

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF)
COLUMBIA DEPT. OF CORRECTIONS,)
et. al.,)

Plaintiffs,)

v.)

DISTRICT OF COLUMBIA, et. al.)

Defendants)

Civil Action No. 98-209
(JLG)

FILED

OCT - 1 1998

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

(Δ5)
THE PARTIES' JOINT STATUS REPORT REGARDING
PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE FOR CONTEMPT

On June 29, 1998 the parties met to discuss and resolve plaintiffs' concerns regarding compliance with the Court Order in the above referenced case. The parties believe they have made considerable progress in resolving these issues, and submit this status report as set forth below. The first section responds to general issues raised in the motion; the second section responds to the specific remedies requested by plaintiffs on page 28 of the motion.

I. GENERAL CONCERNS REGARDING SEXUAL MISCONDUCT

1. Probable Cause Ratio - Plaintiffs state that the number of sexual misconduct cases resulting in a finding of probable cause appears low and that the percentage reflects inadequate investigation.

It is defendants' position that the number of findings of probable cause reflect an appropriate if not exceptional level of probable cause findings. Since the defendants have resumed investigation of sexual misconduct complaints, a finding of probable cause has been reached in 10 out of 63 cases filed at the

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Correctional Treatment Facility (herein "CTF") (until March, 1997, when the CCA took over), Minimum Security and Detention facilities. The CCA has investigated eight cases of sexual misconduct with one finding of probable cause since assuming the responsibility in June, 1997. These findings are consistent and in fact exceed the percentage of positive findings reached by the Special Officer of the Court, Grace Lopes - which were 2 findings of probable cause out of 46 cases.

Plaintiffs requested and shall have regular access to review sexual misconduct reports at the site where they are maintained, with appropriate notice to defense counsel to arrange a mutually agreeable date and time. Plaintiffs have proposed a new format for the compilation of statistics regarding sexual misconduct, which shall be included in the monthly report.

2. Investigative techniques - Plaintiffs alleged that investigators side with employees unless complainants' allegations can be verified or substantiated. In February of 1998, a cadre of 26 DOC staff members and six CCA staff members were selected to serve as sexual misconduct investigators and were trained by United States Investigative Services (USIS) in a week long intensive training program. The candidates were selected from a broad spectrum of correctional disciplines, including correctional officers from various levels on the chain of command, case managers, social workers, psychologists, and a variety of other non-uniformed staff. The investigators also present a broad spectrum of ethnic, racial and religious backgrounds, and were

selected on the basis of their proven records of sound judgment, discretion, superior work habits and skills.

USIS conducts investigations on behalf of the federal government and enjoys an outstanding reputation. The training required full participation in drafting investigative plans which serve as a roadmap of sources to check and witnesses to interview before the investigation begins. The staff were trained not to conclude that the employee prevails if there are no witnesses. They were trained to look for other evidence or indicia that may corroborate the inmate's allegations, such as shift reports, assignment rosters, logs or other documents that will tend to confirm surrounding facts and details. They were also trained to investigate issues of motive such as recent disciplinary actions, past threats, prior relationships and other relevant information.

Employees learned and practiced techniques including witnesses, interviewing witnesses, analyzing evidence and preparing sworn statements.

The DOC and CCA have appointed sexual misconduct coordinators. They are highly qualified and trained individuals who have advanced skills and experience in the many nuances and challenges presented by incidents of sexual misconduct.

The coordinators' duties include reviewing all complaints to determine whether they assert a sexual misconduct claim. If on the face of the complaint it appears it does not present sexual misconduct or retaliation, they interview the complainants to ensure they know all the facts, thereby protecting inmates who may

unartfully draft a complaint.

After an investigator is assigned to a case, the coordinator reviews the investigation plan for comment. The coordinators provide advice and guidance to the investigators, participate in training, refer cases to law enforcement and track case progress monthly. They prepare the sexual misconduct statistical reports and are the custodians of sexual misconduct investigation records.

To date, the CCA has not used its in-house investigators, but rather a private contracting agency, Delaney, Seigal and Zorn, a national company used by the former Special Officer of the Court in this case, Grace Lopes, as well as a private investigator Edward Morey.

3. Investigator Recommendations - Plaintiffs alleged in their motion that the improved quality of investigations is diminished because of the alleged failure by the DOC and CCA to follow investigators' recommendations regarding operational concerns observed in their investigations.

Defendants state that recommendations were not acted upon because they were not in the investigator's area of experience or expertise and could not be followed without violating sound correctional or management practices. Moreover, investigation packets are maintained confidentially and therefore, correctional staff were not aware of the recommendations.

The DOC developed a new procedure where recommendations will be sent to the Deputy Director of Institutions for the DOC or the Warden at the CTF under separate memo without revealing

confidential sexual misconduct information. The procedure was proposed and staff were trained in February, 1998, during the training of 32 investigators described in paragraph two, above. In response to plaintiffs' allegations, a memo outlining the process was circulated on August 25, 1998, which was previously produced to plaintiffs. Defendants shall review this procedure a second time in an upcoming refresher training for the investigators, which has not yet been scheduled, but will occur by November 15, 1998.

Plaintiffs may upon request review these separate memos which will be maintained with the investigative reports.

4. Definition of Sexual Misconduct- Plaintiffs allege an investigator's finding that an officer's actions were made without "specific intent of sexual gratification" is confusing and inconsistent with the sexual misconduct definition. Defendants explain that when an employee is accused of sexual misconduct in the course of action taken pursuant to penological practices, the sexual intent must be examined. For example, if an officer enters a female unit without announcing a man on the tier in the course of a shakedown, or if an officer frisks an inmate but did so for legitimate security reasons, the conduct, in that sense, was not performed with a "specific intent of sexual gratification". Such an intent must be examined to determine whether an action was penologically sound or pretext for sexual contact.

In response to plaintiffs' concern, defendants shall review this procedure in an upcoming refresher training for the investigators, which has not yet been scheduled, but they intend to

hold by November 15, 1998. The training will remind the investigator to explain in the report why specific intent is relevant. In the interim, a memorandum shall be circulated by October 15, 1998, outlining this and any other issues raised in this filing to all appropriate staff. Plaintiffs shall be provided with a copy.

5. CCA Hired DCDC Bad Actors - Plaintiffs expressed concern that the CCA hired the same perpetrators previously identified as "bad actors" in the Department of Corrections (DOC), i.e. people who had previous complaints of sexual misconduct filed against them while at the DOC. To the best of defendants' knowledge, there was only one officer who was hired by the CCA - after retirement from the DOC, not termination. While he had a few complaints filed against him alleging sexual misconduct at the DOC and the CCA, no probable cause was found.

Plaintiffs are concerned that there is a flaw in the system which allows bad actors from DCDC to be hired by the CCA. The undersigned does not dispute the fact that it would be helpful to be able to notify the CCA when a former employee has had sexual misconduct report(s) filed against him or her that resulted in "no probable cause" findings, but the government is bound by laws prohibiting it from maintaining or communicating personnel records of charges in which an employee was exonerated under D.C.M.R. Chapter 16.

However, defendants are developing a procedure allowing communication to the CCA of probable cause findings reached against

former employees through the submission by CCA to the DOC of a written request. The DOC could only reveal information where there was no probable cause if provided with a written and signed waiver by the former employee, specifically relinquishing his/her privacy and personnel rights as to the sexual misconduct reports. The CCA will require that former DOC employee applicants be required to sign such a waiver.

6. Staff Resign Rather than Terminated - Plaintiffs allege investigations were closed after staff members were allowed to resign. Plaintiffs disagree with defendants' position that there was only one officer who quit while an investigation was on-going.

Investigators are required to complete an investigation even after an employee leaves, so a record can be maintained as to whether probable cause was found. The record should contain a clearly stated finding regarding the allegation. However, former staff no longer employed with the agency cannot be compelled to cooperate in the departments' administrative investigation and cannot be disciplined by the DOC. The Department will hold a refresher training on this and all other matters set forth in this status report by November 15, 1998. In the interim, a memo will be distributed to the investigators by October 15, 1998, addressing this issue. Plaintiffs shall be provided with a copy.

7. Inmates Impregnated While Incarcerated - All DOC and CCA pregnant inmates are housed on a special unit in the CTF. Every month, the CTF sexual misconduct coordinator receives a list of all pregnant inmates and checks their conception dates with their

custody dates. Inmates who conceive while incarcerated are immediately referred for a sexual misconduct investigation. The list of pregnant inmates has been sent to plaintiffs since May, 1998 and will continue to be sent to plaintiffs. There have been at least six pregnancies while incarcerated since March of 1997; one is alleged to involve a staff member, and the others allegedly involved male inmates. The pregnancies resulted in policy changes at the CTF that closed the satellite kitchens and segregated the genders in the culinary and medical units, where inmates and staff were able to have furtive contact with the opposite sex.

8. Sexual Misconduct Statistical Report - Pursuant to plaintiffs' request, a new statistical report is implemented for the DOC and the CTF that will be attached to the monthly report. The new report will distinguish the incidents involving females, include the number of sexual misconduct complaints reported to the Metropolitan Police Department, the location of the incident, the type of complaint and the discipline of employees. Plaintiffs requested the statistics include "what recommendations were made and/or implemented" or that the information be included in the monthly report. Defendants will retain this information in a separate file as set forth in paragraph three above, which can be reviewed by plaintiffs periodically. Defendants believe that this is a more secure procedure because the monthly report is not maintained with the appropriate level of confidentiality.

II. RESPONSE TO PLAINTIFFS' PROPOSED REMEDIES

The paragraph references below refer to the relevant paragraphs in the Court Order in this case.

Paragraph 7 CCA must provide written penalties for sexual misconduct.

Response: The CCA's sexual misconduct policy specifies potential penalties for violations of its policies in section 14-100.5(N) which states "CCA will impose stringent disciplinary action against persons, up to and including termination". The CCA does not require a table of penalties as provided in DOC Department Order 3350.2B, due to the fact that CCA is a private corporation, and as such has the ability to terminate any employee for cause. The table of penalties provided by the DOC is tailored to conform to the progressive discipline requirements of D.C.'s Municipal Regulations, Chapter 16. CCA is not limited by the requirement for progressive discipline, and in all instances where a probable cause finding of sexual misconduct was made, the employee was terminated. This is in line with the first offense listed in the DO 3350.2B, where termination is the penalty for sexual abuse on the first offense.

Paragraph 8 CCA must hold Inmate Grievance Committee Meetings.

Response: Inmate Grievance Committee Meetings have been resumed on April 30, 1998 (minutes have been produced to plaintiffs). However, a meeting was not held in June. Meetings have been scheduled for the fourth Thursday of every other month.

Plaintiffs requested a schedule for meetings for the remainder of 1998, but there is no charted schedule and the CCA feels it is unnecessary because it is already specific about when the meetings occur. In a reasonable time period prior to each IGAC meetings, notices will be posted in the women's dormitories.

Paragraph 14 Revise Department Order and CCA policy to allow 15 days for inmate to appeal adverse decision on sexual misconduct investigation.

Response: The CCA/CTF amended Policy 14-100 to reflect this change, effective July 31, 1998.

Regarding the DOC, under D.C.M.R. Chapter 16, an employee must be disciplined within 45 days of the infraction or the charges must be dropped. The time period allotted for appeal cannot be expanded to 15 days, because it leaves insufficient time for the proper investigation as well as receipt, consideration, and response to an inmate appeal and disciplinary action.

Plaintiffs expressed a willingness to compromise on less than 15 days. The DOC agreed to amend the Department Order to include an increase of appeal time from five to eight business days and plaintiffs accepted this proposal. DOC employees are currently preparing the appropriate documents to effect such a change, which must be circulated in the DOC for comment and approval. In the interim, the Department will allow eight days for appeal, which the sexual misconduct coordinators will oversee and a memo will be circulated to that effect to appropriate

staff, no later than October 15, 1998. A copy will be provided to plaintiffs.

Paragraph 15 (b) and (c) Conduct annual refresher training at Jail; Conduct 40 hours training for staff working with female offenders; and conduct enhancement training on working with female inmates.

Response: The CCA/CTF has conducted the training required in this paragraph. Attendance rosters for the 40-hour "Working with Female Offenders" and the first special issues training, "Domestic Violence", were previously submitted to plaintiffs. Plaintiffs were provided the attendance roster for the second special issues training, "The Effects and Impact of Violence on the Female Offender; with special emphasis on rape and incest", which was held on June 5, 1998.

The DOC has contacted Andie Moss, with the National Institute of Corrections (NIC) who has assisted in the development and implementation of that training and has herself conducted a portion of it. The 40 hour enhanced training for staff working with females was provided Monday, August 24 through Friday, the 28th, 1998. The annual refresher training was held September 18, 1998.

Paragraph 17 Make alterations to CTF to ensure women's privacy.

Opaque window coverings were placed on all windows in the female housing units, however, a body silhouette could still be seen. Permanent cover on the windows with a material or

substance sufficient to keep a body from being seen in a lighted room at night violates ACA standards which state that "all inmate rooms/cells provide access to natural light" (ACA Standard 3-4140). To rectify this, pursuant to a memorandum dated February 2, 1998, the new Warden implemented a standardized procedure to allow females to cover their windows, to include a revision to the housing unit officer's posts orders to allow temporary coverings pending installation of permanent covers.

The CCA ordered felt material and velcro to be used to make window coverings which can be put up by female inmates as necessary. The installation was to be complete by July 31, 1998.

However, the CCA learned that the felt is flammable and may be toxic. The CCA ordered a non-toxic, non-flammable material for curtains, which was received in early September. Inmates have been selected to sew curtains which are due to be completed by September 25, 1998. Defendants will accommodate plaintiffs' request with defendants' agreement to inspect the window treatments to confirm their adequacy.

Paragraph 19 Provide diagnostic studies for women.

Pursuant to a memorandum dated January 22, 1998 by the Administrator, DOC Case/Unit Management, diagnostic studies for female inmates were suspended for all female inmates except for Youth Act inmates on the basis of their purported transfer into the Federal Bureau of Prisons (FBOP). However, subsequent to this memorandum, CTF was cited by the DOC Contract Monitor for being out of compliance with the requirement to complete female

diagnostic studies and the Administrator did not have the authority to suspend a court-ordered requirement. Diagnostic studies were completed on all females who did not receive studies during the time following the memorandum and documentation was provided to the DOC Contract Monitor. Diagnostic studies are now being done on all eligible female inmates without regard to whether or not they are designated for transfer to the FBOP.

It is also noted that female inmates at CTF were never required to complete a diagnostic study as a prerequisite to participating in programs. Also, a CTF diagnostic study is not necessary to participate in programs in the FBOP - such a study would be done at the receiving facility.

Paragraph 33 Provide one apprenticeship program for women.

Because of the anticipated transfer of the majority of the long-term female inmate population, the negotiations for an apprenticeship program were put on hold. When the anticipated move did not materialize, CCA/CTF revisited the issue. However, due to the female inmates' inability to complete the hours necessary for even the shortest apprenticeship program within their short sentence structures, the Apprenticeship Council could not identify or approve an acceptable apprenticeship program and in fact, rejected two proposals.

Brenda V. Smith, counsel for plaintiffs, suggested at a meeting on June 29, 1998, that a shorter, "pre-apprenticeship program" may be implemented that can bridge a female inmate to a longer apprenticeship program in the community upon release. The

parties met on July 20, 1998 with the undersigned, Brenda V. Smith and the Deputy Warden of the CTF to discuss the possibility for a "bridge program" and based on the discussion, the CCA is pursuing the possibility.

The CCA has made progress in identifying an appropriate bridge program. They met with several vendors in the building trade and the appropriate CTF programming staff are preparing a report on the options and recommendations by September 30, 1998. The completed report will be provided to the plaintiffs.

For the Court's information, the CCA is initiating an additional vocational program on hairbraiding, a popular service in this area, through a certified beauty school which will provide certification upon completion, in addition to its present programs. The plaintiffs pointed out that the monthly report incorrectly identifies the program as an "apprenticeship program", and it will be corrected immediately. Defendants do not consider the braiding program to be a substitute for an apprenticeship program.

Paragraph 52 Air balancing.

The CTF maintenance contractor has completed servicing and cleaning the ventilation system throughout the facility which they represent will allow for appropriate air flow and should improve performance in the next heating season.

The CTF contracted with Precision Mechanical to insulate outside cell walls. This year, one test cell was insulated and testing by maintenance staff prior to the end of the winter

heating season determined that the temperatures in that room were raised by 6 to 8 degrees. However, the contractor found that it brings in the walls, reducing the size of the cells to dimensions that fall below ACA standards. Under its contract with the District, the CCA is required to achieve ACA accreditation within 2 years, which it will not accomplish if they undertake a renovation that will violate those standards.

Substantial progress has been made in the last few months to the air balancing and heating and cooling system in the facility. The contractors believe that this is sufficient to provide room temperatures which meet those required by the Court Order. However, until the heating season begins, it is not possible to confirm that these improvements have been made. If in the heating season, from approximately October through April, the evidence shows that the problem has not been remedied, an alternative proposal will be provided to the plaintiffs and the Court for further action. The new Warden expressed concern that in the past, adequate documentation was not maintained regarding daily temperatures, and states they will be properly documented under her supervision. The documentation will be provided to plaintiffs upon request.

The present Warden of the CTF was not in the facility last winter. However, she states it was reported to her that regardless of compliant temperatures, there were individuals last year who continued to complain about temperatures due to different tolerances. Plaintiffs have requested copies of the

written contracts CCA contracts DICK Corporation and Precision Mechanical. However, the CTF has advised the undersigned that presently, there are no written contracts regarding the insulation of the sample cell, the air balancing and the ventilation service, and that the work is done pursuant to a verbal agreement while the appropriate agents are negotiating contracts. The CCA stated they did not want to hold up progress over a formal, written agreement. Plaintiffs will be provided with any documentation reflecting the verbal agreement and a copy of the formal contract when it is finalized.

Paragraph 59 DCRA Sanitation Reports.

The CTF did receive a rating of 50% on its DCRA inspection held in October 14-15, 1997. However, a follow-up inspection on October 17, 1997, resulted in a rating of 92%. More importantly, on May 8, 1998, the CTF received a rating of 94% (the report was previously provided to plaintiffs). This shows significant improvement over the October 14-15 inspection. Plaintiffs were provided with an abatement plan for the October, 1997 report on July 29, 1998.

A problematic area continues to be the temperature of foods when delivered to the units. The CCA purchased and is using special tray liners to further insulate and seal food trays to retain heat. In addition, the CCA has received approval from the DOC to amend the staffing plans (a procedure required by the contract) so that a team of designated staff serve food on all units. This will circumvent the wait for food carts to be picked

up by escort officers.

In addition, CCA purchased new food trays that have a bottom and a top. Old trays have no lids of their own, but are designed to be stacked with the upper trays serving as lids for the lower ones. The new trays will better retain the heat and are expected to be delivered by October 3rd and in use by October 12, 1998. New electrically powered food carts with hot and cold compartments have been ordered and are expected to be delivered by October 3rd and in use by the twelfth.

The CCA has asked the food vendor to increase the number of staff in the food preparation, which should accelerate the delivery of meals. The inadequate kitchen staff provided by the contractor exacerbate delays in food delivery.

Equipment, procedural and staffing changes should result in food temperatures in the proper range upon arrival.

Paragraph 65 Conduct training at CTF on fire safety procedures.

The CTF has reviewed the DOC's Fire Safety Lesson Plan and all officers at the CTF have been trained in all of the major components of the DOC's lesson plan, i.e. fire safety, institutional safety, CPR, first aid, emergency plans, and Scot Air Pack. The training was not provided under the single heading of a class called "fire safety", but all officers have received the full spectrum of training required under the DOC Fire Safety Lesson Plan.

To comply with the mandate that all officers receive

training semi-annually, a second training class, entitled "Fire Safety" will be provided for correctional officers before the end of the year.

III. DOCUMENTS

The following documents were previously provided to plaintiffs:

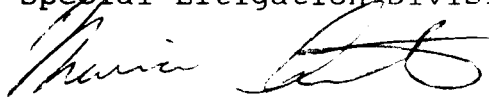
- 1) Inmate Grievance Committee Meeting, May 28, 1998.
- 2) DCRA Environmental Inspection Report, May 4-8, 1998.
- 3) Proposed Vocational Training for Professional Training
- 4) [CONFIDENTIAL] New List of Pregnant Inmates-None Impregnated While Incarcerated
- 5) Sexual Misconduct Monthly Statistical Report
- 6) Training curriculum and attendance log for the 40 hour enhanced training for staff working with female inmates.
- 7) Memorandum from the Deputy Director of Institutions to all sexual misconduct investigators requiring the placement of operational recommendations in a separate memo from the investigation report.
- 8) CCA's amended department order regarding sexual misconduct against inmates, implemented July 31, 1998.

IV. CONCLUSION

The parties shall continue to work to resolve plaintiffs' concerns and defendants appreciate the opportunity to further improve conditions and services for the female inmate population of the D.C. Department of Corrections. Plaintiffs have authorized defendants to file this joint report which has been approved by plaintiffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Joint Status Report Regarding Plaintiffs' Motion for Contempt was mailed, postage prepaid on this 1st day of October 1998, to:

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