

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES JACKSON, et al. :  
on behalf of themselves and :  
others similarly situated :  
PLAINTIFFS, :  
vs. :  
JANIE POULLARD, et al., :  
DEFENDANTS. :  
-----X

CV 85-2384 (AS)

STIPULATION  
MODIFYING THE  
CONSENT JUDGMENT

WHEREAS the parties entered into a Stipulation of Settlement, dated October 24, 1991, which was approved by the court, after notice to the class, on November 26, 1991, as an Order Approving Stipulation of Settlement and Entry as Consent Judgment, and

WHEREAS the parties have agreed to modify certain terms of the Consent Judgment in order to facilitate effective investigations of use of force incidents by the Integrity Control Officer at the Brooklyn House of Detention ("BHD"), and to extend the time for plaintiffs' monitoring of the Consent Judgment.

IT IS HEREBY STIPULATED AND AGREED, subject to the Court's approval and entry as an Order, that paragraphs 17-20 and 28-30 of the Stipulation of Settlement are hereby modified to read as follows:

## INVESTIGATIONS

17. The facility investigations of all uses of force at BHD, as required by ¶ 14-16, shall be conducted by an Integrity Control Officer (an Assistant Deputy Warden ("ADW") or civilian supervising investigator who shall report to the director of the Department's central Investigations Division, not to the Warden of the institution, and shall be rotated every 180 days).

18. Investigations of uses of force or alleged uses of force at the facility level by the Integrity Control Officer, and by the Department's central Investigations Division, shall be consistent with the policies and procedures contained in the Department's directives and training materials on facility investigations and in the Manual on the Conduct of Use of Force Investigations, and shall include: (1) comprehensive identification and private interviewing of all witnesses, both inmate and staff; (2) full review of relevant medical data, including relevant outside hospital reports, where feasible after having made good faith efforts to obtain such reports; (3) explicit conclusions as to what force was used, for what reason, and whether the force was utilized in accordance with existing Department policies, including whether alternatives or lesser force could have been used; (4) resolution, where possible, of disputed matters, with appropriate reference to particular evidence in the investigative file; (5) consideration of any information about involved staff which may be relevant to the investigation, including prior involvement in use of force incidents, as reflected in Directive 5003 summaries, institutional records, litigation records or

employee performance service records. The Integrity Control Officer shall be required to prepare a narrative written report of his/her findings (the Investigating Supervisor's Report, Part B of the Use of Force Report, or its successor reporting document) and to complete a checklist, annexed as Appendix C, to ensure that all pertinent questions are addressed. The Integrity Control Officer's report and checklist shall be forwarded to the Warden for his/her review, as required by ¶ 14 herein.

19. The Department's central Investigations Division shall conduct, consistent with the Department's Manual on the Conduct of Use of Force Investigations, reviews of all use of force and alleged use of force incidents at BHD and independent investigations of incidents as required by the Manual. Any modifications of this Manual, including, but not limited to, any changes in the criteria for determining which incidents shall be independently investigated by the central Investigation Division, which are approved by the Court in Fisher v. Koehler, shall be implemented at BHD.

20. Independent investigations performed by the Department's central Investigations Division and reviews of facility investigations by the central Investigations Division shall, in addition to the requirements provided for in the Manual on Conducting Use of Force Investigations, assess the adequacy of the BHD investigations, and shall include findings with respect to whether the facility investigation: (1) obtained and accurately characterized the statements of all witnesses; and (2) appeared biased or failed to evaluate staff and inmate accounts in an even-handed way.

## MONITORING

28. The Court shall have continuing jurisdiction to enforce the terms of this Decree. On or after July 1, 1996 defendants may move the court to modify or terminate the Decree.

29. Plaintiffs' counsel shall be permitted to monitor defendants' compliance with the terms of the Decree as follows:

(i) Beginning January 1, 1992, and for the next three years, plaintiffs' counsel shall be permitted access four times per year to the following records and documents at the Brooklyn House of Detention and/or the Department's central office, for the purpose of inspection and copying (at their expense);

(a) injury to inmate reports created at BHD along with the injury report log;

(b) the BHD infraction log;

(c) unusual incident reports and attachments, use of force reports, and all other reports or investigative summaries concerning violent incidents at BHD;

(d) the "CCC logs" of unusual incidents at BHD;

(e) the security incident log book or other log listing violent incidents at BHD that were not treated as unusual incidents;

(f) documentation concerning BHD officers created pursuant to defendants' Directive 5003;

(g) The Department's Central Investigation Division files concerning use of force incidents at BHD, including those involving failure properly to report uses of force;

(h) memoranda of complaint for misuse of force or failure properly to report force filed against BHD officers;

(i) disciplinary charges for misuse of force or failure properly to report force issued against BHD officers;

(j) dispositions of disciplinary charges of misuse of force or failure properly to report force entered against BHD officers;

(k) records of command discipline imposed for misuse of force or failure properly to report force imposed against BHD officers;

(l) a copy of any documents created reflecting changes in policy or practice with regard to any of the matters addressed in this order; and

(m) a copy of any summons and/or complaint or Notice of Claim served upon the City of New York and/or the Department of Correction and/or any BHD employee alleging excessive or unnecessary use of force on the part of any BHD employee.

(ii) From January 1 1995 through January 1, 1996 plaintiffs' counsel shall have access to the documents listed in the preceding sub-paragraph once every six months for inspection and copying.


30. (a) On or after July 1, 1996, in the event defendants file a motion to modify the Judgment or terminate jurisdiction, they shall provide plaintiffs' counsel with access to the documents listed in paragraph 29 for the six month period which preceded the date the motion is filed. In the event defendants file such a motion, nothing shall preclude the parties from requesting access to additional documents, pursuant to the Fed-

eral Rules of Civil Procedure and/or an order of the Court, in connection with this motion.

(b) In the event defendants fail to move for modification of the Judgment or termination of jurisdiction by July 1, 1997 nothing shall preclude plaintiffs from thereafter requesting that the Court grant them access to relevant records and documents maintained by defendants. Defendants reserve the right to oppose any such request.

Dated: New York, New York  
August 16, 1993

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