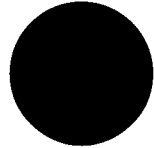


Exhibit D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION



FREDDIE MORGAN AND TOMMY MAE	§	
FLAKES AMES, INDIVIDUALLY AND	§	
ON BEHALF OF ALL OTHERS	§	
SIMILARLY SITUATED,	§	
Plaintiffs	§	
v.	§	CIVIL ACTION NOS.
	§	H-76-0629 and H-80-1546
	§	(CONSOLIDATED)
THE CITY OF HOUSTON,	§	
Defendant	§	

MOTION FOR ENFORCEMENT OF CONSENT DECREE
AND FOR SANCTIONS

COME NOW plaintiffs, Freddie Morgan and Tommy Mae Flakes Ames, as representatives of a Fed. R. Civ. P. 23(b)(2) class, together with the class of those persons similarly situated, seeking enforcement of a Consent Decree and sanctions, and in support would show the Court the following:

I.

This Court entered a Consent Decree on September 25, 1989. The Consent Decree's injunction reads in pertinent part as follows, at page 4:

"4. Defendant will provide, not later than the end of calendar year 1990, 24-hour per day intake medical screening by jail health attendants for all inmates and detainees entering [the City of Houston's jail/lockup facilities]."

Although never disclosed to plaintiffs, the City of Houston has apparently never complied with this provision of the Consent Decree. The City of Houston's own internal documents, discovered

in a separate lawsuit, appear to disclose not only the City's failure to comply with the Consent Decree, but also the City's clear awareness that such failure amounts to a violation of the Consent Decree. See Exhibits A through F. (These documents, while not yet authenticated by the City in this lawsuit, were produced in response to discovery requests in the case of Elvia Cavazos, Individually and as Administrator of the Estate of Maximo Ernesto Perez, vs. National Railroad Passenger Corporation d/b/a Amtrak, City of Houston and Houston Police Department, U. S. District Court, Southern District of Texas, Galveston Division, Civil No. G-94-112. Plaintiffs are submitting simultaneous with this motion Requests for Admission by the City of Houston as to the authenticity of the documents.)

II.

The Consent Decree's injunction further reads in pertinent part as follows, at page 3:

"1. Medical protocol and procedures shall be implemented whereby persons with specific medical problems which require special attention, including ileostomies and colostomies, will receive appropriate treatment by Defendant's jail attendants and jail health personnel. Such treatment shall be provided in accord with the protocols listed in the attached Exhibit 'F'."

This portion of the Consent Decree, likewise, is not being followed by the City. In the case of Elvia Cavazos, allegations are made, and plaintiffs in this case expect to be able to prove, that at least one person has died not only as a result of

the City's failure to have him screened by health personnel, but also because of defendant's failure to provide appropriate treatment for a health problem which required special attention, namely meningitis. Plaintiffs are likewise submitting simultaneous herewith Requests for Admission by the City to establish the veracity of the allegations made herein.

III.

The Consent Decree's injunction further reads, in again in pertinent part, at page 4 as follows:

"3. Defendant's Health Department will have on staff, not later than the end of calendar year 1990, two (2) Class D (of Class C, at Defendant's option) pharmacists with jurisdiction of jail/lockup facilities and command stations * * * and will keep its pharmacists on a 24 hour per day call basis to respond to such facilities as needed."

This portion of the Consent Decree, likewise, is not being or has not been followed by the City. See Exhibit A, attached hereto.

IV.

Plaintiffs submit that at least in the instances set out below the City has admitted, by and through its agents and employees, that the Consent Decree herein is being continually violated by the City.

In a Memorandum dated June 4, 1991, James L. Cheney, EMS Administrator, sent to the Assistant Director of Personal Health Services a memorandum reading in part as follows:

"As of 3:00 PM yesterday, Intake Medical Screening was discontinued for the Downtown Jail on all shifts and the Westside Jail on night shifts until appropriate overtime authorization can be received. As you know, this places the City in contempt of the Federal Court Order received from the Freddie Morgan et. al. Case (H-76-0629 and H-80-1546) for this requirement in addition to the continued violation of the order's requirement for pharmacists." (Emphasis supplied) (See Exhibit A, attached hereto.)

On August 11, 1992, Mr. Cheney sent another memo, this time to Jail Medical Specialists and Senior Jail Medical Specialists, reading in part as follows:

"There appeared a discrepancy between the counts of prisoners by HPD and our counts of prisoners screened at both Downtown and Westside for July:

Site	Prisoners	Screened	%
Downtown	9,598	8,099	84%
Westside	3,098	3,345	108%
Overall:	12,696	11,444	90%

As you know, a federal court mandate requires that we perform intake medical screening for each arriving inmate.

I have asked Senior Jail Medical Specialists, Alberto Balido and Larry Walker, to look into the matter for us at their respective work locations for all shifts. We need to isolate, explain, and/or cure whatever is at the heart of the discrepancies." (Emphasis supplied.) (See Exhibit B, attached hereto.)

On April 20, 1993, Ray Ruth Wheeler, Assistant Director of Personal Health Services, sent a memorandum to Joe D. Havis, "Deputy Director," reading in parts as follows:

"* * * Apparently, in light of the urgent demand from HPD, existing Jail Medical Specialists are being pulled from their current work stations to screen inmates at the new holding area of the Downtown Jail. This situation poses a serious problem since it leaves our jail clinic and current screening stations unattended for long periods of time." (Emphasis supplied) (See Exhibit C, attached hereto.)

On September 8, 1991, Thelma Lemley, EMS/Jail Health Administrator for the City of Houston, sent a memorandum to all Jail Medical Specialists, reading in part as follows:

"It has been brought to my attention that some prisoners referred to the clinic from screening are never seen in the clinic or for some reason are not seen for several hours." (See Exhibit D)

On December 6, 1993, Ms. Lemley sent a memorandum to Joe Havis, "Deputy Director" by way of the interim assistant director of Personal Health Services. In that memorandum, she stated in part as follows:

"It should also be noted, as stated in Mr. Cheney's memo of April 8, 1993, that the HPD Jail Division has continued to add staff as they increase services and as the jail population increases (more than 45% in the last three years). Our staffing has remained the same. This has caused a large turnover rate and increased sick time taken * * *.

"It has been my understanding that we are obligated by law to medically screen all inmates in a timely manner * * *." (Emphasis supplied.) (See Exhibit E, attached hereto.)

Apparently the City, even as late as fiscal year 1993, did not even plan to screen all inmates medically. In August and July of 1992, 92% and 90% of the inmates, respectively, were

screened. For fiscal year 1993, the budget apparently called for only 95% of the inmates to be screened. (See Exhibit F.)

V.

Because of the very serious nature of the non-compliance with the Consent Decree, and because of the City's failure to disclose either to plaintiffs or to this Court that non-compliance has been occurring, apparently for some period of time, perhaps even from the date of the Consent Decree, plaintiffs have chosen to file this motion now in an effort to obtain an early hearing.

VI.

The City's violation of the Consent Decree and this Court's injunction is blatant and egregious. Worse, it has apparently been done knowingly, at least since June 1991, but with no effort to disclose the non-compliance to either the Court or plaintiffs, or to have the decree modified.

Plaintiffs seek a short period of discovery to ferret out other instances of non-compliance, and to establish the nature, extent, and duration of the non-compliance with the specific provisions of the Consent Decree listed above, and to learn what, if any, steps the City has taken or will take to achieve compliance with the Consent Decree.

Plaintiffs also seek this Court's assistance by way of appropriate fines and sanctions, up to and including court supervision and the appointment of a full time monitor, for damages to any inmates who have been injured or damaged in any