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V.

Civil Action Nos. 70-205
70-2545, 71-513, and 71-514

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JAN 12 1962
CHIEF COUNSEL

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MICHAEL E. KUNZ, CIE
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(1) Defendants shall within 60 days of the approval of this Amendment submit

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PC-PA-005-006

to counsel for the plaintiff-class, a proposal for an administrative grievance procedure for the processing of allegations by any member of the plaintiff-class that he has been treated in a manner which is inconsistent with the terms of the Consent Decree, Stipulation, or Amendment.

(2) The grievance procedure may be utilized to process any allegation of violation of the Consent Decree, Stipulation or Amendment and shall be the sole forum for the processing of allegations of violations which are not system or institution-wide. However, no decision rendered as a result of the administrative processing of a grievance which does not allege a system or institution-wide violation shall be reviewable by any court. No resolution of any grievance offered as a result of this procedure shall be interpreted as an admission by any defendant of any violation of the Consent Decree or of state or federal law.

C. The defendants agree to include Bureau of Correction Administrative Directives 201 - Use of Force and Restraint, and 203 - Searches of Inmates and Cells - in the Inmate Handbook.

II. Sections 1, 2, 3 and 4 of the Stipulation are hereby revoked and shall have no further force or effect. The following replaces the revoked sections:

A. The Hearing Committee.

- (1) A Hearing Committee panel shall be composed of three (3) members, consisting of:

- (a) A Major or Captain of the Guard
- (b) A Casework Supervisor
- (c) A School or Vocational Supervisor

(In the case of the Vocational Supervisor he must be a non-uniformed Supervisor.)

- (2) A pool of nine (9) Hearing Committee members shall be designated at each of the affected institutions, except for Graterford, which shall designate twelve (12) members. Hearing Committee panels will be selected from these pools. All Hearing Committee members shall receive in-service training in relevant areas of law. The curriculum will be developed jointly by defendants and plaintiff-class counsel.

- (3) The position of Chairman of the Hearing Committee is abolished. In its place shall be established a Hearing Committee Coordinator. The Hearing Committee Coordinator shall be a Casework Supervisor. The duties of the Hearing Committee Coordinator shall include, but not be limited to:

- (a) Scheduling of hearings,
- (b) Determination of relevancy of witnesses and availability at the hearing,
- (c) Extent of direct or cross-examination of any witnesses,
- (d) The reading and explanation of the charges to the charged inmate,
- (e) Announcing the decision and rationale of the Hearing Committee,
- (f) All other functions previously reserved to the Chairman of the Hearing Committee.

(4) No member of a Hearing Committee panel shall have a direct supervisory role over any other panel member. Hearing Committee members who are related shall not serve on the same panel.

(5) Each vote of a Hearing Committee member shall have equal weight.

(6) Two (2) of the three (3) Committee members must concur to convict an inmate of any misconduct. A record shall be made of how each member voted. This record shall be forwarded to the Program Review Committee if they are to review the misconduct. It shall not be disclosed to the inmate. Only

the vote count will be announced to the charged inmate.

- (7) No staff member who wrote or approved the misconduct charge(s) or conducted the investigation into the charge(s) shall serve on the Hearing Committee panel which hears that misconduct.
- (8) There shall be only one(1) uniformed person on any hearing panel.
- (9) Only top-level management persons shall be chosen to sit on a Hearing Committee panel.
- (10) The above-described changes in the Hearing panel shall be instituted within ninety(90) days.

B. Hearing Examiner.

- (1) Within one year after the entry of the Amendment as an Order of Court, the Hearing Committee shall be replaced by a single person hearing examiner who shall assume all the duties and responsibilities of the Hearing Committee and its coordinator.
- (2) The hearing examiners shall be employed and supervised directly by the Central Office of the Bureau of Correction.
- (3) The hearing examiners, prior to assuming their duties, shall receive training in relevant areas of law. Curriculum will be

developed jointly by the defendants and plaintiff-class counsel.

- (4) The hearing examiners will be qualified and hired pursuant to Commonwealth civil service procedures.

C. Modifications in Misconduct Procedures.

- (1) All misconduct reports are to be reviewed and approved by the ranking officer on duty who is hereby designated to be the shift or watch commander.
- (2) Whenever practical, misconduct reports shall be delivered to the inmate by someone other than the charging staff member. The staff member who delivers the misconduct-report shall fill in the date and time of delivery in the presence of the inmate.
- (3) Witness Request and Inmate Version Forms are to be delivered to the charged inmate with the misconduct report. The inmate shall fill out the Witness Request Form and return it to the block officer no later than 9:00 A.M. the next working day. The block officer shall deliver the Witness Request Form to the hearing coordinator. The inmate should bring the Inmate's Version Form with him to his hearing.
- (4) The inmate shall be permitted to have the staff member who witnessed the alleged mis-

conduct present at his misconduct hearing. If no staff member actually witnessed the misconduct, the inmate shall be permitted to have the charging staff member present. These elections must be made by the inmate prior to the hearing on the witness form provided to the inmate.

- (5) If the inmate has selected an inmate to assist him at the hearing, the assistant shall have reasonable opportunity to address the Hearing Committee or examiner.
- (6) The inmate shall have the right to call three witnesses in his own behalf. The Hearing Committee or examiner shall determine if the requested witnesses are relevant and available. The inmate will be requested to make a statement as to the relevancy and importance of the requested witnesses on the witness form. If the witnesses are relevant, they shall be produced unless the institution can establish to the satisfaction of the Hearing Committee or examiner that the witness is unavailable or that a countervailing security concern exists. For this purpose a countervailing security concern is established when the institution presents evidence to show that the requested witness has a demonstrated history of recent erratic, hostile and disruptive conduct on multiple occasions such

that the presence of the witness would unduly disrupt the progress of the hearing. In the event that a requested witness who has no such history as herein described, exhibits a current state of mind such as would reasonably lead to erratic, hostile and disruptive conduct at the hearing, it shall be the duty of the Hearing Committee Coordinator or examiner to personally examine the requested witness before the hearing, to determine the suitability of presenting the witness in person at the hearing. If the Hearing Committee Coordinator or examiner determines that it would be unsuitable to have the witness present, he may at his election either continue the hearing until the witness may safely be produced, take a written statement from the witness, or hear the testimony of the witness out of the presence of the charged inmate. In the event that a witness has no such history as herein described exhibits erratic, hostile and disruptive behavior at the hearing, the witness may be removed.

- (7) Except in the case of testimony heard in camera as provided by section C (9) below, the inmate shall be permitted a reasonable opportunity to question any witness who has

testified against him.

(8) If the inmate requests a staff member or inmate witness who is not available at the time of the hearing, the inmate may elect either to waive the six (6) day hearing requirement to permit the witness to be present or to have the witness execute a written statement under oath which will be presented in lieu of live testimony. If he elects to have the witness present, the hearing will be rescheduled at the earliest practical time after the witness is available.

(9) When the misconduct is based upon information supplied by an informant whose identity should remain confidential, the following procedure shall be employed:

(a) The information given by the informant, but not the identity of the informant, shall be disclosed to the inmate during the hearing unless the institution has reason to believe that the disclosure of the information itself would disclose the identity of the informant. In the latter instance, the information shall be presented to the Hearing Committee or examiner, in camera.

(b) The reliability of the informant will

be established to the Hearing Committee or examiner by a preponderance of the evidence by showing:

1. The informant had the ability and was in the position to observe.
2. The informant has knowledge of the subject matter of the violation, and
3. The informant has given reliable information previously or that other witnesses have corroborated some of the information supplied by the informant.

(c) The inmate shall be present during the presentation of the reliability evidence unless the institution reasonably believes that the disclosure of the information describing the reliability of the informant would present a threat to the institution's security, in which case the evidence shall be presented in camera to the Hearing Committee or examiner.

(10) If the inmate elects to plead guilty or waive his right to a hearing, no witnesses will be required.

(11) All testimony shall be under oath.

(12) The Hearing Committee or examiner shall make written findings of fact which make reference to the testimony of each witness. Determinations

of credibility shall be left to the discretion of the hearing committee or examiner.

(13) If an inmate is acquitted of the misconduct charge, all records of the misconduct shall be expunged from his institutional record.

(14) Any inmate who has been convicted of a misconduct by the Hearing Committee or examiner may appeal to the Program Review Committee. The three bases for an appeal by the inmate are:

- (a) The procedures employed were contrary to the directive or to the Consent Decree;
- (b) The punishment is disproportionate to the offense; or
- (c) The findings of fact are insufficient to support the verdict.

(15) The Program Review Committee shall have the power to uphold, to remand or to uphold but modify the punishment. The Program Review Committee may not impose a greater punishment than has been designated by the Hearing Committee or examiner. The Program Review Committee shall render its decision within five (5) working days of receipt of an appeal.

(16) The inmate may next appeal to the Superintendent who shall review according to the

three bases for appeal listed in C (14) above. He may make any disposition permitted to the Program Review Committee. The decision of the Superintendent shall be forwarded to the inmate within three (3) working days of his receipt of the appeal. Any working day during this period when the Superintendent is absent from the institution for the entire day, shall not be counted against his allotted time for response.

- (17) The final appeal permitted shall be to the attorney assigned as counsel to the Bureau of Correction in Central Office (hereinafter referred to as "Central Office Attorney"). The basis for such an appeal are limited to C (14) (a) and C (14) (c) above.

D. Transfer of Inmate to Administrative Custody.

- (1) An inmate who has completed his disciplinary sentence shall be released into general population unless the institution presents evidence to the Program Review Committee that there is a valid security reason as defined in Section D (3) below to continue him in administrative custody.
- (2) When an inmate is transferred to administrative custody from general population and the

basis for the transfer is not an outstanding misconduct charge, a self-committal or confinement under investigative status, he shall be provided a hearing before the Program Review Committee within six (6) days of his transfer. The inmate has the right to be present at this hearing. The institution shall present evidence to establish that there is a valid security reason to confine the inmate in administrative custody as defined in Section D (3) below. The inmate shall then have the opportunity to present the reasons why he should be returned to general population. He may request, but has no right to compel, the presence at the hearing of such members of the institution staff as he believes will support his return to general population.

(3) Valid security reasons for this purpose are:

- (a) The inmate is a danger to particular person(s) in the institution who cannot be protected by alternate measures;
- (b) The inmate is a danger to himself;
- (c) He is the instigator of a disturbance;
- (d) Placement in general population would endanger the inmate's safety or welfare, provided that it is shown that alternative means of protecting him such as by relocation of other individuals in the

institution who are a threat to him
are unavailable; or

(e) The inmate would likely attempt escape
if placed in a less restrictive environment.

(4) The appeal of the decision of the Program Review Committee with regard to placement or denial of placement of any inmate in administrative custody shall be made by the inmate or the Superintendent to the Deputy Commissioner who shall review the record of the hearing and all other relevant documents.

(5) If the Superintendent elects to appeal the determination of the Program Review Committee with regard to the administrative custody placement, he must give notice to the inmate, the Program Review Committee and the Deputy Commissioner by the close of the third working day following the hearing. The Deputy Commissioner, or in his absence the individual designated to act in his stead, shall rule on the appeal within two (2) regular working days of receipt of the appeal. The inmate shall remain in administrative custody during this appeal process.

(6) Any inmate in administrative custody at the time of the entry of the Amendment as an Order of Court will be entitled to have a hearing on the fact of his continued con-

finement and to utilize the appeal procedure provided by this section. Any inmate thereafter initially committed to administrative custody from general population or committed to continued confinement in administrative custody by the Program Review Committee shall be committed for a specified period or sentence after which an additional hearing as specified in Section D shall be required for further confinement beyond the original period specified.

- (7) The Program Review Committee shall submit to the Superintendent a status report every thirty (30) days detailing the reasons the Program Review Committee feels that continued administrative custody is necessary. The Superintendent shall review these documents and determine whether the reasons set forth in the documents submitted are valid and reasonable. If the Superintendent determines that the Program Review Committee's findings are valid and reasonable, it will so notify the segregated inmate. If, however, the Superintendent feels that the reasons set forth in the Program Review Committee report are no longer valid or reasonable, the Superintendent shall cause the Program Review Committee to schedule a continuation hearing at which the segregated inmate and institu-

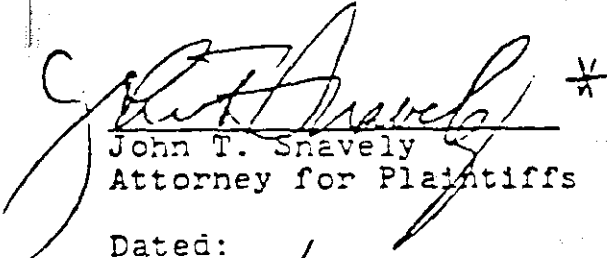
tion staff may present evidence. If after the hearing the Program Review Committee finds no reason for continued segregation, it shall order the inmate's release to general population. Otherwise, the inmate shall remain in segregation until the expiration of the time designated by the Program Review Committee or until another continuation hearing is deemed necessary by the Superintendent. Appeal by the inmate or the institution staff shall be as set forth in D (4) above.

III. The following is added to Section 8 of the Stipulation (page 12):

(E) Random cell searches shall not be conducted later than one hour after the institution has been locked in for the evening.

None of the provisions of this Amendment shall be interpreted as an admission by any defendant of any violation of state or federal law, nor shall they create a private cause of action in any individual against any defendant.

Respectfully submitted,

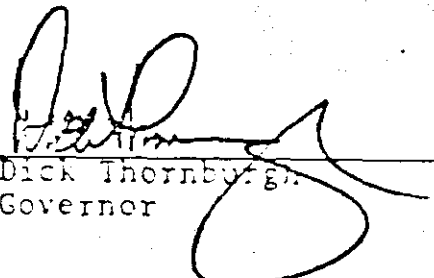
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John T. Snively
Attorney for Plaintiffs

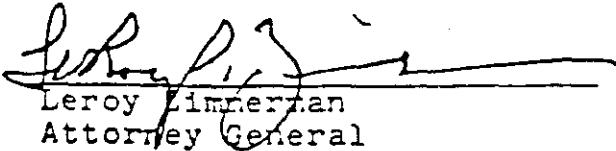
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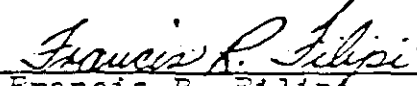
- Subject to implementation
of notice procedure and
opportunity for filing of class
objections in accordance
with Rule 23.

APPROVED:

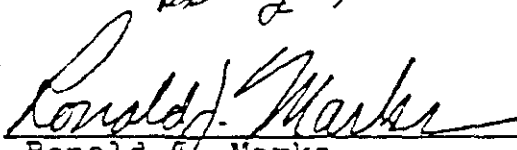

Dick Thornburgh
Governor


Leroy Zimmerman
Attorney General

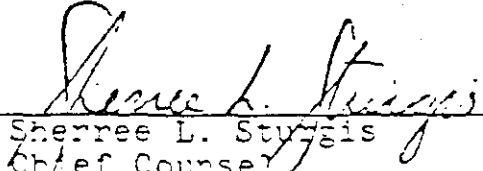
Dated:


Francis R. Filipi
Deputy Attorney General
Attorney for Defendants

Dated: February 25, 1982


Ronald G. Marks
Commissioner
Bureau of Correction

Dated: 2-2-82


Sherree L. Stuygis
Chief Counsel
Office of General Counsel

Dated: 2-4-82

APPROVED.

BY THE COURT:

Dated: