

2003 WL 25530367 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.

William HAVERTY and others¹,
v.
Michael T MALONEY, Commissioner of Correction, and another².

No. 95-3634-F.
February 7, 2003.

Findings of Fact, Rulings of Law and Order for Judgment

[Patrick J. King](#), Justice of the Superior Court.

SUFFOLK, ss.

Introduction

This is a class action, seeking declaratory and injunctive relief, on behalf of inmates in the custody of the Massachusetts Department of Correction arising out of an April 3, 1995 lock down at MCI-Cedar Junction.³ The plaintiffs contend that their due process and equal protection rights under the Fourteenth Amendment to the United States Constitution as well as their rights under the Massachusetts Equal Rights Act, [G.L. c. 93, § 102](#), have been violated⁴ All of the claims except for the claims under State Law were previously submitted on summary judgment to the court (Grabau, J.) Summary judgment was granted in favor of the plaintiffs on their due process claim and denied as to their equal protection claim. As to the due process claim, the court ruled that the East Wing units constituted segregation units which required the defendants to comply with the procedural requirements contained in the Department Segregation Unit Regulations, 103 CMR 421.00 et seq. It was undisputed that inmates assigned to the East Wing were denied the procedural safeguards required by said regulations. Final judgment then entered, pursuant to [Mass. R. Civ. P. 54\(b\)](#), in favor of the plaintiffs on their due process claim. After appeal, that judgment was affirmed in substantial part by the Supreme Judicial Court on October 10, 2002. [Haverty v. Commissioner of Correction](#), 437 Mass. 737, 740, 776 N.E.2d 973 (2002).

During the pendency of the appeal, the equal protection and equal rights act claims were tried. These claims are based on the allegation that DOC classifies Hispanic prisoners to the Plymouth block of the East Wing at MCI-Cedar Junction on the basis of race or ethnicity. Based upon the stipulations of the parties and the credible evidence introduced during the jury-waived trial, the court now makes the following findings of fact, rulings of law and order for judgment.

Findings of Fact

Parties

The plaintiffs, William Haverty, David Cosme, Robert Grady, Mark Gentile and Israel Luna, are all inmates confined at MCI-Cedar Junction.

The defendant Michael T. Maloney has been the Commissioner of the Department of Correction. (DOC) of the Commonwealth of Massachusetts since 1997. When this action was commenced in 1995, Larry DuBois was the Commissioner of Correction.

Peter Pepe is the Superintendent of MCI-Cedar Junction. When this action was filed, Ronald T. Duval was the Superintendent at MCI-Cedar Junction. He held that post between July 1991 and November 1999.

MCI-Cedar Junction - 1970 - April 1995

Between the 1970's and 1995 MCI-Cedar Junction was the Commonwealth's only maximum security facility. The prison was divided into two sections, the East Wing and the West Wing. During the first half of the 1970s, the population at Cedar Junction was approximately 500 inmates. This was a period of extreme turmoil when the prison officials were not able to control the inmates. During this period, there were 25 murders at MCI-Cedar Junction. Over time DOC was able to regain control of the prison and eliminate most of the violence.

Since the mid-1970's, all inmates classified to MCI-Cedar Junction are initially housed in the East Wing of the prison. The East Wing contains eight housing units, each with 45 one man cells, and a ninth Modular Unit which has the capacity to house 58 men. Thus, the East Wing has a maximum capacity of 418 men. The cells in the East Wing have grill type doors and an observation area above the cells where correctional officers can observe the inmates without being detected. There is also a disciplinary segregation unit in the East Wing.⁵ After a period of positive behavioral adjustment and a willingness to work, inmates are allowed to progress to the West Wing of the institution. The West Wing provides less restrictive confinement and is comprised of three housing units, each containing 72 one man cells and a disciplinary segregation unit. The cells in the West Wing have solid doors with windows.

INCREASE IN GANG RELATED VIOLENCE

In the early 1990s, the Commonwealth's prisons experienced a growth in the number of volatile and frequently gang-affiliated incidents involving younger inmates. Over time, these violent inmates were transferred to MCI-Cedar Junction. These inmates often engaged in gang related fights. Beginning in late 1992, MCI-Cedar Junction received an influx of Hispanic gang members.⁶ The three major Hispanic gangs were La Famalia, NETA and the Latin Kings.

The African-American gangs tended to be from particular neighborhoods in the major cities in Massachusetts. The Hispanic gangs, on the other hand, included members from the entire East Coast as well as other areas. The Hispanic gangs were much more organized than the African-American gangs, often having a chain of command.

Upon the arrival of the Hispanic gangs, fights often broke out between members of the Hispanic gangs and the African-American gangs. For example, on July 4, 1992, a Hispanic inmate was attacked by African-American inmates. The correctional officers in the tower at MCI-Cedar Junction had to fire into the recreational yard to break up the disturbance. Despite various sanctions imposed on the aggressors in these altercations, including court prosecutions, loss of statutory good time and reclassification to the Departmental Segregation Unit, the incidents became more frequent between 1992 and 1994.

The disturbances even took place in the inmates' dining room. During one fight in the dining room an inmate was stabbed. On July 13, 1993 there was another major incident on the basketball court when African-American inmates attacked Hispanic inmates. Three Hispanic inmates were seriously injured and spent several months hospitalized. Once again, correctional officers in the tower had to fire their weapons to restore order.

Until 1995, Superintendent Duval had a policy of making himself available to inmates on a one to one basis after lunch.⁷ On one occasion a group of eight Hispanic inmates approached him after lunch and told him that they wanted to speak to him. He refused telling them that he would only speak to them one at a time. The following week he was approached by 10 to 12

Hispanic inmates. This was after specifically telling them that they could not approach him during the lunch hour except on a one to one basis. As a result of that incident, he ruled that the action constituted an unauthorized group demonstration and took disciplinary action against the inmates involved.

THREE PHASE PROGRAM

To address these problems, Superintendent Duval consulted with other DOC officials and in 1995 devised a three phase program at MCI-Cedar Junction to keep the inmates in small groups with the hope that this would reduce the level of violence. Under this three phase program, inmates were assigned to housing units which ranged in restrictiveness based upon the inmate's behavior. Despite these changes, the number of fights continued to increase during the three phase program,

On April 3, 1995 there was a disturbance in Bristol 4 in the East Wing. A correctional officer was stabbed and brutally beaten after being attacked by 10-12 inmates. The attackers included Hispanics, African-Americans and some whites. As a result of this incident, Superintendent Duval came to the conclusion that he could not control the institution and provide safety to the inmates and correctional officers with the three phase system and instituted a lock down where all the inmates were locked in their cells 24 hours a day. That lock down continued to August 1995. In the meantime, on June 30, 1995, this action was filed.

SECURITY THREAT GROUPS

Prison gangs referred to by DOC as Security Threat Groups ("STG") (a name similar to that used by many other state correction departments and the Federal Bureau of Prisons) pose a serious threat to the safety of DOC employees and other inmates. STG's perpetrate criminal activity behind prison walls through violence and intimidation of both staff and fellow inmates. The behavior and activities of STG members, either alone or in concert, pose a substantial threat to the orderly operation of DOC correctional institutions. Operating through force, intimidation, secrecy, extreme loyalty to fellow gang members, STG's potential for destructive activity is well recognized nationwide by correction's officials.

The increase in gang related violence necessitated the need for DOC to develop a policy to effectively manage and deter gang violence within DOC facilities and to prevent future or continued gang involvement by new inmates. This resulted in major operational changes to MCI-Cedar Junction culminating in the present operational parameters within the East Wing of the prison. Superintendent Ronald Duval exercised his professional-judgment and employed reasonable measures for the sole purpose of avoiding institutional disruption and violence, to manage the prison, to reduce violence by prison gangs to staff and other inmates and to control the population with the resources available. These resources necessarily included the architectural design of the prison.

On April 19, 1995, Commissioner DuBois issued the following letter to all inmates:

The Department of Correction is experiencing an increased number of disruptive and violent incidents at secure institutions involving organized inmate groups which represent a threat to the security and safety of the institution, staff and other inmates. Membership in security threat groups will not be tolerated in the Department of Correction.

Effective this date, inmates who are members of security threat groups will not be permitted to transfer below medium security. Additionally, any inmate who is a leader of any of these groups or any inmate involved in a security threat group incident will be subject to transfer to restrictive housing at MCI-Cedar Junction.

In April of 1995, there was an alleged plot at MCI-Concord to take hostages. As a result, 45 inmates were transferred to MCI-Cedar Junction. Many of these inmates were Hispanic. In April 1995, 135 inmates who were members of gangs were assigned to Plymouth units I, II and III in the East Wing. Later a fourth Plymouth unit was opened up for gang members. In May 1995, Superintendent Duval decided to segregate the inmates assigned to the Plymouth units based upon gang

membership.

Inmates at MCI-Shirley in August 1995 rioted causing \$2.3 million in damages. The riot began in the dining room after a correction officer was assaulted. As a result of that riot, approximately 40-50 inmates from MCI-Shirley were transferred to MCI-Cedar Junction including Hispanic gang members. The Inner Perimeter Security.(IPS) team reported that they were members of La Famalia and the Latin Kings. Some of these inmates were assigned to the Plymouth units.

ADOPTION OF STG REGULATIONS

On August 28, 1995, the DOC adopted 103 DOC 514, "Security Threat Group Management", a policy designed to identify gang members in an effort to more effectively manage the activities of gangs and to effectuate some degree of control over gangs in DOC facilities. DOC's STG policy is designed and implemented to identify and control the activities of any group or gang that threatens prison safety and security. DOC's STG policy is race-neutral in its design and implementation. The practices and procedures used to implement the STG policy are reasonable and legitimate to ensure safety and security in the Commonwealth's prisons, including the control of prison gangs. Prisoners are identified as gang members based upon the criteria set forth in the STG Validation Worksheet, which does not include race or ethnicity in such determination.

To ensure the security and program needs of each inmate in DOC's custody, each inmate, pursuant to the Department's Classification regulation, [103 CMR 420.08](#) and [420.09](#), receives an initial classification hearing and subsequent classification reviews at least every six month. Each inmate is classified on an individual case by case basis. Among the factors considered by the classification board, the Superintendents, and the Commissioner's designee in classifying each inmate are the following: outstanding legal issues; escape history; enemies; co-defendants; educational/vocational background; medical issues; mental health issues; family history/support; substance abuse history; disciplinary history; the inmate's objective point-based score; special skills; DDU placements; administrative chronology; institution adjustment and security concerns, current adjustment and program needs.

Those inmates identified as STG members, who are transferred to MCI-Cedar Junction due to an STG related disciplinary action and/or are a leader, recruiter or enforcer of a STG may be deemed by the prison Superintendent to be a security risk to the institution and, therefore, may be housed in the Plymouth Units at the discretion of the Superintendent. After a period of good behavior and a stated willingness to renounce their gang membership, these inmates may be reclassified and transferred to MCI-Norfolk (a medium security prison) for participation in the STG program known as the Spectrum Program. Membership in a gang alone will not result in classification to MCI-Cedar Junction but will prevent the inmate from being classified to a facility below medium level security.

The East Wing of MCI-Cedar Junction is comprised of 9 housing units which have a capacity to house 418 prisoners. Eight of these housing units have a capacity to house 45 men per unit and are named Bristol I; Orientation Unit; Essex I; Suffolk I; and Plymouth I, II, III and IV. Plymouth I housed inmates with miscellaneous disciplinary problems; Plymouth II housed members of the Latin Kings; Plymouth III housed NETA members; and Plymouth IV housed members of La Familia. The ninth housing unit is named the Modular Unit which has the capacity to house 58 men. DOC utilizes the Plymouth housing units to house inmates it believes meet the criteria of the STG regulations. Approximately 283 inmates are confined to the 5 non-Plymouth East Wing housing units.

The implementation of the STG policy has resulted in a significant reduction in inmate violence at MCI-Cedar Junction.

DISPARATE IMPACT OF STG POLICY

The plaintiffs case relies in large part on the disparate impact of the STG policy on Hispanic inmates. When the April 1995 lock down was implemented, Superintendent Duval put persons who were believed to be STG members in the Plymouth housing units. Initially nearly 90% of the inmates in 4 of the Plymouth units were Hispanic. Over the years that percentage

has been reduced but has remained high. The following table shows, for three separate dates in 1996 and 1997, the number and percentage of Hispanic inmates in DOC custody the number and percentage of Hispanic inmates represented in the East Wing, the number and percentage of Hispanic inmates in the 4 Plymouth housing units, and the percentage of the Hispanic inmates in the Plymouth Block represented of all inmates in the custody of DOC:

Dates	% of Hispanic Inmates in DOC custody	No. and % of Hispanics in East Wing	No. and % of Hispanics in Plymouth Unit	fall Hispanic DOC inmates in Plymouth Units
6/6/96	20%	158 of 414 (38%)	118 of 133 (89%)	5.9%
2/7/97	22%	164 of 413 (39%)	109 of 137 (80%)	4.9%
6/6/97	22%	161 of 398 (40%)	98 of 124 (79%)	4.4%

There is no dispute that a disproportionate percentage of Hispanic inmates have been classified to the Plymouth units. The plaintiffs argue that in many instances objective based point scores of the Hispanic inmates do not warrant their classification to the Plymouth units. The objective point based score, however, is only one of the tools used to classify inmates. Moreover, the plaintiffs have not presented any credible statistical evidence that the average point base scores of Hispanic prisoners transferred to MCI-Cedar Junction are disproportionately higher than non-Hispanic prisoners.

The housing units in the East Wing of MCI-Cedar Junction, including the Plymouth units, are, for all practical purposes, segregation units. Inmates in the West Wing are not segregated. No evidence was presented as to the racial composition of the inmates in the West Wing. Although the plaintiff's equal protection and equal rights claim are based on the STG policy which relates to the 4 Plymouth block units, the difference between the conditions in the 4 Plymouth block units and the other five East Wing units are minor. The Plymouth unit inmates have slightly less out of cell time because the Plymouth inmates are let out for exercise in smaller groups in order to reduce the number of fights. Appendix A to this decision shows the privileges afforded inmates in the Plymouth and non-Plymouth housing units of the East Wing at Cedar Junction.

The plaintiffs' case also relies on anecdotal evidence from five inmates of conduct indicating racial animus by certain DOC employees. For example, Alexander Peqroza, who is Hispanic, claimed that he was treated differently than an African-American prisoner during a shake down for weapons. The correctional officers made a mess of his personal belongings while searching his cell, but were very gentle when searching the cell of Garth Brown, who is African-American. On another occasion, a correctional officer referred to him as Jose. When he asked the correction officer to use his true name, the correctional officer allegedly responded that you are all "Joses".

None of the plaintiffs' five anecdotal witnesses could identify by name any of the persons who allegedly acted in a discriminatory manner towards them even though correctional officers wore name tags. The incidents testified to by these 5 witnesses, even if found credible and considered with all the other evidence, would be insufficient to prove the existence of a pattern of racial or ethnic bias against Hispanic inmates. It is noteworthy that the classification history of three of these anecdotal witnesses demonstrates clearly that they were not targeted on account of their race or ethnicity by DOC's STG policy. In fact, the court did not find much of the anecdotal witnesses' testimony credible.

Mr. Pagan, one of the plaintiffs' anecdotal witnesses, was determined to be a member of NETA. In August of 1995, he was returned to MCI-Cedar Junction from MCI-Norfolk because of a drug positive random urine test. He initially went to the orientation unit at MCI- Cedar Junction the initial stop for all newly arrived inmates. On October 5, 1995, he was assigned to Bristol 1 in the East Wing. A few weeks later, he was assigned to Bristol 2 in the West Wing. On December 22, 1995, he was returned back to Bristol 1 in the East Wing because of another dirty urine. Later he was returned back down to Bristol 2, and a few months later on May 23, 1996, he was transferred to Old Colony. Despite the fact that he is Hispanic, had been identified as a member of NETA, and had disciplinary problems, he was not sent back to the Plymouth units.

Another one of plaintiff's witnesses, Mr. Pedrosa, violate his probation and was returned to MCI-Concord where, on June 20, 1999, he was involved in a fight in the recreation yard. It was determined that it was an STG related incident. In January 2000, the classification board recommended that Mr. Pedrosa be assigned to Old Colony Correction Center but the superintendent decided to assign him to Bristol 1 in the East Wing at MCI-Cedar Junction because of the incident in the recreation yard.

Prior to being placed on probation, Mr. Pedrosa had previously been labeled as a gang member and spent time in Plymouth units in 1996. Nonetheless, he was not returned to the Plymouth block. Instead, he was sent to Bristol 1. In July 2000, the classification board recommended that he be sent to Old Colony Correction Center but the Superintendent modified that to SBCC because of a "need for more positive adjustment." Mr. Pedrosa was not returned to the Plymouth units.

As for Mr. Morales, another one of the plaintiffs' witnesses, he assaulted another prisoner while at MCI-Gardner on February 2, 1995. The disciplinary report states that an investigation determined that the incident was STG related. It also had been determined that he was a member of the La Familia. On August 30, 1995, he was transferred to the Plymouth block at MCI-Cedar. He attended the Spectrum Program for STG members. On February 20, 1996, less than 6 months after arriving at MCI-Cedar Junction, he was transferred to Old Colony for Phase 2 of his Spectrum Program. He successfully completed Phase 2 and, on June 30, 1996, he was then classified to MCI-Norfolk. While at MCI-Norfolk, he threatened two officers on two separate occasions. As a result, he was reclassified to MCI-Cedar Junction on October 10, 1996. He was not assigned, however, to the Plymouth units because the disciplinary problems were not gang related; rather he was sent to Essex 1, then to Essex 2, and less than 6 months later, on March 14, 1996, he was reclassified and sent to MCI-Gardner. This evidence demonstrates that DOC's policy with regard to the assignment of inmates to the Plymouth units in the East Wing at MCI-Cedar Junction is based upon behavior and not race or ethnicity.

The plaintiffs' case also relies on expert evidence critical of the STG and classification practices of DOC. The plaintiffs' expert witness, Mr. William Dallman, has worked in the correction industry for 37 years. He retired in June 1994 as a warden and has been working as a consultant since then.

Mr. Dallman opined that putting gang members together was a bad practice because it created solidarity among the gang members. Nonetheless, he agreed that because DOC had only one maximum security facility in 1995, putting all of the gang members in one facility was a judgment call on the part of the DOC which he could not contest.

Although Mr. Dallman opined that the 20 percent rate of overrides of classification board recommendations by the Commissioner in Massachusetts is on the high side, he agreed that quite often there are good reasons for the Commissioner to override a classification board's recommendation. He also acknowledged that the record shows cases where the Commissioner would have been justified in placing Hispanic inmates in maximum security but where he did not do that. For example, inmate Corrillo, who is Hispanic, murdered a correctional officer. Although the Commissioner would have been justified, according to Mr. Dallman, in assigning Mr. Corrillo to MCI-Cedar Junction, he went along with the classification board's recommendation that Mr. Corrillo remain at MCI-Norfolk. Mr. Dallman agreed that ultimately where an inmate is assigned is a judgment call to be made by the Commissioner.

There is no evidence that Hispanic prisoners are being confined in the Plymouth units for a disproportionately longer period of time than those prisoners assigned to the other East Wing housing units or that inmates who renounce their gang affiliation are not allowed to earn their way to a lower security facility through the Spectrum Program.

The Court found credible the testimony that the decision to classify inmates to the Plymouth units was based on the criteria set forth in the STG regulations and that the decision to house Hispanic gang members together was based on legitimate security concerns and not based on the race or ethnic background of the inmates. Although at times 90% of the inmates in the Plymouth units were Hispanic, those inmates represented fewer than 6 percent of all the Hispanic inmates in DOC custody.

Race and ethnicity were not factors in the labeling of STG members. Likewise, race and ethnicity were not factors used by DOC in the classification or transfer of inmates to the Plymouth Housing units.

There is no credible evidence that the Commissioner of Correction or his subordinates selected, designed or implemented the

STG policy to discriminate against Hispanic inmates.

There is no credible evidence that the Commissioner of Correction or his subordinates acted with a discriminatory purpose in classifying and transferring Hispanic inmates to the Plymouth housing units in the East Wing at MCI-Cedar Junction.

RULINGS OF LAW

The Equal Protection Claim brought by the plaintiffs requires a showing that they are members of a distinct class and being purposefully discriminated against. See *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 272, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979). “[E]ven if a neutral law has a disproportionate adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.” *Id.*

The plaintiffs are members of a distinct class for purposes of an Equal Protection Clause, analysis. The STG policy has had a disparate impact on Hispanic inmates in that the percentage of Hispanic inmates in the Plymouth units is grossly disproportionate to the percentage of Hispanic inmates in the custody of DOC. This evidence is sufficient to meet the plaintiff’s burden of proof and to place the burden on DOC to prove the lack of a discriminatory motive.

DOC has met its burden of proof. DOC’s legitimate interest in institutional security warranted the adoption of a policy to control gang activity. Prison officials must be afforded a measure of deference in such matters. See *Jones v. North Carolina Prisoner’s Labor Union, Inc.*, 433 U.S. 119, 132-133, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1997).

DOC’s STG policy is neutral on its face. The factors taken into consideration by DOC in its STG policy are equally applicable to all inmates. During a relevant time period for which figures are available, the Hispanic population in the Plymouth units was approximately 90% as opposed to the Hispanic population in the DOC system of 21%. DOC, however, has rebutted the inference of discrimination by credible evidence that the adoption of the STG regulations and its decision to house Hispanic gang members together in the Plymouth housing units were based on a valid penological objective, namely, to address the significant security threat posed by Hispanic gangs. Where to house inmates is the responsibility of prison officials subject, of course, to compliance with any applicable regulations, none of which apply to this equal protection analysis. See *Meachum v. Fan*, 427 U.S. 215, 225, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976).

The consequence of classification to the Plymouth housing units has dire consequences for the inmates involved. The conditions of confinement in those units are quite harsh. This court’s decision does not in any way endorse the adequacy of the procedures for the classification of inmates to the Plymouth housing units. As the Supreme Judicial Court has made clear, the procedures followed violated DOC’s own DSU regulations. Nonetheless, DOC’s STG policies and practices do not violate plaintiffs’ Equal Protection Clause rights. For the same reasons, the plaintiffs have not established that their rights under the Equal Rights Act, G.L. c. 93, § 102, have been violated.

Based upon all of the evidence, the court rules that the plaintiffs have failed to establish that the STG policy has been used to discriminate against Hispanic inmates. For this reason, judgment will enter in favor of the defendants on plaintiffs’ Equal Protection Clause and Equal Rights Act claims.

ORDER FOR JUDGMENT

Accordingly, it is hereby ordered that:

Judgment shall enter in favor of the defendants with regard to plaintiffs’ Equal Protection Clause and Equal Rights Act claims.

<<signature>>

Patrick J. King

Justice of the Superior Court

DATED: February 7, 2003

Footnotes

- 1 David Cosme, Robert Grady, Mark Gentile and Israel Luna.
- 2 Peter Pepe, Superintendent, MCI-Cedar Junction. When this action was commenced, Larry DuBois was the Commissioner of Correction and Ronald T. Duval was the Superintendent of MCI-Cedar Junction. They have since been replaced by the current named defendants.
- 3 On November 15, 1995, the court (Lopez, J.) certified a class defined as “all prisoners who are now confined or may at some point be confined in any housing unit other than the Department Disciplinary Unit” at MCI-Cedar Junction. For purposes of the equal protection claims presently before the court, the class consists of Hispanic inmates who have been or will in the future be assigned to the Plymouth housing units at MCI-Cedar Junction.
- 4 Additional claims in the Complaint were voluntary dismissed [text illegible]
- 5 The plaintiffs raise no issue in this case concerning the inmates assigned to the East Wing disciplinary segregation unit.
- 6 There was a fifty percent increase in the number of Hispanic inmates in DOC custody between 1990 and 2000.
- 7 Between 1995 and 1999 the Department of Correction’s inmate population was approximately 10,000 inmates each year in 1995 Caucasians made up approximately 49 percent percent of the population, African-Americans 30 percent and Hispanics 20 percent.