

BRIEF BANK

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

RAYE E. CARNIELLO, W. T. PARKER,
MYRON FLEMING, LEONARD BEAN,
ROBERT ROY, and FRANK LEE BASS,

Plaintiffs

v.

Case No. 90-711-Civ-J-14

HARRY K. SINGLETARY, in his
official capacity as Secretary
of the Florida Department of
Corrections, THOMAS L. BARTON, in
his official capacity as
Superintendent of Florida State
Prison, and A.D. THORNTON, in his
official capacity as chief
correctional officer at Florida
State Prison,

Defendants.

Carniello v. Singletary



PC-FL-004-001

**AMENDED COMPLAINT - CLASS ACTION
INJUNCTIVE RELIEF SOUGHT**

Plaintiffs, RAYE E. CARNIELLO, W.T. PARKER, MYRON
FLEMING, LEONARD BEAN, ROBERT ROY and FRANK LEE BASS, individually,
and as representatives of a class of persons similarly situated,
sue defendant HARRY K. SINGLETARY, in his official capacity as
Secretary of the Florida Department of Corrections; THOMAS L.
BARTON, in his official capacity as Superintendent of Florida State

Prison, and A.D. THORNTON, in his official capacity as chief correctional office in charge of security at Florida State Prison, and allege:

Introduction

1. This is a class action for declaratory and injunctive relief alleging that defendants have classified and confined numerous inmates at Florida State Prison under administrative confinement, close management, disciplinary confinement, Q-wing, and on the yard suspension list in a manner violative of the prohibition against cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution and the due process and equal protection provisions of the Fifth and Fourteenth Amendments of the U.S. Constitution.

Jurisdiction

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. Section 1343(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the Plaintiffs by the Eighth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

4. The Plaintiff's claims for relief are predicated upon 42 U.S.C. Section 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the plaintiff by the Constitution and the

laws of the United States and by 42 U.S.C. Section 1988 which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. Section 1983.

Parties

5. Plaintiff, RAYE E. CARNIELLO, is a citizen of the United States incarcerated in close management at Florida State Prison, Starke, Bradford County, Florida.

6. Plaintiff, W.T. PARKER, is a citizen of the United States incarcerated on close management for 11 years at Florida State Prison, Starke, Bradford County, Florida.

7. Plaintiff, MYRON FLEMING, is a citizen of the United States incarcerated on close management at Florida State Prison, Starke, Bradford County, Florida.

8. Plaintiff, LEONARD BEAN, is a citizen of the United States incarcerated on Q wing and on the yard suspension list for 8 years at Florida State Prison, Starke, Bradford County, Florida.

9. Plaintiff, ROBERT ROY, is a citizen of the United States incarcerated on close management at Florida State Prison, Starke, Bradford County, Florida.

10. Plaintiff, FRANK LEE BASS, is a citizen of the United States incarcerated on close management and disciplinary confinement at Florida State Prison, Starke, Bradford County, Florida.

11. Defendant, HARRY K. SINGLETARY, is the Secretary of the Florida Department of Correction. As such, he bears overall responsibility for the operation of Florida State Prison which is

under the supervision and control of the Florida Department of Corrections. He is sued in his official capacity.

12. Defendant, THOMAS L. BARTON, is the Superintendent of Florida State Prison. As such, he bears overall responsibility for the operation of that prison subject to the supervision and control of the Florida Department of Corrections. He is sued in his official capacity.

13. Defendant, A.D. THORNTON, is the Chief Correctional Officer in charge of security at Florida State Prison. As such, he bears overall responsibility for the security of that prison subject to the supervision and control of the Superintendent. He is sued in his official capacity.

Class Action Allegations

14. This action is brought as a class action, pursuant to the provisions of Rule 23(b)(2) of the Federal Rules of Civil Procedure, for injunctive and declaratory relief on behalf of a class of all persons similarly situated.

15. The class of plaintiffs consists of all persons who are currently or who will be incarcerated at Florida State Prison under non-death row administrative confinement (hereinafter administrative confinement), close management confinement, disciplinary confinement, Q-wing, or on the yard suspension list.

16. The Plaintiffs' class consists of sub-classes of unknown but large number of inmates, numbering in the hundreds at any given time, so that joinder of all members is impracticable. For example, on information and belief, at any given point in time, the

typical number of inmates assigned to close management status is approximately 200; in administrative confinement, approximately 100; on disciplinary confinement, approximately 100; on Q wing, 20; and on the yard suspension list, approximately 100.

17. The controlling issues of law and fact are common to all members of each of the plaintiff sub-classes in that the classification procedures and conditions of confinement, as alleged in this Complaint, are common to all inmates respectively in administrative confinement, close management, disciplinary confinement, Q-wing, and the yard suspension list.

18. The claims of the individual plaintiffs are typical of the claims of the members of plaintiffs' sub-classes. The named plaintiffs are the victims of cruel and unusual punishment and are being denied due process and equal protection.

19. The Defendants have acted on grounds generally applicable to the plaintiff sub-classes as a whole thereby making appropriate final injunctive and corresponding declaratory relief with respect to the sub-classes.

20. The pattern and practice of infliction of cruel and unusual punishment and denial of due process and equal protection present common questions of law and fact which are typical of the sub-classes as a whole and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

21. The Plaintiffs will fairly and adequately protect the interests of the members of the plaintiff sub-classes.

Factual Allegations

For reasons set forth more fully below, the conditions of confinement and classification and review procedures relating to administrative confinement, close management, disciplinary confinement, Q-wing, and the yard suspension list at Florida State Prison violate the Eighth Amendment prohibition against cruel and unusual punishment and the due process and equal protection clauses of the Fifth and Fourteenth Amendments.

22. Conditions of confinement in the cells which house close management, administrative confinement, disciplinary confinement and Q-wing inmates at Florida State Prison offend evolving standards of human decency. The Helsinki Human Rights Watch organization (of which the U.S. is a member) issued an international report on September 12, 1991 characterizing the cells on Q wing as constituting one of the most brutal "prisons within a prison" in the world. On May 26, 1991, Human Rights Watch, the largest U.S.-based international human rights organization in the world issued a report characterizing conditions on close management, Q wing and disciplinary confinement at Florida State Prison as shocking and cruel.

23. Conditions of confinement for close management, disciplinary confinement and Q-wing inmates at Florida State Prison, a 30 year old facility, include the following:

a. Lock down 24 hours a day in solitary confinement for all inmates except for some of those assigned to close management II;

b. Inmates are housed on N, P, Q, T, M, and U wings (each wing houses approximately 96 inmates with the exception of Q wing which houses 20);

c. Cells measure approximately six feet wide, eight feet long and eight feet high;

d. Cells on T, M, and U wings are "boxcars" sealed by solid steel doors containing a locked food slot and a small window. A steel mesh and solid plexiglass plate covers the small window. The rear wall of each cell contains a window but it too is covered by heavy steel security mesh which blocks light and air flow. Cells on N, P, and Q wings do not contain windows. Boxcar cells on Q wing are not only windowless but are sealed completely shut by a solid steel door at night. Vents in the rear wall of the cells on Q wing are covered with heavy steel mesh which blocks air flow;

e. Air circulation and ventilation on all the wings is severely restricted in violation of FAC 10D-7.007(4)(a)(b) due to the cell configuration and construction, vents being covered with heavy steel plates, filters which are allowed to remain filthy, and ventilation fans being frequently turned off or inoperable;

f. Inadequate air circulation in the cells causes concentrations of airborne viruses and pollutants which increase the risk of serious health hazard for inmates with asthma and respiratory difficulties. Cell temperatures in the summer time exceed tolerable levels;

g. Inmates experiencing unbearable heat who have repeatedly asked that ventilation fans be turned on, have as a last

resort banged on the cell doors requesting aid and have been issued disciplinary reports for disorderly conduct instead;

h. Heating in the wintertime is inadequate. Cell windows cannot be closed and remain open all winter. Ice occasionally forms in the toilets on the ground floors of the wings. N and P wings contain no heating ducts;

i. Inmates are routinely issued worn, rotting, and torn mattresses and pillows which are stained and contaminated by saliva, semen, blood, sweat and urine;

j. Urine and water seep from unrepaired, leaking toilets on the 2nd and 3rd floors and flow down the walls to the first floor below. Cell toilets and sinks overflow. Human waste from one toilet frequently backs up into the toilets of adjacent cells. Drainage holes in the floors of the cells frequently become blocked causing flooding when the toilets leak;

k. In derogation of its obligation under Florida State Prison Operating Procedure No. 018-90.82 (18.14), the prison refuses to launder t-shirts, undershorts, pajamas, and socks. Inmates are forced to wash these items in toilets as the sinks will not accomodate laundry;

l. Cells are infested with roaches, ants, spiders and other insects. Vermin run across the floors at night;

m. Mosquitoes, flies and gnats swarm throughout the summer, attacking inmates as they try to sleep. Insect repellent is not permitted. No regular insect control program is provided by Defendants;

n. Cell lighting is inadequate with some cells containing only a 25 watt bulb;

o. Cells sometimes are flooded by rain;

p. The lack of chairs in the cells causes inmates with back or spinal problems unremitting pain and discomfort;

q. Cells often have no hot water;

r. Showers are unventilated and do not drain, causing stagnant water, foul odors, and unsanitary conditions;

s. Inmates are permitted three five-minute showers weekly in which to bathe and shave. Although proper mirrors are not allowed, inmates receive disciplinary punishment if their shaving is deemed inadequate under Florida State Prison Operating Procedure No. 017-91.61;

t. Inmates confined in boxcars can only communicate with other human beings by screaming. If, however, an inmate requiring attention hollers or pounds on the steel door he receives disciplinary punishment and his confinement under special classification is further extended;

u. Black and other minority inmates often are subjected to racial slurs and epithets by the guards. Those inmates who object to such indignities are charged with verbal disrespect, disciplined under the guise of maintenance of institutional respect and decorum and, as a result, often remain on close management, disciplinary confinement and/or administrative confinement for years at a time;

v. Inmates with records of suicide attempts, mental and emotional illness, mental retardation, and who are medicated with psychotropic drugs are confined on close management, disciplinary confinement, administrative confinement and Q wing;

w. The harshness, extreme isolation, and lack of sensory stimulation of the conditions are dehumanizing. Over time they engender and/or exacerbate severe emotional and psychological problems. Psychosomatic health problems such as ulcers, severe recurrent headaches, and hypoactivity are common. Many inmates experience massive depression, deep rage and feelings of extreme anguish and hopelessness. Some become suicidal. Weeping, thoughts of self mutilation, paranoia, and thoughts of retributive violence to others infect the inmate's thoughts as he sits for months and years on end without human contact and mental stimulation;

x. The ensuing emotional and psychological deterioration results in verbal and physical assaults between inmates and against guards. As heightened fear and anger permeate the wings, gratuitous violence, racial hatred and sexual aggression become commonplace. Security is endangered by the very methods ostensibly utilized to enforce it;

y. The psychological and emotional damage brought about by incarceration on close management, Q wing, and/or disciplinary confinement defeats the capacity to interact normally with other human beings and makes it unlikely that an inmate will ever return to general population let alone be rehabilitated to rejoin society;

z. Defendants routinely tolerate and/or condone verbal

insult and physical brutality on the part of the guards. Use of force without justification and excessive use of force on inmates in violation of FAC 33-8.003(3),(4) and Florida State Operating Procedure No. A5-91.29 is a frequent occurrence;

aa. Inmates are deprived of access to legal materials and are prevented from receiving legal assistance by the following:

(1) Florida State Prison has been without a law librarian for over a year. The acting law librarian is a library technician without legal training and is unqualified to serve as law librarian. Florida Statutes Section 242.68 provides that correctional librarians must hold a degree in library science;

(2) Defendants forbid inmate legal aides from assisting inmates in the preparation of legal documents. Defendants further forbid legal aides from possessing any inmate's legal papers or documents or passing legal documents from one inmate to another. Those practices violate Florida State Prison Operating Procedure No. P13-91.34.

(3) Legal documents which the legal aides are supposed to be allowed to review are confiscated and destroyed as contraband. Legal aides receive disciplinary punishment, lock down or loss of job for possessing such documents and for offering such assistance;

(4) Legal aides believe that Defendants regularly make illicit copies of inmates' legal papers which have been submitted to the library for photocopying;

(5) Inmates (including illiterate, mentally

retarded, and non-English speaking inmates) are prohibited from sending legal papers or documents to other inmates (jailhouse lawyers) for legal assistance. Defendants routinely search cells for legal documents and read the documents. If legal documents are found in one inmate's cell which pertain to another inmate the papers are seized as contraband and disciplinary punishment is administered;

(6) Inmates are either completely denied access to the law library or receive access only through correspondence. Those permitted access to legal materials are subject to the following restrictions under Florida State Prison Operating Procedure No. P13-91.34: Inmates must request materials (case cites, statutes, etc.) with specificity; no more than five items may be asked for per request, each case cite is considered a separate item; a verifiable court order deadline must be presented for more than two requests per week;

(7) Florida State Operating Procedure No. P14-91.25) provides that an inmate in confinement may only use the writ room (a cell in which an inmate and legal aide, separated by a glass partition, confer) if he is a plaintiff in an ongoing civil case or the defendant in a criminal case. Defendants, however, routinely deny access to legal materials and the writ room to inmates who qualify;

(8) Defendants' policies harass and intimidate inmates and prevent and discourage inmates from exercising their right to access to the courts;

bb. Inmates are made to endure severe depression, physical and emotional distress, muscle atrophy, and aggravation of existing physical, emotional, and psychological ailments as a result of the complete denial or severely limited out-of-cell exercise; ok

cc. Inmates are denied participation in vocational, educational or self-betterment programs. An inmate who is not on disciplinary confinement may enroll in correspondence courses only if he can pay the cost and has no record of disciplinary infractions for the immediately preceding 6 months. This restriction violates FAC 33-3.0083(7);

dd. Inmates are deprived of opportunity to attend religious services or participate in group religious activities. ok Requests to see clergyman are often ignored or go unanswered for weeks and months. The chaplain's office discriminates against non-christian inmates; and

ee. Defendants violate FAC 33-3.0045(7) by denying all access to hobbycraft (Florida State Prison Operating Procedure No. 025-91.23).

24. Inmates have repeatedly appealed the conditions set forth herein through the inmate request and administrative grievance process. Defendants, however, either refuse to grant relief or ignore the requests and grievances.

25. At all times relevant to the claims herein, Defendants have acted or failed to act under color of law of the State of Florida.

CLOSE MANAGEMENT

26. Florida Administrative Code Chapter 33-3.0083 defines close management as long-term, single cell confinement of an inmate apart from the general population for reasons of "security, order and effective management of the institution".

27. According to regulations of the Department of Corrections, as contained in Chapter 33-3.0083(3) of the Florida Administrative Code (hereinafter FAC), close management is not disciplinary in nature and is non-punitive.

28. In reality, Defendants impose close management upon inmates who have been convicted of criminal offenses which Defendants find offensive, upon inmates for retaliatory purposes, and as a general method of imposing punitively harsh conditions upon inmates under the guise of "security".

29. As a result of Defendant's actions or failure to act, inmates in close management are frequently and/or regularly denied the following substantive and procedural safeguards:

a. The right to a hearing before a close management review team as prescribed under FAC 33-3.0083(4)(a) prior to placement on close management;

b. The right to notice of the review team's initial hearing, the right to present witnesses, confront witnesses, and be heard at a close management review team meeting, as prescribed under FAC 33-3.0083(4)(a);

c. The right to be informed of the grounds for the decision to be placed on close management as prescribed under FAC

33-3.0083(4)(b);

d. The right to a documented weekly review by the close management review team for the first two months on close management and a documented review each 30 days thereafter as prescribed under FAC 33-3.0083(6)(a);

e. The right to a personal interview and documented psychological assessment after the first 30 days of confinement and additional psychological assessments each 90 days thereafter as prescribed under FAC 33-3.0083(6)(c);

f. The right to a formal evaluation and report every 30 days as prescribed under FAC 33-3.0083(6)(d);

g. The right to a weekly visit during the first two months and at least a monthly visit thereafter by members of the classification team in order to ensure that the inmate's welfare is properly provided for, and to determine the time and method of release or any program changes as prescribed under FAC 33-3.0083(6)(f)(4).

30. Defendants consistently fail to prepare and preserve the reporting documentation required under FAC 33-3.0083, the Daily Record of Segregation Report required under FAC 33-3.0083(10)(c) and the thirty-day classification team review schedule and report (FSP Form 1045 to be placed in the inmate's master file) as required under Florida State Operating Procedure No. P24-91.19.

31. FAC 33-3.0083(6)(e) provides that the goal of the prison staff shall be to return the inmate to open population as soon as possible. Numerous inmates, however, are relegated to close

management confinement for months and years at a time despite maintaining a record free of disciplinary reports during the assignment to close management.

32. Disproportionate numbers of black and minority inmates are assigned and retained on close management as a result of Defendants' racial and ethnic bias. Minority inmates on "special review" are frequently assigned to close management in lieu of protective management as a result of Defendants' racial and ethnic bias.

33. Harsh conditions of confinement on close management include the conditions set forth in paragraph 23, above, as well as the following:

a. Lock down 24 hours a day for all inmates on Close Management I and for numerous inmates on close management II;

b. Isolation from news of the outside world through denial of access to radio or television for all inmates on close management I and for numerous inmates on close management II;

c. Unconstitutional limitation of out-of-cell exercise to one, two-hour session per week;

d. Regular failure to provide inmates the code-mandated two-hour exercise session per week;

e. Exercise yards too cramped to provide for a meaningful exercise opportunity. Approximately 20 inmates must share a concrete pad measuring approximately 20 ft. x 24 ft. (480 sq. ft.) on U and T wings;

f. Lack of recreational equipment on the exercise yard.

Florida State Prison Operating Procedure No.026-91.63 (26.05) prohibits such equipment;

g. Frequent suspension of exercise opportunities without review, opportunity to be heard, notice, and without the requisite showing of clear and compelling facts as required under FAC 33-3.0083(9)(i);

h. Loss of gain time while on close management;

i. Limitation on the prison canteen to once every two weeks and then severe restrictions on access to items available to the general population;

j. Limitation of one request per week, in writing, of one nonspecified book from the prison library; and

k. Limitation on inmate's access to visitors without requisite review mandated by FAC 33-3.0083(5)(a). Florida State Prison Operating Procedure No. P23-91.38[23.04(6)] provides that: Close management I receive no visits for the first ninety days they are in the designated status; they receive a one-hour visit per month thereafter; Close management II receive a two-hour visit per month; Confinement runners receive regular six hour visits.

DISCIPLINARY CONFINEMENT

34. Disciplinary confinement is defined under FAC 33-3.0084 as the short-term removal of an inmate apart from his customary classification for violation of the "rules and regulations" of the Department of Corrections.

35. FAC 33-22.008(2)(b)(10) provides that disciplinary confinement shall be utilized only as a last resort for violation

of rules and regulations. Defendants, however, inflict disciplinary confinement without consideration or evaluation of the alternative disciplinary actions set forth under FAC 33-22.008(2)(b)(1) through (9).

36. Inmates routinely have been held on disciplinary confinement without interruption for months and years at a time.

37. Defendants utilize disciplinary confinement for retaliatory purposes.

38. As a result of Defendants' actions or failure to act, inmates in disciplinary confinement are frequently and/or regularly denied the following substantive and procedural safeguards:

a. The right to provide the investigating officer in charge of investigating a disciplinary report a full statement concerning the events described in the disciplinary report as required under FAC 33-22.005(4)(b);

b. The right to call witnesses or have witness statements provided at the disciplinary hearing as provided under FAC 33-22.007(2)(b);

c. The right to timely issuance of disciplinary reports, investigation of the disciplinary report and notice of hearing as provided under FAC 33-22.010(2), (3), and (4);

d. The right to frequent review by the disciplinary team as prescribed under FAC 33-3.0084(2)(a) and FAC 3-3.0084(3)(4) for the purpose of determining the inmate's welfare and the inmate's attitude with the mandate that the inmate be returned to his former classification in the shortest time possible; and

e. The right to a personal interview and documented psychological assessment after the first 30 days of confinement and additional psychological assessments every 90 day thereafter as prescribed under FAC 33-3.0084(2)(b).

39. Defendants fail to properly prepare and maintain the Daily Record of Segregation Report required under FAC 33-3.0084(4).

40. Restrictive conditions on disciplinary confinement include the conditions set forth in paragraph 23, above, as well as the following:

a. Lock down 24 hours a day;

b. Isolation from news of the outside world through denial of access to radio or television;

c. Denial of all opportunities to participate in vocational, educational or self-betterment programs;

d. Denial of out-of-cell exercise during the first 30 days of confinement. Thereafter, exercise frequently denied but when available, unconstitutionally limited to one, two-hour session per week;

e. Exercise yards too cramped to provide for a meaningful exercise opportunity. Approximately 20 inmates must share a concrete pad measuring approximately 20 ft. x 24 ft. (480 sq. ft.) on U and T wings;

f. Denial of all recreational equipment on the exercise yard. Florida State Prison Operating Procedure No.026-91.63 (26.05) prohibits such equipment;

g. Confiscation of inmate's property, including legal

files and documents, books, personal items and comfort items;

h. Denial of meaningful access to the courts and legal materials. Inmates may correspond with the law library only for the purpose of challenging the disciplinary confinement, or for the purpose of meeting a court-ordered filing deadline or time limitation signed by a judge or magistrate (notices from clerks of court do not satisfy the requirement), or a time limitation under court procedural rules. Inmates are unable to show the requisite filing deadlines because of Defendants' confiscation of all legal papers and files;

i. Frequent punishment with additional disciplinary confinement for attempting to gain access to legal materials or utilize the writ room;

j. Denial of access to books in the prison library; and

k. Denial of all visiting privileges pursuant to Florida State Operating Procedure No. P23-91.38[23.04(B)(3)].

NON-DEATH ROW ADMINISTRATIVE CONFINEMENT

41. Administrative confinement is defined under FAC 33-3.0081 as the short-term removal of an inmate apart from the general population for the safety of any inmate or group of inmates or for the security of the institution.

42. Administrative confinement is defined under FAC 33-3.0081(2) as non-disciplinary confinement in which the inmates are not punished.

43. In reality, Defendants use administrative confinement as a method of imposing punitively harsh conditions upon inmates under

the guise of safety and security.

44. Inmates are placed in administrative confinement despite the fact that reasonable alternatives exist in violation of FAC 33-3.0081(4)(a).

45. As a result of Defendants' actions or failure to act, inmates in administrative confinement are frequently or regularly denied the following substantive and procedural safeguards:

a. The right to an informal hearing in which the reason for placement on administrative confinement is explained and the inmate is given an opportunity to present his views on the matter as required under FAC 33-3.0081(4)(a);

b. Review of the Report of Administrative Confinement, Form DC4-813(a) by the institutional special review team within five working days of the senior correctional officer's placement of the inmate on administrative confinement as required under FAC 33-3.0081(4)(b); and

c. The right to a personal interview and documented psychological assessment after the first 30 days of confinement and additional psychological assessments every 90 day thereafter as prescribed under FAC 33-3.0081(7)(c).

46. Defendants fail to prepare and maintain the Report of Administrative Confinement, Form DC4-813 as required under FAC 33-3.0081(4)(a),(b) and the Daily Record of Segregation Report required under FAC 33-3.0081(7)(b).

47. Defendants retain inmates on administrative confinement for extended periods of time without justification.

48. Restrictive conditions on administrative confinement include the conditions of confinement set forth in paragraph 23(c) through (x) and (z) through (ee) above, as well as the following:

a. Denial of out-of-cell exercise opportunities during first 30 days of confinement;

b. Failure on the part of the Defendants to regularly provide the requisite two-hour exercise session per week after expiration of initial 30 days in confinement;

c. Arbitrary placement of inmates on exercise yard restrictions under FAC 33-3.0081(9)(1) without notification, justification, the opportunity to be heard, and without adequate and meaningful review;

d. Denial of exercise opportunities for security purposes not restricted to the shortest length of time needed and not properly and regularly documented on Form DC4-814 as required under FAC 33-3.0081(9)(1);

e. Exercise yards too cramped to provide for a meaningful exercise opportunity. Approximately 20 inmates must share a concrete pad measuring approximately 20 ft. x 24 ft. (480 sq. ft.) on U and T wings;

f. Denial of all recreational equipment on the exercise yard. Florida State Prison Operating Procedure No.026-91.63 (26.05) prohibits such equipment;

g. Isolation from news of the outside world through denial of access to radio or television; and

h. Restriction of access to one book per week from the

prison library.

Q WING

49. Approximately 20 inmates are housed on Q wing.

50. Q wing is utilized as punishment for inmates whose underlying criminal convictions involve injury to criminal justice, law enforcement or correctional personnel and for inmates who have angered correctional personnel at Florida State Prison.

51. Inmates are placed on Q wing without notice, without opportunity to be heard, without justification, without explanation and without adequate or meaningful review, in violation of procedural and substantive due process.

52. Numerous inmates have remained incarcerated on Q wing for protracted intervals, some as many as 10 years.

53. As a result of Defendants' actions or failure to act, inmates on Q wing are subjected to the conditions set forth in paragraph 23, above, as well as the following:

- a. Lock down 24 hours a day;
- b. Isolation from news of the outside world through denial of access to radio or television;
- c. Denial of all opportunities to participate in vocational, educational or self-betterment programs;
- d. Denial of all out-of-cell exercise; and
- e. Severe limitation on inmate's access to visitors without the requisite review required under FAC 33-3.0083(5)(a);

YARD SUSPENSION LIST

54. The yard suspension list is a list of inmates who

ostensibly pose problems to the administration and the operation of the prison and who are denied out-of-cell exercise as punishment. Some inmates, however, are placed on yard suspension because of their underlying conviction, not because of conduct relating to their incarceration.

55. Typically, Defendant Thornton submits an inmate's name for suspension to Defendant Barton. Barton then approves placement of the inmate's name on the yard suspension list.

56. Inmates are not permitted to attend hearings concerning yard suspension, are not given notice prior to being placed on yard suspension, and are not given the opportunity to be heard regarding their placement or retention on yard suspension.

57. There are no written criteria for placement on the yard suspension list, removal from the yard suspension list, and length of suspension.

58. There is no meaningful review of either the inmate's conduct which supposedly justifies his placement on suspension or his record of behaviour while on yard suspension.

59. Some inmates remain on yard suspension after they have completed disciplinary sentences for infractions and after they have been removed from disciplinary confinement. Numerous inmates remain on the yard suspension list for months and years at a time, some as long as 10 years.

CAUSE OF ACTION

60. The restrictions and conditions imposed on inmates in close management, disciplinary confinement, administrative

confinement, Q wing and the yard suspension list, as alleged in this complaint, are not imposed for legitimate reasons of security, order and effective management of the institution. Instead, they are imposed as punitive measures and for the purpose of inflicting conditions which are unconstitutionally cruel and unusual.

61. Even if the harsh conditions imposed on inmates in close management, disciplinary confinement, administrative confinement, Q wing and the yard suspension list are imposed for reasons of security, they constitute an exaggerated response to the problems and bear no rational relationship to any legitimate state interest.

62. The patterns and practices of the Department of Corrections, as alleged in this complaint, violate the Cruel and Unusual Punishments Clause of the Eighth Amendment and the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments.

BASIS FOR EQUITABLE RELIEF

63. Plaintiffs have no adequate remedy at law to redress the wrongs suffered herein. Plaintiffs have suffered and will continue to suffer irreparable injury as the result of Defendants' acts 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 acts of the Defendants. The need for relief is pressing as the rights at issue are paramount rights under the Constitution of the United States.

WHEREFORE, Plaintiffs request that this Court:

A. Certify this action as a class action pursuant to

Rule 23(b)(2) of the Federal Rules of Civil Procedure.

B. Declare that the conduct of the Defendants, as alleged, violates Plaintiffs' federal constitutional rights.

C. Declare that those provisions of the Florida Administrative Code and Florida State Prison Operating Procedures which restrict various rights as described herein violate the federal constitutional.

D. Require the Defendants to submit a plan to this Court for approval which will remedy the unconstitutional conditions of close management, administrative confinement, Q wing, disciplinary confinement and the yard suspension list, and to implement it forthwith.

E. Enter preliminary and permanent injunctive relief enjoining the Defendants, their successors in office, and their servants, agents and employees, and those acting in concert with them, from engaging in punitive and discriminatory conduct against inmates on close management, administrative confinement, the yard suspension list, and Q wing, and from engaging in discriminatory conduct against inmates on disciplinary confinement and specifically enjoining the Defendants to adopt policies, procedures and practices which will have the immediate impact of treating inmates on close management, administrative confinement, Q wing, and the yard suspension list in a non-discriminatory, non-punitive manner and have the immediate impact of treating inmates on disciplinary confinement in a non-discriminatory manner.

F. Require Defendants to develop a regular schedule of

daily outdoor exercise.

G. Preliminarily and permanently enjoin Defendants from retaliatory actions arising from Plaintiffs' filing of this complaint;

H. Award attorneys' fees and costs pursuant to 42 U.S.C. Section 1988.

I. Grant Plaintiffs such other and further relief as the Court may deem just and equitable.

DATED this 7th day of October, 1991.

Respectfully submitted,

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