

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CLERK, U. S. DIST. COURT

STEPHEN G. HOWARD, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 GARY L. BASS, et al.,)
)
 Defendants.)
)
)

Civil Action No.
84-0322-R

SETTLEMENT AGREEMENT

BETWEEN PLAINTIFFS AND DEFENDANTS BASS, ET AL.

Plaintiffs and all defendants who are present or former employees of the Virginia Department of Corrections hereby agree to the settlement of this action on the following terms. This agreement is binding upon defendants, their successors, agents and employees. As used herein, the term "DOC" means the Virginia Department of Corrections.

1. The DOC shall pay to plaintiffs the sum of eighty-thousand dollars (\$ 80,000) in satisfaction of plaintiffs' claims in this action, their reasonable attorneys' fees and costs.

2. In consideration of the payment set forth in ¶ 1 and the provisions set forth in the succeeding paragraphs hereof, plaintiffs shall release defendants from liability arising out of their claims in this action, their reasonable attorneys' fees and costs.

3. Plaintiffs agree to the entry by the Court of an Order voluntarily dismissing this action with prejudice. Defendants agree to the entry by the Court of an Order voluntarily dismissing their counterclaims in this action with prejudice.

4. The DOC shall not use any form of chemical agent affecting the respiratory system against plaintiff Stephen Howard while he is confined in a cell, and shall take all feasible steps to prevent the further exposure of plaintiff Stephen Howard to any form of such chemical agent at any other time.

5. The DOC shall enter and maintain in plaintiff Stephen Howard's medical record (a) notations reflecting that he suffers from obstructive airways disease, and (b) instructions that no form of chemical agent affecting the respiratory system shall be used against plaintiff Stephen Howard while he is confined in a cell, and that all feasible steps shall be taken to prevent the further exposure of plaintiff Stephen Howard to any such chemical agent at any other time.

6. The DOC shall provide plaintiff Stephen Howard with appropriate medical treatment for his lung disease, including the scheduling of an appointment within 30 days of the dismissal of this action with Dr. R. Paul Fairman of the Medical College of Virginia. Any recommendations for treatment made by Dr. Fairman following that evaluation shall be subject to review and approval by the Chief Physician of the DOC. The DOC and plaintiffs agree to use their best efforts to resolve any disputes that may arise under this paragraph in a manner that assures plaintiff Stephen Howard appropriate medical treatment.

7. The DOC shall promulgate systemwide guidelines that include the following provisions:

"Except when there is immediate danger of physical violence by an inmate(s) towards employees, inmates, or other persons, or in the event of an attempted escape, the use of gas by certified staff shall be authorized only by the Warden/Superintendent or official designee. A list, ranking all official designees, shall be maintained and posted after being signed by the Warden/Superintendent with copies given to the individuals so authorized. Any use of chemical agents and the authorization thereof shall be documented in accordance with DOC guidelines."

"Tear gas (CN) shall be authorized in the following circumstances.

- A. In self-defense or in the defense of other persons.
- B. To quell a disturbance that is likely to develop into a serious disorder or riot when lesser methods prove ineffective or are not feasible.
- C. To prevent an escape.
- D. To control an inmate or inmates when it is likely that other methods would cause injury or death to the persons involved, or would result in a major disturbance or serious property damage.
- E. To support efforts to remove an inmate from a cell when the inmate has established a barricade in the cell, or is in possession of a weapon which could result in self-harm or harm to another person."

"Repeated use of gas within a short period of time to control an inmate shall not be permitted. In using an aerosol propelled chemical agent, the following procedures shall be followed.

- A. The stream of agent shall be directed at an individual in the manner prescribed by the manufacturer.
- B. The agent should not be used at distances of less than two (2) feet, except in emergencies.

- C. The stream should be discharged in short bursts (approximately two (2) seconds). If control is not achieved within fifteen (15) seconds after the first firing, a second burst may be discharged.
- D. If two (2) bursts of agent are ineffective, sufficient correctional staff shall be employed to subdue the inmate and properly restrain him/her"

"Any inmate against whom a chemical agent has been used shall be permitted to shower and change clothes as soon as possible after the incident."

"No inmate shall be returned to an area where a chemical agent has been used until such area has been fully decontaminated, and any such area shall be decontaminated as soon as possible with thorough ventilation, including the use of fans, if necessary."

8. The DOC shall require training of all security staff in the use of chemical agents through mandatory training given to new officers and through retraining of existing correctional staff, the latter training to be begun on or about June 1, 1985 and to be completed on or about June 30, 1986. Such training shall include instruction as to the health hazards associated with the use of chemical agents, necessary first aid and medical care, and the methods of decontaminating persons and areas exposed to chemical agents.

9. The DOC shall provide counsel for plaintiffs with the proposed curriculum and course materials to be used in conjunction with the training program described in ¶ 8, supra, as soon as possible after dismissal of this action for review by plaintiffs' experts, and shall respond in writing to any comments which plaintiffs' experts may submit concerning the proposed curriculum and course materials.

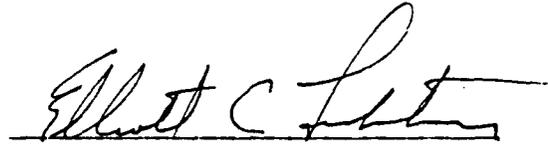
10. The DOC agrees to include as part of their training materials the publication Health Effects of Tear Gases (CN & CS: Implications for Law Enforcement Personnel.

11. The DOC agrees to prohibit the use of any chemical agent which includes chlorbenzylmalononitrile (CS) against any inmate confined within DOC.

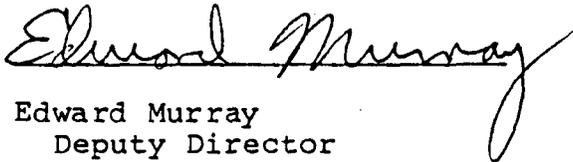
Witness the following signatures and seals:



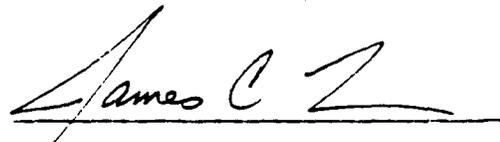
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