

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SCOTT TILLMAN and WILLIAM
LENNEAR, et al.,

Plaintiffs,

vs.

CLAUDE MILLER, et al.,

Defendants.

Case No. 83-199-CIV-ORL-22

SCOTT TILLMAN and WILLIAM
LENNEAR, et al.,

Plaintiffs,

vs.

CLAUDE MILLER, et al.,

Defendants.

Case No. 83-285-CIV-ORL-22

LARRY EUGENE BROWN, JR.,

Plaintiff,

vs.

JERRY W. HICKS, et al.,

Defendants.

Case No. 88-281-CIV-ORL-22

**PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE
WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT
FOR FAILURE TO COMPLY WITH ORDERS OF THE COURT**

With

**INCORPORATED MEMORANDUM OF LAW AND
CERTIFICATION OF COUNSEL**

Plaintiffs, through counsel, pursuant to Rule 70, Federal
Rules of Civil Procedure, move for the entry of an order to show

cause why the Defendants should not be held in contempt for failure to comply with various consent decrees.¹ As will be demonstrated below, chronic overcrowding at the Brevard County Detention Facility has contributed to a range of safety hazards which resulted in five recent suicides within a three months period, increasing inmate-on-staff and inmate-on-inmate violence, lack of meaningful classification, cold food, questionable mental health services, and a range of other problems. In further support, Plaintiffs state:

1. Pursuant to Paragraph I.(A) of the Final Consent Decree, Defendants agreed not to operate the Brevard County Jail (known as the Brevard County Detention Center) "in an overcrowded condition in excess of its overall capacity of 732 inmates or in excess of the cell-by-cell capacity approved by the Florida Department of Corrections." The approved cell-to-cell capacity, after construction of the Annex in 1996, is 1,041.

2. The Brevard County Jail has operated significantly in excess of capacity, as defined in Paragraph I.(A) of the Final Consent Decree for many years. In 2002, the average daily population was 1,208.

3. For the 13 month period from April, 2003 through April, 2004, the average daily count was 1,406. The actual high count of 1,529 was reached on September 8, 2003, the actual low count

¹ The parties entered into the Partial Stipulation and Agreement for Consent Decree (Exhibit A), on July 21, 1988, and the Final Consent Decree (Exhibit B) on June 30, 1993, both of which were approved and adopted by Order Approving Final Consent Decree (Exhibit C), entered on December 3, 1993.

of 1,306, occurred on December 23, 2003. On May 10, 2004, the date of an inspection by Plaintiffs' counsel, the actual count as of 1:00 p.m. was 1,371.

4. The impact of the overcrowding is that cells originally designed to hold one person now often hold three. And, numerous inmates are housed on cots in the dayrooms.

5. The adverse affects of the overcrowding is made worse by severe understaffing. A report entitled "Security Staffing Analysis of the Brevard County Detention Center (hereinafter, Report, filed as Exhibit D), dated March 24, 2003, and prepared at the request of Brevard County found that while the jail population had increased by 90% since the jail first opened in 1987, the security staff had grown by only 6 percent. The Report pointed out that "[t]he more the bodies and the greater the officer workload, the more the risk of mistakes, escapes, assaults, injuries, attempted suicides and deaths." Accordingly, the Report recommended the addition of 65 positions, none of which have been created as of the date of this Motion.

6. That the overcrowding has many adverse affects, as predicted by the Report, was confirmed in the Corrections' Expert's Report of the Brevard County Detention Center, Shalheiser, Florida, prepared by E. Eugene Miller on June 4, 2004, on almost all aspects of jail operations. As Mr. Miller concluded, "there are just too many inmates in too small a space with way too few staff to operate the facility." Miller Report, p. 15, filed as Exhibit E.

7. The law is well-established that "an allegation of overcrowding without more does not state a claim under the eighth amendment." Akao v. Shimoda, 832 F.2d 119, 120 (9th Cir. 1987), cert. denied, 485 U.S. 993 (1988). See also, C.H. v. Sullivan, 920 F.2d 483, 485 (8th Cir. 1990); Lopez v. Robinson, 914 F.2d 486, 493 (4th Cir. 1990).

8. In the Brevard County Detention Center there is a lot more. Numerous courts have condemned overcrowding that results in inmates sleeping on floors, as many inmates must do in the Brevard County Detention Center. See, e.g., Moore v. Morgan, 922 F.2d 1553, 1555 n. 1 (11th Cir. 1991); Thompson v. City of Los Angeles, 885 F.2d 1439, 1448-49 (9th Cir. 1989); Lyons v. Powell, 838 F.2d 28, 31 (1st Cir. 1988); Union County Jail Inmates v. DiBuono, 713 F.2d at 994; LaReau v. Manson, 651 F.2d 96, 105-08 (2d Cir. 1981). The use of dayrooms is a serious problem because of the impact it has on everything else which would normally take place in the dayroom. See Balla v. Board of Corrections, 656 F. Supp. 1108, 1118 (D.Idaho 1987); Gross v. Tazewell County Jail, 533 F. Supp. 413, 416-17 (W.D.Va. 1982); Vazquez v. Gray, 523 F. Supp. 1359, 1365 (S.D.N.Y. 1981).

9. The link between overcrowding and other significant problems is clear. Among the problems caused by the overcrowding is inmate on staff and inmate on inmate violence, a range of safety hazards which contributed to five recent suicides within a three months period, lack of meaningful classification, cold food, questionable mental health services, and a range of other

problems. These types of problems, when linked, as they are, with overcrowding, give rise to a constitutional violation. That is particularly true where overcrowding is coupled with violence and understaffing. Ruiz v. Estelle, 679 F.2d 1115, 1140-42 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); See also Williams v. Griffin, 952 F.2d 820, 824-25 (4th Cir. 1992); Tillery v. Owens, 907 F.2d 418, 427 (3d Cir. 1990); French v. Owens, 777 F.2d 1250, 1252-53 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986); Wellman v. Faulkner, 715 F.2d 269, 274 (7th Cir. 1983), cert. denied, 468 U.S. 1217 (1984).

10. Pursuant to Paragraph I.(A) of the Partial Stipulation and Agreement for Consent Decree, the Defendants agreed to "have and maintain in an up-to-date manner" a law library consisting of the following volumes:

1. Florida Statutes Annotated
2. Florida Jurisprudence, 2nd
3. Florida Rules of Civil Procedure
4. Florida Rules of Criminal Procedure
5. Southern 2nd Reporter
6. Sheppard's Florida Citations
7. Sheppard's United States Citations
8. United States Code Annotated
9. Supreme Court Reporters (Lawyers Edition)
10. Federal Rules of Civil Procedure
11. Federal Rules of Criminal Procedure
12. Introduction to Legal Research
13. Blacks Law Dictionary.

11. Defendants maintain none of the volumes required to be maintained in an up-to-date manner by the Partial Stipulation and Agreement for Consent Decree.

12. Pursuant to Paragraph I.(B) of the Partial Stipulation and Agreement for Consent Decree, the Defendants agreed to have

and maintain, within three hundred sixty days of the parties signing of the Partial Stipulation and Agreement for Consent Decree, the following volumes:

1. Federal Reporter 2nd, Volumes 400 to present
2. Federal Supplement, Volume 500 to present

13. Defendants maintain none of the volumes required to be maintained in an up-to-date manner by Paragraphs 1.(A) and I.(B) of the Partial Stipulation and Agreement for Consent Decree.

14. In lieu of maintaining a law library consisting of the publications listed above, and without agreement of the Plaintiffs, or approval by the Court, Defendants have substituted a computer with access to a computerized legal research service. No inmates have direct access to the computer. Instead, inmates must submit written requests for specific items to a staff person who will then, utilizing the computer, print copies of the requested materials.

15. Paragraphs I.(A) and I.(B) were intended to meet the mandates of Bounds v. Smith, 430 U.S. 817 (1977) that inmates be provided access to courts. While Lewis v. Casey, 518 U.S. 343 (1996) narrowed the scope of assistance necessary, it has no impact on the Partial Stipulation and Agreement for Consent Decree given its already very narrow range of mandated legal materials.

16. An inmate who cannot go to the library cannot have meaningful access to the courts. Hadix v. Johnson, 694 F. Supp. 259, 291 (E.D.Mich. 1988). Brevard County has implemented the type of access system which has been condemned by virtually every

Court to consider the issue. The inmate, without access to the attorney's usual research tools, is supposed to prepare his pleadings by requesting specific case citations. In Hooks v. Wainwright, 536 F.Supp. 1330, 1341 (M.D.Fla 1982), rev'd on other grounds, 775 F.2d 1433 (11th Cir. 1985), cert. denied 479 U.S. 913 (1986), the late Judge Scott found that "It should be obvious that such a system is wholly inadequate to ensure meaningful access to the courts." Brevard County inmates have no access to reference materials. Thus, they have no way to learn what cases, or other materials, they should request. Their situation is similar to that of the inmates in the Maximum Security Unit at the Delaware State Prison, who had no access to the law library, a useless satellite library, and no access to persons trained in the law who could provide an alternative to a law library. Abdul-Akbar v. Watson, 775 F. Supp. 735 (D.Del. 1991). See also, Jones v. Diamond, 594 F.2d 997, 1024 (5th Cir. 1979); Cruz v. Hauck, 627 F.2d 710, 719 (5th Cir. 1980); Morrow v. Harwell, 768 F.2d 619, 622-24 (5th Cir. 1985); Green v. Ferrell, 801 F.2d 765, 772 (5th Cir. 1986); U.S. Ex Rel. Para-Professional Law Clinic v. Kane, 656 F.Supp. 1099 (E.D.Pa. 1987).

17. The Partial Stipulation and Agreement for Consent Decree is attached as Exhibit A to the Notice of Filing submitted simultaneously with this Motion for Order to Show Cause. The Final Consent Decree is attached as Exhibit B. The Order Approving Final Consent Decree is attached as Exhibit C. The Security Staffing Analysis of the Brevard County Detention Center

is attached as Exhibit D. The Report of E. Eugene Miller is attached as Exhibit E.

CERTIFICATION OF COUNSEL

Pursuant to Middle District Rule 3.01(g), the parties have conferred prior to the filing of this Motion for an Order to Show Cause but have been unable to resolve the matter.

WHEREFORE Plaintiffs move for the entry of an order to show cause why the Defendants should not be held in contempt for failure to comply with the above provisions of the Partial Stipulation and Agreement for Consent Decree and the Final Consent Decree, as approved by this Court on December 3, 1993.

Respectfully submitted,

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S/Peter M. Siegel
By: Peter M. Siegel, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to Shannon L. Wilson, Esq., Assistant County Attorney, Office of the Brevard County Attorney, 2725 St. Johns Street, Building C, Suite 346, Melbourne, Florida 32940, counsel for Defendant Brevard County and to Carl R. Peterson, Esq., Jolly, Peterson & Cherr, P.A., P.O. Box 37400, Tallahassee, Florida 32315-7400, counsel for the defendant Sheriff of Brevard County, by First Class U.S. Mail., on August 11, 2004.

S/Peter M. Siegel
Peter M. Siegel, Esq.

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JERRY W. HICKS, et al.,)
)
Defendants.)

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Exhibit A

7/21/88

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SCOTT TILLMAN, and
WILLIAM LENNEAR, etc., et al.,

Plaintiffs,

v.

Case No. 83-199-CIV-ORL-19
83-285-CIV-ORL-19

CLAUDE MILLER, etc., et al.,

Defendants.

PARTIAL STIPULATION AND AGREEMENT
FOR CONSENT DECREE

WHEREAS, on July 20, 1983 the Amended Complaint herein was filed on behalf of Plaintiffs Tillman and Lennear and others similarly situated. Plaintiffs allege a cause of action and jurisdiction of the Court arising from the United States Code and United States Constitution, specifically, 42 U.S.C. Sections, 1983 and 1988, 28 U.S.C. Sections 2201 and 2202, U.S. CONST. Amend. I, IV, V, VI, VIII, IX and XIV; and

WHEREAS, the Amended Complaint alleges, in summary, a failure on the part of the Defendants to carry out their respective statutory and constitutional duties in maintenance and operation of the Brevard County Jail in such a fashion as to violate Plaintiffs constitutional rights; and

WHEREAS, the signatories to this Stipulation represent that they are authorized to enter into this Stipulation and to take all steps required of them by this Stipulation; and

WHEREAS, both Plaintiffs and Defendants consider it desirable and in their best interests of their respective class

or successor, to settle the issues which remain by entering into this Agreement; and

WHEREAS, the parties have entered into this Agreement as a compromise settlement of their dispute, intending that this Stipulation shall not be construed in any way as defining constitutional or statutory standards, nor as an admission that any condition, policy, rule, procedure, act, or omission of the Defendants or of any of their employees or agents were or are in any way in violation of any rights of plaintiff;

THEREFORE, in consideration of the dismissal with prejudice of the allegations, claims and prayers for relief set forth in the complaint, the parties, by and through counsel, hereby stipulate and agree as follows:

I. Law Library -

(A) Within ninety (90) days from the effective date of this Agreement, Defendants agree to have and maintain in an up-to-date manner, the law library of the Brevard County Detention Center, the following volumes:

- (1) Florida Statutes Annotated
- (2) Florida Jurisprudence, 2nd
- (3) Florida Rules of Civil Procedure
- (4) Florida Rules of Criminal Procedure
- (5) Southern 2nd Reporter
- (6) Sheppard's Florida Citations
- (7) Sheppard's United States Citations
- (8) United States Code Annotated
- (9) Supreme Court Reporters (Lawyers Edition)
- (10) Federal Rules of Civil Procedure
- (11) Federal Rules of Criminal Procedure
- (12) Introduction to Legal Research
- (13) Blacks Law Dictionary

(B) Within three hundred sixty (360) days from the date of this Stipulation (date on which last signature necessary is attached), the Defendants agree to have and maintain in an up-to-date manner in the law library of the Brevard County Detention Center, the following volumes:

- (1) Federal Reporter 2nd, Volumes 400 to present
- (2) Federal Supplement, Volume 500 to present

II. Attorney /Client Conference Rooms -

- (A) Within ninety (90) days from the effective date of this Stipulation, the Defendants agree to complete work on the attorney/client conference rooms, to prevent conversations within such rooms from being overheard, such work having begun prior to the Court ordered inspection which took place on January 11, 1988.

III. Visitation Area -

- (A) Within ninety (90) days of the effective date of the Stipulation, the Defendants agree to install handsets or take appropriate action in the visitation areas to ensure that inmates can communicate adequately in a normal conversational voice with visitors.

IV. Attorneys Fees -

- (A) Attorneys fee to be awarded to Plaintiffs shall be in the discretion of the Court if the parties cannot come to an agreement.

V. Reports -

The Defendants, shall file a report at the end of ninety (90) days from the effective date of this Stipulation, certifying the actions and steps taken to implement this Stipulation.

VI. Notice to Class Members -

- (A) Pursuant to Fed.R.Civ.P. 23(e), the Defendants shall within ten (10) days of the execution of the Stipulation, provide notice of the Stipulation for proposed settlement to those members of the Plaintiff's class presently incarcerated in the Brevard County Detention Center.
- (B) Such notice shall be provided by posting in each cellblock, in a place accessible to prisoners, notice as provided in Exhibit 'A' hereto attached.

VII. Submission to Court of Proposed Settlement and Use of Best Efforts to Obtain Approval -

- (A) Promptly upon execution of this Agreement, counsel for the parties shall jointly submit such Agreement to the Court for its approval and

recommend that the Court approve the Agreement. Counsel for both parties also shall take all steps that may be required or requested by the Court and use their best efforts to consummate this settlement, obtain the Court's approval of this Agreement, and obtain entry of a final judgment.

VIII. Effectiveness of Agreement -

- (A) This Agreement shall be effective immediately upon approval by the Court. In the event that the court declines to approve this Agreement or any portion herein, this Agreement shall be null and void and without prejudice to the parties' rights.

IX. Additional Covenants -

- (A) Upon forty-eight (48) hours' notice to defendant Miller or his successor in office, plaintiffs' counsel shall be allowed access to the Brevard County Jail (Detention Center), accompanied by defendant or his designees, except during meal service time and during inmate transfers, to inspect the status of the improvements set out under Sections I, II, and III.
- (B) Defendants agree that they, their officers, employees, agents, successors and all those acting in concert or participating with them shall fully comply with and enforce this Agreement, including all its terms, conditions and exhibits, and the Court's orders.
- (C) Within ten (10) days of entry of an order of the Court approving this Agreement, counsel for the parties shall execute a Stipulation of Dismissal in such form as is attached hereto as Exhibit B, which, within five (5) days after execution, shall be filed with the court by counsel for Plaintiffs.
- (D) Neither party will appeal the order attached hereto as Exhibit C if such order is entered by the court.

X. Entire Agreement -

This Agreement and its exhibits contain the entire agreement between the parties. The issue of attorneys fees remains for the Court to decide.

STIPULATED AND AGREED TO this 21 day of July,
1988.

Sharon L. Wilson
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Merritt Island, Florida 32953

Sue Schmitt
Sue Schmitt
Chairman, Brevard County
Board of County Commissioners

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