

1 RICHARD P. HERMAN, SBN 53743
LAW OFFICE OF RICHARD P. HERMAN
2 3723 BIRCH STREET SUITE 3
NEWPORT BEACH, CA 92660
3 TELEPHONE: 714-547-8512
FACSIMILE: 949-861-8331
4 EMAIL: rherman@richardphermanlaw.com

5 DAN STORMER, SBN 101967
VIRGINIA KEENEY, SBN 139568
6 HANDSELL STORMER KEENEY
RICHARDSON & RENICK LLP
7 128 N. Fair Oaks Avenue, #204
Pasadena, CA 91103
8 TELEPHONE: 626- 585-9600
FACSIMILE: 626-577-7079

9 BARRETT S. LITT, ESQ: SBN: 65717
10 LITT, ESTUAR, HARRISON & KITSON LLP
1055 WILSHIRE BLVD STE 1880
11 Los Angeles, CA 90017
Phone: (213) 386-3114
12 Fax: (213) 380-4585

13 Attorneys for the Plaintiffs

14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 FRED PIERCE, et al

19 Plaintiffs,

20 vs.

21 COUNTY OF ORANGE, et al,

22 Defendants

23
24 JERRY E. STEWART, et al.

25 Plaintiffs,

26 BRAD GATES, et al.
27
28

} Case No.SA01-981 ABC (MLGx)
Case No: CV75-03075 ABC (MLGx)

} PLAINTIFFS MEMORANDUM RE:
ORANGE COUNTY JAILS
CULTURE

1 The culture in the Orange County Jails which informs the behavior of the jail
2 staff and the administration goes back more than 50 years. Since Stewart v. Gates
3 in 1978 there has been resentment of the Federal Courts “interference” with
4 treatment of prisoners. When it comes to the constitutional rights of prisoners the
5 defendants do not “get it”. As a result all sorts of “clever” passive aggressive
6 means to circumvent the intent of Pierce and Stewart are invented.
7

8
9 “The County claims that Plaintiffs did not achieve a significant benefit
10 because they obtained enforcement of only two Stewart injunctions to maintain
11 the status quo, and “ultimately served to deprive similarly situated inmates of
12 injunctive relief that was in place before the litigation commenced.” (County Opp.
13 9.) That position fundamentally misunderstands the proceedings. The County bore
14 the burden under the PLRA in this case to prove that the Stewart injunctions were
15 no longer necessary. See Pierce, 526 F.3d at 1206. The County did so as to twelve
16 of them by demonstrating compliance. See, e.g., Pierce, 526 F.3d at 1206-07
17 (noting that “the County presented evidence tending to show its compliance” with
18 the nine uncontested Stewart injunctions). That means that conditions had
19 improved such that the injunctions were unnecessary, not that inmates were
20 deprived of their benefit.” Order Re: Legal Issues Document Number 684, Filed
21 November 24, 2009 at 12:13 through 13:4.
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1 Unfortunately as the attached “two hour dayroom” correspondence shows
2 the Defendants still do not “get it”. Two hours minimum of dayroom, like three
3 hours a week of recreation are minimums not privileges for Ad Seg or ADA
4 prisoners only (!).

6 More than 20 years ago the AD Seg- special handling distinction was
7 suggested to Judge Rymer as permitting one hour dayroom and no outdoor
8 recreation instead of “Ad Seg privileges”. Judge Rymer said “if it looks like a
9 duck...” and this was corrected.
10

12 Unfortunately serious monitoring including compliance with all of the
13 Stewart orders (as a measure of Defendants understanding of the intent of this
14 Court’s Orders) is needed.
15

16 The present monitors could include this. In fact the penology of operating
17 the County Jail is not rocket science. There are County Jails in California that
18 abide by Constitutional Norms and respect for human decency.
19


20 Respecting the minimum and minimal access to dayroom or outdoor
21 recreation have become more important with realignment. While once only a small
22 percentage of prisoners were held over 30 days, now many prisoners are serving
23 actual time in the Orange County Jails of 9 months to 2 years.
24

26 I attempted to bring a class action (Bowker) including these issues. Mr.
27 Bowker was held for 71 days in a disciplinary isolation cell without adequate
28

1 access to religious services, dayroom, outdoor exercise, or telephones. It was my
2 hope that it would go to Judge Carter but this Court low numbered it and
3 eventually dismissed for technical reasons. Perhaps we could go back to Judge
4 Carter for the Stewart v. Gates issues with which he is familiar because of his
5 daily contacts with the jail when he was the Presiding Criminal Judge of the
6 Orange County Courts. The combination of Judge Carter's expertise and the
7 monitors efforts seem the best hope for winning the "hearts and minds" of
8 Defendants.
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14 DATED: February 8, 2012

Respectfully Submitted,


15 RICHARD P. HERMAN
16 Attorney for Plaintiffs
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LAWRENCE BEACH | ATTORNEYS AT LAW
| ALLEN & CHOI • PC

www.lawrencebeach.com

1600 North Broadway, Suite 1010
Santa Ana, California 92706
T 714-479-0180
F 714-479-0181

Los Angeles County
100 West Broadway, Suite 1200
Glendale, California 91210
T 818-545-1925
F 818-545-1937

January 26, 2012

Richard P. Herman, Esq.
LAW OFFICE OF RICHARD P. HERMAN
A Professional Corporation
3723 Birch Street, Suite 3
Newport Beach, CA 92660

Re: Fred Pierce v. County of Orange, et al.
Case Number: SACV 01-0981 ABC (MLGx)

Dear Mr. Herman:

I have reviewed your January 19, 2012 correspondence referring to "*Stewart v. Gates* Violations" and find it curious in several respects. Accordingly, I take this opportunity to respond to your assertions and direct your attention to the Orange County Jail's Inmate Grievance Procedure available to Ms. Bilotti.

First, the Sheriff's Department takes inmate grievances seriously and maintains a structured Inmate Grievance Procedure to ensure that every inmate grievance is investigated and responded to. As part of that grievance procedure, inmates are afforded the right to appeal up the chain of command if they believe that their grievances have not been satisfactorily resolved at the lower levels. The grievance procedure is the most efficient and effective way to address this type of complaint. Ms. Bilotti's initial grievance was investigated and a response was provided directly to her. Nevertheless, if Ms. Bilotti is not satisfied with the Sergeant's response, please encourage her to pursue the appeal that is available to her.

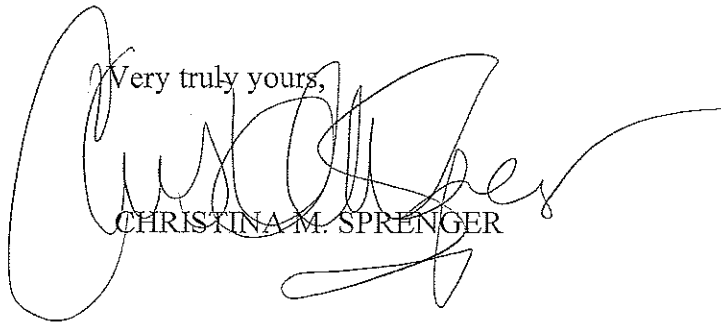
With regard to your reference to *Stewart v. Gates*, I respectfully refer you to the Ninth Circuit's May 15, 2008 Amended Opinion in the *Pierce* litigation which is familiar to you. Please note that the Ninth Circuit affirmed the District Court's Judgment in favor of the County regarding all aspects of the *Stewart* injunction with the exception of two Orders relating to inmates in Administrative Segregation only. You identify Ms. Bilotti as a "special handling"

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ALLEN & CHOI • PC

Re: Pierce v. County of Orange, et al.
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inmate, and Ms. Bilotti is not a *Pierce* class member. As a result, no Orders relating to either the *Stewart* or *Pierce* litigation are invoked by her grievance.

Very truly yours,



CHRISTINA M. SPRENGER

CMS/dta

Law Offices of
RICHARD P. HERMAN

3723 Birch Street, Suite 3
Newport Beach, CA 92660

Email: rherman@richardpbermanlaw.com
Website: www.richardpbermanlaw.com

Toll Free: 866-384-2255
Direct: 714-547-8512
Facsimile: 949-861-8331

January 19, 2012

Via Fax

Wendy J. Phillips
Senior Deputy County Counsel
Office of the County Counsel
333 W. Santa Ana Blvd Ste 407
Santa Ana, CA 92702
Fax No: 714-834-2359

Christina M. Sprenger
Lawrence Beach Allen & Choi PC
1600 N. Broadway Ste 1010
Santa Ana, CA 92706
Fax No: 714-479-0181

Re: Stewart v. Gates Violations

Dear Counsel:

I enclose a grievance where Marissa Bilotti, a "special handling" (blue band) prisoner in the Orange County jail is complaining that she is getting less than one hour of dayroom, only 45 minutes.

The grievance was denied based on the jailor's statement that she is getting one hour of dayroom.

The order in Stewart v. Gates, both originally and now as applied to all special handling prisoners, is that there is to be a minimum of two hours of dayroom for prisoners in special handling. Please be kind enough to advise the Sheriff of this violation and see that it is corrected as to all special handling prisoners by January 25, 2012 and please provide me with copies of the directives correcting this failure to abide by the Court's order.

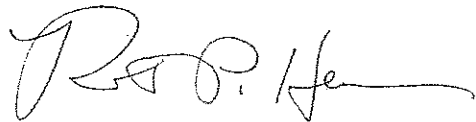
It has always seemed to me that since most prisoners in the Orange County jails are housed with compatible prisoners that they should have open dayroom access everyday from wake up until lights out. Please be kind enough to see if this can be done. This is particularly important since the jail is now housing longer term prisoners, those who would otherwise be in state prison, and the reallocation of prisoners to County jails means that the jails now have a population which is used to long periods out of their cells as with most minimum level state prisoners.

January 19, 2012
Ms. Phillips
Ms. Sprenger
Page 2

I realize that "realignment" of California prisoners into the County jails creates the potential of overcrowding. Also because these are longer term prisoners and in general more serious prisoners than would generally be housed in the County jails there may be problems in finding appropriate housing for these additional prisoners. Plaintiffs are amendable to working out a population cap, not to exceed one prisoner per every bed, and potentially allowing the reopening of the tents at the honor farm (which the prisoners actually liked) if the sheriff feels that this is necessary in order to safely operate the jails and provide necessary services and be in compliance with the Court's orders.

Please be kind enough to advise me on these matters at your earliest convenience.

Yours,



RICHARD P. HERMAN

RPH:yc

Enc:

SHERIFF DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

- Intake/Release Center
- Central Men's Jail
- Central Women's Jail
- James A. Musick
- Theo Lacy Facility

ANDRA HUTCHENS, SHERIFF-CORONER

INMATE GRIEVANCE FORM

INMATE GRIEVANCE

Inmate's Name Marissa Bilotti Booking Number 2601580
 Housing Location N28.3 Date of Complaint 1/9/2012
 Date of Incident 1/9/2012 Time of Incident 7pm Location of Incident NMod

EXPLAIN YOUR COMPLAINT (include dates, times and names of those involved)

I am making a written complaint regarding my dayroom times. Lately I have been getting less than my "minimal one hour". I sit in this cell for 23 hours a day at least and I don't see what's so hard about giving me a complete 60min out of my cell for dayroom.
 Tonight I was let out at 6:15pm. At 7:00pm I was told I have one minute left. Then at 7:05 my phone call was disconnected. It is my right to have at LEAST one hour of dayroom. I am not a dog in the dog pound. I have rights and not only is it disrespectful to my family to hang up the phones without letting me say Goodbye, but it's unprofessional. These deputies work with their phones glued to their hands at all hours then they CUT MY phone time short? That's not right. It's their job to give me an hour. If they are so distracted by their own cellphones then someone needs to intervene.

Check Here For Additional Pages / Include Number Of Attached Pages _____

STAFF RESPONSE / ACTION TAKEN

YOU ARE GETTING YOUR ONE HOUR OF DAYROOM AND ACCORDING TO YOUR OWN WORDS YOU WERE GIVEN A ONE-MINUTE WARNING TO SAY GOODBYE, YOU WERE GIVEN AN EXTRA 4 MINUTES.

STAFF FINDING / OUTCOME

Inmate Signature Marissa Bilotti Date 1/9/2012 Time 7:30pm
 Received By Sgt. J.D. Hosickis Date 1-10-12 Time 0230
Deputy's Name & Badge # (Please Print)
 Assigned to MOD - N STAFF Date 1-10-12
 Response Returned To Inmate By _____ Date _____