

FIFTH DEFENSE

The complaint improperly seeks to proceed as a representative or class action against this defendant as a representative of all wardens and jailers of city and town jails of Alabama.

SIXTH DEFENSE

Answering the allegations of paragraph (1), this defendant denies the matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000.00), or any other sum of money, or that it arises under the Constitution of the United States or involves any federal question under the Constitution or laws of the United States.

SEVENTH DEFENSE

As to this defendant, the complaint improperly seeks to proceed as a class action under Rule 23(a)(3) of the Federal Rules of Civil Procedure, as alleged in paragraph (2), and said defendant denies that common questions of law and fact exist concerning the alleged rights of the several plaintiffs against the several defendants.

EIGHTH DEFENSE

1. For answer to paragraph (3), this defendant is without knowledge or information sufficient to form a belief as to the allegations of said paragraph, except that Hosea L. Williams and Thomas E. Houck, Jr. have each been briefly confined in the Birmingham Jail or Prison on respective charges of ordinance violations of the City of Birmingham, but each has pleaded guilty of such charges against him, was fined, and has paid his fine and costs as to some of the charges, and all other charges under which such confinement was had have been dismissed and each of said defendants released and discharged from further custody on account of all such charges. This defendant has never before heard of any "roughing up" suffered by said Thomas E. Houck, Jr. from other white prisoners, as alleged, but such, if it occurred, was not reported by said Houck to this defendant or his staff.

2. For answer to paragraphs (4) and (5), this defendant admits he is Warden of the City Jail or Prison of Birmingham, Alabama, but denies he is or could be a representative of all other wardens and jailers of cities and towns of Alabama. His office is at such City Jail or Prison. Other allegations of such paragraphs do not apply to this defendant.

3. For answer to paragraph (6), this defendant admits the Code sections of Title 45 of the Alabama Code referred to are contained in said Code. Only Sections 121, 122, 123, 172, 177 and 183 purport to deal with a city jail. However, this defendant was not consciously aware of such sections, other than he knew a monthly report was required to be made to the chief of police and that female and male prisoners could not be placed in cells together, except a husband and a wife. He was not consciously aware of Section 123 before reading the complaint in this cause. He has operated the said Jail or Prison so as to separate the races for reasons of internal security of the jail or prison and to protect prisoners and others from bodily harm. All facilities are interchangeable and are not assigned permanently to either white or colored. This defendant further denies enforcement of said sections deprives the plaintiffs individually or collectively of any rights guaranteed to them under any laws or the Constitution of the United States; further, that he has no authority with respect to matters set out in Section 172 except with respect to the cleanliness of the jail, and has no authority with respect to the matters set forth in Section 183.

4. For answer to paragraph (7), this defendant avers that Sections 136 and 137 relate only to county jails and prisons. No agreement is or has been in existence between the United States and the City of Birmingham whereby it receives aid and assistance from the United States in its penal system. The averments of said paragraph do not apply to this defendant.

5. For answer to paragraph (8), this defendant denies the allegations and conclusions of law contained therein.

6. For answer to paragraph (9), this defendant adopts his answer heretofore made to paragraphs (1) through (7).

7. For answer to paragraph (10), this defendant denies the allegations and conclusions of law contained therein.

8. For answer to paragraph (11), this defendant adopts his answer heretofore made to paragraphs (1) through (7).

9. For answer to paragraph (12), this defendant denies any exclusion, systematic or otherwise, of Negroes from employment in the Police Department of the City of Birmingham, of which department the operation of the City Jail or Prison is a part. All hiring and firing of personnel for the entire department, including the Prison or Jail, is governed by the Jefferson County Civil Service Law, administered by the Jefferson County Civil Service Board, created under Act 248, Regular Session of the Legislature of Alabama 1945, as amended. Such hiring and firing of the personnel of the entire Police Department is administered without regard to race, creed or national origin. Negroes are now employed as members of the said Police Department, and great effort has been made over the past several years, and is now being made, to recruit qualified Negroes for employment therein.

10. For answer to paragraph (13), this defendant denies the conclusions of law and fact stated in said paragraph, as applied to him; denies any concert of action with anyone in the operation of the Birmingham City Jail or Prison; denies that the operation of said Jail or Prison in such a way as to keep white prisoners together and colored prisoners together is an infringement of the Eighth Amendment or the Fourteenth Amendment of the United States Constitution, or any laws enacted pursuant thereto; denies the exclusion of Negroes from employment in said Jail or Prison; and denies the infringement of the Fourteenth Amendment to the Constitution of the United States, or any law enacted pursuant thereto, in employment of said personnel.

11. For answer to paragraph (14), this defendant denies the allegations thereof and demands strict proof thereof.

WHEREFORE, this defendant denies the plaintiffs are entitled to the relief sought, and having fully answered prays that he may be dismissed with his cost sustained in his behalf.



Earl M. Bee

Attorneys for Defendant
Robert K. Austin, As
Warden

600 City Hall
Birmingham, Alabama
35203

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon Charles Morgan, Jr., at 5 Forsyth Street Northwest, Atlanta, Georgia, by mailing the same, first class United States Mail, postage prepaid, on this 16th day of June, 1966.



Attorney for Defendant
Robert K. Austin, As
Warden