

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JORGE ESTEVEZ, GILBERT SANCHEZ,)
ERIC BROUYARD, KIRK SHAFFER,)
WILFRED WHITE, ARMANDO PALENZUELA,)
MAURICE SIMMONS, ANN MOSLEY,)
DAVID WINCHESTER, JOHN STECKLER,)
JEROME ROBINSON, WARREN)
WILLIAMS, FELTON THOMPSON,)
KENNETH WHITE, WILLIAM SUTTON,)
STEVEN HYDE, MARY ANN VALVERDE,)
ALFRED THOMPSON, CRAIG MITCHELL,)
KENNETH VINCENT, RANDY MORRIS,)
CURTIS RUTH, JONATHAN MOORE,)
RONNIE MAYFIELD, EARL MOFFETT,)
TERRELL SHOWERS, and all others)
similarly situated,)

Plaintiffs,)

v.)

CHARLES C. FOTI, JR.,)
individually and in his official)
capacity as CRIMINAL SHERIFF OF)
ORLEANS PARISH,)
CITY OF NEW ORLEANS, LOUISIANA,)

Defendants.)



PC-LA-0004-0001

Civil Action No. 88-01162
Section K(5)

Amended Complaint

Plaintiffs, on behalf of themselves and the class alleged herein, amend their Complaint and state as follows:

I. Preliminary Statement

1. This is a class action brought by Plaintiffs on behalf of all persons who have been or will be confined within the custody of the Criminal Sheriff of Orleans Parish, and housed at facilities known as the Orleans Parish Prison (OPP), Community

Correctional Center (CCC), House of Detention (HOD), Central Lock-up (CLU) and the Emergency Housing Unit (tent city). Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of their rights, privileges and immunities secured by the Constitution of the United States and by the Constitution and laws of the State of Louisiana.

2. Plaintiffs specifically seek relief from conditions at these facilities which fall below the standards of human decency, deny basic human needs, and inflict needless suffering on prisoners. Plaintiffs incarcerated in these facilities contend that they are forced to live in an environment where the ill effects of particular conditions, often exacerbated by other conditions, threaten their physical and mental well-being and result unnecessarily in their physical and mental deterioration. The imminent risks that the existing conditions of these facilities pose to the health and welfare of those confined there require the immediate attention and action of this court.

II. Jurisdiction

3. This Court has jurisdiction of this action under 28 U.S.C. §1331 since this is an action in which the matter in controversy arises under the Constitution and laws of the United States.

4. This Court also has jurisdiction of this action under 28 U.S.C. §1343(4) since this is an action to secure declaratory, injunctive and other equitable relief under acts of Congress

providing for the protection of civil rights, specifically the Civil Rights Acts, 42 U.S.C. §1983.

5. This Court also has jurisdiction of this action under 28 U.S.C. §§2201 and 2202, and Federal Rules of Civil Procedure 57 and 65 since this is an action seeking a judgment declaring the rights of Plaintiffs and for injunctive and other equitable relief based upon that declaratory judgment under §1983.

6. This Court has pendent jurisdiction over all claims under Louisiana law because they arise out of the same nucleus of operative fact as the federal claims.

7. Venue in the Eastern District of Louisiana is proper. Each of the defendants resides in the Eastern District of Louisiana, and each of the claims for relief arose in this District.

III. Plaintiffs

8. Jorge Estevez, Gilbert Sanchez, Eric Brouyard, Kirk Shaffer, Wilfred White, Armando Palenzuela, Maurice Simmons and Ann Mosley, are now, or have in the recent past been, prisoners within the custody of defendant Sheriff Foti. They are the original Plaintiffs in this lawsuit, or have been added as Plaintiffs to this suit by order of the court. Collectively, this group of Plaintiffs has been incarcerated in each of the facilities named in paragraph (1) and have suffered the constitutional violations described in this complaint.

9. David Winchester and John Steckler are now, or have recently been, prisoners of the named defendants, and have

suffered violations of their rights while in custody. They have requested to be named Plaintiffs in this suit.

10. Jerome Robinson is the named plaintiff in Civil Action Number 87-5867 Section K(5). His case was consolidated with this case by order of the court.

11. Warren Williams, Felton Thompson, Kenneth White and William Sutton are named Plaintiffs in Civil Action Number 88-5564 Section K(5). Their case was consolidated with this case by order of the court.

12. Steven Hyde is now, or recently has been, a prisoner incarcerated in the psychiatric ward of the HOD. He has suffered violations of his constitutional rights while housed in that facility.

13. Mary Ann Valverde is presently a pretrial detainee incarcerated in the women's section of the HOD. She has suffered violations of her constitutional rights while housed in that facility.

14. Alfred Thompson is presently a prisoner housed in the CCC medical facility. He has suffered violations of his constitutional rights while housed in that facility.

15. Craig Mitchell is a prisoner housed in the men's section of the HOD. He has suffered violations of his constitutional rights while housed in that facility.

16. Kenneth Vincent, Randy Morris, Curtis Ruth, Jonathan Moore, Ronnie Mayfield, Earl Moffett, and Terrell Showers are all prisoners in the OPP, and are named Plaintiffs in Civil Action

Number 88-1868 M(6). Defendant Foti has requested that case be consolidated with this case. Mr. Vincent has also requested to be a named plaintiff in this case. These Plaintiffs have all suffered constitutional violations while housed in the OPP.

IV. Defendants

17. Charles C. Foti, Jr., is the Criminal Sheriff of Orleans Parish, Louisiana. As such he is responsible for the operation of the jail, pursuant to LRS 15:704 and 33: 1519.1.

18. The City of New Orleans is the municipal entity responsible for the operation of the facilities named herein, pursuant to LRS 15:702 and 33:1523.1.

V. Class Action Allegations

19. This is a class action under Rules 23(a) and 23(b)(1), (2) and ((3)).

20. Plaintiffs are representative parties of a class of all persons who are confined within the custody of Defendant Sheriff Foti, at the OPP, CCC, HOD, CLU and tent city, or who will be so confined in the future.

21. Plaintiffs' claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

22. The class is so numerous that joinder of the members is impracticable. Current members of the class of prisoners number approximately 4,000.

23. The lawsuit challenges various conditions of confinement and there are questions of law and fact common to the class.

24. The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class.

VI. Factual Allegations

Shelter

25. Sanitation throughout the facilities is grossly inadequate. Roaches, mice, and other insects abound throughout the living areas and food preparation areas, causing a serious health risk. Plumbing is inadequate and constantly in need of repair. Often prisoners have no hot water in which to bathe. Clothing and bedding is not properly laundered. Many prisoners must wash their own clothes in toilets.

26. Prisoners are often forced to sleep on the floors, or on benches or tables. In some areas, prisoners sleep on dangerous three or four level bunk beds. Proper bedding is not provided.

27. The facilities are filthy throughout. Prisoners are not provided with adequate cleaning supplies and equipment to keep their own living areas clean.

28. Prisoners are often required to share razors, increasing the risk of the spread of contagious diseases.

29. Ventilation is totally inadequate. Living areas are unbearably hot in summer, and cold in winter. Some areas are completely open to the elements, and become flooded during heavy rains. Lighting is inadequate for reading or other close work. Most of the living areas have only furniture that is broken or worn-out, leaving prisoners with no place to sit, to eat or work. Noise is unbearable throughout the facilities.

30. Neither male or female prisoners are provided with even a modicum of privacy. Personal hygiene, going to the toilet, and even strip searches must be carried out in public. This situation results in the unnecessary humiliation and dehumanization of the prisoner population.

31. Fire safety violations abound throughout the facilities, posing an imminent risk of harm. Fire drills are never held. Prisoners are not instructed in evacuation procedures.

Medical Care

32. Medical services provided to prisoners are totally inadequate and constitute deliberate indifference to prisoners' serious medical needs. Emergency, routine and basic preventive care are inadequate. Routine screening of newly admitted prisoners is not done prior to placement in the general population of the facility.

Dental Care

33. Emergency and preventive care dental services are inadequate to meet the minimum, basic needs of the population.

Mental Health Care

34. Services to psychiatric patients is inadequate, and constitutes deliberate indifference to prisoners' needs. Mentally ill prisoners are often held in the jail for long periods of time for no reason other than a lack of space elsewhere. Psychiatric patients have consistently been subjected to abuse by staff. Psychological counselling or therapy for the general population is non-existent.

Food

35. Prisoners are not provided with an adequate nutritious diet to sustain health. Food is prepared in an unsanitary environment and is not properly served. Medical and religious diets are often ignored. Prisoners are forced to supplement their diets by purchasing snack foods from the commissary, which are grossly overpriced, and unavailable to indigent prisoners.

Exercise

36. Prisoners are not provided with adequate opportunities to exercise in order to sustain health. Except for those prisoners living in the tent city, prisoners rarely get to go

outside to exercise. There is no structured program of exercise or recreation for the general population within the institution.

Programming

37. Prisoners are not provided with sufficient opportunities to participate in educational, vocational or religious programs in order to make productive use of their time of incarceration.

38. Prisoners are not allowed adequate opportunities to visit or use the telephone to maintain contact with their families. Children are not allowed to visit with their mothers or fathers at all. No contact visits are allowed.

Safety

39. Violence is rampant within the facilities. This violence is exacerbated by the failure of the defendants to address such obvious problems as: the complete idleness of the prison population because of the failure to provide productive activity; inadequate numbers of trained, experienced staff; failure to adequately train and compensate staff; failure to provide any viable system of prisoner classification; abuse of prisoners by staff.

Access to Courts and Counsel

40. Prisoners are not provided adequate access to the law library or to legal assistance services. Necessary contact

between lawyers and prisoners is disrupted by unreasonable rules regarding visiting and telephone contact. Often lawyers must obtain court orders so that their clients may telephone them when necessary. Prisoners have been forced to buy opportunities to phone counsel with food. Prisoners are harassed when they attempt to contact lawyers.

Due Process

41. The administration has failed to provide prisoners with clear and consistent rules by which to conform their behavior. Prisoners are not afforded adequate due process protection when alleged disciplinary violations occur. There is no adequate due process procedure related to disciplinary segregation or to security classification. One prisoner has been repeatedly placed in isolation because he encourages others to file lawsuits complaining about the conditions of the jail.

VII. Claims for Relief

First Claim

42. Plaintiffs reallege and incorporate by reference paragraphs 25 through 39.

43. Defendants fail to provide Plaintiffs with the basic necessities of life, including adequate food, shelter, sanitation, medical, dental 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. 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 impermissible punitive conditions in violation of the Due Process clause of the Fourteenth Amendment.

Second Claim

44. Plaintiffs reallege and incorporate by reference paragraph 38.

45. Plaintiffs incarcerated in these facilities are denied the basic right of visitation with their families and friends in appropriate surroundings in violation of their rights under the First Amendment to the United States Constitution.

Third Claim

46. Plaintiffs reallege and incorporate by reference paragraph 40.

47. Defendants, by their failure to provide adequate and appropriate materials and equipment, or law clerks to assist Plaintiffs, and by their failure to permit adequate contact with counsel, have denied Plaintiffs access to courts in violation of the Sixth and Fourteenth Amendments of the United States Constitution.

Fourth Claim

48. Plaintiffs reallege and incorporate by reference paragraph 41.

49. Defendants, by denying Plaintiffs clear and consistent rules and regulations, and by failing to provide adequate due process protection in disciplinary and classification decisions, deprive Plaintiffs of their right to due process under the Fourteenth Amendment to the United States Constitution.

Fifth Claim

50. Plaintiffs reallege and incorporate by reference paragraphs 25 through 41.

51. The conditions described above further deny Plaintiffs' rights as guaranteed by the Louisiana Constitution, Articles 2, 7, 8, 13, 20 and 22; and the laws of the Louisiana, LRS 15:705, 15:707, 15:751, 15:752, 15:753, 15:754, 15:755, 15:756, 15:757, 15:758, 15:760, 15:761, 15:762, 15:763, 15:811, 15:828, and 15:829.

VII. No Adequate Remedy at Law

52. 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

the confinement of plaintiffs 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

53. WHEREFORE, Plaintiffs and the class they represent pray this Court:

1. Determine by order pursuant to Rule 23, Federal Rules of Civil Procedure, that this action may be maintained as a class action;

2. Issue a declaratory judgment stating the defendants' policies, practices, acts and omissions described in this Complaint violate Plaintiffs' rights, guaranteed to them by the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the Louisiana Constitution and Laws;

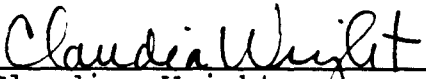
3. Permanently enjoin Defendants, their officers, agents, employees and successors in office, as well as those acting concert and participating with them, from engaging in the unlawful practices described in this Complaint;

4. Retain jurisdiction of this matter until this Court's order has been carried out;

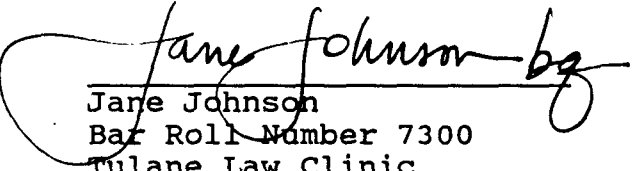
5. Aware Plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. §1988; and

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

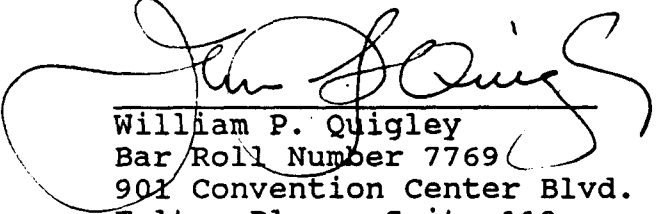
Respectfully submitted,



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