UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

75 Civ. 3073 (HB)

DIRECT TESTIMONY OF BRIAN RIORDAN

Plaintiffs,

-against-

WILLIAM J. FRASER, et al.,

Defendants.

BRIAN RIORDAN declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I have been employed by the New York City Department of Correction (the "Department") since 1986. I have held the post of Deputy Warden for Security at the Anna M. Kross Center ("AMKC") since December 12, 2000. In that capacity, I am responsible for all aspects of security at that jail, including reviewing appeals by inmates challenging their placement in Red ID and/or enhanced restraint status and ensuring that the names of inmates placed in Red ID and/or enhanced restraint status are forwarded to the facility medical staff for medical reviews. My other specifically security related experience at the Department includes being security captain at the George R. Vierno Center ("GRVC") for approximately four years; tour commander at the Adolescent Reception and Detention Center ("ARDC") for several months; then commanding officer of the Emergency Services Unit ("ESU") for the year and a half preceding my promotion to my current position.

Appeals

2. Department Directive 4518 on "Red ID Status And Enhanced Restraint Status Due Process" ("Directive 4518") provides inmates who are placed in Red ID or enhanced restraint status the right to submit a written appeal of the placement to the facility's Deputy Warden for Security within twenty-one days of receiving the notice of hearing determination of the placement. Appeals must be decided within seven days and the inmate must receive a copy of the notice of appeal determination within twenty-four hours of its issuance. These inmates may submit additional appeals without any time limit.

3. As Deputy Warden for Security at AMKC, I receive written appeals from inmates placed in Red ID and enhanced restraint status. AMKC, which is a large jail that conducts initial processing of inmates when they are first placed in the Department's custody, has a relatively large Red ID population, ranging from approximately 75 to 110 at any given time. Nevertheless, very few inmates appeal their placement even at AMKC, just as very few inmates appeal infraction findings. In the first four months of 2002, for example, I received and decided 2 Red ID appeals in January, 4 in February, 3 in March, and 1 in April. The enhanced restraint population is far smaller; in that same period, AMKC had no more than three inmates in enhanced restraint status on any day and has none today. I received no appeals of enhanced restraint status placements in the past four months.

4. Inmates may submit their appeals in any written form. Most commonly, inmates submit letters, which they either type or write by hand. In my facility, until last month I also allowed inmates to submit their appeals on a blank official form that is designated for notifying inmates of their appeal determinations, the Notice of Appeal Determination (Form 4518D), and did receive a number of appeals submitted in that manner. Although I reviewed and decided each appeal provided to me on Form 4518D, I have instructed my hearings officer not to

allow the use of this form for the inmate to provide a basis for his appeal. Inmates are instructed to prepare a written form of correspondence to me.

5. Inmates can use and have used a variety of methods to transmit their appeals to the AMKC security office, including the following:

- placing the appeal in the USPS mailboxes available around the facility, marked to the attention of the Deputy Warden for Security or the Security Office (no stamp is necessary for internal mail from inmates);
- placing the appeal in a social services box or grievance box; these are located in various central places in the facilities;
- delivering the appeal to the law library officer for transmission to the security office; or
- personally handing the appeal to the Deputy Warden or Captain for Security (I am in the AMKC yard every day and commonly walk around the facility and speak with inmates; my security captain is also often available to inmates).

6. In the course of my prior experience at other facilities, including five years as a correction officer at the James A. Thomas Center ("JATC"), and at the other facilities mentioned above, GRVC, ARDC, and the ESU, I became familiar with the layout of each of the Department's jails. All the facilities similarly have numerous and readily accessible United States mail, social services, and grievance boxes

7. Prior to submitting their appeals, inmates may make copies of them to keep for their own files by using the copying machines that are located in the law library. I believe that each facility has a law library and that there is a copy machine available for inmate use at each of them.

8. I commonly receive approximately three or four pieces of mail from inmates a week, including requests for housing changes, complaints about missing property, concerns about personal safety, as well as appeals from Red ID/enhanced restraint status. Based upon my

receipt of these other types of mail, I believe that inmates' mail directed to me does get delivered to me. I have not received complaints from inmates that I failed to respond to these other types of mail or to appeals from placement in Red ID status, and I have no reason to think that inmate appeals are not reaching me.

9. When I receive an appeal from Red ID or enhanced restraint status placement, I carefully review the inmate's basis for seeking revocation of his status. I always verify the inmate's claims by looking at his infraction history for his current incarceration in the Inmate Information System ("IIS"). I always also check the history of prior incarcerations if the inmate was previously in the Department's custody.[1] If the information available from the IIS raises an issue about the basis of a finding of guilt or innocence on an infraction, I can also examine the inmate's folder, which contains the intake form, previous infractions, and various court papers, and I can speak with the hearings officer or to the officer who found the weapon underlying the infraction to get additional detail on the infraction. It can be material, for example, whether a weapon was found in an inmate's personal living area or in a common area, and my further investigation can uncover that information. If the inmate presents accurate facts to support his appeal, and his infraction history warrants revocation, I revoke the Red ID/enhanced restraint status. In fact, of the 9 appeals that I received and decided in the first quarter of this year, I revoked the status of 2 inmates.

10. When I receive an appeal from an inmate who has transferred from another jail, I obtain any necessary information from that other jail. Likewise, I receive and respond to

[1] Inmates return to the Department's custody if they are rearrested, or if they are sentenced inmates who are briefly returned to the Department for a court appearance on a matter unrelated to their criminal case.

requests from Deputy Wardens for Security in other facilities for information about inmates who were placed in Red ID and/or enhanced restraint status at AMKC.

11. I frequently decide Red ID appeals within 24-48 hours of receiving them, and I have always provided the Notices of Appeal Determination to the facility hearings officer to transmit to the inmate within 24 hours of my issuing the decision. To the best of my knowledge, I have always responded to Red ID appeals within the seven days allowed by Directive 4518. I have reviewed some appeals decided by me in which it appears that I decided the appeal more than seven days after it was submitted, based upon the date entered by the inmate and the date of my signature. However, because inmate correspondence is not date-stamped upon receipt by my office, I believe it possible that the inmate submitted the appeal at some point after he wrote and dated it. In addition, my security office is closed on the weekends, and an appeal dated on a weekend will not reach me until the next weekday.

12. I have never heard a complaint, prior to this motion, that an inmate appealed his Red ID and/or enhanced restraint status and received no determination on that appeal. I have reviewed the information submitted by the inmate witnesses who state they sought appeals of their Red ID status at AMKC: Lien Figueroa, David Gray, Jose Martinez, and Santiago Quinones, none of whom has a copy of the appeal in question or any other evidence that they submitted an appeal to me. I have confirmed that in each case either I decided the appeal, or there is no record of the appeal in the AMKC security office file.

13. Mr. Figueroa claims that he submitted appeals in January 2002 and early February 2002. My security office records contain one appeal by Mr. Figueroa dated February 21, 2002, which was received on February 28, 2002 and which I decided by revoking his Red ID status on March 1, 2002. Mr. Martinez's Red ID status was revoked on August 31, 2001, despite

his assertion to the contrary. My security office has no record of the appeals Mr. Gray claims to have submitted August 2001 or that Mr. Quinones claims he submitted in October 2001.

14. All the Deputy Wardens for Security attend bi-weekly meetings chaired by the Bureau Chief for Security. The contents of Directive 4518 and our operational compliance with it have been frequently addressed, and it is emphasized that the Department seeks to achieve consistent standards of compliance in all facilities.

Medical Reviews

15. Directive 4518 requires that the Deputy Warden for Security transmit to the facility medical provider the name of any inmate placed in Red ID or enhanced restraint status, within 24 hours of the placement, so that medical staff can determine whether there are any medical contraindications for that inmate's being placed in the standard Red ID/enhanced restraint mechanical restraints. In addition, the Directive requires that the Deputy Warden for Security transmit to the medical provider, on a monthly basis, the names of all inmates in Red ID or enhanced restraint status in that month. The monthly list must be transmitted within the first week of the month.

16. Starting in January 2001, in compliance with Directive 4518, AMKC security staff under my direction began providing to the facility's medical staff on a daily basis the names of every inmate newly-placed in Red ID or enhanced restraint status. We used for that purpose a copy of the Form 4518A, which is the Notification of Initial Placement into those statuses. A recent Departmental Operations Order, #04/02, which is effective April 5, 2002, provided all facilities with a uniform form for such notification, #975, which AMKC security staff now use to submit that information to facility medical staff.

17. Also starting in January 2001, in compliance with Directive 4518, AMKC security staff under my direction began providing to the facility's medical staff lists of all Red ID and enhanced restraint status inmates. Although Directive 4518 requires the submission of a monthly list, my staff submitted additional lists not only at the beginning of each month, but also during the month, often on a weekly basis. The Red ID inmate list we provided was a printout from an existing Departmental data base for all inmates in security risk groups, excerpted to include all those who are weapons carriers (all of whom are Red ID inmates); a list of any inmates in enhanced restraint status was provided separately. Pursuant to Departmental Operations Order #04/02, the facilities now use a uniform form, #976, for submitting the monthly list of Red ID and enhanced restraint status inmates to medical staff. Since May 1, 2002, my security staff at AMKC has been submitting the new form to medical staff instead of the original security risk group excerpted printout.

Dated: New York, New York
May 21, 2002

BRIAN RIORDAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

75 Civ. 3073 (HB)

DIRECT TESTIMONY OF STEVEN CONRY

Plaintiffs,

-against-

WILLIAM J. FRASER, et al.,

Defendants.

STEVEN CONRY declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I have worked at the New York City Department of Correction (the "Department") since February 14, 1983 and currently hold the position of Chief of Security. As such, I am one of five Bureau Chiefs who report directly to the Chief of Department, the Department's highest ranking uniformed officer. Previously, I was Bureau Chief of Management and Planning. I have had considerable security-related experience at the Department. I was Deputy Warden for Security in three facilities on Rikers Island, and Warden at two facilities, including holding both posts at the Adolescent Reception and Detention Center ("ARDC"), which has a particularly volatile population. I also served as Deputy Warden for two Chiefs of Security. I hold a Bachelors Degree (magna cum laude) and a Masters Degree, each in Public Administration, from John Jay College of Criminal Justice. My curriculum vitae is attached as Exhibit C-1.

2. As Chief of Security, I am responsible for City-wide security issues affecting the Department, including the Gang Intelligence Unit and the procurement of security equipment. As Chief of Management and Planning, I was responsible for the management of all ten jails on Rikers Island, including the safety of inmates, staff, and civilians in the facilities. I am familiar with the Department's operations, procedures, and security issues in all facilities, including issues relating to inmates placed in Red ID and/or enhanced restraint status (collectively, "Red ID inmates"). I contributed to the significant reduction of violence in Rikers Island jails during Fiscal Year ("FY") 2001 by helping to develop and implement measures holding staff accountable for their performance; analyzing drug and weapon contraband seizures; reviewing and analyzing security statistical data; reviewing and critiquing security incidents and investigations; viewing and critiquing video footage of unusual incidents; reviewing and editing security directives and operations orders; performing weekly tours of inspection of Rikers Island facilities; and personally training staff under my jurisdiction with regard to security initiatives.

Security needs mandate rear cuffing

3. By FY 1995, there was a very high incidence of violence in the Department's facilities, with as many as 139 stabbings and slashings per month, and a total of 1093 such violent attacks by inmates on fellow inmates that year. *See* "Analysis of Violence Statistics", "Inmate on Inmate Violence". The Department responded to this dangerous situation at the end of that fiscal year by implementing specific violence reduction initiatives.

4. These anti-violence procedures were adopted incrementally, as the need was demonstrated by the quantity or nature of violent incidents. Initially, the Department increased the quantity and quality of searches for weapons in order to prevent their use, and established procedures for identifying, tracking and monitoring weapon carriers in September 1994. In

1995, the Department expanded this practice for the identification, tracking, and monitoring of violent and high risk inmates. In February 1995, violent inmates were required to be transported within the facility in front cuffs, and in March 1996, a teletype order was issued requiring all violent, high risk or weapon bearing inmates to be rear cuffed, including for transportation to and from court, although without waist chains.

5. Eventually, the Department also added other procedures, including keeping these inmates in separate holding pens in court; adding security mitts to the handcuffs in order to deter tampering with the cuffs or obtaining weapons; and eventually rear cuffing with waist chains and "black boxes" covering the keyhole of the handcuffs. In addition, the Department has acquired more sophisticated searching equipment such as the "BOSS" chair, which detects metal objects like razor blades hidden in body cavities that cannot be detected by regular magnetometers or transfriskers. Each of these steps was prompted by incidents that dictated further fine tuning of the protocols, which now enable the Department to be virtually free of violence by Red ID inmates at the courts and during transportation. These measures have proved highly effective. Since FY 1995, violence in the jails was reduced so that the average number of stabbings and slashings per month Department-wide was 8.5 in FY 1999, 4.5 by FY 2001, and just over 2 so far in FY 2002, representing a 95% decrease from FY 1995 to FY 2001.

6. Other violence reduction measures now in effect include improved methods of identifying the perpetrators of the violent acts, including through the Department's Gang Intelligence Unit to track gang members and other potentially violent inmates;[1] separating or

[1] The Gang Intelligence Unit was formed in March 1997. Soon after, an enhanced computer program was installed to compile all the Department's security risk group information into a single database, enabling more effective tracking and separation of gang members and other high risk inmates.

isolating certain categories of inmates in formerly congregate activities such as law library and recreation; and arresting inmates who commit criminal acts in the Department's facilities, *see* "Inmate Arrests". Additionally, accountability for all levels of the agency was increased significantly through the "TEAMS" (Total Enhanced Accountability Management) initiative, which initially focused primarily on security and violence indicators. In my opinion, the implementation of TEAMS and the increase in inmate arrests are the two most significant factors in reducing violence; the Red ID procedures have also made an important contribution to increasing security in the jails.

7. I understand that plaintiffs' expert, Eugene Miller, has suggested that changes in the classification system were a significant factor in violence reduction in the Department since the mid-1990's. I disagree. The Department's classification system was largely in place in 1995, when violence was at its peak. Although that system was subsequently refined, no substantial changes have been made to it since then.

8. Nor is Red ID/enhanced restraint placement a classification decision. Classification governs housing and other facets of daily institutional life, which are by and large unaffected by Red ID placement. Furthermore, the Department's classification system is an automated, objective process based on a program that was initially put in place around 1990, in which seven factors including elements of the inmate's criminal and infraction history are entered into the system, and the computer program generates a classification score. The Red ID/enhanced restraint placement system incorporates more individualized attention to circumstances than the classification system. Red ID placement is intended to manage inmates whose violence or potential for violence in the correctional system in a very narrow area –

weapons use or possession – in a manner that transcends solutions that can properly be imposed in the classification process.

9. In October 1997, two separate Operations Orders were published dealing specifically with the placement of assaultive inmates in enhanced security restraints during all movement outside their housing area. One of those orders is generally applicable and the other governs inmates in the Central Punitive Segregation Unit. *See* Operations Order No. 14/97, 15/97. Inmates identified as possessors or users of weapons continued to be given a highly visible red identification card to alert staff of potential danger from those inmates. *See* Operations Order 15/94. Now both categories of inmates are placed in enhanced security restraints (handcuffs with security mitts, hands placed behind the back with the palms facing outwards, cuffs secured to a security waist chain, and leg irons) during movement outside the facilities, including to court. *See* Operations Order 06/00.

10. If rear cuffing or any other aspect of enhanced restraints is medically contraindicated, medical staff recommend a modification of the rear cuffing order. At any given time, as many as 14% of Red Id inmates may have medically modified orders. My review of tracking logs and my personal observations of front cuffed inmates in the Red ID court pens corroborate this figure. Because the medical modification notice is physically attached to the accompanying card that travels with the inmate wherever he goes, it is available to all staff who come into contact with Red ID inmates, from the facility to transportation to the court pens.

11. However, front cuffing poses a security hazard for inmates known to be violent or likely to use weapons. It allows an inmate far more dexterity and gives him the ability to coordinate hand-eye movement, thereby enabling him to manipulate locks, cuffs, or weapons, and to scrape security mitts in a fashion that can penetrate their hardened shell. Even when front

cuffing is used in conjunction with a waist chain, reducing the range of motion, the inmate's dexterity is not significantly reduced. Additionally, an inmate is more likely to slip his cuffs when they are in front than when they are in the rear due to the inmate's limited range of motion when in the back. I believe that side cuffs, which the Department has never used, allow a similar degree of hand-eye coordination. Although they are more secure than front cuffs because they separate the inmate's hands, the level of safety they provide is inferior to that of rear cuffs. [2]

12. Inmates in the Department's custody have demonstrated their ability to remove their hands from the mitts and to slip front cuffs, enabling them more easily to attack others. This has occurred even in the presence of custodial staff. In the Department's experience, Red ID inmates will attack others even while being directly observed by staff. Increasing staffing levels is therefore an insufficient measure to combat violence in this small segment of the jail population. Moreover, while Red ID inmates are only a small percentage of the total inmate population, they are a large enough number that they generally cannot be held in individual cells in the court pen areas.[3] The configuration of the court pen areas where Red ID inmates are held does not permit the useful deployment of extra staff for supervision purposes, as there is not a direct line of sight into all cells. Only rear cuffing in combination with other restraining devices has proved sufficient in our experience to thwart certain inmates from perpetrating violent incidents.

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[2] The Department has not explored the possible use of side cuffs in any depth. I reviewed side cuffs as well as a wide range of other mechanical restraints during the 2000 American Correctional Association ("ACA") convention in California. I know that side cuffs are less secure than rear cuffs.

[3] At any one time, the Department has custody of over 500 Red ID inmates, up to thirty of whom on any given day are transported to a single borough's courts – usually in the Bronx, which has the highest Red ID population due to the re-arrests, whose cases are heard there.

13. Leaving inmates uncuffed in pens also poses dangers that must be balanced against the impact on the inmate of remaining in handcuffs. Numerous violent incidents have occurred when a correction officer has entered a cell containing an uncuffed Red ID inmate, often when the officer's task is to replace the inmate in restraints. Just this month, for example, an officer was assaulted and injured by a Red ID inmate in the Manhattan court pens when the officer entered the pen where the inmate had been eating his meal. In addition, an uncuffed inmate can reach out through the barstock at the front of the cell into the corridor and injure a passing officer or other inmate through the bars.

14. Even rear cuffing is not always sufficient to prevent violence if it is not used in combination with other restraints, particularly a waist chain. In October 1999, for example, an inmate slashed another's face in the Manhattan court pens, apparently in order to obtain the victim's gold chain, although both inmates had been rear cuffed with security mitts. The aggressor informed corrections staff that he had managed to remove one of his mitts by pinning the bottom of the mitt with his foot while his back was to the wall and pulling up on his hand and manipulating the mitt until he could remove it. Although no weapon was recovered, the aggressor refused to allow an X-ray of his pelvic/abdominal area, which might have permitted a weapon to be found. See Unusual Incident Report, COD # 1316/99.

15. Similarly, in May 1996, an inmate who was rear cuffed and in security mitts, without a waist chain, was able to move his cuffed hands from the back to the front, cut through the security mitts and slash another inmate's face in a holding pen in Brooklyn, awaiting a court appearance, with seven other rear-cuffed inmates. *See* Unusual Incident Report, COD # 673/96. And in December 1998, a front cuffed inmate who was being escorted to the Queens Courts annex area assaulted another inmate, inflicting a laceration to the left temporal area of the head.

These are just isolated examples of inmates' ability to evade even significant restraints, including rear cuffing without a waist chain. The Department's policy of elimination of violence mandates the use of a level of restraints necessary to prevent as much violence as possible; with inmates known to be violent, this has been proven to require rear cuffs and a waist chain. *See* Unusual Incident Report, COD # 1497/98.

16. The level of security that the Department considers "acceptable" is reflected in its policy of zero tolerance for slashings and stabbings. Since Red ID inmates have such a high demonstrated propensity for violence, it is appropriate to impose on them greater than standard segregation, searching, and restraint protocols. As I understand it, plaintiffs' expert Eugene Miller agrees with this statement in principle. As is clearly stated in its written policies, the Department uses rear cuffs not as punishment, but as the minimum level of restraint necessary to achieve its objective of violence reduction and prevention. Nothing in the Department's practice contradicts this conclusion.

The Department's rear cuffing policy

17. In accordance with the Court Order of August 10, 2000 and with Department Directive 4518 on "Red ID Status And Enhanced Restraint Status Due Process" ("Directive 4518"), inmates found to carry or possess a weapon and consequently identified with a red identification card (Red ID), and all inmates placed in enhanced restraints due to their having exhibited violent behavior, are entitled to certain due process procedures. These procedures include the right to a written appeal to the facility's Deputy Warden for Security of such a placement within twenty-one days of receiving the notice of determination of placement; having that appeal decided within seven days; and receiving a copy of the notice of appeal determination

within twenty-four hours of its issuance. These inmates may submit additional appeals without any time limit. *See* Directive 4518, esp. § IV.D.

18. I am aware that inmates have asserted that weapons found in their living areas were not theirs but were left there by a previous occupant.[4] However, thorough searches are conducted between inmate occupancies of a cell.[5] Not only is it crucial to find weapons or other contraband secreted in the cell by the former occupant, but the Department also has a strong interest in repossessing Department property left behind. In addition, regular institutional searches of approximately one housing area at a time are conducted three times a day in each facility, once on each tour. During that institutional search, a search team, supervised by a search captain and others, goes to a designated housing area and performs a videotaped search of inmates, their living quarters, and common areas. During that search, inmates are strip-frisked, and their clothing, their mattress and bed, and all their property are searched. In a cell, the entire contents of the cell will be searched. The search includes areas under radiator covers and inmate lockers, using a flat object such as a piece of metal or cardboard to sweep under objects that rest on the floor.

19. I am also aware that certain inmates appearing as witnesses in this proceeding have claimed that they filed appeals and received no response. With regard to inmates Quinton

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[4] Even if the prior occupant admitted to possession of the weapon found, I would be suspicious about the inmate's motivation for making such an admission. For example, an inmate with numerous infractions might have little to lose from such an admission, whether or not it was true, and might have an ulterior motive – perhaps some deal done with the accused inmate – for making the admission.

[5] I am not aware of any written Department policy requiring searches between inmates. However, this is a basic correctional principle that I have regularly observed performed in practice in my 19½ years in corrections.

Garret, David Gray, George Harris, and Jose Martinez, I have had a search conducted for appeal records in the security office at the Otis Bantum Correctional Center ("OBCC") and the George Motchan Detention Center ("GMDC"), two of the facilities in which these inmates were housed at the time of their alleged appeal(s). (I understand that Deputy Warden Riordan will discuss records concerning Gray and Martinez at the Anna M. Kross Center ("AMKC"), including the revocation of Martinez's Red ID status at AMKC.) In the normal course of business, inmate appeals from Red ID or enhanced restraint status placements are filed regularly by a designated officer in an appeals file in the facility's security office. Some facilities keep logbooks in addition as records of receipt of appeals. This search showed that the Department has no record of any appeal being filed by Garret at OBCC or at GMDC; by Gray at OBCC, where he was in the Central Punitive Segregation Unit ("CPSU"); by Harris at the CPSU; or by Martinez at OBCC or GMDC. The absence of those records indicates that it is likely that the Department never received them.

20. Directive 4518 provides that, in the event that a facility's deputy warden for security and chief physician are unable to agree on an appropriate modified method of restraint for a particular Red ID or enhanced restraint inmate, the Chief of Security, the Medical Director, and the Department's Assistant (now Deputy) Commissioner for Health Affairs shall confer to determine an acceptable method of restraint. Since I have been Chief of Security, such a conference has been required only once, when it came to my attention that approximately 30 Red ID prisoners at the George R. Vierno Center ("GRVC") had suddenly claimed to medical and correctional staff that they had asthma and required medical modifications of their restraints. When I was informed of this issue, I convened a meeting on April 30, 2002, with the Medical Director and the Deputy Commissioner for Health Affairs.

21. At that meeting, the Medical Director agreed to ensure that medical staff would conduct an additional review of the inmate's history, his usage of prescriptions, and anything else they considered necessary to determine if those inmates really had asthma. In addition, a spot check of charts would be conducted to review the doctors' notes on this issue. I directed facility staff not to use the term "denied" on the medical modification notices when they had questions about a particular modification, as they had been doing, but rather to bring the issue to my attention so that I could confer with the Medical Director and the Health Affairs Commissioner as provided in the Directive. Since that time, jails have been forwarding to the Assistant Commissioner for Health Affairs, to the Medical Director, and to me the names of Red ID and enhanced restraint inmates who have received medical modifications, whenever the Deputy Warden of Security, the Chief Physician, and the Clinic Manager are unable to agree on an alternative means of restraint.

The Department's rear cuffing practices

22. Because plaintiffs' motion for further relief is limited to the issue of rear cuffing outside the facilities, I will address only that aspect of the Department's practices. Outside the facilities, Red ID inmates are placed in enhanced restraints, including handcuffs to the rear with security mitts and a waist chain, primarily in transportation to and from court and for much of the time that they are in the court pens. Effective May 13, 2002, the Department has also been making latex gloves available to Red ID and enhanced restraint inmates for use inside the security mitts (or non-latex powder-free gloves for inmates with an allergic reaction to latex),

and spraying the mitts with a disinfectant spray between uses by different inmates.[6] These practices are in accordance with the manufacturer's specifications for the mitts. *See* Operations Order 05/02. My staff conducted inspections last week and Assistant Chief Mercado's staff conducted inspections this week to verify that these procedures are being followed.

23. I have observed the processing and treatment of Red ID and/or enhanced restraint inmates at the Manhattan, Bronx, Brooklyn, and Queens court pens. In all those locations, I have observed that inmates are uniformly provided with multiple opportunities to use bathroom facilities and are generally given a meal, depending on the time that they spend in the court pens. From my experience throughout my career, I know that inmates would not tolerate being deprived of the opportunity of satisfying such basic needs without vociferous complaints. If the complaints alone did not garner sufficient attention or corrective action, I would expect to see an increase in assaults on staff, uses of force, and other such incidents. I have seen no such trend associated with regard to Red ID and/or enhanced restraint inmates in the court pens.

24. When they arrive at the court pens, Red ID inmates are strip searched, at which time the restraints are temporarily removed and the inmates are offered the opportunity to use bathroom facilities. In the court pens, the Red ID inmates are placed in separate cells from other inmates; if there is sufficient space, they will be separated from one another as well. The cuffs are removed for meals and for bathroom use. The restraints are also removed during court appearances, unless the judge before whom they are appearing has issued an order requiring restraints. In order to have a meal or use bathroom facilities, inmates are relocated from

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[6] Inmates are required to remove their latex/non-latex gloves and deposit them in a glove waste receptacle every time the security mitts are removed. A new pair of such gloves is made available to the inmate prior to the reapplication of the security mitts.

congregate cells so that they are alone in a cell when the restraints are removed.[7] Inmates are given approximately half an hour to eat; ten to fifteen minutes are generally allowed for bathroom breaks. After that time, the inmate is again restrained and replaced in the holding cell. Each courthouse has sufficient staff assigned to the Red ID inmates to ensure that the officers routinely offer bathroom breaks and are responsive to requests to use those facilities. I am aware that certain inmates have asserted that they were prevented from using bathroom facilities when they requested; however, I know of no substantiated case where that occurred.

25. I briefly reviewed documentation in the court pens, including the log book that the Manhattan court pen executive officer, Assistant Deputy Warden Kevin McCloskey, started at the command level. This log provides some documentation of breaks and meals without restraints, as well as time spent in court and, in some cases, time of arrival at and departure from court. The log is kept in a logbook that was adapted for this purpose to contain columns for the inmate's name and identification number, as well as the start and finish times of all breaks, including meals and all bathroom breaks; times to and from court appearances; the number of the bus that returned the inmate to his facility; and the time of departure from the court pens. This log has been kept since January 2001, immediately after the effective date of Directive 4518. Although it appears incomplete, it corroborates my observations that breaks from the restraints are being provided.

26. With regard to inmate Oliver Johnson, one of plaintiffs' inmate witnesses, the Department conducted an extensive investigation into his claim that he was denied an

[7] On occasion, the combination of a large number of Red ID inmates and limited courthouse facilities will require more than one inmate in a cell at a time during mealtimes. In such an event, the inmates have one hand cuffed to the cell far enough apart from each other to prevent violence between them.

opportunity to use a bathroom when he needed to and ultimately urinated on himself. The Department concluded that this allegation is false. *See* Investigation, R2173-2213. In particular, the log book entry documents that Johnson was secured in a pen by himself at 11:15 a.m. and uncuffed so that he could eat his meal and use the bathroom before being transported to another courthouse. His classification mandated his being held in a pen alone, casting considerable doubt on his assertion that other inmates witnessed the alleged incident. None of the officers on duty then recalls any unusual incident, including an inmate soiling himself, at the time Johnson alleges that he soiled himself. There is no record of such an incident, or of fluids on the floor requiring additional cleaning, or of any inmate creating an unsanitary condition on the bus back to Rikers Island. Significantly, Johnson himself did not report any such incident on his return to his facility.

27. I was struck during my tours of the court pens of how minimal an inconvenience the restraints appeared to cause most of the Red ID inmates. Several of the inmates were sleeping soundly on the court pen benches, looking quite comfortable. My tours were conducted during the early to mid-morning, and I would not expect the inmates to be so exhausted by then that they would sleep under very uncomfortable conditions. I was also struck by the lack of inmate complaints. In my experience, inmates take the opportunity to complain when they see a Department supervisor if they have any objections at all, whether about the tightness of cuffs, or the quality of the food, or any other subject. Even when I stopped and spoke to inmates, none of them took the opportunity to mention the restraints to me. Unlike plaintiffs' experts, Mr. Miller and Dr. Puisis, I did not ask them specifically about the restraints. In my experience, even if inmates do not address an issue spontaneously, they will voice complaints when a direct question appears to seek a particular answer.

Transportation of rear cuffed inmates

28. On average, 42 Red ID inmates are among the approximately 1400 inmates whom the Department transports to court every day City-wide.

29. Red ID inmates travel in separate compartments from other inmates on the buses. The inmates remain in rear cuffs and leg irons during transportation. Up to six inmates per bus travel in individual 24" wide x 32" deep compartments enclosed by expanded metal mesh; up to seven are in similarly enclosed 34" wide x 32" deep compartments. The windows on the buses open partially, 3"-4" from the top. The compartments are not padded because padding creates a severe security risk. In my experience, padding in correctional settings is quickly vandalized and becomes a hiding place for contraband, including weapons.

30. I have personally examined the compartments and find that they are shallow enough that an inmate should easily be able to brace himself with his feet and knees, reducing the probability of injury from sudden movements of the bus. The buses have no seat belts because seat belts would pose a greater safety and security risk than not having them. It would be less safe for the inmates if they were seat belted in the event of an accident that required rapid evacuation because an officer would have to enter each compartment to release each inmate. As the officers who escort inmates on buses are armed and never enter an inmate compartment with their firearm except in extraordinary circumstances, this proximity would pose significant security and logistical issues. In addition, applicable state law does not require seat belts on these buses. Furthermore, I believe that rear cuffed inmates have approximately the same ability to protect themselves in the event of a sudden stop or impact as inmates who are front cuffed with a waist chain, because of the significant restriction of the inmate's range of motion from the waist chain itself.

Conclusion

31. Directive 4518 reflects the Department's acceptance that, in limited circumstances, rear cuffs are medically contraindicated for certain individual inmates and that alternatives must be used. As I noted above, many Red ID inmates have such medical modifications. Using alternative restraints on a small fraction of Red ID's, as the Department does, has a far more limited and tolerable impact on security than placing all Red ID inmates in a position to more easily attack other inmates or staff.

Dated: Bronx, New York
May 21, 2002

STEVEN CONRY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

75 Civ. 3073 (HB)

DIRECT TESTIMONY OF JORGE OCASIO

Plaintiffs,

-against-

WILLIAM J. FRASER, et al.,

Defendants.

JORGE OCASIO declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I have been employed by the New York City Department of Correction (the "Department") since 1984. I currently hold the post of Bureau Chief for Custody Management; I was Bureau Chief for Inspectional Services and Compliance Division ("ISCD") from November 2001 to March 2002. Previously, I was Assistant Chief for Division I, supervising half the facilities on Rikers Island, and I was Warden at the George Motchan Detention Center ("GMDC") from January 2000 until June 2001.

2. As Chief of ISCD, I was responsible for monitoring the Department's compliance with court orders, consent decrees, the applicable City and State minimum standards, and internal directives. I interacted with the Department's oversight agencies, including the City Board of Correction, the State Commission of Correction, and the Office of Compliance Consultants. My division also investigated complaints that the Department received from the Legal Aid Society and reviewed any corrective actions taken by the facilities. In that capacity, I

conducted certain audits of medical reviews of inmates in Red ID and/or enhanced restraint status under the court order of August 10, 2000. Although those audits uncovered problems with the medical review procedures, the Department has since taken significant steps to implement effective procedures to maintain compliance with the Court order and its own directive. The process has been working much more smoothly in recent months than it had previously, and it will work effectively in the future.

Department compliance in 2001

3. In late 2001 and early 2002, ISCD conducted four audits of Department compliance with the August 10, 2000 Order and Directive 4518. ISCD staff selected a sample of approximately twenty inmates from each of the audited facilities and inspected source documents at the facility security offices and/or spoke with the clinic administrators. As I discuss more fully below, those audits indicated that, although compliance with those mandates was inconsistent across the Department, most facilities were generally making an effort on their own to comply with those requirements. As a result, the Department decided to standardize the medical review procedures Department-wide and to increase oversight of the process.

4. Two audits were conducted in November 2001. One of them, dated November 16, 2001, determined that the nine Rikers Island facilities audited had institutional orders relating to Directive 4518, indicating consistent awareness of the requirements. Although there was no documentation that any of those facilities was providing the facility clinic with information within 24 hours for the initial medical review, clinic staff at four of the nine facilities was providing the Deputy Warden for Security ("Security D/W") with requests for medical modification of rear cuffing orders, and the Security D/W at seven of those facilities was providing the clinic with a list of Red ID and enhanced restraint inmates during the first week of each month, as required. *See* Audit (Nov. 16, 2001).

5. The other audit conducted in November 2001 focused on compliance with the due process provisions of Directive 4518 concerning hearings, notices of hearing determinations, and appeals. The four facilities audited were GMDC, the George R. Vierno Center ("GRVC"); the North Infirmary Command ("NIC"); and the Otis Bantum Correctional Center ("OBCC"). The audit found documentation of due process hearings in 88% of the instances surveyed; inmates in possession of a notice of hearing determination between 50% and 73% of the time, although we did not follow up to find out whether the inmate might previously have had the notice and misplaced it before we asked to see it; only two appeals filed out of 75 placements, and a written decision for one of those two appeals.

6. On December 27, 2001, ISCD conducted an audit of four Rikers Island facilities, two from each division on Rikers and including three of the largest jails – GMDC, GRVC, and OBCC – and the NIC, which has a separate enhanced restraint unit. This audit determined that the level of notification by Department staff of Red ID and enhanced restraint inmate names to the facility clinic administrator varied by jail. GRVC had developed its own procedures and was 100% compliant with those notification requirements in the random sample of files examined by ISCD. NIC was 78% compliant; and OBCC and GMDC were 35% and 30% compliant, respectively. *See* Audit (Dec. 27, 2001), attached hereto as Exhibit 2.

7. At the end of January 2002, an audit of seven Rikers Island facilities and the four borough jails, based on conversations with the clinic administrators in the facilities, showed that the clinic received the monthly listing of Red ID/enhanced restraint inmates in all but two of the borough facilities, and that in only three of the jails were the clinics receiving the 24-hour notice of initial placements. *See* Audit (Jan. 28, 2002), attached hereto as Exhibit 3.

8. The most recent audit focused on the clinics and looked at the last two weapons-related infractions in each of the seven audited Rikers Island facilities in order to identify recently placed Red ID and/or enhanced restraint inmates. This required going back several months, because the various violence reduction measures implemented by the Department over the past years have significantly reduced the number of inmate weapons found; additionally, the majority of weapons are found in common areas rather than in a specific inmate's living area. This audit found that the clinic had received notification of the initial placement in 50% of the cases surveyed. *See* Audit (Feb. 4, 2002), attached hereto as Exhibit 4.

Standardization of Department procedures

9. After I saw the results of the November audits, I realized the necessity of implementing standard procedures Department-wide, and I convened a meeting in mid-January 2002 with the three Division Chiefs, each of whom supervises the borough jails or half the Rikers Island facilities. I told them to coordinate among themselves and to implement Department-wide policies in their facilities based on the requirements of Directive 4518.

10. On January 25, 2002, the three Division Chiefs wrote a memorandum to all facility commanding officers requiring new procedures to ensure that Department staff provided names of Red ID/enhanced restraint inmates to medical staff as required by the August 10, 2000 Order and Directive 4518 to enable medical staff to conduct reviews to determine if rear cuffing or other restraints were medically contraindicated for any inmate in one of these security statuses. The new procedures included having medical staff sign a copy of the list as a receipt of delivery of that list; the signed copy of the list was to be kept in the facility's security office as documentation of that delivery.

11. On February 26, 2002, I held a meeting with all the wardens and Deputy Wardens for Security to re-emphasize the importance of the smooth and timely functioning of the medical review process.

Current Department procedures

12. Although this initial standardization of procedures was important in increasing compliance with the court order and Department directive, I suggested that the Department centralize and further standardize the procedures to better ensure such compliance. Accordingly, the Department developed an Operations Order on Medical Assessment of Inmates Placed on Red ID and/or Enhanced Restraint Status, Re: Monthly and 24-Hour Notification Forms, finalized and promulgated on April 5, 2002, to unify procedures and to implement the use of improved forms Department-wide. *See* Operations Order 04/02, attached hereto as Exhibit 5. This Operations Order not only regularizes procedures but it also increases accountability by prescribing the forms to use, requiring signatures acknowledging receipt, and mandating record-keeping.

13. Under the procedures established by this Operations Order, a 24-Hour Review form will be used to identify to medical staff all additional inmates housed at the facility recently placed on Red ID/enhanced restraint status in the previous 24 hours. *Id.* III.A. A specific form is appended to the Operations Order for the Security Captain or his/her designee to provide that information to designated medical staff at the facility; as before, receipt will be acknowledged by signing the bottom of a copy of that form. *Id.*, Form 975. In addition, Department security staff are responsible for producing inmates to the clinic for physical evaluation within 24 hours of any request for such production by medical practitioners. The security staff are also responsible for daily collection of completed medical forms from the medical staff as well as retention of the receipts for documentation of notification.

14. The monthly review is similarly ensured with a specially created form; with procedures for delivery of the completed form by security staff to medical staff on the first business day of each month; and with signatures for acknowledgment of receipt of the form. *Id.* III.B & Form 976.

15. The 24-hour review form requires inclusion of the inmate's name and identifying numbers; a check-off to note whether the inmate has been placed in Red ID and/or enhanced restraint status; a check-off for the medical determination of whether the inmate is cleared for enhanced restraints or not; and a space for remarks by medical staff concerning any notation of "not cleared" for such restraints and the basis for any modification of the restraints. *Id.* Form 975.

16. The monthly form calls for the Department to identify all inmates in the facility with Red ID and/or enhanced restraint status for that month, and for medical staff to indicate whether that inmate is cleared or not cleared for enhanced restraints. *Id.* Form 976. Because of the possibility of the monthly repetition of an inmate's name on monthly review forms, the number of inmates "not cleared" by medical staff is not cumulative month after month.

Recent initiatives to expedite Red ID inmate processing

17. The Transportation Division reports to me as Bureau Chief of Custody Management. I am therefore aware of initiatives taken by that division to reduce the length of time that Red ID and enhanced restraint status inmates are held in rear cuffs. The Department recently implemented measures to ensure that those inmates are transported expeditiously back to their facilities upon completion of their court appearance, thus reducing the amount of time that they spend in restraints on any particular day. *See* Transportation Division Command Level

Order 7/02 (eff. Mar. 15, 2002). Upon receiving notification from Department personnel in the courts that a Red ID inmate has completed his court appearance, the Transportation Division will make every effort to pick up that inmate within two hours of notification. Although it was already Department policy to transport these inmates expeditiously, the new policy imposes a two-hour goal where there had previously been no timeframe. To implement this order, each Court Executive Officer, the supervising officer responsible for the court pens in each courthouse, has issued a command level order to their staff to ensure that priority is given to returning Red ID inmates to their facility. In addition, the Transportation Division has developed a new tracking system to document that it is immediately notified upon the completion of the inmate's court appearance.

18. Based on my visits to the Queens and Bronx court pens; my conversations with Department staff in those courthouses and with the Executive Officers of the Manhattan and Brooklyn court pens; and discussions with the commanding officer of the Transportation Division, I believe that the Department is picking up Red ID inmates much more expeditiously than ever in the past, and I understand that the majority of those inmates are picked up for return to their facility within two hours of notification to the Transportation Division of their availability for return.

19. I am also familiar with recent discussions between the Department and the New York State Office of Court Administration ("OCA"), as well as administrative judges in various courts, about modifying court procedures in ways that will, whenever possible, reduce the time that Red ID inmates spend in the courthouse. In the past few months, considerable progress has been made on this front. Commissioner Fraser met with New York State Chief Administrative Judge Jonathan Lippman and the Mayor's Criminal Justice Coordinator, John

Feinblatt, to explore the possibility of formalizing and expanding the pilot projects that had been started unofficially in New York County Supreme and Criminal Courts and in Bronx Supreme Court. Judge Lippman agreed that the Department could meet with the Administrative Judges in the various City courts and supported the courts' cooperating with the Department to expedite the processing of Red ID inmates in court.

20. After meeting with the respective Administrative Judges, agreement was reached on various procedures that would be implemented with regard to Red ID defendants produced for court appearances. Those procedures, summarized in my May 3, 2002 memorandum to First Deputy Commissioner Lanigan, include the highly visible identification of Red ID securing orders; early production of Red ID defendants by the Department; early provision to the OCA chief clerk by the Department's court staff of a list of all Red ID defendants scheduled to appear for that day; the chief clerk's notification of the various court part of that information; the courts' giving priority to Red ID defendants to the extent possible; and other specific aspects of expediting the movement of Red ID inmates, including returning the inmate and his paperwork to Department custody as rapidly as possible. Although the Department clearly does not have control over OCA court personnel or defense attorneys, this agreement represents a significant step in reducing the time that a Red ID inmate must spend in court on any given day. The courts have even agreed to inform defense counsel that their client will be on first calendar call for future court appearances, thus seeking to limit the degree to which defense counsel cause delays. I intend to conduct a survey in the near future to determine how soon after court starts at 9:30 a.m. the court personnel have been picking up Red ID inmates for court appearances from March 2002 to the present.

21. The procedures described above represent an expansion of an initiative that had been started earlier in the year in the Manhattan and Bronx courthouses. In New York County Supreme and Criminal Court, reorganizations and/or arrangements were initiated that also assisted in expediting the court appearance and return to jail of Red ID inmates. The Executive Officer of the Department's Manhattan court pens discussed operational changes for court personnel with Justices Micki Scherer and Martin Murphy, the Administrative Judge of New York County Supreme and the Supervising Judge of Criminal Court respectively, as well as the Chief Clerk of Supreme Court. It was agreed that, every morning, the Executive Officer's staff would fax the list of Red ID inmates scheduled for court appearances that day to the court expediter at OCA, so that the court personnel could attempt to expedite the court appearances for those inmates. In addition, in order to permit the expeditious return of Red ID inmates to their facilities, the court representatives agreed to take such steps as promptly returning to DOC securing orders for inmates whose court appearance would be adjourned if, for example, their attorney served a notice of conflict on the court. *See* Memorandum from Kevin McCloskey to Clyton Eastmond (Mar. 25, 2002). Similarly, at the Department's request, Department staff had met with Administrative Judge Collins in Bronx Supreme Court to seek similar measures and to eliminate altogether the production of inmates who will not actually be seen that day in court whenever possible.

Dated: Bronx, New York
May 21, 2002

JORGE OCASIO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

JAMES BENJAMIN, et. al.,
Plaintiffs

-against -

WILLIAM FRASER, et. al.,
Defendants

and related cases.

----------X

75 Civ. 3073
(HB)

DIRECT TESTIMONY OF MICHAEL PUISIS, D.O.

MICHAEL PUISIS, D.O. declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I have been asked by the Legal Aid Society to give an opinion of the medical consequences of the use of the Red ID restraint procedure in the New York City jails related to Benjamin v. Fraser.

QUALIFICATIONS AND BASIS OF OPINION

2. As reflected in my attached curriculum vitae, I am a Doctor of Osteopathic Medicine. I graduated from Chicago College of Osteopathic medicine in 1982 and completed an Internal Medicine Residency at Cook County Hospital in 1985. In 1985, I became Board Certified in Internal Medicine. I am licensed to practice medicine in the State of Illinois. I have worked in correctional health care for 17 years. I was previously the Medical Director of the Cook County Jail in Chicago from1991-1996. I have served as a consultant for the United States Department of Justice, and a number of other organizations on matters of correctional health care. I have

drafted policies and procedures for correctional systems and hospitals regarding the use of restraints on mental health patients and regarding the shackling of prisoners held in hospital wards. I edited the only textbook on correctional medicine, Clinical Practice in Correctional Medicine. I am a member of the National Commission on Correctional Health Care's Physician Panel on Clinical Practice and I served on the task force to revise the American Public Health Association Correctional Standards in 1999. I currently work as a consultant in correctional health care.

3. In order to render an opinion in this matter, I relied on my professional education, training and experience over my approximately seventeen years in correctional health care. I reviewed a number of documents, a list of which is attached to my testimony. In addition, I conducted a tour of the Bronx Supreme Court and Criminal Court buildings on April 18, 2002, accompanied by Chief Steven Conry, Eugene Miller, John Boston, Florence Hutner and other Department of Correction staff. During the tour, I inspected the manner in which persons confined by Red ID restraints are transported to the court and the manner in which they are held in holding cells pending their appearance in court. I spoke with prisoners who were restrained in the Bronx Supreme and Criminal court pens. I also visited the intake area of the George R. Vierno Center on Rikers Island to inspect the holding areas where Red ID persons are held prior to transport to court. I was not permitted to speak with any of the physicians or other medical staff who are responsible for developing policy, supervising the Red ID program, or monitoring the medical conditions of inmates who are restrained by the Red ID method. Lastly, both Gene Miller and I had the Red ID restraints placed on us in the manner that is used for inmates.

OBSERVATIONS, FINDINGS AND OPINIONS

4. It is my opinion that the Red ID restraint practice causes substantial pain to prisoners who are subjected to it, and additionally poses a significant risk of neurological, musculo-skeletal, vascular, and other injuries (including an increased risk of falls and of injuries from vehicular accidents or sudden stops). The medical screening procedures used by the medical provider are seriously inadequate in a variety of ways to control those risks and prevent injury and pain.

The Application of Red ID Restraints

5. Red ID restraints are placed as follows. Inmates first place their hands in a synthetic fabric mitt with a semi-rigid liner. The inmate then is made to place both arms behind the back with palms outward. The mitts have cuffs around which metal handcuffs are placed, securing the inmate's arms behind him. A metal rectangular box about 6 inches long is fixed around the lock of the cuffs, thereby fixing the cuffed arms in a rigid arrangement. After this, chains are secured between the ankles of the inmate so that the step is restricted to about a 2 to 3 foot span. A chain is placed around the waist and the waist chain and handcuffs are linked and secured with a lock. The movement of the arms is severely limited.

6. The Red ID restraint procedure is utilized on a class of inmates deemed violent by the custody officials. I was told that the categorization of Red ID inmates is made independent of classification, length of stay, or charge. This method of transportation and confinement is utilized on approximately 4% of the population of the jail system. This procedure is carried out whenever the inmate is transported off the facility grounds. The restraints are applied continuously for the time period the inmate is off grounds with the exception of a 15-minute to half hour break for lunch and restroom use at about 11 AM. When inmates enter the court, the

judge has the discretion to remove the restraints, though it appears from declarations that many prisoners report that they remain in the restraints in the courtroom. With the exception of the lunch and bathroom break, inmates may be in these restraints for prolonged periods. Inmates leave the jail in these restraints as early 5:30 AM according to inmates (7 AM according to security officials on the tour; prior to 7 a.m. according to some of the "Red ID Tracking Forms") and may remain in restraints as long as up to 6 PM depending on ~~the~~ when the inmate has his court presentation and when the inmate is taken back to the jail.

7. I am told that defendants have adopted a new policy of attempting to get Red ID status prisoners placed on a bus to return to their jail within two hours of the time they finish seeing the judge. Based upon the "Red ID/Enhanced Restraint Tracking Forms" I reviewed for the Red ID inmates seen in the Bronx courthouses in April, 2002, I do not believe that this policy is being accomplished. Moreover, even if this policy were to be in place, in many instances prisoners would nonetheless be in Red ID restraints for prolonged periods of time. Therefore, this new policy does not change my opinion in this matter.

The Transportation of Inmates in Red ID Restraints

8. Inmates are transported to and from appointments in buses. I inspected two of the buses. There was no air conditioning on these buses. I was told by DOC personnel that there is no air conditioning on any of the transport buses. On the bus, Red ID inmates are locked in cages that are fixed inside the buses. Some of the cages have ventilation; some do not. Those that do not have ventilation are sealed on the window side and have a Lexan type plastic on the front. The cages are approximately two and a half to three feet front to back. I question whether there is sufficient ventilation in these buses. I had the opportunity to be driven in a van (from the

jail back to our hotel when we were on tour) designed for inmate transportation in which the passenger compartment was similarly sealed and surrounded by Lexan. It was a hot afternoon and there was no ventilation in the van, a similar arrangement to the some of the seating on buses. I found the heat insufferable and asked to get out after a short ride. I believe this type of condition will be harmful to persons with cardiovascular disease or for persons taking certain types of psychotropic medication.

9. In addition, because Red ID inmates have their arms fixed behind their backs, and there were no seat belts, it did not appear that inmates could protect themselves during acceleration or deceleration such as during a sudden stop. There was also no padding to protect prisoners from striking the front or sides of these cages. Not surprisingly, several prisoner declarations report injuries occurring during transport in these cages. For the above reasons, I do not believe these transportation arrangements are safe.

10. When inmates move off and on the bus and when they come and go from the Bronx Supreme Court holding pens from the buses, they walk up and down stairs. This is dangerous given that they do not have use of their arms to protect themselves in the event of a fall and given that their legs are shackled and they lack the ability to move their feet more than a couple of feet. Some of the inmates we observed were escorted up stairs by an officer, but other inmates were not. On interviews, inmates stated that being escorted in this manner does not occur on a routine basis. I am not aware of any policy requiring that inmates in these restraints be individually escorted up and down stairs to prevent injury. However, this should be required.

Conditions in the Court Pens for Prisoners in Red ID Restraints

11. The conditions in the court holding pens are equally problematic. While in holding

pens, inmates are restrained even when they are held as the only occupant of a cell. The seating arrangements that are available (a shallow metal bench affixed to the wall) make it impossible to sit in a natural posture. I saw one inmate lying down. He was doing so in an awkward arrangement that looked precarious. Aside from standing there was no easy position that a person could maintain while being held in the court pen.

12. Officers transporting and guarding inmates while they are waiting in the court bullpens do not know the medical conditions of the patients. There is no apparent mechanism for inmates who complain of anything including numbness or pain to be evaluated. In fact, most inmates on the day of my tour complained of loss of feeling in their limbs, but they were not evaluated for this complaint. Inmates complained that their medical complaints relating to effects of the restraints are ignored. There was no mention in the Correctional Health Services policy or procedure of evaluation of problems that may occur as a result of this type of restraint.

My Personal Experience in Red ID Restraints

13. Gene Miller and I were placed in restraints for a brief period of time; less than five minutes. Both Gene Miller and I experienced pain and slight bruising from the restraints. (I examined Mr. Miller's wrists and inquired about his pain as I would with any patient.) The cuffing left an impression on my wrist; more so on Mr. Miller's wrists. I experienced pain in the wrist and shoulder area. The mitts are virtually sealed and my hands immediately began sweating. I understand that defendants' expert David Bogard asserted that he was placed in the Red ID restraints for almost one hour and, while he experienced some discomfort, he did not experience pain once he relaxed. This report does not change my opinion. Based on my own experiences and the experiences laid out in my report, Mr. Bogards experience appears to be the

exception. Mr. Bogard was not in the restraints for the duration that the prisoners are typically held, nor was he restrained under circumstances similar to those of a prisoner.

The Medical Policies Regarding Red ID Restraints Are Inadequate

14. I reviewed two Correctional Health Services ("CHS") policies regarding Red ID and Enhanced Restraints. The first was issued in January 3, 2001. The second, issued April 5, 2002, is a revision of the first. These Correctional Health Services policies entitled Medical Review of Red ID and Enhanced Restraint Status provide vague guidance on what the process is for approving restraints, but no guidance relative to the types of medical conditions that are contraindicated by restraints. Medical staff is left to determine what conditions are likely to cause a "significant adverse medical consequence."

15. The standard articulated in the policy is also troubling in that it seems to condone adverse effects as acceptable as long as the medical adverse events are not "significant." I do not believe this is an appropriate standard for medical practitioners because it is arbitrary and assumes some harm is acceptable. Some practitioners may not view pain and suffering as significant. In my opinion, this is not humane. Even if the organic basis for pain cannot be definitively determined, pain can result from injury and should be addressed.

16. The CHS policy's vague standard also leads to inconsistency. For example, I was told of persons with asthma who were not cleared and other asthmatics who were cleared and placed in restraints. (I agree with Dr. Parks that anyone prescribed an inhaler should have a modification of their restraints, to provide access to in the event of an exacerbation of their asthma. There is not even a policy requiring that a person experiencing an asthma attack be removed from restraints to allow for them to use their inhaler.) My review of the CHS

individual facility monthly "Enhanced Restraint Status/Red ID Medical Reviews" similarly reveal significant variance in the rates at which practitioners at the jails grant prisoners modifications, indicating inconsistent review practices by practitioners.

17. Another problem with the medical review system is the failure to provide the medical staff with appropriate information regarding the effects of the Red ID policy. According to Dr. Parks' deposition transcript, approximately 130 doctors in PHS jails conduct reviews of Red ID inmates. The initial CHS 2001 policy does not explain the nature of Red ID restraints, the conditions under which they are used, or their duration. I understand from Dr. Brown's and Dr. Parks' deposition transcripts that until the new CHS policy was issued in April 2002, medical staff were not provided with any information in this regard. The only information provided was a demonstration conducted by security staff for the approximately ten PHS jail medical directors sometime during the fall of 2001. It is unclear how anyone could evaluate the potential harm of a practice that was not described to them. The new CHS policy of April 2002 at least describes the restraints, however, it remains incomplete in that it still fails to provide information about the conditions in which they are used and the duration of their use.

18. The CHS policy's vague standard does not give medical staff sufficient guidance, especially in the context of a high-turnover jail system in which medical personnel may be under great time pressure because of the large number of tasks they must perform. More explicit guidance is also required where medical personnel may be called on to make judgments that may not be popular with security staff. I know from personal experience, and from experience reported to me by other staff, that in a jail setting there is always pressure-explicit or implicit-on medical staff to go along with security staff's inclinations and not raise potential medical

contraindications. The indications of security overrides of medical modifications I reviewed are consistent with this pressure.

19. The CHS policy additionally fails to provide guidance to practitioners regarding the need for physical examinations as part of the medical review of Red ID status inmates. The CHS policy allows medical practitioners to rely on chart reviews to determine whether to grant a modification of Red ID restraints. Chart reviews alone are not a reliable basis to clear someone for these types of restraints. Chart reviews rely on intake history and physical examinations. Physicians (and nurses) do not perform these histories and examinations with an eye towards information relevant to Red ID status. Therefore, it is inappropriate to clear someone for the restraints based on chart review; only the obvious persons at risk would be eliminated from restraint. However, even the obvious persons at risk will not be addressed unless criteria are written and consistently applied. In spite of these issues, the CHS individual facility monthly "Enhanced Restraint Status/Red ID Medical Reviews" reports indicate that a very small percentage of the initial and of the monthly reviews of persons in Red ID status are performed by physical examination.

20. Prior to "clearing" persons for Red ID restraints, the patient should be interviewed by a physician and, if risk factors are present, examined. Right now there are many significant questions that are not specifically asked in the intake history and examination (e.g. history of dislocations and fractures, deep vein thrombosis, or back injury). A focused set of questions administered as part of the jail intake history and physical examination procedure might substitute in theory for an interview and examination following placement in Red ID status. However, questions on intake would probably not capture all relevant information, since it would

not be the primary concern of the interview which takes place under rushed circumstances and since the prisoner might have experienced other medical issues between the time of intake and the time of placement in Red ID status. Thus, a personal encounter following placement in Red ID status is more likely to elicit accurate information. Limiting the focused inquiry to those placed in Red ID status would also conserve staff resources.

21. Even physical exams are of limited effectiveness in identifying those individuals placed in Red ID restraints who are likely to sustain injury, because, as set forth below, some conditions which increase the risk of injury are not readily apparent. Moreover, all patients are likely to have pain and suffer from the restraints. Temporary neurological injury is likely in many. Because there is little follow up of inmates and no survey of the type of injuries that may have occurred, no one knows the incidence of neuropathy that will occur.

22. There are also institutional factors that will make the medical clearance process ineffective. Making physicians "clear" individuals for the use of restraints is likely to cause tension between the medical staff and correctional staff. This exercise places individual medical staff in a very awkward position and compromises their ability to exercise good judgment. Again, my review of modifications "denied" by security supports this view.

CONSEQUENCES OF THE RED ID RESTRAINTS

23. The medical community has not studied restraint practices as prolonged and as severe as the Red ID restraint practice. However, injury secondary to front cuffing is well established in medical literature. A French study published in the Journal of Forensic Science, September of 2001, reported that neurological symptoms occurred in 6.3% of consecutive prisoners who have been rear cuffed. This compares to 100% of prisoners with neurological symptoms who I

interviewed during the tour who were cuffed in the Red ID manner with cuffs in the rear with palms outward. The previously mentioned French study reported that symptoms were related to the duration of restraints (mean time in restraints was 1.8 hours for asymptomatic patients and 3.7 hours for symptomatic patients). They conclude that the longer restraints are applied the greater the likelihood of potential injury. A study at Emory University presented in the June 2000 issue of the medical journal Nerve, reported that handcuff-related nerve injuries can be severe and permanent. That study documented nerve injuries utilizing electrodiagnostic studies. A report in the Archives of Physical Medicine and Rehabilitation reported cases of median and ulnar neuropathies (nerve damage) as a result of cuffing. The authors state that "significant disability resulted, and a rehabilitation program was indicated." It is my opinion that there is documented evidence that routine front handcuffing does cause temporary and permanent nerve damage. It is also my opinion that documented evidence suggests that similar injuries result from rear cuffing. Finally, it is my opinion that rear cuffing increases the potential for nerve damage and that cuffing with the palms outward further increases the risk.

24. My opinion is that Red ID restraints will result in a variety of muscular-skeletal, neurological and possibly vascular injuries for some prisoners. The position of the arms and hands in the Red ID restraint posture stretches a number of nerves entering the arm and nerves transversing the wrists. In addition, handcuffing compresses nerves in the wrists. The effect of the rear position (particularly with palms outward) is additive. Routine handcuffing causes temporary and permanent nerve injuries in some individuals. As reflected in the French study, cuffing prisoners for prolonged periods increases the likelihood of nerve damage. Prolonged cuffing in the unnatural posture imposed by Red ID restraints additionally increases the

likelihood of injury. The torsion (twisting) of the wrists exposes the wrists to additional strain and may result in joint fatigue and injury as well as increase potential for nerve injury.. In part, this is because the position is uncomfortable, which results in prisoners struggling with the cuffs to increase comfort. This struggle can increase the likelihood of neuropathy. The struggle to find relief may have the same effect as the imposition of excessively tight handcuffs.

25. Prolonged rear handcuffing also results in muscular-skeletal and joint fatigue and presents a risk of injury and pain. In addition, due to the posture, the individual restrained is more vulnerable to injury if a fall occurs. Walking, sitting down or standing up are more difficult with both arms shackled behind one's back. This increases the likelihood of a stumble or accident. This is especially true since inmates have to walk up stairs to get into the Bronx Supreme Court building. Traveling in the buses is not safe. There is inadequate ventilation in some of the cages and there is no means for the inmate to protect himself or herself in the event of sudden acceleration or deceleration.

26. Dr. Parks, in his Declaration states that he is "not aware of a single medical complaint secondary to rear cuffing" while he was with the New Jersey Department of Corrections. However, he does not indicate that the practice in New Jersey of rear cuffing inmates was of similar duration or posture as the practice in New York. He also states that "most rear cuffed inmates do not complain about injuries from rear cuffing." This was not my experience based on prisoner interviews and review of prisoner declarations. On the day of my tour, every inmate I interviewed in Red ID restraints was experiencing pain and numbness. Numerous inmate declarations describe pain and numbness. It may be that prisoners with medical complaints about medical problems from the use of Red ID restraints are not getting to

Dr. Parks' attention.

27. Dr. Parks also mentions that prolonged cuffing primarily causes temporary numbness that occurs equally with front or rear cuffing. I disagree. It is well established in medical literature that even front cuffing can cause traumatic neuropathy. The medical effect of prolonged rear cuffing has not been studied but rear cuffing puts more strain on the shoulders, wrists, and the neurovascular structures of the arms and hands than does front cuffing. It is my opinion therefore that rear cuffing would lead to more numbness and more serious medical problems. Rear cuffing appears to pose greater potential for permanent neuropathy than front cuffing, in addition to potential for other medical problems described elsewhere in this report.

28. The following are examples of other types of medical conditions that may result from use of these devices or types of conditions that should contraindicate use of these restraints.

A. Persons who have need of immediate intermittent self medication (e.g. persons using nitroglycerin or inhalers for asthma or chronic lung disease) will be at increased risk of harm by being unable to access their medication when they need to use it. Dr. Parks agrees in his deposition that these persons should be given a modification of Red ID restraints.

B. Prolonged restraint and immobilization can result in venous stasis (decreased blood flows in veins), thrombosis (clotting) and subsequent pulmonary emboli (clots to the lungs). The Red ID restraint significantly restricts movement and immobilizes the arms. Immobilization of a limb may place persons at higher risk for clotting and subsequent emboli (clots that float off into the circulation). While this type of event may

be infrequent, it is a serious consequence of immobilization of a limb.[1] Persons with other risk factors for increased clotting certainly should not be placed in these types of restraints. Dr. Parks agrees in his deposition to the extent that he believes persons with clotting risk factors should be examined to determine if a modification is necessary. Also, it is standard medical practice for persons in mechanical restraints to periodically move all restrained limbs out of restraints (e.g. every two hours) in order to prevent clots from forming. Decreasing the time in restraints or more frequent time out of restraints would reduce the potentiality of clots forming.

C. Individuals who may have underlying peripheral vascular disease may also suffer transient ischemia (loss or decrease of bloodflow) to the limb. Prolonged ischemia may potentially harm some individuals.

D. The manufacturer's directions for the using The Tube mitts recommend that the mitts be sanitized between uses. This does not occur. Persons with ulcerations or other skin disorders (impetigo) may transmit disease to other inmates. Mitts should be sanitized after each use as per instructions from the manufacturer.

E. Persons with edematous (swelling) disorders should be prohibited from being placed in these restraints because of the impairment in circulation and the resultant pressure effects on nerves.

F. Persons with coronary artery disease who require nitrates should not be placed in these restraints both because of the potential for an increased cardiovascular stress and

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[1] I disagree with Dr. Parks' comment that a clot forming in the arm would probably never reach the lungs. Thrombosis of the veins in the arms is known to occur. The Red ID position immobilizes the arms and therefore the potential for clots exists.

because of the inability to immediately access sublingual nitrates.

G. Elderly persons who may be at increase risk of falls should not be placed in these restraints because of mobility concerns. Persons with any neurological disorder that impairs movement should also be prohibited from being placed in these restraints for the same reasons.

H. Pregnant women should not be placed in these restraints due to the increased hypercoagulable (risk of blood clots) state of pregnancy and due to the increased risk to the fetus in the event of a fall.

I. Persons who have epilepsy should not be placed in these types of restraints because of potential of injury in the event of a seizure.

29. Front or side restraining will significantly reduce or eliminate the potential for the types of neuro-vascular injuries I described above.

30. For all the foregoing reasons the only effective ways to reduce the risk of harm to prisoners from these restraint procedures are to eliminate the most injurious aspect of them, i.e. prolonged rear cuffing and to minimize the number of people subjected to the restraint procedures to the extent possible.

31. In sum, the manner of restraint is awkward, unnatural, and stresses joints, arteries and nerves in a manner that inevitably will lead to injury, disability and pain in a significant number of persons. The policies adopted regarding medical reviews do not adequately screen out those at risk of severe injury. I would encourage the correctional staff to utilize an alternate, more prudent and safer manner of restraint. Alternatively, if these restraints must be used, I would recommend a much more careful, written and detailed policy of applying these restraints

and would restrict their use as much as possible. In addition, I would require a physician's interview of each Red ID candidate prior to placement in restraints. If risk factors are present, a physical examination should be conducted. Where a prisoner has risk factors, but is nonetheless cleared for Red ID restraints, the prisoner should be examined each month thereafter.

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MICHAEL PUISIS, D.O.

Date: May ____ 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

75 Civ. 3073 (HB)

DIRECT TESTIMONY OF DR. PATRICK BROWN

Plaintiffs,

-against-

WILLIAM J. FRASER, et al.,

Defendants.

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PATRICK BROWN, M.D., declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a physician and I currently hold the position of Medical Director for Correctional Health Services (CHS), which post I have held since 1999. I received a BS from City University of New York, Sophie Davis School of Biomedical Education, in 1986; and an MD degree from State University of New York at Stonybrook in 1988. I was board certified in internal medicine in 1999, and I am licensed to practice medicine in New York. I have been working in correctional health care since 1999.

2. As Medical Director, I oversee all aspects – medical, policy/procedure, and administrative – of the provision of health care to the inmates in the custody of the New York City Department of Correction (DOC). I have direct supervisory responsibility for the medical staff at the borough jails, other than the Bernard B. Kerik Center (BBKC) (formerly the Manhattan Detention Center). Medical care at the Rikers Island jails and at BBKC is provided

through an outside provider, Prison Health Services (PHS), whose Medical Director reports to me.

General Medical Assessment and Care of Inmates

3. The inmates in DOC custody receive a thorough intake medical assessment when they are first admitted. The assessment consists of two parts, a history and a physical examination. The history is a two-page form that includes wide-ranging questions about the inmate's medical and physical condition. There are specific questions about the most commonly found conditions, injuries, and diseases, such as HIV and sexually transmitted diseases, tuberculosis, asthma, heart conditions, seizures, and any prior surgeries or fractures. In addition, the history asks the inmate to report any medications taken, and any allergies; it includes a mental health screening; and finally it asks the inmate to report any other medical conditions he is aware of. The physical examination is also thorough. It consists of general inspection of the inmate, then an examination of the entire body, i.e., inspection of the head, eyes, ears, nose, throat, breasts, chest, heart, abdomen, rectum, genitalia, musculo-skeletal/extremities, and neurological system (sensory, motor strength, reflexes, gait, and balance). All findings are noted on the intake history and physical form. A copy of a blank intake history and physical is attached as Exhibit BR-1.

4. CHS provides inmates with readily available medical care throughout their stay in DOC custody. Each facility has a clinic that is staffed with a head physician, staff physicians, physicians' assistants, nurses, and other medical staff. There are also specialists available on call for referrals. The number of staff in each facility depends on the size of the inmate population. The clinics are staffed 24 hours per day, 7 days per week. Routine sick call is available Monday through Friday and emergency sick call is available at all other times.

5. Many inmates in punitive segregation are housed in the Central Punitive Segregation Unit (CPSU) at the Otis Bantum Correctional Center (OBCC) on Rikers Island. Those inmates are seen on a daily basis, seven days per week, by medical staff, who go on rounds to their housing areas and ask each inmate about his condition and solicit any complaints he may have. In addition, medical staff perform a visual inspection of each inmate. A record of all such rounds in the CPSU is maintained, which notes any medical condition reported by an inmate and whether treatment is needed. Five of the 23 inmate witnesses in this proceeding were housed in the CPSU, and the medical staff's visits to them are noted. These inmates are Najib Bosier, David Gray, Ronald Herron, Santiago Quinones, and Jeremy Williams.

6. In January 2001, CHS established a "Patient Care Tracking Program" that provides enhanced monitoring for certain categories of inmates; these inmates are assigned to "case trackers," CHS employees who function as patient advocates. The case trackers are responsible for monitoring specific inmates. Inmate may be assigned to case tracking for a variety of reasons, most commonly because of the inmate's having a particularly complex medical condition, a prosthetic limb, a sensory impairment such as deafness, a disability, an inability to communicate in a language for which translation services are readily available, or another condition as determined on a case-by-case basis by the CHS Medical Director. The case trackers check up on their assigned inmates frequently, solicit any complaints they may be having relating to their condition, and work with facility medical and other staff to resolve any problems that arise.

7. In January 2002, I directed that all Red ID/enhanced restraint inmates who were granted a medical modification should be referred to the case trackers. The medical staff

began referring such inmates to the case trackers in March. All inmates who are granted medical modifications are now being referred to the system for this enhanced monitoring.

Medical Review Procedures

8. In order to enable the City to comply with the order issued by this Court on August 10, 2000 (the "August 10 Order"), the medical staff of CHS and PHS perform a medical review of the health of inmates placed by DOC in Red ID or enhanced restraint status to determine whether the physical restraints that DOC is imposing on those inmates will have a significant adverse medical consequence, or will aggravate an existing medical condition, the standard set forth in the August 10 Order. In accordance with the August 10 Order, these reviews are conducted both upon initial placement and monthly, and are based upon a protocol developed by CHS and promulgated on January 3, 2001, a copy of which is annexed hereto as Exhibit BR-2. The protocol has recently been modified to mesh better with the Department's recent Operations Order, but is otherwise largely unchanged in substance. It includes a description of the standard set of restraints that are used with Red ID inmates as well as the medical review process. As I describe below, however, the new protocol includes procedural improvements that will provide me regularly with additional information about medical reviews of Red ID and enhanced restraint inmates. The new protocol ("CHS Protocol"), promulgated on April 5, 2002, is attached hereto as Exhibit BR-3.

9. Under the CHS Protocol, upon notification by DOC that an inmate has been placed in Red ID or enhanced restraint status, medical staff reviews the inmate's medical record to determine whether the required enhanced restraints are likely to be medically contraindicated. The Department provides to medical staff a copy of the Notice of Authorization for Initial Placement in the applicable status ("Notice of Authorization"), and a 24-hour review form ("24-

hour form," DOC Form 975) for each inmate so placed. Medical staff sign and date a copy of the Notice of Authorization to acknowledge receipt. *Id.* § A.1.a. If medical staff determines that it is medically necessary to examine the inmate before making a determination about medical contraindication, they will request that DOC staff produce the inmate to the clinic. *Id.* § A.1.

10. Should medical staff determine that the enhanced restraints are likely to cause a significant adverse medical consequence for the inmate or aggravate an existing medical condition, medical staff marks on the 24-hour form that the inmate is "not cleared" for those restraints. If there is no such contraindication, the inmate is marked "cleared" for the restraints. *Id.* § A.1.c. The 24-hour form is to be completed and returned promptly to DOC. In addition, copies of the completed 24-hour review form and the initial placement form are placed in the inmate's medical chart. *Id.* § A.1.d.

11. During the first week of each calendar month, DOC provides medical staff in each facility with a list of the inmates in Red ID and/or enhanced restraint status housed in that facility. *Id.* § B.1. Upon receipt of that list, the facility's head physician or his or her designee commences a prompt review of those inmates' medical charts to determine whether any medical condition or problem warrants modifying the restraint order of any of those inmates. If warranted, the inmate is produced to the clinic for physical examination. If the physician finds a condition that warrants modification, he or she marks the inmate "not cleared" for some or all of those restraints; otherwise, the inmate is cleared for full restraints. Upon completion of the Monthly Review form (DOC Form 976), the physician returns that form to DOC, retaining a copy in the facility's head physician's office.

12. If an inmate is not cleared for full restraints, the facility's head physician will confer with the facility's Deputy Warden for Security, at the Deputy Warden's request, to select

an alternative means of restraint that is appropriate given both security and medical concerns. *Id.* § C.

Medical Reviews in Practice

13. Although CHS was prepared to conduct medical reviews of Red ID inmates as of January 2001, reviews conducted before November 2001 were generally in response to inmate complaints and to the monthly lists of inmates that some of the facility security staff provided. In August 2001 I issued a memorandum to all facility medical directors (and through Dr. Parks, Medical Director of PHS, to the site medical directors at the PHS facilities) that requested that they begin reporting to me monthly on such reviews, on a specific form issued to them; the initial CHS protocol had not required that facility medical staff report to me regarding the performance of the mandated medical reviews. A copy of my memorandum is attached as Exhibit BR-4. In November 2001, I became aware, based on the data I received from the facilities for the prior two months, that the initial and monthly reviews were not being performed at most of the facilities.

14. The Department thereafter began providing CHS and PHS medical staff with more complete information about inmates requiring medical review. Both initial placement and monthly medical reviews are now conducted at all Department facilities and have been since the beginning of this year. I receive a monthly report from medical staff in all facilities, on a uniform CHS form, as to the numbers of initial and monthly evaluations requested by DOC, the number performed, the numbers of inmates cleared and not cleared for enhanced restraints, and the number of inmates not evaluated, with the reasons for that circumstance (most commonly because the inmate was transferred from the facility or discharged from Department custody). Physical examinations continue to be performed as warranted; in February 2002, 14 physical

examinations were conducted in addition to approximately 179 chart reviews for initial placement assessments. The same month, 38 inmates were not cleared in initial reviews, and 81 of 426 inmates were not cleared in monthly reviews.

15. I am aware of a letter dated January 7, 2002 that the Law Department sent to the Court indicating, among other things, that CHS was not conducting medical reviews of Red ID inmates. That report was inaccurate; to the extent that CHS has received lists from the Department and/or complaints from individual inmates, it has conducted medical reviews since January 2001. As I noted above, security staff at some facilities were sending monthly lists of inmates in Red ID or enhanced restraint status to the medical staff during 2001. With the standardization of procedures at the Department and the enhancement of the CHS Protocol, CHS is now conducting regular initial placement and monthly reviews at all facilities, and I am confident that this practice will continue smoothly in the future.

16. I have reviewed the claims by inmates who are witnesses in this proceeding with respect to the medical reviews they received after placement in Red ID or enhanced restraints status, and the grant or denial of modifications to their restraints by medical staff. I believe, based on my review of their medical charts, that those claims are in many cases without basis or in some cases even directly contrary to the facts. In some cases, it is clear that, despite an inmate's lack of knowledge, his medical condition was assessed and that no medical modification was warranted. In other cases, it is clear that the inmate was granted a modification, although possibly not immediately or for as long a duration as he sought. For some inmates, the charts are not entirely clear and I cannot evaluate the case without further investigation. I discuss below a few examples.

would undergo surgery first

17. Latrese Carr complained of back and shoulder problems due to rear cuffing on March 18, 2002. Pending the receipt of x-ray results, medical staff issued Mr. Carr a medical modification not to rear cuff him, effective March 18, 2001 until April 18, 2001. Mr. Carr was reviewed again on April 24, 2001. Because the x-ray result did not indicate that he presented with any condition that should prevent cuffing him to the rear, his medical modification was not continued.

- If someone has a torn rotator cuff or injuries or tendons + muscles -- cuffing

18. Prince Dupree complains that he has asthma and therefore should not be in rear cuffs. However, he did not identify his asthma condition at his December 13, 2001 intake examination, he visited the clinic numerous times without complaining of asthma, and at the single clinic visit at which he did complain about asthma (January 23, 2002), he voluntarily left the clinic to return to his housing area when medical staff told him they would have to get his chart for review.

19. Lein Figueroa claims that he should not be rear cuffed, but his chart does not present any condition to warrant a modification of his restraints. His complaints were evaluated multiple times (on January 18, 2002, January 31, 2002, February 7, 2002, and March 1, 2002), but he never presented with any medical conditions that contraindicate rear cuffing. I also note that according to the progress notes in Mr. Figueroa's chart, on February 6, 2002 Mr. Figueroa requested that medical staff put gauze on his wrists so that DOC wouldn't rear cuff him.

20. Oliver Johnson has been seen by medical staff on numerous occasions for a variety of medical problems, but his chart indicates that he has never complained about pain from rear cuffing to the medical staff, nor is there any other indication in the chart that he should not be rear cuffed.

21. David Lawson claims that he should not be rear cuffed, but his chart does not present any contraindications. His rear cuffing status was reviewed on March 21, 2002. In addition, x-rays of his shoulder (April 3, 2002) and leg (August 15, 2001) did not contraindicate rear-cuffing.

Dated: New York, New York
May 21, 2002

PATRICK BROWN, M.D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
JAMES BENJAMIN, et al.,

Plaintiffs,

- against -

WILLIAM J. FRASER, et al.,

Defendants.

and related cases
----------X

75 Civ. 3073 (HB)

DIRECT TESTIMONY OF E. EUGENE MILLER

E. EUGENE MILLER declares under penalty of perjury:

1. The following testimony is slightly revised from the report I submitted on May 2, 2002. At the end is an Addendum addressing certain documentation that had not been provided to me when I wrote that report, as well as limited aspects of the deposition testimony of defendants' experts Steven Conry and David Bogard, which were not available when I wrote my report. A few such new matters are addressed in the main body of the testimony, in footnotes.

2. I was retained by the Prisoners' Rights Project of The Legal Aid Society, which is serving as counsel for the plaintiffs in this case. I was asked to determine whether or not the practice of the protracted rear-cuffing of so called "Red I.D." inmates on trips outside of New York City jails complied with generally accepted principles, practices and standards in the field of penology.

QUALIFICATIONS AND BASIS OF OPINION

3. In preparing this report, I have relied upon the professional education, training and

experience which I have obtained during my approximately thirty-seven years in the field of adult institutional corrections,. Among other positions of responsibility, this experience has included being the Superintendent of the Women's Detention Center in Washington, D.C., and the Correctional Facilities Administrator for the Alaska Division of Corrections, in which position I oversaw the operations of the state's prisons and the major jails. I am active in professional organizations and participate at the principal conferences in the field, such attending the American Jail Association's annual training conference in Milwaukee last month. I am the author of a book, entitled *Jail Management*. I have also written numerous articles on various topics related to jails and correctional administration, including an article on certain types of restraint devices in the June-July, 1999, issue of the *Correctional Security Report*. I have three degrees, including an M.S. in Correctional Administration. (Please see the attached curriculum vitae for details pertaining to my education and experience.)

4. It should be noted that I have also been to more than eight hundred jails and prisons across the United States, including several facilities on Rikers Island, as well as in several foreign countries. In recent years I have had the opportunity to observe the operations of one or more of the jails in such major metropolitan jurisdictions as Los Angeles, Dallas, Detroit, Phoenix, Miami, New Orleans, and Washington, D.C., among others. I have done a significant amount of consulting work for the United States Department of Justice, Civil Rights Division, in investigations of jail conditions and practices.

5. With specific regard to this case, on April 18, 2002, I was able to observe: the arrival of "Red I.D." inmates at the Supreme Court building in the Bronx both in a separate bus and in a bus with general population inmates; physically examine the insides of both of those buses; talk with and

observe "Red I.D." inmates in holding cells (pens); converse with New York City Department of Correction officers and officials, such as Messrs. Conry and Schulman; review the applicable "Post Orders" (P.O.F. - Post 516); observe the transfer of custody of an inmate from the Department of Correction to a court security officer, observe other security equipment present in the holding cell (pens) area and discuss with staff how it is used; observe and talk with "Red I.D." inmates in the holding cells (pens) at the Bronx Criminal Court building; review the applicable "Post Orders" (Post 315A); discuss procedures with correctional officers and officials; observe the serving of lunch; observe the intake/release area at the George R. Vierno Center on Rikers Island; and discuss the procedures used to process "Red I.D." inmates out of and back into the facility in connection with court appearances.,

6. It should be noted that at both the Bronx Supreme Court and Criminal Court buildings, I asked to see any documentation that "Red I.D." inmates were being given breaks to go to the bathroom, eat lunch, etc., as required by the applicable directive. I was shown a form, which I was told had been in use for three weeks, but which had not been filled in because the inmates had not been there long enough to start getting breaks. I then asked to see some completed forms, which were apparently stored elsewhere in the building. Understandably the staff was unable to retrieve these at the time, due to the press of other duties. However, I have subsequently reviewed some of these documents, and they are referred to in the Addendum, below.

7. As part of my assessment, I had staff place me in "Red I.D." restraints and kept them on for several minutes, as I performed several normal functions, such as walking and trying to sit.

8. At all times during the on-site portion of my assessment, I was accompanied by Mr. John Boston, counsel for the plaintiffs, Ms. Florence Hutner, Assistant Corporation Counsel, and several

New York City Department of Correction officials, including Steven Conry.

9. In addition to the foregoing on-site activities, I have also reviewed the following documents and materials:

* Directive, RED ID STATUS AND ENHANCED RESTRAINT STATUS DUE PROCESS, and attached forms, 12/28/00;

* Declaration of John Boston, 11/30/01;

* Benjamin v. Kerik, 102 F.Supp.2d 157 (S.D.N.Y. 2000);

* Benjamin v. Fraser, 264 F.3d 175 (2nd Cir. 2001);

* District Judge Harold Baer, Jr., "Order re: RED ID Status and Restraint Status Due Process", 08/10/00;

* Letter from Assistant Corporation Counsel Coleen Chin to District Judge Harold Baer, Jr., 01/07/02;

* Declarations of some 27 inmates concerning their experiences in Red ID or enhanced restraint status

* Operations Order, SECURITY RESTRAINTS FOR VIOLENT INMATES, 10/22/97;

* Operations Order, SECURITY RESTRAINTS FOR PUNITIVE SEGREGATION INMATES, 10/22/97;

* Operations Order, IDENTIFICATION, TRACKING AND MONITORING OF WEAPON CARRIERS, 9/23/94;

* Operations Order, SECURITY RESTRAINTS FOR TRANSPORTING VIOLENT INMATES, 4/28/00;

* Numerous documents concerning an incident between inmates Anthony Nealous and James Davis on 10/28/99;

* Various documents concerning a Legal Aid Society complaint on behalf of inmate Oliver Johnson, including the results of the investigation by corrections officials;

* Memorandum from Kevin McCloskey to All Personnel, RED I.D. CARD INMATES RE: COMPLETED COURT APPEARANCE, 3/18/02;

* Memorandum from Kevin McCloskey to Warden Clyton Eastmond, EXPEDITING COURT APPEARANCES FOR RED I.D. INMATES RE: FOLLOW-UP TO MMETING WITH O.C.A.;

* Six Los Angeles County Sheriff's Department policies concerning restraints;

* Broward Country Sheriff's Office standard operating procedure concerning internal inmate movement within the jail;

* Declaration of Dr. Michael Puisis;

* Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Relief Pursuant to Rule 60(b);

* Declaration of Dr. Trevor Parks;

* Declaration of Steven Conry;

* Correction Department charts regarding "Analysis of Violence Statistics, FY '95 through FY '02," "Inmate on Inmate Violence, Fiscal Years 1995 - 2001," and "Inmate Arrests, Fiscal Years '96-'01";

* Hundreds of files on individual "Red I.D." and "Enhanced Restraint" prisoners, which were produced by the defendants in discovery;

* Manufacturers' specifications on various types of handcuffs and leg irons used by the Department of Correction;

* Directive #4100R, CLASSIFICATION, and various attachments and appendices, 4/22/96;

* Revision notice to Directive #4100R, 6/23/97;

* New York Code of Rules and Regulations, Section 7003 (the New York State jail standards);

* American Correctional Association, Standards for Adult Local Detention Facilities, 3rd edition;

* American Correctional Association, 2002 Standards Supplement.

10. The following additional materials were made available to me for review after I had submitted my report:

* Records of court production, movement, meals, bathroom breaks, of Red ID and enhanced restraint inmates in the Bronx Briminal and Supreme Courts, various dates in March and April 2002;

* The 41st and 42d Progress Reports of the Office of Compliance Consultants, dated November 18, 1996 and April 16, 1997, respectively;

* Two memoranda concerning classification from Paul Nicoll of the Office of Compliance Consultants, dated August 8, 1997 and February 5, 1998, respectively;

* Additional files concerning specific prisoners whom I had referenced in my report.

11. In addition, plaintiffs' counsel has informed me of several matters testified to by defendants' experts Steven Conry and David Bogard in their depositions, which were taken after my deposition.

OBSERVATIONS, FINDINGS AND OPINIONS

12. It should be noted at the outset that this section of the report addresses the Department of Correction's practice of rear-cuffing "Red I.D." inmates for protracted periods of time. To the best of my knowledge, a practice of rear-cuffing inmates for brief durations is not in controversy here. But the practice of rear-cuffing inmates for lengthy periods raises a number of serious issues and concerns, especially where, as here, it is done in addition to a large number of other security measures.

Protracted Rear-Cuffing Is Not a Common Practice

12. I am personally not aware of another jail or jail system that routinely rear-cuffs any category of inmate for the entire day during movements outside of the facility, e.g., for court appearances. In any event, it is certainly not a common practice in the field, even for high security inmates. On the other hand, the practice of rear-cuffing inmates for short time frames, e.g., during internal movement from one part of a jail to another, is quite common in the field. This is not to say that other major metropolitan jail systems do not emphasize security - quite the contrary. But they seem to be confident that the combination of more usual means of restraint and other security procedures will result in a reasonable level of safety for staff, inmates and the general public.

13. Bureau Chief Steven Conry cited Los Angeles County, California, and Broward County, Florida, in his "Declaration" of March 25, 2002, as examples of jurisdictions that use rear-cuffing. He also attached policies from those counties' sheriffs' departments as exhibits. Mr. Conry's depiction of the situation in Los Angeles was in sharp contrast to my own recollection based upon personal observations several years ago. In an effort to determine the current practice with regard to restraining prisoners in the court pens in Los Angeles County, I talked with John Vaca, who is a supervisor in the Los Angeles County Public Defender's Office and has been monitoring the restraint practices with regard to his clients. He informed me that the practice of keeping some inmates in restraints in the court pens is a relatively new practice. Furthermore, those prisoners who are in restraints are front-cuffed; Mr. Vaca even received a demonstration from the Sheriff's Office on using restraints on court prisoners and the demonstration utilized front-cuffing. Hence, no matter what may be stated in the Sheriff's Department policy cited by Bureau Chief Conry, the actual practice in the court pens seems to employ front-cuffing when restraints are kept on prisoners at all.

14. The Broward County Sheriff's Office policy cited by Mr. Conry pertains only to internal movement within the jail and is consistent with the actual practices, which I have personally seen in that jurisdiction. I agree with Mr. Conry that rear-cuffing inmates for purposes of internal movement within a jail for short time durations is a common practice in many jails, including in Broward County, Florida.

Alternatives to Protracted Rear-Cuffing

15. By focusing solely on the issue of rear-cuffing, it is easy to overlook the other formidable security measures employed, when "Red I.D." inmates are moved out of the jails. For example, I was informed that "Red I.D." inmates being taken to court from the George R. Vierno Center jail are strip-searched before they are even brought to the intake/release area for processing. Then, they are strip-searched again before they are placed in restraints and placed on the bus. While on the bus, they are kept separate from each other and other inmates in individual compartments. Once at the court, they are taken off the bus separately and placed in holding cells (pens) either by themselves or together with other "Red I.D." inmates, depending on available space. Before being moved from the holding cell area to a courtroom, each "Red I.D." inmate undergoes another three part security screening. This screening consists of another strip search, passing through a magnetometer, and sitting in a B.O.S.S. chair, which detects metal concealed n body cavities. If either of these latter two procedures triggers an alarm, then another search is done with a transfrisker (hand-held metal detector).

16. Furthermore, the handcuffs are not the only device restraining the individual. A "black box" is placed over the middle section of the handcuffs. The "black box" prevents someone from

inserting an actual or fabricated key into the handcuffs' keyhole and also makes the cuffs less flexible, so that there is even less freedom of movement. Security mitts, which cover the entire hand and restrict the use of a person's fingers as well as further limiting direct access to the cuffs, are then placed over the hand. Each "Red I.D." prisoner is also placed in leg irons.

17. Of course, in addition to all of the restraint devices and different types of searches, a crucial element in ensuring a reasonable degree of security with these prisoners is staff supervision. With respect to"Red I.D." inmates, there is a transportation officer with them on the bus in addition to the driver. Once off the bus, they are escorted everywhere by an officer. Frequent checks are made on them in the holding cells (pens) by correctional officers.

18. Thus, it is obvious that rear-cuffing is but one aspect of an entire range of regularly-employed security measures designed to ensure that proper security will be maintained, when "Red I.D." inmates are taken to court. Within that framework, I am not suggesting that "Red I.D." inmates should not be restrained in some manner. But in light of the sheer quantity and variety of other security measures already taken with them, rear-cuffing is unnecessary, since reasonable alternatives exist. For example, inmates could be handcuffed at their sides. (It is interesting to note that Bureau Chief Conry did not address this alternative restraint technique at all in his "Declaration.") Or, they could be cuffed in front with the cuffs attached to a waist chain. In such an event, the "black box" would still prevent access to the handcuff keyhole and the attachment to the chain would limit the range of motion of the person's arms.

19. The issue of rear-cuffing is not one of perfect security versus no security at all. Rear-cuffing is but one aspect of a multifaceted security approach developed to deal with people whom the Department of Correction considers to be actually or potentially dangerous. Within that same

security framework, alternatives exist which would maintain security, while simultaneously addressing another important issue, i.e., the pain entailed in protracted rear-cuffing.

Protracted Rear-Cuffing is Painful

20. Protracted rear-cuffing is painful. I know this for several reasons. First, I had corrections staff place me in the same restraints in the same manner as "Red I.D." inmates. After being placed in restraints, I took a few steps. I started to try to sit down, but suddenly became unsure of my balance and my ability to control my descent into a chair, so changed my mind and stood up. All the while, I was experiencing pain in my wrists. As soon as my hands were cuffed behind me, I immediately felt pressure in my upper arms. While this sensation was not painful at the time, I have no doubt that this physical stress would have led to pain at some point.

21. However, I was genuinely surprised when the restraints were removed. There was a slight depression on my left wrist, where the handcuff had been. But there were two deep depressions on my right wrist. I immediately showed my wrists to Dr. Michael Puisis, plaintiffs' medical expert, who accompanied me to the various sites and had been placed in the same restraints just prior to me. He told me that, if I had stayed in the handcuffs for several hours, I undoubtedly would have experienced swelling. When I described the pain I had felt in my wrists and the pressure/physical tension in my upper arms, Dr. Puisis informed me that he had experienced the same sensations. He also gave me a medical explanation for the pressure/tension in my upper arms. Interestingly, Dr. Puisis periodically kept examining my right wrist for at least an hour after the restraints had been removed. (This included back at the hotel after we had left Rikers Island.) The same depressions, though less dramatic, were still plainly visible after that interval.

22. The second basis for my opinion that protracted rear-cuffing is painful is the aforementioned interaction with Dr. Puisis.

23. Third, every "Red I.D." inmate with whom Dr. Puisis and I spoke in the court holding cells in the Bronx complained of pain. Similarly, I read numerous complaints of pain made by other inmates during the course of this lawsuit. While I certainly do not automatically believe everything that inmates tell me, in this instance their complaints are perfectly compatible with my own personal experience and that of a medical professional with considerable experience in providing health care in correctional institutions.

24. In addition to inflicting pain, the practice of rear-cuffing also carries with it the risk of injury to the inmates. The abnormal posture of having one's hands joined behind one's back effects the sense of balance. This happened to me, when I tried to sit down while restrained. Having also examined the buses used to transport the inmates, it is obvious that any sudden stop in traffic could propel a person suddenly forward into a barrier. (The "Red I.D." inmates are placed in compartments on the buses.) The impaired sense of balance would increase the likelihood of this occurring and with one's hands behind one's back there would be no way to brace oneself to minimize the impact.

25. The American Correctional Association's Standards for Adult Local Detention Facilities, 3rd edition, is generally considered to be a statement of the national standards in the field of jail administration. Standard 3-ALDF-3E-08 on page 7 states:

> Written policy, procedure and practice protect inmates from personal abuse, corporal punishment, personal injury, property damage, and harassment.

(The American Correctional Association has four hundred twenty-one standards for jails, of which

only thirty-five are "Mandatory." The specific standard referenced above is one of those "Mandatory" standards.)

25. There are obviously circumstances in a jail which would justify the infliction of pain and possible the injury of an inmate, e.g., foiling an escape attempt, intervening in a violent incident, or defending oneself against an attack. Such situations are, by definition, unusual or extraordinary. Also, the pain is inflicted for only as long as is necessary to bring the inmate under control. By contrast, the New York practice of rear-cuffing is a routine procedure, used on a regular basis to carry out an ordinary function of the jail system. Furthermore, the inmate involved is not known to be engaging in any action at that time which is posing a threat to safety or security, but rather is assumed to be a potential threat, based upon some past action. The duration of the rear-cuffing, and therefore the pain, can be protracted and is not intended to address an immediate security crisis. Failing the latter, the infliction of pain cannot be justified and, thus, could be considered to be de facto punishment for past misconduct. Assuming that to be the case, then the practice of rear-cuffing would also violate another American Correctional Association standard, as well as the generally accepted practice in the field:

> Written policy, procedure and practice provide that instruments of restraint, such as handcuffs...are never applied as punishment... (Standard 3-ALDF-3A-17, page 50.)

Furthermore, the explanatory "Comment" accompanying this standard specifically states:

> ... Restraints should not be applied for more time than is absolutely necessary.

26. It would be wrong to leave the impression that "Red I.D." inmates are rear-cuffed for the entire duration of their court day without surcease. In fact, such inmates are supposed to be given

breaks from the rear-cuffs (but not all restraints) to go to the bathroom and eat lunch. Furthermore, Bureau Chief Conry stated that these inmates generally are not rear-cuffed in the courtrooms, where they are under control of court security personnel. However, a number of prisoner declarations state that many prisoners report that they remain rear-cuffed in the courtrooms, and counsel has informed me that Mr. Bogard, defendants' expert, has confirmed that this is often the case in the Bronx courts. Of course, many inmates who are taken to court, for one reason or another, spend little or no time in a courtroom due to various exigencies of the criminal court process. Thus, it is quite possible for a "Red I. D." inmate to spend a large portion of or even the entire day rear-cuffed, except to use the bathroom or a brief period in which to eat lunch. In fact, according to a Second Circuit Court of Appeals opinion, these inmates may spend as many as fourteen hours from the time they leave Rikers Island until they return. (Benjamin v. Fraser, 264 F.3d 175 (2nd Cir. 2001), at page 181.)

27. Two memoranda from Department of Correction official Kevin McCloskey in March of this year enunciate a new policy of trying to pick up "Red I. D." inmates to return them to their assigned jail within two hours after the completion of their court appearances. However, it should be noted that this formal policy only applies to Manhattan. When I asked how well this policy was being implemented, Mr. Conry told me that data was being collected and needed to be analyzed. With regard to "Red I.D." inmates going to courts in the Bronx, Mr. Conry said that it had always been the informal policy to try to return these prisoners promptly. Hence, I was unable to ascertain how quickly someone is returned to jail (and, therefore, have the rear-cuffs removed) after the completion of his court appearance.

28. During my tour of the Bronx court holding areas, I was told that records were kept of the times when prisoners are released from the restraints for meals or bathroom breaks. I was not able

to see completed records at that time because they were kept at another location. These records are important because record-keeping is an essential aspect of staff accountability for following proper procedures. In addition, a number of inmates have alleged that they were not allowed sufficient bathroom breaks. I was subsequently provided with examples of these records, and they are addressed in the Addendum.

28. Another important aspect of establishing staff accountability for their actions in implementing established policies and procedures is notice. In other words, staff cannot be held accountable for performing duties, if they do not know what those duties are. One means of establishing such accountability in a jail is the issuance of "Post Orders." "Post Orders" normally delineate the specific duties of a given officer job assignment (post), often in chronological order. With regard to the post supervising the holding cells (pens) at the Bronx Supreme Court building, one would expect the "Post Orders" to call attention to the need for "Red I.D." inmates to receive breaks at certain fixed or approximate intervals. Thus, these "Post Orders" would serve to provide notice to staff of what is expected of them, as well as guide an officer, who might not have worked the post regularly before, through the shift efficiently.

29. "Post Orders" are not some esoteric managerial amenity, but are considered an essential part of good jail management, as evidenced by the following two American Correctional Association standards:

> There are written orders for every correctional officer post. These orders are reviewed annually and updated if necessary.
>
> Comment: Written orders should specify the duties of each post and the procedures to be followed to carry out the assignment.
>
> Copies of the post orders should be available for all employees.

(Standard 3-ALDF-3A-05, page 48).

> Written policy, procedure, and practice provide that personnel read the appropriate post order each time they assume a new post and sign and date the post order.

(Standard 3-ALDF-3A-06, page 48.)

30. The "Post Orders" shown to me were grossly deficient and failed utterly to comply with the foregoing standards and the generally accepted practice in the field. In reality, these were not "Post Orders" (as that term is generally understood in the field of corrections), but rather a selection of various policies and procedures from the Bronx Detention Complex (the jail, not the court facility). Practically speaking, the "Post Orders" were virtually useless, as an officer would not plow through the mass of disparate material contained therein to find out how to handle a specific duty on a specific post. The only item that even mentioned "Red I. D." inmates in these "Post Orders" was Order #01/01, dated 01/05/01, which dealt exclusively with "Red I.D. Status and Enhanced Restraint Status Due Process" and the forms related thereto. This document dealt with the process for someone to be put on "Red I.D." status, including a hearing and the appeals process and not with how to supervise them properly in the court pens. Even if the staff on duty were otherwise familiar with the need to provide breaks for "Red I.D." inmates and/or regularly work the relevant post(s), staff members get sick, take vacations or might be absent for any number of other legitimate reasons, and an officer unfamiliar with the procedures would have to fill-in.

31. The situation regarding "Post Orders" was better at the Bronx Criminal Court building. While the "Post Orders" (P.O.F. - Post #315A) were again just a modified version of a full policy and procedure manual, and thus of little practical value in terms of guiding an officer through the duties of a specific post, at least there was a relevant one page "Institutional Order" (#34.96) in the "Post Order" book twice. Furthermore, the 1999 version of the relevant operations order was

literally taped to the wall directly above and in front of the appropriate post. (A copy of the current order, issued in 2001, would be even better.) While not in full compliance with the generally accepted practice in the field, the literal posting of a relevant institutional order at the officer's work station was sufficient to provide the requisite information.

Questionable Placement of Prisoners on "Red I.D." Status

32. I examined literally hundreds of files of prisoners placed in Red I.D. and enhanced restraint status, provided by the defendants through discovery.[1] This examination revealed several serious structural deficiencies in the manner in which inmates are placed on "Red I.D." status. Foremost among these are the total inflexibility of the process and the lack of a relevant standard by which to make placement judgments. It also should be noted that there were at least thirty-six instances in which there was either no relevant information given on the form at all or an attachment, necessary to form a judgment about placement, was missing.

Inflexibility

33. Review of the files indicates that the sole criterion used to determine whether or not somebody should be placed in "Red I.D." status is a history of being found guilty of one or more intra-institutional infractions involving a weapon. This conclusion is based on the lack of reference

[1] In the case of several prisoners, the defendants provided additional documentation well after I had written my report and given my deposition. Some of these documents indicated that there were additional circumstances that might have supported placement in "Red I.D." status. This is precisely the sort of information that should be considered by the decision-maker in "Red I.D." placement. There is no indication in the files of "Red I.D." and enhanced restraint placement that I initially reviewed that the decision-maker actually considered this information.

to any other relevant factors. It is consistent with the written policy, Directive 4518, which does not direct the consideration of any other factors. (The "found guilty" part of this criterion is occasionally waived. I found several files where the charge had been dismissed for "due process" reasons, but was put on "Red I.D." status anyway, since staff felt that he had, in fact, possessed a weapon.) The fact that this is the sole criterion is highlighted by the fact that, if an inmate appeals, apparently the sole issue considered by the appeal decision-maker is whether the inmate had ever been found guilty of, or committed, a weapons infraction. If the answer is "Yes," the appeal is immediately denied. The "Red I.D." placement process seems to make no provision whatsoever for staff discretion. There also appears to be no inquiry or review beyond the simple fact that the person has an infraction on their institutional record, no matter what the extenuating circumstances may have been. This has resulted in a number of instances, in which legitimate questions can be raised about the appropriateness of designating somebody a weapons offender. Several examples drawn from my review of the files should serve to illustrate this point.

34. One example is the man whose alleged weapon was a broomstick. He admitted wielding the broomstick, but claimed that it was in self-defense, as a much larger inmate came at him, brandishing a sharpened toothbrush. Does picking up an otherwise legitimate implement to defend oneself against a sudden attack constitute possessing a weapon? Before making a final judgment, the decision-maker should have obtained more details about the original incident to determine whether or not the man's claims are valid.[2]

35. One inmate claimed to have received a disciplinary report for possessing contraband after

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[2] Documents produced after my report and deposition contained additional description of the incident, none of which was inconsistent with the inmate's statement. None of the new documents reflects any consideration of the circumstances in making the "Red I.D." decision.

a weapon was found in his cell during a search, shortly after he was transferred into that housing unit. Apparently, at the infraction hearing, the previous occupant of the cell confessed that the weapon was his. BOTH men seem to have then be placed on "Red I.D." status. It should be obvious that only one of the two men should have been considered "Red I.D." The Department of Correction decision-maker needs to know more about the situation before determining which one. Whatever the ultimate outcome should have been, there was not enough information presented in the file to make an equitable determination.[3]

36. The previous situation raises another issue, which commonly occurs in jails. An inmate is moved into another cell. Soon thereafter the staff conducts a shakedown of the unit and finds a weapon in the new man's cell and charges him with an infraction. He claims that he knows nothing about the weapon and that it must have been put there by the cell's previous occupant. Sometimes such claims are valid and sometimes they are not. I raise this situation because a sizable number of infractions, which gave rise to people being put on "Red I.D." status, occurred under just such circumstances. If the Department of Correction has a procedure whereby a cell is searched thoroughly prior to the placement of a new inmate therein, then there is no problem at all with holding the new man responsible for the cell's contents. On the other hand, if the cell is not so searched or some other step taken to ensure that the cell is "clean," then it is not fair to hold the new occupant responsible, until he has either been there for some period of time or it can be established that the weapon belongs to him. I do not know what the Department's policy or actual practice is

[3] Documents produced after I had written my report and my deposition had been taken indicate that the disciplinary hearing officer concluded that the prisoner in whose cell the weapon was found was holding it for the other prisoner. However, there is no support for that conclusion visible in the documents. There is no indication in the new documents that the peculiar circumstances of the infraction were considered in the "Red I.D." placement decision.

in this regard.[4]

37. A final example of the total inflexibility of the placement process is the man who used a razor to injure himself. This raises a number of highly relevant issues, which the decision-maker should pursue, including the man's mental health status. Given circumstances, mental health staff should have input as to whether or not this individual requires restraints. A number of possibilities exist, including that the man is no longer a threat to himself or he is now taking medication which effectively controls the problem without the need for any physical restraints. However, according to the record, only the fact that the man had this prior weapons infraction was considered by the Department of Correction decision-maker, who summarily placed this inmate on "Red I.D." status.[5]

Lack of a Relevant Standard for Placement

38. As has been mentioned previously, the Department of Correction's records show that the sole criterion it uses to determine whether or not to place someone on "Red I.D." status is a prior institutional infraction involving weapons use. Such potentially relevant issues as the circumstances surrounding the incident or even how long ago it occurred are ignored. This practice is in direct contradiction to what the Department of Correction does in another important, related operational

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[4] Counsel has read to me an excerpt from Chief Conry's deposition, which was taken after my report and deposition were completed, stating that he believes that such searches are conducted but that there is no written policy concerning them.

[5] Documents produced after I had written my report and my deposition had been taken show that this prisoner was not found guilty of the weapons charge; instead, he was found guilty only of destruction of city property (breaking the razor), for which he was given a reprimand. His testimony at the disciplinary hearing is summarized as: "I was stressed out–so I cut my wrist." Nonetheless he received a "Red I.D." It appears that he also had a 1994 disciplinary conviction for a contraband weapon, but there is no indication that the "Red I.D." decision-makers relied on or even possessed that information.

area, i.e., classification.

39. Classification is essentially the placement of inmates into categories based on a variety of criteria in order to enhance security and identify special needs relative to programs and services. "Red I.D." status is a security designation pertaining to the movement of individuals who have violated previously a jail rule pertaining to weapons. "Red I.D." inmates can be and are found in many different classifications into which the inmate population is divided. But, without making extremely narrow semantic distinctions, placing someone on "Red I.D." status is basically a classification or, at the very least, a classification-like decision. After all, an inmate is being placed in a particular category based upon a specific criterion.

40. The New York City Department of Correction has a very good written policy and procedure on classification (Directive #4100R), which complies fully with applicable standards, as well as the generally accepted practice in the field. The classification system uses a numerical point scale to assign inmates to one of four security categories based on information about their personal characteristics, criminal record and prior institutional behavior. Among other topics, this directive discusses people, who need to be separated from the general population, including

> ...Inmates demonstrating a history of violence as witnessed by convictions on two separate occasions of any violent or serious infraction (i.e., Grade 1) or one conviction for an escape related infraction during their current incarceration or any incarceration during the previous five years.
>
> *Note:* This five year time frame may be disregarded in those instances where security staff believe the orderly running of the institution will be jeopardized. Staff must believe there is a very severe threat to facility staff and to the security of the institution in order to consider older infractions. All such exceptions must be documented. . . .
>
> Exceptions would include all inmates who have murdered other inmates while incarcerated, serious or repeated assault on correctional staff and any serious escape

> charges. Each case will be determined on a case-by-case basis to determine the necessity of the restrictive placement...

(Directive #4100R, Appendix A, "Special Housing Guidelines," pages 2 and 3. Note: Emphasis in the original.)

41. This directive makes two very relevant points, which are directly applicable to a consideration of the process by which people are placed on "Red I.D." status. First, it recognizes that all infractions of institution rules, even murder, are not necessarily equal. It specifically grants the decision-maker flexibility, when the infraction occurred more than five years ago, for reasons which will be discussed below. Second, it establishes a standard that should be used in exercising that flexibility, i.e., that the person "... is a very severe threat to facility staff and to the security of the institution. . . ." It also establishes the principle that ". . . Each case will be determined on a case-by-case basis to determine the necessity of restrictive placement. . . ."

42. Elsewhere in the directive, a five year time frame is also established as the cutoff point for considering previous institutional infractions. Such a time frame limitation is a standard feature of modern classification systems, although the precise number of years may vary. This limit is established, among other reasons, in recognition of the fact that inmates' circumstances can change, thereby effecting behavior. For instance, a man, who engaged in a wild "street" life-style ten years ago, may have been released, gotten married and become a father. There changes in his life may well have had the effect of helping him mature and settle down. Also, it can be shown satisfactorily that career criminals experience burn-out, as they become older, just as people in other occupations do. An exemplification of this widely-recognized fact is that the Department's own classification scale gives an inmate 3 points towards achieving a lower classification level if he is older than thirty-one.

Furthermore, a person may have committed an infraction many years ago, but learned his lesson and has been fully compliant with institution rules ever since.

43. The reason for mentioning this five year time frame for the consideration of past misconduct in the Department's classification system is because of the dramatic implication a similar time limit would have upon the number of inmates being placed on "Red I.D." status. In my review of files, I found approximately 103 people who apparently had been placed on "Red I.D." status because of infractions committed more than five years ago, including several as far back as 1991! That figure represents a very significant percentage (though by no means even half) of the total number of "Red I.D." inmates. Hence, the use of a weapons infraction more than five years old as the sole basis for making someone a "Red I.D." should be discretionary, not mandatory, as it is now.

44. The mere fact that someone has committed an institutional infraction involving a weapon at some time and under some circumstances does not mean that the person requires draconian security measures to ensure safety and security. Prisoners with a prior history of a weapons infraction may well be a good category of prisoners to examine automatically to see if they require extra security measures. But the applicable and determining standard upon which placement in "Red I.D." status should be based is whether or not the individual poses "... a very severe threat to facility staff... the security of the institution...", as the directive of classification states. An alternative way to state the standard would be whether the individual poses a significant current risk of violence or weapons use or possession. The escape risk an inmate poses is another relevant consideration pertaining to the level of security appropriate during outside trips. Such a standard is directly related to legitimate penological objectives. But it also requires the Department's decision-maker to assess other known facts about the individual in order to determine the level of risk, as opposed to just one

criterion in isolation.

45. The Department of Correction should definitely treat people with a weapons infraction committed more than five years ago in the same way it classifies people who murdered someone more than five years ago while incarcerated. Before placing someone in"Red I.D." status, review his file and make a determination as to whether or not he still poses a risk to safety and security. These decisions should be made on a case-by-case basis. Such a standard and process would not compromise security in any way; if a person is still dangerous, then put him on "Red I.D." status.

46. The rationale for establishing a reasonable standard and broader review process is multifaceted. First, it is a long-established principle of jail management that you do not place someone in a higher security category than is necessary. This is a matter of fundamental fairness to the inmate. But it also conserves a precious security resource, i.e., correctional officers' time and attention. Placing an inmate in "Red I.D." restraints is time-consuming, as is taking the restraints at least partially off several times each day to permit bathroom usage and eating lunch. Requiring officers to do this with prisoners for whom it is not necessary distracts them from other important security duties, such as closely supervising those prisoners who do pose a serious risk. If the "Red I.D." inmate does, in fact, pose a threat to safety and security, then putting on the restraints is time well spent. The time spent in putting on and removing restraints is just one aspect of the extra effort properly expended in handling "Red I.D." inmates, since special arrangements are made for their transportation to-and-from court and additional, time-consuming security measures are employed in the court holding cell areas.

47. It should also be noted that the Department of Correction has presented charts depicting the dramatic reduction in inmate violence during the period of fiscal years 1995 through 2002. The

Department no doubt attributes this reduction to the implementation of a number of new procedures and practices, including the implementation of "Red I.D." status. But another new process implemented during the same time frame, which no doubt has contributed to the reduction in violence, is the current classification system--the same system which disregards minor rules violations more than five years old and mandates the review on a case-by-case basis of persons who perpetrated serious infractions more than five years ago, using a current degree of risk standard.[6]

48. Placing someone in restraints is a serious matter, particularly the multiple restraints used to implement the "Red I.D." security program. In order to comply with the generally accepted practices, principles and standards in the field, this should not be done, unless it is absolutely necessary. Looking at all people, who have committed weapons infractions, as potentially serious security risks during outside trips makes sense. However, automatically placing them on "Red I.D." status without making an assessment of current risk is arbitrary, inefficient and unfair. It also departs significantly from the methodology effectively employed in the Department's own classification policy and procedure.

Miscellaneous Observation

49 Since "Red I.D." inmates have been identified as people who pose a threat to safety and/or security, I was quite surprised by a dangerous security practice which I observed during my visit to the Bronx Criminal Court Building. Specifically, a correctional officer was in a cell with two

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[6] I was asked at my deposition whether my opinion would change if I learned that the classification system was fully implemented before 1995. I said it would. I have since been shown documents by plaintiffs' counsel that show the classification system was not fully implemented before 1995.

"Red I.D." inmates and was removing some of the restraints from one of them in preparation for lunch. Despite the fact that the officer was quite vulnerable, there was no back-up officer present to provide immediate assistance, if needed. (There were other staff nearby around a corner, but they could not observe the cell.) The generally accepted practice in the field is for a back-up officer to be present in such a situation. If what I observed was typical, then that practice exposes the officer to an undue risk of potential harm and should be changed at once, if at all possible. This sloppy security practice was also totally inconsistent with the purported danger posed by "Red I.D." inmates, which is used to justify the extreme and, in my opinion, inappropriate means of restraint used on them.

SUMMARY

50. The practice of rear-cuffing inmates for protracted periods of time does not comply with generally accepted practices, principles and standards in the field of penology. First, protracted rear-cuffing is not a common practice in the field. Second, there are acceptable alternatives to protracted rear-cuffing from a security perspective. Third, protracted rear-cuffing is painful. Furthermore, apparently until quite recently, the Department of Correction had not been requiring sufficient documentation by staff to ensure compliance with regulations regarding bathroom and lunch breaks for "Red I.D." inmates. Also, the relevant "Post Orders" at the Bronx Supreme Court pens are quite inadequate. Fourth, the policy is excessive in its reach in that it is only concerned with whether somebody has committed a weapons infraction and not whether they pose a current threat to safety and/or security. Fifth, the process of placing someone on "Red I.D." status has two serious structural deficiencies, i.e., inflexibility and the lack of a relevant standard by which to make judgments about

placement in that status. The current practice of automatically placing people on"Red I.D." status without making any assessment of actual current risk is arbitrary, inefficient and unfair.

ADDENDUM

The Argument That Extraordinary Violence Justifies Extraordinary Measures

51. New York City has advanced the argument that the extraordinary levels of violence experienced at one time within its jail system justified and still justifies the use of extraordinary security measures to maintain a reasonable degree of safety. I agree with this proposition with the caveat that such measures must respect the legal and human rights of the inmates. Otherwise it would be perfectly acceptable to break the legs of all new inmates in order to combat a severe escape problem within a jail system. With regard to the specifics of this litigation, the practice of protracted rear-cuffing can and does cause pain and also risks injuring inmates. Thus, while the goal of maintaining a safe environment is legitimate, the means to accomplishing this end are not, especially in light of the existence of other commonly used alternative to this practice in other major urban jail systems. I am informed that both Mr. Bogard and Bureau Chief Conry have stated in their depositions that they are not aware of any other jurisdiction in the country which uses protracted rear-cuffing for court transportation and holding. Chief Conry has referred to rear-cuffing as "a unique practice for a unique department." The New York City Department of Correction is hardly unique in the United States in having to deal with a sizable number of dangerous inmates, yet these other jurisdictions have apparently been able to maintain reasonable levels of safety and security without resorting to New York's protracted rear-cuffing practice.

Documentation

52. Since the preparation of my initial report, completed on April 27, 2002, I have had the chance to review the forms used to document the activities of "Red I.D." inmates, e.g., bathroom and meal breaks, in the Bronx Supreme Court and Bronx Criminal Court pens. In general, I found that the documentation is very inconsistent and that frequently one cannot tell when, how often, or for how long individual inmates got the requisite breaks. For instance, I looked at the documentation for the four inmates who had been at the Bronx Supreme Court for at least eight hours, and the one who had not been seen by a judge there, on April 18, 2002. (This was the day that I inspected that facility. With regard to each of these five people, I found that the following relevant information elements had not been recorded:

Ed Sykes:	No search
	No bathroom break
	Apparently his lunch break lasted for five minutes
Darron Bracey	No bathroom time listed
	No time listed for when he went into court
	No lunch time
	No search
Robert Hopkins	No search
	No time listed for when he left the court room
	No beginning meal time (he apparently finished lunch at 6:00 p.m.)
	No bathroom breaks
Randy Walton	No search time

Apparently no lunch

No bathroom breaks

Chad Rodriguez: No search

No lunch

No bathroom breaks

Was apparently in a court room for only ten minutes

The reason I reviewed this documentation was to see how long prisoners were actually held in the restraints. However, the state of the documentation did not permit an educated guess, much less a definite answer, to that question.

53. Spot checks of other days revealed similarly spotty documentation. Several officers seemed to be quite conscientious in filling out the documentation form, while others either did not fill it out completely or there is the possibility that the inmates just did not get their required breaks.

54. Two principal reasons why such documentation is crucial are effective administrative oversight and staff accountability. Administrative officials of the Department of Correction cannot be omnipresent in court holding pens to ensure that "Red I.D." inmates are getting the breaks required by policy. Thus, a critical means for administrators to provide effective oversight is by means of documentation. Administrators can review appropriate paperwork which records the relevant information. Documentation is one way that administrators have of ensuring that policies and directives are being implemented consistently.

55. Documentation is also valuable as a means of holding staff accountable for their actions. If staff is required to record their actions accurately, it is also a constant reminder of what their actions should be. If a staff member falsifies documentation, he or she can and should be

disciplined.

56. The documentation which I was provided by the Department of Correction was virtually useless as an administrative oversight tool, unless one took the forms literally to mean that inmates often were not getting any bathroom or meal breaks at all. Furthermore, it has been my experience, when serving as an expert for plaintiffs, that the facility usually makes sure that everything is in order at the time of my visit. If this is the state of the documentation when an opposing expert is expected, how bad is it normally?

57. As is stated above, the "Post Orders" provided staff at the Bronx Supreme Court pens give staff no guidance at all with regard to the requisite treatment of "Red I.D." inmates. In his deposition, I am informed, Mr. Bogard stated that the Post Orders needed to be far more detailed to be effective. Post Orders are an essential element of establishing staff accountability. Thus, at the beginning of the accountability process, the staff is not given written notice of what is required, and at the end of the accountability process, they are not required to maintain full, accurate documentation. Thus, the administrative rubric within which "Red I.D." inmates are handled in the pens at the Bronx Supreme Court is glaringly deficient.

American Correctional Association Standards

58. In his report of April 30, 2002, Mr. Bogard makes numerous statements with regard to the standards promulgated by the American Correctional Association. Mr. Bogard states that I had omitted a relevant standard from my report. It is true that I omitted the standard, but did so because it was so obvious and did not pertain to an issue in dispute in this case. It states only that there should be written policies governing the transportation of prisoners. The issue in this case is not

whether or not there is a written policy regarding transportation, but rather whether it is permissible to restrain prisoners in a manner likely to cause them pain and injury. In his deposition, Mr. Bogard agrees that he is not aware of any correctional standards which specifically address the topic of rear-cuffing.

59. In his report (page 11), Mr. Bogard cites "a very specific Mandatory Standard addressing the use of four point restraints. . . ." He uses this standard to illustrate his contention that ". . . the ACA has implemented standards to limit the use of security practices as to which it has concerns. . . . (Bogard report, page 10) Four point restraints are a universally recognized means of dealing with out-of-control violent and mentally ill people under certain controlled circumstances. Since this common practice is subject to abuse, the ACA rightfully addresses this specific practice. However, ACA does not address protracted rear-cuffing precisely because it is such an uncommon practice. Furthermore, ACA standards, which I cited in my report, generally prohibit those practices which cause pain and injury to inmates unnecessarily, thus, inferentially, prohibiting protracted rear-cuffing. It would be virtually impossible for any set of standards to address every specific, possible security practice. In this instance, four point restraints are addressed because their use is a common practice, which requires oversight and regulation, whereas protracted rear-cuffing appears to be unique to New York City.

60. Mr. Bogard's remarks about how protracted rear-cuffing would be perceived by the American Correctional Association are purely speculative. Similarly, his report of a conversation with Bob Verdeyne, an ACA official, in which Mr. Verdyne reputedly said that protracted rear-cuffing would comply with ACA standards because of the requirement for medical clearance, conveys the result of rank speculation. Were Mr. Verdeyne asked to comment on the practice, after

being told that it often causes pain and subjects inmates to the risk of injury, would his response be the same? Since the ACA standards are the basis for a program of a voluntary accreditation program for jails, the only way to know ACA's actual response would be for the Department of Corretion to apply for accreditation for one or more of its secure jails–something which it apparently has not done, since none of its jails have been accredited.

Vagueness of Policy

61. The Department's policies and procedures regarding how an inmate is placed on "Red I.D." status need to be made more explicit. Both Messrs. Conry and Bogard have stated that they believe decision-makers take additional factors into account other than just a disciplinary system "guilty" finding for a weapons infraction. That assertion is not reflected in the records, which I reviewed. But Mr. Bogard nonetheless agrees that the applicable policies need to be more detailed. I would suggest that the policy enunciate clearly that an inmate must be found to present a current danger to safety and/or security to be placed on "Red I.D." status. Furthermore, the reviewing official should consider elements such as:

* the nature and circumstances of the offense;

* the type of weapon;

* now long ago the offense was committed;

* the individual's overall deportment and adjustment record;

* the person's age;

* any other security factors, e.g., known gang membership;

* any other significant changes affecting the inmate since the offense was committed;

* any other factors relevant to the particular case.

Unless the policy is made more specific and provides a virtual checklist of the factors that the decision-maker must consider, there will be little consistency in approach among individual reviewers. The end goal is to ensure a process which is uniform and thus fair.

Dated: Washington, D.C.
May 20, 2002

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EXPERIENCE:

December 1973 - Present — **Criminal Justice Consultant**

Services provided include: operational analysis of prison and jail operations in the areas of security, staffing, programs and classification; functional review of architectural designs; staff training; litigation advisor and expert witness.

July 1984 - April 1992 — **Vice President, C.M. Security Products, Inc.**
Washington, D.C.

In charge of American subsidiary of C.M. Security Group, Ltd. - a manufacturer of building components and security equipment for the corrections and security fields. Specifically responsible for marketing, public relations and administrative functions.

September 1978 - June 1984 — **Director, Criminal Justice Services, The NBBJ Group**
Seattle, WA

On a consultant basis was responsible for functional aspects of project design (jails, prisons, courts and police facilities) and criminal justice marketing for the firm's offices throughout the nation. Was extensively involved in six projects that were recognized by a joint committee of the ACA/AIA for their functional excellence.

September 1975 - December 1979 — **Faculty member (adjunct), School of Justice, American University**
Washington, D.C.

Taught one course per semester, The Administration of Correctional Institutions, to undergraduate (primarily in-service) students majoring in criminal justice administration.

December 1977 - August 1978 — **Director, Jail Operations Project, National Sheriffs' Administration**
Washington, D.C.

Responsible for all aspects of a National Institute of Corrections funded project with five distinct jail-related components.

Spring 1974 — **Co-Director, Advanced Institute of Correctional Administration, American University, Washington, D.C.**

In conjunction with a colleague developed the curriculum, selected appropriate instructional and textual materials for and administered and taught a two-week institute for selected criminal justice officials from the federal government, five states, the District of Columbia and Japan.

EXPERIENCE:
(Continued)

September 1973 - November 1973 — **Superintendent (Acting), Massachusetts Correctional Institution at Norfolk**

In charge of total operation of the largest prison in New England with 318 employees and 700 inmates.

June 1973 - September 1973 — **Chief Planner, Impact Program, Massachusetts Department of Corrections**

Sole administrator of grant project, comprised of seven distinct parts that were carried out primarily on a sub-contractual basis. Supervised sub-contractors, provided technical assistance to them and coordinated with state and federal granting officials.

September 1972 - June 1973 — **Assistant Professor, Department of Administration of Justice and Public Safety, Virginia Commonwealth University, Richmond, VA**

Taught all corrections courses offered by the department. Initiated and developed special projects with correctional agencies, including a three-day workshop for correctional officers selected from throughout the Virginia state prison system.

May 1970 - July 1972 — **Correctional Facilities Administrator, Alaska Division of Corrections Juneau, AK**

Was responsible for total operation and coordination of six adults and two juvenile institutions. Also developed and administered federal grants and a capital projects budget. Supervised and enforced contracts with local jails; handled interstate institutional placement of adults; and, provided consultant services to local communities.

September 1970 - December 1970 — **Faculty member (adjunct), Juneau-Douglas Community College Juneau, Alaska**

Taught a course in Criminology.

February 1968 - May 1970 — **Administrator, Women's Detention Center, District of Columbia Department of Corrections, Washington, D.C.**

Was responsible for the complete operation of jail with staff of 65, 2,500 admissions per year. Also responsible for supervision of female parolees.

EXPERIENCE:
(Continued)

September 1965 - February 1968 — **Program Development Specialist, District of Columbia Department of Corrections, Washington, D.C.**

Successfully completed a wide variety of research, evaluation and sensitive "special" projects in support of the activities of the Assistant Director for Treatment and, subsequently, the Assistant Director for Planning and Research. Also coordinated with various District of Columbia and Federal agencies and professional organizations.

January 1967 - February 1967 — **Consultant, District of Columbia Board of Parole Washington, D.C.**

On loan from Department of Corrections to conduct management analysis of all administrative policies and procedures and to recommend and, in several instances, institute constructive changes.

November 1964 - September 1965 — **Education Director, Bucks County Prison Doylestown, PA**

On a volunteer basis planned, developed and implemented an education program at two adult institutions (a county jail and its separate work release center). Also carried a counseling caseload at the jail.

September 1964 - July 1965 — **Teacher, Solebury School New Hope, PA**

Taught Latin and Greek to high school students and also coached soccer and basketball.

PUBLICATIONS:

BOOKS

Corrections in the Community, co-authored with M. Robert Montilla, Reston Publishing Company, February, 1977.

Jail Management, D.C. Heath and Company, Lexington Books, June, 1978.

MONOGRAPHS

A Handbook on Jail Programs, co-authored with James E. Murphy, National Sheriffs' Association, 1974.

A Directory of State Jail Inspection Programs, with Glen D. Skoler, National Sheriffs' Association, June, 1978.

PUBLICATIONS
(Continued)

ARTICLES

"Education at the Bucks County Prison", American Journal of Corrections, March - April, 1967.

"Continuity of Treatment in the District of Columbia", Correctional Psychologist, January - February, 1968.

"Changing Times", co-authored with John D. Case, National Jail Association Newsletter, January - February, 1968.

"The Women Participants in Washington's Riots", Federal Probation Quarterly, June, 1969.

"New Perspectives in the Education of Female Prisoners", co-authored with Rebecca Hughes, Journal of Correctional Education, Summer, 1969.

"Jails in Alaska", National Jail Association Newsletter, March - April, 1972.

"Ohio's Jail Dilemma", (Ohio) Cities & Villages, August, 1979.

"The New Jail Myth", American Jail Association's The Report, Winter, 1981.

"The People's Republic of China: Successful Reintegration", Corrections Today, December, 1982.

"Prison Industries in the People's Republic of China", The Prison Journal, Autumn - Winter, 1982.

"Good News/Bad News About Jails", Kentucky Associations' of Counties, County Viewpoint, August - September, 1983.

"New Building Approach for Correctional Facilities Does Not Sacrifice Security",co-authored with K. L. McReynolds, Corrections Digest, March 13, 1985.

"Innovative Expansion", co-authored with K. L. McReynolds, Corrections Today, April, 1986.

"Fire Deaths Result from Officer Carelessness, You Can Avoid Fatalities", Keepers' Voice, August, 1986.

"Rebuilding the Past - Renovation is a Viable Option", co-authored with Charles W. Cansfield, Corrections Today, July, 1987.

"Pretrial Detention in Papua New Guinea", American Jails, Fall, 1989.

PUBLICATIONS:
(Continued)

ARTICLES
(Continued)

"Corrections in Czechoslovakia", American Jails, March/April, 1991.

"Juvenile Justice in Germany", Corrections Today, April, 1991.

"Adult Detention in Vienna", American Jails, May/June, 1991.

PROFESSIONAL AFFILIATIONS:

* Active member of American Correctional Association, the American Jail Association and The National Sheriffs' Association.

* Member, Subcommittee on Life Safety in Detention and Correctional Occupancies, Life Safety Committee, National Fire Protection Association, 1982 - Present.

* Member, Committee on Technology in Corrections, American Correctional Association, 1982 - 1984.

* Member, Committee on Adult Local Detention Facilities, American Correctional Association, 1988 - 1990.

* Member, Committee on Design and Technology, American Correctional Association, 1991 - ~~Present~~ 1993.

* Former member of the Board of Directors of the National Jail Association (six terms) and the Western Correctional Association (one term).

* Member, Board of Directors, Washington Halfway Home for Women, Washington, D.C., 1983 - ~~Present~~ 1992. President, 1985. (The Halfway House is accredited by the American Correctional Association).

* Listed in "Outstanding Young Men of America", 1976, 1978.

* Listed in "Who's Who in American Business Leaders", 1991, 1992.

INTERNATIONAL EXPERIENCE

* Have visited prisons and/or jails in the following countries: Australia, Austria, Canada, China, Czechoslovakia, Germany, Hungary, Papua New Guinea and Singapore, ET AL.

* Member of United States delegation to international corrections conference in Sydney, Australia, 1988.

EDUCATION

M.S., Correctional Administration, American University, Washington, D.C., 1969.

M.A., Classical Languages, University of Wisconsin, Madison, WI, 1964

A.B., Classical Languages, College of the Holy Cross, Worcester, MA, 1963

In addition, have completed successfully numerous specialized institutes and courses in various aspects of correctional administration and public administration. Also participate in the principal conferences in the corrections field.

ADDITIONAL PUBLICATIONS

BOOK REVIEW

Counties in Court: Jail Overcrowding and Court-Ordered Reform, Wayne N. Welsh (author), reviewed in *American Jails*, January - February, 1997.

ARTICLES

"Must the Buyer Beware ?", *American Jails*, January - February, 1995.

"Changes at the Store: Has Your Commissary Kept Up with Population Changes ?", *American Jails*, November - December, 1996.

"How to Make Better Purchasing Decisions", *Corrections Managers' Report*, August - September, 1997.

"Detention in South Africa", *American Jails*, September - October, 1997.

"Problems with "Time-Clock" Supervision of Inmates", *Corrections Managers' Report*, December, 1997 - January, 1998.

"Prisons in South Africa", *American Jails*, January - February, 1998.

"Fine-Tuning a New Jail Design", *Corrections Managers' Report*, October - November 1998.

"A Magic Wand for Inmate Supervision", *Correctional Security Report*, April - May, 1999.

"New Restraint Devices: A Cautionary Perspective", *Correctional Security Report*, June - July, 1999.

"Making More Use of Information to Improve Security and Accountability", *Correctional Security Report*, August - September, 1999.

"Common Jail Training Oversights", *Correctional Managers' Report*, Oct. - Nov., 2001.