

SETTLEMENT AGREEMENT

When implemented, the following agreement will resolve the United States' investigation of allegations of use of excessive force against inmates at the Maricopa County Jails. That investigation was commenced on August 8, 1995, under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §§ 1997 et. seq.

Throughout the investigation the Maricopa County Sheriff's Office (MCSO) has cooperated fully with the United States's requests for information and access to MCSO facilities, staff and inmates and will continue to do so. That cooperation was essential in addressing and resolving the issues raised by the investigation.

During the course of the investigation, the United States interviewed numerous inmates and staff and reviewed thousands of jail records and documents. As part of the investigation a report and findings letter were issued for review by the MCSO. The Sheriff's Office strongly believed that the initial report and findings letter were wrong, reflected inaccurate opinions by the single investigator designated by the United States, and were based upon either incomplete information or information which was misunderstood by the investigator. MCSO maintains that individual instances of excessive use of force were identified, investigated, and addressed by the MCSO. The discipline meted out included demotion, suspension, discharge, and criminal prosecution.

MCSO disputes that a pattern or practice of excessive force existed or exists at the jails. Nevertheless, MCSO has implemented on its own initiative a number of programs designed to reduce the potential for use of excessive force. Throughout the course of the investigation, MCSO has displayed a genuine willingness and interest in implementing changes that seek to ensure that the jails are safe.

The MCSO strongly protested the initial investigation and findings report and as a result the United States and MCSO agreed upon a new investigator, George Sullivan, to conduct a complete and thorough review of the Department's facilities.

As a result of this supplemental investigation, the United States and MCSO have arrived at this agreement in order to reflect the policies and procedures upon which they mutually agree. These policies and procedures are intended to provide for the effective and efficient management of the Maricopa County detention system while at the same time assuring the constitutionally guaranteed rights of the inmates. A number of the policies and practices reflected in this agreement represent policies and practices which have been in effect before August 8, 1995.

The United States will conduct a review of MCSO's implementation of this agreement six months after it is executed. This agreement does not relate to the United States' CRIPA investigation of medical and mental health care at the Maricopa County jails.

I. PHYSICAL PLANT

A. Madison Intake.

1. MCSO will make its best efforts to continue to process initial bookings at the Avondale and Southeast facilities at their current levels, and will encourage all agencies responsible for bringing arrestees for initial bookings to use those facilities where appropriate.

2. MCSO will operate and maintain the area currently under construction for the processing of detainees brought by the Phoenix police department outside and independent of Madison intake. The projected completion date for the new area is December 24, 1997.

3. MCSO has in the past advocated for a new intake facility as part of new jail construction, and will continue its best efforts to advocate for that new intake facility.

4. Between the date of this agreement and the commencement of operation of a new intake facility, MCSO will continue to devise additional measures to reduce the number of inmates entering Madison intake, to decrease the time inmates reside in Madison intake, and to reduce congestion in Madison intake.

B. In-Tents and Con-Tents.

MCSO will continue to implement the following measures. Tents will be kept in good condition; necessary repairs will be made in 3-5 working days. Inmates assigned to tents will have free access to adequate cooled interior areas. Inmates will have free access to adequate indoor toilet facilities 24 hours per day, and inmates will have adequate access to shower facilities. MCSO and Correctional Health Services (CHS) will coordinate to ensure that all assignments to the tents are medically appropriate.

II. STAFFING AND TRAINING

A. Number of Staff Positions.

1. MCSO will make its best efforts to fill all authorized detention staff positions for FY 1997-98, and it will continue to develop procedures to ensure that vacancies are

releasing one limb at a time for movement).

5. No later than four hours after an inmate has been restrained in a restraint chair, MCSO will notify CHS and request that an inmate be examined by a member of CHS's mental health staff as soon as possible.

6. While restrained, inmates will continue to be afforded adequate opportunities to obtain food and water (for example, by freeing one arm to be able to drink or eat) consistent with staff and inmate safety considerations.

7. MCSO's use of force review committee will review all uses of restraint chairs that are ordered by MCSO staff. To facilitate the Committee's review, all uses of restraint chairs will be documented on an appropriate Restraint Chair/Bed form.

8. Absent exigent circumstances, MCSO will request CHS to provide a nurse or physician to be present during an inmate's initial placement in the chair. MCSO will request CHS to evaluate an inmate's fitness for placement in the chair at the earliest opportunity. If exigent circumstances require an inmate's restraint in a chair without supervision by a nurse or physician, MCSO staff will contact a nurse or physician to request evaluation of the inmate as soon as possible thereafter.

C. O/C Spray and Stun guns.

1. MCSO will fully implement its new use of force policy in the jails which reads in part:

Neither passive nor active resistance are sufficient to justify use of **nonlethal weapons** without force being directed against the inmate, the employee, other individuals, or jail property. This reflects the Office decision to discontinue the substitution of **nonlethal weapons** for hands-on control in custodial situations. **Nonlethal weapons** shall not be used solely to gain compliance, such as using an [Electronic Restraint Device] as a come-along tool.

2. MCSO will fully train detention staff on the new policy.

**IV. RESPONSE TO ALLEGATIONS OF
EXCESSIVE USE OF FORCE AND RESTRAINT**

A. Use of Force Review Committee.

1. MCSO will continue to operate the pre-investigation Use of Force Review Committee. That committee will continue to receive, discuss and take all necessary action regarding use-of-force reports and grievances alleging excessive use of force and restraints, and will document those discussions and resulting actions.

B. Use of Force Form.

1. MCSO will continue to utilize Use of Force reporting forms and require all detention officers involved with a use of force incident, even if they only witnessed it, to complete the forms.

2. Use of Force forms will be reviewed by supervisors, who will require those forms to be re-done if incomplete. Command staff will refer any potential substantive problems reflected in the forms to the Jail Crimes Unit or the Internal Affairs Unit.

C. Grievances.

1. MCSO will continue its trial system in the Estrella jail complex in which inmates need not ask officers for grievance forms, and need not hand deliver completed forms to an officer to begin the grievance process.

2. Detention officers will not deny inmates' requests for grievance forms.

3. Grievances relating to excessive use of force or restraints may be filed within thirty days of the alleged incident.

4. All grievances alleging excessive use of force or restraints will continue to be reviewed by the Use of Force Review Committee and processed in the same manner as use of force reports.

D. Investigations of Excessive Use of Force and Restraint Allegations.

1. MCSO will continue to investigate all allegations, however received, of excessive use of force or misuse of restraints, including identifying and interviewing inmate witnesses.

2. MCSO will request that CHS notify MCSO in writing of all injuries received by inmates that could reasonably be thought to have occurred by use of excessive force or restraints (e.g., lacerations, contusions, fractures). MCSO will investigate such reports to assess whether the injuries may have been caused by use of excessive force or restraints.

3. MCSO will continue to document all use of force and restraint investigations and will continue to assess its Use of Force forms for accuracy and completeness.

4. Neither investigators nor hearing officers shall deny a use of force grievance on the ground that the involved inmate was given a disciplinary report in connection with the alleged incident.

5. All allegations of significant excessive use of force -- including but not limited to all such allegations necessitating medical attention for the involved inmate -- will be referred to the Jail Crimes Unit or the Internal Affairs Unit for thorough review, which shall include interviews of staff, alleged victims, and potential inmate witnesses. Jail commanders will have authority to refer allegations of excessive force to the Jail Crimes Unit or the Internal Affairs Unit.

E. Monitoring Officer Conduct.

MCSO will continue to require all detention officers to notify a jail commander when the officer has been arrested or criminally charged, or named as a party in any civil suit involving his or her conduct as a detention officer, when the allegations include use of excessive force or restraints. MCSO will conduct its own investigation of such allegations and will not wait for resolution of the criminal or civil case. The fact that civil litigation has settled will have no bearing on the need or findings of MCSO investigations or discipline.

F. Management Monitoring.

1. MCSO will continue to require commanders to monitor inmate grievances and use of force reports to identify any officers who may be problematic and take appropriate action with respect to such officers (for example, termination, suspension, counseling or increased supervision).

V. SANCTIONS FOR EXCESSIVE USE OF FORCE AND RESTRAINTS

A. Adequate Sanctions.

1. MCSO will continue to sanction appropriately and proportionately all violations of its policies and procedures on use of force and restraints.

**VI. PROACTIVE MEASURES TO PREVENT
EXCESSIVE USE OF FORCE AND RESTRAINTS**

A. Inmate Interviews.

1. Jail management will periodically conduct both random inmate interviews and interviews of inmates recently restrained or who were subject to force to ascertain whether in inmates' opinions they or others have been subject to excessive use of force or restraints. Priority will be given to interviewing inmates recently removed from Madison intake and inmates who are being released from MCSO custody.

2. Prior to being interviewed by MCSO staff, all inmates will be informed that they may not be retaliated against in any way because of their cooperation or because of the information they impart during the interviews.

B. Staff Interviews.

1. Jail management will periodically conduct both random staff interviews and interviews of staff who recently used restraints or force on inmates to ascertain whether the staff understand jail policies and procedures regarding use of force and restraints.

VII. MISCELLANEOUS PROVISIONS


A. The parties to this agreement agree that George E. Sullivan of Salem, Oregon, will conduct a review of MCSO's compliance with the terms of this agreement six months after the agreement is executed.


B. Substantial compliance with the terms of this agreement will fully satisfy the agreement. Isolated and unintentional incidents will not constitute noncompliance.

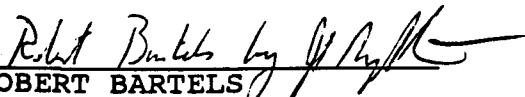
C. In order to assure that the policies and procedures mutually agreed upon by the MCSO and United States are carried into effect, the United States will conduct a final review of the implementation of these policies and procedures six months after this agreement has been signed. In addition, in order to further assure that the policies and procedures mutually agreed upon are implemented, the MCSO has agreed that it will not object to the United States filing a complaint in the Federal District Court to assure implementation of these policies and procedures. The United States has agreed that it will not require MCSO to answer that lawsuit and will voluntarily dismiss it six months after this agreement is signed in accordance with Section VII of this agreement.

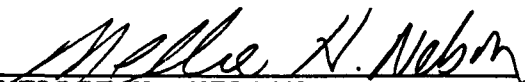
Dated: 10/31/97


FOR THE UNITED STATES:

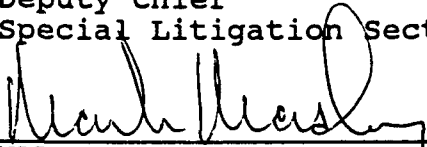

JANET NAPOLITANO
United States Attorney
District of Arizona


STEVEN H. ROSENBAUM
Chief
Special Litigation Section


ROBERT BARTELS
Special Assistant U.S. Attorney
District of Arizona



MELLIE H. NELSON
Deputy Chief
Special Litigation Section

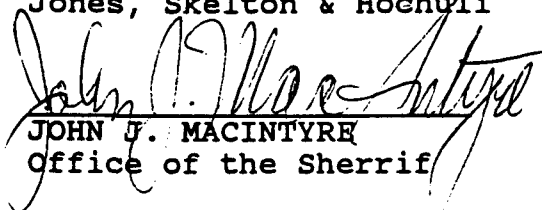

LEE STEIN
Assistant U.S. Attorney
District of Arizona


MARK S. MASLING
Senior Trial Attorney
Special Litigation Section

FOR THE MARICOPA COUNTY SHERIFF'S OFFICE:


JOSEPH ARPAIO
Sheriff's Maricopa County


WILLIAM R. JONES, JR.
Jones, Skelton & Hochuli


JOHN J. MACINTYRE
Office of the Sherrif