

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Brown v. Hutto

ALAN BROWN, et al.,

Plaintiffs,



PC-VA-001-009

v.

CIVIL ACTION NO. 81-0853-R

RAYMOND K. PROCUNIER, et al.,

Defendants.

SETTLEMENT AGREEMENT

1. The Virginia Department of Corrections (DOC) will implement a new procedure of initially placing new inmates in Phase II if they satisfactorily adjust during orientation. Inmates in the phase program will be formally reviewed by the Institutional Classification Committee (ICC) for purposes of considering advancement to the next highest phase or for transfer to another institution normally after the inmate has spent one half of his time within a particular phase. The ICC shall have discretion to review inmate progress at an earlier date. Should the ICC decision be not to review an inmate until the end of completion of a phase, the ICC shall document its reasons for doing so. Under ordinary circumstances which will be further defined by the parties, inmates assigned to the phase program who do not complete it within two years will be transferred to other institutions. Should such inmates successfully adapt at the other institutions, they will be released directly to the general population or other appropriate assignment.

2. The Special Management Unit will be abolished.

3. The DOC will put in concrete form and provide detail for their proposal to tighten significantly screening for assignment to the Mecklenburg Correctional Center (MCC), as well as the proposal for tightening criteria for assignment to MCC. The DOC will develop a written plan for anticipating problems in further assignments for inmates found during the review process to be inappropriate for permanent assignment to MCC. The DOC will develop written policy providing that under ordinary circumstances inmates who have completed the phase system or have been found to be inappropriate for the phase system will be reclassified and placed in appropriate housing within 30 days, if possible.

4. The DOC agrees to continue the process of converting cell lights to internal controls. If necessary for security purposes, certain special status cells may also be equipped with night lights under external control. Steel desks and attached stools will be added to individual cells as funding permits. Inmates will be informed that upon request, they will be provided with light bulbs up to 100 watts. Individual window knobs will be installed in cells of the areas of MCC utilized by inmates in protective custody, the phase system, general population, and Death Row. The DOC will make a good faith effort to complete all of the above within a reasonable time.

5. The DOC will provide written policy defining the circumstances under which toilets in segregation and isolation

can be turned off. Such policy shall designate the decision-maker and the lengths of time during which a toilet may be turned off. In addition, such policy shall provide that toilets shall be turned off only as a result of deliberate flooding or similar misconduct and that no inmate shall be required to consume a meal in a cell with an unflushed toilet.

6. Defendants agree to follow the provisions regarding in-cell restraints contained in IOP 411.M, 412, 413 and 871. In addition, security staff will check a person placed in restraints for suicidal or self-mutilative behavior every fifteen (15) minutes, and all others every hour or less as otherwise directed. The use of restraints in psychiatric problem cases shall be monitored by the psychological staff, and in all restraint cases there shall be immediate consultation with the psychologist or medical doctor at the first available opportunity. Except in emergency situations the use of restraints will only be used after consultation with and personal observation by the ranking psychologist or medical doctor available at the institution who will thereafter review the progress at 24 hour intervals, or less, as they deem appropriate. During times when there is no psychologist or physician at the institution, the on-call psychologist or physician will be notified. A psychologist or physician will interview the inmate when he next comes to the institution. In the event an inmate should need to be restrained in excess of 48 hours, the Deputy Director of the DOC will be notified.

The use of mechanical restraints within the cell shall be limited to those circumstances in which the inmate is engaging in suicidal, self-mutilative, self-destructive or other behavior which appears likely to cause injury to himself or others. In all cases, there must be written documentation of the reasons for placement in restraints, documentation of observation of the individual at fifteen minute or one hour intervals (as appropriate and as outlined above) by security staff, and documentation that the individual was released or partially released at reasonable intervals for eating and use of the toilet. The DOC will make a good faith effort to investigate the possibility of replacing metal restraints with leather restraints. If the DOC determines that non-metal restraints are unsatisfactory, it shall document the reasons for such determination.

7. A segregation section shall not be re-established in Death Row. Death Row inmates will be subjected to ordinary Death Row disciplinary and security procedures.

8. The DOC has conducted a comprehensive review of security measures on visiting but will entertain suggestions made by plaintiff's experts if submitted. In the interim, the DOC will improve, repair and maintain in good working order the telephones in the non-contact visitation area and will continue its policy of non-contact visits as presently established. Death Row prisoners will be allowed weekend visits.

9. All inmates except those restricted for disciplinary confinement such as: prehearing detention, cell restriction,

or isolation, and those under medical restriction shall receive a minimum of between 5 to 6 hours of outdoor recreation per week, weather permitting. During the summer months, between 6 and 7 hours of outdoor recreation will be provided, weather and staff permitting.

10. The DOC will continue the present food program at MCC so that inmates in Segregation, Isolation, Investigative Hold, Orientation, Cell Restriction, Medical Restriction, and Phase I will take their meals in their cells. Inmates in Phase II, Phase III, the proposed Maximum Security Unit, Death Row, Mental Health Pod, and Protective Custody/General Population will receive all their meals outside of their cells in the pod area.

11. (a) The DOC will implement by special memorandum from the Director that it will be the policy of the DOC and the staff at MCC not to use excessive or unnecessary force including excessive use of chemical agents, i.e. that such force as may be used will be reasonable. The DOC will continue its current policy of review of all Serious Incident Reports (SIR's) generated from MCC by the Director or the Deputy Director who may institute such further investigation and disciplinary action as appears appropriate. Currently all SIR's are telecopied to the Deputy Director and the Regional Administrator. The Deputy Director then makes a copy of this SIR for review by the Director. The Deputy Director then personally reviews all SIR's and institutes such further investigation as may be necessary. The Deputy Director or the Director has authority to review any and all

videotapes when necessary. Additionally, the Warden of MCC reviews all SIR's, and if a baton was used or mace was used in a cell or tear gas was used, then the warden reviews the incident with all officers involved, inmates involved if this is deemed necessary, and also reviews the videotape if one was made. Additionally, the DOC has one of the few administrative grievance procedures approved by the United States Department of Justice through which inmates may voice any complaints relative to their incarceration.

(b) The Director will agree for the period of one year hereafter to investigate complaints of excessive force from counsel for plaintiffs. Those complaints may be submitted to the Secretary of Public Safety for his review. He may then forward the complaint to the Director for his review. The Director will investigate all use of force complaints so referred to him to exclude any case in which the parties initially choose to litigate, and will report to counsel for the plaintiffs and to the Secretary his findings, conclusions, and action taken. In appropriate cases, the Director or Secretary will make the results of his investigation available to appropriate law enforcement personnel.

In addition, the Director will agree to review 15 past instances of use of force complaints submitted by counsel for plaintiffs occurring within 2 years prior to this agreement, and in which the parties have not litigated. These complaints may be submitted as outlined above. In those cases in which no action has heretofore been taken, the Director will take

appropriate action and will report his findings, conclusions and action taken as outlined above.

(c) The DOC will by written proposal announce its policy regarding rotation of officers or other staff members at MCC.

(d) The DOC agrees to receive suggestions from plaintiffs' experts regarding current use of force rules.

(e) The DOC agrees to use counseling staff with particular training and crisis-defusing skills as resources to resolve problems without the use of force.

(f) The DOC is of the opinion that it already has an adequate training program but agrees in principle to discuss outside training by the National Institute of Corrections.

(g) The DOC believes that its present policies of screening individuals considered for employment for propensities for violence is appropriate and agrees that if there is any indication in the record of a potential employee that the potential employee has a potential for violence, such as a prior conviction for assault or other violent crime, this person will not be hired unless the incident occurred years in the past and appears to be an isolated occurrence and a current check in his community reveals that there is no propensity for violence. Each potential employee at MCC will be investigated by a Special Departmental Investigator for a complete background investigation with regard for his potential for violence. If the DOC determines, through an appropriate check with the Central Criminal Records Exchange,

that an application has been falsified regarding the existence of convictions in a potential employee's background, the potential employee will not be hired, or if he has been hired, then he will be immediately dismissed.

(h) The DOC agrees that it will continue its practice of videotaping possible serious incidents for at least one year from the date of this agreement.

12. The DOC agrees to develop a comprehensive plan for the improvement of medical and psychiatric care at MCC. The plan will include at a minimum the following components:

(a) The DOC has agreed to hire and has hired an additional psychologist. The DOC will also advertise for and make every good faith effort to hire a half-time psychiatrist.

(b) Inmates demonstrating bizarre behavior will be identified and treated, and, in appropriate cases, transferred from MCC. Inmates needing special services but not requiring more intensive psychological services shall be housed in the Mental Health Pod. The MCC screening process will exclude from MCC those inmates whose psychological problems or mental deficiencies render MCC an inappropriate assignment.

Written policy and procedures shall be developed to implement these provisions. (c) The DOC will by written proposal define its procedures for the conduct of medical assessment at the cell of an inmate, and agrees to review plaintiffs experts' suggestions for protocols for such assessment and further agrees to incorporate such suggestions in the training of staff as is deemed appropriate. The DOC, for reasons of

security, believes that inmates must be kept in restraints during transportation to medical examinations, but will remove such restraints if deemed necessary by the medical staff. At the present time funds have been identified to provide for a call system in the infirmary, but the DOC agrees that ordered medications are to be delivered, regardless of the prisoner's location or sanitary conditions of the housing unit. P.A. IIs are to perform only those functions for which their training would qualify them in civilian life.

(d) The DOC agrees to review suggestions by plaintiffs' experts for implementation of policy and staffing recommendations.

(e) The DOC agrees to conduct a review on its own through appropriate psychologists and/or psychiatrists of the current MCC population to identify those inmates whose behavior demonstrates a need for psychiatric/psychological treatment and will take appropriate action including transfer following recommendations from the reviewing personnel. (f) The DOC agrees to conduct its own review of suicide attempts and self-mutilations and inmate assaults to determine how they may be reduced.

13. The DOC will convert one building at MCC for assignments of regular C Custody inmates from MCC or other maximum security institutions as long as the phase program remains at current levels or below. This population will be separate from MCC and will include programming and vocational opportunities similar to other maximum security institutions. It will be the policy of MCC to make jobs available for all Phase III inmates and for as many Phase II inmates as possible.

The DOC will agree in addition that all Phase III inmates will be given out-of-cell time each day from 7:00 p.m. to 11:00 p.m. as appropriate. Some classroom educational opportunities will be available to Phase III inmates. The educational and vocational training program of the general population area will be available for Phase III inmates whenever possible. The DOC has requested RSA to provide additional personnel necessary to accomplish the above. Phase II inmates will be provided out of cell time every other day from 7:00 p.m. to 11:00 p.m. As far as possible, jobs will be available for all Phase II inmates. Counselling for all inmates will take place as appropriate. The DOC will make a good faith effort to accomplish all of the above.

14. The DOC agrees to an expansion of the time for those inmates who desire to use the law library. If an inmate visits the law library in the morning, he may remain at the law library for the remainder of the morning until the mid-day meal, if space permits, and if visits take place in the afternoon, then such inmates will be allowed to remain in the law library until the break must be made for the evening meal if space permits. It is further agreed that provisions will be made for extra access by Death Row prisoners to the law library and that requests for law library access may be sent by cell block officers as well as through intra-institutional mail. It is also agreed that

prisoners will be allowed to browse through the stacks or have the assistance of a trained library assistant. It is also agreed that a photocopy machine will be available in the law library for prisoner use under supervision and subject to reasonable rules and restrictions.

Death Row inmates may check out law library material overnight. The DOC will implement a priority system to give access to the law library as follows: (1) inmates who have pending court dates; (2) Death Row inmates; and (3) all other general requests.

15. Presently those inmates who are dissatisfied with services of the court appointed attorney are free to file their complaints with the Circuit Court of Mecklenburg County, and are additionally free to consult with the ACLU regarding the adequacy of the services provided. The ACLU is free to contact the Circuit Court of Mecklenburg County or such other body as it may see fit regarding the performance of such attorney.

16. The DOC agrees that all inmates other than those in isolation shall have daily access to newspapers and magazines unless any such inmate has within the prior two weeks misused paper or similar materials creating a security or sanitation hazard.

17. The DOC agrees to the restoration of Saturday mail service.

18. The DOC agrees to review the operation of food

services through its chief dietician to assure the proper cooking and preparation of all items.

19. The DOC agrees to review the dietary requirements of adherents of the Nation of Islam, as set forth in How to Eat to Live, and develop an appropriate plan to make available dietary substitutions for Nation of Islam prisoners that satisfy minimum nutritional needs. The dietary plan shall be approved by Plaintiffs' Nation of Islam consultant. Separate utensils shall be used for pork products. Such materials shall never be used for the serving of non-pork products. The Nation of Islam consultant will be authorized to inspect the kitchen to assure separation of pork and non-pork food items. The defendants will develop a plan to assure the noncontamination by pork of the meals of non-pork eaters which plan may be approved by the Nation of Islam consultant. Upon request, a Nation of Islam consultant may inspect the facilities and methods in the food preparation area at MCC.

20. Group religious activity, including religious services, will be allowed subject to reasonable staff and security needs as determined by DOC.

21. The DOC agrees that the MCC will provide for Ramadan observances by adherents of the American Muslim Mission and the Nation of Islam.

22. The DOC agrees to use reasonable search procedures at MCC. These search procedures will permit a strip search

of an inmate in the privacy of his cell if at all possible prior to an inmate leaving the confines of MCC, or returning thereto after a trip away from the institution. Additionally, strip searches will be conducted routinely after contact visitation in a special room in the visiting area where privacy will be maintained. Also, strip searches are to be routinely done when an inmate is moved to another cell during times when there are no other inmates in the pod area. It will not be the policy at MCC to routinely strip search inmates when such inmates are going to the medical department. MCC does, however, reserve the right to conduct a strip search upon reasonable suspicion that contraband is being concealed.

23. The DOC will allow Death Row inmates two routine telephone calls per month and allow them unlimited legal calls to those attorneys on their attorney list. Additionally such inmates may be allowed additional non-legal telephone calls in special circumstances upon approval of special requests.

24. The DOC agrees to explore the possibility of providing college courses to Phase II, III, General Population and Death Row inmates.

25. The DOC agrees to make a good faith effort to research the feasibility of having protective custody inmates enjoy program opportunities equivalent to those provided the prisoners in the general population status at MCC and will attempt to introduce a pilot program.

26. The DOC agrees to substitute metal detectors where feasible for strip searches and visual body cavity searches.

27. The DOC agrees that except when a reasonable suspicion of contraband exists, the MCC shall not search motor vehicles of visitors to the MCC.

28. The defendants agree to install four (4) inch padding in appropriate places in transportation vehicles and will make a good faith effort to explore other possible measures designed to prevent accidental injury to prisoners during transportation.

29. The DOC will continue for security reasons to provide personal property to inmates in accordance with DGL #141 and IOP #141 governing inmate personal property.

30. The DOC agrees to make a general reading library available for the general population, Phase III inmates and Protective Custody inmates. At the present time, the DOC is exploring the feasibility of giving Phase II inmates access to the general reading library and a pilot program will be instituted. Additionally, the DOC will explore the possibility of extending general reading library services to Death Row inmates. Inmates not having direct access to the general reading library will be provided books in accordance with present procedures including availability of books and magazines from portable carts brought to the prisoners' area not less than once each week.

31. Defendants agree that prisoners on death row at the Mecklenburg Correctional Center shall be permitted to list and have as visitors members of their family, not limited by any degree of consanguinity; common-law wives; fiancées; clergy; and friends and associates of long standing who were known by the prisoner prior to his incarceration subject to reasonable limitations upon the number of visitors that any inmate may maintain on a visiting list, subject to the reasonable approval of the warden, and subject to reasonable limits on the number of persons that may be maintained on a visiting list as presently constituted or as may be constituted in the future, and giving defendants a reasonable time in which to investigate any potential visitors. This provision shall not limit the possibility of special visitors as approved by the warden.

32. Defendants will allow non-contact visitation for death row prisoners and will require that these prisoners be subjected to reasonable search procedures including a pat-down search before and after each visit. Strip searches, however, will not be required prior to or after a visit as a routine matter. Strip searches may be required before or after a visit if in the opinion of the officer in charge there is real suspicion to believe that such a search is necessary and then he may recommend such a search to the watch commander who may authorize it. A prisoner may be subjected to leg restraints during a visit but handcuffs will no longer be used during visitation unless they become necessary in order to maintain order and control.

33. Defendants agree that visits to prisoners at the Mecklenburg Correctional Center will be governed by all regulations applicable to the search procedures to include that they will not be subjected to strip searches or partial strip searches prior to visitation, but defendants maintain the right to deny visitation to any visitor upon real suspicion that the visitor is attempting to bring in contraband or would otherwise jeopardize the security of the institution. Under these circumstances the visitor may be requested to submit to a strip search or partial strip search in accordance with applicable Division Guidelines and Institutional Operating Procedures, or if they refuse, then forfeit the right to visit. Defendants will agree to provide an appropriate written notice to visitors setting forth their search procedures.

34. Defendants further agree that each instance of strip search or partial strip search or request to strip search or partial strip search of a death row inmate or any visitor at the Mecklenburg Correctional Center during visitation shall be documented and maintained in writing, setting forth the name of the visitor or prisoner searched, the time, those persons conducting the search, and the reasons for the search or request for same.

35. This agreement is not to be construed to establish or change the standard of culpability for civil or criminal liability of any official, employee, agent, or representative of the Commonwealth of Virginia other than for the sole and

limited purpose of enforcement of this agreement and any decrees which may issue herein.

36. This agreement was voluntarily and mutually agreed upon by the Defendants and Plaintiffs as a compromised settlement of disputes between the parties and neither any decrees which may issue, nor this agreement, nor any actions taken pursuant hereto constitute admissions that any condition, policy, procedure or acts or omissions of the Virginia Department of Corrections and/or the Mecklenburg Correctional Center or any state official, employee, or agent was, or is, in any way improper, negligent, unconstitutional, or in violation of any rights of the Plaintiff class or any member thereof, caused or causes any injury or other deprivation or damage to the Plaintiff class or any member thereof.

37. This agreement shall not be admissible in evidence in any proceedings or trials other than for the sole and limited purpose of enforcement of this agreement and the decrees on file herein. It is understood and agreed that Rules 407 and 408 of the Federal Rules of Evidence and the Advisory Committee's notes to Rule 407 and 408, and the provisions of Section 8.01-418.1, Code of Virginia (1950), as amended, are applicable to this agreement and any decrees which may issue herein.

38. In the event of an emergency caused by a riot, fire, or other events at the facility not caused by the Defendants, their agents, employees, successors in office, and those acting in concert with them, which make compliance with the

terms of this agreement and any decrees on file herein inconsistent with security within the institution, it may be necessary to temporarily suspend all or certain provisions of this agreement and the decrees on file herein. In such event the Defendants will notify within 5 days counsel for the Plaintiffs of the reasons for and the expected duration of the suspension. If the Plaintiffs or their counsel believe those suspensions and/or their duration are unjustified, unreasonable, or taken in bad faith, then they may request appropriate relief from this Court. This agreement is not intended to supercede the normal disciplinary process of the institution.

39. The parties shall submit this agreement to the Court in full settlement of all remaining issues in this case, except costs and attorneys' fees, and the parties shall request that the Court retain jurisdiction for such time as the Court deems necessary to enforce compliance with this agreement and any decrees which may issue herein. In addition to retaining jurisdiction and taking such action as may be necessary to enforce compliance, it is understood and agreed that six (6) months after the date of the entry of a decree herein, but only upon application by one or both of the parties hereto, the Court will conduct a hearing on any claim that the provisions of paragraph number 11(b) of this agreement are not being complied with.

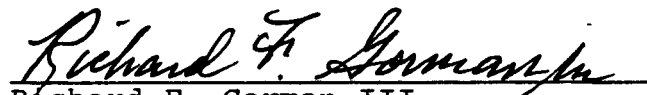
40. The Defendants agree that the Counterclaims contained in their Answers to the Complaint and the Amended and Supplemental Complaint herein are hereby withdrawn without prejudice.

Witness the following signatures and seals:

RAYMOND K. PROCUNIER, et al.


Raymond K. Procunier, Director
Virginia Department of Corrections

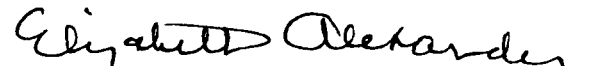

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Dated this 8th day of April, 1983