



JC-DC-001-058

FILED

APR 20 1993

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

LEONARD CAMPBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	Civil Action No. 1462-71
)	(WBB)
v.)	
)	
ANDERSON McGRUDER, <u>et al.</u> ,)	
)	
Defendants.)	
<hr/>		
INMATES OF D.C. JAIL, <u>et al.</u> ,)	
)	
Plaintiffs,)	Civil Action No. 75-1668
)	(WBB)
v.)	
)	
DELBERT C. JACKSON, <u>et al.</u> ,)	
)	
Defendants.)	
<hr/>		

ORDER APPOINTING SPECIAL OFFICER

Hearings were held in these consolidated cases on April 6, April 8, and April 13, 1993 in response to plaintiffs' Motion for an Order to Show Cause Why Defendants Should not be Held in Contempt of Court. Based on the documents and deposition testimony received into evidence, the admissions contained in defendants' Memorandum in Opposition to Plaintiffs' Motion and in the Declarations of William Hall, M.D., Robert Morin, Psy.D. and Carolyn Groom, the arguments of counsel and the record as a whole, this Court finds that the plaintiffs have established by clear and

convincing evidence that the defendants were, until recently, in substantial non-compliance with the June 9, 1980 and August 22, 1985 Orders and that the defendants failed to comply with portions of the March 5, 1993 Order.

The Court finds that, among other things, the defendants have:

- (1) failed to employ a full-time clinical psychologist on the mental health units at the Jail from January 1991 through April 5, 1993, although required to do so under the 1985 Order;
- (2) failed to implement procedures to ensure that only correctional officers with specialized training in psychiatric care procedures worked on the mental health units, in contravention of the 1980 Order;
- (3) dramatically reduced by one-third the hours of the mental health program on the mental health units in August 1990, in contravention of the 1985 Order;
- (4) employed less than the fifteen required forensic psychiatric technicians (also known as mental health technicians) on the mental health units on several occasions over the last two years, including the period from July 11, 1992 through April 15, 1993, in contravention of the 1985 Order;
- (5) employed only two psychiatric nurses on the mental health units at the Jail, rather than the three required, for a period of almost five months in 1992, in contravention of the 1985 Order;
- (6) failed to provide sick call services to each housing unit each weekday from mid-December 1992 to mid-March 1993, in contravention of the 1985 Order;

- (7) failed for a significant period of time to provide a full-time, on-site health administrator at the Jail, even though required to do so under the 1985 Order;
- (8) failed to establish and implement a formal, functioning quality assurance program, in contravention of the 1985 Order; and
- (9) discontinued chronic disease clinics until ordered by the Court to reinstate such clinics, even though the clinics were required to be maintained under the 1985 Order.

There appear to be serious deficiencies in medical and mental health care at the Jail associated with these violations. Indeed, thirteen years after defendants offered their initial plan for improving mental health services at the Jail, inmates on the mental health units appear to receive very little, if any, treatment for their illness beyond the prescription of psychiatric medication. See Declaration of Robert Morin, Psy.D. dated April 7, 1993.

Significantly, the Court finds that defendants concealed the above-referenced violations of the 1985 Order from the Court by not reporting them within 48 hours of their occurrence, as expressly required, and by not reporting them in the bi-weekly reports to the Court which defendants continued to file. The reporting requirement was developed precisely to inform plaintiffs and the Court of instances of non-compliance. The failure to report in the required manner has unnecessarily prolonged the discovery and proceedings in this case, and has hampered

plaintiffs' ability to seek to enforce the orders of this Court, to the detriment of the plaintiff class.

The Court also finds that the defendants initially failed to provide the certification expressly required by this Court's March 5, 1993 Order regarding the length and extent of any non-compliance with the 1980 Order, the 1985 Mental Health Plan and the recommendations of the medical experts. This failure to file the required certification demonstrates, once again, how difficult it is for even this Court to obtain from the defendants reliable information necessary to monitor compliance with its orders. In this regard, the Court also finds that the defendants failed to produce in a timely manner numerous documents requested in discovery which evidenced significant problems in the delivery of medical and mental health care at the Jail. This was so even though many of these documents were clearly responsive to plaintiffs' document requests and were ordered to be produced pursuant to this Court's August 7, 1992 discovery Order.

This is not the first time that this Court has found that the defendants have failed to comply with its orders. See e.g., Campbell v. McGruder, 416 F. Supp. 106, 108-09 (D.D.C. 1975); Memorandum Opinion (September 30, 1983)(finding defendants in contempt of Court). In light of the defendants' history of non-compliance, and given the complicated and factually intensive nature of the matters at issue, this Court determines that a

Special Officer is necessary to assist the Court in effecting future compliance with its orders. This step is not taken lightly, and is based on this Court's more than twenty years experience in this litigation. This Court also determines, based on the record presented, that the appointment of independent medical and mental health experts is necessary and appropriate.

Accordingly, it is by the Court this 20th day of April, 1993

ORDERED that the Court shall, pursuant to its inherent authority to enforce its orders and Rule 53(b) of the Federal Rules of Civil Procedure, appoint Grace M. Lopes as Special Master (hereinafter "Special Officer") to monitor and ensure defendants' compliance with the Court orders and Consent Decrees in these consolidated cases (hereinafter "Orders"); and it is

ORDERED that the defendants shall, pursuant to Rule 53, pay the reasonable fees and expenses incurred by the Special Officer in carrying out her assigned duties. The Special Officer shall be paid a fee of \$85.00 per hour, plus expenses, unless otherwise ordered by the Court. She shall be available to perform her duties as the needs of the Court require; and it is

ORDERED that the duties of the Special Officer shall be to observe, monitor, submit proposed findings of fact, and make recommendations to the Court and to the parties concerning steps that should be taken to achieve compliance with the Orders of

this Court. The Special Officer should endeavor to assist the defendants in achieving compliance in whatever way possible, and should confer informally with the parties on matters affecting compliance with the Orders; and it is

ORDERED that the Special Officer shall assist the Court in monitoring defendants' compliance with the Orders by, among other things, reporting to the Court regularly, and no less than every ten months, concerning the state of defendants' compliance with the Orders of the Court; and it is

ORDERED that the Special Officer shall be granted access by the defendants to the D.C. Detention Facility and the records of the District of Columbia, to the extent necessary to permit the Special Officer to monitor and report fully on defendants' compliance with the Orders of this Court; and it is

ORDERED that the Special Officer shall have the power to require reports by the defendants concerning matters affecting compliance with Orders of this Court; and it is

ORDERED that the Special Officer shall have the power to conduct hearings, to require the attendance of witnesses and the production of documents, and to examine witnesses under oath. The expenses of any reporter hired to transcribe such hearings before the Special Officer shall be paid for by the District of Columbia; and it is

ORDERED that the Special Officer shall be authorized to employ such experts and consultants, including but not limited to medical and mental health experts, as are reasonably necessary to assist the Special Officer in monitoring and reporting on defendants' compliance with the Orders. The Special Officer shall notify counsel for the parties at least two weeks in advance of her intention to employ an expert or consultant. The plaintiffs and defendants shall have the opportunity to raise with the Special Officer any objection they may have to the employment of such an expert or consultant, and make alternative recommendations for who should be employed as the expert or consultant. In the event of a continued disagreement between a party and the Special Officer concerning the employment of any expert or consultant, the party shall have the opportunity to file a motion with the Court to resolve the dispute. In the event that a party does not file a motion within two weeks of receipt of a notice from the Special Officer of the intent to employ an expert or consultant, the Special Officer shall be deemed authorized to employ such expert or consultant. The fees and expenses of any expert or consultant hired by the Special Officer pursuant to this paragraph shall be paid for by the District of Columbia, and any such expert or consultant shall be granted access to the D.C. Detention Facility and the records of the District of Columbia to the extent necessary to assist the Special Officer in monitoring defendants' compliance with the Orders of this Court; and it is

ORDERED that the Special Officer shall be authorized to employ an investigative assistant to assist the Special Officer in fact-finding and investigations concerning defendants' compliance. The investigative assistant shall be granted access to the D.C. Detention Facility and the records of the District of Columbia to the extent necessary to assist the Special Officer in monitoring the compliance of defendants with the Orders of this Court. The fees and expenses of the Special Officer's investigative assistant shall be paid for by the District of Columbia; and it is

ORDERED that the Special Officer, the investigative assistant, and any experts or consultants employed by the Special Officer shall have the right to conduct confidential interviews with officials and staff of the District of Columbia Department of Corrections. The Special Officer shall be authorized to confer and to correspond with either plaintiffs or defendants on an ex parte basis; and it is

ORDERED that the Special Officer shall not be empowered to direct the defendants to take or refrain from taking any specific action to achieve compliance; and it is

ORDERED that the Special Officer shall promptly select medical and mental health experts to evaluate the medical and mental health services being provided at the Jail, including those areas of concern identified in plaintiffs' Memorandum in Support of

Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt. The experts shall issue reports and make specific recommendations for the improvement of medical and mental health services, including recommended staffing levels, as soon as possible but in no event later than 60 days from the date of this Order; and it is

ORDERED that the defendants shall file a detailed written report to the Court within 15 days after the issuance of an expert report responding to each recommendation contained in the report, indicating whether the defendants intend to implement the recommendation and the timeframe for implementation, and, if the defendants object to implementation, the basis for their objection; and it is

ORDERED that the Special Officer shall, within 30 days after the expert reports are issued, submit a report to the Court evaluating the state of defendants' compliance with the Orders respecting medical and mental health care and setting forth any additional concerns that the Special Officer might deem appropriate to bring to the attention of the Court; and it is

ORDERED that effective April 26, 1993, the bi-weekly reports filed by the defendants with the Court shall be certified, in the manner set forth in 28 U.S.C. 1746, by an official (or officials) with personal knowledge and shall state, in addition to the information currently being provided, the following:

1. The medical and mental health staff providing services at the Detention Facility during the two week period. The reports shall indicate the number of full-time equivalent employees, by job title (certified and licensed physician assistants shall be so designated) and shift, who actually worked during the time period. The defendants shall also state the number of overtime hours worked by individuals in each job category.

2. Whether sick leave was available on all housing units each weekday, without limitation on the number of prisoners who could be seen on any particular unit. The report shall list dates on which sick leave was not held on each housing unit, or on which sick leave was limited, and the housing unit or units which were effected.

3. Whether a chronic disease clinic was maintained by an appropriate health care provider, the type of health care provider or providers who delivered services at the clinic, and the number of inmates who attended the clinic in the reporting period.

4. The number of correctional officers assigned to each mental health cellblock during the reporting period, whether each officer employed on the unit had received specialized training in mental health issues and, if not, the dates and shifts on which untrained officers were used.

5. The number of psychiatric screening clinics held at the Jail during the reporting period, the approximate length of each clinic and the number of inmates seen.

6. The number of the following during the reporting period: deaths, suicides, positive PPD tests for tuberculosis infection, cases of active tuberculosis diagnosed and positive tests for HIV infection; and it is

ORDERED that the parties shall negotiate in good faith and attempt to agree on a format for more detailed, certified, reporting to be used by the defendants in their reports to the Court, which shall include such information, in addition to that which is set forth above, as is necessary for the Court, the plaintiffs and the Special Officer to assess the defendants' compliance with Court Orders; and it is

ORDERED that if the parties are unable to agree by May 15, 1993 on a format for future reporting, the parties shall submit proposed reporting forms to the Court, and the Court shall mandate the form of reporting; and it is

FURTHER ORDERED that the defendants may, at any time, move to vacate the appointment of the Special Officer.



William B. Bryant
United States District Judge

Copies to:

David Flyer, Esq.
Assistant Corporation Counsel
Correctional Litigation Section
Government of the District of Columbia
Suite NLL-3
1923 Vermont Avenue, N.W.
Washington, D.C. 20001

J. Patrick Hickey, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20036

Jonathan M. Smith, Esq.
Executive Director
D.C. Prisoners' Legal Services
Project, Inc.
1400 20th Street, N.W.
Suite 117
Washington, D.C. 20036

Edward I. Koren
National Prison Project of the
American Civil Liberties Union
1875 Connecticut Avenue, N.W.
Suite 410
Washington, D.C. 20009

0222:089jhz.93