

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
98 OCT -5 PM 2:39

HAYES WILLIAMS, ET AL

CIVIL ACTION NO. 98-1257
SIGN BD T. MARTIN
CLERK

VERSUS

JOHN J. MCKEITHEN ET AL

AND

IN RE: JUVENILE FACILITIES

CIVIL ACTION NO. 97-0001-B-1 ✓

AND

IN RE: TALLULAH CORRECTIONAL
CENTER FOR YOUTH

CIVIL ACTION NO. 97-0655-B-1

AND

IN RE: JETSON CORRECTIONAL
CENTER FOR YOUTH

CIVIL ACTION NO. 97-0666-B-1

AND

IN RE: SWANSON CORRECTIONAL
CENTER FOR YOUTH

CIVIL ACTION NO. 97-0667-B-1

AND

IN RE: LOUISIANA TRAINING INSTITUTE
BRIDGE CITY

CIVIL ACTION NO. 97-0668-B-1

RULING AND PROTECTIVE ORDER

The State of Louisiana, the plaintiffs in Barry A, et al v. Richard Stalder, et al Civil Action No. 98-1257 on the docket of the United States District Court for the Western District of Louisiana ("Barry A"), and others have tentatively approved an Interim Agreement to facilitate further negotiations to settle pending and threatened litigation. A copy of the Interim Agreement is attached as Exhibit A. The Interim Agreement would terminate on October 25, 1998, unless extended by agreement of the parties.

DKT. & ENTERED

October 1, 1998 (8:33AM)
C:\My Documents\order.wpd

DATE 10-5-98
NOTICE MAILED TO:

19 counsel
Preston
D. Bonnette
Lewis
H. Harris; B. Harris
FJP CB DC
SCR DM

DATE 10/5 BY Hj



3:97-ms-00001 200 - 1

DATE: 10/05/98

DEPUTY CLERK: hj

Among other things, the Interim Agreement would require the State of Louisiana to provide the following described Tallulah Correctional Center for Youth documentation to counsel for plaintiffs in Barry A (or necessary staff or clerical personnel of the Expert or any counsel) during the term of the Interim Agreement and any extensions of that agreement:

- a. All accident and injury reports
- b. All infirmary logs
- c. All use of force reports
- d. Documentation of every allegation of abuse by staff upon a juvenile including every completed investigation, and
- e. The log documenting removal of juveniles from programming.

The Barry A plaintiffs require these documents for the purposes of the Interim Agreement.

The State of Louisiana and Trans American Development Associates, Inc. object to production of these documents to the extent such production might violate La. R.S. 15:574.12 and the privacy rights of individual juveniles. Plaintiffs in Barry A do not admit that this statute is constitutional or that it applies to them in whole or in part and they do not waive their right to assert these arguments in this or any other case. However, in the interest of furthering negotiations and the Interim Agreement, plaintiffs and in Barry A agree to entry of this protective order.

Considering the record of these proceedings:

IT IS ORDERED that the above described documents shall be produced as set forth in the attached Interim Agreement upon execution of that agreement by all parties.

IT IS FURTHER ORDERED that records produced pursuant to the Interim Agreement may be examined by the Court, the Court's expert, and by counsel for the plaintiffs in Barry A, and by consultants retained by the parties and in Barry A. Except for necessary staff and clerical personnel

involved in the preparation of pleadings and reports and for Barry A, identifying information contained in such records shall not be disclosed to any other person without further order of this Court.

IT IS FURTHER ORDERED that pleadings and other papers filed in this case or in Barry A containing references to identifiable juveniles, based on documents provided pursuant to the Interim Agreement and this ruling and protective order, shall be filed under seal or as a sealed exhibit to the pleadings or documents.

IT IS FURTHER ORDERED that the requirement to produce documents pursuant to the Interim Agreement or extensions of that agreement shall be treated as the equivalent of a subpoena for purposes of La. R.S. 15:574.12(F)(1) and this order shall constitute a determination that the information sought is relevant and shall be produced pursuant to this protective order.

Baton Rouge, Louisiana this 5 day of October, 1998.

Frank J. Lloyd
UNITED STATES DISTRICT JUDGE

~~FILED~~
U.S. DIST. COURT
MIDDLE DIST. OF LA.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA 98 OCT -5 PM 2:39

HAYES WILLIAMS, <u>et al</u> ,)	
Plaintiffs,)	Civil No. 71-98-B
)	
v.)	
)	
JOHN McKEITHEN, <u>et al</u> ,)	
Defendants,)	
)	
UNITED STATES OF AMERICA,)	
Amicus Curiae.)	
)	
IN RE: JUVENILE FACILITIES)	Civil No. CH 97-MS-001-B
)	
IN RE: TALLULAH CORRECTIONAL CENTER FOR YOUTH)	Civil No. CH 97-0665-B-M1
)	
IN RE: JETSON CORRECTIONAL CENTER FOR YOUTH)	Civil No. CH 97-0666-B-M1
)	
IN RE: SWANSON CORRECTIONAL CENTER FOR YOUTH)	Civil No. CH 97-0667-B-M1
)	
IN RE: LOUISIANA TRAINING INSTITUTE - BRIDGE CITY)	Civil No. CH 97-0668-B-M1
)	

SIGN _____
RICHARD T. MARTIN
CLERK

INTERIM AGREEMENT

The United States, plaintiffs in Williams v. McKeithen and Barry A. v. Stalder (collectively "plaintiffs"), and the State of Louisiana agree to the following provisions to be implemented from the date of the execution of this Agreement until October 25, unless extended by the written agreement of all the parties hereto. The parties to this Agreement pledge to continue to negotiate in good faith with the goal of reaching agreement on all outstanding issues by October 25, 1998. The parties agree to file this

Agreement with the Court. In light of the commitments made in this Agreement, the parties will request the Court alter the deadlines set in the September 16, 1998 order. The parties will request that the Court stay discovery until October 30, 1998; require submission of a discovery plan on October 30, 1998; schedule the pre-trial conference for January 18, 1999; and reschedule the trial to begin as soon thereafter as possible, provided that each of the parties reserves the right to move the Court for a continuance of that trial date.

The parties to this Agreement stipulate that this Agreement shall not prejudice any of the parties to the Agreement as to positions the parties may take in litigation or further settlement negotiations. The parties also stipulate that this Agreement constitutes a private settlement as defined in the Prison Litigation Reform Act, 18 U.S.C. § 3626(g)(6).

The State hereby agrees to:

1. Limit the population at Tallulah to no more than 536 juveniles. If this Agreement is extended by the parties, the parties will revisit this provision.
2. Prohibit the use of chemical agents (including OC spray) at all facilities except under the following circumstances and pursuant to the following procedures:
 - A. Chemical agents shall not be used except under the conditions set forth in ¶ 2(C) and with prior approval, after personal observation of the situation, from the Warden, Deputy Warden or Assistant Warden if one of these

officials is at the facility. If no Warden, Deputy Warden and Assistant Warden is at the facility, prior approval may be given, after personal observation of the situation, by the highest ranking security officer on duty at the facility. However, such approval shall not be required in the case of a large-scale disturbance (such as an attempted mass escape) that poses an imminent danger to the public, staff or other juvenile, so long as in such an event the Warden, Deputy Warden, or Assistant Warden is notified as soon as practicable.

- B. Chemical agents shall not be carried on the person of any individual. Chemical agents shall not be stored in any cellblock or living area, but shall be securely stored in a separate location. Chemical agents shall not be removed from this secure storage area unless authorized pursuant to ¶ 2(A) in response to a situation described in ¶ 2(C), provided however that the authorizing official need not make a personal observation of the situation prior to authorizing the removal of the chemical agents from the secure area.
- C. Chemical agents shall only be authorized when at the time of authorization and use:
- i. A juvenile is posing a direct and immediate threat of injury to staff or another juvenile;
 - ii. The juvenile is creating a disturbance that jeopardizes the effective monitoring and

supervision of the unit to the extent that the safety of juveniles or staff is endangered, and the use of chemical agents is the only means to avoid a physical confrontation that would likely result in injury to the juvenile or staff.

iii. The use is necessary to prevent the commission of a felony, including an escape; or

iv. The use is necessary to prevent or quell a riot.

D. The Interim Monitor (described in ¶ 4) shall be notified of any authorization for, or use of, chemical agents as soon as practicable after the authorization or use.

3. At Tallulah, the practice of locking a youth in a room for prolonged periods of time (hereinafter "isolation") shall be governed by the following requirements:

A. Disciplinary hearings shall be held every weekday and a juvenile's disciplinary hearing shall be held within 24 hours or at the first scheduled hearing thereafter.

B. Juveniles in the STAGE I program, or any substantially similar program that may replace it, shall be evaluated for reclassification at least once each week.

C. Juveniles in the STAGE I program, or any substantially similar program that may replace it, administrative segregation, or protective custody, shall be reviewed by a medical or mental health professional at least every 12 hours.

D. Regardless of classification or disciplinary status (including placement in administrative segregation), every juvenile shall be permitted to participate in educational, recreation and other programming each day. Participation may only be ended if the juvenile engages in:

- i. Repeated failure to follow orders, where the failure to comply is destabilizing;
- ii. Repeated interference with staff or other juveniles' duties;
- iii. Improper sexual behaviors;
- iv. Fighting;
- v. Substantial destruction of property.
- vi. Violent conduct that creates an imminent danger to other juveniles or staff;

The decision to remove a juvenile from programming shall be approved by a ranking security shift supervisor and documented in a log.

E. If a juvenile is removed from programming before noon, the juvenile shall be evaluated by a ranking security shift supervisor before evening recreation to determine whether the juvenile can be permitted to participate in evening recreation. The juvenile shall be permitted to participate in evening recreation unless the ranking security shift supervisor determines that, based on documented interim behavior, the juvenile is likely to

engage in conduct described in ¶ 3(D) and documents the basis for this belief in a log maintained for this purpose. Provided, however, that every juvenile shall be permitted an opportunity to participate in programming at the beginning of each day.

F. Juveniles not removed from programming shall be permitted out of their rooms for at least seven and one half hours each day, which shall include time out of their rooms in the morning, between lunch and dinner, and in the evening. If this Agreement is extended by the parties, the parties agree to consider extending the period of time juveniles must spend out of their rooms in light of the experience gained under the implementation of this provision.

4. Station an Interim Monitoring Team at Tallulah, led by the Court Expert, John Whitley, with the assistance of two other monitors to be jointly selected by the parties as soon as possible, but not later than October 9. The Monitoring Team shall: (a) monitor compliance with the minimum interim steps required under this Agreement, general conditions of confinement, and compliance with Project Zero Tolerance ("PZT") initiatives; (b) ensure that Tallulah follows proper record keeping and reporting procedures; (c) monitor whether Tallulah takes adequate corrective action in response to substantiated allegations of abuse, improper use of force, and juvenile

injuries; (e) conduct and/or supervise abuse, youth-on-youth violence and sexual misconduct investigations (including all PZT investigations) at the facility. The Monitoring Team shall report findings to the State, the United States and the plaintiffs.

5. Ensure that Tallulah staff do not retaliate against juveniles who report abuse or speak to plaintiffs' counsel, the United States or the Monitoring Team regarding this matter.
6. A staff member under investigation for abuse or sexual misconduct shall be separated from any contact with juveniles if the abuse investigator has a reasonable basis to believe that abuse or sexual misconduct may have occurred.
7. Ensure free and unfettered access by all juveniles to their counsel and to plaintiffs' counsel in Williams and Barry A. in all facilities, within reasonable administrative regulations no more restrictive than those currently enforced. This includes placing counsel in these two cases and the attorneys for the United States on the phone list for every juvenile in each facility.
8. Conduct an audit to ensure proper functioning of the PZT hotline at all facilities, and take any necessary corrective action immediately.
9. The use of mechanical restraints at Tallulah shall be limited as follows.
 - A. Leg irons and handcuffs may be used only:

- i. For transportation of juveniles outside the facility; or
 - ii. For movement of juveniles within the facility only if the facility has documented that the juvenile poses a current escape risk or has engaged in a recent pattern of assaultive behavior toward staff, as determined and authorized by a ranking security shift supervisor. Shackles shall not be used during programming.
 - B. In addition to the circumstances described in 9(A), handcuffs may be used only for movement of juveniles within the facility to transport a juvenile from general population to a restrictive housing area after a fight or other serious incident.
 - C. Every use of a mechanical restraint, other than for transportation outside the facility, shall be documented. The use of mechanical restraints shall be documented in an unusual occurrence report or in a log maintained for this purpose.
10. Provide on a weekly basis the following documentation from Tallulah to the Monitor, plaintiffs' counsel in Williams and the United States: (a) all accident and injury reports; (b) all infirmary logs; (c) all use of force reports; (d) all documentation of every allegation of abuse by staff upon a juvenile, including every completed investigation; and (e) the log documenting

removal of juveniles from programming as described in ¶ 3(D) above. The same documentation shall also be provided to plaintiffs' counsel in Barry A., subject to a protective order acceptable to all parties. The documentation described in ¶ 10(a)-(d) from each other facility shall be provided to the United States, the Court Expert and plaintiffs' counsel in Williams on a bi-weekly basis. The parties to this Agreement do not anticipate that any of the documents covered by paragraph 10 involve documents covered by the attorney client privilege or work product doctrine. If the State believes a particular document is so covered, the State shall immediately notify the parties to this Agreement, in writing, in accordance with the procedures of Rule 26 (b)(5) of Federal Rules of Civil Procedure. This provision does not alter or limit any obligation that exists separate and apart from this Agreement requiring the State to provide reports or other information to the Court, the Court Expert, or plaintiffs' counsel in Williams.

Agreed to this 2d day of October, 1998, by:

FOR THE STATE OF LOUISIANA:

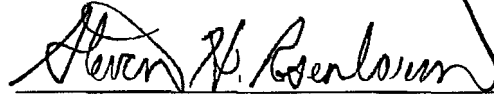
FOR THE UNITED STATES:

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division
United States Department of Justice

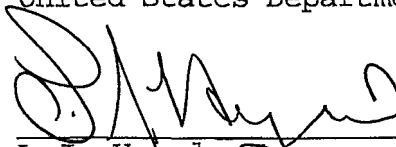


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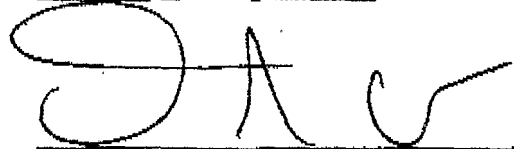
Approved:
L. J. Hyndel -
10-5-98

FOR THE PLAINTIFFS IN
WILLIAMS v. MCKEITHEN:



Keith Nordyke
June Denlinger
Nordyke & Denlinger

FOR THE PLAINTIFFS IN
BARRY A. v. STALDER:



David Utter
Juvenile Justice Project of
Louisiana