Consent Decree Motions

CONSENT DECREE MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES FISHER, et al.,

Plaintiffs,

-against-

RICHARD KOEHLER, et al.,

Defendants.

83 Civ. 2128 (MEL)

PLAINTIFFS' PROPOSED REMEDIAL ORDER (ANNOTATED)

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- E Prof. F. Warren Benton, Summary Statement to the Committee on Use of Force Policy
- F Department of Correction census report, October 12, 1988

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INTRODUCTION

On July 13, 1988, the Court issued its opinion ("Opinion") finding an unconstitutional level of violence at the Correctional Institution for Men (CIFM). On October 7, 1988, defendants submitted a proposed remedial plan in letter form ("DP"). In our view, defendants have categorically failed to respond seriously to the court's findings of serious constitutional violations. Either they have not addressed the problems at all, or they have put forth proposals so nebulous that they do not subject defendants to any discernible standard of performance. Their plan amounts to little more than business as usual in the Department of Correction.

Under the governing legal standard, the court would be obligated to defer to a "carefully and conscientiously formulated remedial plan." Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986). The Court is not obligated to defer to a plan that is "unfeasible or inadequate," id. at 213, "and this surely

encompasses any plan which on its face can reasonably be predicted to be unfeasible or inadequate." Opinion at 128. Accordingly, plaintiffs submit herewith their own proposed Order, accompanied by this annotated version in which we explain the inadequacies of defendants' proposal and set forth the reasons why our counter-proposals are appropriate and necessary to remedy the constitutional violations found by the court.

In preparing the proposed Order and commentary, we have relied primarily on the court's Opinion and the trial record. However, in certain areas--particularly classification--defendants had undertaken purported reforms that had not been completed at the close of the trial. We have therefore referred in several instances to documentation produced by defendants in response to more recent discovery requests. Some of this documentation is attached to this annotated Order. Other documents are simply cited and identified; we are, of course, prepared to submit any of them to the court upon request. We have also referred to the Final Report of the Special Committee on the Use of Force ("Force Committee Report"), with which the court is familiar, Commissioner Koehler's response to that report (attachment A), and a critique of defendants' revised use of force policy tendered to the Special Committee on the Use of Force by a faculty member at the John Jay College of Criminal Justice (attachment E).

PROPOSED REMEDIAL ORDER AND COMMENTARY

The provisions of plaintiffs' proposed order appear in boldface. Counsel's commentary is in ordinary type, indented.

Crowding

1. There shall be no double bunks in any dormitory at CIFM.

Commentary: The court found: "On the court's tour, I observed how poor the sight lines were: the presence of bunk beds in the dormitories made visibility especially difficult." Opinion at 79. Despite this finding, and a record that confirms that many violent incidents at CIFM are not observed by staff,[1] defendants have made no proposal whatever on this subject.

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[1] See, e.g., T. 523-24 (Lisojo); see also exhibits cited in Plaintiffs' Memorandum at 59-61, nn. 67-70, and 272, n. 261. On the injury to inmate report form, there is a line on which the reporting officer is to indicate whether he or she witnessed the incident; it appears that in an enormous number of those cases where that portion is filled out, the officer did not witness the incident. Only rarely does the investigative portion of the form indicate that any other staff member saw the incident. See, e.g., Exhibit 403 (injury reports reflecting inmate-inmate violence, January-March 1987).

2. **No more than 50 inmates shall be housed in any dormitory at CIFM. No more than 50 inmates shall be housed in either half of any of the three existing modular housing structures at CIFM. In any dormitory housing units added to CIFM, no more than 50 inmates shall be housed and each inmate shall be provided no less than 60 square feet of living space, excluding dayrooms and bathrooms.**

Commentary: The court found that "overcrowding is a significant cause of violence at CIFM," Opinion at 69, noted that defendants had not addressed overcrowding in their recent plans for change, and urged them to do so. Opinion at 128-29. Nonetheless, defendants still make no proposal whatsoever to limit CIFM's population, even though they have just opened up 1400 beds for sentenced inmates in the upstate jails.

Defendants' proposals, misleadingly labelled "Overcrowding," are actually addressed to idleness and property issues, even though the court reached no conclusion on these points "except to note that these two issues are certainly not as critically significant" as overcrowding and several other issues. Opinion at 55n. The proposals for more recreation, "special shows" and educational/vocational programs have little bearing on

violence;[2] indeed, the court found that inmate work and recreation opportunities "could only partially alleviate the burdens caused by the concededly high level of overcrowding." Opinion at 57. The same reasoning applies to additional telephone access, especially since the proposed increase is limited to collect calls; even local collect calls cost over $1.00, and their availability will mean little to CIFM inmates, most of whom come from poor families. Moreover, defendants have now moved the telephones from the dormitories' entry corridor into the sleeping area,[3] increasing the danger that inmates rather than officers will "run the phone," with resulting exploitation and conflict. See Opinion at 19; Plaintiffs' Memorandum at 83-84 and exhibits cited. The close staff supervision required to avert such consequences cannot be given

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[2] Indeed, if the jail were to remain overcrowded, some of them could well be counterproductive. Much inmate-officer violence takes place while large numbers of inmates are in common areas or being moved through the halls; counsel's rough count of the 1986 inmate-officer unusual incident reports in Exhibits 147-159 indicates that well over half of them took place in the messhall, corridors, gate areas, clinic, receiving room and other non-housing areas. Creating more mass movement while the jail is overcrowded might well multiply the likelihood of this kind of violence.

[3] Counsel observed the beginning of this process during our tours of the facility with expert witnesses during the trial. We have been informed by Board of Correction personnel that the telephones have now been moved inside most of the dormitories.

in an overcrowded open dormitory.

The proposal to limit jewelry and ban personal clothing is also no substitute for crowding relief. The trial record does not support defendants' claim that jewelry, underwear and sneakers are a major cause of violence, Plaintiffs' Memorandum at 291-93, and the court reached no conclusion on the relation of property issues to violence "except to note that [it is] certainly not as critically significant" as other issues including crowding. Opinion at 55n.[4]

In short, if overcrowding is a major cause of violence, there must be a remedy directed specifically against overcrowding, i.e., a population limit. The record shows that 50 is an outside limit on the number of inmates that can be held safely and securely in open dormitory housing. See Plaintiffs' Memorandum at 214-15, 435-36 and portions of record cited. This is true a fortiori where, as at CIFM, the physical layout of the dormitories defies effective visual surveillance.

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[4] This proposal's chief result will probably be inmates without adequate clean clothing or shoes that fit; in prior proceedings in other cases, there has been little dispute that defendants lack an effective system for laundering inmates' clothes, and there is certainly no reason to believe that defendants are prepared to provide the right size shoes to roughly 25,000 new admissions a year. See T. 3434.

Defendants submitted no evidence in support of a different standard,[5] and their position that crowding is not a significant cause of violence has been conclusively rejected by the court.

The proposed standard would limit CIFM to 1836 inmates. There is no question that defendants can comply with such a limit. Despite their recent propaganda concerning an alleged jail population emergency, on October 12, 1988, CIFM's population had been reduced to 1811. Attachment F.

3. **No more than one inmate shall be housed in any cell at CIFM.**

Commentary: If a dormitory population limit is imposed, defendants may try to get around it by overcrowding the cell areas. Such an evasion should not be permitted, especially since the cells should house higher-security inmates or protective custody inmates who require single cells in order to be safely housed. See Opinion at 73; Plaintiffs' Memorandum at 251-52. Double celling also would violate local law. Board of Correction Minimum Standards at § 5.2(a).

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[5] Indeed, defendants' own Special Committee on the Use of Force endorsed this standard, Force Committee Report at 19, and Commissioner Koehler responded, "We agree with the recommendation. . . .," with the caveat that defendants would prefer to violate space standards than release inmates. Attachment A at 1.

4. The receiving room, the gymnasium, dayrooms, and any other common areas of CIFM shall not be used for the housing of inmates. As to the receiving room, an inmate shall be deemed to be housed there if he remains there for longer than 12 hours. This provision does not adjudicate or dispose of plaintiffs' claims concerning the conditions of confinement in any of the aforementioned areas.

Commentary: Experience in other cases has shown that defendants sometimes avoid crowding limits by backing inmates up in receiving rooms or parking them in non-housing spaces. To avoid the necessity of further post-judgment litigation, this practice should be prohibited from the outset, as it is now prohibited in Benjamin v. Malcolm, No. 73 Civ. 3073, order at ¶ 1 (S.D.N.Y., April 13, 1981).

5. The foregoing provisions shall take effect on January 1, 1989.

Commentary: Late December and early January are generally low points of jail population both at CIFM, Exhibits 263, 263A, and in the Department of Correction generally.

Classification and Dormitory Housing

Commentary: Defendants' classification system had been outlined but not fully implemented as of the end of the trial, and the court found that "[i]t is

too early to determine whether defendants' classification plan is adequate to reduce violence at CIFM significantly." Opinion at 77. Now it is in place and can be evaluated.[6]

We have reviewed documentation of defendants' classification procedures and it shows that for purposes of controlling violence, their classification system as implemented is a fraud and a farce. Its most glaring defects are as follows:

- It fails to exclude from open dormitory housing those inmates who engage in repeated violent conduct and use or possession of weapons;

- The classification scores are grotesquely insensitive to inmates' records of violence;

- The demarcations of security categories bear no relation to the actual classification scores of CIFM inmates;

- More than half of the housing units at CIFM may in practice house any inmate with any classification score.

Defendants' proposals are largely premised on continuation of the existing procedures and completely fail to address these fatal defects. Indeed, their proposals are striking in their fail-

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[6] In a stipulation initially sent to the court on June 9, 1987, defendants stated that they had begun to house CIFM inmates according to their classification scores and that they expected to complete this process in about six months. Exhibit DDD at ¶ 11. Apparently it was done in slightly less time; an institutional order dated October 5, 1987 gives classification designations for all CIFM housing units. Attachment B. These designations were amended by a subsequent Classification Housing Plan dated May 25, 1988. Attachment C.

ure to hold defendants to any identifiable standard governing where inmates are to be housed and how histories of violence are to be assessed.

These arguments are set forth in more detail below in connection with the corresponding provisions.

6. Defendants shall classify all incoming sentenced inmates at CIFM on the basis of a classification system developed by defendants that is consistent with the requirements of this Order, and shall house these inmates according to their classification. Parole violators and any other categories of inmates placed at CIFM shall be classified on the basis of the same classification system and housed according to their classification starting on January 1, 1989.

Commentary: This provision is similar to the first two sentences of defendants' first paragraph under "Initial Classification." DP at 2. Defendants' reference to "the existing classification system" has been modified because, as shown below, the existing classification system is largely worthless for the purposes of controlling violence. The phrase "and any other categories of inmates placed at CIFM" has been added in case defendants place detainees or "state inmates" other than parole violators at CIFM, as they have done in the past and apparently wish to do in the future. See letter, Julian Prager to Richard Wolf, October 14,

1988, annexed to letter of the same date from Commissioner Koehler to the court.

The final sentence of defendants' paragraph is omitted because we believe it inconsistent with the court's findings concerning staffing. See 31ff., infra.

7. **Defendants' classification personnel shall continue to review daily, for reclassification purposes, warrant logs, infraction disposition records, and change of status records. As warranted, inmates will be reclassified. Effective December 1, 1988, all CIFM inmates shall be reviewed for possible reclassification every 90 days. In addition, effective December 1, 1988, the case of any inmate about to be released from punitive segregation shall be individually reviewed to determine an appropriate housing placement. The review shall include scrutiny of the facts of the infraction that resulted in the Punitive Segregation placement and any prior infractions received during the inmate's stay at CIFM.**

Commentary: This provision is substantially identical to defendants' "Reclassification" proposal. DP at 5-6. However, in view of the abject failure of defendants' reclassification efforts to date, see infra at 15ff., we have drafted additional protections that appear in ¶ 8.c, infra.

8. **Defendants' classification system at CIFM shall be amended as follows:**

a. Inmates' prior histories of violent behavior, if any, in the New York City jail system, during the present period of incarceration or previous periods within the preceding three years, shall be determined and shall be taken into account;

Commentary: Information concerning prior behavior in jail is "absolutely essential" to classification. T. 4023 (Bair); accord, T. 3801-02, 3829-30; see Opinion at 75-76. Defendants propose to consider institutional behavior (DP at 3-4), but it appears that their proposal is mostly prospective; i.e., inmates who are in the system now, or who enter in the future, will have their disciplinary history entered in a computer file (an upgraded "Inmate Information System") that does not yet exist. Defendants propose no date by which it is expected to exist. There is some discussion of a request for purchase of equipment that may not even be submitted until February 1, 1989 and, of course, may not be approved; what connection this has with implementing the upgraded IIS is not explained. DP at 4.

Defendants state that CIFM will maintain manual records of disciplinary infractions and review them before releasing inmates from punitive segregation (DP at 4), but they apparently do not propose to consult them upon initial classification of inmates entering CIFM. Actually, they already

have manual records, called infraction logs, going back at least to 1982 (see Exhibits 114A-119), and they should be required to consult these for the preceding three-year period for every inmate admitted to CIFM until such time as their proposed "upgraded IIS" is operational and has three years' worth of historical data in it. This will need to be done not only for CIFM but for the detainee institutions from which inmates are sent to CIFM.[7] The task of making these records usable is eminently manageable.

b. Inmates' prior histories of criminal behavior, if any, during the preceding five years shall be determined, and each conviction for a violent offense shall be separately taken into account in the computation of inmates' classification scores;

Commentary: As defendants' classification system is presently designed, only one conviction for

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[7] The necessity for considering behavior in pre-trial detention is illustrated by the case of Andre Evans, who was repeatedly involved in violence at CIFM during 1982-84. He returned to CIFM in early 1986 after a period of pre-trial detention during which he accumulated a further record of violence and weapons possession; had his detention disciplinary records been reviewed on entry, he might have been put in high-security housing rather than in a general population dormitory. See Exhibit 376; Plaintiffs' Memorandum at Appendix C. The same can be said of the cases in which CIFM inmates sought protection from other inmates who had previously assaulted, robbed, or threatened them in pre-trial detention and then had been admitted to CIFM to menace them again. See Exhibit 134, entries for Matthew Hauptman, Bienvenido Mercado, Gabriel Robles, Thomas Selby; Exhibit 135, Frank Perez; Exhibit 136, Ronald Knapp, Leon Williams; Exhibit 137, Angel Garcia.

violent crime is reflected in the classification score; an inmate who had been convicted of ten criminal assaults would be treated in the same manner as an inmate with one such conviction. Exhibit HHH, unnumbered pages labelled "Initial Classification Screening Form" and "Instructions for Completing the Scoring Form." That procedure is obviously absurd; defendants must make some distinction based on the extensiveness of inmates' criminal history.

c. Inmates with significant histories of violence or weapons possession shall not be housed in CIFM dormitories. Specifically, no inmate who within the preceding three years has been convicted in a disciplinary hearing within DOC of assault or use of a weapon, or who within the preceding three years has been convicted in disciplinary hearings in DOC of three incidents of weapons possession, fighting, theft or extortion shall be housed in a dormitory at CIFM. Defendants shall modify their procedure for computing classification scores and their definitions of "low," "medium" and "high" security inmates so as to accomplish this result. The provisions of this paragraph shall govern both the initial placement of inmates admitted to CIFM and the continued housing of inmates who after admission are convicted of infractions involving violence or weapons possession.

Commentary: This paragraph and the next deal with the heart of classification as a violence reduction measure and with the most egregious failures of defendants' system as implemented. Nothing in

defendants' proposal addresses any of these problems.

a. Defendants fail to remove assaultive inmates from dormitory housing.

The court found that

> . . . even when assaultive inmates become known to the authorities for their violent behavior towards other inmates, they are allowed to remain in open general population dormitories. If placed in segregation, which is rare, they are allowed to return to general population after a very short time. Finally, when they are released from CIFM and then return on subsequent convictions, they are placed once more into general population dormitories. Opinion at 20.

Defendants' classification system has not altered these practices. For example, between November 1987 and early February 1988, Daniel Acevedo was convicted of assaulting a captain, assaulting another inmate, possessing a comb/razor weapon, and fighting and extorting another inmate, and was involved in two other violent incidents that did not result in disciplinary convictions. He was held briefly in a cell area in February. But he was back in dormitory housing in March and joined in a group assault on March 11, a fight resulting in a fractured rib to his opponent on April 2, and another assault on April 27. Yet he remained in dormitory housing at least through mid-May 1988. In mid-June 1988, he was finally

sentenced to 30 days' punitive segregation for another incident of weapons possession.

Acevedo's case is far from unique. Three similar examples are given infra at 79ff., along with a more detailed account of Acevedo's history, and more can be provided on request.

b. Classification scores fail to reflect violent behavior.

The failure of defendants' classification system to remove violent inmates from open dormitory housing becomes more comprehensible when we examine the actual operation of the system.

Defendants produced records reflecting the reclassification of inmates who had been convicted of violent infractions from late December 1987 through late July 1988.[8] They demonstrate that the defendants' classification scores are highly unresponsive to violent acts and that defendants' classification system is therefore virtually useless for the purpose of identifying and segregating violent inmates.

For example, Daniel Acevedo, whose history of violence is discussed supra, received an initial classification score of 13 on September 9, 1987.

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[8] These records will be submitted to the court on request.

He was convicted of assaulting a captain on November 24, 1987 (9249/87),[9] assaulting an inmate on January 16, 1988 (299/88), possessing a weapon on February 4, 1988 (682/88), fighting and extortion on February 5, 1988 (IR, 689/88), assaulting another inmate on March 11, 1988 (IR, 1300/88), fighting[10] on April 2, 1988 (IR, 1693/88), and assaulting another inmate on April 27, 1988 (3014/88). On April 29, 1988, Acevedo appeared on the reclassification sheet, but his classification score--a low security score under defendants' present system--remained unchanged despite his six disciplinary convictions for assaults and fighting and one for possession of a dangerous weapon.

Acevedo's classification history is far from unique. Six similar cases are summarized infra at 84ff., and more can be provided on request.

The only reform defendants propose in their ineffectual reclassification process is to review the classification of inmates about to be released from punitive segregation. DP at 5. We have adopted that proposal in ¶ 7, supra. However,

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[9] Numbers in parentheses refer to index numbers in defendants' infraction log.

[10] His adversary in this fight was hit in the chest with a blunt instrument and sustained a fractured rib. (IR)

without the requirements stated in this paragraph, there is no reason to believe that this reclassification process will be any more effective than the one applied to Mr. Acevedo.[11]

c. The definitions of "low," "medium" and "high" security have no rational relationship to the actual distribution of classification scores among the CIFM population or to inmates' records of violent behavior.

Defendants classify inmates as low, medium or high security. High security includes scores of 28 points or higher.[12] At CIFM, this distinction does not distinguish anything. In three months of assigning classification scores before the end of the trial, no CIFM inmate scored higher than 23. Opinion at 76; Exhibit DD at ¶ 10. This situation apparently has not changed. A memo to the CIFM Warden dated May 5, 1988 indicates that no inmates in the jail on that date were classified as high security. Memo, Capts. Chesaniuk and Mercado to

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[11] Additionally, as noted in Plaintiffs' Reply Memorandum at 23, few CIFM inmates involved in violence are sentenced to punitive segregation. Mr. Acevedo was sentenced only to loss of good time for the seven infractions described above; he did not receive a punitive segregation sentence until June 15, 1988, when he was again convicted of possessing a weapon. See infra at 79ff.

[12] High security was originally defined as classification scores of 18 to 28. Scores of 29 and above placed the inmate in the "maximum" category. Exhibit HHH. It is not clear at this point whether any classification score will cause an inmate to be classified as "maximum" or, indeed, if that classification is still used by defendants.

Warden Sullivan, May 5, 1988 (Attachment D). Thus, there are effectively only two security classifications at CIFM: low and medium.

The distinction between "low" and "medium" has little to do with the actual distribution of scores either. Low security is from 1 to 13 points; but around 90 per cent of inmates admitted to CIFM have scores within that range. Exhibits 96-98. This distinction distinguishes very little.[13]

More importantly, the definitions of "low security" and "medium security" encompass inmates with appalling records of violent behavior. As noted above, Daniel Acevedo retained a classification score of 13 despite six disciplinary convictions for assaults and fighting and one for possession of a dangerous weapon. Similarly, Jose Martinez retained his score of 13 after three disciplinary convictions for assault and fighting (two involving weapons) and one for weapons possession. Michael White had a score of 9 despite three assault convictions, two involving weapons and all involving injury to the victims. Levit Marmolejos

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[13] Defendants initially proposed a more realistic set of distinctions: 1-5 points for low security, 6-17 for medium security, 18-28 for high security, and 29 up for maximum security. Exhibit HHH at 3-4. The available documentation does not explain the change to the present breakdown.

retained a low security classification after seven disciplinary convictions for assault and fighting and one for weapons possession. Arthur Pritchard retained a low security classification after four convictions for assault and fighting. Victor Hernandez had a classification score of 12 after one conviction for weapons contraband and three for assault and fighting, including one stabbing that resulted in emergency hospitalization of his victim with oxygen mask and I.V. fluids; it took a second weapons conviction and a fourth violence conviction to get his classification score raised to 17, still well within the "medium security" range. See infra at 84ff. for more detailed accounts and citations to defendants' records.

d. Each dormitory at CIFM shall be designated for "low security" or "medium security" inmates, except as provided in ¶¶ 13 and 14, infra. No dormitory shall be designated for "low security" and "medium security" inmates. "High security" general population inmates and special housing inmates shall not be housed in dormitories except as set forth below. Rather, they shall be housed in single cells. Inmates whose disciplinary records fall within the terms of § c. of this paragraph, if not classified as special housing inmates, shall be classified as "high security" general population inmates and not as "low security" or "medium security" inmates.

Commentary: Having generated absurd classification scores and divided them into irrationally defined security levels, defendants completed their farcical exercise by failing actually to separate their own nearly meaningless classifications.

There are 31 dormitories at CIFM. Fifteen of the 31 may contain inmates with classification scores from 1 to 27 or from 1 to 33--i.e., any inmate at CIFM.[14] There are four cell areas at CIFM--2 Main, 3 Main, 2 Upper and 3 Upper. Each of them may contain inmates of all custody levels with classification scores from 1 to 33. Thus, half or more of the inmates at CIFM are housed in areas that are completely unrestricted by the classification system so highly touted by defendants during the trial.

It is particularly outrageous that the three adolescent dormitories--7M, 9M and 10M--all include classification scores from 1 to 27 despite defendants' acknowledgement that adolescents are particularly violence-prone. Defendants' Post-Trial Memo

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[14] Dormitories 1M (infirmary) and 4M (mental observation) encompass scores 1 through 33. Dormitories 1U, 4U, 5M, 6M, 7M, 8M, 5U, 8U, 9M, 10M, and the three modules all encompass scores 1 through 27.

Dormitories 5L, 6L, 7L, 8L, 6U, and 7U are limited to scores 14 through 27. Dormitories 9L, 10L, 11L, 12L, 11M, 12M, 9U, 10U, 11U and 12U are limited to scores 1 through 13. Attachment C, Classification Housing Plan.

at 271, 324. The same is true for the parole violator dormitories, despite defendants' claim that they too are a particularly violent population. Id.[15]

The unassigned "pending job assignment" dormitories, 5 Main and 6 Main, both include scores from 1 to 27, despite defendants' concession that unassigned inmates are more violent than employed inmates, Defendants' Post-Trial Memo at 324; in fact, as noted infra at 28, they have designated these dormitories for placement of inmates "who cannot or will not conform to institutional guidelines." Virtually every inmate who enters CIFM must pass through these dangerous, unclassified housing areas.

If classification is to mean anything to the control of violence, inmates who are classified differently must be housed separately. Defendants make no proposal whatsoever to correct this situation, stating only that they will "continue to house [inmates] according to their classification." DP at 2.

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[15] Defendants propose to begin housing parole violators according to their classifications in 1989, DP at 2, but they make no commitment actually to separate classification levels.

e. Each inmate shall be personally interviewed by a member of the institution's classification staff to determine if there are considerations relevant to the inmate's propensities for violence or victimization that are not reflected in his classification score;

> Commentary: Defendants' proposal to interview one per cent of newly admitted inmates "to verify the quality and validity of the scoring system" misses the point. Plaintiffs' and defendants' expert witnesses agreed that a personal interview by a person trained in classification is an integral part of each inmate's classification. Opinion at 76. If defendants wish, in addition, to conduct validation studies on a smaller part of the population, they may do so, but such studies are no substitute for individual classification interviews.

9. Defendants shall promulgate a new Classification Directive by December 1, 1988 which will establish a new classification level--Incomplete--for all inmates for whom there is insufficient information to make a classification decision upon intake. Until the requisite information is obtained, an inmate will remain in the Incomplete classification and be housed and supervised like an inmate who has been classified in the High category. Where possible, inmates classified Incomplete shall be separately housed from inmates classified as high security. Defendants shall obtain the requisite information for inmates

classified as Incomplete and complete their classification within 15 days of their admission.

Commentary: Most of this is defendants' proposal (DP at 3, second paragraph), with explanatory material omitted. We have added the provision regarding separation of Incomplete from high security for safety reasons, since many of these inmates may properly be classified as low or medium security. A time limit should be set so inmates do not languish indefinitely in classification limbo.

10. Administrative segregation inmates shall not be held in CIFM dormitories.

Commentary: Defendants have housed various categories of high-security administrative segregation inmates in cell areas at CIFM. Exhibit 247, admissions 73, 79. This practice should be made mandatory in the court's Order to ensure that defendants do not place these high-security inmates in dormitories in order to lessen the cost or inconvenience of complying with other provisions of the court's Order. Defendants state only that "Any CIFM inmate whose classification score or other factors indicate that a cell is necessary will be placed into a cell," DP at 7, a commitment that is entirely meaningless under defendants' classifica-

tion system.[16]

11. All prospective candidates for protective custody shall be interviewed by a member of defendants' classification staff who has been trained to make housing recommendations and has worked for six months at CIFM. By June 1, 1989, defendants shall complete a review of their admission criteria and procedures for protective custody, reduce them to writing, and submit them to the court and plaintiffs' counsel.

Commentary: This provision is taken from defendants' proposal. DP at 6. Defendants proposed to have PC interviewing conducted by a "Senior Correctional Counselor" without defining that term; we have substituted a requirement of training and of familiarity with the milieu of CIFM, which we believe are essential to making the decision whether or not to admit an inmate to PC.

12. CIFM inmates who are found to require protective custody shall not be housed in dormitories. They shall be placed in single occupancy cells and shall not be commingled with other

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[16] Under defendants' scheme, only maximum security inmates are required to be placed in cells, and the classification score criterion for maximum security classification is set so high (at 29 points) that no one at CIFM meets it. Exhibit HHH. Other non-numerical criteria for maximum security placement are related almost exclusively to risk of escape or involvement in organized crime, terrorism or assassination; they do not address violent behavior in jail. "Special housing" categories other than maximum security are not required to be held in cells. Exhibit HHH at 1 and unnumbered pages headed GUIDELINES FOR SPECIAL HOUSING UNIT ASSIGNMENTS.

categories of inmates such as administrative segregation or punitive segregation inmates. Defendants shall provide adequate security to protective custody inmates when they are in common areas of the jail. Defendants shall provide separate areas for inmates who require protective custody because of their vulnerability and for inmates who require protective custody because of their own past violent or exploitative behavior.

> Commentary: The court found that "[r]egardless, however, whether protective custody inmates under some circumstances may be housed safely in dormitories, it is apparent that the record of this case that protective custody dormitories at CIFM have not provided adequate protection." Opinion at 22. Defendants' proposals for personal interviews and for review of their PC criteria and procedures (DP at 6), substantially adopted in the preceding paragraph, are not responsive to this finding. Whatever procedures and criteria defendants use, they must provide safe single cell housing for CIFM inmates who require PC. Moreover, defendants do not address the fact that some protective custody inmates can be "explosively violent," Opinion at 21 (quoting expert witness Shoultz),[17] and should be

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[17] See also Plaintiffs' Memorandum at 99-100 and exhibits cited; discussion of violent history of Enoch Fields, infra at 80.

separated from more passive protective custody inmates.

13. The prohibitions of this section shall not forbid the assignment of inmates of any classification category to the CIFM mental observation dormitory pursuant to the recommendations of CIFM mental health staff. General population inmates shall not be held in the mental observation dormitory.

Commentary: There may be good psychiatric or psychological reasons for assigning particular inmates to cells or dormitories, and there is no reason on the present record to interfere with these assignments as long as they are made by qualified professionals and defendants provide enough of both types of housing so that the professionals' choice is not unduly constrained. However, defendants should not be able to use mental observation housing as a loophole to avoid the other requirements of the proposed Order. This provision is not inconsistent with any provision of defendants' plan.

14. The prohibitions of this section shall not forbid the assignment of inmates of any classification category to the CIFM infirmary or the detoxification dormitory pursuant to a determination by CIFM medical staff that said inmates require such housing. Inmates shall not be housed in the infirmary or the detoxification dormitory without such a determination by medical staff.

Commentary: The rationale of this provision is similar to that of the preceding paragraph. It, too, is not inconsistent with any provision of defendants' plan.

15. **Inmates whose housing assignments are changed because of their refusal to conform to the jail's rules and regulations shall not be transferred to dormitories holding inmates awaiting assignment or to dormitories holding low security inmates.**

Commentary: This provision is aimed specifically at defendants' policy under which "5 and 6 main are the areas designated by this facility to house all inmates who cannot or will not conform to institutional guidelines." Unusual incident report 25MM101, incident of April 14, 1988. These are the dormitories that hold inmates who are awaiting assignment;[18] they are designated for both low and medium security inmates. Classification Housing Plan. Every adult CIFM inmate who is eligible for employment must pass through these dormitories shortly after admission to the jail. Exhibit 24, admissions 41, 42, 44, and defendants' policy ensures that there will always be a concentration

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[18] The present practice is substantially similar to that described by Captain DeCicco, T. 2013-16; at that time, the adult unassigned dormitories were 7 Lower and 8 Lower. T. 1794.

of violent inmates there to greet them.[19] This is an astonishingly absurd and dangerous policy, especially at a time when defendants are purporting to try to control violence through classification, and the court ought to make it clear that on the present record it cannot be tolerated.

16. Defendants shall, no later than February 28, 1989, provide single cells in a number sufficient to house at least that portion of the CIFM population that may not be housed in dormitories under the terms of this Order and defendants' classification system, and in any case shall provide single cells in a number no less than 20 per cent of the population of CIFM as modified by this Order, whichever is larger. These cells shall be reserved for the inmate population of CIFM.

Commentary: The court found that "lack of sufficient cell space and overreliance on dormitory housing is a significant cause of inmate-inmate violence at CIFM." Opinion at 72. Defendants make vague representations concerning the availability of cells elsewhere in the city jail system (i.e., in detainee institutions) but their commitment to additional cells for CIFM is limited to 68, freed

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[19] We cited four examples infra at 79ff. of inmates who remained in dormitory housing after repeated involvement with violence and weapons. Three of them (Aybar, Acevedo and Sanchez) spent part or all of their stay and committed some of their violent acts in dorms 5 Main or 6 Main. These examples can be multiplied from defendants' records.

by moving punitive segregation and mental observation inmates to other jails. DP at 6-7. The numerical estimates in the record suggest that CIFM should have a number of cells approaching one-fifth of its population. Plaintiffs' Memorandum at 253; T. 3986-88 (Bair), 3782 (Shoultz).

The cells at CIFM have also been used to house inmates from the Brig (T. 3564); in light of this history, it appears likely that defendants will also use the cells at CIFM to house inmates from the upstate jails who are found to require cell housing. If cells are provided based on the population level of CIFM, they must be restricted to CIFM inmates; other sentenced inmates in need of cell housing must be housed elsewhere. Otherwise, the number of cells required at CIFM would have to be substantially increased.

One way for defendants to comply with this provision is to earmark for CIFM inmates the 300 cells being constructed at the North Facility for completion in February 1989. DP at 6.

17. Defendants shall not add any additional dormitory housing units to CIFM.

There is evidence that the stress caused by overcrowding is related in part to the size of the prison as well as to social density in housing units. T. 4692, 4802-03; Exhibit 411 at 1151-52.

Although most inmate-inmate violence occurs in the housing units,[20] substantial amounts of inmate-officer violence occurs in the jail's common areas, especially when large numbers of inmates are being moved to and from services. See n. 2, supra, and exhibits cited. Defendants themselves have conceded that jails encounter significant management problems as their total population increases.[21] Defendants therefore should not be permitted to expand CIFM except by adding additional cells to correct the gross imbalance of dorms and cells that exists at CIFM.

Staffing

Commentary: The court found that "plaintiffs have convincingly demonstrated a connection between inadequate staffing and the occurrence of inmate-inmate violence" and made a similar finding as to inmate-staff violence. Opinion at 82 and n. 44. Despite this finding, defendants' proposals are

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[20] See Plaintiffs' Reply Memorandum at 17, n. 14.

[21] They cite an "ideal functional size for existing Rikers Island detention institutions" of 1200-1500 and claim that institutions housing working sentenced inmates can be larger, although they do not say how much larger. Rikers Island Development Plan at 26, attached to Exhibit 260. They do not comment on the effects of a mix of populations including both sentenced adults and higher-security populations of sentenced adolescents and parole violators.