

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 09-2361

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AUG 17 2009

JOEL SCHNEIDER
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

VINCENT WASHINGTON

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * * *
WEDNESDAY, JUNE 17, 2009
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
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United States District Court House, One Gerry Plaza,
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1 JUDGE BISSELL: The following
2 constitutes the Special Master's determination
3 regarding the complaint of Vincent Washington, docket
4 number 09-2361.

5 This opinion/report is being issued
6 pursuant to the directives of the Order of Reference
7 to a Special Master and the Special Master's
8 Agreement and the guiding principles of law which
9 underlie this decision to be applied to the facts
10 upon which it is based as set forth in the jury
11 instructions in the Walker and Mejias jury charges to
12 the extent applicable to the allegations in
13 Mr. Washington's case.

14 And once again, I have considered the
15 recent Third Circuit opinion in the Mejias case and
16 have determined that that decision has not altered in
17 any way the efficacy and applicability of the Mejias
18 jury charges to the cases before me.

19 As finalized after review under Local
20 Civil Rule 52.1 the transcript of this oral opinion
21 will constitute the written report required by
22 paragraph seven of the Order of Reference to a
23 Special Master.

24 Mr. Washington resided in A Unit which
25 on or about the second of August, 1997 was evacuated

1 with the inmates there taken to the gym for the
2 purpose of the search of the unit.

3 Mr. Washington testifies with regard to
4 two assaultive incidents, one occurring in his cell
5 and the other occurring in the gym. His initial
6 recollection was that these events occurred on two
7 separate days. However, during the course of his
8 cross-examination, while he still had, I think, a
9 belief that that was more likely than not, I did
10 notice from review of the transcript and recall from
11 watching him here that there was some doubt
12 ultimately in his mind as to whether these events
13 happened on different days or on the same day. I
14 find frankly that the evidence as a whole, including
15 the presence of the SOG officers on A Unit with a
16 reason for being there, has demonstrated to me that
17 at worst Mr. Washington was somewhat confused with
18 the passage of time among other things as to whether
19 these incidents first in his cell and then in the gym
20 happened on the same day or not. And I, therefore,
21 draw the inference that they did, indeed, happen on
22 the same day during the course of his extraction from
23 his cell and then later while in the gym during the
24 search of A Unit.

25 He describes the assault and injuries

1 that occurred to him at the time that the SOG
2 officers entered his unit and that description begins
3 at page 14. It's somewhat lengthy, but I think it's
4 once again just as easy to read it as it is to
5 paraphrase it because I have found here that he has
6 testified truthfully and recounted the facts as they
7 occurred.

8 By the way this begins at page 14 line
9 three.

10 He was asked what happened when they
11 came into his cell.

12 And he said: "Yeah, this is going to
13 be a strip search. They asked my cellie to strip and
14 told me to get under the bed.

15 "Question: Did you follow their order?

16 "Answer: Yeah, I was getting under the
17 bed, but I told them I couldn't get under the bed
18 because that's where we had our buckets for washing
19 our clothes. Our clothes, it's not like you got a
20 dresser in there, so that's where we kept our stuff
21 at. So I was telling him I had to move that first
22 before I could get under there, and it must have
23 angered him when I said that.

24 "Question: When you said angered him,
25 what happened?

1 "Answer: They beat me under there. I
2 told them -- They pushed me under there, They got me
3 under there. They beat me until I was under there,
4 until my head hit the back of the wall. They got me
5 under there.

6 "Question: Tell me how you were
7 beaten, Mr. Washington?

8 "Answer: I was hit with sticks,
9 kicked, punched until I got under that bed.

10 "Question: Where on your body were you
11 struck?

12 "Answer: My legs, my legs were stomped
13 on. They broke -- I think they broke my finger,
14 because I never went to the hospital because you
15 couldn't go to the hospital. And basically back of
16 my head from running into the wall.

17 "Question: How many officers did you
18 see?

19 "Answer: I seen three officers. I
20 seen two in there, and I seen one outside the cell."

21 Skipping something that's not
22 particularly pertinent, but moving on down the page,
23 15.

24 "Question: And do you know how long
25 that lasted approximately?

1 "Answer: Couple minutes, maybe
2 seconds. Not long. I mean, maybe 20 seconds,
3 25 seconds, 30 seconds, I guess, you know, not long.
4 It don't take long to beat a guy."

5 He was then asked to discuss his
6 injuries at page 16.

7 He says: "Okay. I was struck in the
8 head, I was punched in the head, I was punched in the
9 stomach, I was hit on the leg with sticks, but I was
10 stomped on my right foot. And somewhere in between
11 that I must have got hit on my hand or they pushed
12 me, I don't know how it happened, they broke my
13 finger."

14 Which he identified as his pinky finger
15 as demonstrated here before me. Mr. Ray continues
16 his questions at the bottom of the page.

17 "Question: Now, describe to us what you
18 felt when you were struck in the head.

19 "Answer: Pain.

20 "Question: What type of pain?

21 "Answer: Serious pain. Pain.

22 "Question: Serious pain?

23 "Answer: I was hurt. I was hurting.

24 What do you want me to say? I was being beat up."

25 Questioning continues.

1 "Question: Let me ask you this,
2 Mr. Washington, as a result of being struck in the
3 head, did you receive any bruising, any lumps?

4 "Answer: Yeah, I had lumps. I had
5 lumps on the back of my head. I had lumps.

6 "Question: Where on the back of your
7 head?

8 "Answer: You know, on the back. They
9 ran my head into the wall under the bed, you know, so
10 it hurt. It's cement, it's cement. The wall is made
11 out of cement, so it swelled up a little bit.

12 "Question: And how long did that last?

13 "Answer: Maybe a couple weeks it go
14 down. It go down.

15 "Question: Where else were you
16 injured, Mr. Washington?

17 "Answer: My feet. My feet was swelled
18 up. Not my feet, my right foot. My left foot wasn't
19 nothing wrong with it. My right foot swelled up and
20 that affected me for a while. I went through
21 something for a while. When I was in the halfway
22 house, I had pus coming out of my right foot, you
23 know, that bothered me for a while off and on. When
24 I was in Riverfront, the doctor down there gave me
25 some -- I guess you call them boots, health boots,

1 because they were wide, triple E, because my feet had
2 swelled up. My foot had swelled up."

3 So that's a description basically of
4 the events that transpired to him there and the
5 injuries that he suffered as a result of being pushed
6 under the bed and acted upon in that way.

7 I'd like to make a comment here, and
8 this is among my findings, of course. I did consider
9 the testimony of Officer Hall who was the Bayside
10 officer on duty in A Unit at the time. I'll have a
11 little more to say about his testimony in a few
12 moments, but I do recall him being asked at one point
13 as to whether this was standard operating procedure
14 for Bayside officers and whether there was any
15 particular reason for putting an inmate under the
16 bed. He testified that there wasn't. And even under
17 some questioning from me, I believe, indicated that
18 he didn't know whether this specifically was a SOG
19 procedure or not.

20 While I realize each case must be
21 decided on its own record, we have had testimony from
22 several plaintiffs in this matter about being
23 directed by SOGs, those who were not being currently
24 processed, to get underneath the bunks and get
25 underneath the beds. Now, surely that is a way of

1 securing the absence of any interference or any
2 actions or any aggression or however one might put it
3 by the person in the cell who was not being
4 processed. And so while it may be that this was not
5 standard operating procedure for Bayside officers
6 under normal circumstances dealing with inmates whom,
7 of course, they would know on their units, I don't
8 think that casts any doubt as such on the fact that
9 it was employed by the SOGs here. And, therefore,
10 this was indeed the technique that they employed here
11 and when faced with, in their assessment I suppose, a
12 failure of complete, immediate compliance without
13 question, they took it out on Mr. Washington as he
14 described. And I so find.

15 He talked then about the extraction to
16 the gym, and beginning at line one on page 21.

17 "Answer: After they strip searched us
18 in the cell, maybe three or four days later" (and
19 I've said my own finding is that it was indeed on the
20 same day) "I guess, I'm not sure, but they came back.
21 And they took everybody out the cell and they marched
22 us to the gym.

23 "Question: Did anything happen to you
24 during the march to the gym?

25 "Answer: Not during the march to the

1 gym, nothing happened, nothing.

2 "Question: You arrived at the gym?

3 "Answer: Yeah. Same, nothing
4 happened.

5 "Question: What happened at the gym?

6 "Answer: They made us sit on the floor
7 in a fetal position with your knees up and head down
8 so you couldn't look up. They had you sitting down
9 like this with your head down like this, couldn't
10 look up because that wasn't, that isn't what they
11 said to do. You had to keep your head down.

12 "Question: Did you do that?

13 "Answer: I did it as long as I could,
14 but then my legs fell asleep.

15 "Question: When you say fell asleep,
16 what do you mean?

17 "Answer: It was numb, pins and
18 needles. I couldn't feel them no more, because we
19 stayed there for a long time. I mean, like an
20 hour-and-a-half, two hours. That's a long time in
21 that position. My legs fell asleep, so I moved my
22 legs to try to get the feeling back, and when I did
23 that, two guards came over, picked me up and took me
24 over to -- they got like a weight cage, it's a metal
25 screen like, and they both had me by the arms, and

1 they was cussing at me, yelling at me, whatever,
2 telling me, you know, like I'm trying to be a tough
3 guy, whatever. Slammed me into the metal cage,
4 right, busted -- that's how my lip got busted, my eye
5 swelled up, and that's when the police behind the
6 cage spit in my face.

7 "Question: Directly in your face?

8 "Answer: They spit in my face. They
9 told me to get on my knees. He spit through that
10 cage, and I got up, and that's when they grabbed me
11 again, but he spit in my face.

12 "Question: Now, you said you suffered
13 an injury on your lip?

14 "Answer: They busted my lip when they
15 slammed me into that cage.

16 "Question: Any other injuries?

17 "Answer: Just my lip and my eye,
18 that's it.

19 "Question: What was the injury on your
20 eye?

21 "Answer: It hit the cage, it swelled
22 up.

23 "Question: And how long -- you say the
24 busted lip, how long did that last? How long was
25 that busted?

1 "Answer: Swollen lip, a couple weeks,
2 I guess. A couple weeks.

3 "Question: How about the eye?

4 "Answer: Same, couple weeks.

5 "Question: At some point you were
6 escorted back to the unit?

7 "Answer: Yeah.

8 "Question: Did anything happen to you
9 during the escort back to the unit?

10 "Answer: I got escorted back to the
11 unit, we locked in. Amazingly I was just in for the
12 duration then. I wasn't coming back out of that cell
13 if I had my way, I wasn't coming back out the cell.
14 When we had showers, they offered showers after maybe
15 30 days. I didn't come out for no shower. My cellie
16 came out, but I didn't come out.

17 "Question: You were afraid to come
18 out?

19 "Answer: Yeah, because he got beat up
20 for going out taking a shower. Just for -- so I
21 wasn't going. I stunk for the rest of the -- you
22 know, I just stayed in there."

23 Further questioning: "Weren't you able
24 to seek any medical treatment during the lockdown?

25 "Answer: No.

1 "Question: How about after the
2 lockdown?

3 "Answer: After the lockdown, no, I
4 left Leesburg. I didn't seek medical attention until
5 I left Leesburg -- Bayside."

6 And then he goes back into the boots
7 situation.

8 I want to continue with some further
9 testimony about the nature of his injuries resulting
10 from the incident in the gym. Page 36.

11 "Question: So after they smashed your
12 face into this cage, you bled, right, your nose, your
13 lip?

14 "Answer: Yeah.

15 "Question: No medical attention,
16 right?

17 "Answer: No.

18 "Question: They just let you bleed?

19 "Answer: Yeah.

20 "Question: Okay. And then they just
21 sent you back to your unit afterwards?

22 "Answer: Yeah.

23 "Question: Bloody?

24 "Answer: Yeah.

25 "Question: And your foot, they had --

1 your foot was hurting, so you had been limping
2 because it hurt so much?

3 "Answer: Yeah."

4 Continuing.

5 "Question: So you go back to your unit,
6 you're limping and your face is bloody and nobody
7 says a word to you?

8 "Answer: My finger is broken. Nobody
9 said nothing."

10 I also considered the testimony of
11 Officer Hall before me here in which he stated that
12 he did not see any of the persons returning to the
13 unit either visibly bleeding or limping or otherwise
14 demonstrating the injuries to which Mr. Washington
15 testified. Once again, I observed Mr. Hall's
16 demeanor. I believe he has testified before me in
17 previous cases as well. I do not think and I do not
18 find that Mr. Hall lied when he testified here, but
19 there was a lot of prisoner movement over large
20 periods of time in and out in this lockdown
21 situation. As I said, a sizeable number returned to
22 the unit on that particular occasion and even though
23 Officer Hall was on station, there are times when
24 people miss things. And my own determination here is
25 that Officer Hall did not see or at least did not

1 appreciate, if you will, the types of injuries
2 inflicted on Mr. Washington and to which he
3 testified. Maybe he didn't want to see it under all
4 of the circumstances. I obviously can't
5 psychoanalyze Officer Hall. And as I said, I don't
6 think he came in here and expressly lied to cover
7 this matter up, but I do not find it conclusive by
8 any means that the fact that he did not see
9 Mr. Washington in this condition means it didn't
10 happen.

11 I have a similar analysis here with
12 regard to the events in the back of the gym. We've
13 also had testimony in several cases here by
14 plaintiffs who have stated that they were taken to
15 the back of the gym surrounded by seven or eight
16 officers and beaten for minutes at a time. Now, both
17 by the evidence in this case and otherwise there
18 certainly were civilians present in the gym and in
19 some cases at the back of the gym, including
20 ombudsmen whose reports here have indicated no
21 visible incidents of this description. But once
22 again in this matter, as described by Mr. Washington,
23 this is a very isolated and quick event in a small
24 time frame. Basically, the SOGs brought him back
25 there, slammed him up against the cage area and sat

1 him down, whereupon some officer inside the cage area
2 spit on him.

3 By the way, other than for the purposes
4 of its weight in establishing liability, I am not
5 ascribing any particular injury either physical or
6 emotional to the act of spitting, but it is, however,
7 consistent with a retributive attitude in this case
8 which I find does indeed assist the plaintiff in
9 sustaining his proofs of the employment of excessive
10 force in that incident.

11 So once again, the fact that an
12 ombudsman's report indicates no conduct of this kind
13 doesn't absolutely preclude the fact that it happened
14 in an instant, perhaps when the ombudsman's attention
15 was not directed in this area of the gym or on the
16 people involved. So I do make the determination
17 that, in fact, Mr. Washington has sustained his case
18 here and has sustained his proof of both the assaults
19 upon him in his cell and in the gym.

20 One further comment with regard to the
21 testimony of Officer Hall and his presence as the
22 supervising officer on the unit. I find it quite
23 clear from the testimony, and with the structure of
24 the cells in A Unit, that an event taking place
25 completely inside the cell with SOG officers kicking,

1 punching and prodding Mr. Washington to get under his
2 bunk, is not in an area which Officer Hall would have
3 observed from his normal duty station.

4 I've also considered, of course,
5 plaintiff's prior statements, D-690 and 691, and the
6 cross-examination that took place on those. Once
7 again, while particular bumps here or bruises there
8 may not be mentioned in those exhibits as well as the
9 trial testimony, I did not find that anything in
10 those prior statements was so inconsistent with his
11 testimony at trial as to cast doubt upon it.

12 The assaults inflicted upon
13 Mr. Washington, as I've determined them here, go well
14 beyond the necessity of any proper law enforcement
15 needs or any proper exercise of discipline or other
16 legitimate penalogical purpose as well defined in the
17 jury instructions which are incorporated here. There
18 was no necessity to cram Mr. Washington under his
19 bunk, no reason for the officers not to act
20 reasonably to his protestations that there was
21 material underneath his bunk that precluded him from
22 going in there and no reason for the officers not to
23 take a slightly altered course, either to allow him
24 to clear the stuff out from under the bunk or to
25 place himself on his bunk head down, face down, hands

1 behind his back, facing the wall as was done in a
2 number of instances here. So there were very
3 legitimate options available to the officers there as
4 alternatives to the course of action chosen. And
5 indeed, of course, the force employed and the
6 resulting injuries are very much the demonstration of
7 the exercise of excessive force. There was indeed
8 excessive, unnecessary and sadistic force imposed
9 upon Mr. Washington within the contemplation of those
10 legal principles.

11 Similarly, in the gym, it is not the
12 least bit unreasonable to anybody with a minimum
13 understanding of physiology that this man's legs fell
14 asleep after an hour-and-a-half or two being seated
15 in one position. Now, I'm not at all impugning the
16 reasons to put the prisoners in one, uniform
17 position, all of them being treated equally and in
18 positions that would neutralize as much as possible
19 the opportunity for any acts of aggression or other
20 disturbances. But if there is a request after a
21 lengthy period of time or even a manifestation of a
22 need to shift position in some way for reasons such
23 as this, there certainly is absolutely no need to
24 address that situation by grabbing this man, hauling
25 him to the back of the gym as if he were a severe

1 disciplinary problem and then, of course, slamming
2 him face first into a grid with the injuries that
3 resulted and which could very foreseeably have
4 resulted from that type of conduct.

5 Once again, there was no legitimate
6 penalogical purpose, no reason for the exercise of
7 really any discipline let alone excessive discipline
8 such as this by the SOG officers in the gym in
9 response to this very natural physical phenomenon
10 that occurred to Mr. Washington. In this instance
11 also there was indeed excessive, unnecessary and
12 sadistic force imposed upon him within the
13 contemplation of those legal principles.

14 However, in light of the fact that
15 these incidents were not prolonged or repeated, while
16 indeed they are actionable for the recovery of
17 compensatory damages, I do not find that in either
18 case or even considered collectively that they have
19 risen to the level of being so egregious as to
20 support a claim for punitive damages, at least
21 against the unidentified officers who were with
22 plaintiff and inflicted the injuries.

23 I realize, of course, the fact that the
24 officers were unidentified here, but there will come
25 a time when the issue arises as to whether there is

1 any significance to the conduct of the perpetrators
2 regarding the plaintiff's efforts to establish
3 supervisory liability. And whether either
4 compensatory or potentially punitive damages can be
5 applied under those circumstances remains an open
6 issue. I do not however, as I said, impose those
7 punitive damages on the actual perpetrators for
8 reasons that I've just expressed.

9 Finally, although not every item of
10 evidence has been discussed in this opinion/report,
11 all evidence presented to the Special Master was
12 reviewed and considered.

13 I find that the injuries inflicted here
14 were actionable. I find that they were acute
15 initially and to some extent remain permanent, namely
16 the broken and disfigured finger. Although that
17 doesn't significantly inhibit Mr. Washington's
18 activities, it nevertheless is a permanent injury.
19 The other inflictions upon him were painful at the
20 time and did not go away immediately.

21 Accordingly, I recommend in this report
22 that the district court enter an award of
23 compensatory damages in the amount of \$5,500 in
24 Mr. Washington's favor.

25

C E R T I F I C A T E

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2
3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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19 *Theresa O. Mastroianni*

20 Theresa O. Mastroianni, C.S.R.
21 Notary Public, State of New Jersey
22 My Commission Expires May 5, 2010
23 Certificate No. XI0857
24 Date: June 17, 2009
25

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