

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JEFFERY PRESLEY, et al.,

Plaintiffs,

v.

No. 4:05-CV-00148

CHRISTOPHER EPPS, et al.,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL COMPLIANCE WITH CONSENT DECREE PROVISIONS
ON EXCESSIVE FORCE
AND TO CONSOLIDATE WITH PLAINTIFF'S PENDING MOTION
TO COMPEL COMPLIANCE WITH CONSENT DECREE PROVISIONS
ON TREATMENT OF THE MENTALLY ILL**

Introduction

Plaintiffs, representing a class of approximately one thousand prisoners confined in Unit 32 of Mississippi State Penitentiary at Parchman,¹ move the Court to order Defendants to comply with the provisions of Paragraph 11 of the April 28, 2006 Consent Decree, which provides:

Defendants shall take reasonable measures to ensure that all incidents of major force

¹Plaintiffs filed suit against Defendants, officials of the Mississippi Department of Corrections, on June 22, 2005, challenging dangerous and inhumane conditions of confinement and requesting injunctive relief. On April 28, 2006, the Court entered a Consent Decree,(Dkt. No. 24), after a fairness hearing in compliance with Rule 23 (e), Federal Rules of Civil Procedure. The Court retained jurisdiction to enforce the provisions of this Consent Decree. Plaintiffs thereafter proceeded to monitor Defendants' compliance.

Memorandum in Support of Plaintiffs' Motion to Compel Compliance With Consent Decree Provisions on Excessive Force and to Consolidate With Pending Motion to Compel Compliance With Consent Decree Provisions on Treatment of the Mentally Ill

by correctional staff against prisoners are thoroughly investigated and documented and that the use of excessive force is not tolerated. The Parties agree to work together in good faith to prepare a written plan to effectuate the goals of this paragraph, and to present the agreed-upon plan to the Court for approval.

(Dkt. No. 24). Plaintiffs further request that the Court consolidate this motion with Plaintiffs' pending motion on treatment of prisoners with mental illness (Dkt. No. 57). Plaintiffs seek expedited hearing since MDOC's routine violation of Paragraph 11 of the Consent Decree and of its own policy on the use of force, combined with the lack of reasonably adequate mental health treatment, the psychosis-inducing effect on the mentally ill of permanent administrative segregation, and the culture of excessive force in Unit 32, create an imminent risk of serious injury to all *Presley* class members, and especially to those with serious mental illness.

The Use of Excessive Force in Unit 32

Unit 32, a super-maximum security facility, is a massive complex of five buildings housing about 1000 men, most of them in segregation cells where they are locked down 23 to 24 hours a day, in total isolation. The June 2005 Complaint in this case alleged in detail how a combination of conditions in Unit 32 – including the profound isolation and unrelieved idleness of solitary confinement, the routine use of excessive force by security staff, and the gross deprivation of basic mental health care – are likely to cause serious mental illness to emerge in previously healthy prisoners, to cause psychosis and complete mental breakdown in less healthy prisoners, and to subject all the men confined there, as well as the men and women who work there, to substantial risk of physical injury, illness and premature death.

Although Unit 32 is supposedly used to incarcerate the most dangerous and incorrigible offenders in the State, in the most secure and restrictive setting possible, the Complaint alleged

that in reality the vast majority of the men housed in Unit 32 – for years, sometimes for decades – do not have the kind of criminal or institutional history that would justify incarceration under “supermax” conditions. Many prisoners were placed in Unit 32 for purely arbitrary reasons, or for no discernible reason at all, and have never had a meaningful opportunity to contest their placement there. Many are confined there because they have special medical needs, are severely mentally ill, or have requested protective custody. Even for those men whose history might warrant the most highly restrictive custody, there is no justification whatsoever for the horrifically brutal and dangerous conditions to which they are subjected. (Complaint, Dkt. No. 1, Paras. 1-3).

The Complaint also alleged that chronic and severe shortages in security staffing and Defendants’ failure to adequately train and supervise security staff put the lives of prisoners and prison employees in Unit 32 in constant peril; that corrections officers do not follow basic security precautions; that some corrections officers sadistically bait and threaten prisoners, or gratuitously beat prisoners already in full restraint gear; and that “takedown teams” often forcibly extract shackled prisoners from their cells, spray them with a chemical agent that causes vomiting and shortness of breath, and then assault them. (Para. 24). The Complaint alleged that sadistic abuse and excessive force by corrections staff create a serious risk of suicide in young or mentally ill prisoners (Para. 25) and provided examples.²

²The Complaint gave the example of Christopher Smiley, a youthful prisoner on psychiatric medications, who on November 25, 2003 threw water at a corrections officer. The officer screamed that she was going to kill him, and a take-down team of several officers was summoned. The officers gassed Smiley and – after putting him in full restraint gear – pushed, punched and dragged him into a hallway, where they severely beat him. Smiley was taken to a

In July 2006, Plaintiffs' psychiatric monitor, Dr. Terry Kupers, carried out an audit of the treatment of mentally ill prisoners at Unit 32, and thereafter submitted a report to Defendants. (See Dkt. No. 59, Exhibit C). Dr. Kupers' report detailed Defendants' almost total failure to comply with the mental health provisions of the Consent Decree.

Among many other unresolved problems, Dr. Kupers found that it is commonplace for prisoners with serious mental illness to be issued disciplinary tickets for disturbed behaviors that are obviously driven by mental illness, and for prisoners with mental illness to be routinely subjected to use of force, including immobilizing gas and cell extractions. (See Dkt. No. 59, Exhibit C, p. 4). Dr. Kupers found that "a vicious cycle" has been created, "wherein prisoners suffering from mental illness become more disturbed in isolated confinement at Unit 32, their illness leads them to break rules – either they act out in response to hallucinated voices or they try to harm themselves – then they are subjected to use of force (gassing, [cell] extractions) and forced to undergo even harsher conditions such as the special management isolation cells where their mental illness is further exacerbated and they breakdown or attempt to harm themselves

holding tank and then brought back to a punishment cell on the tier, where he spent the following night without any clothing or bedding, although the temperature dropped below freezing. Officers refused to give him his psychiatric medications and denied him several meals. The following day, on November 26, an officer told him "you'd better be gone when I come to work tonight." Smiley told ranking officers about the beating and threats and begged to be moved. They told him to set a fire if he wanted to be moved. That night, Smiley was found dead in his cell, hanging in the corner near the sink. A few weeks later, on December 16, 2003, Patrick Presley, a prisoner who was in Unit 32 simply because he needed protective custody, was found hanged in his cell.

anew.” (Dkt. No. 59, Exhibit C, p. 4). Dr. Kupers made recommendations to Defendants on how they might resolve these issues.³

On November 21, 2006, Plaintiffs brought a motion for an evidentiary hearing . *See* Motion for Civil Contempt Sanctions and for Other Equitable Relief to Compel Defendants’ Compliance With Consent Decree Provisions on Medical and Mental Health Care (Dkt. No. 57-60). On April 4, 2007, an evidentiary hearing commenced on Plaintiffs’ contentions that mentally ill prisoners are denied basic psychiatric care, routinely subjected to gassing with chemicals and other use of excessive force for disturbed behaviors triggered by their mental illness; and that a large percentage of prisoners who are being incarcerated in administrative segregation in Unit 32 have serious mental illness which is being severely exacerbated by the harsh conditions of administrative segregation.⁴ Plaintiffs’ evidence included the testimony of Defendants’ psychiatrist Dr. Parveen Kumar, who is responsible for treating the mentally ill prisoners in Unit 32; the testimony of several prisoner witnesses; and the testimony of Dr. Kupers.

The evidence showed that in Unit 32 Defendants do not follow their own policy on use of force, which provides that “[i]t is the policy of MDOC to restrict the use of physical force to

³Dr. Kupers recommended, among other things, that MDOC resolve staffing shortages; provide more training for custody staff about mental illness and suicide; cease the use of special management isolation cells and additional deprivations to manage psychiatric crises; improve the crisis care at Unit 42 by (at the very least) assigning a qualified full-time mental health care provider on Unit 42's psychiatric wing; and pursue any of the multiple available options for accomplishing the objective of separating prisoners with mental illness from the other prisoners on Unit 32.

⁴The issues on medical care were resolved on April 4, 2007 in a Supplemental Consent Decree, which the Court entered as an order on April 16, 2007. (Dkt. No. 70).

instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to maintain or regain control, *and then only as a last resort and in accordance with appropriate statutory authority. In no even is physical force justifiable as punishment.*”⁵

MDOC policy permits the use of chemical agents against prisoners only “to prevent serious injury to the offender or others, to prevent substantial property damage, to prevent loss of life or to prevent escape.”⁶ Dr. Kupers gave multiple examples of mentally ill prisoners in Unit 32 being repeatedly and gratuitously sprayed with chemicals and otherwise punished, rather than treated for the mental illness that drove their disruptive behaviors.

Among many other examples, Dr. Kupers cited the case of James Coffield, a seriously mentally ill inmate in Unit 32 who was severely brain damaged in March 2006 in a botched suicide attempt and who now remains in a permanent vegetative state. MDOC mental health records documented Mr. Coffield’s long history in Unit 32 of bizarre and disruptive behaviors, which the MDOC psychiatrist characterized as merely “manipulative,” and which security staff punished with increasingly harsh force, including repeated gassing with chemicals – until last March, when Mr. Coffield was found in his cell hanging by his neck. Dr. Kupers testified that the very same conditions that resulted in the Coffield tragedy exist to this day in Unit 32, and that

⁵Mississippi Department of Corrections Policy Number 16-13, “Use of Force” (effective date 11-01-2006), page 1. MDOC policy also requires that “[a]ppropriate medical treatment by certified personnel will be provided to all individuals exposed to chemical agents,” and that “immediately after exposure to chemical agents, institutional staff should transport offenders to the clinic for examination.” *Id.* at 2.

⁶Mississippi Department of Corrections SOP Number 16-13-01, “Use of Force” (effective date 11-01-2006), page 2.

there are dozens more “Coffields” waiting to happen unless those conditions are changed.

The Latest Documented Example of Excessive Force Against a Mentally Ill Prisoner

On April 25, 2007, new evidence emerged lending further support to Dr. Kupers’ findings. Kevin King, a mentally ill inmate in Unit 32,⁷ claimed that he had been severely beaten by an officer the day after he was discharged from the psychiatric ward in Unit 42.

According to Mr. King, he was in the shower stall in Unit 32-A when Officer Takeo Clark signaled for the shower door to be opened, then rushed into the shower and beat Mr. King on top of the head with a pair of handcuffs until King’s head and upper body were drenched in blood. After Mr. King had been beaten, shackled, led out of his cell, and made to kneel with his hands cuffed behind him, Correctional Officer Stevie Anderson sprayed pepper spray into the wound. Videotape and photographic evidence tend strongly to support Mr. King’s version of events, and to refute Defendants’ version.

MDOC photographs taken immediately after the incident show Mr. King’s scalp opened at the top of his skull, with lacerations so deep that the crown of the head appears deformed by a sharp bloody protrusion. *See* Exhibits A, B, C, D, E, F. There are multiple lacerations around his eyes, *see* Exhibit B, and his head, face and shirt are drenched in blood. *See* Exhibits E, F. Officer Clark’s version of the incident was that Mr. King emerged from the shower and assaulted

⁷MDOC records produced in discovery show that Mr. King is on the mental illness caseload, that he has been diagnosed with impulse control disorder, that he has been prescribed Thorazine, and that he has been admitted to the psychiatric hospital at least twice. He was most recently discharged from the psychiatric hospital on February 12, 2007, the day before he was beaten by Officer Clark.

him, so he hit Mr. King with a closed fist to subdue him. Officer Clark received a few small scratches. *See Exhibits G, H, I.*

The MDOC Corrections Investigation Division Report of Investigation, relying on videotape of the incident recorded by a stationary security camera, concluded that Officer Clark's account of

the incident was false in a number of material points,

[as] substantiated by video footage depicting [Officer] Trainee Clark appearing to be radioing to the tower officer to open the shower door. *Once the door opened, Trainee Clark stood in the doorway of the shower, and then appeared to lunge forward toward Inmate King. It did not appear that Trainee Clark attempted to restrain Inmate King, prior to the shower door opening, nor did it appear that Inmate King attempted to exit the shower once the door opened.*

However, the report concluded, *"since there are no cameras in the showers, investigators were unable to determine what actually occurred inside."* Accordingly, despite the investigative findings that Officer Clark had lied repeatedly about the incident, and the photographic evidence that Officer Clark had severely beaten Mr. King without any plausible correctional excuse, MDOC sustained a disciplinary charge against Mr. King for assault on an officer; while making no findings as to whether excessive force had been used. Officer Clark was allowed to resign – and hence will presumably be eligible in future for re-employment in MDOC.

Even though the videotape does not show what happened between Officer Clark and Mr. King inside the cell from which Mr. King emerged with his scalp slit open, the videotape does capture what occurred immediately after the beating. Contrary to what Officer Anderson told MDOC investigators – that after King was on the floor in restraint gear Officer Anderson had to use pepper spray because King "jumped from the floor" – the videotape corroborates Mr. King's

account that after he was beaten, placed in restraint gear, and made to kneel on the ground, Officer Anderson gratuitously pepper-sprayed him. (*See* Exhibit J, Declaration of Lawrence Caldwell). MDOC's investigative report does mention that Officer Anderson used pepper spray against King when King was in restraint gear on the floor, but the report simply ignores the videotape evidence refuting Anderson's justification for using chemicals against an incapacitated prisoner.⁸

Like James Coffield a year earlier, Mr. King has no doubt been a "problem" inmate: According to MDOC records, in 2004 - 2005 he was charged with approximately sixty rules violations ranging from beating on the cell floor, being loud and boisterous, and refusing to remove his arm from his tray slot, to setting fires, flooding the tier, destroying a mattress and other state property, throwing urine at staff, striking other inmates, striking an officer, threatening an officer, rolling his wheelchair towards an officer, and taking an overdoes of pills. However, also like Mr. Coffield, Mr. King has a documented history of mental illness. MDOC's own psychiatrist has diagnosed him with Impulse Control Disorder, admitted him to the psychiatric ward, and prescribed him powerful anti-psychotic medication. The disturbed and destructive behaviors for which MDOC has repeatedly punished him are in all likelihood a manifestations of serious untreated mental illness. Just as in the Coffield case, MDOC's psychiatrist characterized these disruptive behaviors as mere "manipulation."

⁸*See* MDOC Corrections Investigation Division: Report of Investigation 07-MSP-025, p. 4 ("When [Officer Anderson] entered the building, Trainee Clark had Inmate King on the floor, in handcuffs. Officer Anderson stated that he and Charles Westmoreland, CO-IV, placed Inmate King in restraint gear. [Officer Anderson] stated that, when Inmate King was on the floor, Inmate King jumped from the floor, and he sprayed Inmate King with one (I) burst of Oleoresin Capsicum (OC) Spray.")

MDOC's Failure to Adequately Document Use of Force

In the past twelve months since the Consent Decree was entered, Plaintiffs' counsel has received complaints from many Unit 32 prisoners about MDOC's continuing use of excessive force. Plaintiffs have reported a number of these incidents to Defendants and have requested disclosure of the documentation of such incidents, including the videotapes of the incidents, as required by MDOC policy, which provides, "when possible, all use of force incidents will be videotaped (video camera with audio recording capabilities) to protect the rights of all involved on the incident." MDOC Policy No. 16-13, "Use of Force," *id.* at 4.

Unfortunately, it appears that adequate documentation and investigation of excessive force claims seldom if ever occur, in large part because the videotaping required by MDOC policy is not taking place. Security cameras are placed in such a way that the interior of the cells are entirely hidden from view, what occurs inside the cell when officers enter is never recorded, and contrary to MDOC policy no sound recording is made. (*See Exhibit J, Caldwell Declaration.*)

In the absence of effective use of video recordings, MDOC's internal investigations of excessive force claims necessarily rely for the most part on the statements of correctional staff. As shown in the February 2007 Kevin King incident, even where MDOC's own internal investigation concludes that security staff lied about material matters in the course of the investigation, any possible doubt is resolved in staff's favor. Indeed, in the King incident, MDOC'S investigative report of the incident concludes that "since there are no cameras in the showers, investigators were unable to determine what actually occurred inside."

Efforts to Resolve the Matter Without Court Intervention

Prior to the filing of this Motion, Plaintiffs notified counsel for Defendants and attempted to negotiate an informal resolution without involving the Court, pursuant to Paragraph 17 of the Consent Decree.

On April 4, 2007, at the close of Plaintiffs' presentation of their evidence on mental health issues and use of excessive force against mentally ill prisoners, the Court summoned the parties' counsel to chambers and strongly urged them to attempt to reach an agreement on how to remedy the serious problems that had been presented. The parties agreed to attempt to negotiate an agreement on remedies, and to meet again with the Court on April 6 for further mediation.

The evidence that had emerged at the hearing showed that the problems relating to treatment of mentally ill prisoners, use of excessive force, and arbitrary classification to administrative segregation are inextricably intertwined. Accordingly, Plaintiffs drafted a proposed Supplemental Consent Decree addressing all of these issues and presented it to Defendants for discussion.

On April 6, 2007, counsel for the parties met at the courthouse and had preliminary discussions of Plaintiffs' proposal. Defendants' counsel agreed to present the proposal to their clients. Counsel then met again in chambers with the Court, who directed the parties to return on June 1, 2007 for the continuation of the evidentiary hearing on Plaintiffs' motion, unless the parties were able in the interim to reach an agreement on remedies. On May 1, 2007, not having had any response from Defendants regarding their settlement proposal, Plaintiffs sent Defendants an updated draft and requested a response by May 11, 2007. Defendants have yet to respond.

MDOC's ongoing violation of Paragraph 11 of the Consent Decree and of its own policy on Memorandum in Support of Plaintiffs' Motion to Compel Compliance With Consent Decree Provisions on Excessive Force and to Consolidate With Pending Motion to Compel Compliance With Consent Decree Provisions on Treatment of the Mentally Ill

the use of force, combined with the lack of reasonably adequate mental health treatment, the psychosis-inducing effect on the mentally ill of permanent administrative segregation, and the culture of excessive force in Unit 32, create an excessive and imminent risk of serious injury to all *Presley* class members, and especially to those with serious mental illness.

CONCLUSION

The Court should consolidate the present motion with Plaintiffs' pending motion on mental health care, hold an expedited hearing, and enter an order compelling Defendants to comply with the requirements of Paragraph 11 of the Consent Decree that "all incidents of major force by correctional staff against prisoners are thoroughly investigated and documented and that the use of excessive force is not tolerated," and that the Parties "work together in good faith to prepare a written plan to effectuate the goals of this paragraph, and to present the agreed-upon plan to the Court for approval."

Respectfully submitted,

/s/ Margaret Winter

Margaret Winter
Gouri Bhat
THE NATIONAL PRISON PROJECT OF THE
ACLU FOUNDATION, INC.
915 15th Street, N.W., Seventh Floor
Washington, D.C. 20005
Tel. (202) 393-4930; fax (202) 393-4931
mwinter@npp-aclu.org
gbhat@npp-aclu.org

Stephen F. Hanlon

Memorandum in Support of Plaintiffs' Motion to Compel Compliance With Consent Decree Provisions on Excessive Force and to Consolidate With Pending Motion to Compel Compliance With Consent Decree Provisions on Treatment of the Mentally Ill

LaKeytria W. Felder
HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

(202) 955-3000; fax (202) 955-5564
stephen.hanlon@hkllaw.com
lakeytria.felder@hkllaw.com

John S. Williams
MS Bar No. 102049ACLU of Mississippi
P.O. Box 2242
Jackson, MS 39225-2242
Tel. (601) 355-6464; fax (601) 355-6465
jwilliams@msaclu.org

Robert B. McDuff
MS Bar No. 2532
767 N. Congress Street
Jackson, MS 39202
Tel. (601) 969-0802; fax (601) 969-0804
rbm767@aol.com