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JUN 25 2004

LUTHER D. THOMAS, Clerk
By: *(Signature)* Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, :
individually and on behalf of all :
present and future inmates in the :
Fulton County Jail in Atlanta, :
Georgia, :

Plaintiffs, :

v. :

DEPUTY TYRONE BENNETT, :
et al., :

Defendants. :

CIVIL ACTION

1:04-CV-1416-MHS

ORDER

This is a proposed class action brought on behalf of all present and future inmates at the Fulton County Jail, who seek relief from alleged unconstitutional conditions of confinement arising from extreme overcrowding, neglected and deteriorating physical facilities, and staff shortages. The complaint cites the May 31, 2004, report of Dr. Robert B. Greifinger, who visited the jail on May 26-27, 2004, in his capacity as a health care consultant.

Dr. Greifinger's report paints a dismal picture. He reports that the jail is extremely overcrowded and that there is a severe shortage of uniformed staff due to a hiring freeze. In addition, the physical facilities are in a state of virtual collapse. As a result, according to Dr. Greifinger, there is "mounting tension within the living units, leading to increased violence and even death," and a substantial increase in the risk of transmission of disease among inmates and staff. "Overall," Dr. Greifinger states, "I believe the Jail is in a state of crisis, necessitating immediate action to reduce the inmate population, increase the security staffing, and repair and maintain the basic systems required for basic health and safety, such as laundry, plumbing, electricity, and air handling." Dr. Greifinger concludes: "In my opinion, the Fulton County Jail needs immediate intervention by responsible county officials to prevent serious harm to staff and inmates. The County must address the problems created by crowding, staff shortages, laundry, and mechanical systems with all possible haste."

Although the County has taken some steps to address some of these problems since the issuance of Dr. Greifinger's report, the Court takes judicial notice of the fact that, due to recent allegations of mishandling of

funds and other charges, Sheriff Jacquelyn Barrett, the County official directly responsible for jail operations, has announced her decision not to seek reelection and appears either unable or unwilling to deal with the serious problems facing the jail. As a result, the jail is like a leaky, rudderless ship overloaded with dangerous and ill passengers, without a captain and with a short-handed crew.

Given the extremely dangerous and deteriorating conditions at the Fulton County Jail, the Court concludes that immediate action is necessary. Accordingly, the Court ORDERS defendants to appear in Courtroom 1707, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at 10:30 a.m. on Thursday, July 8, 2004, and show cause why this Court should not appoint a temporary receiver to replace Sheriff Barrett as the custodian of the jail until a new, duly-elected sheriff takes office. The receiver would assume all responsibility for jail operations, including but not limited to budgetary decisions and decisions regarding the hiring and firing of personnel. Any such appointment would in no way affect Sheriff Barrett's other duties as Sheriff of Fulton County. At the hearing, both sides should be prepared to

present evidence concerning the current conditions at the jail and to make recommendations as to who the Court might appoint as a temporary receiver.

The Court recognizes that construction of a new jail is not the solution to the current situation. Although this Court in past years has ordered the construction of new jails in Douglas, Fayette, and Cobb Counties, those orders were issued with the cooperation and concurrence of the respective county commissioners, who recognized that a new facility was necessary in order to satisfy constitutional requirements. In this case, on the other hand, it is clear that a new jail is not the answer.

First, the current financial situation faced by Fulton County makes construction of a new jail at this time infeasible. Second, in light of recent improvements at the existing jail, including new kitchen and intake facilities, it makes more sense to focus efforts on upgrading and maintaining the existing facility. Finally, the planning and construction of a new jail would take years and the current problems cannot wait that long to be corrected.¹

¹ The Court notes that one possible alternative to a new jail, which might be economically feasible, would be a work-release facility for non-violent inmates with
(continued...)

The Court fully believes that if reasonable efforts are made to reduce the jail population, improve and maintain the physical plant, and fill vacant staff positions, the current facility can be brought within constitutional requirements.²

Finally, the Court invites counsel for the parties, the Fulton County Commissioners or their designated representative(s), the Fulton County Sheriff, the Chief Judges of the Fulton County Superior Court and Fulton County State Court, the Fulton County District Attorney, and the Fulton County Solicitor to meet with the Court in an informal conference to discuss alternatives to limit the flow of new prisoners into the jail and to expedite the release of prisoners who should no longer be detained. The conference shall

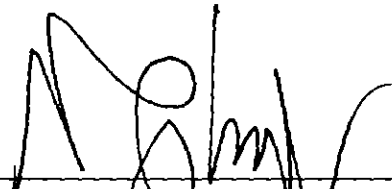
¹(...continued)

less than two years to serve similar to the facility in Cobb County. According to a recent news report, the Cobb facility – a \$5 million, 384-bed building – is touted by jail officials as a cost-saving measure, costing the county only about half as much to house each inmate as the regular jail. This arrangement also permits inmates to work while incarcerated, thus avoiding the collateral damage to families when the breadwinner is in custody.

² Recognizing the defendant county commissioners' concern that this Court has determined that a new jail must be built, if at any time the Court becomes convinced that a new jail is the only possible alternative to address the current problems, the Court will afford defendants an opportunity to move for recusal which will be considered timely filed.

take place in chambers on Thursday, July 15, 2004, at 2:00 p.m. Defendants shall provide a copy of this order to the Chief Judges of the Fulton County Superior Court and the Fulton County State Court, the Fulton County District Attorney, and the Fulton County Solicitor.

IT IS SO ORDERED, this 25th day of June, 2004.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia