

Disposition of the Independent Review Panel



Complainant: Luis Penelas

IRP Case: A2000.137

Date: March 24, 2005

MDCR Case: 161-IA-00

The Independent Review Panel met on March 24, 2005 for the purpose of publicly reviewing the complaint made by Luis Penelas against the Miami-Dade Corrections & Rehabilitation Department (MDCR) and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

1. That MDCR create its own officer photo lineup books and update them with current photographs every two years.
2. That MDCR make photo lineups available to complainants within 15 days of the date the complaint was filed.
3. That MDCR ensure that officers wear name tags at all times.

B. Incident

The complainant was arrested at a pro Elian Gonzalez demonstration on April 22, 2000. He stated that while he was in a holding cell at the main jail, he witnessed a male correctional officer strike an inmate several times, causing injuries to the inmate's face and resulting in the loss of some of the inmate's teeth/dental appliance. The complainant further alleges that a female correctional officer witnessed the beginning of the attack and did nothing to stop the violence.

C. Allegations

1. An unknown male correctional officer used excessive force by striking Adrian Agustino (AKA Agostinho) several times, causing injuries to the inmate's face.
2. An unknown female officer witnessed the start of the beating and did nothing to stop the violence.

D. Disposition of the Independent Review Panel

The committee found Luis Penelas to be a credible witness. Mr. Penelas has been consistent in his account of the incident over a period of five years. However, the committee did not find evidence, other than the statement of Luis Penelas, to sustain the allegation that a male

correctional officer struck an inmate in the face, causing him to lose teeth, while the complainant was incarcerated in a holding cell at the Pre-Detention Center on April 22, 2000.

The Internal Affairs file indicates that some inmates who called IA “alleged and described an incident,” but none saw the alleged incident that took place in the jail “as depicted by Mr. Luis Penelas.” However, the Internal Affairs file does not identify the inmates “who alleged and described an incident,” nor does the file contain information on the incident described.

The Internal Affairs file also indicates that, the alleged victim, Adrian Agustino, denied being involved in the incident.

E. Other Findings

1. Sergeant Regina Smith’s thorough attempts to locate the victim and inmate witnesses led her to identify the person described by Mr. Penelas and potential witnesses.
2. Internal Affairs was not able to interview officers on duty at the time of the alleged incident due to bargaining agreements and state statutes.
3. The medical screening intake report for Inmate Agustinho is dated April 23, 2000, 12:01 AM, one hour after the beginning of the shift (11 PM) on which the alleged incident occurred. Medical screening documented no injuries.
4. The photographs Mr. Penelas viewed in the photo lineup were faxed from MDPD and not viewed by him until nine months after the incident.
5. Sergeant Regina Smith’s statement that she “could not see the area Mr. Penelas indicated on his diagram from cell #3;” and she “was standing approximately seven inches away from cell #3 before [she] could be seen by the trusty [inside cell #3]” conflicts with the statements of IRP staff Carol Boersma and Linda Pierre, who stated they could see clearly the place where Penelas indicated on his diagram that the beating began.

The Independent Review Panel concluded the complaint on March 24, 2005.

Independent Review Panel

Committee Recommendation to the Panel

March 24, 2005

Complaint: A 2000.137

MDCR Case: 161-IA-00

Complainant: Luis Penelas

Accused Party: Miami-Dade Corrections & Rehabilitation Department (MDCR)

Date Complaint Received: May 1, 2000

Materials Reviewed: Correspondence, IA Case 161-IA-00, staff notes, committee notes, Scene drawings (Attachments A and B)

Committee: Min. Dr. Freeman Wyche, Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Constructive Conflict Counselor; Tim Brattain, Community Relations Specialist

Meeting Date: January 22, 2003

Present: From MDCR Professional Compliance Bureau: Captain Edwin Clemente and Sergeant Regina Smith. Complainant Luis Penelas.

Complaint: The complainant was arrested at a pro Elian Gonzalez demonstration on April 22, 2000. He stated that while he was in a holding cell at the main jail, he witnessed a male correctional officer strike an inmate several times, causing injuries to the inmate's face and resulting in the loss of some of the inmate's teeth/dental appliance. The complainant further alleges that a female correctional officer witnessed the beginning of the attack and did nothing to stop the violence.

Luis Penelas wrote a letter of complaint, dated April 24, 2000, to Miami-Dade County Mayor Alex Penelas and copied the MDCR Director at that time, Lois Spears. Luis Penelas and Alex Penelas are brothers.

Department Response – Memorandum to File Case 161-IA-00:

Statement of Luis Penelas

Luis Penelas' statement was taken in the presence of Sergeant Regina Smith and Investigator Robert Kunzel.

Mr. Penelas stated that the incident began in the “processing room” of the Pre-Trial Detention Center during the 11 PM shift. He was in the rear lobby middle holding cell #3 when he saw a Black male correctional officer approach an inmate who was on the phone. The officer told the inmate he was talking too long and hung up the receiver. As the inmate was being escorted around the corner into the hallway, the inmate complained that he had not been able to contact anyone. At this point the officer hit the inmate, causing his gold teeth to fly out of his mouth and the inmate began to bleed. Mr. Penelas stated that one row, “about four or five teeth,” flew into his cell.

Mr. Penelas described the beating as follows:

It began with blows to the face and head. And then somehow they ended up on the floor. Not they, the person that was beat up ended up on the floor and the officer continued beating him up on the floor, standing over him....

...I was in the middle cell and this occurred to my left. And in order for me to see everything, I kind of had to put my nose through the bars.

Q: So your view was somewhat obstructed....

No, it wasn't obstructed as much as it was so violent and so quick. Blood was spattering and teeth were coming out. I can't tell you whether [the officer] kicked him or not. I just know it was a barrage with his hand...

Q: How long would you say the incident took place...

...I was very nervous and I was very upset and I would say at least a minute or two... But it's hard to tell because it was very violent and it was very quick, quick in the way [the officer] just tore into him...

Mr. Penelas stated that a tall, Black female officer, who was standing at the end of the processing table “knew what was going on and didn't react.” Mr. Penelas said the female officer may not have seen the entire beating, but she may have seen the hanging up of the phone and the first blow, because:

The first blow made quite a noise... Certainly what occurred afterwards was loud enough that she certainly knew something was going on..

The officer who beat the inmate escorted him away. Later another officer returned the inmate, who had been cleaned up, to the holding cell area. While the inmate was retrieving his teeth, Mr. Penelas asked his name and the inmate responded “Agustiano.” Mr. Penelas stated the inmate had many tattoos; the most distinguished one was a machine gun along the top part of his back. Mr. Penelas described the involved officer as a Black male in his late twenties or early thirties with a short military haircut who came on duty at 11 PM. The officer was not wearing a name tag.

When asked why he filed a complaint on behalf of the inmate, Mr. Penelas responded:

I've not been in the system before, but the way this beating occurred, there was no need for it. The young man was not resisting. He was just disappointed that he couldn't get through to anybody and he used the "F" word. But it wasn't in any way aggressive...

Photo Lineup

On January 30, 2001, Luis Penelas viewed a photographic lineup of officers assigned to the Pre-Trial Detention Center on April 22, 2000, as well as a photo lineup of inmates incarcerated on that date that met the description he provided. Mr. Penelas was not able to identify anyone in the photographic lineups.

Statement of Adrian Agustino (AKA Agostinho)

On May 12, 2000, Sergeant R. Smith attached an Internal Affairs business card and message on the property receipt of Inmate Adrian Agostinho. Another card was placed into the personal property of Mr. Agostinho.

On May 23, 2000, an unknown male identifying himself as Adrian Agustino telephoned the Internal Affairs Bureau. The caller verified that he was incarcerated at the Pre-Trial Detention Center on April 22, 2000.

Mr. Agustino denied being involved in an incident on that date. He agreed to come into the Internal Affairs Office to sign a complaint withdrawal form. Mr. Agustino reiterated that he did not wish to file a complaint. Mr. Agustino did not appear at the Internal Affairs office as promised.

Case Closing

Sergeant Regina Smith closed the case without prejudice as a Memo to File because:

1. Luis Penelas stated in his April 24, 2000, letter to Mayor Penelas that the incident happened in front of him. In Mr. Penelas' May 8, 2000, interview he said that he had to put his nose through the bars to witness the incident because the incident moved into the hallway away from the cell in which he was placed.

Investigator's Note: On May 11, 2000, Sergeant Regina Smith went to the Pre-Trial Detention Center holding cell and stood in cell #3, as Mr. Penelas stated he did. Sergeant Smith stated she was not able to see the area Mr. Penelas described and indicated on the diagram in official record #4¹, from cell #3. Sergeant Smith then placed a trusty in cell

¹ Official Record #4 is Mr. Penelas' drawing of the area where the incident occurred. (See attachments A & B)

- #3. Sergeant Smith stated she was “standing approximately seven inches away from the cell #3 before [she] could be seen by the trusty.”
2. The telephones cannot be seen from holding cell #3, as depicted in official record #4. Mr. Penelas could not have seen the telephones from cell #3.
 3. An inquiry of the CJIS - Criminal Justice Inquiry System indicated that there was an Adrian Agostinho incarnated on April 22, 2000, aka Adrian Agustino. The alleged victim, Mr. Adrian Agustino, was contacted via the property room.
 4. The medical screening intake report, dated April 22, 2000 [at 21:41], for Inmate Agostinho, Jail #00-33224, aka Adrian Agustino, does not indicate any observations or reports of bruising, trauma, bleeding or pain.
 5. On May 16, 2000, nineteen certified letters were mailed to persons that were booked before and after Adrian Agustino, as well as to Mr. Agustino. The Internal Affairs file documents ten signed receipts; eight letters returned and one is unaccounted for. Of the phone calls received in response to the letters, no one saw the alleged incident that took place in the jail as depicted by Mr. Luis Penelas. Of those who alleged and described an incident, no one came into the Internal Affairs Office to give a statement or view a photographic lineup.
 6. On May 23, 2000, a person identifying himself as Adrian Agustino denied being involved in an incident. Additionally, he did not ask anyone to file a complaint on his behalf, nor did he request to file a complaint. Mr. Agustino failed to respond to the Internal Affairs Office to file a complaint or sign a complaint withdrawal.
 7. On January 30, 2001, Mr. Luis Penelas reviewed photographic lineups. Mr. Penelas was not able to identify the alleged victim nor was he able to identify the officer that allegedly hit the victim.

Committee Remarks: Mr. Penelas expressed his primary concerns with the Internal Affairs (IA) investigation:

1. The IA report generated concerning this incident portrays him as a “liar” by implying that he could not have seen what he saw due to his location in the holding cell. The complainant reiterated that he witnessed the incident.
2. The statement that he could not identify the victim or the involved officer in the photo lineup did not consider that he was shown the pictures nine months after the incident, the photos he viewed were not consistent and some were not clear. Some were very dark and looked as if they had been faxed.

Penelas’ Sight from Holding Cell #3: Mr. Penelas indicated that he witnessed the victim with a receiver in his hand talking on the phone, after which the attack began. Mr. Penelas indicated

that he was able to turn his head and observe the altercation as the victim was allegedly beaten at a location further down the hallway. According to Sergeant Smith, who placed herself at the scene and attempted to view the location from the angle Mr. Penelas described, Mr. Penelas would have been unable to see the events as reported.

Witness Bernardo Perez: Dr. Diaz asked Sergeant Smith if witness Bernardo Perez, who was in the cell next to Mr. Penelas, was contacted at any point during her investigation. Sergeant Smith produced a May 16th letter from Captain Joyce Chester to Mr. Perez, requesting an interview.

Photo Lineup: Mr. Penelas questioned the length of time it took to receive the faxed photographs of officers and inmate witnesses, as well as the quality of the faxed copies received. Sergeant Smith stated that the copies she receives for use in photo lineups are from the Miami-Dade County Police Department and are not originals.

Staff Remarks: Following the Committee Meeting, Ms. Boersma called the two telephone numbers Mr. Penelas provided for Bernardo Perez. The pager number, (305) 713-8516, was not in service. The answering machine of the other number, (305) 225-4426, identified it as the home of Abraham Irrete. Ms. Boersma left message for Bernardo Perez, but received no response.

IRP staff Carol Boersma and Linda Pierre visited the Pre-Trial Detention Center on February 18, 2005, guided by Lt. Johnson and Lt. Pamela Drane, Executive Officer. Both Ms. Boersma and Ms. Pierre stood inside cell #3. They could not see the phones on the other side of the wall, but they could see a person who was standing to the side of the phone with the receiver in his hand. Both could see clearly the place where Penelas indicated on his diagram that the beating began, and up to 12 feet (estimated by Lt. Johnson) down the hall along the wall behind the phones, with the area of vision being reduced as the distance increased.

Committee Findings:

A. Regarding the allegation

The committee found Luis Penelas to be a credible witness. Mr. Penelas has been consistent in his account of the incident over a period of five years. However, the committee did not find evidence, other than the statement of Luis Penelas, to sustain the allegation that a male correctional officer struck an inmate in the face, causing him to lose teeth, while the complainant was incarcerated in a holding cell at the Pre-Detention Center on April 22, 2000.

The Internal Affairs file indicates that some inmates who called IA “alleged and described an incident,” but none saw the alleged incident that took place in the jail “as depicted by Mr. Luis Penelas.”

The Internal Affairs file also indicates that, the alleged victim, Adrian Agustino, denied being involved an incident.

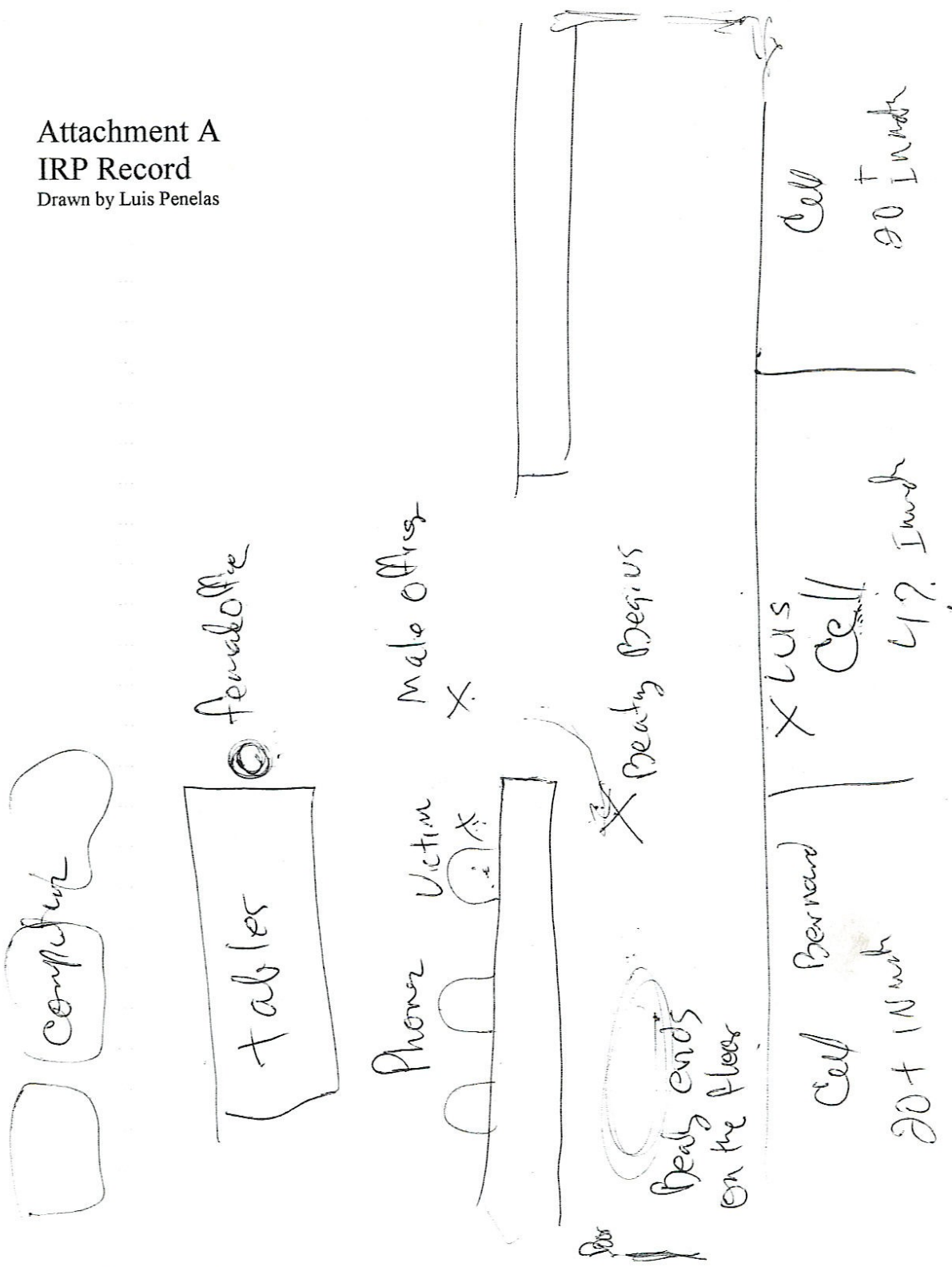
B. Other Findings:

1. Sergeant Regina Smith's thorough attempts to locate the victim and inmate witnesses led her to identify the person described by Mr. Penelas and potential witnesses.
2. The Internal Affairs file does not identify the inmates "who alleged and described an incident," nor does the file contain information on the incident described.
3. No statements were taken from officers who were on duty at the time of the alleged incident.
4. The medical screening intake report for Inmate Agostinho is dated April 22, 2000, 21:41 hours. The alleged incident occurred after the shift that began at 23:00.
5. The photographs Mr. Penelas viewed in the photo lineup were faxed from MDPD and shown to him nine months after the incident.
6. Sergeant Regina Smith's statement that she "could not see the area Mr. Penelas indicated on his diagram from cell #3;" and she "was standing approximately seven inches away from cell #3 before [she] could be seen by the trusty [inside cell #3]" conflicts with the statements of IRP staff Carol Boersma and Linda Pierre, who stated they could see clearly the place where Penelas indicated on his diagram that the beating began.

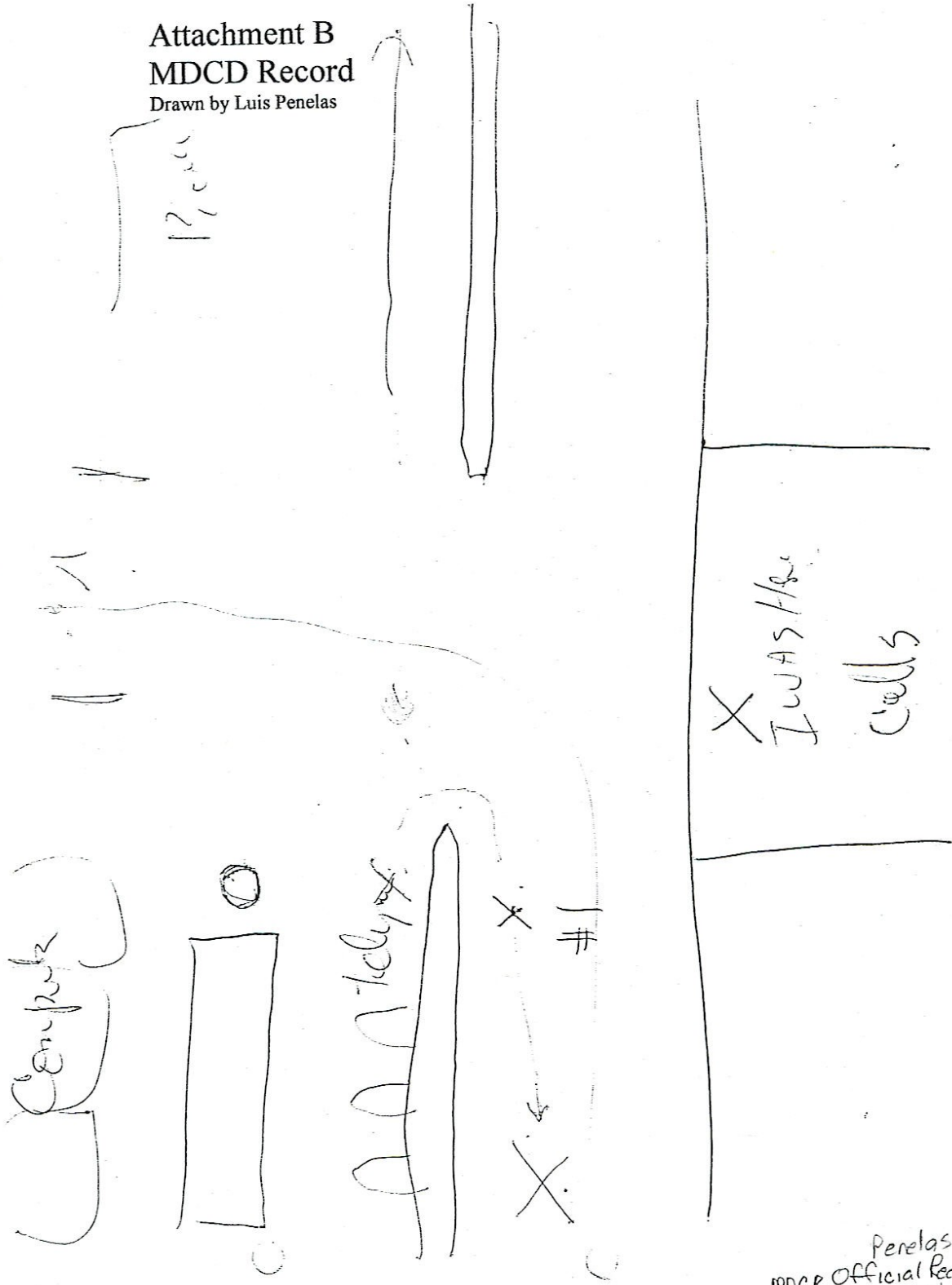
Recommendations:

1. That MDCR, in cases where the complainant gives a detailed, specific description of physical abuse, conduct a complete investigation, including taking statements from employees who were working in the area at the time of the incident, and render a disposition, rather than conclude the complaint with a Memo to File written by the complaint investigator.
2. That MDCR Internal Affairs have its own officer photo lineup books so that a complainant can see actual pictures of officers.
3. That MDCR show photo lineups within 30 days of the date of the complaint.
4. That the Panel adopt the committee findings and recommendations.
5. That the Panel conclude the complaint.

Attachment A
IRP Record
Drawn by Luis Penelas



Attachment B
MDCD Record
Drawn by Luis Penelas



Penelas
MDCR Official Record
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