

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0051

Clifford E. Avery

v.

Helen Hanks, Commissioner,
New Hampshire Department of Corrections

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
MERRIMACK COUNTY SUPERIOR COURT

**REPLY BRIEF OF *AMICI* NEW HAMPSHIRE LEGAL ASSISTANCE,
DISABILITY RIGHTS CENTER – NEW HAMPSHIRE, AND THE
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE TO
THE SUPPLEMENTAL BRIEF OF HELEN HANKS, COMMISSIONER,
NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS**

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FIRST SUPPLEMENTAL QUESTION

Do the terms of the “Laaman Settlement Agreement” that is the subject of the plaintiff’s “Petition for Enforcement,” in whole or in part, provide the remedy for the Eighth Amendment violation found in *Laaman v. Helgemoe*, 437 F. Supp. 269 (D. N.H. 1977) – specifically that the New Hampshire Department of Corrections violated inmates’ right to be free from cruel and unusual punishment?

Answer: Yes

PRELIMINARY STATEMENT

Amici reply to the State’s Supplemental Brief for Helen Hanks, Commissioner, New Hampshire Department of Corrections, which was filed on April 6, 2020. In their initial brief filed on April 6, 2020, Amici addressed the question as to why plaintiff’s action for specific performance is not barred by sovereign immunity. This brief addresses only the Court’s first Supplemental Question posed in its briefing Order of December 23, 2019.

SUMMARY OF ARGUMENT

The history and specific terms of the Laaman Settlement Agreement (referring to the various agreements collectively) provide, in whole or in part, the remedy for the Eighth Amendment violation found by the federal court in *Laaman v. Helgemoe*, 437 F. Supp. 269 (D. N.H. 1977).

Specifically, the federal court found that the State violated the plaintiff inmates' right to be free from cruel and unusual punishment as a result of unlawful conditions of confinement and lack of minimally adequate programs and services at the NH State Prison ("NHSP"). The original Consent Decree, executed in 1978, provided specific relief for the constitutional violations found to exist at the NHSP by the federal court. The 1990 Consent Decree resulted from a Motion for Contempt alleging numerous substantial violations of the 1978 Consent Decree. The 1990 Decree specifically incorporated several sections of the 1978 Decree, and expressly provided that it "also constitutes a settlement agreement that survives the termination of this court's [the federal court's] jurisdiction" (Appendix to Defendant's original brief, "App. 1" at 148, paragraph 10). The 1994 Stipulation of Settlement (App. 1 at 208) and the 2001 settlement agreement resulted from the filing of another contempt motion in 1993. The 2001 settlement agreement specifically incorporates the 1990 Consent Decree. (App. 1 at 212, paragraph 1). Simply stated, the case before this Court is another chapter in an ongoing story that began with a comprehensive federal court order issued in 1977 and continues with a series of efforts by the plaintiffs to enforce it.

The *Laaman* plaintiffs entered into the 2001 Settlement Agreement, in whole or in part, to remedy the constitutional violations found in the 1977 *Laaman* case, as well as to remedy current and ongoing violations of the Consent Decrees and federal law at the NHSP. After the *Laaman* plaintiffs provided the federal court with specific allegations of current and ongoing violations of federal law, as required by the federal Prison Litigation Reform Act (PLRA), the parties executed the 2001 Settlement Agreement, bringing to a close the civil contempt proceedings filed by the plaintiffs in 1993.

The PLRA did not require the federal judge to make findings that the State was violating the plaintiffs' constitutional rights before approving the 2001 Settlement Agreement and relinquishing federal court jurisdiction. Private settlement agreements with the State, enforceable in state courts, are expressly authorized by the PLRA.

The 2001 *Laaman* Settlement Agreement is now in state court. But the federal constitutional violations have not gone away just because the *Laaman* case is now under state court jurisdiction. The state courts can and must ensure that the federal constitutional rights of the *Laaman* plaintiffs will continue to be protected and enforced until such time as the State complies with its obligations under the constitution and the settlement agreements.

ARGUMENT

I. THE TERMS OF THE “LAAMAN SETTLEMENT AGREEMENT” THAT IS THE SUBJECT OF THE PLAINTIFF’S “PETITION FOR ENFORCEMENT,” IN WHOLE OR IN PART, PROVIDE THE REMEDY FOR THE EIGHTH AMENDMENT VIOLATION FOUND IN *LAAMAN V. HELGEMOE*, 437 F. SUPP. 269 (D. N.H. 1977) – SPECIFICALLY THAT THE NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS VIOLATED INMATES’ RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

A. The Laaman Settlement Agreement Provides the Remedy, In Whole or In Part, For the Eighth Amendment Violation Found in the 1977 Laaman Decision and Order.

This Court’s first supplemental question is whether the terms of the Laaman Settlement Agreement provide the remedy for the Eighth Amendment violation found in *Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977). The history of the *Laaman* case, the language and structure of the 1978 and 1990 Consent Decrees, the subsequent Laaman Settlement Agreements, and the pleadings filed by plaintiffs in 2001 show that the answer to the Court’s first Supplemental Question is Yes.

The First Circuit Court of Appeals succinctly summarized the early history of this case:

In 1975, inmates at the New Hampshire State Prison in Concord (the “Prison”) filed individual civil rights actions (later consolidated into a class action) against state officials in federal district court pursuant to 42 U.S.C. § 1983. *Laaman v. Helgemoe*, 437 F. Supp. 269, 275 (D.N.H.1977). In an extensive opinion, the court made “specific findings” that prison conditions violated inmates’ Eighth Amendment

rights, *id.* at 323–25, and issued a sixteen-part order specifying required relief, *id.* at 325–30. *The order was implemented in a consent decree approved by the court on August 10, 1978.*

Laaman v. Warden N.H. State Prison, 238 F.3d 14, 15 (1st Cir. 2001) (emphasis added).

In September 1987, the inmates filed a contempt action in federal court alleging extensive violations of the 1978 Consent Decree, resulting in the execution of the 1990 Consent Decree. This decree specifically incorporated several sections of the 1978 Decree, and expressly provided that it “also constitutes a settlement agreement that survives the termination of this court’s [the federal court’s] jurisdiction” (Appendix to the State’s Brief (“App. 1”) at 149, paragraphs 10 and 11). Two weeks before the federal court’s jurisdiction over the case was set to expire (July 1, 1993), the inmates filed a new contempt action, which by the terms of the 1990 Consent Decree prevented the termination of federal court jurisdiction. 238 F.3d at 15. The 1994 Stipulation of Settlement of Vocational Training Issues (App. 1 at 209) resolved part of the 1993 contempt action. A trial on the remaining issues was held in December 1995, but due to the death of Judge Devine, no decision on the merits was issued. Judge Barbadoro, who took over the case, dismissed the case pursuant to the Prison Litigation Reform Act (“PLRA”). After the First Circuit Court of Appeals remanded the case, the 1993 contempt action concluded with the execution of the 2001 settlement agreement. This settlement agreement provides, “Upon approval of the stipulation for dismissal, the Consent Decree ... shall expire and the provisions of the Consent Decree approved by this court on May

22, 1990, as modified by this agreement, shall constitute a settlement agreement enforceable by the courts of the State of New Hampshire” (App. 1 at 212, paragraph 1).

The undeniable fact is that each of the individual settlement agreements, beginning with the 1990 Consent Decree, was entered into to resolve a contempt action based on the State’s violations of the agreements it made to implement the federal court’s initial order. The fact that Mr. Avery’s case was brought as an action for specific performance rather than contempt does not alter the fundamental nature of his claim: that the State has failed to live up to the promises it made to remedy the constitutional violations found by the federal court’s 1977 decision.

The *Laaman* case is not a series of one act plays, as the State would like to believe. Instead, the *Laaman* case is akin to a lengthy novel, divided into closely related chapters. The main characters are the same; the issues and the theme remain constant. The overarching issue that closely binds the chapters together is the failure of the State to provide minimally adequate programs, services, and conditions of confinement for inmates, as required by the Constitution and by the State’s contractual obligations.

The parties have opposing views as to whether the state courts have jurisdiction to enforce the promises made by the State in its settlement agreements (*see* Amici’s initial brief, filed on April 6, 2020), but the history of the *Laaman* case makes clear that notwithstanding the variation in name over the years, and a seamless change in forum, it is one case with a single goal: to remedy the violations of the plaintiffs’ Eighth Amendment rights.

The courts of New Hampshire can and should ensure that this remedy is fully implemented.

B. The Primary Purpose of the 2001 Settlement Agreement was to Obtain Compliance with the Federal Court's 1977 Order and to Remedy the Current and Ongoing Violations of Federal Law.

The State narrowly focuses on the 2001 Settlement Agreement, and argues that it was not executed as a result of a 42 U.S.C. § 1983 action in which the federal court found that the State violated the *Laaman* plaintiffs' constitutional rights. *See* Heading "B" on page 22 of the State's Supplemental Brief. On this basis it argues that the 2001 Settlement Agreement is separate and apart from the original *Laaman* litigation.

The most obvious flaw in the State's argument is evident from the very first paragraph of the 2001 agreement. Paragraph 1 specifically incorporates the 1990 Consent Decree (App. 1, at 212) which incorporated the 1978 Consent Decree (App. 1 at 149, par. 11). Had the 2001 settlement agreement simply resolved a new case there would have been no reason for the State to reaffirm its obligations imposed by the prior Consent Decrees. Moreover, the record in this case, including the documents produced by the State (*see* State's Addendum to its Supplemental Brief ("State's Add."), pages 57-61), demonstrates that the *Laaman* plaintiffs entered into the 2001 Settlement Agreement, not only to remedy the constitutional violations identified by the federal court in 1977, but also to remedy current and ongoing violations of the Consent Decrees and federal law.

Plaintiffs' Specification recites numerous violations, many of which were substantial violations of the 1990 Laaman Consent Decree. (State's Add. at 57-61). A comparison of the Specification (State's Add. at 57-59), and the plaintiff's 1993 Motion for Contempt (Addendum to this Reply Brief ("Add.") at 21), with the 2001 Settlement Agreement (App. 1 at 212-219) clearly shows that the 2001 Laaman Settlement Agreement directly addresses and remedies many of the allegations in the 1993 contempt motion (which alleges extensive violations of the 1990 Consent Decree). For example:

- 1) The 1993 contempt motion and the Specification allege that Defendants have failed to implement necessary suicide prevention measures in SHU, "thereby increasing the risk of suicide and suicide attempts. Indeed from 1996 to the present, a disproportionate number of inmates who have committed suicide ... were housed in SHU ...". (State's Add. at 57, par. 1b; *see also* Add. at 25, par. 18). The 2001 Settlement Agreement specifically provides for the establishment and implementation of a suicide prevention policy in SHU. App. 1 at 215, par. 11-12.
- 2) The 1993 contempt motion and the Specification allege that Defendants fail and refuse to provide necessary medication to certain inmates who have a significant mental illness, thereby resulting in needless suffering. Add. at 22, par. 5 and pp. 42-43, par. 99-106; State's Add. at 59; App. 1 at 171-173.

- 3) The 1993 contempt motion alleges that inmates with significant mental illness are placed in SHU where they receive little or no appropriate mental health treatment. (Add. at 24, 28 and 33, par. 13, 14, 32, 53). The Specification alleges that many of the inmates with mental illness who are sent to SHU require a residential treatment unit (“RTU”) that is less restrictive than SHU and more restrictive than the general population. (State’s Add. at 59, par. 3b). The 2001 Settlement Agreement provides the exact RTU that plaintiffs claimed was required. App. 1, at 212-213, par. 3-7.
- 4) The Motion for Contempt and Specification allege that the State has failed to assure that newly arriving inmates with mental illness continue to receive appropriate medication that was prescribed prior to their admission to the NHSP. (Add. at 43, par. 104, and State’s Add. at 59, par. 4a). The 2001 Settlement Agreement directly addresses this allegation. App. 1 at 215, par. 13.
- 5) The Motion for Contempt and Specification allege that severe staff shortages in the Mental Health Unit has resulted in the State’s failure to provide timely and adequate treatment. (Add. at 26, par. 20-23; State’s Add. at 59, par. 5). The 2001 Settlement Agreement directly addresses the shortages of staff in the Mental Health Unit. App. 1 at 216-217, par. 19-20.

- 6) The Specification alleges that inmates in the Secure Psychiatric Unit (SPU) languish in lockdown for extended time periods. State's Add. at 60, par. 6. The 2001 Settlement Agreement specifically directs the Defendants to decrease the amount of time that inmates in E-Ward are locked in their rooms and requires that they be provided with appropriate out of cell activities. App. 1 at 217, par. 24.
- 7) The Motion for Contempt and the Specification allege that the State violated its obligation under the 1990 Consent Decree to maintain an effective Quality Assurance Program (QAP), which is supposed to, *inter alia*, "review a representative sample of acute psychiatric interventions," (Add. at 46 , par. 120-122; State's Add. at 60, par. 7a; *see also* App. 1 at 162-163, par. 44 (b) iii (3)). The 2001 Settlement Agreement requires that defendants establish a QAP for the Mental Health Unit at the NHSP. App. 1 at 216, par. 17-18.

The comparison set forth above establishes the substantive connection between the 1993 Motion for Contempt, which was based on the 1990 Consent Decree, and the 2001 Settlement Agreement. The purpose of 1990 Consent Decree, like that of its predecessor, the 1978 Consent Decree, was to cure the constitutional violations that the federal court found to exist at the NHSP.

The fact that the federal court's jurisdiction over the *Laaman* case terminated upon the approval of the 2001 Settlement Agreement does not

change the *purpose* of that agreement, which was to cure longstanding Eighth Amendment violations at the NHSP.

C. In Approving the 2001 Laaman Settlement Agreement the Federal Court Was Not Required to Make Findings that the State Violated the Laaman Plaintiffs' Constitutional Rights.

The State argues that because the federal court made no finding of constitutional violations when it approved the 2001 Laaman Settlement Agreement, that Agreement cannot be seen as remedying constitutional violations. *See* State's Supplemental Brief, page 22.

This argument ignores the fact that the federal court did make such a finding in 1977, and, as pointed out in section A *supra*, the subsequent Consent Decrees and Settlement Agreements, including the 2001 Settlement Agreement, are "a product of" that finding. Moreover, the PLRA did not require such a finding when the federal court approved the 2001 Settlement Agreement. Indeed, the PLRA expressly exempts private settlement agreements from the findings otherwise required under the PLRA. *See* 18 U.S.C. § 3626(c)(2)(A), which states in part: "Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in section (a) . . ." Further, section 3626(c)(2)(B) provides that "Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law."

Finally, notwithstanding the unmistakable connection between the Plaintiffs' constitutional claims raised in their Specification, the 1993

Motion for Contempt, and the provisions of the 2001 Settlement Agreement, the State claims that the parties made the 2001 Settlement Agreement principally to avoid the “risk and uncertainty” associated with the pending trial. As the State well knows, the risks of litigation and uncertainties of trial outcome are almost always an important consideration for entering into any settlement agreement. The fact that the plaintiffs, as well as the defendants, settled the case rather than risk the uncertain results of a trial does nothing to weaken the direct connection between the plaintiffs’ constitutional claims and the provisions of the settlement agreement.

CONCLUSION

For the reasons set forth above, Amici respectfully ask the Court to rule that the terms of the Laaman Settlement Agreement, in whole or in part, provide the remedy for the Eighth Amendment violation found in *Laaman v. Helgemoe*, 437 F. Supp. 269 (D. N.H. 1977) – specifically that the New Hampshire Department of Corrections violated the inmates’ right to be free from cruel and unusual punishment. On this basis, and for the reasons set forth in Amici’s initial brief, Amici further ask this Court to rule that the doctrine of sovereign immunity does not bar plaintiff’s action for specific performance.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Elliott Berry, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 2786 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

May 15, 2020

/s/ Elliott Berry
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CERTIFICATE OF SERVICE

I, Elliott Berry, hereby certify that this Amici Reply Brief and Addendum shall be sent via the Court's e-filing system to:

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Gilles Bissonnette and Henry Klementowicz, American Civil Liberties Union of New Hampshire.

I further certify that a copy of the Amici Reply Brief and Addendum shall be forwarded via first class U.S. mail, postage prepaid, to: Clifford E.

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ADDENDUM

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Jaan Laaman, et al.)	
)	
Plaintiffs)	
)	
v.)	Civil Nos. 75-258
)	77-256
Ronald Powell, et al.)	87-301D
)	
Defendants)	
)	

MOTION FOR CONTEMPT

1. This contempt motion is filed on behalf of the plaintiff inmate class to remedy defendants' extensive violations of this Consent Decree.
2. Defendants are in violation of the following requirements of the Consent Decree:
 - 1) Medical care (paragraphs 29-52A),
 - 2) Mental health services (paragraphs 53-63),
 - 3) Classification, work, and programs for maximum custody (paragraphs 72-90 and 145-150),
 - 4) Vocational training (paragraphs 91-137).
3. Defendants fail to provide comprehensive mental health services to inmates who are mentally ill. Inmates are not examined, diagnosed or treated on a timely basis. Treatment plans are frequently lacking. Defendants fail to maintain adequate individual and group counselling and treatment programs. Mentally ill inmates are frequently treated in a punitive manner, including placement in isolation, and

punitive segregation. The maximum security unit warehouses many mentally ill inmates who are often subjected to punishment and excessive force by correctional officers, instead of receiving clinically appropriate mental health treatment.

4. Defendants keep inmates confined to the maximum security unit for excessive periods of time and fail to provide them with minimally sufficient programming. Maximum security inmates are confined to their cells in the Special Housing Unit for 22 to 24 hours per day. Many inmates are held in SHU for years despite the fact that inmates are to be confined in SHU for only short periods of time. Inmates in SHU are subject to debilitating idleness. There is little access to meaningful jobs, vocational training, education, programming, counselling, or outside medical services.
5. Defendants fail to provide adequate medical care to inmates on a timely basis. Correctional officers routinely interfere with access to health services and medical orders. Inmates do not receive adequate examination, diagnosis, and treatment at sick call. An adequate tracking system is lacking to assure follow-up care. Medications are frequently not renewed on a timely basis. Delays in transporting inmates to outside medical appointments are routine. Care and treatment in the prison infirmary and chronic care clinics is often inadequate. Defendants fail to assure that inmates transferred to halfway houses, the

Lakes Region Facility, or county facilities receive adequate and timely medical care.

6. Defendants fail to assure that vocational training is made available to a sufficient number of inmates. Defendants have deliberately overcounted the number of inmates participating in pre-vocational education. Many inmates are thereby deprived of the opportunity to learn a vocation to help them successfully become a member of the community upon their release from prison.
7. Defendants have ignored plaintiffs' requests and warnings over the past several years to comply with the requirements of the Consent Decree.
8. Plaintiffs request that this Court find defendants in contempt and order prompt and effective relief in order to vindicate the rights of the plaintiff class.

MENTAL HEALTH

FAILURE TO PROVIDE ACCESS TO COMPREHENSIVE MENTAL HEALTH SERVICES TO INDIVIDUAL INMATES WITH SIGNIFICANT MENTAL ILLNESSES.

9. Defendants fail to provide all inmates with access to a comprehensive mental health program based on their individual needs, and fail to refer inmates to outside specialists when defendants cannot provide clinically indicated treatment, in violation of paragraphs 53 and 54 of the Consent Decree.
10. Inmate requests for mental health treatment and counselling are often ignored by defendants. Defendants fail to assure that appropriate therapy is provided within a timeframe that

is deemed clinically appropriate, in violation of paragraph 55(d) of the Consent Decree. Nor do defendants maintain individual counselling programs required by the 1978 Consent Decree, section XIII, paragraph 6, page 32.

11. Inmates with significant mental illnesses are frequently subjected to punitive treatment instead of being provided with desperately needed mental health services.
12. Defendants' failure to provide adequate mental health treatment, counselling, and follow-up services to inmates with mental illnesses frequently results in inappropriate conduct and acting out by the inmate. As a result, inmates with severe mental illnesses are frequently subjected to disciplinary actions, including placement in punitive segregation, instead of receiving clinically indicated counselling and treatment.
13. Inmates with significant mental illnesses are often placed in isolation in the Prison Special Housing Unit (SHU) for maximum security inmates.
14. Mentally ill inmates in SHU receive little or no mental health services. These inmates are often confined in isolation cells or are locked in an empty SHU dayroom for days at a time. Inmates with mental illnesses have been isolated for weeks or months on the SHU Administrative Segregation tiers, including "N" tier, known as "Death Row." Mentally ill inmates are frequently subjected to the use of excessive force by guards. This includes physical assault,

being sprayed with a chemical agent, and placement in physical restraints, including a "stretcher-restraint" device in which the inmate is forcibly tied down in a prone position on a stretcher for hours at a time.

15. Inmates transferred to the Secure Psychiatric Unit (SPU) are subject to involuntary medication. They are kept in isolation until stabilized, after which they are transferred back to SHU or their former housing unit, generally without adequate therapy or follow-up treatment plan.
16. Inmates with severe psychiatric illnesses are generally shunted between their housing unit, SPU, and SHU in lieu of long-term clinically indicated therapy and treatment.
17. Defendants have failed to develop a plan to conduct tracking and follow-up of inmate treatment and progress, as required by paragraph 58 of the Consent Decree.
18. Many mentally ill inmates who do not receive adequate mental health treatment have attempted to commit suicide. Defendants fail to assure adequate suicide prevention and treatment practices, as required under paragraph 61 of the Consent Decree.
19. Defendants' policy and practice of informing inmates that strict confidentiality of communications will not be observed by Mental Health staff deters inmates from seeking out or participating in mental health programs, thereby interfering with access to mental health services in violation of paragraph 53 of the Consent Decree.

FAILURE OF OVERBURDENED MENTAL HEALTH STAFF TO EXAMINE, DIAGNOSE, AND REFER FOR TREATMENT ALL INMATES WHO HAVE SIGNIFICANT MENTAL ILLNESSES.

20. Defendants fail to examine, diagnose, and refer for treatment all inmates who have significant mental illness in violation of paragraphs 53, 54, and 55(c) of the Consent Decree.
21. Defendants' Mental Health Unit, consisting of seven persons, is overwhelmed with nonclinical responsibilities, and is unable to perform its primary task of examining, diagnosing, and referring out for treatment, or providing clinically appropriate treatment and services to inmates. Individual, on-going counselling and therapy is not provided to inmates who need such individual counselling on an on-going basis.
22. The Mental Health Unit is forced to devote the majority of its time to nonclinical services, such as probation and parole matters, court evaluations, and reports and investigations. The Mental Health Unit is responsible for the Sex Offender Program as well as the Substance Abuse Program. Consequently, four of the seven full-time mental health staff work full-time on the Sex Offender and Substance Abuse Programs, leaving the remainder of the mental health staff unable to provide counselling and treatment to all inmates who need it.
23. Although housing units at the prison have a security employee designated as a case manager/unit counselor, inmates with mental illness do not receive mental health

counselling from their case manager/unit counselors. Case managers/unit counselors are not qualified or trained to provide mental health services and treatment. They therefore are required to refer inmates with suspected mental illnesses to the Mental Health Unit pursuant to paragraph 60 of the Consent Decree.

FAILURE TO HAVE A SUFFICIENT NUMBER OF MENTAL HEALTH STAFF AND QUALIFIED CASE MANAGERS/UNIT COUNSELORS WHO ARE ADEQUATELY TRAINED AND SUPERVISED.

24. Defendants do not have a sufficient number of qualified Mental Health Unit staff as required by paragraph 63 (a) and (b) of the Consent Decree.
25. Defendants do not have a psychiatrist present at N.H. State Prison eight days per month as required by paragraph 63(e) of the Consent Decree.
26. Inmates do not receive the psychiatric counselling and consultation which they need and which is required under paragraphs 63(e) and 53 of the Consent Decree.
27. Defendants do not have 16 case managers/unit counselors as required by paragraph 63(b) of the Consent Decree.
28. Defendants have failed to maintain a ratio of one case manager/unit counselor for every 80 inmates at the Prison as required by paragraph 63(c) of the Consent Decree. In some housing units, such as Medium Security, there is only one case manager/unit counselor for approximately 240 inmates.
29. As a result of excessive caseloads and other security directed responsibilities, case manager/unit counselors are

unable to adequately carry out their function to detect behavior indicative of mental illness and to refer inmates for evaluation to a mental health professional as required by paragraph 60 of the Consent Decree.

DENIAL OF ACCESS TO GROUP TREATMENT PROGRAMS.

30. When a significant number of inmates manifest a particular mental health need which is appropriate for group therapy, defendants are required by paragraph 57 of the Consent Decree to provide additional programs deemed appropriate to meet such needs. Defendants are further required by section XIII of the 1978 Consent Decree, paragraph 6, p. 32, to maintain group counselling programs according to inmate interest, such as sex offender programs.
31. Defendants' sex offender program is limited to inmates convicted of an offense against children. Numerous inmates have been convicted of a sex offense against adults. Many of these inmates want to participate in a sex offender program. Defendants do not have a sex offender program for these inmates. Defendants refuse and have failed to establish and maintain such a sex offender program, despite the fact that sentencing judges have recommended or ordered inmates to participate in a sex offender program.
32. Defendants fail to provide alternative treatment programs despite the clear need and expressed inmate interest in participating in such programs. Inmates who are amenable to

treatment cannot receive treatment because defendants do not provide the treatment programs.

33. Defendants have instituted a policy that any inmate who is more than two years away from his minimum release date is denied admission to certain mental health group treatment programs. Inmates who have a serious need for such group treatment are denied access to necessary mental health services.
34. Defendants have failed to provide access to comprehensive group mental health treatment in violation of paragraphs 53, 54, and 57 of the 1990 Consent Decree and section XIII, paragraph 6 of the 1978 Consent Decree.

SPECIAL HOUSING UNIT/MAXIMUM SECURITY

CONFINEMENT IN MAXIMUM SECURITY FOR EXCESSIVE PERIODS OF TIME.

35. Defendants are required to have a classification system that takes into account an inmate's age, offense, work, vocational and educational needs, and physical and mental health. Defendants' Classification Manual is to govern all decisions regarding classification of inmates. Consent Decree, paragraphs 72-76.
36. Inmates classified as maximum security (C-5 status) are confined in the Special Housing Unit (SHU). Defendants are in violation of classification requirements of the Consent Decree with respect to inmates housed in SHU.

37. SHU is the most restrictive housing at N.H. State Prison. Most inmates in SHU are confined to their cells 22 to 24 hours per day. SHU is designed for short term confinement. Confinement in SHU is generally to be for no more than a "few" months with a "presumption" that an inmate will not remain in this status unless exceptional circumstances exist. Review for less restrictive housing and additional programming is to take place every three months, before a three-person Board and the inmate is to be provided the opportunity for input. Classification Manual, pages 6, 9, 53, 54.
38. The 90-day reclassification reviews are frequently perfunctory in nature and generally the inmate remains in the same classification and restrictive housing status in SHU for at least another three-month period.
39. Inmates generally remain in SHU for lengthy periods of time. Instead of short term confinement for a few months, the average time spent in SHU exceeds one year. Many inmates are confined in SHU for years.

EXCESSIVE IDLENESS AND FAILURE TO PROVIDE WORK, EDUCATION, VOCATIONAL TRAINING AND OTHER PROGRAMMING IN SHU.

40. The 1990 Consent Decree requires that all C-5 (maximum custody) inmates who are willing and able will be afforded the opportunity to engage in useful jobs, education, vocational training, counselling, recreation programs, or other activities in addition to one hour of

outdoor exercise to which they are entitled. Consent Decree, paragraph 83.

41. Defendants are to make their best efforts to provide a minimum of five hours of such programming, five days a week to each C-5 inmate who is willing and able to participate. Consent Decree, paragraph 84.
42. Defendants do not provide required programming to SHU inmates. Most SHU inmates are confined to their cell for at least 22 hours per day where they have little to do beyond reading. The two hours per day of out-of-cell time consists of one hour of outdoor exercise and 45 minutes of tier time to shower, clean the tier, and/or sit in the "dayroom" where there is virtually nothing to do.
43. The 1978 Laaman Consent Decree, Section VI, paragraph 1, page 25, requires that each inmate at N.H. State Prison shall be afforded the opportunity to work at a useful job and shall not be idle or on a status whereby he has to await a job assignment longer than 14 days.
44. Most SHU inmates are not assigned useful work or jobs. Most jobs are menial, such as cleaning tiers and cells and delivering food trays. These jobs take a minimal amount of time to perform and do not teach marketable job skills.
45. All C-5 inmates who are willing and able are to be afforded the opportunity to engage in education or other programs and activities in SHU. Laaman Consent Decree (1990), paragraph 83.

46. Most of the general education that occurs in SHU is conducted through a correspondence course format in which the inmate reads in his cell alone and a supervising teacher meets with the inmate at his cell once per week for a short period of time to provide new assignments.
47. Inmates in SHU who need special education services, remedial work, tutoring, and student-teacher classroom interaction are generally unable to receive such educational services in SHU.
48. Defendants are required by the Consent Decree to provide vocational education to SHU inmates. Defendants are required to have a tailor program with capacity for 16 inmates, a computer education program for eight inmates, and a technical education/industrial arts program with a capacity for 16 inmates. Consent Decree, paragraph 85.
49. The tailor program, computer education program, and technical education/industrial arts programs have been and are all substantially below capacity. Many inmates in SHU are not afforded the opportunity to meaningfully participate in or complete vocational programs.
50. The tailor program does not provide sufficient work and training to fully occupy the time of those inmates who do participate in the program. Marketable job skills are not being taught to enable these inmates to secure employment in this field upon release from prison.

51. The Consent Decree recognizes that inmates confined in SHU for more than six consecutive months need and benefit from a greater variety of work and vocational opportunities within SHU, and are to receive priority for these work and training opportunities. Consent Decree, paragraph 85. Generally, SHU inmates who have resided in SHU for longer than six months do not receive such priority.
52. The lack of useful jobs and meaningful education, as well as the limited availability of vocational training, contributes to excessive and debilitating idleness for SHU inmates and violates the work, education and training requirements of the Consent Decree.

FAILURE TO PROVIDE ADEQUATE MENTAL HEALTH TREATMENT.

53. Defendants have failed to provide all SHU inmates access to comprehensive mental health services based on individual needs as required by the Consent Decree, paragraph 53.
54. Individual and group counselling programs have not been maintained for SHU inmates, as required by the 1978 Consent Decree, section XIII, para. 6, p. 32.
55. Inmates in punitive and Administrative Segregation are to be afforded adequate medical and mental health care and a daily visit or examination by a qualified medical or mental health care professional. 1978 Consent Decree, section III, paragraph 3.e., page 9.
56. Access to mental health services in SHU is limited mainly to crisis intervention services. Numerous inmates who have

requested on-going mental health psychological and psychiatric counselling have not received these necessary mental health services.

57. Many inmates come to SHU in significant emotional distress. When subjected to the long-term idleness, isolation, and tension characteristic of life in SHU, the lack of mental health treatment beyond crisis intervention seriously exacerbates the suffering of these inmates and delays treatment until there is a crisis.
58. The failure of the defendants to provide SHU inmates with adequate mental health treatment frequently results in inappropriate behavior by inmates which gives rise to overreaction by correctional officers, often characterized by the use of excess force. Defendants subject inmates to punitive actions instead of providing needed mental health services and programs mandated by the Consent Decree.

ADMINISTRATIVE SEGREGATION.

59. Defendants have created a new classification status called "Administrative Segregation". It is the most restrictive custody status at N.H. State Prison. This status is not authorized by the Classification Manual or the Consent Decree and subjects inmates to intolerable isolation and idleness.
60. Inmates in Administrative Segregation are single-celled. They are confined to their cells 23-24 hours per day, seven

days per week. They do everything alone. When they are permitted outside or into the dayroom, they must be alone. The dayroom is empty and there is nothing for the inmate to do there.

61. Inmates in Administrative Segregation are not provided with work, vocational training, or other programming. They are given no access to education outside of their cell. They are not permitted to use the law library.
62. Access to medical and mental health care is limited for inmates in Administrative Segregation status.
63. Initial placement in Administrative Segregation takes place without due process or Classification Board protections. Criteria for placement in Administrative Segregation is arbitrary and largely unknown to inmates. Similarly, criteria for review for release from confinement from Administrative Segregation is arbitrary, subjective and largely unknown to inmates on Administrative Segregation status.
64. Confinement on Administrative Segregation status is indefinite.
65. Some inmates have been confined to Administrative Segregation continuously since August 1991.
66. Some Administrative Segregation inmates are confined on "N" tier, known as "death row."
67. The N.H. DOC Classification Systems Manual does not authorize an indefinite classification and housing status

known as Administrative Segregation and under the highly restrictive and punitive conditions described above. Nor is such a status authorized by the Laaman Consent Decrees. Administrative Segregation is in violation of Defendants' Classification Systems Manual and the Laaman Consent Decree.

LAW LIBRARY.

68. SHU inmates are to be provided with access to the SHU satellite law library for a sufficient number of hours to meet their legal needs. Consent Decree, paragraph 145. Defendants do not permit adequate access to the law library.
69. The librarian from the N.H. State Prison main library and/or Inmate Attorney are to be available to respond to SHU inmates' requests for assistance with legal research and writing. Consent Decree, paragraph 147. The librarian and Inmate Attorney are not available to assist SHU inmates.
70. The SHU Law Library is to contain, at a minimum, such digests, handbooks and research aids as shall enable inmates to determine what cases to request from the Main Law Library. Consent Decree, paragraph 148. The SHU Law Library is missing digests, handbooks and research aids sufficient to enable inmates to adequately perform legal research and to determine what cases to request from the Main Law Library.
71. SHU inmates must pay for copies of legal documents and cases not contained in the SHU Law Library. SHU inmates must often wait weeks for these materials to be copied and

returned to them, thereby resulting in unreasonable delays in their research and legal case preparation.

72. Most inmates in SHU are not educated in the law or legal matters and are unable to adequately conduct legal research and prepare their own cases. The defendants' policies and practices unreasonably interfere with SHU inmates' rights of access to the courts and violate the Laaman Consent Decree.

MEDICAL CARE.

FAILURE TO PROVIDE TIMELY ACCESS TO ADEQUATE MEDICAL CARE.

73. Defendants fail to assure timely access to adequate medical and dental services as required by paragraph 29 of the Consent Decree.
74. Prison Correctional Staff are prohibited from in any way inhibiting an inmate's ability to access medical or mental health staff or services. Further, all medical matters that involve medical judgment are the sole province of the physician and dentist. Consent Decree, paragraphs 36 and 41.
75. Correctional officers have interfered and attempted to interfere with inmate access to medical and dental services and with the implementation of medical orders in violation of paragraphs 29, 36, 37(d), and 41 of the Consent Decree.
76. Inmates who are ill and unable to work are subjected to disciplinary actions if they refuse to work.
77. Inmates on "lockdown" status are not provided timely access to medical care.

78. Protective custody inmates and inmates in the Reception and Diagnostic Unit who seek to attend sick call due to an illness or injury have been denied access to sick call because they did not sign up for sick call the previous day prior to becoming ill or injured.

FAILURE TO ASSURE TIMELY ACCESS TO ADEQUATE SICK CALL DIAGNOSIS AND TREATMENT.

79. The Consent Decree, paragraphs 37(a) and (b), requires daily sick call by trained medical staff in accordance with mandated sick call procedures. Defendants frequently fail to follow sick call nursing protocols and inmates have been denied timely and adequate access to adequate sick call procedures and health services.
80. Inmates confined in the Special Housing Unit (SHU) frequently receive hurried and perfunctory sick call screening when the nurse stops at their cell during nursing rounds.
81. Many inmates are deterred from attending sick call due to the unsanitary and adverse conditions of the sick call holding cells and the lengthy wait required to see medical staff.
82. The Consent Decree, paragraph 37(e), requires that defendants institute a tracking system to determine if an inmate has presented the same medical complaint to either the sick call nurse or other sick call personnel three times in a 30-day period. The defendants do not have a tracking

system. The failure to have such a tracking system in place interferes with the provision of adequate sick call services to inmates and violates paragraphs 37(e) and 42 of the Consent Decree.

83. Many medical chart entries are illegible in violation of the record keeping requirements of paragraph 46(a)(4) of the Consent Decree, thereby interfering with continuity of care and follow-up treatment.
84. Contrary to paragraph 38 of the Consent Decree non-English speaking inmates have had difficulty gaining access to health services because of language barriers.
85. Defendants have failed to assure adequate training of health service staff on the use of sick call protocols and all written policies pertaining to health services as required by paragraphs 37(c) and 52A of the Consent Decree.

FAILURE TO ASSURE ADEQUATE SCREENING AND QUARANTINE OF NEW INMATES.

86. The Consent Decree, paragraph 78, requires medical screening and quarantine of new inmates. During this period, inmates are entitled to all necessary health care. Defendants have failed to comply with paragraph 78 of the Consent Decree.
87. Defendants house new inmates in the Reception and Diagnostic Unit (R&D). The R&D Unit is overcrowded. Inmates on medical quarantine are allowed to mix with inmates who are medically cleared.

INADEQUATE PERIODIC PHYSICAL EXAMINATIONS.

88. The Consent Decree, paragraph 30(c), requires that each inmate be given periodic physical examinations annually, bi-annually, or every three years based on the respective inmate's age and birthdate, in order to ensure that the individual's health has not declined while in confinement and to review and update the medical record of the inmate.
89. Defendants fail to conduct adequate physical exams in violation of paragraphs 29 and 30(c) of the Consent Decree. Many inmates receive only perfunctory periodic physical exams which fail to record or address significant medical history since the prior physical exam.

FAILURE TO PROVIDE TIMELY ACCESS TO AND ADEQUATE CARE AT CHRONIC CARE CLINICS.

90. The Consent Decree, paragraph 50, requires that defendants establish chronic care clinics which ensure that inmates who have chronic illnesses, such as, diabetes, asthma, hypertension, seizure disorders, chronic pain, heart diseases, respiratory disorders, and HIV/AIDS are seen by health care personnel at regular intervals of three or four months.
91. The Consent Decree, paragraph 42(c), requires that defendants set up and follow a tracking system to ensure that chronic care clinics are scheduled in a timely manner. Paragraph 42(e) requires that inmates receive ongoing care

recommended by the N.H. State Prison physician in a timely manner.

92. Defendants fail to assure that inmates with chronic illnesses are timely scheduled, seen on a regular basis, and provided adequate care at Chronic Care Clinics, in violation of paragraphs 42 and 50 of the Consent Decree.

FAILURE TO ASSURE ADEQUATE CARE AND RECORD KEEPING FOR INMATES IN THE INFIRMARY.

93. Paragraphs 29 and 45 of the Consent Decree require that inmates who are patients in the infirmary receive adequate medical care. Paragraph 46 requires that proper records be maintained for infirmary patients. Defendants have failed to provide adequate record keeping and adequate medical care to inmates in the Infirmary, including inmates who are terminally ill and dying.
94. Physician notes are frequently not recorded within 36 hours of admission, containing, at a minimum, the reason for the admission, the admitting diagnosis and diagnostic/therapeutic plans as required by paragraph 45 of the Consent Decree.
95. Admission records frequently do not reflect whether the patient is an acute care patient who must be seen every 72 hours by a physician's assistant or nurse practitioner as required by paragraph 45 of the Consent Decree.
96. All medical encounters are not recorded on the day of the

encounter as required by paragraphs 45 and 46 of the Consent Decree.

97. Medical treatment for some infirmity patients, including inmates who are dying, is often "problematic" and inadequate, as documented in the Third Annual Health Services Evaluation Report, pages 26-27, 94, and Addendum to Report, p. xxiii.
98. Defendants fail to maintain adequate records for patients who are dying or who have died, including autopsy report, internal investigations, State Police Report, and outside hospital records as required by paragraph 43 of the Consent Decree.

FAILURE TO ASSURE TIMELY REVIEW, RENEWAL, AND PROVISION OF NECESSARY MEDICATIONS.

99. The Consent Decree, paragraph 51, requires that all inmate medications be handled in accordance with written policies, and that the physician conduct a monthly review on each inmate, or at the latest, at a maximum of 90 days.
100. Many inmates are not receiving monthly or 90-day medication reviews as required by paragraph 51 of the Consent Decree.
101. Defendants frequently fail to timely renew medications despite written and oral inmate requests.
102. Defendants have instituted a policy of requiring inmates to purchase over-the-counter medications at the Prison "canteen" despite the fact that such medication is necessary for the inmate's treatment.

103. Inmates without funds cannot afford to purchase over-the-counter medications. Consequently, inmates suffer needlessly when not provided with medication deemed necessary for their medical care and treatment.
104. Inmates have been denied medication despite the fact that this medication was prescribed for them prior to their incarceration at the N.H. State Prison.
105. Defendants have failed to assure prompt transfer of inmate medications when inmates are transferred to a new housing unit, contrary to PPD 2.6.42 and paragraph 51 of the Consent Decree.
106. Defendants' failure and refusal to provide inmates with regular review and timely renewal of necessary medication is contrary to the Consent Decree, paragraphs 29, 40, 42(e), 44(b)(ii)(3), and 51.

BUDGET CONSIDERATIONS INTERFERE WITH PROVISION OF NECESSARY MEDICAL TREATMENT.

107. The Consent Decree, paragraph 36, provides that an insufficient budget shall not excuse the failure to provide necessary medical treatment.
108. Inmates have been informed by health services staff that cost factors affect medical decisions regarding necessary and appropriate dental and medical treatment. Medical and/or dental treatment has been denied or delayed as a result of consideration of medical and dental cost factors.

FAILURE TO TIMELY SCHEDULE AND TRANSPORT INMATES TO OUTSIDE MEDICAL APPOINTMENTS AND TREATMENT.

109. The Consent Decree, paragraph 35, requires that inmates be referred to accredited hospitals and medical specialists for necessary medical care and services. Paragraph 41 of the Consent Decree prohibits corrections staff from interfering with inmate access to medical care.
110. Inmates frequently experience harmful delays in access to outside evaluation and treatment because their scheduled medical appointment is delayed or cancelled by defendants' Transportation Unit due to lack of transportation staff or vehicles or for security reasons.
111. Delays in scheduling and transporting of N.H. State Prison inmates to outside medical appointments is also caused by defendants' procedures that require scheduling of all outside medical services by correctional officers in the Transportation Unit, rather than by health services personnel located at the Health Services Center/Infirmary.
112. When an inmate's outside medical consult is cancelled by the Transportation Unit, another appointment must be rescheduled by the Transportation Unit. The resulting delays are detrimental to the inmate's health.
113. Some inmates have been instructed by Health Services workers to schedule or reschedule their own outside medical consults despite the fact that inmates do not have the ability or authority to do so.

114. Paragraph 37(d) of the Consent Decree requires that all inmates, including SHU inmates, be examined by the physician/PA/Nurse Practitioner within three weeks from the date of referral. If an inmate misses the appointment because of confinement in SHU administrative or punitive segregation, the inmate is to be rescheduled for the next appointment time. Consent Decree, paragraph 37(h). Appointments are frequently not rescheduled on a timely basis, resulting in delays in access to adequate medical care.
115. Defendants fail to comply with paragraphs 35, 36, 37(d), 37(h), and 41 of the Consent Decree which require timely and adequate transport of injured and ill inmates to medical evaluations and treatment.

FAILURE TO ASSURE RECEIPT OF ADEQUATE SPECIAL MEDICAL DIETS.

116. The Consent Decree, paragraphs 151-153, requires that every inmate receive three wholesome and nutritious meals per day. Special medical diets are to be provided after approval of a request for a special diet.
117. Inmates, including diabetic inmates, frequently fail to receive medically indicated special diets as ordered.
118. Defendants do not have a full-time, state-certified dietitian, and are not in compliance with the requirement of one full-time dietitian pursuant to paragraph 31(j) of the Consent Decree. Defendants employ a nutritionist who has been unable to obtain state certification as a registered

dietician and who is not qualified to assure compliance with paragraphs 151-153 of the Consent Decree.

INSUFFICIENT NUMBER OF HEALTH SERVICES STAFF.

119. Defendants do not have the number of health services staff required by paragraph 31 of the Consent Decree. Defendants do not have 14 full-time nurses, a full-time health services receptionist, a full-time physician's assistant, and a full-time dietitian, as required by the Consent Decree.

FAILURE TO MAINTAIN AN ADEQUATE QUALITY ASSURANCE PROGRAM.

120. The Consent Decree, paragraph 44, requires the defendants to implement and maintain a Quality Assurance Program, under the direction of a full-time Quality Assurance Director. The QA Director is required to document the monitoring and evaluation process and review the appropriateness of certain services, including off-site patient care services.

121. The QA Director, who has no formal training in Quality Assurance, is hampered in performing her duties by lack of staff and resources, and is unable to adequately assess quality of care.

122. Defendants fail to provide adequate support and resources to assure that the Quality Assurance Director is able to adequately carry out her functions as required by paragraph 44 of the Consent Decree.

FAILURE TO ASSURE ADEQUATE MEDICAL CARE TO INMATES IN HALFWAY HOUSES.

123. Defendants fail to assure that inmates in Halfway Houses in Manchester, Laconia, and Concord receive timely and adequate medical care as required by paragraph 29 of the Consent Decree.
124. Pursuant to paragraphs 7 and 15 of the Consent Decree, inmates in halfway houses are part of the plaintiff class. Defendants refuse to recognize halfway house inmates as members of the plaintiff class.
125. Halfway house inmates must obtain and pay for medical care on their own. Inmates unable to provide for their own medical care are transferred back to the Prison, thereby resulting in delay in release from prison. Inmates are thus forced to choose between medical care and release back into the community through halfway house work programs.

FAILURE TO ASSURE TIMELY AND ADEQUATE HEALTH SERVICES AT THE LAKES REGION FACILITY.

126. Defendants opened their Lakes Region Facility in 1991. Up to 300 inmates are to be housed at this facility.
127. The Lakes Region Facility does not have a Health Services Center. There is a nurse but no doctor, physician's assistant or nurse practitioner. A N.H. State Prison doctor and/or PA visits the facility approximately one-half day per week for sick call. There is no infirmary. A pharmacy is not located at the facility. There is no dental department at the facility. There is no physical therapy treatment.

128. Inmates are reluctant to bring to the attention of LRF staff their medical illnesses and injuries. Due to inadequate treatment facilities at LRF, the inmate's reported health condition can and has resulted in the inmate being transferred back to the Concord facility. This often adversely affects the inmate's classification, programming, work, and release from prison.
129. Defendants refuse to include inmates at the Lakes Region Facility within the plaintiff class, contrary to paragraphs 7 and 15 of the Consent Decree.
130. Defendants fail to provide timely and adequate medical care to inmates at the Lakes Region Facility in violation of paragraph 29 of the Consent Decree.

FAILURE TO ASSURE ADEQUATE HEALTH SERVICES ARE PROVIDED TO INMATES INVOLUNTARILY TRANSFERRED TO COUNTY JAILS OR OTHER PRISONS.

131. Due to overcrowding at N.H. State Prison, approximately 100 to 150 members of plaintiff class have been involuntarily transferred to county jails in New Hampshire and to prisons in other states.
132. Inmates transferred to other facilities frequently do not receive timely or adequate medical treatment required under this Consent Decree.
133. Defendants refuse to include inmates involuntarily transferred to other facilities as members of the plaintiff class, in violation of paragraph 7 of the Consent Decree.

134. Defendants have failed to timely transfer inmate medical records when inmates are transferred to another facility. Medical treatment at the receiving facility is delayed or denied due to defendants' failure to timely transfer medical records.
135. Defendants have failed to assure that timely and adequate medical treatment is provided to inmates who are involuntarily transferred from N.H. State Prison to county jails or other prison facilities.

VOCATIONAL TRAINING.

FAILURE TO HAVE VOCATIONAL PROGRAMS FOR AT LEAST ONE-HALF OF THE ELIGIBLE INMATE POPULATION.

136. Defendants are required to establish and maintain vocational training programs at N.H. State Prison and make these programs available to 50% or more of the eligible inmate population as of May 1st of the preceding year. This is known as the 50% capacity requirement. Consent Decree, paragraph 119.
137. Inmates enrolled in pre-vocational education courses may be counted as vocational inmates if (1) they intend to participate in a specified vocational training program, (2) they are enrolled in basic education courses specified in their Voc./Ed. Plan, and (3) these courses are required in order for them to meaningfully participate in a vocational training program. Consent Decree, paragraph 118.

138. Defendants have overcounted the number of pre-vocational education inmates in order to be in compliance with the 50% capacity requirement.
139. Defendants do not count the actual number of pre-vocational education inmates at N.H. State Prison. Instead, defendants have developed a formula which estimates or projects the number of pre-vocational inmates that defendants claim should exist at N.H. State Prison. This formula projects a much larger number of inmates than actually exist. The use of such a formula is not authorized by plaintiffs or by the Consent Decree, and is contrary to paragraphs 136 and 137 of the Consent Decree which require that "each" pre-vocational education inmate be listed in defendants' Pre-Vocational Education Reports.
140. Defendants' formula projected that there were 105.9 pre-vocational inmates as of May 1992. However, defendants' May 1992 Pre-Vocational Education Report acknowledges that there were only 48 inmates actually enrolled in basic education courses who have a written Voc. Ed. Plan that indicates a need for pre-vocational education.
141. Defendants' May 1993 Pre-Vocational Education Report projects 128 pre-vocational education inmates. However, the Report states that there are only 35 inmates enrolled in pre-vocational education courses at N.H. State Prison.
142. Defendants have further overcounted the number of pre-vocational education inmates by including inmates who are

enrolled in basic Education courses, but who do not qualify as pre-vocational inmates.

143. Defendants' Pre-Vocational Education Report for the last quarter of 1992 lists 42 inmates who are enrolled in basic education courses who have an active Voc. Ed. Plan. Twenty of these 42 inmates do not qualify as pre-vocational education inmates largely because they are enrolled in basic education courses that are not required in order to meaningfully participate in a vocational training program.
144. Similarly, of the 48 inmates listed as pre-vocational education inmates in defendants' May 1992 Pre-Vocational Education Report, only 37 are qualified pre-vocational education inmates.
145. The defendants are not in compliance with the 50% capacity requirement of paragraph 119 of the Consent Decree because of overcounting of pre-vocational inmates.

FAILURE TO HAVE A SUFFICIENT NUMBER OF INMATES ENROLLED IN VOCATIONAL TRAINING.

146. In the Second Annual Vocational Evaluation Report, paragraph 141, the Vocational Evaluator determined that the 50% capacity requirement was 522, and the total enrollment in vocational training programs was either 506 inmates or 564 inmates, depending upon the number of pre-vocational education inmates counted as set forth below:

<u>Program</u>	<u>Enrollment</u>
State Certified	192
Post-secondary	20
TIE	246

Pre-Vocational (formula) 106 or 48 (actual)
 Total 564 or 506

147. The actual number of qualified inmates enrolled in vocational training programs as of May 1991 is 495, as set forth below:

<u>Program</u>	<u>Enrollment</u>
State Certified	192
College	20
TIE	246
Pre-Vocational	<u>37</u>
Totals	<u>495</u>

148. The Vocational Evaluator has determined for the Third Annual Report that the 50% capacity requirement is 564 and the total enrollment in vocational training programs as of May 1992 is 618 inmates, as set forth below:

<u>Program</u>	<u>Enrollment</u>
State Certified	186
Post-Secondary	32
TIE	272
Pre-Vocational (formula)	<u>128</u>
Total	618

149. The actual number of qualified inmates enrolled in vocational programs as of May 1992 is 525, as set forth below:

<u>Program</u>	<u>Enrollment</u>
State Certified	186
Post-Secondary	32
TIE	272
Pre-Vocational (actual)	<u>35</u>
Total	525

150. Defendants have failed to meet the 50% capacity enrollment requirement of the Consent Decree as set forth below:

<u>Year</u>	<u>50% Capacity Requirement</u>	<u>#Inmates Enrolled</u>	<u>Under Capacity</u>
1991	522	495	27
1992	564	525	39

151. Defendants have failed to assure that a sufficient number of inmates are enrolled in qualified vocational training programs in violation of paragraphs 104 and 119 of the Consent Decree, thereby depriving numerous inmates of the opportunity to learn a vocation to help them successfully integrate into the community upon their release from the N.H. State Prison.

RELIEF.

WHEREFORE, plaintiffs request that this Court grant the following relief:

- A. Find defendants in contempt.
- B. Order defendants to submit a plan of compliance with the Consent Decree within 30 days from the date of this order and afford plaintiffs' counsel 20 days in which to object or otherwise respond to defendants' plan.
- C. Issue a preliminary and permanent injunction enjoining defendants, their successors, attorneys, agents, and employees from failing to comply with the Consent Decree as

ordered, and from failing to assure that the compliance plan, once approved by this Court, is implemented forthwith.

- D. Appoint a monitor, master, and/or receiver to assure implementation of the Consent Decree and to have the following powers and duties:
1. Oversee implementation of defendants' plan of compliance;
 2. Be answerable solely to this Court, and not be under the direction, control, supervision or employ of the defendants;
 3. Have full authority to enter unannounced, without any wait or delay, any area of the N.H. State Prison, Halfway Houses, and Lakes Region Facility;
 4. Have access to all N.H. State Prison and Department of Corrections documents relevant to enforcement of the Consent Decree, including logs, reports, mental health and medical records, offender records, classification files, and Quality Assurance documents and reports;
 5. Conduct bi-weekly site visits to the above Department of Corrections facilities;
 6. Review documents and information received from plaintiffs and/or plaintiffs' counsel with respect to defendants' compliance with the Consent Decree;
 7. Provide quarterly reports to this Court and counsel with respect defendants' implementation of their plan of compliance;

8. File an annual report with this Court on the anniversary date of this Order, together with a recommendation for continuation of jurisdiction of this Court;
 9. Have full authority to resolve disputes as may arise with respect to issues of noncompliance with the Consent Decree;
 10. Serve for a minimum period of twelve (12) months;
 11. Receive full and fair compensation. Defendants shall be responsible for payment and shall make timely and adequate payment. The parties shall attempt to reach agreement on the terms of compensation. If agreement cannot be reached, this Court shall determine reasonable compensation.
- E. Order the filing of a Fourth Annual Health Services Evaluation Report for 1993 under the same terms and conditions set forth in the Consent Decree, and determine the appropriateness of appointment of a new Health Services Evaluator.
- F. Order the filing of a Fourth Annual Vocational Training Evaluation Report for 1993 under the same terms and conditions as set forth in the Consent Decree, and determine the appropriateness of appointment of a new Vocational Training Evaluator.
- G. Order, rule, and decree that the plaintiff class includes all convicted male inmates housed at any Department of

Corrections facility in New Hampshire, including the Lakes Region Facility in Laconia and the Community Corrections Halfway Houses, currently located in Manchester, Laconia, and Concord, New Hampshire.

- H. Order, rule, and decree that plaintiff class includes all convicted male New Hampshire state prisoners who are involuntarily transferred by defendants to any other prison, jail, or county correctional facility.
- I. Order, rule, and decree that the Consent Decree does not authorize the use of any formula to estimate or project the number of pre-vocational education inmates, and instead, requires defendants to count only inmates who are identified and who meet the requirements for pre-vocational education set forth in paragraphs 96, 118, 136, and 137 of the Consent Decree.
- J. Order, rule, and decree that "Administrative Segregation" in the Special Housing Unit is not authorized by defendants' Classification Systems Manual as incorporated into the Consent Decree at paragraphs 73 and 74.
- K. Enjoin defendants, their successors, agents, and employees from subjecting inmates in SHU, and particularly inmates who are mentally ill, to excessive force and unlawful punitive actions, including physical assault, chemical agents and stretcher restraints, and from failing to provide inmates who are mentally ill with clinically appropriate and timely mental health services and treatment.

- L. Extend the jurisdiction of this Court until such time as this Court finds that defendants are in full compliance with the Consent Decree.
- M. Impose sanctions upon defendants, including monetary sanctions.
- N. Award plaintiffs their costs and reasonable attorney's fees and expert witness and consultant fees, pursuant to 42 USC §1988;
- O. Grant such other relief as may be equitable and just.

Submitted by,
Plaintiff, NHSP Inmate Class

By their Attorney
NEW HAMPSHIRE LEGAL ASSISTANCE
15 Green Street
Concord, NH 03301

6/15/93
Date

Alan Linder
Alan Linder, Bar No. 1487
Attorney for Plaintiff Class

Certification of Service

I certify that a copy of this document has been served upon counsel for defendants, Daniel Mullen, Esquire, and John Vinson, Esquire, on this date.

NEW HAMPSHIRE LEGAL ASSISTANCE

6/15/93
Date

Alan Linder
Alan Linder

Rule 11(b) Certification

Pursuant to Rule 11(b) of the Rules of this Court, attempt was made to obtain concurrence to this motion. Defendants do not concur in this motion.

NEW HAMPSHIRE LEGAL ASSISTANCE

6/15/93
Date

Alan Linder
Alan Linder