



PC-NY-044-001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES JACKSON, RICHARD McCARTHY, : CV 85-2384(AS)
 CURTNEY BREWSTER and ARTHUR :
 CAMPBELL and JOSEPH BROOKS a/k/a :
 IRVING JOHNSON, on behalf of : STIPULATION OF
 themselves and others : SETTLEMENT
 similarly situated, :
 :
 Plaintiffs, :
 :
 vs :
 :
 ALBERT MONTEMAGNO, ANTOINE :
 DUBOULAY, MORRIS SMITH, RAYMOND :
 RODRIGUEZ, SALVATORE MAGADDINO, :
 FREDERICK McKEITHAN, EDWARD :
 SCHULTZ, KENNETH REID, EUGENE :
 MORAN, JAMES MARSH, PAUL CAVANO, :
 LESLIE PROBHERBS, JOSEPH BIMONTE, :
 LAWRENCE DeBIANCHI, RICHARD DRAKE, :
 RICHARD ANDERSON, SALVATORE MACCHIA, :
 C.O. DIAZ, WILLIAM SANTIAGO, LEE :
 HARMON, MICHAEL FERNANDEZ, JOHN :
 DOES I-XV, TYRONE BUTLER, JACQUELINE :
 McMICKENS, and the CITY OF NEW YORK :
 Defendants. :
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WHEREAS, this action was commenced on June 27, 1985 by five present and former pretrial detainees at the Brooklyn House of Detention for compensatory and punitive damages to redress defendants' violations of their rights by subjecting plaintiffs to brutal, unlawful beatings while each was incarcerated at the Brooklyn House of Detention (hereinafter "BHD") in violation of their rights under the Fourteenth Amendment to the United States Constitution and the laws and constitution of the State of New York; and

WHEREAS, plaintiffs Arthur Campbell and Joseph Brooks, on their own behalf and on behalf of a class of other current and future inmates at BHD sought declaratory and injunctive relief to end the pattern of brutality at the jail; and

WHEREAS, defendants filed answers on October 8, 1985, October 25, 1985 and May 3, 1986; and

WHEREAS, plaintiffs Campbell and Brooks filed a motion for class certification with respect to the declaratory and injunctive claims on December 16, 1985; and

WHEREAS, the parties, other than defendant DuBoulay (against whom no claim for class relief was asserted), agreed that the plaintiff class should be certified as a class pursuant to F.R. Civ. P. 23 (a) and (b)(1) and (2), and class certification was therefore granted on consent by the Court on February 2, 1986 with respect to the claims for injunctive and declaratory relief; and

WHEREAS, the Court certified a class of all current and future pretrial detainees who would be confined at BHD; and

WHEREAS, by stipulation of the parties and order of the Court plaintiffs filed an amended complaint on June 23, 1986, adding several defendants and asserting additional claims against other defendants; and

WHEREAS, by stipulation between all defendants, except defendant DuBoulay, and plaintiffs Jackson, McCarthy, Brewster, Campbell and Brooks the damage claims of each of the five named plaintiffs were settled, and the stipulation of settlement was approved and "so ordered" by the court on February 9, 1988; and

WHEREAS, defendant DuBoulay, defendant City of New York and plaintiff Jackson stipulated and agreed that Jackson's claim against DuBoulay, and DuBoulay's cross claim against the City, should be discontinued with prejudice, and this Stipulation was "so ordered" by the Court on February 3, 1990; and

WHEREAS, the parties have exchanged relevant documents and have engaged in substantial discovery with respect to the class claim for declaratory and injunctive relief alleging a pattern of unnecessary and excessive force by correction officers on inmates at the BHD; and

WHEREAS, the parties agree that the Court has jurisdiction over this action and the parties, and that the Court has the authority to order the relief set forth in this Stipulation; and

WHEREAS, the parties without conceding any infirmity in their claims or defenses, have agreed that the terms of this Stipulation are appropriate; and

WHEREAS, the Department of Correction has implemented systems for controlling and investigating use of force incidents, and for disciplining correction staff who have applied unnecessary or excessive force, pursuant to the decisions of the United States District Court in Fisher v. Koehler, 692 F. Supp. 1519 (S.D.N.Y. 1988), injunction entered, 718 F. Supp. 1111 (S.D.N.Y. 1989), aff'd, 902 F.2d 2 (2d Cir. 1990); and

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by defendants of any violation of any law, regulation, rule or order, and nothing in this Stipulation shall be construed as evidence that defendants maintained a

policy or practice that was intended to result or, in fact, resulted in the deprivation of any rights, privileges or immunities of any member of the plaintiff class;

IT IS HEREBY STIPULATED AND AGREED, by the parties that plaintiffs' claims will be resolved without further litigation by the entry of a Judgment incorporating the terms of this Stipulation, following its approval by the Court after notice of its terms is provided to the class.

The parties stipulate as follows:

USE OF FORCE POLICY

1. Department of Correction (hereinafter "Department") staff shall use force at the Brooklyn House of Detention only when required to insure the personal safety of officers or inmates or when necessary to insure compliance with a lawful direct order. Defendants and their agents shall use no more force than is reasonably necessary for these purposes. Force shall not be used as punishment by Department of Correction staff, to retaliate for inmate misconduct, or where an alternative to the use of force is reasonably available. The amount of force used shall be only that which is necessary in the circumstances to restrain the inmate and control the situation. Blows should not be struck if control holds would be adequate to restrain the inmate. Every correction officer and other Department of Correction staff members at BHD shall promptly report in writing, any use of force that he or she witnesses, or is reported to him/her by an inmate.

2. Defendants shall maintain written standards and procedures governing the use of force by correctional staff at the Brooklyn House of Detention. The provisions of the written standards and procedures shall specify, among other items, when force may be used, the nature of minimal force, the nature of alternatives to the use of force, and means for avoiding the unnecessary use of force. These written standards and procedures shall state what use of force techniques should be used and in what order, with the response escalating in proportion to the threat encountered, when force is necessary to respond to disorder or disobedience by inmates. Defendants shall include in their written standards and procedures a description of what types of force are generally inappropriate (e.g., kicks, punches to the face or head, use of weapons or instruments such as keys) and that aggressive stances or gestures by inmates ("fighting stances," the "raising of hands") in and of themselves do not justify the use of injurious force, such as punches to the face or head. The use of force policy and other requirements of this section, and those in section 1 of this agreement, are currently set forth in the Department's Directive 5005, promulgated August 30, 1990, the Manual on the Conduct of Use of Force Investigations and the Department's training material, and these policies and requirements shall be maintained in any subsequent revisions.

USE OF FORCE TRAINING

3. The defendants shall continue to provide at least eight weeks of pre-service training to recruits at BHD including

instruction on interpersonal relations, values and attitudes, conflict resolution and mediation, stress management, human relations and use of force. The pre-service training program shall be designed to communicate effectively to recruits the legal requirements and Departmental policy regarding use of force and to provide them with the skills necessary to follow governing law and policies in the course of their work. The pre-service training program shall require that recruits demonstrate proficiency in use of force policy and techniques of unarmed self-defense as a condition of graduation.

4. The Department curriculum materials as to the use of force shall provide guidance to officers as to the appropriate force to use and steps to take to avoid using any force in recurrent situations that officers encounter in their work.

5. Defendants shall employ sufficient qualified staff and provide sufficient other resources for the training academy attended by BHD correctional staff to avoid the need to use or require academy instructors routinely to teach double sessions or routinely to work overtime.

6. Defendants shall employ qualified staff at the training academy in sufficient numbers to meet professionally acceptable student/facility ratios and to provide competent professional training in accordance with modern educational approaches. Defendants shall employ sufficient qualified self-defense instructors to maintain a student/facility ratio that will enable students to be trained effectively in self-defense techniques by a single instructor.

7. Defendants shall maintain a position of assistant deputy warden at the academy whose duties shall include management of the use of force instruction program and provision of pre-promotional and in-service training in the use of force to captains.

8. The defendants shall continue to provide annually, on average, five days of in-service training to all non probationary BHD officers that includes substantial training related to use of force, e.g., interpersonal communications and human relations, non-violent crisis intervention, self-defense, appropriate use of force, and report writing. Probationary officers who have served a year or more shall be required to participate in the use of force section of this program.

9. Commencing January 1, 1992, as part of the annual in-service training program, defendants shall provide semi-annual half-day, mandatory skills retention training in unarmed self-defense for all correctional officers assigned to BHD. Annually, each BHD officer shall demonstrate proficiency in self-defense techniques.

10. Annually, for the next two years, the defendants shall employ a consultant to perform quality assurance checks on the use of force training within the Department. The consultants shall report on the quality of instruction and instructional materials and improvement as necessary. The consultant shall also develop a quality assurance program to maintain the dependability of the program after the two year period. Plaintiffs' counsel shall have the right to submit its views in writing to

the consultant and the consultant shall consider such views in connection with the performance of his/her duties.

INVESTIGATION TRAINING

11. Defendants shall maintain written policies and procedures (1) prescribing appropriate investigation techniques and report writing for use by BHD personnel performing investigations and (2) identifying the procedures and standards for investigations of alleged uses of force by the central office Investigations Division which have been approved by the Court in Fisher v. Koehler, pursuant to the Judgment in that case. 718 F. Supp. 1111 (S.D.N.Y. 1989). The Manual for the central Investigations Division shall emphasize the need to identify all possible witnesses, interview witnesses privately, review medical data, and determine the force used, the reason for and alternatives to its use, and to note and resolve, where possible, factual disputes. Any modifications of this Manual which are approved by the Court in Fisher v. Koehler shall be implemented at BHD.

12. All captains or other supervisory personnel assigned to conduct or review use of force investigations at BHD shall have completed a training course in investigative skills and techniques. All future captains or other supervisory personnel at BHD shall receive such training, including familiarity with the requirements of the captains' investigative manual, before they commence their investigative tasks.

13. Within sixty days of the date this Stipulation is approved and entered as a Judgment by the Court, all investiga-

tors assigned to BHD by the Departments' central Investigations Division shall have completed a training course in investigative skills and techniques relative to their duties at BHD. All future investigators shall receive such training before they begin their duties. On average, all investigators assigned to conduct investigations at BHD shall annually receive five days of in-service training.

USE OF FORCE REPORTING AND MONITORING

14. Defendants shall maintain a single reporting and filing system for all uses of force and alleged uses of force at BHD. All uses of force or alleged uses of force shall be reported by appropriate and competent documentation to the Warden, the Commissioner of the Department or his designee, and to the Director of the Department's central Investigations Division, or his/her designee. The Warden of BHD shall personally review all reports of use of force or alleged use of force at BHD and the Warden or Deputy Warden for Security at BHD shall review relevant videotapes, if existing, of incidents in which force was applied.

15. Each BHD staff member who was involved in the use of force or an alleged use of force, or who witnesses it or was present at it, shall make a full written report of the incident. These reports shall be attached to the use of force form, unusual incidents reports, or other documents that are forwarded to the Department's central Investigations Division.

16. Defendants shall install audio video cameras, which shall operate twenty four hours per day, in the receiving rooms, and other appropriate locations to be agreed upon by the parties,

and described in Appendix A attached hereto, and shall record all activities observed by the cameras. All films taken by these cameras shall have on-screen date and time display and shall be retained by the Department for 30 days except that, where a use of force is recorded, the tape shall be retained for a period sufficient to allow plaintiffs' counsel the opportunity to view them as part of their monitoring activity. These tapes shall be subject to review by plaintiffs' counsel upon request in accordance with the procedures contained in Appendix B, attached hereto, during the period specified in paragraphs 29 and 30 of this Stipulation.

INVESTIGATIONS

17. The investigations of all uses of force at BHD shall be conducted by an officer of the rank of captain or above at the institution who was not a participant in or witness to the incident and who has received substantial professional training in investigative techniques and procedures as described above in paragraph 12. In addition, these investigations shall be reviewed, in accordance with the procedures contained in the Manual on the Conduct of Use of Force Investigations for Integrity Control Officers, by personnel at the rank of Assistant Deputy Warden ("ADW") or civilian supervising investigator who shall report to the director of the Department's central Investigations Division, not to the Warden of the institution, and shall be rotated at a frequency to be agreed upon by the parties within 60 days from the date this Stipulation is entered as an Order of

the Court. This official shall review all BHD use of force investigations for completeness, accuracy and quality. This official will document in writing, and discuss with the captains who completed facility investigations, any inadequacies in the facility investigation.

18. Investigations of uses of force or alleged uses of force at the facility level and by the Department's central Investigations Division shall be consistent with the policies and procedures contained in the Department's directives and training materials on facility investigations and in the Manual on the Conduct of Use of Force Investigations, and shall include: (1) comprehensive identification and private interviewing of all witnesses, both inmate and staff; (2) full review of relevant medical data, including relevant outside hospital reports, where feasible after having made good faith efforts to obtain such reports; (3) explicit conclusions as to what force was used, for what reason, and whether the force was utilized in accordance with existing Department policies, including whether alternatives or lesser force could have been used; (4) resolution, where possible, of disputed matters, with appropriate reference to particular evidence in the investigative file; (5) consideration of any information about involved staff which may be relevant to the investigation, including prior involvement in use of force incidents, as reflected in Directive 5003 summaries, institutional records, litigation records or employee performance service records. The facility investigator shall be required to prepare a narrative written report of his/her findings and to complete a

checklist, annexed as Appendix C, to ensure that all pertinent questions are addressed.

19. The Department's central Investigations Division shall conduct, consistent with the Department's Manual on the Conduct of Use of Force Investigations, reviews of all use of force and alleged use of force incidents at BHD and independent investigations of incidents as required by the Manual. Any modifications of this Manual, including, but not limited to, any changes in the criteria for determining which incidents shall be independently investigated by the central Investigation Division, which are approved by the Court in Fisher v. Koehler, shall be implemented at BHD.

20. Independent investigations performed by the Department's central Investigations Division and reviews of facility investigations by the central Investigations Division shall, in addition to the requirements provided for in the Manual on Conducting Use of Force Investigations, assess the adequacy of the BHD investigations, and shall include findings with respect to whether the facility investigation: (1) obtained and accurately characterized the statements of all witnesses; and (2) appeared biased or failed to evaluate staff and inmate accounts in an even-handed way.

DISCIPLINARY PROSECUTIONS

21. Effective 90 days after entry of this order, defendants shall either resolve or be ready to proceed to trial at the Office of Administrative Trials and Hearings ("OATH"), or another

approved disciplinary forum, with all departmental charges for misuse of force or failure properly to report force by BHD staff, within 90 days of having first been informed of an alleged use of force or failure properly to report those, except in cases in which:

(a) an outside law enforcement agency or the Department of Investigation is involved and the Department of Correction is awaiting notification as to whether that agency intends to proceed with criminal charges or is awaiting resolution of criminal proceedings;

(b) large numbers of inmates and staff are involved or the accused officer(s) has yet to be identified;

(c) the availability of personnel not within the control of the Department (e.g., medical personnel) causes delay in the investigative or trial preparation stages; or

-- (d) unforeseen, unusual circumstances affect the ability of the Department or the defendant officer to be ready to proceed within 90 days.

Whenever any of these factors prevent the Department from disposing of the case or being ready to proceed at trial at OATH or other appropriate forum, if any, within 90 days, the specific factors causing the delay shall be set forth in the case file. These exceptions shall not relieve the defendants of their obligation to use their best efforts to ensure that they are prepared to resolve or to try the case within 90 days of the incident. The Department shall maintain adequate staff to perform the functions specified in this section.

22. If the trial is delayed pending determination by an outside law enforcement agency, or the Department of Investigation, whether to proceed with criminal charges, the staff person charged with misuse of force or failure properly to report force shall not, during the pendency of the investigation or prosecution, remain in a position involving inmate contact.

PLACEMENT AND RETENTION OF OFFICERS AT BHD

23. No correction officer or supervisor shall be assigned to BHD without his having been personally interviewed by the Warden or Deputy Warden for Security of BHD no later than 30 days after assignment. Prior to the transfer of any officer or supervisor to BHD, the Chief of Operations, or his/her designee, shall review the officer's or supervisor's employee performance service records and any data generated pursuant to Directive 5003 and shall make a determination whether it is appropriate to place such officer, or supervisor, at BHD. If, after this review is completed, the decision is to transfer the officer or supervisor to BHD, the Chief of Operations, or his/her designee, shall inform the Warden at BHD: (1) whether the officer or supervisor has charges pending alleging unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force; or (2) the nature of any use of force incidents in which this officer or supervisor has been involved, as reflected in the data maintained pursuant to Directive 5003, and whether and when the officer or supervisor has been referred for retraining pursuant to Directive 5003, or its successors; or (3) whether during the preceding four years, the officer or super-

visor has been found guilty of Department charges of unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force. This information shall be placed and maintained in the officer's or supervisor's BHD personnel file.

24. Any BHD correction officer or member of the supervisory staff who (a) is found guilty of or pleaded guilty or no contest to unnecessary or excessive use of force, failure to report use of force, or failure to accurately report use of force in connection with an incident in which there is a documented injury to an inmate, or (b) has been referred for retraining pursuant to Directive 5003 two times within a two year period, shall be removed from any post at BHD involving inmate contact for a period of at least six (6) months.

25. The parties agree that the records of litigation against individual correction officers and supervisory officials, the Department of Correction and/or the City of New York alleging unnecessary or excessive force by Department employees against inmates may contain information of value to supervisory officials of the Department in evaluating the fitness of individual Department employees at BHD to perform duties involving inmate contact. Defendants agree to make their best efforts to have information reflecting the resolution of such litigation, including verdicts and settlements, communicated routinely by the Office of the Corporation Counsel and/or the Office of the Comptroller to the Department. The Chief of Operations, or his/her designee, shall review this information and shall make appropriate recommenda-

tions to the Warden of BHD concerning the fitness of these employees for inmate contact.

26. The Warden at BHD shall evaluate for fitness to work a post involving inmate contact any correction officer or supervisor who: (1) has been referred for retraining on use of force pursuant to Directive 5003; or (2) has been charged with excessive or unnecessary use of force, or failure to report or to report accurately use of force; or (3) has been the subject of litigation arising out of an alleged use of force which has been settled, or tried to verdict and damages awarded, and a sum in excess of \$15,000.00 has been awarded or paid to the plaintiff. Such review shall take place as soon as possible after the officer has been ordered to participate in retraining, or charges have been issued, or a verdict rendered, or settlement has been agreed to by the City. If it is determined upon evaluation that the officer shall continue to work a post or posts with inmate contact, then the Warden shall document in writing the reason(s) why the officer should not be removed from a post with inmate contact.

27. No officer shall serve on the BHD probe team or response team unless he/she has satisfactorily completed a substantial program of training in emergency response techniques and tactics, including the use and avoidance of force in emergency response situations. Further, no officer who has been removed from inmate contact, or who has been disciplined, or against whom disciplinary charges are pending; for use of excessive or unnecessary force, or for failing to report, or accurately

report, use of force, shall serve on a BHD probe or response team unless the Warden determines that in her/his judgment such an exclusion is unwarranted. Should the Warden determine that a BHD officer shall not be excluded from the response or probe team he/she shall specify in writing the reason for the decision.

MONITORING

28. The Court shall have continuing jurisdiction to enforce the terms of this Decree. On or after July 1, 1995 defendants may move the court to modify or terminate the Decree.

29. Plaintiffs' counsel shall be permitted to monitor defendants' compliance with the terms of the Decree as follows:

(i) Beginning January 1, 1992, and for the next two years, plaintiffs' counsel shall be permitted access four times per year to the following records and documents at the Brooklyn House of Detention and/or the Department's central office, for the purpose of inspection and copying (at their expense);

(a) injury to inmate reports created at BHD along with the injury report log;

(b) the BHD infraction log;

(c) unusual incident reports and attachments, use of force reports, and all other reports or investigative summaries concerning violent incidents at BHD;

(d) the "CCC logs" of unusual incidents at BHD;

(e) the security incident log book or other log listing violent incidents at BHD that were not treated as unusual incidents;

(f) documentation concerning BHD officers

created pursuant to defendants' Directive 5003;

(g) The Department's Central Investigation Division files concerning use of force incidents at BHD, including those involving failure properly to report uses of force;

(h) memoranda of complaint for misuse of force or failure properly to report force filed against BHD officers;

(i) disciplinary charges for misuse of force or failure properly to report force issued against BHD officers;

(j) dispositions of disciplinary charges of misuse of force or failure properly to report force entered against BHD officers;

(k) records of command discipline imposed for misuse of force or failure properly to report force imposed against BHD officers;

(l) a copy of any documents created reflecting changes in policy or practice with regard to any of the matters addressed in this order; and

(m) a copy of any summons and/or complaint or Notice of Claim served upon the City of New York and/or the Department of Correction and/or any BHD employee alleging excessive or unnecessary use of force on the part of any BHD employee.

(ii) From January 1 1994 through January 1, 1995 plaintiffs' counsel shall have access to the documents listed in the preceding sub-paragraph once every six months for inspection and copying.

30. (a) On or after July 1, 1995, in the event defendants file a motion to modify the Judgment or terminate jurisdiction, they shall provide plaintiffs' counsel with access to the docu-

ments listed in paragraph 29 for the six month period which preceded the date the motion is filed. In the event defendants file such a motion, nothing shall preclude the parties from requesting access to additional documents, pursuant to the Federal Rules of Civil Procedure and/or an order of the Court, in connection with this motion.

(b) In the event defendants fail to move for modification of the Judgment or termination of jurisdiction by July 1, 1996 nothing shall preclude plaintiffs from thereafter requesting that the Court grant them access to relevant records and documents maintained by defendants. Defendants reserve the right to oppose any such request.

31. In the event plaintiffs file a motion for contempt or for further relief, nothing herein shall preclude them for moving for discovery of relevant information as provided by the Federal Rules of Civil Procedure.

32. To facilitate monitoring of defendants' compliance with the terms of this decree:

a. Plaintiffs' counsel shall be permitted to confer confidentially with any individual class member or group of class members, subject to defendants' right to reasonably limit the number of BHD inmates in any such group and to bar any particular BHD inmate from participating in such group conferences when, in the defendants' judgment, it is required for the security of the institution; nothing in this paragraph is intended to resolve or address the issue of plaintiffs' counsel's right to confer con-

fidentially with groups of the plaintiff class as its legal representative and for purposes other than monitoring compliance;

b. In addition, plaintiffs' counsel and/or experts, upon request, shall have access to any area of BHD for the purpose of observing compliance with this judgment whenever they have a reasonable belief that such measure is appropriate and that other sources of information are inadequate; provided, however, that such access may be subject to reasonable security and scheduling conditions established by defendants.

NOTICE

33. Defendants shall post conspicuously in each housing area dayroom, the institutional law library, receiving room, gymnasium and chapel, a notice prepared by plaintiffs' counsel advising members of the plaintiff class that (1) a federal court order has been entered addressing use of force by officers at BHD, (2) questions concerning the order should be addressed to the Prisoners' Rights Project of the Legal Aid Society, and (3) a complete copy of the order can be obtained from the institutional law library.

Dated: New York, New York
October 25, 1991

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Attorneys for Plaintiffs

ATTACHMENT A

Defendants shall install time lapse cameras, which will record for 24 hours continuously, in the following locations in the receiving room: (1) two cameras on the far, northeast side of the receiving room, one of which shall have a view of the area in front of the two pens on that side of the receiving room, and one of which shall have a view of the front area of the two pens on that side of the receiving room; (2) two cameras on the south side of the receiving room, one of which shall have a view of the area in front of the pens on that side of the receiving room, and one of which shall have a view of the front area of the two pens on that side of the receiving room; and (3) one camera shall be placed in the search/medical examination area on the east wall facing the area west of the shower.

ATTACHMENT B

All film taken in the receiving room shall be preserved by the Deputy Warden for Security at BHD for at least thirty days, and if no use of force is recorded on any camera for that day, such film may be re-used after thirty-one days.

However, if a use of force incident is recorded on any camera in the receiving room, then all films for that day shall be preserved for at least ninety days from the date of the incident. If a use of force incident is recorded on any camera in the receiving room, defendants' counsel shall notify plaintiffs' counsel in writing of this fact no later than sixty days after the incident, and defendants' counsel shall ensure that plaintiffs' counsel have an opportunity to view all films taken at the time of the incident within thirty days of said notification. Following such notification of a use of force incident, plaintiffs' counsel shall be provided an opportunity to review at BHD all films which were running at the time of the incident as soon as practicable after plaintiffs' counsel make a request for such review. Following such review, if plaintiffs' counsel request that the films be preserved, defendants shall maintain custody of the original film and shall provide a copy of the requested films to plaintiffs' counsel at plaintiffs' counsel's expense.

In no event shall any film recording events in the

receiving room during the time of a use of force incident be destroyed or re-used before both (1) ninety days have elapsed from the date of the incident and (2) thirty days have elapsed since plaintiffs' counsel were notified that an incident occurred in the receiving room and no request has been made by plaintiffs' counsel to preserve the film.

In the event that plaintiffs' counsel or any class member alleges that force was applied in the receiving room improperly or in violation of the terms of this Judgment, defendants shall preserve all films which were in operation at the time of the alleged incident in the same manner, and pursuant to the same schedule, and provide notice to plaintiffs' counsel, as is set forth in this Attachment with respect to a use of force incident.

In the event an anticipated use of force occurs, DOC staff will use the mini-cam (hand held video cassette recorder) to record the incident and this film will be safeguarded by the Security Captain and processed and handled as is set forth above.

ATTACHMENT C

CHECKLIST FOR BHD USE OF FORCE INVESTIGATORS

Each of the following questions must be answered for every use of force investigation. If any question is answered "Yes," the answer must be explained in writing.

1. Location and Context

a. In the sequence of events leading up to the incident, was there anything that could reasonably have been done to avoid or reduce the need for use of force?

_____ Yes _____ No

b. Could procedural change or training reduce the potential for similar incidents in the future?

_____ Yes _____ No

c. If there was any choice in where force was used, was the location inappropriate?

_____ Yes _____ No

2. Force Used

a. Did correction staff strike or punch the inmate?

_____ Yes _____ No

b. Was the use of force unnecessary?

_____ Yes _____ No

c. Was force used as retaliation or punishment?

_____ Yes _____ No

d. Was the type of force used inappropriate or inconsistent with Departmental policy, procedure and training?

_____ Yes _____ No

e. Was the number of staff responding too high or too low?

_____ Yes _____ No

f. Was the kind of force used excessive when consideration is given to the number of staff responding to the incident?

_____ Yes _____ No

g. If force greater than restraint was applied, would restraining alone have been sufficient?

_____ Yes _____ No

h. Could the use of force have been prevented by calling in additional staff as a show of force?

_____ Yes _____ No

i. Could the incident have been managed by using a lesser degree of force?

_____ Yes _____ No

j. Did the employee(s) attempt to manage the incident by using a lesser degree of force?

_____ Yes _____ No

k. Was the inmate given insufficient warning before force was used?

_____ Yes _____ No

l. Could a faster or slower response have avoided or reduced the use of force?

_____ Yes _____ No

m. Did force, other than restraint, continue after the inmate ceased to resist?

_____ Yes _____ No

n. Did staff fail properly to restrain the inmate within a reasonable time after the incident began?

_____ Yes _____ No

3. Inmate Behavior

a. Did the inmate's behavior fail to present a threat to himself, others, or to the order of the jail?

_____ Yes _____ No

b. Could the inmate's behavior have been prevented through the use of restraints under departmental policy?

_____ Yes _____ No

c. Could the inmate's behavior have been anticipated?

_____Yes _____No

d. Is there any possible action with respect to the inmate or his classification, institutional, program or housing assignment (s) that might prevent a recurrence of this incident?

_____Yes _____No

4. Documentation and Evidence

a. Has any staff member who was involved in the incident or who witnessed it not submitted a written report?

_____Yes _____No

b. Has each inmate or other non-staff member who was involved in the incident or witnessed it been interviewed or submitted a written statement?

_____Yes _____No

c. Does the inmate's version of the incident differ significantly from that of the staff involved?

_____Yes _____No

d. Do the reports of inmate or other non-staff witnesses differ significantly from those of the staff involved?

_____Yes _____No

e. Does the documentation of the injuries experienced by staff and inmates appear to be inconsistent with the official version of the incident?

_____Yes _____No

5. Supervision

a. Did this incident occur in the absence of supervisory staff (captain or above)?

_____Yes _____No

b. If supervisory staff was not present, was there any opportunity for supervisory staff to be summoned?

_____Yes _____No

c. Did a supervisor personally and physically participate in the incident?

_____Yes _____No

d. Does any of the action taken in this incident indicate supervisory error, indecision, or inaction?

_____Yes _____No

6. Administration Action

a. Did any staff member depart in any fashion from facility or departmental policy, rules or procedure?

_____Yes _____No

b. Is disciplinary action recommended against any staff member as a result of this incident?

_____Yes _____No

c. Does the incident reveal management or operational problems at the institution where the incident occurred requiring appropriate remedial action?

_____Yes _____No