

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FILED

MAR 18 2004

JUDGE MATTHEW F. KENNELLY
UNITED STATES DISTRICT COURT

LAWRENCE E. THOMPSON)
)
 Plaintiff,)
)
 Vs.)
)
 The COUNTY OF COOK; MICHAEL)
 SHEAHAN, Sheriff of Cook County, in)
 his official capacity; CALLIE BEARD,)
 Director, COOK COUNTY)
 DEPARTMENT OF CORRECTIONS, in)
 her official capacity; RUTH ROTHSTEIN,)
 Director, COOK COUNTY)
 DEPARTMENT OF PUBLIC HEALTH,)
 in her official capacity; LEONARD R.)
 BERSKY, Chief Operating Officer,)
 CERMAK HEALTH SERVICES OF)
 COOK COUNTY, in his official capacity,)
)
 Defendants.)
)
)
)
)

No. 1:03-cv-07172

THE HONORABLE
MATTHEW F. KENNELLY

DRAFTED
MAR 23 2004

SECOND AMENDED COMPLAINT

NOW COMES the Plaintiff, LAWRENCE E. THOMPSON, *pro se*, and states the following as his Second Amended Complaint:

NATURE OF THE ACTION IN BRIEF

1. This action arises under Section 1983 and Section 1988 of the Civil Rights Act, 42 U.S.C. §§1983, 1988. Plaintiff is an attorney who on October 8, 2002 was required by a judge of the Circuit Court of Cook County to sign a document waiving and relinquishing his rights to valuable marital assets in Plaintiff's dissolution proceeding. Plaintiff refused to sign the document in order to avoid committing perjury. Even if the duress imposed upon Plaintiff could have legally justified, though not excused, the commission of the crime, his ethical transgression likely would have subjected Plaintiff to discipline by the Arizona and Georgia Bars and his application for the Illinois Bar could have been jeopardized. As a result of his refusal to sign the

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document, and regardless of his defense upon an effort to avoid committing perjury, Plaintiff was incarcerated upon a finding of contempt in the Cook County Department of Corrections on October 9, 2002. On that date, an agent of the Cook County Department of Corrections placed a rod in Plaintiff's urethra. Plaintiff was forced to provide blood. And, Plaintiff was subjected to a full body cavity search.

2. The actions of the Defendants violated Plaintiff's constitutional rights to be free of unreasonable searches, to enjoy due process, and to be free of cruel and unusual punishment. Plaintiff seeks declaratory, injunctive, compensatory, and other relief to remedy the Defendants' unconstitutional policies.

NATURE OF THE ACTION

3. Plaintiff is a patent attorney who is currently registered in Arizona, Georgia and Illinois. As of October 9, 2002 Plaintiff had passed the Illinois Bar exam and was awaiting his admission to the Illinois Bar.

4. Plaintiff is the respondent in a dissolution of marriage proceeding before The Honorable Judge William Stewart Boyd of the Cook County Circuit Court (filed in October 2001).

5. On October 8, 2002, Plaintiff was ordered to sign a waiver. The waiver required Plaintiff to provide sworn testimony that he was not signing the waiver under coercion. Coercion was present in that Plaintiff was under threat of incarceration if he failed to sign the waiver.

6. On October 9, 2002, upon his refusal to sign the waiver, officers acting under the authority of defendant Michael Sheahan, as Sheriff of Cook County, arrested Plaintiff.

7. On October 9, 2002, Plaintiff was transported to the Cook County Department of Corrections facility at approximately 26th and California.

8. On October 9, 2002, Plaintiff was forced to submit to intake procedures at the Cook County Department of Corrections facility at approximately 26th and California.

9. Pursuant to policies imposed by Defendants, arrestees processed through the Cook County Department of Corrections intake area receive medical and mental health screening. During intake, defendant County of Cook, acting through the Cook County Department of Corrections, the Cook County Department of Public Health, and Cermak Health

Services of Cook County, collect medical samples purportedly for the purpose of syphilis and gonorrhea testing. Upon information and belief, intake procedures at the Department of Corrections include urine-based gonorrhea and chlamydia testing for women arrestees. The intake procedures are drastically different for male arrestees.

10. On October 9, 2002, an agent of the Defendants placed a metal rod into Plaintiff's urethra. Defendants' actions caused Plaintiff to suffer great pain, humiliation and emotional distress. The agent who placed the metal rod into Plaintiff's urethra introduced himself to the half-naked arrestees by telling them to remain in line against the wall, to remain silent, and to refrain from taking any other actions because "you don't want to piss-off the Dick Doctor" and you don't want to "fuck with the Dick Doctor." While smoking a cigarette, the self-described "Dick Doctor" selected one arrestee for special treatment. Through verbal abuse, that arrestee was individually informed that he would be making a huge mistake if he were to anger the "Dick Doctor."

11. After Plaintiff passed through a door, the "Dick Doctor" ordered Plaintiff to expose his penis and to hold his penis so that it was hanging over a large plastic waste container. The "Dick Doctor" then inserted a metal rod into Plaintiff's urethra. Plaintiff was then forced to provide blood. Plaintiff was then subjected to a full-body cavity search.

12. On October 11, 2002 Plaintiff was again brought before Judge Boyd. Plaintiff again refused to sign the waiver. Plaintiff was then released from incarceration.

JURISDICTION

13. This action arises under the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343. This Court has jurisdiction over the Plaintiff's request for declaratory and injunctive relief pursuant to 28 U.S.C. §§2201-2202.

14. This action also arises under state claims identified below. The state claims arise from a common nucleus of operative facts as the federal constitutional and statutory claims. This Court has discretion to assert jurisdiction over all claims arising from the common nucleus of common facts. 28 U.S.C. §1367.

15. Defendant demands that this case be tried before a jury.

PARTIES

16. The County of Cook is the corporate name through which the State of Illinois has determined it may be sued pursuant to 55 ILCS 5/5-1001. Defendant County of Cook was acting under color of law. The County of Cook operates the Cook County Department of Corrections and is responsible for the medical procedures practiced on arrestees brought to that facility. The County of Cook has a legal responsibility to administer its programs and services in conformity with the United States Constitution, federal statutes, and state standards. The County of Cook has a legal responsibility to ensure that the policies and practices of the County of Cook, and its administrative departments, comply with the United States Constitution and federal and state standards

17. Defendant Michael Sheahan is the Sheriff of the County of Cook. Pursuant to 55 ILCS 5/3-6016, Sheriff Michael Sheehan is liable for any violations of Plaintiff's rights when occasioned by a deputy or auxiliary deputy, in the same manner as for his or her own personal violations. Pursuant to 55 ILCS 5/5-1002, the County of Cook shall indemnify Sheriff Sheahan for his violations of Plaintiff's rights. Sheriff Sheahan has a legal responsibility to administer his department in conformity with the United States Constitution, federal statutes, and state standards. Defendant Sheahan is sued in his official capacity.

18. Defendant Callie Beard is the Director of the Cook County Department of Corrections. As Director, she is responsible for the development and oversight of all Cook County Department of Corrections policies and practices, including arrestee intake procedures and oversight of health care services that may have been contracted out to private providers. Defendant Beard is responsible for ensuring that the Cook County Department of Corrections operates in a manner that is consistent with the United States Constitution, federal statutes and state standards. Defendant Beard was acting under color of law. Defendant Beard is sued in her official capacity.

19. Defendant Ruth Rothstein is the Director of the Cook County Department of Public Health. As Director, she is responsible for the development and oversight of all Cook County Department of Corrections medical screening policies and practices including those practiced through Cermak Health Survives and those that may have been contracted out to private providers. Defendant Rothstein is responsible for ensuring that the Cook County Department of Corrections medical intake procedures are operated in a manner that is consistent

with the United States Constitution, federal statutes, and state standards. Defendant Rothstein was acting under color of law. Defendant Rothstein is sued in her official capacity.

20. Defendant Leonard R. Bersky is the Chief Operating Officer of Cermak Health Services of Cook County. As Chief Operating Officer, he is responsible for the development and oversight of Cook County Department of Corrections medical intake policies and practices. Defendant Bersky is responsible for ensuring that the Cook County Department of Corrections medical intake procedures are operated in a manner that is consistent with the United States Constitution, federal statutes, and state standards. Defendant Bersky was acting under color of law. Defendant Bersky is sued in his official capacity.

21. Plaintiff is a citizen of the United States of America and is a resident of Cook County Illinois. Plaintiff has resided at 111760 Brook Hill Drive at all relevant times but for the time he was incarcerated in the Cook County Department of Corrections.

Count I - The Strip Search -- Fourth Amendment

22. Plaintiff was subjected to a strip search. Plaintiff saw no attempt to segregate certain persons who would be subject to strip searches from those who would not be subject to strip searches. Searches of pretrial detainees in jail must be reasonable within the meaning of the Fourth Amendment. To evaluate the reasonableness of a challenged search, the court or jury must balance the need for the particular search against the invasion of personal rights that the search entails. The county may have a weighty interest in preventing the introduction of weapons or other contraband into the jail. However, a strip search, particularly a full body cavity search as practiced by defendants, are demeaning, dehumanizing, undignified and humiliating.

23. Policies calling for blanket strip searches are invalid. Strip searches generally require individualized suspicion that an arrestee is carrying or concealing contraband. Placement in a general prison population cannot alone justify a strip search. An offense must be sufficiently associated with violence to justify a visual strip search.

24. Plaintiff was arrested for civil contempt for an alleged improper refusal to provide his signature on a document. The county had no reasonable individualized suspicion that Plaintiff was carrying or concealing contraband. The offense for which Plaintiff was subject to arrest was not associated in any way with violence.

25. Upon information and belief, the full body cavity search is an official county policy or custom of subjecting non-violent contempt arrestees to unconstitutional strip searches. The information and belief including that Plaintiff did not observe any efforts to segregate those who would be subject to a full-cavity search from those who would be subject to a less invasive search and the fact that Plaintiff was subject to a full cavity search though he was not a incarcerated based upon any allegations related to violence.

26. The defendants medical procedures are also practiced in an unconstitutional manner. Any claim that the county's medical screening policy is justified based upon the counties interest in diagnosing severe medical problems to prevent transmission of serious disease among the general jail population must fail in light of the county's failure to test for the HIV virus which poses a far greater risk to the prison population and could be, but is not, screened for using the same invasive procedures that are already employed. Upon information and belief, the insertion of a metal rod into the urethra is of male prisons is an official county policy or custom. Searches that in theory might be constitutional, run afoul of the Fourth Amendment if conducted in an unnecessarily cruel, painful or dangerous manner.

27. Defendants have violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983. Plaintiff was subject to unconstitutional prison procedures and conditions.

Count II - The Deprivation of Liberty without Due Process – Fourteenth Amendments

28. Defendants subjected Plaintiff to incarceration and physical harm. Defendants' actions caused Plaintiff the loss of his liberty interest including his interfering with his employment opportunities, his interest in remaining free of unlawful searches, and free of excessive force, and free of unlawful invasions of his privacy. Defendants deprived Plaintiff of his due process right to be free of unjustified intrusions into his body. Plaintiff's due process right includes the right to refuse unwanted medical treatment and the right to information sufficient to exercise an intelligent choice. Retaliation for the exercise of the right to refuse treatment is itself a violation of Plaintiff's rights.

Count III - The Cruel and Unusual Punishment – Fourteenth Amendment

29. Defendants intentionally inflicted upon Plaintiff needless suffering. Defendants deliberately gave him a kind of medical treatment knowing that it was more invasive than necessary. The conditions under which Plaintiff was confined pose a substantial risk of serious harm and defendants were acting with a deliberate indifference to the substantial risk of serious harm to Plaintiff.

30. The Department of Corrections screening procedure is a custom or policy and has been described as “universal gonorrhea testing.” The reasonableness of Defendants’ actions must also take into consideration that the U.S. Department of Justice indicates that few correctional systems routinely screen inmates for STDs. It is very rare for correctional facilities to incorporate routine urethral swabbing screening for gonorrhea. It is possible to perform urine gonorrhea screening - as is used for women detainees. In the absence of such screening in the vast majority of correctional institutions the states interest in performing urethral swabbing must be considered slight.

31. Upon information and belief, including that HIV is not tested for despite the extremely invasive screening procedures and the self-proclaimed Dick Doctor’s warning that he should not be “fucked” with, defendants deliberately provide overly invasive and less efficacious screening procedures in order to intimidate arrestees rather than for permissible purposes.

32. The presence and actions of the self-described “Dick Doctor” indicate the actions of placing a rod into the urethra of male prisoners is done with an intent to punish pretrial detainees. The Defendants’ policies and practices violate Plaintiff’s rights under the Eight and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. §1983.

Count IV - Assault

33. The defendants and their agents intentionally created a reasonable apprehension in Plaintiff of immediate harmful or offensive contact to Plaintiff’s person. Defendants’ actions caused injury to Plaintiff.

Count V - Battery

34. The defendants intentionally and without legal justification caused a harmful and offensive contact with Plaintiff’s person. The defendants’ actions caused injury to Plaintiff. The

defendants committed an act of sexual penetration by the use of threat of force. The defendants committed an act of sexual penetration and the defendants knew that Plaintiff was unable to give knowing consent.

Count VI - Intentional Infliction of Emotional Distress

35. The defendants' conduct was extreme and outrageous. The defendants intended their conduct inflict severe emotional distress, or knew there was at least a high probability that their conduct would cause severe emotional distress and were reckless as to the effect of their conduct. The defendants caused Plaintiff severe emotional distress.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter a judgment against the Defendants as well as the Unknown Officers and the "Dick Doctor" providing as follows:

- A. Declare the acts and omissions of the Defendants violates the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution;
- B. Enjoining the Defendants, as well as their officers, from conducting strip searches without warrant and without probable cause;
- C. Enjoining the Defendants, as well as their officers, from urethral swabbing without full and informed consent;
- D. Mandatorily imposing upon the Defendants training, education and other requirements with the goal of enhancing the knowledge of discrimination matters and relations and enhancing the skills of officers within Cook County law enforcement relating to prisoner rights and handling;
- E. Compensatory damages, paid to Plaintiff, by the Defendants in a reasonable amount which the trier of fact deems sufficient to compensate Plaintiff for his injuries;
- F. Punitive damages paid to Plaintiff by Defendants in a reasonable amount which the trier of fact deems sufficient to deter future illegal conduct; and
- G. Payment by the Defendants of Plaintiff's attorneys' fees, witness fees and costs of this action, in an amount to be set forth in an affidavit from the attorney(s) for Plaintiff at the conclusion of this matter.

RESPECTFULLY SUBMITTED this 1st day of March 2004.



Lawrence E. Thompson

Lawrence E. Thompson
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CERTIFICATION AND VERIFICATION

I, Lawrence E. Thompson, certify that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify that I verily believe the same to be true.



LAWRENCE E. THOMPSON