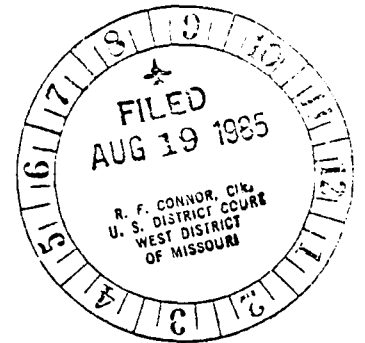


COMPLAINT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

CENTRAL DIVISION



SAMUEL L. McDONALD, GERALD M. SMITH, RAYFIELD NEWLON, THOMAS BATTLE, and ALAN J. BANNISTER, individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

BILL ARMONTROUT, Warden, Missouri State Penitentiary; LEE ROY BLACK, Director, Missouri Department of Corrections; DONALD W. WYRICK, Director, Division of Adult Institutions, Missouri Department of Corrections; and JOHN D. ASHCROFT, Governor, State of Missouri,

Defendants.

CASE NO.

CIVIL RIGHTS -  
CLASS ACTION

85 4422 -CV-C-5

COMPLAINT

1. This is a class action on behalf of all prisoners under sentence of death in the Missouri State Penitentiary, Jefferson City, Missouri, seeking declaratory and injunctive relief from the intolerable and unlawful conditions under which they are confined during the many years that their appeals and post-conviction proceedings are pending. The action is brought under 42 U.S.C. §1983 to redress the violation by defendants, acting under color of state law, of plaintiffs' rights under the First, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

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PC-MO-001-005

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1343(3) and (4) and 2201.

CLASS ACTION ALLEGATIONS

3. This action is brought as a class action pursuant to Rules 23(a) and (b)(1) and (2) of the Federal Rules of Civil Procedure.

(a) Plaintiffs sue on behalf of all persons who are presently confined under sentence of death in the Missouri State Penitentiary, and on behalf of an unknown number of persons who in the future will be confined under sentence of death by the Missouri Department of Corrections either at the Missouri State Penitentiary or elsewhere.

(b) The class presently consists of approximately 40 members and is likely to grow in size during the pendency of this lawsuit. It is so numerous that joinder of all its members is impracticable.

(c) The conditions and practices that are the basis of this complaint, and the questions of law concerning the constitutionality of those conditions and practices, are common to all members of the class.

(d) Plaintiffs are all death-sentenced prisoners confined in the Missouri State penitentiary. Their claims are typical of the claims of the class, and they will fairly and adequately protect the interests of the class. They are repre-

sented by counsel who are experienced in representation of death-sentenced prisoners and in representation of cases concerning prison conditions.

(e) The prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to each which would establish incompatible standards of conduct for defendants.

(f) The prosecution of separate actions by individual members of the class would create a risk of adjudications which as practical matter would be dispositive of the interests of the other members not parties to such adjudications, or would substantially impair or impede their ability to protect their interests.

(g) The defendants have acted or failed to act on grounds generally applicable to all prisoners in their custody who have been sentenced to death, and the appropriate injunctive and declaratory relief would apply to the class as a whole.

#### PARTIES

##### A. Plaintiffs

4. Plaintiffs SAMUEL L. McDONALD, GERALD M. SMITH, RAYFIELD NEWLON, THOMAS BATTLE and ALAN J. BANNISTER are in custody at the Missouri State Penitentiary under sentence of death, awaiting the results of their appeals or post-conviction proceedings.

## B. Defendants

5. Defendant BILL ARMONTROUT is Warden of the Missouri State Penitentiary. He is responsible for the management and supervision of that facility and for the humane treatment of all prisoners confined therein, including the plaintiff class confined under sentence of death. He has custody and control over plaintiffs.

6. Defendant LEE ROY BLACK is Director of the Department of Corrections of the State of Missouri. He is the chief administrative officer of the Missouri Department of Corrections, which is responsible for the maintenance and operation of all Missouri prisons including the Missouri State Penitentiary.

7. Defendant DONALD W. WYRICK is Director of the Division of Adult Institutions of the Missouri Department of Corrections. He is responsible for the administration of all adult institutions within the Department.

8. Defendant JOHN D. ASHCROFT is Governor of the State of Missouri. He is responsible for the administration of all State departments.

### FACTS

9. As a result of defendants' actions or failure to act, the plaintiff class is confined under conditions which are unconscionably oppressive and degrading and which violate plaintiffs' basic constitutional rights. Absent declaratory and

injunctive relief from this Court, plaintiffs will continue to live under such conditions for the many years that their cases are pending on appeal or post-conviction proceedings. These conditions include the following:

10. All death-sentenced inmates are confined to their cells an average of approximately 23 1/2 hours per day.

11. Plaintiffs are permitted only three outdoor recreation periods per week, each lasting only approximately 45 minutes. Even these recreation periods are frequently cancelled due to inclement weather or muddy conditions in the exercise yard, or for other reasons not explained to plaintiffs.

12. Plaintiffs are supposed to be permitted 45-minute exercise periods on a weight machine, adjacent to their housing area, on days when they do not receive outdoor recreation. However, in reality these exercise periods are accorded far less frequently, because there are not enough weight machines, only two prisoners at a time are allowed to use each machine, and the areas where the machines are located are so poorly ventilated that on many days exercise is impossible. Exercise periods on the weight machines are often denied for other reasons not explained to plaintiffs.

13. Plaintiffs are supposed to receive showers three days per week, although even these shower periods are sometimes cancelled for reasons not explained to plaintiffs. Often plaintiffs are denied showers after exercise periods. Shower periods

last only 10-15 minutes at most, and are frequently shorter. It is not uncommon for a brief shower to be the only out-of-cell time for a death-sentenced prisoner during an entire day.

14. Death row at the Missouri State Penitentiary consists of three rows of single-tier cells, running at right angles to each other, in the basement of a building constructed in approximately 1865.

15. There are no dayrooms or other common areas attached to the rows of cells in which death-sentenced prisoners are confined. There is a narrow walk approximately 4' wide in front of each row of cells, but even this limited area is not used for any regularly scheduled out-of-cell time.

16. Death row cells at the Missouri State Penitentiary measure approximately 9'8" x 6'4", for a total of approximately 60 square feet. Much of the space is taken up by fixtures (bed, toilet, sink, etc.), leaving a total floor space of only approximately 20 square feet for each prisoner to stand or walk.

17. Two of the three rows of cells for death sentenced prisoners have no clear windows. One of these has frosted windows which are translucent but not transparent. On the other the windows have been painted over with opaque paint, leaving the prisoners without any natural light whatsoever; on this row prisoners are subjected to the disorienting experience of not even being able to tell whether it is day or night.

18. The plumbing on death row is in extremely poor condition, causing toilets and sinks to overflow into the cells; frequently human waste from one toilet will back up into the toilets of several adjacent cells.

19. Drinking water in the cells on death row has a foul taste and is unsanitary.

20. Ventilation on death row is grossly inadequate, resulting in stifling heat in warm weather. In cold weather the heating is insufficient.

21. Because of frequent toilet breakdowns and inadequate ventilation, the air on death row is exceedingly noxious, odorous and unhealthy.

22. Showers on death row are unventilated and do not drain properly. These conditions cause stagnant water and accompanying foul odors, which add still further to deterioration of the air.

23. Each death row cell contains a one bare light bulb of low wattage, located approximately 12 to 14 feet from the floor. Because of the height of the bulb and its low wattage, it is virtually impossible to read or write without considerable eyestrain.

24. Noise levels on death row are extremely high, thereby exacerbating tensions and subjecting plaintiffs to the risk of hearing impairment.

25. Death row is extremely dirty and infested with roaches and flies. Although prison officials sometimes spray and fog the unit with insecticide, they do not remove inmates from their cells when this is done. Inmates are thus constantly forced to ingest noxious and dangerous fumes.

26. Mattresses and blankets in the cells on death row are filthy. The mattresses are never cleaned, and the blankets are generally cleaned no more than once a year.

27. Death-sentenced prisoners alleged to have committed disciplinary infractions are placed in special seclusion cells on death row, commonly known as the "hole." Cells in the hole are the worst ventilated, dirtiest and most insect-infested on death row, and the floor areas in them are frequently wet due to plumbing malfunctions. The beds in these cells have been removed, thereby forcing prisoners to sleep on a mattress on the floor amidst the insects and pools of water. There is no light bulb in the cells, and the nearest bulb, in a small enclosure just outside the bars, is controlled by guards; there is also a solid door between the small enclosure just outside the bars and the walk. Guards frequently turn off the light bulb and close the solid door, leaving prisoners in total darkness. Guards also can and frequently do turn off the water in these cells, making it impossible to flush the toilet or to wash. Prisoners sentenced to the hole are allowed only two showers per week, and must otherwise remain in these squalid cells 24 hours per day. They are also denied sheets, pillows and pillowcases, all reading



material, and even their own legal papers. Death-sentenced prisoners are routinely consigned to these unconscionable and barbaric conditions for the most minor infractions, such as talking back to a guard.

28. Guards on death row frequently subject prisoners to verbal harassment about their sentences, taunting them with strident declarations of support for capital punishment and other barbs about their status as condemned prisoners who may be put to death. Prisoners must either endure these provocations or, if they dare to respond, run the risk of placement in the hole for talking back to an officer.

29. Death-sentenced prisoners are required to eat all meals in their cells, and no group dining is permitted. The food is prepared at a general prison facility and transferred across an outside yard; by the time it is given to plaintiffs it is usually cold, and often contains dirt and other unsanitary particles.

30. The last meal of the day on death row is at 2:30 p.m., and breakfast is not until 8 a.m. the following morning. This bizzare feeding schedule leaves a period of approximately 17 1/2 hours during which food is totally denied to plaintiffs.

31. Death-sentenced prisoners are not allowed to have group religious services, and are denied even individual access to clergy who are not employees of the Missouri Department of Corrections. Muslim death-sentenced prisoners are denied even

individual access to the Muslim minister who conducts weekly services for Muslim general population prisoners at the Missouri State Penitentiary.

32. Defendants presently allow only four prisoners at a time to exercise in the yards used for death row recreation. There are two such yards, both of which are too small and inadequately equipped to permit meaningful exercise. Both are unpaved and have no drainage, resulting in the cancellation of many recreation periods due to muddy conditions.

33. Prisoners on death row may not visit the Missouri State Penitentiary's law library or writ room, and the system by which legal materials are delivered to prisoners on death row does not provide meaningful access to these materials.

34. Prisoners on death row are not provided adequate medical care. Virtually all initial diagnosis and medical care for death row inmates is provided by inmate medical assistants, many of whom have no formal medical training of any kind. Requests by ill prisoners for visits to death row by doctors or medical technicians are often denied or met with unconscionable delays. When a medical doctor does visit death row, he generally conducts only perfunctory examinations of death-sentenced prisoners through the cell bars. Delivery of urgently needed medication is often delayed or denied. Prescriptions obtained from the medical assistants receive only perfunctory review by a medical doctor, who is generally available only one day per week.

35. Plaintiffs are not evaluated for psychiatric or psychological problems when they arrive at the prison. No procedures exist for monitoring the mental state of inmates to identify the development or progress of psychological disturbances, and prisoners in need of psychiatric care do not receive it.

36. Obtaining dental care at the Missouri State Penitentiary is a capricious and often slow process for death-sentenced prisoners. Many have suffered needless pain and waited for months after diagnosis to see a dentist for treatment.

37. The only employment opportunity available to death row prisoners is the position of "walk man." The "walk man" is supposed to serve the food and keep the walk clean. There is one "walk man" position for each of the three death row walks, and the position is not generally rotated among the death row population. As a result, most members of the plaintiff class have no employment opportunities at all.

38. Death row inmates are not allowed any educational or vocational programming.

39. Death row inmates are accorded inadequate counseling services.

40. Death row inmates are denied access to many canteen items accorded to other prisoners, including mirrors and food packaged in jars or cans.

41. Death row inmates have inadequate opportunity to use the telephone.

42. Death row inmates are not permitted access to the prison library.

43. Death row inmates have inadequate opportunity to use typewriters.

44. Death row inmates are not provided adequate supplies of paper, envelopes, pens and pencils necessary for correspondence with courts, public officials, attorneys, family members and other individuals.

45. Prison officials frequently read, tamper with, tear and destroy death row inmates' mail, including legal mail.

46. Prison officials frequently examine and scatter death row inmates' legal papers during searches of their cells.

47. All visits for death-sentenced prisoners, except for some visits by attorneys, take place behind a dark, thick screen which makes it very difficult for the prisoners and visitors to see and hear each other. There are no privacy partitions in the visiting area.

48. The Missouri State Penitentiary has only two small rooms available for contact visits between attorneys and prisoners. When these two rooms are occupied by other visits -- which may include non-attorney visits such as interviews by law enforcement personnel -- an attorney wishing to visit a death row inmate must either wait for one of the rooms to become available or visit behind the screen in the non-contact visiting area.

49. Defendants do not permit attorneys to provide death row inmates with legal papers during visits, except upon inspection of the papers by prison officials outside the presence of the inmate and his attorney.

50. All death-sentenced prisoners are unnecessarily handcuffed behind their backs virtually every time they leave their cells, including times when they are going to and from the yard or visiting area. This practice is degrading and endangers plaintiffs' safety by leaving them defenseless against attacks by other prisoners.

51. The death row cell areas have an inadequate number of exits for evacuation in case of fire. On some shifts the guards do not have ready access to keys necessary for evacuation in case of fire.

52. At various times during the past year defendants have sporadically relaxed some of the conditions alleged herein, briefly permitting more frequent exercise periods attended by more prisoners at a time, additional showers, occasional contact visits and other improvements. However, even these slight ameliorations of the conditions alleged herein have usually been arbitrarily suspended, curtailed or eliminated without explanation. None have been made permanent by the posting or distribution of schedules or other memoranda advising plaintiffs of official changes in the rules and regulations of the institution.

53. Confinement of plaintiffs for periods of many years under the conditions alleged herein is dehumanizing and damaging to plaintiffs' physical and psychological health and safety.

54. Confinement of plaintiffs for many years under the conditions alleged herein creates an atmosphere of hostility and tension both among prisoners and between prisoners and staff, and endangers institutional security.

55. Confinement of plaintiffs for many years under the conditions alleged herein is so physically and psychologically debilitating that some members of the plaintiff class will invariably choose to terminate their appeals and be executed rather than continue to exist under such conditions.

56. Many members of the plaintiff class will ultimately prevail on their appeals or post-conviction proceedings, and will have new trials at which their record of institutional behavior may be introduced in evidence at the penalty phase. Some will eventually be sentenced to terms of imprisonment, and their record of institutional behavior will be a factor in determining whether or not they are to be released on parole. Those who do not succeed in having their death sentences set aside will seek executive clemency, at which time their record of institutional behavior will be a factor in determining whether or not their lives are to be spared. Accordingly, plaintiffs have an interest in maintaining a good record of institutional behavior, and cannot all be presumed to pose a threat to institutional security.

57. The conditions alleged herein are more restrictive than those imposed by defendants upon prisoners confined to administrative or punitive segregation at the Missouri State Penitentiary.

58. The period of time during which the plaintiff class will have to suffer under the conditions alleged herein, i.e., the many years during which their cases are pending on appeal and post-conviction proceedings, is much longer than the typical period of administrative or punitive segregation at the Missouri State Penitentiary.

59. Unlike prisoners in administrative or punitive segregation, death-sentenced prisoners have been consigned to the restrictive conditions alleged herein without any hearing or classification proceeding to determine whether it is necessary for institutional security to subject them to such restrictions. They are confined under these conditions solely because of their sentence.

60. All prisoners under sentence of death committed to defendants' custody are automatically required to live under the conditions alleged herein. Defendants make no effort to determine whether or not they have any prior record of institutional misbehavior, or any prior record of convictions for crimes of violence, which might indicate that they pose a threat to institutional security.

61. Most prisoners at the Missouri State Penitentiary, including many who have been convicted of murder or other violent crimes, and many who have records of institutional misbehavior, are not subjected to the conditions alleged herein. Once they have been classified as suitable for general population they are allowed out of their cells for most of the day, enjoy extensive group recreational opportunities in large outdoor and indoor recreational facilities, and are accorded employment opportunities, group dining in a mess hall, group religious services, contact visits, access to the library, law library and writ room, and many other basic necessities denied to death-sentenced prisoners.

62. Many prisoners under sentence of death, identifiable pursuant to routine classification procedures, could be housed under conditions far less restrictive than those alleged herein without any danger to institutional security.

63. Plaintiffs have attempted to appeal conditions on death row administratively, to no avail.

64. At all times relevant to the claims herein, defendants have acted or failed to act under color of law of the State of Missouri.

#### CAUSES OF ACTION

65. Defendants have violated and are violating plaintiffs' right to be free from cruel and unusual punishment under the



Eighth and Fourteenth Amendments to the Constitution of the United States, by subjecting plaintiffs to conditions and practices which, both individually and in their totality, a) offend minimal concepts of dignity and civilized standards of human decency, b) are excessive and disproportionate to any legitimate correctional objective, and c) demonstrate a deliberate indifference to the basic medical and psychological needs of plaintiffs.

66. Defendants have violated and are violating plaintiffs' right to due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, by arbitrarily and without justification depriving plaintiffs of their protected liberty interest to be free of conditions equal to or worse than conditions of administrative or punitive segregation. Such deprivation offends both plaintiffs' right to procedural due process, in that no meaningful hearing or classification proceeding is conducted prior to consigning plaintiffs to these conditions, and offends plaintiffs' right to substantive due process.

67. Defendants have violated and are violating plaintiffs' right to equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, by singling them out for confinement under the conditions alleged herein solely on the basis of their sentencing status.

68. Defendants have violated and are violating plaintiffs' constitutional right to access to the courts and to the assistance of counsel by failing to provide them with meaningful

access to legal materials and an effective means of communicating with counsel and the courts, in violation of the Sixth and Fourteenth Amendments to the Constitution of the United States.

69. Defendants have violated and are violating plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States, by interfering with plaintiffs' incoming and outgoing mail.

70. Defendants have violated and are violating plaintiffs' rights under the First, Eighth and Fourteenth Amendments to the Constitution of the United States, by restricting their visits.

71. Defendants have violated and are violating plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States, by refusing to allow plaintiffs to attend group religious services.

72. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered and set forth herein. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, practices and policies of the defendants alleged herein unless they are granted the relief prayed for. This suit for declaratory and injunctive relief is the only means by which plaintiffs may secure relief from the unlawful acts, practices and policies of defendants. The need for relief is pressing as the rights at issue are paramount rights under the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

I. Adjudge and declare that the conditions and practices alleged herein are in violation of the rights of plaintiffs and the class they represent under the Constitution and laws of the United States.

II. Enjoin defendants, their agents and employees, and all persons acting in concert with them, from incarcerating plaintiffs and the class they represent under the unconstitutional conditions and practices alleged herein.

III. Enjoin defendants, their agents and employees, and all persons acting in concert with them, from engaging in any acts of retaliation against plaintiffs and the class they represent for having brought this lawsuit.

IV. Direct defendants to submit a plan for the prompt elimination of the unconstitutional conditions and practices alleged herein.

V. Retain jurisdiction in this cause until the unlawful conditions and practices alleged herein no longer exist and the Court is satisfied that they will not recur.

VI. Grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees.

VII. Grant such other and additional relief as the Court may deem just and proper.

Respectfully submitted,



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