



PC-CT-005-002

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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| DAVID DOE, <u>et al.</u> | : | CIVIL NO. H-88-562(PCD) |
| | : | (JGM) |
| -vs- | : | |
| | : | |
| LARRY MEACHUM, <u>et al.</u> | : | MAY 16, 1989 |

CONSENT JUDGMENT ON
AIDS EDUCATION AND PRE- AND POST-HIV TEST COUNSELLING

I. BACKGROUND

1. This action was filed on August 15, 1988. It challenges certain policies and practices of the defendant officials of the Connecticut Department of Correction which pertain to education regarding the Human Immunodeficiency Virus ("HIV"), counselling prior and subsequent to testing for HIV infection, medical and mental health care provided to inmates with HIV infection, and protections for the confidentiality of persons with HIV infection.

2. This action was certified as a class action on February 10, 1989, by Order of United States District Judge Peter C. Dorsey, accepting and adopting Magistrate Joan Margolis' January 20, 1989 Recommended Ruling on Plaintiffs' Motion for Class Certification.

3. The class certified, by agreement of counsel, consists of all persons who were at any time since August 15, 1985, are, or will be subject to the care and custody of defendant Larry Meachum, Commissioner of the Connecticut Department of

Correction, but excluding those individuals in the class certified in Smith v. Meachum, Civ. No. H87-221 (JAC).

4. After extensive motion practice and discovery concerning plaintiffs' claims, plaintiffs filed a Motion for Preliminary Injunction on March 3, 1989. Plaintiffs sought interim relief on those claims relating to claimed deficiencies in the provision of information about infection with the Human Immunodeficiency Virus ("HIV") to the inmate population ("AIDS education") and to claimed deficiencies in counselling of inmates immediately prior to and upon the disclosure of the results of HIV-related tests ("pre- and post-HIV-test counselling").

5. A hearing on plaintiffs' Motion for Preliminary Injunction commenced on April 5, 1989 before the Honorable Joan Glazer Margolis and continued until May 8, 1989.

6. On May 9, 1989, after sixteen days of testimony, counsel for the parties met to discuss and negotiate settlement of the issues raised by plaintiffs' Motion for Preliminary Injunction, as specified in Paragraph 4.

7. The provisions of this Consent Judgment are the result of several discussions and careful negotiation among all the parties. They have been agreed upon solely as a means to put a reasonable end to the parties' dispute over the issues of AIDS education and pre- and post-HIV test counselling and to avoid the costs, time, and risks which would be involved in further litigation for both parties. The Consent Judgment embodies a compromise of the issues involved and, while its provisions are binding on the parties herein, its provisions are not to be

construed to be statements, rulings, or precedents with respect to the constitutional and other legal rights of persons who are parties or nonparties to this litigation in this or any other action.

8. The provisions of this Consent Judgment resolve all of the plaintiff class' existing claims in this case regarding inmate AIDS education and pre- and post- HIV test counselling, as of the date that counsel for the parties sign this Consent Judgment, against Commissioner Larry R. Meachum, Commissioner of the Connecticut Department of Correction ("DOC"), and the other named defendants, all of whom are officials and employees of DOC.

9. Notice to the plaintiff class members of this Consent Judgment shall issue pursuant to the notice provisions approved by the Court.

10. As used in this Consent Judgment, the following terms shall have the following meanings unless specifically stated otherwise:

a. "Commissioner of Correction" or "Commissioner" shall mean the Commissioner of the Connecticut Department of Correction ("DOC") or his designee.

b. "Warden" shall mean the Warden of any DOC facility or his/her designee.

c. "Inmate" shall mean any and all persons committed to the care and custody of the defendant Commissioner of Correction now or in the future, whether in pretrial or sentenced status, except for those in community confinement.

d. "AIDS" means Acquired Immune Deficiency Syndrome, as defined by the Centers for Disease Control of the United States Public Health Service.

e. "HIV infection" means infection with the human immunodeficiency virus, or any other related virus identified as a probable causative agent of AIDS.

f. "HIV test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agents whatsoever thought to cause or indicate the presence of HIV infection.

g. "Community confinement" shall mean any transfer to community residence programs pursuant to state law including but not limited to halfway houses, work release, education release, and supervised home release under C.G.S. 18-100.

h. "Counsellor-educator" shall mean an infectious disease counsellor-educator and shall refer to a staff member of the Health Services Division of the DOC hired either in a permanent or contractual position whose primary responsibility shall be to provide counselling and education services to inmates at risk for HIV infection.

11. Now, therefore, without any additional proceedings and upon the consent of the parties to this action, it is hereby ORDERED as follows:

II. STAFFING

12. The AIDS Program within the Department of Correction shall have an AIDS Coordinator whose responsibilities are

specified in part in paragraphs 13 and 14, infra. In addition, DOC shall continue to implement the current Memorandum of Agreement ("MOA") with the Connecticut Department of Health Services including the provision which calls for the assignment of nine counsellor/educators (or full-time equivalents) to DOC custodial facilities. Should the MOA terminate, or change, defendants shall provide plaintiffs' counsel, 60 days in advance of termination or change, their plan to reassign responsibilities among staff to fulfill defendants' obligations under this Judgment. DOC agrees to maintain sufficient staff to carry out the provisions of this Consent Judgment.

13. The AIDS Coordinator shall be a person designated by the defendant Director of Health Services of DOC who shall be responsible for supervision and coordination of the programs related to HIV infection within DOC. The duties of the AIDS Coordinator shall include coordination of the AIDS Program within DOC, generally, and shall specifically include ensuring that each DOC facility has available to inmates educationally and linguistically-appropriate AIDS education materials of comparable quality and quantity, and ensuring that all staff involved in the DOC AIDS education and counselling program periodically are given such retraining and updated information as are necessary to keep them current in the field.

14. The AIDS Coordinator is responsible for supervision and coordination of live inmate AIDS presentations, training staff to provide AIDS education to inmates and evaluation and assessment of the effectiveness of the AIDS education

program, through devices including, but not limited to, inmate knowledge, attitude, and behavior surveys.

15. The recruitment and hiring of AIDS counsellor-educators shall target qualified black and Hispanic persons in an effort to have the counselling staff reflect the racial and ethnic mix of the inmate population.

16. All counsellor-educators and other staff within the DOC charged with the responsibility of providing pre- and post- HIV test counselling shall complete the Connecticut Department of Health Services' training program for AIDS counselors or shall have other comparable training or equivalent experience as approved by the defendant Director of Health Services for DOC.

17. The primary responsibility of the counsellor-educators shall be to provide appropriate pre- and post-HIV-test counselling.

18. All DOC facilities shall be accessible to the counsellor-educators as is necessary to carry out the provisions of this Consent Judgment and each facility shall provide appropriate space which affords inmates and staff confidentiality during the counselling sessions.

19. As determined appropriate by the Commissioner, defendants will continue to cooperate with, encourage, and allow reasonable access to their facilities to permit community efforts to provide AIDS education to inmates.

III. AIDS EDUCATION

20. The purpose of a systematic and comprehensive AIDS education program within DOC is to ensure that the inmates are provided with appropriate information regarding the prevention of transmission of HIV.

21. All videos, curricula, oral presentations and written materials used for inmate AIDS education shall be appropriate, medically-accurate, not unduly repetitive, and culturally and linguistically appropriate to the target population.

22. There shall be provided as a part of the routine orientation process in each DOC facility a video about HIV infection, followed by a period for discussion and questions and answers. The AIDS video-discussion orientation program shall be held a minimum of three times each week on non-consecutive days at the following institutions: the Hartford Correctional Center, the Connecticut Correctional Institution at Niantic, the Morgan Street Detention Center, the Union Avenue Detention Center, the Bridgeport Correctional Center, the Gates Correctional Institution, the Montville Correctional Center, the New Haven Correctional Center, the Brooklyn Correctional Center, the Litchfield Correctional Center, Jennings Road and the Cheshire Correctional Center. The program shall be held a minimum of once each week as a part of orientation at the Northeast Pre-Release Center, the Eddy/DWI facility, the Connecticut Correctional Institution at Somers, the Hartell/ DWI facility,, the Enfield Correctional Institution, the Carl Robinson Correctional Institution and the

Manson Youth Institution. The program shall be held additionally at the Hartell/DWI facility once each weekend. These initial orientation presentations shall include information about HIV transmission, methods and skills for protection against transmission, discrimination and confidentiality, the HIV test, community resources, and the need for compassion toward HIV-infected people.

23. All inmates shall also receive at intake into a DOC facility a copy of the "Stop the Spread" pamphlet about AIDS, printed in English and Spanish. Defendants shall periodically assess the need to make changes in this pamphlet based upon experience as new developments about AIDS arise and shall make such changes as are necessary to provide inmates with timely and culturally and linguistically appropriate written information. Should an AIDS HOTLINE be established in this State, or should some other phone number more appropriate and accessible to inmates than the Department of Health Services number become available, this information will be provided as a part of the pamphlet distributed to all inmates.

24. A variety of written AIDS materials, in English and in Spanish, shall be maintained in sufficient supply in areas of each DOC facility which are easily accessible to inmates, including but not limited to, the medical unit of each facility, counsellors' offices, at the weekly AIDS video sessions, as well as in the library if one exists.

25. A one to two hour voluntary weekly AIDS education seminar shall be available to all inmates in all DOC facilities.

It shall generally include a lecture, video, and a question and answer discussion period led by a counsellor-educator or by an appropriately-trained staff member or volunteer. This weekly seminar shall be in addition to the video and question and answer sessions described in paragraph 22, supra.

26. Inmates shall be notified of the weekly AIDS seminars by appropriate notices in English and Spanish posted in readily viewable sites within the facilities, including the housing units, by announcements in inmate newspapers in facilities where newspapers are published, and in such other manner as the Wardens of the individual institutions deem appropriate, such as announcements over a public address system.

27. Defendants shall periodically assess and evaluate the inmate demand for the weekly AIDS education seminars to determine if inmate access is being deprived or unduly delayed because of excessive demand. Defendants shall consider and implement such changes as are necessary to ensure that no inmate who wishes to attend a weekly AIDS education seminar has his/her request unreasonably denied and/or delayed.

28. Inmates in protective custody, segregation or other restrictive custody statuses shall be provided with AIDS education services reasonably comparable to those provided to other inmates.

29. Inmates shall be advised at the orientation program on AIDS and at the weekly sessions on AIDS that if they have additional questions about HIV infection after completing these programs, they should contact a counsellor-educator or

other qualified staff person for an individual educational session. Inmates shall also be informed at these sessions as to whom within the facility they should contact for further information and the method of contacting such persons.

30. The AIDS Coordinator shall ensure that the videos, curricula, and written materials used within DOC for AIDS education remain current and consistent throughout the Department.

31. Defendants shall secure a sufficient number of videos in Spanish to ensure that non-English or limited-English speaking Hispanic inmates within each DOC facility are offered and are able to view a video in Spanish about HIV infection. An orientation video session in Spanish shall be conducted when non-English or limited-English speaking Hispanic inmates are identified through the intake process in each DOC facility. AIDS seminars conducted in Spanish similar to those identified in paragraph 25, supra, shall be available in each DOC facility, using Spanish materials and led by a Hispanic counselor/educator, a trained Hispanic staff person or other qualified Spanish-speaking staff person, contract or volunteer AIDS educator on an as-needed basis, i.e. when non-English or limited-English speaking Hispanic inmates sign up to participate in a live AIDS education seminar.

32. In order to provide initial AIDS education to the current population as of the date of the entry of this Judgment, defendants:

a. Shall provide each inmate with a copy of "Stop the Spread" in English and Spanish;

b. During the period from June 15, 1989 to July 7, 1989, shall schedule and hold such additional AIDS education weekly video-question and answer programs as to ensure that no weekly session exceeds forty inmates in size.

33. An AIDS education discharge packet will be distributed to all inmates leaving a DOC facility on discharge, release, or transfer to community confinement. The discharge packet shall at least include a brochure (in English and Spanish) listing community resources and information on how to prevent transmission of HIV through sex and sharing needles. In 1989, the packets shall begin being distributed effective on the date of delivery of discharge packets to each DOC facility.

IV. PRE-AND POST-HIV-TEST COUNSELLING

34. All inmates who are considering or who are given an HIV test shall receive appropriate pre-test counselling prior to the HIV test. This pre-test counselling shall be provided by one of the counsellor-educators, or by another staff person who has equivalent background, training and time to provide comparable services.

35. The components of the pre-HIV test counselling session shall include, but not be limited to:

a. a description of the HIV test, including its purpose and results;

b. an assessment of inmate's risk status;

c. confidentiality protections and the persons to whom disclosure of a test result may be made;

d. implications of partner notification;

e. references to community resources;

f. informed consent;

g. an exploration of an inmate's specific

reaction to a positive or negative test result;

h. discussion of discrimination within and

outside the correctional facility;

i. review of modes of transmission of HIV and

methods of prevention of transmission;

j. assessment of the inmate's ability to handle

learning of the test results.

36. All inmates who receive an HIV test shall be given

appropriate post-test counseling. The post-test counseling

shall be provided by one of the counselor-educators, or by

another staff person who has equivalent background, training and

time to provide comparable services. The components of post-test

counseling if the test is positive shall include, but not be

limited to:

a. the meaning of the test results;

b. differences between HIV infection and AIDS;

c. the availability of lab tests, including T-

cell tests;

d. a discussion of partner notification;

e. health maintenance;

f. making appropriate referrals;

- g. medical options, including appropriate medical and mental health care;
- h. the availability of AZT and pentamidine;
- i. an assessment of the inmate's potential for suicide or depression, and appropriate referrals;
- j. information about the early detection of symptoms;
- k. discussion of confidentiality and the potential of discrimination;
- l. review of modes of transmission and methods of prevention.

37. The components of post-test counselling if the test is negative shall include, but not be limited to:

- a. the meaning of the test results;
- b. discussion of the "window period" and assessment of need for retesting in three to six months;
- c. reinforcement of information about modes of transmission and the methods and skills to prevent transmission of HIV.

38. The post-testing counselling session shall be routinely initiated and, unless refused, given to each inmate immediately upon notifying the inmate of the test result. A follow-up session shall be offered to each inmate approximately one week after the notification of the test results if the inmate so desires such session and is currently confined in a DOC facility.

39. Consent to an HIV test shall be obtained without undue inducement or any element of compulsion, fraud, deceit, duress or other form of constraint or coercion.

40. Inmates shall be notified of their HIV test results, whether positive or negative, within five working days of receipt of the test results by DOC.

41. For those inmates who have been discharged or released from the custody of the Commissioner of DOC, reasonable efforts shall be made to notify the inmates of their test results.

42. Defendants shall develop and employ in all DOC facilities a standardized HIV test counselling protocol and forms to ensure compliance with the requirements of this Judgment.

V. GENERAL PROVISIONS

43. In the event that a new DOC facility opens, the provisions of this Consent Judgment shall apply to that facility.

44. The parties recognize that knowledge of HIV infection is changing and that the policies and procedures described herein must be flexible to change appropriately in the future to conform with sound professional medical and public health policy and practice, as based on new information and circumstances. Therefore, it is agreed that any provision of this Consent Judgment may be changed or amended either by consent of all parties or by the Court, upon appropriate motion by a party and upon a showing of good cause and a need for change which is consistent with the goals and purposes of this Judgment in light of the changed circumstances.

45. The provisions of this Consent Judgment may be suspended or modified in part or in its entirety if the Commissioner, Warden, or person next in command, determines that a "genuine emergency" exists at a specific DOC facility or any portion thereof. Genuine emergency means any special circumstances, or combination thereof, under which it is reasonable to conclude that there is any actual or presumptive threat to (a) either the security and order of the specific DOC facility or any portion thereof, or to (b) the safety of the staff, inmates, or other person within that facility. If a "genuine emergency" lasts longer than 12 hours or recurs once or more in a one-week period, defendants shall report to plaintiffs' counsel, within forty-eight hours except for good cause, the date of the emergency, the nature of the emergency, and what provisions of the Consent Judgment were suspended and/or modified and how they were suspended and/or modified. Population increases alone and overcrowding shall not constitute a "genuine emergency."

46. The provisions of this Consent Judgment can be temporarily suspended or modified for a specific inmate by defendants when, in the opinion of prison authorities, disciplinary or security reasons require such action. Such suspension or modification may last only so long as the specific disciplinary or security reasons require.

47. Plaintiffs reserve the right to seek their costs and attorneys' fees. Defendants reserve the right to oppose such a request.

WHEREFORE, in consideration of the foregoing provisions the parties respectfully request that the Court approve and adopt the Consent Judgment as being fair, reasonable, and adequate.

THE DEFENDANTS
Larry Meachum, et al

THE PLAINTIFFS
David Doe, et al

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ADOPTED, APPROVED, AND SO ORDERED.

Dated at New Haven, Connecticut this day of May, 1989.

Joan Glazer Margolis
United States Magistrate

APPROVED, AND SO ORDERED.

Dated at Hartford, Connecticut this day of May, 1989.

Peter C. Dorsey
United States District Judge