

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROLYN LANGLEY, ALBERTA SUCCAW,
SHIRLEY FURTICK, and CELESTE CLECKLEY,
on behalf of others similarly situated,

Plaintiffs,

STIPULATION
84 Civ. 5431 (LBS)

-against-

THOMAS COUGHLIN III, Commissioner, New
York State Department of Correctional
Services, et al.,

Defendants.

WHEREAS, plaintiffs commenced this action on behalf of
themselves and all others similarly situated on or about July
31, 1984, against, inter alia, the Commissioner of the New York
State Department of Correctional Services, the Superintendent
of the Bedford Hills Correctional Facility (hereinafter
referred to as "BHCF"), and other employees of the New York
State Department of Correctional Services (hereinafter referred
to as "DOCS") in their official capacities, (all of the said
defendants hereinafter referred to collectively as the "DOCS
defendants") for declaratory and injunctive relief concerning
the provision of mental health services to inmates confined to
the disciplinary Special Housing Unit (hereinafter referred to
as "SHU") at BHCF, based on allegations that defendants' acts,
policies and procedures violated plaintiffs' rights under the
Fifth, Eighth, and Fourteenth Amendments to the United States
Constitution; and

WHEREAS, the defendants have denied that the provision of mental health services to inmates confined to SHU at BHCF violated plaintiffs' rights under United States Constitution; and

WHEREAS, this action was certified as a class action on behalf of all prisoners confined to SHU at BHCF, by memorandum endorsement dated December 4, 1985, and subsequent order filed on or about December 27, 1985; and

WHEREAS, the hearing on the preliminary injunction was consolidated with the trial on permanent injunctive relief pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, and the damages claims were severed from the said consolidated hearing, on November 20, 1986; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have come to an agreement that a final resolution, without further litigation, of the injunctive portion of this action with respect to the mental health claims is appropriate; and

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by defendants of a violation of any law, regulation, rule or order, or of any admission as to liability for attorneys fees and costs, or of an agreement by defendants that the provisions of this Stipulation set forth the minimum standard for mental health care required by the United States Constitution or New York law;

IT IS STIPULATED AND AGREED therefore between plaintiffs and the DOCS defendants that all claims for declaratory and injunctive relief on the mental health claims (specifically defined as all claims for relief set forth in the Pre Trial Order filed in December 1986, except for the claims for relief set forth in sections 6.B.2 and 6.C.1 thereof) are hereby withdrawn with prejudice as against the DOCS defendants; and

IT IS FURTHER STIPULATED AND AGREED therefore between plaintiffs and the DOCS defendants that the DOCS defendants, as well as their successors, agents, employees, and assigns, shall, at BHCF:

1. Provide access to a quiet, clinically appropriate room, where confidentiality may be maintained, on SHU, for use by clinical staff of the New York State Office of Mental Health (hereinafter referred to as "OMH"), for the purpose of meeting with inmates confined to SHU, as clinically appropriate. What is presently referred to as the SHU office/interview room is appropriate and will be used for this purpose;

2. Permit OMH staff at BHCF to have access, for treatment purposes, to the disciplinary records of inmates placed on SHU;

3. Make DOCS staff at BHCF available so that they may receive training from OMH, and specifically, will make BHCF SHU security staff available for training on an annual basis, and executive staff and security staff at the rank of captain on a periodic basis, if OMH offers such training; and

4. The Superintendent of BHCF shall review and give appropriate consideration to all recommendations made, pursuant to sections IV.A.5 and 6 of the Stipulation entered into in this case between plaintiffs and OMH (hereinafter "the OMH Stipulation"), to the Superintendent by OMH staff regarding inmates placed on SHU. The Superintendent shall retain full discretion to determine the site of housing for all BHCF inmates. An inmate who wishes to challenge any decision by the Superintendent made in accordance with this paragraph and paragraph IV.C. of the OMH Stipulation, may do so in any manner provided for by law.

IT IS FURTHER STIPULATED AND AGREED, between plaintiffs and the DOCS defendants, that

A. The terms of this Stipulation shall apply to plaintiff-intervenor, and nothing in this section shall be construed as to in any way exclude plaintiff-intervenor from the relief granted to the class by the terms of this Stipulation;

B. Defendants shall provide plaintiff-intervenor with a treatment plan consistent with the March 11, 1987 letter of agreement between Assistant Attorney General Ann Horowitz and William Gibney of Prisoners' Legal Services of New York, and the testimony of Daniel Abreu and Superintendent Elaine Lord, given in this Court on April 16, 1987 and April 22, 1987, respectively, all annexed hereto as Appendix A;

C. Nothing in this section shall be construed as preventing mental health professionals in the exercise of their professional judgment from altering the treatment plan for plaintiff-intervenor from time to time to meet the programmatic and psychological needs of plaintiff-intervenor, nor shall anything in this section be construed as preventing the Superintendent of BHCF from taking any action necessary to maintain prison security and discipline.

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By:

Dated:

July 23, 1987

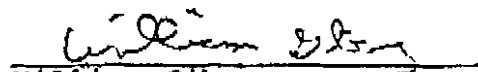

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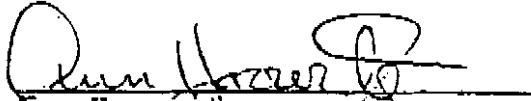
July 23, 1989


William Gibney
Ruth N. Cassell

ROBERT ABRAMS
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State of New York
Attorney for Defendants
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New York, New York
(212) 341-2567

By:

Dated: July 23, 1987


Ann Horowitz
Assistant Attorney General

SO ORDERED:

HON. LEONARD B. SAND
United States District Judge

Dated: New York, New York
August , 1987

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROLYN LANGLEY, ALBERTA SUCCAW,
SHIRLEY FURTICK, and CELESTE CLECKLEY,
on behalf of others similarly situated,

Plaintiffs,

STIPULATION
84 Civ. 5431 (LBS)

-against-

THOMAS COUGHLIN III, Commissioner, New
York State Department of Correctional
Services, et al.,

Defendants.

WHEREAS, plaintiffs commenced this action on behalf of themselves and all others similarly situated on or about July 31, 1984, against, inter alia, the Commissioner of the New York State Office of Mental Health (hereinafter referred to as "OMH"), and other officers and employees of OMH in their official capacities (said defendants hereinafter referred to as the "OMH defendants") for declaratory and injunctive relief concerning the provision of mental health services to inmates confined to the Special Housing Unit ("SHU") at Bedford Hills Correctional Facility ("BHCF"), based on allegations that defendants' acts, policies and procedures violated plaintiffs' rights under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution; and

WHEREAS, the defendants have denied that the provision of mental health services to inmates confined to SHU at BHCF violated plaintiffs' rights under the United States Constitution; and

WHEREAS, this action was certified as a class action on behalf of all prisoners confined to SHU at BHCF, by memorandum endorsement dated December 4, 1985, and subsequent order filed on or about December 27, 1985; and

WHEREAS, the hearing on the preliminary injunction was consolidated with the trial on permanent injunctive relief pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, and the damages claims were severed from the said consolidated hearing, on November 20, 1986; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have come to an agreement that a final resolution, without further litigation, of the injunctive portion of this action with respect to the mental health claims is appropriate; and

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by defendants of a violation of any law, regulation, rule or order, or of any admission as to liability for attorneys fees and costs, or of an agreement by defendants that the provisions of this Stipulation set forth the minimum standard for mental health care required by the United States Constitution or New York law;

IT IS STIPULATED AND AGREED therefore between plaintiffs and the OMH defendants that all claims for declaratory and injunctive relief on the mental health claims (specifically defined as all claims for relief set forth in the Pre Trial Order filed in December 1986, except for the claims for relief set forth in sections 6.B.2 and 6.C.1 thereof) are hereby settled on the following terms:

I. CLINICAL PRESENCE ON SHU

A. A qualified mental health professional will be present on SHU a minimum of ten (10) hours per week, which shall include a daily presence on SHU five days out of every seven days. However, in the event that there are so few inmates on SHU during a particular time period that this minimum presence would be a clinically ineffective use of clinician time, the Unit Chief retains discretion to reduce the number of hours of presence on SHU for that time period only; there shall nonetheless be a daily presence on SHU five days out of every seven days.

B. The services provided on SHU by OMH pursuant to paragraph I.A. shall not preclude any other clinically appropriate treatment, as determined by the treatment team.

C. A qualified mental health professional for the purposes of this provision shall include anyone trained in therapeutic and diagnostic skills. A nurse's rounds for purposes of distribution of medication shall not be considered as part of the ten hours of OMH presence referred to herein.

D. A quiet, clinically appropriate room, where confidentiality may be maintained, on SHU, shall be used by the mental health professional(s) described in paragraph I.A, for the purpose of meeting with inmates confined to SHU, as clinically appropriate. What is presently referred to as the SHU office/interview room is appropriate and will be used for this purpose.

E. The mental health professional(s) described in paragraph I.A. shall have full access to OMH records and DOCS disciplinary records concerning the inmates on SHU.

F. An inmate in SHU may be seen by the mental health professional(s) described in paragraph I.A. either at her cell door, within her cell, or in the room described in paragraph I.D. The OMH clinician will make a clinical judgment, which takes into consideration an inmate's request or need for privacy, as to the clinically appropriate site for the interview.

G. Requests by the OMH mental health professional(s) to see inmates, as described in ¶ I.F, shall be scheduled and implemented by DOCS personnel subject to security considerations.

II. RECORD KEEPING

A. OMH shall implement a new case record package to be used on the Satellite Unit. Such implementation shall be commenced within three months, and shall be complete by one year, from the date that this stipulation is "so ordered" by the Court. The new case record package is appended hereto as Appendix A.

B. Appendix A may be amended as necessary by OMH, and such amendments shall be deemed to be included in Exhibit A, except such amended case record package shall minimally include forms for identifying information, patient data, initial treatment plan and evaluations, referrals, combined and

physical assessments, consents for release of information, treatment plan review, progress notes, medication profile, dispositions, transfers and discharges, including the first and last discharge summaries of past psychiatric hospitalizations.

C. For each patient admitted to OMH service, all reasonable efforts will be made to obtain the discharge summary from each patient's first and last psychiatric hospitalization prior to such patient's current incarceration, and those discharge summaries will be included in the patient's OMH file. The record package described in ¶ II.A. will include consent forms for the release of prior psychiatric records.

D. All OMH records shall be legible.

III. TRAINING

A. OMH shall offer annual training for all correctional officers assigned to SHU regarding issues related to treatment and management of SHU inmates with mental health needs.

B. The training referred to in ¶ III.A. shall be pursuant to a written syllabus, appended hereto as Appendix B.

C. All OMH clinical staff shall be trained regarding the effects of isolation and/or SHU on inmates.

D. OME shall offer training to DOCS personnel who have authority to place inmates in SHU prior to a hearing, i.e., DOCS personnel of a rank of captain or higher, regarding recognition and appropriate referral of inmates with apparent mental health problems, and regarding the use of observation cells.

IV. TREATMENT RECOMMENDATIONS FOR SHU INMATES

A. OMH shall perform a mental health evaluation for all inmates placed on SHU as soon as possible after an inmate's placement on SHU, but in any event no later than one business day after placement on SHU. The evaluation will be recorded on a form to be developed by OMH. Any form containing a recommendation to the Superintendent will be forwarded to the Superintendent; all other forms will be retained and will be available to the Superintendent on request. Elements of the evaluation shall include:

1. A personal interview with the inmate, except that if the clinician attempts to interview an inmate and the inmate refuses, the refusal shall be honored and noted on the evaluation form;

2. Familiarity with, or review of, the OMH records for those inmates who are OMH patients;

3. Eliciting information as to the length of SHU time imposed;

4. A mental status examination, which shall, at a minimum, comment on the inmate's physical appearance, any apparent neurological deficits, the inmate's manner of relating (mood and the quality, rhythm and content of speech), estimated intelligence, insight, judgment and functioning of cognitive ability, and shall also comment on any present evidence of current suicidal or self-destructive ideation, psychosis, or other emergent psychiatric condition;

5. In the event that the OMH mental health professional determines that an inmate who is placed on SHU is in need of mental health treatment, the mental health professional shall make appropriate treatment recommendations. Such recommendations may include a recommendation to the Superintendent about the appropriate site of such treatment. Any such recommendations concerning an appropriate site for treatment may include the provision of mental health services on SHU, on the Satellite Unit, on the Intermediate Care Program ("ICP") or at Central New York Psychiatric Center ("CNYPC");

6. The OMH mental health professional will also report to the Superintendent any clinical conclusion he or she has made that an inmate's current placement on SHU is having such a deleterious effect on an inmate's mental status that a change in housing is appropriate, and shall make any clinically appropriate recommendations concerning an alternative site for any necessary treatment.

B. The mental health professional referred to in section I of this Stipulation will monitor inmates placed on SHU on a continuing basis, as clinically appropriate, and shall document all formal clinical contacts in a professionally appropriate manner.

C. The Superintendent shall retain full discretion to determine the site of housing for all inmates, including inmates subject to § IV.A. 5 and 6, above.

D. An inmate who wishes to challenge any decision by the Superintendent, made in accordance with §§ IV.C., may do so in any manner provided for by law.

V. COMPLIANCE SUPERVISION

A. Implementation of the terms of this stipulation shall be supervised as set forth below.

B. A psychiatric expert (hereinafter referred to as "the Expert") shall be appointed by the consent of the parties for the purpose of supervising compliance. Payment of the Expert's fees by defendants shall be subject to obtaining all necessary approvals required by state law. The Expert shall give written notice to plaintiffs' counsel and defendants' counsel of the date that the supervision of compliance commences.

C. The Expert shall:

1. Audit a random sample of the charts and treatment plans of OMH patients. The audit shall include at a minimum, fifty (50) percent of the OMH patients who have been placed on SHU within each period for which a report is due under §§ V.F and V.G;

2. Conduct meetings, at least once during the first year of supervision and once during the second year of supervision, and at any other time(s) as he deems necessary,

- a. with BHCF administration;
- b. with OMH staff;
- c. with DOCS staff assigned to SHU;
- d. with SHU patients.

D. A mechanism will be provided to ensure written confidential communications from OMH patients to the Expert, so that the Expert may make such review as he or she deems necessary at the next scheduled site visit.

E. Supervision shall include site visits to the facility by the Expert or his or her designee. The number and frequency of site visits will be as determined by the Expert as being necessary to assure the appropriate supervision of compliance, but in any event shall occur once during each time period at the end of which a report is due pursuant to §§ V.F and V.G.

F. The Expert shall file a report at the end of three, six and eleven months from the commencement of the supervision of compliance. The eleventh month report shall include findings regarding defendants' compliance during the first year period.

G. 1. In the event the Expert finds substantial compliance at the end of the first year, limited supervision shall continue for a second year. The eleventh month report provided for in § V.F shall, in this event, contain recommendations concerning the nature and extent of the limited supervision for the second year, but such limited supervision shall at a minimum include the filing of a six month and eleventh month report by the Expert during the second year.

2. In the event the Expert finds that the defendants are not in substantial compliance with the terms of the Stipulation, then full supervision shall continue during the second year, pursuant to the provisions of §§ V.C through V.F.

3. The eleventh month report to be filed during the second year shall contain findings regarding defendants' compliance during the second year.

4. Unless extended by the Court pursuant to ¶ VI.B.4 of this Stipulation, the supervision of compliance shall terminate at the end of two years from the time that the supervision of compliance commences.

H. 1. Plaintiffs and defendants shall have an opportunity to comment on the findings contained in the eleventh month reports for the first and second year within 30 days of receiving those reports, and if the comments submitted by either party change the Expert's findings and recommendations, the Expert shall file an amended report reflecting those changes within 30 days of receiving the parties' comments.

2. The provisions of ¶¶ V.F, V.G and V.H.1 notwithstanding, either party may move to vacate the findings and recommendations issued by the Expert, and any such motion shall be determined upon a hearing by the Court.

I. The Expert shall not testify as a psychiatric expert on behalf of either party at the hearing provided for by ¶ V.H.2, but may testify as the Court's expert.

J. During any period of compliance supervision pursuant to this stipulation, the psychiatric experts of the plaintiff-class and of the defendants shall have full access to all OMH records of the plaintiff class and all OMH records reviewed by the Expert.

VI. JURISDICTION AND MOTIONS

A. The Court shall retain jurisdiction for the purpose of enforcing the terms of this Stipulation, until such time as the Court may grant a motion by defendants, pursuant to ¶ VI.C of this Stipulation, to terminate jurisdiction and be relieved of the terms of this Stipulation.

Nothing in this Stipulation shall preclude either party from making any motion permitted by Rule 60 of the Federal Rules of Civil Procedure, on notice and based on proof of changed circumstances supporting the relief requested, except that any motion specified in ¶ VI.B shall be made in accordance with the procedures specified therein.

B. Plaintiffs' Motions

Nothing in this stipulation shall preclude the plaintiff-class from moving for an extension of the period of compliance supervision, or for any other appropriate relief, in accordance with the procedures set forth below.

1. For the purposes of this Stipulation, and any motion for relief as provided for herein based upon defendants' alleged compliance or non-compliance with the substantive requirements of this Stipulation, defendants shall be considered to be in "compliance" with the provisions of this Stipulation unless plaintiffs prove that defendants' failures or omissions to meet the terms of this Stipulation were not minimal or isolated but were substantial and sufficiently frequent or widespread as to be systemic.

2. If plaintiffs believe that defendants are not in compliance with the terms of this Stipulation, as defined in ¶ VI.B.1, plaintiffs' counsel shall bring the facts supporting that belief to the attention of defendants' counsel prior to the filing of any motion to enforce or extend the terms of this Stipulation. Upon receipt of plaintiffs' notice by defendants' counsel, defendants shall either remedy the alleged problem and so notify plaintiff's counsel in writing or provide a written explanation within 30 days. At the end of such period, if the issue is not resolved, plaintiffs may seek relief from the Court.

3. If plaintiffs believe defendants are not in compliance with the terms of this Stipulation based on facts involving an individual plaintiff, the procedures set forth in ¶ VI.B.2 shall be followed, except that defendants shall respond within 5 business days. The provisions of this paragraph shall not be construed as extending any substantive provision of this Stipulation. If defendants believe that plaintiffs are seeking review of individual cases in a manner or to an extent that constitutes an abuse, defendants may, on notice, move this Court for modification or elimination of the provisions of this paragraph. The terms of this paragraph shall terminate automatically upon the termination of the period of compliance supervision.

4. The Court, upon motion and based on proof of defendants' failure to comply with this Stipulation as defined

in ¶ VI.B.1, may alter the frequency of reports during the periods set forth in ¶¶ V.F and V.G, may extend such periods beyond the two years specified in ¶¶ IV.F and IV.G, by periods of no more than one year for each such extension, and may make such other orders as are consistent with and reasonably necessary to ensure compliance with this Stipulation.

C. Defendants' Motions

At the conclusion of two years from the date that the supervision of compliance commences, or at any time thereafter, defendants may move the Court, on notice, to terminate the Court's continuing jurisdiction, and to be relieved from the terms of this Stipulation, such that the terms of this Stipulation shall no longer bind the defendants, their successors, agents, assigns and those acting in concert with them, except that defendants, their successors, agents, assigns and those acting in concert with them, shall continue to be required to provide a mental health care system that complies with the requirements of the United States Constitution.

VII. SEPARATE PROVISIONS FOR PLAINTIFF-INTERVENOR

A. The terms of this Stipulation shall apply to plaintiff-intervenor, and nothing in this section shall be construed as to in any way exclude plaintiff-intervenor from the relief granted to the class by the terms of this Stipulation.

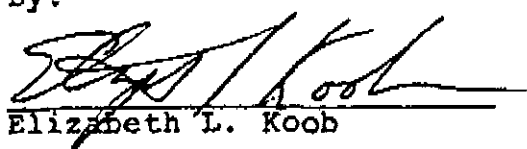
B. Defendants shall provide plaintiff-intervenor with a treatment plan consistent with the March 11, 1987 letter of agreement between Assistant Attorney General Ann Horowitz and William Gibney of Prisoners' Legal Services of New York, and the testimony of Daniel Abreu and Superintendent Elaine Lord, given in this Court on April 16, 1987 and April 22, 1987, respectively, all annexed hereto as Appendix C.

C. Nothing in this section shall be construed as preventing mental health professionals in the exercise of their professional judgment from altering the treatment plan for plaintiff-intervenor from time to time to meet the programmatic and psychological needs of plaintiff-intervenor, nor shall anything in this section be construed as preventing the Superintendent of BHCf from taking any action necessary to maintain prison security and discipline.

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By:

Dated: July 23, 1987


Elizabeth L. Koob

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William Gibney
Ruth N. Cassell

Dated:

July 23, 1987

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By:

Arn Horowitz

Arn Horowitz
Assistant Attorney General

Dated:

July 23, 1987

SO ORDERED:

HON. LEONARD B. SAND
United States District Judge

Dated: New York, New York
August , 1987