

Sheppard v. Phoenix, et. al.



PC-NY-0001-0003

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AHMED SHEPPARD, et al.,
Plaintiffs,

-vs.-

ANDREW PHOENIX, et al.
Defendants.

91 Civ.4148 (RPP)

**ORDER APPROVING
STIPULATION OF
SETTLEMENT AND
ENTRY AS
JUDGMENT**

-----X

The parties have entered into a stipulated agreement ("the Stipulation") on injunctive relief settling the remaining claims in this class action lawsuit which alleged the use of unnecessary and excessive force in the Central Punitive Segregation Unit ("the CPSU"). The Stipulation, which is attached hereto, includes provisions regarding: the use of force policy in the CPSU and the formulation of written guidelines for how force (including chemical agents) may be used in the CPSU; the assignment, screening, monitoring, training, investigation and discipline of uniformed staff; the assessment of CPSU inmates for appropriate mental health services; the investigation and reporting of use of force incidents; and the utilization of video cameras to record staff-inmate confrontations.

Pursuant to the Stipulation, the parties will jointly retain two corrections experts to assist them in implementing the terms of the Stipulation. The Court will retain jurisdiction over this action, and plaintiffs' counsel will monitor the Department of Corrections' compliance with the terms of the Stipulation.

The parties have agreed to the entry of a Judgment incorporating the terms of the Stipulation, subject to the Court's approval under F.R.Civ.P 23(e), after notice to the members of

the plaintiff class. The Court entered an Order on June 9, 1998, pursuant to which, on June 15, 1998, plaintiffs' counsel personally delivered to each inmate in the CPSU, or left at each inmate's cell, a copy of the "Notice to the Class" approved by the Court. The Department of Correction provided the Notice to the Class to each inmate admitted to the CPSU between June 15 and July 2, 1998.

Plaintiffs' counsel filed with the Court on June 26, 1998 a declaration setting forth the reasons why the relief set out in the Stipulation should be ordered. See, Declaration of Jonathan S. Chasan, June 26, 1998.

The Court conducted a hearing on July 10, 1998 concerning the proposed settlement and considered the comments of members of the plaintiff class.

The Court finds that the terms of the proposed settlement, as summarized below, are fair and reasonable and adequately protect the legal rights of all members of the plaintiff class:

1. The remedies set forth in the Stipulation are narrowly drawn, extend no further than necessary to correct the violations of the federal rights of the plaintiff class, and are the least intrusive means necessary to accomplish redress. See, 18 U.S.C. § 3626(a); Stipulation at 4-5.

2. Use of Force Policy; Chemical Agents

The Stipulation requires that the Department direct and train CPSU staff to respond to inmate misconduct without force, or if force is necessary, to utilize control techniques that minimize injuries to both inmates and staff. Force techniques that carry a high risk of injury, such as punches, kicks and strikes to vital areas of the body, are to be used only where the facts and circumstances known to a correction staff member, in the exercise of sound correctional judgment, are necessary as a last resort to prevent serious physical injury, escapes, or similarly

serious breaches of security. See, Stipulation, ¶¶ 1-2.

CPSU staff are not to use chemical agents on any inmate who has not been medically cleared for the use of such agents except under emergency circumstances (when a delay in the use of such agents would present an immediate threat of death or serious injury or would severely threaten the safety or security of the facility). Except in emergency circumstances, staff shall not administer chemical agents to an inmate unless the health services staff has first been notified to determine whether there is a medical reason why chemical agents cannot be used. See, Stipulation ¶ 6.

3. Use of Force Training

The Stipulation provides that no officer or captain can be assigned to the CPSU unless the staff member has been trained in the utilization of control holds and other forms of self-defense, and has demonstrated a working knowledge of and thorough familiarity with these techniques. The Stipulation requires that the Department, with the parties' expert consultants, formulate a training curriculum and written standards and procedures governing the use of force by correction staff in the CPSU. The training curriculum will include control techniques, nature of minimal force, nature of alternatives to force, means for avoiding the unnecessary use of force, when and how gas, batons, shields and stun equipment may properly be used, a policy on inmate movement, a policy requiring the use of the hand-held video camera, and when and how to conduct a cell extraction. The Stipulation requires that staff receive no less than two weeks' training prior to their assignment to the Unit in the utilization of use of force techniques and procedures, including techniques intended to minimize injuries to staff and inmates. As a condition of their continued assignment to the Unit, CPSU officers will receive an additional

forty hours of training annually on a quarterly basis, or more frequently as determined by the Department in consultation with the expert consultants. The Stipulation further requires that on an annual basis CPSU staff members' skills will be reassessed. See, Stipulation ¶27-29.

3. CPSU Operating Manual: Written Policies and Procedures for CPSU Staff

The Stipulation requires that the Department, with the parties' expert consultants, create a revised CPSU Operating Manual. The Operating Manual will include the use of force policy for the CPSU, a description of how medical, mental health and other mandated services are to be provided to CPSU inmates, and the policy governing the use of mechanical restraints. See, Stipulation ¶3.

4. Mental Health Services

The Stipulation requires that the Department maintain a written plan for the provision of mental health services to CPSU inmates. Inmates deemed by mental health staff to present a risk of mental or emotional deterioration if placed or continued to be confined in the CPSU shall be removed and placed in alternative housing. Observation aides are required to be assigned to each housing area; all inmates in the CPSU shall be seen by medical staff daily so that referral to mental health services may be made. The Stipulation also requires that mental health staff shall review any punitive segregation time imposed on an inmate in a mental observation housing area, and prohibits the transfer of an inmate from a mental observation area to the CPSU without authorization of mental health staff. Mental health staff must also interview and review the medical records of any inmate receiving mental health services who is to be placed in the CPSU before such placement. See, Stipulation ¶¶ 4-5.

5. Prohibition of Denying Services as Punishment

The Stipulation requires that uniform staff shall not withhold access to any service or program in the CPSU in retaliation for misconduct or perceived misconduct, and that no CPSU inmate shall be housed in a cell which lacks an operable sink with running water, a flushable toilet, and appropriate bedding. Uniformed staff shall supervise food delivery and shall ensure that food is delivered to each inmate in a housing area. See Stipulation ¶ 20-21.

6. Time Lapse Video Coverage

The Stipulation requires that the wall mounted video cameras in the CPSU will continue to be maintained, and that additional cameras will be added to designated areas. Emergency Response Unit ("ERU," now "ESU" (Emergency Services Unit)) vests will have visible identifying numbers which can be read by the cameras and staff will be required to record the number of the vest that they wore during an operation. Searches conducted of inmates transferred to the CPSU shall be conducted with a supervisor present in an area subject to continuous video-taped surveillance. See, Stipulation ¶¶74-79

7. CPSU Hand Held Video Cameras

The Stipulation requires that hand-held cameras be used to record anticipated uses of force, including facility and ESU searches, as well as all non-routine movement of an inmate from their cell to an area not covered by a wall-mounted video camera. The hand-held tape must provide continuous coverage throughout the incident and the escort of the inmate from the area. The Department will revise its Operations Order to provide specific guidance to staff concerning the videotaping of anticipated uses of force. See, Stipulation ¶83-87.

8. Screening and Selection of CPSU Staff

The Stipulation sets out requirements to ensure that experienced staff are assigned to the

unit: half of the correction officer staff assigned to the CPSU must have completed their two year probationary period; one quarter must have completed one year of their probationary period; and no housing area shall be staffed solely by probationary correction officers. No probationary captains or assistant deputy wardens shall be assigned to the CPSU. In addition, the Stipulation formulates procedures for screening staff for assignment to the CPSU. No staff with pending disciplinary charges arising from a use of force incident, or who have in the prior ten years been found guilty or pleaded guilty or no contest in satisfaction of charges of excessive, impermissible, or unnecessary force; failure to supervise in an incident that resulted in serious injury to an inmate; false reporting or false statements; or failure to report a use of force may be assigned to the CPSU. The Stipulation requires that the disciplinary history, as well as the use of force history, of all staff to be assigned to the unit be subject to extensive and detailed review before their approval for assignment. See, Stipulation ¶¶ 7-15.

9. Transfer of Staff From the CPSU Upon Documentation of Involvement in Misuse of Force

The Stipulation requires that any CPSU staff charged with excessive, impermissible, or unnecessary force, false reporting or false statements, failure to supervise, failure to employ an alternative to force, or failure to report a use of force, shall be transferred from the CPSU. The conduct of staff charged with other misconduct shall also be reviewed for possible transfer from the Unit. See, Stipulation ¶¶ 17-18.

10. Review of Staff Use of Force

The Stipulation requires that the facility supervisory staff review and evaluate the conduct of staff members who have been involved in repeated applications of force. This review will utilize the information gathered about the staff members' conduct by the Investigations Division,

and will be conducted consistent with the policy underlying Department Directive 5003. See, Stipulation ¶¶ 22-26.

11. Use of Force Reporting

The Stipulation includes requirements for staff report writing designed to eliminate collusion between officers, and to ensure accuracy of reporting: reports shall be written directly after an incident; they shall include detailed information from the staff member's personal knowledge; and reports shall be written independently in separate areas under supervision. Staff who cannot write a report due to injury shall give an oral statement to a supervisor who was not a witness or participant in the incident. The Stipulation requires that staff who claim injury be offered the opportunity to be examined in the facility clinic. Staff refusal of treatment shall be recorded and included in the documentation of the incident. A logbook in the clinic shall record the time that inmates and staff arrive in the clinic for treatment. Medical examination reports shall include the time that the individual was treated by medical personnel.

The Stipulation requires that the "use of force package" (use of force reports, use of force witness reports, injury to inmate reports and all other documents and physical evidence pertaining to a use of force) shall be compiled by a Captain who was neither a participant nor a witness to the incident and that the package shall be provided to the CPSU Use of Force Unit of the Investigation Division within 7 days after the incident. The Stipulation also provides that the Investigation Division staff may get copies of reports as soon as they are prepared. See, Stipulation ¶¶ 30-37.

12. Physical Evidence; Photographs

The Stipulation includes requirements to collect, and safeguard physical evidence

including photographs, videotapes, and contraband. Photographs of staff and inmates will be taken by staff who were not witnesses or participants in the incident. The Department will utilize wall-mounted and hand-held video cameras to record staff-inmate confrontations. See, Stipulation ¶¶ 38-41.

13. CPSU Use of Force Unit-Investigations

The Stipulation requires that the Department continue to use a dedicated group of investigators and attorneys--assigned to the Investigation Division and outside the facility chain of command--to investigate CPSU use of force incidents. The CPSU Use of Force Unit ("CPSU-UFU"), a section of the DOC Investigation Division, shall investigate all uses of force and allegations of uses of force in the CPSU, as well as allegations of staff misconduct in connection with incidents in which CPSU inmates are injured. The Stipulation sets forth the minimum staffing level for CPSU-UFU, including the requirement that there be an Integrity Control Officer (ICO) assigned to the facility; requirements governing the supervision of CPSU-UFU; time frames for completing investigations; and requirements for how to conduct investigations. The Stipulation requires that investigators assigned to CPSU-UFU undergo a 40 hour training course that will include: interviewing skills and techniques; basic medical terminology; evaluating evidence; writing analytic reports; operating procedures in the CPSU; history of the poor investigations previously conducted in the CPSU; video reviewing; handling physical evidence; use of computer database; and other CPSU-UFU procedures. The Stipulation requires that UFU investigators receive a minimum of 40 hours of investigatory training each year. Medical professionals with appropriate expertise, including a doctor with experience and training in forensic pathology, will be designated to review medical records for the CPSU-UFU

and assist in determining how injuries were caused.

The Stipulation requires that the CPSU-UFU be notified after each use of force that occurs in the CPSU.

The requirements in the Stipulation for conducting investigations include: preliminary review of evidence and videotapes; careful review of all videotapes; obtaining and reviewing reports from medical facilities; use of medical experts to assist in interpreting the cause of injuries; identification of inmate and staff participants and witnesses; interviews with inmate participants and witnesses; staff interviews; review of inmate and staff prior involvement in uses of force; and staff members' prior disciplinary history. See, Stipulation ¶¶ 44-66.

14 CPSU Integrity Control Officer - ICO

The Stipulation sets out specific duties and responsibilities for the Integrity Control Officer assigned exclusively to the CPSU. These responsibilities include: report writing; conducting unscheduled tours of the Unit; maintaining the integrity of the video recording system and evidence room; reviewing all videotapes of use of force incidents; responding to alarms, anticipated uses of force and ESU operations to observe activities; and assisting CPSU-UFU investigators. See, Stipulation ¶¶ 51-2.

15. Case Tracking System

The Stipulation requires that the Department of Correction's Investigation and Trials Division utilize computerized databases with searching and reporting capabilities. The databases will include every use of force incident which occurs in the CPSU and every disciplinary action against CPSU staff. Information in the databases will be used for the supervision of UFU (maintaining compliance with time frames for completing investigations, tracking caseloads,

reviewing investigative efforts), for the purpose of retrieving information useful in investigations (officers' repeated use of gas or other force, groups of officers repeatedly involved in uses of force together), and for the resolution of disciplinary charges against staff (formulating plea offers and making recommendations for penalty at OATH). The Stipulation designates the data that must be in the program, including: injuries to inmate, injuries to staff, type of force used, location of incident, was a weapon recovered, was a weapon alleged and not recovered, names of staff and inmates involved, UFU investigator, date of incident, date of investigation closing, result of investigation, and use of force number. See, Stipulation ¶¶ 67-8.

16. Disciplinary Charges

The Stipulation sets out time frames for the service and resolution of disciplinary charges against CPSU staff. The Stipulation requires that the Department and the joint expert consultants formulate penalty guidelines which will be used by the Trials and Litigation Division in formulating plea agreements and in making recommendations to the Administrative Law Judges. See, Stipulation ¶¶ 69-73.

17. The Parties' Expert Consultants

To assist in the implementation of the remedial plan set out in the Stipulation, the parties have jointly retained two nationally recognized corrections experts for a period of two years, or longer if the parties agree: Norman Carlson, the retired Director of the United States Bureau of Prisons, and Steve J. Martin, a consultant and expert witness in connection with investigations and litigation with respect to scores of correctional facilities.

The Stipulation requires that, shortly after the Court approves the agreement as an order, the consultants will assist the Department in formulating: written standards and procedures

governing the use of force in the CPSU; a training curriculum for CPSU staff and a plan for continued, in-service training; and a revised CPSU Operating Manual. Thereafter, the consultants will conduct site visits, document reviews, interviews with Department staff and CPSU inmates to assess the Department's compliance with the Stipulation.

The scope of the consultants' responsibilities include periodic reviews of all activity addressed by the remedy: use of force incidents in the CPSU, the investigation of those incidents by the Investigation Division, and the discipline of staff members against whom charges have been recommended; and the formulation and implementation of policies and procedure which are, or should be, operative in the CPSU. In addition, the consultants will "assess the adequacy of defendants' use of force policy, staffing and supervision practices, training programs, and any other practices addressed by [the] Stipulation and Order which are intended to insure that the plaintiff class is reasonably safeguarded from injury." The consultants will submit written reports to the Court and parties every 90 days for the first year, and thereafter every 120 days, assessing defendants' compliance with the Stipulation and Order and reporting to them "any other matters which affect the security and safety of the plaintiff class." See, Stipulation ¶¶88-95.

18. Monitoring, Enforcement, Continuing Jurisdiction

The Stipulation will remain in effect for two years after which the defendants may move to terminate. Under the Stipulation, the Court will terminate the the Stipulation on defendants' motion unless the Court makes written findings that the relief "remains necessary to correct a current and ongoing violation" of the federal right, extends no further than necessary to correct such a violation, and is narrowly drawn and the least intrusive means to correct such violation."

See, Stipulation, ¶ 103.

While the Stipulation remains in effect, the City will provide the expert consultants, as well as plaintiffs' counsel, with relevant records and documents on an agreed-upon schedule, either bi-weekly or monthly. See, Stipulation ¶¶ 91, 95, 97.

The Stipulation will apply to any facility, including any areas of facilities, housing the CPSU if it is relocated or expanded, but not to other existing punitive segregation areas that are not a relocation or expansion of the CPSU. See, Stipulation ¶ 98.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Stipulation, attached hereto, is approved and adopted as a Judgment of this Court.


UNITED STATES DISTRICT COURT JUDGE

Dated: New York, New York
July 10, 1998