

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
)	With Civil Action Numbers:
ERNEST N. MORIAL, et al.,)	87-5867, 88-3736, 88-1162,
)	88-5564, 89-1084, and 94-2502
Defendants.)	

PARTIAL AMENDED COMPLAINT

In July 1994, the related case of Lambert v. Morial, 94-2502, involving female inmates, was initiated. On December 21, 1994, with the consent of all parties, the Court (1) expanded the class in this litigation to "any and all inmates housed in the Community Correctional Center, House of Detention, Old Parish Prison, Templeman I, II, and III, and any and all female inmates housed in any facility in the Orleans Parish Prison System," (2) extended the June 10, 1991 consent decree on medical issues, the plan for a psychiatric program, and the January 14, 1994 environmental consent decree to cover the amended class, and (3) transferred and consolidated the remaining issues in the Lambert case into this case -- to be handled as Phase IV. Accordingly, the purpose of this amended complaint is to incorporate the case of Lambert v. Morial into the present case and to delineate the remaining issues before the Court to be addressed in Phase IV of the case.

Plaintiffs, on behalf of themselves and the class alleged herein, therefore amend their Complaint to add paragraphs 13a. and 13b., to substitute Rose Forrest for J. Christopher Pilley in

Hamilton v. Morial



JC-LA-003-014

paragraph 18, and to substitute the following paragraphs for paragraphs 45 to 53 of the Amended Complaint filed in January 1992.

13a. At the time the Lambert case was brought and certification was sought, plaintiff Serelda Lambert was incarcerated as a sentenced prisoner at the South White Street jail. Prior to that time she was housed in various Orleans Parish Prison facilities, including Rendon Street. She suffered violations of her constitutional rights while confined at those facilities.

13b. At the time the Lambert case was filed and class certification sought, plaintiff Pamela Edwards was a pretrial detainee at the South White Street jail. Prior to that time she was housed in various Orleans Parish Prison facilities, including Rendon Street. She suffered violations of her constitutional rights while confined at those facilities.

Phase IV - Conditions and Practices in the Women's Facilities and Legal Access

Most of the physical plant, environmental and operational allegations have been resolved by the entry of an environmental consent decree of November 22, 1993. However, in addition to the sexual misconduct, privacy, legal access and visitation issues below, the following physical plant issues were not resolved.

Physical Plant and Environmental Conditions

45. Female prisoners are housed in a number of facilities, two of which are specifically designated for them at this time: South White Street and Rendon Street. Female prisoners are also housed in Templeman I and III and in the House of Detention.

46. Female prisoners are crowded into these facilities in open bay dormitories and are confined inside, almost without exception, twenty-four hours a day.

47. Due to the physical layout of the facilities and the population density, there is no receiving tier for new arrivals to be housed while they are medically cleared and classified. As a matter of policy and practice, defendants house newly received inmates in general population, which increases the risk of exposure of staff and prisoners to communicable diseases, such as tuberculosis and crabs.

48. Unlike their male counterparts, female prisoners with ambulatory or chronic medical problems are not provided with either an infirmary or step-down unit.

49. Because of the physical layout of the facilities and the population density, defendants are not able to provide adequate segregation housing for special management prisoners including prisoners with mental illnesses, predators, and persons in need of protection. The few cells set aside in the SWS facility are used almost exclusively to house immigration holds in virtual lock-down status. Therefore, there is an atmosphere of chaos and disorder which pervades each of these housing units.

50. In Templeman III, there are no emergency buzzers accessible during lockdown, no guards posted in the cell-block area, and no clear visibility into the cell-blocks from the control module. Prisoners are unable to contact guards in the event of an emergency, creating the risk of serious injury.

51. The conditions described in ¶¶ 45 through 50, above, among others, subject plaintiffs to life-threatening conditions of confinement.

Sexual Misconduct and Degrading Treatment

52. In this phase of the litigation, allegations of sexual misconduct, harassment and degrading treatment arose in the context of investigating conditions in specific women's facilities not governed by the previous consent decrees. However the problems exist system-wide, in all facilities which house women. On information and belief, certain Orleans Parish Prison officers have engaged in a pattern and practice of sexually assaulting female inmates and extracting sexual favors from them. These officers also allow male inmate trustees to extract sexual favors from female inmates. This conduct frequently occurs incident to placement in the disciplinary segregation or the mental health units or during transport to court. Due to the nature of this conduct and fear of retaliation, many female prisoners are reluctant to discuss these allegations.

53. In conjunction with the conduct described above, female inmates are routinely subjected to vulgar sexual remarks and sexual slurs and epithets by Orleans Parish Prison officers. Prisoners who object to such indignities are charged with verbal disrespect, and disciplined under the guise of maintenance of institutional respect and decorum.

54. Correctional officers often fraternize with specific inmates, unprofessionally establishing personal relationships and creating an atmosphere of favoritism.

55. Defendants have failed to train, discipline or control properly the sexually abusive and degrading actions of correctional officers.

56. The practices and procedures outlined in ¶¶ 52 through 55, supra, subject plaintiffs to confinement under harmful conditions that are detrimental to their health and well-being.

Privacy

57. In all facilities that house female prisoners, Orleans Parish Prison officers routinely fail to inform female prisoners that there is a man in the facility. Consequently male guards and other personnel often observe female prisoners while they are nude or partially nude. Similarly, due to the lack of any barrier or privacy curtain between the shower area and the remainder of the dorm, these men sometimes observe the shower areas. These "observations" are unrelated to the need to establish a "count" of inmates or any other security need.

58. In SWS, there are closed-circuit cameras in the women's shower areas. The camera monitors are located in the correctional officer's central module, at the front of SWS. Consequently, any man entering this facility can observe the women in the showers. The use of this monitoring equipment violates the inmates' rights to privacy.

59. Defendants inconsistently apply their strip search policy to female prisoners, inappropriately using the strip search as a form of harassment. Additionally, strip searches are routinely conducted in public places, often in front of an entire dorm, in violation of prisoners' privacy.

60. In SWS and Rendon Street, bathroom facilities consist of approximately five toilets positioned three feet apart, at one end of the dormitory. There are no barriers between the toilets, in violation of prisoners' rights to privacy.

61. The practices and procedures outlined in ¶¶ 57 through 60, supra, subject plaintiffs to confinement under harmful conditions that are detrimental to their health and well-being.

Legal Access

62. Prisoners are denied adequate opportunities to have contact with their attorney. The nearly one hundred prisoners in each of the dormitories of SWS and Rendon have access to only three telephones and the hours of access to these telephones are unduly limited. The telephones are frequently turned off for days at a time for disciplinary reasons, preventing prisoners from contacting their attorneys.

63. The defendants routinely open inmates' legal mail outside of the presence of the inmates.

64. The defendants do not provide adequate facilities for legal visits. The same room is used for legal visits as for non-legal visits. As a result, legal visits are denied during regular visiting hours.

65. The visiting room at SWS is divided by a solid glass wall. Approximately twelve round stools are positioned on each side of the glass, one foot apart. There are no partitions between the stools, and desks for note-taking. Telephone receivers, many of which are broken, must be used to communicate,

making it impossible for two attorneys to speak with an inmate at the same time. Generally, when several legal visits are being conducted at once, maintaining attorney-client confidentiality is almost impossible. Due to the barrier, it is not possible to pass legal documents or for a lawyer and client to review legal documents simultaneously. The visiting room at Templeman III is similar to that at SWS, except that there are no telephones. Instead both parties must shout through a glass partition. There are similar problems with visitation at the House of Detention and Templeman I and II. Rendon Street has no visitation room.

66. Defendants often require female plaintiffs to visit with their attorneys at facilities other than those in which they are housed, necessitating long waits in cramped holding cells, delay in receipt of medication or food, and strip searches subsequent to transportation outside of the facility. These practices discourage inmates from exercising their legal rights.

67. Prisoners in Orleans Parish Prison are routinely denied contact attorney visits, unnecessarily infringing on their rights to access to the courts and counsel and the confidentiality of legal materials. These prisoners are unable to review documents simultaneously with their attorneys and documents must be given to officers to pass between attorney and prisoner. The officers are out of view of the attorney and prisoner when delivering documents from one to the other. There are delays in the passage of documents when an officer is unavailable.

68. The Sheriff and his delegees have consistently obstructed access to female plaintiffs by the ACLU National Prison Project (NPP) and other legal service organizations. This obstruction has taken the form of outright denial of access under certain circumstances, unnecessary delays in obtaining access, use of intimidation tactics, and transfer of inmates who request visits with NPP lawyers or who make allegations of abuse. For example, Sheriff's employees questioned one prisoner, immediately following a legal visit with a NPP representative, about the substance of their discussion.

69. Prisoners, including those who are indigent, are not provided with pens, paper, stamps or notary services for their legal needs. Prisoners who can afford them may purchase these items from the Orleans Parish Prison store.

70. Because of the practices and procedures outlined in ¶ 62 through 69, supra, plaintiffs are denied meaningful access to the courts and effective assistance of counsel.

Visitation

71. After giving birth, female prisoners are immediately separated from their newborn babies, and are thereafter denied the opportunity to breast-feed during regular visiting hours. This practice subjects plaintiffs to confinement under harmful conditions that are detrimental to their health and well-being, and unreasonably interferes with the parent-child relationship.

72. Visitation is limited to a total of three visitors. Children must be accompanied by an adult. Therefore, prisoners with three or more children must completely forego visitation with one or more of their children. Visits that do occur are limited to fifteen minutes, in cramped and crowded visitation rooms, divided by a glass partition.

73. The practices and procedures outlined in ¶¶ 71 through 72, supra, subject plaintiffs to confinement under harmful conditions that are detrimental to their health and well-being, unreasonably interfere with the parent-child relationship, and unreasonably cut prisoner ties to the community.

VII. DEFENDANTS' KNOWLEDGE OF THE DEFICIENCIES

74. Numerous prisoners have attempted, to no avail, to file individual grievances complaining to prison staff about inadequate and inappropriate treatment, conditions and care. Through plaintiffs complaints and advocacy efforts on behalf of individual plaintiffs, defendants have been informed on numerous occasions regarding specific instances of inappropriate treatment and care. Moreover, all defendants have been on notice of the allegations in Phase IV since the filing of the Lambert complaint in July 1994.

75. 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.

76. As Mayor of the City of New Orleans, Mayor Morial 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.

77. 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 Orleans Parish Prison. He has knowledge of the complained of conditions and has failed to take adequate measures to correct them.

81. As Secretary of the Louisiana Department of Corrections, Secretary Stalder 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.

82. As Secretary of the Louisiana Department of Health and Hospitals, Secretary Forrest has the responsibility for providing the custodial care for state forensic patients at Orleans Parish Prison. He has knowledge of the complained of conditions and has not taken adequate measures to correct them.

VIII. CLAIMS FOR RELIEF

A. Medical, Psychiatric, Physical Environment, and Conditions and Practices

83. Plaintiffs reallege and incorporate by reference paragraphs 25 through 82.

84. 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.

B. Sexual Misconduct and Degrading Treatment

85. As alleged in ¶¶ 52 through 55, the defendants have subjected plaintiffs to a pattern and practice of sexual misconduct including sexual assault, extraction of sexual favors, and derisive sexual slurs and epithets by Orleans Parish Prison officers, in violation of the Eighth and Fourteenth Amendments. Female plaintiffs have been targeted for harassment because of their sex in violation of the Equal Protection clause of the Fourteenth Amendment.

C. Privacy

86. As alleged in ¶¶ 57 through 60, the defendants have violated plaintiffs right to privacy under the First, Fourth, and Fourteenth Amendments. In addition, defendants' violation of plaintiffs' privacy violates the Eighth Amendment of the United States Constitution.

D. Legal Access

87. As alleged in ¶¶ 62 through 69, the defendants' interference with plaintiffs' legal access, denial of legal visits and denial of contact attorney visits deprive plaintiffs of their right to meaningful access to the courts as guaranteed by the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

E. Visitation

88. As alleged in ¶¶ 71 through 72, the defendants have violated plaintiffs right to privacy, family autonomy, and freedom from cruel and unusual punishment under the First, Fourth, Fifth, Eighth and Fourteenth Amendments.

VIII. NO ADEQUATE REMEDY AT LAW

89. 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 their confinement 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

90. WHEREFORE, plaintiffs and the class they represent pray that this Court grant the following relief:

A. Issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, 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;


B. 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;

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

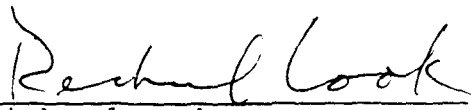
D. Award plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

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

Respectfully submitted,



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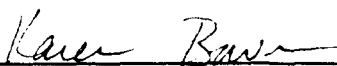
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Dated: April 5, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the plaintiffs' Partial Amended Complaint has been delivered by First Class Mail to Patricia Bowers, Bowers & Bowers, Place St. Charles, 201 St. Charles Street, Suite 2505, New Orleans, Louisiana 70170; Allen Usry, Usry & Weeks, 2800 Veterans Memorial Blvd., Suite 180, Metairie, Louisiana 70002; and Terri Love, Deputy City Attorney, 1300 Perdido Street, Room 2W23, New Orleans, Louisiana 70112 this 5th day of April, 1995.



Karen A. Bower