



JC-LA-003-008

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IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 69-2443
	)	Section LLM (5) Consolidated
ERNEST N. MORIAL, et al.,	)	With Civil Action Numbers:
	)	87-5867, 88-3736, 88-1162,
Defendants.	)	88-5564, and 89-1084

AMENDED COMPLAINT

Plaintiffs, on behalf of themselves and the class alleged herein, amend their Complaint and state as follows:

I. PRELIMINARY STATEMENT

1. This case originated in 1969 and pursuant to that action a class was certified consisting of all those persons incarcerated in the facilities then operated by the Criminal Sheriff for the Parish of Orleans. The action was brought for preliminary and permanent injunctions with regard to prison conditions under the provisions of 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. 1981, 1983, 1985 and 1986, to enjoin defendants from subjecting the persons so incarcerated, to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments. The defendants in the suit were and still are the Mayor, the City Council, the Superintendent of Police, the City Attorney, the Superintendent of Fire, the Superintendent of the Department of Health, and the Criminal Sheriff and the Wardens of New Orleans.

2. The plaintiffs alleged, in essence, that the conditions existing in the prison then operated by the Sheriff's Department were in violation of their Eighth Amendment right to be free from cruel and unusual punishment, and were also in violation of the Fourteenth Amendment. They complained that the buildings in which they were housed were in a state of deterioration, that fire safety and sanitary conditions were unsafe, that medical care was inadequate, that the prison was overcrowded, that there was insufficient number of guards, that the prisoners were subject to assaults by other prisoners, as well as other matters regarding prison conditions.

3. In 1985, after many of the offending conditions had been corrected, the case was administratively closed. However, as conditions at the Orleans Parish Prison deteriorated in the ensuing years, several new actions were initiated seeking class-wide injunctive relief. Among these were Robinson v. Foti, 88-5867 and Estevez v. Foti, 88-1162. In addition to Sheriff Charles C. Foti, these cases named as a defendant the Secretary of the Louisiana Department of Corrections, C. Paul Phelps. These cases were consolidated with each other and a new class was certified consisting of all persons who have been or will be confined within the custody of the Criminal Sheriff of Orleans Parish, and housed at facilities known as the Orleans Parish Prison (OPP), Community Correctional Center (CCC), House of Detention (HOD), Central Lock-up (CLU), and the Emergency Housing Unit (Tent City). Shortly afterward, the Hamilton case was reopened, consolidating the

Estevez and Robinson cases with it and directing that all future pleadings be filed under the present caption. In 1990, David Ramsey, Secretary of the Louisiana Department of Health and Hospitals, was added as a defendant.

4. In consideration of the number and complexity of the issues raised in the several consolidated actions, and the urgency of the allegations relating to medical and psychiatric care, these claims were tried first. The medical claims were resolved by the entry of a comprehensive consent judgment in December 1990, and the mental health claims are the subject of a 1991 Court Order establishing a program for psychiatric care at the prison. The purpose of this amended complaint is to clarify the remaining issues before the Court.

5. Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of their rights, privileges and immunities secured by the Constitution of the United States. Plaintiffs specifically seek relief from conditions at these facilities which fall below the standards of human decency, deny basic human needs, and inflict needless suffering on prisoners. Plaintiffs incarcerated in these facilities contend that they are forced to live in an environment where the ill effects of particular conditions, often exacerbated by overcrowding and other conditions, threaten their physical and mental well-being and result unnecessarily in their physical and mental deterioration. The imminent risks that the existing conditions of these facilities pose to the health and welfare of those confined there require the

immediate attention and action of this Court.

## II. JURISDICTION

6. This Court has jurisdiction of this action under 28 U.S.C. §1331 since this is an action in which the matter in controversy arises under the Constitution and laws of the United States.

7. This Court also has jurisdiction of this action under 28 U.S.C. §1343(4) since this is an action to secure declaratory relief.

## III. PLAINTIFFS

8. Louis Hamilton was the designated class representative when the class was certified in 1970 consisting of all persons incarcerated in the facilities then operated by the Criminal Sheriff of Orleans Parish.

9. Jerome Robinson, Jorge Estevez, Gilbert Sanchez, Eric Broyard, Kirk Shaffer and Wilfred White, Ann Mosley, Warren Williams, Felton Thompson, Kenneth White, William Sutton and Kenneth Linn are all plaintiffs in one of the following pro se prisoner cases: Estevez v. Foti, 88-1162, Robinson v. Foti, 87-5867, Williams v. Felton, 88-5564 or Linn v. Foti, 88-3736. These cases have all been consolidated and a class was certified in 1989 consisting of all inmates, present and future, currently incarcerated in the Orleans Parish Prison system in the following facilities: Old Parish Prison, Community Correctional Center, House of Detention, Central Lock-up, and Emergency Detention Center, i.e., Tent City. Each of these prisoners is currently or was at

the time the class was certified confined in one of the subject facilities.

10. Andrew Twohig, III is presently confined at the Templeman facility. He has suffered violations of his constitutional rights while confined in that facility.

11. Gayle Niedhardt is presently confined at the Community Correctional Center. She has suffered violations of her constitutional rights while confined at that facility.

12. Robin Myles is presently confined at the Community Correctional Center. She has suffered violations of her constitutional rights while confined at that facility.

13. Albert Buggage is presently confined at the Old Parish Prison. He has suffered violations of his constitutional rights while confined at that facility.

#### IV. DEFENDANTS

14. Charles C. Foti is sued in his official capacity as the Criminal Sheriff of Orleans Parish and as the custodian of the Orleans Parish Prison pursuant to LRS 15:704 and 33:1519.1.

15. Sidney Barthelemy is sued in his official capacity as the Mayor of the City of New Orleans and as the person responsible for the expenses of establishing, maintaining and operating the Orleans Parish Prison pursuant to LRS 15:702 and 33:1523.1.

16. Edwin Edwards is sued in his official capacity as the Governor of the State of Louisiana and, through his delegees, as the person responsible for the care of prisoners sentenced to the custody of the Louisiana Department of Corrections, and patients

committed to the Department of Health and Hospitals, who are currently confined in the Orleans Parish Prison.

17. Richard Stoldard is sued in his official capacity as the Secretary of the Louisiana Department of Corrections and as the custodian of prisoners sentenced to the custody of the Department of Corrections who are currently confined at the Orleans Parish Prison.

18. J. Christopher Pilley is sued in his official capacity as the Secretary of the Louisiana Department of Health and Hospitals and as the custodian of Department of Health and Hospitals' patients currently confined at the Orleans Parish Prison.

#### V. CLASS ACTION ALLEGATIONS

19. This is a class action under Rules 23(a) and 23(b)(1), (2) and (3).

20. Plaintiffs are representative parties of a class of all persons who are confined within the custody of Defendant Sheriff Foti, at the Old Parish Prison, Community Correctional Center, House of Detention, Central Lock-up, Templeman Facility, and the Emergency Detention Center, or who will be so confined in the future. As noted in Paragraph 3, a class has been previously certified consisting of prisoners in all of the above-referenced facilities except the newly constructed Templeman Facility.

21. Plaintiffs' claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

22. The class is so numerous that joinder of the members is impracticable. Current members of the class of prisoners number approximately 5,000.

23. The lawsuit challenges various conditions of confinement and there are questions of law and fact common to the class.

24. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class.

#### VI. FACTUAL ALLEGATIONS

##### Medical Care

25. Medical services provided to prisoners have been totally inadequate and have constituted deliberate indifference to prisoners' serious medical needs. Emergency, routine and basic preventive care have been inadequate. Routine screening of newly admitted prisoners has not been done prior to placement in the general population of the facility. Health care services have been completely disorganized with virtually no leadership or system of authority. The system has been run through a series of contracts between Charity Hospital of New Orleans, Sheriff Foti, the City of New Orleans and the Department of Health and Hospitals. The City has not fulfilled its obligations on these contracts by making the required payments. As a consequence, the Department of Health and Hospitals and the Charity Hospital of New Orleans had not increased the level of services since the initial contract was executed in the early 1980s. In fact services had decreased.

26. As a direct result of the lack of organization,

leadership and resources described above, such essential services as intake screening, sick-calls, follow-up care, emergency care, specialty consultations, HIV care, charting and record keeping, pharmacy, radiology, and quality assurance have not routinely been provided to prisoners on a timely and medically necessary basis. The failure to provide these services has contributed to unnecessary suffering and death.

27. On December 11, 1990, the Court approved and entered as an Order of the Court the Agreed Entry Medical Care negotiated by the parties. The agreement establishes a comprehensive system of medical care at the prison and requires the defendants to obtain certification from the National Commission on Correction Health Care as a precondition to compliance with the judgment of the Court. The defendants have not complied with the June 1, 1991 deadline for achieving full compliance with the provisions of the Agreed Entry. Dr. Joseph T. Hamrick was appointed as the Court's expert for a purposes of monitoring compliance.

#### Mental Health Care

28. Services to psychiatric patients are inadequate and constitutes deliberate indifference to prisoner needs. There are many significant problems regarding the provisions of minimally adequate mental health services to severely mentally ill inmates at OPP. These problems originate with a significant dispute between the Sheriff's department and the Louisiana Department of Health and Hospitals concerning which agency is responsible for treatment of mentally ill inmates at OPP. Basic principles

governing the delivery of psychiatric services in jails and prisons are not being followed within the mental health system at OPP. There appears to be no formal policies and procedures addressing issues concerning the use of restraints and seclusion, mental health evaluations, involuntary medications, confidentiality, informed consent, education and training of correctional staff, and other very basic components of minimally adequate mental health treatment systems. Psychiatric hospital beds are not available to a significant number of inmates in need of such treatment, including DHH patients remanded to state-forensic facilities. These deficits in the mental health system have resulted in the lack of essential mental health services for severely mentally ill inmates at OPP and resulted in unnecessary suffering and death.

29. Prior to the commencement of trial on this claim, the parties entered into a stipulation agreeing to waive the trial and to develop a plan for the establishment of a system for mental health care at the prison. This stipulation was entered into the record on September 9, 1991. On September 9, 1991, the Court entered an Order requiring the defendants to develop a plan for the delivery of mental health services that conforms to the standards established by the National Commission on Correctional Health Care. This plan is currently being developed and will be the subject of future proceedings. Additionally, to alleviate the failure of the Department of Health and Hospital to transfer patients in a timely manner to state facilities, the Court has established a mechanism to expedite the process that requires a

Department of Health and Hospitals representative to respond monthly to a standing order to show cause to explain any delays in transfers to state facilities.

### Shelter

30. Conditions vary considerably from facility to facility, depending largely on their date and type of construction and the extent of renovation. Nevertheless, the physical conditions described below are common to each of the facilities unless otherwise indicated.

31. Sanitation throughout the OPP facilities, including sanitation in housing, food preparation and serving areas, is grossly inadequate. Prisoners are required to eat in their cells (tents) or in other housing areas not adequate for the serving or consumption of food. As a direct result of this, vermin, such as mice and roaches are found in the housing areas of many of the facilities.

32. Toilet and shower areas are particularly foul. House-keeping rules are inconsistently enforced. Cleaning equipment and supplies are not available. Prisoners have no personal storage space and keep their belongings in plastic bags or under their mattresses. As a result of this, living areas are cluttered with personal belongings and garbage creating both a public health and fire safety hazard.

33. In the older facilities the plumbing is in disrepair. There are leaking pipes, ceilings and roofs. Even in the new facilities, there is frequently a lack of water pressure or hot

water. Sanitary fixtures such as toilets, urinals, lavatories and showers are poorly maintained. Repairs are not made promptly. Given the population of the housing units, there are inadequate numbers of such fixtures to serve this population. In some units, toilet and shower facilities are not available to the prisoners housed there for large periods of the day. In others, prisoners are limited to just five or ten minutes in the showers. In the female segregation unit prisoners are allowed out to shower at 12:00 a.m.

34. Except in the facilities that have installed central air conditioning and heating, ventilation in the facilities is totally inadequate. Living areas are unbearably hot in summer, and cold in winter. Many windows are broken-out or inoperable, contributing to the uneven temperatures. In Tent City, prisoners are exposed to the elements, and flooding during heavy rains. Lighting is inadequate for reading or other close work. Most of the living areas have no furniture or furniture that is broken or worn-out, leaving prisoners with no place to sit, to eat or work. Noise is unbearable throughout the facilities.

35. Basic personal hygienic supplies are either not provided or inconsistently provided. Soap, toothpaste and brushes, toilet paper, deoderant, sanitary napkins are simply not available or are in short supply. Some of these items are sold in the commissary but prisoners cannot afford to purchase them.

#### Clothing and Bedding

36. Basic clothing is not provided. Generally prisoners are

provided with one or two pairs of pants and shirts (two uniforms). Everything else, shoes, socks, underwear, pajamas, warmer clothes for outside must be provided by the prisoner by way of his or her relatives and friends. Those prisoners who have only one shirt and one pair of pants cannot afford to launder them because they have nothing to wear in the interim. Laundry facilities consist in some cases of prisoners washing clothes in toilet bowls.

37. Bedding is also limited. Prisoners are issued one or two blankets but no sheets, pillows, or an adequate supply of towels. All must come from the outside. Mattresses are frequently torn and/or soiled, creating both a public health and fire safety hazard.

#### Crowding and Space

38. There is insufficient amount of space for housing prisoners throughout the Orleans Parish Prison. Consistently men and women are forced to sleep on bunks stacked three and four high, and on floors in cells already filled to capacity as well as in dayroom areas not designed for housing. In the holding tanks in the CLU, prisoners are confined in crowded large cells where they must sleep without mattresses or bedding on benches for days at a time. Detainees under the influence of drugs or alcohol, or those that are mentally ill are routinely placed in the holding tanks with other detainees frequently creating a disturbance through their unpredictable conduct or by becoming ill.

39. Crowding has forced the defendants to house prisoners on more than a temporary basis in tents out on the former recreation

field. The field becomes muddy and swampy in rainy weather, making for unsanitary conditions to prevail. In winter the tents are cold and drafty because the heating units supplied are inadequate. In storms, tents have blown down, causing injuries to prisoners. The mess tent where prisoners are served their meals has no seating, forcing prisoners to eat their meals in their living tents. This practice is unsanitary and has resulted in pest and vermin problems. Crowding has exacerbated the problems with respect to shelter and personal safety.

#### Fire Safety

40. The danger of fire is ignored and basic fire safety measures are not taken. Smoking policies are not enforced or are enforced inconsistently. Personal belongings, including papers and clothing clutter the housing areas. Metal lockers or cabinets are not provided and prisoners store their things in paper and plastic bags and in cardboard boxes. The crowding of beds, furniture and people in cellblocks and dorms makes evacuation in case of fire problematic and a threat to life and limb. Broken locks, blocked exits, lack of smoke detectors, extinguishers and fire drills add to the danger.

#### Exercise

41. Prisoners are not provided adequate opportunities to exercise in order to sustain health or to positively or profitably spend their time. Recreation is frequently limited to one hour or less per week. Cancellations due to inclement weather are not made up and there is no indoor area for exercise. In many areas of the

prison, prisoners are virtually locked down in their crowded cells and dormitories for months and years on end. These conditions are particularly harsh on prisoners serving long sentences at OPP, and juvenile prisoners who need greater amounts of exercise to maintain their health. Except for the prisoners in Tent City, prisoners rarely get to go outside to exercise. In colder weather, no suitable clothing is provided even if prisoners are brought out. There is little equipment available and no organized or structured recreational program for OPP prisoners. This lack of opportunities is exacerbated by the crowding and the lack of space.

#### Personal Safety

42. Violence and/or the threat of violence are endemic at OPP, resulting in physical injury and death. This situation is exacerbated by a number of factors including excessive crowding; almost complete idleness; the lack of exercise opportunities; insufficient staff supervision; the availability of weapons; the presence of mentally ill prisoners housed in the population; the absence of an effective classification system separating violent from the non-violent offenders and the pretrial from sentenced long-term offenders; and a failure to adequately train and compensate staff. Inmate-on-inmate fighting and assaults and staff abuse and beatings of prisoners are not uncommon and have resulted in serious injuries.

43. In the disciplinary segregation unit, assaultive prisoners are routinely locked down with other assaultive prisoners, two or more to a cell. This dangerous practice has led

to inmate assaults and injuries.

44. Juvenile offenders are or have been housed in several adult facilities, including OPP, HOD/CLU, and the Templeman Facility. Insufficient measures are taken to adequately isolate them from adult prisoners and have jeopardized their safety.

Responsibilities of the Defendants

45. As the lawful custodian of the Orleans Parish Prison, Sheriff Foti has knowledge of the complained of conditions and has failed to take adequate measures to correct them.

46. As Mayor of the City of New Orleans, Mayor Barthelemy has the responsibility for financing and maintaining the Orleans Parish Prison. He has knowledge of the complained of conditions and has failed to take adequate measures to correct them.

47. As Governor of the State of Louisiana, Governor Edwards has the responsibility through his delegees for providing custodial care for state-sentenced prisoners and state forensic patients confined at OPP. He has knowledge of the complained of conditions and has failed to take adequate measures to correct them.

48. As Secretary of the Louisiana Department of Corrections, Secretary Stoldard has the responsibility for providing the custodial care for state-sentenced prisoners. He has knowledge of the complained of conditions and has failed to take adequate measures to correct them.

49. As Secretary of the Louisiana Department of Health and Hospitals, Secretary Pilley has the responsibility for providing the custodial care for state forensic patients at OPP. He has

knowledge of the complained of conditions and has not taken adequate measures to correct them.

#### VII. CLAIMS FOR RELIEF

##### First Claim

50. Plaintiffs reallege and incorporate by reference paragraphs 25 through 49.

51. Defendants fail to provide plaintiffs with the basic necessities of life, including adequate food, shelter, sanitation, medical and mental health care, and personal safety. The conditions in these facilities are incompatible with contemporary standards of decency, cause unnecessary and wanton infliction of pain and are not reasonably related to any legitimate governmental objectives. As a result of the defendants' deliberate indifference, sentenced prisoners are thereby subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and pretrial detainees are subjected to impermissibly punitive conditions in violation of the Due Process Clause of the Fourteenth Amendment.

#### VIII. NO ADEQUATE REMEDY AT LAW

52. As a proximate result of the defendants' policies, practices, procedures, acts and omissions, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury. Plaintiffs' physical and psychological health and well-being will continue to deteriorate during the course of the confinement of plaintiffs under the conditions described in this

complaint. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, and procedures, acts and omissions of the defendants unless this Court grants the injunctive relief that plaintiffs seek.

IX. PRAYER FOR RELIEF

53. WHEREFORE, plaintiffs and the class they represent pray that this Court:

1. Determine by order pursuant to Rule 23, Federal Rules of Civil Procedure, that the class in this action may be expanded to include prisoners in the Templeman Facility;

2. Issue a declaratory judgment stating that the defendants' policies, practices, acts and omissions described in this Complaint violate plaintiffs' rights, guaranteed to them by the Eighth and Fourteenth Amendments to the United States Constitution;

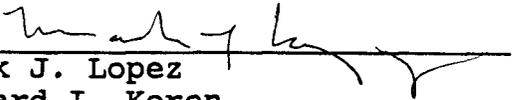
3. Permanently enjoin defendants, their officers, agents, employees and successors in office, as well as those acting in concert and participating with them, from engaging in the unlawful practices described in this Complaint;

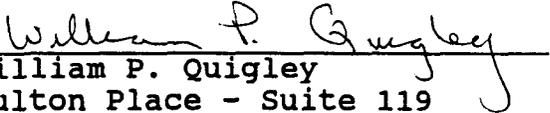
4. Retain jurisdiction of this matter until this Court's orders have been carried out;

5. Award plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. §1988; and

6. Grant such other relief as may be just and equitable.

Respectfully submitted,

  
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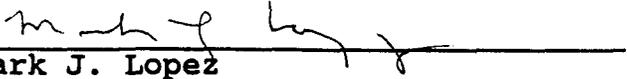
  
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Attorneys for Plaintiffs

Dated: January <sup>22</sup> 7, 1992

CERTIFICATE OF SERVICE

I hereby certify that a copy of the plaintiffs' Amended Complaint has been <sup>hand</sup> delivered by ~~Federal Express~~ to Patricia Bowers, Assistant Attorney General, Department of Justice, 234 Loyola Ave., New Orleans, Louisiana 70112; Allen Usry, Usry & Weeks, 2800 Veterans Memorial Blvd., Suite 180, Metairie, Louisiana 70002; and Brett Prendergast, Deputy City Attorney, 1300 Perdido Street, Room 2W23, New Orleans, Louisiana 70112 this <sup>22nd</sup> 8th day of January, 1992.

  
 Mark J. Lopez