecutorial Misconduct Which Tainted the Jury's Death Verdict.

The State committed multiple instances of misconduct during guilt/innocence and sentencing phases of Mr. Sutton's capital trial that tainted the jury's guilty and death verdicts, in violation of Article I §§ 8, 9, 16, 17, and Article XI § 8 of the Tennessee Constitution and Amendments 5, 6, 8, and 14 to the United States Constitution. Throughout the trial, the State used the excessive courtroom and courthouse security as a prop to influence the jury's perception of Mr. Sutton's level of danger. During the guilt/innocence phase, the prosecutor placed the murder weapons within reach of the defendants, triggering a response by armed officers present in the courtroom. The State then argued for a death verdict based on Mr. Sutton's future dangerousness. Recent interviews of numerous jurors reveal the prejudicial effects of these tactics. Because Mr. Sutton's death sentence is rendered unconstitutional as the product of state

[7] The reasonable probability standard requires less proof than "more likely than not." *Timothy Terrell McKinney v. State of Tennessee*, No W2006-02132-CCA-R3-PD, 2010 WL 796939, at *37 (Tenn. Crim. App. March 9, 2010); *Winston v. Kelly*, ___ F.Supp.2d ___, 2011 WL 1838844, at *9 (W.D. Va. May 16, 2011) (assessing prejudice of defense counsel's failure to present evidence of borderline mental retardation and finding a reasonable probability of a different outcome because "the likelihood of a different result is not insubstantial").

misconduct, this Court must vacate his sentence and remand him back to the trial court for a new trial.

Multiple police and corrections officers guarded the courthouse and courtroom during Mr. Sutton's trial. The streets leading to the courthouse were blockaded and officers armed with shotguns stood guard at each corner of the courthouse. There were more than a dozen armed officers spread throughout the small courtroom where Mr. Sutton was tried. *Sutton v. State*, 1999 WL 423005 *8 (Tenn. 1999). During the guilt/innocence phase of Mr. Sutton's trial, the State improperly placed on the defense table where Mr. Sutton and his two codefendants were seated the knives used in the homicide. The prosecutor did this despite the court's ruling that no sharp objects, including metal-tipped pens and pencils, were to be placed on defense counsel's table. In response to knives being placed within reach of Mr. Sutton and his codefendants, multiple armed correctional officers present in the small courtroom reached for their weapons. After the incident, the court instructed the State to have defense counsel examine weapons at the State's table. *State v. Sutton*, 761 S.W.2d at 769. The State's action created a further perception of Mr. Sutton as extremely dangerous.

The State compounded the error by then improperly arguing Mr. Sutton's future dangerousness based on his having a prior murder conviction. Specifically, the State argued:

> [A]nd what do we do to protect the Carl Esteps? What do we do? If a person is already in the penitentiary already serving time for armed robbery or a life sentence for murder, what is the next step? (p. 2632) What are you going to do to Nick Sutton, give him a life sentence? Will that prevent another Carl Estep?

(Vol. XXVII at 2633.) That argument continued during rebuttal: "Ladies and gentlemen, we suggest to you that persons who are armed robbers and first degree murderers are already conditioned to kill people." (Vol. XXVII at 2647.)

On direct appeal, the Tennessee Supreme Court denied the claim of prosecutorial misconduct based on the knife incident. The *Sutton* Court held that the record reflected that only one such incident occurred and that since the jurors knew that Mr. Sutton and his codefendants were inmates, "it probably came as no surprise to the jurors that [the defendants] would be closely watched and guarded." *State v. Sutton*, 761 S.W.2d at 769. The Court, therefore, found Mr. Sutton was not denied a fair trial. *Id.*

In state post-conviction proceedings, Mr. Sutton alleged that the State committed misconduct by using heightened courtroom security as a prop, which denied him a fair trial. Counsel for one of the codefendants testified that the courthouse was an "armed fortress." *Id.* As to the knife incident, Mr. Sutton's trial counsel, John Appman, testified that when the prosecutor put the knives on defense counsel table, Appman jerked away from the table so that neither Mr. Sutton nor the codefendants could take him hostage. He further testified that his fear of being taken hostage prevented him from making a motion for mistrial. *Id.* at *9. The trial judge, Judge Eblen, testified that he saw Mr. Sutton's counsel jump when the knives were placed on the table and also heard an officer pull a gun. However, the trial judge testified that the courtroom settled down quickly and the jury seemed to smile. *Id.* The post-conviction court denied the claim. *Id.* at *8-9.

The Tennessee Supreme Court upheld the denial, relying on the trial judge's post-conviction testimony that more than a dozen police and correctional officers present in the courtroom were not "overly conspicuous." Id. at *8. The Court upheld the post-conviction court's finding that the trial court took measures to reduce any prejudicial effects of the courthouse and courtroom security, including steps taken to hide the shackles on Mr. Sutton and his codefendants, and that the excessive security was not prejudicial to Mr. Sutton. *Id.* at *10.

The Court also noted that since the jurors lived in a county with two state prisons, they were more likely than jurors from other counties to be desensitized to "a possibly coercive atmosphere." *Id.* at *8. Additionally, during post-conviction review, the Supreme Court denied relief on Mr. Sutton's claim of prosecutorial misconduct based on the State's closing argument regarding future dangerousness. Although the Court found the closing argument remarks to be "obviously inappropriate," it deemed them to be harmless error. *Sutton v. State*, 1999 WL 423005 *26-27.

The Court, however, was deprived of the evidence now offered in this proceeding that the instances of prosecutorial misconduct, individually and cumulatively, prejudiced the jury. Recent interviews of numerous jurors reveal the significant effect that the excessive courtroom security had on them and the perception it created of Mr. Sutton as a very dangerous man. In his affidavit attached to this amended petition, foreperson Billy Dyer states:

> [The defendants] were well-secured and shackled in the courtroom. There was hand-cuffing in front, not behind the back. . . . Some of the female jurors were reluctant to give the death penalty. I assured them Nick Sutton was very dangerous and would be more secure on death row, and that the State of Tennessee was unlikely to execute him.

(Attachment 1.) Juror Johnny Lively states, "There was a lot of courtroom security during the trial." Although Mr. Lively could not recall whether Mr. Sutton or his codefendants had their wrists chained, he recalled the defendants wearing leg shackles. (Attachment 3.)

Regardless of residing in Morgan County, jurors certainly were not desensitized to the courtroom security or prosecutor's stunt with the knives. In her affidavit attached to this amended petition, juror Diana Cagley states:

> There was a lot of courtroom security during the trial. The defendants were shackled and the attorneys were not allowed to lay down pens or pencils on the table. That told me something about the defendants. Armed guards were everywhere and Judge Eblen did not let anyone leave the courthouse until the

> jury had been escorted back to the jail and we had called our families. . . . I was fearful for a period of time after the trial and hesitant to let people into my home.

(Attachment 4.) In her affidavit attached to this amended petition, juror Nancy Koger Jeffers states:

> What I most recall about being a juror on Mr. Sutton's case is how traumatized it left me. At the time, I was a young woman with young children and I was scared to death that Mr. Sutton or another defendant would come after me or my family. For at least two months after the trial, I would wake up in the middle of the night, get my children out of bed and drive to my mother's house. I couldn't feel safe in my own home. Even though the trial was thirty years ago, I am still affected by it. I will always carry the emotional trauma of this case.
>
> A big cause of my fear was how heavily guarded the courthouse and courtroom were. Although we were told that the security was because it was a murder case, I knew it had to be really bad to call for that much security. The courtroom was small and crowded with several guards. Mr. Sutton and his codefendants wore heavy chains. Other than this being a murder case, the heightened security was never explained to us. I recall during trial when the prosecutor placed the shanks/homemade knives on defense counsel's table, within reach of the defendants. I could not believe he did that. I reacted in shock but told myself that hopefully the defendants could not reach any of the weapons since they were chained.
>
> Although I grew up in Morgan County, had a grandfather that worked at Brushy Mountain and a brother-in-law who worked at Morgan County prison, before this trial, I never thought about the prisons not being safe. After the trial, I doubted my safety. . . .

(Attachment 2.) Clearly, the excessive security and the State's use of it throughout the trial had a deep negative effect on the jury.

In addition, the State's closing argument improperly relieved the jury of its responsibility for their verdict, in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). The State began its closing argument in Mr. Sutton's sentencing phase: "The first thing I would like to say to you is that it is not your fault that these two defendants are before you here today. It is not your fault that they have been found guilty of murder in the first degree. It is not your fault that Carl Estep was killed on the 15th day of January. And if either one of these defendants receives a death sentence, it will not be your fault." (Vol. XXVII at 2624.) This argument diminished the jury's

responsibility for the death verdict it returned, signaling to the jurors that the decision about the ultimate punishment was not in their hands, but rather the result of Mr. Sutton's own choice.

A citizen on trial for his life is entitled, under the constitutional provisions set out above, to fundamental fairness, a reliable determination of guilt and sentence, and to an individualized determination of the appropriate sentence guided by clear, objective, and evenly applied standards. *See, e.g., Gardner v. Florida*, 430 U.S. 349 (1977); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Gregg v. Georgia*, 428 U.S. 153 (1976). A prosecutor is required to act as a minister of justice and not merely as an advocate. As the Tennessee Supreme Court has explained, "it has long been recognized that the office has the inherent responsibility and duty to seek justice rather than to be just an advocate for the State's victory at any cost." *State v. Superior Oil*, 875 S.W.2d 658, 661 (Tenn. 1994); see also Commentary to Tenn. R. Sup. Ct. 8, R.P.C. 3.8 (The prosecutor "has the responsibility of a minister of justice whose duty is to seek justice rather than merely to advocate for the State's victory at any given cost."); *Berger v. United States*, 295 U.S. 78, 88 (1935) (a prosecutor is "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligations to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done."). In this instance, the prosecution's improper actions and argument render Mr. Sutton's death sentence unconstitutional.

Although the evidence of the prejudicial effect on the jurors underlying this claim is new evidence that has not been presented in prior proceedings, in the interest of justice and fundamental fairness, this Court should consider this claim. As a capital defendant, Mr. Sutton was entitled to heightened due process. The United States Supreme Court has consistently held that, because the death penalty is uniquely different than all other punishments, the Eighth

Amendment's prohibition on cruel and unusual punishment requires heightened procedural safeguards. This heightened due process includes fair notice and a fair and reliable decision-making process, and commands that death sentences be free from arbitrariness and capriciousness. *See, California v. Ramos*, 463 U.S. at 998-999; *Gardner v. Florida*, 430 U.S. at 357-358; *Woodson v. North Carolina*, 428 U.S. at 305; *Van Tran v. State*, 66 S.W.3d at 807. 2004).

Trial counsel for Mr. Sutton rendered ineffective assistance of counsel by both failing to object to the State's prejudicial misconduct and move for a mistrial, and also by failing to interview jury members about the State's improper antics prior to litigating the motion for a new trial. *See Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). Had counsel interviewed jurors, they would have verified that the State's misconduct directly led to their verdict of death. Counsel should have discovered this evidence prior to the motion for a new trial in order to supplement the record with this critical evidence. Had they done so, there is a reasonable probability that Mr. Sutton would have been granted a new sentencing hearing. Similarly, post-conviction counsel's failure to interview the jurors and develop this evidence denied Mr. Sutton's right to due process. *See California v. Ramos*, 463 U.S. at 998-999; *Gardner v. Florida*, 430 U.S. at 357-358; *Woodson v. North Carolina*, 428 U.S. at 305; *Van Tran v. State*, 66 S.W.3d at 807. 2004); see also Affidavit of Michael Passino (attachment 5).

Due process concerns can overcome the Post-Conviction Procedure Act's bar on previously determined issues. *Allen v. State*, No. M2009–02151–CCA–R3–PC, 2011 WL 1601587, at *7 (Tenn. Crim. App. Apr. 26, 2011) (citations omitted). Although the general rule is that the "law of the case" doctrine precludes reconsideration of issues already decided in prior

appeals of the same case, courts may reconsider issues that have been previously determined if one of the following exceptions applies: (1) the evidence offered at the [subsequent proceeding] was substantially different from the evidence at the first proceeding; (2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; or (3) the prior decision is contrary to a change in the controlling law occurring between the first and second [proceedings]. *State v. Hall*, 461 S.W.3d 469, 500 (Tenn. 2015) (citations omitted). Indeed, courts may, in their discretion, review an issue even though none of those three exceptions applies. *Id.* (reviewing sufficiency of the evidence despite inapplicability of the exceptions). Like in *Hall*, the shortcomings of counsel in this capital case warrant review of this issue due to the recognition of "heightened regard for the imperatives of fundamental fairness and substantial justice" in capital cases. *Id.* (citation omitted).

In addition, although the prosecutor's misconduct was previously raised, this Court should review the issue anew because the evidence now offered is substantially different than what was presented in the earlier proceedings. Both trial and state post-conviction counsel failed to interview the jurors, which would have established the prejudicial nature of the State's actions at trial. See Affidavit of State Post-Conviction Counsel Michael Passino (Attachment 5). Accordingly, the analysis is substantially different now than in the prior proceedings. It is only for the first time now that a court is given an opportunity to consider the actual effect that the excessive courtroom security and the State's misuse of it had on the jury. The new evidence demonstrates that Mr. Sutton's right to be free from cruel and unusual punishment was violated because his death sentence rests on the jury's belief in Mr. Sutton's future dangerousness driven by the State's misconduct and the manner in which the trial was conducted rather than simply the evidence in the case.

VI. Under *Hurst v. Florida*, a New Substantive Rule of Constitutional Law Applicable to Cases on Collateral Review, Mr. Sutton's Death Sentence is Invalid Because a Judge—Not a Jury—Made Factual Findings Necessary to Impose the Sentence of Death.

On October 4, 2016, this Court entered a Preliminary Order on "Motion to Reopen Post-Conviction Petition," granting in part Mr. Sutton's motion challenging as unconstitutional the prior violent felony conviction aggravator, based on *Johnson v. United States*, 135 S.Ct. 2251 (2015). In the Preliminary Order, the Court directed Mr. Sutton's counsel to ". . . investigate all possible constitutional grounds for relief for the purpose of filing an amended petition, if necessary. . . . Counsel may also raise any additional issues counsel deems necessary." Order, p. 15.

Mr. Sutton, pursuant to Article I, §§ 8, 9, 10, 16, 17, and 32 and Article XI, § 16 of the Tennessee Constitution, Amendments 5, 6, 8, and 14 to the United States Constitution, the right to due process and a full and fair hearing of state post-conviction claims, and *Hurst v. Florida*, 136 S.Ct. 616 (2016), presents this claim for post-conviction relief. The United States Supreme Court's ruling in *Hurst* makes clear that Mr. Sutton's death sentence violates his constitutional rights to due process and to a jury determination of his death eligibility. *Hurst* declares that "any fact that 'expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict' is an 'element' that must be submitted to a jury." *Hurst*, 136 S.Ct.at 621. In Mr. Sutton's case, the judge found facts necessary for the imposition of Mr. Sutton's death sentence. Because *Hurst* is a new substantive rule of constitutional law, this is Mr. Sutton's first opportunity to raise this claim. Counsel deems raising this claim necessary as *Hurst* makes clear that Mr. Sutton's death sentence is based on violations of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights to a jury trial, to due process of law, to heightened due process of law in a

capital proceeding, and freedom from cruel and unusual punishment and arbitrary sentence of death.

A. *Hurst* Holds that the United States Constitution Requires that a Jury Must Find all Facts Necessary to Impose a Sentence of Death.

In *Hurst v. Florida*, 136 S.Ct. at 624, the United States Supreme Court held that Florida's death penalty statute was unconstitutional because, under the statute, the sentencing judge—not the jury—made factual findings required for the imposition of the death penalty. Specifically, a defendant was not eligible for death under Florida's statute until the trial judge made findings regarding the sufficiency of aggravating circumstances, mitigating circumstances, and the relative weight of each. *Id.* at 622. *Hurst* declared that "any fact that 'expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict' is an 'element' that must be submitted to a jury." *Id.* at 621. In other words, a jury—not a judge—must "find each fact necessary to impose a sentence of death." *Id.* at 619.

B. The Court Rendered Findings Required for Imposition of the Death Sentence in Mr. Sutton's Case.

In Tennessee, the trial judge has a "mandatory duty to serve as the thirteenth juror." *State v. Carter*, 896 S.W.2d 119, 122 (Tenn. 1995). The thirteenth juror must make certain evidentiary findings before imposing the final judgment. *Id.* In so doing, the judge does not merely consider whether the evidence is constitutionally sufficient, but instead must "'weigh the evidence himself as if he were a juror and determine the credibility of the witnesses and the preponderance of the evidence.'" *State v. Ellis*, 453 S.W.3d 889, 899 (Tenn. 2015) (quoting *State v. Johnson*, 692 S.W.2d 412, 415 (Tenn. 1985) (Drowota, J., dissenting)). "The rationale behind the thirteenth juror rule is that '[i]mmediately after the trial, the trial court judge is in the same position as the jury to evaluate the credibility of witnesses and assess the weight of the evidence, based upon the

live trial proceedings.'" *State v. Hall*, 461 S.W.3d 469, 490 (Tenn. 2015) (quoting *State v. Moats*, 906 S.W.2d 431, 434 (Tenn.1995)); *see also, State v. Dankworth*, 919 S.W.2d 52, 56 (Tenn. Crim. App. 1995) ("The trial judge must be personally satisfied with the verdict"). Such findings are a "necessary prerequisite to the imposition of a valid judgment." *Ellis*, 453 S.W.3d at 900 (quoting *Moats*, 906 S.W.2d at 434); *see also, Carter*, 896 S.W.2d at 122.

"Although trial judges have a 'mandatory duty to serve as the thirteenth juror in every criminal case,' a judge is not required to provide a specific statement on the record to indicate his or her approval of the jury's verdict." *Hall*, 461 S.W.3d at 490 (quoting *Carter*, 896 S.W.2d at 122). In death penalty cases, the judge's thirteenth juror findings are necessarily required to impose the death penalty. A defendant is not eligible for death until the trial judge makes such a finding. *See, e.g., Smith v. State*, 357 S.W.3d 322, 339 (Tenn. 2011) (The court "approved the death penalty as thirteenth juror, and entered judgement sentencing Smith to death."); *State v. Anglin*, No. 01C01–9403–CC–00106, 1998 WL 531847, at *7 (Tenn. Crim. App. 1998) ("However, the trial judge announced to counsel at a sidebar conference that he would, as thirteenth juror, set aside a sentence of death as he was not convinced that the aggravating circumstances had been proven beyond a reasonable doubt."). Without such a finding, any judgment imposing a death penalty would be invalid, despite any verdict the jury reached. *See Ellis*, 453 S.W.3d at 900 (explaining that "when a trial court in a criminal case fails to discharge its mandatory duty to act as the thirteenth juror, the sole remedy on appeal is reversal of the defendant's conviction(s) and a new trial."). Here, the trial judge served as the thirteenth juror. *See, State v. Sutton*, 761 S.W. at 768.

Tennessee's death penalty statute prescribes that after finding the existence of an aggravating circumstance, the next essential part of imposing the death penalty is the weighing

of aggravating and mitigating circumstances. Tenn. Code Ann. § 39–13–204(g)(1)(B) (requiring an aggravating circumstance or circumstances to have been proven by the State to outweigh any mitigating circumstances beyond a reasonable doubt). The sentencing judge, in fulfilling the role of the thirteenth juror, also made this critical finding. Because the judge's finding was a necessary prerequisite under Tennessee law for the imposition of a valid judgment and Mr. Sutton could not have received a death sentence without the judge's finding, the judge's finding elevated the maximum sentence for Mr. Sutton's offense from life in prison to death.

Under *Hurst*, Tennessee's system requiring the trial judge to make the final decision to sentence a defendant to death is unconstitutional. The *Hurst* Court held that the Sixth Amendment prohibits the trial court from making a finding that is a prerequisite to imposing death. *Hurst*, 136 S.Ct. at 622. In the Court's words, because "the maximum punishment Timothy Hurst could have received without any judge-made findings was life in prison without parole," and because "a judge increased Hurst's authorized punishment based on her own factfinding . . . . Hurst's sentence violates the Sixth Amendment." *Hurst*, 136 S.Ct. at 622.

In so holding, the *Hurst* Court rejected Florida's argument contending that because the jury's death recommendation necessitated the finding of an aggravating circumstance, the judge's finding only provided the defendant with additional protection. *Id.* The Court explained that "the Florida sentencing statute does not make a defendant eligible for death until 'findings by the court that such person shall be punished by death.'" *Id.* (quoting Fla. Stat. § 775.082(1)). Thus, because the trial court made the final findings, and because the defendant was not eligible for death without such findings, Florida's death penalty scheme was unconstitutional. *Id.*

Under the thirteenth juror rule in Tennessee, a defendant similarly cannot receive a capital sentence until the trial judge weighs the evidence and makes final findings regarding the

appropriate punishment. Furthermore, by (1) finding that an aggravating circumstance has been proven beyond a reasonable doubt, (2) finding that the aggravating circumstance outweighs any mitigating circumstances beyond a reasonable doubt, and (3) approving the jury's verdict by entering the final judgment, the judge's findings increase the authorized punishment. However, under *Hurst*, a death sentence must be imposed "on a jury's verdict, not a judge's factfinding[.]" *Hurst*, 136 S.Ct. at 624. The sentencing judge's findings in Mr. Sutton's case therefore violate both the United States and the Tennessee Constitutions. *See id.*

Further, it is notable that the seven Justices of the majority decision in *Hurst* necessarily rejected the dissenting justice's argument that the sentencing judge may perform "a reviewing function" over the jury's decision to impose the death penalty. *See Hurst*, 136 S. Ct. at 625 (Alito, J., dissenting). Justice Alito's description of a judge duplicating the steps performed by the jury while reviewing the jury's verdict is, essentially, the thirteenth juror rule espoused by Tennessee law. The majority's implicit rejection of this rationale further demonstrates the unconstitutionality of our thirteenth juror rule under *Hurst*. Accordingly, Mr. Sutton's death sentence is invalid.

VII. The State of Tennessee's Unconstitutional Mistreatment of Mr. Sutton while He Was Incarcerated at State Prisons Prohibits the State from Seeking His Execution.

Mr. Sutton's participation in the homicide of Carl Estep at Morgan County Correctional Facility was a direct result of his Post-Traumatic Stress Disorder—defined by hypervigilance and inability to accurately assess danger—caused or exacerbated by the constant threats to his life and overall unsafe and inhumane conditions that he suffered during his incarceration at Brushy Mountain Prison (BMP) and Morgan County Regional Correctional Facility (MCRCF). Executing Mr. Sutton for a crime that is the direct result of his cruel and inhumane treatment by the State violates the Eighth and Fourteenth Amendments to the United States Constitution and

Article I, Sections 8, 13, and 16 of the Tennessee Constitution. The State has lost any right to impose the death penalty in this case. This constitutional violation demands commutation of Mr. Sutton's death sentence. *See, e.g., McKenzie v. Day*, 57 F.3d 1461, 1488 n.22 (9th Cir. 1995) (Norris, J., dissenting) (arguing that commutation is the appropriate remedy for a claim that execution after lengthy confinement on death row violates the 8th Amendment and the evolving standards of decency).

Mr. Sutton was incarcerated at BMP in 1980 at the age of nineteen, after his conviction of first degree murder. Although he enlisted in the military at age seventeen, he was honorably discharged shortly thereafter because he could not emotionally handle the stress of military training, given the psychological toll of his chaotic, abusive childhood. In 1982, several years after the Davidson County Chancery Court held that conditions in the Tennessee Department of Corrections (TDOC) institutions, including the level of violence, violated the United States and Tennessee Constitutions, the United States District Court for the Middle District of Tennessee reached a similar conclusion, finding "an unconstitutionally high level of violence in TDOC." *Grubbs v. Bradley*, 552 F. Supp. 1052, 1061 (M.D. Tenn. 1982). In fact, the level of violence in the institutions was so high that Judge Morton found that inmates lived "in constant danger of violent attack." *Grubbs*, 552 F. Supp. at 1081.

Violence was omnipresent at BMP during the time of Mr. Sutton's incarceration. *See Grubbs v. Bradley*, 552 F.Supp. 1052. "[I]nmates at Brushy live[d] in constant fear of violent attack." *Id.* at 1102. The overcrowding and lack of decent treatment created or worsened psychological and emotional problems of those housed there. *Id.* at 1066. The specific acts of violence cited poisoning, and "cold blooded murder." *Id.* The court found that "no part of BMP can be considered safe harbor from the constant threat of violence." *Id.* at 1103.

Mr. Sutton remained at BMP for three years until the prison was closed in 1983. He was then transferred to MCRCF, where he remained until the homicide of Mr. Estep in January 1985. Two weeks after Mr. Estep was murdered, a federal evaluator concluded that the conditions and escalating violence at MCRCF were so terrible that "[r]easonable and prudent precautions to protect the public while assuring the personal safety of staff and inmates [are] not possible. . . ." *See* F. Woods, "Report on Conditions at Selected Adult Correctional Facilities in the Tennessee Department of Corrections," (MCRCF Section) at 1. (Attachment 6). In October 1985, the Attorney General for the State of Tennessee and the Commissioner of the Tennessee Department of Correction told the federal court that while they recognized the endemic, if not epidemic, level of violence in TDOC institutions, TDOC was wholly unable to manage the institutions safely. *See Grubbs, supra,* Oct. 23, 1985 Trans., at 25, 43, 78, 82. (Attachment 7.)

American jurists have long recognized that claims of the infliction of mental anguish and physical torture are cognizable under the Eighth Amendment. *See, e.g., Hudson v. McMillan*, 112 U.S. 995, 1004 (1992) (Blackmun, J., concurring) ("I am unaware of any precedent of this Court to the effect that psychological pain is not cognizable for constitutional purposes [under the Eighth Amendment]. If anything, our precedent is to the contrary."); *Furman v. Georgia*, 408 U.S. 238, 271-73 (1972) (Brennan, J., concurring) ("The Framers also knew that there could be exercises of cruelty other than those which inflicted bodily pain or mutilation."); *Smith v. Aldingers*, 999 F.2d 109, 110 n.4 (5th Cir. 1993) (collecting recent cases holding that mental or psychological torture can violate the Eighth Amendment).

In *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972), and *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909 (1976), the Supreme Court explained that for the death penalty to pass Eighth Amendment standards, it can be imposed only in cases where its application will clearly

serve "two principal social purposes: retribution and deterrence." *Gregg*, 428 U.S. at 183. The death penalty should not be imposed where its application would be disproportionate to these defined social purposes. As Justice White noted in *Furman*, when the death penalty "ceases realistically to further these purposes . . . its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the Eighth Amendment." *Furman*, 408 U.S. at 312 (White, J., concurring).

Because of the State's cruel and inhumane treatment of Mr. Sutton at BMP and MCRCF, which directly led to his capital offense, neither retribution nor deterrence retains any force justifying imposition of the death penalty. *Id.* Given the unique circumstances of this case, imposition of the death penalty would be "patently excessive" and would be a "pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes." *Lackey v. Texas*, 514 U.S. 1045 (1995) (J. Stevens, concurring in denial of certiori but noting importance of issue). Given the unique circumstances of this case, imposition of the death penalty would be "patently excessive" and would be a "pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes." *Cf.* Memorandum of Justice Stevens respecting denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995).

VIII. Tennessee's Death Penalty System Is Broken and Violates the Eighth Amendment's Prohibition Against Cruel and Unusual Punishment.

In support of this claim, Mr. Sutton relies upon the Revised Affidavit of H.E. Miller, Jr. which summarizes the results of his extensive study of public records pertaining to first degree murder cases decided between July 1, 1977 (beginning with the enactment of Tennessee's current capital sentencing scheme) through June 30, 2016—a period of 39 years.

(Attachment 8.)[8] Information compiled in Mr. Miller's study clearly reveals two points:

i) The death penalty system as applied in Tennessee operates in an arbitrary and capricious manner in violation of Eighth Amendment principles first set forth in *Furman v. Georgia,* 408 U.S. 238 (1972); and

ii) The evolving standards of decency in Tennessee, and particularly in Morgan County, have rendered Mr. Sutton's death sentence unconstitutional.

This new claim, based upon Mr. Miller's extensive study of public records, has ripened over time. The kind of arbitrariness and capriciousness at issue here can be evaluated only by viewing the manner in which the entire sentencing system has operated over a prolonged period. Similarly, by definition, evolving standards of decency change over time and can be ascertained only by examining historical trends. There can be a point in time long after the enactment of a capital punishment sentencing scheme when the scheme in its application becomes demonstrably arbitrary and contrary to evolving standards. *See, e.g., Connecticut v. Santiago,* 122 A.3d 1 (Conn. 2015) (ruling the Connecticut death penalty sentencing scheme unconstitutional by virtue of arbitrariness demonstrated over time, considering contemporary standards of decency, and applying that ruling retroactively to vacate all existing death sentences in the state). For reasons revealed by the statistical data, as explained below, that point in time has now arrived in Tennessee.

A. The Principles Which Underlie Tennessee's Capital Sentencing System.

The reasoning behind our current capital sentencing scheme stems from *Furman v. Georgia,* 408 U.S. 238 (1972), where the United States Supreme Court addressed three

[8] Mr. Miller's study is a work in progress that is being updated. Undersigned counsel offers Mr. Miller's revised affidavit that was prepared for litigation in another capital post-conviction proceeding. At an evidentiary hearing in this matter, Petitioner will present additional evidence from Mr. Miller including updated data pertaining to first degree murder cases in Tennessee and information specific to Morgan County.

principles that underlie the Cruel and Unusual Punishment Clause of the Eighth Amendment:

> First, death is different.
>
> "The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity."

Id. at 306 (Stewart, J., concurring). The Supreme Court has reiterated this principle. "From the point of view of the defendant, it is different both in its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action." *Gardner v. Florida*, 430 U.S. 349, 357 (1977).

The qualitative difference of death from all other punishments requires a correspondingly greater need for reliability, consistency and fairness in capital sentencing decisions. *See, e.g., Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). A capital sentencing scheme must provide a "meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." *Furman*, 408 U.S. at 313 (White, J., concurring). Therefore, "[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner*, 430 U.S. at 357. Because of the uniqueness of the death penalty, courts must carefully scrutinize sentencing decisions to minimize the risk that the penalty will be imposed in error or in an arbitrary and capricious manner. *See Godfrey v. Georgia*, 446 U.S. 420, 427 (1980). A capital sentencing scheme must provide a "meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." *Furman*, 408 U.S. at 313 (White, J., concurring).

Second, whether a punishment is constitutional is to be judged by contemporary, "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). The proscription of cruel and unusual punishment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S. 349, 378 (1910). Thus, the court's constitutional decisions should be informed by "contemporary values concerning the infliction of a challenged sanction." *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). Obviously, "contemporary values" change over time.

Third, the death penalty must not be imposed in an arbitrary and capricious manner. Justices Stewart and White issued the decisive opinions in *Furman* that represent the Court's Holding —the common denominator among the concurring opinions constituting the majority Justice Stewart explained it this way:

> In the first place, it is clear that these sentences are "cruel" in the sense that they excessively go beyond, not in degree but in kind, the punishments that the state legislatures have determined to be necessary. In the second place, it is equally clear that these sentences are "unusual" in the sense that the penalty of death is infrequently imposed for murder, and that its imposition for rape is extraordinarily rare. But I do not rest my conclusion upon these two propositions alone. These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.

Furman, 408 U.S. at 309-10 (Stewart, J., concurring) (internal citations omitted; emphasis added).

And Justice White opined:

> I begin with what I consider a near truism: that the death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system . . . . [W]hen imposition of the penalty reaches a certain degree of infrequency, it

> would be very doubtful that any existing general need for retribution would be measurably satisfied. Nor could it be said with confidence that society's need for specific deterrence justifies death for so few when for so many in like circumstances life imprisonment or shorter prison terms are judged sufficient, or that community values are measurably reinforced by authorizing a penalty so rarely invoked.

Id. at 311-12 (White, J., concurring) (emphasis added).

> It is also my judgment that this point has been reached with respect to capital punishment as it is presently administered under the statutes involved in these cases . . . . I cannot avoid the conclusion that as the statutes before us are now administered, the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice.

Id. at 312-13 (White, J., concurring) (emphasis added).

Furman makes at least three more specific points concerning a proper Eighth Amendment analysis in the death penalty context:

(i) Courts must view how the entire sentencing system operates—i.e., how the few are selected to be executed from the many murderers who are not—and not just focus on the particular case under review. As the Supreme Court explained, we must "look[] to the sentencing system as a whole (as the Court did in *Furman*)," *Gregg*, 428 U.S. at 153 (emphasis added): a constitutional violation is established if a defendant demonstrates a "pattern of arbitrary and capricious sentencing." *Id.* at 195 n. 46;

(ii) The application of the death penalty system, as well as evolving standards of decency, will change over time and eventually can reach a point where the system is operating in an unconstitutional manner; and

(iii) An essential factor to consider in the Eighth Amendment analysis is the frequency with which the death penalty is carried out.

When analyzing whether the death penalty violates the Eighth Amendment by viewing

the sentencing system as a whole and ascertaining the frequency with which the death penalty is carried out, it is necessary to look at statistics over time. After all, frequency is a statistical concept. A similar need to analyze statistics, particularly statistical trends, applies when assessing evolving standards of decency.

And, indeed, that is exactly what the *Furman* Court did. Each of the concurring opinions in *Furman* relied upon various forms of statistical evidence that purported to demonstrate patterns of inconsistent or otherwise arbitrary sentencing. *Furman*, 408 U.S. at 249-52 (Douglas, J., concurring); *id.* at 291-95 (Brennan, J., concurring); *id.* at 309-10 (Stewart, J., concurring); *id.* at 313 (White, J., concurring); *id.* at 364-66 (Marshall, J., concurring). Evidence of such inconsistent results of sentencing decisions that could not be explained on the basis of individual culpability, indicated that the system operated arbitrarily and therefore violated the Eighth Amendment.

In response to *Furman*, numerous states enacted new capital sentencing schemes. In 1976 in *Gregg v. Georgia*, 428 U.S. 153 (1976), the United States Supreme Court upheld a "guided discretion" sentencing scheme. This type of sentencing statute was designed to address *Furman*'s concern with arbitrariness by: (i) bifurcating capital trials in order to treat the sentencing decision separately from the guilt-innocence decision; (ii) narrowing the class of death-eligible defendants by requiring the prosecution to prove aggravating circumstances; (iii) allowing the defendant to present mitigating evidence, to ensure that the sentencing decision is individualized; (iv) guiding the jury's exercise of discretion within that narrowed range by instructing the jury on the proper consideration of aggravating and mitigating circumstances; and (v) ensuring adequate judicial review of the sentencing decision as a check against possible arbitrary and capricious decisions. The Court explained the fundamental principle of *Furman* that "where discretion is afforded a

sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." 428 U.S. at 189.

In 1977, Tennessee enacted its version of a guided discretion capital sentencing scheme. *See* T.C.A. sections 39-13-204 and 206. Tennessee's capital sentencing statute is closely patterned after the Georgia scheme upheld in *Gregg*. Although the General Assembly subsequently amended Tennessee's statute a number of times, its basic structure remains the same.[9]

B. The Tennessee Capital Sentencing Statute Fails to Fulfill *Furman*'s Basic Requirements.

It has now become clear from H.E. Miller, Jr.'s examination of Tennessee's first degree murder cases that have accumulated over the past 39 years that Tennessee's capital sentencing scheme fails to fulfill *Furman*'s basic requirements of "replacing arbitrary and wanton jury discretion with objective standards to guide, regularize, and make rationally reviewable the process for imposing a sentence of death." *Woodson*, 428 U.S. at 303. Nor does Tennessee's sentencing scheme comply with our evolving standards of decency. Mr. Miller's study and our experience show that at least eleven factors contribute to and demonstrate that Tennessee's sentencing statute violates the Eighth Amendment's prohibition against cruel and unusual punishment.

(1) Infrequency

Frequency of application is the single most important factor in assessing the

[9] The most important amendments broadened the class of death-eligible defendants by adding numerous aggravating circumstances. This broadening of the class of death-eligible defendants correspondingly broadened the range of discretion for the prosecutor in deciding whether to seek death, and for the jury in making the sentencing decision at trial, which in turn increased the potential for arbitrariness. It is therefore significant that over the past ten to twenty years, Tennessee has experienced a sharp decline in new death sentences, notwithstanding the availability of death as a sentencing option in an increasing number of cases. This is an indicator of Tennessee's evolving standard of decency.

constitutionality of the death penalty. It sets the foundation for analysis of the system. Since July 1, 1977, there have been at least 2,095 Tennessee cases[10] resulting in first degree murder convictions. A total of 220 defendants have been sentenced to death. Of those, 94 defendants' death sentences have been upheld, and 126 have been vacated or reversed. Accordingly, over the span of the past 39 years, only 4.5% of those convicted of first degree murderer have received death sentences that have been upheld on appeal—and most of those cases are still under review.

Since 2000, the death penalty rate is substantially lower. Over the past 16 years (from January 1, 2000 through June 30, 2016), there have been 974 first degree murder convictions, and only 21 of those defendants received death sentences that have been upheld on appeal. Thus, the capital sentencing rate since 2000 has decreased to 2.2%, roughly half the rate for the entire period since 1977.

The frequency of actual executions is much lower. Tennessee has executed only six condemned inmates since 1977. Thus, just 0.3% of the defendants convicted of first degree murder over the past 39 years have been executed. Even if Tennessee were to rush to execute the dozen or so death row inmates who have completed their three tiers of review (*see* Tenn. S. Ct. R. 13), the percentage of executed defendants when compared to all first degree murder cases would remain infinitesimally small.

These frequency rates compare to the time of the *Furman* decision, when Justice Stewart pointed out that the application of the death penalty was "cruel and unusual in the same way that being struck by lightning is cruel and unusual." 408 U.S. at 310. The same can be said today. At this level of infrequency, it is impossible to conceive how Tennessee's death penalty system

[10] No Rule 12 reports were filed in more than 30% of first degree murder cases. This has made the search for all first degree murder cases difficult. While Mr. Miller has accounted for all death penalty cases and all cases for which Rule 12 reports have been filed, he is continuing his search for cases with no Rule 12 reports. He inevitably will find more of those cases, which will further skew the statistics towards a greater number of total cases and a correspondingly lower death penalty frequency rate.

is serving any legitimate penological purpose. No reasonable scholar could maintain that there is any deterrence value to the death penalty when it is imposed with such infrequency.[11] And there is minimal retributive value when the overwhelming percentage of cases end up resolved with sentences of life or life without parole.[12] Any residual deterrent or retributive value in Tennessee's capital sentencing system is further diluted to the point of non-existence by the other factors of arbitrariness discussed below.

(2) Error rates

Of the 220 defendants that have been sentenced to death in Tennessee since 1977, only 94 defendants have had their sentences upheld on appeal—and most of those cases are still under review. Conviction or death sentences have been reversed or vacated in 126 cases. This amounts to a reversal rate of 57.3%. One of the fundamental principles of Eighth Amendment jurisprudence is that our capital sentencing system must be reliable. With a 57.3% reversal rate, reliability is lacking. The existence of error in Tennessee capital cases and the prospect of reversal is a random factor that introduces a substantial element of arbitrariness into the system.

(3) Geographic disparity

Death sentences are not evenly distributed throughout the state. Whether it is a function of political environment, racial tensions, the attitude of prosecutors, the availability of resources, the competency of defense counsel, or the characteristics of typical juries, some counties have

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[11] The overwhelming majority of social science research on the issue of the deterrence effect of capital punishment "concludes that the death penalty has no effect on the homicide rate." D. Beschle, "*Why Do People Support Capital Punishment? The Death Penalty as Community Ritual*," 33 Conn. L.Rev. 765, 768 (2001).

[12] Moreover, the federal courts have recognized that, as society has evolved and matured, the erstwhile importance of retribution as a goal of and justification for criminal sanctions has waned. Over time, "our society has moved away from public and painful retribution toward even more humane forms of punishment." *Baze v. Rees*, 553 U.S. 35, 80 (2008) (Stevens, J., concurring). Moreover, the United States Supreme Court has cautioned that, of the valid justifications for punishment, "retribution . . . most often can contradict the law's own ends. This is of particular concern . . . in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008).

zealously pursued the death penalty in the past, while others have avoided it altogether. Death sentences have been imposed in only about one-half (48 out of 95) of the counties in Tennessee.

Shelby County stands at one end of the spectrum. Since 1977, it has accounted for 37% of all sustained death sentences. Lincoln County is one of the many counties that stand at the other end of the spectrum. Over the past 39 years in Lincoln County, there have been ten first degree murder cases involving eleven defendants and not a single death sentence was imposed, even in two mass murder cases.

Indeed, in the entire Middle Grand Division, over the past 25 years, since January 1, 1992, only six defendants received sustained death sentences—a rate of only one case every four years on average over that entire period, and no cases since February 2001.

The statistics from recent years show increasing geographic disparity. Over the last 10 years of Mr. Miller's study (from July 1, 2006 through June 30, 2016), juries have imposed death sentences in fourteen cases from a total of seven counties, as follows:

County	Number of Death Sentences	Population[13]
Chester	1	17,471
Knox	1	451,324
Madison	1	97,610
Shelby	8	938,069
Sullivan	1	156,791
Tipton	1	61,870
Washington	1	126,302
Totals	14	1,849,437

The population of the entire state is 6,600,299. Accordingly, from July 1, 2006 through June 30, 2016, death sentences have been imposed in only 7.4% of Tennessee's counties representing only 28% of the state's total population with Shelby County accounting for 57% of all death sentences over the ten-year period.

[13] These population figures are from the U.S. Census Bureau's estimates for July 1, 2015. *See* www.census.gov.

There is a statistically significant disparity between the geographic distribution of first degree murder cases, on the one hand, and the geographic distribution of death sentences, on the other. Mere geographic location of a case makes a difference, contributing yet another element of arbitrariness to Tennessee's capital punishment system.

(4) Comparative disproportionality

The death penalty is intended only for "the worst of the worst" crimes, but that is not what Tennessee's capital sentencing scheme produces. The statistics concerning one simple metric make the point—the number of victims. Since 1997, Mr. Miller has identified 251 defendants convicted of multiple counts of first degree murder. Of those cases, only 33 (or 13%) received death sentences, whereas 216 (or 86%) received sentences of life or life without parole (not counting the two awaiting retrial). Several defendants who received a sentence of less than death were convicted of three or more murders. Thus, if a defendant deliberately kills two or more victims, they are seven times more likely to be sentenced to life than death; and the sentence will most likely depend on extraneous factors such as geographic location, the prosecutor's charging practices and the quality of defense counsel. This comparative disproportionality demonstrates a lack of rationality and the presence of arbitrariness in Tennessee's capital sentencing scheme.

Moreover, the death penalty is disproportionate and arbitrary in Mr. Sutton's case because similarly-situated offenders who have been convicted of similar crimes (i.e., the murder of a fellow prison inmate) have not received a death sentence. A death sentence for the killing of an inmate in prison is exceedingly rare in Tennessee, indeed so rare as to constitute an arbitrary and freakish result in this case. Tennessee Department of Corrections data indicates that, between 1993 and 2003, there were nineteen inmates whose deaths were classified as

homicide.[14] A death sentence was sought for only four of the 19 defendants who were charged with first degree murder between 1993 and 2003. Only one defendant received the death penalty—Joel Schmeiderer, who has since been resentenced to life in prison without the possibility of parole.[15] Since Mr. Schmeiderer, no other person has been sentenced to death for killing an inmate. Currently, Mr. Sutton is the only person who is on Tennessee's death row for killing a prison inmate. Where identically situated persons have received a sentence less than death, Mr. Sutton's death sentence is unconstitutionally arbitrary, capricious, and disproportionate.

Mr. Sutton's death sentence is also arbitrary and capricious in light of the State's pretrial offer to life in prison. The State agreed that a life sentence for Mr. Sutton was appropriate and would serve all the interests necessary in this case.[16] The prosecution, however, conditioned Mr. Sutton's offer upon his two codefendants also entering guilty pleas. Mr. Sutton did not accept the offer because of his concern for his codefendants, one of whom was not involved in Mr. Estep's death and one whose involvement and culpability were limited.

Despite the life offer and Mr. Sutton's willingness to accept the offer for himself, the State sought and obtained a death sentence at trial. The jury sentenced Mr. Sutton to death, sentenced one codefendant, Mr. Street, to life, and acquitted the other codefendant, Mr. Freeman. *State v. Sutton*, 761 S.W.2d at 764. At the time of Mr. Sutton's crime, defendants who were sentenced to life in prison were eligible for consideration of parole after having served 25

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[14] Information on inmate homicides prior to 1993 is not readily available due to TDOC record keeping prior to that year.

[15] At the time of the offense, Mr. Schmeiderer was serving a life sentence for first degree murder. *State v. Schmeiderer*, 319 S.W.3d 607, 615 (Tenn. 2010). During his capital state post-conviction proceedings, Mr. Schmeiderer received an offer of life in prison without the possibility of parole, in response to the overwhelming mitigation, later developed in post-conviction, that trial counsel had failed to develop and deprived the jury from hearing. *See* Agreed Disposition of Post-Conviction Case, entered December 22, 2014. (Attachment 9.)

[16] State Post-Conviction Tr. Vol. VI, pp. 675-679.

years.[17] Mr. Street, who received a life sentence, is parole eligible. Mr. Sutton has already served 30 years and had he been offered a plea bargain that did not require an innocent codefendant accepting a life sentence, Mr. Sutton would have been parole eligible five years ago. It is not only arbitrary and capricious—but cruel in every sense—that the only reason Mr. Sutton received the death sentence was his concern that an innocent codefendant not be forced into accepting life in prison.

(5) Duration of cases and natural death

Among the 60 inmates currently on death row under sentence of death, the average length of time they have lived on death row is more than 20 years. Of the six whom Tennessee has executed, one had been on death row for close to 29 years, and their average length of time on death row was 20 years (this includes one inmate who had been on death row only eight years when he was executed because he waived his appeals). We now have several death row inmates who have lived on death row for close to 30 years or longer. The length of time inmates serve on death row facing possible execution further diminishes any arguable penological interest in capital punishment. With the passage of time, the force of deterrence disappears, and the meaning of retribution is lost.

Moreover, 22 condemned inmates have died of natural causes on death row. This means that a death-sentenced inmate is almost four times more likely to die of natural causes than by execution. A high percentage of natural deaths is an actuarial fact affecting the carrying out of the death penalty, which constitutes an additional element of arbitrariness in the system. Moreover, if a death row inmate is much more likely to die of natural causes, then death

[17] Prior to the 1993 enactment of life in prison without the possibility of parole, the only available punishments for first degree murder were death and life with the possibility of parole. A defendant who received a life sentence was not eligible for parole consideration until the defendant had served at least twenty-five (25) full calendar years. *State v. Bush*, 942 S.W.2d 489, 504 n. 8 (Tenn. 1997).

sentences lose any possible deterrent or retributive effect.

(6) Quality of defense representation

Mr. Miller's study points to 45 death-sentenced inmates who have been granted relief on the grounds of ineffective assistance of counsel. In other words, courts have found that 23% of the Tennessee defendants sentenced to death were deprived of their constitutional right to adequate legal representation. There are numerous reasons for deficient defense representation in death penalty cases. Defending a capital case is all-consuming, requiring an extraordinary amount of time and resources. Capital defense practitioners must possess specialized skills, such as being able to select a death-qualified jury, develop mitigation, and present mental health expert testimony. It is difficult for private counsel to build and maintain a law practice while effectively defending a capital case at reduced rates, *see* Tenn. S. Ct. R. 13. (setting maximum billing rates for appointed counsel) and most public defender offices have excessive caseloads without having to take on capital cases.

In Tennessee, especially with the sharp decline in capital prosecutions, few attorneys have experience defending capital cases and training opportunities are limited. Moreover, in light of constraints on compensation and funds for expert services, Tennessee offers inadequate resources to properly defend a capital case or to attract skilled trial attorneys.

As a result, people accused of capital crimes are often defended by lawyers who lack the skills, resources, and commitment to handle such serious matters. This fact is confirmed in case after case. It is not the facts of the crime but rather the quality of legal representation that distinguishes cases where the death penalty was imposed from many similar cases where it was not. The death penalty continues to be imposed, not upon those who commit the worst crimes, but upon those who have the misfortune to be assigned the worst lawyers - yet another source of

arbitrariness in the system.

(7) Prosecutorial discretion and misconduct

There are at least eight capital cases where relief was granted due to prosecutorial misconduct.[18] Capital cases are presumably handled by the most experienced and qualified prosecutors, so there is no excuse for this repeated pattern of misconduct. Moreover, we can reasonably assume that undetected misconduct, potentially affecting case outcomes, has occurred in other capital prosecutions. Suppressed *Brady* material is not always discovered. Beyond the problem of misconduct, prosecutors vary in their attitude towards the death penalty. Some strongly pursue it, while others avoid it. In more sparsely populated districts, the costs and burdens of prosecuting a capital case may be prohibitive. In other districts (such as Shelby County), the political environment and other factors may encourage the aggressive pursuit of the death penalty.[19]

The varying ways that prosecutorial discretion is exercised, and the occurrence of prosecutorial misconduct in some cases, are important additional factors contributing to arbitrariness.

(8) Inaccuracy

Aside from the 104 capital defendants whose convictions or death sentences have been reversed or vacated, three condemned inmates have been released from prison because they were

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[18] *See Bates v. Bell*, 402 F.3d 635 (6th Cir. 2005) (improper closing argument); *House v. Bell*, 2007 WL 4568444 (E.D.Tenn. 2007) (*Brady* violation); *Johnson v. State*, 38 S.W.3d (Tenn. 2001) (*Brady* violation); *State v. Bigbee*, 885 S.W.2d 797 (Tenn. 1994); *State v. Smith*, 755 S.W.2d 757 (Tenn. 1988) (improper closing argument); *State v. Buck*, 670 S.W.2d 600 (Tenn. 1984) (improper closing argument and *Brady* violation); *Christopher A. Davis v. State*, Davidson County, No. 96-B-866 (April 6, 2010) (*Brady* violation); *Gdongalay Berry v. State*, Davidson County, No. 96-B-866 (April 6, 2010) (*Brady* violation). There are other cases of *Brady* violations which did not serve as grounds for reversal. *See, e.g., Abdu r'Rahman v. Bell*, 999 F.Supp. 1073, 1088-1090 (E.D.Tenn. 1998) (*Brady* violations found not material); *Rimmer v. State*, Shelby Co. 98-010134, 97-02817, 98-01003 (Oct. 12, 2012) (while the prosecution suppressed evidence, the conviction was vacated on ineffectiveness grounds).

[19] For example, although we have not collected the data on this issue, it is well known among the defense bar that in Shelby County, in a significant percentage of capital trials, juries do not return verdicts of first degree murder, suggesting a tendency on the part of the prosecution to overcharge.

exonerated. A fourth was released after his death sentence was vacated and a retrial was ordered on the strength of evidence of innocence.[20] In all likelihood, there are other death row inmates who are actually innocent.

The lack of reliability of a capital sentencing scheme is an independent reason for declaring it unconstitutional under due process and Eighth Amendment principles. But it also infuses another arbitrary factor in the process by which the random few are selected for execution.

(9) Race

Implicit racial bias exists in our criminal justice system, and this bias inevitably infects the capital punishment system. In 1997, the Tennessee Supreme Court's Commission on Racial and Ethnic Fairness issued its Final Report at the conclusion of its two-year review of the State's judicial system.[21] Among other things, the Commission concluded that while no "explicit manifestations of racial bias abound [in the Tennessee judicial system] . . . , institutionalized bias is relentlessly at work."[22] While our society continually attempts to eradicate the effects of implicit bias from our institutions, there is no indication that it has been eliminated from our capital sentencing system.

In March 2007, the American Bar Association (ABA) published *Evaluating Fairness and Accuracy in State Death Penalty Systems: An Analysis of Tennessee's Death Penalty Laws*,

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[20] As set forth in Mr. Miller's revised affidavit, Michael Lee McCormick was acquitted in his retrial; Paul Gregory House was released when his charges were dropped on the strength of newly discovered evidence of actual innocence; Gussie Vann's charges were dropped due to evidence of actual innocence; and Ndume Olatushani was released upon entering an *Alford* plea.

[21] Final Report of the Tennessee Commission on Racial and Ethnic Fairness to the Supreme Court of Tennessee (1997).

[22] *Id.* at 5.

Procedures, and Practices.[23] As part of that study, the ABA commissioned a study of "Race and Death Sentencing in Tennessee, 1981–2000."[24] The study concluded that "white-on-white homicides are more likely than black-on-black homicides to result in a death sentence, even after the level of homicide aggravation is statistically controlled."[25]

The recent trend regarding race is disturbing. Over the last ten years of Mr. Miller's study (from July 1, 2006 through June 30, 2016), there have been fourteen trials resulting in death sentences. In ten of those cases (71%), the defendants were African-American. It appears that as the death penalty becomes less frequently imposed, in an increasing percentage of cases it is returned against African-American defendants.

Race certainly has an effect in capital cases, which is another source of unacceptable arbitrariness.

(10) Judicial disparity

While judges are presumed to be objective and impartial, different judges view these cases differently, and the disposition of a judge can influence their decisions in capital cases. We can begin by looking at the nine opinions issued in *Furman* through the five opinions in *Glossip v. Gross,* 135 S.Ct. 2726 (2015) and in cases since then. These judges, persons of integrity and intelligence, acting in good faith, and looking at the same cases involving the same legal principles, often come to opposing conclusions about what the proper outcome should be. And that is to be expected in the highly controversial and emotionally charged arena of capital punishment. It is human nature. Everyone approaches issues with certain cognitive biases borne of differing world views. This is not a criticism, for in our society diversity of viewpoint is a

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[23] This report is published on the ABA website at http:/www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/tennessee/finalreport.authcheckdam.pdf (last visited Jan. 10, 2017).
[24] *Id.* at Appendix 1.
[25] *Id.* at Q.

good thing. But in death penalty cases, where divergent points of view are more likely to come to the fore, and where arbitrariness is not to be tolerated, differences in judicial disposition contribute to the capriciousness of the capital punishment system.

(11) Timing

The timing of a first degree murder conviction is another arbitrary factor affecting the odds that the death penalty would be imposed. A defendant convicted before 2000 was three times more likely to be sentenced to death than a defendant convicted after 2000, and more than five times more likely to be sentenced to death than a defendant convicted any time during the past ten years.

The numbers of cases in which death sentences were imposed (both those that have been upheld and those that that were subsequently reversed or vacated), in five-year intervals as set forth in Mr. Miller's Revised Affidavit, are as follows:

7/1/1977 to 6/30/1982 = 34 (6.8 per year)
7/1/1982 to 6/30/1987 = 50 (10.0 per year)
7/1/1987 to 6/30/1992 = 45 (9.0 per year)
7/1/1992 to 6/30/1997 = 26 (5.2 per year)
7/1/1997 to 6/30/2002 = 37 (7.4 per year)
7/1/2007 to 6/30/2012 = 9 (1.8 per year)
7/1/2012 to 6/30/2016 = 3 (0.75 per year) (4 year interval)

The trend is clear. During the ten-year period from July 1982 through June 1992, death sentences were imposed in Tennessee at a rate of 9.5 cases per year, whereas from July 2007 through June 2016, defendants were sentenced to death at a rate of just 1.3 cases per year. This sharp downward trend continued to accelerate over the past four years during which we saw only three new death sentences—all from Shelby County and all African-American defendants. The increasing rarity of new death sentences reflects our evolving standard of decency away from the imposition of the death penalty. It also demonstrates that the timing of the case, along with its

location and the race of the defendant, are other arbitrary and capricious factors that pervade Tennessee's capital sentencing system.

C. The Evolving Standards of Decency in Morgan County Have Rendered Mr. Sutton's Death Sentence Unconstitutional.

In Morgan County, the death penalty is an endangered species and may well be extinct. Nicholas Sutton is the only Morgan County defendant on death row in Tennessee. Since 1977, there have been six Morgan County defendants convicted of first degree murder with only Mr. Sutton receiving a death sentence. Thus, the last time someone was sentenced to death in Morgan County was March 4, 1986. That means that in the past 40 years, Morgan County defendants were sentenced to death at a rate of just .025 cases per year, with no one receiving a death sentence in almost 31 years. These statistics demonstrate that in Morgan County, the death penalty is contrary to contemporary standards of decency.

United States Supreme Court precedent mandates that "where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Gregg*, 428 U.S. at 189. It is clear from the statistics and our experience over the past 39 years that Tennessee's capital punishment system "fails to provide a constitutionally tolerable response to *Furman*'s rejection of unbridled jury discretion in the imposition of capital sentences." *Woodson*, 428 U.S. at 302.

Mr. Sutton is "among a capriciously selected random handful upon whom the sentence of death has in fact been imposed." *Furman*, 408 U.S. at 310. In light of the historical record, which reflects the capriciously random way death sentences are imposed in Tennessee, as well as our evolving standard of decency, our death penalty sentencing system as applied must be declared unconstitutional under *Furman* and its progeny.

In the alternative, in light of the statistics in Morgan County, imposition of the death penalty in Mr. Sutton's case is arbitrary and capricious, and runs counter to the evolving standard of decency that now prevails in Morgan County, and his death sentence should therefore be vacated on that ground.

IX. Cumulative Error.

Mr. Sutton hereby incorporates into this claim for relief, by reference, all other paragraphs contained in this amended petition as well as all paragraphs contained in the Motion to Reopen Post-Conviction Proceedings. Mr. Sutton asserts that all claims of error coalesced into a unitary abridgment of Mr. Sutton's constitutional rights, and this Court should consider the scope of the alleged errors in their entirety when assessing prejudice. *McKinney*, 2010 WL 796939, at *37. But even if this Court considers each claim of error individually and finds that none of the individual errors at trial or on appeal violated his rights, Mr. Sutton nevertheless submits that the cumulative effect of all such errors violated his rights under Article I, §§ 6, 7, 8, 9, 16, 17, 19, and 32 and Article XI, §§ 8 and 16, of the Tennessee Constitution, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. *United States v. Hernandez*, 227 F.3d 686, 697 (6th Cir. 2000); *Groseclose v. Bell*, 895 F. Supp. 935, 960 (M.D. Tenn. 1995).

Statement Required by Tenn. Code Ann. § 40-30-104(e)

As to any ground for relief for which authority for raising the ground is not contained contemporaneously with the above allegations supporting the ground, Petitioner asserts the following allegations of fact explaining why each ground for relief raised in this petition was not previously presented in any earlier proceedings:

1. The ineffective assistance of counsel claims were not adjudicated in any prior proceeding and are not waived. The claims in this petition assert a challenge to the effectiveness of the attorneys who represented the petitioner in the only proceedings preceding the present action and it would have been impossible for these attorneys to allege their own ineffectiveness due to an inherent conflict of interest. Tenn. Code Ann. §40-30-106(g).

2. To the extent that this Court concludes that any issue raised in this petition was not presented during a prior proceeding where the issue could have been presented, Mr. Sutton did not personally, with knowledge and understanding, waive those issues. Contrary to the ruling of the Tennessee Supreme Court in *House v. State*, 911 S.W.2d 705 (Tenn. 1995), the absence of a personal, knowing, and understanding waiver on the part of Mr. Sutton precludes waiver of the claims raised in this petition.

a. Amendments VIII and XIV to the United States Constitution and Article I, §§8 and 16 and Article XI, §16 of the Tennessee Constitution preclude application of the *House* waiver standard to claims involving fundamental rights, as do all issues raised in this petition. Amendments VIII and XIV to the United States Constitution and Article I, §§8 and 16 and Article XI, §16 of the Tennessee Constitution preclude a court from reaching a conclusion from a silent record. For a waiver of fundamental rights to be effective, the record must affirmatively demonstrate a knowing and understanding waiver of such rights. The record contains no such demonstration, and therefore, Amendments VIII and XIV to the United States Constitution and Article I, §§8 and 16 and Article XI, §16 of the Tennessee Constitution preclude the Court from concluding that the petitioner waived the above-mentioned claims.

b. Ineffective assistance of counsel explains the failure of Petitioner's counsel to raise claims at trial and on appeal. Petitioner had a constitutionally protected right to effective assistance of counsel at his trial and on direct appeal. Counsel provided ineffective assistance by failing to raise claims that if they had been raised, there is reasonable probability that the outcome of the Petitioner's trial would have been different. For the reasons set out in this petition, the failure of Petitioner's counsel to raise these claims constitutes deficient performance. Because the petitioner received ineffective assistance of counsel in violation of Amendment VI to the United States Constitution and Article I, § 9 of the Tennessee Constitution, he is excused from any failure to present the above-presented claims at trial or on direct appeal.

3. This Court cannot apply the waiver statute to avoid addressing the merits of any claims raised in this petition. In prior cases, Tennessee courts have routinely addressed the merits of claims that were subject to the waiver defense. To address the merits of potentially waived claims in those cases but not address the merits of potentially waived claims in this case would constitute a violation of the petitioner's right to equal protection under the law as guaranteed by Amendment XIV to the United States Constitution and Article XI, § 8 of the Tennessee Constitution.

4. Certain grounds raised in this petition involve the constitutionality of the death penalty in this case. This is an area of the law that is constantly changing, and thus, many of the grounds and subparts are subject to new law exceptions to waiver defenses.

5. Article XI, § 16 of the Tennessee Constitution precludes the waiver of any right included in Tennessee's Declaration of Rights in Article I of the Tennessee Constitution because those rights "shall forever remain inviolate." Article XI, § 16. Consequently, any waiver doctrine

cannot apply to claims that Petitioner asserts based on violations of any right contained in Article I of the Tennessee Constitution.

Prayer for Relief

For the foregoing reasons, Petitioner Nicholas Todd Sutton prays the Court to find that his rights under the Tennessee Constitution and the United States Constitution were violated during the sentencing phase of his capital trial. For all of the above reasons, and based upon the full record of this matter, Petitioner requests that the Court provide the following relief:

A) That Petitioner be granted such discovery as is necessary for full and fair resolution of the claims contained in this Petition;

B) That leave to amend this Petition, if necessary, be granted;

C) That an evidentiary hearing be conducted on all claims involving disputed issues of fact;

D) That Respondents be Ordered to respond to this Petition;

E) That Petitioner be Permitted to file a Reply Memorandum; and

F) That Petitioner's convictions and sentences be vacated and a new trial be ordered, or such further relief as the Court deems appropriate.

Respectfully submitted,

Deborah Y. Drew, BPR #032608
Deputy Post-Conviction Defender

Andrew L. Harris, BPR #034989
Assistant Post-Conviction Defender

Office of the Post-Conviction Defender
P. O. Box 198068, Nashville, TN 37219-8068
(615) 741-9331 (main); (615) 741-9430 (fax)
Counsel for Petitioner Nicholas Todd Sutton

Petitioner's Verification under Oath Subject to Penalty for Perjury

I swear (or affirm) under penalty of perjury that the contents of the foregoing are true and correct to the best of my knowledge and belief.

Nicholas Todd Sutton

Nicholas Todd Sutton, Petitioner

Dated: 02-01-17

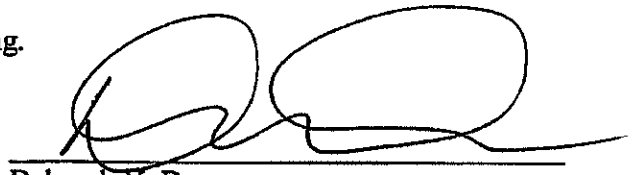
SWORN TO AND SUBSCRIBED before me this the 1st day of February 2017.

Notary Public

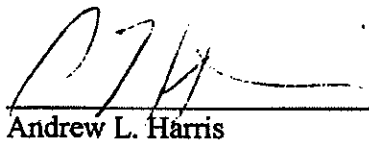
My commission expires: 07/03/17

Certificate of Counsel

We, Deborah Y. Drew and Andrew L. Harris, certify that we have investigated possible constitutional violations Petitioner has alleged. That investigation, however, is not complete. We have attempted to raise all non-frivolous claims known to us at this time but also have requested leave to amend this petition if necessary. We are aware that any ground not raised shall be forever barred by application of Tennessee Code Annotated §40-30-206(g). We understand the requirement of this certificate as set out in Supreme Court Rule 28 and respectfully submit that we cannot ethically sign the certificate as set out in the rule because we do not know whether we have raised all available, non-frivolous issues and recognize that we likely have not done so, as the investigation in this case remains ongoing.



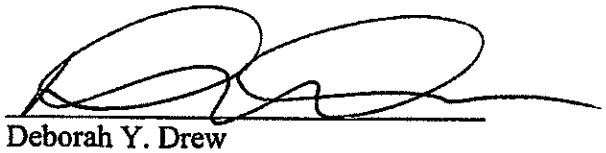
Deborah Y. Drew



Andrew L. Harris

Certificate of Service

I hereby certify that a true and exact copy of the foregoing was provided via first-class mail, postage prepaid, to District Attorney General Robert Edwards, Ninth Judicial District, 1008 Bradford Way, Kingston, TN 37763 on this 1 day of February, 2017.



Deborah Y. Drew

Attachment 1

NICHOLAS TODD SUTTON vs. STATE OF TENNESSEE

AFFIDAVIT

I, Billy Dyer, do hereby affirm that the following is true to the best of my knowledge, information and belief:

I reside in Morgan County, Tennessee, at _____

I served as a juror in the case of State v. Nicholas Sutton in 1986. I was the foreman.

I was also the foreman on a jury immediately before that in a prison rape case.

Nick Sutton had two co-defendants he was tried with. They were well-secured and shackled in the courtroom. There was hand-cuffing in front, not behind the back.

I was called to attend a court proceeding for one of Nick Sutton's co-defendants. It had to do with the jury having been allowed to go to a church singing during the trial. I did not attend the church singing.

BCD

I believe the death penalty is the correct punishment for any premeditated murder that is not accidental.

During my jury service I was sequestered at the Holiday Inn at Harriman.

I have set on several juries and was usually the foreperson.

Some of the female jurors were reluctant to give the death penalty. I assured them Nick Sutton was very dangerous and would be more secure on death row, and that the State of Tennessee was unlikely to execute him.

I thought the judge and the prosecution did a good job. The defense had a terrible case to work with.

Billy G. Dyer
Signature

Sworn to and subscribed to before me this 27th day of October, 2016.

Holly C Browning
NOTARY PUBLIC

My commission expires: 11/06/2017

HOLLY C. BROWNING
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

BGD

Attachment 2

NICHOLAS TODD SUTTON vs. STATE OF TENNESSEE

AFFIDAVIT

I, Nancy Kaye Jeffers, do hereby affirm that the following is true to the best of my knowledge, information and belief:

I reside in ~~Morgan~~ Cumberland County, Tennessee, at Crossville. I am over the age of eighteen. I was a juror on N. de Sutton's trial in 1996 in Nashville.

What I most recall about being a juror on Mr. Sutton's case is how traumatized it left me. At the time, I was a young woman with young children and I was scared to death that Mr. Sutton or another defendant would come after me or my family. For at least two months after the trial, I would wake up in the middle of the night, get my children out of bed and drive to my mother's house. I couldn't feel safe in my own home. Even though the trial was thirty years ago, I am still affected by it. I will always carry the emotional trauma of this case.

At this time of my fear was heavily guarded the courthouse and courtroom were. Although we were told that the security was because it was a murder case, I knew it had to be really bad to call for that much security. The courtroom was small and crowded with several guards. Mr. Sutton and his codefendants were heavily chained. Other than this being made clear, the heightened security was never

N.J.

explained the (c).

I recall during trial when the prosecutor placed the shanks / homemade knives on defense counsel's table, within reach of the defendants. I could not believe he did that. I reacted in shock but told myself that hopefully the defendants could not reach any of the weapons since they were chained.

Although I grew up in Morgan county, had a grandfather that worked at Brushy Mountain and a brother-in-law who worked at Morgan County prison, before this trial, I never thought about the prisons not being safe or the community not being safe. After the trial, I doubted my safety. I remember being told during trial that violence was just how prison life is. It's either kill or be killed. That seems to be what happened in this case - that anything goes in prison. I remember I couldn't believe that Mr. Sutton killed another inmate over a bad drug deal. I also couldn't believe the number of stab wounds that, to me, seem senseless.

I recall there may have been some talk about self-defense but defense counsel definitely did not make a convincing case. I remember the photos of the bloody cell where the inmate was killed.

N.J.

I also remember the drastic difference between how Mr. Sutton looked in trial and the photos we were shown. In court, he was clean cut, well dressed, and nice-looking. The picture, however, was not what I saw in court. In the photo, Mr. Sutton looked like a freak. He looked mean. That was hard for me to reconcile.

I don't believe anything about Mr. Sutton's mental state was introduced into evidence but I don't know if that would have made a difference to me. I have been told that since the trial, Mr. Sutton's legal team gathered information about Mr. Sutton's upbringing, including having been abandoned and abused and having had a mentally ill father. I sympathize with this but it does not excuse what he did and I don't know that I would have given a different sentence if I had heard it. I had a less than ideal upbringing and went through bad things but I have figured out and hurt someone. I believe that people know right from wrong.

I remember that all of us on the jury were pretty much in agreement quickly, both during the guilt phase and the penalty phase deliberations. I knew of a few of the other jurors at the time - neighbors or former schoolmates, and got to know others after the trial through our children.

N.J.

activities. Even being around others within some other jurors did not make it easy. It is difficult being asked to come to an agreement about what should happen to someone especially when we do not know the law and have not been given all the facts.

All I wish I had known more facts that I am now aware of. First, I wish I had known the details of the inmate who was killed. We were not told that he was in prison for aggravated rape of his nine-year-old stepdaughter. I do not believe anyone deserves to be killed, but knowing that about the victim may have been a reason for me to choose life in prison instead of death for Mr. Sutton.

Another fact I wish I had been told is that all three defendants had been offered a life sentence prior to trial. In trial we were told that Mr. Sutton was such a bad guy, he needed to be killed. But the prosecutor knew that he had offered Mr Sutton life in prison. Again the details about the victim, knowing about this life offer before trial may have led me to choose life in prison for Mr Sutton instead of death.

Deborah Drew and Jessica Thomson, who work for the Office of the Post-Conviction Defender Office, are currently represent

N.G.

Mr. Sutton in state post-conviction proceedings have spoken to me about my experience as a juror in Mr. Sutton's case.

Nancy Jeffers
Signature

Sworn to and subscribed to before me this 26th day of October, 2016.

Jessica Thomson
NOTARY PUBLIC

My commission expires: Jan. 11, 2017

JESSICA THOMSON
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Attachment 3

NICHOLAS TODD SUTTON vs. STATE OF TENNESSEE

AFFIDAVIT

I, Johnny Lively, do hereby affirm that the following is true to the best of my knowledge, information and belief:

I reside in Morgan County, Tennessee, at _____

I served as a juror on the case of State v. Nicholas Sutton.

We were sequestered for nine or ten days.

I don't remember if the defendants were handcuffed but I do recall they wore leg shackles.

I do believe the death penalty is the appropriate punishment for premeditated murder and that the principle of "an eye for an eye" applies.

There was a lot of courtroom security during the trial.

This was my first jury service. I have only served on one jury since.

Signature

Sworn to and subscribed to before me this 27th day of October, 2016.

NOTARY PUBLIC

My commission expires: 11/06/2017

HOLLY C. BROWNING
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

Attachment 4

NICHOLAS TODD SUTTON vs. STATE OF TENNESSEE

AFFIDAVIT

I, Diana Cagley, do hereby affirm that the following is true to the best of my knowledge, information and belief:

I reside in Morgan County, Tennessee, at _____

I served as a juror in State v. Sutton in 1986. We, the jurors, were sequestered and stayed at the Holiday Inn in Harriman.

There was a lot of courtroom security during the trial. The defendants were shackled and the attorneys were not allowed to lay down pens or pencils on the table. That told me something about the defendants. Armed guards were everywhere and Judge Eblen did not let anyone leave the courthouse until the jury had been escorted back to the jail and we had called our families.

I was familiar with the foreperson Billy Dyer and Tommy Patrick because we went to church together. I knew one of the bailiffs whose house was burned down that week. He was replaced, possibly because it was related to the trial.

I believe the death penalty is the correct punishment for murder, if there is no doubt as to guilt, because the Bible says if you take a life you must give your own.

Estep, the victim in the case, was a child molester. I knew he had gone to prison for molestation but I don't remember exactly how - possibly through a family connection.

I worked in the county clerk's office from 1978-1982 doing civil matters.

I believe Nick Sutton's co-defendants would have been convicted to the extent Sutton was had there not been issues with chain of custody of evidence.

I was fearful for a period of time after the trial and hesitant to let people into my home.

I had a roommate during sequestration. She was a young blonde woman.

I thought the prosecution did a good job.

Considering what the defense had to work with, they did a pretty good job.

The jurors were allowed to go to church once during the trial but we were with guards the whole time and couldn't talk to others in the church.

Signature

Sworn to and subscribed to before me this 26th day of October, 2016.

NOTARY PUBLIC

My commission expires: 11/06/2017

HOLLY C. BROWNING
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

Attachment 5

NICHOLAS TODD SUTTON vs. STATE OF TENNESSEE

AFFIDAVIT

Affiant, Michael J.Passino, being duly sworn, state as follows:

1. I am an adult resident citizen of Nasvhville, Davidson County, Tennessee, where I have resided since November 1977, or so.

2. I make this affidavit based on personal knowledge, except where indicated otherwise. References to hearsay are for the purpose of explaining my actions or include information of the type I use as an attorney to form judgments or take actions as attorneys do. Conclusions are aimed at clarifying material I address or are to encapsulate matters based on my knowledge, training, education and experience as an attorney even though I make this declaration as a percipient witness, albeit through a lens that necessarily informs how I view matters.

3. At the time I became involved in Mr. Sutton's case, I was a staff attorney at the Capital Case Resource Center of Tennessee (CCRC). His counsel, John Eldridge, a criminal defense lawyer in Knoxville, Tennessee contacted CCRC for assistance in Mr. Sutton's post-conviction case. I was not a party to that conversation, but learned of it in a number of ways. As a consequence, I was assigned to work on Mr. Sutton's case. I drafted the Verified Amended Petition For Post-Conviction Relief, which reflects that Mr. Sutton verified it on or about December 24, 1991. Mr. Eldridge then filed the Petition with the Morgan County Clerk's Office.

4. Although I would have read the trial record and conducted legal research before drafting the Petition, I have no recollection of conducting or causing to be conducted a factual investigation of Mr. Sutton's case before drafting the Petition, and

during my tenure at CCRC it was not my usual practice to do so because of the time pressures the office was under; the nature of the ways we were presented with and addressed problems of lawyers in the field; and my relative inexperience in the area of death penalty litigation at the time as well as the ways in which my prior experience differed from that of criminal and capital attorneys.

5. That is, prior to going to CCRC I had extensive experience in civil litigation and complex litigation, including class action suits, anti-trust, civil RICO, ERISA, juvenile institutional challenges, and large labor disputes of one kind or another. I also had limited prior experience in handling the direct appeals of criminal cases for the state of Tennessee. Since that time, and in the following years, I have had fairly extensive experience in state and federal post-conviction work and have gained a much fuller understanding of the capital trial process.

6. When I left CCRC I returned to private practice, but continued to represent Mr. Sutton, whose case had simply been sitting in the post-conviction court, where it was overseen by Judge Eblen, the original trial judge, then Special Judge William Inman (who recused himself for bias), and then Court of Appeals Judge Gary Wade, appointed specially by the Tennessee Supreme Court after Judge Inman removed himself from the case.

7. After his special appointment Judge Wade took almost immediate action to move Mr. Sutton's case expeditiously, holding a status conference, setting deadlines, carefully overseeing motion practice, and setting the matter for a hearing. Although I will still in a small practice, in fact and effect, living at the economic margins, the actions of Judge Wade, the size of the record, the complexity of the legal actions, demanded

almost my full attention to the case as well as my investment of my personal funds in various investigative and expert services because Judge Wade denied important requests. Although the records of the Administrative Office of the Tennessee Supreme Court will reflect the substantial time I invested in Mr. Sutton's case during a relative short period, at a reimbursement rate of what I seem to recall being $20.00, the plain fact is that it was impossible for me to conduct an adequate investigation or properly pursue each and every non-frivolous issue as required, if not demanded by the Tennessee Supreme Court's Rules governing the ethical obligations of attorneys and/or the ABA Guidelines on the Appointment and Performance of Counsel in Capital Standards I say this not to excuse my performance, but to state a *fact* not subject to principled dispute by reasonable minds having a minimal understanding of a capital attorneys duties coupled with a proper respect for the law. The reality was that I was presented with the circumstance of doing a competent job, in a complex case, with significant legal and factual issues in a short time while simultaneously having to maintain a law practice and support (or contribute to the support of) a family, my wife, and our children.

8. While I hired an investigator, neither the investigator nor I interviewed jurors, nor did I direct her to do so. I did not do so, because I was ignorant of the vital purpose of juror interviews in capital work post-trial and post-conviction and based on this ignorance did not see or realize the important connection between such information and issues I actually presented in the Petition. The decision was not a tactical or strategic one, and I had neither the knowledge nor a factual basis for making it. Compounding the above, while investigation was ongoing, and I was trying to develop and present issues for the hearing, I did not consider amending the Petition to expand or more carefully articulate

issues, nor did I give the matter thoughtful consideration when I was researching related issues.

9. So, for example, while I was focused on courtroom security, which one witness described as much like an armed fortress, I did not allege the shackling issue in the Petition, did not seek to amend it in, and did not seek to develop testimony on the issue although shackling presented a distinct constitutional fair trail issue, was factually and legally supported, if not compelling, and folded into existing claims bolstering those claims as well as standing on its own bottom. The failure to further investigate and present the shackling issue was not a tactical or strategic decision. In fact, given its relationship to facts that I knew and issues I was investigating, this oversight is one of breathtaking stupidity, at best.

10. Relatedly, although I have said, I do not have access to my files or the complete record because the Office of the Post-Conviction Counsel does not presently have these documents, counsels from the Office of the Post-Conviction Defender have provided me with the affidavits of four jurors from Mr. Sutton's trial which I have reviewed, viz. the affidavits of Billy Dyer, Nancy Koger Jeffers, Diana Cagley, and Johnny Lively. These jurors witnessed Mr. Sutton shackled throughout his capital trial and seem to have been deeply and adversely affected by this *and* related courtroom security measures. Juror Nancy Koger Jeffers, for example, recalls she was "scared to death that Mr. Sutton or another defendant would come after her." And, remarkably, although thirty years have passed, when states that she is "still affected," and "will always carry the emotional trauma of this case." This terror, which arose out of her impressions of the defendants, which, in turn, arose from numerous courtroom indicia of

their dangerousness, including that Mr. Sutton and the other defendants "wore heavy chains." With respect to the shackling issue, as stated above, I did not interview these jurors, did not presented their testimony, did not present a separate claim, decisions that were neither strategic nor tactical for the reasons describe above.

11. Had I obtained the information from the jurors that current counsel has obtained, I also would have raised a claim that Mr. Sutton was deprived of a constitutionally fair capital jury. The juror affidavits that I reviewed establish that several of the jurors who deliberated and returned a sentence of death were "automatic death penalty" (ADP), meaning that they would always vote for a sentence of death for someone convicted of first-degree murder, without regard to aggravating or mitigating circumstances. This is fundamental trial error under *Morgan v. Illinois* 504 U.S. 719, 729 (1992) ("[i]f even one such juror is empaneled and the death sentence is imposed, the state is disentitled to execute the sentence"); it is fundamental error, undermining the very structure of the criminal process. *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993) (Rehnquist, C.J., concurring (citing *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991)). Prejudice to Mr. Sutton's right to a fair trial by an impartial jury in such circumstances is, *and must be presumed.*

12. Despite limited funding, I retained Dr. Gillian Blair, a licensed clinical psychologist to evaluate Mr. Sutton in light of his traumatic, abusive childhood as well as the conditions he endured while incarcerated at Brushy Mountain Prison and the lawlessness that prevailed at the Morgan County Regional Correctional Facility. Given my inability to adequately investigate and retain the mental health experts deemed imperative in capital defense, I was unable to fully develop mental state evidence that I

believe would have presented a factual basis for attacking and undermining the elements of first-degree murder, as well as providing a factual basis for attacking aggravating circumstance including the fact that it was a prison killing in a facility which had been found independently to be, which the Tennessee Attorney General and the Commissioner of the Department of Corrections acknowledge to the United States District Court to be, dangerous for inmates and officers alike. Despite these circumstances and my knowledge of Mr. Sutton's past, I did not investigate, prepare or present a detailed social history either to present to the court or to present to mental health experts to reach informed conclusions. So, too, I did not request neuropsychological testing nor brain imaging with regard to these important mental-state or related issues. This lack of investigation or further evaluation was not a tactical or strategic decision. Nor did I fail to pursue these issues based on an adequate factual investigation. Indeed, the circumstances were precisely otherwise. Both inquiries and pursuits are elementary steps to be conducted in any capital case.

13. My abilities as a labor and civil rights lawyer, as well as a capital post-conviction lawyer have been recognized by others, despite whether that recognition has been warranted. Appointment to a death penalty case imposes minimal duties of competence and diligence of the attorney that exceed by some substantial measure those imposed on ordinary attorneys. The appointment imposes that an attorney use his or her best efforts, not to win, but to ensure that issues are properly investigated and presented to the courts so that they can do their jobs. Yet, counsel's duty to the courts is insignificant when measured against counsel's duty to his client. The above-described errors and omissions constituted a failure to meet my obligations to the trial court and Mr.

Sutton. It is no excuse, nor does it ameliorate these failure that there was little money available, that I had insufficient time, that had competing personal interests, or that I acted out of ignorance in whole or in part.

14. Because this affidavit was prepared in haste, without the ability to consult relevant records, I reserve the right to emend and/or supplement; the above statements upon review of all the relevant available documents.

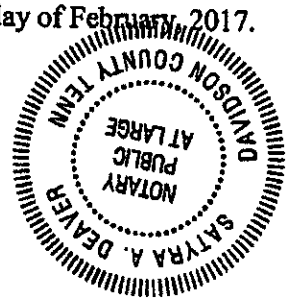
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Michael J. Passino,
Assistant Federal Public Defender

Sworn to and subscribed to before me this 1st day of February, 2017.

NOTARY PUBLIC

My commission expires: 5/5/2020



Attachment 6

Report on conditions at selected Adult Correctional Facilities in the Tennessee Department of Corrections

Prepared by:

Frank W. Wood
Consultant

June, 1985

REP 'T ON THE QUALITY OF LIFE AT SELECTED ADULT CORRECTIONAL FACILITIES IN THE TENNESSEE DEPARTMENT OF CORRECTIONS

REPORT SUBMITTED

TO:

PATRICK D. MCMANUS,

SPECIAL MASTER

STEVE NORRIS,

COMMISSIONER

TENNESSEE DEPARTMENT OF CORRECTIONS

G. GORDON BONNYMAN,

LEGAL SERVICES

MIDDLE TENNESSEE, INC.

JOHN F. SOUTHWORTH, JR.,

ASSISTANT ATTORNEY GENERAL

TENNESSEE

PREPARED BY:

FRANK W. WOOD,

CONSULTANT

JUNE, 1985

PREFACE

SINCERE THANKS, GRATITUDE AND APPRECIATION ARE EXTENDED TO THE SPECIAL MASTER, THE TENNESSEE DEPARTMENT OF CORRECTIONS AND THOSE STAFF, ATTORNEYS, CONSULTANTS AND INMATES, WHO, BY THEIR RECEPTIVITY, RESPONSIVENESS, CANDOR, HONESTY, CONTRIBUTIONS AND COOPERATION, ASSISTED ME IN THE PREPARATION OF THIS REPORT.

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INTRODUCTION

AN INITIAL PHONE CONTACT WAS MADE WITH ME BY FEDERAL COURT APPOINTED SPECIAL MASTER, PATRICK D. MCMANUS. IN AUGUST, 1984, AT WHICH TIME I STATED MY RELUCTANCE TO ENGAGE IN ANY ADVERSARIAL PROCESS WITH PROFESSIONAL CORRECTIONAL COLLEAGUES AND PRACTITIONERS, WHO MAY BE STRUGGLING TO CARRY OUT THEIR RESPONSIBILITIES WITH INSUFFICIENT FISCAL AND HUMAN RESOURCES OR IN A POLITICAL CLIMATE THAT IS NOT CONDUCIVE TO HUMANE AND PROGRESSIVE CONTEMPORARY CORRECTIONS MANAGEMENT. I WAS CONTACTED AGAIN BY PHONE IN OCTOBER, 1984, AT WHICH TIME MR. MCMANUS INDICATED THAT PROGRESS WAS BEING MADE WHICH WOULD PERMIT ME TO BE INVOLVED AS A NON-ADVERSARIAL CONSULTANT TO ASSIST ALL PARTIES INVOLVED IN THE "GRUBBS LITIGATION BEFORE THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION." SUBSEQUENT PHONE CONVERSATIONS BETWEEN SPECIAL MASTER MCMANUS AND MINNESOTA COMMISSIONER OF CORRECTIONS, ORVILLE B. PUNG, AND FINALLY PHONE CONVERSATIONS BETWEEN, THEN TENNESSEE COMMISSIONER OF CORRECTIONS, PELLEGRIN, AND COMMISSIONER PUNG, FOLLOWED BY A NOVEMBER 9, 1984 LETTER, RESULTED IN MY INVOLVEMENT AS ONE OF SEVEN SEPARATE CONSULTANT ENTITIES BEING RETAINED BY THE STATE OF TENNESSEE TO EVALUATE THE DEPARTMENT AND SELECTED ADULT FACILITIES.

IN A THREE PAGE LETTER TO COMMISSIONER PELLEGRIN DATED DECEMBER 6, 1984, I OUTLINED THE INITIAL INFORMATION I WOULD NEED TO RESEARCH PRIOR TO MY ON-SITE VISITS TO THE FACILITIES, MOST OF WHICH WAS RECEIVED (35 LBS.) DURING THE FIRST WEEK IN JANUARY, 1985.

ON DECEMBER 9, 10 & 11, 1984, I MET IN NASHVILLE, TENNESSEE FOR THE FIRST TIME WITH THE DEPARTMENT LEADERSHIP AND OTHER CONSULTANTS ALREADY UNDER CONTRACT. SUBSEQUENTLY, ON DECEMBER 17, 1984 I SUBMITTED A PROPOSAL TO IMPLEMENT AN EVALUATION OF THE SOCIAL/ENVIRONMENTAL AND QUALITY OF LIFE FACTORS AT SEVEN PRE-DESIGNATED FACILITIES. THOSE FACILITIES WERE:

TENNESSEE STATE PENITENTIARY

BLEDSOE COUNTY REGIONAL CORRECTIONAL FACILITY

MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY

FORT PILLOW STATE PRISON

TURNEY CENTER

MIDDLE TENNESSEE REGIONAL CORRECTIONAL FACILITY

TENNESSEE PRISON FOR WOMEN

THE PROPOSAL LIMITED THE AMOUNT OF TIME I COULD DEVOTE (30 DAYS OF EARNED ANNUAL LEAVE) TO THE EVALUATIONS BECAUSE OF MY FULL TIME RESPONSIBILITIES AS WARDEN OF MINNESOTA'S HIGH SECURITY FACILITY. THE METHODOLOGY USED FOR EVALUATING THE QUALITY OF LIFE FACTORS INCLUDED:

A. REVIEW OF DOCUMENTS

B. SITE VISITS (DIRECT OBSERVATION)

C. STAFF INTERVIEWS

D. INMATE INTERVIEWS

THE TERM "QUALITY OF LIFE" IS NEBULOUS AT BEST, AND TO MOST, THE TERM IS VAGUE AND LACKS DEFINITE FORM OR LIMITS. TO DEFINE THE TERM AND TO MORE SHARPLY FOCUS ON WHAT CONDITIONS AND VARIABLES MAKE UP THE CRITERIA FOR EVALUATING THE "QUALITY OF LIFE" IN CORRECTIONAL INSTITUTIONS, SOME BACKGROUND IS NECESSARY. BEFORE DEFINING AND/OR EVALUATING THE "QUALITY OF LIFE" IN A CORRECTIONAL INSTITUTION SETTING, IT IS ESSENTIAL THAT WE ESTABLISH SOME VERY BASIC AND FUNDAMENTAL CONCEPTS: A) THE MISSION OF THE INSTITUTION AND STAFF IS TO CREATE AND MAINTAIN AN ENVIRONMENT CONDUCIVE TO THE REHABILITATION OF THOSE INDIVIDUALS CONFINED TO THE INSTITUTION, WHO ARE INCLINED TO CHANGE AND/OR REHABILITATE THEMSELVES. B) IT IS ALSO NECESSARY TO ACCEPT THE PREMISE THAT INSTITUTIONS ARE NOT DESIGNED TO PUNISH THOSE WHO RESIDE IN THEM, NOR ARE THE STAFF EMPLOYED TO PUNISH OR IN ANY WAY, AGGRAVATE THE CONDITIONS OF CONFINEMENT FOR THE PURPOSE OF PUNISHING THE INMATE POPULATION. THERE IS NO QUESTION THAT SOCIETY CONFINES PEOPLE TO PRISONS FOR A VARIETY OF REASONS - INCAPACITATION, DETERRENCE, REHABILITATION AND YES, RETRIBUTION (PUNISHMENT). C) IT IS IMPORTANT THAT PUNISHMENT BE UNDERSTOOD AND RESTRICTED TO THE INDIVIDUAL'S LOSS OF PERSONAL FREEDOM AND THE ACCESS TO AND LIMITED ISOLATION FROM FAMILY, FRIENDS AND COMMUNITY.

IT WOULD BE A WASTE OF TIME, RESOURCES AND AN EXERCISE IN FUTILITY TO EMBARK ON THE EVALUATION OF THE "QUALITY OF LIFE" IN AN AGENCY OR INSTITUTION WHERE THE POLITICAL AND PROFESSIONAL LEADERSHIP AND THE INSTITUTION STAFF IN A STATE, BELIEVED THAT PART OF CORRECTIONS' MISSION SHOULD BE TO MAKE THE LIFE OF THOSE CONFINED AS FEARFUL, BRUTAL, STERILE AND MISERABLE AS POSSIBLE IN AN ATTEMPT TO PUNISH THEM INTO CHANGE.

WITH THAT BACKGROUND, "QUALITY OF LIFE," AS IT APPLIES TO A CORRECTIONAL INSTITUTION SETTING CAN BE DEFINED. THE TERM, QUALITY OF LIFE, IN CORRECTIONAL INSTITUTIONS REPRESENTS A BROAD RANGE OF SOCIAL AND ENVIRONMENTAL CONDITIONS, WHICH IMPACT ON AN INMATE'S AND/OR STAFF'S PHYSICAL, EMOTIONAL AND MENTAL HEALTH. FOR THE INMATE IT INCLUDES A CLIMATE THAT PERMITS, ENCOURAGES AND FACILITATES SELF-EVALUATION AND IMPROVEMENT, PERSONAL GROWTH, AWARENESS AND CHANGE, ALL OF WHICH HAVE THE POTENTIAL OF IMPROVING THE PREDICTABILITY OF AN INMATE'S SUCCESSFUL RETURN TO THE COMMUNITY AS A PRODUCTIVE MEMBER OF SOCIETY, SHOULD HE/SHE BE SO INCLINED.

FOR THE STAFF IT BEGINS WITH RECRUITMENT OF HONEST, INTELLIGENT, SENSITIVE INDIVIDUALS WHO ARE ABLE TO RELATE TO PEOPLE & PROVIDING THOSE SELECTED, WITH RELEVANT TRAINING WHICH WILL EQUIP THEM TO WORK IN THE CORRECTIONAL ENVIRONMENT. COMPENSATION THAT IS COMPETITIVE AND COMMENSURATE WITH THEIR CLASSIFICATION, ASSIGNMENT AND LEVEL OF RESPONSIBILITY IS ESSENTIAL. EMPLOYEES MUST BE PROVIDED WITH LEADERSHIP, SUPERVISION, GUIDANCE, POLICY, PROCEDURES, POST ORDERS AND A CLEAR PICTURE OF WHAT IS EXPECTED OF THEM. ALL EMPLOYEES IN A CORRECTIONAL ENVIRONMENT CAN REASONABLY EXPECT THAT THEY AND THE ADMINISTRATION MUST TAKE EVERY REASONABLE AND PRUDENT PRECAUTION TO REDUCE THE FREQUENCY, SCOPE AND DANGEROUSNESS OF INCIDENTS IN THE INSTITUTION ENVIRONMENT. THE WORKING ENVIRONMENT SHOULD PROVIDE TRAINING, EXPERIENCE AND OPPORTUNITIES FOR EMPLOYEES TO GROW TO THEIR FULL PERSONAL AND PROFESSIONAL POTENTIAL. EVERY EMPLOYEE SHOULD BE PROVIDED WITH A FRINGE BENEFIT PACKAGE AND AFFORDED THE OPPORTUNITIES TO RESPONSIBILY UTILIZE ALL ASPECTS OF THE FRINGE BENEFIT PACKAGE, AND HAVE REASONABLE WORKING HOURS IN AN ENVIRONMENT THAT IS CLEAN AND HEALTHY.

ALTHOUGH BROAD, THE FOLLOWING FACTORS WERE CONSIDERED IN THE STUDY AND EVALUATION OF THE QUALITY OF LIFE AT THE INSTITUTIONS.

I. POPULATION DENSITY

OVERCROWDING, DOUBLE CELLING, PERSONAL PRIVACY.

II. PHYSICAL PLANT

INDIVIDUAL CELL, ROOM OR DORMITORY CAPACITIES; AVAILABLE SQUARE FOOTAGE PER INMATE FOR LIVING, WORK, PROGRAM, RECREATION AND LEISURE TIME ACTIVITIES. MAINTENANCE, PREVENTATIVE MAINTENANCE AND CONDITION OF HEATING, VENTILATION, LIGHTING SYSTEMS. HOUSEKEEPING, SANITATION, NOISE LEVELS, SAFETY; CONTROL AND EASE OF STAFF AND INMATE TRAFFIC; INMATE ACCESSIBILITY TO SERVICES. (IS THE FACILITY HOUSING THE INMATE CLIENTELE FOR WHICH IT WAS DESIGNED, CONSISTENT WITH ITS ORIGINAL MISSION AND ARE SPACES USED FOR THEIR DESIGNED PURPOSE?).

III. INSTITUTION CLIMATE

LEVELS OF VIOLENCE AND FEAR AMONG INMATES AND STAFF. ASSAULTS ON INMATES BY INMATES; ASSAULTS ON STAFF BY INMATES; USE OF PHYSICAL FORCE, GAS, WEAPONS, RESTRAINTS AND PRESCRIPTION DRUGS FOR INMATE CONTROL. FREQUENCY OF CRISIS, INCIDENTS, BRUTALITY, HOMICIDE, SUICIDE, STRIKES, WORK STOPPAGES, DISTURBANCES, RIOTS. QUALITY OF COMMUNICATIONS AND RELATIONSHIPS BETWEEN INMATES, AND INMATES AND STAFF. LEVELS OF CREDIBILITY, CONFIDENCE AND TRUST BETWEEN INMATES AND STAFF; FORUMS FOR COMMUNICATIONS BETWEEN STAFF AND INMATES. RACIAL ANTAGONISM OR RACIAL TENSION. RESPONSIVENESS OF STAFF TO REAL AND IMAGINED CONCERNS OF INMATES. FORUMS FOR RESOLUTION OF GRIEVANCES. INSTITUTION POLICIES, PROCEDURES, MISSION AND ADMINISTRATIVE AND PROGRAM OPERATIONAL PHILOSOPHY, ALONG WITH AGENCY & INSTITUTIONAL PLANNING.

IV. CLASSIFICATION, WORK, PROGRAM AND SERVICES

INMATES MUST BE PROPERLY CLASSIFIED FOR INSTITUTION SECURITY AND PROGRAM ASSIGNMENTS, CONSISTENT WITH THE INMATE'S NEEDS AND AGENCY RESOURCES. AVAILABILITY AND A BALANCE OF TRAINING, WORK, TREATMENT, EDUCATIONAL AND PERSONAL DEVELOPMENT OPPORTUNITIES. (INCLUDES THE AVAILABILITY AND RATIO OF TRAINED COUNSELORS/SOCIAL WORKERS TO INMATE POPULATION AND ACCESS TO REFERRAL RESOURCES SUCH AS PSYCHOLOGISTS AND PSYCHIATRISTS). IDLENESS, INMATE COMPENSATION, STRUCTURED, ORGANIZED, LEISURE TIME ACTIVITIES AND COMPETITIVE SPORTS PROGRAMS.

V. HEALTH AND SAFETY

QUALITY, ACCESSIBILITY AND RESPONSIVENESS OF MEDICAL AND DENTAL SERVICES. QUALITY, QUANTITY, TEMPERATURE AND NUTRITIONAL BALANCE OF MEALS. SANITATION IN MEDICAL, DENTAL AND FOOD SERVICE AREAS AND PERSONAL HYGIENE OF MEDICAL, DENTAL AND FOOD SERVICE STAFF. LEVELS OF ACCIDENTS INVOLVING INJURY TO INMATES AND STAFF; CONTROL OF CONTAGIOUS DISEASE, INCIDENTS, OUTBREAKS OR SPREAD OF SERIOUS ILLNESS. COMPLIANCE WITH OSHA STANDARDS IN ALL STAFF AND INMATE WORK AND PROGRAM ASSIGNMENTS.

VI. INSTITUTION SECURITY AND CONTROL

PHYSICAL PLANT SECURITY; CELL OR ROOM SECURITY; PERIMETER SECURITY; TOOL CONTROL; KEY CONTROL; MEDICATION CONTROL; CONTRABAND CONTROL; SUPERVISION AND CONTROL OF INMATE LIVING UNITS, PROGRAM AREAS AND INMATE MOVEMENT.

VI. INSTITUTION SECURITY A. CONTROL (CONT'D)

USE OF PREVENTATIVE LOCK DOWNS TO CONTROL CONTRABAND, REDUCE TENSION (AS OPPOSED TO CRISIS LOCK DOWNS AFTER THE FACT). STAFF KNOWLEDGE AND AVAILABILITY OF DISTURBANCE, RIOT, HOSTAGE AND ESCAPE PLANS. USE OF DISCIPLINARY SEGREGATION VERSUS ADMINISTRATIVE SEGREGATION, PROTECTIVE CUSTODY, VOLUME OF PROSECUTION REFERRALS.

VII. STAFFING/EMPLOYEE WORKING CONDITIONS

STAFF ASSIGNMENTS. DEPLOYMENT AND COVERAGE AND RATIOS (CUSTODIAL, PROGRAM, SUPPORT). TRAINING, COMPENSATION, TURNOVER RATES, USE OF SICK LEAVE, STRIKES, GRIEVANCE PROCEDURES, STAFF EVALUATION, OPEN, COMPETITIVE AND EQUAL PROMOTIONAL OPPORTUNITIES FOR ALL STAFF (MINORITIES, WOMEN). STAFF DISCIPLINE, REPRIMANDS, SUSPENSIONS, TERMINATIONS. POST ORDERS, JOB DESCRIPTIONS, ASSIGNMENT ROSTERS, WORKING CONDITIONS AND RELATIONSHIPS BETWEEN EMPLOYEES, EMPLOYEES AND SUPERVISORS, EMPLOYEES, SUPERVISORS, MANAGERS AND ADMINISTRATION.

VIII. LITIGATION

VALIDITY OF LEGAL AND CONSTITUTIONAL ISSUES INVOLVING CONDITIONS OF CONFINEMENT SURFACED IN LAWSUITS FILED BY INMATES, EMPLOYEES OR CITIZENS. FEDERAL COURT RULINGS AGAINST THE AGENCY OR INSTITUTION.

IN THIS REPORT, I HAVE DOCUMENTED MY FINDINGS IN THESE AREAS BY DATA, INTERVIEWS AND BY DIRECT, ON-SITE OBSERVATIONS OF THE PRACTICES, PROBLEMS AND/OR CONDITIONS.

"THIS CONSULTANT IS COMMITTED TO A PROCESS AND THE DEVELOPMENT OF RECOMMENDATIONS AND TIMELINES WHICH ARE REASONABLE, PRUDENT, RATIONAL AND FEASIBLE. RECOMMENDATIONS WILL NOT BE LIMITED, RESTRICTED OR MODIFIED BECAUSE OF ANY EXISTING CONDITION, POLICY, PROCEDURE, LAW, STATUTE, CURRENT INCUMBENT'S PHILOSOPHICAL VIEWPOINT OR ANY OTHER POLITICAL OR REAL OR IMAGINED BARRIER. RECOMMENDATIONS WILL BE MADE WITH THE KNOWLEDGE OF AND SENSITIVITY TO THE ABOVE, BUT THE EMPHASIS AND PRIORITY WILL BE PLACED ON WHAT IS IN THE JUDGEMENT OF THE CONSULTANT, GOOD FOR THE STATE OF TENNESSEE, THE TAXPAYERS, PUBLIC SAFETY AND THE SAFETY AND MENTAL HEALTH OF THOSE WHO LIVE AND WORK IN THE CORRECTIONAL FACILITIES. PLACING A HIGH PRIORITY ON THE HUMANE ADMINISTRATION AND DIRECTION OF ALL ASPECTS OF THE INSTITUTIONAL OPERATIONS IS ESSENTIAL TO ASSURE THE PRESERVATION OF RIGHTS AND RESPONSIBILITIES AND IN THE FINAL ANALYSIS, DOES SERVE TO PROVIDE THE ULTIMATE PROTECTION OF SOCIETY."

ON DECEMBER 31, 1984, I SENT A THREE PAGE LETTER TO ROD O'CONNOR, TENNESSEE DEPARTMENT OF CORRECTIONS, DIRECTOR OF PLANNING, OUTLINING THE SCHEDULE FOR MY ON-SITE VISITS TO THE SEVEN FACILITIES, A GENERAL FORMAT AND AGENDA FOR EACH OF THE ON-SITE VISITS AND A DRAFT OF A LETTER REQUESTED BY THEN COMMISSIONER, ERNEST PELLEGRIN, WHICH HE INTENDED TO SEND EACH OF THE INSTITUTION HEADS JUST PRIOR TO MY ON-SITE VISITS. THE DECEMBER 31, 1984 SCHEDULE OF ON-SITE VISITS WAS ADHERED TO WITHOUT ANY DEVIATION EXCEPT THE CHANGES NECESSARY TO ACCOMMODATE THE TWO ADDITIONAL ON-SITE VISITS NOT ORIGINALLY ANTICIPATED IN THE CONTRACT.

ON JANUARY 7, 1985, I SIGNED A CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF CORRECTIONS, WHICH WAS SUBSEQUENTLY SIGNED, EXECUTED AND RETURNED TO ME ON FEBRUARY 11, 1985.

AS OF THIS WRITING, . AVE MADE THREE ON-SITE VISITS THE TENNESSEE DEPARTMENT OF CORRECTIONS-CENTRAL OFFICE, AND ON-SITE VISITS TO ALL OF THE FACILITIES LISTED BELOW. THE ON-SITE VISITS TO THOSE FACILITIES IN THE CONTRACT RANGED FROM TWO TO FIVE DAYS IN DURATION. SUBSEQUENTLY, I WAS REQUESTED TO MAKE BRIEF, HALF DAY ON-SITE VISITS TO EVALUATE SPECIFIC PROPOSED CHANGES AT THE EAST TENNESSEE RECEPTION CENTER AND THE WEST TENNESSEE RECEPTION CENTER. LISTED BELOW ARE THE FACILITIES VISITED AND THE DATES OF THOSE VISITS.

1. TENNESSEE STATE PRISON (1/6/85 - 1/11/85);
2. BLEDSOE COUNTY REGIONAL CORRECTIONAL FACILITY (1/27, 1/28, & 1/29/85);
3. MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY (1/30/85 & 1/31/85);
4. EAST TENNESSEE RECEPTION CENTER (2/1/85) (WHILE AT THE BLEDSOE FACILITY, I RECEIVED A LETTER FROM DEPUTY COMMISSIONER BISHOP, DATED JANUARY 24, 1985, REQUESTING THAT I VISIT "D" BLOCK AND PROVIDE MY OPINION ON THE ADVISABILITY OF RENOVATING "D" BLOCK FOR A MAXIMUM SECURITY HOUSING UNIT);
5. FORT PILLOW FACILITY (2/18, 2/19, & 2/20/85);
6. WEST TENNESSEE RECEPTION CENTER (2/21/85). LETTER RECEIVED FROM SPECIAL MASTER, PATRICK MCMANUS, REQUESTING THAT I EVALUATE THE USE OF THE WORK RELEASE HOUSING UNITS FOR PRE-RELEASE AT THIS FACILITY;
7. TURNEY CENTER (3/11/85 & 3/12/85);
8. MIDDLE TENNESSEE RECEPTION CENTER (3/13, 3/14 & 3/15/85);
9. TENNESSEE PRISON FOR WOMEN (3/28/85 & 3/29/85).

PRIOR TO EACH OF THE ON-SITE VISITS, I HAVE REVIEWED ALL OF THE MATERIAL PROVIDED TO EXPEDITE THE ON-SITE EVALUATION PROCESS. HAVING READ THE INFORMATION PROVIDED AND PRIOR TO VISITING ANY FACILITY, IT WAS APPARENT THAT THE STATE OF TENNESSEE AND THE TENNESSEE DEPARTMENT OF CORRECTIONS HAD A VARIETY OF SERIOUS PROBLEMS AT THE TIME THE MATERIAL WAS WRITTEN. AMONG A FEW OF THE OBVIOUS PROBLEMS WERE:

1. SYSTEM-WIDE OVERCROWDING;
2. SYSTEM-WIDE INMATE IDLENESS;
3. HIGH FREQUENCY OF VIOLENCE IN SOME MAJOR INSTITUTIONS;
4. A RECENTLY, ILL-CONCEIVED MAJOR SHIFT IN THE AGENCY'S PRIORITIES AND DIRECTION, WHICH HAD A PREDICTABLE AND DRAMATIC IMPACT ON THE AGENCY, ITS INSTITUTIONS, INMATES AND STAFF.

I DO NOT ADVOCATE SIMPLISTIC, SHORT RANGE, BANDAID SOLUTIONS, WHICH USUALLY PERPETUATE AN ONGOING SERIES OF REACTIONARY, STOPGAP RESPONSES TO THE INEVITABLE SERIES OF CRISIS. RATHER, I PREFER TO ADDRESS PROBLEMS AT THEIR SOURCES AND WORK TOWARD MORE STABLE, LONG TERM SOLUTIONS THAT WILL CORRECT THE PROBLEMS AT THE SOURCE, RATHER THAN ATTEMPTING TO CORRECT OR MAKE ADJUSTMENTS WHERE THE OBVIOUS MANIFESTATIONS OF THE PROBLEM EMERGE.

IT IS NOT MY INTENTION IN THIS REPORT TO OFFEND ANYONE, BUT TO GET IN TOUCH WITH THE REALITIES OF THE PROBLEMS FACING TENNESSEE AND ITS ADULT INSTITUTIONS. FACING TRUTH SOMETIMES HURTS, BUT THE PATH OF GROWTH AND CHANGE IS RARELY FOLLOWED WITHOUT SOME DISCOMFORT. MY CHARGE WAS NOT TO BE A GOOD OL'BOY, TO BE

POPULAR, PATRONIZING OR TO MAKE EXCUSES FOR EXISTING CIRCUMSTANCES, BUT RATHER, TO PROVIDE CONCISE AND PROFESSIONAL OBSERVATIONS AND OPINIONS ON WHAT CONDITIONS. FACTORS AND VARIABLES MAY BE CONTRIBUTING TO THE CURRENT SET OF CIRCUMSTANCES, AND OFFER MY PROFESSIONAL SUGGESTIONS ON HOW THOSE CIRCUMSTANCES AND CONDITIONS COULD BE IMPROVED OR REMEDIED.

MY OBSERVATIONS ON THE QUALITY OF LIFE IN THESE FACILITIES WILL NECESSARILY OVERLAP INTO SEVERAL OF THE AREAS BEING EVALUATED BY MY CONSULTANT COLLEAGUES. IN RELATION TO THESE AREAS OF OVERLAP, I HAVE TAKEN THE APPROACH THAT I WILL MAKE NOTE OF WHAT I ACTUALLY SEE, HEAR AND/OR CAN CORROBORATE OR DOCUMENT TO MY SATISFACTION. I MAY, IN SOME INSTANCES, SUPPORT SPECIFIC CHANGES OR ADDITIONS WHICH IN MY JUDGEMENT WOULD BE AN IMPROVEMENT. THOSE OBSERVATIONS AND RECOMMENDATIONS WILL BE BASED ON TWENTY-SIX YEARS OF ACTUALLY WORKING IN INSTITUTIONS, OF WHICH NEARLY TEN WERE SPENT AS A CHIEF EXECUTIVE OFFICER/WARDEN OF FACILITIES THAT WERE ACCREDITED UNDER MY ADMINISTRATION. THEY ARE IN SOME ISOLATED INSTANCES, NOT CONSISTENT WITH ONE OR MORE OF MY CONSULTANT COLLEAGUE'S VIEWS. IN THOSE INSTANCES WHERE THERE ARE DIFFERENCES, THERE HAVE BEEN PRODUCTIVE DISCUSSIONS WHICH HAVE LED TO RECOMMENDATIONS THAT CAN BE SUPPORTED BY ALL PARTIES. THE OBSERVATIONS AND RECOMMENDATIONS OF THOSE EXPERTS WHO HAVE DEVOTED MORE STAFF TIME AND RESOURCES TO ANALYSIS OF AN ASSIGNED SPECIFIC AREA OF EXPERTISE, HAVE BEEN VERY PERSUASIVE AND EASY TO SUPPORT. THERE ARE, HOWEVER, SOME AREAS OF PROFESSIONAL DISAGREEMENT. FOR EXAMPLE, MR. HENDERSON (SECURITY CONSULTANT) IS DOING A COMPREHENSIVE STAFFING ANALYSIS, USING SPECIFIC STAFFING FORMULAS, WHICH INCLUDE FACTORS FOR VACATION, SICK LEAVE, TRAINING, ETC., AND HE DID MAKE STAFFING RECOMMENDATIONS DIFFERENT FROM THOSE I MADE. WE MAY HAVE AN HONEST DISAGREEMENT ON THE LEVEL OF SUPERVISION REQUIRED WHEN I EITHER FOUND AN AREA WITHOUT SUPERVISION AT SPECIFIC TIMES OR NOT SUFFICIENTLY STAFFED FOR THE NUMBER OF INMATES, TYPE OF UNIT AND/OR CLIENTELE IN THE UNIT. IN THIS INSTANCE, I SUGGEST THE DEPARTMENT RECONCILE MY RECOMMENDATIONS WITH MR. HENDERSON'S TO DETERMINE IF THE COVERAGE I RECOMMEND CAN BE PROVIDED BY REASSIGNMENT OR RE-DEPLOYMENT OF STAFF WITHIN THE STAFF COMPLEMENT INCREASES MR. HENDERSON RECOMMENDED, AND/OR WITHIN THE EXISTING INSTITUTION COMPLEMENT. IN SOME CASES IT MAY REQUIRE ADDING ADDITIONAL POSTS AND POSITIONS, WHICH WOULD REQURE APPLYING THE APPROPRIATE FORMULA TO ENSURE THE REQUIRED STAFFING AROUND THE CLOCK, SEVEN DAYS A WEEK WITH PROVISIONS FOR VACATION, SICK LEAVE, TRAINING, ETC.; OR REDUCING THE INMATE POPULATION, OR ASSIGNING MORE APPROPRIATELY CLASSIFIED INMATES TO A GIVEN LIVING OR PROGRAM AREA.

OVERVIEW

AS STATED PRIOR TO VISITING CENTRAL OFFICE OR ANY OF THE FACILITIES, I REVIEWED HUNDREDS OF PAGES OF DOCUMENTS, CORRESPONDENCE AND MATERIALS THAT PROVIDED ME WITH AN INFORMATIVE BACKGROUND ON THE DEPARTMENT, ITS RECENT HISTORY, PHILOSOPHY, LEADERSHIP, PROBLEMS, STRENGTHS AND WEAKNESSES. AMONG THE MORE RELEVANT AND REVEALING WERE THE:

-JULY, 1984 REPORT ON THE MANAGEMENT HISTORY OF THE TENNESSEE DEPARTMENT OF CORRECTIONS;
-THE JANUARY, 1983 PLAN FOR THE 80'S;
-THE MARCH, 1982, "OVERVIEW OF THE PLAINTIFF'S POST TRIAL BRIEF" DRAFTED BY PLAINTIFF'S COUNSEL;
-THE TENNESSEE DEPARTMENT OF CORRECTIONS ANNUAL REPORT FY82-83;
-THE NOVEMBER, 1984 ORGANIZATIONAL CHART FOR THE DEPARTMENT OF CORRECTIONS;
-THE AUGUST, 1982 GRUBBS VS. BRADLEY SUIT;
-THE JULY, 1984 FEDERAL COURT ORDER, GRUBBS VS. PELLEGRIN
EMERGENCY POWERS ACT - 1983 PUBLIC CHAPTER 325;
-THE DEPARTMENT OF CORRECTIONS BASE BUDGET DOCUMENT FOR 85-86.

CENTRAL OFFICE IS NOT LIS) AS ONE OF THE AREAS TO BE EVA ATED. THE INSTITUTIONS, HOWEVER, MU . FUNCTION UNDER THE ADMINISTRA N, PRIORITIES, DIRECTION AND POLICY OF THE CENTRAL OFFICE, THEREFORE, CENTRAL OFFICE DOES HAVE ULTIMATE RESPONSIBILITY FOR THE QUALITY OF LIFE IN THE INSTITUTIONS AND THEIR SUCCESS OR FAILURE.

DURING THE COURSE OF THIS EVALUATION, I TALKED WITH FORMER COMMISSIONER PELLEGRIN ON THREE OCCASIONS. THE TWO MOST LENGTHY AND REVEALING DISCUSSIONS OCCURRED ON THE MORNING OF JANUARY 7, 1985 AND DURING AN EXIT SUMMARY ON JANUARY 11, 1985. COMMISSIONER PELLEGRIN WAS CANDID AND STRAIGHTFORWARD, BUT GUARDED AND PROTECTIVE OF THE GOVERNOR AND THE LEGISLATURE. HE WAS QUICK TO OFFER THAT HE HAD NO EXPERIENCE IN CORRECTIONS AND NO MANAGEMENT OR ADMINISTRATIVE BACKGROUND OR EXPERIENCE. HE BELIEVED THAT HE COULD MAKE A CONTRIBUTION TO THE DEPARTMENT BY VIRTUE OF HIS PUBLIC SPEAKING SKILLS, HIS CREDIBILITY AND RAPPORT WITH THE JUDGES, HAVING BEEN A JUDGE IN TENNESSEE FOR SEVEN YEARS PRIOR TO HIS APPOINTMENT AS COMMISSIONER. HE ALSO POINTED OUT THAT HE HAS CREDIBILITY WITH THE POLITICIANS, SPECIFICALLY LEGISLATORS SINCE HE HAD ALSO SERVED IN THE LEGISLATURE IN THE PAST. I FOUND COMMISSIONER PELLEGRIN TO BE AN ARTICULATE, HONEST, SOMEWHAT GUARDED, BUT WELL INTENDED INDIVIDUAL, WHOM I BELIEVE GENUINELY WANTED TO IMPROVE THE AGENCY AND THE QUALITY OF LIFE FOR THE STAFF AND INMATES. HOWEVER, GIVEN THE COMMISSIONER'S ADMITTEDLY LIMITED EXPERIENCE, BACKGROUND AND KNOWLEDGE IN CORRECTIONS, HE WAS EXPERIENCING SOME DIFFICULTY ATTEMPTING TO BE A CONVINCING SPOKESMAN FOR CORRECTIONS. I FOUND LITTLE EVIDENCE THAT THE COMMISSIONER WAS ATTEMPTING TO PERSUADE OR EDUCATE THE LEGISLATURE AND EXECUTIVE BRANCHES OF GOVERNMENT ON HOW COUNTERPRODUCTIVE THE GET TOUGH, LOCK EM UP AND THROW THE KEY AWAY RHETORIC IS TO BUILDING PUBLIC SUPPORT FOR HUMANE AND A CONSTITUTIONALLY ACCEPTABLE QUALITY OF LIFE FOR THOSE WHO WORK AND LIVE IN THE STATE'S CORRECTIONAL INSTITUTIONS. IT APPEARED NO ATTEMPT WAS MADE TO EDUCATE OR CONFRONT THOSE IN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF STATE GOVERNMENT, WHO AREN'T KNOWLEDGEABLE ABOUT CORRECTIONS ISSUES. IT WOULD APPEAR THE DEPARTMENT ENDORSES AND FEEDS INTO THE SAME RHETORIC THAT ALREADY APPEALS TO THE POLITICALLY AROUSED EMOTIONS AND PREJUDICES OF THE PUBLIC. EXAMPLES: THE ILL-ADVISED ADOPTION, AND ATTEMPTED IMPLEMENTATION OF THE ORIGINAL PLAN FOR THE 80'S AND SUCH STATEMENTS AS, THERE IS NOT MUCH NEED FOR THE POLICY MAKERS TO SPEND TIME ARGUING WHAT THE STAND ON HUMANENESS OUGHT TO BE. TENNESSEE TAXPAYERS HAVE MADE IT CLEAR THAT THEY WILL "NOT TOLERATE A STANDARD HIGHER THAN THE MINIMUM," OR THERE WILL BE "NO REHABILITATION OR JOB TRAINING PROGRAMS OFFERRED IN THE ADULT CORRECTIONS SYSTEM EXCEPT THOSE THAT ARE DIRECTLY RELATED TO MAKING IT POSSIBLE FOR PRISONERS TO WORK AT THE SPECIFIC SKILLED OCCUPATIONS NECESSARY TO MAINTAIN THE PRISON SYSTEM." BOTH STATEMENTS ARE FOUND IN THE TENNESSEE CORRECTIONS POLICY SECTION OF THE 82-83 ANNUAL REPORT.

IT IS ESSENTIAL THAT CORRECTIONS AGENCY HEADS IN VERY VISIBLE AND INFLUENTIAL POSITIONS EDUCATE BOTH THE POLICY MAKERS AND THE CITIZENS. AS A LEADER, IT IS INCUMBENT ON EACH OF US TO SOMETIMES TAKE UNPOPULAR STANDS AND MAKE UNPOPULAR DECISIONS FOR THE OVERALL GOOD. THE TAXPAYERS AND VOTERS CANNOT BE EXPECTED TO KNOW WHAT GOOD AND SOUND COST-EFFECTIVE CORRECTIONS POLICY SHOULD BE WITHOUT HAVING BEEN PROVIDED THE NECESSARY BACKGROUND, ANY MORE THAN THEY CAN BE EXPECTED TO KNOW WHAT SOUND FISCAL OR STATE PLANNING POLICY SHOULD BE WITHOUT ALL THE FACTS AND INFORMATION. THEY NEED THE CANDID ADVICE, COUNSEL AND PERSUASION OF THE EDUCATED, TRAINED AND EXPERIENCED EXPERTS FROM THOSE FIELDS, TO EXPLAIN AND EDUCATE THEM - NOT LEADERS AND POLICY MAKERS WHO BLINDLY FOLLOW THE POLITICALLY AROUSED PREJUDICES OF THE MASSES OR THE POLITICALLY MOTIVATED RHETORIC OF SOME POLITICIAN WHO HAS HIS OWN PERSONAL AGENDA. HAVING BEEN EXPOSED TO THE PRINTED AND ELECTRONIC MEDIA IN TENNESSEE, IT WOULD BE MY JUDGE-

MENT THAT A NUMBER OF TENNESSEE'S STATE POLITICANS MAY NOT BE AWARE OF THE IMPLICATIONS OF TENNESSEE'S CURRENT SENTENCING LAWS AND RELEASE POLICIES. FORMER COMMISSIONER PELLEGRIN'S RECENT RE-ASSIGNMENT TO THE STUDY OF LESS EXPENSIVE ALTERNATIVES TO INCARCERATION FOR PROPERTY OFFENDERS IS ONE OF THE MORE HOPEFUL SIGNS WHICH HAS THE POTENTIAL OF DOING MORE FOR THE STATE OF TENNESSEE AND THE DEPARTMENT OF CORRECTIONS THAN ANY OTHER SINGLE INITIATIVE. IT IS, HOWEVER, ESSENTIAL THAT THE LEGISLATIVE AND JUDICIAL BRANCHES OF GOVERNMENT ACT TO DIVERT NON-DANGEROUS PROPERTY OFFENDERS FROM THE INSTITUTIONS AND INTO ALTERNATIVE PROGRAMS THAT PROVIDE SUPERVISION AND ACCOUNTABILITY FOR THE OFFENDER, ALONG WITH OPPORTUNITIES FOR VICTIM AND/OR COMMUNITY RESTITUTION.

AS OF THIS WRITING, I HAVE NOT MET THE NEW COMMISSIONER OF CORRECTIONS, STEVE NORRIS, BUT BASED ON WHAT I HAVE READ AND LEARNED FROM THOSE WHO KNOW HIM, HE SHOULD BRING STRENGTH AND EXPERTISE IN THE AREAS OF ADMINISTRATION AND MANAGEMENT. THE RECENT ADDITION OF AN EXPERIENCED CORRECTIONS PROFESSIONAL LIKE TONY YOUNG TO THE TOP MANAGEMENT TEAM, WILL COMPLIMENT COMMISSIONER NORRIS' MANAGEMENT EXPERTISE. THIS MANAGEMENT COMBINATION MAY BE JUST WHAT TENNESSEE NEEDS AT THIS POINT TO PULL THE STAFF TOGETHER TO IMPLEMENT THE CONSULTANT RECOMMENDATIONS AND LEAD THE DEPARTMENT TOWARD A PRO-ACTIVE, STABLE FUTURE FOR THE AGENCY.

I. POPULATION DENSITY/OVERCROWDING

THE CURRENT SENTENCING POLICY AND RELEASE PROCESS ARE THE DRIVING FORCES BEHIND TENNESSEE'S OVERCROWDING AND ESCAPE PROBLEMS. THE OVERCROWDING PROBLEMS ARE A MAJOR FACTOR IN THE LEVEL OF VIOLENCE IN THE INSTITUTIONS. THESE PROBLEMS MUST BE CORRECTED AT THE SOURCE. IT IS OF COURSE, THE STATE'S PREROGATIVE TO INCARCERATE AS MANY OFFENDERS AS THEY SEE FIT. HOWEVER, INCARCERATION DECISIONS MUST BE MADE WITH THE FULL KNOWLEDGE AND AWARENESS OF THE FISCAL IMPLICATIONS, AND THE IMPACT THOSE INCARCERATIONS HAVE ON OVERCROWDING, SECURITY AND VIOLENCE. BY VIRTUE OF THE LONG SENTENCES GIVEN TO PROPERTY OFFENDERS, TENNESSEE MAKES CUSTODY AND ESCAPE RISKS OUT OF SOME INMATES WHO ARGUABLY DO NOT JUSTIFY THE COST OF INCARCERATION. FOR EXAMPLE, SENTENCING INMATE #101753 TO 20 YEARS FOR PETIT LARCENY (UNDER $100) INCREASES THE RISK OF EVEN PLACING HIM IN A MINIMUM SECURITY FACILITY. AN INMATE ON MINIMUM SECURITY FACING A LONG SENTENCE IS HIGHLY LIKELY TO DECIDE THAT IT IS MORE PRACTICAL TO WALK AWAY THAN SERVE TEN OR TWENTY YEARS WHEN FREEDOM IS ONLY A FEW STEPS AWAY.

THE EMERGENCY POWERS ACT IS NOT A LONG RANGE SOLUTION TO TENNESSEE'S PRISON OVER-CROWDING PROBLEM. IT ISN'T EVEN A GOOD TEMPORARY BANDAID SOLUTION TO THE PROBLEM. LEGISLATION IS NEEDED TO ESTABLISH CRITERIA, WHICH WOULD RECONCILE SENTENCES WITH AVAILABLE CORRECTIONAL RESOURCES. I HAVE NOT SEEN THE BILL, BUT I HAVE BEEN ADVISED THAT SUCH A BILL HAS RECENTLY BEEN INTRODUCED. THIS IS ANOTHER RECENT INDICATION THAT ENLIGHTENED INITIATIVES ARE ON THE HORIZON, WHICH HAVE THE POTENTIAL FOR CONTROLLING THE STATE'S EXPLODING PRISON POPULATION. IT IS IMPOSSIBLE TO HAVE A CLASSIFICATION "SYSTEM," IF AT SPORADIC INTERVALS, THOSE CLASSIFIED ARE BEING RELEASED TO MEET MANDATORY COURT IMPOSED POPULATION TIMELINES. THE PROBLEM ALSO CANNOT BE CORRECTED BY FRANTIC CALLS FROM CENTRAL OFFICE TO THE INSTITUTION HEADS A FEW DAYS BEFORE A DEADLINE TO SUGGEST THAT THE INSTITUTION PUT AS MANY PEOPLE AS POSSIBLE ON FURLOUGHS FOR MARCH 31, 1985 TO PERMIT THE RECORD TO REFLECT A REDUCTION IN POPULATION, WHICH IN TRUTH, DOES NOT EXIST.

IF THE STATE OF TENNESSEE CONTINUES TO INCARCERATE PEOPLE AT THE 1983 RATE OF 163 PER 100,000 POPULATION, (WHICH WAS A TIME WHEN THEY WERE AND CURRENTLY ARE NOT MEETING CONSTITUTIONALLY REQUIRED CONDITIONS FOR CONFINEMENT) AND APPROPRIATE FUNDS TO MEET CONSTITUTIONAL REQUIREMENTS FOR HUMANE CONDITIONS OF CONFINEMENT FOR OVER 7,000 INMATES, IT COULD EXCEED TENNESSEE'S ABILITY TO FUND SUCH A SCENARIO. THE FY 85-86 BUDGET FOR CORRECTIONS IN TENNESSEE IS IN EXCESS OF $170,000,000. WITH THAT LEVEL OF FUNDING AND A RESPONSIBLE SENTENCING AND RELEASING POLICY, TENNESSEE COULD BE A LEADER IN CORRECTIONS. HOWEVER, TOUGH CHOICES WILL HAVE TO BE MADE REGARDING THE MANNER IN WHICH THAT MONEY CAN MOST EFFECTIVELY BE SPENT. THE PRACTICAL AND FINANCIAL REALITIES UNDERLYING THOSE DECISIONS WILL HAVE TO BE EXPLAINED TO THE PUBLIC.

IT MAKES ABUNDANT SENSE TO ABANDON THE GET TOUGH, LOCK EM UP, THROW AWAY THE KEY MENTALITY. A REALISTIC SENTENCING STRUCTURE AND A NETWORK OF COMMUNITY-BASED INTENSE SUPERVISION AND/OR RESTITUTION ALTERNATIVES, COULD BE CREATED WITHIN THE LIMITS OF THE EXISTING STAFFING COMPLEMENT OF THE DEPARTMENT. A STRAIGHT-FORWARD PLAN SHOULD BE DEVELOPED TO RE-TRAIN STAFF WHO WILL NOT BE NEEDED IN THE FACILITIES AS THE INSTITUTION POPULATIONS ARE REDUCED. THESE TRAINED AND EXPERIENCED INDIVIDUALS WOULD BE PLACED UNDER THE SUPERVISION AND DIRECTION OF EXISTING PAROLE AND PROBATION STAFF, AND ASSIGNED TO SUPERVISE THOSE LESS SERIOUS OFFENDERS WHO WERE DIVERTED FROM THE SYSTEM. IN 1983 MORE THAN HALF THE STATES IN THE NATION SPENT LESS PER CAPITA THAN TENNESSEE ON ADULT CORRECTIONAL INSTITUTIONS FOR CONFINEMENT. THE TENNESSEE DEPARTMENT OF CORRECTIONS' BUDGET REQUEST FOR THE NEXT FISCAL YEAR BEGINNING IN JULY, 1985 IS IN EXCESS OF $170,000,000 AND YET, DOES NOT INCLUDE THE COST OF THE RECOMMENDATIONS CURRENTLY BEING DEVELOPED BY THE CONSULTANTS. TENNESSEE CANNOT AFFORD TO GET TOUGH OR TOUGHER REGARDLESS OF WHAT THE PUBLIC IS PERCEIVED TO WANT. THE POLITICIANS WILL FIND THAT WHEN THE PUBLIC IS ASKED TO PAY THE BILL, THE TAXPAYERS WILL NOT BE PREPARED TO PAY THE BILL FOR WHAT THE POLITICIANS HAVE LED THEM TO BELIEVE WAS SOUND CORRECTIONS POLICY. I HAVEN'T HEARD A POLITICIAN OR CORRECTIONS PROFESSIONAL OR SEEN A REFERENDUM THAT EXPLAINS WHAT THE CURRENT POLICY WILL COST THE TENNESSEE TAXPAYERS. WHEN THE LEADERS ARE TALKING ABOUT GETTING TOUGH, THEY ALSO HAVE A RESPONSIBILITY TO TELL THE TAXPAYERS WHAT IT WILL COST AND WHAT WILL CHANGE FOR ALL THESE EXPENDITURES. THERE ARE EMPIRICAL STUDIES WHICH SHOW THAT ANY STATE COULD DOUBLE THE NUMBERS INCARCERATED WITH VERY LITTLE CHANGE IN THE CRIME RATE. IT HAS LONG AGO BEEN ESTABLISHED THAT LONG SENTENCES DON'T DETER THOSE WHO DON'T BELIEVE THEY WILL GET CAUGHT (A VERY LOW PERCENTAGE DO GET CAUGHT - 20%).

RECOMMENDATIONS:

1) IF A CURRENT, COMPREHENSIVE POPULATION ANALYSIS OF PROPERTY AND PERSON OFFENDERS IS NOT AVAILABLE, IT SHOULD BE UNDERTAKEN IMMEDIATELY.

2) THE CURRENT YEAR OLD TASK FORCE WHICH I AM TOLD IS "STUDYING LONG TERM WAYS TO CURB PRISON OVERCROWDING" HEADED BY JUDGE LEWIS H. CONNER, JR., SHOULD BE PROVIDED WITH THE RESULTS OF THE ABOVE POPULATION ANALYSIS. THE TASK FORCE SHOULD HAVE REPRESENTATIVES OF THE GOVERNOR'S OFFICE, LEGISLATIVE LEADERSHIP, THE JUDICIARY, LAW ENFORCEMENT, CORRECTIONS AND THE RELEASING AUTHORITY SERVING AS ITS MEMBERS. THIS MEMBERSHIP INCREASES THE CHANCES OF DEVELOPING A BROAD BASE OF PUBLIC AND POLITICAL SUPPORT FOR THE IMPLEMENTATION OF THE CHANGES THAT WILL BE NECESSARY. (THE TASK FORCE SHOULD HAVE FULL TIME, PAID SUPPORT STAFF TO PULL TOGETHER THE RESEARCH AND INFORMATION, AND PREPARE THE DRAFT PROPOSALS FOR THE TASK FORCE REVIEW, STUDY AND FINAL WORDING).

3) THE SHORT RANGE AGENDA (90 DAYS) FOR THE TASK FORCE SHOULD BE TO DEVELOP REALISTIC PAROLE AND RELEASE OPTIONS FOR ALL OFFENDERS CURRENTLY IN THE SYSTEM, WITH SPECIAL EMPHASIS ON THE PROPERTY OFFENDERS. LEGISLATED BARRIERS CONTAINED IN THE TENNESSEE CRIMINAL JUSTICE SENTENCING ACT OF 1982 MUST BE REMOVED TO PERMIT PROPER CLASSIFICATION, MANAGEMENT AND DISTRIBUTION OF THE INMATE POPULATION BY THE TENNESSEE DEPARTMENT OF CORRECTIONS. (FORMER COMMISSIONER PELLEGRIN'S NEW ASSIGNMENT SHOULD BE COORDINATED WITH THE TASK FORCE).

I. POPULATION DENSITY/OVERCROWDING (CONT'D)

RECOMMENDATIONS (CONT'D)

4) THE LONGER RANGE (9 MONTH) AGENDA OF THIS TASK FORCE SHOULD BE TO DEVELOP A NEW STATE-WIDE SENTENCING POLICY. THE NEW COMPREHENSIVE LEGISLATIVE SENTENCING PACKAGE SHOULD FOCUS ON CORRECTING TENNESSEE'S MAJOR OVERCROWDING PROBLEM AT ITS SOURCE.

5) THE POLITICAL AND CRIMINAL JUSTICE LEADERSHIP OF THE STATE SHOULD EMBARK ON A STATE-WIDE EDUCATIONAL CAMPAIGN OF THE VOTERS AND TAXPAYERS, TO ENHANCE THEIR KNOWLEDGE OF THE PROBLEM, THE ALTERNATIVES AND ULTIMATELY, THE MOST WISE AND COST-EFFECTIVE WAY OF SOLVING TENNESSEE'S OVERCROWDING PROBLEMS.

6) THE CURRENT CLASSIFICATION SYSTEM MUST BE STUDIED AND CHANGED TO REFLECT THOSE CHANGES IN SENTENCING AND RELEASING THAT ARE IMPLEMENTED.

7) THE TENNESSEE DEPARTMENT OF CORRECTIONS AND LEGISLATURE SHOULD ESTABLISH A FIVE YEAR GOAL FOR AGENCY-WIDE COMPLIANCE WITH THE COMMISSION ON ACCREDITATION STANDARDS FOR ACCREDITATION OF THE AGENCY AND ALL OF ITS INSTITUTIONS.

AT THE POINT THAT PRACTICAL AND REALISTIC SENTENCING AND RELEASING POLICIES ARE IN PLACE, IT WILL BE POSSIBLE TO THEN PREDICT WITH AN INCREASED DEGREE OF ACCURACY, FUTURE INMATE POPULATIONS, WHAT CUSTODY LEVELS ARE NEEDED, FROM WHAT GEOGRAPHIC AREA OF THE STATE COMMITMENTS WILL ORIGINATE AND WHAT OFFENSE CATEGORIES THEY REPRESENT. ASSUMING THE NEW SENTENCING, RELEASING AND CLASSIFICATION LAWS, POLICIES AND PROCEDURES REFLECT 20TH CENTURY WISDOM, THE TENNESSEE DEPARTMENT OF CORRECTIONS WOULD BE HOUSING BETWEEN 3,500 - 4,500 INMATES IN INSTITUTIONS, AND HAVE INCREASED THE NUMBER OF THOSE UNDER SUPERVISION IN THE COMMUNITY OR IN COMMUNITY-BASED ALTERNATIVES BY THREE TO FOUR THOUSAND. IT THEN WOULD NOT BE UNREALISTIC TO ATTEMPT THE GOAL OF OPERATING THE AGENCY WITHIN NEXT YEAR'S BUDGET REQUEST WITH AN INFLATION FACTOR INCLUDED OF COURSE. INITIALLY, HOWEVER, THERE WOULD BE A ONE TIME NEED FOR CAPITAL IMPROVEMENTS ON THE INSTITUTIONS, WHICH WOULD BECOME PART OF THE NEW PLAN AND THE NEEDED NEW MAXIMUM AND CLOSE CUSTODY FACILITIES.

II. PHYSICAL PLANTS/CAPITAL NEEDS

THE SYSTEM-WIDE NEGLECT OF THE STATE'S CORRECTIONAL FACILITIES IS OBVIOUS EVEN TO A CASUAL OBSERVER. ADMITTEDLY, THERE IS A RECENT FLURRY OF COSMETIC ACTIVITY TO IMPROVE THE APPEARANCE OF SOME OF THE FACILITIES, AND TO UPGRADE PERIMETER SECURITY. THERE ARE ALSO A WIDE RANGE OF CAPITAL IMPROVEMENT REQUESTS TO UPGRADE SOME OF THE INSTITUTION DOORS AND OTHER SECURITY HARDWARE. THESE SHOULD BE DELAYED JUST LONG ENOUGH TO DETERMINE WHICH FACILITIES COULD BE CLOSED AND WHICH COULD BE COST-EFFECTIVELY RENOVATED AND OPERATED. TURNEY CENTER'S LIVING UNITS SHOULD BE AT THE TOP OF THE LIST FOR THAT TYPE OF EVALUATION. IT IS HIGHLY UNLIKELY THAT THE LIVING UNITS AT TURNEY COULD BE COST-EFFECTIVELY STAFFED AND MAINTAINED GIVEN THE CURRENT ARCHITECTURAL LIMITATIONS. IN THE INTERIM BEFORE THAT DECISION IS MADE, HOWEVER, THEY SHOULD BE STAFFED AS RECOMMENDED AND SOME MINIMAL REPAIRS DONE FOR STAFF AND INMATE SAFETY UNTIL IT IS DETERMINED WHAT ROLE (IF ANY), THE HOUSING UNITS AT TURNEY WILL PLAY IN THE TENNESSEE DEPARTMENT OF CORRECTIONS' FUTURE.

THE TENNESSEE STATE PRISON HAS SERVED THE STATE FOR NEARLY 100 YEARS. ITS' ARCHITECTURE, DESIGN, SQUARE FOOTAGE, PLUMBING, HEATING, ETC. ARE SUCH THAT IT IS HIGHLY UNLIKELY THAT IT CAN BE COST-EFFECTIVELY UPGRADED TO WHAT ANYONE WOULD CONSIDER A GOOD MAXIMUM SECURITY FACILITY. THE DEPARTMENT SHOULD CONSIDER COMPLETING THE ROOF REPAIRS CURRENTLY UNDERWAY AND DELAY FURTHER CAPITAL INVESTMENTS IN THE FACILITY. THE STATE OF TENNESSEE DOES NOT HAVE ANY FACILITY THAT IS CURRENTLY A GOOD CANDIDATE FOR UPGRADING TO A MAXIMUM CUSTODY FACILITY. AS I INDICATED BACK IN EARLY JANUARY TO COMMISSIONER PELLEGRIN AFTER MY ON-SITE AT TENNESSEE STATE PRISON, THE STATE SHOULD CONTINUE THE USE OF THE FACILITY TO HOUSE INMATES DURING THE INTERIM, WHILE TWO NEW "MAXIMUM SECURITY" FACILITIES ARE PLANNED AND BUILT IN YET TO BE DETERMINED LOCATIONS OF THE STATE, WHERE THEY WOULD BEST SERVE THE MAXIMUM CUSTODY NEEDS OF THE STATE IN LOCATIONS CLOSEST TO THE SOURCES OF THE MAJORITY OF MAXIMUM CUSTODY PRISONERS (POSSIBLY NEAR THE NASHVILLE AND MEMPHIS AREAS). THESE FACILITIES, IF PROPERLY DESIGNED AND HELD TO MAXIMUM CAPACITIES OF 500 EACH, COULD BE STAFFED BY DIVIDING THE CURRENT NEARLY 600 STAFF COMPLEMENT AT TENNESSEE STATE PRISON BETWEEN THE TWO FACILITIES. IT WILL PROBABLY TAKE THE DEPARTMENT (60 - 90 DAYS) TO MAKE A COMPREHENSIVE ANALYSIS OF THE CURRENT AND FUTURE NEED FOR MAXIMUM SECURITY BEDS IN TENNESSEE. I AM CONFIDENT THAT 1000 MAXIMUM SECURITY BEDS WITH DESIGN AND PROGRAM FLEXIBILITY INCORPORATED INTO THE ARCHITECTURE, WILL MEET THIS NEED FOR THE FORESEEABLE FUTURE. IF ONLY 400 - 500 MAXIMUM BEDS ARE NEEDED AT PRESENT, ONE OF THE FACILITIES OR HALF OF EACH COULD BE OPERATED AS CLOSE CUSTODY BEDS, PROVIDED THE POPULATIONS ARE DIVIDED INTO SMALLER, MORE MANAGEABLE GROUPS AND THE DESIGN OF THE FACILITY WOULD PERMIT EACH UNIT TO OPERATE AT THE NEEDED CUSTODY LEVEL. THE SYSTEM HAS AN ADEQUATE NUMBER OF MEDIUM/MINIMUM SECURITY BEDS, PROVIDING A RATIONAL SYSTEM OF SENTENCING AND RELEASE IS ADOPTED AND IMPLEMENTED, RESULTING IN A PREDICTABLE REDUCTION IN INMATE POPULATION. THE INSTITUTIONS WHICH WERE REPLICATED ALL OVER THE STATE AFTER THE COMPLETION OF THE MIDDLE TENNESSEE FACILITY (E.G., BLEDSOE COUNTY, LAKE COUNTY AND MORGAN COUNTY) COULD SERVE AS MEDIUM SECURITY FACILITIES IF THEIR POPULATIONS WERE REDUCED TO 400 TO 500 (400 MEDIUM SECURITY INMATES AND 100 MINIMUM SECURITY INMATES). THESE FACILITIES WOULD ALSO NEED VERY SIMILAR ADDITIONS WHICH WOULD PERMIT, WHERE NEEDED, THE RE-LOCATION OF THE MAINTENANCE AND WAREHOUSE FACILITIES OUTSIDE THE SECURE PERIMETER, AND THE CONVERSION OF THAT VACATED SPACE TO EDUCATION, RECREATION AND STRUCTURED LEISURE TIME ACTIVITY AREAS. THE LIVING UNITS WOULD NEED HOLLOW METAL ROOM DOORS, SECURE WINDOWS, SECURE LOCKS AND SECURITY HARDWARE, AND COMPLETION OF THEIR DOUBLE FENCE SECURE PERIMETERS (SEE RECOMMENDATIONS IN THOSE SECTIONS OF THE REPORT). BECAUSE OF DESIGN FLAWS THAT COMPROMISE SECURITY AND SEVERELY LIMIT THE OPERATIONAL FLEXIBILITY AND EFFICIENCY, IT IS UNFORTUNATE THAT THESE FACILITIES APPEAR TO HAVE BEEN REPLICATED ALL OVER THE STATE, WITH NO APPARENT DESIGN MODIFICATIONS OR CHANGES.

RECOMMENDATIONS:

1) BUILD TWO NEW 500 BED, MAXIMUM/CLOSE SECURITY INSTITUTIONS IN SEPARATE GEOGRAPHIC LOCATIONS OF THE STATE NEAR THE URBAN CENTERS FROM WHICH THE MAJORITY OF THE MAXIMUM AND CLOSE CUSTODY INMATES ARE GENERATED (E.G., NASHVILLE AND MEMPHIS). THESE TWO FACILITIES WOULD REPLACE THE CURRENT TENNESSEE STATE PRISON.

RECOMMENDATIONS (CONT'D)

2) OVER A TWO YEAR PERIOD, REPLACE ALL OF THE LIVING UNITS AT THE TURNEY CENTER. THE NEW LIVING UNITS SHOULD BE DESIGNED WITH A FORUM FOR THE INPUT OF STAFF. THE UNITS SHOULD BE SECURE, COST-EFFECTIVELY STAFFED, MAKING OPTIMUM UTILITY OF ARCHITECTURE TO FACILITATE STAFF CONTROL AND INMATE ACCOUNTABILITY.

3) A. DISCONTINUE THE USE OF C-1 AND C-2 DORMITORIES AT FORT PILLOW AS HOUSING UNITS. THIS BUILDING SHOULD BE REMODELED AND USED FOR MULTI-PURPOSE, EDUCATIONAL/VOCATIONAL SPACES AND A STRUCTURED, SUPERVISED LEISURE AND RECREATIONAL ACTIVITIES IN A SUPERVISED DAY ROOM OR GAME ROOM SETTING.

B. REMODEL AND UPGRADE THE CONSTRUCTION OF THE SEGREGATION UNIT AT FORT PILLOW, INCLUDING THE OUTDOOR RECREATION SPACE AND PROVISIONS FOR INDOOR EXERCISE.

4) A. INSTALL SECURE DOORS, WINDOWS, LOCKS AND SECURITY HARDWARE AT ALL THE REGIONAL FACILITIES.

B. RE-LOCATE THE MAINTENANCE AND WAREHOUSE FUNCTION SPACES OUTSIDE THE PERIMETER OF THE FACILITIES.

C. REMODEL FORMER MAINTENANCE AND WAREHOUSE AREAS, AND CONSTRUCT ADDITIONAL SPACE AT EACH FACILITY TO ACCOMMODATE AND PROVIDE SUFFICIENT SPACE FOR ACADEMIC AND VOCATIONAL EDUCATION. CONTACT AND NON-CONTACT VISITING, COUNSELING, RECREATION, LIBRARIES, INDUSTRY AND STAFF TRAINING.

THESE RECOMMENDATIONS REPRESENT THE VERY HIGHEST PRIORITY ITEMS. ALSO OF SIGNIFICANT IMPORTANCE, ARE A WIDE VARIETY OF NECESSARY PHYSICAL PLANT IMPROVEMENTS AT EACH OF THE FACILITIES THAT ARE ESSENTIAL TO THE SECURITY, CONTROL AND QUALITY OF LIFE IN EACH OF THE FACILITIES. THESE RECOMMENDATIONS ARE FOUND IN THE INSTITUTION NARRATIVES.

III. INSTITUTION CLIMATE

IT IS MY ASSESSMENT THAT LEVELS AND/OR PERCEPTIONS OF VIOLENCE, FEAR AMONG STAFF AND INMATES AND THE FREQUENCY OF INCIDENTS OF ASSAULT AND ESCAPE, HAVE BEEN ON THE INCREASE FOR THE YEAR PRECEDING THIS EVALUATION. THE INTERVALS BETWEEN HOMICIDES AND VERY SERIOUS ASSAULTS DIMINISHED. THE MEDIA AND PUBLIC ATTENTION AND RESULTING POLITICAL FALLOUT, ERODED THE CONFIDENCE OF STAFF AT ALL LEVELS. THIS WAS ALL AGGRAVATED BY THE FREQUENT TURNOVER IN AGENCY LEADERSHIP AND CORRESPONDING CHANGES IN POLICY AND DIRECTION. THIS, IN TURN, RESULTED IN FURTHER DETERIORATION IN THE QUALITY OF COMMUNICATIONS BETWEEN CENTRAL OFFICE AND THE INSTITUTIONS. ULTIMATELY, WHEN THE STAFF LOST CONFIDENCE IN THEMSELVES AND WERE ESSENTIALLY OPERATING ON A CRISIS-TO-CRISIS MODE, THEY, ALONG WITH THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT, BEGAN OVERREACTING. (STRIPES FOR ALL INMATES IS JUST ONE EXAMPLE TO ADDRESS THE ESCAPE ISSUE). THIS IN TURN, ELIMINATED WHAT LITTLE CONFIDENCE THE INMATES HAD IN STAFF AND THE SYSTEM AS THEY HEARD AND SAW ALL THE POLITICAL RHETORIC IN THE MEDIA. WHEN YOU ADD TO THE EQUATION THE PLAN FOR THE 80'S, WHICH DID NOT ADDRESS ANY ONE OF THE MAJOR PROBLEMS FACING THE AGENCY AND INSTITUTIONS, IT IS EASY TO UNDERSTAND WHY THE LAST COUPLE OF YEARS HAVE BEEN SO HARD ON ALL THE STAFF AND THE INMATES.

FROM MY DISCUSSIONS WITH STAFF AT ALL LEVELS IN CENTRAL OFFICE AND IN THE INSTITUTIONS, I DID NOT FIND ANYONE WHO FELT THEY HAD INPUT INTO THE PLAN FOR THE 80'S BEFORE IMPLEMENTATION. VERY FEW STAFF FELT THE PLAN HAD ANY REDEEMING QUALITIES. IT IS SAFE TO SAY AFTER HAVING TALKED TO MOST OF THOSE WHO WERE MOST AFFECTED BY THE PLAN FOR THE 80'S (INSTITUTION HEADS) THAT THE OVERWHELMING

MAJORITY FELT THE PLAN WA_ ILL-ADVISED AND CONCEIVED AND L ELOPED IN A VACUUM. EVEN THOSE IN CENTRAL OFFICE AT THE TIME THE PLAN WAS BEING DEVELOPED, WHO HAD PRIMARY RESPONSIBILITY FOR THE INSTITUTIONS, HAD NO INPUT. CONSENSUS OF THOSE IN THE INSTITUTIONS IS THAT THEY WERE SUMMONED TO A MEETING, HANDED THE REPORT, ATTEMPTED TO RAISE SOME QUESTIONS AND DISCUSS THE PLAN, BUT IT WAS MADE VERY CLEAR THAT THE PLAN WAS GOING TO PROCEED INTACT, IN ITS ORIGINAL FORM AND THEIR DIRECTION WAS TO IMPLEMENT IT. IT IS IMPORTANT THAT WE ANALYZE THE DEVELOPMENT AND IMPLEMENTATION OF THE PLAN FOR THE 80'S BECAUSE IT IS SYMPTOMATIC OF A MENTALITY AND PROCESS THAT HAS CONTINUED UP TO THE PRESENT.

I HAVE BEEN UNABLE TO FIND ANY RATIONAL EXPLANATION FOR WHAT THE PLAN WAS GOING TO ACCOMPLISH FOR THE AGENCY, OR HOW IT WOULD ADDRESS THE DEPARTMENT'S MOST SERIOUS PROBLEMS AT THE TIME - OVERCROWDING, VIOLENCE, ESCAPES, CLASSIFICATION, IDLENESS. ANY REASONABLE PERSON COULD PREDICT THAT NOT ONLY WOULD THE PLAN NOT ADDRESS THESE PROBLEMS, BUT WOULD IN FACT, AGGRAVATE AND COMPOUND MOST IF NOT ALL OF THE PROBLEMS PLAGUING THE AGENCY. THE AGENCY LEADERSHIP DID PROCEED WITH THIS "DESIGN FOR DISASTER" IN FACE OF THE CONCERNS EXPRESSED BY INSTITUTION AND CENTRAL OFFICE STAFF RESPONSIBLE FOR THE FACILITIES AND THE SPECIAL MASTER.

THE AGENCY NEEDED A PLAN, THEY DIDN'T HAVE ONE, THE PLAN FOR THE 80'S WAS ACCEPTABLE TO THE EXECUTIVE BRANCH AND IT WAS ADOPTED BECAUSE A PLAN TO TRULY ADDRESS TENNESSEE'S PROBLEMS HAD NOT BEEN DEVELOPED. THE PLAN FOR THE 80'S SHOULD BE SCRAPPED AND ANY REFERENCE TO IT DELETED FROM ALL DEPARTMENT DOCUMENTS. THE AGENCY SHOULD ADMIT OUT FRONT THAT THE PLAN WAS A DISASTER AND NOT DANCE AROUND THE FACT THAT MAJOR CHANGES HAVE ALREADY BEEN MADE BY RESTORING COUNSELING AND EDUCATION, ETC. COMMITTEES MADE UP OF THE INSTITUTION HEADS AND DEPARTMENT STAFF WHO REPRESENT THE WEALTH OF THE DEPARTMENT'S KNOWLEDGE AND EXPERIENCE SHOULD BE ESTABLISHED IMMEDIATELY TO REVIEW, STUDY AND DEVELOP ACTION PLANS AND TIMELINES FOR THE IMPLEMENTATION OF THE CONSULTANT RECOMMENDATIONS.

ONE OF THE MAJOR FACTORS THAT HAS CONTRIBUTED TO A VERY POOR CLIMATE IN THE INSTITUTIONS IS THE FACT THAT THE AGENCY HAS NOT HAD ANY STABILITY IN THE DEPARTMENT LEADERSHIP FOR A LONG TIME. THE DEPARTMENT HAS MADE DRAMATIC SHIFTS IN DIRECTION AND PRIORITIES AND THIS IN TURN, HAS CONFUSED, FRUSTRATED AND BEWILDERED NOT ONLY THE INSTITUTION STAFF, BUT THE DEPARTMENT LEADERSHIP IN CENTRAL OFFICE. IF THE TENNESSEE DEPARTMENT OF CORRECTIONS IS GOING TO TAKE A LEADERSHIP ROLE IN ESTABLISHING SOUND CORRECTIONS POLICY, THE EXECUTIVE BRANCH OF GOVERNMENT MUST BRING SOME STABILITY TO THE COMMISSIONER'S POSITION. I AM AWARE THAT IN A YEAR AND A HALF, TENNESSEE WILL HAVE A NEW GOVERNOR AND THIS COULD LIKELY LEAD TO YET ANOTHER CHANGE IN THE AGENCY LEADERSHIP. THE STATE OF TENNESSEE MUST PLACE A PRIORITY ON ENSURING THE LONG TERM STABLE LEADERSHIP OF THE CORRECTIONS DEPARTMENT, IF THE AGENCY IS GOING TO RETURN TO AN INDEPENDENT AGENCY THAT IS IN CONTROL OF ITS OWN FUTURE AND DESTINY.

ONE OF THE MOST IMPORTANT AND KEY ELEMENTS IN THE DEVELOPMENT, MAINTENANCE AND MANAGEMENT OF AN APPROPRIATE CLIMATE IN A CORRECTIONAL FACILITY, IS THE ROLE OF THE CHIEF EXECUTIVE OFFICER (WARDEN/SUPERINTENDENT). IT BECAME APPARENT VERY EARLY IN THE COURSE OF MY ON-SITE VISITS TO THE INSTITUTIONS, THAT THE INSTITUTION HEADS HAD VERY LIMITED ACTUAL AUTHORITY AND WERE PERCEIVED BY THEMSELVES AND OTHER INSTITUTION STAFF AND INMATES, AS HAVING VERY RESTRICTED AUTHORITY TO MANAGE THEIR INSTITUTIONS. INSTITUTIONAL AUTHORITY HAS BEEN USURPED BY CENTRAL OFFICE MANAGERS AND STAFF ASSUMING LINE AUTHORITY ROLES IN THE AREAS OF BUDGETING, PERSONNEL SELECTION AND DEPLOYMENT, SECURITY, INDUSTRY, ETC. THESE AND OTHER CONSTRAINTS, DIRECTIVES AND

FUNCTIONAL INSTRUCTIONS FROM THE COMMISSIONER, DEPUTY COMMISSIONER, ASSISTANT COMMISSIONER AND OTHER CENTRAL OFFICE STAFF, INCREASINGLY PRESCRIBE NOT ONLY WHAT TO DO, BUT HOW TO DO IT. KEY INSTITUTION STAFF RECEIVE REDUNDANT, CONTRADICTORY, CONFLICTING INFORMATION AND IN SOME CASES, JUST PLAIN UNSOUND ADVICE AND ORDERS, WHICH ORIGINATE FROM INDIVIDUALS WHO IN THE JUDGEMENT OF SOME INSTITUTION STAFF, DO NOT HAVE THE EXPERIENCE OR CREDIBILITY TO PROVIDE SUCH DIRECTION. INSTITUTION STAFF DO NOT FEEL THEY ARE CONSULTED BEFORE MAJOR DECISONS ARE MADE, AND HAVE NO INPUT ON CHANGE WHICH THEY ARE EXPECTED TO IMPLEMENT OR THAT IMPACTS THEM, THE STAFF AND THE INMATES. THESE DECISIONS INCLUDE BUDGET DECISIONS, STAFF RE-ASSIGNMENTS, INMATE TRANSFERS, CHANGING THE MISSION, THE CLASSIFICATION OF HOUSING UNITS, ETC. THEY ALSO EXPRESSED CONCERN ABOUT DIRECTIVES AND CHANGES THAT ARE COMMUNICATED DIRECTLY TO SUBORDINATE INSTITUTION STAFF, WITHOUT ANY KNOWLEDGE OF THE WARDEN OR ASSOCIATE WARDENS. CENTRAL OFFICE IS PERCEIVED AS BEING UNRESPONSIVE TO THE NEEDS OF INSTITUTION MANAGERS AND STAFF.

WITH THE EXISTING MONITORING CAPABILITY OF CENTRAL OFFICE AND ALL OF THE SAFEGUARDS IN PLACE TO ENSURE THAT STAFF AND INMATE RIGHTS ARE ADEQUATELY PROTECTED, IT IS NOT NECESSARY TO CENTRALIZE AUTHORITY AND CONTROL. SYSTEMS ARE IN PLACE TO MONITOR THE USE AND DEPLOYMENT OF FISCAL AND HUMAN RESOURCES. IT IS IMPERATIVE THAT THE WARDEN HAVE THE AUTHORITY AND LATITUDE TO MAKE DECISIONS, COORDINATE AND LEAD THE INSTITUTION. THE CLIMATE, DISCIPLINE, MORALE AND CONDUCT OF AN INSTITUTION ARE DEPENDENT ON THE LEADERSHIP AND PERCEIVED AUTHORITY OF THE WARDEN.

ONE OF THE MOST IMPORTANT MANAGEMENT PRINCIPLES IS THE DELEGATION OF AUTHORITY AS CLOSE AS POSSIBLE TO THE POINT OF IMPACT OF THE DECISION. IN PRACTICAL TERMS, AS MUCH AUTHORITY AS POSSIBLE SHOULD BE DELEGATED TO THE INSTITUTION HEADS. IN TURN, THE INSTITUTION HEAD MUST BE RESPONSIBLE AND HELD ACCOUNTABLE FOR THE DEVELOPMENT AND MANAGEMENT OF THE TONE AND CLIMATE OF THE INSTITUTION. THE WARDEN IS ACCOUNTABLE FOR THE COORDINATION AND INTERACTION OF ALL THE COMPONENTS THAT MAKE UP THE INSTITUTION ORGANIZATION AND OPERATION. IN THE RELATIONSHIP BETWEEN CENTRAL OFFICE AND THE INSTITUTION, THE INSTITUTION MUST BE VIEWED AS THE MOST IMPORTANT ORGANIZATIONAL COMPONENT OF THE CORRECTIONS AGENCY. ALL OF THE CENTRAL OFFICE COMPONENTS THAT HAVE A RELATIONSHIP TO THE INSTITUTIONS, SHOULD BE TAILORED AND DESIGNED TO SERVE THE INSTITUTION. THE CENTRAL OFFICE RESOURCES MUST BE SEEN AS OFFERING, NOT IMPOSING THEIR SERVICES ON THE INSTITUTION. THE WARDEN AS THE INSTITUTION HEAD, MUST HAVE AND BE PERCEIVED TO HAVE THE AUTHORITY TO RUN THE INSTITUTION BY ALL THE STAFF AND INMATES.

THE WARDEN MUST SEE AND BE SEEN IN THE INSTITUTION BY BOTH STAFF AND INMATES. IT IS ESSENTIAL FOR THE STAFF AND INMATES TO KNOW AND BELIEVE THAT THE WARDEN KNOWS WHAT'S GOING ON IN THE INSTITUTION ON A DAY-TO-DAY BASIS. THE WARDEN HAS TO HAVE HIS/HER FINGER ON THE PULSE OF THE INSTITUTION IN ORDER TO TAKE STRATEGIC, PRO-ACTIVE AND PREVENTATIVE INITIATIVES IN MANAGING THE INSTITUTION. THE WARDEN CANNOT BE PRO-ACTIVE IF HE IS NOT KNOWLEDGEABLE ABOUT WHAT'S GOING ON IN THE FACILITY. COMPETENT WARDENS REDUCE THE FREQUENCY OF REACTIONARY, AFTER THE FACT RESPONSES. CRISIS TO CRISIS REACTIONS ARE THE PRODUCTS OF THE LACK OF STRATEGIC, TACTICAL, PREVENTATIVE AND ANTICIPATORY MANAGEMENT.

IN ADDITION TO SEEING AND BEING SEEN, THE WARDEN MUST DESIGN AND IMPLEMENT SYSTEMS AND DESIGN FORUMS THAT ENSURE GOOD COMMUNICATIONS BETWEEN ALL STAFF ON ALL SHIFTS. THAT COMMUNICATION MUST BE TWO WAYS, FROM THE LINE STAFF TO THE ADMINISTRATION & FROM THE ADMINISTRATION TO THE LINE STAFF. THE SAME QUALITY AND CREDIBILITY OF COMMUNICATIONS BETWEEN STAFF AT ALL LEVELS AND THE INMATE POPULATION IS ALSO ESSENTIAL.

STAFF MUST BE RESPONSIVE TO BOTH THE REAL AND THE IMAGINED PROBLEMS AND CONCERNS OF THE INMATE POPULATION. IN MOST INSTITUTIONS, AT LEAST THE FORMAL FORUMS FOR COMMUNICATIONS BETWEEN THE INMATES AND STAFF (INMATE COUNCILS) APPEARED TO BE FUNCTIONING WELL.

DANGEROUS OR SIGNIFICANT LEVELS OF RACIAL ANTAGONISM OR TENSION WERE NOT DETECTED IN THE INSTITUTIONS. FROM DIRECT OBSERVATION AND DISCUSSION WITH STAFF AND INMATES, THE LEVEL OF RACIAL TENSION IN THE INSTITUTION WOULD BE CLOSELY REPRESENTATIVE OF THE LOCAL COMMUNITY AROUND ANY GIVEN FACILITY.

RECOMMENDATIONS:

1) THE AGENCY SHOULD PURGE ALL OF ITS FUTURE COMMUNICATIONS OF ANY REFERENCE TO THE "PLAN FOR THE 80'S." THE TERM CARRIES WITH IT TOO MUCH NEGATIVE BAGGAGE. THE LATEST REVISED VERSION IS FORTUNATELY TAKING AN ALMOST 180° TURN FROM THE PLAN'S ORIGINAL INTENT.

2) THE CONCEPT OF THE SINGLE MISSION INSTITUTION SERVING AN EXCLUSIVE GEOGRAPHICAL AREA OF THE STATE SHOULD BE REMOVED FROM AGENCY AND INSTITUTION MISSION STATEMENTS.

3) THE INTELLECT, EXPERIENCE, COMPETENCE AND KNOWLEDGE OF THE DEPARTMENT AND INSTITUTION STAFF SHOULD BE ORGANIZED AND TAPPED TO DEVELOP, REVIEW AND UP-DATE POLICY AND PROCEDURE ON AN ONGOING BASIS, AND MORE IMPORTANTLY, TO PROVIDE A FORUM WHERE THEY WILL HAVE DIRECT INPUT INTO THE DEPARTMENT'S LONG RANGE PLANNING. HAVING PARTICIPATED IN THE DEVELOPMENT AND IMPLEMENTATION OF THE DEPARTMENT'S LONG RANGE PLAN, THEY WILL HAVE AN INHERENT SENSE OF OWNERSHIP, PROPRIETORSHIP AND COMMITMENT TO THE PLAN.

4) THIS GROUP (THE INSTITUTION HEADS AND KEY CENTRAL OFFICE STAFF) SHOULD BE ASSEMBLED TO DEVELOP THE PROCESS AND METHODS FOR IMPLEMENTING THE FINAL RECOMMENDATIONS OF THE EVALUATORS. THIS DOCUMENT SHOULD BE THE DEPARTMENT'S FIVE YEAR PLAN, AND MUST HAVE THE ESSENTIAL SUPPORT OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF TENNESSEE STATE GOVERNMENT.

5) THE EXECUTIVE BRANCH OF STATE GOVERNMENT MUST MAKE A LONG TERM CONTRACTUAL COMMITMENT, WHICH WILL ENSURE THAT THE AGENCY WILL HAVE AN EXPERIENCED, COMPETENT LEADER OVER THE COURSE OF A FOUR OR FIVE YEAR PERIOD, WHO WILL OVERSEE THE DIRECTION AND IMPLEMENTATION OF THE CHANGES THAT WILL BE IMPLEMENTED FROM THIS PROCESS.

6) IT IS ESSENTIAL THAT THE INSTITUTION HEADS BE CLEARLY SEEN BY ALL DEPARTMENT STAFF AS "THE CHIEF EXECUTIVE OFFICERS" OF THEIR RESPECTIVE INSTITUTIONS. THE DEPARTMENT OF CORRECTIONS LEADERSHIP SHOULD PROMOTE THE CONCEPT OF THE WARDEN'S LEADERSHIP AT THE INSTITUTION LEVEL, AND ACTIVELY DELEGATE ALL ASPECTS OF OPERATIONAL AUTHORITY TO THE INSTITUTION HEADS.

7) THE DEPARTMENT SHOULD REVIEW ALL POLICY, PROCEDURES AND DIRECTIVES TO ENSURE THAT THEY PROVIDE APPROPRIATE GUIDELINES FOR THE INSTITUTIONS WITHOUT SPECIFYING OPERATIONAL DETAILS.

8) IT IS RECOMMENDED THAT WARDENS HAVE FINAL AUTHORITY OVER THE UTILIZATION OF ALLOCATED FUNCTIONAL RESOURCES IN THE INSTITUTION, AND THAT THE WARDEN BE HELD ACCOUNTABLE FOR THE ALLOCATIONS OF BOTH THE FISCAL AND HUMAN RESOURCES ALLOCATED TO THE INSTITUTION.

RECOMMENDATIONS: (CONT'D)

9) IT IS RECOMMENDED THAT ANNUAL WORK PLANS BE DEVELOPED JOINTLY BY THE COMMISSIONER, DEPUTY COMMISSIONER AND INSTITUTION HEADS. THE WORK PLAN SHOULD INCLUDE WORTHWHILE, REALISTIC AND ACHIEVABLE ANNUAL GOALS AND OBJECTIVES.

10) WARDENS, WORKING WITH THEIR IMMEDIATE SUPERVISOR, SHOULD HAVE THE AUTHORITY TO DEVELOP THEIR INSTITUTION BUDGETS WITHIN THE PARAMETERS NEGOTIATED AND AGREED TO BY THE COMMISSIONER OF CORRECTIONS. FURTHER, ONCE THE FUNDS ARE ALLOCATED TO THE INSTITUTION, THE WARDEN MUST BE GIVEN THE AUTHORITY TO MAKE REALLOCATIONS WITHIN THE FISCAL LIMITS OF THE APPROVED BUDGET.

11) THE AUTHORITY DELEGATED TO THE WARDEN MUST BE BALANCED WITH A HIGH DEGREE OF ACCOUNTABILITY. THE SYSTEMS AND MECHANISMS FOR MONITORING ACCOUNTABILITY SHOULD BE DESIGNED TO MINIMIZE THE DISRUPTION TO THE INSTITUTIONS.

12) THE WARDEN SHOULD SPEND A MINIMUM OF ONE-QUARTER OF HIS TIME, AND IDEALLY UP TO ONE-HALF OF HIS TIME, VISITING ALL AREAS IN THE INSTITUTION OBSERVING AND MONITORING THE OPERATIONS AND PROCEDURES, AND TALKING INFORMALLY WITH STAFF AND INMATES. THIS PROVIDES A ROLE MODEL FOR STAFF AT ALL LEVELS, AND CREATES AND MAINTAINS A CLIMATE OF RESPONSIVENESS AMONG ALL THE STAFF. IT ALSO IS AN EXCELLENT PROCESS BY WHICH THE WARDEN IS ABLE TO MONITOR THE INSTITUTION AND KEEP HIS FINGER ON THE PULSE OF THE INSTITUTION, WHICH LEADS TO PRO-ACTIVE INTERVENTION AND REDUCES THE FREQUENCY OF INCIDENTS OF CRISIS MANAGEMENT.

13) EACH OF THE INSTITUTIONS SHOULD INITIATE RESPONSIVE DAILY REPORTING PROCEDURES. EACH UNIT SHOULD SUBMIT FOR EACH SHIFT, A DAILY REPORT FORM WHICH OUTLINES BOTH ROUTINE AND UNUSUAL OCCURRENCES DURING THE SHIFT. ANY SERIOUS INCIDENTS SHOULD BE ATTACHED ON DETAILED INCIDENT REPORT FORMS. THE FORM SHOULD ALSO PROVIDE SPACE FOR STAFF TO PROVIDE DIRECT INFORMATION ON RUMORS, OTHER INTELLIGENCE INFORMATION AND ANY PHYSICAL PLANT PROBLEMS, AND/OR PROCEDURAL SUGGESTIONS, ETC. THESE REPORTS IN TURN, SHOULD BE COLLECTED JUST BEFORE THE END OF EACH SHIFT AND PROVIDED TO THE SHIFT SUPERVISOR AND ONCOMING SHIFT SUPERVISOR.

14) MOST INSTITUTIONS DO CONDUCT A SHIFT ASSIGNMENT MEETING BEFORE EACH SHIFT. IT IS RECOMMENDED THAT THESE ASSIGNMENT OR ROLL CALL MEETINGS BE RE-DESIGNATED AS SHIFT BRIEFINGS AND THEY BE USED BY THE SHIFT SUPERVISOR AND ADMINISTRATION TO PROVIDE CURRENT INFORMATION TO ALL STAFF ON WHAT IS GOING ON INSTITUTION-WIDE. INCIDENTS, CONCERNS, ANTICIPATED POTENTIAL PROBLEMS, SPECIFIC INSTRUCTIONS ON WHAT AREAS AND WHO SHOULD BE MONITORED MORE CLOSELY DURING THE SHIFT, CHANGES IN PROCEDURE OR POLICY AND A WIDE VARIETY OF IMPORTANT INFORMATION SHOULD BE DISSEMINATED AT THE SHIFT BRIEFINGS IN ORDER TO FOSTER THE CONCEPT THAT ALL THE STAFF ARE PART OF A INSTITUTION-WIDE TEAM - THEY ARE IMPORTANT, THE ADMINISTRATION WANTS THEM TO BE INFORMED AND THEREBY, BETTER EQUIPPED TO CARRY OUT THEIR VERY DIFFICULT AND IMPORTANT RESPONSIBILITIES.

15) THE REPORTS GATHERED FROM EACH OF THE UNITS AND THE THREE SHIFTS, SHOULD BE ORGANIZED AND PROVIDED TO THE WARDEN ALONG WITH A COVER REPORT FROM EACH SHIFT SUPERVISOR. THESE REPORTS SHOULD THEN BE USED EVERY MORNING AS THE BASIS FOR A BRIEF MEETING OF THE WARDEN'S KEY STAFF. AT THE MEETING,

III. INSTITUTION CLIMATE (CONT'D)

RECOMMENDATIONS: (CONT'D)

15) THE WARDEN SHOULD ASSIGN APPROPRIATE ADMINISTRATORS TO FOLLOW UP ON CONCERNS, ISSUES AND/OR PHYSICAL PLANT MAINTENANCE REPAIR OR MODIFICATION. THIS COMBINED NETWORK OF COMMUNICATION WILL MAKE THE ORGANIZATION PRO-ACTIVE, RESPONSIVE, AND IN THE EYES OF STAFF, GIVE THEM TANGIBLE EVIDENCE THAT WHAT THEY SEE, REPORT AND ARE CONCERNED ABOUT IS ACTED UPON AT THE TOP.

16) THE INSTITUTION LEADERSHIP SHOULD MAKE INCREASED USE OF WRITTEN COMMUNICATIONS WITH INMATES AND STAFF. MANY TIMES, RUMORS, SPECULATION, CONJECTURE AND INAPPROPRIATE BEHAVIOR RESULTING FROM BAD INFORMATION CAN BE MINIMIZED OR AVOIDED WITH A SINGLE SHEET FLYER DELIVERED TO ALL INMATE'S CELLS AND TO THE STAFF AND SHIFT BRIEFINGS.

IV. CLASSIFICATION, WORK, PROGRAM AND SERVICES

IT IS FRUSTRATING, DEMORALIZING AND AN UNNECESSARY DRAIN ON STAFF RESOURCES TO ATTEMPT TO DEVELOP, MAINTAIN OR MANAGE ANY CLASSIFICATION, "SYSTEM," GIVEN: 1) THE CURRENT SENTENCING LAWS; 2) RELEASING POLICIES; 3) THE LEGISLATIVE BARRIERS TO CLASSIFICATION IN THE 1982 TENNESSEE CRIMINAL SENTENCING ACT; AND 4) THE AFTER THE FACT USE OF EARLY RELEASES TO CONTROL INMATE POPULATION. UNDER THESE CONDITIONS IT IS HIGHLY UNLIKELY THAT ANY AGENCY (REGARDLESS OF HOW COMMITTED THE STAFF ARE) WOULD BE ABLE TO MANAGE ANY CLASSIFICATION SYSTEM THAT WOULD MAKE TIMELY AND OPTIMUM UTILITY OF THE AGENCY'S MINIMUM, MEDIUM, CLOSE AND MAXIMUM CUSTODY BED SPACE. THERE ARE JUST TOO MANY VARIABLES THAT THE DEPARTMENT HAS NO CONTROL OVER AND THAT DEFY ANY ACCURATE PREDICTION.

IN A COURAGEOUS AND I BELIEVE, WELL INTENDED EFFORT TO MANAGE THE UNMANAGEABLE, THE INSTITUTION STAFF HAVE ATTEMPTED TO LOCATE VACANT BEDS IN THE SYSTEM, IDENTIFY INMATES WHO COULD BE CLASSIFIED TO FILL THEM, AND TRANSFER THOSE INMATES TO THE EXISTING VACANT BEDS. INMATE CLASSIFCATION CHANGES ARE RAMPANT AND THE SYSTEM EXCEPTIONS ARE MADE TO RE-CLASSIFY INMATES BOTH UP AND DOWN. THE END RESULT HAS BEEN AN: 1) EXTREMELY HIGH VOLUME OF INMATE TRANSFERS; 2) THE DISTRIBUTION OF INMATES TC INSTITUTIONS NOT DESIGNED, STAFFED OR PROGRAMMED TO ACCOMMODATE AND CONTROL THEM; 3) INMATES TRANSFERRED TO INSTITUTIONS ACROSS THE STATE, ALL BUT ELIMINATES THEIR ABILITY TO MAINTAIN RELATIONSHIPS WITH THEIR FAMILIES, FRIENDS AND COMMUNITY AND/OR TO AN INSTITUTION LOCATED IN A REGION OF THE STATE WHERE MINORITIES ARE NOT REPRESENTATIVE AMONG STAFF AND CANNOT BE RECRUITED TO WORK AT THE FACILITY FROM THAT GEOGRAPHIC LOCATION; AND 4) SOME INMATE TRANSFERS ENTAIL THE INTERRUPTION OF THE INMATE'S INVOLVEMENT IN EDUCATIONAL, VOCATIONAL TRAINING AND OTHER CONSTRUCTIVE PROGRAM ASSIGNMENTS, ONLY TO BE SENT TO A FACILITY WHERE THEY WILL BE IDLE.

THE OVERCROWDING PROBLEM BY ITSELF CONTRIBUTES TO THE INCREASE IN VIOLENCE. THE POTENTIAL FOR VIOLENCE IS COMPOUNDED BY THE HIGH VOLUME OF TRANSFERS AND INAPPROPRIATE MIX OF INMATES WHOSE NEEDS ARE NOT COMPATIBLE WITH THE FACILITY, THE REGION AND/OR HIS CUSTODY REQUIREMENTS. THERE IS A DIRECT ADVERSE AFFECT ON THE AMBIANCE OF THE INSTITUTION WHICH COMPROMISES THE EFFECTIVE DELIVERY OF PROGRAM, SERVICES AND INFLUENCES THE QUALITY OF STAFF AND INMATE RELATIONSHIPS AND ULTIMATELY THE SECURITY OF THE INSTITUTION. A CONSTANT TURNOVER OF INMATE POPULATIONS DE-STABILIZES THE INSTITUTIONS AND CONTRIBUTES TO INCREASED VIOLENCE BY MAKING SECURITY AND CUSTODY MORE ONEROUS, REGIMENTED AND DE-PERSONALIZED. THE HIGH VOLUME OF INMATE TRANSFERS THROUGHOUT THE SYSTEM IS A MAJOR DRAIN ON STAFF RESOURCES. THE ONGOING MASS MOVEMENT OF INMATES INTO AND OUT OF INSTITUTIONS USES A WIDE RANGE OF STAFF

RESOURCES IN THE ADMINISTRATIVE PAPERWORK, RECEPTION, ORIENTATION, DISCHARGE, PROPERTY MOVEMENT, TRANSPORTATION, ETC. I AM CONVINCED THAT WE ALL WOULD BE SHOCKED AT HOW MANY TRANSFERS OCCURRED SYSTEM-WIDE BETWEEN JULY, 1984 AND JUNE 30, 1985. THIS FIGURE WOULD BE JUST ONE INDICATOR OF HOW STAFF RESOURCES ARE NOT BEING COST-EFFECTIVELY AND EFFICIENTLY UTILIZED. AS RESOURCES AND SERVICES ARE INCREASINGLY STRAINED, THE INMATES AND STAFF WILL EXPERIENCE STRESS RELATED SYMPTOMS. INMATE RELATIONSHIPS MUST BE RE-ESTABLISHED AT THE NEW INSTITUTION, AND LEVELS OF CREDIBILITY AND TRUST BETWEEN INMATES AND STAFF MUST BE RE-DEVELOPED. THESE CONDITIONS INCREASE THE POTENTIAL FOR INMATE ON INMATE AND INMATE ON STAFF VIOLENCE. THE INMATE SOCIAL HIERARCHIES ARE ALWAYS IN A STATE OF COMPETITION TO DETERMINE WHO HAS THE INFLUENCE, WHO WILL EMERGE AS THE INFORMAL LEADERS. ALL OF THESE CONSTANTLY CHANGING CIRCUMSTANCES CAN CONTRIBUTE TO AND ACTUALLY TRIGGER BEHAVIOR THAT IS DISRUPTIVE AND DANGEROUS, BUT MAY RESULT IN NEW SENTENCES WHICH FURTHER CONTRIBUTE TO THE OVERCROWDING PROBLEM.

INMATE IDLENESS IS RAMPANT SYSTEM-WIDE. ON ANY GIVEN DAY WHEN THE LONG AND SHORT LINES ARE OUT, I WOULD ESTIMATE THAT OVER 40% OF THE INMATES ARE IDLE SYSTEM-WIDE. THOSE INMATES THAT ARE IN AN ASSIGNMENT, I WOULD ESTIMATE SPEND FOUR HOURS OR LESS ACTUALLY ENGAGED IN CONSTRUCTIVE OUTPUT. IN THE MONTHS OF JANUARY, FEBRUARY AND MARCH, 75% OF THE INMATE POPULATION MAY BE IDLE SYSTEM-WIDE. (I EXPECT THE JOB TRACKING REPORT WILL BE VERY REVEALING AND DOCUMENT SYSTEM-WIDE THE ACUTE NATURE OF THE IDLENESS PROBLEM - SEE INSTITUTION REPORTS).

THE BEST, MOST SUBTLE AND USUALLY THE MOST EFFECTIVE SECURITY AND CONTROL IS CARRIED OUT IN A PROGRAM RICH ENVIRONMENT WHERE THE MAJORITY OF THE INMATES ARE ENGAGED IN CONSTRUCTIVE ASSIGNMENTS FOR WHICH THEY RECEIVE SOME REASONABLE COMPENSATION. THE INMATE'S NUMBERS AND LOCATIONS ARE DETERMINED BY THE ASSIGNMENTS. SCHEDULES MUST BE ADHERED TO AND EVEN THE LEISURE TIME ACTIVITIES ARE SCHEDULED AND STRUCTURED AROUND ACCOUNTABILITY, SUPERVISION AND CONTROL OF THE INMATE POPULATION. IDLENESS BREEDS VIOLENCE THROUGH COMPETITION FOR VERY LIMITED RESOURCES. THEFTS, FIGHTS, EXTORTION, RAPES AND THE BEHAVIOR THAT BROUGHT THE INMATES TO PRISON ARE PERPETUATED BY IDLENESS.

THE NEED TO RESTORE THE PREVIOUS RATIO OF STAFF COUNSELOR POSITIONS TO INMATES HAS BEEN CLEARLY DOCUMENTED. IT IS ESSENTIAL THAT INMATES IN ANY LONG TERM CONFINEMENT FACILITY HAVE A DESIGNATED SOURCE TO GO TO FOR INFORMATION, ADVICE, COUNSEL AND TO JUST VENTILATE ABOUT CONCERNS AND FRUSTRATIONS THAT MIGHT OTHERWISE BE BOTTLED UP UNTIL THEY MANIFEST THEMSELVES IN ASSAULTS AND/OR A DETERIORATION OF MENTAL HEALTH, WHICH COULD PRODUCE EVEN MORE BIZARRE AND DANGEROUS BEHAVIOR.

THE EDUCATION AND VOCATIONAL PROGRAMS ARE EVEN MORE IMPORTANT IN THE TENNESSEE SYSTEM, THAN ANY OTHER SYSTEM I AM CURRENTLY FAMILIAR WITH. IN A STATE THAT HAS AN ACUTE PROBLEM OF PROVIDING EDUCATIONAL SERVICES TO THE CITIZENS AND CHILDREN AND CURRENTLY SPENDS LESS PER CAPITA ON EDUCATION THAN ANY OTHER STATE IN THE NATION, IT SHOULD NOT BE A SURPRISE TO ANYONE THAT EDUCATION NEEDS IN TENNESSEE'S CORRECTIONAL INSTITUTIONS ARE ACUTE. ESTIMATES OF LITERACY RATES AMONG THE INMATES BY SYSTEM EDUCATORS RANGE FROM 40% TO 65% OF THE INMATE POPULATION ARE UNABLE TO PASS SIXTH GRADE COMPETENCY TESTING. ALL OF THE INSTITUTIONS MUST INCREASE BOTH THE FISCAL AND HUMAN RESOURCES TO ADDRESS THIS SERIOUS PROBLEM THAT CAN ONLY FURTHER ADD TO THE OVERCROWDING POTENTIAL BY SENDING INDIVIDUALS BACK INTO THE FREE COMMUNITY UNABLE TO HANDLE THEIR OWN AFFAIRS. IF THEY CAN'T COMPETE, THEY WILL RESORT TO THE SAME BEHAVIOR THAT BROUGHT THEM TO PRISON. COMPETITIVE INCENTIVES MUST BE PROVIDED TO THOSE YOUNG MEN AND WOMEN TO ENCOURAGE AND SUPPORT THEM WHILE THEY ACQUIRE THE NECESSARY ACADEMIC SKILLS TO INCREASE THEIR CHANCES OF A SUCCESSFUL ADJUSTMENT IN THE COMMUNITY. I FULLY SUPPORT DR. OSA COFFEY'S RECOMMENDATIONS IN THE ACADEMIC AND VOCATIONAL EDUCATION AREAS, LIBRARY SERVICES AND RECREATION.

ANOTHER CLEARLY DOCUMENTED NEED IS TO RESEARCH, CREATE AND FOUND INDUSTRIES THAT ACTUALLY PROVIDE NOT ONLY OPPORTUNITIES FOR THE INMATES TO MAINTAIN A CONSTRUCTIVE ASSIGNMENT AND RECEIVE REASONABLE COMPENSATION WHILE IN PRISON, BUT TO EXPOSE THEM TO A MARKETABLE SKILL THAT IS IN DEMAND IN THE TENNESSEE JOB MARKET.

CURRENTLY THE RECREATION PROGRAMS AND STRUCTURED LEISURE TIME ACTIVITIES FOR INMATES ONLY SERVE AN ISOLATED AND/OR SELECT FEW. THERE IS AN OBVIOUS NEED FOR TRAINED PHYSICAL EDUCATION STAFF, EQUIPMENT AND IN SOME CASES, SPACE. THE DEPARTMENT MUST BE PRO-ACTIVE IN DEVELOPING ORGANIZED, WELL BALANCED PROGRAMS FOR COMPETITIVE RECREATIONAL OUTLETS AND STRUCTURED LEISURE TIME ACTIVITIES. THESE PROGRAMS ARE ESSENTIAL IN THAT THEY OCCUPY THE INMATE'S INTEREST AND TIME, AS WELL AS PROVIDE A PHYSICAL OUTLET FOR EXCESS OR PENT-UP AND UNSPENT ENERGY, WHICH IF NOT PROPERLY CHANNELED, RESULTS IN DISRUPTIVE, ASSAULTIVE AND DANGEROUS BEHAVIORS. INSTITUTIONS WHICH DO NOT INVEST IN RECREATIONAL AND LEISURE TIME ACTIVITIES AND THAT DON'T HIRE ENTHUSIASTIC STAFF WHO GENERATE ENTHUSIASM AND INTEREST AMONG THE INMATES IN CONSTRUCTIVE LEISURE TIME OUTLETS, GENERALLY EXPERIENCE INCREASED SECURITY AND CONTROL PROBLEMS AND VIOLENCE. WITH SO MUCH IDLENESS AND INACTIVITY SYSTEM-WIDE, INCREASED EMPHASIS AND RESOURCES DEVOTED TO THIS AREA CAN OFFSET SOME OF THE EFFECTS OF DAILY PROGRAM IDLENESS DURING THAT PERIOD WHILE INITIATIVES ARE UNDERWAY TO DEVELOP CONSTRUCTIVE WORK AND PROGRAM ASSIGNMENTS.

RECOMMENDATIONS:

1) THE DEPARTMENT MUST SECURE EXECUTIVE AND LEGISLATIVE SUPPORT FOR LEGISLATIVE CHANGES WHICH WOULD PERMIT A CLASSIFICATION SYSTEM TO MAKE FULL UTILITY OF THE EXISTING INSTITUTION BEDS, WHILE ENSURING INMATE CONTROL AND PUBLIC SAFETY.

2) THE DEPARTMENT MUST IMMEDIATELY STUDY THE VOLUME OF INMATE TRANSFERS AND ITS DRAIN ON STAFFING AND FISCAL RESOURCES, AND DEVELOP A RATIONAL SYSTEM TO REDUCE AND MINIMIZE INMATE TRANSFERS.

3) COUNSELING STAFF MUST BE INCREASED TO PERMIT A MINIMUM RATIO OF ONE COUNSELOR FOR EVERY 70 INMATES, SYSTEM-WIDE. (SUPERVISORY AND/OR SPECIALIZED COUNSELING STAFF NOT ASSIGNED A FULL CASELOAD OF 70 INMATES SHOULD NOT BE COUNTED IN THAT RATIO).

4) ACADEMIC AND VOCATIONAL PROGRAMS AND RESOURCES MUST BE UPGRADED SYSTEM-WIDE AND LOCATED IN INSTITUTIONS WHICH SERVE ALL GEOGRAPHIC LOCATIONS OF THE STATE.

5) COMPETITIVE COMPENSATION AND OTHER INCENTIVES MUST BE FUNDED TO ENCOURAGE THE VERY LARGE SEGMENT OF TENNESSEE INMATES WHO NEED ACADEMIC TRAINING AND VOCATIONAL SKILLS TO SURVIVE AND COMPETE IN THE COMMUNITY, AND ALSO TO REDUCE THE LIKLIHOOD THAT THEY WILL BE A LIFE-LONG BURDEN ON THE TAXPAYERS ON THE WELFARE ROLES OR IN ONE OF THE STATE'S INSTITUTIONS.

6) THE DEPARTMENT MUST CEASE THE FACADE OF CREATING ASSIGNMENT SLOTS ON PAPER AND USE THOSE RESOURCES CURRENTLY DEVOTED TO THESE DECEPTIONS AND UNPRODUCTIVE PURSUITS, TO DEVELOP AND IMPLEMENT A SYSTEM-WIDE PLAN TO PROVIDE CONSTRUCTIVE AND PRODUCTIVE ASSIGNMENTS FOR 80% OF THE INMATES SYSTEM-WIDE.

7) THE DEPARTMENT MUST SECURE THE NECESSARY POLITICAL SUPPORT AND FISCAL RESOURCES NECESSARY TO PROVIDE THE STAFF, SPACE, EQUIPMENT AND MATERIALS TO DEVELOP AND PROVIDE INDUSTRY PROGRAMS THAT FIRST PROVIDE THE INMATE POPULATION WITH OPPORTUNITIES TO LEARN MARKETABLE SKILLS, AND SECOND, IN THE FUTURE WILL HAVE THE POTENTIAL OF BREAKING EVEN OR GENERATING A PROFIT.

IV. CLASSIFICATION, WORK, PROGRAM AND SERVICES (CONT'D)

RECOMMENDATIONS: (CONT'D)

8) INMATES MUST BE PAID AT A LEVEL WHICH WILL NOT ONLY PROVIDE THEM WITH SOME OF THE BASIC NECESSITIES, BUT AN ACCEPTABLE LEVEL OF COMPENSATION RELATED TO PRODUCTIVITY AS AN INCENTIVE, WHICH WILL GIVE THEM INCOME FOR DISCRETIONARY SPENDING. LONG RANGE PLANNING IN THIS AREA SHOULD INCLUDE LEGISLATION TO SELL PRODUCTS IN THE MARKETPLACE, ENTER INTO CONTRACTS WITH A WIDE VARIETY OF CORPORATE AND OTHER PRIVATE CONTRACTORS, WHICH COULD LEAD TO PAYING INMATE WAGES WHICH COULD BE USED TO SUPPORT RESTITUTION PROGRAMS AND/OR DEFRAY INCARCERATION OR FAMILY AND WELFARE EXPENSES.

9) TRAINED PHYSICAL EDUCATION STAFF MUST BE HIRED AND RECREATIONAL EQUIPMENT PURCHASED TO UPGRADE AND ORGANIZE RECREATION PROGRAMS AND STRUCTURED LEISURE TIME ACTIVITIES SYSTEM-WIDE.

V. HEALTH AND SAFETY

OVERALL, THE DELIVERY OF HEALTH CARE SERVICES IN THOSE INSTITUTIONS VISITED, REFLECT THE TIME, ENERGY, ATTENTION AND RESOURCES WHICH HAVE BEEN DEVOTED TO IMPROVING THE ACCESSIBILITY, RESPONSIVENESS AND QUALITY OF BOTH MEDICAL AND DENTAL SERVICES. EXCEPTIONS ARE NOTED IN THE INSTITUTION REPORTS. THE PRACTICE OF REQUIRING SICK INDIVIDUALS TO REPORT TO AND/OR WAIT AT AN OUTSIDE WINDOW FOR SICK CALL AND MEDICATIONS, REGARDLESS OF THE WEATHER IS OBVIOUSLY NOT CONSISTENT WITH CONTEMPORARY HEALTH CARE STANDARDS. AS NOTED, SOME FACILITIES HAVE CREATED SPACE FOR WAITING ROOMS. DURING INCLEMENT WEATHER, INDIVIDUALS ALREADY DIAGNOSED TO HAVE HEALTH CONDITIONS WHICH WOULD BE AGGRAVATED BY COLD, RAIN, SNOW, ETC. SHOULD BE SPARED THE FREQUENT TRIPS TO THE WINDOW TO GET THEIR MEDICATIONS. OTHER ARRANGEMENTS COULD BE MADE WITHOUT JEOPARDIZING SECURITY OR COMPROMISING ANY HEALTH CARE STANDARDS.

GENERALLY, THE MEALS SERVED IN THE INSTITUTIONS VISITED WERE CONSISTENT WITH THE MASTER MENU WHICH WAS NUTRITIONALLY BALANCED. THE QUANTITIES OF MEAT PORTIONS WERE IN ONE ISOLATED CASE, INADEQUATE. OVERALL, THE QUALITY AND QUANTITY, TEMPERATURE AND SERVING APPEARANCE OF MEALS WAS ACCEPTABLE. THE MAJOR EXCEPTION TO THIS WAS THE PRACTICE OF SERVING COLD BAG LUNCHES AT ALL NOON MEALS FIVE DAYS A WEEK TO ALL INMATES AND STAFF WORKING IN AND OUTSIDE OF TWO FACILITIES. ATTEMPTS WERE MADE TO JUSTIFY THE PRACTICE WITH THE EXPLANATION THAT SINCE THE INMATES ON LONG LINES DIDN'T GET A HOT NOON MEAL, THE INMATES IDLE OR WORKING INSIDE THE FACILITY SHOULD NOT BE PROVIDED A HOT MEAL. THE EQUIPMENT AND TECHNOLOGY HAS BEEN USED BY THE ARMED FORCES FOR DECADES TO SERVE HOT MEALS TO THE TROOPS IN THE FIELD. OVERALL THE SANITATION AND HYGIENE IN THE FOOD STORAGE, PREPARATION AND SERVING AREAS WAS ACCEPTABLE. NOTE THE EXCEPTIONS IN SPECIFIC INSTITUTION REPORTS. ALSO NOTE THOSE FACILITIES HAVING UNSANITARY FOOD SERVING PRACTICES AND LITTLE OR NO CONTROL OF SUGAR. IT SHOULD BE NOTED THAT IN THOSE FACILITIES, LARGE QUANTITIES OF JULEP (FERMENTED SPIRITS) ARE RECOVERED, SOMETIMES IN 55 GALLON QUANTITIES. IT GOES WITHOUT EXPLANATION, THAT ALL INTOXICANTS ARE A SOURCE OF DIMINISHED JUDGEMENT, WHICH CONTRIBUTES TO CONFLICTS AND VIOLENCE.

WITH THE WIDE VARIETY OF OSHA (OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION) CODE VIOLATIONS FOUND PRIMARILY IN INMATE WORK AREAS, OSHA TRAINED AND EXPERIENCED INDIVIDUALS SHOULD BE RETAINED BY THE DEPARTMENT TO INSPECT, MONITOR AND TRAIN STAFF TO ENSURE SYSTEM-WIDE COMPLIANCE WITH APPLICABLE OSHA STANDARDS FOR THE SAFETY AND HEALTH OF BOTH INMATES AND STAFF.

THE OVERALL CLEANLINESS, SANITATION AND HOUSEKEEPING AT THE MAJORITY OF THE FACILITIES WAS ACCEPTABLE. THE OBVIOUS EXCEPTIONS (TENNESSEE STATE PRISON AND

V. HEALTH AND SAFETY (CONT'D)

TURNEY) ARE NOTED IN THE INSTITUTION REPORTS. THE HEALTH AND SAFETY HAZARDS CREATED BY POOR AND DAMAGED PLUMBING, ELECTRICAL SYSTEMS, PLUGGED DRAINS AND CELLS WHICH HAVE BECOME FIRE HAZARDS BY VIRTUE OF THE ACCUMULATED PAPER AND PROPERTY, ARE OUTLINED IN SPECIFIC INSTITUTION REPORTS.

RECOMMENDATIONS:

1) THE DEPARTMENT SHOULD CONTINUE THE SAME STEADY COURSE OF IMPROVING THE DELIVERY OF HEALTH CARE SERVICES AND INCREASE THE FREQUENCY OF INSPECTIONS AND MONITORING OF HEALTH CARE SERVICES IN EACH OF THE INSTITUTIONS.

2) THE PRACTICE OF REQUIRING SICK INDIVIDUALS TO WAIT OUTSIDE IN THE WEATHER FOR SICK CALL OR MEDICATIONS, SHOULD CEASE IMMEDIATELY.

3) SERVING COLD BAG LUNCHES AS A FIVE DAY A WEEK, ROUTINE SHOULD CEASE.

4) ALL UNSANITARY FOOD SERVING PRACTICES AND PROCEDURES SHOULD CEASE.

5) INSTITUTIONS THAT ARE NOT EXERCISING ADEQUATE CONTROL OF SUGAR AND YEAST SHOULD IMPLEMENT PROCEDURES TO DO SO IMMEDIATELY.

6) THE DEPARTMENT MUST DESIGNATE OSHA TRAINED STAFF TO INSPECT AND MONITOR ON A TIMELY BASIS, ALL LIFE/SAFETY CONDITIONS IN THE INSTITUTIONS THAT ARE REQUIRED TO BE IN FULL COMPLIANCE WITH OSHA STANDARDS.

7) INADEQUATE, UNSANITARY AND/OR UNSAFE PLUMBING AND ELECTRICAL SYSTEMS THAT ARE NOT PART OF INSTITUTIONS SCHEDULED TO BE REPLACED, MUST BE COMPLETELY REPLACED AND UPGRADED. THOSE SYSTEMS IN FACILITIES SCHEDULED FOR REPLACEMENT MUST BE REPAIRED TO ENSURE THE SAFETY AND HEALTH OF STAFF AND INMATES DURING THE INTERIM PERIOD BEFORE CONSTRUCTION IS COMPLETED.

VI. INSTITUTION SECURITY & CONTROL

THE MOST EFFECTIVE INTERNAL SECURITY IS ACCOMPLISHED BY MEETING THE LEGITIMATE HUMAN NEEDS (LIFE, SAFETY AND HEALTH) OF THE INMATE POPULATION. WHEN THE ADMINISTRATION PAYS ATTENTION TO LESS OBVIOUS AND MORE SUBTLE CONDITIONS OF CONFINEMENT THE LARGER CONCERNS OF SECURITY AND CONTROL ARE ENHANCED. WHEN THE SOUND ENVIROMENTAL AND QUALITY OF LIFE ISSUES RECEIVE PRIORITY ATTENTION THE LEVELS OF SELF CONTROL CIVILITY ARE MORE PREVALENT. WHEN AN INMATE LIVES IN AN ENVIRONMENT THAT IS CLEAN, HEALTHY AND WELL MAINTAINED, HE/SHE NATURALLY FEELS BETTER ABOUT HIMSELF. WHEN HIS BASIC HUMAN NEEDS ARE MET WITH SUFFICIENT, ATTRACTIVELY SERVED, NUTRITIONALLY BALANCED MEALS, HE/SHE IS LIKE ANY OTHER ANIMAL-CONTENT, RATIONAL, ETC.. . . WHEN THE INMATE'S VERY FUNDAMENTAL NEEDS FOR SAFETY AND SECURITY ARE BEING MET BY COMPETENT STAFF TAKING THE REASONABLE AND PRUDENT PRECAUTIONS TO INSURE THAT CONTRABAND IS CONTROLLED, INMATES ARE NOT THREATENED, INTIMIDATED, EXTORTED, ASSAULTED OR RAPED, THEN THE INMATE DOES NOT HAVE TO ARM HIMSELF OR PROJECT MENACING IMAGE AND REPUTATION TO SURVIVE. WHEN THESE NEEDS ARE MET THEN THE INSTITUTION STAFF ARE IN CONTROL OF THE ENVIRONMENT, NOT THE INMATES. IT IS ONLY WHEN STAFF ARE NOT TAKING PROACTIVE, PREVENTATIVE STEPS TO INSURE A CONTROLLED AND SAFE ENVIRONMENT THAT LARGE NUMBERS OF INMATES PERCEIVE THE NEED TO ARM THEMSELVES TO PROTECT THEMSELVES, THEIR MANHOOD OR PROPERTY AND/OR JUST TO MEET THEIR UNMET, VERY BASIC SAFETY AND SURVIVAL INSTINCTS. ONCE STAFF HAVE CONTROL OF THE ENVIRONMENT, IT IS THEN POSSIBLE

VI. INSTITUTION SECURITY & CONTP (CONT'D)

TO PROVIDE A WIDE RANGE OF PROGRAM OPTIONS TO MEET THE IDENTIFIED NEEDS OF THOSE WHO POPULATE OUR INSTITUTIONS. IN A HUMANELY CONTROLLED ENVIRONMENT, INMATES WILL PARTICIPATE IN EDUCATIONAL, VOCATIONAL, MENTAL HEALTH, CHEMICAL DEPENDENCY, SEX OFFENDER TREATMENT AND OTHER BEHAVIORAL PROGRAMS AND INDUSTRIES THAT WILL PROVIDE THEM WITH THE TECHNIQUES, TOOLS AND MARKETABLE SKILLS TO COMPETE IN A COMPETITIVE WORLD. THIS PARTICIPATION MUST PROVIDE THEM WITH FAIR AND EQUITABLE COMPENSATION FOR PROGRESS AND PRODUCTION. THE COMPENSATION SHOULD PERMIT THEM TO MEET THEIR BASIC NEEDS AND PROVIDE A REASONABLE BALANCE FOR DISCRETIONARY SPENDING. PROPERLY SELECTED AND TRAINED STAFF SHOULD BE ENCOURAGED TO MAINTAIN RAPPORT AND CREDIBILITY WITH THE INMATE POPULATION BY BEING RESPONSIVE TO THEIR REAL AND IMAGINED PROBLEMS AND CONCERNS. STAFF SHOULD BE PROFESSIONALS WHO ARE IN CONTROL AND RESTRAINED EVEN IN CIRCUMSTANCES OF EXTREME PROVOCATION. THE PHILOSOPHY OF THE AGENCY, INSTITUTION LEADERSHIP, AND THE STAFF SHOULD BE TO TREAT INMATES AS WE WOULD WANT TO BE TREATED OR WOULD WANT OUR BROTHER, SON OR FATHER TREATED IF HE WERE IN PRISON. STAFF SHOULD UNDERSTAND THAT WE DON'T REJECT PEOPLE, WE REJECT THOSE BEHAVIORS WHICH ARE NOT CONDUCIVE TO CIVILIZED LIVING. IT IS ALSO IMPORTANT THAT STAFF PLACE A HIGH PRIORITY ON SCHEDULING AND STRUCTURING ALL OF THE HOURS INMATES SPEND OUT OF THEIR CELLS, THAT PROPER SUPERVISION, MONITORING AND CONTROL OF MOVEMENT IS STUDIED AND MANAGED, THAT INCOMPATIBLES ARE IDENTIFIED, SEPARATED AND MONITORED. WHEN THOSE CONDITIONS ARE IN PLACE THE COMPETITION AMONG INMATES AND AMONG INMATES AND STAFF DIMINISH, PREDATORY BEHAVIOR IS REDUCED, VIOLENCE IS LESS FREQUENT AND THERE ARE GREATER INTERVALS OF RELATIVE PEACE AND TRANQUILLITY IN AN INSTITUTION. INMATE POPULATIONS ARE REPRESENTATIVE OF OUR COMMUNITY POPULATIONS. IF THEY FEEL SAFE AND SECURE AND THEIR BASIC NEEDS ARE BEING MET, THERE IS LESS OF A TENDENCY TO ARM THEMSELVES AND/OR EXHIBIT BEHAVIORS THAT ARE A MANIFESTATION OF INSECURITY. IF THESE INITIATIVES ARE IN PLACE, YOU HAVE AN ENVIRONMENT THAT IS CONDUCIVE TO THE REHABILITATION OF THOSE WHO ARE INCLINED TO CHANGE. THOSE WHO INTERFERE WITH OR IN ANY WAY IMPEDE THAT PROCESS MUST BE IDENTIFIED AND THROUGH DUE PROCESS, BE ISOLATED FROM THAT POPULATION TO INSURE THE RIGHTS AND OPPORTUNITIES FOR THE MAJORITY JUST AS WE DO IN THE FREE SOCIETY. THIS APPROACH TO MANAGING THE CORRECTIONAL ENVIRONMENT DOES NOT GUARANTEE THAT THERE WILL BE NO MORE PROBLEMS OR VIOLENCE JUST AS IN FREE SOCIETY WE CANNOT ABSOLUTELY GUARANTEE OUR CITIZENS A PROBLEM-FREE EXISTENCE. WHAT THIS APPROACH DOES DO IS REDUCE SIGNIFICANTLY THE SCOPE, FREQUENCY AND SERIOUSNESS OF CONFRONTATIONS, INCIDENTS AND VIOLENCE.

ALL OF THE ABOVE, OF COURSE, ASSUMES THAT IN SECURE INSTITUTIONS YOU HAVE A SECURE, WELL MONITORED PERIMETER SECURITY SYSTEM. THIS IS NECESSARY TO REDUCE THE NUMBER OF INMATES WHO WILL BE PRE-OCCUPIED WITH ESCAPE AND IN SOME CASES BECAUSE OF THAT PRE-OCCUPATION, BE UNWILLING TO PARTICIPATE IN PROGRAM.

AS INDICATED, INTERNAL SECURITY AND CONTROL ARE ESSENTIAL BEFORE ANY PROGRAM ENVIRONMENT CAN FUNCTION. CONTRABAND MUST BE CONTROLLED IN THE INDUSTRIES, THE LIVING UNITS AND ALL AREAS OF THE INSTITUTION. THIS IS ACCOMPLISHED BY PROACTIVE, ANTICIPATORY AND PREVENTATIVE STRATEGIES. ALL AREAS SHOULD BE RANDOMLY SCHEDULED FOR COMPREHENSIVE, PREVENTATIVE SEARCHES. MANY SYSTEMS DO THEIR LOCK-UPS AND SEARCHES AS A REACTIONARY, PUNITIVE RESPONSE TO AN INCIDENT, ASSAULT, MURDER, ESCAPE OR RIOT. THE PRO-ACTIVE, PREVENTATIVE APPROACH IS TO CONDUCT THESE LOCK-UPS AND SEARCHES AS ROUTINE INITIATIVES OF SPECIFIC DURATION (WHATEVER TIME "IT REALLY TAKES" TO CONDUCT A THOROUGH, EFFICIENT, COMPREHENSIVE SEARCH OF AN AREA). ADMINISTRATION AND STAFF SOMETIMES HAVE A PROPENSITY FOR TAKING THEIR TIME DURING THESE LOCK-UPS AND SEARCHES BECAUSE THEY VIEW THE LOCK-UP AS A "TIME OUT" OR A VACATION. USUALLY, THIS ESCALATES HOSTILITIES BETWEEN THE INMATES AND EVEN FURTHER EXTENDS THE LOCK-UP AND IN SOME INSTITUTIONS THE LOCK-UPS HAVE BECOME A WAY OF LIFE AND

GO ON FOR MONTHS AND :N YEARS.

I DID NOT SEE MUCH EVIDENCE THAT MUCH PRO-ACTIVE SECURITY WAS BEING CARRIED OUT IN THE INSTITUTIONS.

AS A CAREER PROFESSIONAL CORRECTIONAL ADMINISTRATOR, I WAS ABSOLUTELY STUNNED TO LEARN THAT OVER A DOZEN HANDGUNS HAVE BEEN RECOVERED OVER THE LAST TWO YEARS IN THE TENNESSEE STATE PRISON. I BELIEVE THIS AND OTHER OBSERVATIONS ARE INDICATIVE OF THE LACK OF A PRO-ACTIVE APPROACH TO INSTITUTION SECURITY.

RECOMMENDATIONS:

1) THE PRACTICE OF ROUTINELY PERMITTING MINIMUM SECURITY INMATES INTO THE SECURE INSTITUTIONS FOR COMMISSARY AND OTHER SERVICES IS A POOR SECURITY PRACTICE AND THREATENS THE INTEGRITY OF INTERNAL SECURITY AND CONTRABAND CONTROL ON A ROUTINE BASIS. THIS PRACTICE SHOULD STOP.

2) THE PRACTICE OF PERMITTING VISITORS AND INMATES TO USE THE SAME BATHROOMS IN SOME OF THE INSTITUTION VISITING ROOMS AND PICNIC AREAS SHOULD CEASE. THIS PRACTICE IS TANTAMOUNT TO PROVIDING A DIRECT CONDUIT FOR CONTRABAND TO ENTER THE INSTITUTION IN BODY CAVITIES.

3) THE PRACTICE OF LEAVING LIVING UNITS UNATTENDED AND UNSUPERVISED BY STAFF WITH INMATES PRESENT IN SOME INSTITUTIONS MUST BE DISCONTINUED AS SHOULD THE PRACTICE OF NOT SECURING THE LIVING UNITS AT ALL TIMES. EVERY INMATE ENTERING ANY LIVING UNIT IN A SECURE FACILITY SHOULD ENCOUNTER A STAFF PERSON AND BE PAT SEARCHED. THE OTHER RECOMMENDATION AND OBSERVATION RELATIVE TO SECURITY CAN BE FOUND IN THE INSTITUTION REPORTS. THE THRUST OF MY INTEREST IN SECURITY IS IN THE "SECURITY CLIMATE". I BELIEVE MR. HENDERSON IS ADDRESSING SECURITY MORE ON THE HARDWARE AND PROCEDURES PERSPECTIVE. MY EMPHASIS HAS BEEN ON THE TACTICAL AND STRATEGIC PROGRAM ASPECTS OF SECURITY WHICH ENHANCES OVERALL SECURITY BY MEETING THE PHYSICAL AND PSYCHOLOGICAL NEEDS OF THE INMATES. PROVIDING AN ORGANIZED, STRUCTURED, ACTIVE, STABLE ENVIRONMENT OF ACCOUNTABILITY, INMATES EXHIBIT LESS FREQUENT DISRUPTIVE BIZARRE AND/OR DANGEROUS BEHAVIORS AND FIND THEM ACTING MORE CIVILIZED BECAUSE THEY ARE LIVING IN A HUMANE AND CIVILIZED ATMOSPHERE. PEOPLE LIVING IN THE PRISON ENVIRONMENT DEVELOP WHAT SEEMS TO THOSE OF US NOT IN PRISON,TO BE DISTORTED VALUE SYSTEMS. FOR EXAMPLE, WHEN OUR WIFE BURNS THE TOAST OR THE LASAGNE IS A LITTLE RUNNY, WE MAY COMMENT ON IT OR OVERLOOK IT BECAUSE IT IS ONE MEAL OUT OF MANY OTHER GOOD MEALS WE HAVE EATEN OR WILL EAT. OR WHEN THE FAMILY RUNS OUT OF CATSUP OR WE'RE PARTICULARLY HUNGRY AND THERE ARE NOT SECONDS, THAT DOES NOT USUALLY TRIGGER A RIOT RESULTING LOSS OF LIVES AND THOUSANDS OF DOLLARS DAMAGE.

WHEN WE AS ADMINISTRATORS PLACE HIGH PRIORITY ON ALL THE SMALL DETAILS AND ACTUALLY REDUCE THOSE LITTLE IRRITATIONS THAT AGGRAVATE CONDITIONS OF CONFINEMENT THAT SOMETIMES TRIGGER VIOLENCE AMONG AN INMATE CLIENTELE THAT ARE IN MANY CASES IN PRISON BECAUSE OF THEIR POOR IMPULSE CONTROL , WE CAN SIGNIFICANTLY IMPROVE THE LEVEL OF SAFETY FOR STAFF AND INMATES. I BELIEVE MOST INTELLIGENT, COMPETENT CORRECTIONAL ADMINISTRATORS AGREE THAT ALTHOUGH DIFFICULT, DEMANDING AND MANY TIMES UNAPPRECIATED, EFFORTS THAT ARE TIME CONSUMING AND COSTLY, ARE STILL, BY FAR, LESS EXPENSIVE THAN DISTURBANCES, RIOTS, PROPERTY DAMAGE, LAWSUITS AND PREFERABLE TO THE LOSS OF STAFF AND INMATE'S LIVES.

VII. STAFFING/EMPLOYEE WORKING CONDITIONS

MAJOR CONCERNS ARE STAFFING AND STAFF TURNOVER. AMONG THE MOST CRITICAL WAS STAFF TURNOVER, WHICH FOR EXAMPLE, IN 1984, 115 OFFICERS WERE HIRED AT THE FT. PILLOW FACILITY WITH A TOTAL COMPLEMENT OF 215 OFFICERS. TURNOVER DEPARTMENT-WIDE CAN BE ATTRIBUTED TO A NUMBER OF FACTORS NOT LIMITED TO THE FOLLOWING:

1. COMPENSATION (LACK OF COMPETITIVE SALARIES);
2. INSUFFICIENT STAFFING OR STAFF DEPLOYMENT;
3. INFLATED, UNCOMPENSATED EARNED COMPENSATORY BANKS;
4. DELAYS IN FILLING VACANT POSITIONS;
5. INABILITY TO REQUEST AND RECEIVE EARNED TIME OFF CONSISTENT WITH THE EMPLOYEE'S PLANS AND CONVENIENCE;
6. ABUSE OF SICK LEAVE (FURTHER COMPOUNDS THE TIME OFF PROBLEMS AND INFLATES COMP-TIME BANK BALANCES);
7. FEELINGS ON THE PART OF SOME THAT THEY ARE NOT APPRECIATED AND SUPPORTED; ALSO EMBARRASSED ABOUT THE CRITICAL PUBLICITY THEY AND THEIR EMPLOYER RECEIVE:
8. LACK OF PROMOTIONAL INCENTIVES;
9. PERCEPTIONS OF SOME THAT PROMOTIONS ARE NOT MADE ON MERIT;
10. RECRUITMENT AND HIRING OF EMPLOYEES WHO CLEARLY WERE NOT QUALIFIED FOR THEIR POSITIONS AND WHO HAVE A POOR PROGNOSIS FOR BECOMING A COMPETENT, PROFESSIONAL CORRECTIONAL OFFICER.

MOST OF THESE FACTORS COULD BE OFFSET BY TWO EXPENSIVE, BUT NECESSARY AND ESSENTIAL INITIATIVES. PAY ENTRY LEVEL STAFF THE MEDIAN SALARY FOR CORRECTIONAL OFFICERS IN THE COUNTRY ($14,000 - $16,000 PER YEAR) OR USE SOME OTHER MEASURE TO ESTABLISH AN EQUITABLE AND COMPETITIVE SALARY SCHEDULE. IT IS ALSO IMPORTANT THAT TENNESSEE COME INTO COMPLIANCE WITH THE FEDERAL FAIR LABOR STANDARDS ACT. THE RECENT UNITED STATES SUPREME COURT (GARCIA V. SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY) DECISION HAS PLACED ALL STATE EMPLOYEES UNDER THIS ACT, AND BY DOING SO, ELIMINATES THEM FROM BEING REQUIRED TO PLACE COMPENSATORY TIME IN A BANK. SURPLUS FUNDS AT THE END OF THIS FISCAL YEAR SHOULD NOT BE RETURNED TO THE STATE, BUT USED TO LIQUIDATE OVER $1,000,000 IN ESTIMATED COMPENSATORY TIME CURRENTLY ON THE BOOKS IN THE FACILITIES I VISITED. COMPETITIVE PAY AND PAYMENT FOR ALL OVERTIME WORK, WILL PERMIT THE DEPARTMENT TO RECRUIT, TRAIN AND RETAIN AN INTELLIGENT, COMPETENT AND COMMITTED WORK FORCE. THESE TWO INITIATIVES, ALONG WITH THE HIRING OF ADDITIONAL STAFF AND/OR RE-DEPLOYMENT OF STAFF RESOURCES AND ANTICIPATING TURNOVER IN ORDER TO HIRE STAFF WITH SUFFICIENT LEAD TIME TO REDUCE THE TIME POSITIONS ARE VACANT, SHOULD REDUCE THE USE OF SICK LEAVE AND PERMIT STAFF TO TAKE EARNED ANNUAL LEAVE AT TIMES DESIRABLE TO THE EMPLOYEE, WHILE MEETING THE STAFFING NEEDS OF THE INSTITUTIONS. EQUITABLE PAY IS AN ISSUE THAT IMPACTS ALL CLASSIFICATIONS IN CORRECTIONS, FROM THE OFFICERS TO THE WARDENS. TENNESSEE CANNOT EXPECT TO RETAIN COMPETENT INSTITUTION HEADS AT SALARIES WHICH ARE PAID TO LIEUTENANTS AND CAPTAINS IN MOST OF THE OTHER SYSTEMS IN THE COUNTRY.

IT IS MY ASSESSMENT THAT THE ORGANIZATION (TENNESSEE DEPARTMENT OF CORRECTIONS) IS IN THE MIDST OF A COMMUNICATIONS AND CREDIBILITY CRISIS AMONG ITS KEY ADMINISTRATIVE AND MANAGERIAL STAFF.

THIS COMMUNICATION CRISIS HAS AFFECTED THE MORALE AND SELF-CONFIDENCE OF SOME ADMINISTRATORS, MANAGERS, SUPERVISORS AND LINE STAFF, WHICH IN TURN IS PERCEIVED BY THE INMATES THAT MANY STAFF DO NOT KNOW HOW TO MANAGE THEM, OR THE INSTITUTION. WHEN STAFF ARE UNSURE OF WHAT'S EXPECTED OF THEM AND PERCEIVE THAT THEIR LEADERSHIP IS ALSO UNSURE OF HOW TO LEAD AND DIRECT THEM, THEY BECOME DEMORALIZED, DIRECTIONLESS AND THEREBY INEFFECTIVE. WHEN STAFF ARE INEFFECTIVE, THE INMATES EXPLOIT THAT CONDITION AND IN ANY PRISON WHERE THE INMATES BELIEVE THEMSELVES TO BE IN CONTROL, YOU HAVE INCREASED VIOLENCE. STAFF THEN FIND THEMSELVES IN THE REACTIONARY ROLE OF RESPONDING TO EACH CRISIS THE INMATES CREATE AS OPPOSED TO THE PRO-ACTIVE PREVENTATIVE POSTURE STAFF SHOULD OCCUPY.

STAFFING CONCERNS ARE DOCUMENTED IN THE INSTITUTION SECTION OF THIS REPORT AND ALTHOUGH THEY ARE A SYSTEM-WIDE PROBLEM, STAFFING PROBLEMS IN EACH FACILITY ARE UNIQUE BECAUSE OF THE ARCHITECTURE, MISSION, PROGRAM AND LEVEL OF SECURITY BEING PROVIDED. MR. HENDERSON'S EXCELLENT STAFFING STUDY AND ANALYSIS ALSO DOCUMENTS THE STAFFING PROBLEMS AND HE PROVIDES A MUTUALLY ACCEPTED FORMULA WHICH IS A USEFUL TOOL IN MOST CASES FOR DETERMINING STAFFING NEEDS AND COVERAGE.

THE HIGH TURNOVER OF LINE STAFF CONTRIBUTES TO INSTITUTION INSTABILITY. NEW AND INEXPERIENCED STAFF ARE NOT AS KNOWLEDGEABLE OR COMPETENT AS THOSE WHOSE COMBINATION OF TRAINING AND EXPERIENCE GIVES THEM THE ANTICIPATORY EDGE TO PREVENT INCIDENTS AND REDUCE VIOLENCE BY TAKING BEFORE THE FACT INITIATIVES. NEW STAFF ARE VULNERABLE TO INMATE MANIPULATION AND EXPLOITATION. THEY ARE LEARNING, SOMETIMES INSECURE AND UNSURE OF THEMSELVES AND MAY FIND THEMSELVES TAKING THE WRONG ADVICE FROM INMATES.

RECOMMENDATIONS:

1) SALARIES FOR ALL CORRECTIONS STAFF SHOULD BE UPGRADED CONSISTENT WITH COMPETITIVE SALARIES AMONG CORRECTIONS PROFESSIONALS IN THE REST OF THE COUNTRY.

2) AS A MAJOR FIRST STEP TOWARDS PAY EQUITY FOR CORRECTIONAL OFFICERS, SALARIES FOR ALL UNIFORMED STAFF SHOULD BE ADJUSTED TO BE CONSISTENT WITH TENNESSEE STATE TROOPERS PAY SCHEDULE.

3) ALL OVERTIME WORKED SHOULD BE COMPENSATED CONSISTENT WITH THE FEDERAL FAIR LABOR STANDARDS ACT AS IT APPLIES TO UNIFORM STAFF WORKING IN STATE CORRECTIONAL FACILITIES.

4) INSTITUTION STAFFING COMPLEMENTS SHOULD INCLUDE SUFFICIENT STAFF TO INSURE THE SECURITY AND CONTROL OF THE INSTITUTION WHILE PROVIDING ALL EMPLOYEES THE OPPORTUNITY TO RESPONSIBLY UTILIZE VACATION, SICK LEAVE AND BE AFFORDED SUFFICIENT TRAINING TO INSURE COMPLIANCE WITH THE COMMISSION OF ACCREDITATION STANDARDS.

5) SUFFICIENT SUPPORT STAFF AND UNIFORM STAFF MUST BE HIRED AT ALL OF THE INSTITUTIONS AND IN CENTRAL OFFICE TO INSURE THAT TRAINED UNIFORM STAFF ARE PERFORMING DUTIES CONSISTENT WITH THEIR JOB DESCRIPTIONS AND TRAINED, EXPERIENCED SUPPORT STAFF (e.g., TEACHERS, COUNSELORS, INDUSTRY, MAINTENANCE AND/OR CONSTRUCTION PERSONNEL) ARE PERFORMING DUTIES CONSISTENT WITH THEIR RESPECTIVE TITLES.

RECOMMENDATIONS: (CONT'D)

6) COMMISSIONER NORRIS, DEPUTY COMMISSIONER YOUNG AND THE INSTITUTION HEADS SHOULD STUDY THE COMMUNICATIONS PROBLEM AND DEVELOP CLEAR LINES OF AUTHORITY, DIRECTION AND COMMUNICATION BETWEEN CENTRAL OFFICE AND THE INSTITUTIONS. THE GOAL SHOULD BE RECIPROCAL IMPROVEMENT IN COMMUNICATIONS, CREDIBILITY AND CONFIDENCE IN CENTRAL OFFICE AND INSTITUTION LEADERSHIP. THE CONCERNS AND PROBLEMS OUTLINED IN THE OVERVIEW SECTION OF THE REPORT ARE FURTHER DOCUMENTED IN INSTITUTION SECTIONS OF THIS REPORT. SALARIES, OVERTIME COMPENSATION, SICK LEAVE USE AND ABUSE AND INSUFFICIENT STAFFING OF THE INSTITUTIONS ARE CLEARLY AMONG THE MAJOR CONCERNS OF UNIFORM STAFF, SUPERVISORS, MANAGERS AND ADMINISTRATORS.

7) THE WARDENS SHOULD ALSO ASSEMBLE THEIR KEY STAFF TO DEVELOP A STRATEGY TO IMPROVE COMMUNICATIONS, CREDIBILITY AND CONFIDENCE AMONG STAFF AT ALL LEVELS.

8) I ENCOURAGE THE COMMISSIONER TO TAKE THE TIME TO VISIT AND TOUR EACH ADULT INSTITUTION AT LEAST TWICE A YEAR AND THE DEPUTY COMMISSIONER TO VISIT EACH ADULT INSTITUTION AT LEAST ONCE PER QUARTER. THIS PROCESS WILL COMMUNICATE TO STAFF THAT THEY ARE IMPORTANT, THE DEPARTMENT LEADERSHIP IS CONCERNED ABOUT AND DOES SUPPORT THEM THEREBY IMPROVING NOT ONLY STAFF MORALE, BUT THEIR CONFIDENCE IN THE AGENCY LEADERSHIP.

VIII. LITIGATION

IN THE INTEREST OF TIME AND SPACE, I BELIEVE MOST PEOPLE WHO ARE AT ALL FAMILIAR WITH THE GRUBBS LITIGATION HAVE LONG AGO CONCLUDED FROM THE OVERWHELMING EVIDENCE, DOCUMENTATION AND/OR FIRST HAND EXPOSURE, THAT THE TENNESSEE DEPARTMENT OF CORRECTIONS AND ITS ADULT INSTITUTIONS WERE AND CONTINUE TO BE IN VIOLATION OF LEGAL AND CONSTITUTIONAL CONDITIONS FOR CONFINEMENT. WHAT IS IMPORTANT IS THAT IMPROVEMENTS CAN BE CLEARLY DOCUMENTED SINCE THE SUIT WAS FILED AND THAT BY CONTRACTING WITH NON-ADVERSARIAL EVALUATORS, THE STATE AND THE DEPARTMENT ARE MAKING A GOOD FAITH EFFORT TO GET EXPERT ADVICE, COUNSEL, AND DIRECTION TO MAKE THE NECESSARY CHANGES TO PROVIDE A RATIONAL AND CONSTITUTIONAL CORRECTIONAL SYSTEM.

UNDER THIS SECTION I WANT TO FOCUS ATTENTION ON THE PROBLEM THAT THE INSTITUTION STAFF EXPRESSED ABOUT THE FEELING OF LACK OF SUPPORT WHEN THEY ARE NAMED IN LAWSUITS. (HAVING TO SECURE THEIR OWN LEGAL COUNSEL TO REPRESENT THEM IS INTIMIDATING AND DEMORALIZING).

RECOMMENDATIONS:

1) IT IS IMPORTANT FOR STAFF MORALE, THAT STAFF BE REPRESENTED BY ATTORNEYS WITH CORRECTIONS EXPERIENCE ON THE ATTORNEY GENERAL'S STAFF.

OVERVIEW SUMMARY

THE OVERVIEW AND RECOMMENDATIONS SECTION OF THIS REPORT REPRESENT THE MAJOR FOCUS OF THE REPORT AND SHOULD RECEIVE PRIORITY ATTENTION. THEY ARE AT THE SOURCE, WHICH DRIVES AND PROVIDES THE IMPETUS FOR THE MORE OBVIOUS AND VISIBLE PROBLEMS OF OVERCROWDING, TENSION, INSTITUTION INSTABILITY, VIOLENCE, ESCAPE AND OTHER MANIFESTATIONS OF INMATE UNREST, AS WELL AS STAFF FRUSTRATION, LOW MORALE AND ULTIMATELY A LACK OF CONFIDENCE BY BOTH STAFF AND INMATES IN THEMSELVES AND IN THE SYSTEM.

INSTITUTIONS

IN THE FOLLOWING INSTITUTION REPORTS - SUMMARY RECOMMENDATIONS, I HAVE MADE THE DISTINCTION BETWEEN THOSE RECOMMENDATIONS THAT ARE CRITICAL AND ESSENTIAL (*) AND THOSE WHICH ARE IMPORTANT (+). THE ESSENTIAL (*) RECOMMENDATIONS ARE THOSE PROBLEMS WHICH DIRECTLY CONTRIBUTE TO THE CURRENT CRITICAL PROBLEMS MANIFESTED IN THE INSTITUTION. THE IMPORTANT (+) RECOMMENDATIONS ARE DIRECTED AT THOSE SOCIAL AND ENVIRONMENTAL CONDITIONS WHILE NOT ESSENTIAL (*) DO ENHANCE THE RECIPROCAL CREDIBILITY OF COMMUNICATIONS, REDUCED TENSIONS AND OVERALL IMPROVEMENT IN THE STABILITY OF THE INSTITUTION CLIMATE. THE END RESULT WHEN IMPLEMENTED WILL BE DRAMATIC IMPROVEMENTS IN THE LEVEL OF SAFETY AND QUALITY OF LIFE FOR ALL THOSE WORKING AND LIVING IN THE INSTITUTIONS.

* = ESSENTIAL

\+ = IMPORTANT

TENNESSEE STATE PRISON

THE ON-SITE VISIT TO THE TENNESSEE STATE PRISON STARTED ON MONDAY, JANUARY 7, 1985 AND ENDED ON FRIDAY, JANUARY 11, 1985, WITH AN EXIT SUMMARY OF MY PRELIMINARY OBSERVATIONS AND CONCERNS. WARDEN DUTTON AND KEY STAFF MEMBERS WERE IN ATTENDANCE. DURING THE COURSE OF THE EVALUATION, I TALKED INFORMALLY WITH STAFF AT ALL LEVELS AND INMATES, BUT HELD PRIVATE AND MORE STRUCTURED INDIVIDUAL INTERVIEWS WITH THREE BLACK AND THREE WHITE INMATES, WHOM I SELECTED FOR A VARIETY OF REASONS. I ALSO HAD PRIVATE STRUCTURED INDIVIDUAL INTERVIEWS WITH WARDEN DUTTON AND FIFTEEN STAFF MEMBERS WHICH REPRESENTED A CROSS SECTION OF THE STAFF AT THE TENNESSEE STATE PRISON.

THE INSTITUTION POPULATION REMAINED OVER 1110 DURING THE WEEK I WAS THERE. THE OVERCROWDING PROBLEM IS ACUTE GIVEN THAT OVER 400 OF THE 1100 INMATES ARE DOUBLE CELLED IN 5' X 7' (35 SQUARE FEET) CELLS. DEDUCTING THE SPACE OCCUPIED BY THE BEDS, TOILET, SINK AND INMATE BELONGINGS, IT RESULTS IN TWO ADULT MALE INMATES LIVING IN A CELL WHICH IS NO LARGER THAN A CLOSET.

I WAS ADVISED THAT THERE ARE LIMITS ON PERSONAL BELONGINGS, BUT THE CELLS DID NOT REFLECT THAT ANY LIMITS HAVE BEEN IMPOSED. MANY OF THE CELLS ARE SO FULL OF ACCUMULATED MATERIALS THAT THEY ARE FIRE HAZARDS. THESE CONDITIONS CONTRIBUTE TO STRESS AND SHORT TEMPERS AND COUPLE THOSE CONDITIONS WITH A TOILET WHEN LEFT UNCOVERED, PRODUCES SEWER ODORS THAT MAKE IT DIFFICULT TO KEEP YOUR LAST MEAL DOWN, THE LIVING CONDITIONS BECOME INTOLERABLE. IN THIS SMALL SPACE TWO MEN MUST USE THE TOILET IN EACH OTHER'S PRESENCE, PERFORM BODY HYGIENE, SLEEP AND SPEND THEIR WAKING AND IDLE HOURS WITH NO OPPORTUNITY FOR PERSONAL PRIVACY OR JUST TO BE ALONE. THE PLUMBING IS EXTREMELY OLD, OFTEN PLUGGED, AND ODORS ARE COMMON. (UNDER THESE CONDITIONS, THE FLU, DIARRHEA OR JUST THE PASSING OF GAS CAN PRODUCE ANGER, FRUSTRATION OR PHYSICAL CONFRONTATION. (THE ELECTRICAL SYSTEM IS BEING TAXED TO ITS CAPACITY WITH THE ADDITION OF RADIOS AND TELEVISIONS AND OTHER APPLIANCES THAT WERE NOT ANTICIPATED WHEN THE PRISON WAS WIRED).

OVER 420 INMATES OF THE POPULATION OF 1113 DO NOT HAVE A CONSTRUCTIVE ASSIGNMENT. THOSE WHO DO HAVE ASSIGNMENTS ACTUALLY ARE ENGAGED IN SOME PRODUCTIVE WORK ONLY TWO TO FIVE HOURS A DAY, DEPENDING ON THEIR RESPECTIVE ASSIGNMENT. THE INSTITUTION'S DAILY SCHEDULE IS VERY RELAXED. THE TIMELINES FOR SERVING AND COMPLETING MEALS ARE NOT ENFORCED, NOR ARE REPORTING TIMES FOR WORK. THE INSTITUTION'S DAILY SCHEDULE WITH THE EXCEPTION OF THE OFFICER'S REPORTING AND RELIEF SCHEDULE, IS VERY LOOSE. THE INMATES INFLUENCE AND ARE ABLE TO MANIPULATE THE SCHEDULE BY STALLING MEALS OR REPORTING TO WORK LATE. THE FOOD SERVICE INMATES HAVE ALSO BEEN PUT INTO THE POSITION WHICH PERMITS THEM TO CONTRIBUTE TO THE CHAOS BY DELAYS IN PREPARING AND SERVING MEALS.

STAFF MUST ENFORCE ALL ASPECTS OF THE SCHEDULE. EXPECTATIONS FOR INMATES MUST BE CLEARLY SPELLED OUT AND THEY MUST BE HELD ACCOUNTABLE FOR DEVIATIONS BY THE IMPOSITION OF APPROPRIATE AND LOGICAL CONSEQUENCES.

TO ENSURE ORDER, CONTROL AND THE ULTIMATE SAFETY OF STAFF AND INMATES, THE STAFF MUST BE IN CONTROL. UNDER CURRENT POLICY, AN ASSIGNED INMATE WHO HAS ANY CONFLICTING APPOINTMENT DURING A GIVEN DAY CANNOT RETURN TO WORK REGARDLESS OF THE APPOINTMENT'S DURATION. THIS CURRENT POLICY SHOULD BE CHANGED TO PREVENT THIS FROM OCCURRING. ENTRY LEVEL UNSKILLED INMATE WORKERS ARE PAID ELEVEN DOLLARS ($11.00) A MONTH ACROSS THE BOARD. EVEN WITH THE HIGH NUMBER OF UNASSIGNED INMATES, THERE ARE JOB ASSIGNMENTS NOT FILLED. A LARGE NUMBER OF INMATES OPT TO DONATE BLOOD PLASMA AT $7.55 PER DONATION, WHICH THEY ARE PERMITTED TO MAKE TWICE A WEEK. THIS OPTION PERMITS THE INMATE TO LIVE AND REINFORCES AN UNPRODUCTIVE LIFESTYLE. HIS NET INCOME PER MONTH FOR DONATING PLASMA IS $48.00, EVEN AFTER THE REQUIRED RESTITUTION AND OTHER DEDUCTIONS ARE MADE. A LARGE NUMBER OF INMATES WHO ARE WORKING ALSO SUPPLEMENT THEIR INCOME BY DONATING PLASMA. "THIS IS ANOTHER ISSUE THAT

GOES DIRECTLY TO THE HEART OF THE SOCIAL/ENVIRONMENTAL AND QUALITY OF LIFE ISSUES IN THE INSTITUTION." I AM WELL AWARE OF THE CRITICAL NEED FOR PLASMA AND ITS WORLDWIDE USES IN RESEARCH, DIAGNOSIS AND TREATMENT. HOWEVER, THE OPERATION OF PLASMAPHERESIS CENTERS IN PRISONS WHERE THERE ARE VERY LIMITED OR NO OTHER OPTIONS AVAILABLE TO EARN INCOME, IMPROVE YOUR EDUCATION OR LEARN A MARKETABLE SKILL, REINFORCES A LIFESTYLE CONSISTENT WITH THAT OF THE UNEMPLOYED TRANSIENTS WHOSE COUNTERPRODUCTIVE LIFESTYLE FINDS THEM LIVING IN RAILROAD YARDS, AT MISSIONS, ON STREET CORNERS, IN PUBLIC AREAS, AND UNDER BRIDGES.

PROBLEMS INCLUDE: 1) USING A PRISON POPULATION WHICH IS NOT REPRESENTATIVE OF THE COMMUNITY, 2) RESEARCH INDICATES THAT A HIGH PERCENTAGE OF INMATES WERE AND ARE DRUG USERS AND HAVE HEPATITIS. THE INCREASED PROBABILITY OF AIDS AMONG LARGE GROUPS OF INMATES WHO LIVE IN CLOSE PROXIMITY, COUPLED WITH A HIGH FREQUENCY OF HOMOSEXUAL ACTIVITY, CERTAINLY SHOULD RAISE CONCERNS OUTSIDE THE INSTITUTION. MY FOCUS, HOWEVER, IS ON THE MORAL ISSUE OF A STATE AND A CORRECTIONS SYSTEM THAT IS NOT PROVIDING AN ENVIRONMENT WHERE INCARCERATED INDIVIDUALS CAN EARN A REASONABLE LEVEL OF COMPENSATION WHILE LEARNING A MARKETABLE SKILL OR IMPROVING THEIR ACADEMIC EDUCATION. IT IS A SYSTEM THAT HAS HUNDREDS OF INMATES IDLE, AND HAS OPTED TO IMPLEMENT A PLASMAPHERESIS PROGRAM AS AN ALTERNATIVE TO CREATING AND FUNDING CONSTRUCTIVE ASSIGNMENTS. FEW PEOPLE COULD OBJECT TO THE PROGRAM IF IT EXISTED AS AN OPTION TO THOSE IN PRISON AS IT IS AN OPTION TO THOSE OF US IN THE FREE WORLD. HOWEVER, WHEN THE INMATE'S DAILY PAY IS LESS THAN ONE-FOURTH OF WHAT IS OFFERED FOR PLASMA DONATIONS, IT SMACKS OF EXPLOITATION. THE PROGRAM REINFORCES AND COMPOUNDS THE IDLENESS PROBLEM. IDLENESS HAS BEEN ESTABLISHED AS A MAJOR FACTOR CONTRIBUTING TO DISTURBANCES, RIOTS AND VIOLENCE.

IT IS RECOMMENDED THAT INMATE PAY BE RAISED TO A COMPETITIVE LEVEL WITH THAT OF THE PLASMA PROGRAM AND THAT THE AGENCY ESTABLISH AN UNEMPLOYMENT PAY SCHEDULE FOR THOSE INMATES WHO WANT TO WORK BUT ARE UNABLE TO BECAUSE THERE IS NO ASSIGNMENT AVAILABLE.

WITH THIS IN PLACE, IF THE PLASMA PROGRAM IS TO CONTINUE, THE DONORS MUST HAVE MAINTAINED A CONSTRUCTIVE ASSIGNMENT THE PREVIOUS WEEK TO BE AN ELIGIBLE DONOR THE FOLLOWING WEEK. REINFORCING AN UNEMPLOYED AND NON-PRODUCTIVE IDLE LIFESTYLE IS COUNTERPRODUCTIVE AND CONTRIBUTES TO THE ABNORMAL CLIMATE IN THE INSTITUTION. IT ALSO REINFORCES UNREALISTIC EXPECTATIONS AMONG THE INMATES RETURNING TO THE COMMUNITY.

THE LEVEL OF VIOLENCE IN THE INSTITUTION IS UNACCEPTABLE. IN 1983 THERE WERE FOUR HOMICIDES AT THE TENNESSEE STATE PRISON. IN 1984, THERE WERE FIVE HOMICIDES AND IN JULY OF 1984, A STABBING IN UNIT #1 RESULTED IN A NEAR FATALITY OF AN OFFICER. IN 1985, THREE DAYS BEFORE I ARRIVED AT THE FACILITY, A HOMOSEXUALLY RELATED HOMICIDE OCCURRED, WHICH WAS DESCRIBED BY WARDEN DUTTON AS THE MOST VICIOUS AND BLOODY STABBING HE HAS SEEN IN HIS CAREER. I WAS AMAZED TO LEARN THAT OVER A DOZEN HANDGUNS HAVE BEEN RETRIEVED FROM INSIDE THE INSTITUTION OVER THE LAST TWO YEARS. THESE DISCOVERIES USUALLY RESULTED FROM SOME KIND OF BARGAIN WHICH WAS MADE WITH AN INMATE IN EXCHANGE FOR DIVULGING THE LOCATION OF THE WEAPON. THE MAJORITY OF THE HOMICIDES INVOLVE HOMOSEXUAL FEUDS OR TRIANGLES, DRUG TRAFFIC AND DISPUTES RELATED TO AND CONFLICTS OVER INMATE-MADE SPIRITS (JULEP). IT IS QUITE CLEAR THAT THE LEVEL OF VIOLENCE IS A MANIFESTATION OF SEVERAL OTHER VARIABLES THAT ARE PRESENT:

1) OVERCROWDING;
2) IDLENESS;
3) LOOSE SCHEDULING, LIMITED AND UNSTRUCTURED LEISURE TIME ACTIVITY;
4) INEFFECTIVE AND INEFFICIENT INTERNAL SECURITY AND CONTROL; AND
5) INSUFFICIENT PHYSICAL AND EMOTIONAL OUTLETS AND FORUMS FOR INMATES TO

5) (CONT'D)

RELEASE TENSION OR STRESS THROUGH STRENUOUS PHYSICAL ACTIVITY OR CONTACTS WITH CASEWORKERS OR COUNSELING STAFF.

OVERCROWDING CONTRIBUTES TO VIOLENCE IN THE FREE SOCIETY, BUT IS COMPOUNDED WHEN PEOPLE WHOSE PAST BEHAVIOR DEMONSTRATES A PROPENSITY FOR SOLVING PROBLEMS WITH VIOLENCE, ARE CONFINED TO LIVING QUARTERS THAT DO NOT ALLOW FOR ANY PRIVACY OR TIME TO BE ALONE TO TAKE CARE OF ONE'S EMOTIONAL OR PHYSICAL NEEDS.

THE IDLENESS IS A CONTRIBUTING FACTOR TO VIOLENCE AMONG INMATES BECAUSE PAST CASE HISTORIES USUALLY REVEAL THAT THEY HAVE MANY TIMES SUPPORTED THEMSELVES IN PART OR COMPLETELY BY TAKING WHATEVER THEY WANT - SEX, MONEY, OR THE PROPERTY OF OTHERS. IF THEY ARE THEN PLACED IN AN ENVIRONMENT THAT DOES NOT ENCOURAGE THE WORK ETHIC AND IN FACT, REINFORCES NOT WORKING, BY PROVIDING A BETTER SOURCE OF INCOME FROM SELLING BODY FLUIDS THAN WORKING, THERE LOGICALLY CANNOT BE ANY REASONABLE EXPECTATION THAT THEY WILL CHANGE THE BEHAVIOR AND LIFESTYLE THAT LED THEM TO PRISON. WHEN COUPLED WITH A LOOSE DAYTIME SCHEDULE AND LIMITED AND UNSTRUCTURED EVENING AND WEEKEND LEISURE TIME ACTIVITY, IT SHOULD NOT BE SURPRISING TO ANYONE THAT DRUGS, GAMBLING, INTIMIDATION, EXTORTION, AND HOMOSEXUAL EXPLOITATION OF THE WEAKER INMATES WILL BE THE OUTLET FOR THE ENERGIES OF CONVICTED FELONS IN PRISON. IT'S EXPENSIVE TO PROVIDE SPACE, EQUIPMENT, AND STAFF FOR PROGRAMS AND CARRY OUT STRUCTURED LEISURE TIME ACTIVITIES, HOWEVER, IT IS AN ESSENTIAL TO ANY PRISON ENVIRONMENT, ESPECIALLY IN SECURE LONG TERM CONFINEMENT FACILITIES. THE STAFF, FROM MY VANTAGE POINT, DO NOT LACK INTELLIGENCE, COMPETENCE, CREATIVITY OR COMMITMENT, BUT THE FISCAL AND HUMAN RESOURCES NECESSARY TO CHANGE THE ENVIRONMENT ARE LACKING.

INTERNAL SECURITY AND CONTROL IS VERY POOR. THE DOORS TO THE UNITS ARE NOT SECURED, AN OFFICER IS NOT POSTED AT THE DOORS AND INMATES ARE NOT PAT SEARCHED UPON ENTERING AND LEAVING THE UNIT. THE DOORS BETWEEN THE SHOP AREAS ARE NOT SECURED, NOR ARE THERE STAFF MONITORING INMATE MOVEMENT BETWEEN SHOPS. ALL DOORS IN A SECURE FACILITY SHOULD BE SECURED AND OPERATED BY STAFF TO CONTROL AND MONITOR INMATE MOVEMENT AND TO CONTROL CONTRABAND TRAFFIC. INMATES SHOULD BE PAT SEARCHED AND/OR BE SCANNED WITH A HAND HELD METAL DETECTOR UPON ENTERING OR LEAVING THE LIVING UNITS. THE OFFICER AND STAFF SUPERVISION OF THE DINING ROOM IS VERY POOR. THE DINING ROOM IS HISTORICALLY A PLACE WHERE GENERALLY THE MOST SERIOUS PROBLEMS ARE ENCOUNTERED. DURING ONE NOON MEAL, THERE WAS ONLY ONE OFFICER IN THE SPLIT DINING HALL, WITH AN ESTIMATED 200 TO 300 INMATES IN, ENROUTE TO OR RETURNING FROM THE AREA. SUGAR, WHICH IS THE MAIN INGREDIENT FOR JULEP, IS LEFT IN AN OPEN TRAY ON THE SERVING LINE AND IS SPOONED IN LARGE QUANTITIES BY THE INMATES ONTO THEIR TRAYS. I OBSERVED NO CONTROL OF THE SUGAR, AND NO CONCERN ON ANYONE'S PART ABOUT THE QUANTITY OF SUGAR AVAILABLE TO THE INMATES. I WAS NOT SURPRISED TO LEARN ABOUT THE BATCHES OF JULEP RANGING IN QUANTITIES OF 5 TO 55 GALLONS, BEING FOUND AROUND THE INSTITUTION AS THIS OCCURRENCE IS CONSISTENT WITH SYSTEMS THAT HAVE NO CONTROL OVER THE AMOUNT OF SUGAR THAT IS AVAILABLE TO THE INMATES. SUGAR IS PROBLEMATICAL STANDING ALONE, EVEN WHEN IT IS NOT USED FOR JULEP. IT HAS BEEN PROVEN WITH EMPIRACAL RESEARCH, THAT HIGH SUGAR CONSUMPTION CAN CAUSE A WIDE RANGE OF BEHAVIORAL SYMPTOMS, INCLUDING DEPRESSION, HYPERACTIVITY AND ACTING OUT BEHAVIORS THAT ARE EXTREMELY ASOCIAL. I WAS ALSO CONCERNED WITH THE CONTROL OF POTENTIALLY DANGEROUS WEAPONS IN THE FOOD PREPARATION AREA. DURING THE SERVING OF THE NOON MEAL, KNIVES WERE BEING USED BY KITCHEN INMATES OR LEFT ON TABLES WHERE PORK WAS BEING CUT UP FOR THE NEXT MEAL. THE DOORS FROM THE FOOD PREPARATION AREA WERE NOT SECURED AND COULD PERMIT A FOOD SERVER THE OPPORTUNITY TO PASS A KNIFE FROM THE KITCHEN AS HE WAITED FOR A SPECIFIC STAFF OR INMATE TARGET TO ENTER THE DINING ROOM. ALSO OF CONCERN WAS THE FACT, WITH FEW EXCEPTIONS, THE MAIN ELECTRICAL SWITCH BOXES WERE NOT SECURED IN THE KITCHEN, PROVIDING AN OPPORTUNITY FOR

INMATES TO SHUT DOWN L POWER AND LIGHTS WHILE THE D 'NG ROOM WAS OCCUPIED. THE POTENTIAL FOR MAJOR INCIDENTS TO OCCUR EXISTS INVOLVING MULTIPLE STAFF &/OR INMATE ASSAULTS AND THE VERY REAL POSSIBILITY THAT NO VICTIMS OR WITNESSES COULD IDENTIFY THE PERPETRATORS.

INMATE HOMOSEXUAL RELATIONSHIPS APPEAR TO BE OVERLOOKED. I OBSERVED BOTH BLACK AND WHITE EFFEMINATE INMATES WITH LONG HAIR COIFFURED, WEARING TIGHT CLOTHES WITH EYE MAKEUP, LIPSTICK, ETC. WHEN I INQUIRED OF SOME STAFF, THEY FELT THEY COULD DO NOTHING ABOUT IT. THEY ALSO REPORTED THAT THESE PEOPLE ARE PERMITTED TO CELL WITH THEIR KNOWN SEXUAL PARTNERS. KNOWN AND OVERT PRACTICING HOMOSEXUALS SHOULD BE PLACED IN INDIVIDUAL CELLS. WITH THE HIGH CORRELATION BETWEEN SOME OF THE HOMICIDES AND ASSAULTS AT T. S. P. AND HOMOSEXUAL ACTIVITY, A PROACTIVE AND PREVENTATIVE APPROACH SHOULD BE TAKEN ON THE PROBLEM. THE INSTITUTION POLICY 502.03-1 CLEARLY PROVIDES THE STAFF WITH THE RULE TO CONFRONT THOSE WHO ARE FLAUNTING THEIR SEXUAL PREFERENCE AND THEREBY CREATING AN UNSTABLE AND DANGEROUS ENVIRONMENT.

A NUMBER OF STAFF INDICATED THEIR CONCERN OVER THE AMOUNT OF VERBAL ABUSE DIRECTED AT THEM FROM THE INMATES. THEY FELT THAT REPORTING INMATES FOR VERBAL ABUSE IS A WASTE OF TIME. IN THEIR PERCEPTION, THE DISCIPLINARY BOARD TREATED THESE OFFENSES AS IF THEY WERE BEING A NUISANCE FOR WRITING THE REPORT. IT IS THIS CONSULTANT'S PROFESSIONAL OPINION THAT VERBAL ABUSE IS A BEHAVIOR THAT MUST BE TARGETED AND CONSISTENTLY CONFRONTED IN A PRISON. IF INMATE TO INMATE, INMATE TO STAFF OR STAFF TO INMATE DIALOGUE IS FULL OF PROFANITY AND CASTING ASPERSIONS ON EACH OTHER'S MOTHER, AND THIS IS THE ACCEPTED DAILY DIALOGUE, A CONSTANT AND RAPID DETERIORATION OF RELATIONSHIPS WILL OCCUR AND THE LEVEL OF VIOLENCE AND A SIGNIFICANT INCREASE IN ASSAULTS IS INEVITABLE. IF VERBAL ABUSE IS TARGETED AND CONSISTENTLY ENFORCED AMONG BOTH INMATES AND STAFF, ASSAULTIVE BEHAVIOR CAN BE REDUCED. IF INMATES ARE ALREADY ROUTINELY EXCHANGING PROFANITY ABOUT THEMSELVES AND OTHERS, WHEN A HEATED EXCHANGE EMERGES, THEY HAVE ALREADY PASSED THE VERBAL BARRIER AND THE CONFRONTATION IS IMMEDIATELY ESCALATED TO THE PHYSICAL LEVEL. THE ENVIRONMENT SHOULD ENCOURAGE AND ENFORCE THE EXPECTATION THAT PEOPLE TREAT EACH OTHER WITH MUTUAL RESPECT AND PERSONAL DIGNITY. IN THIS TYPE OF POSITIVE CLIMATE, ANGER AND HOSTILITY WILL USUALLY MANIFEST ITSELF INITIALLY IN A LOUD, VERBALLY ABUSIVE EXCHANGE OR OUTBURST, WHICH INCREASES THE OPPORTUNITY FOR STAFF TO INTERVENE BEFORE THE CONFRONTATION ESCALATES TO PHYSICAL VIOLENCE.

INTERNAL SECURITY AND CONTROL IS ALSO AFFECTED BY THE INADEQUATE LOCKING SYSTEM THAT REQUIRES A DISPROPORTIONATE AMOUNT OF STAFF TIME TO OPERATE, AND REDUCES THE AMOUNT OF TIME THEY CAN DEVOTE TO VISUAL SURVEILLANCE AND SUPERVISON OF THE INMATES.

PERMITTING MINIMUM SECURITY INMATES TO ROUTINELY ENTER THE INSIDE OF THE INSTITUTION TO FACILITATE COMMISSARY PURCHASES IS NOT NECESSARY AND CREATES A PREDICTABLE, SCHEDULED BREACH IN MAINTAINING THE INTEGRITY OF INTERNAL SECURITY AND CONTROL. MINIMUM SECURITY INMATES SHOULD ORDER THEIR COMMISSARY ITEMS AND THEY SHOULD BE BOXED OR BAGGED AND DELIVERED TO THEIR MINIMUM SECURITY UNIT OUTSIDE THE FACILTIY. ANY MINIMUM SECURITY INMATE THAT MUST ENTER THE FACILITY FOR ANY REASON (USUALLY ONLY MEDICAL REASONS) SHOULD BE ESCORTED BY STAFF AT ALL TIMES.

THE LIGHTING IN THE LIVING UNITS AND IN THE YARD IS INADEQUATE TO PROVIDE ANY ACCEPTABLE LEVEL OF VISUAL SURVEILLANCE OF INMATE ACTIVITY AND MOVEMENT. THE EXISTING LIGHTS IN THE LIVING UNITS MAY BE SUFFICIENT AS A NIGHT LIGHT WHEN ALL THE INMATES HAVE BEEN SECURED IN THEIR CELLS, BUT NOT WHEN INMATE MOVEMENT IS IN PROGRESS. IT IS UNDERSTANDABLE THAT IN THE EVENING, STAFF IN THE UNITS TEND TO GRAVITATE TO THE DESK, WHICH IS A SLIGHTLY BETTER LIGHTED AREA, WHICH LEAVES THE

MAJORITY OF THE INMATES UNSEEN AND UNSUPERVISED.

THE LOWER SECTION OF THE CELL DOORS IN UNIT #3 AND THE HOSPITAL CHECK IN AREA (PROTECTIVE CUSTODY) HAVE BARS REMOVED, THEREBY CREATING THE POTENTIAL FOR A SMALL MAN TO LEAVE HIS CELL UNDETECTED. WITH A LITTLE EFFORT EITHER ON HIS DOOR OR ON THE FLOOR UNDER HIS DOOR, HE COULD EFFECT AN ESCAPE.

THE WARDEN, THE ASSOCIATE WARDEN OF SECURITY (VANDEVER) AND SELECTED OTHER STAFF MEMBERS, TO THE EXTENT POSSIBLE, DO PROVIDE FORUMS FOR THE INMATES TO EXPRESS THEIR REAL AND IMAGINED CONCERNS AND PROBLEMS. THIS HAS RESULTED IN A/W VANDEVER BEING VIEWED BY THE INMATES AS THE "BIG DADDY" (NICKNAME AMONG THE INMATES). UNFORTUNATELY, IN HIS ATTEMPT TO FILL THE VOIDS LEFT BY THE CUTBACK IN COUNSELING POSITIONS, HE HAS NOT DEVOTED THE NECESSARY ATTENTION TO HIS AREA OF RESPONSIBILITY, WHICH IS INSTITUTION SECURITY - THAT SHOULD HAVE BEEN HIS FIRST PRIORITY. I AM SURE HIS DISCUSSIONS AND PRIVATE COUNSELING SESSIONS WITH INMATES HAVE BEEN OF BENEFIT TO THE INSTITUTION (MR. VANDEVER HAS RECOVERED SEVERAL OF THE GUNS THAT FOUND THEIR WAY INTO THE SECURE PERIMETER OF THE FACILITY). A NEGATIVE SIDE EFFECT OF MR. VANDEVER'S SOCIAL WORK EFFORTS, IS THAT HE ALIENATED A NUMBER OF THE UNIFORM STAFF BECAUSE OF HIS PRACTICE OF PROVIDING INMATES WITH MEMOS WHICH GAVE THEM SPECIAL PRIVILEGES, EXEMPTIONS AND STATUS. THE SECURITY AND UNIT STAFF WERE NOT COPIED ON THE CORRESPONDENCE AND INMATES WOULD WAVE IT IN FRONT OF STAFF WHEN THEY WERE CONFRONTED. THE FRUSTRATION AMONG STAFF CENTERED AROUND THEIR INABILITY TO IMPARTIALLY AND UNIFORMLY ENFORCE POLICY, PROCEDURE AND RULES. I RECOMMEND THAT ANY EXCEPTION TO PROCEDURES AND RULES SHOULD BE COPIED TO ALL STAFF. DEVIATIONS FROM POLICY SHOULD BE APPROVED BY THE WARDEN. THE DAILY SCHEDULE AND INTERNAL SECURITY AND CONTROL SHOULD BE THE PRIORITY OF THE ASSOCIATE WARDEN OF SECURITY. DURING THE EXIT SUMMARY, THIS WAS DISCUSSED WITH MR. VANDEVER AND WARDEN DUTTON, AND WARDEN DUTTON HAS ADVISED ME THAT MR. VANDEVER REORGANIZED HIS PRIORITIES AND IS MAKING CHANGES.

THE CURRENT LACK OF COUNSELING AND/OR SOCIAL WORK RESOURCES DOES CONTRIBUTE IN PART TO SOME OF THE FRUSTRATIONS EXPERIENCED BY THE INMATES, AND LIMITS THE ABILITY OF THE INSTITUTION ORGANIZATION TO PROVIDE ONE OF THE ESSENTIAL INGREDIENTS NECESSARY TO OPERATE A STABLE CORRECTIONAL ENVIRONMENT. THAT ELEMENT IS FORUMS FOR THE STAFF TO BE RESPONSIVE TO BOTH THE REAL AND IMAGINED CONCERNS OF THE INMATES. FAIR AND IMPARTIAL TREATMENT, JUSTICE, EQUITY AND JUST HAVING A DESIGNATED SOURCE TO GO TO FOR INFORMATION AND COUNSEL IS ESSENTIAL IN ANY CORRECTIONAL FACILITY THAT IS USED FOR LONG TERM CONFINEMENT. THE CURRENTLY AUTHORIZED COMPLEMENT OF 8 COUNSELORS IS INADEQUATE FOR AN INMATE POPULATION IN EXCESS OF 1100. THE CURRENT COUNSELORS ARE INUNDATED WITH PAPERWORK FOR PAROLE SUMMARIES, RE-CLASSIFICATION SUMMARIES, GROUP SPONSORSHIP AND TOURS. WITH WHAT LITTLE TIME MAY BE LEFT, THEY ATTEMPT TO RESPOND TO EMERGENCY OR HIGH PRIORITY INMATE REQUESTS. MORE APPROPRIATE RATIO OF COUNSELORS TO INMATES WOULD BE ONE COUNSELOR SERVING A CASELOAD OF SEVENTY INMATES, WHICH COULD REQUIRE DOUBLING THE CURRENT COUNSELOR COMPLEMENT TO SIXTEEN COUNSELORS.

CURRENTLY THERE IS ONLY ONE PSYCHOLOGICAL EXAMINER POSITION FOR THE ENTIRE POPULATION. THERE SHOULD BE A MINIMUM OF TWO POSITIONS IF ANY REASONABLE ATTEMPT IS GOING TO BE MADE TO EVALUATE THE MENTAL HEALTH OF THE INMATES. INMATES WHO ARE UNSTABLE ESCALATE THE POTENTIAL FOR VIOLENCE TOWARDS THEMSELVES, OTHER INMATES AND STAFF. INMATES WHO ARE IDENTIFIED TO BE IN NEED OF INTERVENTION CAN BE REFERRED TO MENTAL HEALTH INTERVENTION, AND THEREBY REDUCE THE POTENTIAL FOR VIOLENCE.

ONE POSITION TO DEVELOP, COORDINATE, DIRECT AND PROVIDE RECREATIONAL ACTIVITIES AND STRUCTURED LEISURE TIME ACTIVITIES FOR OVER 1100 INMATES IS NOT ADEQUATE. AT A MINIMUM, THERE SHOULD BE THREE POSITIONS, AT LEAST ONE OF WHICH SHOULD HAVE PHYSICAL EDUCATION CREDENTIALS - BACHELOR'S DEGREE IN RECREATION OR AN EQUIVALENT COMBINATION OF EXPERIENCE AND COLLEGE LEVEL TRAINING. BY PROVIDING APPROPRIATE OUTLETS FOR PHYSICAL ACTIVITY, FRUSTRATIONS AND TENSION ARE REDUCED AS IS THE POTENTIAL FOR SHORT TEMPERS WHICH LEAD TO ASSAULTS AND VIOLENCE.

THE CURRENT COMPLEMENT OF ACADEMIC TEACHERS APPEARS ADEQUATE TO MEET THE CURRENT INTERESTS OF THE INMATE POPULATION. IT IS UNFORTUNATE THAT WITH THE HIGH ILLITERACY RATE AMONG TENNESSEE STATE PRISON INMATES (IT WAS ESTIMATED TO ME, THAT 65% OF THE T.S.P. INMATE POPULATION IS UNABLE TO PASS SIXTH GRADE COMPETENCY TESTING) THAT THERE IS SO LITTLE INTEREST AMONG THE INMATES IN EDUCATION. I RECOMMEND INCREASING THE COMPENSATION TO INMATES ENGAGED IN EDUCATION WHO RECEIVE PASSING GRADES, TO ENCOURAGE AND PROVIDE INCENTIVE TO THOSE WHO DESPERATELY NEED THE BASIC ACADEMIC SKILLS JUST TO SURVIVE, AND ATTEMPT TO BE SELF-SUPPORTING WHEN THEY RETURN TO THEIR COMMUNITIES. COLLEGE LEVEL COURSEWORK SHOULD BE ENCOURAGED AND FACILITATED BY THE EDUCATION STAFF FOR THOSE INTERESTED.

WITH AN UNDEREDUCATED INMATE POPULATION, AMONG WHICH A HIGH PERCENTAGE DO NOT HAVE A MARKETABLE SKILL, IT IS COUNTERPRODUCTIVE FOR THE SYSTEM TO MOVE AWAY FROM VOCATIONAL EDUCATION. THE STATE OF TENNESSEE CANNOT CONTINUE TO BEAR THE FINANCIAL BURDEN OF SUPPORTING THESE INDIVIDUALS AND THEIR DEPENDENTS, WHETHER THEY ARE IN PRISON OR UNEMPLOYED IN THE COMMUNITY. I WOULD RECOMMEND INCREASING THE CURRENT COMPLEMENT OF VOCATIONAL INSTRUCTORS CONSISTENT WITH DR. OSA COFFEY'S RECOMMENDATIONS. AMONG THE PROGRAMS I SUGGEST BE CONSIDERED, ARE REFRIGERATION AND COMPUTER OR DATA PROCESSING. THESE RECOMMENDATIONS NOT ONLY CARRY A LONG TERM PAY OFF FOR TENNESSEE, BUT WILL REDUCE THE IDLENESS WHICH IS THE SOURCE OF SOME OF THE PROBLEMS BEING EXPERIENCED SYSTEM-WIDE.

IT WAS APPARENT DURING MY VISIT, BOTH FROM CONVERSATION WITH STAFF, INMATES AND AFTER HAVING READ SOME DISCIPLINE REPORTS, THAT THERE ARE A SIGNIFICANT NUMBER OF UNIFORM STAFF WHO APPEAR TO LACK REPORT WRITING OR WRITTEN COMMUNICATIONS SKILLS. OVERALL. I WAS IMPRESSED WITH THE QUALITY, INTELLECT, COMMON SENSE, GOOD JUDGEMENT AND COMMITMENT OF THE MAJORITY OF THE UNIFORM STAFF. IT WAS CLEAR THAT EVEN THOUGH THE GENERAL MAKEUP OF THE STAFF COMPLEMENT IS OUTSTANDING, AMONG THEM ARE THOSE WHOM YOU WOULD FIND IN ANY SETTING WHO ARE DISGRUNTLED, UNHAPPY COMPLAINERS. YOU ALSO HAVE SOME WHO ARE NOT OBJECTIVE ABOUT RACE. THIS GROUP OF STAFF, HOWEVER, ARE NOT REPRESENTATIVE OF THE MAJORITY.

IT IS RECOMMENDED THAT THOSE OFFICERS WHO NEED REMEDIAL EDUCATION BE IDENTIFIED AND TRAINING (ON THEIR OWN TIME) BE PROVIDED BY THE TENNESSEE DEPARTMENT OF CORRECTIONS. THIS TRAINING SHOULD BE MADE MANDATORY TO BRING ALL STAFF TO AN ACCEPTABLE LEVEL OF LITERACY (G.E.D.) OVER THE COURSE OF THE NEXT YEAR OR TWO.

IF THE TENNESSEE DEPARTMENT OF CORRECTIONS IS GOING TO ATTRACT AND RETAIN EDUCATED AND COMPETENT PERSONNEL, THEY WILL HAVE TO PAY COMPETITIVELY. THE CURRENT ENTRY LEVEL PAY OF LESS THAN $950.00 PER MONTH AND A TYPICAL OFFICER TAKE HOME PAY OF UNDER $370.00 EVERY TWO WEEKS, IS GROSSLY INADEQUATE IN TODAY'S ECONOMY, INCLUDING THE TENNESSEE ECONOMY. I AM NOT SUGGESTING THAT UNIFORM STAFF IN TENNESSEE BE PAID WHAT THEY ARE PAID IN ALASKA, CALIFORNIA, COLORADO, OREGON OR MINNESOTA, BUT THERE SHOULD BE SOME CONSISTENCY WITH SOUTHEASTERN STATES LIKE ALABAMA, OKLAHOMA, TEXAS OR NORTH CAROLINA. IN THE LONG RANGE PLAN, THE AVERAGE PAY FOR CORRECTIONAL

OFFICERS IN THE COUNTRY ($14,000 - $16,000/YEAR) SHOULD BE THE GOAL.

A MAJOR PROBLEM IN ADDITION TO PAY CONTRIBUTING TO THE FRUSTRATION AND BELOW PAR MORALE AMONG THE UNIFORM STAFF AT TENNESSEE STATE PRISON, IS THE COMPENSATORY TIME PROBLEM. TENNESSEE STATE PRISON CURRENTLY HAS OVER 40,000 HOURS OF COMP TIME ON THE BOOKS. THAT IN ITSELF DOES NOT SOUND ALARMING UNTIL YOU LEARN THAT THERE ARE NO PROVISIONS TO PAY THE COMP TIME TO AN EMPLOYEE UNLESS HE RESIGNS. RESIGNATIONS ARE FREQUENT AS IS EVIDENCED BY THE PERSONNEL DIRECTOR'S ESTIMATE OF NEARLY 30% TURNOVER ANNUALLY AMONG THE OFFICERS. THE OFFICERS INDICATE AND THE PERSONNEL DIRECTOR AND WARDEN ACKNOWLEDGED, THAT IT HAS BEEN VERY DIFFICULT IF NOT IMPOSSIBLE TO GET COMP TIME OFF ONCE YOU'VE EARNED IT. IT IS ALSO DIFFICULT TO GET EARNED VACATION TIME OFF WHEN YOU REQUEST IT. CURRENTLY, WHEN AN OFFICER QUITS WHO HAS ACCUMULATED VACATION AND COMP TIME, THE INSTITUTION IS UNABLE TO FILL THE POSITION UNTIL THAT FORMER EMPLOYEE HAS BEEN PAID FOR HIS ACCUMULATED TIME AT REGULAR BI-WEEKLY PAY INTERVALS. THE STATE DOES NOT MAKE LUMP SUM PAY OFFS ON RESIGNATIONS OR RETIREMENTS OF ACCUMULATED VACATION AND COMP TIME. THIS SYSTEM CREATES A VICIOUS CYCLE OF FRUSTRATION. THE INSTITUTION NEEDS STAFF TO WORK OVERTIME, THE EMPLOYEES ARE REQUIRED TO WORK THE OVERTIME, OVERTIME IS USED TO PERMIT PEOPLE TO TAKE OFF COMP TIME AND VACATION, AND THE DEBT INCREASES AND IN THE FINAL ANALYSIS, THE INSTITUTION SUFFERS WITH A VACANT POSITION THEY CANNOT FILL FOR SIX MONTHS OR MORE WHEN SOMEONE RESIGNS OR RETIRES, THEREBY CREATING MORE OVERTIME. ULTIMATELY YOU HAVE OVER A MILLION DOLLARS IN OVERTIME OWED TO EMPLOYEES AT THE TENNESSEE STATE PRISON.

MY RECOMMENDATION IS THAT PROVISIONS BE MADE TO MAKE A LUMP SUM PAYMENT TO ALL THE EMPLOYEES WHO ARE A PART OF THE OVER 40,000 HOUR COMP TIME CURRENTLY ON THE BOOKS. I BELIEVE RECENT RULINGS BY THE U.S. SUPREME COURT HAVE PLACED STATE EMPLOYEES UNDER THE FEDERAL FAIR LABOR STANDARDS ACT. THIS RULING SHOULD ENCOURAGE THE STATE OF TENNESSEE TO PAY EMPLOYEES FOR OVERTIME WORKED. IN RELATION TO PAY PERIODS, NUMEROUS EMPLOYEES (AT ALL LEVELS) FELT THAT EMPLOYEES SHOULD BE PAID EVERY TWO WEEKS ON FRIDAYS AS OPPOSED TO BEING PAID TWICE A MONTH UNDER THE CURRENT SYSTEM. I CONCUR, MOST GOVERNMENTAL AGENCIES AND THE MAJORITY OF THE CORPORATE AND PRIVATE SECTOR, PAY THEIR EMPLOYEES EVERY TWO WEEKS. REMOVING FRUSTRATIONS AND IRRITATIONS SUCH AS THIS IMPROVES EMPLOYEE MORALE AND WHEN MORALE IS IMPROVED, SO IS PERFORMANCE. COMPETENT PERFORMANCE BY THE STAFF REDUCES TENSION AND CONTRIBUTES TO A MORE STABLE PRISON ENVIRONMENT.

I FURTHER RECOMMEND THAT THE STATE GRANT AUTHORITY TO THE INSTITUTION TO HIRE UP TO 20 UNIFORM STAFF OVER COMPLEMENT. THIS WILL PERMIT THE INSTITUTION TO ANTICIPATE TURNOVER, RECRUIT, SCREEN, HIRE AND TRAIN STAFF WITHOUT GOING BELOW COMPLEMENT, THEREBY REDUCING THE NEED TO HIRE OVERTIME TO COVER VACANT POSITIONS. IF TURNOVER DOES NOT MATERIALIZE AS PROJECTED, THOSE NEW STAFF WHO ARE AT ENTRY LEVEL PAY SHOULD BE ASSIGNED TO VACATION AND COMP TIME RELIEF AND OTHER OVERTIME ASSIGNMENTS, THAT WOULD NORMALLY BE FILLED BY HIGHER PAID STAFF. IT IS BLATANTLY UNFAIR TO COMPENSATE CERTAIN SELECTED CLASSES OF EMPLOYEES AT TIME AND A HALF FOR OVERTIME, AND NOT OTHERS. I WAS ADVISED AND HAVE CONFIRMED THAT SPECIFIC CLASSIFICATIONS OF EMPLOYEES SUCH AS MEDICAL OR NURSING STAFF, ARE COMPENSATED AT TIME AND A HALF FOR OVERTIME WHILE THE OFFICERS EARN COMP TIME AT STRAIGHT TIME. ALL EMPLOYEE CLASSIFICATIONS SHOULD BE TREATED EQUITABLY UNDER THE FAIR LABOR STANDARDS ACT - THEY ALL SHOULD RECEIVE TIME AND A HALF.

BELOW ARE LISTED A NUMBER OF OTHER OBSERVATIONS AND RECOMMENDATIONS THAT IN ADDITION TO THE AFOREMENTIONED, ALSO IMPACT ON THE SOCIAL/ENVIRONMENTAL AND QUALITY OF LIFE AND SECURITY AT TENNESSEE STATE PRISON.

ENTRANCE SECURITY WAS POOR AND SPORADIC AND IN PART, MAY ACCOUNT FOR THE AVAILABILITY OF HARD LIQUOR, DRUGS AND THE EXTREMELY HIGH NUMBER OF FIREARMS RECOVERED INSIDE THE INSTITUTION. DURING MY NUMEROUS VISITS TO THE INSTITUTION, WHEN I WAS PAT SEARCHED, IT WAS NOT THOROUGH, NOR WAS MY BRIEFCASE SEARCHED ADEQUATELY. ON ONE OCCASION THE OFFICER WALKED AWAY FROM THE DOOR TO THE REGISTRATION DESK AND LEFT THE KEY IN THE DOOR. I WOULD ALSO SUGGEST THE USE OF WALK THROUGH AND HANDHELD METAL DETECTORS. IF THEY DO NOT FUNCTION PROPERLY IN THE CURRENT LOCATION, A WOODEN EXTENSION TO THE EXISTING ENTRANCE BUILDING COULD BE ERECTED TO PROVIDE A MORE PRIVATE AREA TO SEARCH STAFF AND VISITORS, AND ALSO PERMIT FULL TIME USE OF METAL DETECTION EQUIPMENT. THE PRACTICE OF ROUTINELY PAT SEARCHING STAFF SHOULD BE DISCONTINUED. A MORE EFFECTIVE APPROACH HAS BEEN TO ORDER ALL INDIVIDUALS ENTERING THE FACILITY ON RANDOM DAYS AND DURING CHANGING HOURS OF THE DAY, TO BE PAT SEARCHED - POSSIBLY ONCE A WEEK AT SOME DAY AND TIME DESIGNATED EACH TIME BY THE WARDEN.

THE VEHICLE INSPECTIONS AT THE VEHICLE GATE ARE NOT THOROUGH. CONSIDERATION SHOULD BE GIVEN TO AN INSPECTION PIT WHICH COULD FACILITATE A MORE THOROUGH INSPECTION OF THE UNDERSIDE OF VEHICLES.

I FOUND THE KITCHEN CLEANLINESS AND SANITATION LACKING. DURING MY VISITS, I SAW WHAT APPEARED TO BE COCKROACHES AND SILVERFISH IN THE KITCHEN AND THE FOOD SERVICE DIRECTOR'S OFFICE. THE OVENS AND OTHER FOOD PREPARATION AREAS WERE NOT THOROUGHLY CLEAN, AND CONTRIBUTING TO UNHEALTHY AND UNSANITARY CONDITIONS WAS THE FACT THAT AT ONE OF THE NOON MEALS, I NOTED BREAD HAD BEEN PLACED ON THE SERVING LINE IN A LARGE STAINLESS STEEL BOWL. INMATES COMING FROM INDUSTRY WITH VISIBLE, UNWASHED HANDS, REACHED INTO THE BOWL AND SELECTED BREAD FOR THEIR TRAY. EITHER SERVING TONGS SHOULD BE PROVIDED OR A GLOVED SERVER SHOULD SERVE THE BREAD.

IN THE INDUSTRY SHOPS, I OBSERVED HIGH CONCENTRATIONS OF SAWDUST IN THE AIR THAT WAS NOT BEING PROPERLY EXHAUSTED. SIGNS WERE EVIDENT INDICATING INMATES SHOULD WEAR MASKS, HOWEVER, NONE WERE EVIDENT AND THERE APPEARED NOT TO BE ANY ENFORCEMENT OF THE POLICY. NOISE LEVELS IN SOME AREAS WERE HIGH, WITH ONLY ONE INMATE OBSERVED WEARING ANY EAR PROTECTION. I ALSO NOTED ONE OF THE STAFF SHOP OFFICES EQUIPPED WITH AN AIR CONDITIONING UNIT, WHICH EXHAUSTED INTO THE INMATE WORK AREA OF THE SHOP.

UPON INQUIRING ABOUT THE FREQUENCY AND THOROUGHNESS OF SEARCHES OF THE SHOP AREAS FOR FIRE, CONTRABAND AND ALSO THOROUGH FIRE CHECKS AFTER THE INMATES LEAVE THE WORK AREAS, I WAS ADVISED THAT THEY ARE RARELY IF EVER DONE.

DEATH ROW/UNIT #6: THIS BUILDING DESIGN DOES NOT PERMIT INMATE ACCESS TO NATURAL LIGHT. NATURAL LIGHT AND THE VISUAL STIMULATION USUALLY AVAILABLE WITH NATURAL LIGHT HAVE BEEN ESTABLISHED AS IMPORTANT TO PHYSICAL AND PSYCHOLOGICAL HEALTH AND STABILITY. DETERIORATING PHYSICAL AND MENTAL HEALTH CAN CONTRIBUTE TO DEPRESSION, SUICIDE AND/OR BIZARRE ACTING OUT OR DANGEROUS BEHAVIORS TOWARD STAFF AND INMATES. THE AIR HANDLING AND CIRCULATION SYSTEM WAS OBVIOUSLY INADEQUATE BASED ON THE STAGNANT STALE CLIMATE I FOUND. THE ARCHAIC CELL LOCKING SYSTEM SHOULD BE REPLACE THE EXPOSED LOCK BOLT AND PADLOCK SYSTEM ARE NOT SECURE, AND WOULD MAKE QUICK EVACUATION OF THE INMATES IN THE EVENT OF A LIFE THREATENING FIRE IMPOSSIBLE. THERE IS A HIGH RISK OF LOSS OF LIFE IN THIS UNIT SHOULD THERE BE A SERIOUS FIRE.

I RECOMMEND THAT THE OUTSIDE EXERCISE YARD WHICH IS USED JOINTLY BY UNITS #1 & #6 ON A SCHEDULED BASIS, BE DIVIDED IN ORDER TO SEPARATE POTENTIAL INCOMPATIBILITIES WHILE EXPEDITING OUTSIDE EXERCISE.

ALSO NOTED IN DEATH ROW IS THE PRACTICE OF HAVING DEATH ROW RESIDENTS IN THE FRONT ENTRANCE AREA OF THE UNIT, NOT IN RESTRAINTS. THIS IS DANGEROUS WITH A POPULATION THAT HAS LITTLE TO LOSE. THEY SHOULD BE RESTRAINED UNLESS THEY ARE IN THEIR CELLS OR IN A CONFINED, SECURE AREA.

UNIT #7: THE WOOD FRAME WALLS WHICH DIVIDE THE UPSTAIRS DORMITORY ARE AN EXTREME FIRE HAZARD. IT WAS ALSO NOTED THAT THE WINDOWS HAD BEEN PAINTED OVER WHICH PREVENTED ACCESS TO NATURAL LIGHT IN THAT AREA.

THE OLD AUDITORIUM BUILDING WHICH WAS CONVERTED TO ACCOMMODATE AN ELEVATED LEVEL GYM FLOOR IS INADEQUATE. THE ONLY FACILITIES PROVIDED ARE FOR BASKETBALL, WEIGHT LIFTING AND MOVIES. ADEQUATE EXERCISE AND LEISURE TIME FACILITIES, EQUIPMENT AND STAFFING CAN PROVIDE AN EXCELLENT FORUM TO ABSORB PENT UP ENERGY AND HOSTILITY, AND CHANNEL IT IN A SAFER AND HEALTHIER DIRECTION.

IN ADDITION TO THE ABOVE, DURING MY EXIT SUMMARY WITH WARDEN DUTTON, I RECOMMENDED THAT INMATE PERSONAL PROPERTY LIMITS BE ENFORCED, FLAMMABLE CELL FRONT COVERINGS BE REMOVED, AND PICNIC AREA SECURITY BE IMPROVED BY ADDING A VEHICLE CRASH BARRIER TO THE FENCE AROUND THE AREA. I RECOMMENDED THAT SEPARATE TOILETS FOR VISITORS AND INMATES BE INSTALLED AND THAT A POLICY BE INSTITUTED THAT REQUIRES INMATES TO HAVE REPORT-FREE BEHAVIOR FOR A SPECIFIC DURATION TO BE ELIGIBLE FOR PICNIC AREA VISITS. I ALSO SUGGESTED THAT THE LIGHT FIXTURES IN #5 BE REPLACED WITH KENALL ABUSE RESISTANT FIXTURES AND THE PORCELAIN TOILETS ALSO BE REPLACED WITH STAINLESS STEEL. AGAIN, UNIT #5 HAS NO PROVISIONS FOR NATURAL LIGHT IN THE CELL AREAS. I ALSO SUGGESTED REMOVING ALL THE ELECTRICAL EXTENSION CORDS AND MULTI-PLUG ARRANGEMENTS IN ALL UNITS BECAUSE OF THE FIRE AND SAFETY HAZARD.

THE MAIN PRISON STRUCTURE (UNITS 1, 2, 3, 4) IS IN EXTREMELY RUN DOWN CONDITION. THE ROOFS AND WINDOWS ARE LEAKING. DURING SOME OF THE WINTER COLD SNAPS, THE TEMPERATURES IN THE CELL BLOCKS WERE IN THE 20'S AND 30'S. THE TOILETS, DRAINS AND PLUMBING REFLECT THE 100 YEAR'S USE WITH CORROSION PLUGGING IN THE CELLS, SHOWERS, ETC. THE LOCKING SYSTEM IN THESE UNITS IS NOT ONLY A SEVERE DRAIN ON STAFF TIME; BUT CREATES A FIRE HAZARD WHEN COUPLED WITH OVER 100 YEARS OF ACCUMULATED LAYERS OF PAINT THAT CANNOT BE REMOVED BY SANDBLASTING BECAUSE OF THE CRUMBLING AND DECAYING CONCRETE AND BRICK. THE EXPOSED CONCRETE CULVERTS AND DRAINAGE SYSTEM CREATES NOT ONLY EXCELLENT HIDING PLACES OUTSIDE THE UNITS, BUT THE GRATES THAT COVER THEM HAVE POTENTIAL USE AS BATTERING RAMS AND/OR LADDERS TO EFFECT ESCAPE. IN DISCUSSING THE FACILITIES WITH ARCHITECTURAL AND CONSTRUCTION PROFESSIONALS, THE ESTIMATES FOR REPAIRING THE FACILITIES AND UPGRADING THE STRUCTURAL PLUMBING, ELECTRICAL, LOCKING SYSTEM AND ADDING APPROPRIATE EXERCISE DAY ROOM AND LEISURE TIME ACTIVITY SPACES TO THE UNITS, THE ESTIMATES RANGE FROM TEN TO TWENTY MILLION DOLLARS. THIS HOWEVER, WOULD STILL LEAVE TENNESSEE WITH AN INADEQUATE FACILITY. THE CURRENT 5' X 7' CELLS DO NOT MEET AMERICAN CORRECTIONS ASSOCIATION COMMISSION ON ACCREDITATION STANDARDS. IT IS MY RECOMMENDATION THAT THE STATE BUILD TWO NEW 500 BED FACILITIES - ONE MAXIMUM FACILITY AND ONE CLOSE CUSTODY FACILITY. THE TWO NEW FACILITIES SHOULD BE STRATEGICALLY LOCATED TO SERVE THOSE GEOGRAPHICAL LOCATIONS OF THE STATE WHERE THE PROJECTED HIGHEST NUMBERS OF MAXIMUM SECURITY INMATES AND/OR SERIOUS FELONY CONVICTION RATES ARE ANTICIPATED. THE OLD INSTITUTION HAS SERVED TENNESSEE FOR NEARLY 100 YEARS, IS WORN OUT AND WOULD NOT BE COST-EFFECTIVE TO RENOVATE GIVEN THE CURRENT ARCHITECTURAL, SECURITY AND OPERATIONAL LIMITATIONS, CURRENT RUN DOWN CONDITION BUT WILL PROVIDE TEMPORARY HOUSING DURING THE CONSTRUCTION OF THE NEW FACILITIES.

SUMMARY

OVERALL, I WAS IMPRESSED BY THE WARDEN, HIS ADMINISTRATIVE STAFF AND THE MAJORITY OF THE MIDDLE MANAGERS AND UNIFORM STAFF I ENCOUNTERED AND TALKED WITH. MOST, BUT NOT ALL OF THE CRITICAL PROBLEMS AT TENNESSEE STATE PRISON, AS I HAVE INDICATED, ARE NOT UNDER THE DIRECT CONTROL OF THE INSTITUTION ADMINISTRATION. OVERCROWDING, PHYSICAL PLANT, LACK OF PROGRAM AND LEISURE TIME RESOURCES ARE UNDER THE ULTIMATE CONTROL OF STATE GOVERNMENT.

GIVEN THE INCREASING HIGH LEVEL OF VIOLENCE OVER THE LAST THREE YEARS AND EVEN THOUGH THERE WAS A HOMICIDE JUST TWO DAYS BEFORE MY VISIT AND ANOTHER STABBING IN UNIT #1 ON THE MORNING OF MY EXIT SUMMARY WITH WARDEN DUTTON AND HIS STAFF, I DID NOT DETECT EITHER DURING THE DAYLIGHT VISITS OR EVENING VISITS, OR AMONG THE INMATES I INTERVIEWED, A HIGH LEVEL OF RAW EXPLOSIVE TENSION YOU WOULD EXPECT GIVEN HISTORY AND THE CONDITIONS AND LACK OF CONSTRUCTIVE ACTIVITY. I ATTRIBUTE THIS TO THE EXTRA EFFORTS OF THE MAJORITY OF STAFF AT ALL LEVELS, BEING ACCESSIBLE AND AS RESPONSIVE TO THE INMATES AND STAFF AS IS POSSIBLE GIVEN THE LIMITED RESOURCES. I FOUND LITTLE OR NO EVIDENCE OF RACIAL ANTAGONISM BETWEEN INMATES AND STAFF, AND LITTLE RACIAL ANTAGONISM BETWEEN BLACK AND WHITE INMATES. I ALSO NOTED THAT OF THE OVER 550 STAFF, NEARLY 150 WERE BLACK. BLACK STAFF WERE ALSO REPRESENTED IN THE SUPERVISORY RANKS. THE ADMINISTRATIVE CAPTAIN IS BLACK. IT WOULD, HOWEVER, BE UNWISE NOT TO ACT EXPEDITIOUSLY TO ADDRESS AND RESOLVE THESE CRITICAL PROBLEMS. THE STAFF CANNOT BE EXPECTED TO SUSTAIN THE CURRENT LEVEL OF EFFORT THAT APPEARS TO AT LEAST IN PART, BE COMPENSATING FOR THE OBVIOUS SHORTCOMINGS OF THE SYSTEM.

THERE IS MUCH THE INSTITUTION STAFF CAN DO TO ADDRESS PROBLEMS AND MAKE IMPROVEMENTS IN SECURITY, CONTROL, INMATE ACCOUNTABILITY, HOUSEKEEPING, ADHERENCE TO SCHEDULES AND GENERALLY, TAKING A MORE PROFESSIONAL AND CREATIVE APPROACH TO THEIR WORK. THE MAJOR FORCES WHICH ARE AT THE SOURCE OF THE PROBLEMS MUST BE ADDRESSED WITH CHANGES IN PUBLIC POLICY AND ADDITIONAL FISCAL AND HUMAN RESOURCES.

FROM A HISTORICAL PERSPECTIVE, ALL OF THE CHEMISTRY IS PRESENT FOR "SIGNIFICANT MAJOR INSTITUTION AND SYSTEM-WIDE PROBLEMS." THE CUMULATIVE EFFECT OF THESE CONDITIONS OVER AN EXTENDED PERIOD OF TIME HAVE ERUPTED OVER ONE BAD MEAL, AN EXTENDED PERIOD OF UNUSUALLY HIGH TEMPERATURES, ONE ISOLATED RACIAL CONFRONTATION OR A SINGLE STAFF PERSON OVERREACTING TO AN INCIDENT AS A RESULT OF A SUSTAINED PERIOD OF STRESS.

AT THE EXIT SUMMARY, I ALSO SUGGESTED THAT EACH UNIT SUBMIT A SHIFT ACTIVITY REPORT TO THE SHIFT SUPERVISOR THAT WOULD INCLUDE ANY ROUTINE AND UNUSUAL ACTIVITY IN THE UNIT, PHYSICAL PLANT REPAIRS (E.G., LIGHTS OUT, DRAINS PLUGGED) AND ATTACH ANY INCIDENT REPORTS AND GIVE A BRIEF ONE SENTENCE DESCRIPTION OF THE CLIMATE AND PULSE OF EACH OF THE UNITS DURING THE SHIFT. THESE ONE PAGE REPORTS WOULD BE ATTACHED TO A ONE PAGE SHIFT SUPERVISOR REPORT AND FORWARDED TO THE WARDEN AND ADMINISTRATIVE TEAM FOR DAILY MORNING REVIEW OF THE PAST DAY'S ACTIVITIES. THERE IN THE WARDEN'S 15 MINUTE MORNING MEETING, SPECIFIC PRIORITIES OR REPAIRS OR INTERVENTION COULD BE BRIEFLY DISCUSSED AND ACTED UPON ON A DAILY BASIS BY THE TOP LEVEL ADMINISTRATION. THIS FORUM PROVIDES THE OFFICERS WITH FEEDBACK THAT WHAT THEY SEE, ENCOUNTER AND REPORT IS IMPORTANT AND IS ACTED UPON. IT ALSO KEEPS THE ENTIRE MANAGEMENT TEAM IN TOUCH WITH THE PULSE OF THE

SUMMARY (CONT'D)

INSTITUTION AND MORALE OF STAFF. I SUGGESTED THE OFFICER ROLL CALL AGENDA BE EXPANDED TO INCLUDE AN UPDATE TO ALL THE OFFICERS ON THE EVENTS OF THE PREVIOUS 16 HOURS SINCE THEY LEFT THE FACILITY TO IMPROVE THE COMMUNICATIONS, AS WELL AS GIVING ALL STAFF A BROADER PERSPECTIVE ON THE INSTITUTIONAL CLIMATE AND ENHANCE TEAM IDENTITY. IT WAS ALSO SUGGESTED THAT PRE-SERVICE, ON-THE-JOB TRAINING BE EXPANDED AND NEW LINE STAFF BE ASSIGNED POSITIVE, COMPETENT, EXPERIENCED LINE STAFF WHO WOULD ACT NOT ONLY AS TRAINERS, BUT AS A MENTOR OR STAFF ADVISOR AND EVALUATOR. I ALSO SUGGEST THAT ALL CORRECTIONAL STAFF SELECTED TO WORK AT EACH OF THE FACILITIES BE EXPOSED TO A MINIMUM OF 5 DAYS OF OBSERVATION IN A VARIETY OF AREAS AND SHIFTS PRIOR TO MAKING A TRAINING INVESTMENT IN THEM. THIS PROCESS SHOULD PROVIDE EVERY NEW OFFICER WITH A REALISTIC PICTURE OF WHAT INSTITUTIONAL WORK ENTAILS. IN-SERVICE TRAINING SESSIONS SHOULD INCLUDE STRESS MANAGEMENT TECHNIQUES, TEAM BUILDING, FIRST LEVEL SUPERVISORY TRAINING AND MANAGEMENT TRAINING.

TENNESSEE STATE PRISON HAS THE MOST IMPORTANT COMPONENT NEEDED TO OPERATE A SECURE, RATIONAL, HUMANE, JUST AND SAFE CORRECTIONAL FACILITY - A MAJORITY OF HONEST STAFF WHO EXERCISE GOOD JUDGEMENT AND COMMON SENSE. WITH BETTER POLICY DIRECTION AND SUFFICIENT RESOURCES, THE QUALITY OF LIFE FOR INMATES AND STAFF CAN BE IMPROVED OVER THE SHORT RUN, BUT I DON'T BELIEVE THE STATE CAN ESCAPE THE FACT THAT THE SYSTEM NEEDS TO REPLACE AND UPDATE ITS MAXIMUM AND CLOSE CUSTODY BEDS.

I SUGGESTED TO COMMISSIONER PELLEGRIN THAT WARDEN DUTTON BE PERMITTED TO VISIT THREE OF OUR FACILITIES IN MINNESOTA FOR THE PURPOSE OF OBSERVING SOME OF OUR INSTITUTIONS AND METHODS OF OUR OPERATION AND EVALUATE SOME OF OUR POLICIES AND PROCEDURES THAT MAY BE HELPFUL TO HIM AND OTHER INSTITUTION HEADS. COMMISSIONER PELLEGRIN WAS VERY RECEPTIVE TO THE SUGGESTION AND WARDEN DUTTON DID VISIT OUR ST. CLOUD, STILLWATER AND OAK PARK HEIGHTS FACILITIES THE FIRST WEEK IN FEBRUARY.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*DAILY SCHEDULES SHOULD BE CONSISTENT, LOGICAL AND ENFORCED.
*THERE SHOULD BE CONSEQUENCES FOR INMATES WHO DO NOT ADHERE TO THE DAILY SCHEDULE.
*RAISE INMATE PAY TO COMPETITIVE LEVEL.
+ESTABLISH A SUBSISTENCE LEVEL UNEMPLOYMENT PAY SCHEDULE FOR THOSE INMATES WHO WANT TO WORK AND ARE NOT ASSIGNED BECAUSE THE SYSTEM HAS NOT PROVIDED A CONSTRUCTIVE ASSIGNMENT.
+DONORS TO THE PLASMA PROGRAM MUST HAVE MAINTAINED A CONSTRUCTIVE ASSIGNMENT THE PREVIOUS WEEK TO BE ELIGIBLE.
*PROVIDE FOR SPACE, EQUIPMENT AND STAFF TO COORDINATE, PLAN AND SUPERVISE LEISURE TIME ACTIVITIES.
*SECURE ALL FACILITY DOORS, ESPECIALLY THOSE TO THE LIVING UNITS AND TO PROGRAM AND WORK AREAS.
*POST AN OFFICER AT ALL DOORS TO LIVING UNITS TO INTERCEPT AND PAT SEARCH INMATES ENTERING THE UNITS.
*INMATE MOVEMENT BETWEEN SHOPS SHOULD BE MONITORED.
*PROVIDE CORRECTIONAL OFFICERS FOR DINING HALL SUPERVISION.
*CONTROL OF SUGAR IS ESSENTIAL.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*ESTABLISH A SYSTEM OF CONTROL AND ACCOUNTABILITY FOR KITCHEN ITEMS THAT ARE POTENTIAL DANGEROUS WEAPONS.
*SECURE ELECTRICAL SWITCH BOXES IN KITCHEN AREA.
*PLACE ALL KNOWN AND/OR OVERT HOMOSEXUALS IN INDIVIDUAL CELLS.
*ENFORCE THE INSTITUTION POLICY AGAINST BEHAVIOR THAT ENCOURAGES HOMOSEXUAL-TYPE ACTIVITY.
*CONFRONT AND ENFORCE CONSISTENTLY, DISCIPLINARY ACTION AGAINST VERBAL ABUSE.
+CREATE AN ENVIRONMENT THAT ENCOURAGES THE TREATMENT OF OTHERS WITH PERSONAL DIGNITY.
+UPGRADE THE ANTIQUATED LOCKING SYSTEM.
*CONTROL THE MOVEMENT OF MINIMUM SECURITY INMATES INTO THE INSTITUTION.
*PROVIDE ADEQUATE LIGHTING IN ALL UNITS.
+SECURE DOORS IN UNIT #3 AND HOSPITAL CHECK IN AREA (PROTECTIVE CUSTODY).
*INSTITUTION SECURITY NEEDS TO BE ELEVATED TO HIGHEST PRIORITY.
*THE WARDEN MUST APPROVE ALL POLICY AND PROCEDURE, AND APPROVE ANY DEVIATIONS OR CHANGE IN POLICY AND PROCEDURE.
+ALL STAFF SHOULD BE MADE AWARE OF ALL NEW AND REVISED POLICY AND PROCEDURE (REQUIRED SIGN OFF).
*INCREASE RATIO OF COUNSELORS TO INMATES, TO ONE COUNSELOR FOR A CASELOAD OF 70 INMATES.
*INCREASE PSYCHOLOGICAL EXAMINER COMPLEMENT FROM ONE TO TWO.
+INCREASE RECREATION STAFF COMPLEMENT FROM ONE TO A MINIMUM OF THREE, AT LEAST ONE OF WHICH HAS A DEGREE OR EQUIVALENT TRAINING IN RECREATION PLANNING.
+INCREASE COMPENSATION FOR INMATES ENGAGED IN EDUCATION WHO RECEIVE PASSING GRADES AS A PROGRAM AND BASIC NEEDS INCENTIVE.
+FACILITATE COLLEGE LEVEL COURSE WORK AND CORRESPONDENCE COURSES.
+EMPHASIZE, ENCOURAGE, COORDINATE AND FACILITATE VOCATIONAL TRAINING BY INCREASING COMPLEMENT VOCATIONAL INSTRUCTORS CONSISTENT WITH DR. COFFEY'S RECOMMENDATIONS.
+PROVIDE FOR MANDATORY REMEDIAL TRAINING FOR STAFF (ON THEIR OWN TIME) TO BRING ALL STAFF TO AN ACCEPTABLE LITERACY LEVEL WITHIN THE NEXT TWO YEARS.
*ESTABLISH COMPETITIVE PAY PLAN FOR OFFICERS CONSISTENT WITH THE TENNESSEE HIGHWAY PATROL.
+MAKE LUMP SUM PAYMENT TO ALL EMPLOYEES WHO ARE PART OF THE OVER 40,000 HOUR COMP TIME CURRENTLY ON THE BOOKS.
+ESTABLISH PAY SCHEDULE SO THAT EMPLOYEES ARE PAID EVERY TWO WEEKS.
+AS AN ANTICIPATORY MEASURE TO TURNOVER, RECRUITMENT, TRAINING AND OVERTIME, ALLOW INSTITUTIONS TO HIRE UP TO 20 TRAINEES OVER COMPLEMENT.
+DISCONTINUE ROUTINE PAT SEARCHES OF STAFF AND IMPLEMENT RANDOM PAT SEARCHES OF STAFF AS OUTLINED.
+INCREASE THE USE OF WALK THROUGH AND HAND HELD METAL DETECTORS. (NOTE: IF THEY DO NOT FUNCTION PROPERLY IN THE CURRENT LOCATION, A WOODEN EXTENSION TO THE EXISTING ENTRANCE BUILDING COULD BE ERECTED TO PROVIDE A MORE PRIVATE AREA TO SEARCH STAFF AND VISITORS).
*INCREASE LEVEL OF SECURITY INSPECTIONS OF VEHICLES AT VEHICLE GATE BY THE USE OF AN INSPECTION PIT.
*ENFORCE CLEANLINESS AND SANITATION THROUGHOUT INSTITUTION.
+APPROPRIATE FOOD SERVING UTENSILS SHOULD BE USED FOR SERVING FOOD AT ALL TIMES AND AT ALL LOCATIONS.
*INMATES SHOULD BE PROVIDED WITH MASKS AND EAR PROTECTION IN THE HIGH SAWDUST AND NOISY SHOP AREAS, AND THE USE OF THE MASKS AND EAR PROTECTION DEVICES SHOULD BE ENFORCED BY POLICY.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*DISPENSE WITH THE USE OF STAFF AIR CONDITIONING UNITS WHICH EXHAUST HEAT INTO INMATE AREAS.
*DEVELOP POLICY AND REGULAR FIRE SAFETY INSPECTIONS IN ALL INSTITUTION AREAS.
*REPLACE LOCKING SYSTEM, AIR HANDLING AND CIRCULATION SYSTEM AND PROVIDE FOR NATURAL LIGHTING IN DEATH ROW SECTION.
*DISPENSE WITH THE PADLOCK SYSTEM IN DEATH ROW SECTION.
*DIVIDE OUTSIDE EXERCISE YARD FOR UNITS #1 AND #6.
*DEATH ROW INMATES SHOULD ALWAYS BE IN RESTRAINTS WHEN NOT CONFINED OR WHEN NOT IN A SECURE AREA.
*REPLACE OR DISPENSE WITH WOOD FRAME WALLS WHICH DIVIDE UNIT #7 UPSTAIRS DORM (FIRE HAZARD). OPEN UP AREAS TO PROVIDE FOR NATURAL LIGHTING.
*ENFORCE INMATE PERSONAL PROPERTY LIMITS.
*INTRODUCE FIRE/SPACE INSPECTIONS TO REMOVE FLAMMABLE CELL FRONT COVERINGS.
+IMPROVE UPON PICNIC AREA SECURITY BY ADDING A VEHICLE CRASH BARRIER TO THE FENCE AROUND THE AREA.
*INSTALL SEPARATE BATHROOM FACILITIES FOR VISITORS AND INMATES.
+INSTITUTE POLICY THAT REQUIRES REPORT-FREE BEHAVIOR FOR SPECIFIC DURATION TO BE ELIGIBLE FOR PICNIC VISITS.
+REPLACE LIGHT FIXTURES WITH KENALL ABUSE RESISTANT FIXTURES.
+REPLACE PORCELAIN TOILETS WITH STAINLESS STEEL TOILETS.
+PROVIDE FOR NATURAL LIGHT IN UNIT #5.
+REMOVE ALL ELECTRICAL EXTENSION CORDS AND MULTI-PLUG ARRANGEMENTS IN ALL UNITS (FIRE SAFETY HAZARD).
+UPGRADE STRUCTURAL PLUMBING, ELECTRICAL SYSTEM AND SECURE CONCRETE CULVERTS AND DRAINAGE SYSTEM, AND SECURE GRATES THAT PROVIDE THEIR COVER.
*ALL CORRECTIONAL STAFF SELECTED TO WORK AT EACH OF THE FACILITIES SHOULD BE EXPOSED TO A MINIMUM OF 5 DAYS OBSERVATION IN A VARIETY OF AREAS AND SHIFTS PRIOR TO MAKING A TRAINING INVESTMENT IN THEM.

BLED E COUNTY REGIONAL CORRECTIONAL CILITY

THE ON-SITE VISIT TO THE BLEDSOE FACILITY BEGAN ON MONDAY MORNING, JANUARY 28, 1985. IN ORDER TO ACCOMODATE AN ADDITIONAL REQUEST FROM THE DEPARTMENT TO ALSO INCLUDE IN MY SCHEDULE DURING THE WEEK, A VISIT TO THE EAST TENNESSEE RECEPTION CENTER (BRUSHY MOUNTAIN) TO EVALUATE THE PROPOSED LOCATION OF A MAXIMUM UNIT IN "D" UNIT, I COMPLETED MY ON-SITE AT THE BLEDSOE FACILITY ON TUESDAY EVENING, JANUARY 29, 1985.

DURING MY VISIT I TALKED WITH A VARIETY OF STAFF AND INMATES INFORMALLY, BUT SCHEDULED PRIVATE INTERVIEWS WITH EIGHT INMATES SELECTED BY ME AT RANDOM DURING MY TOUR OF THE FACILITY. I ALSO CONDUCTED STRUCTURED PRIVATE INTERVIEWS WITH WARDEN LIVESAY AND ELEVEN STAFF REPRESENTATIVE OF A CROSS SECTION OF STAFF AT THE BLEDSOE FACILITY.

DURING MY VISIT, THE INSTITUTION INMATE POPULATION WAS 830 OR 330 OVER THE CAPACITY OF THE FACILITY, INCLUDING THE MINIMUM SECURITY OPEN DORMITORIES AT THE MINIMUM SECURITY ANNEX. WITH THE EXCEPTION OF THE MINIMUM SECURITY DORMITORIES, THE INMATES ARE NEARLY ALL DOUBLE CELLED. THE DOUBLE CELLING AT BLEDSOE CREATES THE SAME PROBLEMS ALLUDED TO IN MY REMARKS ABOUT TENNESSEE STATE PRISON'S OVERCROWDING. I SHOULD ADD THE ROOMS ARE SLIGHTLY LARGER THAN THOSE AT THE TENNESSEE STATE PRISON. THERE ARE, HOWEVER, OTHER SECURITY IMPLICATIONS PRESENT AT BLEDSOE THAT ARE NOT PRESENT AT TENNESSEE STATE PRISON. THE BLEDSOE FACILITY WAS OBVIOUSLY BUILT TO HOUSE MEDIUM SECURITY INMATES, JUDGING FROM THE WOODEN DOORS, CONCRETE BLOCK CONSTRUCTION (NOT CONCRETE FILLED OR STEEL REINFORCED), VERY FRAGILE WINDOW SECURITY AND PORCELAIN PLUMBING FIXTURES. THIS OVERCROWDED MEDIUM SECURITY FACILITY IS NOT OVERCROWDED WITH MEDIUM SECURITY INMATES. ON JANUARY 28, 1985, 301 INMATES WERE PROPERTY OFFENDERS AND 40 WERE THERE FOR DRUG OFFNESES. THE REMAINING NEARLY FIVE-HUNDRED (500) WERE INMATES REPRESENTING THE FULL RANGE OF PERSON OFFENDERS - MURDER, MANSLAUGHTER, ARMED ROBBERY, ASSAULT, ETC. OVERCROWDING A MEDIUM SECURITY FACILITY WITH OFFENDERS WHO ARE PROPERTY OFFENDERS IS LESS LIKELY TO PRODUCE VIOLENCE THAN OVERCROWDING A MEDIUM SECURITY FACILITY THAT LACKS THE SECURITY AND CONTROL OF A CLOSE OR MAXIMUM FACILITY, WITH A MAJORITY OF OFFENDERS WHO HAVE A HISTORY OF SOLVING THEIR PROBLEMS WITH VIOLENCE (FIREARMS AND ASSAULT).

THE PHYSICAL PLANT MINIMALLY MEETS THE REQUIREMENTS FOR A MEDIUM SECURITY FACILITY. IF THE INSTITUTION WERE PROPERLY UTILIZED CONSISTENT WITH AMERICAN CORRECTIONS ASSOCIATION, COMMISSION ON ACCREDITATION STANDARDS, E.G., HOUSING 400 MEDIUM AND 100 MINIMUM SECURITY INMATES, IT WOULD PROBABLY BE MARGINALLY ADEQUATE. I ACKNOWLEDGE THAT THE COURT HAS PERMITTED THE DEPARTMENT TO HOUSE MORE INMATES IN THE FACILITY THAN ITS DESIGN CAPACITY. HOWEVER, I HAVE NOT BEEN ABLE TO LOCATE ANYONE WHO COULD EXPLAIN HOW THIS DECISION WAS REACHED. IT IS NOT CONSISTENT WITH AMERICAN CORRECTIONS ASSOCIATION STANDARDS. MEDIUM SECURITY INMATES IN MY JUDGEMENT ARE EITHER PROPERTY OFFENDERS, LOW PROFILE DRUG DEALERS AND USERS, AND/OR PERSON OFFENDERS WHO ARE NEARING THE END OF THEIR SENTENCES, E.G., 24 TO 30 MONTHS LEFT TO SERVE.

IN EACH OF THE ROOMS, THE STEEL BEDS AND STEEL FOOTLOCKERS ARE ALL LOOSE. IT IS CURRENTLY IMPOSSIBLE TO ASSURE THE SECURITY OF THE INSTITUTION AT ANY TIME. SHOULD AN INMATE, A GROUP OF INMATES OR THE ENTIRE INMATE POPULATION DECIDE NOT TO REMAIN IN THEIR WOODEN DOORED, COMMERCIALLY LOCKED ROOMS, IT WOULD ONLY TAKE MINUTES TO OPEN THEIR DOORS WITH WHAT IS ALREADY AVAILABLE IN THEIR CELLS. ADDING TO THE PROBLEM IS THE FACT THAT EACH OF THE SIXTEEN UNITS AND THE MINIMUM SECURITY

ANNEX ARE UNDERSTAFFED. THE ORIGINALLY PLANNED 25 BED UNITS NOW HOLD 50 INMATES WITH ONLY ONE STAFF PERSON ON DUTY AT ANY GIVEN TIME. AGAIN, I MUST EMPHASIZE IF THE UNITS HOUSED ONLY 25 "MEDIUM" SECURITY INMATES, THAT STAFFING WOULD BE ACCEPTABLE. UNDER THE CURRENT CIRCUMSTANCES, MINIMALLY, THERE SHOULD BE ONE ADDITIONAL ROVING STAFF MEMBER BETWEEN EACH TWO UNITS ON EACH SHIFT, MAKING UNPREDICTABLE VISITS OF VARYING DURATION. IDEALLY, TWO STAFF MEMBERS WOULD BE ASSIGNED TO EACH UNIT GIVEN THE CURRENT OVERCROWDING AND INMATE CLIENTELE. IN THE MINIMUM SECURITY ANNEX, STAFF COVERAGE DOES NOT PERMIT EVEN ONE STAFF PERSON TO BE ON DUTY IN EACH UNIT ON EACH SHIFT. STAFFING IN MINIMUM SECURITY SHOULD BE INCREASED TO ONE STAFF PERSON PER UNIT, PER SHIFT.

COUPLED WITH THE ABOVE CONDITION, WAS THE FACT THAT DURING MY VISIT, THE MAJORITY OF THE INMATES HAD NOT BEEN OUT TO WORK FOR OVER TWO WEEKS BECAUSE OF THE WEATHER. WARDEN LIVESAY POINTED OUT THAT DEPENDING UPON THE WEATHER, MORE THAN TWO MONTHS A YEAR THE ENTIRE POPULATION IS IDLE.

THE UNITS ARE EACH DESIGNED WITH THE ROOMS ON THE OUTSIDE WALL, A STAFF OFFICE IS LOCATED IN THE CENTER OF THE UNIT. THE UNITS ARE SEPARATED AT THE STAFF OFFICE WITH DOORS, DIVIDING THE UNIT IN HALF. SHOWERS ARE ADJACENT TO THE DOORS DIVIDING THE UNITS. EACH HALF OF THE UNIT HAS A LARGE EMPTY AND STERILE DAY ROOM SPACE WITH THE EXCEPTION OF ONE TALBE ON EACH HALF AND A FEW CHAIRS. IN ONE OF THE TWO DAYROOM SPACES IS A SMALL WALL MOUNTED WEIGHT MACHINE. THAT IS THE EXTENT OF THE IN-UNIT LEISURE TIME EQUIPMENT AND SEVERELY LIMITS ANY VARIETY OR CREATIVITY IN LEISURE TIME ACTIVITIES. THERE IS ALSO A STERILE T.V. ROOM LOCATED IN ONE CORNER ROOM OF EACH UNIT. THESE ROOMS DO NOT HAVE ANY FURNITURE - JUST A WALL MOUNTED T.V. SET. I WOULD SUGGEST LOCATING COMBINATION CHAIR/TABLE UNITS SIMILAR TO THOSE BEING INSTALLED AT THE MORGAN COUNTY FACILITY UNITS IN THE DAY ROOM SPACES AND ADDING CHAIRS, SMALL END TABLES AND ASH TRAYS TO THE T.V. ROOMS. I WOULD ALSO SUGGEST ADDING A HEAVY BAG IN EACH UNIT, AS WELL AS LIGHT WEIGHT PING PONG TABLES AND RE-STOCKING A SUPPLY OF TABLE GAMES THAT CAN BE DRAWN FROM THE STAFF - MONOPOLY, DOMINOES, CARDS, ETC.

THE FACILITY DOES HAVE AN EXCELLENT MODERN GYM, WHICH IS THE FOCAL POINT OF THE FACILITY IN TERMS OF INTEREST AND USE BY THE INMATE POPULATION. PROBLEMATICAL IS ITS MULTI-USE FOR VISITING. ON WEEKENDS, THE GYM IS NOT AVAILABLE TO THE INMATES BECAUSE USE IS CONVERTED TO A VISITING ROOM. ON SATURDAYS AND SUNDAYS IF YOU DON'T HAVE A VISIT AND MOST INMATES APPEAR NOT TO BE VISITED WEEKLY BECAUSE OF THE INSTITUTION'S DISTANCE FROM THE INMATE'S HOMES AND MAJOR CITIES AND ITS ISOLATED LOCATION, MY PRIMARY CONCERNS ARE TWO: 1) HAVING OVER 800 MEN WHO HAVE BEEN IDLE ALL WEEK WHO ARE ALSO IDLE ON WEEKENDS, WITHOUT ANY IN-UNIT EXERCISE OR STRUCTURED LEISURE TIME ACTIVITIES, CONTRIBUTES TO A POTENTIALLY VOLATILE CLIMATE IN WHICH THE INMATES SEARCH FOR AND DEVELOP OTHER MEANS TO ENTERTAIN THEMSELVES; 2) THERE ARE NUMEROUS SECURITY IMPLICATIONS THAT RESULT FROM BRINGING VISITORS DIRECTLY INTO THE SECURE PERIMETER OF THE FACILITY, MAKING IT IMPOSSIBLE TO CONTROL THE INTRODUCTION OF CONTRABAND, DRUGS, ETC.

THE EDUCATION PROGRAM IS CONDUCTED IN ONE HALF UNIT OF THE UNIT'S DAY ROOM. THIS ENVIRONMENT, DIRECTLY ADJACENT TO THEIR CELLS, IS NOT CONDUCIVE TO CONCENTRATION AND LEARNING. THIRTY-ONE INMATES ARE CURRENTLY ENROLLED IN THE G.E.D. PROGRAM AND 20 INMATES ARE ENROLLED IN A.B.E. (ADULT BASIC EDUCATION). THERE IS A WAITING

LIST OF ABOUT 25 FOR BOTH PROGRAMS ACCORDING TO MR. DAVIS, ONE OF THE TEACHERS. AGAIN, GIVEN THE CURRENT CLASSROOM ARRANGEMENT IN ONE UNIT, IT IS NOT CONDUCIVE TO ATTRACTING THE INTEREST OF THOSE WHO NEED IT, NOR WOULD THERE BE SUFFICIENT SPACE, TEACHERS, MATERIAL AND EQUIPMENT AVAILABLE IF THOSE WHO NEED IT SIGNED UP. THE CONDITIONS DISCOURAGE ALL BUT THOSE INMATES WHO ARE THE MOST DETERMINED TO GET AN EDUCATION. THE EDUCATION PROGRAM CLEARLY NEEDS A PRINCIPAL AND TO INCREASE THE ACADEMIC AND VOCATIONAL STAFF. BEFORE THAT CAN HAPPEN, HOWEVER, ADEQUATE CLASSROOM AND SHOP FACILITIES MUST BE MADE AVAILABLE. I CONCUR WITH AND SUPPORT DR. OSA COFFEY'S RECOMMENDATIONS FOR EDUCATION STAFFING, FACILITIES AND MATERIALS.

THERE IS ALSO AN OBVIOUS SHORTAGE OF COUNSELING STAFF AT THIS FACILITY. COUNSELORS CANNOT PROVIDE COUNSELING IF THEIR NUMBERS ARE SO FEW THEY ARE INUNDATED WITH PAPERWORK AND HAVE UNREASONABLE CASELOADS. AT A VERY MINIMUM, THE COUNSELING STAFF MUST BE INCREASED TO PROVIDE AT LEAST ONE COUNSELOR FOR A CASELOAD OF 70 INMATES, CREATING MANAGEABLE CASELOADS TO ENSURE AT LEAST A MINIMAL LEVEL OF RESPONSIVENESS TO THE NEEDS OF THE INMATE POPULATION.

MAINTENANCE FACILITIES SHOULD BE RE-LOCATED OUTSIDE THE SECURE PERIMETER OF THE FACILITY. IN THE INTERIM, HOWEVER, DOORS TO MAINTENANCE SHOULD ALL BE SECURED. THEY ARE CURRENTLY LEFT OPEN, PROVIDING AN EXCELLENT OPPORTUNITY FOR INMATES TO TAKE OVER THE AREA AND ACCESS TOOLS AND EQUIPMENT.

AN IDEAL SOLUTION TO MANY OF THESE PROBLEMS WOULD BE THE CONSTRUCTION OF A MAINTENANCE SHOP OUTSIDE THE SECURE FACILITY AND PLACING AN ADDITION ON THE VACATED MAINTENANCE SHOP AREA TO ACCOMMODATE EDUCATIONAL AND VOCATIONAL CLASSROOMS, COUNSELOR AND TEACHER OFFICES, HOBBYCRAFT SPACE AND A CONTACT AND NON-CONTACT VISITING AREA THAT DOES NOT REQUIRE BRINGING VISITORS INTO THE SECURE PERIMETER OF THE FACILITY. THIS BUILDING COULD INCLUDE MULTI-PURPOSE STAFF AND INMATE TRAINING AND GROUP MEETING SPACES.

THE SECURITY IMPLICATIONS OF THE BLIND SPOT WHICH IS CURRENTLY BEING COVERED BY AN ARMED OFFICER IN A PATROL VEHICLE WILL BE RESOLVED WITH THE IMPLEMENTATION OF MR. HENDERSON'S RECOMMENDATIONS.

ANOTHER MAJOR PROBLEM WITH REGARD TO THE STAFFING OF THE FACILITY IS THE OBVIOUS LACK OF ENTRY LEVEL SUPERVISION AND RANKING STAFF. IT IS RECOMMENDED THAT THE INSTITUTION HAVE A MINIMUM OF SIX LIEUTENANTS TO ENSURE THAT THE FACILITY ALWAYS HAS A LIEUTENANT ON-SITE TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK. WITH OVER 220 OFFICERS IT IS ESSENTIAL THAT THERE BE ADEQUATE SUPERVISION AND DIRECTION TO ENSURE CONSISTENCY, MAINTAIN ACCOUNTABILITY AND PROVIDE REASONABLE OPPORTUNITIES FOR ADVANCEMENT TO LEAD WORKER STATUS (CORPORAL). THERE IS A REAL DEARTH OF CAREER PROMOTIONAL OPPORTUNITIES AT THIS FACILITY, WHICH IS DEMORALIZING TO THE UNIFORM STAFF. IT WOULD NOT BE UNREASONABLE FOR THIS FACILITY TO HAVE 8 TO 10 SERGEANT POSITIONS, AND 30 TO 35 CORPORAL POSITIONS TO PROVIDE APPROPRIATE LEADER-SHIP, SUPERVISION AND PROMOTIONAL OPPORTUNITIES FOR AN ORGANIZATION OF THIS SIZE.

AS I STUDIED THE FACILITY, I ADVISED STAFF AND THE WARDEN ABOUT A VARIETY OF SECURITY, SAFETY, ENVIRONMENTAL AND QUALITY OF LIFE CONCERNS THAT CAME TO MY ATTENTION. DURING MY VISIT, THEY WERE:

1) THE CURRENT EMERGENCY GENERATOR DOES NOT HAVE THE CAPACITY TO MAINTAIN PERIMETER LIGHTING DURING A POWER FAILURE. IT ALSO CANNOT HEAT THIS ALL ELECTRIC FACILITY. THIS PROBLEM SHOULD BE PLACED ON A HIGH PRIORITY FOR REMEDIAL ACTION;

2) THE EXISTING FIRE ALARM SYSTEM DOES NOT WORK AND WITH SIXTEEN UNITS SPREAD ALL OVER THE CAMPUS, THIS COULD RESULT IN LOSS OF LIFE AND PROPERTY;

3) ONLY ONE AIR PACK EXISTED FOR THE ENTIRE FACILITY AND IT WAS RARELY CHECKED. THREE ADDITIONAL AIR PACKS ARRIVED ON THE SECOND DAY I WAS THERE. I RECOMMEND IDEALLY, ONE AIR PACK BE AVAILABLE IN EACH UNIT TO PERMIT THE OFFICER TO BREATHE WHILE HE IS ATTEMPTING TO UNLOCK HIS FIFTY RESIDENTS SHOULD THERE BE A LIFE THREATENING FIRE;

4) A STAFF FIRE FIGHTING BRIGADE SHOULD BE EQUIPPED AND TRAINED ON EACH SHIFT;

5) THE CURRENT SCHEDULE CALLS FOR THE EVENING SHIFT TO BE RELIEVED PRIOR TO THE 10:30 P.M. LOCK UP AND COUNT. UNDER THESE CIRCUMSTANCES IF YOU WERE MISSING AN INMATE OR A GROUP OF INMATES, THE SKELETON MIDNIGHT SHIFT WOULD NOT BE IN A POSITION TO MAKE AN IMMEDIATE RESPONSE TO THE ESCAPE. THE SCHEDULE SHOULD BE CHANGED AND THE LOCK UP AND COUNT BE CONDUCTED JUST BEFORE THE EVENING SHIFT IS RELIEVED, THEREBY PROVIDING THE INSTITUTION WITH BOTH THE STAFF RESOURCES FROM THE EVENING SHIFT AND FRESH STAFF RESOURCES FROM THE MIDNIGHT SHIFT, SHOULD AN ESCAPE BE DISCOVERED AT THAT TIME;

6) THE YARD AND OUTSIDE LIGHTING IS BORDERLINE AT BEST, AND LIGHTS THAT ARE OUT SHOULD BE REPLACED AS SOON AS THEY ARE REPORTED. THE CURRENT PRACTICE IS TO WAIT UNTIL THREE OR FOUR MAJOR LIGHTS ARE OUT AND THEN BRING IN A CHERRY PICKER TO REPLACE THEM;

7) THE WASHERS AND DRYERS IN THE LIVING UNITS WERE NOT BEING REPLACED AS THEY REACHED THE POINT THAT THEY WERE NOT REPAIRABLE. THIS IS AN IMPORTANT CONCERN GIVEN THE MAJORITY OF THE MEN WORK OUTSIDE EVERY DAY AND THE CLOTHING EXCHANGE IS ONLY DONE ONCE A WEEK WITH THE TAFT FACILITY, WHERE THE BULK OF THE LAUNDRY IS DONE FOR THE BLEDSOE FACILITY;

8) THERE IS AN EMERGING PROBLEM IN THE UNITS WITH THE INCREASED FREQUENCY OF INMATES THROWING DOOR KNOBS THROUGH THE OFFICER'S OFFICE WINDOWS. IT IS RECOMMENDED FIRST THAT AN EFFORT BE MADE TO DETERMINE WHETHER OR NOT THE DOOR KNOBS CAN BE PROPERLY SECURED TO THE DOORS, AND IF NOT, I RECOMMEND THAT EXPANDED METAL COVERING BE FABRICATED TO COVER THE WINDOWS TO PROTECT THE OFFICERS, AND THAT THE CURRENT BROKEN WINDOWS BE REPLACED. IT CURRENTLY TAKES BETWEEN 4 AND 6 WEEKS FOR THESE WINDOWS TO BE REPLACED. THE VISUAL ATTRACTION TO THE BROKEN WINDOW INVITES OTHERS TO ALSO ENTERTAIN THEMSELVES AT THE EXPENSE OF THE OFFICER AND THE STATE;

9) I FOUND THE INSULATION, HEATING AND FRESH AIR CIRCULATION IN THE UNITS TO NEED ATTENTION. I AM ADVISED THAT PREVENTATIVE MAINTENANCE IS ALMOST NEXT TO IMPOSSIBLE BECAUSE OF THE BACKLOG OF WORK ORDERS. I RECOMMEND THAT TWO SKILLED TRADES PEOPLE BE EMPLOYED TO PROVIDE ADEQUATE PREVENTATIVE MAINTENANCE AND TO ENSURE SATISFACTORY RESPONSE TO THE EMERGENCY REPAIR NEEDS OF THE FACILITY;

10) I WAS ALSO CONCERNED .. THE NUMBER OF INMATE COMPLAINTS ABOUT BEING FORCED TO WAIT OUT IN THE WEATHER WHEN THEY REPORT FOR MEDICATIONS OR ARE CALLED TO SICK CALL. THERE ALSO WERE INMATE COMPLAINTS ABOUT THE ACCESSIBILITY OF A DOCTOR. THE DOCTOR PROVIDES FOUR HOURS, TWO DAYS A WEEK AT THE INSTITUTION;

11) OF SIGNIFICANT CONCERN IS THE PRACTICE OF SERVING COLD BAG LUNCHES AT ALL NOON MEALS. THE EXPLANATION PROVIDED WAS THAT SINCE BAG LUNCHES ARE FED TO THOSE WORKING OUT IN THE FIELDS, THOSE BACK AT THE INSTITUTION SHOULD NOT BE PROVIDED A HOT MEAL. MY RECOMMENDATION IS THAT ALL THE INMATES ROUTINELY RECEIVE THREE HOT MEALS A DAY, WHETHER THEY WORK AWAY FROM THE INSTITUTION OR NOT. IT IS TO BE EXPECTED THAT OCCASIONALLY THERE WILL BE SANDWICHES AND SOUP, ETC. DURING A GIVEN WEEK. THE ARMY AND MARINES FEED PEOPLE HOT MEALS IN THE FIELDS ON A DAILY BASIS. THE EQUIPMENT IS ON THE MARKET TO TRANSPORT HOT FOOD CENTRALLY PREPARED TO FIELD SITES. THERE WERE A SIGNIFICANT NUMBER OF COMPLAINTS ABOUT THE BAG LUNCHES FROM BOTH INMATES AND STAFF. DISSATISFACTION WITH FOOD AMONG A MAJOR SEGMENT OF AN INMATE POPULATION HAS THE POTENTIAL OF TRIGGERING A SERIOUS AND POTENTIALLY DANGEROUS DISTRUBANCE OR RIOT;

12) INMATES WERE OBSERVED GOING THROUGH THE SERVING LINE USING THEIR HANDS TO SERVE THEMSELVES BREAD. THIS PRACTICE SHOULD CEASE FOR THE HEALTH OF ALL CONCERNED.

SUMMARY

I FOUND THE WARDEN AND THE MAJORITY OF HIS STAFF TO BE ENLIGHTENED, COMMITTED CORRECTIONS PROFESSIONALS WHO ARE RESPONSIVE TO THOSE ISSUES AND PROBLEMS THAT THEY ARE ABLE TO RESOLVE WITHIN THE LIMITS OF THEIR AUTHORITY AND OF COURSE, WITHIN THE LIMITS OF THEIR FISCAL AND HUMAN RESOURCES.

HAVING READ NUMEROUS PREVIOUS INSPECTION REPORTS FROM 1983 AND MID-1984, I NOTED SIGNIFICANT IMPROVEMENTS IN THE OVERALL CLEANLINESS AND SANITATION OF THE FACILITY.

THEY HAVE BEEN CREATIVE IN THEIR EFFORTS TO COMPENSATE FOR THE SHORTAGE OF COUNSELING AND EDUCATIONAL RESOURCES. THEY SCHEDULE A COUNSELOR FOUR NIGHTS A WEEK FROM 4:30 - 5:30 P.M. AT A WINDOW ADJACENT TO THE MAIN DINING ROOM DURING THE EVENING MEAL. THIS FORUM HAS KEPT LINES OF COMMUNICATION OPEN AND LETS THE INMATE POPULATION KNOW THEY ARE ATTEMPTING TO BE ACCESSIBLE AND RESPONSIVE TO THEIR NEEDS. GIVEN THE PROBLEMS, THE CLIMATE IS RELATIVELY MELLOW.

THEY HAVE HAD RECENT STABBINGS INSIDE THE INSTITUTION AND THE MINIMUM SECURITY AREA. ONE OF THE RECENT INSIDE STABBINGS RESULTED IN THE FIRST INMATE DEATH AT THE FACILITY. THESE INCIDENTS ARE THE PREDICTABLE MANIFESTATION OF OVERCROWDING, PLACEMENT OF LONG TERM SERIOUS PERSON OFFENDERS IN FACILITIES NOT DESIGNED FOR SECURITY, CONTROL AND LONG TERM CONFINEMENT, LACK OF SUPERVISION, IDLENESS, ETC. THESE INCIDENTS CAN BE EXPECTED TO INCREASE DURING THE HOT SUMMER MONTHS IF IMMEDIATE STEPS ARE NOT TAKEN TO REDUCE OVERCROWDING, CREATE CONSTRUCTIVE ASSIGNMENTS AND INCREASE SUPERVISION.

SUMMARY (CONT'D)

WITH ONLY ONE NON-WHITE STAFF PERSON IN THE ENTIRE STAFF COMPLEMENT WHO WORKED ON THE THIRD SHIFT, I FOUND NO COMPLAINTS FROM THE BLACK INMATES ABOUT OVERT RACIAL PREJUDICE OR DISCRIMINATION. ONE YOUNG WHITE OFFICER, HOWEVER, DID TELL ME THAT BLACKS ARE NOT WELCOME IN SOME OF THE NEARBY COMMUNITIES. THIS WAS LATER CONFIRMED BY OTHERS. IT IS HIGHLY UNLIKELY THAT YOU WILL BE ABLE TO ATTRACT BLACK STAFF TO ANY AREA WHERE SO MUCH RACIAL PREJUDICE EXISTS IN THE SURROUNDING COMMUNITIES. IT WAS OBVIOUS THAT THE MAJORITY OF STAFF WERE NOT OVERTLY PREJUDICE AND MANY WOULD WELCOME BLACK STAFF.

THE MORALE OF STAFF APPEARS GOOD. ONE OF THE INDICATORS IS THE FACT THAT THE MAJORITY OF STAFF REPORT TO WORK 20 TO 30 MINUTES BEFORE ROLL CALL, JUST TO SIT AND VISIT AND EXCHANGE STORIES AND INFORMATION.

I HAVE ALSO MADE RECOMMENDATIONS TO WARDEN LIVESAY WHICH WERE SIMILAR TO THE SUGGESTIONS I MADE TO WARDEN DUTTON REGARDING UNIT AND SHIFT REPORTS, AND A 15 MINUTE MORNING WARDEN'S BRIEFING WITH HIS ADMINISTRATIVE STAFF.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*IMMEDIATE STEPS SHOULD BE TAKEN TO ALLEVIATE OVERCROWDING AND IN THE PROCESS, REDUCE THE NUMBER OF LONG TERM, DANGEROUS OFFENDERS ASSIGNED TO THIS FACILITY.
*INCREASE STAFFING AND INMATE SUPERVISION IN THE INTERIM TO COMPENSATE FOR OVERCROWDING, IDLENESS, PHYSICAL PLANT LIMITATIONS AND THE CURRENT NUMBER OF LONG TERM PERSON OFFENDERS IN THE INMATE POPULATION. UNIFORM STAFF SHOULD BE INCREASED TO PROVIDE A MINIMUM OF ONE ROVING OFFICER BETWEEN EACH TWO UNITS ON EACH SHIFT. THE OFFICERS SHOULD ALTERNATE THEIR TIME BETWEEN EACH TWO UNITS AT UNPREDICTABLE INTERVALS. THESE OFFICERS WILL ALSO PROVIDE RELIEF FOR MEALS, USE OF THE BATHROOM, ETC. TO ENSURE CONTINUOUS STAFF COVERAGE OF THE UNIT.
*PROVIDE A MINIMUM OF FIVE HOURS AND IDEALLY, SEVEN HOURS A DAY, FIVE DAYS A WEEK OF CONSTRUCTIVE PROGRAM AND/OR WORK ASSIGNMENTS FOR A MINIMUM OF 80% OF THE INSTITUTION POPULATION. CONTINGENCY PROGRAM AND WORK ASSIGNMENTS MUST BE DEVELOPED INSIDE THE FACILITY FOR THOSE EXTENDED PERIODS WHEN THE WEATHER PREVENTS THE INMATES FROM WORKING OUTSIDE THE FACILITY.
*RE-LOCATE THE VISITING FUNCTION TO A SECURE AREA, STOP THE PRACTICE OF USING THE GYM FOR VISITING AND BRINGING VISITORS INTO INMATE PROGRAM AREAS OF THE FACILITY.
*RE-LOCATE THE MAINTENANCE AND WAREHOUSE FACILITIES AND FUNCTIONS OUTSIDE THE SECURE PERIMETER OF THE FACILITY AND REMODEL THE VACATED SPACE, ADDING SUFFICIENT SPACE TO ACCOMMODATE ACADEMIC AND VOCATIONAL EDUCATION, CONTACT AND NON-CONTACT VISITING, COUNSELING, RECREATION, LIBRARIES, INDUSTRIES AND STAFF TRAINING.
*PROVIDE COUNSELING STAFF TO ENSURE A MAXIMUM INMATE CASELOAD OF 70 INMATES PER STAFF COUNSELOR.
*REPLACE WOODEN DOORS WITH STEEL DOORS, SECURITY HARDWARE AND SECURE LOCKS.
*ALL CELL FURNISHINGS THAT HAVE THE POTENTIAL TO COMPROMISE SECURITY, SHOULD BE SECURED TO THE FLOORS AND/OR WALLS.
*STAFFING AT THE MINIMUM SECURITY UNITS SHOULD BE INCREASED TO ONE STAFF PER UNIT, PER SHIFT.

SUMMARY OF RECOMMENDAT S (CONT'D)

+IMPROVE AND ENHANCE INSTITUTION-WIDE LIVING UNIT RECREATION AND LEISURE TIME ACTIVITIES WITH CREATIVE AND IMAGINATIVE PROGRAMMING, AND ADDITIONAL RECREATION STAFF, RESOURCES AND EQUIPMENT.
*ALL DOORS TO MAINTENANCE SHOULD BE SECURED AT ALL TIMES, AND ACCESS PROVIDED BY STAFF DURING THE INTERIM BEFORE THE MAINTENANCE FUNCTION IS RE-LOCATED OUTSIDE THE SECURE PERIMETER.
*INCREASE INSTITUTION SUPERVISORY STAFF. IT IS ESSENTIAL THAT THE INSTITUTION BE UNDER THE AUTHORITY OF A HIGH RANKING STAFF POSITION. I RECOMMEND THAT THE INSTITUTION HAVE ON-SITE LEADERSHIP 24 HOURS A DAY, 7 DAYS A WEEK. THIS COVERAGE COULD BE PROVIDED WITH 6 LIEUTENANT POSITIONS.

THIS INSTITUTION WHEN COMPARED WITH OTHER FACILITIES OF ITS TYPE, DOES NOT HAVE SUFFICIENT LEADERSHIP FOR UNIFORM STAFF IN THE EXISTING STAFF COMPLEMENT. I, THEREFORE, RECOMMEND INCREASING SUPERVISORY STAFF BY 8 SERGEANTS AND 30 (LEAD WORKER OR CORPORAL POSITIONS).
*INSTALL AN EMERGENCY GENERATOR THAT WILL MAINTAIN ALL THE PERIMETER LIGHTING AND THE OTHER ELECTRICAL NEEDS OF THE INSTITUTION DURING A POWER OUTAGE.
*PROVIDE A FUNCTIONAL AND OPERATIONAL FIRE ALARM SYSTEM.
*PROVIDE A MINIMUM OF 1 AIR PACK IN EACH LIVING UNIT TO PERMIT THE OFFICER TO USE IT WHILE ATTEMPTING TO EVACUATE THE UNIT DURING A LIFE THREATENING SITUATION.
*EQUIP AND TRAIN UNIFORM STAFF FIRE FIGHTING BRIGADES ON EACH SHIFT.
*CHANGE THE STAFF SCHEDULE TO CORRESPOND WITH THE LOCK UP AND LAST COUNT TO ENSURE THAT ADEQUATE BACK UP STAFF WILL BE ON-SITE IN THE EVENT OF AN ESCAPE.
*UPGRADE YARD COMPOUND AND PERIMETER LIGHTING. ALL LIGHTS SHOULD BE REPLACED AS THEY BURN OUT.
+REPAIR IF POSSIBLE OR REPLACE ALL WASHERS AND DRYERS THAT ARE NOT WORKING PROPERLY IN EACH LIVING UNIT.
+SECURE DOOR KNOBS TO THE DOORS, OR USE EXPANDED METAL COVERINGS OVER THE WINDOWS TO PROTECT THE OFFICERS AND TO DISCOURAGE THE THROWING OF DOOR KNOBS AND OTHER DANGEROUS PROJECTIVES.
+REPLACE ALL BROKEN WINDOWS.
+REPAIR AND/OR REPLACE THE INSULATION, HEATING AND FRESH AIR CIRCULATION SYSTEMS.
*HIRE A MINIMUM OF 2 SKILLED TRADES PEOPLE TO SET UP A PREVENTATIVE MAINTENANCE PROGRAM AND TO ENSURE SATISFACTORY RESPONSE TO THE DAY-TO-DAY MAINTENANCE AND REPAIR NEEDS OF THE FACILITY.
+AN INSIDE WAITING AREA MUST BE PROVIDED FOR INMATES WAITING FOR SICK CALL, MEDICAL SERVICES, MEDICATIONS OR DENTAL SERVICES.
+CONDUCT A 15 MINUTE WARDEN'S ADMINISTRATIVE STAFF BRIEFING EACH MORNING CONSISTENT WITH RECOMMENDATIONS IN THE OVERVIEW, AND EXPAND THE SHIFT BRIEFINGS CONSISTENT WITH RECOMMENDATIONS IN THE OVERVIEW.
+PROVIDE THREE HOT MEALS A DAY CONSISTENT WITH THE DEPARTMENTAL CYCLE MENUS. OCCASIONAL COLD PLATE LUNCHES OR BAG LUNCHES ARE ACCEPTABLE.

MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY

THE ON-SITE VISIT TO THE FACILITY STARTED ON WEDNESDAY, JANUARY 30, 1985 AND ENDED WITH AN EXIT SUMMARY WITH WARDEN OTIE JONES AND HIS STAFF ON THURSDAY EVENING, JANUARY 31, 1985.

WHILE ON SITE, I HAD INFORMAL CONTACTS WITH A VARIETY OF STAFF AND INMATES, BUT I INTERVIEWED FOUR INMATES PRIVATELY, TWO OF WHOM INDICATED A DESIRE TO TALK WITH ME DURING MY VISITS TO THE UNITS, AND TWO WHOM I RANDOMLY SELECTED AFTER SOME BRIEF DISCUSSION WITH OTHER INMATES AND STAFF. I CONDUCTED PRIVATE, STRUCTURED INTERVIEWS WITH WARDEN JONES AND NINE STAFF WHO REPRESENTED A CROSS SECTION OF THE STAFF AT THE MORGAN COUNTY FACILITY.

THE INMATE POPULATION AT THE MORGAN COUNTY FACILITY WAS OVER 820 IN HOUSE, AND THE DESIGN CAPACITY OF THE FACILITY (INCLDUING THE FOUR MINIMUM SECURITY DORMITORIES) IS 520. ALMOST ALL OF THE INMATES INSIDE THE SECURE PERIMETER OF THE FACILITY WERE DOUBLE CELLED WITH THE EXCEPTION OF THOSE IN UNIT #1-PUNITIVE SEGREGATION. OVERCROWDING IS A MAJOR PROBLEM AT MORGAN COUNTY FACILITY. TO AVOID REDUNDANCY IN THE REPORT, I WILL NOT ELABORATE FURTHER HERE.

THE MORGAN COUNTY FACILITY IS A VERY CLOSE REPLICA OF THE BLEDSOE COUNTY FACILITY ARCHITECTURALLY. IT IS AS I HAVE STATED, PUZZLING THAT THE DEPARTMENT WOULD REPLICATE A FACILITY WITH THE INHERENT DESIGN FLAWS, SECURITY AND OPERATIONAL LIMITATIONS THAT ARE SO OBVIOUS.

THIS FACILITY AND THE BLEDSOE COUNTY FACILITY WOULD ONLY BE MARGINALLY ADEQUATE TO HOUSE MEDIUM SECURITY INMATES. THE MORGAN FACILITY IS HOUSING THE FULL RANGE OF CUSTODY LEVELS AND SECURITY RISKS. AS STATED IN THE BLEDSOE FACILITY PORTION OF THIS REPORT, THE SQUARE FOOTAGE IN THE ROOMS IS AN IMPROVEMENT OVER THE TENNESSEE STATE PRISON. THE INSIDE DIMENSIONS OF A TYPICAL ROOM IS SLIGHTLY UNDER SEVEN FEET WIDE AND ELEVEN FEET LONG, OR APPROXIMATELY 73 SQUARE FEET. THE SECURITY OF THE ROOMS AND THE UNITS IS NON-EXISTENT. IT IS POSSIBLE AT ANY TIME FOR A SINGLE INMATE OR A GROUP OF INMATES TO DECIDE THAT THEY WANT TO COME OUT OF THEIR ROOMS OR THEIR UNITS, AND TO ACT ON AND ACCOMPLISH THAT WITHIN MINUTES OF THEIR DECISION. THE WOODEN DOORS, THE STANDARD CONCRETE BLOCK CONSTRUCTION (NOT STEEL REINFORCED OR FILLED WITH CONCRETE) BOTH ON THE INTERIOR AND EXTERIOR WALLS, MAKE IT IMPOSSIBLE TO ENSURE THE INTEGRITY AND SECURITY OF THE FACILITY AND TO ENSURE CONTROL OF THE INMATE POPULATION. COMPOUNDING THE PROBLEM IS THE PORCELAIN PLUMBING FIXTURES. THE PROBLEM OF OVERCROWDING AT THIS FACILITY WOULD NOT BE NEARLY SO ACUTE IF THIS "MEDIUM SECURITY" FACILITY WERE OVERCROWDED WITH MEDIUM SECURITY INMATES (BURGLARS, AUTO THIEVES, CHECK WRITERS, OR SERIOUS OFFENDERS WITH GOOD ADJUSTMENT RECORDS WHO WERE NEAR THE END OF THEIR SENTENCE).

THE PHYSICAL PLANT WAS NOT DESIGNED FOR ITS CURRENT USE, NOR SHOULD IT BE USED TO HOUSE THOSE WITH LONG SENTENCES FOR SERIOUS OFFENSES. AS INDICATED, THE DESIGN AND STAFFING OF THE FACILITY IS NOT ADEQUATE TO HOUSE AN OVERCROWDED POPULATION OF OVER EIGHT-HUNDRED INMATES OF WHICH OVER HALF ARE SERVING VERY LONG SENTENCES. REASONABLE AND PRUDENT PRECAUTIONS TO PROTECT THE PUBLIC WHILE ASSURING THE PERSONAL SAFETY OF STAFF AND INMATES IS NOT POSSIBLE GIVEN THE CURRENT CIRCUMSTANCES.

AT A MINIMUM, STAFFING SHOULD BE INCREASED TO PROVIDE ONE ROVING STAFF MEMBER BETWEEN EACH TWO UNITS ON EACH SHIFT. THE ROVING OFFICER WOULD MAKE UNPREDICTABLE VISITS TO BOTH UNITS OF VARYING DURATION DURING THE ENTIRE SHIFT, AND WOULD ALSO PROVIDE A RELIEF FOR THE OTHER OFFICERS TO USE TOILET FACILITIES AND EAT, WITHOUT

LEAVING THE UNI. .NSUPERVISED. THIS IS NOT A LONG RANGE SOLUTION TO THE PROBLEM AND WOULD ONLY BE AN INTERIM SOLUTION UNTIL THE POPULATION OF THE INSTITUTION COULD BE REDUCED TO MEET CURRENT AMERICAN CORRECTIONS ASSOCIATION COMMISSION ON ACCREDITATION STANDARDS.

STAFFING IN THE MINIMUM SECURITY UNITS SHOULD PROVIDE ONE STAFF PERSON IN EACH OF THE UNITS IN OPERATION TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK.

THE LIVING UNITS ARE DESIGNED AND ARRANGED IDENTICALLY TO BLEDSOE COUNTY. THE IN-UNIT LEISURE TIME ACTIVITIES ARE LIMITED. WARDEN JONES HAS RECENTLY STARTED ADDING COMBINATION TABLE AND CHAIR UNITS IN SOME OF THE DAYSPACES. THEY ARE HEAV GUAGE METAL AND WILL BE ADEQUATE FOR INSTITUTION USE. HOWEVER, THE TABLES SHOULD BE ANCHORED TO THE FLOOR BECAUSE OF THEIR WEIGHT AND SIZE. IT IS APPARENT THAT FIVE OR SIX INMATES COULD PICK UP A TABLE AND USE IT TO GET THROUGH ANY DOOR OR WALL IN THE UNIT.

UNLIKE THE BLEDSOE FACILITY, THERE ARE NO T.V. ROOMS. THE CORNER ROOM IN EACH UNIT IS USED FOR OFFICES, OR IN SOME CASES, CLASSROOMS. WARDEN JONES INDICATED THAT HE IS PLANNING SATELLITE LIBRARIES FOR THESE AREAS, WHICH WILL PROVIDE AN EXCELLENT LEISURE TIME ACTIVITY OPTION. I SUGGEST THAT AT LEAST ONE T.V. SET BE PLACED IN ONE OF THE DAY ROOMS OF EACH UNIT FOR VIEWING BY THOSE WHO DO NOT HAVE AND/OR CANNOT AFFORD A T.V. IN THEIR ROOM. THIS PROVIDES SOME DIVERSION AND MENTAL STIMULATION IN AN OVERCROWDED AND IDLE ENVIRONMENT THAT HAS A DEARTH OF PROGRAM AND STRUCTURED LEISURE TIME AND RECREATIONAL OUTLETS.

THE OVERCROWDING WHEN COUPLED WITH VERY LIMITED STRUCTURED LEISURE TIME ACTIVITIES, BOTH IN AND OUT OF THE UNIT, PRODUCES FRUSTRATION AND SHORT FUSES AMONG SOME OF THE INMATE POPULATION. WHEN YOU ADD TO THAT EQUATION, THE EXTENDED PERIOD OF IDLENESS (AT THE TIME OF THE VISIT, IT HAD BEEN OVER THREE WEEKS SINCE THE MAJORITY OF THE INMATES HAD BEEN OUT TO WORK), THE POTENTIAL FOR IRRATIONAL AND EXPLOSIVE BEHAVIOR INCREASES DRAMATICALLY WITH INSTITUTION-WIDE IDLENESS.

IN FAIRNESS TO THE WARDEN AND HIS STAFF, THEY ARE DOING EVERYTHING POSSIBLE WITHIN THE LIMITED PHYSICAL PLANT, FISCAL AND HUMAN RESOURCES TO OFFSET THE PROBLEMS. AS AN EXAMPLE, WHILE AT THE MORGAN FACILITY, STAFF ARRANGED A BASKET-BALL GAME BETWEEN THE INMATES FROM THE BLEDSOE FACILITY AND THE MORGAN FACILITY. THE WARDEN AND I VISITED THE GYM DURING A PORTION OF THE GAME. I WOULD ESTIMATE THE TOTAL ATTENDANCE AT THE GAME (SPECTATORS AND PARTICIPANTS) BETWEEN 300 - 350.

THE COUNSELING AND EDUCATION STAFF UNDER THE DIRECTION OF CORRECTIONAL COUNSELOR MANAGER MILLER, ARE AWARE OF THE ANXIETIES, STRESS AND FRUSTRATION LEVELS IN THE INMATE POPULATION, BUT WITH COUNSELOR CASELOADS OF OVER 200 THEY ARE BEING AS RESPONSIVE AS COULD BE EXPECTED, GIVEN THE RATIO OF COUNSELORS TO INMATES AND THE PAPERWORK WORKLOAD.

THE FOLLOWING STAFFING ADDITIONS ARE RECOMMENDED:

SUFFICIENT COUNSELORS SHOULD BE RESTORED TO PROVIDE MAXIMUM INMATE CASELOADS OF 70 INMATES;

A LIBRARIAN TO OPERATE THE LIBRARY AND ASSIST IN THE DEVELOPMENT AND IMPLEMENTATION OF THE SATELLITE LIBRARY SYSTEM IN EACH UNIT;

ONE PSYCHOLOGICAL EXAMINER TO EXPEDITE THE ASSESSMENT AND EVALUATION PROCESS;

ONE PRINCIPAL POSITION TO COORDINATE THE ACADEMIC AND VOCATIONAL PROGRAMS. A MINIMUM OF FOUR VOCATIONAL INSTRUCTORS SHOULD BE ADDED TO REDUCE IDLENESS AND PROVIDE CONSTRUCTIVE PROGRAMS TO TEACH MARKETABLE SKILLS.

ONCE THESE CHANGES HAVE BEEN MADE, IT WOULD BE APPROPRIATE TO HAVE THE COUNSELOR III AND THE PRINCIPAL REPORT TO AN ASSOCIATE WARDEN OF TREATMENT (CURRENTLY AN ASSOCIATE WARDEN OF TREATMENT POSITION DOES NOT EXIST AT THE MORGAN FACILITY). I ALSO ENDORSE THE RECOMMENDATIONS OF DR. OSA COFFEY IN RELATION TO EDUCATION, VOCATIONAL AND LIBRARY SERVICES.

THE INSTITUTION GYM FACILITY IS IN EXCELLENT CONDITION AND VERY WELL MAINTAINED. THE INSTITUTION OPERATES FOUR PROTECTIVE CUSTODY UNITS, WHICH ARE FENCED FROM THE GENERAL POPULATION. THIS NECESSITATES SCHEDULING THE USE OF THE GYM FOR THE PROTECTIVE CUSTODY INMATES IN ORDER TO SEPARATE THEM FROM THE GENERAL POPULATION INMATES AND OTHER INCOMPATIBLES. UNIT #16 IS ALSO USED AS AN INTAKE UNIT AND HOUSES FIVE PUNITIVE CELLS FOR PROTECTIVE CUSTODY (CHECK INS) DISCIPLINE CASES. AS AT BLEDSOE, THE GYM IS CLOSED ON SATURDAYS AND SUNDAYS TO ACCOMMODATE VISITING DURING THE DAY, AGAIN, RESTRICTING THE INMATE'S RECREATIONAL ACCESS. AT ANY GIVEN TIME ON A SATURDAY AND SUNDAY, ABOUT 40 TO 45 INMATES ARE VISITING, LEAVING THE OTHER 700 PLUS INMATES IDLE, AND THEY MAY HAVE BEEN IDLE DURING THE PAST WEEK AS HAS BEEN THE CASE THE PREVIOUS THREE OR MORE WEEKS.

THE OTHER PROBLEM PRESENTED IS BRINGING VISITORS INTO THE SECURE PERIMETER OF THE FACILITY, COMPROMISING THE INTEGRITY OF INSTITUTION SECURITY, MAKING IT NEXT TO IMPOSSIBLE TO CONTROL THE INTRODUCTION OF CONTRABAND. IT IS RECOMMENDED THAT A SECURE VISITING ROOM WITH BOTH CONTACT AND NON-CONTACT VISITING CAPABILITY BE ADDED TO THE FACILITY. THE ADDITION SHOULD INCLUDE AN INDOOR VISITOR'S WAITING ROOM. SEPARATE TOILET FACILITIES FOR MEN AND WOMEN VISITORS AND ONE EXCLUSIVELY FOR INMATES SHOULD ALSO BE PROVIDED TO REDUCE THE POTENTIAL FOR THE INTRODUCTION OF CONTRABAND. THIS ADDITION SHOULD ALSO INCLUDE ACADEMIC AND VOCATIONAL TRAINING CLASSROOMS, TREATMENT OFFICES AND APPROPRIATELY LOCATED CAPTAIN AND SHIFT SUPERVISOR OFFICES.

BECAUSE OF THE ARRANGEMENT OF THE BUILDINGS AND THE CONTOURS OF THE LOW AND HIGH GROUND THAT MAKE UP THE SITE, THERE ARE A NUMBER OF BLIND SITE LINES, BOTH IN THE PERIMETER AND THE COMPOUND. I EXPRESSED CONCERN ABOUT THE SECURITY OF THE STAIRCASE FROM THE CONTROL CENTER TO THE TOWER. DURING MY TOUR OF THIS AREA, I NOTED THE TOWER OFFICER HAD HIS DOOR TO THE TOWER UNLOCKED AND WITH NO WAY OF SECURING THE STAIRWAY TO THE TOWER, THE ARMORY AND THE CONTROL CENTER COULD BE IN JEOPARDY.

WHILE IN THE KITCHEN, I NOTED SEVERAL UNSAFE AND UNSANITARY CONDITIONS. I RE-VISITED THE KITCHEN ONLY TO FIND THAT ONE CORRECTION WAS MADE, BUT THAT OTHER PROBLEMS HAD EMERGED. THE KITCHEN FLOORS AND DRAINS WERE FILTHY. TOXIC CLEANING MATERIALS WERE NOT SECURED AND WERE LOCATED IN A CLOSET WITHIN A FEW FEET OF THE FOOD PREPARATION AREAS. MOVEABLE BINS OF CORN MEAL, ETC. WERE PUSHED INTO A BATHROOM AGAINST THE TOILET. PINTO BEANS IN SACKS AND OTHER DRY FOOD STUFFS WERE LAYING ON THE FLOOR, NOT ON PALLETS. IT WAS OBSERVED THAT UNCOVERED HAM AND SHORTENING WERE FOUND IN THE WALK IN COOLER. THE OVENS AND DEEP FRYERS OBVIOUSLY HAD NOT BEEN THOROUGHLY CLEANED FOR SOME TIME.

A MAJOR CONCERN WA. .HE STANDARD POLICY TO SERVE BA. LUNCHES TO THE ENTIRE INMATE POPULATION FOR THE NOON MEAL EVERY DAY. THE RATIONALE PROVIDED FOR THIS PRACTICE WAS THAT SOME STAFF FELT SINCE THE INMATES WORKING ON THE LONG LINES RECEIVED BAG LUNCHES DAILY, THE OTHERS NOT ASSIGNED OUTSIDE OR UNASSIGNED, SHOULD ALSO RECEIVE BAG LUNCHES. AS STATED EARLIER, THE INMATES HAD NOT BEEN OUT TO WORK FOR OVER THREE WEEKS, YET THE NOON MEAL CONTINUED TO BE A BAG LUNCH. IT IS RECOMMENDED THAT EQUIPMENT BE ACQUIRED TO SERVE HOT MEALS TO THE LONG LINES. THE ARMY SERVES TROOPS HOT MEALS WITHOUT ALOT OF SOPHISTICATED OR COMPLICATED EQUIPMENT - POSSIBLY SOME SURPLUS MILITARY EQUIPMENT MAY BE AVAILABLE. AN OCCASIONAL BAG LUNCH IS APPROPRIATE AND EXPECTED, HOWEVER, A FLAT POLICY TO PROVIDE ONLY BAG LUNCHES AT EVERY NOON MEAL IS NOT ACCEPTABLE. FOOD IN A CORRECTIONAL ENVIRONMENT IS TAKEN FOR GRANTED WHEN IT IS ATTRACTIVELY SERVED IN SUFFICIENT QUANTITY, QUALITY AND AT THE APPROPRIATE TEMPERATURE. WHEN FOOD IS A MAJOR SOURCE OF COMPLAINT, IT CAN AND DOES TRIGGER VERY COSTLY BEHAVIOR. THE INMATES AND EVEN SOME OF THE STAFF INDICATED THAT THE STEADY DIET OF BAG LUNCHES IS A SOURCE OF IRRITATION.

THE MORGAN FACILITY IS NOT EQUIPPED WITH AN EMERGENCY GENERATOR. THIS PROBLEM SHOULD BE CORRECTED ON A PRIORITY BASIS. IT IS INDEFENSIBLE THAT A SECURE CORRECTIONAL FACILITY DOES NOT HAVE AN EMERGENCY SOURCE OF POWER. DURING A POWER OUTAGE, IT IS IMPOSSIBLE TO PROTECT THE PUBLIC - THE TOWERS AND THE OFFICERS MANNING THEM CANNOT PROVIDE PERIMETER SECURITY. IT IS ALSO NOT POSSIBLE TO PROVIDE A SAFE AND SECURE ENVIRONMENT FOR INMATES AND STAFF DURING A POWER OUTAGE. THERE ARE TWO OPTIONS - ONE TO PURCHASE AN EMERGENCY GENERATOR FOR $500,000 TO $800,000, OR A LESS EXPENSIVE OPTION TO CONSIDER WOULD BE TO CONNECT WITH THE HARRIMAN UTILITY FEEDER LINE, WHICH WOULD PROVIDE TWO SEPARATE SOURCES OF POWER TO THE FACILITY (IT BEING HIGHLY UNLIKELY THAT TWO SEPARATE SOURCES WOULD FAIL AT THE SAME TIME). IT HAS BEEN ESTIMATED THAT THE SECOND OPTION WOULD COST LESS THAN $300,000. THE CURRENT FEEDER LINE IS PROVIDED BY PLAKAN UTILITY.

LIGHTING IN THE YARD AND OTHER ACTIVITY AREAS OUTSIDE IS NOT ADEQUATE. IT IS RECOMMENDED THAT TO CONTINUE WITH THE LEVEL OF INMATE TRAFFIC WHICH IS NECESSARY TO PROVIDE ACCESS TO ACTIVITY AREAS AFTER DARK, AT LEAST TWO HIGH MAST CLUSTERS OF LIGHTING POLES BE INSTALLED - ONE FOR THE BALL DIAMOND AND ONE FOR THE OUTSIDE BASKETBALL AND CENTER COURTYARD AREA.

IT WAS NOTED IN SEVERAL AREAS THAT METAL LOUVRES ARE MISSING FROM VENTS. THESE METAL LOUVRES HAVE WEAPON POTENTIAL. IT IS RECOMMENDED THAT THE LOUVRES BE REPLACED WITH NON-METALIC LOUVRE COVERS OR COVERED "SECURELY" WITH EXPANDED METAL TO PREVENT TAMPERING.

MEDICAL AND DENTAL SERVICES OVERALL WERE GOOD, WITH SOME EXCEPTIONS. THE PHYSICIAN PROVIDES HALF DAY COVERAGE ON TUESDAYS AND THURSDAYS AND IS ON CALL. HE ALSO SERVES AS THE EMERGENCY ROOM DOCTOR AT THE LOCAL HARRIMAN HOSPITAL. THE MORGAN COUNTY AMBULANCE SERVICE IS LOCATED ONLY A MILE AWAY. THERE IS NOT A REGISTERED NURSE ON DUTY DURING THE THIRD SHIFT. I SUGGEST THAT REGISTERED NURSE COVERAGE BE PROVIDED 24 HOURS A DAY, SEVEN DAYS A WEEK. I ALSO RECEIVED SEVERAL COMPLAINTS FROM INMATES ABOUT HAVING TO WAIT OUT IN THE WEATHER WHEN THEY ARE SUMMONED FOR SICK CALL OR FOR MEDICATIONS. THE DENTIST PROVIDES DENTAL SERVICES THREE DAYS A WEEK. CURRENTLY THERE IS A TWO TO THREE WEEK BACKLOG OF DENTAL WORK. HOWEVER, EMERGENCY DENTAL PATIENTS ARE SEEN RIGHT AWAY.

THE CURRENT REMODELING OF UNIT #1 (THE SEGREGATION UNIT) IS NOT ADEQUATE. THE ADDITION OF A FEW SECURE DOORED CELLS WILL NOT BE SUFFICIENT. THE RE-LOCATION OF STEEL BEDS WITH SUPPORT LEGS AND ANCHORED TO THE WALL WITHOUT STEEL PLATES ON THOSE FRAGILE WALLS IS LIKELY TO BE PROBLEMATICAL. THE THREE WALLS IN THE CELLS SHOULD BE COVERED WITH 1/8"OR 1/4"STEEL TO MAKE THEM ABUSE RESISTANT. I RECOMMEND STAINLESS STEEL COMBINATION TOILET AND SINK FACILITIES AND EITHER STEEL DOORS OR BARRED DOORS. SECURE UTILITY ACCESS TO VALVES AND ELECTRICAL SWITCHES SHOULD BE LOCATED OUTSIDE THE CELLS.

IN ORDER TO PROVIDE ADEQUATE FOOD SERVICE COVERAGE, TWO STAFF SHOULD BE ADDED. THE COMMISSARY IS ALSO IN NEED OF AT LEAST ONE AND POSSIBLY TWO STAFF GIVEN THE VOLUME OF WORK.

THE MORGAN FACILITY IS FACING THE SAME STAFF TURNOVER PROBLEMS AS THE OTHER FACILITIES. WITH THE CORRECTIONAL OFFICER SALARIES AMONG THE LOWEST IN THE NATION, AND 18,860 HOURS OF COMP TIME ON THE BOOKS AS OF FEBRUARY 1, 1985, THE SAME PROBLEM MUST BE ADDRESSED. COMPETITIVE SALARIES ARE ESSENTIAL TO ATTRACT AND RETAIN COMPETENT STAFF. WHEN STAFF WORK ON DEMAND TO MEET THE NEEDS OF THE FACILITY, TIME OFF SHOULD BE PROVIDED AT THE EMPLOYEE'S REQUEST WITHIN A REASONABLE PERIOD OF TIME. IF LIMITED STAFFING PRECLUDES GIVING THE EMPLOYEE TIME OFF FOR THE OVERTIME HE/SHE WORKED, THEN THE SYSTEM SHOULD COMPENSATE THE EMPLOYEE IN CASH. WITH NEARLY 19,000 HOURS ON THE BOOKS AND JUDGING FROM STAFF COMMENTS, THEY ARE UNABLE TO GET TIME OFF WHEN THEY WOULD LIKE IT. THE COMP TIME ON THE BOOKS SHOULD BE LIQUIDATED. ALL OVERTIME WORKED AFTER THE LIQUIDATION SHOULD BE COMPENSATED FOR IN A TIMELY AND PREDICTABLE PROCESS.

I WOULD ALSO RECOMMEND THAT SERIOUS CONSIDERATION BE GIVEN TO THE PURCHASE OF A COMBINE, WHICH WOULD PERMIT DOUBLE CROPPING OF WHEAT AND INCREASE THE NUMBER OF JOBS FOR INMATES, REDUCING IDLENESS.

DURING MY VISITS TO THE INSTITUTION AND IN MY EXIT SUMMARY WITH WARDEN JONES, I ADVISED WARDEN JONES AND MEMBERS OF HIS STAFF ABOUT A VARIETY OF OTHER CONCERNS AND OBSERVATIONS, SOME OF WHICH ARE LISTED HERE:

FIRE EXTINGUISHERS THAT HAD EITHER NOT BEEN TAGGED AT ALL AND/OR CHECKED EVERY THIRTY DAYS AS REQUIRED, E.G., MAIL ROOM AND THE MINIMUM SECURITY AREA.

THERE IS CONCERN ABOUT THE LARGE NUMBER OF KEROSENE SPACE HEATERS AROUND THE FACILITY IN THE MINIMUM SECURITY UNITS AND IN THE MAIL ROOM. THE POTENTIAL FOR A SERIOUS INJURY OR LOSS OF LIFE IN THESE TWO AREAS IS HIGH. WHEN I VISTED THE MAIL ROOM, IT WAS CLUTTERED WITH PAPERS, WRAPPING, PACKAGES, ETC., ALL OF WHICH WOULD FUEL A LIFE THREATENING FIRE IN THE CONFINES OF THE LOCKED MAIL ROOM. IN THE MINIMUM SECURITY UNITS, THESE HEATERS PRESENT AN EVEN MORE SERIOUS DANGER AT NIGHT, IF THE UNIT IS UNATTENDED OR A FIGHT WERE TO ERUPT. THE HEATER, KEROSENE IN THE HEATER, ALONG WITH THE FUEL CAN, COULD PRODUCE A DISASTER.

THE MAJORITY OF THE SHOWERS IN THE UNITS NEED TO BE THOROUGHLY CLEANED AND PAINTED. THE SHOWER CONTROLS AND LEAKING SHOWER HEADS NEED REPAIR.

THE INSULATION, AIR CIRCULATION & HEATING SYSTEM FOR THE WEATHER THAT THE FACILITY ENCOUNTERS DURING JANUARY AND FEBRUARY IS INADEQUATE.

THE CONGLOMORATION OF MAKESHIFT AERIALS AND T.V. ANTENNAS DOES CREATE A SECURITY PROBLEM. THESE WIRES AND POLES THAT ARE EVIDENT ALL AROUND EACH OF THE SIXTEEN UNITS, NOT ONLY LOOK UNSIGHTLY, BUT THEY CAN BE USED AS WEAPONS OR TOOLS FOR ESCAPE. IN ANY INSTITUTION, THEY WOULD BE CONSIDERED CONTRABAND. THE SOLUTION IS AN INTERNAL ANTENNA SYSTEM, ALONG WITH A SINGLE ANTENNA DISH TO BRING IN THE STATION. T.V. RECEPTION IS VERY POOR.

THE PRACTICE OF HAVING INMATES WORK IN THE ADMINISTRATION BUILDING UNSUPERVISED TO CLEAN THE OFFICE AREA, SHOULD BE DISCONTINUED. THE POTENTIAL BREACHES OF SECURITY ARE GREAT AND COULD BE VERY COSTLY.

IT IS RECOMMENDED THAT THE INTERIOR OF THE FACILITY BE REPAINTED.

THE PRACTICE OF PERMITTING INMATE JANITORS IN THE UNIT TO KEEP TOXIC CLEANING MATERIALS IN THEIR CELLS SHOULD BE DISCONTINUED. THEY SHOULD BE STORED IN A SECURE AREA AND THE INMATES SHOULD BE SUPERVISED BY STAFF WHEN THEY ARE USED.

SUMMARY

IT WAS OBVIOUS THAT WITH A FEW EXCEPTIONS, THE STAFF AND INMATES TAKE PRIDE IN THE APPEARANCE OF THE FACILITY. I FOUND THE STAFF TO BE RECEPTIVE AND RESPONSIVE. THE MAJORITY WERE KNOWLEDGEABLE ABOUT THEIR JOBS AND RESPONSIBILITIES, AND THIS WAS EVIDENT EVEN FROM THOSE WHO WERE RELATIVELY NEW TO THEIR CURRENT ASSIGNMENTS. I FOUND WARDEN JONES TO BE A VERY INTENSE ADMINISTRATOR, WHO OBVIOUSLY SPENDS TIME IN HIS INSTITUTION AND HAS A SUPERIOR RAPPORT WITH MOST OF HIS STAFF AND A SIGNIFICANT PORTION OF THE INMATE POPULATION.

IN MOST CASES, WITH THE EXCEPTION OF THE KITCHEN, THE FACILITY HAD MADE PROGRESS AND IMPROVEMENTS SINCE THE LAST INSPECTION REPORTS I READ.

THE OVERALL STAFF MORALE APPEARED GOOD, WITH THE EXCEPTIONS EITHER NOTED IN THAT SECTION OF THE REPORT, OR IN THE LATTER SUMMARY. I DID NOTE THAT THERE WERE FOUR NON-WHITE STAFF AMONG THE TOTAL STAFF COMPLEMENT OF THE FACILITY AND AN INMATE POPULATION THAT IS 17% BLACK. IN MY CONTACTS WITH BOTH INMATES AND STAFF I FOUND NO OVERT SIGNS OF PREJUDICE, RACIAL ANTAGONISM OR CONFLICT BETWEEN THE BLACK INMATES AND WHITE STAFF. IT WAS POINTED OUT THAT THERE HAVE BEEN SOME ISOLATED INCIDENTS OF A RACIAL NATURE SOME TIME AGO. STAFF WERE CANDID AND DID INDICATE THAT THERE WERE A VERY SMALL NUMBER OF ISOLATED INDIVIDUALS WHO WERE NOT IN TOUCH WITH THE CURRENT STATUS OF RACE RELATIONS. THEY DO NOT PRACTICE OR ARTICULATE THESE FEELINGS IN THE WORKPLACE.

THE ADDITION OF THE COMBINATION CHAIRS AND TABLES IN THE UNITS AND THE PROCESS THAT HAS BEGUN TO FABRICATE THE EXPANDED METAL FOR THE WINDOWS OF THE OFFICES IS INDICATIVE OF THE WARDEN'S AND STAFF'S PROACTIVE ATTEMPTS TO ADDRESS SOME OF THE PROBLEMS.

I WAS IMPRESSED WITH THE CIVIL AND PRODUCTIVE DIALOGUE AND EXCHANGES BETWEEN STAFF AND INMATE REPRESENTATIVES OF THE INMATE POPULATION DURING AN INMATE ADVISORY COUNCIL MEETING I ATTENDED.

I WOULD ENCOURAGE THE WARDEN AND HIS ADMINISTRATIVE STAFF TO DEVELOP THE LEADERSHIP AND DECISION-MAKING POTENTIAL OF THE MANAGERS. IT WOULD BE HELPFUL TO START AN OFFICER-OF-THE-DAY (O.D.) SCHEDULE, WHEREBY LIEUTENANTS, CAPTAINS AND OTHER

SUMMARY (CONT'D)

MEMBERS OF THE MANAGERIAL STAFF COULD DEVELOP THEIR DECISION-MAKING AND LEADERSHIP SKILLS WHILE RELIEVING THE ASSOCIATE WARDEN OF SECURITY AND THE WARDEN OF THAT DIRECT BURDEN DURING NON-BUSINESS HOURS. THEY SHOULD BE AVAILABLE, BUT WITH AN O.D. SCHEDULE, IT WOULD PROVIDE STAFF WITH AN OPPORTUNITY FOR GROWTH WHILE SCREENING ALL BUT THE MOST NECESSARY CONTACTS WITH THE WARDEN AND ASSOCIATE WARDENS DURING THEIR OFF DUTY HOURS.

I WAS IMPRESSED WITH THE PLANS TO DEVELOP A SMALL ENGINE REPAIR VOCATIONAL PROGRAM. IT IS PLANNED TO BE HOUSED IN A NEW BUILDING AND PUT 80 INMATES TO WORK (40 INMATES EACH ON THE FIRST AND SECOND SHIFT). I SUPPORT THIS EFFORT AND INTERPRET IT AS ONE OF THE FIRST SIGNS OF AN ACTIVE STEP TO ADDRESS THE IDLENESS PROBLEM.

THEY ARE ALSO WORKING ON ANOTHER INDUSTRY PROGRAM WHICH WILL PRODUCE ENGINEERING STAKES FOR THE TENNESSEE DEPARTMENT OF TRANSPORTATION, WHICH HAS THE POTENTIAL TO PROVIDE 25 TO 50 CONSTRUCTIVE ASSIGNMENTS FOR INMATES.

THERE HAVE BEEN SOME SERIOUS STABBINGS IN 1984 AT THE FACILITY, BUT NONE WERE FATAL. TWO WEEKS PRIOR TO MY VISIT, HOWEVER THERE WAS A FATAL STABBING.

MY OVERALL IMPRESSION OF THE CLIMATE OF THE FACILITY WAS GOOD, GIVEN THE OVERCROWDING, IDLENESS AND LACK OF CONSTRUCTIVE LEISURE TIME ACTIVITY. IT IS INDICATIVE OF THE STAFF'S PERSISTENCE TO ATTEMPT TO COMPENSATE FOR THE PROBLEMS BY STAYING IN TOUCH WITH THE INMATES AND MAINTAINING GOOD COMMUNICATIONS AND LEVELS OF RECIPROCAL TRUST.

I HAVE ALSO MADE SIMILAR RECOMMENDATIONS TO WARDEN JONES REGARDING THE USE OF UNIT AND SHIFT REPORTS. I ALSO POINTED OUT THE EXCELLENT POTENTIAL AND RESULTS THAT A DAILY, FIFTEEN MINUTE WARDEN'S BRIEFING WITH THE ADMINISTRATIVE TEAM CAN HAVE.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*INCREASE STAFFING AND INMATE SUPERVISION IN THE INTERIM TO COMPENSATE OVERCROWDING, IDLENESS, PHYSICAL PLANT LIMITATIONS AND THE CURRENT NUMBER OF LONG TERM PERSON OFFENDERS IN THE INMATE POPULATION. UNIFORM STAFF SHOULD BE INCREASED TO PROVIDE A MINIMUM OF ONE ROVING OFFICER BETWEEN EACH TWO UNITS ON EACH SHIFT. THE ROVING OFFICERS SHOULD ALTERNATE THEIR TIME BETWEEN EACH TWO UNITS AT UNPREDICTABLE INTERVALS. THEY SHOULD ALSO PROVIDE RELIEF FOR THE UNIT OFFICERS FOR MEALS, USE OF THE BATHROOM, ETC. TO ENSURE THE UNITS ARE ALWAYS SUPERVISED BY AT LEAST ONE OFFICER.
*MINIMUM SECURITY UNITS SHOULD BE STAFFED WITH ONE PERSON PER SHIFT, 24 HOURS PER DAY, SEVEN DAYS A WEEK.
*COUNSELING STAFF POSITIONS SHOULD BE ADDED TO PROVIDE A RATIO OF ONE COUNSELOR FOR AN INMATE CASELOAD OF 70.
*ONE PSYCHOLOGICAL EXAMINER POSITION SHOULD BE ADDED TO EXPEDITE THE ASSESSMENT AND EVALUATION PROCESS.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*ONE EDUCATION PRINCIPAL POSITION SHOULD BE ADDED TO DIRECT AND COORDINATE THE ACADEMIC AND VOCATIONAL PROGRAM. A MINIMUM OF FOUR VOCATIONAL INSTRUCTORS SHOULD BE ADDED TO PROVIDE INSTRUCTION FOR EXISTING AND PLANNED VOCATIONAL TRAINING TO REDUCE IDLENESS.
*A LIBRARIAN SHOULD BE PROVIDED TO ORGANIZE AND SUPERVISE THE LIBRARY AND LAW LIBRARY.
+THE PLANS FOR THE SMALL ENGINE REPAIR VOCATIONAL PROGRAM AND THE ENGINEERING STAKE INDUSTRY ARE STRONGLY SUPPORTED. DR. OSA COFFEY'S RECOMMENDATIONS IN EDUCATION, VOCATIONAL TRAINING, LIBRARY SERVICES AND RECREATION ARE ENDORSED AND SUPPORTED.
+TWO ADDITIONAL FOOD SERVICE STAFF ARE NEEDED.
+TWO ADDITIONAL COMMISSARY STAFF ARE NEEDED.
*EXPAND AND ENHANCE LEISURE TIME PROGRAMMING, EQUIPMENT AND RECREATION ACTIVITIES IN THE LIVING UNITS AND INSTITUTION-WIDE.
*ANCHOR ALL HEAVY TABLES AND CHAIRS IN THE LIVING UNITS.
+PLACE ONE T.V. SET IN EACH OF THE DAYROOM SPACES.
*WHEN OUTSIDE WORK IS NOT AVAILABLE, THERE MUST BE PROGRAMMING DEVELOPED THAT IS AVAILABLE INSIDE THE FACILITY, SO THAT INMATES ARE PROVIDED WITH THE OPPORTUNITY TO BE INVOLVED IN A CONSTRUCTIVE ASSIGNMENT.
*ADD A SECURITY VISIT ROOM AND ADJACENT OFFICES TO THE FACILITY. THIS SHOULD INCLUDE AN INDOOR VISITOR WAITING ROOM, SEPARATE TOILET FACILITIES FOR MEN AND WOMEN VISITORS, AND ONE TOILET FACILITY EXCLUSIVELY FOR INMATES. THIS ADDITION SHOULD ALSO INCLUDE CLASSROOM, TREATMENT OFFICES AND APPROPRIATELY LOCATED CAPTAIN AND SHIFT SUPERVISOR OFFICES.
+DEVELOP DAILY INSPECTION AND CLEAN UP PROCEDURE FOR ALL INSTITUTION AREAS IN ORDER TO REDUCE HEALTH HAZARDS AND UNSANITARY CONDITIONS.
*SECURE ALL TOXIC CLEANING MATERIALS IN ALL AREAS OF THE INSTITUTION.
*DO A THOROUGH CLEANING OF THE KITCHEN AND THE FOOD STORAGE PROCESS NEEDS TO BE RE-EVALUATED SO THAT FOOD IS PROPERLY STORED IN ACCESSIBLE LOCATIONS.
*DISPENSE WITH THE BAG LUNCH PROCESS AS AN EVERY DAY OCCURRENCE AND ACQUIRE EQUIPMENT TO SERVE HOT MEALS TO THE LONG LINES.
*AS A TOP PRIORITY, PROVIDE AN EMERGENCY GENERATOR, OR AS AN ALTERNATIVE, CONNECT WITH THE HARRIMAN UTILITY FEEDERLINE.
*INCREASE YARD LIGHTING - IT IS CURRENTLY INADEQUATE.
*VENT LOUVRES SHOULD BE REPLACED WITH NON-METALLIC LOUVRE COVERS OR COVERED SECURELY WITH EXPANDED METAL TO PREVENT TAMPERING.
*REGISTERED NURSE COVERAGE SHOULD BE PROVIDED 7 DAYS A WEEK, 24 HOURS A DAY.
*PROVIDE FACILITIES SO THAT INMATES DO NOT HAVE TO STAND OUTSIDE IN THE WEATHER WHILE WAITING FOR MEDICATIONS OR SICK CALL.
*UNIT #1: THREE WALLS IN THE INMATE CELLS SHOULD BE COVERED WITH 1/8 OR 1/4 IN. STEEL TO MAKE THEM ABUSE RESISTANT GIVEN THE CURRENT EXTERIOR CONSTRUCTION OF THE UNIT.
*INSTALL STAINLESS STEEL COMBINATION TOILETS AND SINK FACILITIES AND EITHER STEEL DOORS OR BARRED DOORS IN THE SEGREGATION UNIT (INCLUDING SECURITY HARDWARE, HINGES AND LOCKS).
*SECURE UTILITY ACCESS TO VALVES AND ELECTRICAL SWITCHES SHOULD BE LOCATED OUTSIDE THE CELLS.
*LIQUIDATE ALL COMP TIME ON THE BOOKS.
+CONSIDER PURCHASING A COMBINE.
*THERE SHOULD BE FIRE EXTINGUISHER CHECKS ON A REGULAR BASIS.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*PRECAUTIONARY PROCEDURES SHOULD TAKE PLACE WITH KEROSENE SPACE HEATERS. THIS MUST BE DONE IN ORDER TO CONTROL POTENTIAL HAZARDS.
*CLEAN UP MAIL ROOM (CLUTTERED PAPERS, ETC.) SO THAT IT IS NOT A FIRE HAZARD.
+CLEAN AND PAINT ALL UNIT SHOWERS.
+REPAIR LEAKING SHOWER HEADS.
*THERE SHOULD BE NO MAKESHIFT AERIALS AND T.V. ANTENNAS.
*INSTALL INTERNAL ANTENNA SYSTEM ALONG WITH A SINGLE ANTENNA DISH.
*STOP THE PRACTICE OF LEAVING UNSUPERVISED MINIMUM SECURITY INMATES IN ADMINISTRATIVE OFFICE AREA.
+RE-PAINT THE INTERIOR OF THE FACILITY.
*REMOVE ALL TOXIC MATERIALS FROM INMATE JANITOR CELLS - INMATES SHOULD ALWAYS BE SUPERVISED WHEN USING TOXICS.
+IT IS RECOMMENDED THAT A DAILY WARDEN'S MORNING MEETING TAKE PLACE AS SUMMARIZED IN THE SUMMARY OVERVIEW. AN OFFICER-OF-THE-DAY SCHEDULE SHOULD BE IMPLEMENTED.

EAST TENNESSEE RECEPTION CEN

COMMISSIONER PELLEGRIN REQUESTED THAT I EXAMINE "D" BLOCK AT THE EAST TENNESSEE RECEPTION CENTER, AND PROVIDE MY OPINION ON THE ADVISIBILITY OF RENOVATING "D" BLOCK FOR A 32 BED MAXIMUM SECURITY HOUSING UNIT. I WAS ADVISED THAT THE UNIT WOULD HOUSE MAXIMUM CUSTODY SEPARATEES OR INCOMPATIBLES FROM OTHER MAXIMUM CUSTODY INMATES WHO ARE CURRENTLY HOUSED AT OTHER FACILITIES.

IN DEPUTY COMMISSIONER, RON BISHOP'S MEMO DATED JANUARY 24, 1985, HE INDICATED THAT MY EXAMINATION OF "D" BLOCK SHOULD INCLUDE:

1) THE AVAILABILITY OF SPACE FOR PROGRAMMATIC AND RECREATIONAL USE;
2) RECOMMENDED NON-SECURITY STAFF POSITIONS NECESSARY TO OPERATE A SEPARATE MAXIMUM CUSTODY PROGRAM AT THE RECEPTION CENTER;
3) CONSIDER THE LIMITATIONS ON THE TYPES OF MAXIMUM SECURITY INMATES THAT SHOULD BE PLACED IN THE UNIT;
4) PROVIDE "ANY ADDITIONAL RECOMMENDATIONS ON THE CONVERSION BASED ON YOUR PROFESSIONAL EXPERIENCE AND JUDGEMENT."

I WAS ALSO ADVISED THAT MR. CHRIS BAIRD WOULD BE EVALUATING THE UNIT WITHIN THE PARAMETERS OF HIS AREA OF CLASSIFICATION.

I VISITED THE FACILITY ON FRIDAY, FEBRUARY 1, 1985. UPON ARRIVAL, I MET WITH WARDEN D.W. HARRIS AND SECURITY CAPTAIN, CHARLES JONES. I ALSO INTERVIEWED TWO STAFF MEMBERS. DURING MY VISIT I WAS PROVIDED WITH COPIES OF WARDEN HARRIS' AUGUST 3, 1984 "D" BLOCK CONVERSION PROPOSAL, AND OTHER INFORMATION AND DATA THAT I REQUESTED, WAS EITHER PROVIDED ON-SITE OR SUBSEQUENTLY MAILED TO ME.

WARDEN HARRIS, CAPTAIN JONES AND I TOURED THE ENTIRE FACILITY. A SUBSTANTIAL PORTION OF THAT TIME WAS SPENT IN AND AROUND "D" BLOCK. AFTER MAKING THE ON-SITE EVALUATION AND HAVING REVIEWED THE PROPOSAL AND OTHER RELEVANT MATERIAL ON THE CONVERSION OF D-BLOCK TO A MAXIMUM CUSTODY UNIT, I MAKE THE FOLLOWING OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS:

PHYSICAL PLANT

THE INDIVIDUAL CELLS IN THE PROPOSED MAXIMUM CUSTODY UNIT DO NOT MEET CURRENT SQUARE FOOTAGE REQUIREMENTS THAT ARE ESSENTIAL FOR ANY INMATE IN SEGREGATED STATUS FOR EXTENDED PERIODS OF TIME. THE 44 SQUARE FEET IN EACH OF THE THIRTY-TWO SINGLE CELLS IN THE UNIT IS A PROBLEM. WHEN CONFINEMENT EXCEEDS 10 HOURS A DAY, WHICH ACCORDING TO THE PROPOSAL WILL BE THE CASE IN THIS UNIT, THE CELLS SHOULD PROVIDE 80 SQ. FT. OF FLOOR SPACE. IT IS SUGGESTED TO COMPENSATE FOR ANY LACK OF SQUARE FOOTAGE THAT EXISTS AFTER EXPANDING THE CELL SIZE IN THE WALKWAYS, THAT PROGRAM BE DEVELOPED TO INCREASE THE AMOUNT OF TIME THAT AN INMATE SPENDS OUTSIDE HIS CELL. THIS CAN BE ACCOMPLISHED BY SCHEDULING AND PROVIDING SUPERVISION FOR EDUCATION, LIBRARY, SOCIAL SERVICES, COUNSELING, RELIGION, COMMISSARY AND RECREATION PROGRAMS AND ACTIVITIES.

THE CELLS ARE EQUIPPED WITH STAINLESS STEEL COMBINATION TOILET AND SINK FIXTURES, WHICH ARE APPROPRIATE FOR A MAXIMUM CUSTODY UNIT AND SHOULD WITHSTAND ANTICIPATED ABUSE. IT IS RECOMMENDED THAT WATER SHUT OFF VALVES AND ELECTRICAL SWITCHES FOR EACH CELL BE PLACED IN THE UTILITY ACCESS CORRIDOR BETWEEN CELLS. THIS WILL PERMIT STAFF TO TAILOR THEIR RESPONSE TO AN INDIVIDUAL INMATE WHO MAY BE FLOODING HIS CELL OR PLAYING A T.V. OR RADIO TOO LOUD.

PHYSICAL PLANT (CONT'D)

THE LIGHT FIXTURES IN THE CELLS AND IN THE WALKWAYS SHOULD BE REPLACED WITH KENALL FIXTURES OR SOME OTHER EQUALLY ABUSE RESISTANT FIXTURE.

SMOKE DETECTION DEVICES SHOULD BE INSTALLED IN EACH OF THE 4 WALKS IN THE "D" UNIT.

THE CELL HINGES AND THE EXPOSED BOLT ON THE DOORS ARE NOT ADEQUATE FOR MAXIMUM SECURITY. AT A MINIMUM, I WOULD RECOMMEND REPLACEMENT OF THE HINGES AND MODIFICATION OF THE DOOR TO COVER THE EXPOSED LOCK BOLT TO REDUCE THE POTENTIAL FOR A SECURITY BREACH OF THE LOCK. IDEALLY, THE BARS, LOCKS AND HINGES SHOULD BE UPGRADED WITH UP-TO-DATE SECURITY HARDWARE AND A MORE EFFICIENT AND SECURE LOCKING SYSTEM. THIS WOULD PERMIT STAFF TO UNLOCK THE CELLS INDIVIDUALLY WITHOUT ENTERING THE WALK. THIS FEATURE WOULD PERMIT SOME INSIDE EXERCISE IN THE WALKWAY FOR ONE INMATE AT A TIME. ADDITIONALLY, THE SIZE OF THE CELL COULD BE INCREASED BY EXTENDING THE EXISTING WALLS OF THE CELLS INTO THE WALKWAYS WITH STEEL REINFORCED CONCRETE AND THEN APPLYING THE NEW HARDWARE AND LOCKS.

IT IS RECOMMENDED THAT THE CURRENT NON-CONTACT VISITING AREA BE MODIFIED TO ACCOMMODATE THREE INMATES IN SEPARATE BOOTHS. THE EXPANDED METAL SHOULD BE REMOVED AND REPLACED WITH POLYCARBONATE LAYERED TEMPERED SECURITY GLASS AND PHONES SHOULD BE INSTALLED ON THE VISITOR AND INMATE SIDES OF THE SECURE BOOTHS TO PERMIT CONVERSATION BETWEEN THE VISITOR AND THE INMATE.

I CONCUR WITH THE PROPOSAL TO REPLACE THE FENCE AROUND "D" BLOCK WITH A SECURE DOUBLE FENCE AND THE INSTALLATION OF RAZOR RIBBON. AS I INDICATED TO WARDEN DAVIS AND CAPTAIN JONES, IT WOULD BE MORE EFFICIENT AND PRACTICAL TO CONSTRUCT FOUR SEPARATE OUTSIDE EXERCISE AREAS AS OPPOSED TO THREE. THIS ARRANGEMENT WOULD PERMIT FOUR INMATES TO BE EXERCISED AT THE SAME TIME IN SEPARATE SPACES, AND WOULD EXPEDITE THE OUTSIDE EXERCISE. I DO NOT CONCUR WITH THE PLACING OF TRAPS ON EACH OF THE ENTRANCES TO THE EXERCISE AREAS. SECURITY OF THESE AREAS AND THE SAFETY OF OFFICERS CAN BEST BE MAINTAINED BY FABRICATING OPENINGS IN THE GATES TO PERMIT THE OFFICER TO USE A SECURITY PROCEDURE WHICH ENTAILS RESTRAINING THE INMATE THROUGH THE BARS AT HIS CELL, ESCORTING HIM TO THE EXERCISE AREA, CLOSING THE GATE OF THE EXERCISE AREA ONCE THE INMATE HAS ENTERED, AND HAVING THE INMATE PLACE HIS HANDS THROUGH THE OPENING IN THE GATE WITH THE GATE SECURE IN ORDER TO REMOVE THE HANDCUFFS. THE PROCEDURE WOULD THEN BE REVERSED WHEN THE EXERCISE PERIOD HAS ENDED. THIS WOULD REDUCE THE POTENTIAL FOR SERIOUS ASSAULT BECAUSE THE OFFICER WOULD NOT BE IN DIRECT CONTACT WITH THE INMATE WHEN THE INMATE WAS NOT IN RESTRAINTS. THE OUTSIDE EXERCISE AREAS AND THE AREAS AROUND THEM SHOULD BE SEARCHED THOROUGHLY PRIOR TO ANY INMATES BEING PLACED IN THEM.

I DISAGREE WITH THE FRED HIX MEMO RECOMMENDING BLOCK WALLS IN THE OUTSIDE EXERCISE AREA. THEY NOT ONLY REDUCE VISUAL SURVEILLANCE OF THE INMATES, BUT THEY ARE NOT SECURE. FREE STANDING WEIGHTS WHICH I UNDERSTAND WILL BE AVAILABLE IN THE EXERCISE AREA, MAKE SHORT WORK OF A BLOCK WALL THAT IS NOT CONCRETE FILLED AND STEEL REINFORCED (E.G., FORT PILLOW). I RECOMMEND THAT THE HEAVY DUTY COATED SECURITY FENCE BE USED AND MOUNTED IN HEAVY GAUGE STEEL FRAME.

PHYSICAL PLANT (CONT'D)

I WOULD RECOMMEND THAT EACH EXERCISE AREA HAVE A LOCKED, BUT DETACHABLE HEAVY BAG INSTALLED. HEAVY BAGS HAVE PROVEN TO ABSORB ALOT OF PENT UP FRUSTRATION AND HOSTILITY PREVALENT AMONG SEGREGATION INMATES AND ULTIMATELY REDUCES THE FREQUENCY OF ASSAULT ON OTHER INMATES AND STAFF.

I CONCUR WITH THE PROPOSED RE-LOCATION OF TOWER THREE TO PROVIDE EVENLY DISTRIBUTED AND BETTER VISUAL SUPERVISON OF THE YARD AND THE "D" BLOCK EXERCISE AREA. I ALSO CONCUR WITH THE REPLACEMENT AND RE-LOCATION OF THE OTHER TOWERS AS PROPOSED FOR THE SAME REASONS.

I CONCUR WITH THE PROPOSAL TO PROVIDE A (REMOTE OPERATED FROM "D" BLOCK) SALLY-PORT (TRAP GATE) ENTRANCE TO THE "D" BLOCK AREA TO PROVIDE ADEQUATE ENTRANCE SECURITY AND SEPARATION FROM GENERAL POPULATION INMATES.

THE PANIC HARDWARE CURRENTLY ON THE DOOR OF THE NEWLY REMODELLED CLASSIFICATION AREA MUST BE REMOVED. THESE DOORS OPEN OUTSIDE AND OVERLOOK "D" BLOCK, WHICH WOULD PERMIT AN INMATE UNDETECTED TO PASS OR THROW DANGEROUS CONTRABAND AND/OR DRUGS INTO THE REACH OF MAXIMUM CUSTODY INMATES. THE DOOR SHOULD BE SECURED AT ALL TIMES AND AN OFFICER SHOULD BE IN THE AREA WHENEVER INMATES ARE IN THE AREA. IN ADDITION, HE SHOULD HAVE A KEY TO THE FIRE DOOR IN THE EVENT IT IS NECESSARY TO EVACUATE THE INMATES IN THE EVENT OF FIRE.

STAFFING

I WAS DIRECTED TO RECOMMEND NON-SECURITY STAFF POSITIONS THAT I BELIEVE WERE REQUIRED TO OPERATE A DEFENSIBLE MAXIMUM SECURITY UNIT, BUT I CANNOT IGNORE OBVIOUS SECURITY STAFFING NEEDS. AS I TOURED THE FACILITY, I OBSERVED SEVERAL NON-SECURITY STAFF OPERATING SECURITY DOORS. I ALSO OBSERVED INMATE ACCESSIBLE AREAS THAT WERE NOT SUPERVISED BY SECURITY PERSONNEL OR ANY OTHER PERSONNEL FOR THAT MATTER (E.G., THE INTAKE/CLASSIFICATION AREA I MENTIONED ABOVE). IN THE MAY, 1984 STAFFING EVALUATION, 37 SECURITY POSITIONS WERE RECOMMENDED FOR THE FACILITY. TO DATE, ELEVEN POSITIONS HAVE BEEN ADDED. I AM NOT CHARGED NOR DO I HAVE THE TIME TO DO A COMPREHENSIVE STAFFING ANALYSIS OF THE EAST TENNESSEE RECEPTION CENTER. IT WAS, HOWEVER, OBVIOUS BY MY PERSONAL OBSERVATIONS AND DISCUSSIONS WITH THE WARDEN, THE CAPTAIN AND STAFF, THAT WITH THE CURRENT STAFFING PATTERN, THERE ARE NUMEROUS CALCULATED RISKS BEING TAKEN THAT COULD RESULT IN SOME EMBARRASSING OUTCOMES. I CONCUR WITH THE REQUEST FOR AN ASSOCIATE WARDEN OF SECURITY POSITION AT THE EAST TENNESSEE RECEPTION CENTER, CONSISTENT WITH THE OTHER FACILITIES IN THE SYSTEM.

IN THE UNIT, I WOULD RECOMMEND THAT ONE QUALIFIED AND EXPERIENCED LIEUTENANT BE APPOINTED DIRECTOR OF THE MAXIMUM UNIT, WITH FLEXIBLE HOURS TO PROVIDE DIRECT MONITORING, SUPERVISION AND DIRECTION TO ALL OF THE STAFF ON ALL SHIFTS, INSTEAD OF THREE LIEUTENANTS. IN THE LIEUTENANT'S ABSENCE, THE MOST QUALIFIED SERGEANTS SHOULD BE DESIGNATED BY THE LIEUTENANT AS THE OFFICER-IN-CHARGE (O.I.C.). INSTEAD OF FOUR SERGEANTS, I RECOMMEND SIX SERGEANTS. THIS WILL ENSURE THAT THE UNIT WILL NEVER BE SUPERVISED BY ANYONE BELOW THE RANK OF SERGEANT. SIX POSITIONS WILL PROVIDE 24 HOUR A DAY, SEVEN DAY A WEEK COVERAGE WITH COVERAGE FOR VACATION AND SICK LEAVE. I CONCUR WITH THE RECOMMENDATION FOR FOUR CORPORALS AND 10 CORRECTIONAL OFFICERS.

STAFFING (CONT'D)

IN NON-SECURITY POSITIONS, I RECOMMEND THAT THE COUNSELOR BE DESIGNATED EXCLUSIVELY FOR THE MAXIMUM UNIT. IF THAT CASELOAD AND OTHER SUPPORT RESPONSIBILITIES IN THE MAXIMUM UNIT DO NOT REQUIRE HIS FULL TIME COMMITMENT (WHICH I SUSPECT THEY WILL), THEN THE ASSOCIATE WARDEN OF TREATMENT COULD ADD OTHER ASSIGNMENTS TO HIS RESPONSIBILITIES. MAXIMUM INMATES TEND TO GENERATE MORE WORK THAN GENERAL POPULATION INMATES, AND I BELIEVE THAT WILL BE THE CASE HERE. WITH A POPULATION OF SEPARATEES AND INCOMPATIBLES, JUST THE PROCESS OF KEEPING TRACK OF WHO THE COMPATIBLES AND INCOMPATIBLES ARE IS A MAJOR CHORE. IT IS ESSENTIAL THAT THIS PROCESS BE CLOSELY MONITORED IF YOU WANT TO DEMONSTRATE THAT REASONABLE AND PRUDENT PRECAUTIONS HAVE BEEN TAKEN TO REDUCE THE POTENTIAL OF DIRECT CONTACT BETWEEN COMBATANTS. I RECOMMEND THAT A TEACHER BE ADDED TO THE UNIT COMPLEMENT TO MEET THE REQUIREMENT THAT INMATES IN ADMINISTRATIVE SEGREGATION HAVE ACCESS TO PROGRAMS AND SERVICES THAT INCLUDE, BUT ARE NOT LIMITED TO: EDUCATIONAL SERVICES, LIBRARY SERVICES, SOCIAL SERVICES, COUNSELING SERVICES, RELIGIOUS GUIDANCE, COMMISSARY SERVICES AND RECREATIONAL PROGRAMS. THE COMBINATION OF A FULL TIME COUNSELOR AND A FULL TIME TEACHER, WOULD ENSURE THE COORDINATION AND DELIVERY OF THESE SERVICES TO MEET THOSE REQUIREMENTS.

I AM CONCERNED ABOUT THE ARRANGEMENTS FOR INSIDE EXERCISE DURING THOSE PERIODS (SOMETIMES A WEEK OR MORE) WHEN I AM TOLD OUTSIDE EXERCISE IS IMPRACTICAL. IN MY JUDGEMENT, ACCESS TO THE GYM ONCE A MONTH IS NOT ADEQUATE. AT A MINIMUM, I WOULD SUGGEST THAT ONCE A WEEK DURING INCLEMENT WEATHER, INDIVIDUAL INMATES BE OFFERED THE OPTION OF OUTSIDE EXERCISE OR GYM ACCESS. IN ADDITION TO THE REQUIRED ONE HOUR OF EXERCISE PER DAY, FIVE DAYS A WEEK, EXERCISE OUTSIDE OF THE CELL SHOULD BE PROVIDED AS A PRIORITY OVER INSIDE EXERCISE WHENEVER POSSIBLE.

SUMMARY

IN SUMMARY, I SUPPORT THE CONCEPTUAL BASIS FOR THE CONVERSION OF "D" BLOCK TO A MAXIMUM SECURITY UNIT FOR HIGH RISK INMATES WHO ARE ALSO INCOMPATIBLE WITH OTHER MAXIMUM SECURITY INMATES IN OTHER INSTITUTIONS IN THE SYSTEM. WITH THE CHANGES PROPOSED AND "VERY CAREFUL SELECTION" OF INTELLIGENT, TRAINED SECURITY AND TREATMENT STAFF, IT CAN BE A HUMANE AND WELL RUN UNIT. I AM, HOWEVER, AWARE THAT SOME OF THE OLD BRUSHY MOUNTAIN STAFF MAY HAVE DEVELOPED HABITS AND ATTITUDES THAT COULD BE COUNTERPRODUCTIVE AND INCREASE THE RISK TO THEMSELVES, THE OTHER STAFF AND THE INMATES. FOR THAT REASON, I EXPRESS CAUTION THAT THE STAFF SELECTED FOR THIS UNIT BE PROGRESSIVE, RESPONSIVE AND RECOGNIZE THAT FAIR, IMPARTIAL AND SENSITIVE COMMUNICATIONS AND INTERACTIONS REDUCE HOSTILITY, FRUSTRATION AND VIOLENCE. BRUTALITY AND VIOLENCE BY STAFF WILL ALWAYS BE ESCALATED BY THE INMATES TO A LEVEL WHICH FEW STAFF WHO VALUE THEIR FREEDOM, ARE WILLING TO GO. NON-VIOLENCE IN AN INSTITUTION IS USUALLY NOT A PRODUCT OF A CONCERTED EFFORT ON THE PART OF INMATES. IT IS ALMOST ALWAYS A PRODUCT OF INTELLIGENT, COMPETENT AND SENSITIVE STAFF, DEMONSTRATING TO THE INMATE POPULATION THROUGH OBSERVEABLE ACTION, THAT PROBLEMS CAN BE SOLVED WITHOUT VIOLENCE. STAFF, EVEN UNDER EXTREME PROVOCATION, MUST BE RESTRAINED AND PROFESSIONAL - THAT IS THE ONLY PATH TO RELATIVELY NON-VIOLENT INSTITUTIONS.

SUMMARY (CONT'D)

IN CLOSING, I RECOMMEND THAT PRIOR TO THE UNIT OPENING OR ACCEPTING INMATES, THAT A LIEUTENANT, A COUNSELOR AND A TEACHER BE SELECTED, HIRED AND CHARGED WITH THE DEVELOPMENT OF THE PROGRAM AND THE DEVELOPMENT OF POLICIES AND PROCEDURES WHICH WILL BE REVIEWED BY THE ASSOCIATE WARDEN OF SECURITY AND THE WARDEN. AS I INDICATED TO WARDEN HARRIS AND CAPTAIN JONES, THE SECTION ON "SPECIAL MANAGEMENT INMATES" IN THE A.C.A. STANDARDS FOR ADULT CORRECTIONAL INSTITUTONS, IS A GOOD STARTING POINT TO USE IN THE DEVELOPMENT OF THE MAXIMUM CUSTODY PROGRAM AT EAST TENNESSEE RECEPTION CENTER.

IT SHOULD BE EMPHASIZED THAT THIS UNIT SHOULD NOT BE USED FOR EXTREME HIGH RISKS, BUT FOR THOSE WHO ARE CLASSIFIED AS MAXIMUM CUSTODY, WHO REQUIRE SEPARATION FROM OTHER MAXIMUM CUSTODY INMATES. THERE IS A TENDENCY FOR OTHER INSTITUTIONS TO USE SMALL SECURE UNITS AS A DUMPING GROUND FOR A WIDE VARIETY OF PROBLEMATICAL INMATES. DEPARTMENT CRITERIA SHOULD BE ESTABLISHED FOR TRANSFERS TO THE UNIT. THAT CRITERIA SHOULD INCLUDE A REVIEW OF THE CASE BY THE WARDEN OF THE RECEIVING FACILITY, PRIOR TO ANY TRANSFER TO THE UNIT BEING EXECUTED.

FROM MY OBSERVATIONS AND DIRECT CONTACT WITH WARDEN HARRIS, CAPTAIN JONES AND MANY OF THE OTHER STAFF THAT I ENCOUNTERED DURING MY VISIT, IT WAS APPARENT THAT THEY ARE REASONABLE, CAPABLE AND CONCERNED PEOPLE WHO WILL NOT ONLY MAKE THE PROGRAM WORK, BUT MAKE IT A CREDIT TO THE DEPARTMENT.

SUMMARY OF RECOMMENDATIONS

*FOR THE CONFINEMENT PLAN THAT IS ANTICIPATED, THE CELLS SHOULD BE EXPANDED TO PROVIDE AS CLOSE TO 80 SQ. FT. (CURRENTLY AT 44 SQ. FT.) OF FLOOR SPACE AS IS POSSIBLE BY EXPANDING THEM INTO THE EXISTING WIDE WALKWAY.
*PROGRAMS SHOULD BE DEVELOPED AND ADEQUATE SUPERVISION PROVIDED TO INCREASE THE AMOUNT OF TIME THAT AN INMATE SPENDS OUT OF HIS CELL.
*THE ACTIVITY PROGRAMS RECOMMENDED ARE: EDUCATION, LIBRARY, SOCIAL SERVICES, COUNSELING, RELIGION, COMMISSARY AND RECREATION PROGRAMS.
+INSTALL WATER SHUT OFF VALVES AND ELECTRICAL SWITCHES FOR EACH CELL IN THE UTILITY ACCESS CORRIDOR IN BACK OF THE CELLS.
*REPLACE LIGHT FIXTURES IN THE CELLS AND WALKWAYS WITH KENALL OR SOME EQUALLY ABUSE RESISTANT FIXTURES.
*INSTALL SMOKE DETECTION DEVICES IN EACH OF THE 4 WALKS IN "D" UNIT.
*REPLACE DOOR HINGES AND MODIFY THE DOOR TO COVER THE EXPOSED LOCK BOLT.
*UPGRADE THE BARS, LOCKS, AND HINGES WITH UP-TO-DATE SECURITY HARDWARE, AND A MORE SECURE AND EFFICIENT LOCKING SYSTEM (TO PERMIT STAFF TO UNLOCK CELLS INDIVIDUALLY WITHOUT ENTERING THE WALKWAYS).
*THE SIZE OF CELLS COULD BE INCREASED BY EXTENDING THE EXISTING WALLS OF THE CELLS INTO THE EXISTING WIDE WALKWAYS WITH STEEL REINFORCED CONCRETE AND THEN APPLYING THE NEW HARDWARE AND LOCKS.
*MODIFY NON-CONTACT VISITING AREA TO ACCOMMODATE THREE INMATES IN SEPARATE BOOTHS.
*INSTALL PHONES ON EACH SIDE OF THE VISITING BOOTHS.
*REMOVE EXPANDED METAL AND REPLACE IT WITH POLYCARBONATE LAYERED TEMPERED SECURITY GLASS ON THE BOOTHS.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*REPLACE THE FENCE AROUND "D" BLOCK WITH A SECURE DOUBLE FENCE AND RAZOR RIBBON AS PROPOSED.
*CONSTRUCT FOUR OUTSIDE EXERCISE AREAS.
*DO NOT PLACE OUTSIDE TRAPS AT ENTRANCES TO EXERCISE AREAS - THERE SHOULD BE FABRICATED OPENINGS IN THE GATES TO PERMIT THE OFFICER TO RESTRAIN THE INMATE THROUGH THE BARS AT THIS CELL, ESCORT THE INMATE TO THE EXERCISE AREA, CLOSE THE GATE AND REMOVE THE RESTRAINTS THROUGH THE GATE OPENING. THIS PROCEDURE WILL BE REVERSED UPON THE ENDING OF THE EXERCISE PERIOD. NO DIRECT CONTACT WITH THE INMATE WOULD BE NECESSARY WHILE THE INMATE IS NOT RESTRAINED FOR THE EXERCISE PERIOD.
*A SEARCH SHOULD BE CONDUCTED IN THE OUTSIDE AREAS PRIOR TO EXERCISE TIMES.
*DO NOT CONSTRUCT BLOCK WALLS IN THE EXERCISE AREAS - IT IS RECOMMENDED THAT HEAVY DUTY SECURITY FENCE BE INSTALLED AND THAT IT BE MOUNTED IN HEAVY GAUGE STEEL FRAME.
*INSTALL LOCKED, BUT DETACHABLE HEAVY BAGS IN THE OUTSIDE EXERCISE AREAS.
*THE PROPOSED RE-LOCATION PLAN FOR TOWER 3 IS SUPPORTED AND RECOMMENDED.
*THE PROPOSED PLAN FOR REPLACEMENT AND RE-LOCATION OF OTHER TOWERS IS RECOMMENDED.
*THE PROPOSAL TO PROVIDE (REMOTE OPERATED FROM "D" BLOCK) A SALLYPORT ENTRANCE TO "D" BLOCK AREA IS RECOMMENDED.
*REMOVE PANIC HARDWARE ON THE DOOR OF THE CLASSIFICATION AREA.
*WHEN INMATES ARE PRESENT IN THE CLASSIFICATION AREA, THE DOOR SHOULD BE SECURED AT ALL TIMES AND AN OFFICER SHOULD BE PRESENT.
*OFFICERS SHOULD ALWAYS HAVE A KEY TO THE FIRE DOOR.
*NON-SECURITY STAFF SHOULD NOT ROUTINELY OPERATE SECURITY DOORS.
*STAFFING RECOMMENDATIONS: (SECURITY POSITIONS)
 -THE REMAINING 26 STAFF POSITIONS RECOMMENDED IN THE MAY 1984 STAFFING EVALUATION SHOULD BE CREATED AND FILLED.
 -ASSOCIATE WARDEN OF SECURITY.
 -(IN UNIT) A QUALIFIED AND EXPERIENCED LIEUTENANT SHOULD BE APPOINTED DIRECTOR OF THE UNIT WITH FLEXIBLE HOURS TO PROVIDE MONITORING, SUPERVISION AND DIRECTION TO THE UNIT STAFF. IN THE LIEUTENANT'S ABSENCE, THE MOST QUALIFIED SERGEANTS SHOULD BE DESIGNATED AS OFFICERS-IN-CHARGE (O.I.C.).
 -6 SERGEANTS TO PROVIDE ON-SITE SUPERVISION OF THE UNIT 24 HOURS A DAY, SEVEN DAYS A WEEK.
 -4 CORPORALS - LEAD WORKERS.
 -10 CORRECTIONAL OFFICERS.
*ALL INMATE ACCESSIBILITY AREAS SHOULD BE SUPERVISED WHEN INMATES ARE PRESENT.
*STAFFING RECOMMENDATIONS (NON-SECURITY POSITIONS)
 -ASSIGN A COUNSELOR EXCLUSIVELY FOR THE MAXIMUM UNIT.
 -DEVELOP A SYSTEM (COULD BE INCLUDED IN COUNSELOR DUTIES) TO KEEP TRACK OF COMPATIBLES AND INCOMPATIBLES.
 -ASSIGN A TEACHER TO THE MAXIMUM SECURITY UNIT.
*DURING INCLEMENT WEATHER INMATES SHOULD BE OFFERED THE OPPORTUNITY TO EXERCISE IN THE GYM AT LEAST ONCE A WEEK.
*CAREFULLY SELECT STAFF THAT ARE INTELLIGENT AND HIGHLY TRAINED SECURITY AND TREATMENT STAFF FOR THE MAXIMUM SECURITY UNIT. THEY MUST BE STAFF THAT ARE PROGRESSIVE, RESPONSIVE, FAIR AND IMPARTIAL, AND HAVE THE QUALITIES TO UNDERSTAND THAT SENSITIVE COMMUNICATIONS AND INTERACTIONS REDUCE HOSTILITY, FRUSTRATION AND VIOLENCE.

SUMMARY OF RECOMMENDATIONS (CONT'D)

+PRIOR TO THE OPENING OF THE UNIT, A LIEUTENANT, COUNSELOR AND A TEACHER SHOULD BE SELECTED TO DEVELOP A PROGRAM WITH POLICIES AND PROCEDURES TO BE REVIEWED BY THE ASSOCIATE WARDEN OF SECURITY AND THE WARDEN.
+REFER TO THE A.C.A. STANDARDS ON SPECIAL MANAGEMENT INMATES AS A MODEL TO DEVELOP THE PROGRAM.
*ESTABLISH DEPARTMENTAL CRITERIA FOR TRANSFER TO THIS UNIT WITH FINAL REVIEW OF THE TRANSFER BEING MADE BY THE WARDEN OF THE RECEIVING FACILITY.
*THE UNIT SHOULD NOT BE USED FOR EXTREME HIGH RISKS, BUT FOR THOSE CLASSIFIED AS MAXIMUM CUSTODY WHO REQUIRE SEPARATION FROM OTHER MAXIMUM SECURITY INMATES.

FORT PILLOW

MY ON-SITE VISIT TO THE FORT PILLOW FACILITY BEGAN EARLY MONDAY MORNING, FEBRUARY 18, 1985 AND ENDED WITH AN EXIT SUMMARY WITH WARDEN DAVIS ON WEDNESDAY EVENING, FEBRUARY 20, 1985. PRIOR TO MY SCHEDULED ON-SITE VISIT TO FORT PILLOW I RECEIVED A LETTER FROM GORDON BONNYMAN DATED JANUARY 31, 1985 (WHICH HAD BEEN COPIED TO SPECIAL MASTER MCMANUS AND MR. JOHN SOUTHWORTH OF THE ATTORNEY GENERAL'S OFFICE). IN THAT LETTER MR. BONNYMAN INDICATED THAT HE HAD RECEIVED INFORMATION THAT A HALF A DOZEN INMATES IN THE SEGREGATION UNIT (B-1) AT FORT PILLOW WERE ALLEGEDLY TAKEN FROM THEIR CELLS AFTER AN INCIDENT IN THE EARLY MORNING HOURS OF JANUARY 13, 1985, AND ALLEGEDLY BEATEN, RUN THROUGH THE SHOWERS, AND RETURNED TO THEIR CELLS AND LEFT NAKED AND DRIPPING WET. I WAS PROVIDED WITH THE NAMES OF THREE INMATES WHO ALLEGEDLY WERE INVOLVED IN THE INCIDENT. THIS INFORMATION WAS PROVIDED TO ME BECAUSE IT WAS AGREED THAT IT WAS RELEVANT TO MY EVALUATION OF THE SOCIAL/ENVIRONMENTAL CONDITIONS AND QUALITY OF LIFE IN THE INSTITUTION.

IN THAT SAME LETTER, TWO OTHER ISSUES WERE BROUGHT TO MY ATTENTION: A) THE COURT ORDERED CLOSURE OF C-BUILDING AND, B) THE COURTS EXPECTATION THAT INMATES IN A AND B CELL BLOCKS WOULD BE SINGLE CELLED UNLESS THE DEPARTMENT COULD DEMONSTRATE THAT THE LEVEL OF VIOLENCE AT FORT PILLOW HAD BEEN REDUCED.

WHILE AT THE FACILITY, I HAD SPONTANEOUS AND INFORMAL CONTACTS AND INTERACTIONS WITH INMATES IN VARIOUS AREAS OF THE INSTITUTION. ADDITIONALLY, I HAD PRIVATE INTERVIEWS WITH FOUR INMATES. ONE OF THE FOUR INMATES THAT I INTERVIEWED WAS SUGGESTED IN MR. BONNYMAN'S JANUARY 31, 1985 LETTER TO ME. THE OTHER TWO INMATES THAT HAD BEEN SUGGESTED THAT I CONTACT HAD BEEN TRANSFERRED FROM FORT PILLOW ON FEBRUARY 7, 1985. I SELECTED THE OTHER THREE INMATES FOR A VARIETY OF REASONS, INCLUDING THEIR REPUTATION, LIVING UNIT AND PAST EXPERIENCE IN OTHER FACILITIES, E.G., AN INMATE IN SEGREGATION WHO WAS BEING HELD FOR HAVING STABBED ANOTHER INMATE TO DEATH THE THURSDAY BEFORE I ARRIVED AT FORT PILLOW. ADDITIONALLY, I INTERVIEWED WARDEN DAVIS AND ELEVEN STAFF PRIVATELY, ONE OF WHOM AFTER THE INTERVIEW STARTED, DECLINED TO BE INTERVIEWED AFTER I ASKED HIM TO TELL ME WHY HE TOOK A VOLUNTARY DEMOTION.

THE INSTITUTION INMATE POPULATION DURING MY VISIT WAS 796 WITH A SINGLE CELL AND DORMITORY CAPACITY OF 617. THE SQUARE FOOTAGE IN THE CELLS IN UNITS A-1, A-2, A-3, B-1, B-2 AND B-3 ARE ALL 120 SQ. FEET, WITH THE EXCEPTION OF TWO INDIVIDUAL CELLS - ONE CELL IN A-1 HAS 97 SQ. FEET, AND ONE CELL IN B-1 (SEGREGATION) HAS 79 SQ. FEET. THERE IS ALSO A LARGE TEMPORARY (SIX OR SEVEN YEAR OLD) STEEL BUILDING (UNITS C-1 AND C-2 ARE ADJOINING 100 MAN DORMITORIES). ADDITIONALLY, THERE ARE TWO, THIRTY MAN MINIMUM SECURITY DORMITORIES IN ANOTHER MINIMUM SECURITY BUILDING IN FRONT OF THE INSTITUTION AND A COUPLE OF OTHER SMALLER, INMATE LIVING QUARTERS AT THE DOG KENNELS AND THE OUTSIDE GARAGE. WHILE OBVIOUS OVERCROWDING DOES EXIST AT THE FACILITY, THE SQUARE FOOTAGE OF THE MAJORITY OF THE CELLS OFFSETS "SOME" OF THE NEGATIVE ASPECTS OF DOUBLE CELLING, BUT THE SPACE DOES NOT COMPENSATE OR OFFSET THE FACT THAT AN INMATE CANNOT HAVE ANY PERSONAL PRIVACY. HE MUST CHANGE CLOTHES, GO TO THE TOILET AND PERFORM ALL OF HIS PERSONAL HYGIENE WITH SOMEONE ELSE PRESENT. IT'S NOT UNCOMMON TO SEE TWO PEOPLE IN A CELL WITH TWO T.V. SETS ON DIFFERENT CHANNELS. SOME WOULD SAY THEY'RE LUCKY THE SYSTEM PERMITS THEM TO HAVE A T.V. THE POINT IS THAT AN INDIVIDUAL IS UNABLE TO EVEN RELAX WITHOUT COMPETING DISTRACTIONS.

THIS BUILDS UP FRUSTRATION, HOSTILITY AND ANGER OVER A PERIOD OF TIME, AND MANY TIMES WITHOUT THE CONSCIOUS KNOWLEDGE OF THE INDIVIDUAL UNTIL HE REACHES THE LIMITS OF HIS TOLERANCE AND THE ANGER MANIFESTS ITSELF OVER A RELATIVELY MINOR FRUSTRATION, INCIDENT OR EXCHANGE. THE C-BUILDING IS ANOTHER ENTIRELY DIFFERENT SITUATION. IN THESE TWO (C-1 AND C-2) ADJOINING UNITS, THERE ARE TWO LARGE 100 MAN OPEN DORMITORIES WITH ROWS OF BEDS THAT HOUSE INMATES WITH THE FULL RANGE OF OFFENSES AND SENTENCES. THIS BUILDING, WHICH IS NOT SECURE, CANNOT BE SECURED GIVEN ITS CURRENT LIMITATIONS. IN TALKING TO INMATES WHO LIVE IN THE UNITS, ONE OF WHOM WAS SCHEDULED TO LEAVE IN A FEW MONTHS, HE DESCRIBES IT AS A DAY TO DAY STRUGGLE FOR SAFETY AND SURVIVAL, AND EVERY DAY WAS A CHALLENGE TO AVOID PICKING UP A NEW OFFENSE IF INMATES ATTEMPT TO PROTECT THEMSELVES AND THE LITTLE BIT OF PROPERTY THEY HAVE. STAFF AND INMATES CORROBORATED THE INCIDENTS AND ASSAULTS. AT THIS TIME, THOSE 196 MEN CHOOSE, FOR WHATEVER REASONS, TO REMAIN IN THE DORMITORIES. IF, HOWEVER, THE MAJORITY OR ANY INDIVIDUAL DECIDES THEY WANT TO LEAVE THE BUILDING AS PART OF A DISTURBANCE, INCIDENT OR RIOT, THE BUILDING CANNOT HOLD THEM. THE POTENTIAL FOR THIS TO OCCUR IS POSSIBLE 24 HOURS A DAY, SEVEN DAYS A WEEK. IT IS A POTENTIAL PROBLEM THE MAGNITUDE OF WHICH COULD PRODUCE ANOTHER NEW MEXICO (NEW MEXICO'S FEBRUARY, 1980 RIOT STARTED IN THE 100 MAN DORMITORIES). TO CONTINUE TO PERPETUATE THIS ILL-ADVISED ARRANGEMENT IS A GAMBLE WHERE THE ODDS OF HAVING A MAJOR INCIDENT INCREASE EVERY DAY.

I RECOMMEND THE DORMITORIES BE VACATED BEFORE SUMMER, AND THAT PLANS BE DEVELOPED TO ADD SPACE TO AND CONVERT THE C-BUILDING TO VERY MUCH NEEDED ACADEMIC AND VOCATIONAL SPACES, INDOOR MULTI-PURPOSE DAYROOM, RECREATION, ARTS, CRAFTS AND OTHER PROGRAM SPACE, TO WHICH ACCESS BY EACH UNIT WOULD BE SCHEDULED AND SUPERVISED.

THE SECURITY OF THE OTHER UNITS IN THE FACILITY IS NOT ASSURED DURING THE WAKING HOURS OF THE INMATES. DURING THE THREE DAYS I WAS IN THE INSTITUTION, I FOUND ONLY ONE STAFF ASSIGNED TO EACH 100 MAN UNIT. (THE CONTROL STATION OPENS INTO A CORRIDOR NEAR A STAIRWELL THAT THE ENTIRE INMATE POPULATION HAS ACCESS TO WHEN THEY ARE OUT IN THEIR UNITS). WHEN THE OFFICER IS IN THE UNIT WITH THE OTHER DOORS I MENTIONED OPEN, HE LEAVES THE UNIT DOOR OPEN AND CARRIES WITH HIM, THE KEYS TO THE CELLS IN THE UNIT. THE OFFICER AND OTHER ADMINISTRATIVE STAFF INDICATED THE REASON FOR LEAVING THE UNIT DOOR OPEN IS SO THAT IF THE OFFICER IS ATTACKED, HE CAN ATTEMPT TO RUN FOR SAFETY. THIS POLICY AND PRACTICE IS DANGEROUS, NOT ONLY FOR THE STAFF, BUT FOR THE INMATES AS WELL. IF ANY INMATE ASSAILANT OR GROUP OF ASSAILANTS WANTED TO ENTER B-2 (A UNIT THAT IS USED TO HOUSE A COMBINATION OF INMATES INCLUDING THOSE ON PROTECTIVE CUSTODY), THEY COULD ENTER THE OPEN UNIT, FIRE BOMB A CELL OR OVERPOWER THE OFFICER, TAKE THE KEYS AND KILL OR MAIM ALL OF THE INMATES WHOM THE SYSTEM WAS ATTEMPTING TO PROTECT. ADDITIONALLY, ANY INMATE IN A UNIT COULD ASSAULT AND OVERPOWER AN OFFICER IN THE UNIT, TAKE HIS KEYS AND RELEASE THE OTHER INMATES AND IT WOULD BE SOME TIME BEFORE ANYONE WOULD KNOW IT HAPPENED. IF SUCH AN EFFORT WERE COORDINATED BY THE INMATES FROM SEVERAL OR ALL OF THE UNITS, THE WHOLE POPULATION COULD BE LOOSE AND TAKE CONTROL OVER THE ENTIRE INSTITUTION. THE SAME IS TRUE FOR ALL THE UNITS, WITH THE EXCEPTION OF THE SEGREGATION UNIT, B-1, WHERE "ADEQUATE ENTRANCE SECURITY IS PROVIDED."

I AM AWARE THAT MR. HENDERSON IS DOING A STAFFING ANALYSIS. I, HOWEVER, RECOMMEND THAT AT MINIMUM, ONE ADDITIONAL STAFF PERSON BE ASSIGNED TO EACH TWO UNITS IN THE MAIN INSTITUTION. THAT OFFICER'S DUTIES WOULD BE TO RELIEVE THE UNIT OFFICERS. THE UNIT OFFICER WOULD THEN ENTER THE UNIT TO OPERATE THE CELL DOORS FOR THE PURPOSE OF LETTING INMATES IN AND OUT. HE WOULD ENTER THE CONTROL STATION, LET THE UNIT OFFICER OUT, SECURE THE CONTROL STATION DOOR, OPEN THE DOOR TO THE UNIT TO PERMIT THE UNIT OFFICER TO ENTER THE UNIT, AND SECURE THE ENTRANCE DOOR. WHILE THE UNIT OFFICER IS IN THE UNIT, HE WOULD OBSERVE THE OFFICER'S MOVEMENT TO ASSURE HIS SAFETY. HE WOULD REVERSE THE PROCESS AND REPORT TO THE OTHER OF THE TWO UNITS TO WHICH HE IS ASSIGNED TO REPEAT THE SAME PROCEDURE, AS NECESSARY.

PRIOR TO MY ARRIVAL AT THE INSTITUTION, IT HAD BEEN NEARLY SIX WEEKS SINCE THE MAJORITY OF THE INMATE POPULATION HAD WORKED, WITH THE EXCEPTION OF A DAY AND A HALF APPROXIMATELY THREE WEEKS AGO. ON THE WEDNESDAY BEFORE I LEFT, THE WARDEN ORDERED THE LONG LINES OUT. IT WAS OBVIOUS FROM THE STAFF AND INMATE REACTIONS THAT GETTING OUTSIDE AGAIN DID SERVE TO IMPROVE THE ATTITUDES OF STAFF AND INMATES, AND THE OVERALL CLIMATE IN THE FACILITY.

I RECOMMEND THAT THE DEPARTMENT EXPLORE TEMPORARY PRODUCTION WORK OR CONTRACTS DURING THOSE PREDICTABLE PERIODS OF IDLENESS BECAUSE OF WEATHER CONDITIONS. IN THE INTERIM, HOWEVER, THE CONVERSION OF AND ADDING SPACE TO THE C-BUILDING TO PROVIDE MUCH NEEDED ACADEMIC AND VOCATIONAL PROGRAM SPACE AND MULTI-PURPOSE RECREATION AND LEISURE TIME PROGRAM SPACES, WILL PROVIDE SOME BADLY NEEDED ACADEMIC AND VOCATIONAL PROGRAM SLOTS, AND STRUCTURED LEISURE TIME ACTIVITY. THIS WILL OFFSET SOME OF THE BOREDOM & IDLENESS, AND START THE PROCESS OF REDUCING INCIDENTS AND VIOLENCE THAT ARE FUELED BY OVERCROWDING, IDLENESS AND THE LIMITED SURVEILLANCE SUPERVISION AND CONTROL OF THE INMATES.

THE ASSIGNMENT OF THIRTY MEDIUM SECURITY INMATES TO THE UNIT #1 MINIMUM SECURITY DORMITORY WAS INAPPROPRIATE. THE WARDEN AND HIS STAFF HAD REQUESTED SPECIFIC CHANGES TO IMPROVE THE LIGHTING AND PERIMETER SECURITY OF THAT AREA PRIOR TO THE PLACEMENT OF THE MEDIUM SECURITY INMATES IN UNIT #1 OF THE MINIMUM SECURITY AREA. IT WAS IN THIS GENERAL VICINITY THAT SEVERAL INMATES ATTEMPTED ESCAPES. IF MEDIUM SECURITY INMATES ARE GOING TO BE HOUSED IN EITHER UNIT #1 OR #2 OR BOTH, SECURE RAZOR RIBBON DOUBLE FENCE PERIMETER OF THE FACILITY SHOULD EXTEND AROUND THESE UNITS. EVEN WITH THIS SECURITY PRECAUTION IN PLACE, ONLY VERY SELECT MEDIUM SECURITY INMATES SHOULD BE HOUSED IN THESE 30 BED OPEN DORMITORIES. STAFF SUPERVISION IN THE UNITS SHOULD BE PROVIDED 24 HOURS A DAY, SEVEN DAYS A WEEK.

I CONCUR WITH THE TEMPORARY ASSIGNMENT OF AN EXTRA OFFICER TO THE TOWER NEAR THE UNIT, BUT THAT IS ONLY A TEMPORARY SOLUTION. PERIMETER SECURITY SHOULD BE ENHANCED IN THE AREA, AND AN EXTRA OFFICER ASSIGNED TO THE DORMITORIES. IF MEDIUM SECURITY INMATES ARE GOING TO BE HOUSED IN THIS AREA, THE TOWER SHOULD BE RE-LOCATED AND ELEVATED TO PROVIDE OPTIMUM SUPERVISION AND SURVEILLANCE OF THAT SEGMENT OF THE SECURE PERIMETER. IN THE MINIMUM SECURITY DORMITORIES #1 AND #2, I SUGGEST A THIRD BUILDING (E.G., BLEDSOE COUNTY REGIONAL CORRECTIONAL FACILITY AND MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY) OF SIMILAR SIZE BE CONSTRUCTED, WHICH WOULD PERMIT THOSE UNITS TO HAVE A SMALL FOOD SERVICE AREA, DINING ROOM, LIBRARY AND DAYROOM. THE DINING AREA COULD BE USED FOR VISITING ON WEEKENDS BEFORE AND AFTER MEALS, PROVIDING THAT A SEPARATE OUTSIDE SALLY-PORT ENTRANCE BE INSTALLED TO AVOID BRINGING VISITORS THROUGH THE MAIN INSTITUTION. THE OLD CONCRETE PADS COULD BE EXPANDED FOR OUTSIDE BASKETBALL

AND HANDBALL COURT THEREBY KEEPING THE INSIDE MI. UM INMATES SEPARATE FROM THE MAIN INSTITUTION POPULATION. WITH ALL OF THESE CHANGES, IT WOULD BE FEASIBLE TO KEEP "SELECTED" MEDIUM SECURITY INMATES IN MINIMUM DORMITORY #1. BECAUSE OF THEIR MINIMUM SECURITY ASSIGNMENTS OUTSIDE THE INSTITUTION, HOWEVER, THEY SHOULD BE SEGREGATED FROM THE MAIN INSTITUTION POPULATION. THESE CHANGES WILL PERMIT THEM TO WORK, EAT AND RECREATE SEPARATE FROM THE GENERAL POPULATION. THE MINIMUM SECURITY INMATES WILL BE IN A MORE SECURE SETTING THAN IS NECESSARY. I, HOWEVER, WOULD RECOMMEND THAT THE UNIT BE MAINTAINED AS MINIMUM SECURITY, WITH ONLY TRUE MINIMUM SECURITY INMATES ASSIGNED. HOWEVER, THEY TOO MUST BE SEPARATED FROM THE GENERAL POPULATION INMATES. THE ADDITIONAL UNIT SHOULD BE ADDED FOR FEEDING, VISITING, SMALL LIBRARY, ETC.

THE SECURITY OF THE PERIMETER OF THE LARGE BALL FIELD ADJACENT TO THE MINIMUM SECURITY DORMITORIES AND THE OUTSIDE PICNIC AREA IS INADEQUATE. THIS PERIMETER IS VULNERABLE WITH A SINGLE FENCE. I AM AWARE THAT THE YARD GETS RESTRICTED USE AND WHEN IT IS USED, ARMED OFFICERS ARE PLACED ON PLATFORMS OUTSIDE THE FENCE. THERE ARE A NUMBER OF ESCAPE SCENARIOS POSSIBLE UNDER THE CURRENT CONDITIONS AT THE INSTITUTION. DUE TO THE LIMITED INTERNAL UNIT SECURITY (C-BUILDING SPECIFICALLY), THE CHANCES OF ESCAPE SUCCESS ARE INCREASED WITH THIS VERY WEAK SECTION OF THE PERIMETER, WHICH INVITES EVEN THOSE WHOM ESCAPE IS JUST A FLEETING FANTASY, TO TRY IT.

WHEN YOU COMBINE THESE WEAKNESSES WITH THE FACT THAT THERE IS NO FORMAL COUNT OF INMATES BEHIND THE FENCE FROM 6:00 A.M. UNTIL 6:00 P.M., IT IS CONCEIV-ABLE FOR EVEN AN INMATE OF MEDIOCRE INTELLIGENCE AND CREATIVITY, WITH A LITTLE STRATEGY AND LUCK, TO BE GONE FOR TEN OR ELEVEN HOURS BEFORE HIS ABSENCE IS DETECTED.

I RECOMMEND SECURING THAT PERIMETER WITH A RAZOR RIBBON DOUBLE FENCE AND INSTALLING A SECURE AND ADEQUATE TRAP GATE WITH CRASH BARRIERS, AND A SPACE LARGE ENOUGH TO ACCOMMODATE A TRACTOR TRAILER, SO BOTH GATES ARE NOT OPENED AT THE SAME TIME. THAT TOWER SHOULD ALSO BE ELEVATED TO PROVIDE BETTER SUPERVISION OF THE GATE AND THAT AREA OF THE YARD. I ALSO RECOMMEND THAT AT A MINIMUM, AT LEAST ONE ADDITIONAL FORMAL COUNT BE CONDUCTED AT AROUND NOON EACH DAY.

ALTHOUGH I RECOGNIZE SIGNIFICANT IMPROVEMENTS IN THE PHYSICAL PLANT SINCE SOME OF THE PREVIOUS INSPECTION REPORTS WERE WRITTEN, I FIND THE PHYSICAL PLANT WITH NUMEROUS DEFICIENCIES:

1) THE LEAKING ROOF AREAS IN THE INFIRMARY (BUCKETS IN SEVERAL AREAS TO CATCH LEAKING WATER, HOLES IN THE CEILING, ETC.) AND OTHER AREAS OF THE INSTITUTION;

2) THE WALL CONSTRUCTION BETWEEN CELLS IN A-1, 2, 3 AND B-1, 2, AND 3 ARE NOT CONCRETE FILLED OR STEEL REINFORCED. INMATES AT ANY GIVEN TIME CAN TAKE BLOCKS OUT OF THE WALLS BETWEEN CELLS OR AS IS THE CASE IN B-1 (SEGREGATION), WHERE INMATES ACTUALLY REMOVED PORTIONS OF THE WALLS BETWEEN THE CELLS. I AM PARTICULARLY CONCERNED ABOUT THE LACK OF PHYSICAL PLANT SECURITY IN SEGREGATION. THE CURRENT LACK OF ABUSE RESISTANT CONSTRUCTION IN B-1 PRODUCES UNSAFE CONDITIONS FOR STAFF AND INMATES;

3) THE METAL COVERED STEAM HEATING UNITS IN EACH OF THE CELLS PROVIDE EXCELLENT TOOL MATERIAL FOR REMOVING THE WALLS AND/OR RAW MATERIALS FOR WEAPONS;

4) THE WINDOWS ON ALL THE UNITS EXCEPT B-1 (SEGREGATION) ARE NOT BARRED EXCEPT WHERE TWO CELLS SHARE A WINDOW AND, THEREFORE, PROVIDE VERY LIMITED SECURITY;

5) THE LARGE GANG SHOWER AREAS ARE POORLY SUPERVISED, LIGHTED AND MAINTAINED (BROKEN AND LEAKING PIPES AND SHOWER HEADS). IN GENERAL, THERE APPEARS TO BE A REAL NEED FOR A PREVENTATIVE MAINTENANCE PLAN. WHEN I DISCUSSED THESE PROBLEMS WITH WARDEN DAVIS, HE INDICATED THAT HE HAD FIRED THE MAINTENANCE SUPERVISOR AND TO DATE, HAS NOT YET BEEN ABLE TO REPLACE HIM. "I CAN UNDERSTAND WHY HE WAS TERMINATED."

I WAS ALSO TOLD BY SEVERAL STAFF THAT SOME OF THE MAINTENANCE STAFF RECEIVED JOBS YEARS AGO BECAUSE OF POLITICAL CONNECTIONS. THEY INDICATED THAT SOME ARE NOT TRAINED, SKILLED OR LICENSED TRADESMEN, AND THAT ON NUMEROUS OCCASIONS SOME HAVE BEEN CALLED TO THE INSTITUTION TO DO REFRIGERATION OR ELECTRICAL WORK, AND WERE UNABLE TO DO THE WORK. I DID NOT HAVE TIME TO INVESTIGATE THIS THOROUGHLY, BUT I WAS ABLE TO VERIFY THAT INMATES HAVE BEEN USED TO DO SOME ELECTRICAL WORK THAT STAFF WERE UNABLE TO DO. I ALSO VERIFIED THAT OUTSIDE HEATING AND REFRIGERATION PEOPLE HAVE BEEN HIRED ON CONTRACT TO DO REPAIR THAT IN MY JUDGEMENT, COMPETENT INSTITUTION MAINTENANCE STAFF DO IN INSTITUTIONS EVERY DAY. I ALSO VERIFIED THAT IT WAS ONCE NECESSARY TO HIRE A RENTED REFRIGERATED TRUCK TO STORE FOOD BECAUSE THE FREEZER WAS BROKEN AND THERE WAS A DELAY IN REPAIRING THE FREEZER BECAUSE SOMEONE FROM THE COMMUNITY HAD TO BE HIRED ON CONTRACT. IF THERE ARE EVEN SHREDS OF TRUTH TO WHAT I HAVE BEEN TOLD, THOSE INDIVIDUALS WHO ARE INCOMPETENT OR CANNOT PERFORM THE DUTIES FOR WHICH THEY WERE HIRED, SHOULD BE TERMINATED AND SKILLED TRADESMEN HIRED. THE STATE OF TENNESSEE CANNOT PROTECT THE TAXPAYER'S INVESTMENT IN FACILITIES UNLESS SKILLED, QUALIFIED PEOPLE ARE RETAINED TO DO SO. WHEN THE HIRED STAFF ARE UNABLE TO MAINTAIN THE PLANT, THE INMATES ARE FORCED TO LIVE WITH INOPERATIVE PLUMBING, ELECTRICAL AND OTHER HAZARDS TO THEIR HEALTH, WELFARE AND SAFETY, WHICH PRODUCES STRESS AND FRUSTRATION. THAT ULTIMATELY CAN LEAD TO SERIOUS INCIDENTS IN PROTEST OF CONDITIONS OF CONFINEMENT. I RECOMMEND THAT GIVEN THE SIZE AND AGE OF THE FACILITY, THE COMPLEMENT OF MAINTENANCE STAFF BE INCREASED BY 5 SKILLED TRADES PEOPLE. THE INSTITUTION DOES NOT HAVE ANY CIVILIAN JANITORIAL STAFF AND SHOULD HAVE AT LEAST ONE JANITOR TO MAINTAIN THE ADMINISTRATIVE OFFICES, AND POSSIBLY ASSIST IN THE SEGREGATION UNIT TO AVOID THE USE OF INMATES IN EITHER AREA.

THE SECURITY IN THE VISITING ROOM IS NON-EXISTENT. MALE VISITORS USE THE SAME BATHROOM AS THE INMATES, WHICH PROVIDES EXCELLENT PRIVACY FOR VISITORS TO EXTRACT CONTRABAND FROM BODY ORIFICES, AND EITHER PASS IT OR LEAVE IT IN THE BATHROOM FOR AN INMATE TO SECRETE INTO HIS RECTUM, SWALLOW A BALLOON, ETC. THE LAYOUT OF THE VISITING ROOM ALSO DOES NOT AFFORD GOOD VISUAL SURVEILLANCE BY THE OFFICER. WHEN THE VISITING ROOM IS HEAVILY OCCUPIED, AT LEAST TWO STAFF SHOULD BE ASSIGNED TO THE AREAS. IDEALLY, A NEW VISITING ROOM SHOULD BE DESIGNED FOR THAT AREA WHICH WOULD INCLUDE A SECTION FOR NON-CONTACT VISITING AND A SEPARATE ROOM FOR INMATE STRIP SEARCHES.

THE PRACTICE OF HAVING INMATE RUNNERS IN THE VISITING ROOM SHOULD BE DISCONTINUED. I HAVE NO PROBLEM USING INMATES TO LOCATE OTHER INMATES FOR VISITS, BUT THEY SHOULD BE LOCATED OUTSIDE OF AND AWAY FROM THE VISITING ROOM. THEY SHOULD NOT BE REPEATEDLY ENTERING AND LEAVING THE VISITING ROOM. THEY COULD BE LOCATED AT SOME OTHER DESIGNATED AND SUPERVISED LOCATION, AND THE VISIT ROOM STAFF MEMBER COULD CALL THAT LOCATION AND HAVE THE RUNNER LOCATE THE DESIRED INMATE.

AS I POINTED OUT, THE PHYSICAL SECURITY IN B-1 IS IN NEED OF IMMEDIATE ATTENTION. IF FORT PILLOW IS GOING TO HOUSE MAXIMUM SECURITY INMATES, THEY MUST HAVE THE PHYSICAL CAPABILITY AND SECURITY TO DO SO, OR SEND MAXIMUM SECURITY INMATES TO ANOTHER FACILITY. THEY MUST HAVE A SECURE OUTSIDE EXERCISE AREA, A REMOTE LOCKING SYSTEM, AND PROGRAM MUST BE MADE AVAILABLE TO ADMINISTRATIVE SEGREGATION INMATES CONSISTENT WITH THE STANDARDS FOR SPECIAL MANAGEMENT INMATES. INMATE WORKERS NOT HOUSED IN THE SEGREGATION UNIT SHOULD NOT BE USED FOR UNIT WORKERS IN SEGREGATION (THE LAST VICTIM OF HOMICIDE WAS A GENERAL POPULATION INMATE WHO WAS A UNIT WORKER IN SEGREGATION). IT IS NOT JUST TO AVOID THOSE INCIDENTS, BUT TO CONTROL CONTRABAND AND REDUCE THE OPPORTUNITY FOR INMATES WORKING TOGETHER TO COMPROMISE UNIT SECURITY AND AVOID A UNIT TAKEOVER BY INMATES.

THE FORT PILLOW FACILITY HAS EXPERIENCED A DRAMATIC TURNOVER AMONG THE 212 CORRECTIONAL OFFICER POSITIONS IN 1984. IN CALENDAR YEAR 1984, THE TURNOVER RATE IN THIS CLASS ALONE AT FORT PILLOW WAS AN UNBELIEVABLE 56%. AT THE TIME I VISITED THE FACILITY, 115 OF THE 212 CORRECTIONAL OFFICERS HAD LESS THAN 1 YEAR OF EXPERIENCE. WITH HIGH TURNOVER RATES, THE INSTITUTION IS UNABLE TO PROVIDE STAFFING FOR THE INSTITUTION THAT IS KNOWLEDGEABLE AND EXPERIENCED. THIS COMPROMISES SECURITY BECAUSE THE INMATES EXPLOIT STAFF INEXPERIENCE. IF TAKES A MAJORITY OF EXPERIENCED, SEASONED AND WELL-TRAINED STAFF TO OFFSET THE FACILITY'S LIMITATIONS, OVERCROWDING AND IDLENESS. THIS PHENOMENAL TURNOVER IS ATTRIBUTABLE TO SEVERAL FACTORS:

1) AS HAS BEEN THE COMMON THREAD BETWEEN ALL INSTITUTIONS, THE UNIFORM STAFF ARE NOT COMPETITIVELY COMPENSATED FOR THEIR WORK;

2) THE INSTITUTION HAS OVER 33,000 HOURS OF COMP TIME ON THE BOOKS THAT STAFF HAVE GREAT DIFFICULTY TAKING OFF, NOT TO MENTION THEIR EARNED ANNUAL LEAVE TIME. AS IS REFLECTED IN THE FACT THAT IN CALENDAR YEAR 1982, 9,300 HOURS OF SICK LEAVE WERE USED, AND TWO YEARS LATER IN 1984, OVER 25,500 HOURS WERE USED - THIS DRAMATIC INCREASE REFLECTS BOTH AN ATTITUDINAL CHANGE AND DIMINISHED MORALE, WHICH I BELIEVE ARE AGGRAVATED BY:

   A) THE HARSH (AND OFTEN EXAGGERATED AND UNFAIR) CRITICISM FOLLOWING THE ESCAPE FROM FORT PILLOW A YEAR AGO;
   B) THE HIGH VOLUME OF BOTH FRIVOLOUS LITIGATION AND SOME VALID LITIGATION FILED BY INMATES AGAINST STAFF, COUPLED WITH THE PERCEPTION OF STAFF AT ALL LEVELS OF BEING ABANDONED BY THE STATE, THE POLITICIANS AND THE AGENCY. (E.G., TYPICAL LETTER TO AN OFFICER FROM THE ATTORNEY GENERAL'S OFFICE AFTER HAVING REQUESTED REPRESENTATION IN A SUIT: "WE REGRET TO INFORM YOU THAT DUE TO THE BUDGETARY RESTRAINTS UPON THIS OFFICE, WE WILL BE UNABLE TO REPRESENT YOU IN THIS CASE. BE ASSURED THAT OUR

2) B) DECISION TO DECLINE REPRESENTATION IS IN NO WAY A REFLECTION ON THE MERITS OF YOUR DEFENSE. YOU WILL PROBABLY NEED TO EMPLOY PRIVATE COUNSEL TO REPRESENT YOU. IF YOU RETAIN YOUR OWN ATTORNEY, THE DEFENSE COUNSEL COMMISSION, MAY, IN ITS OWN DISCRETION, PAY FOR YOUR ATTORNEY FEES....." THIS IS AN EXCERPT FROM A TYPICAL LETTER TO AN OFFICER SUPPORTING A FAMILY ON $350 TAKE HOME PAY EVERY TWO WEEKS, WHO HAS HUNDREDS OF HOURS OF VACATION AND COMP TIME ON THE BOOKS HE CANNOT TAKE OFF OR BE FAIRLY COMPENSATED FOR WHILE HE IS IN STATE SERVICE;

C) OR A JANUARY, 1985 LETTER FROM THE DIRECTOR OF FISCAL SERVICES, WHICH READS IN PART, "THE GOVERNOR'S LEGAL COUNSEL ADVISES US THAT HE DOUBTS THE VALIDITY OF STATUTORY IMMUNITY EXTENDED TO EMPLOYEES WHEN OPERATING STATE VEHICLES. STAFF ATTORNEYS RECOMMEND THAT EMPLOYEES USING STATE VEHICLES ENSURE THAT THEIR PRIVATE AUTO INSURANCE PROVIDES ADEQUATE LIABILITY COVERAGE SHOULD THEY BE HELD AT FAULT IN AN ACCIDENT WHILE OPERATING A STATE OWNED VEHICLE." THINK OF THE REACTION YOU MIGHT HAVE AS AN OFFICER WHO DRIVES A DEPARTMENT OF CORRECTIONS TRANSPORTATION BUS FOR THIRTY OR FORTY INMATES, OR EVEN A PASSENGER VEHICLE, GIVEN THE LITIGATION CLIMATE IN TENNESSEE RIGHT NOW.

WHEN YOU ADD THESE FACTORS TO WORKING ALONE IN AN INMATE LIVING UNIT WITH LIMITED PHYSICAL PLANT SECURITY, AND IT APPEARS THAT ASIDE FROM THE WARDEN AND HIS STAFF WHO ARE IN THE SAME SITUATION, FEW PEOPLE IN THE COMMUNITY OR THE STATE GOVERNMENT ARE SENSITIVE TO YOUR SITUATION, OR APPRECIATE YOUR VALUABLE CONTRIBUTIONS TO THE SAFETY OF THE CITIZENS AND TAXPAYERS, THE OUTCOME IS PREDICTABLE.

THE STAFF SHOULD RECEIVE COMPETITIVE COMPENSATION FOR THEIR SERVICES, AND BE PAID FOR ALL THE WORK THEY DO - NOT JUST THE FIRST EIGHT HOURS. THEY SHOULD ALSO BE REPRESENTED BY STATE LEGAL COUNSEL WITHOUT ANY HASSLES ON THEIR OWN TIME. IF THEY ARE REQUIRED TO LOCATE AND RETAIN LEGAL COUNSEL, THEY SHOULD BE DEFINITELY ASSURED THAT THE STATE WILL PAY THEIR ATTORNEY. THEY SHOULD ALSO BE COMPENSATED FOR ANY TIME THEY SPEND LOCATING LEGAL COUNSEL AND IN PREPARING THEIR DEFENSE. NOR SHOULD THEY BE REQUIRED TO BEAR ANY PERSONAL LIABILITY FOR ACCIDENTS THAT OCCUR WHEN THEY ARE IN THE EMPLOY OF THE STATE, WHEN THEY ARE PERFORMING THEIR DUTIES IN A REASONABLE AND PRUDENT MANNER, CONSISTENT WITH THE STATE LAWS, DEPARTMENT POLICIES, PROCEDURES, ETC.

THE INTEGRITY OF THE MAIN INSTITUTION SECURITY IS COMPROMISED SEVERAL TIMES EACH DAY WITH THE CURRENT POLICY THAT PERMITS MINIMUM SECURITY INMATES TO EAT IN THE GENERAL POPULATION DINING ROOM THREE TIMES A DAY. ALL MINIMUM INMATES OUTSIDE THE FENCE SHOULD BE FED OUTSIDE THE MAIN INSTITUTION. YOU MAY WANT TO CONSIDER FEEDING THAT GROUP IN THE STAFF DINING ROOM BY THE WAY OF THE ENTRANCE BELOW THE FRONT STEPS. THEY SHOULD ORDER THEIR COMMISSARY ITEMS FROM THE OUTSIDE AND IT SHOULD BE DELIVERED BY STAFF TO THEM. OUTSIDE RECREATION FACILITIES SHOULD BE PROVIDED TO KEEP MINIMUM AND CLOSE CUSTODY INMATES SEGREGATED.

THE LIGHTING IN THE YARD AREA IS INADEQUATE. IT WOULD BE IMPOSSIBLE FOR STAFF IN THE YARD OR TOWER 2 TO IDENTIFY AN ASSAILANT IN THE YARD. HIGH MAST LIGHTING IS RECOMMENDED TO ILLUMINATE THE YARD DURING EVENING TRAFFIC HOURS.

WITH CONTROLS LOCATED IN TOWER #2, THE TOWER OFFICER WOULD BE IN A POSITION TO FLOOD LIGHT THE AREA SHOULD THE INMATES FROM C-UNIT ENTER THE YARD IN MASS OR IF AN INCIDENT OR ESCAPE ATTEMPT WAS IN PROGRESS.

WHILE AT THE INSTITUTION, I LEARNED THAT THE OUTSIDE EMERGENCY GENERATOR SOMETIMES FAILS BECAUSE OF POWER SURGES WHICH OVERLOAD THE CURRENT AND KICK OUT THE BREAKER. I AM TOLD THERE IS A DEVICE WHICH CAN BE INSTALLED WHICH WILL MODERATE THE POWER SURGES AND ALMOST ELIMINATE THE POTENTIAL OF A SHUT DOWN FROM POWER SURGES. THE INSIDE EMERGENCY GENERATOR, THOUGH QUITE OLD, APPEARS TO BE MORE RELIABLE THAN THE NEW EMERGENCY GENERATOR.

WITH AN INMATE POPULATION OF 800, THE CURRENT COUNSELING STAFF (5) CANNOT BE EXPECTED TO BE RESPONSIVE TO THE REAL AND IMAGINED PROBLEMS AND CONCERNS OF THE INMATES. I RECOMMEND THAT THE COMPLEMENT OF COUNSELORS BE INCREASED TO PROVIDE ONE COUNSELOR FOR EACH CASELOAD OF 70 INMATES. ONE OF THE COUNSELORS COULD THEN DEVOTE FULL TIME TO THE SEGREGATION POPULATION; ANOTHER COULD BE ASSIGNED FULL TIME TO RE-CLASSIFICATIONS AND THE OTHER, WOULD ASSUME CASE-LOADS WHICH WOULD REDUCE THE CASELOADS OF ALL THE OTHER COUNSELORS. THIS WOULD PERMIT COUNSELORS TO INTERACT WITH AND COUNSEL THE INMATES AS OPPOSED TO BEING PAPER PROCESSORS.

THE TENNESSEE DEPARTMENT OF CORRECTIONS MAY WANT TO EXPLORE SOME DEPARTMENT-WIDE INCENTIVES FOR THOSE WHO CANNOT PASS BASIC COMPETENCIES, AND THOSE WHO DO NOT HAVE A HIGH SCHOOL EQUIVALENCY TO ENCOURAGE THEM TO ACQUIRE THOSE SKILLS THAT ARE NECESSARY TO SURVIVE AND COMPETE IN THE FREE WORLD. I CONCUR WITH, AND SUPPORT DR. OSA COFFEY'S RECOMMENDATIONS IN THE AREA OF ACADEMIC, VOCATIONAL, LIBRARY SERVICES AND RECREATION PROGRAMMING.

I AM AWARE THAT OTHER CONSULTANTS ARE STUDYING THE CLASSIFICATION SYSTEM. I, HOWEVER, HAVE NOT FOUND ANYONE AMONG THE AGENCY'S INSTITUTION STAFF TO DATE, WHO IS SATISFIED WITH OR SUPPORTIVE OF THE CURRENT CLASSIFICATION SYSTEM. THE MOST FREQUENT OBSERVATION IS THAT, "IT IS NOT A SYSTEM," "WE ARE ALWAYS MAKING EXCEPTIONS," "WE ARE CHANGING AND MODIFYING IT (THE SYSTEM) AND IT HAS NOT PRODUCED THE DESIRED END RESULT WHICH WE EXPECTED." THEY EXPECTED THE SYSTEM TO BE A USEFUL TOOL THAT WOULD RATIONALIZE THE ASSIGNMENT AND DISTRIBUTION OF INMATES AROUND THE SYSTEM ACCORDING TO THEIR CLASSIFICATION, CONSISTENT WITH THE AGENCY'S INSTITUTIONAL RESOURCES.

ANOTHER CONSISTENT CONCERN AT ALL THE INSTITUTIONS IS SENTENCE COMPUTATIONS AND INMATE RELEASES. WHILE AT FORT PILLOW, I WAS APPROACHED BY AN INMATE WHO INDICATED THAT HE SHOULD HAVE BEEN RELEASED THAT DAY (HE HAD A COMPUTER PRINTOUT WHICH INDICATED HIS DATE OF RELEASE). THIS WAS BROUGHT TO THE ATTENTION OF STAFF AND HE WAS IN FACT CORRECT, AND WAS LATER RELEASED THAT DAY. AFTER FURTHER INQUIRIES, I LEARNED THAT OVER 50 INMATES AT FORT PILLOW DID NOT HAVE THEIR SENTENCES COMPUTED. IT WAS COMMON KNOWLEDGE AMONG STAFF THAT INMATES WERE HELD PAST RELEASE DATES WITH SOME FREQUENCY. IT WAS ALSO POINTED OUT THAT "PRISON PERFORMANCE SENTENCE CREDIT" (GOOD TIME) IS NOT CREDITED ON A TIMELY BASIS, AND IN SOME INSTANCES, ONCE IT IS COMPUTED AND CREDITED, THE STAFF LEARN THAT THE INMATE IS PAST HIS LEGAL RELEASE DATE. WITH SENTENCE COMPUTATIONS DONE IN CENTRAL OFFICE, YOU CAN READILY UNDERSTAND THE FRUSTRATIONS OF COUNSELORS AND OTHER INSTITUTION STAFF WHO MUST INTERACT WITH INMATES ON A DAILY BASIS. THEY ARE UNABLE TO RESPOND TO LEGITIMATE AND

APPROPRIATE QUESTIONS FROM ...E INMATES BECAUSE THE INFORMATION IS NOT READILY AVAILABLE TO THE CASEWORKERS AND OTHER STAFF.

THE RECREATION PROGRAM AT FORT PILLOW IS INADEQUATE AND STAFF PERMIT A SMALL SEGMENT OF THE INMATE POPULATION TO MONOPOLIZE THE VERY LIMITED RECREATIONAL FACILITIES AND LEISURE TIME ACTIVITIES. A SMALL MINORITY (PRIMARILY BLACKS) OF THE INMATE POPULATION ORGANIZE THEIR OWN BASKETBALL TEAMS. THEY RECRUIT OTHER INMATES AND FORM THEIR OWN TEAMS. THEY PLAY FIVE NIGHTS A WEEK IN THE GYM AND MONOPOLIZE THE USE OF THE AREA. THE REMAINDER OF THE INMATES WHO ARE NOT PICKED OR WHO ARE NOT IN THE CLICK, ARE LEFT TO JUST HANG AROUND IN THE STAIRWELLS, HALLS AND ON THE PERIPHERY OF THE GYM. I WOULD RECOMMEND HIRING AN ACADEMICALLY QUALIFIED PHYSICAL EDUCATION PERSON AND AT LEAST TWO RECREATION STAFF ASSISTANTS. THEY WOULD TAKE CHARGE OF ORGANIZING TEAMS BY UNIT (BASKETBALL, VOLLEYBALL, ETC.). ALL INMATES REGARDLESS OF SKILL LEVEL WOULD BE ENCOURAGED TO PARTICIPATE AS PLAYERS, EQUIPMENT MANAGERS, STATISTICIANS, TEAM MANAGERS, OR SPECTATORS WHEN THEIR UNIT IS PLAYING ANOTHER UNIT. NOW THE TEAMS PLAY WITH VERY FEW OR NO SPECTATORS. TO ENCOURAGE MORE INMATE PARTICIPATION, INMATES SHOULD BE RESTRICTED FROM DUAL MEMBERSHIP, E.G., AN INMATE COULD NOT BE PLAYING ON THE VOLLEYBALL TEAM AND THE BASKETBALL TEAM DURING THE SAME SEASON.

THE WEIGHT ROOM LOCATED NEAR THE SHOWERS IS INADEQUATELY EQUIPPED, POORLY LIGHTED AND DIFFICULT TO SUPERVISE. THE WHOLE SHOWER AND WEIGHT ROOM AREA HAS SEVERAL CORNERS AND AREAS THAT PROVIDE CONVENIENT AND PRIVATE LOCATIONS WHERE ASSAULTS AND RAPES COULD OCCUR. THESE PROBLEMS AGAIN REINFORCE THE RECOMMENDATION THAT C-BUILDING USE AS AN INMATE LIVING UNIT DORMITORY, CEASE AND IT BE EXPANDED AND REMODELLED TO ACCOMMODATE THE SPACES AND PROGRAMS OUTLINED IN THIS REPORT.

IT IS RECOMMENDED THAT THE PICNIC AREA BE RE-LOCATED FOR BETTER SECURITY. SEPARATE TOILET FACILITIES SHOULD BE PROVIDED FOR INMATES AND VISITORS. THE CURRENT LOCATION OF THE PICNIC AREA NEXT TO THE BALLFIELD ON ONE SIDE, AND THE C-1 AND C-2 DORMITORIES ON THE OTHER, IS OBVIOUSLY RESULTING IN BREACHES OF SECURITY. ALL OF THE SCREENS ON THE WINDOWS FACING THE PICNIC AREA IN C-BUILDING HAVE BEEN TORN TO PERMIT PASSING CONTRABAND INTO THE UNITS. IT WAS ALSO LEARNED DURING MY VISIT, THAT T.V.'S AND RADIOS ARE NOT ROUTINELY TAKEN APART AND SEARCHED. THIS PRACTICE IS A SERIOUS BREACH OF INSTITUTION SECURITY. THE POTENTIAL FOR DRUGS, HANDGUNS, EXPLOSIVES AND OTHER WEAPONS TO ENTER THE FACILITY THIS WAY IS VERY HIGH.

I SUGGEST SOME CHANGES IN ROLL CALL, THE USE OF DAILY UNIT AND SHIFT REPORTS AND THE USE OF A FIFTEEN MINUTE MORNING ADMINISTRATIVE STAFF MEETING FOR REVIEW OF THE PAST 24 HOUR'S ACTIVITIES, AND FOLLOW UP ON STAFF AND INSTITUTION NEEDS AND CONCERNS.

I ALSO RECOMMEND THE EXPANDED INVOLVEMENT OF STAFF AT ALL LEVELS IN POLICY, PROCEDURE, POST ORDERS AND JOB DESCRIPTION REVIEWS. THE COMMITTEES SERVE SEVERAL PURPOSES - THEY ENSURE THE ANNUAL REVIEW OF WHAT YOU ARE DOING AND PROVIDE A FORUM FOR ALL STAFF TO PROVIDE INPUT INTO POLICY AND PROCEDURE CHANGES, GIVING THE STAFF A SENSE OF INVOLVEMENT AND PROPRIETORSHIP IN THE INSTITUTION OPERATION. THE PROCESS IS EFFECTIVE IN NOT ONLY IMPROVING POLICY AND PROCEDURE WITH THE DIRECT INPUT OF THOSE EXPECTED TO CARRY OUT POLICY AND WHO USUALLY ARE MOST AFFECTED BY POLICY CHANGE, BUT ENJOY IMPROVED MORALE

AND COMMITMENT BECAUSE THEY FEEL MORE A PART OF THE TEAM, AND THAT THEY CAN SEE SOME OF THEIR SUGGESTIONS REFLECTED IN POLICIES, PROCEDURES, POST ORDERS AND HOW THE FACILITY OPERATES.

A CONCERN AT ALL INSTITUTIONS, INCLUDING FORT PILLOW, WAS THE LACK OF INPUT AND CONTACT THEY HAVE ON THEIR FISCAL AND HUMAN RESOURCES. THE ARBITRARY CHANGES IN BOTH AREAS ARE DICTATED BY THOSE OUTSIDE THE INSTITUTION. AS AN EXAMPLE, I ASKED WHAT THE CONSTRUCTION WAS FOR NEXT TO THE MAIN BUILDING. I WAS TOLD THAT THEY WERE BUILDING AN ELEVATOR. I ASKED WHY OF SEVERAL PEOPLE INCLUDING THE WARDEN AND THE ONLY REASON ANYONE GAVE ME WAS, "IT'S TO GET STABBING AND ASSAULT VICTIMS TO THE MEDICAL SERVICES AREA FASTER." I ASKED AND WAS TOLD THE PRICE TAG WAS $125,000. I ASKED WHO REQUESTED IT AND NOBODY WAS SURE EXCEPT THAT IT WAS AUTHORIZED BY THE DEPARTMENT. IT OCCURS TO ME THAT THE $125,000 COULD BE BETTER SPENT TO ADDRESS THE PROBLEMS THAT CONTRIBUTE TO THE ASSAULTS AND STABBINGS, AS OPPOSED TO BUILDING AN ELEVATOR TO IMPROVE THE EFFICIENCY OF CARING FOR THE VICTIMS OF ASSAULTS. THIS COULD BE VIEWED AS THE LEVEL OF VIOLENCE IS EXPECTED TO CONTINUE. I SUSPECT A NEW GROUND LEVEL INFIRMARY (WITHOUT LEAKING CEILINGS) MAY HAVE BEEN A BETTER INVESTMENT.

SUMMARY

THE WARDEN, HIS ADMINISTRATIVE STAFF AND THE MAJORITY OF SUPERVISORY AND LINE STAFF (GIVEN THAT OVER HALF OF THEM HAVE LESS THAN A YEAR'S EXPERIENCE) APPEAR TO BE COMPETENT AND CONCERNED PEOPLE. I BELIEVE IT FAIR TO SAY THAT THEY ARE CURRENTLY DEMORALIZED. THEY APPEAR TO FEEL ISOLATED AND SOMEWHAT ABANDONED. THEY DON'T HAVE A SENSE THAT THE AGENCY LEADERSHIP IS SENSITIVE, UNDERSTANDING AND SUPPORTIVE OF WHAT THEY ARE ATTEMPTING TO ACCOMPLISH WITH VERY LIMITED FACILITIES AND RESOURCES. I DON'T SENSE THAT THE TURNOVER OF STAFF WAS ALL BAD. A LARGE PERCENTAGE OF THE CURRENT STAFF FEEL THAT SOME OF THE STAFF THAT EITHER LEFT OR WERE TERMINATED CONTRIBUTED IN PART TO SOME OF THEIR PAST PROBLEMS.

THERE IS AN UNDERLYING SENSE OF FEAR AMONG SOME OF THE INMATE POPULATION, BUT THE INSTITUTION HAS NOT REACHED THE POINT OF HIGH TENSION AND RAMPANT FEAR AMONG THE MAJORITY OF INMATES. I ATTRIBUTE THIS TO THE HARD WORK AND INVOLVEMENT OF STAFF AT ALL LEVELS WITH THE INMATES. THE TENSION LEVELS ARE QUITE HIGH IN ALL OF THE DORMITORY SETTINGS, ESPECIALLY IN C-BUILDING AND IN SEGREGATION. I WOULD RECOMMEND THAT THE WARDEN AND HIS IMMEDIATE HIGH LEVEL PROGRAM AND SECURITY STAFF VISIT ALL THE UNITS REGULARLY. HOWEVER, THE SEGREGATION UNIT SHOULD BE VISITED BY THE WARDEN AND OTHER TOP ADMINISTRATORS AT LEAST TWICE A WEEK. THE STAFF NEED SUPPORT - THE INMATE POPULATION IN SEGREGATION IS HOSTILE AND ANGRY. I BELIEVE INCREASED DIALOGUE WITH BOTH THE INMATES AND STAFF, ALONG WITH THE NECESSARY CHANGES IN THE CONSTRUCTION OF THE UNIT, AND BUILDING A MORE SUITABLE OUTSIDE EXERCISE AREA, WILL REDUCE TENSIONS IN THE UNIT. IN RELATION TO THE ALLEGATIONS OUTLINED IN MR. BONNYMAN'S JANUARY 31, 1985 LETTER TO ME, I WAS UNABLE, IN THE TIMEFRAME I HAD TO WORK WITH, TO REACH ANY ABSOLUTELY CONCLUSIVE FINDINGS. I CAN, HOWEVER, REPORT THAT IN MY JUDGEMENT IF IN FACT THERE WERE SERIOUS ASSAULTS ON INMATES IN B-1, SEGREGATION ON JANUARY 13, 1985, AND IF IN FACT AFTER THEY WERE BEATEN, THEY WERE RUN THROUGH THE SHOWERS, AND RETURNED TO THEIR CELLS DRIPPING WET AND

SUMMARY (CONT'D)

NAKED, IT WOULD IN MY PAST EXPERIENCE, BEEN A MATTER WHICH WOULD HAVE BEEN UPPER MOST IN THE MINDS OF THE INMATES IN SEGREGATION THAT I INTERVIEWED. THIS WAS NOT THE CASE. THEY ALL TALKED ABOUT OTHER PROBLEMS AND PERSONAL ISSUES FIRST, AND ONE MENTIONED THAT INCIDENT, BUT DID NOT STATE THAT HE HAD SEEN FIRSTHAND, ANY OF THE ALLEGATIONS THAT HE MADE DURING THE INTERVIEW.

I ALSO INTERVIEWED LT. PERRY SANDERS WHO LED THE STAFF THAT NIGHT IN GETTING CONTROL OF THE UNIT AND SEARCHING IT. HE CONVINCINGLY STATES THAT HE WAS IN THE UNIT (NEVER LEFT) FROM 7:30 P.M., JANUARY 13, 1985, UNTIL 6:00 A.M., JANUARY 14, 1985. HE DID STATE THAT THE B-BUILDING MAJOR LEADERS WERE TAKEN FROM THEIR CELLS, HANDCUFFED AND PLACED IN THE SHOWERS, AND THAT THE SHOWER DOOR WAS LOCKED. HE STATED THAT THE SHOWERS WERE NOT TURNED ON AT THE TIME. THEY SEARCHED THE INMATES, THEIR CELLS AND REMOVED THE BEDS AND WALL LOCKERS, AND EACH INMATE WAS GIVEN A SET OF CLOTHES AND A MATTRESS AND RETURNED TO HIS CELL. MEDICAL STAFF CAME TO THE UNIT AND EXAMINED THE INMATES BECAUSE INITIALLY A FEW OF THE INMATES PHYSICALLY RESISTED, BUT MEDICAL STAFF FOUND NO SERIOUS INJURIES. SOME OF THOSE WHO RESISTED DID HAVE A FEW BRUISES AND ONE'S LEG WAS BRUISED. I WOULD SUGGEST THAT LT. SANDERS BE GIVEN A POLYGRAPH BASED ON WHAT HE TOLD ME, AND IF THERE IS NO INDICATION OF DECEPTION, IT WOULD BE SAFE TO CONCLUDE THAT THE INMATES MAY HAVE FABRICATED, EXAGGERATED AND/OR DISTORTED WHAT OCCURRED DURING THE DISTURBANCE ON JANUARY 13, 1985.

I ALSO FOUND ALOT OF FRUSTRATION AMONG STAFF ABOUT SO MANY DIFFERENT PEOPLE FROM CENTRAL OFFICE TELLING THEM WHAT TO DO. MANY TIMES THE DIRECTION FROM ONE CENTRAL OFFICE SOURCE WAS CONTRADICTORY TO THE ORDERS FROM ANOTHER CENTRAL OFFICE SOURCE.

THE LINE STAFF WERE QUITE UPSET BY A RECENT RULING BY A FEDERAL JUDGE NAMED MCRAE, WHO THEY ALLEGE RULED THAT INMATES MUST FIRST BE GIVEN CONTRABAND BEFORE STAFF CAN CONFISCATE IT. ON ITS FACE, THAT ALLEGATION APPEARS SO BIZARRE THAT IT COULD NOT BE TRUE, E.G., A LOADED GUN IS SENT IN, THE OFFICER MUST FIRST LET THE INMATE TAKE IT INTO HIS POSSESSION BEFORE HE CONFISCATES IT - THIS SHOULD NOT OCCUR UNDER ANY CIRCUMSTANCES. I TALKED WITH SEVERAL SOURCES WHO ALL HAD THE SAME IMPRESSION. IF STAFF ARE MISINFORMED, THIS SHOULD BE CLARIFIED FOR THEM. IF THEY ARE CORRECT, THE CONSEQUENCES OF SUCH A RULING SHOULD BE BROUGHT TO THE COURT'S ATTENTION THROUGH THE ATTORNEY GENERAL'S OFFICE.

I DON'T DETECT ANY SIGNIFICANT RACIAL ANTAGONISM AMONG STAFF OR INMATES. I DID, HOWEVER, GET SOME COMMENT FROM A FEW WHITE INMATES WHO FELT THE BLACKS WERE PERMITTED TO MONOPOLIZE THE GYM AND RECREATION FACILITIES. THEY WERE UPSET ABOUT THE SITUATION, BUT NOT, AT LEAST AT THAT TIME, CONSIDERING VIOLENCE.

I NOTED SOME SECURITY BREACHES IN RELATION TO MINIMUM SECURITY INMATES HOUSED IN VARIOUS LOCATIONS AROUND THE INSTITUTION PROPERTY, AND I AM CONFIDENT WARDEN DAVIS WILL BE ADDRESSING THOSE PROBLEMS.

THERE IS MUCH TO IMPROVE UPON AT FORT PILLOW, AND I BELIEVE THAT THE WARDEN AND HIS STAFF ARE CAPABLE OF MAKING THE IMPROVEMENTS. THERE IS ALSO MUCH THAT NEEDS TO BE DONE AT FORT PILLOW AND THE OTHER INSTITUTIONS WHICH REQUIRE SUPPORT AND RESOURCES.

SUMMARY (CONT'D)

TOTALLY AUTONOMOUS OPERATION OF INSTITUTIONS IS NOT DESIRABLE, HOWEVER, IT IS NECESSARY TO GIVE A CHIEF EXECUTIVE OFFICER (WARDEN) CONTROL OVER HIS STAFF AND BUDGET, WHILE HOLDING HIM ACCOUNTABLE AND COMMUNICATING DIRECTIVES TO HIS STAFF THROUGH HIM. FROM WHAT I HAVE OBSERVED AT FORT PILLOW AND THE OTHER FACILITIES, THERE IS ENTIRELY TOO MUCH INVOLVEMENT OF CENTRAL OFFICE STAFF WITH INSTITUTION STAFF, BYPASSING THE INSTITUTION HEADS. THE END RESULT IS STAFF ARE CONFUSED, THE WARDEN'S AUTHORITY AND CONTROL OVER HIS STAFF AND BUDGET IS ERODED, YET HE IS HELD DIRECTLY ACCOUNTABLE FOR ALL OF THE OUTCOMES AT THE INSTITUTION.

IN CONCLUSION, I AGAIN EMPHASIZE THAT PLACING MEDIUM SECURITY INMATES (OR EVEN "LIGHT WEIGHT MEDIUMS") IN ONE OF THE MINIMUM SECURITY DORMITORIES, IS NOT A LONG RANGE WISE MOVE. THE TWO DORMITORIES AND THE CURRENT LEVEL OF SECURITY AFFORDED IN THAT AREA, ARE MOST SUITED TO MINIMUM SECURITY INMATES. THEY, HOWEVER, SHOULD BE ISOLATED FROM THE GENERAL POPULATION AND THAT CAN BE ACCOMPLISHED BY BUILDING ANOTHER RELATIVELY INEXPENSIVE UNIT FOR DINING, VISITING, ETC.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*REDUCE OVERCROWDING AS INDICATED IN THIS INSTITUTION REPORT AND CONSISTENT WITH THE RECOMMENDATIONS IN THE OVERVIEW.
*VACATE C-1 AND C-2 DORMITORIES BEFORE THE HOT SUMMER MONTHS.
*REMODEL AND ADD SPACE TO C-BUILDING FOR ACADEMIC, VOCATIONAL PROGRAMMING, AND INDOOR MULTI-PURPOSE DAYROOM, LEISURE TIME, RECREATION, ART AND CRAFT SPACES. THE EVENING AND WEEKEND USE OF THE MULTI-PURPOSE INDOOR SPACE SHOULD BE SCHEDULED TO PROVIDE EQUAL AND CONTROLLED ACCESS AND APPROPRIATE STAFF SUPERVISION.
*SECURITY SYSTEMS AND PRACTICES FOR ALL UNITS NEED TO BE CAREFULLY RE-EVALUATED. STAFFING SHOULD BE INCREASED AS INDICATED TO PROVIDE SUFFICIENT SECURITY, INMATE CONTROL AND ACCOUNTABILITY AND TO ENHANCE THE LEVEL OF SAFETY FOR STAFF AND INMATES. THE CURRENT STAFFING AND PROCEDURES ARE EXTREMELY DANGEROUS AND IF EXPLOITED BY THE INMATES, COULD LEAD TO A VERY SERIOUS, MAJOR INCIDENT.
*AT A MINIMUM, ONE ADDITIONAL STAFF MUST BE ASSIGNED TO EACH TWO UNITS IN THE MAIN INSTITUTION. THE OFFICER'S DUTIES OUTLINED IN THIS REPORT SHOULD BE IMPLEMENTED.
+A DEPARTMENT-WIDE EXPLORATION OF TEMPORARY PRODUCTION WORK OR CONTRACTS DURING IDLE PERIODS DUE TO WEATHER CONDITIONS IS RECOMMENDED.
*IF MEDIUM SECURITY INMATES ARE GOING TO BE HOUSED IN UNIT 1 OR UNIT 2, THE SECURE RAZOR RIBBON DOUBLE FENCE PERIMETER SHOULD EXTEND AROUND THESE UNITS.
*ONLY "SELECT" MEDIUM SECURITY INMATES SHOULD BE HOUSED IN C-1 AND C-2 DORMITORIES UNTIL THEY ARE VACATED.
*WHILE DORMITORIES ARE IN USE, THERE SHOULD BE 24 HOUR A DAY, 7 DAY A WEEK SUPERVISION IN EACH OF THE DORMITORIES.
*AS A TEMPORARY SOLUTION, I CONCUR WITH THE EXTRA OFFICER ASSIGNED TO THE TOWER NEAR THE UNIT, HOWEVER, IF MEDIUM SECURITY INMATES ARE GOING TO BE HOUSED IN THIS AREA, THE TOWER SHOULD BE RE-LOCATED AND ELEVATED AS INDICATED.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*ERECT A THIRD BUILDING FOR THE MINIMUM SECURITY DORMITORIES #1 & #2 FOR A SMALL FOOD SERVICE AREA, DINING ROOM, LIBRARY, DAYROOM. THE DINING AREA SHOULD BE USED FOR VISITING ON WEEKENDS BEFORE AND AFTER MEALS. INSTALL A SEPARATE OUTSIDE SALLYPORT AND ELIMINATE THE NEED TO MIX MINIMUM SECURITY INMATES WITH THE GENERAL POPULATION OF THE MAIN INSTITUTION FOR FEEDING, VISITING AND RECREATION.
*EXPAND OUTSIDE CONCRETE PADS FOR BASKETBALL AND HANDBALL COURTS.
*IF SELECTED MEDIUM SECURITY INMATES ARE HOUSED IN DORMITORY 1, THEY MUST BE KEPT SEPARATED FROM THE MAIN INSTITUTION. IT IS RECOMMENDED, HOWEVER, THAT THE UNIT BE MAINTAINED AS A MINIMUM SECURITY UNIT.
*INCREASE PERIMETER SECURITY OF LARGE BALLFIELD.
*CONDUCT FORMAL INSTITUTION COUNTS AT STRATEGIC TIMES DURING THE DAY (A NOON COUNT IS ABSOLUTELY ESSENTIAL).
*SECURE THE PERIMETER WITH A RAZOR RIBBON DOUBLE FENCE.
*INSTALL A SECURE AND ADEQUATE TRAP GATE WITH CRASH BARRIERS AND A SPACE LARGE ENOUGH TO ACCOMMODATE A TRACTOR TRAILER, SO BOTH GATES ARE NOT OPENED AT THE SAME TIME.
*ELEVATE THE TOWER FOR BETTER SUPERVISON OF THE GATE AND THE YARD.
*REPAIR ROOF LEAKS.
*WALLS (A-1, 2, 3, B-1, 2, 3) NEED TO BE CONCRETE FILLED OR STEEL REINFORCED IF THE INSTITUTION IS GOING TO CONTINUE TO HOUSE CLOSE AND MAXIMUM CUSTODY INMATES.
*BAR THE WINDOWS ON ALL UNITS.
*GANG SHOWER AREAS NEED SUPERVISION, BETTER LIGHTING AND SIGNIFICANT REPAIRS NEED TO BE MADE ON THE PLUMBING IN THE INTERIM. LONG RANGE PLANNING SHOULD INCLUDE SECURING THE FUNDS TO LOCATE SHOWERS IN EACH UNIT AND CONVERTING THE VACATED GANG SHOWER SPACE TO RECREATION AND LEISURE TIME SPACE, WHICH SHOULD BE PROVIDED WITH SUFFICIENT STAFF SUPERVISION TO MONITOR AND CONTROL INMATE ACTIVITIES.
*DEVELOP AND IMPLEMENT A PREVENTATIVE MAINTENANCE PLAN.
+HIRE 5 SKILLED TRADESMEN IN THE MAINTENANCE DEPARTMENT TO PERFORM NECESSARY DAY-TO-DAY REPAIR AND MAINTENANCE FUNCTIONS AS INDICATED.
+EVALUATE AND TERMINATE THOSE MAINTENANCE STAFF WHO WERE HIRED TO PERFORM SKILLED FUNCTIONS, BUT DO NOT HAVE THE SKILLS TO PERFORM THE FUNCTIONS THAT THEY WERE HIRED TO PERFORM.
*STOP THE PRACTICE OF INMATES FROM THE INSTITUTION'S GENERAL POPULATION PERFORMING JANITORIAL FUNCTIONS IN SEGREGATION OR IN OR AROUND THE ADMINISTRATIVE OFFICES.
*HIRE ONE STAFF JANITOR TO PROVIDE JANITORIAL SERVICES FOR THE ADMINISTRATIVE OFFICES AND THE SEGREGATION UNIT.
*RE-EVALUATE ALL VISITING ROOM POLICIES, PROCEDURES AND SECURITY DIRECTIVES, AND DEVELOP POLICIES AND PROCEDURES CONSISTENT WITH THE RECOMMENDATIONS IN THIS REPORT.
*PROVIDE FOR SEPARATE BATHROOMS FOR VISITORS AND INMATES.
*DISCONTINUE INMATE RUNNERS FROM ENTERING THE VISITING ROOM.
*SECURE OUTSIDE EXERCISE AREAS.
*PROVIDE PROGRAMMING FOR ADMINISTRATIVE SEGREGATION INMATES CONSISTENT WITH STANDARDS FOR SPECIAL MANAGEMENT INMATES.
*MINIMUM AND CLOSE OR MAXIMUM CUSTODY INMATES SHOULD BE SEGREGATED AT ALL TIMES.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*INSTALL HIGH MAST LIGHTING FOR THE YARD WITH CONTROL IN TOWER #2.
*INCREASE COUNSELING STAFF TO PROVIDE MAXIMUM CASELOADS OF 70 INMATES PER COUNSELOR.
+ONE COUNSELOR SHOULD BE ASSIGNED FULL TIME TO THE SEGREGATION UNIT.
+ONE COUNSELOR SHOULD BE ASSIGNED TO THE RE-CLASSIFICATION AREA.
*EXPLORE DEPARTMENT-WIDE INCENTIVES FOR INMATES WHO CANNOT PASS BASIC EDUCATION COMPETENCIES AND FOR THOSE WHO DO NOT HAVE A HIGH SCHOOL EQUIVALENCY.
*IMPLEMENT ACADEMIC, VOCATIONAL, LIBRARY AND RECREATIONAL RECOMMENDATIONS OF DR. OSA COFFEY.
*DEVELOP A SYSTEM WHEREBY ALL SENTENCES ARE COMPUTED AND UP-TO-DATE, AND THAT THIS PROCESS IS DONE AT THE INSTITUTION.
*HIRE A QUALIFIED PHYSICAL EDUCATION STAFF PERSON AND TWO RECREATION STAFF TO PLAN, COORDINATE AND EQUALLY INVOLVE ALL INMATES IN ACTIVITY PROGRAMS.
*ADEQUATELY EQUIP THE WEIGHT ROOM NEAR THE SHOWERS, AND INCREASE THE LIGHTING AND SUPERVISION OF THIS AREA.
+RE-LOCATE THE PICNIC AREA AS INDICATED TO IMPROVE SECURITY, SURVEILLANCE AND CONTROL IN THE PICNIC AREA.
+REPLACE TORN SCREENS IN C-BUILDING.
*SEARCH ALL T.V.'S AND RADIOS PRIOR TO THEIR ENTERING THE FACILITY.
*IT IS RECOMMENDED THAT A DAILY WARDEN'S MEETING TAKE PLACE AS SUMMARIZED IN THE SUMMARY OVERVIEW.
*EXPAND WATCH BRIEFING FORMAT TO BRING STAFF UP-TO-DATE ON INSTITUTION ACTIVITIES.
+IMPLEMENT A POST ORDER AND JOB DESCRIPTION REVIEW BY STAFF ON A ROUTINE BASIS.
+ERECT A NEW GROUND LEVEL INFIRMARY.
*THE WARDEN AND OTHER KEY STAFF NEED TO INCREASE THE FREQUENCY AND AMOUNT OF TIME THEY SPEND IN THE INSTITUTION. IT SHOULD BE A HIGH PRIORITY OF ADMINISTRATIVE STAFF TO GET INTO THE INSTITUTION TO INCREASE AND ENHANCE THE QUALITY OF COMMUNICATIONS WITH STAFF AND INMATES.
*GIVE THE INMATES MAKING THE ALLEGATIONS ABOUT THE JANUARY 13, 1985 INCIDENT POLYGRAPH EXAMS. IF THEY ARE POSITIVE, I BELIEVE LT. SANDERS WOULD VOLUNTEER FOR A POLYGRAPH EXAM TO PUT THE ALLEGATION TO REST.
*DETERMINE THE ACCURACY AND INTERPRETATION OF THE FEDERAL JUDGE RULING ON CONTRABAND CONFISCATION, AND THEN APPEAL THE RULING IF DEEMED INAPPROPRIATE BY THE DEPARTMENT AND THE ATTORNEY GENERAL'S OFFICE.
*LIQUIDATE ALL COMP TIME.
*STAFF MUST BE SUPPORTED AND REPRESENTED BY THE DEPARTMENT'S LEGAL COUNSEL IN LAWSUITS AGAINST THEM.
*STAFF MUST BE PROVIDED BY INSURANCE COVERAGE WHEN USING STATE VEHICLES.
*I WOULD NOT SUPPORT THE CONTINUATION OF DOUBLE CELLING IN THE A AND B CELL BLOCKS UNDER THE CURRENT CONDITIONS THAT EXIST AT THIS TIME. VERY LIMITED AND RESTRICTED DOUBLE CELLING IN THESE 120 SQUARE FEET CELLS COULD ONLY BE CONSIDERED AFTER THE IDLENESS, STAFF SUPERVISION, PHYSICAL PLANT DEFICIENCIES AND THE CLOSING OF C DORMITORIES HAVE BEEN ACCOMPLISHED.

WF TENNESSEE RECEPTION CENTER
(PROPOSED PRE-RELEASE PROGRAM - EVALUATION)

IN A LETTER DATED FEBRUARY 4, 1985, SPECIAL MASTER, PAT MCMANUS, REQUESTED THAT I INCLUDE IN MY ON-SITE VISIT TO FORT PILLOW, A BRIEF VISIT TO THE WEST TENNESSEE RECEPTION CENTER. IN HIS LETTER, HE REQUESTED THAT I INSPECT THE DORMITORIES TO DETERMINE THEIR UTILITY FOR HOUSING INMATES IN A PROPOSED PRE-RELEASE PROGRAM AT THE WEST TENNESSEE RECEPTION CENTER. I ALSO RECEIVED A MEMORANDUM FROM JIM ROSE, DATED FEBRUARY 14, 1985, OUTLINING THE PROPOSAL AND SOME ATTACHMENTS, WHICH ESSENTIALLY CONSISTED OF DAILY SCHEDULES AND OUTLINES OF PROGRAM SPECIFICS.

MY TASK, AS I VIEWED IT, WAS TO DETERMINE WHAT WAS BEING PROPOSED FOR THESE DORMITORIES LOCATED OUTSIDE OF THE SECURE PERIMETER OF THE FACILITY, AND TO ASSESS THE LOGIC, PRACTICALITY AND FEASIBILITY OF THE PROPOSAL, AS WELL AS THE APPROPRIATENESS OF THE PHYSICAL FACILITIES TO BE USED FOR THE PROGRAM.

I ARRIVED AT THE INSTITUTION ON THURSDAY, FEBRUARY 21, 1985, AND WAS MET BY ASSOCIATE WARDENS SAM BACHELOR, WILLIAM TIPTON AND WALTER CHAPUIS.

FROM MY DISCUSSIONS WITH ASSOCIATE WARDEN BACHELOR AND ASSOCIATE WARDEN TIPTON, I WAS INFORMED OF THE FOLLOWING:

1) INMATES WHO HAD SEEN THE PAROLING AUTHORITY AND WERE SCHEDULED FOR PRE-RELEASE WOULD BE PLACED IN THE UNITS WHICH PREVIOUSLY HAD BEEN USED FOR WORK RELEASE.

2) INMATES AWAITING RELEASE AUTHORITY DECISION (PRE-PAROLE) WOULD BE HELD IN ANOTHER LOCATION AT THE FACILITY UNTIL THEY HAD SEEN THE BOARD.

3) INMATES WORKING AT THE RECEPTION CENTER AS FOOD SERVICE WORKERS, LAUNDRY, INSIDE MAINTENANCE, JANITORS, ETC., WOULD ALSO BE PLACED IN THE DORMITORIES WITH THOSE WHO WERE ASSIGNED TO PRE-RELEASE.

4) THE FORMER WORK RELEASE DORMITORIES WHICH WERE SCHEDULED TO BECOME THE NEW PRE-RELEASE UNITS WERE SCHEDULED TO BE SECURED BY BEING INCLUDED IN THE SECURE PERIMETER OF THE WEST TENNESSEE RECEPTION CENTER WITH A DOUBLE FENCE, RAZOR RIBBON, CONSTRUCTION OF A NEW TOWER TO BE MANNED 24 HOURS A DAY, SEVEN DAYS A WEEK AND A CHECK POINT POST WHICH ALSO WAS TO BE MANNED. THE NEW FENCE WAS ALSO GOING TO BE EQUIPPED WITH AN ELECTRONIC SURVEILLANCE DEVICE WHICH WOULD PROVIDE A WARNING IN THE EVENT OF ATTEMPTED ESCAPE OR INTRUSION.

5) THE EXISTING KITCHEN FACILITIES IN THE CENTER OF THESE FOUR CONNECTED DORMITORIES WAS BEING DISMANTLED (2 UNITS BUILT IN 1976; 2 OTHERS COMPLETED IN 1982) AND SCHEDULED TO BE SHIPPED TO STATE SURPLUS.

6) THE PRE-RELEASE INMATES (ALREADY APPROVED FOR RETURN TO THE COMMUNITY AND OUTSIDE WORK WITH THE CONSERVATION DEPARTMENT IN STATE PARKS) ALONG WITH THE OTHER INMATES WORKING IN INSTITUTION SUPPORT ASSIGNMENTS, WILL BE SCHEDULED TO EAT IN THE RECEPTION CENTER DINING FACILITIES AND HAVE SCHEDULED USE OF THE RECREATION AND GYM FACILITIES IN THE MAIN FACILITY.

THE LOGIC BEHIND SOME OF THE PROPOSED CHANGES APPEARS TO STEM FROM PROBLEMS ENCOUNTERED WITH THE WORK RELEASE INMATES (ARMED ROBBERIES, ESCAPES, ETC.). I WAS ADVISED THAT STAFF EXPERIENCED A GREAT DEAL OF DIFFICULTY HOLDING INMATES ACCOUNTABLE FOR THEIR BEHAVIOR AT THAT TIME. WHEN ONE OF THE INMATES VIOLATED CONDITIONS OR RULES, IT WAS NEXT TO IMPOSSIBLE TO PUT HIM BACK INSIDE THE FENCE. THE INMATES QUICKLY REALIZED THAT THE STAFF'S HANDS WERE TIED, WHICH I BELIEVE EXPLAINS IN PART, SOME OF THE PROBLEMS THEY EXPERIENCED AND THE PREDICTABLE COMMUNITY REACTION. THE DEPARTMENT HAS THE RESPONSIBILITY OF HOLDING INMATES ACCOUNTABLE IN ANY SETTING, BUT THAT RESPONSIBILITY TO THE COMMUNITY INCREASES WHEN YOU ARE PLACING ANY INMATE IN A MINIMUM SECURITY, WORK RELEASE OR PRE-RELEASE SETTING. THE MISSION FOR THE DEPARTMENT IS TO DETERMINE IF AN INMATE WITH DIMINISHED SUPERVISION AND PHYSICAL CONTROLS HAS THE CORRESPONDING ESSENTIAL INTERNAL CONTROLS TO BE AN ACCEPTABLE RISK FOR RETURN TO THE COMMUNITY. THE SYSTEM MUST BE DESIGNED TO IMMEDIATELY RESPOND TO ANY DEVIATION AND HOLD THE INMATE ACCOUNTABLE FOR THOSE DEVIATIONS, INCLUDING RECOMMENDING DELAYED OR REVOKED PAROLE STATUS.

AS I POINTED OUT IN MY PHONE CONVERSATION WITH THEN COMMISSIONER PELLEGRIN AND ASSISTANT COMMISSIONER BISHOP, AND ALSO TO MR. MCMANUS AND ATTORNEYS SOUTHWORTH AND BONNYMAN DURING THE FEBRUARY 26, 1985 STATUS CONFERENCE, I WAS OPPOSED TO THE PROPOSED PLAN AND THE MASSIVE EXPENDITURES FOR SECURITY HARDWARE. I WAS ALSO OPPOSED TO THE LONG-TERM COMMITMENT OF STAFFING ANOTHER TOWER AND CHECKPOINT TO GUARD THOSE INMATES THAT THE TENNESSEE DEPARTMENT OF CORRECTIONS AND THE PAROLING AUTHORITY HAVE ALREADY DETERMINED WILL BE RELEASED TO THE COMMUNITY.

WITH FEW EXCEPTIONS, I FOUND THE FACILITIES TO BE EXCELLENT. THE SQUARE FOOTAGE, WHILE NOT THE REQURIED 60 SQUARE FEET OF USABLE SPACE PER INMATE, IS VERY CLOSE AT 56 SQUARE FEET. IF YOU ADD THE SPACE OF THE AISLES, I BELIEVE IT IS ADEQUATE. THE FACILITIES ARE AIR-CONDITIONED, EQUIPPED WITH AMPLE TOILET AND SHOWER FACILITIES, A SMALL BUT ADEQUATE LAUNDRY, SMOKE DETECTORS, WORKING ALARM SYSTEMS, PANIC HARDWARE ON THE DOORS, A DRY HEAD SPRINKLER SYSTEM AND ALL OF THE REQUIRED LIFE SAFETY FEATURES. THE BUILDINGS, AS I SAID, WERE BUILT IN 1976 AND 1982 AND APPEAR TO HAVE BEEN WELL MAINTAINED. THE DORMITORIES ARE PARTITIONED INTO 56 SQUARE FEET CUBICLES AND HAVE ELEVATED STAFF DUTY STATIONS IN EACH OF THE FOUR 30-MAN DORMITORIES. I RECOMMEND THAT THEY NOT BE INCREASED TO 45-MAN DORMITORIES.

THE PHYSICAL FACILITIES WOULD ACCOMMODATE CLASSROOM SPACES IN THE EXISTING DAYROOMS, CONFERENCE ROOMS AND THE EXISTING DINING ROOM. THESE SPACES COULD BE SCHEDULED FOR AND EFFICIENTLY SERVE MORE THAN ONE NEED IF USED AS MULTI-PURPOSE AREAS. IF THE INMATES ARE SCHEDULED TO BE IN THE PRE-RELEASE CLASSROOM TRAINING, THEY WILL NOT NEED THE DAYROOM AT THAT TIME. WHEN THE INMATES ARE NOT USING THE DINING ROOM, IT COULD SERVE AS A CLASSROOM. WHEN STAFF ARE NOT USING CONFERENCE SPACES, THEY CAN BE USED FOR SMALL GROUPS, ETC. IF IT IS A PROPOSED PRE-RELEASE CENTER FOR THOSE WHO HAVE BEEN GRANTED PAROLE, IT SHOULD BE USED EXCLUSIVELY FOR 120 PRE-RELEASE RESIDENTS. THEY SHOULD NOT BE WRAPPED IN THE SECURE PERIMETER OF THE RECEPTION CENTER, NOR SHOULD THE TOWERS AND CHECKPOINTS BE BUILT. THESE PRECAUTIONS SHOULD NOT BE NEEDED FOR INDIVIDUALS THAT THE DEPARTMENT AND THE BOARD HAVE INDICATED ARE READY TO RETURN TO THE

COMMUNITY. IF THESE CONTROLS ARE NEEDED FOR PRE-PAROLEES, ARE THEY READY TO RETURN TO THE FREE COMMUNITY?

THOSE INMATES ON WHOM THE BOARD HAS NOT YET ACTED SHOULD REMAIN AT OTHER FACILITIES OR INSIDE THE RECEPTION CENTER PERIMETER UNTIL THEY ARE GRANTED PRE-RELEASE OR PAROLE STATUS.

THE KITCHEN FACILITIES SHOULD BE RESTORED AND IF IT IS LESS EXPENSIVE TO PREPARE THE FOOD IN THE MAIN KITCHEN FACILITY FOR SOME OF THE MEALS, THEY CAN BE TRANSPORTED TO THE PRE-RELEASE UNIT.

NONE OF THE INSIDE INMATE WORKERS FROM THE RECEPTION CENTER SHOULD BE HOUSED IN THE OUTSIDE UNITS. THE GROUNDSKEEPING WORK OUTSIDE THE SECURE PERIMETER COULD BE ASSIGNED TO THE PRE-RELEASE INMATES.

THE INMATES ASSIGNED TO PRE-RELEASE SHOULD HAVE VERY STRICT RULES AND HIGH BEHAVIORAL EXPECTATIONS. WHEN THEY FAIL TO CONDUCT THEMSELVES CONSISTENT WITH WHAT WOULD BE EXPECTED, THERE SHOULD BE A CLIMATE OF SWIFT AND ABSOLUTE CONSEQUENCES. FIVE OR TEN SEGREGATION CELLS IN THE RECEPTION CENTER SHOULD BE AVAILABLE FOR DETENTION PURPOSES. THIS WILL ENSURE A NO NONSENSE CLIMATE OF ACCOUNTABILITY AND THE INMATES WILL GET THE MESSAGE QUICKLY. ULTIMATELY, YOU MAY ONLY NEED ONE OR TWO CELLS SET ASIDE IN THE RECEPTION CENTER-SEGREGATION UNIT FOR THIS PURPOSE. IF THE BEHAVIOR IS SERIOUS ENOUGH, IT SHOULD BE PRE-ARRANGED WITH THE BOARD WHICH BEHAVIORS WILL MEAN DELAYED PAROLE OR PAROLE REVOCATION. UNDER THESE CONDITIONS, PRE-RELEASE INMATES WILL BE PROTECTED FROM EXPLOITATION BY THE GENERAL POPULATION INMATES AND THE POTENTIAL OF CONTRABAND BEING SMUGGLED INTO THE RECEPTION CENTER WILL BE SIGNIFICANTLY REDUCED. THE DEPARTMENT WILL HAVE FULFILLED ITS RESPONSIBILITY TO THE COMMUNITY TO DETERMINE WHETHER OR NOT THE PRE-RELEASEE HAS THE REQUIRED SELF-CONTROL, GOOD JUDGMENT AND RESTRAINT TO BE AN ACCEPTABLE RISK IN THE COMMUNITY. THE DEPARTMENT WILL NOT SPEND LIMITED RESOURCES ON MORE SECURITY WHERE IT IS CLEARLY NOT APPROPRIATE AND DEFENSIBLE. THE TAXPAYERS AND CITIZENS WILL KNOW THAT THE TENNESSES DEPARTMENT OF CORRECTIONS AND THE BOARD TAKE THEIR RESPONSIBILITY FOR PUBLIC SAFETY SERIOUSLY, AND ULTIMATELY THOSE SCHEDULED FOR RELEASE WILL ALSO KNOW THAT NOT WHAT THEY SAY, BUT THEIR BEHAVIOR AND SELF-CONTROL WILL DETERMINE THEIR READINESS TO RETURN TO THE COMMUNITY.

AT THE TIME THE ENTIRE DRAFT REPORT (INCLUDING THE REPORT ON THIS INSTITUTION) WAS PROVIDED (APRIL 16, 1985) TO THE DEPARTMENT SPECIAL MASTER, THE ATTORNEYS AND EVALUATORS, A BRIEF DISCUSSION WAS HELD BETWEEN MR. BISHOP, MR. ROSE AND I REGARDING MY RECOMMENDATIONS. THE MEETING OCCURRED IN THE UPSTAIRS OFFICES OF I.E.P.S. IN ALEXANDRIA, VIRGINIA, ON TUESDAY AFTERNOON, APRIL 16, 1985. THAT DISCUSSION INCLUDED A VARIETY OF COMPROMISES PROPOSED BY MR. BISHOP AND MR. ROSE. IT WAS MY UNDERSTANDING THAT I WOULD RECEIVE SOME WRITTEN FOLLOW-UP ON THE CONTENT OF THOSE DISCUSSIONS IN ORDER THAT I MIGHT RESPOND AND INDICATE MY SUPPORT AND APPROVAL. SINCE I HAVE NOT RECEIVED THAT CORRESPONDENCE AND HAVING BEEN ADVISED ON JUNE 4, 1985, IN A PHONE CONVERSATION WITH COMMISSIONER NORRIS THAT THE DEPARTMENT DID NOT INTEND TO RESPOND TO THE DRAFT REPORT AS ORIGINALLY AGREED, THE SUMMARY RECOMMENDATIONS WILL NOT REFLECT ANY OF THE PROPOSED COMPROMISES DISCUSSED IN THE BRIEF MEETING OF APRIL 16, 1985.

SUMMARY OF RECOMMENDATIONS

*IT IS RECOMMENDED THAT EXPENDITURES NOT BE APPROVED TO CONSTRUCT A TOWER AND A CHECKPOINT FOR THE PRE-RELEASE CENTER.
*IT IS RECOMMENDED THAT THE PRE-RELEASE CENTER NOT BE ENCLOSED IN THE RAZOR RIBBON DOUBLE SECURITY FENCE PERIMETER OF THE RECEPTION CENTER.
*STAFF RESOURCES SHOULD NOT BE FUNDED OR COMMITTED TO MANNING THESE UNNECESSARY SECURITY POSTS FOR INMATES RETURNING TO THE COMMUNITY.
+THE DORMITORY CAPACITIES SHOULD NOT BE INCREASED TO 45 INMATES.
*THE DORMITORIES SHOULD BE USED EXCLUSIVELY FOR THOSE WHO HAVE BEEN PLACED ON PRE-RELEASE STATUS AND THESE RESIDENTS SHOULD NOT BE ROUTINELY BROUGHT INSIDE THE PERIMETER OF THE FACILITY.
*THE KITCHEN FACILITIES SHOULD BE RESTORED OR THE FOOD SHOULD BE TRANSPORTED FROM THE MAIN KITCHEN TO THE PRE-RELEASE UNIT.
*NO INMATE WORKERS FROM THE RECEPTION CENTER SHOULD BE HOUSED IN THE OUTSIDE UNITS.
*GROUNDSKEEPING WORK OUTSIDE THE SECURE PERIMETER SHOULD BE ASSIGNED TO PRE-RELEASE INMATES.
*STRICT RULES AND HIGH EXPECTATIONS FOR PRE-RELEASE INMATES SHOULD BE PUT INTO PLACE WITH SWIFT AND ABSOLUTE CONSEQUENCES BEING ENFORCED SHOULD ANY OF THESE RULES BE VIOLATED.
*THERE SHOULD BE DETENTION CELLS THAT ARE AVAILABLE INSIDE THE MAIN INSTITUTION FOR VIOLATORS OF PRE-RELEASE RULES.
*IT SHOULD BE PRE-ARRANGED WITH THE PAROLE BOARD AS TO WHICH TYPE OF BEHAVIORS COULD MEAN REVOCATION OF THE PRE-RELEASE STATUS.
*OUTSIDE AND INSIDE EXERCISE FACILITIES SHOULD BE PUT IN PLACE TO PROVIDE PHYSICAL OUTLETS FOR THE PRE-RELEASE INMATES AND TO ELIMINATE THE NEED FOR THE PRE-RELEASE INMATES TO ENTER THE SECURE FACILITY FOR ACCESS TO THESE FACILITIES.

TURNEY CENTER

THE ON-SITE VISIT TO THE TURNEY CENTER STARTED ON MONDAY, MARCH 11, 1985 AND ENDED WITH A PRIVATE EXIT SUMMARY WITH WARDEN LARRY LACK ON TUESDAY EVENING, MARCH 12, 1985.

WHILE ON SITE, I HAD INFORMAL CONVERSATIONS WITH SEVERAL STAFF AND INMATES, BUT HELD STRUCTURED PRIVATE INTERVIEWS WITH THREE INMATES, THE WARDEN AND EIGHT STAFF WHO REPRESENT A CROSS SECTION OF STAFF AT THE FACILITY.

THE INMATE POPULATION AT TURNEY CENTER WAS 857 DURING THE ON-SITE VISIT. THE COURT ESTABLISHED MAXIMUM POPULATION PER WARDEN LACK IS 780. THE ACTUAL SINGLE CELL CAPACITY IS 27 UNITS X 22 CELLS = 594 SINGLE CELLS, PLUS 4 THIRTY BED MINIMUM DORMITORIES IN THE ANNEX FOR AN ACTUAL TOTAL CAPACITY OF 714. BECAUSE OF REPAIRS AFTER A FIRE IN ONE OF THE ANNEX DORMITORIES, AND OTHER VACANT BEDS IN THE ANNEX, 462 INMATES WERE DOUBLE CELLED DURING THE ON-SITE VISIT.

THE FACILITY WAS ORIGINALLY CONCEIVED AND BUILT FOURTEEN YEARS AGO FOR THE PURPOSE OF HOUSING LOW RISK YOUTHFUL OFFENDERS. THE CURRENT INMATE POPULATION OF THE FACILITY IS REPRESENTATIVE OF THE FULL RANGE OF PERSON AND PROPERTY OFFENDERS AND ALL AGE GROUPS. THE STAFF COMPLEMENT FOR THE FACILITY IS 390.

THE CONTOURS OF THE LAND WERE EXCAVATED TO ACCOMMODATE AN ARCHITECTURAL PLAN TO BUILD TWENTY-SEVEN LIVING UNITS ON CONCRETE SUPPORTS (STILTS), WHICH RAISE PORTIONS OF THE LIVING UNITS OFF THE GROUND FROM A VERY SLIGHT ELEVATION, TO THREE OR FOUR STORIES FROM GROUND LEVEL, DEPENDING ON THE DROP IN THE TERRAIN. THE UNITS THEMSELVES ARE CONNECTED TOGETHER IN GROUPS OF TWO OR THREE, WITH THE EXCEPTION OF THE MAXIMUM SECURITY BUILDING WHICH IS A SINGLE UNIT. EACH UNIT HAS TWENTY-TWO ROOMS, AND THOSE UNITS WHICH ARE CONNECTED TOGETHER IN A GROUP OF THREE, WOULD HAVE AN ACTUAL SINGLE ROOM CAPACITY OF 66, HOWEVER, SOME OF THE 3 UNIT COMPLEXES HAD OVER 90 INMATES IN RESIDENCE. THE ROOMS IN THE UNITS ARE NOT EQUIPPED WITH TOILETS OR SINKS. EACH UNIT HAS A GANG SHOWER AND CENTRAL TOILET FACILITIES. THE DOORS ON THE ROOMS ARE HOLLOW CORE WOODEN DOORS, WITH OPEN SPACE AT THE BOTTOM AND TOP TO PERMIT HEATING AND VENTILATION OF THE ROOMS. ALL OF THE COMPLEXES OF 2 or 3 COMBINED UNITS ARE STAFFED WITH ONE OFFICER. THE OFFICER IS EXPECTED TO MAN THE ENTRANCE TO THE UNIT, SEARCH INMATES AS THEY ENTER THE UNIT, KEEP TRACK OF HIS COUNT, ANSWER AND MAKE PHONE CALLS, ISSUE PASSES, LET INMATES OUT AND INTO THEIR ROOMS TO USE THE TOILET, AND TO REPORT TO AND FROM WORK, RECREATION. IN ADDITION, HE MUST MAKE SECURITY CHECKS OF THE UNIT AND MAINTAIN CONTROL AND SECURITY IN THE UNIT. THE OFFICER ALSO DOES THIS DURING THE TIME THAT HE/SHE EATS THEIR MEAL. THE OFFICER'S MEAL IS NOT SERVED WHILE HIS UNIT INMATES ARE FED AT THE CENTRAL DINING LOCATION. OFFICERS WERE OBSERVED DURING THE DAY AND EVENING ATTEMPTING TO EAT THEIR MEALS ON THE RUN WHILE PERFORMING THEIR DUTIES.

THE ROOMS ARE NOT SECURE EXCEPT IN THE MAXIMUM SECURITY BUILDING.

THE INSTITUTION LIVING UNITS ARE THE FILTHIEST, THE WORST MAINTAINED AND MOST NEGLECTED I HAVE SEEN IN OVER THIRTY YEARS OF EXPOSURE TO CONFINEMENT FACILITIES. I STOPPED COUNTING BROKEN WINDOWS AT 100. THE LIGHT FIXTURES, FIRE ALARMS AND SMOKE DETECTION SYSTEMS HAVE ALL BEEN VANDALIZED AND THE

WIRING IS BEING USED BY THE INMATES FOR T.V. ANTENNAS. THE BATHROOMS AND SHOWERS HAVE ALL BEEN VANDALIZED TO VARYING DEGREES. LEAKING SHOWER HEADS, MISSING MIRRORS, BROKEN TILE, AND UNCOVERED DRAINS ARE COMMON.

OF THE MOST IMMEDIATE CONCERN AMONG THE MANY SERIOUS PHYSICAL PLANT PROBLEMS, IS THE FACT THAT IN SOME OF THE CORRIDORS IN THE LIVING UNITS THERE IS NO LIGHT. ALL OF THE UNITS HAVE NUMEROUS LIGHTS THAT ARE NOT OPERATIONAL. (UNITS 12, 13, & 14 ARE THE WORST AMONG THE UNITS, WITH 14 THE WORST OF THOSE THREE UNITS.) INMATES AND OFFICERS MUST WALK DURING THE DAY, EVENING AND AT NIGHT IN THESE CORRIDORS WITHOUT LIGHT. COMBINED WITH THE LIMITED OFFICER COVERAGE, IT WOULD BE FAIR TO SPECULATE THAT ASSAULTS AND RAPES ARE NOT REPORTED, BECAUSE IT IS IMPOSSIBLE FOR ONE OFFICER TO PROPERLY SUPERVISE ONE UNIT, LET ALONE TWO OR THREE.

THE DESIGN OF THE UNIT WOULD NOT BE ACCEPTABLE IN A JUVENILE FACILITY. THE OFFICER IS STATIONED AS HE SHOULD BE AT THE ENTRANCE, BUT CAN ONLY SEE ONE OF THE FOUR CORRIDORS OF ONE UNIT. IN THE TYPICAL COMPLEXES, HE HAS EIGHT TO TWELVE CORRIDORS AND FROM HIS DESK AT THE ENTRANCE, CAN ONLY SEE AND SUPERVISE ONE CORRIDOR. UNIT SECURITY IS OBVIOUSLY POOR AND THE OFFICERS HAVE BEEN INSTRUCTED TO KEEP THE ENTRANCE SECURED, HOWEVER UPON A VISIT TO A COMPLEX MADE UP OF 1, 2 & 3 UNITS, THE DOOR WAS OPEN, AND IT WAS THREE TO FIVE MINUTES BEFORE THE OFFICER RETURNED TO THE DOOR. I SUSPECT THIS IS MORE COMMON THAN WHAT WAS OBSERVED BECAUSE OF THE UNTENABLE CIRCUMSTANCE IN WHICH THE OFFICER FINDS HIMSELF. MY CONCERN FOR UNIT SECURITY AND STAFF AND INMATE SAFETY WAS INCREASED WHEN I VISITED UNITS 23 AND 24, WHICH ARE CONNECTED AND SUPERVISED BY TWO OFFICERS. UNIT 23 IS A VOLUNTARY PROTECTIVE CUSTODY UNIT AND UNIT 24 IS A PUNITIVE SEGREGATION UNIT. THE CELL DOORS IN THESE UNITS ARE NOT SECURE AS IS THE CASE IN THE OPEN POPULATION UNITS. THERE IS A LIGHT WEIGHT GATE LOCKED WITH A PADLOCK SEPARATING THE TWO UNITS. THE CLOSE PROXIMITY AND POOR SECURITY OF THE TWO UNIT COMPLEX, CREATES UNNECESSARY VULNERABILITY TO STAFF AND PROTECTIVE CUSTODY INMATES. THE OFFICER IN THE PUNITIVE SEGREGATION UNIT CARRIES THE KEYS TO EACH OF THE CELL DOORS AND THE PADLOCKED GATE. WHEN I ASKED STAFF ABOUT THE SITUATION, I WAS TOLD THE OFFICER HAS THE KEYS TO THE GATE IN ORDER TO FACILITATE HIS ESCAPE FROM THE UNIT SHOULD HE BE ATTACKED WHEN OPENING THE DOORS FOR SEGREGATION INMATES TO USE THE TOILET FACILITIES. THESE UNITS SHOULD BE REPLACED BUT IN THE INTERIM, SOME OF THE PROBLEMS COULD BE CORRECTED TO MAKE THE UNITS SAFER AND MORE LIVEABLE.

THE DOORS SHOULD BE MODIFIED WITH AN OPENING TO PERMIT THE RESTRAINING OF INMATES PRIOR TO REMOVING THEM FROM THE CELLS. PLACE A SECURE BARRIER BETWEEN THE TWO UNITS AND OPERATE THEM INDEPENDENT OF EACH OTHER.

IN THE INTERIM, HOWEVER, I WOULD RECOMMEND THAT THE OFFICER IN SEGREGATION NOT HAVE A KEY TO THE EXTERIOR DOORS OF THE UNIT. IF HE IS ASSAULTED, IT IS UNLIKELY THAT A KEY TO THAT GATE WILL BE OF ANY HELP TO HIM. BODY ALARMS SHOULD BE PROVIDED TO THE SEGREGATION OFFICER. BODY ALARMS SHOULD BE AN OPTION THAT THE ADMINISTRATION CONSIDERS FOR ALL UNIT STAFF. OPERATION OF THE EXTERIOR DOORS OF THIS UNIT SHOULD BE ASSIGNED TO AN OFFICER OUTSIDE THE UNIT WHO COULD RESPOND AS NEEDED.

IN THE MAXIMUM SECURITY BUILDING, I WOULD SUGGEST INMATES BE RESTRAINED BEHIND THEIR BACKS THROUGH THE FOOD PASS IN THEIR DOORS. THIS SHOULD BE DONE PRIOR TO THE DOORS BEING OPENED AND PRIOR TO THE INMATES BEING REMOVED FROM THEIR ROOMS. A PAT OR STRIP SEARCH OF THE INMATE CAN BE CONDUCTED IN THE ROOM OF THE CORRIDOR WITH INCREASED SAFETY FOR THE OFFICER. THE DOORS LEADING TO THE INSIDE COURTYARD AND THE OUTSIDE EXERCISE AREAS SHOULD BE EQUIPPED TO PERMIT THE STAFF TO REMOVE THE RESTRAINTS AFTER THE INMATE HAS BEEN PLACED IN THESE AREAS WITHOUT DIRECT CONTACT.

UNIT SECURITY CANNOT BE IMPROVED UNTIL STAFFING IS IMPROVED. THE PRESENT ARCHITECTURE AND CONFIGURATION OF THE UNITS PRECLUDE COST-EFFECTIVE STAFFING. MINIMALLY, HOWEVER, EACH COMPLEX SHOULD HAVE TWO STAFF MEMBERS ON DUTY ON EACH SHIFT. THAT WOULD NOT BE IDEAL, BUT WOULD PROVIDE A BACK UP STAFF PERSON IN EVERY COMPLEX. ONE OFFICER COULD BE STATIONED AT THE ENTRANCE AND THE OTHER COULD BE MAKING SECURITY ROUNDS AND LOCKING AND UNLOCKING INMATE CELLS. THE DUTIES COULD BE ROTATED BETWEEN THE TWO OFFICERS. THE ASSIGNMENT WOULD BECOME MORE REASONABLE AND TOLERABLE FOR THE OFFICERS UNTIL THE LIVING UNITS CAN BE REPLACED. IT IS RECOMMENDED THE DEPARTMENT CONSTRUCT NEW LIVING UNITS WHICH CAN BE COST EFFECTIVELY STAFFED AND SUPERVISED AND MEET HUMANE CONDITIONS OF CONFINEMENT. STAFFING ALSO MUST BE INCREASED OR RE-DISTRIBUTED TO PROVIDE AT LEAST ONE UNIFORMED OFFICER AT EVERY WORK SITE IN THE INSTITUTION. I VISITED EVERY WORK AREA AND FOUND NO OFFICERS ASSIGNED. ADDITIONALLY, THE EIGHT UNIFORM STAFF CURRENTLY ASSIGNED TO NON-SECURITY DUTIES SHOULD BE FILLED WITH NON-UNIFORM STAFF, AND THE UNIFORM STAFF RETURNED TO SECURITY ASSIGNMENT, (E.G., SECRETARIES, CONSTRUCTION, TRAINING, ACCREDITATION AND SAFETY OFFICER).

IN THE LIFE SAFETY AREA AS INDICATED EARLIER, I AM CONCERNED ABOUT THE FACT THAT THE "FIRE ALARMS," "SMOKE DETECTORS" AND SOME OF THE SPRINKLERS ARE NOT WORKING. A FIRE IN ONE OF THE LIVING COMPLEXES COULD BE DISASTROUS WITH THE CURRENT STAFFING AND CONDITIONS. THE FIRE EXTINGUISHERS IN THE UNITS ARE LOCKED UP AND BECAUSE OF THE STAFFING, IT IS UNLIKELY THEY COULD BE PUT TO IMMEDIATE USE IN THE EVENT OF A ROOM FIRE.

HASPS HAVE BEEN WELDED ON THE OUTSIDE OF MANY DOORS, BUT WERE NEVER USED. THEY SHOULD BE REMOVED. THE HASPS CREATE A LIFE SAFETY HAZARD FOR THE INMATES. WE DID SEE STRAY PADLOCKS ON SOME HASPS, WHICH COULD BE USED BY INMATES TO LOCK AN INMATE IN HIS ROOM AND TORCH THE ROOM. THE RESPONDING OFFICER WOULD NOT HAVE A KEY AND THE DELAY IN OPENING THE DOOR MAY WELL BE THE DIFFERENCE BETWEEN LIFE AND DEATH. THE RISK IS REDUCED BY THE FACT THAT THE INMATE COULD USE HIS LOCKER OR BED TO BATTER HIS WAY OUT. IF METAL DOORS ARE INSTALLED IN THE INTERIM BEFORE THE LIVING UNITS ARE REPLACED, THEY WILL NEED SECURE OPENINGS WHICH WILL PERMIT CIRCULATION OF AIR AND HEAT. CURRENTLY, THE TOWERS ARE NOT EQUIPPED TO PREVENT ESCAPE OF THE OFFICER IN THE EVENT OF FIRE - THIS CONDITION SHOULD BE CORRECTED.

DURING MY TOURS OF THE FACILITY, I VISITED EVERY AREA OF THE INSTITUTION. THE ONLY LIVING AREA THAT HAD AN ACCEPTABLE LEVEL OF SANITATION CLEANLINESS WAS THE MINIMUM SECURITY ANNEX. THERE IS NO ACCEPTABLE EXCUSE FOR ANY FACILITY TO BE AS FILTHY AS TURNEY CENTER. ONE COULD MAKE EXCUSES FOR THE PHYSICAL PLANT BEING IN A RUN DOWN CONDITION BECAUSE OF NO SKILLED TRADESMEN

ON STAFF, AND/OR BECAUSE OF A LACK OF FUNDS AND STAFF SUPERVISION. HOWEVER, IN A SITUATION WHERE ADMITTEDLY THERE IS AN ABUNDANCE OF INMATE LABOR (AN IDLE INMATE LABOR FORCE I MIGHT ADD) AND CLEANING AND PAINTING MATERIALS ARE RELATIVELY INEXPENSIVE, THERE IS NO EXCUSE. BOTH STAFF AND INMATES AGREE THAT THE LIVING UNITS HAVE NOT BEEN CLEAN SINCE THE SEPTEMBER, 1983 DISTURBANCE.

WITH REGARD TO IDLENESS, I ESTIMATED THAT OVER THREE HUNDRED INMATES WERE ACTUALLY IDLE. THIS ESTIMATION WAS NOT DISPUTED BY STAFF. IN FACT, I WAS TOLD BY MORE THAN ONE STAFF SOURCE IN THE INSTITUTION, THAT THEY HAD RECEIVED INSTRUCTIONS FROM CENTRAL OFFICE TO CREATE ASSIGNMENTS FOR THE INMATES ON PAPER. THE BREAKDOWN OF ASSIGNMENTS INDICATE 778 INMATES ASSIGNED FROM A POPULATION OF 857. FOR EXAMPLE, IT DOESN'T TAKE A GENIUS TO SURMISE THAT TWELVE INMATES ASSIGNED TO ELECTRICAL REPAIR ARE NOT ALL WORKING. I FOUND NO EVIDENCE IN ANY OF THE LIVING UNITS OF ANY RECENT REPAIR OF THE LIGHTS, WIRING OR FIXTURES. DURING MY VISIT, I FOUND VERY LITTLE EVIDENCE OF ANY GROUNDSKEEPER WORK THAT WAS DONE OR BEING DONE, WITH OVER 85 INMATES ASSIGNED AS GROUNDSKEEPER GENERAL LABOR AND/OR LANDSCAPE LABORERS. OVER THIRTY INMATE PAINTERS ASSIGNED - AGAIN NO RECENT SIGN OF ANY PAINTING IN THE LIVING UNITS. FINALLY, WITH NEARLY 70 INMATES ASSIGNED AS JANITORS, COMMERCIAL AND INSTITUTION CLEANERS, I FOUND ONLY AN OCCASIONAL INMATE WITH A MOP IN HIS HAND. THE SANITATION AND CONDITION OF THE FACILITY IS AMPLE EVIDENCE THAT IF IN FACT THESE PEOPLE ARE ASSIGNED (WHICH I DOUBT), THEY ARE NOT CARRYING OUT ANY CONSTRUCTIVE ASSIGNMENTS OR DUTIES. I COULD GO ON TO THE POINT OF DIMINISHING RETURN, RAISING QUESTIONS ABOUT WHAT APPEARS TO BE INFLATED NUMBERS OF ASSIGNED INMATES. HOWEVER, SINCE NOT A SINGLE STAFF PERSON OR INMATE DISAGREED WITH MY OBSERVATIONS, IT IS FAIR TO CONCLUDE THAT THE ASSIGNMENT LIST IS IN PART, A FABRICATION AND IS NOT REPRESENTATIVE OF THE ACTUAL NUMBER OF INMATES CONSTRUCTIVELY ASSIGNED.

THE PHYSICAL PLANT CONSISTS OF OVER 472,000 SQ. FT. AS I INDICATED EARLIER, THE PHYSICAL PLANT HAS BEEN GROSSLY NEGLECTED. THERE HAS NOT BEEN IN EFFECT, ANY PREVENTATIVE MAINTENANCE PROGRAM, NOR IS THERE ANY INDICATION THAT THE MAINTENANCE STAFF HAVE BEEN RESPONSIVE TO EVEN THE VERY OBVIOUS MAINTENANCE AND REPAIR NEEDS. IN ADDITION TO THE MAINTENANCE STAFF, I BELIEVE ONE CAN LEGITIMATELY ASK WHAT ARE THE TANGIBLE AND VISIBLE BENEFITS OF THE 12 MAINTENANCE CONTRACTS TOTALLING ONE-QUARTER OF A MILLION DOLLARS. I HAVE ALREADY MENTIONED THE CONDITION OF LIGHTS, WIRING, DOORS, WINDOWS, BATHROOM FACILITIES, FIRE ALARM SYSTEMS, SMOKE DETECTORS, SPRINKLERS, ETC. AN ADDITIONAL MAJOR PROBLEM HAS BEEN THE LOCATION AND SECURITY OF THE UNIT MECHANICAL ROOMS. THESE ROOMS HAVE OBVIOUSLY BEEN BROKEN INTO AND VANDALIZED ON NUMEROUS OCCASIONS BY THE INMATES. THEIR LOCATION AND POOR DESIGN HAS RESULTED IN VERY CRITICAL MOISTURE PROBLEMS IN THE MAIN ELECTRICAL SWITCH BOXES. RECENT ATTEMPTS BY STAFF TO BUILD SMALL RETAINING WALLS AND CONCRETE PLATFORMS IN FRONT OF THE DOORS TO THE MECHANICAL ROOMS ARE EVIDENT, AS ARE ATTEMPTS TO SECURE THE DOORS. IT IS ALSO MY UNDERSTANDING THAT MONEY HAS RECENTLY BEEN MADE AVAILABLE TO CORRECT THE MAJOR MECHANICAL ROOM ELECTRICAL PROBLEMS. (AGAIN, I MUST CAUTION THAT THIS EXPENDITURE SHOULD BE EVALUATED IN LIGHT OF THE FACT THAT EVEN WITH THE PLANNED REPAIRS AND IMPROVEMENTS OF THE LIVING UNITS, THEY CANNOT BE COST EFFECTIVELY STAFFED AND OPERATED SAFELY.) THE HIGH PRESSURE SODIUM LIGHTING THAT HAS BEEN CONTRACTED FOR WILL BE A BIG IMPROVEMENT IN LIGHTING THE COMPOUND AND PROVIDING VISIBILITY FOR THE COMPOUND STAFF AND TOWER OFFICERS AND INMATES. IT WAS SUGGESTED TO THE WARDEN THAT HE MIGHT WANT TO REPOSITION TWO OR THREE OF THE

PLANNED LOCATIONS OF THE TWELVE LIGHTS TO BETTER ILLUMINATE SOME OF THE DARKER (UNIT #1) OR HIGH TRAFFIC AREAS, SUCH AS THE AREA BETWEEN THE CHAPEL AND THE DINING HALL.

IT IS MY RECOMMENDATION THAT A MINIMUM OF THREE SKILLED TRADESMEN (NOT GENERAL REPAIR PERSONS) BE ADDED TO THE MAINTENANCE COMPLEMENT. CURRENTLY, THE MAINTENANCE STAFF DOES NOT HAVE ANY CERTIFIED SKILLED TRADESMEN IN THE COMPLEMENT. I WOULD RECOMMEND THAT CONSIDERATION BE GIVEN TO ADDING A TRAINED AND CERTIFIED ELECTRICIAN, PLUMBER AND REFRIGERATION TRADESMAN. I RECOMMEND THAT THE FACILITY MANAGER AND SUPERVISOR DEVELOP A COMPREHENSIVE PREVENTATIVE MAINTENANCE PROGRAM TO BE IMPLEMENTED AND MONITORED BY THEM. IF THE STATE MAKES THE DECISION TO CONTINUE TO USE THE CURRENT LIVING UNITS, MY RECOMMENDATION WOULD BE TO BUILD NEW LIVING UNITS ON THE PROPERTY AND CLOSE THE CURRENT UNITS WHEN THEY ARE COMPLETED. IF THE BED SPACE WAS NOT SO CRITICAL AT THIS TIME FOR THE TENNESSEE DEPARTMENT OF CORRECTIONS, I WOULD RECOMMEND THAT SERIOUS CONSIDERATION BE GIVEN TO CLOSING THE FACILITY UNTIL NEW LIVING UNITS COULD BE COMPLETED.

I HAVE ALREADY ADDRESSED THE CLEANLINESS AND SANITATION OF THE FACILITY, WHICH I FOUND TO BE DEPLORABLE. I RECOMMEND THAT AN EXPERIENCED JANITOR BE HIRED TO CLEAN THE MAXIMUM SECURITY BUILDING, THE PROTECTIVE CUSTODY UNIT, AND THE PUNITIVE SEGREGATION UNIT (#23 & #24). THE CURRENT PRACTICE OF BRINGING POPULATION INMATES INTO THESE AREAS THREATENS THE INTEGRITY OF SECURITY IN THESE SEGREGATED UNITS AND THE SAFETY OF STAFF AND INMATES IN THESE UNITS. A JANITOR COULD ALSO SET UP ONGOING, DAILY CLEANING ROUTINES FOR EACH OF THE UNITS, TO BE MONITORED AND SUPERVISED BY THE UNIT STAFF AND CHECKED PERIODICALLY BY THE SUPERVISING JANITOR.

THE VISITING ROOM AND PICNIC AREA SECURITY ARE INADEQUATE. VISITORS AND INMATES ARE USING THE SAME TOILET FACILITIES, WHICH PERMITS THE INTRODUCTION OF CONTRABAND WITH RELATIVE EASE. I SUPPORT THE PROPOSED SECURE FENCE WHICH WILL SEPARATE THE PICNIC AREA, AND THE VEHICLE INTAKE AREA FROM THE REST OF THE COMPOUND. THE PROPOSED RELOCATION OF THE MAIL, PROPERTY AND COUNT CONTROL ROOMS TO THE BOARD ROOM AREA WILL IMPROVE THE SECURITY IN THE VISITING ROOM AND FRONT GATE AREA, AND AFFORD THE INMATES EASIER ACCESS TO THE MAIL AND PROPERTY ROOMS.

TURNEY CENTER FACES THE SAME TURNOVER PROBLEMS THAT THE OTHER FACILITIES ARE EXPERIENCING AMONG THE UNIFORM STAFF. IN 1984 THEY HIRED 139 NEW STAFF. EIGHTY-SIX (86) OF THOSE WHO WERE HIRED, REPLACED THOSE WHO HAD RESIGNED. MANY OF THOSE WHO LEFT INDICATED THAT THEY HAD FOUND BETTER OPPORTUNITIES WITH IMPROVED COMPENSATION. SOME INDICATED THEY LEFT FOR A COMBINATION OF PAY AND THE DISTANCE THAT THEY HAD TO TRAVEL TO WORK.

THE COMPENSATION FOR UNIFORM STAFF EVEN FOR THIS RURAL AREA, IS OBVIOUSLY A MAJOR FACTOR IN RETAINING AN INTELLIGENT, EXPERIENCED AND TRAINED WORK FORCE. ADDITIONAL FACTORS CONTRIBUTING TO THE PROBLEM, ARE THE FACT THAT THEY ARE NOT COMPENSATED IN CASH FOR COMP TIME OFF. THERE WOULD APPEAR TO BE AN INCREASE IN THE USE OF SICK LEAVE. TURNEY CENTER CURRENTLY IS INDEBTED TO ITS EMPLOYEES FOR 22,800 HOURS OF COMP TIME. SICK LEAVE USE HAS RISEN FROM AN ALREADY HIGH USAGE OF 27,000 HOURS IN 1983 TO NEARLY 30,000 HOURS IN 1984. IT SHOULD BE POINTED OUT THAT ATTEMPTS HAVE BEEN AND

ARE BEING MADE BY THE ADMINISTRATION TO FACILITATE THE USE OF COMP. TIME BY THE EMPLOYEES. OVER 1,400 HOURS OF COMP. TIME HAD BEEN TAKEN OFF IN 1985 OR THE TOTAL COMP. TIME ON THE BOOKS WOULD HAVE BEEN APPROACHING 25,000 HOURS.

I AGAIN EMPHASIZE THAT SALARIES OF STAFF MUST BE INCREASED TO A COMPETITIVE LEVEL TO RETAIN A COMPETENT WORK FORCE. IT IS ALSO RECOMMENDED THAT COMP. TIME BE LIQUIDATED AND STAFF COMPENSATED FOR THEIR HOURS WORKED.

BASED ON THE INMATE POPULATION AND THE CURRENT DEMANDS ON THE COUNSELING STAFF, WITH CASELOADS OF 120 AND MORE INMATES, IT IS IMPOSSIBLE TO PROVIDE ANY REASONABLE LEVEL OF RESPONSIVENESS TO THE INMATE'S NEEDS. IT IS RECOMMENDED THAT THE COUNSELING STAFF BE INCREASED TO PROVIDE A RATIO OF ONE COUNSELOR FOR AN INMATE CASELOAD OF 70.

IN THE ACADEMIC AREA, THERE ARE FOUR ACADEMIC TEACHING POSITIONS, AND 2 VOCATIONAL TEACHING POSITIONS. THE DEPARTMENTAL PLAN CALLS FOR THESE POSITIONS TO PROVIDE SERVICES TO 200 INMATES. BASED ON MY DISCUSSION WITH STAFF, IT IS RECOMMENDED THAT AN ADDITIONAL ACADEMIC TEACHING POSITION BE ADDED TO MAINTAIN REASONABLE CLASS SIZES. IT IS ALSO SUGGESTED THAT CONSIDERATION BE GIVEN TO A HALF DAY EDUCATION AND HALF DAY WORK PROGRAM AND/OR AN EVENING EDUCATION PROGRAM FOR THOSE WHO ARE ON WORK ASSIGNMENTS DURING THE DAY. I DID PICK UP FRUSTRATION AND DISAPPOINTMENT AMONG SOME OF THE INMATES ABOUT NOT BEING ABLE TO BE TRANSFERRED TO THE LAKE COUNTY EDUCATION FACILITY BECAUSE OF THEIR INABILITY TO GET HIGHER GRADES. IF THIS IS THE CASE, I SUGGEST THAT THE CRITERIA FOR TRANSFER BE REVIEWED AND THOSE NEEDING SPECIAL HELP MIGHT BE BETTER SERVED BY A FACILITY WHOSE PRIMARY FOCUS IS EDUCATION. I ENDORSE AND SUPPORT THE RECOMMENDATIONS FOR ACADEMIC AND VOCATIONAL EDUCATION, LIBRARY SERVICES AND RECREATION MADE BY DR. OSA COFFEY.

AS IN MOST OF THE FACILITIES, THE COMMON CONCERN AND COMPLAINT AMONG TEACHING STAFF AND INMATES IS THE LACK OF FUNDING TO PURCHASE EDUCATION EQUIPMENT, SUPPLIES AND MATERIALS.

IT CAN'T BE OVER EMPHASIZED THAT FULL QUALITY PROGRAM PARTICIPATION AND STRUCTURED, CONSTRUCTIVE LEISURE TIME ACTIVITY PROVIDES THE BEST SECURITY AND THE BEST CONTROL OF ANY INMATE POPULATION. FISCAL AND HUMAN RESOURCES INVESTED IN THESE AREAS PAY LONG RANGE DIVIDENDS BY REDUCING VIOLENCE AND VANDALISM. IDLE INMATES WILL OCCUPY THEIR TIME AND OFFSET BOREDOM AT THE EXPENSE OF THE WEAKER INMATES, THE PHYSICAL PLANT AND ULTIMATELY THE STAFF.

AGAIN, IT IS NECESSARY TO MENTION THE CONTINUING PATTERN OF OVERRIDING INMATE CLASSIFICATION, BOTH UP AND DOWN. CONSISTENT WITH THE COMMENTS OF STAFF FROM OTHER INSTITUTIONS, IS THE CONSENSUS THAT THEY DON'T BELIEVE THE CURRENT CLASSIFICATION SYSTEM IS WORKING. THEY ALSO POINT OUT THAT LATE IN 1984, THERE WERE OVER 150 SENTENCES UNCOMPUTED. IT WAS ESTIMATED THAT OVER 40 INMATES AT TURNEY CENTER DO NOT HAVE THEIR SENTENCES COMPUTED.

IN THE FISCAL AREA, TURNEY CENTER IS PROJECTING A $700,000 DEFICIT IN THE CURRENT FISCAL YEAR. A COMMON THREAD OF DISSATISFACTION AMONG THE INSTITUTION STAFF IS EMERGING FROM THE INSTITUTION VISITS. THEY FEEL VERY STRONGLY ABOUT

THE LACK OF CONTROL THEY HAVE OVER THEIR BUDGETS. THEY ARE UNCOMFORTABLE AND FEEL LEFT OUT OF WHAT APPEARS TO THEM TO BE ARBITRARY DECISIONS AND CHANGES IN THE INSTITUTION'S BUDGETS WITHOUT CONSULTING THEM.

THE DECISION TO COMBINE THE ENTIRE DEPARTMENT'S INDUSTRY BUDGET AND THE TURNEY CENTER BUDGET IS PRODUCING MAJOR PROBLEMS FOR BOTH INDUSTRY AND THE INSTITUTION. THE CASH FLOW PROBLEMS RESULTING FROM THE MOVE FROM THE REVOLVING FUND SYSTEM TO THE ACCRUAL SYSTEM ARE OBVIOUS TO ALL CONCERNED, BUT NOTHING HAS BEEN DONE TO CORRECT THE PROBLEM. IT IS SUGGESTED THAT THESE ISSUES ALONG WITH SETTING UP SEPARATE COST CENTERS FOR INDUSTRY, MAINTENANCE, WAREHOUSE AND ADMINISTRATION IS CRITICAL.

SUMMARY

IN SUMMARY, THERE APPEARS TO BE MAJOR FACTORS AND NUMEROUS LESS SIGNIFICANT FACTORS WHICH HAVE CONTRIBUTED TO THE CURRENT PREDICAMENT OF THE TURNEY CENTER.

1) THE DECISION TO BUILD A FACILITY THAT INHERENT IN ITS DESIGN WAS THE MAJOR FLAW THAT IT COULD NOT BE COST-EFFECTIVELY SUPERVISED SET THE STAGE FOR TODAY'S PROBLEMS. THE ONLY REASON THIS FACILITY DID NOT EXPERIENCE SECURITY AND CONTROL PROBLEMS AS A YOUTHFUL OFFENDER FACILITY WAS VERY LIKELY BECAUSE OF THE MAJORITY OF THOSE CONFINED PROBABLY DID NOT NEED TO BE CONFINED TO CONTROL THEM.

2) A MAJOR FACTOR IN CONTRIBUTING TO THE CURRENT SITUATION WAS THE DECISION TO CHANGE THE MISSION OF THE FACILITY AND TO BEGIN HOUSING THE FULL RANGE OF OFFENDERS IN A PHYSICAL PLANT THAT DID NOT AFFORD ADEQUATE SECURITY AND WAS DESIGNED WITH NO CONSIDERATION FOR STAFF SUPERVISION OF INMATE CLIENTELE.

3) THE DECISION TO ATTEMPT TO OPERATE THE FACILITY WITHOUT A DRAMATIC INCREASE IN STAFFING WITH A NEW SOPHISTICATED ADULT POPULATION WAS UNWISE.

4) KNOWING THE LIMITATIONS OF THE FACILITY'S LIVING UNITS, THE DECISION TO DESIGNATE IT AS THE DEPARTMENT'S INDUSTRIAL FACILITY, HOUSING THE FULL RANGE OF OFFENDERS WAS UNWISE.

5) THE LACK OF DECISIVE, PRO-ACTIVE ACTION TO ADDRESS A RELATIVELY SMALL AND EASILY SOLVED PROBLEM THAT COULD HAVE BEEN CORRECTED THREE YEARS AGO FOR LESS THAN $50,000 - "THE INSTALLATION OF AN INTERNAL TELEVISION ANTENNA SYSTEM." THAT FAILURE TO RECOGNIZE AND ACT UPON SOLVING THIS RELATIVELY MINOR PROBLEM HAS BEEN A MAJOR FACTOR IN WIDESPREAD VANDALISM AT THIS FACILITY. NOW, SEVERAL YEARS AFTER THE DAMAGE IS DONE, $63,000 IS BEING SPENT TO CORRECT THE PROBLEM WHICH WAS OBVIOUS YEARS AGO. THIS IS ANOTHER CLEAR EXAMPLE OF HOW SOME RELATIVELY SMALL ISSUE NOT ADDRESSED CAN END UP BEING A MAJOR FACTOR IN THE CONTROL OF THE INMATES, OPERATION OF THE FACILITY AND VERY EXPENSIVE REPAIRS NECESSITATED BY VANDALISM THAT WOULD NOT HAVE OCCURRED IF THEY HAD AN ANTENNA AND COULD HAVE OCCUPIED THEIR TIME WATCHING TELEVISION.

IF THE DEPARTMENT IS FORCED TO CONTINUE TO HOUSE INMATES IN THE EXISTING LIVING UNITS OF THIS FACILITY WHILE REPLACEMENT UNITS ARE UNDER CONSTRUCTION,

SUMMARY (CONT'D)

THE STAFF COMPLEMENT MUST BE INCREASED DRAMATICALLY AND ALL OF THE LIVING UNITS MUST BE RENOVATED TO MAKE THEM SAFE AND HABITABLE.

RANKING UNIFORM STAFF SHOULD BE ASSIGNED TO EACH COMPLEX TO DEVELOP A SENSE OF OWNERSHIP AND PROPRIETORSHIP IN THE UNIT. THIS WILL IMPROVE NOT ONLY MAINTENANCE, BUT CLEANLINESS AND SANITATION AS A HEALTHY LEVEL OF COMPETITIVENESS DEVELOPS BETWEEN THE UNIT STAFF.

THE INSTITUTION POPULATION SHOULD BE REDUCED TO THE NUMBER OF INMATES THAT CAN BE ACCOMMODATED ONE TO A ROOM AND ONLY 30 INMATES SHOULD BE ASSIGNED TO THE ANNEX 30 MAN MINIMUM SECURITY DORMITORIES.

THE UNITS SHOULD BE DESIGNATED TO FACILITATE THE HOUSING OF INMATES BY ASSIGNMENT - VOCATIONAL, ACADEMIC EDUCATION, GARMENT INDUSTRY, ETC.

IT IS ALSO RECOMMENDED THAT THE WARDEN AND THE MEMBERS OF THE ADMINISTRATIVE TEAM SPEND MORE TIME IN THE INSTITUTION OBSERVING, INSPECTING AND COMMUNICATING WITH STAFF AND INMATES. IN THE COURSE OF A WEEK, EVERY UNIT SHOULD BE VISITED AND THE ADMINISTRATIVE TEAM SHOULD SEE AND BE SEEN IN THE INSTITUTION BY STAFF AND INMATES.

IT WOULD BE AN EYE OPENING EXPERIENCE FOR THE COMMISSIONER AND THE CENTRAL OFFICE ADMINISTRATIVE TEAM TO MAKE AN UNANNOUNCED VISIT TO THE INSTITUTION SOME EVENING BETWEEN 7:30 P.M. AND 9:30 P.M. THEY SHOULD ALSO STAY OVERNIGHT AND LOOK AT THE LIVING UNITS IN THE DAYLIGHT. IT WILL GIVE THEM, AS IT DID ME, A GREAT APPRECIATION FOR WHAT THESE PUBLIC SERVANTS ARE DOING WITH SO LITTLE FISCAL AND HUMAN SUPPORT.

THE LEVEL OF REPORTED VIOLENCE IN THIS FACILITY SHOWS A STEADY AND PREDICTABLE INCREASE SINCE 1982:

	1982	1983	1984	1985 (TO 3/12/85)
HOMICIDE	0	0	3	0
SUICIDE	0	0	0	0
ASSAULTS (INMATE ON INMATE)	17	22	25	9
ASSAULTS (INMATE ON STAFF)	3	6	9	2
TOTAL VIOLENT INCIDENTS:	20	28	34	11

AS I INDICATED EARLIER IN THE REPORT ON TURNEY CENTER, GIVEN THE DESIGN OF THE FACILITY AND STAFFING, IT'S REASONABLE TO SPECULATE THAT NUMEROUS ASSAULTS GO UNREPORTED BECAUSE THEY ARE NOT OBSERVED BY STAFF AND/OR THE INMATE IS NOT SO SERIOUSLY INJURED THAT HE REQUIRES MEDICAL ATTENTION.

"THE INSTITUTION STAFF NEED HELP AND SUPPORT NOW, OR CLOSE THE INSTITUTION BEFORE THERE IS A MAJOR DISASTER."

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*IT IS RECOMMENDED THAT IMMEDIATE STEPS BE TAKEN TO SELECT A LOCATION ON THE CURRENT SITE TO BUILD NEW, SECURE, EFFICIENTLY STAFFED LIVING UNITS TO REPLACE THE EXISTING LIVING UNITS (INCLUDING A NEW PUNITIVE SEGREGATION UNIT AND A NEW, SECURE AND SEPARATE MAXIMUM CUSTODY UNIT).
*IN THE INTERIM, NECESSARY REPAIRS TO MAKE THE BUILDINGS MORE LIVEABLE AND SAFER SHOULD BE UNDERTAKEN.
*IN THE INTERIM, A SECURE BARRIER SHOULD BE INSTALLED BETWEEN THE PUNITIVE SEGREGATION AND VOLUNTARY PROTECTIVE CUSTODY UNITS (#23 & #24). THESE UNITS SHOULD BE OPERATED ADJACENT OF EACH OTHER.
*IT IS RECOMMENDED THAT THE OFFICER IN THE SEGREGATION UNIT NOT HAVE A KEY TO THE EXTERIOR DOORS OF THE UNIT. THE EXTERIOR DOORS SHOULD BE OPERATED BY AN OFFICER STATIONED IN CLOSE PROXIMITY TO THE UNIT WHO COULD BE CALLED WHEN ACCESS TO THE UNIT IS NEEDED.
*THE EIGHT (8) UNIFORM STAFF CURRENTLY ASSIGNED TO NON-SECURITY DUTIES SHOULD BE REPLACED WITH NON-UNIFORM STAFF, AND THE UNIFORM STAFF RETURNED TO APPROPRIATE SECURITY ASSIGNMENTS.
*CONSTRUCTIVE PROGRAM AND WORK ASSIGNMENTS MUST BE DEVELOPED TO REDUCE IDLENESS. (THE PRACTICE OF FABRICATING ASSIGNMENT ON PAPER SHOULD BE DISCONTINUED.)
*I ENDORSE ALL RECOMMENDATIONS MADE BY DR. OSA COFFEY IN THE AREAS OF ACADEMIC AND VOCATIONAL EDUCATION, LIBRARY SERVICES AND RECREATION.
*DOUBLE CELLING: IMMEDIATE STEPS SHOULD BE TAKEN TO ALLEVIATE OVERCROWDING AND IN THE PROCESS, REDUCE THE NUMBERS OF LONG TERM DANGEROUS OFFENDERS ASSIGNED TO THIS FACILITY.
+BODY ALARMS ARE RECOMMENDED FOR UNIT STAFF.
*IN THE MAXIMUM SECURITY BUILDING, INMATES SHOULD BE RESTRAINED BEHIND THEIR BACK (VIA OPENING IN CELL DOOR) BEFORE THE DOORS ARE OPENED AND THEY ARE REMOVED FROM THE ROOMS.
*CONDUCT APPROPRIATE PAT OR STRIP SEARCHES OF INMATES IN THEIR ROOMS OR THE CORRIDOR.
*THE DOORS LEADING TO THE OUTSIDE EXERCISE AREAS AND THE INSIDE COURTYARD SHOULD BE MODIFIED TO REMOVE RESTRAINTS FROM INMATES WITHOUT DIRECT CONTACT.
*STAFFING MUST BE INCREASED AS OUTLINED IN THIS REPORT.
*EACH COMPLEX SHOULD HAVE TWO STAFF MEMBERS ON DUTY EACH SHIFT.
*RECOMMEND ONE OFFICER BE ASSIGNED TO EACH PROGRAM OR WORK SITE IN THE INSTITUTION DURING OPERATION.
*REPAIR AND MAINTAIN THE FIRE ALARM, SMOKE DETECTORS, AND SPRINKLERS AROUND THE FACILITY. ALL FIRE EXTINGUISHERS NEED TO BE EASILY ACCESSIBLE FOR STAFF.
*REMOVE THE HASPS ON THE DOORS.
*SECURE BEDS AND LOCKERS IN ROOMS.
+CORRECT CONDITIONS THAT PREVENT THE OFFICER TO ESCAPE FROM THE TOWERS IN THE EVENT OF FIRE.
+COMPLETE A THOROUGH CLEANING OF THE ENTIRE FACILITY.
*REPAIR LIGHTS, WIRING AND FIXTURES IN THE LIVING UNITS.
*BEGIN AN EXTENSIVE GROUNDSKEEPING PLAN.
+REPOSITION TWO OF THE PLANNED LOCATIONS OF THE TWELVE LIGHTS TO BETTER ILLUMINATE KEY AREAS.
*ADD THREE SKILLED TRADESMEN TO THE PLANT MAINTENANCE DEPARTMENT (CERTIFIED ELECTRICIAN, PLUMBER, REFRIGERATION TRADESMAN).

SUMMARY OF RECOMMENDATIONS (CONT'D)

+DEVELOP A COMPREHENSIVE PREVENTATIVE MAINTENANCE PLAN.
*HIRE AN EXPERIENCED JANITOR TO CLEAN THE MAXIMUM SECURITY BUILDING, THE PROTECTIVE CUSTODY UNIT AND THE PUNITIVE SEGREGATION UNIT.
*DISCONTINUE THE PRACTICE OF BRINGING GENERAL POPULATION INMATES INTO THE MAXIMUM SECURITY UNIT, THE PROTECTIVE CUSTODY UNIT, OR THE PUNITIVE SEGREGATION UNIT.
*INSTALL SEPARATE TOILET FACILITIES FOR INMATES AND VISITORS IN THE VISITING AND PICNIC AREAS.
+I SUPPORT THE PROPOSED SECURE FENCE WHICH WILL SEPARATE THE PICNIC AREA AND THE VEHICLE INTAKE AREA FROM THE REST OF THE COMPOUND.
*LIQUIDATE ALL COMP. TIME.
*INCREASE THE COUNSELOR STAFF COMPLEMENT TO PROVIDE ONE COUNSELOR FOR A CASELOAD OF 70 INMATES.
*RESTORE THE PSYCHOLOGICAL EXAMINER POSITION.
+RE-EVALUATE THE EDUCATIONAL TRANSFER CRITERIA SO AS TO BETTER FULFILL THE NEEDS OF THE INMATE POPULATION TOWARD THEIR EDUCATIONAL GOALS.
*PURCHASE THE NECESSARY EDUCATION EQUIPMENT, SUPPLIES AND MATERIALS TO FACILITATE THE PROGRAM'S GOALS.
*INVEST THE NECESSARY RESOURCES FOR A FULLY STRUCTURED LEISURE TIME ACTIVITY PROGRAM.
+COMPUTE ALL INMATE SENTENCES AND KEEP THIS PROCESS UP-TO-DATE.
+EVALUATE THE CASH FLOW PROBLEMS AND SET UP SEPARATE COST CENTERS FROM INDUSTRY FOR MAINTENANCE, THE WAREHOUSE AND ADMINISTRATION.
+ASSIGN RANKING UNIFORM STAFF TO EACH COMPLEX.
*REDUCE THE INMATE POPULATION TO NUMBER OF INMATES TO ENSURE ONE INMATE TO A ROOM AND CONSISTENT WITH THE ANNEX DORMITORY CAPACITIES OF 30 INMATES EACH.
+INMATES SHOULD BE ASSIGNED TO UNITS BY SPECIFIC ASSIGNMENT, WORK, EDUCATION, ETC., HOUSING BY ASSIGNMENT CONCEPT.
*THE WARDEN AND STAFF SHOULD INCREASE THE AMOUNT OF TIME THEY SPEND IN THE PROGRAM AREAS AND LIVING UNITS TO PROVIDE A FORUM FOR OPEN COMMUNICATION AND INTERACTIONS WITH STAFF AND INMATES.
+CENTRAL OFFICE SHOULD MAKE ROUTINE VISITS TO THE INSTITUTIONS.

MIDDLE TENNESSEE RECEPTION CENTER

ON WEDNESDAY MORNING, MARCH 13, 1985, I ARRIVED AT THE FACILITY TO BEGIN THE ON-SITE EVALUATION. THE ON-SITE ENDED ON FRIDAY MORNING, MARCH 15, 1985, WITH AN EXIT SUMMARY IN WARDEN COOK'S OFFICE WITH THE ADMINISTRATIVE TEAM AND OTHER KEY STAFF. DURING MY VISIT I HAD SEVERAL INFORMAL CONTACTS WITH STAFF AND INMATES, AND SCHEDULED PRIVATE INTERVIEWS WITH THREE INMATES SELECTED FROM THOSE I SPOKE WITH DURING MY TOURS OF THE UNITS. PRIVATE INTERVIEWS WERE ALSO CONDUCTED WITH WARDEN COOK AND EIGHT STAFF REPRESENTING A CROSS SECTION OF THE STAFF AT THE FACILITY.

THE FACILITY IS IDENTICAL IN ARCHITECTURE AND LAYOUT TO THE BLEDSOE AND MORGAN COUNTY FACILITIES. IT WAS, HOWEVER, THE FIRST OF THE THREE BUILT AND APPEARED TO BE IN THE BEST CONDITION OF THE THREE.

ON THE FIRST DAY OF MY VISIT, THE INMATE POPULATION WAS 534. THE COURT MANDATED MAXIMUM POPULATION IS 600. THE DEPARTMENT'S ESTABLISHED MAXIMUM POPULATION IS 570. THE REALITY IS THAT THE INSTITUTION'S SIXTEEN GUILDS (UNITS) WERE DESIGNED TO HOUSE TWENTY-FIVE INMATES EACH IN SINGLE ROOMS. THE ACTUAL SINGLE CELL CAPACITY OF THE INSTITUTION IS 400 INMATES, AND DURING MY VISIT OVER 200 INMATES WERE DOUBLED CELLED.

SEVEN OF THE SIXTEEN GUILDS (#6, 7, 9, 10, 14, 15, 16) ARE OCCUPIED BY INMATES WHO ARE EITHER INVOLVED IN THE CLASSIFICATION AND ORIENTATION PROGRAM, OR ARE AWAITING (SOMETIMES TWO TO FOUR MONTHS) FOR AN EMPTY BED IN ANOTHER FACILITY FOR PLACEMENT. THE OTHER UNITS ARE DESIGNED AS FOLLOWS:

#1: HOUSES INMATE INSTITUTION SUPPORT WORKERS;

#2: FOOD SERVICE INMATES;

#3: MEDICAL;

#4: INTAKE;

#5: CLOSE CUSTODY UNIT;

#8: HANDICAPPED AND GERIATRIC INMATES;

#11, 12, 13: VOLUNTARY ADMINISTRATION SEGREGATION INMATES (PROTECTIVE CUSTODY).

THERE IS A PROPOSAL TO CONVERT TWO MORE GUILDS TO GERIATRIC HOUSING, WHICH I WOULD SUPPORT.

THE FACILITY OPENED IN 1979 AND IS IN A GOOD STATE OF REPAIR. GIVEN ITS USE AND THE GENERAL ORIGINAL CONSTRUCTION SPECIFICATIONS, THE FACILITY WAS ORIGINALLY INTENDED TO SERVE AS A REGIONAL FACILITY FOR LOW MEDIUM OR PRE-MINIMUM SECURITY INMATES, WHICH WOULD EXPLAIN THE WOODEN DOORS, THE INSECURE WINDOWS, THE ARCHITECTURAL DESIGN, LAYOUT, AND THE FACT THAT THE WALLS ARE NOT STEEL REINFORCED AND CONCRETE FILLED. BEFORE THE FACILITY OPENED, HOWEVER, ITS ORIGINAL PURPOSE AND MISSION CHANGED WITH NO CHANGES IN THE SECURITY HARDWARE OR CONSTRUCTION, AND NO CHANGE IN THE STAFFING.

THIS FACILITY WAS NOT CONVERTED TO THE CENTRAL DINING CONCEPT AS WERE THE BLEDSOE AND MORGAN COUNTY FACILITIES. FOOD FOR ALL THE MEALS IS CENTRALLY PREPARED AND BROUGHT TO THE UNITS. EACH UNIT IS EQUIPPED WITH A SMALL KITCHEN WITH A PORTABLE STAINLESS STEEL SERVING LINE, COMMERCIAL TOASTER, ICE MACHINE, JUICE AND WATER DISPENSERS, GARBAGE DISPOSAL AND RANGE HOOD. ALL OF THE

RANGES HAVE BEEN REMOVED. THERE ARE CHRONIC COMPLAINTS B. STAFF AND INMATES ABOUT THE ABOVE EQUIPMENT ALWAYS BREAKING DOWN AND CONSTANTLY NEEDING REPAIR. REPLACEMENT OF THESE ITEMS SHOULD BE BUILT INTO THE BUDGET AND REPLACEMENT OF WORN OUT EQUIPMENT EXPEDITED.

DEPENDING ON THE INMATE POPULATION AT ANY GIVEN TIME OF YEAR, 250 TO 300 INMATES ARE IDLE. NO STRUCTURED PROGRAM HAS BEEN DEVELOPED FOR THOSE AWAITING TRANSFER AFTER CLASSIFICATION. THESE INMATES WAIT FOR TRANSFER FROM TWO TO FOUR MONTHS. THE INMATES IN THE THREE PROTECTIVE CUSTODY UNITS SPEND MOST OF THE TIME IN THEIR CELL. THEY ARE PERMITTED TO GO TO THE GYM ONCE A WEEK FOR ONE HOUR. DURING THAT HOUR THEY MUST ALSO MAKE THEIR COMMISSARY PURCHASES. THEY ARE EXERCISED OUTSIDE OF THEIR CELL ONE HOUR A DAY AND ARE FED IN THEIR CELLS. THREE TEACHERS ARE ASSIGNED TO THE THREE PROTECTIVE CUSTODY UNITS. THE SAME PROBLEM PLAGUES EDUCATION HERE - NO FUNDS TO PURCHASE TEACHING MATERIALS, SUPPLIES AND EQUIPMENT. THERE IS LITTLE OR NO EFFORT TO STIMULATE INTEREST IN EDUCATION AMONG ANY OF THE INMATES INCLUDING THE CHECK IN INMATES. THERE ALSO IS NO REASONABLE COMPENSATION PAID TO INMATES IN EDUCATION. THESE INCENTIVES ARE ESSENTIAL IF THE HUNDREDS OF INMATES IN THE SYSTEM WHO NEED BASIC EDUCATION ARE GOING TO GET INVOLVED. THERE ARE SOME PRO-ACTIVE STEPS UNDERWAY TO ADDRESS SOME OF THE PROBLEMS WITH THE PROTECTIVE CUSTODY INMATES. A GREENHOUSE IS UNDER CONSTRUCTION AND SEPARATE OUTSIDE EXERCISE YARDS ARE BEING PLANNED FOR EACH OF THE PROTECTIVE CUSTODY UNITS IN ORDER TO FACILITATE EXERCISE FOR EACH UNIT AND TO KEEP INCOMPATIBLES SEPARATED. IT HAS BEEN RECOMMENDED TO THE WARDEN AND HIS STAFF THAT INCOMPATIBLE LISTS BE DEVELOPED, AND THAT INMATES IN THOSE UNITS BE PERMITTED TO EXERCISE AND BE FED OUTSIDE THEIR CELLS IN THE UNIT.

TABLE GAMES AND PING PONG TABLES WOULD PROVIDE SOME LEISURE TIME DIVERSION FOR THE INMATES IN THE UNITS. INMATES WHO FOR WHATEVER REASON, DO NOT FEEL SAFE, COULD CONTINUE TO BE FED IN THEIR CELLS. THOSE PERMITTED MORE FREEDOM WOULD HAVE TO SIGN PROTECTIVE CUSTODY WAIVERS BEFORE THEY ARE PERMITTED EXPANDED TIME OUT OF THEIR CELLS. THE PROTECTIVE CUSTODY PROCEDURE DOES REQUIRE REVIEW. IT IS CURRENTLY TOO EASY (SYSTEM-WIDE) FOR AN INMATE TO "CHECK-IN" AND HE IS NOT REQUIRED TO PROVIDE ANY SPECIFICS AS TO THE NATURE OF THE DANGER OR THE SOURCE OF HIS FEAR. IT IS BEING USED BY THE INMATES TO AVOID WORK ASSIGNMENTS AND MANIPULATE TRANSFERS TO SPECIFIC INSTITUTIONS. IF IN FACT THEY ARE BEING PREYED UPON BY PREDATORS, THE PREDATORS SHOULD BE IDENTIFIED AND PLACED IN A SEGREGATED STATUS. I AM OPPOSED TO LOCKING UP THE VICTIMS AND PREYED UPON WHILE THE PREDATORS ARE FREE IN THE GENERAL POPULATION TO PREY ON OTHERS. I AM AWARE THAT IN ISOLATED CASES THERE ARE NO SAFE ALTERNATIVES. IT IS REASONABLE AND PRUDENT TO REQUIRE AN INMATE SEEKING PROTECTION, TO IDENTIFY THE SOURCE OF HIS FEAR AND IF OPTS NOT TO, HE SHOULD BE ASSIGNED TO THE OPEN POPULATION OF ANOTHER INSTITUTION, NOT A PROTECTIVE CUSTODY UNIT. THE MAJOR BURDEN OF AN INMATES PERSONAL SAFETY MUST FIRST REST WITH HIM. IT IS NOT REASONABLE FOR ANY INMATE TO EXPECT THAT THE AGENCY, THE WARDEN OR THE STAFF CAN PROTECT HIM IF HE IS UNWILLING TO DIVULGE THE CIRCUMSTANCES AND SOURCE OF HIS FEAR. THE STAFF CANNOT BE EXPECTED TO PROTECT ONE INMATE FROM ANOTHER WHEN THEY HAVE NO CLUE AS TO WHICH INMATE AMONG HUNDREDS OR POSSIBLY THOUSANDS IS THE POTENTIAL ASSAILANT. THE STAFF, HOWEVER, MUST BE HELD ACCOUNTABLE FOR TAKING REASONABLE AND PRUDENT PRECAUTIONS TO PROTECT A POTENTIAL VICTIM FROM A POTENTIAL ASSAILANT WHEN THEY KNOW THE ASSAILANTS IDENTITY.

I AM NOT AT THIS POINT RECOMMENDING THAT THE TENNESSEE DEPARTMENT OF CORRECTIONS IMMEDIATELY ADAPT THIS POLICY. AT THE PRESENT TIME WITH THE CURRENT PROBLEMS IN THE INSTITUTION WHICH ARE AGENCY AND SYSTEM-WIDE, IT WOULD BE FOLLY TO IMPOSE CONDITIONS WHICH WOULD MAKE IT MORE DIFFICULT FOR AN INMATE TO PROTECT HIMSELF FROM A POTENTIAL ASSAULT OR DEATH. THE COMBINATION OF OVERCROWDING, IDLENESS, A

"NON-SYSTEM" CLASSIFICATION .STEM, LACK OF SURVEILLANCE SUPERVISION, AND CONTROL OF INMATES, CONTRABAND, ETC., POOR COMMUNICATIONS, THOUSANDS OF INMATE TRANSFERS AND VERY POOR CREDIBILITY AMONG STAFF AND STAFF AND INMATES THE PROPOSED APPROACH COULD NOT WORK. HOWEVER, AFTER ALL OF THE RECOMMENDATIONS AND CHANGES IN THE SYSTEM HAVE BEEN IMPLEMENTED, THE APPROACH WILL WORK AND WILL MAKE IT POSSIBLE TO REDUCE PROTECTIVE CUSTODY POPULATIONS AND REDUCE THE FREQUENCY OF INMATE MANIPULATION OR EXPLOITATION OF PROTECTIVE CUSTODY STATUS. WHEN THE DETAIL OF A CONFLICT ARE KNOWN STAFF ARE, IN MANY SITUATIONS, ABLE TO BRING ABOUT SOME SOLUTION AND KEEP BOTH INMATES FROM BEING ASSIGNED TO SOME SEGREGATED STATUS.

THERE ARE APPROXIMATELY 170 LISTED INMATE ASSIGNMENTS, ASIDE FROM THOSE ASSIGNED TO INTAKE CLASSIFICATION. ONE-HUNDRED, FORTY (140) OF THOSE ASSIGNMENTS WERE FILLED.

THE STAFFING OF MIDDLE TENNESSEE RECEPTION CENTER IS NOT COMPARABLE TO THE OTHER FACILITIES WITH SIMILAR ARCHITECTURE, I.E., MORGAN CO. 315 STAFF: BLEDSOE CO. 341 STAFF OF WHICH 220 ARE UNIFORM STAFF. I AM AWARE THAT THE PRIMARY ROLE OF THESE FACILITIES IS FARMING, AND STAFF ARE ASSIGNED TO SUPERVISE INMATES IN THE FIELD, HOWEVER, MIDDLE TENNESSEE RECEPTION CENTER HAS 237 STAFF OF WHICH ONLY 137 ARE CORRECTIONAL OFFICERS AND ONLY 20 ARE RANKING OFFICERS. THE LACK OF STAFFING WAS ILLUSTRATED VIVIDLY ON THE FIRST DAY OF MY VISIT WHILE VISITING GUILDS #1 - INMATE SUPPORT WORKERS AND #2 - INMATE KITCHEN WORKERS. I FOUND ONLY ONE FEMALE OFFICER RESPONSIBLE FOR TWO UNITS, ONE OF THE UNITS (1) WAS UNATTENDED. LATER IN THAT AFTERNOON, I AGAIN VISITED THE UNITS AND THERE WAS NO OFFICER IN EITHER UNIT, AND BOTH WERE OPEN. AN HOUR LATER THERE WAS A FRANTIC FEMALE VOICE ON THE TWO-WAY RADIO (CODE 1 CALL TO ALL UNITS, FIGHT IN UNIT #1). I LEFT THE INMATE ADVISORY COUNCIL MEETING AND WENT TO UNIT #1, THE STAFF RESPONSE WAS GOOD AND THERE WAS A FEMALE OFFICER ON DUTY IN THE UNIT. MY CONCERN IS HOW MANY SIMILAR ALTERCATIONS GO UNREPORTED BECAUSE NO STAFF SUPERVISION IS IN THE AREA OR A MORE FRIGHTENING SCENARIO - WHAT IF YOU FOUND A DEAD INMATE IN A UNIT THAT HAD NO STAFF SUPERVISION. I SHOULD ADD THAT I HAD A COMPUTER SAMPLE DONE ON WHAT INMATES OCCUPIED UNIT #1 AND FOUND THAT THEY WEREN'T DOCILE PROPERTY OFFENDERS, BUT SOME WERE SERVING LONG TERM SENTENCES FOR MURDER, ASSAULT AND ROBBERY. I ALSO LEARNED THAT AT NIGHT THE SINGLE OFFICER FROM THESE TWO UNITS #1 & #2, IS PULLED OFF THE UNITS TO PICK UP THE COUNT SLIPS FROM OTHER UNITS. THE CURRENT STAFFING AT MIDDLE TENNESSEE RECEPTION CENTER IS NOT ADEQUATE AND SHOULD BE INCREASED TO PROVIDE 24 HOUR A DAY, SEVEN DAY A WEEK STAFF COVERAGE IN EVERY UNIT. ADDITIONALLY, SUFFICIENT STAFF SHOULD BE PLACED ON THE COMPLEMENT TO PERMIT A ROVING OFFICER (16 HOURS A DAY, 7 DAYS A WEEK) DURING THE WAKING HOURS OF THE INMATES BETWEEN EACH TWO UNITS. THIS ARRANGEMENT WILL CREATE A CLIMATE WHERE THE INMATES CANNOT PREDICT WHEN THE ROVING OFFICER WILL SHOW UP IN A UNIT AND IN EFFECT, CREATE THE EFFECT OF HAVING TWO STAFF ON DUTY IN A UNIT DURING THE WAKING HOURS OF THE INMATES. THE INSTITUTION COMPLEMENT OF RANKING UNIFORM OFFICERS DEFIES EXPLANATION OR DEFENSE. CURRENTLY, THERE IS NO ASSOCIATE WARDEN OF SECURITY, ONE CAPTAIN, FOUR LIEUTENANTS, FOUR SERGEANTS AND THREE CORPORALS. IT IS NOT UNCOMMON ON THE SECOND AND THIRD WATCHES TO FIND A SERGEANT IN CHARGE OF THE INSTITUTION. THAT WAS THE CASE ON ONE OF THE EVENINGS I WAS AT THE INSTITUTION. TO LEAVE THE ON-SITE RESPONSIBILITY FOR AN INSTITUTION WITH A COMBINATION OF 600 INMATES AND STAFF IN THE HANDS OF A SERGEANT, IS INDICATIVE OF THE LACK OF UNDERSTANDING AND SUPPORT FOR THE TASK FACING THE STAFF. IT IS NOT SURPRISING THAT WHEN YOU DO HAVE INCIDENTS, PROBLEMS, ESCAPES OR OTHER SERIOUS PROBLEMS, THAT THE OUTCOME IN THE AGENCY IS MANY TIMES EMBARRASSING. I AM LED TO BELIEVE THAT THE INSTITUTION STAFF HAVE ATTEMPTED TO GET THE RANKING OFFICER ISSUE RESOLVED, BUT WITH LITTLE SUCCESS. I DISAGREE WITH THEIR PROPOSAL TO CONVERT A VACANT LIEUTENANT'S POSITION TO AN ASSOCIATE WARDEN OF SECURITY. I RECOMMEND THE ADDITION OF:

1 ASSOCIATE WARDEN OF SECURITY POSITION

1 LIEUTENANT POSITION

1 SERGEANT POSITION

8 CORPORALS POSITIONS

THIS ARRANGEMENT WILL PROVIDE THE NECESSARY LEADERSHIP TO OPERATE THE FACILITY SEVEN DAYS A WEEK, 24 HOURS A DAY, WITH THE ON-SITE RESPONSIBILITY FOR THE INSTITUTION IN THE HANDS OF A LIEUTENANT. IT WILL PROVIDE A SERGEANT ON DUTY ON EVERY WATCH WITH ADEQUATE RELIEF. SIX OF THE EIGHT CORPORALS COULD BE ASSIGNED SO AS TO HAVE A CORPORAL RESPONSIBLE FOR EACH TWO UNITS. THE OTHER TWO CORPORALS WOULD BE AVAILABLE TO PROVIDE THE NECESSARY LEADERSHIP, SUPERVISION, AND MONITORING NECESSARY ON ALL THREE SHIFTS.

THE PHYSICAL PLANT HAS THE IDENTICAL LIMITATIONS PRESENT AS AT THE BLEDSOE FACILITY. THE WOODEN DOORS SHOULD BE REPLACED WITH STEEL DOORS, AND SECURE LOCKS INSTALLED. THE WINDOWS SHOULD EITHER BE REPLACED OR SECURED WITH BARS ON THE OUTSIDE. (A SELECT FEW HAVE ALREADY BEEN SECURED AFTER ESCAPE ATTEMPTS). THE WALL LOCKERS AND BEDS SHOULD BE SECURED TO THE FLOOR AND WALL.

BECAUSE OF THE VULNERABILITY OF THE EXTERIOR WALLS, (RECENTLY A CONCRETE BLOCK WAS REMOVED FROM AN OUTSIDE WALL IN A CELL EXPOSING THE OUTSIDE BRICK FACIA, IT WAS ONLY DISCOVERED BECAUSE OF AN INFORMANT) A SECURITY CHECK OF THE WALL IN EACH CELL SHOULD BE COMPLETED AT THE BEGINNING OF EACH SHIFT. UNTIL THE DOORS AND WINDOWS ARE REPLACED OR SECURED, THEY SHOULD ALSO BE INCLUDED IN THE SECURITY CHECK.

THE PLANT MAINTENANCE FACILITIES, EQUIPMENT INVENTORY, AND TOOL INVENTORY, SHOULD ALL BE RE-LOCATED OUTSIDE THE SECURE PERIMETER OF THE FACILITY. THE VACATED AREA COULD BE CONVERTED INTO EDUCATION, COUNSELING, AND DAY ROOM, OR GAME ROOM FACILITIES.

IT IS ALSO RECOMMENDED THAT A NEW CONTACT VISITING ROOM BE CONSTRUCTED WITH A SMALL (FOUR STATION) NON-CONTACT VISITING SECTION AND ADDED TO THE ADMINISTRATION BUILDING. THIS IS RECOMMENDED BECAUSE THE GYM IS CURRENTLY USED AS A VISITING ROOM ON WEEKENDS AND WEDNESDAYS. THIS ARRANGEMENT NOT ONLY DEPRIVES THE INMATE POPULATION OF A VERY MUCH NEEDED PHYSICAL EXCERCISE OUTLET THREE DAYS A WEEK, BUT COMPROMISES THE SECURITY OF THE FACILITY BY BRINGING VISITORS INTO THE SECURE PERIMETER OF THE FACILITY. THE NEW VISITING AREA SHOULD HAVE AN INMATE STRIP SEARCH ROOM AND SEPARATE TOILET FACILITIES FOR MALE VISITORS AND INMATES AND WOMEN VISITORS. SEPARATE BATHROOMS FOR INMATES AND VISITORS AND A PRIVATE STRIP SEARCH AREA FOR INMATES SHOULD BE INCLUDED IN THE PLANNED PICNIC VISITING AREA WHICH I WAS TOLD WOULD BE OPERATIONAL THIS SUMMER.

THE CURRENT PRACTICE OF TERMINATING VISITS WHENEVER IT IS NECESSARY FOR AN INMATE TO USE THE BATHROOM, IS UNREASONABLE AND UNDESIRABLE. IT IS ALSO RECOMMENDED THAT THE PRACTICE OF EXCHANGING VISITORS IN GROUPS AND MAKING PEOPLE WAIT UNTIL THE NEXT VISITING PERIOD BE DISCONTINUED. IT IS NOT ONLY UNNECESSARY, BUT VERY INEFFICIENT. THE CHANGE SHOULD IMPROVE THE PROCESSING OF VISITORS AS THEY ARRIVE, AND THE STRIP SEARCHING OF INMATES AFTER A VISIT. IN THE INTERIM, UNTIL A NEW VISITING ROOM IS A REALITY, THE PROPOSAL TO CONVERT A NEARBY OFFICE IN OPERATIONS TO A SEARCH AREA, SHOULD ALSO INCLUDE A BATHROOM EXCLUSIVELY FOR INMATES DURING VISITING.

THE PHYSICAL PLANT, ALTHOUGH BETTER MAINTAINED THAN MOST OF THE CORRECTIONAL FACILITIES I'VE SEEN IN TENNESSEE, IS IN NEED OF PAINTING IN MANY OF THE GRIMEY NICOTINE STAINED ROOMS. SOME UNIT SHOWERS ARE IN NEED OF REP.

THE CURRENT COMPLEMENT OF MAINTENANCE STAFF IS NOT ADEQUATE FOR A FACILITY WITH 135,000 SQ. FT. OF BUILDING TO MAINTIAN. THE PRACTICE OF LEAVING MAINTENANCE INMATES IN THE UNITS WITH A TOOL POUCH UNDER THE SUPERVISION OF A SINGLE UNIT OFFICER, WHO CANNOT PERFORM HIS DUTIES AND SUPERVISE AN INMATE WITH TOOLS, MUST CEASE. IT IS ALSO NOT ACCEPTABLE THAT CELL #8 IN UNIT #7 SHOULD HAVE A LEAKING FLOWING HOT WATER FAUCET FOR THREE DAYS AFTER A WORK ORDER HAD BEEN SUBMITTED (ACCORDING TO THE OFFICER, SHE HAD TURNED IN A WORK ORDER 3 DAYS BEFORE I SAW IT).

IT IS RECOMMENDED THAT AT LEAST TWO SKILLED TRADESMEN BE ADDED TO THE MAINTENANCE COMPLEMENT TO PROVIDE THE NECESSARY PREVENTATIVE MAINTENANCE, IN ORDER TO AVOID WHAT COULD BE EXPENSIVE & UNNECESSARY DETERIORATION OF THIS FACILITY, A QUALIFIED, COMPETENT, HARD WORKING MAINTENANCE STAFF THAT IS DEPENDABLE, WILL BE A COST-EFFECTIVE INVESTMENT THAT WILL SAVE THE TAXPAYERS THOUSANDS OF DOLLARS. THE ADDITION OF A CERTIFIED PLUMBER AND ELECTRICIAN WILL PERMIT THE USE OF OTHER MAINTENANCE STAFF AS GENERAL REPAIRMEN.

IT IS ALSO RECOMMENDED THAT A SECRETARIAL POSITION BE ADDED TO THE ADMINISTRATION AREA. AT THE PRESENT TIME THE ADMINISTRATIVE DIVISION IS SHARING THE ASSOCIATE WARDEN OF TREATMENT SECRETARY. WHEN SHE IS UNABLE TO HANDLE THE WORKLOAD, IT IS NECESSARY TO SEARCH FOR SECRETARIAL ASSISTANCE FROM OTHER INSTITUTION RESOURCES, LEADING TO DELAYS IN CRITICAL ADMINISTRATION CORRESPONDENCE.

THE NEW DOUBLE SECURITY FENCE WITH RAZOR RIBBON IS AN EXCELLENT ADDITION AND WILL IMPROVE THE SECURITY OF THE PERIMETER SIGNIFICANTLY. WHEN THE PERIMETER IS SECURE AND ADDITIONAL PERIMETER LIGHTING AND HIGH MAST LIGHTING IN THE RECREATION FIELD ARE INSTALLED, AND SUFFICIENT STAFFING OF THE UNITS IS COMPLETED, THERE SHOULD BE A REDUCTION IN THE RECENT RASH OF ATTEMPTED AND SUCCESSFUL ESCAPE ACTIVITY AT THE MIDDLE TENNESSEE RECEPTION CENTER.

IT HAS BEEN RECOMMENDED TO WARDEN COOK THAT THE INSIDE ROOF LINE OF THE ADMINISTRATION BUILDING BE SECURED WITH RAZOR RIBBON. I ALSO CONCUR WITH THE WARDEN'S PROPOSAL TO ELEVATE TOWER #1 AND MAN THAT STATION TO PERMIT IMPROVED SURVEILLANCE OF THE PERIMETER. THE WINDOWS AND DOOR OF THE CONTROL CENTER ADJACENT TO THE MAIN TRAP GATE SHOULD BE SECURED. THIS COULD BE ACCOMPLISHED WITH BARS OR SOME TYPE OF SECURE ORNAMENTAL IRON ARRANGEMENT. A MOVEABLE CRASH BARRIER SHOULD BE INSTALLED ON THE INSIDE OF THE TRAP GATE. IT IS ALSO SUGGESTED THAT A FIXED STEEL CABLE CRASH BARRIER BE INSTALLED ALONG THE FENCE LINE ADJACENT TO THE PARKING AREA.

IN MY DISCUSSION OF THE PHYSICAL PLANT SECRUITY CONCERNS, I MENTIONED:

1) INMATES BEING LEFT WITH TOOL POUCHES IN THE UNITS:

2) MOVEMENT OF THE MAINTENANCE AND WAREHOUSE OUTSIDE THE SECURE PERIMETER;

3) THE NECESSITY OF BUILDING AND SECURITY HARDWARE SECURITY CHECKS ON EACH SHIFT BECAUSE OF THE VULNERABILITY OF THE PHYSICAL PLANT.

ADDITIONALLY, A SOPHISTICATED TOOL CONTROL SYSTEM OF ACCOUNTABILITY MUST BE DEVELOPED AND IMPLEMENTED. THE RECENT ESCAPE INVOLVED THE CUTTING OF THE FENCE. A COMPLETE INVENTORY OF ALL THE TOOLS IN THE INSTITUTION MUST BE DEVELOPED. A SPECIFIC SECURE LOCATION FOR THE TOOLS MUST BE DESIGNATED WITH

ACCOUNTABILITY ASSIGNED TO SPECIFIC STAFF. SHADOW BOARDS AND SIGN OUT SHEETS MUST BE DEVELOPED. UNTIL THE MAINTENANCE OPERATION IS MOVED OUTSIDE THE PERIMETER, THE ENTRANCE TO THE MAINTENANCE DEPARTMENT MUST BE KEPT SECURED TO REDUCE THE POTENTIAL FOR INMATE TAKEOVER OF THE AREA, THE TOOLS AND SUPPLIES. I ALSO RESPONDED WITH STAFF TO A CALL WHEN AN INMATE REFUSED TO ENTER HIS CELL. WE WERE DELAYED BY THE FACT THAT THE WORN KEY WOULD NOT OPEN THE DOOR. I RECOMMEND THAT KEY INTEGRITY CHECKS BE MADE ON EACH SHIFT BY A RANKING OFFICER TO ENSURE KEYS ARE NOT WORN OR CRACKED. LOCKS SHOULD BE CHECKED AND DEFECTS REPORTED PROMPTLY, AS WELL.

ALSO IN THE SECURITY AREA, THE PRACTICE OF NOT COUNTING AND SECURING THE KITCHEN KNIVES AND SEARCHING THE CARTS BEFORE THEY ARE WHEELED TO THE GUILDS, HAS GREAT POTENTIAL FOR A SERIOUS INCIDENT. IT IS ALSO RECOMMENDED THAT ANYTIME INMATES ARE IN THE KITCHEN AREA, AN OFFICER SHOULD BE STATIONED IN THE KITCHEN TO PROVIDE THE NECESSARY SUPERVISION, VISUAL SURVEILLANCE, AND SECURITY CHECKS OF THIS AREA, TO ENSURE THE INTEGRITY OF KITCHEN FOOD STORAGE AND POTENTIALLY DANGEROUS KITCHEN UTENSILS.

THE FENCE-LIKE WIRE GRILL SEPARATING THE FOOD STORAGE AREA FROM THE OTHER STORAGE AREA, SHOULD BE REPLACED WITH A BLOCK WALL WITH A DOOR AND A SECURE WINDOW TO IMPROVE KITCHEN SECURITY. IT IS ALSO RECOMMENDED THAT THE LOADING AREA, WHICH HAS A PADLOCKED EXPOSED FREEZER DOOR, BE SECURED BY A CYCLONE FENCE GATE TO SEAL OFF AN AREA WHERE POTENTIAL ASSAULTS COULD TAKE PLACE, AND TO PREVENT BREAK INS OF THE FOOD STORAGE AREA.

MENTIONED EARLIER IN THIS REPORT WAS THE FACT THAT AT LEAST ON TWO OCCASIONS (DURING MY VISIT), GUILD #2 HAD INMATES IN THE UNIT UNSUPERVISED. COMPOUNDING THAT PROBLEM IS THE FACT THAT THE INSTITUTIONS ENTIRE INVENTORY OF YEAST IS STORE IN GUILD #2 BEHIND A WOODEN DOOR. NO STAFF MEMBER COULD GIVE ME A LOGICAL EXPLANATION FOR THIS DECISION AND THE PRACTICE. IT IS RECOMMENDED THAT A SMALL INVENTORY OF YEAST BE KEPT IN A SECURE AREA AND THAT INMATES ONLY HANDLE YEAST UNDER THE DIRECT SUPERVISION OF STAFF.

AS COULD BE EXPECTED, THE COMP TIME BALANCE ON THE BOOKS AT MIDDLE TENNESSEE RECEPTION CENTER IS NEARLY 17,000 HOURS, WITH A STAFF COMPLEMENT OF ONLY 237. THE USE OF SICK LEAVE JUMPED IN CALENDAR YEAR 1983 TO 17,200 HOURS, UP FROM THE CALENDAR YEAR 1982 FIGURE OF 12,500 HOURS. IN 1984, THE USE OF SICK LEAVE CONTINUED AT THE 1983 LEVEL. THE TURNOVER PICTURE IS ALSO SIMILAR TO OTHER FACILITIES, WITH 84 STAFF HIRED IN 1984. THE MAJORITY OF THOSE LEAVING EMPLOYMENT AT THE FACILITY LEFT BECAUSE OF SALARY. SEVERAL LEFT TO WORK FOR THE NEW NISSAN PLANT, 15 MILES EAST OF SMYRNA AT $8.00 PER HOUR WHICH WAS THE STARTING SALARY ON THE ASSEMBLY LINE. OTHERS LEFT TO RETURN TO OR ACCEPT BETTER PAYING CONSTRUCTION JOBS. THE PATTERN IS CLEAR - THE COMPENSATION FOR ENTRY LEVEL OFFICERS MUST BE INCREASED. A COMPETITIVE SALARY SCHEDULE OF GUARANTEED PERFORMANCE BASED INCREASES AT SIX MONTH INTERVALS FOR THE FIRST TWO YEARS MUST BE PUT IN PLACE. COMPENSATORY TIME SHOULD EITHER BE TAKEN WITHIN EACH FISCAL YEAR, OR IF THE STATE IS UNABLE TO GIVE THE EMPLOYEE THE TIME OFF, EACH EMPLOYEE'S COMP TIME BANK SHOULD BE LIQUIDATED IN CASH. THIS SHOULD IMPROVE THE AGENCY'S ABILITY TO RETAIN TRAINED, EXPERIENCED AND COMPETENT OFFICERS, AND AVOID THE EMERGING PHENOMENON OF LOWERING STANDARDS IN SOME AREAS OF THE STATE JUST TO FILL THE VACANT POSITIONS.

IN THE AREA OF COUNSELING, THERE IS A CLEAR NEED FOR AN ADDITIONAL CLASSIFICATION TEAM, CONSISTING OF ONE COUNSELOR AND ONE PSYCH EXAMINER. ALSO THERE CURRENTLY IS A CORRECTIONAL OFFICER FUNCTIONING AS A COUNSELOR. THIS POSITION SHOULD BE RECLASSIFIED AND UPGRADED TO A COUNSELING POSITION. IF

IN FACT THE GERIATRIC POPULATION IS INCREASED TO 75, AN ADDITIONAL COUNSELING POSITION SHOULD BE ADDED TO SERVICE THIS LARGE GROUP OF PEOPLE WHO HISTORICALLY REQUIRE MORE ATTENTION BECAUSE OF THIER HEALTH, FEARS, HANDICAPS, AND OTHER PSYCHOLOGICAL NEEDS. COUNSELOR CASELOADS SHOULD NOT EXCEED 70 INMATES.

IN THE EDUCATION AREA, IT IS RECOMMENDED THAT ONE OF THE CURRENT TEACHING POSITIONS BE RE-CLASSIFIED TO A LEAD OR SUPERVISORY TEACHING POSITION. THE SAME PROBLEM EXISTS AT THE MIDDLE TENNESSEE RECEPTION CENTER FACILITY WITH A LACK OF FUNDS TO PURCHASE TEACHING AIDS, MATERIALS, SUPPLIES AND EQUIPMENT. THESE ESSENTIALS TO ANY EDUCATION PROGRAM, SHOULD HAVE BEEN FUNDED WHEN EDUCATION POSITIONS WERE RESTORED TO THE INSTITUTIONS.

AGAIN, IT MUST BE POINTED OUT THAT FROM MY PERSPECTIVE, THE MAJOR PROBLEMS IN THE TENNESSEE DEPARTMENT OF CORRECTIONS EMANATE FROM TWO SOURCES - THE SENTENCING STRUCTURE OF THE STATE AND THE CLASSIFICATION SYSTEM. THE SENTENCING POLICY BECAUSE IT GOES UNMANAGED, UNCHECKED AND UNCHANGED, DRIVING THE AGENCY'S INSTITUTION POPULATIONS BEYOND THEIR CAPACITIES, EVEN WITH THE BANDAID EARLY RELEASE POLICY IN EFFECT. THE SENTENCING POLICY CONTINUES WITH NO TANGIBLE EVIDENCE THAT IT IS REDUCING CRIME AND/OR RECIDIVISM. AT THIS POINT, AFTER HAVING VISITED NEARLY ALL OF THE MAJOR INSTITUTIONS, THERE APPEARS TO BE A CONSENSUS AMONG THOSE WORKING CLOSEST TO THE CLASSIFICATION SYSTEM. THIS CONSENSUS IS THAT IN MANY CASES, IT DEPENDS UPON WHO AND WHERE THE CLASSIFICATION IS DONE, AND WHAT THE CURRENT PERCEIVED NEEDS OF THE DEPARTMENT ARE. IT IS BELIEVED THAT THESE ARE THE FACTORS THAT DETERMINE THE SPECIFIC CLASSIFICATION OF AN INMATE.

I FOUND, AS IN THE OTHER FACILITIES, A DEARTH OF RECREATION AND LEISURE TIME ACTIVITIES. THE UNITS HAVE ALMOST NO IN-UNIT RECREATION FACILITIES. I DID SEE ONE OLD PING PONG TABLE IN ONE UNIT SO DILAPITATED, THAT IT WAS SUPPORTED BY FOLDING CHAIRS. IT IS RECOMMENDED THAT PING PONG, POOL AND FOOSBALL TABLES BE MADE AVAILABLE, ALONG WITH ONE STATION AND MULTI-STATION UNIVERSAL GYMS, HEAVY BAGS, AS WELL AS SPEED BAGS FOR THE UNITS AND THE GYM. THE IDEAL WOULD ALSO INCLUDE THE CONVERSION OF THE VACATED WAREHOUSE AND MAINTENANCE FACILITIES WHEN THOSE FACILITIES ARE RELOCATED OUTSIDE THE PERIMETER, TO A MULTI-PURPOSE PROGRAM, GAME ROOM AND RECREATIONAL FACILITY. THIS NEED IS COMPOUNDED CURRENTLY BY THE FACT THAT THE GYM IS NOT AVAILABLE TO THE MAJORITY OF THE INMATE POPULATION ON WEDNESDAY EVENINGS AND ALL DAY SATURDAY AND SUNDAY.

OF MAJOR CONCERN TO ME WAS THE FACT CURRENTLY THAT LOCAL PHONE CALLS COST THE INMATE $1.25 PER CALL. WITH INMATE WAGES AROUND $11.00 PER MONTH (AND MANY INMATE'S FAMILIES ALREADY ON SOME FORM OF PUBLIC ASSISTANCE), THE COST OF KEEPING IN TOUCH WITH FAMILY AND FRIENDS WILL BE PROHIBITIVE. THIS ISSUE SHOULD BE APPEALED TO THE AGENCY OR BOARD, WHICH REVIEWS PUBLIC UTILITY RATES. IF THIS IS UNSUCCESSFUL, DIRECT LOCAL PHONE LINES SHOULD BE INSTALLED TO REPLACE THE COLLECT PHONES.

THERE IS THE SAME CONSISTENT THEME RUNNING THROUGH THE COMMENTS OF ALL THE STAFF OF THE INSTITUTIONS I HAVE VISITED TO DATE. THE STAFF FEEL THEY ARE NOT PROVIDED FORUMS FOR INPUT AND DISCUSSIONS BEFORE, DURING, OR AFTER ARBITRARY CHANGES ARE MADE IN THEIR BUDGETS. THEY REALIZE THAT YOU DON'T ALWAYS GET APPROPRIATIONS THAT MATCH YOUR NEEDS, BUT I BELIEVE THEY WOULD MORE READILY UNDERSTAND AND ACCEPT CHANGES IF CHANGES, OPTIONS AND ALTERNATIVES WERE DISCUSSED WITH THEM "BEFORE THE FACT".

UNIFORM STAFF DID EXPRESS CONCERNS ABOUT THE LACK OF CONSEQUENCES FOR INMATES WHO VERBALLY ABUSE OR WHO ARE DISRESPECTFUL AND THREATENING TO STAFF. THEY FELT AND I CONCUR, THAT THERE SHOULD AT LEAST BE SOME OBVIOUS LOSS OF PRIVILEGES FOR THE INMATE. THEY INDICATED THAT EVEN REPEATED OFFENDERS ARE WARNED BY THE DISCIPLINARY BOARD. IN MY JUDGEMENT, VERBAL ABUSE SHOULD BE A TARGETED BEHAVIOR. A CLIMATE OF MUTUAL RESPECT, AND CIVIL INTERACTION MUST BE INSISTED UPON AND ENFORCED. THIS DOES NOT APPEAR, AT LEAST FROM MY OBSERVATION, TO BE A MAJOR PROBLEM, BUT A CLIMATE WHERE VERBAL ABUSE IS OVERLOOKED OR TOLERATED, USUALLY CULMINATES IN AN ESCALATED LEVEL OF VIOLENCE BETWEEN INMATES AND IN-INMATES, AND INMATES AND STAFF.

UNIFORM STAFF ALSO EXPRESSED CONCERNS ABOUT ASSIGNMENTS, PROMOTIONS, DAYS OFF, AND THE ACCELERATED PROMOTIONS OF THOSE WHO REQUEST VOLUNTARY DEMOTIONS AND THEN CHANGE THEIR MINDS. IT IS OF CONCERN THAT THESE STAFF ARE THEN PROMOTED AHEAD OF THOSE WHO HAVE BEEN ON THE REGISTER FOR SOME TIME WITH A STABLE RECORD OF PERFORMANCE.

SUMMARY

WITH THE EXCEPTIONS NOTED, I FOUND THE FACILITY TO BE ONE OF THE BETTER MAINTAINED OF THOSE I HAVE VISITED IN THE TENNESSEE SYSTEM. THE ADMINISTRATIVE TEAM WAS PARTICULARLY IMPRESSIVE. IT WAS APPARENT FROM STAFF, THAT THE MAJORITY FELT THE LEADERSHIP OF THE INSTITUTION WAS IN GOOD HANDS. I FOUND THE SUPERVISORY STAFF TO BE COMMITTED AND RESPONSIVE. I DID NOT DETECT ANY RACIAL ANTAGONISM, OR PREJUDICE AMONG THE STAFF TOWARDS OTHER STAFF OR INMATES.

THE INMATE POPULATION COULD BEST BE DESCRIBED AS MELLOW AT THE TIME OF MY VISITS. THEY DID NOT HAVE ALOT OF COMPLAINTS, BUT I FOUND THE COMPLAINTS THEY DID MAKE, TO BE VALID. THE MOST OFTEN MENTIONED WAS THE LACK OF RECREATIONAL ACTIVITY, THE IDLENESS, AND THE LIMITED ACCESS TO THE GYM. AMONG THE PROTECTIVE CUSTODY INMATES, THE COMPLAINTS CENTERED AROUND THE TIME THEY WERE FORCED TO SPEND IN THEIR CELLS (UP TO 23 HOURS A DAY IN THEIR CELLS IN SOME CASES). THEY ALSO COMPLAINED THAT THEY WERE FORCED TO EAT IN THEIR CELLS. WHEN ASKED ABOUT HOW THEY SPENT THEIR TIME, SEVERAL STATED: "SLEEPING AND PACING THE FLOOR". THE SAME COMPLAINT ABOUT NOTHING TO DO SURFACED FROM THOSE INMATES AWAITING ASSIGNMENT AFTER COMPLETING INMATE CLASSIFICATION.

I WAS IMPRESSED WITH THE PRO-ACTIVE, ACTION-ORIENTED APPROACH TO THE PROBLEMS STAFF WERE FACING. IT WAS OBVIOUS THAT THEY HAD RECOGNIZED SOME OF THEIR-PROBLEMS AND WERE TAKING STEPS TO CORRECT THEM OR AT LEAST HAD OR WERE REQUESTING THE RESOURCES TO CORRECT SOME OF THE PROBLEMS.

WITH ISOLATED EXCEPTIONS, I BELIEVE THE INSTITUTION IS IN GOOD HANDS. THE MAJORITY OF THE STAFF AND INMATES APPEAR TO NOT ONLY BE ACCEPTING OF THE DIRECTION AND DAY-TO-DAY OPERATION OF THE FACILITY, BUT IN MANY CASES ARE VERY SUPPORTIVE OF STAFF, SUPERVISORS AND MANAGEMENT.

THE LEVELS OF SERIOUS INCIDENTS AND VIOLENCE AT THE INSTITUTION ARE NOT ALARMING, BUT DO SHOW AN INCREASE FROM 1983 to 1984.

	1982	1983	1984	1985 (to date)
ASSAULT (INMATE/INMATE)	3	4	12	0
ASSAULT (INMATE/STAFF)	1	2	5	0
ASSAULT (STAFF ON INMATE)	0	1	0	0
ATTEMPTED ESCAPE	0	1	3	0
ESCAPE (FURLOUGH)	2	1	1	1
TOTAL:	6	9	21	1

OVER THE LAST THREE YEARS, THERE HAS BEEN NO LOSS OF LIFE AS A RESULT OF VIOLENCE, AND ONLY ONE DEATH IN 1982 FROM NATURAL CAUSES.

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WITH THE APPROPRIATE FISCAL AND HUMAN RESOURCES, SOME CHANGES, NO DRAMATIC CHANGE IN MISSION, AND THE SUPPORT AND ASSISTANCE OF AGENCY STAFF AND LEADERSHIP, ALONG WITH SOUND STRUCTURING AND CLASSIFICATION POLICIES, THIS INSTITUTION AND STAFF CAN PERFORM THIS MISSION AND BE A REAL CREDIT TO THE STATE AND THE AGENCY.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

*DOUBLE CELL PROBLEM - AS IN OTHER REPORTS, IMMEDIATE STEPS SHOULD BE TAKEN TO ALLEVIATE OVERCROWDING AND IN THE PROCESS REDUCE THE NUMBERS OF LONG TERM DANGEROUS OFFENDERS ASSIGNED TO THIS FACILITY.
*I SUPPORT THE PLAN TO CONVERT TWO MORE GUILDS TO GERIATRIC HOUSING.
*REPLACE AND REPAIR FOOD SERVICE EQUIPMENT AND KEEP IT MAINTAINED FOR DAY TO DAY USAGE.
*THE PROBLEM OF INMATES WAITING EXTENDED PERIODS FOR TRANSFERS MUST BE CORRECTED IMMEDIATELY.
*IN THE INTERIM DEVELOP STRUCTURED PROGRAMMING FOR INMATES AWAITING TRANSFER AFTER CLASSIFICATION.
*ESTABLISH REGULAR PROGRAMMING SCHEDULES FOR PROTECTIVE CUSTODY INMATES.
*CREATE INCENTIVES FOR INMATES TO ENCOURAGE EDUCATION PROGRAMS.
*FORM AN INCOMPATIBILITY COMMITTEE TO DEVELOP INMATE INCOMPATIBILITY LISTS.
*PERMIT EXERCISE AND FEEDING INSIDE OF THE PROTECTIVE CUSTODY UNITS THROUGH USAGE OF THE INCOMPATIBILITY LISTS (FOR THOSE INMATES WHO WISH TO LEAVE THEIR CELLS).
*PURCHASE ADDITIONAL RECREATION EQUIPMENT FOR ALL LIVING AREAS OF THE FACILITY.
*MONITOR THE USE OF A PROTECTIVE CUSTODY WAIVER SYSTEM AND REEVALUATE THE PROTECTIVE CUSTODY SITUATION AND THE LOCK UP OF INMATE VICTIMS SHOULD CEASE.
*STAFF SHOULD PLACE A PRIORITY ON IDENTIFYING THE PREDATORS AND LOCKING THEM UP PENDING DISCIPLINARY ACTION.
*A COMPLETE STAFFING EVALUATION MUST BE DONE.
*POSITIONS MUST BE ADDED TO THE COMPLEMENT TO PROVIDE ADMINISTRATIVE DIRECTION RANKING ON-SITE LEADERSHIP DURING NON-BUSINESS HOURS, DIRECT LINE SUPERVISION MUST BE ENHANCED AND THE LIVING UNITS STAFFING MUST BE INCREASED. (SEE DETAILS IN NARRATIVE SECTION OF THE REPORT).
*REPLACE THE WOODEN DOORS WITH STEEL DOORS AND INSTALL SECURE LOCKS.
*SECURE ALL WALL LOCKERS AND BEDS IN THE CELLS TO PREVENT THEIR MISUSE.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*IMPLEMENT A SECURITY CHECK OF THE WALLS OF EACH CELL AT THE BEGINNING OF EACH SHIFT - INCLUDE THE DOORS AND WINDOWS IN THE SECURITY CHECKS.
*RE-LOCATE OUTSIDE THE SECURE PERIMETER OF THE FACILITY ALL PLANT MAINTENANCE FACILITIES, EQUIPMENT INVENTORY AND TOOL INVENTORY - USE THE VACATED AREA TO CONVERT IT INTO EDUCATION, COUNSELING, AND DAY ROOM OR GAME ROOM FACILITIES.
*CONSTRUCT A NEW VISITING ROOM (WITH FOUR STATION NON-CONTACT VISITING AREA).
*VISITORS SHOULD NOT ENTER THE SECURE PERIMETER OF THE FACILITY BUILDING AT ANY TIME.
*THE NEW VISITING AREA SHOULD HAVE A STRIP SEARCH ROOM AND SEPARATE TOILET FACILITIES FOR MALE AND FEMALE VISITORS AND INMATES.
*THE SAME RECOMMENDATION IS MADE FOR THE PICNIC AREA AS IS MADE FOR THE VISITING AREA.
*VISITS SHOULD NOT BE TERMINATED BECAUSE THE TOILET FACILITIES NEED TO BE USED. SEPARATE FACILITIES WILL DECREASE THE LIKELIHOOD OF THIS BEING A PROBLEM.
*DISCONTINUE THE VISITOR GROUP EXCHANGE PROCEDURE. VISITORS SHOULD NOT BE KEPT WAITING UNTIL ANOTHER VISITING PERIOD BEGINS.
*CONVERT NEARBY OFFICE FOR STRIP SEARCHING AND THIS SHOULD INCLUDE AN INMATE BATHROOM FACILITY.
+REPAIR UNIT SHOWERS THAT ARE LEAKING AND INOPERATIVE.
+THE ROOMS IN THE LIVING UNITS ARE IN NEED OF PAINT.
*MAINTENANCE INMATES THAT USE TOOLS SHOULD NOT BE LEFT UNSUPERVISED IN THE UNITS UNDER ANY CIRCUMSTANCES.
*MAINTENANCE PRIORITIES SHOULD BE RE-EVALUATED - ITEMS SUCH AS LEAKING SINKS, ETC., SHOULD BE REPAIRED IMMEDIATELY.
*ADD TO THE MAINTENANCE STAFF A CERTIFIED PLUMBER AND A CERTIFIED ELECTRICIAN.
*ADD A SECRETARIAL POSITION TO THE ADMINISTRATIVE AREA.
*SECURE THE INSIDE ROOFLINE OF THE ADMINISTRATIVE BUILDING WITH RAZOR RIBBON.
*ELEVATE TOWER #1 AND MAN THAT STATION TO PERMIT IMPROVED SURVEILLANCE OF THE PERIMETER.
*SECURE THE WINDOWS AND DOOR OF THE CONTROL CENTER ADJACENT TO THE MAIN TRAP GATE.
*INSTALL A MOVEABLE CRASH BARRIER ON THE INSIDE OF THE TRAP GATE.
*INSTALL A FIXED STEEL CABLE CRASH BARRIER ALONG THE FENCELINE ADJACENT TO THE PARKING AREA.
*DEVELOP A SYSTEM WHEREBY A BUILDING AND SECURITY AND HARDWARE SECURITY CHECK IS MADE ON EACH SHIFT.
*DEVELOP A TOOL CONTROL ACCOUNTABILITY SYSTEM AND COMPLETE AN INVENTORY OF ALL INSTITUTION TOOLS.
*IN ADDITION, ASSIGN A SPECIFIC LOCATION FOR TOOLS WITH STAFF ASSIGNED RESPONSIBILITY FOR TOOL LOCATIONS.
*SHADOW BOARDS AND TOOL SIGN-OUT SHEETS SHOULD BE IMPLEMENTED AS WELL.
*SECURE THE ENTRANCE TO THE MAINTENANCE DEPARTMENT.
*DEVELOP A SYSTEM OF KEY INTEGRITY CHECKS BY A RANKING OFFICER.
*DEFECTIVE LOCK CHECKS SHOULD BE MADE AND REPORTED IMMEDIATELY.
*ASSIGN AN OFFICER TO THE KITCHEN ANYTIME THERE ARE INMATES PRESENT.
*SECURE ALL KITCHEN KNIVES AND SEARCH THE FOOD CARTS PRIOR TO THEIR GOING TO THE GUILDS.
+INSTALL A BLOCK WALL IN THE KITCHEN STORAGE AREA WITH A SECURE DOOR AND WINDOW BETWEEN THE FOOD STORAGE AREA AND THE OTHER STORAGE AREA.
+INSTALL A CYCLONE FENCE GATE IN THE LOADING AREA.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*KEEP ONLY A SMALL INVENTORY OF YEAST ON HAND AND IN A SECURE PLACE - INMATES SHOULD ONLY HANDLE YEAST UNDER THE SUPERVISION OF STAFF.
*LIQUIDATE ALL COMP TIME.
*ADD A CLASSIFICATION TEAM CONSISTING OF A COUNSELOR AND ONE PSYCHOLOGICAL EXAMINER.
*PROVIDE SUFFICIENT COUNSELORS TO INSURE A MAXIMUM COUNSELOR CASELOAD OF 70.
*RECLASSIFY ONE OF THE EDUCATION TEACHING POSITIONS TO A LEAD OR SUPERVISORY POSITION.
*IMPLEMENT OSA COFFEY'S RECOMMENDATIONS FOR ACADEMIC AND VOCATIONAL EDUCATION, LIBRARY SERVICES AND RECREATION.
*PURCHASE THE NECESSARY EDUCATION MATERIALS, SUPPLIES AND EQUIPMENT.
+DEVELOP PLANNED AND EXTENSIVE UNIT LEISURE TIME ACTIVITIES AND OUT-OF-UNIT ACTIVITIES.
+PURCHASE ADDITIONAL RECREATION EQUIPMENT FOR ALL UNITS.
*AFTER THE MAINTENANCE AREA IS RELOCATED, THE VACATED SPACE SHOULD BE REMODELED FOR MULTI-PURPOSE USE TO ACCOMMODATE EDUCATION, COUNSELING AND INDOOR RECREATION AND LEISURE TIME ACTIVITIES.
+APPEAL OF THE PUBLIC UTILITY RATES AND IF THIS PHONE UTILITY APPEAL IS UNSUCCESSFUL, REPLACE COLLECT CALL PHONES WITH DIRECT DIAL PHONES.
+ENFORCE VERBAL ABUSE REGULATIONS.
+RE-EVALUATE THE ENTIRE PROMOTION AND VOLUNTARY DEMOTION PROCESS TOWARD DEVELOPING A SYSTEM OF FUNDAMENTAL FAIRNESS THAT REWARDS EXPERIENCE AND COMPETENCY.
*DEVELOP PROGRAMS WHICH ENCOURAGE THE INMATES INVOLVEMENT IN LEISURE TIME ACTIVITIES AND/OR CONSTRUCTIVE ASSIGNMENTS DURING ALL OF THEIR WAKING HOURS.

TENNESSEE PRISON FOR WOMEN

THE ON-SITE VISIT TO THE INSTITUTION STARTED EARLY THURSDAY MORNING, MARCH 28, 1985. THE ON-SITE EVALUATION ENDED WITH AN EXIT SUMMARY IN WARDEN GREER'S CONFERENCE ROOM, LATE AFTERNOON, FRIDAY, MARCH 29, 1985. WARDEN GREER AND HER ADMINISTRATIVE TEAM WERE PRESENT AT THE SUMMARY.

IN THE COURSE OF THE ON-SITE EVALUATION, I SPOKE INFORMALLY WITH A VARIETY OF STAFF AND INMATES FROM WHOM I SELECTED THOSE TO BE INTERVIEWED PRIVATELY. FOUR FEMALE INMATES WERE INTERVIEWED PRIVATELY (ONE BLACK AND THREE WHITE). I ALSO HAD STRUCTURED PRIVATE CONVERSATIONS WITH WARDEN GREER AND SIX STAFF MEMBERS.

THE MAIN FACILITIES WERE COMPLETED AND OCCUPIED BY INMATES IN 1967. THE MINIMUM SECURITY ANNEX WAS BUILT AS A JUVENILE FACILITY IN THE EARLY 50'S AND LATER CONVERTED FOR USE AS A MINIMUM SECURITY UNIT FOR WOMEN. THE INMATE POPULATION OF THE FACILITY DURING MY VISIT WAS 252 WOMEN, OF WHICH 57 WERE HOUSED IN THE MINIMUM SECURITY ANNEX. THE COURT ORDERED MAXIMUM INMATE CAPACITY WAS ESTABLISHED AT 355. THE INSTITUTION CONSISTS OF FIVE PRIMARY LIVING UNITS. (THREE IN THE MAIN COMPLEX AND TWO IN THE ANNEX COMPLEX). THE ACTUAL CAPACITY OF THE FACILITY IS 263. THE ACTUAL TOTAL WAS REACHED USING THE FOLLOWING BREAKDOWN OF UNIT CAPACITIES. INSIDE THE MAIN FACILITY, UNIT #1 HAS A SINGLE ROOM (70 SQ. FT.) CAPACITY OF 50, CONSISTING OF TWO, 25 ROOM WINGS CONNECTED BY A DAY ROOM AND OFFICER STATION. ALSO INSIDE THE MAIN FACILITY, UNIT #2 HAS A SINGLE ROOM (70 SQ. FT.) CAPACITY OF 75, CONSISTING OF THREE, 25 ROOM WINGS, CONNECTED ALSO BY A DAY ROOM AND OFFICER STATION. NINE CELLS IN ONE OF THE THREE WINGS ARE USED FOR DETENTION AND PUNITIVE SEGREGATION. UNIT #3 IS AN OPEN BAY DORMITORY, WHICH ACCOMODATES 30 BEDS FOR A TOTAL ACTUAL SINGLE BED CAPACITY IN THE MAIN FACILITY OF 155. THE MINIMUM SECURITY ANNEX CONSISTS OF TWO BUILDINGS - UNIT #4 AND UNIT #5. UNIT #4 HAS FOUR, 5 BED OPEN DORMITORIES FOR A CAPACITY OF 20 INMATES. UNIT #5 HAS FOUR, 15 BED DORMITORIES AND A BASEMENT DORMITORY THAT ACCOMODATES 18 BEDS, FOR A CAPACITY OF 78 INMATES. THE TOTAL CAPACITY OF THE ANNEX IS 98. BASED ON THESE FIGURES, THE ACTUAL COMBINED CAPACITY OF THE MAIN FACILITY AND THE ANNEX FACILITIES IS 263.

THE MAIN FACILITY AND THE ANNEX FACILITIES AND GROUNDS AT THE TIME OF MY VISIT, REFLECTED THE LACK OF FISCAL AND HUMAN RESOURCES TO PROPERLY MAINTAIN THEM. IT IS APPARENT BY THE DANDELIONS, WEEDS, PATCHY GRASS AND THE LONG, UNMOWED GRASS, THAT THE GROUNDS HAVE BEEN NEGLECTED. THE OBVIOUS PRIORITY HAS BEEN GIVEN TO THE IMMEDIATE NEEDS OF THE BUILDINGS AND PERIMETER. WHAT IS ENCOURAGING, IS THE FACT THAT IN THE LAST FEW MONTHS, OVER A DOZEN PROJECTS WERE EITHER UNDERTAKEN OR ARE IN THE FINAL STAGES OF STUDYING AND/OR PLANNING, SOME OF WHICH I WILL COMMENT ON LATER IN THE REPORT.

THE STAFF COMPLEMENT OF THE FACILITY IS 172, OF WHICH 115 POSITIONS ARE UNIFORM STAFF, 30 TREATMENT STAFF AND 27 ARE ADMINISTRATIVE/SUPPORT AND MAINTENANCE. WITH THREE EXCEPTIONS, I FOUND THE CURRENT STAFFING WITH THE CURRENT INMATE POPULATION ADEQUATE. IT IS RECOMMENDED THAT THE MAINTENANCE STAFF BE DOUBLED, FROM 4 TO 8, AND THE FOUR ADDITIONAL STAFF BE CERTIFIED TRADESMEN - PLUMBER, ELECTRICIAN, REFRIGERATION AND COMBINATION MECHANIC/GROUNDSKEEPER.

BECAUSE OF THE HIGH VOLUME OF TRANSPORTATION NECESSARY (40 - 60 TRIPS PER WEEK), IT IS RECOMMENDED THAT 2 TRANSPORTATION CORPORALS BE ADDED TO THE

COMPLEMENT. IT IS ESTIMATED THAT AT ANY GIVEN TIME, DEPENDING ON THE INMATE POPULATION, BETWEEN 40 - 75 INMATES MUST BE TRANSPORTED TO LOCATIONS AWAY FROM THE FACILITY - T.S.P.; T.S.I.; S.Y.C.; D.G.S., DEPARTMENT OF SAFETY AND THE DEPARTMENT OF CONSERVATION. CURRENTLY STAFF ON OCCASION ARE TAKEN FROM THE SUPERVISION OF INMATES IN THE FACILITY TO TRANSPORT AND/OR ESCORT INMATES ON SPECIAL ASSIGNMENTS, LEAVING THE FACILITY SHORT STAFFED.

BECAUSE THEY ARE OPERATING TWO SEPARATE KITCHENS WITH TWO SEPARATE MENUS, IN TWO DIFFERENT LOCATIONS, I RECOMMEND THAT 2 FOOD SERVICE PERSONNEL BE ADDED TO PROPERLY MANAGE AND SUPERVISE THE TWO SEPARATE KITCHEN AND DINING FACILITIES.

AT THE TIME OF MY VISIT THERE WASN'T ALOT OF IDLENESS. THIS WAS A RECENT PHENOMENON, HOWEVER, BECAUSE THE INMATE POPULATION HAD RECENTLY DROPPED FROM OVER 355 INMATES TO THE CURRENT POPULATION OF 252 INMATES. THOSE INMATES WHO WERE IN THE INTAKE/ORIENTATION/CLASSIFICATION PHASE AND NOT "MEDICALLY CLEARED" YET, WERE IDLE FOR SIGNIFICANT PERIODS OF TIME. "MEDICALLY CLEARED" IS A TERM THAT HAS NOW BECOME A SORT OF INSIDE JOKE AMONG THE STAFF BECAUSE IT HAD PREVIOUSLY BEEN USED TO EXPLAIN TO INMATES WHY THEY WERE NOT INVOLVED IN PROGRAM AND LEISURE TIME ACTIVITIES. STAFF ARE IN THE PROCESS OF CHANGING THAT PAST PRACTICE. WHEN THE WOMEN'S POPULATION IS UP OVER 300, THERE IS IDLENESS. STRUCTURED LEISURE TIME ACTIVITIES ON EVENINGS AND WEEKENDS ARE MINIMAL AT THIS TIME, BUT THERE ARE CLEAR INDICATIONS FROM THE INMATE POPULATION THAT IMPROVEMENTS ARE BEING MADE AND HAVE BEEN MADE IN THE LAST FEW MONTHS. IN THE EVENING, THE UNIT DAYROOMS WERE FULLY OCCUPIED WITH LADIES PLAYING TABLE GAMES AND TALKING, AND IN GENERAL, QUITE RELAXED. I WOULD RECOMMEND SOME MODEST INVESTMENTS IN PING PONG, POOL, FOOSBALL AND AN ASSORTMENT OF TABLE GAMES FOR THE UNITS, ENCOURAGING UNIT TEAM COMPETITION IN A VARIETY OF SPORTS. IT IS ALSO SUGGESTED THAT A HEAVY BAG BE MOUNTED IN EACH UNIT TO ABSORB PENT UP ENERGY TO RELIEVE FRUSTRATION.

THE SEGREGATION UNIT (CAPACITY - 9) AND THE 4 HOLDING CELLS (2 EACH BEHIND THE OFFICER STATION IN UNITS #1 AND #2) WERE ALL EMPTY EXCEPT FOR ONE WOMAN IN SEGREGATION FOR ALLEGEDLY REFUSING TO WORK. I DID CONDUCT A PRIVATE INTERVIEW WITH THIS WOMAN. HER VERSION OF HER CIRCUMSTANCE WAS INTERESTING AND DID RAISE A NUMBER OF ISSUES AND CONCERNS WHICH I DID DISCUSS WITH WARDEN GREER.

AS STATED, OVERCROWDING ON THE SURFACE WOULD NOT APPEAR TO BE A MAJOR ISSUE. AS STATED, THE FACILITY HAS AN ACTUAL CAPACITY OF 263 AND THE POPULATION WAS 252 DURING MY VISIT. WITH ONLY 57 WOMEN AT THE ANNEX, 30 WOMEN IN THE OPEN DORMITORY (UNIT #3), THAT LEAVES 165 OUT OF 252 WOMEN DOUBLE CELLED IN UNITS #1 AND #2, WITH A TOTAL CAPACITY OF 125 ROOMS IN THE TWO UNITS. WITH ONE EXCEPTION, ALL OF THE WOMEN I TALKED WITH, BOTH INFORMALLY AND PRIVATELY, HAD A VERY DIFFICULT TIME ADJUSTING TO THE OPEN DORMITORIES, GANG SHOWERS AND BEING FORCED TO TAKE CARE OF BODY FUNCTIONS IN A 70 SQ. FT. ROOM WITH ANOTHER WOMEN PRESENT ALL THE TIME. MOST WOMEN SPOKE OF THE EXTREME ANXIETY, STRESS AND PRESSURE THEY FELT THAT SOMETIMES MANIFESTED ITSELF IN HUMILIATING WAITS IN FRONT OF THEIR CELL PARTNER JUST TO COMPLETE A SINGLE BODY FUNCTION THAT WAS DELAYED BY THE PSYCHOLOGICAL STRESS OF NOT BEING ABLE TO HAVE ANY PRIVACY. THE STORIES OF PANIC THAT CAME OVER THEM HAVING LEFT A HOME, HUSBAND AND CHILDREN, AND THEN TO FIND YOURSELF IN AN OPEN DORMITORY WITH 29 OTHER FEMALES,

FORCED TO DRESS AND UNDRESS IN FRONT OF PEOPLE YOU NEVER MET BEFORE, OR GOING TO THE OFFICER AT THE DESK AND ASKING IS IT SAFE TO SHOWER, BEING TOLD YES, AND THEN SHOWERING IN A LARGE TILED GANG SHOWER (SIX SHOWER HEADS IN ONE OPEN SHOWER AREA) AND BEING HALF WAY THROUGH YOUR SHOWER WHEN TWO OTHER WOMEN BEGIN ENGAGING IN OPEN, OVERT SEXUAL ACTIVITY AND BEING SO FRIGHTENED THAT YOU DON'T COMPLETE YOUR SHOWER IN ORDER TO LEAVE THE AREA BECAUSE OF THE FEAR YOU MAY BE FORCED TO PARTICIPATE.

CONSISTENT WITH THIS CONCERN, WERE THE CONCERNS EXPESSED BY EVERY WOMAN WITH ONE EXCEPTION, THAT HOMOSEXUALITY AMONG THE WOMEN WAS ESTIMATED FROM AS LOW AS 25% TO 50% & 70%. CONSISTENTLY, HOWEVER, IT WAS ESTIMATED THAT 50% OF THE WOMEN AT VARIOUS TIMES PARTICIPATED IN HOMOSEXUAL ACTIVITY. STAFF ESTIMATES RANGED FROM AS FEW AS 10% TO THE MAJORITY, WHICH ESTIMATED THIS ACTIVITY TO BE PREVELANT AMONG 30 - 50% OF THE WOMEN. IN ORDER TO CELL TOGETHER, ALL THAT IS REQUIRED IS A SINGLE WRITTEN REQUEST TO THE FEMALE HOUSING SERGEANT. SHE IN TURN, CONFIRMS WITH BOTH PARTIES THAT THEY DO IN FACT WANT TO CELL TOGETHER, AND THEN HAS THEM SIGN A 90 DAY, NO CELL CHANGE CONTRACT, WHICH SHE WILL NOT ENFORCE IF UNIT STAFF (COUNSELOR OR PSYCH EXAMINER) DOCUMENT INCOMPATIBILITY AND RECOMMEND A CHANGE. THE HOUSING OFFICER INDICATES THAT "EVEN IF THEY HALF TELL ME WHY THEY WANT TO CELL TOGETHER, WHAT CAN I DO." SHE FELT IT WAS UP TO UNIT STAFF TO CATCH INMATES IN AN OVERT ACT THEN THERE WOULD BE A BASIS TO SEPARATE AND DISCIPLINE THEM. BOTH INMATES AND STAFF AGREED THAT THEY KNOW OF NO INCIDENTS OF ANYONE BEING FORCED INTO A SEXUAL RELATIONSHIP. INMATES INDICATE THAT THEY ARE APPROACHED, BUT SOMEONE WHO IS ATTRACTIVE MAY GET A LITTLE MORE PRESSURE OR BE SLAPPED AROUND, BUT IT USUALLY ENDS THERE. THE INMATES REASONED THAT THERE ARE SO MANY WILLING PARTNERS THAT FORCE IS JUST NOT NECESSARY.

ONE OF MY MAJOR CONCERNS ABOUT THE WOMEN'S FACILITY CENTERS AROUND THIS ISSUE. I DID NOT HAVE SUFFICIENT TIME TO PROBE THE ISSUE FURTHER, BUT I AM CONFIDENT WARDEN GREER WILL. SHE AGREED WITH MY RECOMMENDATION THAT THE ADMINISTRATION AND STAFF SHOULD ARTICULATE CLEARLY, BOTH IN WRITING AND IN ACTIONS, THAT BY POLICY, THE STAFF WILL NOT CONDONE OR ACCOMODATE SEXUAL CONTACT BETWEEN INMATES, AND WILL MAKE EVERY REASONABLE AND PRUDENT EFFORT TO CONFRONT AND DISCOURAGE SUCH ACTIVITY. ADMITTEDLY, THIS IS A DELICATE SUBJECT, BUT IF THE MAJORITY OF THE OPINIONS ARE CORRECT, IT HAS THE POTENTIAL FOR POLITICAL AND MEDIA EXPLOITATION AND SENSATIONALIZATION. IT IS ALSO IMPORTANT NOT TO OVERREACT. IT IS UNDERSTOOD AND ACCEPTED THAT WOMEN ARE MORE COMFORTABLE THAN MOST MEN EXPRESSING THEIR FRIENDSHIP, EMOTIONS AND SENSITIVITY. IN MOST CASES, THEY ARE DEMONSTRATIVE AND DO KISS AND EMBRACE EACH OTHER IN PUBLIC MORE READILY THAN MEN. I DON'T ADVOCATE INTERVENING AND/OR DISCOURAGING THIS APPROPRIATE BEHAVIOR. SOME OF THE WOMEN I TALKED WITH CAME FROM AFFLUENT AND/OR INTACT FAMILY UNITS AND WERE VERY FRIGHTENED AND THREATENED AND IN A STATE OF DISBELIEF AT THE EXTENT OF SEXUAL RELATIONSHIPS AMONG THE WOMEN. SOME OF THE WOMEN BELIEVED THAT TO SOME EXTENT, THE BEHAVIOR IF NOT OUTRIGHT CONDONED BY STAFF, WAS ACCEPTED AS A FACT OF LIFE IN A WOMEN'S FACILITY. FROM MY CONVERSATIONS WITH WARDEN GREER, I AM CONFIDENT SHE WILL APPROACH THE ISSUE WITH BOTH SENSITIVITY AND COMMITMENT TO LEARN AND UNDERSTAND THE EXTENT OF THE PROBLEM. SHE WILL BE TAKING THE STEPS NECESSARY TO ESTABLISH THE NECESSARY AWARENESS AND EXPECTATIONS FOR BOTH STAFF AND INMATES, TO REDUCE THIS TYPE OF ACTIVITY TO THE EXTENT POSSIBLE, IF IN FACT IT HAS REACHED THE

PROPORTIONS ARTICULATED BY BOTH STAFF AND INMATES. THE MOST PRODUCTIVE STEP IN THIS DIRECTION WOULD BE TO ELIMINATE DOUBLE CELLING. GIVEN THE CURRENT CAPACITIES AND INMATE POPULATION, THAT WOULD BE POSSIBLE IF THE NECESSARY REPAIRS WERE MADE ON UNIT FOUR IN THE ANNEX, AND DEPARTMENTAL POLICY WAS CHANGED TO PERMIT THE TRANSFER OF LOW RISK, PROPERTY OFFENDERS TO MINIMUM SECURITY. BECAUSE OF THE CURRENT DORMITORY ARRANGEMENTS IN THE ANNEX, ADDITIONAL INCENTIVES AND PRIVILEGES SHOULD BE PERMITTED IN THE ANNEX. IT IS ALSO RECOMMENDED THAT IN ALL THE DORMITORIES (#3, #4, #5) PRIVACY DIVIDERS BE PLACED BETWEEN EACH LIVING AREA. GANG-TYPE SHOWERS SHOULD BE REMODELLED TO PERMIT PRIVATE SHOWERING AND DRESSING AREAS. I SHOULD ADD THAT SOME PRIVACY DIVIDERS HAVE BEEN INSTALLED AND THE WOMEN INDICATED THAT EVEN THIS SLIGHT IMPROVEMENT, GAVE THEM SOME LIMITED SENSE OF PERSONAL PRIVACY.

THE INMATES AND STAFF EAT MEALS TOGETHER IN A CENTRAL DINING ROOM. WARDEN GREER IS IN THE DINING ROOM SEVERAL TIMES A WEEK AND IS VERY ACCESSIBLE TO THE INMATES. ONE OF THE INMATES INTERVIEWED SAID SHE HAD BEEN IN THE FACILITY THREE YEARS AND HAD ONLY SEEN THE PREVIOUS WARDEN TWICE. STAFF CORROBORATED THE PREVIOUS WARDEN'S PREFERENCE FOR HER OFFICE. IT IS OBVIOUS FROM WARDEN GREER'S RELATIONSHIP WITH THE WOMEN AND STAFF, THAT SHE PRACTICES THE SOUND POLICY OF SEEING AND BEING SEEN. INMATES COMMENTED ON HER ACCESSIBILITY AND RESPONSIVENESS.

THE ATMOSHPHERE AT THE FACILITY WAS RELAXED AND THE MAJORITY OF THE WOMEN WERE NEATLY DRESSED IN THEIR OWN PERSONAL CLOTHES. IT APPEARS THAT THE WOMEN ATTEMPT TO LOOK THEIR BEST FOR MEALS (HAIR, MAKE UP, ETC.) WHICH BRINGS ME TO ANOTHER CONCERN. AS OF JULY 1, 1985 BY STATE STATUTE, ALL THE WOMEN WILL BE CLOTHED IN DISTINCTIVE STATE ISSUE DENIMS, WHICH WILL HAVE A WHITE STRIPE DOWN THE OUTSIDE OF THE LEG, AND A WHITE PANEL IN THE FRONT OF THE JACKET. IMPRINTED ON THE PANTS AND THE JACKET IN BOLD LETTERS ARE "TENNESSEE DEPARTMENT OF CORRECTIONS." THIS POLICY IS ARCHAIC AND AN OVERREACTION TO SOME ESCAPES FROM THE MEN'S FACILITIES. I BELIEVE THE STATUTE SHOULD BE REPEALED AND THE WOMEN INSIDE THE FACILITY SHOULD BE EXEMPT FROM THE POLICY UNTIL THE STATUTE IS REPEALED. WOMEN PLACE A HIGH PRIORITY ON THEIR CLOTHES. THEIR SENSE OF INDIVIDUALITY, SELF-ESTEEM AND OVERALL ADJUSTMENT WILL BE DRASTICALLY AFFECTED BY THE LOSS OF THEIR PERSONAL CLOTHES. THIS WAS A MAJOR CONCERN OF THE WOMEN AND STAFF I SPOKE WITH.

AS AN ASIDE, THE PLACING OF INMATES IN THESE STRIPES WILL IN FACT, INCREASE THE POTENTIAL DANGER TO ALL WHO LIVE IN CLOSE PROXIMITY TO A CORRECTIONAL FACILITY. WHAT THE ILL-ADVISED NEW STATUTE WILL FORCE A DESPERATE ESCAPEE TO DO, IS TO MAKE CONTACT WITH A CITIZEN AS SOON AFTER ESCAPE AS IS POSSIBLE. THIS WILL BE DONE IN ORDER TO ACQUIRE NON-PRISON CLOTHING AND DISCARD THE STRIPES. BY FORCING THAT CONTACT AT A POINT WHEN A DESPERATE PERSON WOULD USUALLY NOT WANT CONTACT WITH ANYONE SINCE THE STANDARD ESCAPE PATTERN IS TO PUT DISTANCE BETWEEN HIMSELF OR HERSELF AND THE INSTITUTION, THE STATE WILL SOON LEARN THAT THE STATUTE IS COUNTERPRODUCTIVE TO WHAT THEY EXPECT IT WILL ACCOMPLISH.

AS INDICATED EARLIER IN THIS REPORT, I FOUND THE PHYSICAL PLANT IN A STATE OF NEGLECT. THERE ARE RECENT SIGNS THAT THE NEW ADMINISTRATION HAS PLACED A HIGHER PRIORITY ON PREVENTATIVE MAINTENANCE AND MAINTENANCE. DURING MY VISITS TO ALL AREAS OF THE FACILITY, THERE WERE EXAMPLES OF EXPOSED OUTLETS, WIRES, LIGHTED "EXIT" SIGNS DANGLING BY TWO WIRES, BATTERY PACKS MISSING FROM

EMERGENCY LIGHTS IN THE LIVING UNITS, LEAKING FAUCETS AND SHOWERS, ETC., MOLD ON THE CEILINGS OF BATHROOMS AND SHOWERS, AND MANY AREAS ARE IN NEED OF PAINT AND REPAIRS. IT WAS ALSO NOTED THAT PHOTO ELECTRIC CELLS THAT TURN ON AND SHUT OFF COMPOUND AND PARKING LOT LIGHTING, HAD NOT BEEN WORKING FOR MONTHS. THE END RESULT IS EXPENSIVE TO OPERATE MERCURY VAPOR LIGHTING USING ELECTRIC ENERGY DURING THE DAY. I WOULD ESTIMATE THAT THE REPLACEMENT OF THE PHOTO ELECTRONIC CELLS COULD HAVE BEEN FUNDED SEVERAL TIMES OVER WITH THE AMOUNT SPENT ON THOSE LIGHTS BURNING DURING THE DAYLIGHT HOURS.

THE MAINTENANCE BUILDING AND FENCED AREA AROUND THE BUILDING LOCATED OUTSIDE THE COMPOUND WAS A SIGHT TO BEHOLD. IT RESEMBLED A JUNK YARD. IT WAS OBVIOUS THAT TOOL CONTROL AND MATERIAL INVENTORIES WOULD BE FOREIGN TO THOSE RESPONSIBLE FOR THE AREA. HOWEVER, WARDEN GREER AND LT. MITHCELL DID INDICATE THAT WORK HAD BEGUN ON A TOOL CONTROL SYSTEM SINCE THEIR ARRIVAL AT THE INSTITUTION.

ONE OF THE FACTORS IN THE GRASS NOT HAVING BEEN MOWED WAS THE INSTITUTION MOWERS WERE NOT OPERABLE. ADMITTEDLY, ONE COULD UNDERSTAND SOME OF THE "RECENT" NEGLECT BECAUSE OF THE FEW MAINTENANCE STAFF (4) AND ALL OF THE NEW CONSTRUCTION UNDERWAY, BUT IT WAS OBVIOUS THAT THE NEGLECT AND LACK OF ORGANIZATION OF THE MAINTENANCE BUILDING WAS NOT A RECENT PHENOMENON.

THE LIST OF NEW PROJECTS THAT HAVE BEEN STARTED SINCE WARDEN GREER'S ARRIVAL IS IMPRESSIVE:

-REMODELLING TO ACCOMMODATE THE RE-LOCATION OF THE ARMORY;
-REMODELLING TO ACCOMMODATE THE RE-LOCATION OF KEY CONTROL;
-REMODELLING TO ACCOMMODATE THE RE-LOCATION OF COMMUNICATIONS;
-REMODELLING TO ACCOMMODATE THE RE-LOCATION OF SHIFT SUPERVISOR'S OFFICE;
-INSTALLATION OF THE DOUBLE FENCE AROUND THE MAIN FACILITY;
-CONSTRUCTION OF A NEW TRAP GATE WITH AN UNDERCARRIAGE INSPECTION TRENCH ADJACENT TO THE NEW SHIFT SUPERVISOR'S OFFICE.

ALSO IN FINAL PLANNING STAGES, WAS THE REMODELLING OF THE CURRENTLY UNUSED CHAPEL SPACE, TO INMATE AND VISITOR SEARCH ROOMS. THESE ROOMS WILL BE LOCATED CLOSE TO A PLANNED FOUR DOOR INTER-LOCKING SALLYPORT ARRANGEMENT ADJACENT TO THE ELEVATED CONTROL, WHICH OVERLOOKS THE LOBBY ENTRANCE ON ONE SIDE AND THE VISITING ROOM ON THE OTHER SIDE. IT WOULD BE IMPRACTICAL TO LIST HERE ALL OF THE EXCELLENT IMPROVEMENTS UNDERWAY SINCE THE RECENT (3 MONTHS) CHANGE IN ADMINISTRATION. IT IS IMPRESSIVE TO THE STAFF AND INMATES AS WELL. BOTH THE STAFF AND INMATES (WITH ISOLATED EXCEPTIONS) FEEL VERY OPTIMISTIC ABOUT THE CHANGES THEY SEE AND THE ACCESSIBILITY OF THE NEW WARDEN AND HER STAFF.

I RECOMMENDED TO THE WARDEN THAT SECURE ENTRANCE DOORS SHOULD BE INSTALLED ON UNITS #1 AND #2, AND THE MAKESHIFT CONTROL STATION IN THOSE UNITS BE DISMANTLED. IN EACH OF THOSE UNITS THE ENTRANCE DOORS ARE STANDARD TYPICAL ALUMINUM/GLASS DOORS. THESE DOORS SHOULD BE REPLACED WITH SECURITY DOORS AND SECURITY HARDWARE, AND BE CAPABLE OF OPERATING MANUALLY FROM A SMALL DESK TOP REMOTE SWITCH PANEL, WHICH COULD BE SECURED. THE CONTROLS FOR THE LARGE SLIDING BARRED DOORS TO THE WINGS ADJOINING THE DAYROOM WOULD BE OPERATED FROM THE SAME DESK TOP PANEL. IT IS VERY BASIC AND OBVIOUSLY GOOD SECURITY POLICY TO MAINTAIN CONTROL OF ACCESS TO ANY INMATE LIVING UNIT. MAINTAINING CONTROL OVER UNIT ACCESS KEEPS

STAFF AWARE OF WHO IS ENTERING AND LEAVING THE UNIT, AND INDICATES TO THE INMATE POPULATION THAT THERE IS CONTROL AND ACCOUNTABILITY. IT IS ALSO GOOD PRACTICE TO MAINTAIN CONTROL OF UNIT ENTRANCES TO PREVENT THE SPREAD OF A PROBLEM SHOULD YOU HAVE A DISTURBANCE IN ANOTHER UNIT OF THE INSTITUTION.

THE VERY LARGE UNSIGHTLY OFFICER STATIONS IN UNITS #1 AND #2 ARE A MIXTURE OF BARS, EXPANDED METAL AND PLEXIGLASS. THE DOORS ARE CURRENTLY LEFT UNLOCKED BY STAFF AND OPERATE MOST OF THE TIME WITH THE UPPER HALF OF THE EXPANDED METAL HALF DOOR OPEN. THE CONTROL STATIONS PLACE AN UNNECESSARY BARRIER BETWEEN STAFF AND INMATES, AND REDUCES THE POTENTIAL FOR GOOD RAPPORT BETWEEN STAFF AND INMATES. SINCE ALL OF THE ROOM DOORS ARE MANUALLY OPERATED, THE OFFICER STATION SERVES NO USEFUL SECURITY PURPOSE. IT SHOULD BE DISMANTLED.

IT WAS NOTED THAT THE CEILINGS OF THE GYM & DINING ROOM ARE EXPOSED ASBESTOS. IT IS RECOMMENDED THAT A KNOWLEDGEABLE CONSULTANT BE CONTRACTED TO DETERMINE THE POTENTIAL HAZARD TO HEALTH, ESPECIALLY IN THE MAIN DINING FACILITY. IT WOULD SEEM POSSIBLE THAT SMALL PARTICLES OF ASBESTOS COULD FIND THEIR WAY INTO THE FOOD.

IT WAS OBVIOUS THAT WITH THE AMOUNT OF TRANSPORTATION NECESSARY AT THIS FACILITY, THAT THERE IS A CRITICAL NEED FOR VEHICLES. THE CURRENT FIFTEEN YEAR OLD BUS BREAKS DOWN WITH REGULARLITY. THE CURRENT PICK UP TRUCK USED FOR PERIMETER PATROL WAS GIVEN TO THE INSTITUTION BY WARDEN HERMAN DAVIS AT FORT PILLOW. IT IS RECOMMENDED THAT THE BUS BE REPLACED WITH A NEW BUS. A FOUR-WHEEL DRIVE PERIMETER VEHICLE SHOULD BE PURCHASED TO REPLACE THE USED PICK UP. WITH THE CURRENT TRANSPORTATION COMMITMENTS, AN ADDITIONAL VAN AND STATION WAGON SHOULD ALSO BE PURCHASED. THESE VEHICLES AND THE CURRENT VEHICLES COULD BE PROPERLY MAINTAINED BY THE MECHANIC POSITION RECOMMENDED EARLIER IN THIS REPORT.

THE SEPARATE AND COMPLETE KITCHEN FACILITIES ARE OPERATED FROM TWO LOCATIONS. THE EFFICIENCY OF THIS ARRANGEMENT SHOULD BE STUDIED. REGARDLESS, THERE IS A NEED FOR TWO ADDITIONAL FOOD SERVICE PERSONNEL TO PROPERLY SUPERVISE THE FOOD SERVICE OPERATION, THREE MEALS A DAY, SEVEN DAYS A WEEK.

THE RECENT PURCHASE AND INSTALLATION OF OVENS AND OTHER KITCHEN EQUIPMENT AT THE ANNEX HAS IMPROVED THAT OPERATION SIGNIFICANTLY. THE OUTSIDE DOORS OF THE KITCHEN AND DINING ROOM FACILITIES SHOULD BE CLOSED TO PREVENT THE CONTAMINATION OF FOOD BY INSECTS, ETC., UNLESS THEY ARE EQUIPPED WITH SCREENS. THE SCREEN ABOVE THE SINKS IN THE ANNEX KITCHEN IS IN NEED OF REPAIR OR REPLACEMENT. SOME OF THE KITCHEN EQUIPMENT IN THE MAIN KITCHEN IS IN NEED OF REPLACEMENT. REPAIRS HAD RECENTLY BEEN COMPLETED ON SOME OF THE REFRIGERATION UNITS, BUT THE SEALS ON THE BOTTOM OF THE DOORS HAD NOT BEEN REPLACED.

I WAS UNABLE TO DETERMINE WHAT MEALS HAD BEEN SERVED OVER THE LAST COUPLE OF WEEKS BECAUSE NO MENUS WERE AVAILABLE. I WAS TOLD MENUS ARE PENCILED OUT BY MR. FLOSSIE AND THROWN AWAY. MR. FLOSSIE DID NOT HAVE COPIES OF THE DEPARTMENT CYCLE MENU (WHICH RAISES THE QUESTION OF WHAT GUIDES HIM IN THE PREPARATION OF HIS MENUS FOR THE INSTITUTION). MENUS SHOULD BE DEVELOPED CONSISTENT WITH THE CYCLE MENU AND SUBSTITUTIONS NOTED AND DOCUMENTED WHEN

NECESSARY. WEEKLY MENUS SHOULD BE POSTED IN ALL THE LIVING UNITS ON THE FRIDAY BEFORE THE SUNDAY THE NEW MENU BEGINS. OVERALL, THE STAFF AND INMATE COMMENTS ABOUT THE FOOD WERE NOT CRITICAL. INMATES AND STAFF BOTH INDICATED THAT THE MENU HAS LACKED FRESH FRUIT AND VEGETABLES. SOME ALSO FELT WHEN THEY DID GET VEGETABLES, THEY WERE OVERCOOKED, DIMINISHING THE TASTE AND NUTRITIONAL VALUE. SOME FELT THERE WAS TOO MUCH STARCH IN THE MEALS, AND SEVERAL REPORTED DRAMATIC WEIGHT GAINS. WITHOUT ANY MENUS ON RECORD, THESE CONCERNS AND COMPLAINTS COULD NEITHER BE SUBSTANTIATED OR REFUTED. I GOT THE IMPRESSION FROM WARDEN GREER THAT THESE PROBLEMS WOULD BE CORRECTED BEFORE I COULD WRITE MY REPORT.

THE WAREHOUSE AND STORAGE FACILITIES FOR AN INSTITUTION OF THIS SIZE ARE TOTALLY INADEQUATE. THE WAREHOUSE WAS BUILT AT A TIME WHEN IT WAS BELIEVED IT WOULD SERVE A POPULATION OF 75. IN ORDER TO PROVIDE ADEQUATE LOADING, STAGING, STORAGE AND WAREHOUSE SPACE, AND SUFFICIENT SPACE TO PROPERLY ACCESS, MANAGE AND ROTATE INVENTORY, THE SPACE SHOULD BE TRIPLED AT A MINIMUM.

IN THE MEDICAL AREA, I WAS CONCERNED ABOUT MEDICAL SERVICES BECAUSE OF THE CURRENT SHORTAGE OF NURSING STAFF. THREE OF THE SIX NURSING POSITIONS WERE VACANT DURING MY VISIT.

ANOTHER RECENT CHANGE WAS THE INSTALLATION OF A MEDICATION PASS THROUGH WINDOW IN THE PHARMACY, WHICH PERMITS THE NURSE TO PASS MEDICATION FROM THE PHARMACY TO INMATE PATIENTS OUTSIDE THE BUILDING. HOWEVER, THAT NEW PASS THROUGH DID NOT HAVE A SCREEN ON THE LARGE LOUVRED VERTICAL WINDOW, PERMITTING DUST AND INSECTS TO ENTER THE PHARMACY AREA WHERE MEDICATION IS COUNTED, PACKAGED AND DISTRIBUTED. I RECOMMEND THAT A SCREEN BE INSTALLED ON THE VERTICAL WINDOW AND AN ENCLOSURE BE BUILT OUTSIDE THE WINDOW TO PERMIT PATIENTS TO PICK UP THEIR MEDICATION IN RAINY, COLD OR SNOWY WEATHER, OUT OF THE ELEMENTS. FOR THOSE PATIENTS WHO WOULD AGGRAVATE THEIR CONDITION BY COMING TO THE PHARMACY FOR THEIR MEDS, I SUGGEST THAT AN OFFICER ESCORT THE NURSE TO THE LIVING UNITS OF THOSE FEW WHO SHOULD NOT COME TO THE PHARMACY FOR THEIR MEDICATION.

IT WAS DISAPPOINTING TO SEE THAT THE HOUSEKEEPING AND HYGIENE STANDARDS WERE SO LOW IN THE MEDICAL AREA. TYPICALLY, MEDICAL AND DENTAL AREAS ARE USUALLY IN SPARKLING SUPERIORITY OVER OTHER AREAS OF MOST FACILITIES. THIS WAS NOT THE CASE. IT WAS OBVIOUS TO WARDEN GREER AND MYSELF, THAT THIS AREA NEEDS TO GET BETTER ORGANIZED AND A HIGHER PRIORITY SHOULD BE PLACED ON SANITATION, HYGIENE, HOUSEKEEPING AND OVERALL CLEANLINESS. THIS AREA SHOULD BE SETTING THE EXAMPLE FOR HOUSEKEEPING IN THE INSTITUTION. THERE WAS ADEQUATE CONTROL AND ACCOUNTABILITY OF MEDICATION AND SYRINGES.

THE HOUSEKEEPING IN THE UNITS COULD BE IMPROVED, BUT WAS GENERALLY ACCEPTABLE WITH THE EXCEPTION OF SHOWERS, BATHROOMS, AND LAUNDRY ROOMS, AND SOME STORAGE AREAS. THE VENTS IN EACH ROOM ARE IN NEED OF CLEANING AND IT WAS NOTED THAT BIRD NESTS WERE IN A FEW OPEN WINDOWS IN THE UNITS. THE NESTS SHOULD BE REMOVED AND THE WINDOWS CLOSED AT SOME POINT DAILY TO DISCOURAGE BIRDS FROM NESTING THERE. THE SCREENS COULD USE CLEANING AT CLOSER INTERVALS. THE PRACTICE OF PERMITTING INMATES TO KEEP TOXIC SUBSTANCES IN THEIR CELLS SUCH AS BLEACH, PINE SOL, ETC. MUST CEASE. WARDEN GREER INDICATED THAT SHE HAD PUT A STOP TO THE DIRECT SALE OF BLEACH TO INMATES IN THE COMMISSARY. WITH THESE EXCEPTIONS, THE OVERALL HOUSEKEEPING WAS SATISFACTORY.

THE UNIT FURNISHINGS - CHAIRS PRIMARILY, WERE OLD (ESTIMATED 25 YEARS OLD) AND EVEN THOUGH SOME HAD RECENTLY BEEN RECOVERED, MOST WERE WORN OUT, BROKEN AND CERTAINLY NOT ANYTHING THAT HAS BEEN IN USE FOR THE LAST TEN YEARS OR CURRENTLY FOUND IN USE ANYPLACE I HAVE BEEN. IT IS RECOMMENDED THAT AN EXPENDITURE BE MADE TO IMPROVE THE FURNITURE AND FURNISHINGS IN THE LIVING UNITS.

POLICIES, PROCEDURES, POST ORDERS, JOB DESCRIPTIONS, UNIT MANUALS, ETC. ARE AN AREA WHICH HAS BEEN NEGLECTED FOR SOME TIME AT THIS FACILITY BASED ON WHAT WAS OBSERVED DURING MY VISIT, AND FROM THE STAFF RESPONSES MADE WHEN THEY WERE ASKED ABOUT THEIR KNOWLEDGE OF THEM AND WHERE THEY COULD BE LOCATED. WARDEN GREER INDICATED THAT THIS WAS ONE OF HER PRIORITIES AND RECOGNIZED SHORTLY AFTER HER ARRIVAL AS WARDEN, THAT THIS HAD BEEN AN AREA WHICH HAD NOT RECEIVED THE EMPHASIS AND ATTENTION TO ENSURE CONTINUITY AND CONSISTENCY. AS INDICATED, THERE IS ALSO ROOM FOR IMPROVEMENT IN TOOL CONTROL. IMPROVEMENTS ARE ALSO PLANNED FOR KEY CONTROL WHEN IT IS RE-LOCATED.

AS AN ASIDE IN THE SECURITY AREA, I NOTED UPON LEAVING THE FACILITY AT ABOUT 7:30 P.M., THAT THE TRANSPORTATION BUS WAS PARKED IN THE PARKING LOT IN FRONT OF THE ADMINISTRATION BUILDING WITH THE DOOR OPEN. I ALSO NOTED FIVE OR SIX PEOPLE WHO HAD EVIDENTLY ACCOMPANIED VISITORS TO THE INSTITUTION, BUT WERE STANDING AROUND IN THE PARKING LOT ENGAGED IN SOME HORSEPLAY. I CHECKED WITH THE ACTING CAPTAIN THE FOLLOWING MORNING AND FOUND THAT THE WOMEN WERE LOADED INTO THE SAME BUS FOR TRANSPORTATION AND THE BUS HAD NOT BEEN SEARCHED. THIS COULD HAVE HAD SERIOUS AND DANGEROUS IMPLICATIONS, AND I AM CONFIDENT THAT THE WARDEN AND THE CAPTAIN WILL TAKE THE NECESSARY STEPS TO ENSURE THAT THIS IS NOT REPEATED. I ALSO WAS VERY IMPRESSED WITH THE HONESTY AND INTEGRITY OF THE WOMAN OFFICER WHO ADMITTED SHE ERRED IN NOT SEARCHING THE BUS, AND THE ACTING CAPTAIN IN PASSING THAT ON TO ME. IT IS AN INDICATION OF THE QUALITY OF THE PERSONNEL INVOLVED.

I FOUND THE COUNSELING STAFFING RATIO TO BE ADEQUATE (SIX COUNSELOR POSITIONS FOR 250 INMATES). I WOULD RECOMMEND THAT THE COUNSELORS WHO AS YET DO NOT HAVE THEIR PHONES HOOKED UP IN THEIR UNIT OFFICES, SHOULD HAVE THIS ESSENTIAL TOOL OF THEIR TRADE INSTALLED ON A PRIORITY BASIS.

IN EDUCATION, IT IS RECOMMENDED THAT A LIBRARIAN POSITION BE ADDED. THE FIRST PRIORITY OF THE LIBRARIAN SHOULD BE TO UPDATE AND UPGRADE THE LIBRARY INVENTORY AND IMPLEMENT A CARD FILE SYSTEM. THE LIBRARY WILL NEED SHELVING AND OTHER EQUIPMENT AS WELL. IT IS IMPRESSIVE TO SEE WHAT ENTHUSIASTIC, COMPETENT PEOPLE CAN DO WITH VERY LIMITED RESOURCES. THE EDUCATION PROGRAMS ARE NOT ADEQUATELY FUNDED FOR EQUIPMENT AND SUPPLIES. AS AN EXAMPLE, THE BUSINESS PROGRAM DOES NOT HAVE ANY C.R.T., WORD PROCESSORS, COMPUTER PRINTERS, ETC. THE PROGRAM HAS FIFTEEN YEAR OLD TYPEWRITERS, WHICH I DOUBT YOU WOULD FIND IN ANY CONTEMPORARY, EFFICIENT WORK PLACE IN TENNESSEE. IT IS ESSENTIAL THAT ANY PROGRAM THAT IS EITHER GOING TO PROVIDE CONTEMPORARY TRAINING AND CERTIFICATION IN THE OPERATION OF OFFICE AND BUSINESS MACHINES, OR EVEN EXPOSURE TO CONTEMPORARY BUSINESS PRACTICES, MUST HAVE EQUIPMENT THAT IS CONSISTENT WITH THE TECHNOLOGY THAT IS CURRENTLY IN USE IN THE BUSINESS WORLD. IT IS RECOMMENDED THAT FUNDS BE MADE AVAILABLE TO PURCHASE CONTEMPORARY BUSINESS AND OFFICE MACHINES AND WORD PROCESSING EQUIPMENT FOR THE BUSINESS PROGRAM.

I WAS IMPRESSED WITH THE FACT THAT THE WARDEN AND EDUCATION STAFF HAVE MADE GOOD USE OF SOME CASH REGISTERS WHICH WERE USED IN A PREVIOUSLY FEDERALLY FUNDED PROGRAM, AND ARE PLANNING TO PUT THEM TO USE IN A CASHIER TRAINING PROGRAM.

THE INSTITUTION NEWSPAPER IS ANOTHER EXAMPLE OF CREATIVITY. THE SECOND EDITION CAME OUT DURING MY VISIT AND WAS OBVIOUSLY A GREAT SOURCE OF PRIDE AND ACCOMPLISHMENT FOR THE STAFF AND INMATES.

THE COSMOTOLOGY PROGRAM, WHICH IS ASSOCIATED WITH THE JOHN NAVE SCHOOL OF BEAUTY IN NASHVILLE, HAS A HIGH LEVEL OF INTEREST AMONG THE INMATE POPULATION AND THE ENTHUSIASTIC SUPPORT AND COMMITMENT OF THE STAFF. THE WARDEN HAS PLANS TO SET UP A SMALL SATELLITE OF THE PROGRAM FOR THE MINIMUM SECURITY UNITS.

I WOULD SUPPORT THE CAPITAL REQUEST FOR THE ADDITION OF A VOCATIONAL TRAINING BUILDING IN THE 86-87 BUDGET. IT IS OBVIOUS WITH THE LIMITED SPACE IN THE EDUCATION FACILITIES THAT ADDITIONAL PROGRAM SPACE IS NEEDED. I ALSO SUPPORT THE IMPLEMENTATION OF A VOCATIONAL BUILDING MAINTENANCE PROGRAM. I UNDERSTAND THE $150,000 GRANT WILL FUND THE PROGRAM FOR A YEAR. THIS PROGRAM WILL PROVIDE BOTH VOCATIONAL EXPOSURE AND MARKETABLE SKILLS TO SOME, WHILE MEETING SOME VERY GLARING NEEDS OF THE INSTITUTION. PLANNING SHOULD START NOW FOR SECURING FUNDING TO CONTINUE THE PROGRAM WHEN THE GRANT ENDS, IF IT DOES IN FACT PROVE TO HAVE INMATE INTEREST.

AS I HAVE FOUND IN THE OTHER INSTITUTIONS, THE COMPENSATION FOR STAFF AT ALL LEVELS IS INADEQUATE. THE COMP TIME BALANCE IS 11,740 HOURS AND THE AVERAGE USE OF SICK LEAVE AMONG THE UNIFORM STAFF IS UP TO NINE DAYS A YEAR.

MY EXPERIENCE AT THE WOMEN'S FACILITY HAS REINFORCED THE BELIEF THAT THE SENTENCING POLICY OF THE STATE IS THE MAJOR SOURCE OF THE PROBLEM FACING THE STATE, THE AGENCY AND THE INSTITUTIONS. CLASSIFICATION CANNOT BECOME A REALITY UNTIL RATIONAL SENTENCING AND RELEASE POLICIES ARE DEVELOPED, IMPLEMENTED AND SUPPORTED BY THE POLITICIANS.

SUMMARY

I FOUND THE INMATES, STAFF, THE INSTITUTION AND THE GROUNDS TO HAVE BEEN THROUGH AN OBVIOUS PERIOD OF NEGLECT. HOWEVER, WITH FEW EXCEPTIONS, THE STAFF, INMATES AND THE FACILITIES REFLECT RECENT SIGNS OF PRO-ACTIVE LEADERSHIP AND INTERVENTION. THE ONLY COMPLAINT I HEARD FROM ANY SOURCE ABOUT THE WARDEN WAS HOW CAN SHE EXPECT THEM TO TACKLE SO MANY PROJECTS AT THE SAME TIME.

THE FACTS ARE THAT THEY ARE TACKLING THE PROBLEMS AND THAT THEY ARE MAKING PROGRESS. IT WOULD APPEAR THAT THIS IS THE CASE IN EVERY AREA EXCEPT GROUNDS-KEEPING. I WAS IMPRESSED WITH THE LEVEL OF ENTHUSIASM WARDEN GREER HAS BROUGHT TO THE INMATES AND STAFF (SHE IS GIVEN THE CREDIT BY BOTH STAFF AND INMATES FOR BEING THE CATALYST FOR THE RECENT AND PLANNED IMPROVEMENTS). IF WHAT HAS BEEN ACCOMPLISHED IN THREE MONTHS IS ANY INDICATION OF THE LEVEL OF EFFORT WARDEN GREER AND HER STAFF ARE CAPABLE OF, IT WOULD BE A REAL PLEASURE TO RETURN TO THIS FACILITY IN A YEAR TO SEE WHAT CAN BE ACCOMPLISHED WITH THE HIGH LEVEL OF ENTHUSIASM I SAW, AND A SUSTAINED PERIOD OF TOTAL STAFF AND INMATE EFFORT.

SUMMARY (CONT'D)

ALL THEY WILL NEED ARE THE FISCAL AND HUMAN RESOURCES TO PURCHASE THE NEEDED EQUIPMENT, MATERIALS AND A FEW ADDITIONAL STAFF TO DO THE JOB. I AM CONCERNED ABOUT THE PERCEIVED LEVEL OF HOMOSEXUALITY AMONG THE RESIDENTS AS REPORTED BY STAFF AND INMATES, BUT I BELIEVE WARDEN GREER AND HER STAFF WILL STUDY THE ISSUE AND ACT ON IT TO CREATE AN APPROPRIATE CLIMATE FOR THE WOMEN.

SUMMARY OF RECOMMENDATIONS

(PLEASE NOTE THE PRIORITY RECOMMENDATIONS THAT APPLY TO THIS FACILITY IN THE OVERVIEW SECTION OF THE REPORT)

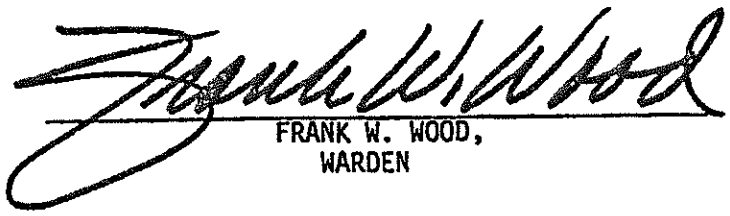
*IMMEDIATE STEPS SHOULD BE TAKEN TO REDUCE DOUBLE CELLING. THE WARDEN AND KEY STAFF SHOULD DISCUSS AND STUDY THE CONCERN SOME WOMEN INMATES AND STAFF EXPRESS ABOUT HOMOSEXUALITY AMONG THE INMATES. THE ALLEGATIONS SHOULD BE INVESTIGATED AND SENSITIVE, REASONABLE, PRO-ACTIVE STRATEGIES, INCLUDING SINGLE CELLING KNOWN HOMOSEXUALS, SHOULD BE IMPLEMENTED.
*DOUBLE THE MAINTENANCE STAFF FROM 4 TO 8 AND THE 4 ADDED SHOULD BE CERTIFIED TRADESMEN - A PLUMBER, ELECTRICIAN, REFRIGERATION SPECIALIST AND A MECHANIC/ GROUNDSKEEPER.
*TWO ADDITIONAL TRANSPORTATION CORPORALS SHOULD BE ADDED TO THE STAFF COMPLEMENT.
*TWO FOOD SERVICE PERSONNEL SHOULD BE ADDED TO THE KITCHEN STAFF.
*ADDITIONAL UNIT RECREATION EQUIPMENT SHOULD BE PURCHASED.
*PLAN UNIT PROGRAMMING THAT ENCOURAGES TEAM COMPETITION IN A VARIETY OF SPORTS.
+MOUNT A HEAVY BAG IN EACH UNIT.
+IN ALL DORMITORIES, PLACE PRIVACY DIVIDERS BETWEEN EACH LIVING AREA.
*REMODEL THE GANG SHOWERS TO PERMIT PRIVATE SHOWERS AND DRESSING AREAS.
+GET AN EXEMPTION FOR WOMEN FROM THE INMATE CLOTHING STATUTE, AND WORK FOR THE REPEAL OF THE STATUTE IN THE NEXT SESSION.
*MAINTENANCE WORK NEEDS TO BE DONE ON SUCH THINGS AS EXPOSED OUTLETS, WIRES, LIGHTED EXIT SIGNS DANGLING BY TWO WIRES, BATTERY PACKS MISSING FROM EMERGENCY LIGHTS, LEAKING FAUCETS AND SHOWERS, ETC.
+PAINTING NEEDS TO BE DONE IN MANY AREAS.
*REPAIR PHOTO ELECTRIC CELLS THAT TURN ON AND SHUT OFF THE COMPOUND AND PARKING LOT LIGHTING.
*COMPLETE THE TOOL CONTROL SYSTEM WHICH IS IN PROGRESS.
*REPAIR MAINTENANCE EQUIPMENT AND REPLACE ALL PIECES OF EQUIPMENT DEEMED INOPERABLE.
*INSTALL SECURE ENTRANCE DOORS IN UNITS #1 AND #2, AND THE MAKESHIFT CONTROL UNITS SHOULD BE DISMANTLED. THE NEW UNIT DOORS SHOULD BE EQUIPPED WITH SECURITY HARDWARE. THE DOORS SHOULD BE OPERABLE FROM A SMALL REMOTE DESK TOP SWITCH PANEL WHICH COULD BE SECURED.
*IN ADDITION, OPERATE THE LARGE SLIDING BARRED DOORS TO THE WINGS ADJOINING THE DAYROOM FROM THE SAME SECURE DESK TOP PANEL.
*MAINTAIN CONTROL OF ALL INMATE MOVEMENT TO ANY LIVING UNIT AND UNIT ENTRANCES - ALL ENTRANCES AND EXITS SHOULD BE CONTROLLED BY STAFF.
+DISPENSE WITH OFFICER STATIONS.
*HAVE A TRAINED CONSULTANT EVALUATE THE ASBESTOS CEILING IN THE GYM AND DINING ROOM FOR POTENTIAL HEALTH PROBLEMS.

SUMMARY OF RECOMMENDATIONS (CONT'D)

*REPLACE THE OLD TRANSPORTATION BUS WITH A NEW BUS.
+REPLACE THE USED PICKUP TRUCK WITH A 4-WHEEL DRIVE PERIMETER VEHICLE.
*PURCHASE A VAN & STATION WAGON.
+KEEP THE DOORS OF THE KITCHEN AND THE DINING FACILITIES CLOSED OR EQUIP THEM WITH SCREENS TO PREVENT FOOD CONTAMINATION BY INSECTS, ETC.
+REPAIR THE SCREENS ABOVE THE SINKS IN THE ANNEX KITCHEN.
+REPLACE ALL KITCHEN EQUIPMENT THAT CANNOT BE REPAIRED OR IS INOPERABLE.
+REPLACE ALL SEALS ON THE BOTTOM OF THE DOORS OF THE REFRIGERATION UNITS.
*DEVELOP MENUS CONSISTENT WITH THE CYCLE MENUS AND NOTE SUBSTITUTIONS AND DOCUMENT WHEN NECESSARY.
*POST WEEKLY MENUS IN ALL LIVING UNITS.
*AT A MINIMUM, THE WAREHOUSE AND STORAGE FACILITIES SHOULD BE 3 TIMES LARGER.
*FILL THE 3 NURSING POSITIONS THAT ARE NOW VACANT.
+INSTALL A SCREEN ON THE MEDICAL MEDICATIONS PASS THROUGH WINDOW, AND ENCLOSE THE OUTSIDE AREA SO RESIDENTS DO NOT HAVE TO BE OUT IN THE WEATHER WHEN PICKING UP MEDICATIONS.
*FOR THOSE INMATES WHO CANNOT COME TO PICK UP THEIR MEDICATIONS DUE TO THEIR PHYSICAL CONDITION, AN OFFICER SHOULD ESCORT A NURSE TO THE UNIT FOR DISTRIBUTION.
+PLACE A HIGH PRIORITY ON CLEANING THE MEDICAL AREA.
+CLEAN THE ROOM VENTS AND REMOVE BIRD NESTS FROM SOME OF THE OPEN WINDOWS IN THE LIVING UNITS.
+CLEAN THE SCREENS ALL OVER THE FACILITY ON A REGULAR BASIS.
*REFRAIN FROM ALLOWING INMATES TOXICS IN THEIR CELLS.
+IMPROVE FURNITURE AND FURNISHINGS IN THE UNITS BY PURCHASING THE NECESSARY ITEMS (CHAIRS, TABLES, ETC.).
*IMPROVE ON POLICY AND PROCEDURE UPDATING. AN ANNUAL REVIEW OF ALL POLICIES AND PROCEDURES BY THE WARDEN IS ESSENTIAL.
*DEVELOP A TOOL CONTROL ACCOUNTABILITY SYSTEM.
*DEVELOP A SYSTEMATIC AND ACCOUNTABLE KEY CONTROL SYSTEM.
*ALL TRANSPORTATION VEHICLES SHOULD BE SEARCHED PRIOR TO TRANSPORTING PRISONERS. THE TRANSPORTATION BUS AND OTHER STATE VEHICLES SHOULD BE PARKED IN A SECURE AREA.
+THE OFFICE PHONES FOR COUNSELORS SHOULD BE HOOKED UP ON A PRIORITY BASIS.
+ADD A LIBRARIAN TO THE STAFF AND INSTALL NECESSARY LIBRARY EQUIPMENT.
*ADEQUATELY FUND EDUCATION PROGRAMS TO PURCHASE THE NECESSARY EQUIPMENT AND SUPPLIES.
*PURCHASE THE NECESSARY EQUIPMENT FOR THE BUSINESS PROGRAM TO MAKE IT SUCCESSFUL.
*SUPPORT CAPITAL REQUEST FOR THE ADDITION OF A VOCATIONAL TRAINING BUILDING IN THE 1986-87 BUDGET.
*DR. OSA COFFEY'S RECOMMENDATIONS FOR ACADEMIC AND VOCATIONAL EDUCATION, LIBRARY SERVICES AND RECREATION ARE SUPPORTED AND ENDORSED BY THIS CONSULTANT.

SUMMARY STATEMENT

THE PROBLEMS FACING THE STATE OF TENNESSEE AND THE TENNESSEE DEPARTMENT OF CORRECTIONS DO HAVE SOLUTIONS. IT IS ENCOURAGING THAT THERE IS A CORE OF EXPERIENCED, COMPETENT AND PROFESSIONAL STAFF IN KEY POSITIONS IN THE INSTITUTIONS. WITH COMPETENT, KNOWLEDGEALBE AND CREDITABLE AGENCY LEADERSHIP, THE GUIDANCE OF SOUND CRIMINAL JUSTICE POLICIES, ADEQUATE FISCAL AND HUMAN RESOURCES, THE DEPARTMENT WILL GET CONTROL OF THE SYSTEM AND THE INSTITUTIONS. I HAVE BEEN SHOCKED AT SOME OF THE CONDITIONS FOUND IN CORRECTIONAL INSTITUTIONS IN THE STATE OF TENNESSEE IN 1985. ON THE POSITIVE SIDE, I AM IMPRESSED WITH THE QUALITY, TENACITY AND COMMITMENT OF INSTITUTION EMPLOYEES, WHO HAVE GIVEN THEIR VERY BEST TO MAKE EVEN MISGUIDED POLICIES AND PLANS WORK. WHEN THESE SAME PEOPLE ARE GIVEN THE LEADERSHIP, SUPPORT AND RESOURCES TO UPGRADE THE SYSTEM, AND PROVIDED WITH THE OPPORTUNITY TO PLAY KEY ROLES IN DEVELOPING THE DIRECTION AND ULTIMATE STRATEGY FOR CHANGE, I AM CONFIDENT THAT THEIR INDIVIDUAL AND COLLECTIVE SENSE OF TEAM COMMITMENT AND PERSONAL PROPRIETORSHIP WILL PRODUCE A RATIONAL, MORE SECURE, CONTROLLED, HUMANE SYSTEM IN WHICH THE ENTIRE STATE CAN TAKE PRIDE.



FRANK W. WOOD,
WARDEN

Attachment 7

IN THE UNITED STATES DISTRICT COURT FOR THE

MIDDLE DISTRICT OF TENNESSEE

Nashville Division

IN THE MATTER OF:

SCOTTY GRUBBS, et al,	)	80-3404
Plaintiffs	)	80-3613
	)	80-3578
vs.	)	80-3617
	)	October 23, 1985
STEPHEN H. NORRIS, et al,	)	
Defendants	)	

BEFORE: The Honorable Thomas A. Higgins, District Judge

APPEARANCES:

For the Plaintiffs: Hon. Gordon Bonnyman
and
Hon. Drake Holliday

For the Defendants: Attorney General Jay Michael Cody,
Asst. Attorney General John Southworth
and Associate Chief Deputy Robert Grunow

For the Metropolitan Government:

Hon. James Charles
Metro Legal Department

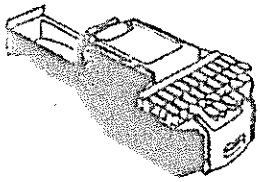
TRANSCRIPT OF PROCEEDINGS

REPORTED BY:

VIRGINIA K. WELLS
Official Courtreporter
Rm. A-835, U.S. Courthouse
Nashville, Tennessee 37203

PREPARED FOR:

Orig



VIRGINIA K. WELLS
CERTIFIED SHORTHAND REPORTER
[illegible]
263-3775

INDEX

(Case was called by the Clerk at 3:30 o'clock PM and the parties announced ready.)

THE COURT: Mr. Charles, are you here on behalf of the intervenor?

MR. CHARLES: Yes, Your Honor.

THE COURT: You want to be heard?

MR. CHARLES: If Your Honor please, I have filed a motion on behalf of Sheriff Fate Thomas in his official capacity for the limited purpose of objecting to the plaintiffs' motion for additional relief in this case.

I'll be very brief, Your Honor. Specifically the Sheriff of Davidson County is concerned the relief the plaintiffs suggest for their clients may force the Sheriff and--well the Sheriff into violation of his duties to the pre-trial detainees he presently incarcerates in that he would soon be faced with overcrowding just as the State defendants are presently faced with overcrowding, Your Honor.

The Sheriff would fear he may be forced into a situation where he might be in violation of the Fourteenth Amendment or the Eighth Amendment, depending on who he's dealing with, whether pre-trial detainee or someone already convicted of a crime. And the purpose of the motion is simply to intervene for that limited purpose and raise that objection.

To that extent, Your Honor, we have had no real reason to intervene in this case to date. This relief has just

recently been suggested by the plaintiffs or at least to my knowledge it has just been recently suggested by the plaintiffs. For that purpose, Your Honor, we would certainly respectfully submit we do certainly have an interest in the matter before the Court, and that there was no one presently no party presently before the Court who adequately represents our interest.

THE COURT: Doesn't the Attorney General of Tennessee represent the interest of the Sheriff?

MR. CHARLES: No, Your Honor, he does not.

THE COURT: Why not?

MR. CHARLES: Well, unlike the present parties before the Court, Your Honor, the Sheriff of Davidson County is a person subject to suit under the Civil Rights Act. He is in his official capacity he speaks for the Metropolitan Government of Nashville, Davidson County, Tennessee, but no one represents the Sheriff in his official capacity.

THE COURT: He performs state functions, doesn't he?

MR. CHARLES: Yes, Your Honor. He performs state functions.

THE COURT: He acts under color of State law.

MR. CHARLES: He certainly acts under color of State law.

THE COURT: Takes an oath like every other public

official to support and uphold and defend the Constitution of the United States under Article Six of the Constitution.

MR. CHARLES: He certainly does, Your Honor. No question about that. However he as a defendant would be tied in his official capacity to the Metropolitan Government of Nashville, Davidson County, Tennessee. I don't think anyone presumes or pretends the State Attorney General's office represents the interest of the Metropolitan Government of Nashville, Davidson County, Tennessee.

THE COURT: Isn't the Sheriff a Constitutional Officer?

MR. CHARLES: Yes, sir, he is. He certainly is.

THE COURT: One of the things that couldn't be abolished when the Metropolitan Government was created, wasn't it?

MR. CHARLES: That is correct, Your Honor. There was some noise to that effect back in 1963 I believe or '64. But to my knowledge the State Attorney General's office never represented the Sheriff of Davidson County in any litigation. If they have I'm not aware of it.

THE COURT: I'm not talking about representing him in litigation. I'm talking about the interest the Sheriff will represent, that is the housing of state--sentenced state prisoners in county jails.

MR. CHARLES: Well, Your Honor, he would under the

proposed plan of the plaintiffs he would have that responsibility. He would also have the responsibility of housing pre-trial detainees. And that has always been the Metropolitan Government's responsibility, and we have always--we have been dragged into state court for apparently failing in that responsibility in the past. And we may very well be dragged into federal court if the proposed solution of the plaintiffs comes to pass. That is the purpose for our motion to intervene.

THE COURT: Well, I'm not sure what relief you're asking. It sounds to me that what you say is just as susceptible of the response that maybe Sheriff Thomas ought to talk to his Senators and Representatives, and tell them to get busy about their business. That is, is he really raising a justicible issue that he has standing to assert in this litigation, or is his complaint or fears about something that is prospective that really the resolution of it lies in another forum, political forum rather than judicial forum?

He hasn't been harmed or agrieved at this point, has he?

MR. CHARLES: No, Your Honor.

THE COURT: What you are here asking to intervene because of, if various things occur, prospectively, he may be faced with litigation alleging that the operation of the Davidson County Jail or workhouse or both are being operated in an unconstitutional fashion.

MR. CHARLES: Yes, Your Honor, that is true. Presently the State has the overcrowded condition that they are experiencing, and the relief the plaintiff proposes would put the overcrowded burden on us. We would then be the facilities that are overcrowded, and then the State, the present defendants, would no longer have an overcrowded problem.

It is true, Your Honor, that we have yet to be faced with overcrowding. The relief that the plaintiffs suggest now would force us into that position.

THE COURT: You envision all ninety-five sheriffs coming in, or that Sheriff Thomas would be representative of the class, so to speak?

MR. CHARLES: Well, Your Honor, it may be once--if the Sheriff were allowed to intervene for this limited purpose of objecting to this proposed remedy, that he could speak for all of them. I think their interest would be basically the same. However, I'm not--I do not have the knowledge, myself, as to conditions at other jails.

THE COURT: Well, is he going to intervene just to object to one of the proposed remedies, or is he going to bring a cure with him when he comes in? Has he got a solution to urge as a part of the entry into the lawsuit, or just that he doesn't want to get stung for some of the fallout?

MR. CHARLES: Certainly the latter. I'm not sure

one way or the other as to the former, Your Honor. I do not know. But the purpose--

THE COURT: You agree at this stage in the proceedings his concerns are really concerns that are properly something to be addressed to the Legislature. They make the public policy of this State. They make the laws, the executive executes them. But the General Assembly still makes the laws, ordains what the public policy of this State is going to be. At this stage Sheriff Thomas's proper remedy is to go and petition his elected representatives, isn't it?

MR. CHARLES: Well, Your Honor--

THE COURT: Do you agree with that or not at this stage he hasn't been harmed?

MR. CHARLES: At this moment, Your Honor?

THE COURT: Yes.

MR. CHARLES: Well, I'm not sure. I'm not sure.

THE COURT: What are you uncertain about?

MR. CHARLES: Well, the plaintiffs have thrown this issue before the Court. If this Court were to order the relief they have requested, Your Honor, I don't know where else we would go but before this Court. If this Court were to order that, as I understand the request, that the Classification Centers were not to admit any more prisoners, then they obviously would back up into the county jails. No where else for them to go.

It might be after this hearing is over that this is the proper place where we are supposed to be, but that seems to me--seems to me we ought to be heard before that happens. We ought to have an--

THE COURT: Why?

MR. CHARLES: Well, Your Honor, it may be too late by then.

THE COURT: What are you going to contribute? What are you prepared to contribute on behalf of the Sheriff of Davidson County right now except urge that particular relief that might inconvenience him, and impose a burden at the risk of everybody being sued, is objectionable for the reasons stated. What else is he going to contribute?

MR. CHARLES: Well, Your Honor, I think the thrust of our contribution is that the persons who have that responsibility are the ones that should be held to that responsibility. The responsibility of housing these people under present law is with the State, and if they fail in that responsibility, I would hope they are not allowed to abdicate that responsibility by it being placed on us, Your Honor.

THE COURT: Do you think they have abdicated?

MR. CHARLES: Well, Your Honor, it's--

THE COURT: What is your position on that? You're asking to come into this lawsuit. What is the position of

the Sheriff of Davidson County on that?

MR. CHARLES: Well, Your Honor, our position is if they are overcrowded, they have the responsibility to do something about it, just as if we were overcrowded we'd have the responsibility to do something about it.

Your Honor well knows, you've seen enough of these lawsuits, and I'm sure the State has, too, what they are about, but I would certainly submit to Your Honor that it's not a solution to the problem before this Court to make someone who has heretofore been an innocent party responsible for taking care of this problem.

THE COURT: Why has the Sheriff of Davidson County waited until October 22, 1985 to move to intervene into the case? He hasn't been oblivious to the pendency of this litigation, surely.

MR. CHARLES: No, Your Honor, he has not. But this is a new remedy sought by the plaintiffs, at least to my knowledge it is, something that has happened within the last month. I think this motion was filed in early October, brought to my attention last week. As soon as I could do it, with the other things I had to do, to try to get this done.

That's the reason--we have heretofore--heretofore we have not been potentially harmed by the remedies suggested by the plaintiffs, Your Honor, but the remedies suggested by the plaintiff before this Court--

THE COURT: Getting close to home.

MR. CHARLES: While it applies directly to us, I think and really I don't see where it does anything to the State except maybe let them off the hook. And for that reason, Your Honor, that's why we move to intervene.

Thank you.

THE COURT: Mr. Bonnyman?

MR. BONNYMAN: May it please the Court, I think there is misperception about the process we are involved in. It's a lawsuit, it's not a debating society. I don't doubt that Sheriff Thomas has some views, some perhaps very strongly held.

THE COURT: Who hasn't?

MR. BONNYMAN: Everyone does. Everyone has very strong views and I'm sure Fate Thomas is among those who does.

But returning to the contention of where we are, we are involved in judicial proceedings which are bound by rules about justicible interest, not just merely strongly held views. And I think if intervention were granted in this context, this courtroom would soon like the U.N. General Assembly. There would be no point in stopping with the Sheriff of Davidson County. I'm sure the bail bonds would have an interest. I'm sure the local general sessions judges have an interst. I'm sure the D.A.'s have an interest.

Their interest is personal. It's not legally cognizable.

As officers of the State of Tennessee, there is only one State and that is represented by the Attorney General's office.

So as far as there is any legally cognizable interests which the Sheriff would offer to this Court, those are already represented in this litigation.

The rest of it, there may be some very good ideas, may be some very strongly held belief, but it just so happens that has no part in the lawsuit. That's really the reason why we are in this mess, still in this mess after ten years, because of the way the problem is dealt with outside this courtroom. Anybody, any politician that happens to have a view on the subject is free to just wade right in and say I'm agin it. Nobody is signing up with any solutions. They are all just saying, we're agin it. And if enough people say we're agin it, which has been the history over ten years, then nothing happens. We don't need to replicate that model and bring it into the courtroom.

THE COURT: Mr. Cody?

MR. CODY: If the Court please, it's our hope today that the proof and argument which the State will make will convince the Court that the State be allowed to wait two weeks until the Special Session can get underway, and that the State can pass the necessary legislation to allow the State itself to solve the problems that all of us are concerned with

I think that at this point--

THE COURT: That's been the whole posture of the--that the Court has taken since its inception. My predecessor time and time again has stated that the Court is acting with--has acted with enormous forbearance so as not to unduly intrude on that very delicate federal/state balance that is so much a part of our constitutional system of government on the principles of federalism.

MR. CODY: I understand.

THE COURT: The State has no grumble about the enormous forebearance with which this Court has acted over a period of years.

MR. CODY: None whatsoever, if the Court please.

THE COURT: As a matter of fact, wouldn't you agree, General Cody, the Court has acted with enormous restraint, responded generously time and time again to the state's applications for extensions in order to come into compliance?

MR. CODY: I would. But I'm here again today to ask the Court, and will through our efforts this afternoon, to forebear with what is going on now which I think we can detail today for a short period of time to allow the State--I think the State has not--has an opportunity if the legislation the Governor proposes is passed to do that.

Certainly the Sheriff and all the sheriffs has an interest in the legislation, an interest that I can't

represent in the sense that if the remedy that the plaintiffs have asked for were adopted by the Court, then it would affect their interest, and I could not adequately represent those, certainly have a conflict in some sense.

We know that the counties are overcrowded. They are not in position to take large numbers of state prisoners. I think that the Court should hold this motion to intervene until such time as the Court has heard the proof and the arguments today. But that if the Court did not agree with the State's position, felt it had to take some action before we had an opportunity to have the legislature address it, the 5th of November, then I think the County Sheriff does have an interest in the litigation.

THE COURT: Mr. Grunow, do you want to be heard?

MR. GRUNOW: No, Your Honor.

THE COURT: All right. Well, anything else to be said about the petition to intervene?

MR. BONNYMAN: Your Honor, only to bring to the Court's attention the fact that we did file a brief earlier today.

THE COURT: I've read it, Mr. Bonnyman. And also Mr. Charles's brief that came in today in support of the petition, the petition filed yesterday.

All right. We have that behind us. Let's move on to take up the motion. Mr. Bonnyman, we're ready now.

MR. BONNYMAN: Your Honor, our proof today will simply consist of a number of pieces of stipulated evidence. Subject to correction by the Attorney General's office, we have agreement to have admitted into evidence the deposition of Assistant Commissioner Tony Young, affidavits of--

THE COURT: All right, what is the date of that?

MR. BONNYMAN: I'm sorry, Your Honor, it was filed with the Court on October 2nd. It was the subject of an order that Your Honor entered allowing us to file it in the Clerk's office.

THE COURT: All right.

MR. BONNYMAN: Filed October 2nd also were the affidavits which we would like now to move into evidence without objection, of Lieutenants William Perry, Charles Sulfridge, Thomas Ellis and two other affiants proceeding under pseudonyms, John Doe 85-1 and John Doe 85-2, that together with stipulation filed earlier this week and stipulation attached to our motion of October 2nd.

THE COURT: That is stipulation of October 21st?

MR. BONNYMAN: Yes, Your Honor.

THE COURT: And the stipulation of--

MR. BONNYMAN: September 30, 1985.

THE COURT: Attached to the motion.

MR. BONNYMAN: Yes, Your Honor.

THE COURT: All right. Anything else?

MR. BONNYMAN: That's all of our proof. I can argue or perhaps if the Court--

THE COURT: Let's see if the State has any objection Mr. Cody, there is proposed to be received in evidence Mr. Young's deposition that has been filed pursuant to Court order of October 2nd, the affidavit of Mr. Perry, Sulfridge, Ellis, and the two Mr. Does whose affidavits are under seal, names are under seal, the stipulation of October 21,1985 and September 30, 1985.

MR. CODY: Counsels' statement in that regard is accurate.

THE COURT: Be so received in evidence and considered as part of the record on motion.

MR. BONNYMAN: Your Honor, unless you would like to hear from me by way of preliminary statement, I propose to let the State proceed with its proof, whatever it wishes to do, and argue following that. But I can be heard now if Your Honor prefers.

THE COURT: Do you want to be heard now?

MR. BONNYMAN: I don't--I think it probably would expedite things to go ahead and proceed with the proof and then argue.

THE COURT: We'll move into the State's proof.

MR. CODY: If the Court please, the State will only have one witness and that is Commissioner Norris. And I'd

like to call him to the stand.

THE COURT: All right, let Mr. Norris come around.

STEPHEN HOWARD NORRIS, DEFENDANTS'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. CODY:

Q. State your name, please.

A. Stephen Howard Norris.

Q. And what is your position with the State Government?

A. Commissioner of the State Department of Corrections.

Q. How long have you been with the Department of Corrections, Commissioner?

A. Since April 12, 1985.

Q. Were you present in the courtroom in June when we were previously here before the Court?

A. Yes, I was.

Q. And you are aware of the Court's order of June 27th?

A. Yes, I am.

Q. Basically what did that order provide?

A. Provided that the State would end double-celling at the main prison which has been done. It further provided that the State of Tennessee reduce its prison population to 7,019 by December 31st of 1985.

Q. All right. You indicated the first of those, the double-celling, had been eliminated.

A. That is correct.

Q. What have you done since the end of June to deal with the second part of the Court's order?

A. A number of things. We have explored various avenues of releasing people prior to the end of their sentence, prior to their earliest release date. We have determined that the use of the Governor's clemency powers is not appropriate to end prisoner overcrowding.

We are still pursuing the early release mechanism. The problem there is there are not enough eligible inmates under current law to allow the State to reduce its population sufficiently to meet the Court's order.

We are preparing diligently for the Special Session which will be called for November 5th of this year. There are a number of proposals that will be made, firm recommendations that will be made to the legislature to cure this problem once and for all.

I think the critical point is there is a recognization that the State prison system cannot continue to operate in an overcrowded way.

THE COURT: Who has recognized that?

THE WITNESS: Your Honor, I think the Governor recognizes that, and I believe the Legislature has come to recognize that as I have.

BY MR. CODY:

Q. Mr. Norris, have you also filed through our office on

August 5th and August 23rd reports with the Court advising the Court as to what the current situation is, and what plans the State is preparing to deal with the Court's order?

A. Yes.

Q. And with respect to those plans, they are in the state of development, I guess?

A. That is correct, an advanced state, I think you could say.

Q. What is the present situation with respect to crowded conditions in the institutions, and particularly in the Reception Centers?

A. There is no question that the Reception Centers are overcrowded. There is no question that overcrowding is a chronic problem throughout the prison system with the exception of a couple of institutions, the Women's Prison, and a couple of community service centers where we have a few vacant beds. But other than that the rest of the system is in a crowded state.

THE COURT: Well, let me ask you about these Reception Centers. Presently you've got them sleeping on the floors in gymnasiums.

THE WITNESS: Yes, sir.

THE COURT: You have them sleeping in rooms that are not designed for human habitation.

THE WITNESS: Yes, sir.

THE COURT: And are sleeping in a variety of other

conditions.

THE WITNESS: Yes, sir.

THE COURT: All of which of course is in violation of the Court's order.

THE WITNESS: Yes, sir.

THE COURT: And that addresses just the question of overcrowding. Now, as a result of that, turn now to the question of classification. The Court ordered at least two years ago or more that no inmate in these classification centers be placed in cells until a basic check had been done about the determination of whether they are incompatible or have a history of victimizing other inmates, or have known traits of viciousness.

Now, given the condition today in these Reception Centers new prisoners are brought in, received every day. Is the Court to understand that the circumstances compel the celling of prisoners without this basic classification check being made?

THE WITNESS: We are doing the initial classification check. I cannot tell the Court that it is sufficient in all cases. We are doing the best we can with it.

THE COURT: Sort of catch as catch can?

THE WITNESS: It's a little more systematic than that, but anytime you have an overcrowded situation you are subject to make mistakes.

THE COURT: All right.

BY MR. CODY:

Q. Commissioner Norris, with respect to the system as a whole, as indicated in all the papers I think have been filed, the current population is 7,732, is that correct?

A. I think that is correct, yes.

Q. And the designated capacity is 7,579, which I think you mentioned you can't put men prisoners in the Women's Prison, and you have work release centers which are not suitable for prisoners that are too dangerous to be there. So some of those beds are not usable, is that correct?

A. That is correct, and it's not even a question, General Cody, of the beds not being usable relative to the danger situation. A lot of it has to do with our current restrictions on classification that exist in legislation and in policy.

Q. So you are, is the number correct, you are 153 prisoners over your designated capacity but probably closer to 350 over your usable capacity.

A. That is correct.

Q. Now, you've indicated that the situation in the Reception Centers is worse overall than it is in the prison system generally.

A. Yes. That's right.

Q. Now, why do the Reception Centers--why have they become

more overcrowded and the other units not so much?

A. Two reasons. Well, a series of reasons. One, we have attempted to keep as much pressure as we can off of some of the time building facilities that are already either at capacity or above capacity, because of the problems we experienced last summer.

We are experiencing on the average thirty more people a month in our intake than we did this time last year. So our intake continues to increase over what it was. And, you know, it tends to back them up in the Reception Centers. The numbers continue to get more unmanageable as we go along.

Q. Now, if you would again what are your present abilities, absent the development and effectuation of a plan, what are your present abilities with respect to the clemency aspect, what is the State--

A. The State's position there is it's not an appropriate use of the Governor's clemency power.

Q. What has happened to the Emergency Power Act that was passed by the Legislature in earlier sessions as to its use to reduce overcrowding?

A. Basically we have used up the availablity. We have painted ourselves into a corner. Those inmates who get within a year to six months of their earliest release date do not exist in the system in as great numbers as they once did. So when we take in 450 people a month, and let out 100

or so less than that, then the system continues to--the population of the system continues to grow.

Q. Now, you've indicated to the Court that you have heretofore filed with the Court and submitted to the Legislature a plan. Right now I just want to deal with those parts of the plan that reflect concern about the overcrowding. When is the Legislature session set to begin?

A. Novebmer 5th of this year.

Q. Now, what has your office, your department and the administration and the Legislature done since June to plan for the November 5th session?

A. There is a special legislative study committee that, chaired by Senator Rochelle from Lebanon, and basically represents the leadership of both houses. They have held a number of hearings, toured prisons, and studied the correction issue more than I think any other legislative body has in the past. That is the reason I belive I can safely say they recognize some of the fundamental problems in the Tennessee Prison System today that members of the legislature did not recognize before.

THE COURT: Why didn't they recognize them before?

THE WITNESS: I think it's a question of exposure to the problem.

THE COURT: Well, Commissioner, Artice 1 Section 33 of the Constitution of Tennessee provides that the erection of

safe, comfortable--that's different than the Eighth Amendment in the way it's phrased at least, the inspection of prisons, and the humane treatment of prisoners shall be provided for.

Now you say they now come to recognize the problem. Are you telling the Court that the Legislature--why haven't they recognized it before? They have a constitutional duty to do so, under the State Constitution. We'll come to the Federal Constitution in a minute. What is the reason why the State Legislature hasn't concerned itself with this responsibility that they raise their hands and take an oath to uphold and discharge?

THE WITNESS: Your Honor, I don't know the answer to that question. I can only in this respect I can only deal with the experience I have had with them since April 12th. And I don't know why they haven't recognized it before.

THE COURT: It's a matter of record. I suppose the Court could even take judicial notice of it. But there would have to be undoubtedly legislators up there, been there and raised their hands and taken an oath six, seven, eight, nine, maybe ten times, been in one body or the other ten times. You can't--you have no explanation today that you can share with the Court as to why this has become of concern to the legislative branch of Government that makes the policies, the public policy of the State, they make the laws, and you say they just now have come to be concerned

with constitutional mandate--

MR. CODY: Your Honor, perhaps I misspoke myself. I think the legislature and the executive branch have attempted to deal with this problem before in a range of different ways. But it's always been done in a very piecemeal fashion. It's either build more prisons or put some money at the local level for jails, or adjust sentencing laws. I don't think a comprehensive understanding has ever been present in the legislature and to some degree in the executive branch where there is enough responsibility to go around. I don't think the understanding has been as comprehensive in the past as it is now. I don't think that enough--I don't think the level of attention this problem has received in the last several months has ever been as focused as it is right now.

THE COURT: Why has it received so much attention in the last couple of months?

MR. CODY: A number of reasons. We have gone through the process with court appointed evaluators and their results have been published. Of course, the overcrowding question continues to be surfaced in the halls of government, if you will, and in the media. We had four riots last summer, five if you count the one that occurred a little bit later on, that certainly focused the attention of the legislature and the public and certainly got my attention. There have

been a series of events that have brought this problem t focus.

THE COURT: The least of which is concern abou obedience to the orders of this Court.

THE WITNESS: I think--I don't know that I can agree with that. I think everybody understands what our responsibilities are relative to the Court appointed evaluators and the result of that evaluation. And the f. that in response to court order, we have eliminated a nu of problems in the system; C Building at Fort Pillow, double-celling at the Main Prison, some of the medical problems, and I think various problems I think have been subject to consideration by the Federal Court in the pas It's the overcrowding question we have most difficulty dealing with.

I think the important issue now is that everyone wh in a decision-making position finally recognizes that pri systems are not manageable in an overcrowded situation. will never be manageable, this system will never be mana properly while it's overcrowded--properly managed while i overcrowded.

BY MR. CODY:

Q. Commissioner, let me direct your attention to--with regard to the November 5th Special Session, and ask you i in the plan which was submitted to the Court and given to

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legislature by the administration, there was a thirty months safety valve which was to replace the early release that we now have in the present law--that was the initial plan, was it not?

A. That is correct.

Q. After consideration by members of the legislature and your office, it was determined that that would not solve the overcrowding problem that you--just like in the emergency powers, you ran out of the thirty months as well as you ran out of emergency powers.

A. That is correct. That mechanism would not be sufficient to allow us to meet the--it might allow us to meet the Court order initially, but would not provide good enough mechanism for us to sustain that level very long.

Q. In response to that realization, what has the administration proposed, and what will be presented to the legislature in basic form on November 5th to give a guarantee to the Court and to the community that the State will be able to reach a designated capacity and stay within that capacity?

A. We will recommend very strongly a mechanism that recognizes the prison system can't be operated while it's overcrowded, and provide an absolute solution. We may use the thirty months provision as a beginning point, but mechanically here is how the process would work: Prisoners who are within 10% of the end of their sentence will be

reviewed by the Parole Board. Those prisoners who are found acceptable by the Parole Board will be released 10% earlier. Those not acceptable will retain original sentence length.

If that does not produce sufficient numbers to meet the Court ordered capacity of 7,019, we will deal with the remainder of the prison population in 5% increments, until we have released a number of prisoners sufficient to meet the Court order. That would remain--that provision would remain part of the law until someone recommended--until someone decided to change it or until the legislature decided to change it. In other words it would be a long-term provision of the law with capacity of having immediate impact on prison overcrowding situation.

Mechanically how that would work, when the prison population reaches 95% of the designated capacity, whatever that might be, after the additional beds and so forth, then that safety valve would trigger in, would provide for a release of a certain number of prisoners down to 90% of whatever the designated capacity would be, and then it would trigger off, and the prisoners would go back to the original length of sentence until we reached 95% again and trigger back in. The important thing it's absolute.

Q. So there is a mechanism in the legislation that will be proposed not only to allow the State to reduce its population to the Court ordered number, but will allow it to maintain

a constitutional designated capacity.

A. That is correct.

THE COURT: Well, Commissioner, that assumes you've got an accurate data base to operate from, doesn't it?

THE WITNESS: Yes, it does.

THE COURT: In other words you've got to know who's in the system, when they were sentenced, what they were--the length of the sentence, and the eligibility date for release, and having credit whatever the statutory provisions are as to good time, good behavior and so forth, do the mathematics, subtract that, and come out with eligible date for release. You have to have all that in the form of accurate data before you can begin to--you have legislation, legislation can be passed providing this automatic trigger, but unless you've got this data base that's accurate, you can't implement the legislation.

THE WITNESS: No, sir. But I believe we can do that now.

THE COURT: When you were here in June, you said bookkeeping in the department was virtually manual for all practical purposes. You characterized it as being on a 1955 computer level. Has something remarkable, something so remarkable occurred between June of this year and October that you now have compiled this data base so that you, one, know who's in the prison, what they were sentenced to, and their

expected date of release, calculated by the application of the statutory provisions for good time, do you have that information now?

THE WITNESS: Yes, sir, we do. Nothing very miraculous about it. The program is in a little better shape than it was before. That sort of fundamental information about name, nature of crime, end of sentence is something we already had the capacity to do minipulation of that data. We had trouble too--we have the capacity now to ask the computer to identify for us people who are within the 10% of their end of sentence with reliable accuracy.

THE COURT: Including crediting the statutory varieties of good time and good behavior and all that?

THE WITNESS: That will have to be added, for all practical purposes.

THE COURT: You don't now actually have a valid source of information from a computer that really gives you a valid release date by applying all the varieties of statutory good time people are entitled to on a per prisoner basis, do you?

THE WITNESS: No, sir, we don't. As a matter of fact we don't even have a very good good time system which is another thing we'll be recommending to the legislature this year.

THE COURT: You have what the law commands now.

THE WITNESS: But it comes off the end of the sentence, but not the earliest release date. In effect it's use as incentive for prisoners is practically non-existent.

THE COURT: Comes off the end of the sentence?

THE WITNESS: Yes, sir. As opposed to the earliest release date.

THE COURT: Well, explain that.

THE WITNESS: Sentence credits are applied--someone is sentenced to ten years, sentence credits are applied to the tenth year if he's doing 30% instead of the third year. So as a practical matter, most prisoners never experience the benefit of having achieved good behavior credit.

THE COURT: Then it's just make believe.

THE WITNESS: So far it is.

THE COURT: The legislature passed laws and it really doesn't make any difference whether you all keep the books or not, because as a practical matter it's make believe, the way you say it's applied, doesn't have anything to do with the release of prisoners.

THE WITNESS: That's correct, it doesn't. We're recommending that that be changed, that it be applied both to the end of the sentence and to the earliest release date. And again I do believe members of the legislature, particularly members of that committee recognize the value of having a system of incentives for good behavior and achievement and

will entertain that recommendation in a very acceptable way.

THE COURT: So you have a prisoner out there who exerts his very best to behave in an exemplary fashion, have a clean record, does everything he's required to do, and in order to earn the credit available by--provided by the laws of the legislature, and really not doing a bit of good.

THE WITNESS: That's correct, in terms of end of his sentence, it's not doing him any good. His living conditions can certainly be better.

THE COURT: Might have more privileges.

THE WITNESS: That is correct.

THE COURT: But the practical effect of good behavior earning you some credit toward early release, it just isn't so, is it?

THE WITNESS: No, sir, it's not.

THE COURT: That doesn't provide much of an incentive to an inmate, does it?

THE WITNESS: No, sir, it doesn't.

BY MR. CODY:

Q. Commissioner, it's your testimony that administration will propose to the legislature in November that this mechanism be in place which would allow the population to be brought down to 7,019 as the Court ordered.

A. That is correct.

THE COURT: Let's stop right there. 7,019, Mr.

Cody referred to it as the Court's order. That is certainly true, that number is the number that is reflected in the Court's order to be achieved by midnight December 31, 1985. Do you understand that essentially that number, for all practical purposes, is not a number that the Court plucked out of the air, no arbitrary number, you understand that, don't you, Commissioner?

THE WITNESS: Yes, sir, I do.

THE COURT: You understand that number was arrived at as a result of essentially the submissions of the State, the plaintiffs didn't agree to it, but that number was arrived at as a result of submissions of the State as to the capacity of the system, and allowing for the capacities that were placed on--and the mechanics for the fifty per month net reduction in effect provided that number, you understand that?

THE WITNESS: My understanding of the number 7,019 would have been the number--

THE COURT: That would have been achieved by April 30, 1985 which was the date the State filed its motion for permission--for an extension to be relieved from compliance on that date.

THE WITNESS: Yes, sir.

THE COURT: But I'm going back to 7,019, you understand--it is your understanding that essentially that number

was a number that was proposed by the State in its submissions to be arrived at by April 30, 1985, by means of the method of reduction which the State proposed.

THE WITNESS: Yes, sir, I do.

THE COURT: Well, you understand it, but--you understand that's not a number the Court arbitrarily picked out of the air, but that's a number your side of the table in effect suggested and came up with. That's your understanding, isn't it?

THE WITNESS: Yes, sir. I understood the relationship to April 1st. I had never gone through that entire deliberative process that we've just gone through, but I did understand the number was not arbitrary, and it would have been the number achieved under the other net reduction agreement between the State and the Court.

THE COURT: Which was based on the submissions and urgings of the State.

THE WITNESS: Yes, sir.

THE COURT: The mechanics of how you would reduce the population on a monthly basis, thus arriving at this number.

THE WITNESS: Yes, sir.

THE COURT: Go ahead, Mr. Cody.

BY MR. CODY:

Q. Commissioner, with regard to the 7,019, the Court has

been advised that even with the legislative action that is hoped for in November, that it will be difficult if not impossible for the State on an orderly basis to release enough prisoners to be at 7,019 by December 31st, is that correct?

A. That is correct.

Q. Now, what have you done since the Court--since we were in court in June to prepare for the eventuality that if the legislature acted favorably upon the Administration's recommendations, allowed for this mechanism for release, that an orderly process would be set up to allow those releases to begin immediately?

A. We've asked the Parole Board to--as a matter of fact we asked the Parole Board to, a couple of months ago, to begin reviewing case files so a pool of potentially eligible prisoners could be built up so when legislative authority was in place, they could be considered in a timely way, and orderly way, and released from the prison population.

Q. In making those considerations as to the orderly release, have you tried to take into account not only identifying those people as carefully as you can, but determining what effect it will have with respect to their supervision when they are released?

A. Yes.

THE COURT: Well, first of all you've got to

identify the prisoners?

THE WITNESS: Yes, sir.

THE COURT: And call on your computer to do that.

THE WITNESS: Yes, sir.

THE COURT: You say the computer capacity is now improved over--the data base is improved over what it was as you related in June of this year.

THE WITNESS: To some degree it's better, still not as good as it needs to be.

THE COURT: You identify the prisoners, you assume the legislation will pass, the proposed enabling legislation, and then the Pardons and Parole Board then has to set about to do its work.

THE WITNESS: Yes, sir.

THE COURT: How many people are on the Pardons and Parole Board?

THE WITNESS: Five people I believe. Plus a series of hearing officers.

THE COURT: And these prisoners then have to be interviewed, have to be a hearing of some sort.

THE WITNESS: That's correct.

THE COURT: Would the Parole Board have to see each prisoner?

THE WITNESS: No, sir, I think some of it can be done by hearing officers.

THE COURT: And how many hearing officers are there?

THE WITNESS: Your Honor, I'm not sure.

THE COURT: Can the Parole Board sit in pairs or separately--

THE WITNESS: They can sit separately I believe, yes.

THE COURT: So if you have the legislation that is passed say before Thanksgiving, and you call on the computer to--the data base that you say is improved, and not counting working on the Sundays, how long do you think it would take to administratively carry out and do what is necessary to implement the legislation? How far into 1986 will it take? What are your projections in that regard?

THE WITNESS: Under the thirty months scenario, we project it will take us into March before we could reach the 7,019.

THE COURT: With the continuing intake.

THE WITNESS: That is just what I was getting ready to say. If our intake continues to increase the way it has, then it's going to take longer.

THE COURT: How much longer, Commissioner?

THE WITNESS: Your Honor, I don't know at this point.

THE COURT: If you can hazard a relatively informed opinion, other than just idle speculation.

THE WITNESS: This wouldn't be idle speculation, but it would be an educated guess. I'd say a minimum of another couple of months.

THE COURT: Past March?

THE WITNESS: Yes, sir. Just simply so the logistics can occur, each of the cases can be considered in an appropriate way.

THE COURT: That gets us right up to June, 1986.

THE WITNESS: It is conceivable it could take that long, yes, sir.

BY MR. CODY:

Q. Commissioner, just briefly; with respect to the over-crowded concern, in addition to the mechanism to release prisoners which you have detailed for the Court, are there other matters that you've begun to work on and will propose to the legislature or will take into account since June up to the present time?

A. Yes, there are. And one thing has just occurred, we have just opened 120 bed work camp in Wayne County. In addition to that, there is a facility that will open in June or July of 1986 that has 160 beds in it.

Q. Where is that?

A. It's in Carter County, Tennessee. It's ahead of construction schedule and we believe will come on line in a timely way and add 160 beds to the system.

I have recommended to the legislature that two new 500 bed prisons be constructed that can be multi-purpose prisons, have capacity to deal with maximum security prisoners or the whole range of classifications; that Turney Center Housing Units that are such a management nightmare, be razed and reconstructed; that several segregation units be built at the existing facilities.

We are also pursuing--

THE COURT: Where would you put the people at Turney while you are razing and rebuilding?

THE WITNESS: The housing down there are built in pods, and we would try to--we believe this is do-able, the engineers believe what I am about to say is do-able--you wouldn't be displacing the entire inmate population, only be displacing a portion while you razed one section and reconstructed it, razed the next section and reconstructed it. I don't think at any one time somewhere between 25 and 50% of the inmate population would be displaced.

THE COURT: Where would they be displaced to?

THE WITNESS: The kind of people we have at Turney Center for the most part have to be housed in institutions like Fort Pillow, the Main Prison, possibly some to Brushy Mountain, reasonably secure institutions.

THE COURT: What would that result in as far as over population at those institutions?

THE WITNESS: I think certainly that would be a factor in what our agreed to designated capacity would be, and we would have to manage our population accordingly. We would have to adjust our capacity relative to the loss of those beds while they were being reconstructed. I think that would be the only reasonable way to do it. To overcrowd another institution would simply be to add to the management problems of that institution.

THE COURT: How would you do that with continuing with the day to day intake? I find myself in a circle in that regard. You are going to move people from Turney and spread them out to Fort Pillow, the Main Prison and Brushy Mountain, and at the same time you've got continuing daily influx.

THE WITNESS: Combination of things, not just moving people to other prisons, and not just--there have to be some other ways to deal with--as part of the solutions, we are recommending to the legislature there are a range of solutions, not just new construction. I don't think the State of Tennessee can ever out build its problem. I'm not suggesting the current building program that's been recommended is enough. I think it's enough to bite off this year, but it may not be enough. And I have testified to that fact before the legislature on a number of occasions. If we don't do some things differently then it will not be enough prison

beds.

In addition to that, I was just talking about in terms of constructing new housing units, there are other ways to deal with some of our less problematic offenders I believe. 37% of the people we get on an annual basis come to us with less than twelve months to serve. We believe that people are plea bargaining to the State system because they think they can get out earlier if they come to the State system, because they know we are overcrowded. And that is in fact true. If they come to us with less than twelve months to serve, the likelihood that they'll be with us for twelve months is pretty low. They'll end up getting paroled in a very short period of time.

We think that is an artificial factor in the fact that our intake is so high. If we can find a way to prevent that plea bargaining from occurring, our intake may decrease. In addition to that, I think we're going to be able to develop contractual partnership with a couple of major--of the larger counties in Tennessee, Shelby County, and Davidson County, for more bed space. I received a preliminary proposal from Sheriff Thomas and I received preliminary proposal from the officials in Shelby County. It looks like those two avenues may materialize.

THE COURT: In other words the proposed i
in this lawsuit, so concerned about the overcrowdi

prison system, you all are carrying on a little parley with them about helping to relieve the overcrowding in the prison system on a State basis by housing some of the State prisoners under his auspices.

THE WITNESS: Different sort of relationship, though, than we have now.

MR. CODY: Kind of like Springhill in Maury County, in lieu of taxes.

BY MR. CODY:

Q. You're negotiating with them for contracts.

A. Certainly am.

THE COURT: Are you still here, Mr. Charles?

MR. CHARLES: I certainly, Your Honor.

THE COURT: All right.

BY MR. CODY:

Q. What type number is Shelby County talking about?

A. 600 beds.

Q. When would those beds be put on the line, come into play with the others?

A. Within about 18 months of time. What they are talking about is renovation of the Shelby County Penal Farm and the State would provide the grant monies necessary to do that, and they would be housing prisoners before they ever got to the State system. It would be a way to divert a lot of people out of the State system that currently come to us and

are backing up in the Reception Centers.

Q. Such an arrangement was discussed with Shelby County earlier, but was not fruitful, is that correct?

A. That is correct.

Q. Different factors today, though.

A. Yes, sir, there are.

THE COURT: What different factors?

THE WITNESS: To be quite honest with you, Your Honor--

THE COURT: You do that.

THE WITNESS: I will. Always. The thing that broke those discussions down before was the fact that one of the private sector companies got involved in the deliberations, and that received bad publicity in Shelby County, and the officials concerned with the negotiation simply backed away from it.

BY MR. CODY:

Q. So in addition to the release mechanism you indicated to the Court you'll ask the legislature to pass in November, you also have alternative sentencing programs and community correction programs to deal with less serious offenders, is that correct?

A. That is correct. These programs have not been tried much in Tennessee. I think they offer the possibility that we may do a better service to society by punishing people in other

ways than by simply putting them in jail through a community correction act. I believe that act will pass, and has potential for diverting between now and five years from now as many as eleven hundred people annually. The first year would involve about three and a half million dollars of State appropriation. At the fifth year it would involve about ten million dollars State appropriation. The first year will be dealing with about 350 people annually and in the fifth year approximately 1,100 people annually. These are people who will be diverted away from the State system, they'll be punished certainly, but punished in ways other than incarceration. That idea is receiving I think pretty thorough consideration in the legislature. We believe it has the potential for, with cooperation certainly of the trial judges and the district attorneys, has potential for alleviating a lot of the State's problems.

Q. Overall today your testimony is in no way to the effect you do not feel as Administrator that you must get your institutions down to reasonable designated capacity so they will be manageable.

A. I think we have to. As I have said a number of times, the State system will never be managed in an effective way, in a safe, secure, constitutional way, until it is below maximum capacity.

Q. Your request today to the Court is that Administration be

allowed to work with the legislature to see if this can be done in an orderly fashion, understanding the overcrowded conditions, and the need to respond to those with a real sense of emergency.

A. That is correct.

THE COURT: You're saying it continues to be in unconstitutional non-compliance as of today.

THE WITNESS: Yes, sir.

THE COURT: And you are asking for yet another extension to submit these proposals to the General Assembly, and then for time after that to do the administrative--bring about the administrative implementation to reduce the population, to bring it into constitutional compliance.

THE WITNESS: Yes, Your Honor. I think that an opportunity exist now to, because of some circumstances we have already discussed that has never been there before--

THE COURT: Why, why now, just why weren't they there before?

THE WITNESS: The same reasons, Your Honor, I went through before. I don't think the issue has ever been as focused from as many different directions with as much information as it is today.

THE COURT: Now, Commissioner, you're ducking. The opportunity was there, but people who took a solemn oath, who make the general--the laws of this State, public policy of

this State, didn't do their duty. Now that's the answer, isn't it?

THE WITNESS: Your Honor, I'm not denying that.

THE COURT: You're not up here telling me that there wasn't the opportunity to correct this before.

THE WITNESS: The opportunity has been here. Yes, sir.

THE COURT: There's just been a--for whatever reason, a willful disregard of their sworn obligation to comply with the Constitution of the United States and the Constitution of Tennessee, or just reckless indifference. The opportunity has been there, but for one reason or another, they have either disregarded their oath or been indifferent, haven't acted until the heat has gotten on, until now, have they?

THE WITNESS: That's correct, Your Honor. I think one of the more compelling arguments--I don't think the level of understanding of the problem has ever been as significant as it is right now.

THE COURT: Well, why is that?

THE WITNESS: Certainly they've known the problem was there.

THE COURT: Why is that? Just want to remain in a state of ignorance? Is that--that's the best way not to know about anything, isolate yourself from finding out. Nothing kept them from knowing, though, during the pendency of this

litigation.

THE WITNESS: No, sir, that is correct.

THE COURT: Or the five years there was litigation in the State Courts before this lawsuit started in the United States District Court, nothing kept them from knowing about it, was it?

THE WITNESS: That's correct, sir.

THE COURT: Let's don't duck now, where the responsibility rest.

THE WITNESS: Your Honor, I don't mean to duck. I just think the issue is so compelling now the understanding is more complete than it ever has been before. Therefore the opportunity to correct the problem is better than it's ever been before.

THE COURT: I want you to understand we are not engaged in any after luncheon speeches at Civic Clubs where talk is cheap.

THE WITNESS: I understand that.

THE COURT: Or street corner exercise of the First Amendment right where people say whatever they please. A record is being made in this Court. And I don't want the focus of who bears the responsibility and why the prison system has arrived at this state to go unnoted or just to be non-focused and lurking in the shadows. I want to be sure that it's identified.

THE WITNESS: I understand, Your Honor.

BY MR. CODY:

Q. I'll just ask one more question, in line somewhat with the Court's remarks. During pendency of the State and Federal litigation during the last six years, has the State built three thousand new beds in the system?

A. Yes, they have.

Q. Have we lost over fourteen hundred beds in the system in order to eliminate double-celling and crowded conditions?

A. That's what I was referring to earlier, the double-celling at the Main Prison and closing of C Building at Fort Pillow.

Q. Since November, 1983 has the State released six thousand prisoners earlier than they would normally be released?

A. That is correct as well.

THE COURT: The ideal solution I get, Commissioner, from your direct testimony, would be to--the way to bring about a situation where the system is manageable, where you really get your hands on it, that's what you're talking about.

THE WITNESS: Yes, sir.

THE COURT: Would be to cut off intake of inmates. Now the State says it can't do it because it's mandated by law to take those prisoners that are sent to them by the--brought to them by the sheriffs of the various counties.

THE WITNESS: Yes, sir.

THE COURT: So I assume since you are the Commissione you can't very well be in the position of coming up here and saying, Judge, we can't control it, but--and I suppose you probably--I don't know what you need to do as far as asking the Court, if the Court were to do it, that would be the ideal solution to your problem on a temporary interim basis, wouldn't it?

THE WITNESS: Yes, sir, it would.

THE COURT: Why don't you ask the Court to do it?

THE WITNESS: Because I don't think it would be a solution to the problem. All it would do I think is transfer the problem to a lower level. I think there is a better way to do it.

THE COURT: The better way is to submit this program to the legislature.

THE WITNESS: Yes, sir.

THE COURT: Hope it passes. Try to assure its passage.

THE WITNESS: Yes, sir.

THE COURT: And then assuming it passes, in essentially the form in which it is submitted or something similar to it, begin to implement it administratively.

THE WITNESS: Immediately.

THE COURT: And then work toward instead of complying with the Court's order on December 31st, hope to

comply with it by June 1st.

THE WITNESS: Try to get there as fast as we could, yes, sir.

THE COURT: Go ahead, Mr. Bonnyman.

CROSS-EXAMINATION

BY MR. BONNYMAN:

Q. Commissioner, you just stated on direct testimony you built three thousand beds in the past six years.

A. I think I didn't, but three thousand beds have been constructed in the system, I believe in the last six years.

Q. And by that, to clear up the record, literally you mean beds, you don't mean bed space.

A. That is correct.

Q. In fact that is all space that was designed originally as single cell and it's all double cell now, is that correct?

A. If we're talking about the regional prisons, they are double-celled.

Q. We're also talking about Turney Center.

A. Turney Center is not double-celled right now in all cases I don't think.

Q. Not in all cases, but substantially double-celled, isn't it?

A. Yes, there is double-celling at Turney.

Q. So part of the three thousand beds that you just were talking about are in fact half of those beds are beds brought

on line since Judge Morton originally ruled three years ago and said, I'm warning you as you deal with the problem of overcrowding at the Main Prison, I don't want to see unconstitutional conditions created at presently uncrowded facilities. Isn't that correct?

A. I'm not familiar with that discussion from Judge Morton. What I can tell you, the regional prisons are double-celled.

Q. Turning to the plan that you have sumitted earlier, the Administration submitted to the legislature, I think you stated on direct questioning by General Cody that the plan was in advanced state of development, is that correct?

A. I think it is at this point.

Q. Would it be accurate to state it is in fact undergoing major revision right now?

A. I don't think you could classify it as major. The plan contains sixty-four recommendations. The adjustments we are talking about probably affect half a dozen or so of those recommendations.

Q. Pretty important, include the safety valve?

A. No question they are important.

Q. You would call bringing the plan into compliance or putting it into effect or allowing the State to come into compliance with population a major part of the plan.

A. No question.

Q. It is undergoing revision, is that correct?

A. That is correct.

Q. The first safety valve that was contained in the plan had thirty months limitation on it you acknowledge won't work, you knew in August that wasn't going to work, didn't you?

A. Not really. Not really.

Q. You were told by plaintiffs' counsel in August it wasn't going to work.

A. You told me, no question.

Q. You had the figures based on your own Administration-generated figures, is that not correct?

A. Yes, I had the figures. But I wasn't yet--

Q. The same figures upon which you concluded ultimately they would not work.

A. No, I still--I still had a few questions about intake, trying to figure out what was going on there. So--

Q. In fact your intake is down in the past few months, isn't it, by over seventy-five as compared to the same months last year.

A. No, I think it's above what it was over the same months last year.

Q. Do you know?

A. I believe it is, according to the figures I looked at yesterday we are above what we were this time last year in terms of monthly intake.

I'll stipulate if you wish that I was not firmly convinced last August or on September 16th that when we produced that plan that that thirty months provision was the complete answer. It was the best that I could do at the time. Now, since that time, through discussions with you, the Special Master, and other interested people, we have concluded that certainly the thirty months provision would not work. And that's the reason the recommendation has been changed. That's the reason I propose the change to the legislature. So that our solution to overcrowding, our capacity to manage inmate population, would be absolute. So that it would not paint us into a corner just as the current early release law did.

Q. Am I not correct when you presented that plan, when the Governor presented that plan with the thirty months restriction in it to the legislature, it was presented as a plan which was the Administration's final plan which would bring the prison system into compliance with the order of the Court.

A. You are not correct. That plan was never offered in concrete. That plan was offered to members of the legislature certainly to address the prison problem in a comprehensive way. But at no--pardon me--but at no time did I say or did the Governor say, this is the absolute solution. As a matter of fact, what we requested from interested people and members of the legislature is if you have got improvements or if

you have a better idea, let us know what they are, because we are going to continue to work on this problem. So, no, sir, it was never offered in concrete.

Q. Well, we're talking about the same plan filed by the Attorney General's office, represented to the Court as a final plan.

A. September 16th.

Q. Am I correct the major part of that plan for controlling population was shifting of population, present State inmate population to local jails?

A. That is correct. The original plan, the plan of September 16th recommended that over several year period of time, that ultimately local Governments would be housing prisoners with sentences of six years or less with the State paying the cost.

Q. Am I correct that you had to scrap that part of the plan?

A. You are correct in that through out discussion with local Governments we have determined that wasn't going to work.

Q. The Sheriffs didn't like it.

A. The Sheriffs didn't like it.

Q. The Judges didn't like it.

MR. CODY: If the Court please, I don't like to interrupt, but I would request that counsel let the witness finish his answer before he ask the next question.

THE COURT: Slow down a little Mr. Bonnyman. Let

the Commissioner make a full response.

THE WITNESS: You are correct. The members of local Government didn't like it, didn't appear it was a workable solution. As a practical matter, if we had been able to get those recommendations passed through the legislature this year, then we would have simply had to fight that battle again next year, and the year after and so forth. That's not a very productive way to do business in my view. What we chose to do is change those recommendations and seek voluntary relationships with the local Governments where the State Government would be certainly obligated to pay the cost of incarcerating people at the local level, but do it in the way that would be acceptable to local Government officials. And the result of that has been a willingness to participate by several local Governments in Tennessee.

That would allow us to house a number of inmates I think at the local level.

BY MR. BONNYMAN:

Q. Including Sheriff Thomas.

A. That is correct. And in all honesty I must tell you at this point in time those relationships do not exist in the form of contracts. Discussions are preliminary. We are negotiating with them, and I think those negotiations will develop a conclusion that is both--that serves both levels of Government well.

Q. Are you as far a long now with those negotiations as you were in April with Shelby County?

A. Farther.

Q. Am I correct you and Judge Pellagrin have--Judge Pellagrin particularly have put a lot of effort into trying to convince the State Judges around Tennessee that you've got a big problem, the State has a big problem with overcrowding, need to take this into account in their sentencing and commitment practices?

A. Yes, we both have met with the Judges on several occasions.

Q. I believe the last time you were testifying you said you had written a letter to the Judges asking for their cooperation, is that correct?

A. I think that testimony occurred before the last time I testified. You mean here or--

Q. Yes. The last time you were in this courtroom in June I believe you testified, did you not, that you had sent a letter to each Criminal Court Judge?

A. I have done that, yes.

Q. Asking for their cooperation.

A. Yes.

Q. Is that correct?

A. That is correct.

Q. And am I correct you've had only one State Judge respond affirmatively to that request?

A. No, you are not. No, you are not I can't give exact numbers, but I had several Judges, certainly sympathetic with the problem, told me they would do the best they could. I had several Judges tell me it's my problem and for me to handle it. But at least half of the responses were reasonable in their tone, and in their nature, that they would do the best they could.

What a lot of Judges tell me at this point is they are--if they had other alternatives to incarceration, they would be inclined to use them. Somewhere, some program, or some method of punishment that exists between probation and incarceration. And that's one of the--one of the things we would--will be proposing to the legislature this year.

Q. Regardless of what they've told you, am I to understand you from what you said a few moments ago that in fact your admissions are up still markedly compared to this time a year ago?

A. I think they are. I could stand to be corrected on that, but I believe our admissions are up over this time last year on the average of thirty a month.

Q. You alluded to the problem of needing to extend the early release program to the county jails through the Parole Board considering people in the jails so that these people would not end up through plea bargaining coming to your system further exacerbating the problem you have in the State

system.

A. That is correct.

Q. Am I also correct there are at least two judicial circuits in this State where in spite of, I suppose, the supremacy of State law, the Criminal Court Judges have told the Parole Board they are not to send any of their employees to the local jails to interview or screen for early release because those are their prisoners, and the Parole Board employees are subject to arrest if they set foot in their district?

A. I believe that's right.

Q. You have some surplus space in the community service centers, work release centers, is that correct?

A. It's about a hundred beds, I believe.

Q. Am I correct the last time you were here you testified that you were going to immediately, in fact just the day before you had testified you had already issued an order to identify people who could be reclassified to fill those beds, thereby relieving overcrowding problems elsewhere in the system, is that correct?

A. That is correct. And we are, as people can be reclassified to community service centers setting, we continue to do that.

Q. Am I correct some of the restrictions on reclassification of those inmates are statutory, is that correct?

A. That is correct.

Q. Am I also correct some of those are administrative and within your power to change.

A. That is correct. Those rate primarily to people who can have capacity to work outside the walls.

Q. Did you not testify last week before the legislative committee that although you had the authority to change those administrative restrictions and thought it a good idea to do so so that people could be reclassified to a lower security level, you had not done so because you felt the need to run it by the Legislature several times before you did that, is that correct?

A. Not exactly.

THE COURT: Have you changed any of the guidelines that are within your prerogative to change?

THE WITNESS: No, sir, I have not. It is my intention to do so.

THE COURT: That was your intention in June, wasn't it?

THE WITNESS: It still is.

THE COURT: When are you going to do it?

THE WITNESS: Between now and November 5th. It's on my desk right now.

THE COURT: The proposed change?

THE WITNESS: Not the proposed change, the policy in question. If I can go further with the discussion that

occurred in the legislative testimony, my reason for not changing the policy to this point is basically two. One, I felt like the members of the legislature had a right to know what I was about to do. And I wanted to be certain enough it was the correct thing to do, that I could feel comfortable with it. I felt like that policy change needed to occur within context, or needed to occur as a part of the comprehensive deliberation that we are going through right now, not just an isolated action. I wanted to understand better what the consequences of that action would be through discussion with the wardens, what impact it would have on their institutions. That's the reason it hasn't been changed before. I think it does need to be changed, and intend to change it between now and November 5th.

BY MR. BONNYMAN:

Q. But you agree this is a fair restatement of what you said, quote it's my intention to change it. I felt obligated to let the legislature know that I was working on the change, what my intentions were, so if you had opposition to it you would have opportunity to voice it, but it is my responsibility to change it.

A. That is correct.

Q. You have had that legal authority since June, have you not?

A. No question, no. I have had the legal authority since I

think being appointed Commissioner.

Q. Am I correct that the programatic sections of the plan that has been submitted to the General Assembly, specifically to the special committee chaired by Senator Rochelle, that that plan is lacking in narrative description of the programatic aspects of the Administration's plan; in other words you're taking the position that dealing with idle is dealing with education; and can be dealt with primarily through submission of budget, is that correct?

A. That is correct.

Q. And am I correct that part of the plan has not yet been formally submitted to the legislature?

A. That is correct.

Q. And that there has been no narrative description submitted to the legislature of what your intentions are in that regard.

A. That is correct.

Q. Am I correct also that in contradiction of what was filed with the Court on September 16th and what had been discussed among the parties with the Special Master with regard to implementation--evaluate the recommendation to phase out the Tennessee State Prison for security reasons and financially, that last week under questioning by the legislative committee you agreed to delete that provision and continue to indefinitely operate the Tennessee State Prison?

A. No, sir, that is not entirely correct. I believe just as I believed when you and I talked before that the Main Prison needs to be closed. I don't think there's any question--or the housing units extensively renovated. Certainly something very extensive and very drastic needs to be done to it. The problem I'm having is determining when to do it. I agree that's up in the air. It's a decision that does need to be made.

There are two decisions, one something does need to be done to the Main Prison. No question. Should be done. The question of when is something that I have not resolved yet.

Q. In terms of the status of that part of the plan, am I correct that last week you stated explicitly you were revising the formal plan provision for closure of that facility at completion of the second of two five hundred-man institutions?

A. That is correct.

Q. Am I correct that the legislative committe or some members of the legislative committee have voiced the opinion they're not going to legislate any short term remedies unless it's in the context of a comprehensive effort to address the problems of the prison system?

A. Yes.

Q. They are not going to address any comprehensive remedy unless they have plenty of lead time to receive a plan in final form and analyze it and determine whether it's something

they could support.

A. That I can't say.

Q. You have not been told by legislators, specifically legislators on that special committee, that they are unwilling to vote on a plan they have not had enough time to study, and the committee staff to study, to analyze in some form which has narrative attached to it, budget figures attached to it which will map out a comprehensive approach to these problems? You have not been told that?

A. No, in so many words I have. No question there.

Q. So far you have not been able to give them that comprehensive package they are demanding.

A. So far we have not provided all the answers to the questions they have.

Q. Am I correct the existing so called safety valve, that is the early Emergency Powers Act which was enacted back in 1983, that it was considerably narrower than the safety valve you are now proposing.

A. Yes.

Q. Am I also correct that the existing law largely at the behest of the District Attorneys and local law enforcement officials was repealed in the Tennessee House of Representatives a few months ago?

A. That is correct.

THE COURT: The Emergency Powers Act of 1983?

MR. BONNYMAN: Yes, sir, Your Honor. It was held up in committee and the senate. Is that correct?

THE WITNESS: Yes, that is correct.

BY MR. BONNYMAN:

Q. But it passed by substantial margin--repeal passed by substantial margin in the House, is that correct?

A. Yes.

Q. And it was not as part of an effort to broaden it, but simply take it off the books altogether, is that correct?

A. That is correct.

THE COURT: Was that--is that attributable to reaction to the so-called swinging door process?

THE WITNESS: I don't know exactly what you mean, Your Honor.

THE COURT: In and out, these short term prisoners coming to the prisons, coming back out, in other words you just tell me what is your understanding as to why the Emergency Powers act--effort was made to repeal it, and it was successful in the House, but according to Mr. Bonnyman, stalled in the Senate.

THE WITNESS: I believe it was reaction to the early turnaround, yes, sir.

BY MR. BONNYMAN:

Q. Am I correct that the State's present position is that its ability to ever comply with the Court's orders which are

now being violated hinges entirely on the enactment of legislation by the Tennessee General Assembly?

A. That is correct.

MR. BONNYMAN: I have no further questions.

MR. CODY: I have no further questions.

THE COURT: Well, the State is a defendant to this action. Who did you bring with you from the legislature to opine about the passage of this legislative package, Mr. Commissioner?

THE WITNESS: Your Honor, I'm here.

THE COURT: You're the lone man?

THE WITNESS: I'm it.

THE COURT: The State is not in compliance.

THE WITNESS: That is correct, Your Honor.

THE COURT: There is no reasonable expectation at all that you can advance on your oath of compliance by December 31, 1985.

THE WITNESS: No, sir. It would be very, very difficult.

THE COURT: It would be miraculous, wouldn't it?

THE WITNESS: Yes, sir, it would.

THE COURT: The only representation that you can make of ultimate compliance is predicated on the passage of a legislative package that is not yet in final form.

THE WITNESS: That is correct. Very near final form,

not yet in final form.

THE COURT: And then if that legislative package passes, it would still require a substantial amount of time to implement it administratively to bring about compliance with the Court's order.

THE WITNESS: Yes, sir.

THE COURT: Mr. Cody, do you have something else for the Commissioner?

MR. CODY: I do not.

THE COURT: Mr. Bonnyman?

MR. BONNYMAN: No, Your Honor.

THE COURT: Thank you,Mr. Norris.

THE WITNESS: Thank you, sir. (Witness excused.)

THE COURT: Mr. Cody, is there something else on behalf of the State?

MR. CODY: There is not.

THE COURT: Mr. Bonnyman?

MR. BONNYMAN: Your Honor, you were inquring of the witness earlier why has there not been something done in the past. There was a discussion around the question of what was the level of understanding.

The record that was before Judge Morton and probably stored away in the archives somewhere now,is part of the record in this case, goes back to 1937. There was a Blue Ribbon Committee appointed in 1937 which you could take its

findings regarding the then existing conditions in the prison system and you could lay them like a template over the problems we have now. Granted, we have some new facilities we didn't have then. There've been some changes. But the common theme of no classification, gross overcrowding, of rape, brutalization, degeneracy, standard fare for people entering Tennessee State Prison system was there in 1937 and was condemned in 1937.

There was a handsome plan that was, frankly, further developed than the plan now that's been discussed submitted to the General Assembly. In fact that's how we got Fort Pillow. Fort Pillow was built in fullfillment of that plan.

Unfortunately all that plan contained was a building plan. They never carried through anything else. As I said they built another prison which is simply another prison we're cursed with now as part of the system that's part of the system that's unconstitutional.

In 1951 the Governor had another Special Blue Ribbon committee that studied the problem at great length. In 1953 I believe there was a legislative hearing. When Governor Clement came in, he came in saying he was going to clean up the prisons.

There was more study, a study in 1960 about two inches thick. There was another study updating that in late '60s and after that we come into current history.

In 1972 Governor Dunn submitted his plan for regional prisons which included among others the regional prison at Morristown. Unfortunately that is recent enough that we're all familiar with that, the way we established vicinity veto power, any local officials, for that matter any local mob not happy with the way things were going, all a matter of "me, too", I want a part of the action, I want veto power, the State has given all those interest veto power over the years.

In 1976, getting ready to go to trial on Trigg, this I believe was alluded to in a paper filed back in June, certainly part of the documentary record, is a motion filed by the Attorney General's office in 1976 saying, we now have a master plan which we are going to submit to the General Assembly of the State of Tennessee, and that's going to be the answer to the problem. We move continuance so that the Chancery Court will defer to the legislature and to executive branch to work this out. We've got a swell plan. That plan was very well developed, was all written in, budgeted out and it went over like a lead balloon.

We came back in the fall of 1981 in this very Court before Judge Morton, and the testimony of November, 1981 by then Commissioner Bradley and by other officials of the current gubernatorial administration was to the effect, well, it may not be swell now, but we've got new budget proposals

we're submitting, if you'll lay off until the next session of the General Assembly, the check is in the mail.

We were back in August of 1982 when the Court said the system is unconstitutional, do something about it, don't mess up the rest of the system while you're fixing thepart that's already broken. A year later nothing had happened. It was only--it was only under the certainty that Judge Morton was going to actually hammer the State of Tennessee that they became at all forthcoming and came up with a solution which was then condified into the Court's order of October 18, 1983, and within two of the first three months after this they were immediately in contempt.

The record developed in the spring of this year with high administrative officials indicates they knew at the time they submitted that proposal, that proposed time table to Judge Morton in October of 1983, the time he bought into it, they were going to be in contempt of that order by--it's speculative whether it would be a year later or eighteen months later, but that the device they had developed, the Emergency Powers Act, was going to go bust, and indeed it did. They knew it, they knew it from the time they entered into it, and they did nothing. The first time they started doing anything about it was a year later.

They had study committees, they had study plans, and they've also been made a part of the record here. And what

did they do to implement those? They started shifting people in the middle of the night and then resorted to self-help at the end of April when they resorted to self-help. At the end of April they said, Scout's honor, if you'll give us more time, we'll hold the population at its April 30th level. But in June we were already 300 inmates above that. And they said all that's wrong. Commissioner Norris sat in that witness chair and to his credit he said, I can't make promises, but then he proceeded to make some promises, for example that he was going to deal with the imbalance of overcrowding, brutality at some facilities, vacant beds in work release community service centers.

He said he had already put the wheels in gear. Which he hadn't. He says now he's going to in November.

Why not? Because the way the system operates in the State of Tennessee. We've got to get off this notion they talk about the legislature is this or the judge is that. The defendants in this case, the responsible authorities in this case which are subject to the United States Constitution are State officials. We are dealing with the State Government of Tennessee. There is no State Government in Tennessee on this issue. It's a free for all. It's whoever wants to be heard, whoever wants to dig a ditch across the access road for construction equipment to a new prison site in Morristown; whatever the local sheriff wants

to negotiate for a lucrative contract with the prison system going to try to intervene in this case.

We have no Government. So that's where we are. That's been the level of awareness for at least half a century, and it's documented in this record. All we've gotten for half a century is promises, promises and that's all we're getting now. We don't have half as much of what we had nine years ago in level of promises made,backed up by concrete fully developed plan that was submitted to Chancelor Cantrell.

We have less than that. We have, in spite of what Commissioner Norris says, we have a plan which was incomplete when it was drafted; a plan which its own figures reveal would not deal with the population crisis. And that those parts of the plan and indeed other parts of the plan have been totally shredded, and why have they been shredded? Well, because the sheriffs didn't like it, the local DAs didn't like it, local criminal court judges didn't like it.

What kind of State do we have here? We have a State where Judge Roy Bean who sits in upper East Tennessee says if a parole officer duly sworn and carrying out his duties comes into my district for the purpose of carrying out the law, I'll have him arrested. We have that in two different entire judicial districts in this State, and the Commissioner says their admission rates are up in spite of their pleas to local officials to give some relief.

Why did Commissioner Norris himself not avail himself of the powers he already had? Because he knew or thought he knew or someone in the Administration thought they knew better, not to do what he told the Court he was going to do by changing classification to relieve some of the crisis that is causing the daily rape, and brutalization of young inmates at the Reception Centers. Better not deal with the problems until I run it by the legislature a couple of times to make sure I wasn't stepping on anybody's toes.

So if history is any guide, it's, A wait for the legislature, it won't happen, B, if part of it does happen the Administration will not avail itself of the powers that it has under State law, just as it's not paroling people early in the jails, though it has that power, though it's not reclassifying good risk inmates to community service centers, though it has that power of law it will not do what it is lawfully entitled to and authorized and mandated to do under the Federal Constitution.

THE COURT: You're not talking about the use of clemency power.

MR. BONNYMAN: I'm not, though I must say, Your Honor, that there is a sworn obligation to uphold the United States Constitution before all else. But even laying off that, and just assuming that is sacrosanct, which I think is rather unusual, that defendants can come into the Court and

say we have we have this legal power to comply with the Court's order but we just choose not to use it, but assuming that is sacrosanct, they have statutory authority already as the Commissioner conceded to deal with that problem that he says is so bad of rising admissions, people wanting to plea bargain into the State, how are they dealing with that? They are dealing with that through statutory powers to go out there and start paroling people in the jails, and the Judges are saying just like Millers did in Morristown to heck with the law, I don't need the law, the law doesn't seat me. I've got my own interests here. I won't permit it, so it doesn't happen.

They already have the authority which has nothing to to with clemency powers to reclassify people who are being raped in the Reception Centers, and minimum security facilities where they have vacant beds. They are not doing it, and they are not doing it because they don't have legal authority, they are not doing it because they are waiting to have the General Assembly come into session in November, but because of the way the game is played in Tennessee. The way the game is played in Tennessee one does not do that if there's anybody out there saying they don't like it. They are afraid people are going to say we don't like it, and so they don't do it.

If you look at history you have to say two things:

A, there's been a very great level of awareness throughout, and, B, it hasn't made any difference. And if you wait-- the Court continues to wait for State officials of both branches to carry out their sworn obligation which is more fundamental than anything else they ever want to do once they take public office, which is uphold the National Constitution, we'll be waiting in vain. And everyday we wait there are people who have been sentenced under the laws of this State but also under the Federal Constitution, specifically the Eighth Amendment, two facilities which by everybody's definition, everybody's admission, are unconstitutional, which deprive them of any modicum of safety from rape, brutalization. That isn't right, and it cannot be permitted to continue simply because the State of Tennessee keeps wrangling among itself and among its constitutent parts, all of which boils down to the political interests of the various parties involved.

MR. CODY: If the Court please, before I make my brief remarks, I would like to state that the State is reclassifying people to the community service centers, and if there is any question about that, I would like opportunity to recall Commissioner Norris, if there is a question. But we are reclassifying people in community service centers at the present time.

The present overcrowding, if the Court please, is

unacceptable, particularly in the Reception Centers. The State does not condone it, and we only ask that we be able to reduce the overcrowding through the early release of prisoners who admittedly have committed very serious offenses, but in order to protect the safety of the society we live in, that we not release dangerous criminals, and that these releases be made in a structured and responsible manner, under effective supervision, under some balancing of what we understand are the constitutional rights of prisoners to have humane facilities and the right of society to be protected from harm in the best way the Government can.

There is no question that we need to eliminate the overcrowding in our prisons as expeditiously as possible and consistent as possible with the obligation to protect the public.

The State doesn't have any viable option today other than legislative action to do that. The Governor contends and has stated and we have reported to the Court that he believes it is a misuse of the clemency power to use it to just reduce population rather than to deal with the merits of the particular case.

Legislative action is needed for orderly release on supervised parole of some of the inmates sufficient to reduce population level below capacity of our system, and certainly to the 7,019 that we have agreed to and tried to meet since

that agreement.

The Commissioner has testified that he has made a safety valve proposal to the Legislature and the Governor will present this formally to the Legislature in the package that will be submitted prior to the November 5th General Assembly session, less than two weeks away. If that safety valve is properly enacted, then the State within a period of time, and the Commissioner has tried to testify that hopefully it would be as early as March or at the latest June, but during that period of time there would be substantial reductions in the prison population, and the Board of Pardons and Parole has been reviewing files in anticipation of that orderly release.

The Legislature meets in less than two weeks. We are asking the Court today to find that the State is entitled to have that option, to go to the Legislature, and have the Court not take action today on the plaintiffs' motion, and to refrain from imposing an immediate sanction of this intake bar that has been suggested until we can have the Legislature to meet.

We tried to deal with this problem--

THE COURT: Mr. Cody, let's pause this just a moment. I apologize for interrupting your train of thought. There is no question but the State has been back here time and time again, has asked for extensions and has been granted

those. Isn't that correct?

MR. CODY: That is correct.

THE COURT: Now there is no legitimate complaint on the part of the State that this Court has acted in an unduely intrusive fashion, is it?

MR. CODY: During the time that I have been in office there has been no occasion that I know of that I felt the Court has been intrusive or has not been sympathetic to the State's problems in trying to solve the overcrowding.

THE COURT: As a matter of fact, the record and I had them compiled and read it today, of the memorandums and orders in this case, time and time again reflect the enormous restraint this Court has--with which this Court has acted or withheld acting in deference to the delicate relationship, Federal and State relationship. You would agree with that, wouldn't you?

MR. CODY: Yes, sir.

THE COURT: Now you are here again today--

MR. CODY: If the Court--

THE COURT: Let me ask you this, though. Bear with me now, Mr. Cody. At what point--at what point are you suggesting--what is that noise clicking back there?

Now, ladies and gentlemen, there'll be no recording devices up here. That is absolutely prohibited on this floor except for the court reporter. No electrnoic recordings, no

other stenographic devices, nothing, prohibited.

Have Mrs. Wauford have the Marshal come around here. There is an order to that effect posted out in the hall.

FROM THE AUDIENCE: Yes, sir. My name is Dave Getz, sir. This is a computer that--

THE COURT: You just turn your computer off. This is the end of your computer. I'm going to have the Marshal take you out and have you read that order out there. You're violating the order, standing order of this Court.

FROM THE AUDIENCE: If Your Honor please, sir, Judge Nixon and Judge Wiseman have allowed me to use it, if you don't wish--

THE COURT: You didn't ask me.

FROM THE AUDIENCE: No, sir, I did not.

THE COURT: All right, sir. You just stay where you are. I'm going to give you an opportunity to read the order out there.

Now, Mr. Cody, at what point--at what point is the constitutional principle of the Eighth Amendment to be vindicated in this lawsuit?

MR. CODY: I think at all points it has been raised, and I think what I was trying to tell the Court, the State in response to the Court's orders, and in an effort to try to comply, has lost fourteen hundred beds in its system. By trying to comply we have released six thousand prisoners in

the last two years earlier than they would have been normally released. I think the State has tried to keep up with that constitutional obligation.

THE COURT: But it never complied with it.

MR. CODY: We haven't been able to, if the Court please, and cannot today, absent some help from the legislature in this November session.

THE COURT: Or sanctions from this Court.

MR. CODY: Or sanctions from this Court.

THE COURT: That is really what this Court sits for, is to vindicate the constitutional principle.

MR. CODY: That is correct.

THE COURT: You stand there as the chief lawyer for the State and very lawyer-like, candidly concede for all practical purposes the State is abdicating so far its ability to comply with--during the course of this litigation--with the Eighth Amendment. That is the record. There is no challenge to that is there, Mr. Cody, even until today, and in fact under Mr. Norris's sworn testimony, nothing short of a miraculous occurrence would result in even the compliance with this Court's order when I last granted you an extension in June to December 31, 1985.

Now, in view of that record, when will the principle of the Eighth Amendment be vindicated?

MR. CODY: If the Court please, I think it's my

statement and my position that the State, because of the admissions that we have received, have been unable under their existing mechanisms to release enough prisoners to keep up with the admissions. The only way I know to solve that is to pass a law which will say you can release enough prisoners to get down to 7,019. We don't have that mechanism today. The Governor intends to ask the legislature within two weeks to give him that authority. And that's what we're asking the Court today, to allow the State to deal with the problem in this legislative session.

THE COURT: And the net effect is that, and I don't mean this disrespectfully, understand that, it's colloquy between the Court and counsel, but the net effect of your position, Mr. Cody, on behalf of the State is this: Yes, the State is bound by the Eighth Amendment to the United States Constitution. However, there is a little footnote applicable to the State of Tennessee because of extraordinary difficulty it has in complying with it, that the rest of the constitution is applicable, but there is this extra-ordinary extension after extension for the State to obey the Eighth Amendment.

Now, I've put it in nickel and dime words, but that's in effect--in June you need extension until December. Now it's anticipated if everything goes just right and clicks, maybe in June, but we go back years. In fact from the order

of 1983, the State came in repeatedly and asked for extensions and were indulged. Prior to the time the case came from Judge Morton to me, which all is in the teeth of the fact that at some point the constitutional principle itself, if there is any efficacy to be gained from having a constitution, from the constitution, if the constitution is to have any efficacy at all, it's got to be vindicated.

MR. CODY: I think that is correct, if the Court please, and I think the State's position is simply this: There is no reason that the constitution should not be enforced, and all we are asking is that if the State legislative process can do that during this session, it would be better for the constitutional balance than have the Court order the intake of prisoners stopped, and what that will do to the system throughout the State.

THE COURT: But it's that extraordinary conservative concern that this Court has demonstrated historically for the delicate Federal and State balance that has brought us to this point, because the State has been indulged time and time again.

MR. CODY: I understand.

THE COURT: Suppose this was an instance of the Fourth and Fifth Amendments to the Constitution? No one seriously suggests that the Court would entertain, please, Judge, it's true we are violating the Constitution with

regard to searches and seizures, but we're going to do better six months from now. Why is it that when you're dealing with the Eighth Amendment, other than the fact that beneficiaries of it have very little in the way of constituency, since they're all locked up out there and they're under presumptively valid judgments of conviction, why is it that no one would suggest putting off the vindication of the Fourth and Fifth Amendments for six months another six months and then another six months? Why is it that when it comes to the Eighth Amendment that seems like, well, just dealing with routine sort of business matters, that another extension is of no consequence.

MR. CODY: I don't think it's that, if the Court please. I think it's a question, even though the State understands its obligation not to have prisons crowded to the extent that it has one prisoner hurting another prisoner, it has also got an obligation to the public to make sure it's not taking a dangerous person that has been sentenced to incarceration and turning them back out or not letting them in the prisons. There is a balancing the State must deal with with respect to protecting the rights of society as well as meeting its obligation to have a constitutional prison system. And I guess that's what makes it a more difficult balancing situation.

THE COURT: Well, I've said it before and I've said

it again, in June I told Commissioner Norris this Court does not know how to run a State prison system, and it's not supposed to know how. It's the function of the State Government of Tennessee to run that prison system. The function of this Court is to vindicate the constitutional principle that the system be run in conformity with the Constitution. That is the burden this Court has.

MR. CODY: The only statement I can make in response to that is since the 27th of June, the Administration and the Legislature have devoted an incredible amount of time and effort to trying to developing programs that can be enacted, that will make our prison system one that is constitutional, regardless of the tremendous expense that that will entail.

I make no excuses about the overcrowded conditions of the prison and the dangers that that has for not only inmates but staff.

THE COURT: Well, of course you are in an unenviable position, the oar you're laboring with, Mr. Cody. Suppose the sanctions are not granted. We know that you have conceded you are not going to comply with the Court's order of December 31st. Isn't that true?

MR. CODY: We cannot reach 7,019 by December, yes, sir. Excuse me, unless the Governor were to use his commutation powers.

THE COURT: And that is a matter of grace and favor, really, to set straight a manifest injustice. That's not the kind of power that is used to regulate the population of a prison. I hear all this idle chatter about that, but the State just came through an instance of where that power of grace and favor, extra clemency power, has been misused. We can pass that to one side. It's irrelevant to suggest that that is a vehicle, a viable vehicle to run the prison system. It's nonsense.

But my first concern was with having made an order effective December 31st, to alter it in anyway because having made an order to alter it, absent extraordinarily compelling reasons, insert that uncertainity into the orders of the Court and judicial process, that should be avoided at all costs. But that concern really is out of the picture, because as you stated just a moment ago, there isn't any practical way the State can comply with it. That's what the record and the findings will reflect, isn't that true?

MR. CODY: That is correct.

THE COURT: So we are down to this--the Court either acts tonight, or reasonably hereafter, and grants the sanctions or, two, indulges the State in yet another extension, and to stay this matter over until June of 1986. That's where we are, isn't it? That is essentially the dichotomy.

MR. CODY: Except I don't believe the situation

would be the same in June because releases would begin as early as December and would continue on through June. I think the Commissioner testified he could not say all those releases could be done by early April because he doesn't know what the intake is going to be.

THE COURT: But the ultimate--whether it's April or June, that's the dichotomy, act now or impose sanctions or grant yet another extension based on the assumption that these various hypotheticals will take place that will create the machinery to--so the State through its own efforts and resources can reduce the population and begin to comply with the mandates of the Court and constitutional principles.

MR. CODY: I believe that's correct.

THE COURT: Mr. Bonnyman?

MR. BONNYMAN: I have nothing further, Your Honor.

THE COURT: We'll take a recess, ten or fifteen minutes.

(Hearing was in recess and then resumed at 6:15 o'clock PM and the following proceedings were had.)

THE COURT: The Court first has before it the motion to intervene filed on behalf of Sheriff Fate Thomas, Sheriff of Davidson County, for the Metropolitan Government of Nashville Davidson County, filed October 22, 1985. The motion to intervene is opposed by the plaintiffs in this case, and the motion will be denied on the ground that the application to intervene is not timely.

The matter is well established that one of the most important considerations in deciding whether a motion for intervening is untimely is whether delay in moving for intervention would prejudice the existing parties to the case. In this case, the adverse consequences for the plaintiffs are obvious, since the granting of the motion would inevitably delay the relief of conditions long since declared unconstitutional, and which continue to threaten life and limb on an immediate ongoing basis. And the intervention would further substantially interfere with the orderly process of the Court, because it would delay the Court's actions required to enforce compliance with its previous orders which the Court notes that the defendants admittedly are violating presently.

And thus the eleventh hour entry into the case by the proposed intervenor would not serve the interests of justice

and would operate in such a fashion as to delay the Court processes and the granting of the relief in this situation.

And so for the reasons stated which constitute the Court's findings, the motion will be denied and the Court reserves the right to modify, or alter its findings, but not change them.

Now, the Court also has before it the plaintiffs' motion for further relief filed October 2, 1985. The Court has considered the motion, the supporting motion papers, the proof that has been received into the record, as well as the counter-motion papers and briefs in opposition to the motion filed on behalf of the defendants.

The history of this case need not be repeated at this time. It has been set forth on a number of occasions in the prior memorandums and orders of this Court.

At the present time, the defendants candidly and forthrightly concede in open court that they are in non-compliance with the orders of this Court with regard to the prison population in the Tennessee Department of Corrections.

And in like fashion candidly, forthrightly admitted and conceded on the record before this Court that there is no reasonable prospect of coming in compliance with the orders of this Court so far as reduction of population to the figure first advanced and urged by the State, itself of seven thousand nineteen by the date set by the Court on an

application for an extention by the State earlier in these proceedings, the date being December 31, 1985.

However, the question of the reduction to that figure is not a matter that need be addressed at this time in connection with the plaintiffs' motion for further relief presently before the Court. The more urgent matter which the Court must address its attention to is the population at the three reception centers which serve as the intake source into the prison system.

As of October 21, 1985, it is stipulated between the parties that the West Tennessee Reception Center is above its established maximum capacity by 170 inmates who are housed in day rooms.

It's further stipulated that as of October 21, 1985, Middle Tennessee Reception Center is 117 inmates above its established maximum capacity, and these inmates are housed in offices.

It's further stipulated that as of October 21, 1985, East Tennessee Reception Center is 111 inmates above its established capacity and these inmates are housed in the gymnasium.

And it's further stipulated that these additional inmates over and above the established capacity of the respective reception centers are in addition to the housing permitted by the "Camp" set in the October 18, 1983 order.

Thus what is facing the Court, the Court is confronted with foremost is the extraordinary situation of the excessive population in violation of the orders of the Court at the three reception centers.

As the record further reflects, the in-house population of the Tennessee Prison System, and in that regard the Court excludes those inmates that are in the Wayne County Work Camp or under contract in local jails, was at 7,732 as of October 21, 1985, but as previously stated this is not an aspect of the matter that the Court is going to address in connection with this motion, but does note the population has risen steadily since June 27, 1985, and that its current rate of increase is at an average net gain of more than a hundred inmates per month, and these figures are supported by the defendants own evidence. And the projections made by the State indicates that population in the system on a system-wide basis, will be in excess of 8,000 by January of 1986.

Now, the inmate population at the major prisons is at or above the institutional population caps previously imposed by this Court. And the defendants have, as the Court has previously noted, conceded that to place any more inmates at these institutions would irresponsibly jeopardize the safety of the prisoners and as a consequence most of the over crowding which has occurred in the recent months has been

absorbed by the State's three classification centers which are foced to absorb and will have to absorb the further increases that are projected by the defendants.

At the population levels which exceed their ordered capacities, the three reception centers are operating under conditions which strip the inmates of any reasonable degree of protection from assault or other violence. The prevailing conditions in the reception centers are marked by each of the factors which the Court has previously found to contribute to the high level of prison violence; that is over-crowding, idleness, a classification system that fails to identify and segregate violence-prone inmates, insufficient number of guards, insufficient training of guards, improper use of dormitory housing, as well as improper prison design.

As a function of the limited space, the newly-admitted inmates to these reception centers are now ordinarily assigned to double or multiple-occupancy selling within hours or at the most a few days of their arrival at the reception centers.

Now, it is the insistence of the defendants through the testimony of Commissioner Norris that every best effort within the capacity of the department is made to make an initial assestment of each newly-committed inmate with regard to danger to themselves or to others. But the commissioner likewise concedes that this is not the kind of assessment that is required to bring the classification process into

compliance with the orders of the Court.

The Court further notes that as stated in reciting the population figures, the inmates at the three reception centers are housed in make-shift quarters that were not designed for human habitation, and have all of the associated security risks that go with being housed in facilities such as offices and gymnasiums.

Now the defendants contend they lack the present ability to reduce over crowding, or even to limit the continuing growth of the inmate population. The testimony before the Court is to the effect that the State advances the suggestion that legislation is being prepared that will be submitted to the General Assembly that will convene pursuant to Special Call on November 5, 1985, and that the defendants anticipate submission of a legislative package which, if passed, would provide a certain legislative framework that, when further implemented by certain administrative measures, would bring about a system for the orderly reduction of the over crowded prison population. But the State concedes that at best this, if all goes well, and the legislative package is adopted as proposed or substantially so, and is efficiently implemented through the necessary administrative measures, that it will be as late as April of 1986 and possibly even June of 1986 before the defendants are in compliance with long standing orders of this Court.

But again that is not a matter that the Court is required to address tonight in connection with acting on the defendants' motion, but the Court does note and gives full credit to the defendants for acting in good faith insofar as initiating these steps that are going to be taken to address the long term problem. But that leaves us nevertheless with the immediate problem at the reception centers.

Now, from all the foregoing, the Court concludes that the defendants have failed to comply with the Court's orders with regard to the operation of the prison system, and specifically with regard to the three reception centers.

In this record the Court notes that in the order of June 27, 1985, the Court expressly provided that all the prior orders of the Court remain in full force and effect, and that included, among others, the orders with regard to the capacity or maximum capacity of the reception centers.

The Court further concludes the defendants' failure to control the over crowded conditions at the reception centers has resulted in the conditions described in the Court's findings, and deprives members of the plaintiff's class of their Eighth Amendment rights to be free from cruel and unusual treatment.

The Court further finds that it has both the duty and the inherent Power to fashion relief so as to effectively remedy violations of constitutional rights.

Now, for the reasons stated, which will constitute the Court's findings and conclusions, the Court reserves the right to amend and modify but not to change substantively, it is the Court's order that, effective as of 6:30 Central Daylight Saving Time, Nashville, Tennessee, the defendant State will be precluded from admitting any new and additional inmates to the Tennessee Prison system unless and until the population in the reception centers are reduced below, to or below the capacity established for the particular reception center in the Court's order of October 18, 1983.

At such time as the population at any one of the reception centers is so reduced, then new inmates may be received at that reception center, but in no event will the population capacity previously established by the order of the Court be exceeded.

The only exception to the foregoing order of the Court will be that upon prior approval by the Special Master on a case by case basis, the defendants may admit additional prisoners to the Tennessee Prison system if their incarceration in the state system is urgently required for reasons of security. And in that regard, the Special Master is instructed that he may accept the certificate of the Commissioner that such urgent conditions exist that require a particular inmate to be received without regard to the population; that the population at the reception centers have not been brought

down to the maximum capacity established by order of the Court.

I want, Mr. McManus, a sufficiently flexible vehicle as a practical matter, based on the Commissioner's certificate to you that the urgent conditions exist that you may permit it subject to and then conduct an after-the-fact investigation to ratify the judgment, if you think necessary. And in all other cases, absent the Commissioner's certificate to you, it will be done only on the basis of your prior approval on a case by case basis.

The Court expressly makes all the prior orders in this case shall remain in full force and effect, including the June 27, 1985 order with regard to the prison-wide system population reduction to stated number by December 31, 1985. And that is a matter which the Court is expressly not addressing or resolving on the plaintiff's motion at this time.

Mr. Cody?

MR. CODY: If the Court please, I'm a little concerned about the Court's order--I guess I should say very concerned about a number of aspects of the Court's order, particularly with respect to the 6:30 date. I don't want the State to be in contempt of the Court's order as to 6:30, but I think the Commissioner will need--

THE COURT: 7:30 in East Tennessee are they still hauling prisoners in up there at 7:30 at night?

MR. CODY: What I was afraid of, I wouldn't want the reception center admitting prisoners before the Commissioner has opportunity to notify them.

THE COURT: I assumed the intake shutdown was 4:00 or 4:30.

MR. CODY: That is not correct.

THE COURT: If that is not correct, then, what do you suggest, Mr. Cody? The Commissioner needs time to have his office notify the wardens and responsible officials at all three facilities, but it's going to be done tonight, there's not going to be any unloading of prisoners by sheriffs by staving this thing off for twenty-four or forty-eight hours.

MR. CODY: I would ask the Court if we could have an hour. We would then--

THE COURT: You'll have until--it'll be effective at 8:30, Nashville time, on a system-wide basis. And the only way they can go in is through these reception centers, is that correct, Mr. Cody?

MR. CODY: Yes, that is correct.

THE COURT: Then there will be no inmates introduced into the system from the outside directly into one of these so called time building facilities. They have to come in through the reception center, is that correct? I don't want any rat holes left.

MR. CODY: If the Court please, the only thing-- John Southworth just advised me of the possible problem of short term escapees from one of the institutions--

MR. SOUTHWORTH: Your Honor, they return to the institution from which they escape.

THE COURT: These residents who have just taken French leave, they go back where they came from.

MR. CODY: The State understands the Court's order.

THE COURT: So effective at 8:30, Nashville time, there will be no prisoners taken into the system until at a particular reception center where prisoners are tendered, that reception center capacity has been brought into compliance with the October, 1983 order. If it gets one below that, they can take one in. Five below, they can take five in. If the other two are still above the capacity they are barred. But it does not preclude entry through the one whose capacity has come down.

The Commissioner can certify the necessity of admitting a prisoner for some extraordinarily urgent reason, and go ahead and directly authorize his admission, based on his certificate to you, and all other cases require approval.

But, Mr. Cody, that is not going to be delegated to any Deputy Commissioner or someone else. When they want to by-pass the order of this Court, Mr. Norris has got to personally be consulted about it, and authorize the admission of that

prisoner into the system and then promptly make his certificate to the Special Master. It's not going to be delegated to any Assistant Deputy Commissioner or anybody else. He's got to personally vouch for the necessity at 11:00 at night or 3:00 in the morning to put somebody in this system under this order. Now that's the common sense--the thrust of it. And it's non-delegible. He'll bear the responsibility. In all other cases the department can make their application--in all other cases the Commissioner doesn't consider it so urgent as a matter of state security it justifies his doing it, certifying it, in all other cases if you've got somebody knocking on your door, telling you you have got to take them, you don't think it's that urgent, you submit it to the Special Master on a case by case basis for his prior approval.

MR. BONNYMAN: Your Honor, I have at the risk of perhaps belaboring the obvious, but I want to be--to make sure there's no uncertainty. I take it that once they get below the cap in a particular institution they have to stay under that cap and then take new people but only if they can do so without exceeding the cap.

THE COURT: That's right. They can not exceed the cap established in the October, 1983 order.

MR. BONNYMAN: My other question was I assume that order was premised on the Court's acceptance of the State's representations here today, that it cannot responsibly

increase the population at the other institutions. My concern, of course, is that they not immediately move people out of the reception center into other institutions which we have heard here today cannot responsibly be--

THE COURT: The order is predicated on that.

MR. BONNYMAN: I assumed that. I wanted to be sure.

THE COURT: That constitutes one of the fundings of the Court. That would be pure circumvention, Mr. Bonnyman. The State is not going to engage in that.

MR. BONNYMAN: Thank you, Your Honor.

THE COURT: That would be just attempting to do it by the backdoor. It is prohibited and the State wouldn't indulge in it.

Is there any remaining matter now, this addresses solely the conditions at the reception center. You understand that.

MR. CODY: Yes, Your Honor.

THE COURT: Is there anything further? Make your telephone call. Court will stand adjourned at 8:30 PM.

(Adjourned.)

COURT REPORTER CERTIFICATE

I, Virginia K. Wells, Official Court Reporter for the United States District Court for the Middle District of Tennessee, do certify that I recorded the proceedings had in the foregoing matter on the date and at the time and place set out; that the record was reduced to typewriting under my direction and that the transcript herein is complete and accurate to the best of my knowledge, skill and belief.

This is the_____day of_____,1985.

_____
Official Court Reporter

Attachment 8

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY
AT NASHVILLE
20th JUDICIAL DISTRICT

ABU ALI ABDUR'RAHMAN Petitioner Vs. STATE OF TENNESSEE Respondent	)	No. 87-W-417 Capital Post-Conviction/Habeas Corpus

2016 SEP 23 A11:03:39

REVISED AFFIDAVIT OF H. E. MILLER, JR.

Mr. H. E. Miller, Jr., being duly sworn, states the following under oath:

1. I am an attorney duly licensed and in good standing to practice law in Tennessee.

2. Over the past two years I have undertaken to review all first-degree murder cases in Tennessee since 1977, for the purpose of compiling statistics regarding the application of the death penalty and other sentences in such cases.

3. In this project, I have had the assistance of Mr. Abdur'Rahman's attorney, Bradley A. MacLean, and other members of the bar.

4. I have reviewed the following sources of information:

- All Rule 12 reports as provided by the Administrative Office of the Courts;
- Reports issued by the Administrative Office of the Courts on capital cases;
- The Report on Tennessee Death Penalty Cases from 1977 to June 2007 published by The Tennessee Justice Project;
- Tennessee Court of Criminal Appeals decisions and Tennessee Supreme Court decisions in first-degree murder cases, as published on the Administrative Office of the Courts' website;
- Information furnished by the Tennessee Department of Correction;
- Information found in the Tennessee Department of Correction TOMIS system;
- Original court records.

1. Ultimately, all of the information contained in the attached exhibits can be obtained from court records, and wherever possible I have verified the information by going to the court records.

2. I have invested untold hours in this project – reviewing cases, searching for cases, and verifying information – to ensure that the information I am compiling is as accurate and thorough as possible.

3. This project is not completed. To date, I have found Tennessee cases since 1977 resulting in first-degree murder convictions for 2,095 defendants. Rule 12 reports were filed for 1,467 defendants, and no Rule 12 reports were filed for 628 defendants (i.e., no Rule 12 reports were filed in the cases of more than 30of % of first-degree murder defendants)(my charts list 2,150 cases, but those include cases in which the conviction was reversed or reduced. There are 2,095 cases in which first-degree murder convictions have been sustained).

4. This Affidavit is a revision of my Affidavit that was filed with the Court in this matter on September 9, 2016, to correct certain errors and to include my updated research. As I explained in my earlier Affidavit, this is an ongoing project. As I continue my search, I find additional non-capital first-degree murder cases in which no Rule 12 reports have been found. I searched the cases listed on the Tennessee Administrative Office of the Courts' website by county for additional first-degree murder cases. My search will not capture all such cases because some cases were resolved at the trial level and did not go up on appeal, and there are very few cases with crime dates prior to 1990 available on the AOC website, which means that I probably have not located many cases with crime dates before 1990. I have included all cases for which Rule 12 reports were filed, and I have included all cases in which death sentences were imposed. Accordingly, as I find additional non-capital first-degree murder cases, the total number of such cases will increase, which in turn will lower the percentage of cases that resulted in death sentences.

5. Attached as Exhibit A is a summary of my findings, all of which are derived from the other Exhibits.

6. Attached as Exhibit B is my chart of first-degree murder cases beginning with 1977 through June 30, 2016, in which Rule 12 reports were filed.

7. Attached as Exhibit C is my chart of first-degree murder cases that I have found beginning with 1977 through June 30, 2016, in which Rule 12 reports were not filed.

8. Attached as Exhibit D is my chart showing the numbers convicted defendants during this period by county.

9. Attached as Exhibit E is my chart of multiple first-degree murder cases during this same period of time, in which defendants were convicted of murdering two or more victims.

10. Aitached as Exhibit F is my chart giving the numbers of multiple first-degree murder cases during this same period of time broken down by county and Grand Division, and indicating the number of victims in the cases

11. Attached as Exhibit G is my listing of cases in which death sentences were vacated on grounds of ineffective assistance of counsel.

12. Attached as Exhibit H is my chart of all cases resulting in death sentences since 1977.

13. Although there may be some minor errors in some of the charts, due to the sheer quantity of information contained therein, the charts are generally accurate to the best of my knowledge and ability.

FURTHER THE AFFIANT SAITH NOT.

H. E. Miller, Jr.
B.P.R. #9318
1016 Langley Court
Brentwood, Tennessee 37027

Subscribed and sworn before me this 23 day of September, 2016.

Notary Public, State of Tennessee

My Commission Expires: 11/5/18

KIMBERLY J. BOYD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires November 5, 2018

Attachment 9

IN THE CIRCUIT COURT FOR MAURY COUNTY
AT COLUMBIA, TENNESSEE

2014 DEC 22 PM 1:57

JOEL RICHARD SCHMEIDERER,	)	
	)	
Petitioner,	)	CASE NO. 14488
	)	
v.	)	(Capital Post-Conviction)
	)	
STATE OF TENNESSEE,	)	
	)	
Respondent.	)	

AGREED DISPOSITION OF POST-CONVICTION CASE

This matter is before the Court pursuant to an agreed disposition of the capital post-conviction case of Joel Schmeiderer with a sentence of life without parole. The Court has reviewed the agreed terms of the disposition, and otherwise being sufficiently advised, and good cause having been demonstrated by Petitioner and Respondent, hereby orders that Joel Schmeiderer's sentence of death shall be set aside and a new judgment imposing a life without parole sentence shall be entered.

Mr. Schmeiderer was convicted of first degree murder and sentenced to death. He petitioned for post-conviction relief alleging, among other grounds, ineffective assistance of counsel for failure to investigate and present evidence relevant to the jury's sentencing determination. Specifically, Petitioner alleges that counsel failed to investigate and present evidence of cognitive impairments as mitigating evidence.

The Court finds as follows:

1. The judgment imposing a sentence of death in Maury County Circuit Court Case No. 14488 is hereby set aside and is void due to constitutional error occurring during the sentencing phase of Mr. Schmeiderer's trial. The parties agree, and this Court finds, that counsel's failure to timely investigate and present evidence of cognitive impairments as mitigating evidence constitutes deficient performance which prejudiced Mr. Schmeiderer since a reasonable probability exists that at least one juror would have returned a sentence less than death. *See Davidson v. State*, ___ S.W.3d___, No. M2010–02663–SC–R11–PD (Tenn. November 17, 2014). Thus, Mr. Schmeiderer's death sentence was obtained in violation of the Tennessee and U.S. Constitutions.

2. Mr. Schmeiderer and counsel for the parties, as evidenced by the signatures below, agree to a sentence of life without parole for the conviction of first degree murder.

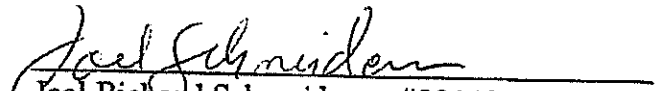
3. This Court has reviewed the record in this case and is satisfied that factual and legal bases exist for this Agreed Disposition of Post-Conviction Case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death sentence of Joel Schmeiderer is vacated and a life without parole sentence shall be imposed for Mr. Schmeiderer's first degree murder conviction.

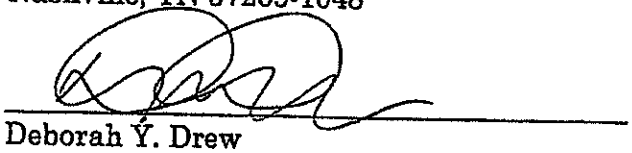
ENTERED this the 22 day of December, 2014.

Don R. Ash, Senior Judge

AGREED TO:



Joel Richard Schmeiderer, #301481
Unit 2
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, TN 37209-1048



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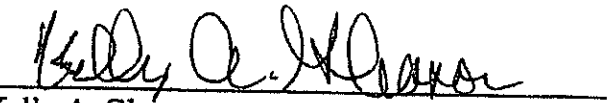

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