

FILED

DEC 29 1981

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

LARRY GRAY, RONALD ARTIS, and)
ALONZO PATTERSON, On behalf of)
all other inmates and pre-trial)
detainees in the Scott County)
Jail similarly situated,)

Plaintiffs,)

vs.)

BILL FERRELL, Sheriff of Scott)
County and his agents, subor-)
dinates and employees; LOUIS)
HIRSCHOWITZ, ELDON ZIEGENHORN,)
and DEWAINE SHAFFER, Judges of)
the County Court of Scott County,)
Missouri,)

Defendant.)

Case No. S81-18C

Class Action Complaint

FILED

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EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

*1/17/81
leave granted
W.S.D.*

PLAINTIFFS' SECOND AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT, INJUNCTIVE
RELIEF, AND OTHER APPROPRIATE RELIEF

PARTIES

1. Plaintiffs are and were at all times herein material citizens of the United States and were at all times herein material prisoners or pre-trial detainees in the Scott County Jail in Benton, Scott County, Missouri.

2. Plaintiff Larry Gray was confined in the Scott County Jail for a period of 92 days, from the 12th day of December, 1980 to the 30th day of March, 1981.

3. Plaintiff Ronald V. Artis was confined in the Scott County Jail for a period of 94 days, from the 29th day of December, 1980 to the 1st day of April, 1981.

4. Plaintiff Alonzo Patterson was confined in the Scott County Jail for a period of 239 days, said time being from the 4th day of June, 1979, to the 5th day of June, 1979; from the 23rd day of June, 1980 to the 26th day of June, 1980; and from the 1st day of July, 1980 to the 18th day of February, 1981. He has been confined for various periods of time since then.

5. Defendant Bill Ferrell is now, and at all times herein material, was a resident of Scott County, Missouri, and the duly elected, qualified and acting Sheriff of Scott County, Missouri.

6. Defendants, Louis Hirschowitz, Eldon Ziegenhorn and Dewaine Shaffer are residents of Scott County, Missouri and the duly elected, qualified and acting Judges of the Scott County Court. Included within their responsibilities pursuant to Missouri Revised Statutes Sections 49.310 and 221.120 et seq are to "erect and maintain... a good and sufficient... jail..." and the appropriations of funds necessary to insure that Plaintiffs and the class which they represent are not subjected to fundamental Constitutional violations.

JURISDICTION

7. This action arises under the United States Constitution, particularly under the provisions of the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, and under Federal Law, particularly the Civil Rights Act, Title 42 of the United States Code, Section 1983.

8. Jurisdiction over this action is conferred by Title 28 of the United States Code, Section 1343.

9. Defendants at all times herein material, were acting in their official capacities under color of State law with respect to all claims herein alleged.

CLASS ACTION

10. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and all other inmates and pre-trial detainees confined in the Scott County Jail. The number of class members is so numerous that joinder is impractical. There are questions of law and fact common to the class. The claims of the Plaintiffs are typical of the claims of the class and the respective sub-classes. The Plaintiffs in this case will fairly and adequately protect the interests of the class.

11. This action is particularly appropriate as a class action because prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members not a part of the adjudications. Further, Defendants have acted and refused to act on grounds generally applicable to the class thereby making appropriate final injunctive and declaratory relief.

FACTS

12. Plaintiffs and the members of the class which they represent, have been, are, and will continue to be subjected to the dehumanizing, illegal and unconstitutional conditions and practices enumerated herein. These conditions and practices exist because of the willful and intentional acts, policies and omissions of the Defendants in this action.

13. The Scott County Jail is located in Benton, Missouri, a small town approximately fifteen (15) miles from Sikeston, Missouri.

OVERCROWDING

14. Inmates in the Scott County Jail are confined in twelve (12) four-person cells. Each cell contains a toilet and sink. The cells have approximately ninety (90) square feet of floor space. Each cell has four beds; however, on occasion, five persons have been temporarily housed in one cell.

UNSANITARY AND UNSAFE CONDITIONS

15. Inmates are provided with totally inadequate hygiene facilities. They receive a small hotel-size bar of soap upon admission. They cannot receive shampoo, deodorant or toothpaste from visitors, but must purchase these if they have the money. Inmates who are being punished are frequently not allowed to shower, or to shower only once a week.

16. The mattresses are filthy and crawling with lice and other vermin. Inmates are permitted only one change of

clothes and are required to wear their clothes for an excessively lengthy period of time without the opportunity to have their clothing washed or laundered.

17. Inmates are required to clean their cells, but are not provided with adequate cleaning supplies. At times, inmates must clean the toilets with their hands because defendants failed to provide a toilet brush or other supplies.

18. Each cell contains an open toilet. Due to the lack of cleaning supplies previously mentioned, and the fact that inmates are often required to eat their meals in their cells, they are exposed to infection, contamination and unsanitary conditions.

19. An extremely dangerous condition exists if there would be a fire in the jail. There are no smoke detectors or sprinklers. There are an insufficient number of fire extinguishers. There are no fire drills and no fire evacuation plan.

LACK OF RECREATIONAL, EDUCATIONAL AND COUNSELLING FACILITIES

20. Inmates are under a regime of enforced idleness, being locked in their cells each evening at about 4:00 p.m. until the following morning. At other times, they are only allowed to pace in a common "bull pen" area. Although an outside, secure yard is available, inmates are given virtually no opportunity for outdoor recreation or exercise. This lack of recreation leads to increased tensions among prisoners and mental and physical deterioration.

21. There is no library of any sort in the jail. The only reading materials which inmates are allowed consists of paperback books and magazines.

22. There is no psychological counselling program at the jail for inmates.

23. There is no alcohol or drug counselling at the jail.

FOOD AND NUTRITION

24. Meals served to inmates are inadequate in quality and

and quantity and are far below the minimum daily nutritional requirements of adult inmates. The same weekly menu has been used since June, 1979. It contains no milk or eggs at all. Inmates do not receive any fresh fruits or vegetables. In addition, the meat is often spoiled, the rolls stale and the food generally repetitious and unsavory.

25. There is no employed cook at the jail and no regular planning of menus to provide a nutritional, balanced diet. Meals are prepared by the inmates themselves. These inmates are not checked for contagious diseases, thus creating a serious health risk to the entire jail population.

MEDICAL FACILITIES AND CARE

26. When an inmate enters the Scott County Jail, there is no medical screening for contagious disease or special medical requirements. There is no medical history taken or procedure to determine if an inmate is on prescribed medication.

27. An inmate entering the jail is not informed of the procedure to get medical attention if needed. Jail personnel have no procedure for routinely checking with inmates to see who needs medical attention and they do not in fact do so.

28. Due to the lack of supervision and structure of the jail, it is difficult for inmates to get help in an emergency. Even when an inmate succeeds in communicating a medical or other emergency to someone, there is frequently an unreasonable and dangerous delay before the inmate is taken to a hospital.

29. There is no sick call by a nurse or other qualified person. No inmate is allowed to see a doctor unless a jailor or sheriff's deputy thinks it is important and necessary. There is no adequate space in the jail to use for a treatment room. Inmates with serious injuries are required to sit on a chair in the front corridor until the trustee or dispatcher can contact the sheriff or a deputy for instructions.

30. There is no set procedure for obtaining medication already prescribed by a private physician.

31. There is no organized method of medical record keeping

at the jail for each inmate.

VISITATION AND COMMUNICATION

32. There are numerous policies which restrict and arbitrarily limit visits between inmates and family and friends. Visitation hours are limited to one hour each Tuesday and two hours on Saturday for up to forty-eight (48) inmates. Visits are often limited to five or ten minutes per inmate; visits are limited to blood relatives, although this is not clearly defined and is selectively enforced by jail personnel. Contact visits are not allowed. Visitation takes place in four booth-like areas that separate the inmate from the visitor with a small mesh screen through which conversation is difficult. Acoustics in the visiting area make it difficult or impossible to have any meaningful communication.

33. In order to receive any mail, inmates are required to sign a "mail inspection authorization" upon admission to the jail which gives jail personnel permission to open inmates' mail, and this is done even for letters from an inmates' lawyer.

34. Inmates' incoming and outgoing mail is often read by deputies and trustees and the private contents of said letters are often discussed loudly between the deputies or trustees and other inmates.

35. Inmates are allowed, or prohibited from making telephone calls at the whim of the person on duty at the time. Recently promulgated rules restrict inmates to make one telephone call at their expense at the time of incarceration. The only other calls that are allowed are to obtain a lawyer or to post bond, "then only one call for each." Thus, if an inmate does not have money, or his lawyer is out of the office when the call is made, the inmate is effectively denied access to telephone contact with family or lawyers.

36. The telephone calls take place in the jail office/dispatcher area, so that the conversation can be easily overheard by jail personnel. If an inmate is calling his attorney, he is denied the confidentiality of the attorney-client

relationship.

JAIL DISCIPLINE

37. Inmates are not provided with a copy of any written rules or jail policies. Rules are selectively enforced, or changed at the whim of whoever is in charge at the time. Punishment is imposed summarily and depends totally on the whim of jail personnel.

38. Inmates are subjected to verbal and physical intimidation, assaults and threats by jail personnel.

39. There is no established procedure for registering inmate complaints.

40. Inmates are subject to being placed in "the hole" or "on deadlock" without any due process whatsoever. "The hole" is a separate cell in which inmates may be confined without opportunity for showers or access to the "bull pen" for limited exercise. "Deadlock" is the confinement of an entire cell block (as many as 16 inmates) to their cells for as long as several weeks. Inmates who are on deadlock cannot leave their cells for exercise or meals.

INMATE SECURITY AND SUPERVISION

41. There is no procedure for the classification of inmates. Pre-trial detainees, misdemeanants and felons are all housed together. No classification procedures exist based upon inmates' size, crime, or experience with the criminal justice system. No attempt is made to screen inmates with propensities for violence and separate them. Indeed, violence-prone inmates appear to be frequently used to assist in maintaining discipline or for punishment of other inmates.

42. Those persons utilized as correctional officers for the Scott County Jail are not given training to prepare them for their duties at a detention facility.

43. Adequate supervision of the inmates is impeded by the structure of the jail itself and the limited number of correctional officers employed to run the jail. Jail personnel are ill-trained and isolated in the front office room so that requests for medical attention or assistance go unheard.

Violence and sexual assault of inmates by other inmates is a continuing and serious problem at the jail.

PSYCHOLOGICAL EFFECT OF DETENTION IN THE JAIL

44. Plaintiffs and the class they represent suffer mental and emotional as well as physical harm by incarceration at the Scott County Jail. Long term psychological damage results from the aggravation and demoralization associated with the unsanitary and inhumane living conditions, the lack of recreation, the long hours of idleness, the isolation, the inadequate health services, the almost total denial of contact with their families and friends and the inconsistent treatment by jail personnel. This atmosphere deprives Plaintiffs and the class which they represent of all dignity and severely damages their mental and emotional well-being.

IMPAIRMENT OF THE RIGHT TO A FAIR TRIAL AND THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

45. Pre-trial detainees are impaired as to their right to aid in the preparation of their defense at trial in the following manner:

- a. As noted in paragraph 36 above, inmates are limited to only one telephone call to a lawyer. There is no privacy for these calls and, if the inmate has no money, he may be unable to make even one call to a lawyer. The majority of inmates' lawyers are in Sikeston, which is a toll call.
- b. Inmates have no access to any law books or legal materials whatsoever, notwithstanding the law library located in the nearby Scott County Courthouse.

FIRST CLAIM

46. The imposition of summary, harsh and brutal punishment and conditions upon Plaintiffs and their class enumerated in paragraphs 12 through 45 denies them the right to be free from cruel and unusual punishment in contravention of the Eighth and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM

47. The conditions found in the Scott County Jail are severely punitive in nature and effectively punish the class

of pre-trial detainees prior to trial and before they have been convicted of any crimes or given any sentence. Thus, detainees are deprived of their life and liberty without due process of law in violation of their rights under the Fifth and Fourteenth Amendments to the Constitution.

THIRD CLAIM

48. Failure to afford Plaintiffs proper disciplinary hearings prior to imposition of punishment and the arbitrary denial of recreation, showers, telephone privileges, etc. as described in paragraphs 37 through 40 denies Plaintiffs life and liberty without due process of law in contravention of the Fourteenth Amendment of the United States Constitution.

FOURTH CLAIM

49. Plaintiffs and the class they represent are denied effective assistance of counsel and the right to a fair trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, by the practices, procedures, acts and policies of Defendants as described in paragraph 45 which restrict, limit and prevent access to legal materials, legal counsel and to other persons and means necessary to prepare a defense.

FIFTH CLAIM

50. Plaintiffs and the class they represent are denied the right to freedom of speech and association in violation of the First and Fourteenth Amendments to the United States Constitution by practices, procedures, acts and policies of Defendants described in paragraphs 32 through 36 which restrict and limit visitation, arbitrarily prohibit visitation with non-blood relatives, and deny Plaintiffs the right to communicate with other persons by telephone and mail.

SIXTH CLAIM

51. Failure to provide a law library and other materials needed by Plaintiffs and the class they represent or to provide

a reasonable alternative to direct access to a law library denies Plaintiffs the rights to access to the Courts as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

SEVENTH CLAIM

52. As a result of Defendants' actions and omissions, Plaintiffs Larry Gray, Alonzo Patterson and Ronald Artis suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the class they represent, respectfully pray for relief as follows:

1. That the Court enter its Order that Plaintiffs' claims for declaratory Judgment and Injunctive Relief be maintained as a class action.
2. That Plaintiffs' individual claims for damages be stayed pending resolution of Plaintiffs' equitable claims as set forth herein.
3. That the Court hereafter order that all members of the class be notified of the action by the posting of one copy of the Complaint and the Court Order establishing the class in a conspicuous place in each section of the Scott County Jail. There shall also be posted a notice explaining that the class action case is before the Court and directing inmates to contact Plaintiffs' attorneys if they have questions. The notice shall for this reason include the names, addresses and telephone numbers of Plaintiffs' attorneys. These items shall remain posted, being replaced by Defendants as necessary during the pendency of this litigation.
4. That the Court enter an order declaring, that due to the individual and collective acts, practices and omissions, the Defendants:
 - (a) Have subjected Plaintiffs and the class they represent

to punishment without due process of law; and to cruel and unusual punishment within the meaning of the Eighth and Fourteenth Amendments to the United States Constitution;

- (b) Have deprived Plaintiffs and the class of pre-trial detainees they represent to the punitive conditions found in the Scott County Jail of life and liberty without due process of law and contravene the presumption that they are innocent until proven guilty in violation of the Fifth and Fourteenth Amendments to the United States Constitution;
- (c) Have subjected Plaintiffs and the class they represent to discipline without due process of law in violation of the Fourteenth Amendment to the United States Constitution;
- (d) Have deprived Plaintiffs and the class and subclasses whom they represent of the right to effective assistance of counsel and of assisting in their defense in their constitutionally protected right to fair trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution;
- (e) Have deprived Plaintiffs and the classes they represent to their rights of access to the Court under the First and Fourteenth Amendments to the United States Constitution.

5. That the Court issue a permanent injunction enjoining and restraining Defendants from engaging in any and all of the unlawful acts, practices or omissions complained of in this Complaint.

6. That the Court order Defendants to submit to the Court and thereafter implement a plan whereby Plaintiffs and the classes they represent are assured:

- (a) That the Scott County Jail and the cells therein be restored to and kept in safe and sanitary condition, with proper plumbing, heating, ventilation, cleaning, fumigation, and other repair and maintenance and that the jail population be reduced to a number which can be safely housed in the present jail facility;
- (b) That adequate fire prevention and evacuation procedures be instituted including such structural changes as might be required to provide quick exits from the cell areas by inmates.;
- (c) That a regular recreational and exercise program outside of the cells be established and that inmates be permitted outside of the jail for sufficient periods to assure their continuous physical and mental well-being;
- (d) That the Court immediately order that no inmate be housed in the Scott County Jail unless he can be continuously and directly viewed by a correction officer without assistance of electronic aids and unless a sufficient number of additional officers

be available to immediately intervene in any fight, assault, or attack to protect him;

- (e) That all inmates be fed in suitable, sanitary facilities outside of their cells, that meals be prepared and served in accordance with recognized nutritional standards and that procedures providing for special diets for either health or religious purposes be established and followed;
- (f) That inmates be permitted sufficient showers in safe and sanitary facilities to assure that they remain clean;
- (g) That inmates be furnished clean and sanitary mattresses and beds, a complete set of bedding and clothing, including socks and undergarments, which are cleaned and changed at least three times weekly, adequate towels, proper cleaning equipment and other personal hygienic necessities (such as toothpaste, soap, toothbrush);
- (h) That inmates be accorded essential preventive medical services, including complete physical and mental examinations upon admission to the jail and periodically thereafter, and receive adequate medical, dental and mental health care;
- (i) That inmates be classified according to age, prior record and type of offense committed so that alleged, youthful and first offenders are not confined with multiple offenders;
- (j) That voluntary educational, psychological counselling, vocational and work release programs be established and that pre-trial detainees be allowed to participate in those programs which are restricted to the jail;
- (k) That visiting regulations and facilities be established which ensure decency, comfort, privacy, reasonable visiting periods and no restrictions on the identity of visitors; and that visiting be increased to seven days a week;
- (l) That adequate telephones, which shall not be subjected to wiretapping or other monitoring, be installed and prisoners have access to them in order to make local outgoing calls without charge on a more frequent basis; that a system for unlimited phone calls to attorneys be allowed at reasonable times and during regular office hours;
- (m) That inmates have access to books, magazines, newspapers and law books and other legal materials in sufficient quantity and quality;
- (n) That no punishment, restraint or disciplinary measures be taken against any inmate pursuant to procedures which assure inter alia, that:
 - (1) Inmates are disciplined only for infractions of specific, written rules of conduct, which shall be published and distributed to every inmate;
 - (2) The inmate is informed in writing of any charges against him, the name of the charging officer, the names of witnesses against him, and the date and time of the hearing;

- (3) The disciplinary panel is an impartial tribunal;
 - (4) The charging officer is present and testifies at the hearing;
 - (5) The inmate is allowed to testify in his own behalf;
 - (6) The inmate is allowed to call witnesses;
 - (7) The inmate is allowed to cross-examine the charging officer and other witnesses;
 - (8) The inmate is allowed to select and to be assisted in investigation and at the hearing by an attorney, a law student, another inmate, or a member of the jail staff;
 - (9) A detailed record of the hearing is kept;
 - (10) Decisions regarding guilt or innocence are based on substantial evidence;
 - (11) Findings of not guilty are clearly indicated in the inmate's institution record;
 - (12) The inmate is informed of the reasons for the Board's decision and disposition;
 - (13) All disciplinary proceedings are reviewed by the Sheriff, who shall not increase the severity of any disposition.
- (o) That procedures for filing formal complaints or grievances by inmates be established.

7. That if a satisfactory plan is not submitted and implemented, the Defendants be enjoined and restrained from incarcerating or detaining any and all of the members of the class at the jail and further be enjoined from transferring Plaintiff and his class to an alternative facility unless Defendants can provide evidence satisfactory to the Court that the alternative does not suffer from the conditions herein complained of and is fully accessible to visitors and counsel.

8. That the Court enter an order directing the Judges of the County Court Defendants to appropriate funds and take such further steps as may be necessary and appropriate within their powers for the implementation of the orders and injunction referred to in this prayer of relief.

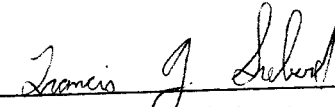
9. That the Court retain jurisdiction over Defendants and each of them until such times as the Court is satisfied that the practices, policies and omissions alleged herein no longer exist and will not recur.

10. That during pendency of this action and thereafter, Defendants, and each of them, and each of the jail officials and guards under their direction and control, be restrained and enjoined from any and all acts of punishment and/or reprisal with respect to the named Plaintiffs and the members of the class by reason of this action.

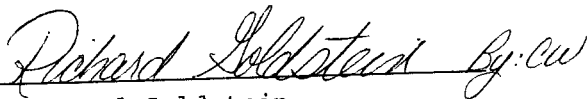
11. That the Plaintiffs be awarded reasonable attorney fees, costs and disbursements, pursuant to the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. §1988 (1979).

12. That the Court enter such further relief as may be just and proper.

Respectfully submitted,



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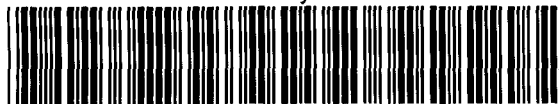
ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

THE UNDERSIGNED CERTIFIES THAT A COMPLETE COPY OF THIS INSTRUMENT WAS SERVED UPON THE ATTORNEYS OF RECORD OF EACH PARTY TO THE ABOVE ACTION BY ENCLOSING THE SAME IN AN ENVELOPE ADDRESSED TO SAID ATTORNEYS AT THEIR BUSINESS ADDRESS AS DISCLOSED IN THE PLEADINGS OF RECORD HEREIN WITH FIRST CLASS POSTAGE FULLY PREPAID AND BY DEPOSITING SAID ENVELOPES IN THE U. S. MAIL ON THE

18th DAY OF December, 19 81
Cornie L. Workman

Gray v. Ferrell



JC-MO-013-005