

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF MICHIGAN, et al.,

Defendants.

Hon. John Corbett O'Meara, Hon. Marc L. Goldman

Civil Action No. 97-CV-71514

**UNITED STATES' MEMORANDUM IN SUPPORT OF
STIPULATION TO DISMISS**

The United States and Michigan have filed a joint Stipulation to Dismiss the case of United States v. Michigan, Civ. No. 97-CV-71514-DT, as the joint expert chosen by the parties has found Michigan in substantial compliance with the parties' Settlement Agreement. The United States files this memorandum in support of the parties' request for dismissal.

Following an investigation initiated in 1994, the United States filed suit in March 1997 under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, alleging, inter alia, that inmates in Michigan's women's prisons were subject to sexual misconduct and invasions of privacy by staff. After two years of litigation, including extensive discovery, the parties executed a Settlement Agreement resolving these matters in May 1999. On September 28, 1999, this Court conditionally dismissed this matter pending Michigan's compliance with the terms of the Settlement Agreement.

The Settlement Agreement provided that the parties' mutually agreed upon expert, Mr. Patrick McManus, would assess Michigan's compliance with the terms of the Agreement approximately three and six months after the parties' execution of the Agreement. Mr. McManus is experienced both in corrections and as an independent evaluator of court-ordered changes. He was formerly Secretary of Corrections for the State of Kansas and Assistant Commissioner of Corrections in Minnesota, and has served as a Special Master and Independent Court Monitor for many United States courts since 1983. The Agreement provided that if Mr. McManus found Michigan to be in substantial compliance with its terms after the final compliance tour of the facilities, the parties would file a stipulation seeking dismissal of this case.⁽¹⁾

Mr. McManus toured Scott and Crane Correctional Facilities on August 23-27, 1999 and December 7-10, 1999. During these visits he spoke with staff and inmates, reviewed documents and observed physical plant changes. He conducted additional meetings with staff and reviews of documents in Lansing on November 2-3, 1999. Attorneys for the United States and the State of Michigan accompanied and participated with Mr. McManus on these tours. In between these visits, the United States reviewed and provided recommendations on draft policies, procedures, training and education materials, reviewed other compliance documents and remained in contact with representatives of the State of Michigan. In his report, Mr. McManus finds Michigan to be in substantial compliance with the

Settlement Agreement.⁽²⁾ The following provides an overview of actions taken by Michigan that led to Mr. McManus' finding of substantial compliance.

MDOC Policies and Procedures: MDOC implemented significant new policies and procedures in the course of the compliance period. MDOC issued two Director's Office Memoranda (DOM's) incorporating provisions of the Settlement Agreement into policy. In addition, MDOC issued a policy variance temporarily halting pat searches by male officers through February 2000 (Michigan has not yet announced its new plans regarding pat searches), amended work rules to incorporate the Agreement's definitions in prohibiting sexual misconduct, sexual harassment and overfamiliarity, amended investigation policies and checklists to incorporate more precise outcome definitions and require completion of new tasks, and created a formal procedure for conducting criminal and domestic violence checks of officers. At the institutional level, wardens issued memoranda explaining how the new knock and announce requirements were to be implemented, outlining procedures for increased rounds of secluded areas and controlled access to other areas, detailing how the limitations on male officers being alone with female inmates would operate, and incorporating some of these provisions, where appropriate, into the education program's rules. Michigan incorporated many of the suggestions offered by the United States.

Pre-Employment Screening: An important change in Michigan's hiring procedure was the institution of more extensive pre-employment screening, including checks for domestic violence history and five years of employment background. MDOC also agreed to check current staff every five years for criminal and domestic violence records. MDOC has implemented the required enhancements of its screening of both new staff candidates and continuing staff, and conducted screening of all existing staff ahead of the required schedule.

Staff Training: During the summer, MDOC conducted a new training for all staff introducing them to the Settlement Agreement and highlighting prohibitions of sexual misconduct, sexual harassment and overfamiliarity. During the compliance period, staff were also trained in implementation of the knock and announce policy and retrained in performing pat search and clothed body searches.

In the coming year, MDOC has committed to requiring all staff to attend six hours of training on sexual harassment, sexual misconduct, overfamiliarity and new policies, and will be revising the 40-hour program it conducts on Critical Issues in Managing Female Offenders. MDOC has committed to maintaining current, complete training on these subjects in the future. Michigan incorporated many of the suggestions offered by the United States and preserved some suggestions for future program revisions.

Inmate Education: A major component of the Settlement Agreement was the education of inmates in identifying, preventing and reporting improper staff behavior. MDOC created a new brochure for inmates entitled "Appropriate and Inappropriate Staff and Prisoner Interactions: A Guide to Sexual Misconduct Prevention and Intervention." MDOC provided this booklet to inmates and gathered them for oral presentation of the material as well. MDOC also incorporated this material into the prisoner orientation program to educate new inmates about this subject matter as they enter the women's prison system.

MDOC also created posters placed around the institution reminding staff, inmates and visitors that sexual misconduct and harassment are prohibited and encouraging reporting of improper conduct. Copies of the Settlement Agreement are available in the law libraries at Scott and Crane.

Facilitation of Reporting: MDOC has hired a Special Administrator, Ms. Nancy Zang, who has been

instrumental in the implementation of the Settlement Agreement. The Special Administrator has made herself available to inmates, both conducting random interviews and following up on correspondence sent to her. She has attended meetings of the Warden's Forum, the inmates' representative body at each facility, to share information about developments, fine-tune the inmate education program, and encourage inmates to report misconduct. The new computer tracking system gathers sufficient information for the Special Administrator to monitor complaints about misconduct and take action where she deems it appropriate.

MDOC has promoted confidentiality in the reporting process by communicating to staff and inmates through written and verbal means the importance of maintaining confidentiality and the willingness of MDOC to discipline those who compromise confidentiality of investigations. MDOC has added to investigators' instructions a requirement to advise all witnesses about the importance of confidentiality during the course of investigations.

In addition to maintaining its prohibition of retaliation and reinforcing this policy through training, MDOC has created a new committee at each facility that will examine grievances, critical incident reports, misconduct tickets, kites and any other available information and report to the warden if there is evidence of retaliation.

Investigations: The Settlement Agreement aimed to improve investigation of sexual misconduct allegations. Allegations of sexual misconduct are investigated by staff in the Office of Internal Affairs, a central MDOC office outside the facilities, and occasionally by the institution-level Inspectors. These investigators have all received three days of specialized sexual misconduct investigation training, and have also completed Basic Detective School, in which sexual misconduct investigations are among the special issues addressed. Allegations that could constitute criminal acts are referred to the Michigan State Police as well.

Allegations of sexual harassment, overfamiliarity, retaliation, and violations of knock and announce and one-on-one prohibition policies are typically investigated by staff at the facilities, with more serious incidents investigated by Inspectors, and other incidents investigated by a variety of supervisory staff. Only those staff members who have completed MDOC's Sexual Harassment Investigator Training Program and Critical Issues in Managing Female Offenders will be appointed to investigate these grievances. MDOC has committed to completing a new training program, Advanced Techniques for Investigating Grievances of Women Prisoners, early in 2000.

MDOC has temporarily reassigned employees to posts without inmate contact when they have been accused of sexual misconduct and investigations are proceeding. Mr. McManus conducted reviews of both open and closed investigations in determining that MDOC was in substantial compliance with the many requirements of this section.

Minimization of One-on-One Situations: MDOC policy now prohibits male staff from being alone with female inmates except in situations of emergency, medical care, counseling, questioning during investigations, and reporting of confidential information. Supervisors have analyzed individual circumstances and locations at the facility to provide guidance to staff on implementing the policy in specific situations.

Secluded Areas: MDOC has made a number of physical plant changes both to limit access to some spaces and increase observability in others. MDOC re-keyed or installed new locks, the keys to which are now only available from a shift commander. MDOC now seals other areas such as classrooms every night with specially numbered tabs that would reveal any entry into such areas. Staff have rewired some

offices and classrooms so that they are now lit continuously. They have retrofitted other areas with convex mirrors so that security officers conducting rounds can see into far corners. MDOC has replaced many doors with screens or cut windows in the doors. Management has given guidance to supervisors to increase the frequency of their rounds in some parts of the institutions.

Inmate Clothing: The Settlement Agreement required Michigan to create a standard institutional dress code. Michigan has chosen to institute a requirement that all inmates wear uniforms.

Random Interviews and Exit Interviews: The Special Administrator and other senior staff have instituted a program of random interviews of inmates to discuss the topics addressed in the Settlement Agreement. Staff have also conducted exit interviews. Staff have referred allegations of misconduct for appropriate response.

Post-Investigation Management Review: The Sexual Assault/Sexual Misconduct Review Committee has continued to meet to review all sexual misconduct investigations and make recommendations on findings. The committee has at times made recommendations for improving investigations and providing additional training to officers.

Files: MDOC has created a new computer system, the Allegation, Investigation and Personnel Action System (AIPAS). Staff have been trained in its various uses so that senior administrators can track the course of complaints and investigations, investigators can search for prior allegations and reports of activity can be created. This system and the Personnel Department's computer system will both be queried before accepting rehires.

Staffing: MDOC commissioned a staffing study by Securicor, which examined staffing options to increase the presence of female officers in the housing units. MDOC has decided to eliminate the presence of male officers in the housing units and other selected areas.

Staff Discipline: During the settlement compliance period, MDOC terminated or otherwise disciplined a number of officers found to have violated policies covered by the Settlement Agreement. Notations in officers' files show that those who were fired or resigned in lieu of termination are ineligible for rehire.

Inmate Psychological Services: Staff assigned to investigate allegations of sexual misconduct and sexual harassment now are instructed to offer psychological services to those inmates covered by this provision. A form confirming the offer of services has been created so that the offer and inmate's decision whether to accept services can be verified.

Inmate Discipline: MDOC has standardized the definitions for the outcomes of investigations and has added new outcome options. MDOC has also instituted a process whereby senior central office staff review and may supersede all recommendations that misconduct tickets be written for making unfounded allegations.

Knock and Announce Policies: An important feature of the Settlement Agreement required implementation of a "knock and Announce" policy to promote inmate privacy unless security concerns dictate otherwise. MDOC has trained male officers to announce their presence prior to entering areas where they may be able to view inmates in a state of undress. Staff analyzed circumstances in the various segregation wings of the facilities to determine what privacy accommodations could be adopted reasonably and safely in segregation.

Pat Down Searches: MDOC enacted a temporary halt to pat searches by male officers at Scott and

Crane, absent exigent circumstances, until February 2000. During that time period, staff were retrained in conducting pat searches and clothed body searches, and management evaluated the five pat search per day requirement. MDOC has not yet announced a determination as to whether males will resume pat searches or whether the pat search quota will be eliminated.

Screening of Inmates Regarding Past Histories: MDOC revised its intake screening questions regarding physical and sexual abuse history.

Quality Assurance: MDOC created quality assurance plans to monitor its hiring process, staff training, inmate education and investigations for ongoing compliance with the Settlement Agreement.

Conclusion

For the foregoing reasons, the United States requests that the Court grant the parties' stipulation to dismiss this case.

Respectfully submitted,

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Dated: March 7, 2000

1. The Settlement Agreement is attached as Exhibit 1 to this memorandum. Section XV of the Settlement Agreement contains its termination provisions.
2. Mr. McManus' report is attached as Exhibit 2.