

WOMEN PRISONERS OF THE DISTRICT OF  
COLUMBIA DEPARTMENT OF CORRECTIONS,  
et al.,

**v.**

**Defendants.**

**FILED**

CLERK U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

**VOLUME I**

Grace M. Lopes

copied  
into exhibits



PC-DC-011-010

224

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF  
COLUMBIA DEPARTMENT OF CORRECTIONS,  
et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, et al.

Defendants.

Civil Action  
No. 93-2052 (JLG)

FILED

MAY 10 1995

**THE SPECIAL OFFICER'S REPORT ON COMPLIANCE  
WITH THE DECEMBER 13, 1994 ORDER, AS AMENDED**

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

This report addresses whether the defendants are in compliance with this Court's December 13, 1994 Order insofar as the Order relates to the defendants' operations at the Correctional Treatment Facility (CTF).<sup>1</sup> In summary, the defendants have made appreciable progress toward developing a sexual misconduct policy but have experienced some difficulty investigating sexual misconduct complaints from women prisoners. The Special Officer finds far less progress in the area of obstetrical and gynecological care where, in some instances, defendants have not attempted to implement the Court's Order and have made inaccurate representations about their compliance. The defendants have made a serious attempt to comply with some of the

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<sup>1</sup> This report provides only limited narrative discussion of defendants' compliance. As such, the Court and the parties are encouraged to review the cited exhibits. In most instances, they contain detailed memoranda and records supporting this report's findings. All inmate names, and other identifying information, have been redacted from the exhibits. Upon request, the parties will be provided with this identifying information in a separate document that shall not be filed in the public record.

programming requirements in the Order but have had difficulty with implementation because of the significant limitations imposed by the CTF's physical plant and the shortage of correctional staff. Defendants' efforts to address deficiencies in environmental health and safety have been ineffective. Essential supplies frequently are not in stock, the heating and ventilation system remains grossly inadequate, and a dysfunctional fire safety program creates a major life safety hazard.

### I. Background

On December 13, 1994 this Court issued an Order requiring defendants to remedy constitutional and statutory violations related to sexual misconduct, obstetrical and gynecological care, programs, and environmental health and safety. Shortly after the Order was entered, the defendants announced a cost-saving plan premised on the closure of the Modular Facility at Lorton<sup>2</sup> and the double-celling of the CTF, a facility that houses male and female prisoners and falls within the purview of the December 13, 1994 Order.

On January 26, 1995, plaintiffs in this case and the Modular case filed an emergency motion requesting that the defendants be enjoined from implementing this cost-saving plan until they

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<sup>2</sup> This Court has jurisdiction of Inmates of the Modular Facility v. District of Columbia, Civil Action No. 90-0727, and oversees implementation of the Consent Decree that relates to the conditions of confinement at the Modular Facility.

demonstrated that it would not threaten the safety and well-being of the women prisoners at the CTF, impede the implementation of the December 13, 1994 Order or result in a violation of the Modular Consent Decree. Pursuant to an interim agreement between the parties and approved by the Court, the Special Officer evaluated defendants' double-celling plan and concluded that she could not endorse it. She determined that there are substantial deficiencies in conditions of confinement at the CTF and that its physical plant cannot safely accommodate double-celling.<sup>3</sup> Some of the deficiencies in the conditions of confinement that the Special Officer noted relate to the December 13, 1994 Order.

After the defendants withdrew their double-celling plan,<sup>4</sup> plaintiffs moved for a hearing on defendants' compliance in this case. On March 15, 1995 the Court issued an Order instructing the Special Officer to determine whether operations at the CTF comport with the requirements of the December 13, 1994 Order.

## II. Methodology

This report is based on an investigation that began in March of 1995, including multiple unaccompanied tours of the CTF housing units, program facilities, recreational areas, infirmary, culinary unit, satellite kitchens, and medical facilities as well

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<sup>3</sup> The Special Officer's conclusions are set forth in a letter to defendants' chief counsel which is attached as Ex. 1.

<sup>4</sup> The defendants still plan to close the Modular Facility. Negotiations related to the terms of a consent agreement have been protracted.

as a tour of holding areas located at D.C. General Hospital (DCGH). The Special Officer and her assistants interviewed, among others, correctional officers, correctional supervisors, the warden, the deputy wardens, members of the executive staff of the Department of Corrections (DOC), the sanitarian, case workers, counselors, medical staff members, facilities maintenance supervisors and staff, recreational therapists, law library clerks, culinary staff, and members of the plaintiff class. Documents and memoranda such as logbooks, complaints, medical records, institutional records, correspondence files, policies, and sexual misconduct complaint files were reviewed. The Special Officer's expert on correctional health care<sup>5</sup> as well as the Special Officer's security and staffing expert were consulted about medical and operational issues relevant to the evaluation of defendants' compliance with the Orders issued in this case.<sup>6</sup>

### III. Findings

The December 13, 1994 Order sets forth various **deadlines** by which defendants are required to take remedial action. The Special Officer has not made findings regarding compliance in those situations in which deadlines have not lapsed.

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<sup>5</sup> The Special Officer's correctional health care expert, Dr. Robert L. Cohen, is well known to the parties and to the Court.

<sup>6</sup> Most of the consultations with the Special Officer's security expert, James D. Henderson, occurred during and shortly after the audit referred to in Ex. 1. Like Dr. Cohen, Mr. Henderson is also well known to the parties and to the Court.

**A. Findings Related to Sexual Harassment**

¶3.<sup>7</sup> Within 60 days, the Defendants shall write and follow a Department Order prohibiting sexual harassment involving District of Columbia Department of Corrections (DCDC) employees and women prisoners. The Defendants shall post and circulate the Department Order in accordance with departmental policy.

**Finding:** Partial compliance.

The defendants have collaborated with plaintiffs' counsel and the Special Officer<sup>8</sup> on the development of a Department Order (D.O.), a version of which was filed on March 16, 1995.<sup>9</sup> The D.O. that defendants filed did not contain all of the revisions that had been agreed upon by the parties and the Special Officer and did not fully conform to the terms of the December 13, 1994 Order.<sup>10</sup> After the defendants were advised of this problem, they proposed additional revisions. In late April,

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<sup>7</sup> All paragraph numbers correspond to the paragraph numbers in the December 13, 1994 Order.

<sup>8</sup> This collaboration was not required by the December 13, 1994 Order which merely instructed the defendants to collaborate with the Special Officer on the development of a schedule of penalties. The defendants willingness to work with plaintiffs and their experts on the development of this policy is commendable.

<sup>9</sup> A copy of the D.O. and the accompanying filing is attached for the Court's convenience as Ex. 2.

<sup>10</sup> Defendants advised the Court that both the Special Officer and plaintiffs' counsel approved the D.O. that was filed. Although the version that was filed closely mirrored the version that the Special Officer and plaintiffs' counsel approved, there were two provisions contained in the March 16, 1995 version that were not fully consistent with this Court's December 13, 1994 Order and had not been endorsed by the Special Officer and plaintiffs' counsel. See Exs. 3A and 3B.

after further collaboration,<sup>11</sup> an agreement was reached regarding the terms of the revision. The defendants have not yet submitted a revised draft. Absent the filing of a version that conforms to the terms of the December 13, 1994 Order, the Special Officer cannot find the defendants in compliance.

The defendants have posted the March 16, 1995 version of the D.O. and distributed it to all employees who are assigned to the CTF.<sup>12</sup> The Special Officer has been advised that the defendants do not intend to circulate the D.O. to the inmates housed at the CTF until the inmate training required under the terms of ¶18 of the December 13, 1994 Order has commenced.<sup>13</sup>

¶4. Under this policy the DCDC has the obligation to take appropriate steps to prevent and remedy sexual harassment committed by its own employees.

**Finding:** No finding.

Four complaints regarding sexual misconduct at the CTF have been filed since the issuance of this Court's December 13, 1994 Order. Three of these complaints, which were filed after the

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<sup>11</sup> See Exs. 4A, 4B and 4C.

<sup>12</sup> The Special Officer observed at least one posted copy of the D.O. on the bulletin board at the staff entrance to the CTF. In addition, the defendants have required all staff to read and acknowledge receipt of a copy of the D.O. The Special Officer has reviewed the certifications that have been signed by CTF staff. A sample is attached as Ex. 5A. The warden has also advised staff about the D.O. at a series of staff meetings. The minutes from those staff meetings are attached as Ex. 5B.

<sup>13</sup> The D.O. that was filed on March 16, 1995 requires the defendants to inform prisoners about the content of the policy and post it on inmate bulletin boards, in the law library, and in inmate publications. Ex. 2 at 10.

D.O. became effective, are currently under investigation.<sup>14</sup> The Special Officer has been unable to determine the status of the fourth complaint and will supplement this submission as soon as this information is obtained from the defendants. Because of the small number of complaints, and the on-going investigations, there are insufficient data to assess defendants' compliance with this provision at this time.

¶5. One or more members from the office of Grace M. Lopes, Special Officer of the U.S. District Court for the District of Columbia, will monitor allegations of sexual harassment at each facility in which women prisoners are housed. The monitor(s) shall log in each allegation of sexual harassment, investigate the allegations, submit the results of the investigation to the Warden of the relevant facility and the Director of the DCDC and keep records of the Defendants' resolution of the matter, including disciplinary actions, of such claims.

¶6. The monitor(s) shall investigate all outstanding allegations of sexual harassment and shall submit a report on each allegation to the Warden of the relevant facility, and to the Director of the DCDC.

**Finding:** No finding.

The Special Officer cannot and should not evaluate her own compliance with this Court's Order. In addition, the role of the Special Officer regarding these issues is contingent upon the resolution of whether this Court's Order will be stayed pending

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<sup>14</sup> Redacted copies of each of these complaints, and related documents provided by the warden of the CTF, are attached as Exs. 6A, 6B, 6C and 6D.

appeal.<sup>15</sup> However, the Special Officer has addressed ¶5 and ¶6 of the December 13, 1994 Order in order to inform the Court of the current status of sexual misconduct investigations generated by complaints from women prisoners at the CTF.

It has been the Special Officer's understanding that defendants have been conducting their own investigations of sexual misconduct complaints concerning women prisoners. In fact, during negotiations with the parties concerning the content of the sexual misconduct policy, the defendants advised the Special Officer that complaints related to women prisoners would be investigated in the same manner prescribed in the policy for investigating complaints related to male prisoners.

During the first week of May 1995, in an effort to determine the disposition of four sexual misconduct complaints lodged by women prisoners housed at the CTF since the December 13, 1994 Order was issued, the defendants advised the Special Officer that

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<sup>15</sup> On December 28, 1994 the defendants moved to stay this Court's December 13, 1994 Order in toto. Following the filing of the motion to stay, the Special Officer moved to enlarge the time within which she was required to perform the investigative functions set forth in the December 13, 1994 Order because the expenses associated with hiring staff and leasing office space could not be justified absent resolution of the question whether a stay pending appeal would be ordered by this Court or the United States Court of Appeals for the District of Columbia Circuit. The parties did not object to the motion to enlarge and in an Order dated January 18, 1995, the motion was granted. On February 9, 1995, this Court denied defendants' motion to stay and thereafter defendants noted an appeal and moved to stay the December 13, 1994 Order pending appeal. The determination of whether a stay will be granted during the pendency of this appeal has not yet been resolved. On April 4, 1995 the Court of Appeals deferred ruling on defendants' motion to stay and remanded the case for further briefing. A hearing on this matter is scheduled before this Court on May 11, 1995.

they have experienced substantial difficulty investigating inmate complaints. Approximately 24 employees system-wide have been trained by the Office of Personnel Management (OPM) to conduct sexual harassment investigations regarding employee complaints. They have not been trained in investigating inmate complaints. The Special Officer has been advised that these employee-investigators are required to perform their regular job responsibilities, investigate employee sexual harassment complaints<sup>16</sup> and investigate inmate sexual misconduct complaints.

The assignment of employee-investigators to inmate sexual misconduct complaints has not been centralized. Under the D.O. each warden is required to forward the inmate complaint to the deputy director responsible for her/his institution and in turn the deputy director assigns the complaint to a committee selected from the pool of 24 employee-investigators. Because assignments are not centralized, investigators are arbitrarily assigned to cases without regard to other pending investigative assignments. This has contributed to the delays experienced in resolving these investigations. Indeed, although the D.O. filed on March 16, 1995 requires the investigative committees to submit their findings within 30 calendar days of the Department's "knowledge of a complaint",<sup>17</sup> none of the investigations of the three

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<sup>16</sup> The Special Officer has been informed that complex employee sexual harassment complaints are assigned to OPM investigators on a case-by-case contractual basis.

<sup>17</sup> Ex. 2 at 7.

complaints related to women prisoners that arose subsequent to the issuance of the March 16, 1995 D.O. is even required to be completed within this 30 calendar day period. This is significant because District of Columbia personnel law requires the defendants to take adverse action against employees within a 45-day time period.

¶7. Prohibited conduct under the policy shall be defined as:

a. Sexual harassment which includes:

(1) all unwelcome sexual activity directed by any DCDC employee at a prisoner including acts of sexual intercourse, oral sex, or sexual touching and any attempt to commit these acts; and

(2) all unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature directed by any DCDC employee at a prisoner; and

b. Invasions of women prisoners' privacy by male employees without a valid penological reason, including the failure of any male employee to announce his presence when entering a female housing unit.

c. Retaliation for reporting complaints of, assisting any individual in making a report of, or cooperating in an investigation of sexual harassment, regardless of the merits or the disposition of the underlying complaint. Retaliatory conduct includes the following actions taken against a prisoner in response to that prisoner's complaint of sexual harassment or cooperation in the reporting or investigation of sexual harassment: disciplining, changing work or program assignments of, transferring to another

facility of, or placing under involuntary protective custody any prisoner.

d. Any breach of confidentiality by any employee concerning any report of sexual harassment.

e. Any interference with investigations of sexual harassment.

**Finding:** No finding.

Although the defendants addressed this provision in the D.O. filed on March 16, 1995, until the defendants file a final version that incorporates the revisions agreed to by the parties, the Special Officer cannot find the defendants in compliance with this provision. The Special Officer recommends that defendants advise the Court of the date by which a final version of the D.O. will be filed and that the Court enter an appropriate order requiring submission of a revised and corrected copy by that date.

¶8. Penalties for prohibited conduct under the policy shall be worked out by the Director of the DCDC and the Court's Special Officer Ms. Grace Lopes within 30 days of this Order.

**Finding:** Partial compliance.

The parties successfully collaborated with the Special Officer on the development and drafting of a schedule of penalties appended to the D.O. filed on March 16, 1995. However, until the defendants file a final version of the schedule of penalties incorporating minor revisions agreed to by the Special Officer and the parties, a finding of compliance cannot be made.

¶9. Women prisoners shall be able to report instances of sexual harassment through the existing Inmate Grievance Procedure (IGP) as specified in Department Order 4030.1D. The Defendants shall strictly adhere to the Inmate Grievance Procedure and shall establish an Inmate Grievance Advisory Committee (IGAC) as required by Section VII(C) of Department Order 4030.1D.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Interviews with the IGAC chairperson, corroborated by the attached memoranda,<sup>18</sup> demonstrate the defendants' substantial progress toward compliance.<sup>19</sup>

¶10. Women prisoners shall also be able to submit IGP's or complaints concerning sexual harassment in any form, orally or in writing, to any DCDC employee, who must submit the information, in writing, to the monitor(s) and Warden of the facility within 24 hours of receiving the information. Women prisoners may also submit IGP's or complaints to an prisoner representative to the IGAC.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However, based on interviews with the CTF administrative staff as well as with the CTF's IGAC chairperson, defendants apparently have not begun to develop a

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<sup>18</sup> See Exs. 7A, 7B and 7C. A copy of the "Inmate Grievance Procedure" policy is attached for the Court's convenience as Ex. 7D.

<sup>19</sup> This provision was also incorporated in the sexual misconduct D.O. that was filed on March 16, 1995. See Ex. 2 at 3.

procedure for inmates to submit complaints to prisoner representatives.

¶11. The Defendants shall establish a confidential hot line, under the supervision of the monitor(s), through which women prisoners can report allegations of sexual harassment.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The hot line has not been established.<sup>20</sup>

¶12. Each employee shall be required to report any information, from any source, concerning sexual harassment, in writing, to the Warden of the facility and to the monitor(s) within 24 hours of receiving the information. Failure of an employee to report any suspected incident of sexual harassment shall subject the employee to discipline. If a prisoner so requests, the prisoner shall be treated as an anonymous informant.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995.

¶13. The monitor(s) shall ensure that each reported violation of the policy is thoroughly investigated and documented. The monitor(s) shall submit a final written report to the Warden of the institution; the report shall include factual findings and a conclusion as to whether a preponderance of evidence shows that a violation of the sexual harassment policy occurred. Within 48 hours after the Warden receives the monitor(s)' report, the Defendants shall inform the complaining woman prisoner, in writing, of the outcome of the investigation. The

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<sup>20</sup> See discussion regarding the Special Officer's role in ¶5 and ¶6, above.

Warden shall take appropriate action as detailed in the schedule of penalties.

**Finding:** No finding.

¶14. Upon receipt of any allegation of an act of unwelcome sexual intercourse or any allegation of unwelcome sexual touching, the monitor(s) and the institution must notify the proper law enforcement agency. The monitor(s) shall communicate with the law enforcement agency concerning the status of any investigation. The monitor(s) must periodically document the status of police investigations. The occurrence of a police investigation does not relieve the monitor(s) of the duty to investigate.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. The Special Officer has been advised that none of the complaints attached as Exs. 6A through 6D has been reported to a law enforcement agency, notwithstanding the fact that at least some of them constitute allegations of unwelcome sexual intercourse and unwelcome sexual touching.

¶15. The identity of the target of the alleged sexual harassment shall be revealed only to those who have an immediate need to know, including the monitor(s), the alleged harasser(s) or retaliator(s) and any witnesses. All parties contacted in the course of an investigation will be advised that any retaliation, reprisal, or breach of confidentiality is a separate actionable offense as provided in the schedule of penalties.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However, it does not appear that the defendants have developed a protocol for conducting

investigations of inmate complaints. Even if a stay of the December 13, 1994 Order is not issued, and the Special Officer assumes the role of the Monitor, the defendants would still be obligated to investigate complaints lodged by male inmates. The Special Officer recommends that the defendants develop investigation protocols and conduct appropriate training of investigators as soon as possible.

¶16. Any prisoner who is dissatisfied with any investigation or resolution of an allegation of sexual harassment may appeal to the Director of the DCDC within 15 days of receiving written notice of the outcome of the investigation. The Director must respond within 15 days.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Appellate procedures are set forth in the D.O. filed on March 16, 1995.<sup>21</sup>

¶17. Within 90 days, a trainer from the National Institute of Corrections (NIC), mutually agreed upon by the parties, shall conduct mandatory training on sexual harassment for all DCDC employees who work with women prisoners. The trainer shall be selected within 60 days. The monitor(s) if they so choose, may attend this training.

a. The training shall include education concerning the Defendants' policies regarding reporting, investigating, and preventing sexual harassment, and the consequences for violating any policy concerning sexual harassment; and

b. In addition to roll call training, formal training sessions on sexual harassment shall

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<sup>21</sup> Ex. 2 at 5.

be conducted on a quarterly basis for all years succeeding entry of this Court Order.

**Finding:** Non-compliance.

On March 15, 1995 this Court extended the deadline for compliance with this requirement to April 13, 1995. No further requests for enlargement of time have been filed. The parties have agreed on a trainer who has received a technical assistance grant from the National Institute of Corrections (NIC). However, the \$6,000.00 grant awarded by NIC will not subsidize the cost of the training required under the Order. The trainer made an on-site visit to the DOC for a three-day period beginning on April 26 and ending on April 28, 1995. She met with the executive staff of the DOC and conducted inmate interviews. The trainer is expected to return to the DOC during the latter part of May in order to continue to develop the training program. In addition to the development of this NIC-sponsored training program, the defendants have conducted roll call training on sexual misconduct.<sup>22</sup>

¶18. Within 90 days, an outside consultant, mutually agreed upon by the parties, shall develop a sexual harassment training program and materials and conduct training on sexual harassment for women prisoners so that women prisoners know how to recognize and report sexual harassment. The trainer shall be selected within 60 days.

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<sup>22</sup> Copies of the shift reports evidencing the roll call training are attached as Ex. 8. The Special Officer corroborated the representations in the shift report through interviews with correctional and administrative staff.

a. The training materials must be included in the orientation that each woman receives upon intake or classification at each facility; and

b. Formal training sessions for women prisoners on sexual harassment shall be conducted on a monthly basis for the first year succeeding entry of the consent decree, and on a quarterly basis in all years thereafter that this decree shall remain in effect.

**Finding:** Non-compliance.

The trainer described in the narrative that accompanies ¶17 was also hired to assist with the training of women prisoners. Like the staff training, the inmate training is still in the developmental stage.<sup>23</sup>

¶19. The Defendants shall make necessary alterations at both the Correctional Treatment Facility (CTF) and the Minimum Security Annex (Annex) within 60 days to ensure that women have privacy in their living, sleeping and shower areas.

**Finding:** Non-compliance.

As far as the Special Officer has been able to determine, women housed at the CTF have not had privacy in their living, sleeping and shower areas because the day rooms and cell windows on the B side of E Building<sup>24</sup> face a building which houses male inmates who can look from a distance into the day room and cell

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<sup>23</sup> The defendants have raised significant objections to the terms of both the staff and employee training requirements of the Order. The Special Officer recognizes the defendants' concerns and can work with the parties on the terms of a stipulated modification if her assistance would be helpful.

<sup>24</sup> The women inmates are housed in E Building which has both an A and B side.

windows; male prisoners in some of the recreation yards have been able to look through some day room and cell windows into some of the womens' living and sleeping areas,<sup>25</sup> and there has been an insufficient supply of shower curtains so that anyone walking past the shower area, or looking into the door of the shower area, can readily observe an inmate while she is taking a shower.

The defendants have corrected the problem in the recreation yard by using fencing to block visibility and access to the windows. However, in the housing units on the B side of the building, women prisoners still do not have privacy in the day rooms and sleeping areas. As an accommodation, the defendants now permit women to hang paper on their cell windows when they are changing their clothing.<sup>26</sup> Many showers in the E building do not have shower curtains.<sup>27</sup> After discussing this issue with the Special Officer, the defendants attempted to order shower curtains from the General Services Administration (GSA).<sup>28</sup> Unfortunately, GSA refused to honor the purchase request because

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<sup>25</sup> This was the case in the Behavior Modification Unit (BMU) which is used for administrative and punitive segregation.

<sup>26</sup> The Special Officer has repeatedly observed male prisoners peering through their windows into the windows of E building and women prisoners peering through their windows at the men.

<sup>27</sup> Some of the showers have make-shift curtains fashioned out of plastic garbage bags and cloth sheets. These curtains are unsanitary and affixed to the equivalent of a shower curtain rod with pointed metallic hooks. The hooks raise substantial security concerns.

<sup>28</sup> A copy of the procurement request is attached as Ex. 9.

the defendants had a substantial outstanding balance which had not been paid.

**B. Findings Related to Obstetrical and Gynecological Care**

¶20. The Defendants shall hire within 60 days:

a. a nurse midwife in a half-time position who shall provide clinical and health educational services to the entire female prisoner population; and

b. an additional nurse practitioner or physician's assistant with special training in obstetrics and gynecology to provide clinical services to women prisoners at CTF.

**Finding:** Non-compliance.

Defendants have not hired any additional staff and have advised the Special Officer that they do not intend to comply with this requirement. The Special Officer has substantial concerns about the adequacy of the current OB/GYN staffing at the CTF, given the findings addressed in this section of the report.

¶21. The CTF OB/GYN Clinic shall maintain its current regularly scheduled hours.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. A clinic schedule<sup>29</sup> that was provided to the Special Officer states that the OB/GYN clinic is held four hours per day, four days per week and that patients who need gynecological care are seen in clinics on Monday, Tuesday

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<sup>29</sup> See Ex. 10A.

and Thursday. Obstetrical patients are seen during the Wednesday clinic. However, a review of the OB/GYN clinic schedule logs from January of 1995 through April of 1995<sup>30</sup> reveals that the clinic has only operated sporadically.<sup>31</sup> The number of clinics held per month has ranged from three clinics in February of 1995 to 10 clinics in January of 1995. The clinic nurse informed Karen Schneider, the Special Officer's assistant, that the clinic was often not held due to the physician's other administrative responsibilities.

¶22. The Defendants shall establish a prenatal clinic at CTF for women who receive their primary prenatal care at CTF. This clinic shall operate at least one half-day each week. Pregnant women shall not be required to make appointments for the prenatal clinic through the sick-call process, but rather, shall have scheduled appointments for the clinic.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, the defendants have reported that it is their current practice for all pregnant women to receive their primary prenatal care at DCGH's prenatal clinic rather than CTF's OB/GYN clinic.

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<sup>30</sup> See Ex. 10B. These logs were provided to the Special Officer's assistant, Karen Schneider, by Mary dot Thomas, the licensed practical nurse (L.P.N.) who runs the OB/GYN clinic. Ms. Schneider, who is a registered nurse (R.N.) and an attorney, questioned Ms. Thomas about whether these logs accurately reflected actual clinic operations and was assured that they do.

<sup>31</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes relating to OB/GYN clinic hours attached as Ex. 10C.

A review of the medical records of six pregnant women established that all of them were regularly seen for primary prenatal care at DCGH. Although defendants have reported that each pregnant woman is also seen at the CTF OB/GYN clinic every other week, the documentation in the medical records of these six pregnant inmates does not corroborate this representation.<sup>32</sup>

There have been numerous instances when prenatal vitamins are renewed through the sick call process. This violates the Court's order and is of particular concern due to the irregularity of sick call. Review of the housing unit visitor logs in unit E-3-A, the unit which houses the pregnant women, and unit E-3-B, the adjacent women's unit, establishes that sick call is not held with any regularity and has averaged four to eight times per month since January of 1995.<sup>33</sup>

¶23. The Defendants shall maintain statistics on the number of pregnant women and the birth outcomes of infants whose mothers delivered while incarcerated.

**Finding:** Compliance.

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<sup>32</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding prenatal care at the CTF attached as Ex. 11.

<sup>33</sup> See May 6, 1995 memorandum from Timothy Roche to Grace Lopes and accompanying documentation attached as Ex. 11B. Interviews with correctional staff and inmates corroborated these deficiencies in access to sick call. However, the medical staff generally maintains that sick call is currently held on a daily basis in each of the housing units.

Although the defendants are not required to comply with this requirement until June 13, 1995, monthly statistics have been maintained since April of 1995.<sup>34</sup>

¶24. In addition to the general health interview and observation performed for male prisoners, the intake screening for all women prisoners shall include specific inquiry about her use of contraceptives or intrauterine devices, history of pregnancy, last known menstrual period, current likelihood and history of sexually transmitted diseases and pattern of drug use (if applicable).

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. In the memorandum defendants filed in support of their renewed motion to stay and/or modify, defendants maintained that the required information is contained in the Health Services Intake Screening Form which is completed upon intake at the D.C. Jail<sup>35</sup> (Jail) and the Intra-System Health Screening Form which is completed upon intake to the CTF.<sup>36</sup> However, the inquiry about contraceptives is only contained in the CTF intake form and is rarely completed. Both forms contain information about the other requirements except that questions regarding the likelihood of sexually transmitted diseases are not contained on either intake form. Both forms contain questions designed to elicit patient histories of sexually transmitted

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<sup>34</sup> See Ex. 12.

<sup>35</sup> See Ex. 13A.

<sup>36</sup> See Ex. 13B.

diseases. A review of 21 intake forms for patients transferred to the CTF during the past five months establishes that there is substantial compliance regarding all inquiries except contraceptives or intrauterine devices. Only five of the 21 records noted any response to the inquiry about contraceptives or intrauterine devices.<sup>37</sup>

¶25. In accordance with DCDC policy, the Defendants shall inform all women prisoners of the procedure to access health services while incarcerated.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. The Chief Medical Officer at the CTF advised Ms. Schneider that a statement regarding access to health services has not yet been developed. Dr. Charles Hall, the CTF's OB/GYN physician, submitted a statement to the Special Officer regarding access to OB/GYN care and self-breast examination.<sup>38</sup> According to Dr. Hall this statement will be included in a pamphlet distributed at the time of intake.

¶26. In addition to the health appraisal conducted for male prisoners, the Defendants shall conduct a gynecological examination, including a pelvic examination and evaluation, a breast examination accompanied by patient education, a PAP smear, a chlamydia and gonorrhea culture, and a serology for syphilis. In accordance with the CTF Operations manual and National Commission on Correctional Healthcare (NCCHC) and American Correctional Association (ACA) standards, this health appraisal shall occur within 14 days of admission into the DCDC, unless

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<sup>37</sup> See Chart for ¶24 and the accompanying intake forms for each patient, attached as Ex. 13C.

<sup>38</sup> See Ex. 14.

there is documentation of a complete and comparable health appraisal within the previous 90 days.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, in their memoranda in support of their renewed motion to stay, defendants claim that they are in compliance with this provision since the required examination and tests are completed during intake at the Jail and documented on the Jail's Health Services Intake Screening Form.<sup>39</sup> Of the 21 intake forms reviewed, 17 inmates were new intakes to the Jail who were subsequently transferred to the CTF. Three of these patients did not receive a gynecological examination or the required laboratory tests at the Jail, nor did they receive the required examination and laboratory tests within 14 days of their entry into the CTF.<sup>40</sup> In addition, none of these four medical records document patient education regarding breast examinations. As noted in the discussion concerning ¶25, above, the defendants intend to incorporate a statement regarding breast examination education into an intake pamphlet.

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<sup>39</sup> See Ex. 13A.

<sup>40</sup> See Chart for ¶26 attached as Ex. 15 and intake forms attached at Ex. 13C. The remaining four of the 21 medical records reviewed were records of inmates who were originally admitted to the DOC in 1993 or 1994 and transferred to the CTF in 1995. Although it had been approximately one year or longer since a gynecological examination or laboratory tests had been performed, review of the medical records of these four women establishes that examinations were not performed upon admission to the CTF.

¶27. The Defendants shall develop and implement within 90 days, an appropriate health appraisal form to correspond with the ordered health appraisal for women noted in ¶26.

**Finding:** Partial compliance.

The Health Services Intake Screening Form used at the Jail contains the requirements of ¶26, except that it does not address patient education regarding breast examinations.

¶28. The Defendants shall develop and implement within 90 days, detailed written protocols concerning routine and follow-up care for common gynecological problems including syphilis, gonorrhea, chlamydia, and pelvic inflammatory disease; PAP tests; pelvic examinations; breast examinations; education in contraception and mammography for high-risk women, in accordance with the standards of the American College of Obstetrics and Gynecology (ACOG).

¶29. The Defendants shall provide gynecological care within the time frames and in a manner consistent with gynecological protocols that satisfy ACOG standards unless a physician determines that in his or her medical judgment it is not medically appropriate for such care to be provided in accordance with the protocol, in which case the reasons for this determination shall be entered into the patient's medical record.

**Finding:** Non-compliance.

The defendants provided the Special Officer with a copy of the gynecology protocol for the CTF on April 3, 1995 and treatment guidelines for syphilis, gonorrhea, chlamydia, and acute pelvic inflammatory disease on May 2, 1995.<sup>41</sup> Protocols for PAP tests, pelvic examinations, breast examinations and education in contraception and mammography for high-risk women

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<sup>41</sup> See Ex. 16.

have not been provided. Upon receipt of the remaining protocols, the Special Officer can retain her correctional health care expert to assist her in evaluating compliance.<sup>42</sup>

¶30. At a minimum, the protocol concerning the provision of gynecological care shall provide that the Defendants shall offer and make available PAP tests to all high-risk women at CTF every six months.

**Finding:** Non-compliance.

The protocol regarding gynecological care does not contain this provision. The defendants' current practice is to refer all patients with abnormal PAP tests to DCGH's GYN/Oncology clinic. All subsequent PAP tests are conducted in accordance with the recommendations of the GYN/Oncology clinic.

¶31. The Defendants shall maintain a list of abnormal PAP results and, within seven days of receipt of an abnormal PAP result, shall notify the patient of the abnormal result and develop and initiate a course of treatment.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. Although Ms. Thomas currently maintains a list of all patients who have had an abnormal PAP test and are being seen in the GYN/Oncology clinic at DCGH, she does not maintain a list of any subsequent abnormal test

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<sup>42</sup> In the Special Officer's view it would be more cost effective to hire an expert to evaluate all the protocols at the same time instead of on a piece-by-piece basis.

results.<sup>43</sup> Notification to the patient of the abnormal test result is not documented.

A review of five medical records of patients who had abnormal PAP test results was conducted. The shortest time period between the date of the abnormal PAP test results and the consult at DCGH's GYN/Oncology clinic was three months. One patient was not seen at DCGH's GYN/Oncology clinic until 11 months after the initial abnormal test result.<sup>44</sup> This evidences significant deficiencies which require prompt corrective action.

¶32. All women who receive an abnormal PAP test result shall be scheduled for a repeat PAP test at three-month intervals until the PAP test results are normal. Once the PAP test results are normal, a PAP test shall take place every six months. If a culdoscopy is required, it shall be performed in a manner and within time frames accepted as appropriate by ACOG standards.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However, as noted in the discussion regarding ¶30, above, follow-up PAP tests are scheduled in accordance with the recommendation from the DCGH GYN/Oncology clinic.

¶33. The Defendants shall implement within 60 days a tracking system to insure that all women receive

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<sup>43</sup> See list attached as Ex. 17A.

<sup>44</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding abnormal PAP test results and supporting medical records attached as Ex. 17B.

appropriate preventive gynecological care at regular intervals.

**Finding:** Non-compliance.

The defendants were unable to show the development of a tracking system to insure that all women receive appropriate preventive gynecological care at regular intervals.

¶34. If a pregnancy test reveals that a woman is pregnant, routine prenatal care shall be initiated immediately.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, we reviewed the medical records of five women whose prenatal care commenced at the CTF in 1995. Of those five records reviewed, some type of prenatal care (i.e., sonogram or examination by Dr. Hall) was initiated within eight days.<sup>45</sup>

¶35. The Defendants shall develop and implement a protocol concerning restraints used on pregnant and postpartum women which provides that a pregnant prisoner shall be transported in the least restrictive way possible consistent with legitimate security reasons. Specifically, the protocol shall provide:

a. The Defendants shall use no restraints on any woman in labor, during delivery, or in recovery immediately after delivery.

b. During the last trimester of pregnancy up until labor, the Defendants shall use only leg shackles when transporting a pregnant woman prisoner unless the woman has demonstrated a history of assaultive behavior or has escaped from a correctional facility.

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<sup>45</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding prenatal care previously cited as Ex. 11.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However, in their memoranda in support of their renewed motion to stay, defendants claim that they are in compliance with the Court's Order. Interviews with three pregnant inmates who recently gave birth at DCGH indicate that restraints were used during labor and immediately after delivery.<sup>46</sup> This practice is also contrary to the CTF's draft policy, DOP No. 4950,<sup>47</sup> which provides that only wrist restraints shall be used on pregnant women.

The Special Officer's correctional medical expert, Dr. Robert L. Cohen, has expressed significant concern about the use of leg shackles during the last trimester of pregnancy. In his view, such a practice may be ill-advised given the balance deficits experienced during the latter part of pregnancy. The Special Officer recommends that the Court reconsider the leg shackling requirement.

¶36. The Defendants shall develop and implement within 90 days, a detailed written prenatal protocol for women who receive their primary prenatal care at CTF in accordance with ACOG standards. The protocol shall also provide guidelines to define "high-risk pregnancy." High-risk pregnancies shall be considered to include at a minimum those women with histories of alcohol and drug abuse, sexually transmitted diseases, diabetes or anemia,

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<sup>46</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding use of restraints on pregnant women attached as Ex. 18A.

<sup>47</sup> See May 4, 1995 memorandum from Timothy Roche to Grace Lopes and draft DOP attached as Ex. 18B.

older women, women with poor obstetrical histories, and women expecting multiple births.

**Finding:** Non-compliance.

The prenatal protocol submitted by the defendants<sup>48</sup> does not address high-risk pregnancies.

¶37. The Defendants shall arrange for each pregnant woman prisoner to see an obstetrician at monthly intervals during the first two trimesters of her pregnancy, bimonthly intervals during the seventh and eighth months, and weekly intervals during the ninth month. The Defendants shall arrange for women who are experiencing high-risk pregnancies to see an obstetrician at shorter than routine intervals until it is determined that the pregnancy is progressing normally.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The records of six women who were pregnant during 1995 were reviewed. All received their primary prenatal care at the DCGH prenatal clinic. Except for one occasion when an inmate missed an appointment during her ninth month, all were seen at the required intervals.<sup>49</sup>

¶38. The Defendants shall implement a tracking system to insure that all pregnant women are scheduled and seen regularly for prenatal care.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The pregnant women at CTF are

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<sup>48</sup> See Ex. 19.

<sup>49</sup> See memorandum referenced in discussion regarding compliance with ¶22, attached as Ex. 11.

seen in accordance with appointments scheduled by DCGH's Prenatal Clinic. The DOC does not have a formal tracking system. When the trip ticket is returned to the DOC after a woman is sent to the DCGH Prenatal Clinic, Ms. Thomas notes the date DCGH has scheduled for the next appointment in her calendar. She is responsible for completing the trip tickets for all visits.

¶39. The Defendants shall permit a woman prisoner to feed her baby at D.C. General Hospital while the woman prisoner and baby remain at D.C. General Hospital.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, interviews with inmates and DOC staff suggest that it is likely defendants will be in non-compliance with this requirement.<sup>50</sup>

Non-incarcerated women who give birth at DCGH are permitted to leave their rooms, go to the nursery, retrieve their infants, and bring their infants into their rooms for feeding. In situations where a non-incarcerated woman is physically unable to get her infant, nurses bring the infant to the woman's room for feeding.

Incarcerated women cannot leave their rooms unescorted. According to one of the deputy wardens at the CTF who is

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<sup>50</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding postpartum feeding of babies at DCGH attached as Ex. 20A.

responsible for security,<sup>51</sup> two officers must be present when a woman feeds her baby because her handcuffs are removed and DCGH requires that two officers be present when an inmate is not handcuffed. Because the CTF has a substantial shortage of correctional officers, and because of the refusal of most DCGH nurses to bring infants to the rooms of incarcerated women for feeding, it appears that new mothers are rarely permitted to feed their infants during the postpartum period.

The draft policy regarding Pregnant & Postpartum Inmates<sup>52</sup> cited in the narrative concerning ¶35 of the Order is inconsistent with current practices. It states that "[h]andcuffs shall be removed only if the medical staff requests for postpartum inmate in order to hold and feed her baby." Substantial coordination with DCGH will be necessary in order for the defendants to achieve compliance with this provision.

¶40. The Defendants shall develop a routine visiting program for women whose children remain in D.C. General Hospital. These women shall be allowed to visit their children at D.C. General Hospital every day.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, interviews with inmates and DOC staff indicate that defendants will be in non-compliance with this requirement. Of the three postpartum

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<sup>51</sup> See May 4, 1995 memorandum from Timothy Roche to Grace Lopes attached as Ex. 20B.

<sup>52</sup> See Ex. 18 B.

inmates interviewed, only one inmate visited her baby and this visit took place on the baby's tenth and last day at DCGH.<sup>53</sup> It appears that the defendants do not intend to comply with this requirement.

The draft policy regarding Pregnant & Postpartum Inmates<sup>54</sup> states that "[t]he postpartum inmate shall be allowed to visit with her baby several days a week as follows: 9:00 a.m., 1:00 p.m., 6:00 p.m." This time schedule is inconsistent with the rationale regarding security-based objections that is present in the Declaration submitted in support of defendants renewed motion to stay this Court's Order. Contrary to defendants' protestations, the Special Officer's security expert does not believe that daily transport of women to DCGH in order to feed their babies presents insurmountable security problems.

¶41. In accordance with the Defendants' Department Order, pregnant women prisoners shall receive counseling regarding child placement as soon as the pregnancy is known.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. The social worker responsible for child placement counseling is the sole case worker for all women housed at the CTF, all inmates housed in the BMU, all infirmary

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<sup>53</sup> See May 5, 1995 memorandum from Karen Schneider to Grace Lopes regarding postpartum visitation of babies at DCGH attached as Ex. 21.

<sup>54</sup> See Ex. 18B.

patients, and all inmates with special mental health needs. In the Special Officer's view, it is unlikely that this case worker can meaningfully discharge all of her assigned responsibilities. The inmates interviewed indicated that they had not received meaningful child placement counseling because they were approached by a counselor after they had made arrangements for child placement.

¶42. The Defendants shall designate a representative who shall develop and maintain contacts with licensed child-placing agencies, including the Department of Human Services. The Defendants shall provide training to its social workers on the range of options available for child placement, including third-party placement with family or friends, foster-care placement, and adoption. Each woman shall be given information about each of the options.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. The social worker who is responsible for child placement counseling has been designated as the representative. A formal training program has not been developed.

¶43. The nurse midwife shall implement within 90 days an obstetrical and gynecological health education program that satisfies a recognized national medical standard. Education material should also be made available in the CTF library. The Defendants shall maintain adequate documentation on the program so that it can be evaluated by the Court within 60 days after implementation.

**Finding:** Non-compliance.

The defendants have not hired a nurse midwife to implement a health education program. There are no health education materials available in the CTF library.

¶44. The Defendants shall have at least one medical staff member available at CTF 24 hours each day.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. The physician and physician assistant schedules provide for at least one staff member on each shift.<sup>55</sup> The Chief Medical Officer at the CTF, Dr. Taylor, has advised us that during 1995 there have not been any uncovered shifts.

¶45. CTF medical personnel shall have telephone access to the OB/GYN physician at CTF during evening and weekend hours.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. Dr. Hall, the obstetrician/gynecologist assigned to the CTF, works 20 hours per week. He is on call at all other times unless he is out of town. His beeper number is posted in the doctors' office. There is no system for coverage when he is out of town.

¶46. If a woman prisoner is in need of emergency obstetrical or gynecological care during evening or weekend hours, she shall be taken immediately to the emergency area in the OB/GYN clinic at D.C. General Hospital, unless employees providing obstetrical and/or gynecological care at D.C. General Hospital determine

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<sup>55</sup> See Exs. 22A and 22B.

that the main emergency room at D.C. General Hospital would be more medically appropriate.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. According to the defendants, the current procedure is to take pregnant women in need of emergency care to the emergency room if a woman is pregnant less than 20 weeks and to the OB admitting office if a woman is 20 weeks pregnant or more.

¶47. The Defendants shall provide each woman prisoner who is discharged from custody with the following:

- a. a supply of essential medications that will last until she may be reasonably expected to obtain necessary follow-up care in her community; and
- b. referrals to services in the community to insure continuity of care.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. The Chief Medical Officer advised us that the physician assigned to medically clear an inmate prior to release is responsible for medication and referrals. She also told us that this physician completes the Community Correctional Center Medical Referral form<sup>56</sup> which is filed in the medical record.

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<sup>56</sup> See Ex. 23A.

The defendants have had substantial difficulty maintaining their inventories of prescription medication.<sup>57</sup> If these difficulties continue, it is likely the defendants will not be able to achieve compliance with this provision.

¶48. If a woman is released prior to the time that results of any gynecological or obstetrical tests are received by CTF medical personnel, the Defendants shall forward the test results to her last known mailing address.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. From conversations with medical records staff, it appears as if a procedure has been designed to comply with this requirement.<sup>58</sup>

¶49. The Defendants shall provide sufficient resources to insure that prisoners are transported to medical appointments in a timely fashion, including a sufficient number of security staff to transport prisoners, appropriate and sufficient transport vehicles, and appropriate waiting areas.

¶50. The Defendants shall modify their transportation procedures so that the transportation system alone does not cause women prisoners to wait for more than one hour at D.C. General Hospital before receiving medical care.

**Finding:** No finding.

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<sup>57</sup> See Ex. 23B.

<sup>58</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes attached as Ex. 24.

The defendants are not required to comply with this requirement until June 13, 1995. By defendants' own admission, CTF has insufficient staff to accommodate defendants' medical transport needs.<sup>59</sup>

¶51. If a woman prisoner misses a medical appointment for any reason, the Defendants shall reschedule the appointment for the earliest available date. The Defendants shall use their best efforts to insure that the rescheduled appointment occurs within a medically appropriate period of time.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The staff member at the CTF responsible for scheduling the DCGH appointments has advised us that it has not been difficult to promptly reschedule clinic appointments.<sup>60</sup>

¶52. The Defendants shall comply fully with all provisions of the Memorandum of Understanding between the DCDC and D.C. General Hospital.

**Finding:** No finding.

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<sup>59</sup> See memorandum regarding prenatal care attached as Ex. 11 which notes a situation in which an inmate refused to be transported to DCGH after waiting in the Receiving and Discharge holding cells for two hours.

<sup>60</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes regarding rescheduling of clinic appointments attached as Ex. 25. See also OB/GYN clinic log of April 19, 1995 attached as Ex. 10B. The log indicates that all clinic visits were canceled due to a lockdown. Ex. 10B contains all clinic log sheets from April of 1995. A review of the subsequent log sheets shows that the eight women whose appointments were canceled were not rescheduled during the month of April 1995.

Defendants are not required to comply with this requirement until June 13, 1995. A review of the Memorandum of Understanding and the security agreement and hospital regulation,<sup>61</sup> which appear to be incorporated into the Memorandum, raises several concerns regarding access to information, use of restraints and patient confidentiality.

Section II A 3 of the Memorandum of Understanding requires that the agencies establish an access system for medical information. Interviews with CTF staff and review of medical records establish that there is no actual system in place.<sup>62</sup>

Section A 2 of the document entitled "Security Agreement" requires that escorted prisoners inside DCGH must be held in full restraints (leg irons, waist chain and handcuffs) at all times except when an extreme medical necessity requires removal or restraints are reduced by DCGH, the on-site supervisor for the Lorton Transport Unit or a higher authority within the DOC. This agreement is inconsistent with the Order of December 13, 1994 and the defendants' draft policy regarding pregnant and postpartum inmates.<sup>63</sup>

Section A 4 of the "Security Agreement" requires that escort personnel remain with the prisoner at all times at DCGH. Interviews with CTF staff and inmates confirm that a correctional

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<sup>61</sup> Attached as Ex. 26A.

<sup>62</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes regarding obtaining medical information regarding DOC patients from DCGH attached as Ex. 26B.

<sup>63</sup> Attached as Ex. 18B.

officer remains in the room with an inmate during all medical interviews, treatments and procedures, including labor and delivery. This practice creates a substantial violation of confidentiality which should be promptly resolved.<sup>64</sup>

¶53. The Defendants shall assign a physician, or a member of the medical staff at CTF, who provides obstetrical or gynecological care, to serve as a liaison between CTF medical personnel and D.C. General Hospital.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. However, defendants claim Ms. Thomas is the nursing liaison and Dr. Charles Hall is the medical liaison.

¶54. The Defendants shall maintain the content of each medical record in an orderly and confidential manner.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The medical records we reviewed appeared to be maintained in an orderly fashion. The Special Officer was unable to confirm the reported practice that the medical records are secured in a plastic bag prior to transfer. However, a review of medical records showed that the old consult form<sup>65</sup> is used for off-site specialty referrals. This form fails to provide confidentiality. Medical information appears on

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<sup>64</sup> The Special Officer was unaware of this practice which violates orders in related litigation before this Court.

<sup>65</sup> See ¶56.

the face of the form, fully visible by non-medical correctional personnel during inmate transfers.

¶55. For all pregnant women prisoners, the Defendants shall maintain a medical chart on the POPRAS form pregnancy chart, or an equivalent form, together with a regular medical chart. All medical visits to or by the responsible physician or primary healthcare provider, orders for laboratory tests, laboratory test results and other notes and orders relating to the medical care of pregnant women prisoners shall be recorded on the POPRAS form or consultation form.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. In their renewed motion to stay, defendants have claimed that the method of charting used by the DOC, i.e., the master problem list and the problem oriented SOAP method, was comparable to the POPRAS forms.<sup>66</sup> However, on May 2, 1995, Dr. Hall advised Ms. Schneider that defendants were using the ACOG form.<sup>67</sup> Dr. Cohen, the Special Officer's correctional medical expert, reviewed both the POPRAS form and the ACOG form. It is his opinion that the POPRAS and ACOG forms are equivalent. However, Dr. Cohen has advised the Special Officer that the POPRAS and the problem oriented system are not equivalent.

¶56. The Defendants shall develop and implement within 90 days, a new consultation form that provides adequate clinical information to D.C. General Hospital

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<sup>66</sup> The PROPRAS forms are attached as Ex. 27A.

<sup>67</sup> Attached as Ex. 27B.

and insures that adequate information is provided by D.C. General Hospital to CTF medical personnel.

**Finding:** Non-compliance.

Although a new consultation form<sup>68</sup> is used at other DOC facilities, it is not being used at the CTF, according to medical staff.<sup>69</sup> Review of numerous medical records verified this practice.

¶57. The Defendants shall institute, maintain and follow a system to coordinate the implementation and tracking of physician orders so that gynecological and obstetrical care will be provided within a timely fashion. The system shall coordinate all orders regardless of whether the physician orders are to be filled inside or outside the facility. This system shall be reflected in written procedural guidelines, a copy of which shall be provided to counsel for Plaintiffs within 60 days. Orders for medication are not to be tracked under this system.

**Finding:** Non-compliance.

According to the CTF's OB/GYN nurse, there is no tracking system for physician orders. Written procedural guidelines have not been developed.

¶58. Documentation shall be required whenever CTF medical staff elect not to follow the instructions of a consulting physician at D.C. General Hospital or elsewhere. This documentation should include the justification for not providing the therapy ordered. Only medically-based justifications shall be permissible.

**Finding:** No finding.

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<sup>68</sup> Attached as Ex. 28A.

<sup>69</sup> The old form that is currently used at CTF is attached as Ex. 28B.

The defendants are not required to comply with this provisions until June 13, 1995. According to the CTF staff, orders from a consulting physician are not followed primarily because of shortages of recommended medication in the DOC pharmacy.<sup>70</sup>

¶59. For all women prisoners who are discharged from D.C. General Hospital or other medical facilities to CTF, CTF medical personnel shall promptly obtain a discharge summary and maintain the summary in the prisoner's medical record.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. As noted in the discussion regarding compliance with the Memorandum of Understanding between the DOC and DCGH in ¶52, there are significant deficiencies with access to information.<sup>71</sup>

¶60. Prisoners shall receive notice of results of laboratory or diagnostic tests which are of no clinical significance within seven calendar days of the date the facility receives the results of such test.

**Finding:** No finding.

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<sup>70</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes and supporting medical records attached as Ex. 29.

<sup>71</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes attached as Ex. 26B.

Defendants are not required to comply with this requirement until June 13, 1995. It does not appear that defendants intend to comply with this requirement.<sup>72</sup>

¶61. In the case of non-emergency abnormal laboratory or diagnostic test results of clinical significance, the prisoner will be seen by the ordering physician, or if that physician is unavailable, by the Medical Officer, within 24 hours of the time the facility receives the results of such test. At such time the physician will explain the result to the patient and order such follow-up care as is appropriate.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. It does not appear that defendants plan to comply with this requirement.<sup>73</sup>

¶62. The Defendants shall require a woman prisoner who refuses medical care to do so in the presence of a licensed medical staff member who can answer the patient's questions and counsel the patient concerning the consequences of a refusal. In accordance with DCDC policy regarding quality assurance, the reasons for refusal shall be analyzed regularly as part of a comprehensive and up-to-date quality assurance program. This quality assurance activity shall be documented.

This paragraph was modified on March 15, 1995 as follows:

¶62. The Defendants shall require a woman prisoner who refuses medical care relating to obstetrical and/or gynecological care to be referred by two business days to a licensed medical staff member who can answer the

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<sup>72</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes attached as Ex. 30. The defendants have raised significant concerns about this provision which should be addressed. The Special Officer is available to work with the parties in an effort to resolve defendants' concerns.

<sup>73</sup> See Ex. 30.

patient's questions and counsel the patient concerning the consequences of refusal. If the prisoner refuses in the presence of an appropriate medical staff member, the prisoner will be counseled immediately by that health care provider. Medical care, for the purposes of this paragraph, shall be defined as treatment, procedures, test or consultations ordered or referred by a health care provider. Until such time that a comprehensive and up-to-date quality assurance program is implemented for the D.C. Department of Corrections system-wide, Defendants will maintain a record of the refusals, that shall include the basis for the refusal, and follow-up consultation. The reasons for refusal shall be analyzed as part of the monthly reporting procedures by the Chief Medical Officer. When the system-wide quality assurance program is in place, the reasons for refusal shall be analyzed regularly as part of this comprehensive and up to date quality assurance program. This quality assurance activity shall be documented.

**Finding:** No finding.

Defendants are not required to comply with this requirement until June 13, 1995. The defendants have admitted that there are no written guidelines for the medical staff<sup>74</sup> or the correctional staff<sup>75</sup> regarding the procedure to be followed when an inmate refuses medical care. The defendants have also admitted that they do not currently maintain the required record of refusals.

**C. Findings Concerning Program Evaluation**

¶63. The Defendants shall provide diagnostic evaluations for women prisoners similar to those currently provided for men in the Reception and Diagnostic Unit at CTF to determine women prisoners' needs, interests, and requirements for increased programs

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<sup>74</sup> See May 8, 1995 memorandum from Karen Schneider to Grace Lopes attached as Ex. 31A.

<sup>75</sup> See May 4, 1995 memorandum from Timothy Roche to Grace Lopes attached as Ex. 31B.

and opportunities in academic and higher education, vocation, work, religion and recreation. The procedure for the needs assessment shall be done by an approved scientific method. These evaluations shall be completed within 30-45 days of a female prisoner's transfer to CTF or the Annex. The evaluations shall include educational testing, vocational testing and psychological testing. The Defendants shall provide women with the appropriate programming called for by this evaluation within 60 days of their arrival at the facility.

The parties jointly moved to modify this provision and on March 15, 1995 an Order modified this requirement as follows:

¶63. The Defendants shall provide diagnostic evaluations for adult women prisoners who are sentenced felons and at least one year from their parole eligibility date, equivalent to those currently provided for men held in the Reception and Diagnostic Unit at the CTF, to determine women prisoners' needs, interest, and requirements for increased programs and opportunities in academic and higher education, vocation, work, religion and recreation. The procedure for the needs assessment shall be done by an approved scientific method. These evaluations shall be completed in a manner and time frame equivalent to the males in the diagnostic unit, but shall not exceed 120 days from the date of the female prisoner's transfer to CTF or the Annex. The evaluations shall include educational, vocational and psychological testing. The Defendants shall provide women with the appropriate available programming called for by this evaluation within 30 days of completion of the Diagnostic Evaluation.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995.<sup>76</sup> There have been well-documented and long-standing delays in processing inmates in the

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<sup>76</sup> In their most recent compliance report, defendants claim they are non-compliant. The relevant pages from this report are attached as Ex. 32A.

Reception and Diagnostic Unit.<sup>77</sup> Many of these deficiencies touch on the Court's orders in related litigation.<sup>78</sup> In an effort to address some of the staffing deficiencies that have contributed to the backlog in the Diagnostic Unit,<sup>79</sup> the defendants recently authorized overtime for psychologists. They have also attempted to recruit psychologists throughout the system to work in the Diagnostic Unit on an overtime basis.<sup>80</sup> In addition, short-term contracts for two psychologists have also been authorized.<sup>81</sup>

¶64. The Defendants shall coordinate the scheduling of academic educational classes, higher education classes, vocational training, recreation time and activities, law library hours, and work in prison details for women in such a manner as to maximize women prisoners' participation in as many areas as possible.

Finding: No finding.

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<sup>77</sup> See Ex. 1. Various memoranda addressing the backlog problem and describing the Diagnostic Unit as "in crisis" are attached as Exs. 32B, 32C and 32D.

<sup>78</sup> See Ex. 32E which sets forth the Special Officer's concerns about violations of the Twelve John Does Decree directly related to the deficiencies in the operation of the Reception and Diagnostic Unit. Over two months have elapsed and the Special Officer has not yet been provided with a corrective action plan.

<sup>79</sup> There is evidence which suggests that the defendants have focused their attention on evaluating the deficiencies in the Diagnostic Unit after the issuance of the Special Officer's February 7, 1995 recommendations on double-celling (Ex. 1) which identified serious deficiencies in the operation of the Diagnostic Unit. See Exs. 32F and 32G.

<sup>80</sup> See the April 14, 1995 memorandum from the Acting Executive Deputy Director to all DOC wardens attached as Ex. 32H.

<sup>81</sup> See Ex. 32I.

The defendants are not required to comply with this requirement until June 13, 1995. They have contracted<sup>82</sup> for two core introductory higher education classes through the University of the District of Columbia. These classes are scheduled to begin on May 30, 1995 and will be held on Monday, Wednesday and Friday evenings from 6:00 p.m. to 9:00 p.m. According to CTF educational staff, approximately 120 women were screened for the higher education program and only 30 were eligible to enroll in these higher education classes. There are currently 140 women enrolled in the academic school which offers adult basic education (ABE) and general equivalency high school certification (GED). ABE and GED classes are scheduled five days per week from 8:00 a.m. to 10:45 a.m. for women and in the afternoons for men.<sup>83</sup> The vocational classes,<sup>84</sup> which have a total enrollment of approximately 80 women, are also offered during weekday mornings for the women<sup>85</sup> and during the afternoons for the men.<sup>86</sup> The women are scheduled for the law library twice per week. Library sessions are two hours each.<sup>87</sup> Outdoor and

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<sup>82</sup> The Special Officer has been unable to obtain a copy of the contract.

<sup>83</sup> The academic school schedule is attached as Ex. 33A.

<sup>84</sup> This includes sewing, typing, graphic arts, computer literacy, and professional housekeeping.

<sup>85</sup> Graphic arts is the only vocational class that is offered for the women in the afternoons.

<sup>86</sup> The vocational schedule is attached as Ex. 33B.

<sup>87</sup> A copy of the library schedule is attached as Ex. 33C.

indoor recreation for the women is scheduled in the afternoons.<sup>88</sup> The scheduling of details varies according to the nature of the position.

¶66. The Defendants shall develop and implement quality assurance programs for monitoring program delivery to ensure the continued provision of equal and adequate programs to women prisoners.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. The Special Officer has been unable to identify a DOC staff member who is responsible for the implementation of this provision.

¶67. The Defendants shall increase the number of staff posted or detailed at the women's unit at CTF and at the Annex to ensure that women prisoners are escorted to educational programs, recreation, employment, and medical care as scheduled. Sufficient staff shall be provided in a manner that does not prevent the programming staff from performing any of their duties.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However, the Special Officer has substantial concerns about whether the defendants can achieve timely compliance. In response to this litigation the CTF warden created security posts to facilitate escorts for programming as well as hallway surveillance. In addition, she has dedicated an elevator to inmate programming activity during program hours,

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<sup>88</sup> The recreation schedules are attached as Ex. 33D.

creating an elevator operator post. These posts have not been authorized and are filled by officers working on overtime status.<sup>89</sup> Many of these officers are from other DOC institutions and are unfamiliar with operations at the CTF. They are not required to participate in an orientation program prior to working on overtime status at the CTF. The chronic use of overtime to fill these posts raises significant security issues. The warden of the CTF has been under substantial pressure to reduce the use of overtime by correctional officers at the facility.<sup>90</sup> She has advanced proposals to establish an authorized complement at the CTF which, if implemented, would reduce overtime usage at the facility.<sup>91</sup> Nonetheless there has been a decrease from 162 officers to 160 officers assigned to the CTF<sup>92</sup> since the December 13, 1994 Order was filed.

Educational, correctional and administrative staff, as well as inmates, have advised the Special Officer that notwithstanding the modifications in officer staffing and elevator operations implemented in the wake of this Court's Order, substantial delays in access to programming are common. Indeed, there is a high

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<sup>89</sup> The CTF relies heavily on overtime for correctional coverage as evidenced by the May 1, 1995 "Correctional On Duty and Leave Utilization Report" which is attached hereto as Ex. 34A.

<sup>90</sup> See Exs. 34B and 34C.

<sup>91</sup> Copies of the warden's proposals are attached as Exs. 34D and 34E.

<sup>92</sup> Two officers were fired and the vacancies they created have not been filled.

level of absenteeism for educational and vocational programs. Correctional and educational staff attribute the absenteeism to shortages of escorts and the severe limitations in movement that are imposed by the physical plant.<sup>93</sup> Even if adequate escort staff was available, the Special Officer has substantial concerns about whether this would result in efficient movement of inmates to programming areas given the limited elevator accessibility at the CTF.

¶69. The Defendants shall provide women prisoners at CTF with a range of academic education programs that is equivalent to the range of academic programs provided to male prisoners at the Occoquan, Central and Medium facilities.

**Finding:** No finding.

The defendants are not required to implement this requirement until June 13, 1995. The academic school offers ABE and GED classes which appear to be equivalent to the ABE and GED programs offered at the Central, Medium and Occoquan facilities.

¶70. Women prisoners at the Annex and CTF shall be provided with the opportunity for full-time (five hours per day, five days per week) basic education to include ABE, GED, and Special Education classes. The Defendants shall immediately provide two full-time basic education teachers for ABE, GED, and Special Education classes at the Annex.

**Finding:** No finding.

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<sup>93</sup> At times the Special Officer and her assistants have waited over 30 minutes for an elevator to transport them from one floor to the next in the CTF.

The defendants are not required to implement this requirement until June 13, 1995. They have, however, advised the Special Officer that they will not be in compliance with this provision.<sup>94</sup>

¶71. Women prisoners at CTF shall have access to on-site higher education programs which shall include a four-year B.A. and/or B.S. degree program, an A.A. degree program, a certification program, and a precollege program. The bachelor and associate programs shall be offered in a variety of fields, and at a minimum shall each offer three different areas of study leading to a degree. Within 90 days, the Defendants shall at least make the University of the District of Columbia B.A. and A.A. programs available to women prisoners at CTF.

**Finding:** Non-compliance.

The defendants have contracted with the University of the District of Columbia to provide two core introductory college classes for the women at the CTF. These classes are not scheduled to begin until May 30, 1995. The Special Officer assumes that the "certification program" required by the Order refers to a vocational apprenticeship program. There are no vocational apprenticeship programs that provide certification operating at the CTF and available documentation suggests that the defendants do not plan to offer such programs at the CTF.<sup>95</sup>

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<sup>94</sup> The defendants have raised significant concerns about this provision which should be addressed. The Special Officer is available to work with the parties in an effort to resolve defendants' concerns.

<sup>95</sup> See Ex. 35. Indeed, the defendants are currently in violation of the Twelve John Does Consent Decree because they have dismantled the apprenticeship program that had operated at Lorton's Central Facility.

¶72. The Defendants shall offer women prisoners financial arrangements for these education programs that are the same as those arrangements available to similarly situated male prisoners.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However it appears defendants will be in compliance because there are no financial arrangements currently available to male prisoners.

¶73. The Defendants shall immediately provide women prisoners at CTF with at least 30 hours of access per week to the Atlantic Union computers. Women shall be scheduled to access the computer during educational program time and during free time, including evenings and weekends. Women prisoners shall be provided with an amount of computers sufficient to meet their needs.

¶74. The Defendants shall immediately process the applications for Atlantic Union in a complete and timely manner. Women shall be provided with all books and course materials before the start of a course. The women shall receive substantive tutorial guidance in the course work from qualified educators.

**Finding:** Non-compliance.

The Special Officer has been advised that Atlantic Union College canceled the contract with the DOC before the December 13, 1994 Order was issued.

¶75. The Defendants shall immediately provide appropriate substitute teachers or instructors during absences of regular teachers or instructors of more than three working days. The provision of a substitute teacher or instructor shall not result in consolidating two classes into one or increasing the class size.

**Finding:** Non-compliance.

The defendants have not complied with this provision.<sup>96</sup>

¶76. The Defendants shall provide women prisoners at CTF with a range of vocational education programs that is equivalent to the range of vocational education programs provided to male prisoners at the Occoquan, Central and Medium facilities.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. However defendants currently offer the following five vocational programs to women incarcerated at the CTF: professional housekeeping, graphic arts, computer literacy, business typing, and sewing. It does not appear that defendants plan to expand this offering. The following vocational programs are provided at the Central Facility: autobody, dental technology, carpentry, electrical, culinary arts, brick masonry, auto mechanics, digital electronics, graphic arts, and printing. At the Medium Security Facility the defendants offer dry wall, brick masonry and word processing. The Occoquan prison offers photography, boiler house operations, graphic arts and digital electronics.

¶77. The Defendants shall provide women prisoners at CTF with two prevocational programs each to be at least six weeks in duration. Prevocational programs include those courses which teach personal development skills, living skills, and/or employment skills such as Employment Techniques, Awareness and Preparation (ETAP) and Lifeskills.

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<sup>96</sup> The defendants have raised some important concerns related to compliance. The Special Officer is available to assist the parties with the resolution of these concerns.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. Beginning on May 29, 1995, they plan to offer two eight week sessions per trimester of ETAP and Lifeskills.

¶78. The Defendants shall provide women prisoners at CTF with a minimum of four vocational education programs, including the one program currently in place (DocuTech). These programs shall be available to female prisoners of all custody levels. A vocational education program is any program of 12 to 24 months of duration that teaches employable skills and contains both a classroom component and an on-the-job-training component. Two programs shall be operative within 120 days of the entry of this Order.

**Finding:** Non-compliance.

Except for the graphic arts program (Docutech), none of the other vocational programs offered at the CTF is of 12 months duration.<sup>97</sup> In addition, because the location of the graphic arts program raises a valid security justification,<sup>98</sup> it is not open to inmates of all custody levels.

¶79. The Defendants shall provide women prisoners at CTF with at least two apprenticeship programs as defined by Department order.

**Finding:** No finding.

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<sup>97</sup> Professional housekeeping and sewing are four-month courses and computer literacy and business typing are six-month courses.

<sup>98</sup> The Special Officer concurs with the security justification which will not be described in the public record. Information about this issue will be provided to the Court and the plaintiffs upon request.

The defendants are not required to comply with this requirement until June 13, 1995. However, as addressed more fully in the discussion under ¶71 of the Order, it does not appear that defendants plan to operate any apprenticeship programs at the CTF.

¶80. All prevocational programs, vocational programs, and apprenticeships added for women prisoners at CTF shall have the potential for providing women with job skills marketable in the local labor market. An important consideration in the Defendants' selection of programs shall be the wage-earning capacity upon completion of the program.

**Finding:** No finding.

It does not appear defendants will be in compliance with this provision by June 13, 1995 since they do not have vocational or apprenticeship programs that meet the requirements set forth in the Order.

¶81. The Defendants shall conduct affirmative outreach to women during the enrollment period for vocational training. This outreach shall entail DCDC staff meeting with women at least one month before the deadline for program enrollment to inform the women that the new programs are available and to offer a full description of the available programs and any applicable criteria for participation.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. They have, however, developed outreach materials<sup>99</sup> although the Special Officer has received

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<sup>99</sup> A copy of the hand-out used by the educational unit is attached as Ex. 36.

contradictory information about the procedure for conducting affirmative outreach that the defendants intend to use.

¶82. The Defendants shall ensure that all contractual programs used to provide services to women prisoners are compatible with and fulfill the provisions of this Order.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. The Special Officer has been unable to determine whether the defendants have developed the contract review process required by the Order.

¶84. The Defendants shall provide women prisoners at CTF with a range of work opportunities that is equivalent to the range of work opportunities provided to male prisoners at the Occoquan, Central and Medium facilities.

¶85. The Defendants shall employ capable women prisoners on all work details available at the facility where women prisoners are housed. These details shall include maintenance and trades, such as plumbing, carpentry, and electrical.

**Finding:** No finding.

The defendants are not required to comply with these requirements until June 13, 1995. A review of non-industrial pay records<sup>100</sup> establishes that women at the CTF participate in work details that are equivalent to the work details at the Occoquan, Central and Medium Security Facilities. However, unlike the situation at the Lorton Facilities, there are currently no

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<sup>100</sup> Copies of these records are attached as Ex. 37.

industrial opportunities for women at the CTF. The staff at the CTF had hoped to expand the current sewing program into an industrial service program, but their proposal appears to have been rejected.<sup>101</sup>

¶86. The Defendants shall offer equivalent industrial opportunities by establishing at least two industries at CTF or by transporting women prisoners from CTF to the industries at the Central Facility to perform industrial work. Within 60 days, the Defendants shall submit to the Court plans for the implementation of an industrial program for CTF women prisoners.

**Finding:** Non-compliance.

The defendants have failed to submit a plan to the Court for the implementation of an industrial program for women housed at the CTF. The Director of Industries at Lorton, Raymond Sullivan, has not endorsed the CTF warden's request to develop an industrial sewing program at the CTF.<sup>102</sup> In addition, the defendants have raised a number of security-related concerns about transporting women prisoners from the CTF to Lorton.<sup>103</sup>

¶87. The Defendants shall revise the guidelines and practices for work training eligibility within 30 days to take into account the different sentence structure of

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<sup>101</sup> CTF administrative staff provided the Special Officer with a description of their efforts to institute a limited industrial program at the CTF. This description is attached as Ex. 38.

<sup>102</sup> See the memorandum attached as Ex. 38.

<sup>103</sup> The Special Officer recognizes the security issues that the defendants have identified and is available to work with the parties to resolve this matter.

female offenders and to permit women's maximum participation in work training.

**Finding:** Non-compliance.

The defendants have not yet revised their work training guidelines or practices. However, they have provided plaintiffs and the Special Officer with a helpful assessment of the steps that must be undertaken in order to make work training accessible to female offenders.<sup>104</sup>

¶88. The Defendants will immediately provide a work training program to all women prisoners who are eligible under the revised guidelines, including those who are housed at CTF as stated in the CTF Operations Manual.

**Finding:** Non-compliance.

Work training is not provided to women housed at the CTF.

¶89. Within 30 days of entry of this Order, the Defendants shall complete and submit work training packets for each woman prisoner eligible for work training and expedite the approval process.

**Finding:** Non-compliance.

According to the defendants' analysis, 71 women were eligible for work training as of April 3, 1994. However, during the preceding six-month period, only one woman has participated in the work training program.<sup>105</sup> Work training packets have not been submitted for women who are eligible for this program.

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<sup>104</sup> A copy of defendants' assessment is attached as Ex. 39.

<sup>105</sup> See Ex. to ¶87.

¶90. The Defendants shall submit required paperwork for work training approval 45 days prior to a woman prisoner's eligibility date in order to complete the process by the date of eligibility. In the event that a woman arrives at the institution with less than 45 days until she is eligible for work training, the Defendants shall expedite the paperwork.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995.

¶92. The Defendants shall provide adequate staff, including case managers and vocational development specialists, to enable the women prisoners to be informed of their work training eligibility and to complete the necessary paperwork in the required time frame.

**Finding:** No finding.

The Special Officer has not had an opportunity to assess the defendants' compliance with this provision.

¶95. The Defendants shall provide women prisoners at CTF with recreational opportunities that are equivalent to the recreational opportunities provided to male prisoners at the Occoquan, Central and Medium facilities.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Because of the serious limitations in the CTF's physical plant, which is not designed for long-term housing of sentenced inmates, it does not appear that defendants will achieve timely compliance with this provision.

¶96. The Defendants shall immediately provide all women prisoners at CTF, including pregnant prisoners subject to medical approval, with recreation seven days per week for at least five hours per day. Women shall have the option of going outside or to indoor recreation facilities during this time period. This recreation schedule shall be effective at CTF within 30 days of this Order.

**Finding:** Non-compliance.

The design of the CTF creates substantial physical plant limitations. These limitations, combined with the fact that other inmates housed at the CTF require access to the building's limited recreational facilities, suggest that defendants will be unable to achieve compliance with this requirement.

¶97. Women shall be given access to the same variety of recreation activities as are available to men, including large group events, intramurals, arts and crafts and drama activities.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Currently women inmates participate in large group events, including intramurals. They have access to the gym on Mondays, Wednesdays and Fridays from 6:00 p.m. to 8:00 p.m. and have access to the outdoor recreation yard and the gym during the spring and summer months each weekday from 1:30 to 2:45 p.m. The women do not participate in arts and crafts. There is an informal drama program available to the women that is project-based and staffed by various volunteers. Although it appears that women at the CTF have equal access to recreational activities as compared to men housed at the CTF,

they do not have access to the same range of recreational activities as medium custody male prisoners at the Central Facility.

**D. Findings Concerning Environmental Health**

¶116. Within 90 days, the Defendants shall hire a qualified air balancing contractor to service the CTF air handling system so that it provides an acceptable level of air quality to all areas of the facility inhabited by prisoners.

**Finding: Non-compliance.**

Although the defendants hired an air balancing contractor, who performed an assessment and some minor servicing, the deficiencies in the air quality and temperature at the CTF have not yet been remedied.<sup>106</sup>

¶117. In the event that the air balancing and other recent repairs to the heating system at CTF fail to maintain a minimum cell temperature of 65°F in every cell, measured at the perimeter wall, the Defendants shall immediately

- a. cease housing women in the end cells of each tier;
- b. provide each woman prisoner with two extra blankets, two pairs of thermal underwear, and two pairs of wool socks;
- c. explore means of insulating or heating the perimeter walls of the cells; and
- d. report back to the Court.

**Finding: Non-compliance.**

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<sup>106</sup> See the May 4, 1995 memorandum to Grace Lopes from Timothy Roche, and the supporting documents, attached as Ex. 40A.

Interviews conducted by the Special Officer and her assistants<sup>107</sup> with correctional staff, counselors, administrative staff and inmates have established that the defendants did not cease housing inmates in the end cells of each tier when the temperature dropped below 65 degrees. Instead, the defendants permitted women housed in the end cells to sleep in the day rooms at nighttime.<sup>108</sup> The defendants have not provided two pairs of wool socks, two extra blankets or two pairs of thermal underwear to each woman prisoner at the CTF when the temperature has reached unacceptable levels. The defendants have considered heating the perimeter walls but have not addressed whether the insulation of the walls can be bolstered.<sup>109</sup>

¶118. The Defendants shall develop and implement an effective rodent prevention program.

**Finding:** No finding.

Evidence suggests that the defendants are attempting to implement a rodent control program.<sup>110</sup> However, in their March 22, 1995 report, based on inspections conducted in January and February of 1995, the Department of Consumer and Regulatory

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<sup>107</sup> See the May 4, 1995 memorandum from Timothy Roche to the Grace Lopes, attached as Ex. 40B.

<sup>108</sup> The defendants' well-intentioned practices create security and fire safety problems.

<sup>109</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 40C.

<sup>110</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes and accompanying documents, attached as Ex. 41A.

Affairs (DCRA) found evidence of a serious mouse infestation problem.<sup>111</sup> Because defendants apparently have just begun to implement a rodent control program, the effectiveness of the current program cannot be assessed.

¶119. Effective immediately, the Defendants shall ensure that all housing units at CTF are issued a timely, adequate and appropriate amount of cleaning supplies.

**Finding:** Non-compliance.

Interviews with unit counselors, correctional officers, members of the administrative staff, the facility sanitarian, the materials handler supervisor, and the environmental officer confirm that the CTF does not receive an adequate, timely or appropriate amount of cleaning supplies. Although staff at the CTF have instituted inventory monitoring procedures, the facility is unable to obtain supplies in a timely fashion. Significant shortages of basic and essential supplies such as disinfectant, laundry detergent, and soap have been intermittent since at least January of 1995.<sup>112</sup> A recent survey of the housing units conducted by one of the Special Officer's assistants confirmed these deficiencies.<sup>113</sup> As the recent DCRA report demonstrates,<sup>114</sup> the failure to provide cleaning supplies

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<sup>111</sup> The DCRA report is attached as Ex. 41B.

<sup>112</sup> See Ex. 1 at 3.

<sup>113</sup> See Ex. 42.

<sup>114</sup> See Ex. 41B.

increases the risk of serious unsanitary conditions that can, if unabated, imperil the health and safety of the inmate population.

¶120. The Defendants shall use cart liners or disposable or washable laundry bags to transport laundry between CTF and the Jail.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Currently laundry is transported in canvas laundry carts which cannot be sanitized. The carts are sometimes lined with a clean sheet. The CTF sanitarian has identified a cost-effective alternative<sup>115</sup> for transferring laundry between the CTF and the Jail.<sup>116</sup> It does not, however, appear that the defendants will be able to obtain the alternative carts proposed by the sanitarian before June 13, 1995.

¶121. Effective immediately, the Defendants at CTF shall monitor the food temperature and delivery times of all foods, including special diet meals, delivered to the satellite kitchen.

**Finding:** Non-compliance.

While defendants have taken some steps to comply, significant shortcomings remain evident. The defendants have developed a system for monitoring food temperatures and have trained staff in the monitoring process. They have also modified

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<sup>115</sup> The sanitarian has proposed buying washable carts with lids which can be cleaned and sanitized after each use.

<sup>116</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 43.

food distribution procedures in an effort to ensure that food is delivered to the housing units in a timely fashion.<sup>117</sup> However, as the attached memoranda demonstrate,<sup>118</sup> among other deficiencies, a review of temperature logs for a recent five-day period indicates that culinary staff took the temperature of cold food on only two of 27 occasions.<sup>119</sup>

¶122. The Defendants shall promulgate and follow a written preventive maintenance plan for the CTF that includes maintenance of structures, systems, and equipment.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995. A written preventive maintenance plan for the CTF has not been developed.<sup>120</sup>

¶123. The Defendants shall ensure that the correctional officers inspect all plumbing fixtures on

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<sup>117</sup> In the past, to get to the housing units from the kitchen, employees had to use a series of elevators. To expedite the process, the defendants dedicated an elevator to food delivery during the latter part of 1994, which significantly improved food distribution. However, the DCRA report (Ex. 41B) evidences deficiencies in food preparation regarding the ability to achieve as well as to maintain food at an appropriate temperature. The defendants have instituted corrective action in an effort to address the deficiencies in food preparation that are identified in the DCRA report.

<sup>118</sup> See Ex. 44.

<sup>119</sup> Cold food maintained at a temperature above 44 degrees poses a significant risk for growth of microorganisms which can cause serious food-borne illnesses.

<sup>120</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 45.

each shift, and shall ensure that any plumbing fixture that requires repair will be reported immediately upon discovery, and repaired immediately. The Defendants shall maintain logs demonstrating compliance with this requirement.

**Finding:** No finding.

The defendants are not required to comply with this requirement until June 13, 1995.<sup>121</sup> Interviews with maintenance staff, correctional officers, and counselors demonstrate that defendants have not yet taken steps to implement this requirement.<sup>122</sup>

¶124. Three times per year, the Defendants shall cause the District of Columbia DCRA to conduct inspections of the CTF for compliance with the requirements of environmental sanitation, maintenance and food service delivery. The first such inspection shall be conducted within 45 days of the date of this Order. Within 30 days of each inspection, the Warden of CTF shall obtain the DCRA findings. The Warden shall repair, clean, or otherwise remedy any unsanitary, unsound, or unsafe practice or condition identified by DCRA as soon as feasible but in no event later than 30 days following the receipt of the DCRA report.

**Finding:** Non-compliance.

The DCRA inspected the CTF on January 23 and 27 and February 10, 1995. As of May 8, 1995 the warden of the CTF had not yet received the report from DCRA. In late April the Special Officer contacted the DCRA Inspection Coordinator, Sheryl Watson, in order to obtain a copy of the inspection report of the CTF.

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<sup>121</sup> The defendants have raised a number of concerns about this requirement and the Special Officer is available to work with the parties on resolving these issues.

<sup>122</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 46.

Ms. Watson agreed to send the Special Officer a copy of the report but advised that she had not yet sent the report to the DOC because the electrical, construction and plumbing assessments had not been incorporated into the report. The report that Ms. Watson provided to the Special Officer does not contain these three assessments and is dated March 22, 1995.<sup>123</sup>

The inspection and abatement process is predicated on the timely receipt of the DCRA reports. If DCRA is unable to produce the inspection reports required under this Order in a timely fashion,<sup>124</sup> it may be appropriate for the Court and the parties to explore alternatives to the DCRA inspection process.

**E. Fire Safety**

¶133. Within 30 days, the Defendants at CTF shall repair the water leakage from rain, particularly in the vicinity of the high-voltage electrical conduit in the culinary storage room located in the CTF basement.

**Finding:** Partial compliance.

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<sup>123</sup> This report was previously attached as Ex. 41B.

<sup>124</sup> The DCRA conducts inspections ordered by this Court in the Twelve John Does, John Doe, and Inmates of Modular cases as well as inspections ordered by the Honorable William B. Bryant in Campbell v. McGruder. The agency has repeatedly failed to meet court ordered report production deadlines in those cases and has advanced a preliminary proposal for modification of the inspection schedules. The Special Officer, the DOC, and plaintiffs' counsel are currently waiting for a formal modification proposal from DCRA in those cases. It appears that a similar proposal may be made in this case as well.

Although the defendants repaired the area in the vicinity of the high-voltage electrical conduit,<sup>125</sup> leaks in the medical unit hallway have not been effectively repaired.

¶134. At CTF, the Defendants shall maintain the storage in the culinary storage room in a manner that does not prevent the sprinkler heads from functioning adequately.

**Finding:** Compliance.<sup>126</sup>

Although defendants are not required to comply with this requirement until June 13, 1995, they are in compliance.

¶135. At CTF, the Defendants shall maintain the sprinkler system and test it quarterly and they shall test the fire pump annually.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Based upon interviews with the facilities maintenance supervisor and the CTF "Fire Marshal",<sup>127</sup>

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<sup>125</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 47.

<sup>126</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached as Ex. 48.

<sup>127</sup> The Fire Marshal, Ms. Martin, is also employed as the CTF sanitarian and the culinary supervisor. Even if she was appropriately trained and competent to perform the duties of a fire marshal, Ms. Martin could not perform those duties effectively while also working as the sanitarian and as the culinary supervisor.

it does not appear that defendants have the current capability to achieve compliance with this provision.<sup>128</sup>

¶136. At CTF, the Defendants shall conduct fire drills 12 times per year, 4 times per shift, and shall keep written documentation of all such drills.

**Finding:** No finding.

The defendants are not required to comply with this provision until June 13, 1995. Interviews with the "Fire Marshal" indicate that defendants do not have the current capability to achieve compliance with this provision.<sup>129</sup> The defendants failure to make progress toward implementation of an appropriate fire safety program is a serious concern which implicates critical life safety issues, particularly in a building that is designed like the CTF.

#### IV. Conclusion

The defendants have housed sentenced women prisoners in the CTF, a facility that is not designed for this purpose. Physical plant limitations, staff shortages, and the fact that male inmates are housed at the CTF, complicate the compliance effort. During our investigation, we inadvertently identified three women prisoners who became pregnant while recently housed at the CTF.

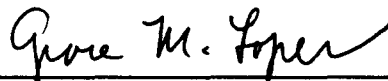
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<sup>128</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes, attached hereto as Ex. 49.

<sup>129</sup> See the May 4, 1995 memorandum from Timothy Roche to Grace Lopes and the May 2, 1995 memorandum from Dorothy Martin to Warden Poteat, attached as Ex. 50.

These pregnancies underscore the significant problems that arise from housing women at the CTF.

The differences between the parties are not irreconcilable. The Special Officer is available to work with the parties on resolving the challenges presented by the remedial effort, and is hopeful that these challenges can be overcome.



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CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered this report on the  
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GRACE M. LOPES

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