

1989 WL 135912

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United States District Court, S.D. New York.

Charles FISHER, et al., Plaintiffs,
v.
Richard J. KOEHLER, et al., Defendants.

No. 83 CIV. 2128(MEL). | Nov. 8, 1989.

Opinion

LASKER, District Judge.

*1 The decree entered in this case on July 14, 1989 provides at ¶ 29: “Defendants shall maintain a single reporting and filing system for all uses of force at CIFM.” 718 F.Supp. 1111, 1125 (S.D.N.Y.1989).

In accordance with the requirements of the decree, the defendants have drafted a new Use of Force Policy (“Draft Directive 5004”) (submitted Aug. 24, 1989) for which they now seek approval. Plaintiffs oppose approval of the present draft primarily on the grounds that it does not comply with the requirement for a “single reporting and filing system for all uses of force” because it provides for two categories of reports designated as “Class A” and “Class B”.

In fact, Draft Directive 5004 does provide for a single reporting and filing system in that it requires that every use of force shall be reported by the facility to the Central Communications Center (“CCC”) and to the Investigations and Discipline Unit (“IAD”). However, Draft Directive 5004 also provides, as indicated above, for a division of all reported uses of force into Class A and Class B cases. The Class A designation is intended to cover cases which heretofore have been designated and continue to be designated “unusual incidents”. At least one of the reasons for creating this category is to comply with regulations of the State Correctional authorities which require the reporting of such incidents to the State. In general, the distinction between Class A and Class B cases is that the Class A cases involve more serious injury than do those in Class B.

The plaintiffs’ apprehension, based on the pretrial record at CIFM, is that cases designated Class B will not be

adequately investigated or remedied. The plaintiffs are also concerned that the criterion used to distinguish Class A from Class B cases is too close to the visible or medically “detectable injury” criterion, a criterion which the record shows as having been abused in the past.

The defendants assert that the plaintiffs’ apprehensions are unwarranted and that, in any event, those apprehensions have to do with the thoroughness or superficiality of the investigation and not with the structure for reporting. They point out that under the new proposed system, the initial reporting requirements for all use of force incidents will be much more comprehensive and searching than was previously the case and contend that it will result in adequate investigation of all cases. It is the defendants’ position that the Class A investigation, if it does more than the Class B investigation, will simply go beyond the requirements of the decree, but that, in any event, the Class B investigation will meet the requirements of the decree.

In this early stage of compliance procedures, it is my view that if a proposal of the defendants is rationally based and on its face an acceptable method of curing the ill to which the decree is directed, it should be approved by the Court subject, of course, to examination for actual compliance at a later date. I conclude that Draft Directive 5004 meets those criteria with one exception discussed below. In reaching this conclusion, it is important to observe, however, that my doing so is not intended in any way to sanction superficial investigations or inadequate remedies for excessive use of force.

*2 The exception referred to above is as follows: Directive 5004 as drafted defines a Class A use of force incident to include “*b. the use of a weapon (firearm or baton) or the use of a chemical agent, regardless of injury.*” Draft Directive 5004 at 11. Plaintiffs contend that this definition should at the least be modified so that it includes any incident in which any sort of striking force is used or alleged including punches, kicks, or other blows or in which there is any injury. I am persuaded that the definition should be broadened to read as follows: “The use of a weapon or any object (including firearm, keys, flashlight) *or* the use of a chemical agent, *regardless of injury.*”

As so amended, Draft Directive 5004 is approved.