

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA

WILLIE M. ARIAS, et al.,

Plaintiffs,

v.

LOUIE L. WAINWRIGHT,

Defendant.

C.A. No. TCA 79-0792

PLAINTIFFS' MEMORANDUM IN RESPONSE
TO CLASS MEMBERS' COMMENTS AND OBJECTIONS
TO THE PROPOSED STIPULATION AND AGREEMENT
OF PARTIAL SETTLEMENT

On July 9, 1981, this Court approved a notice of proposed partial settlement of the above-captioned case and directed that the notice and the Stipulation and Agreement of Partial Settlement ("Stipulation") be posted in jails throughout the State of Florida. The Court approved an amended notice on August 6, 1981, and extended to August 26, 1981 the time within which members of plaintiffs' class could comment on the Stipulation. At the expiration of the notice period, the Court invited counsel to file memoranda addressing the merits, effect and applicability of the comments and objections filed by members of plaintiffs' class. This memorandum, filed by counsel for plaintiffs, addresses those issues.

I. The Stipulation and Agreement of Partial Settlement Is Fair, Equitable and in the Best Interests of Members of Plaintiffs' Class.

A. Evolution of the Stipulation

The Amended Complaint in this action was filed on April 12, 1979. It alleged, inter alia, that defendant Louie L. Wainwright, Secretary of the Florida Department of Corrections, has failed to carry out his statutory duties under Florida Statutes § 951.23 to promulgate constitutional rules and regulations governing the conditions in and operation of jails in the State of Florida, to enforce the regulations he has promulgated, and to conduct inspections of the jails adequate to inform him whether the jail regulations are being complied with. Central to plaintiffs' Complaint was the allegation that, although defendant has promulgated jail regulations and conducted some inspections, he regularly has failed to ensure adequate detection of violations of those regulations and to take effective action to enforce them.

The parties engaged in extensive discovery between April 1979 and May 1981. Plaintiffs' counsel served defendant with numerous requests for the production of documents and voluminous requests for admissions; took the depositions of defendant Wainwright and a number of officials of the Department of Corrections and sheriffs of individual jails; and, along with a team of experts in the fields of corrections, environmental health and safety, psychology and medicine, inspected many of the jails in the State and discussed jail conditions with members of the class.

Plaintiffs' discovery revealed deplorable conditions throughout the jails in Florida.^{*/} As the Department of Corrections' Chief Inspector had reported, "approximately 80% of the county and municipal detention facilities did not meet minimum standards" for the health, safety and comfort of their prisoners.^{**/} Another inspector estimated that only 15% of the jails were in compliance with the jail regulations.^{***/}

It also became evident that the consistently substandard conditions in the jails could be attributed to defendant's failure to conduct meaningful inspections and actively to enforce his jail regulations. Inspections often have been infrequent (in some cases less than once a year); inspectors have not been properly equipped or trained to detect violations of the regulations; and reports of the inspections have been cursory,

^{*/} By defendant's own admission, scores of jails in Florida have persistently had, among other problems, structural and operations deficiencies; insufficient staffing; inadequate security; substandard medical care; insufficient classification systems; no provisions or space for recreation, exercise, programs and adequate visitation; overcrowded conditions; fire hazards; general housekeeping, sanitation and safety problems; insufficient lighting and ventilation; inadequate laundry and clothing issuance; and record-keeping deficiencies. Answer to Plaintiffs' First Request for Admissions (admission numbers 4, 5, 7-10, 12, 13, 15-20, 22), July 24, 1980. See also id., admission numbers 6, 11, 14, 21.

^{**/} Id. (admission number 25).

^{***/} Id. (admission number 24). See also, e.g., id., admission numbers 23 ("many of the State jails are far below acceptable standards in care and treatment"); 26 ("approximately 30%" of the 43 jails in "counties under 50,000" "are complying with our required [jail] standards"; "none are complying with all standards"); 27 ("[m]any of the [Florida] jails would most likely be described as being suspect in most of the paragraphs" of the Amended Complaint in this case).

incomplete and inaccurate.^{*/} Defendant has for years ignored evidence of violations of the jail regulations, and allowed long periods of time to go by without taking any action to seek the correction of violations that had been brought to his attention year after year. Moreover, defendant has repeatedly failed under appropriate circumstances to exercise his statutory power to seek court orders prohibiting the confinement of prisoners in jails that do not comply with the jail regulations (see Florida Statutes § 951.23(3), (4)); indeed, rather than initiating actions to ensure that prisoners are not incarcerated in noncomplying facilities, defendant had decided not to resort to court procedures to enforce his regulations.^{**/}

In the face of this evidence, the parties began discussing a negotiated resolution of this action. The parties sought agreement both on revisions of the jail regulations themselves and on the establishment of procedures for inspections and enforcement that would ensure that violations of the regulations are rectified, rather than ignored. After months of negotiation, defendant proposed to promulgate new jail regulations,

^{*/} See, e.g., id., admission numbers 32 ("the [jail] inspections can be more in depth and critical"); 33 (The Department of Corrections is "quite behind" in its "jail inspections" and "Florida has a long way to go before we can come close to providing an inspection service which will truly bring about change").

^{**/} Deposition of Louie L. Wainwright, February 3, 1981, at 3, 15. See also admission number 27 (the Department of Corrections has failed to take "court action in some special cases which were especially intolerable and where action to change probably should have been required").

which, although in many instances significantly improved upon the then-existing regulations, were not entirely satisfactory to plaintiffs' counsel. Accordingly, no agreement could be reached on the substance of all the proposed new jail regulations. Defendant promulgated the new jail regulations that had been formulated and proposed during the negotiations, and they became effective in May of 1981.

Even though no agreement could be reached on the regulations themselves, negotiations concerning procedures governing enforcement of those regulations continued. In plaintiffs' counsel's view, the interests of plaintiffs' class could best be protected during the time it would take to implement the new jail regulations and possibly to litigate their constitutionality by promptly establishing mechanisms to at least ensure enforcement of those new regulations. The procedures and timetables for inspection and enforcement upon which the parties were able to agree are reasonable and practicable and sufficient to provide effective relief for class members from continued violations of the jail regulations. While plaintiffs are hopeful that adequate jail inspections and effective enforcement of the new regulations will bring about dramatic improvements in the conditions of the jails in Florida, the Stipulation does not cover issues relating to the constitutionality of the jail regulations themselves, and plaintiffs have retained all rights to continue, if necessary, to litigate those issues.

B. Features of the Stipulation

With respect to inspections, the Stipulation, if approved, would require the Department of Corrections to employ a sufficient number of inspectors to ensure that violations of the jail regulations are adequately uncovered. Jail inspections would have to be conducted twice a year, at a minimum (see p. 8, infra), by inspectors properly equipped and trained so as to be able to determine and report fully on the state of compliance with the jail regulations; moreover, the inspections would have to be "exacting, comprehensive, and adequately documented." (Stipulation ¶ 6.)

With respect to enforcement, the Stipulation would require defendant to "vigorously, promptly, effectively and thoroughly enforce" all jail regulations, "to the full extent of the authority vested in him by law," and to "fully implement and enforce Florida Statutes § 951.23." (Stipulation ¶ 7.) Specific procedures to ensure that the jail rules are effectively and thoroughly enforced would be put into place: Defendant would be required to seek appropriate relief from the Circuit Court to cure all aggravated violations -- violations that appear to pose a substantial and immediate danger to prisoners or staff members -- within seven days after he received notice of such violations (Stipulation ¶ 7(a)), and to seek relief from other types of violations within one year, with limited exceptions (Stipulation ¶ 7(b)).

A system for monitoring defendant's efforts would also be established. In order to ensure that defendant properly implements and enforces the jail regulations and complies fully with the Stipulation, plain-

tiffs' "Compliance Counsel" (see Stipulation ¶ 8) would be, for a minimum period of 38 months following approval of the partial settlement, given access to all Department of Corrections records and files relating to the jails; entitled to briefings by the Department of Corrections as to jail conditions and the state of inspection and enforcement; permitted on-going access to the jails; entitled to conduct interviews with Department of Corrections' employees concerning jail inspections and conditions; and specifically authorized to interview prisoners privately. (Stipulation ¶¶ 9-12.) Furthermore, Compliance Counsel would be able at any time to petition the court for enforcement of the Stipulation and attempt to show that defendant is not effectively enforcing his jail regulations. (Stipulation ¶ 13.)

In sum, the Stipulation would require of defendant, for the first time, specific remedial actions designed to bring a halt to the longstanding and widespread violations of the jail regulations. Approval of the Stipulation would ensure that defendant operates under an enforceable court order requiring him fully and effectively to carry out the duties imposed on him by Florida Statutes § 951.23.

II. The Comments Filed by Members of Plaintiffs' Class Support the Proposed Partial Settlement.

The vast majority of the comments filed by members of plaintiffs' class confirm that defendant has not taken effective measures in the past to ensure that conditions in Florida's jails are acceptable and in com-

pliance with the jail regulations, and vividly demonstrate the need for the exacting and effective inspection and enforcement mechanisms that would be established pursuant to the Stipulation. On the whole, the comments support the Stipulation, which will ensure that defendant carries out his statutory duties to take effective enforcement action against jails which do not comply with applicable regulations.*/

Only one class member, Mr. William J. Stewart, expressed any concern about specific terms of the proposed partial settlement: He indicated that inspections should not be limited to two per year and that inspections should be unannounced, rather than on 48 hours' notice. There is, however, no cause for such concern.

First, the Stipulation would not limit inspections by the Department of Corrections to two per year; to the contrary, it would require "at least" two routine inspections of each jail per year (see Stipulation ¶ 6). In addition, the Stipulation envisions that whenever a routine inspection reveals a violation of the jail regulations, follow-up inspections would be conducted to enable defendant to determine whether the violation has been cured or, if not, whether he is required to seek relief from the Circuit

*/ Several of the class members who filed comments expressly applauded and endorsed the terms of the Stipulation itself. Some class members complained that they had been tried unfairly or that they have been imprisoned without cause; these comments, of course, do not bear on the propriety of the proposed partial settlement. A few class members complained that they failed to receive proper notice of the proposal. However, defendant's counsel has assured plaintiffs' counsel that these complaints were investigated and that steps were taken to ensure notice and, more important, the number of responsive comments filed is evidence that the class as a whole received adequate notice under Rule 23, Fed. R. Civ. P.

^{*/}
Court. Moreover, the Stipulation provides for unlimited jail inspections by plaintiffs' Compliance Counsel (see Stipulation ¶ 10).

Second, the section of the Stipulation dealing with 48 hours' notice relates to inspections by plaintiffs' Compliance Counsel, not to inspections by the Department of Corrections (compare Stipulation ¶ 10 with Stipulation ¶ 6), and notice would have to be given by Compliance Counsel only to the Inspector General, not to the sheriff of the targeted jail. Nothing in the Stipulation would preclude inspections that are a surprise to the officials of the jail that counsel intends to inspect. Moreover, the new jail regulations expressly provide that "[t]he Inspector General and the Inspectors may enter any detention facility in this State at any time and shall be immediately admitted to such place upon request for such admittance."^{**/} Indeed, the depositions of the inspectors indicate that the Department of Corrections routinely inspects jails without prior notice to the jails and defendant has represented that he fully intends to continue this practice.

^{*/} The new jail regulations, which the Stipulation would require defendant to adhere to, also provide for "reinspection[s]." See Rules of the Department of Corrections, Chapter 33-8.02(5)(a)4, 5; 33-8.02(5)(b)2(a).

^{**/} Id., Chapter 33-8.02(3).

CONCLUSION

Entry of an enforceable court order requiring defendant properly and effectively to enforce the jail regulations in accordance with the procedures and time limits set forth in the Stipulation would go a long way towards ameliorating the conditions in Florida's jails and protecting the rights of members of plaintiffs' class. Plaintiffs request approval of the Stipulation and entry of such order.

Respectfully submitted,

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Dated: September 18, 1981

CERTIFICATE OF SERVICE

I, Lynn Bregman, hereby certify that I have, on this 18th day of September, 1981, caused a copy of the attached "Plaintiffs' Memorandum in Response to Class Members' Comments and Objections to the Proposed Stipulation and Agreement of Partial Settlement" to be served on defendant's counsel, James A. Peters, Esq., Assistant Attorney General, Department of Legal Affairs, Civil Division, The Capitol -- Suite 150, Tallahassee, Florida 32301, by mailing such copy first-class, postage prepaid.



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