



## **PLAINTIFFS' MEMORANDUM ON COMPLIANCE**

The Court has received responses to the Monitor's Fourth Quarterly Report from the Sheriff and the County. The plaintiffs submit this memorandum with regard to the areas addressed by the Monitor to put certain matters on the record and to point out areas requiring attention by the Sheriff, the Monitor, and the Auditor. Plaintiffs do not ask for the Court's intervention at this time, but will seek relief if problems regarding the safety and security of inmates and the absence of a functioning grievance system persist.

### **STAFFING AND SECURITY**

The staffing of the Fulton County Jail is of critical importance to the safety and security of both inmates and staff. Yet, as the Monitor points out in his report, the "Jail has never been in compliance with either the staffing or reporting requirements" with regard to staffing.<sup>1</sup> The Monitor reports that from April 15 to April 22, the three

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1. Monitor's Report at 5. Paragraph 25 of the Consent Order provides:

The Sheriff shall establish at least three positions for uniformed officers to supervise the inmates in the six cellblocks on each side of each floor at the Rice Street facility on all shifts seven days a week. In addition, one supervisor shall be stationed on each floor and at least one person shall be stationed in the tower to observe the cellblocks on each side from the tower. The Sheriff shall report to the Court each month when there are fewer than three officers in a cellblock on any shift and the reason for there being fewer than three.

shifts were short an average of 17.9 positions.<sup>2</sup> The Sheriff computes the numbers differently and asserts that the Jail was short only seven percent of the personnel required under the Consent Order.<sup>3</sup>

There are different ways to analyze the adequacy of staffing at the Jail. However, the plain language of the Consent Order requires that during each shift there shall be three uniformed officers on each floor on and one person in the tower at the main jail,<sup>4</sup> five uniformed officers at the Bellwood annex and three uniformed officers at the Marietta annex.<sup>5</sup> The plaintiffs have determined from the watch commander's logs the *actual staffing for each unit* – not the number of officers assigned – for each shift.<sup>6</sup> Once that is determined, it is a simple matter of whether a unit had the staffing required by the Consent Order.

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2. Monitor's Report at 6.

3. Fulton County Sheriff Myron Freeman's Response to the Fourth Quarterly Report of the Court Monitor (May 22, 2007) (hereinafter "Sheriff's Response") at 10.

4. Consent Order, page 9, ¶ 25.

5. *Id.*, page 10, ¶ 27.

6. This analysis does not include the separate provision for supervisors – one for each floor of the main jail, the Bellwood annex and the Marietta annex. As the sheriff acknowledges, the Jail has not had sufficient supervisory personnel to comply with the Consent Order.

Appended to this Memorandum as Exhibit A is a chart which reflects the number of staff deployed for each shift of each day from April 15 to April 22, the period which was a source of controversy in the Monitor's Report and the Sheriff's Response. On the first day, April 15, during the 7 a.m. to 3 p.m. shift, there was compliance with the requirements of the Consent Order on all 12 cellblocks at the main Jail – each was staffed with one person in the tower and three on the floor for a total of 4. The Marietta annex was staffed with three officers as required. But there were only 3 officers at the Bellwood annex instead of the five required by the Consent Order. Thus, 13 of the 14 units were fully staffed as required by the Consent Order.

That level of compliance was not maintained on the next shift – from 3 p.m. to 11 p.m. During that shift, only four of the 14 units were staffed as required. One cellblock in the main jail, 6-North, was staffed with only two officers instead of the four required. Nine units were short one person. During the 11 p.m. to 7 a.m. shift, half of the units were staffed as required. During the three shifts together, 24 units – 57 percent– were staffed in accordance with the Consent Order and 18 were not.

Exhibit A also shows that the Sheriff deployed 146 members of his staff on April 15, for the 168 positions required to staff each of the units as required by the Consent Order. That is 87 percent of the staff required. But even though the sheriff

filled 87 percent of the positions needed to staff the units, only 57 percent of the units were adequately staffed.

During the period of April 15 to April 22, staffing ranged from 88 percent of the units being staffed in accordance with the Consent Order on April 17 to only 48 percent of them in compliance on April 20. For the entire period of April 15 to April 22, 211 of the 336 units – 62.75 percent – were fully staffed in accordance with the Consent Order. See Exhibit A. As previously stated, this does not include the understaffing of supervisory personnel.

The Sheriff has been required by the Consent Order to “report to the Court each month when there are fewer than three officers in a cellblock on any shift and the reason for there being fewer than three.”<sup>7</sup> This requirement is to report on the staffing of each unit, not a percentage of the personnel required.

The understaffing has had consequences beyond security on the cellblocks. Documents from the Jail indicate that inmates were not taken to Grady Hospital because of a shortage of staff and there are questions about whether inmates were returned from Grady to the Jail despite their need to remain at the hospital under a

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7. Consent Order, paragraph 25.

doctor's care. The Sheriff's unit at Grady notified the Jail of a staff shortage on April 15; the Jail responded that it had no personnel to give.<sup>8</sup>

Regardless of how compliance is measured, there is no dispute that the Jail is understaffed. It was understaffed when this lawsuit was filed on June 22, 2004; it was understaffed when the Court approved the Consent Order on February 6, 2006; and it remains understaffed to this day. The Sheriff makes the point that he is in partial compliance in this regard, but this is the most crucial area requiring full compliance.

Full compliance is within reach. The Sheriff sought additional positions in January, informing the County Commission that he could be in compliance with the Consent Order by July. The Commission approved the positions. There have been other encouraging developments. The most important is that the entry level salary for a detention officer is being increased to \$33,000, which will help the Sheriff attract more applicants and compete with other jurisdictions in hiring staff.

The Jail can and should be staffed in accordance with what the Sheriff agreed to and this Court ordered. If it is not so staffed by the end of the current quarter, intervention by the Court will be required to achieve compliance.

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8. Fulton County Sheriff's Department Jail Bureau, Shift Activity Report & Jail Deployment form, April 15, 2007, signed by Lt. Mays.

## USE OF FORCE

Although the Sheriff argues in his Response to the Monitor that use of force is not covered by the Consent Order, it is directly related to the understaffing at the Jail and relevant so long as the Jail is understaffed. The lack of enough officers in a cellblock may result in the use of tasers or pepper spray to compensate for lack of staff.<sup>9</sup> These weapons may even be used to punish inmates who pose no immediate threat.

The Monitor questions the lack of any review by the Use of Force Review Board between September 1, 2006 and March 31, 2007.<sup>10</sup> The Sheriff responds that Directive 1.01 requires an inquiry by the Board only when “(a) the use of force . . . results in serious injury or death, (b) [there] is any discharge of a projectile from any weapon . . . and (c) [there] is a vehicle pursuit,” and that *none* of the 254 use of force reports forwarded to the Board required review under this Directive. This raises some serious questions about how the Board interprets the Directive.

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9. For example, the supervising sergeant reported on November 4 that *due to a staff shortage*, he called the SORT team to respond to the behavior of Richard Glasco, an apparently mentally ill inmate. The SORT team shot Mr. Glasco with a taser.

10. Monitor’s Report at 9-10.

A number of inmates have been shot with tasers, an electroshock weapon, that fires a projectile into a person which delivers a powerful electric shock that causes great pain while disrupting nerve and muscle functions.<sup>11</sup> The weapon can be lethal.<sup>12</sup> Although plaintiffs do not know how many inmates were shot with tasers during the six-month period, it is known that one officer, Deputy Nancy Dallas, shot at least three inmates with tasers during the month of January alone.

Deputy Dallas shot Gabriel Tilman on January 10 for refusing to sit down and cursing while awaiting sick call.<sup>13</sup> Deputy Dallas “dry stunned” Tamicea Smith on

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11. See Amnesty International, *Excessive and lethal force? Amnesty International’s concerns about deaths and ill-treatment involving police use of tasers*, available at <http://web.amnesty.org/library/index/engamr511392004>.

12. *Id.* For example, James Borden died in Monroe County Jail, on November 6, 2003, after being stunned at least six times. Ray Austin died in the Gwinnett County Jail in September 2003 after being shocked three times with a taser. Frederick Jerome Williams also died in the Gwinnett County Jail in June 2004, after being shocked with a taser while being strapped into a restraint chair. Following William’s death, two Georgia police agencies (Macon Police Department and Forsyth County Sheriff’s Department) said they were suspending their use of tasers and a third (College Park Police Department) was reported to have shelved plans to purchase them.

13. Incident Report and related documents regarding the use of a taser against Gabriel Tillman, Fulton County Jail, Jan. 10, 2007.

January 16 because she would not take a shower.<sup>14</sup> Inmate Smith, who is described as a danger to herself, was reassigned to the medical unit after the incident.<sup>15</sup>

Deputy Dallas shot Larry Bridges *twice* with a taser on January 31, once when he was handcuffed *behind his back*.<sup>16</sup> Bridges was waiting to get his medications. The nurse who distributed medication to inmates described what happened in a written statement:

I, Nurse Blue, observed Deputy Dallas taze [inmate] Larry Bridges . . . for at least 3 minutes continuously. He was tazed while sitting down on the steps. This inmate was not being aggressive or abusive. I made my medication announcement and the [inmates] proceeded to line up . . . Mr. Bridges proceeded to get up from the steps to receive his medication. Deputy Dallas told him not to get up, and he started to explain to her that he is on medication and was just getting up to get the medication. She did not allow him to get the medication. Mr. Bridges was tazed twice, the second time he was tazed Mr. Bridges was seated and handcuffed. . . . I went over to see if he was OK and also try to give him his meds, and [Officer Dallas] . . . refused to allow me to give him his medication.<sup>17</sup>

Another nurse stated:

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14. Incident report and related documents regarding the use of a taser against Tamieca Smith, Fulton County Jail, Jan. 16, 2007.

15. "Supervisory Taser International Use Report" regarding the use of a taser against Tamieca Smith, Fulton County Jail, Jan. 16, 2007.

16. Incident Report and related documents, including the Unit Manager's Investigative Report, regarding the use of a taser against Larry Bridges, Fulton County Jail, Jan. 31, 2007.

17. *Id.*, Statement of Nurse Blue.

I saw the inmate lined up with the other inmates to get his medication. Deputy Dallas . . . said be quiet and sit down. The inmate walked toward the stairs to sit down, the then deputy pulled out her taser gun and pointed the red light on the inmate, the deputy continued to yell at the inmate. The inmate went up about 3 steps and proceeded to sit down. Then without any notice to the people around, the deputy tased the inmate. The inmate hit his head on the step and rolled on the floor. The deputy cuffed the inmate and had him sit on the chair. The deputy stayed next to the inmate saying something to him. I heard the inmate say he was trying to get his medication. The deputy continued to yell at the inmate; then *I saw the deputy put the taser gun on his back while he was handcuffed and sitting, and tased the inmate again.*<sup>18</sup>

Deputy Manning-Moss who was also working on the unit reported:

I informed [Deputy Dallas] that I called for everyone to line up for medication call. The inmate was not irate nor speaking to her; he was in line trying to get his medication. She gave him a command regardless [of] me saying I told him to line up. Dep. Dallas insisted that he have a seat on the stairs. . . . The inmate complied to her request to sit on the stairs. I didn't hear him curse her or call out any names. I did hear him say he was just trying to get his medication.

I was shocked when it happened. I did not think she was going to tase him, due to the fact no one was in danger nor was she in danger[;] he wasn't aggressive towards her[;] he did as she asked.<sup>19</sup>

Deputy Manning-Moss felt that Deputy Dallas was "out of control."<sup>20</sup>

The incident was reviewed by Lt. Walker-Stanley who reported:

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18. *Id.*, Statement of Nurse Latasha Barnes (emphasis added).

19. *Id.*, Statement of Dept. H. Manning-Moss at 2-3.

20. *Id.*, Statement of Deputy Manning-Moss at 3.

In my interview with Deputy Dallas, she failed to describe any type of threat to persons, property or to the jail which was posed by inmate L. Bridges. Statements submitted by various witnesses (Sworn officers, civilians and inmates) suggest that Deputy N. Dallas acted improperly. Additionally, the evidence shows that Deputy Dallas administered a shock to Inmate Bridges a second time, after he had been handcuffed. I found no evidence to suggest that Inmate Bridges became combative or acted in any manner tht would have suggested that he was a threat. Based on these facts, the use of force was not justified.<sup>21</sup>

It is hard to imagine how the Use of Force Review Board concluded that these and other incidents<sup>22</sup> did not meet the criteria of Directive 1.01, quoted above and in the Sheriff's Response. Surely, being shot with a taser is "serious injury." A person shot with a taser experiences muscle spasms throughout the body. The shock interferes with the electrical system of the body, leading, in some instances, to ventricular fibrillations which can cause cardiac arrest. And the firing of a taser into an inmate is "discharge of a projectile from any weapon." A taser is certainly a

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21. *Id.*, Unit Manager's Investigative Report, Jan. 31, 2007, by Lt. L. Walker-Stanley, at 2.

22. For example, Barry Jackson, a mentally ill man was damaging property in his cell on December 26 after attempting suicide earlier in the month . Two officers responded, opened the cell door and sprayed Mr. Jackson with chemical spray. Mr. Jackson was damaging property but he did not present a threat of violence to the officers or inmates. Tyrone Mullins, while being moved on January 8, expressed some concern about being moved to another floor because of his mental condition. He was directed to go into a cell, but refused to go in it. Again, although he presented no threat of violence or harm to staff or inmates, he was shot with a taser.

weapon, a very dangerous one that can cause serious injury or even death, and the electrode fired from a taser is “a projectile.”

The use of tasers and pepper spray should be reviewed not only to examine whether a use of force was required in a particular incident – such as whether it was necessary to shock inmate Bridges with a taser a second time while he was handcuffed behind his back – but to look forward at how they should be used in the future. Special attention should be given to the inappropriate or frequent use of the weapon by any one deputy, and a determination made as to what officers should be allowed to use a taser. Finally, there is a need for review of the use of the weapon against inmates who do not present an imminent threat a violence or injury, particularly the mentally ill.

Thus, the plaintiffs concur with the Monitor’s finding of the “need to carefully examine every aspect of this issue”<sup>23</sup> including the extent to which it is related to the shortage of staff.

## **RELEASES**

The plaintiffs agree that there has been significant improvement in the processing of releases by the Jail staff upon receipt of documentation that inmates are

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23. Monitor’s Report at 10.

to be released.<sup>24</sup> But problems remain. For example, counsel for Leroy Stokes notified plaintiffs' counsel that the family of Mr. Stokes posted bond and submitted the necessary documents to the jail at 6 p.m. on Thursday, June 14. He was not released until after 9:30 p.m. the following day, three and a half hours beyond the 24 hour limit.

The Sheriff's reporting of all delays, even those for which the Sheriff is not responsible, as required by the Consent Order, will contribute to identifying and remedying the problems at the courthouse. As the Sheriff points out, only 1.6 percent of inmates are not being released within the 24-hour requirement. (Only 22 of 1310 cases.) Hopefully, this means that reporting will not be too great a burden and that the reasons for that relatively small number of delays can soon be corrected.

## **GRIEVANCE PROCEDURES**

Much of what the Monitor said and the Sheriff responded to about the grievance procedure is now moot. However, the grievance system has not been working and needs immediate attention.

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24. The extent of that improvement is not clear because plaintiffs have not received a report on releases since February 27, 2007. Previously reports had been received by e-mail every week.

The Consent Order provides in paragraph 102, “Grievance forms shall be available to inmates at all times.” They are not available. The members of the inmate class complain regularly that they cannot obtain grievance forms. Their difficulty in this regard was confirmed when plaintiffs’ paralegal visited one cellblock and asked for a grievance form. No one could produce one.

The Consent Order provides in paragraph 101 that information regarding “how to obtain additional forms, how to complete the forms, and submission of the forms” shall be “set out on a laminated document and posted in each of the cellblocks housing units in the Jail.” That has not occurred.

If there is to be any meaningful grievance system, information about it and grievance forms must be available at all times in all cellblocks. Plaintiffs urge the Auditor to monitor the availability of forms.

Grievance forms should be in duplicate so that the inmate can keep a copy of the grievance in order to follow up if there is no response and so that there is no dispute with regard to the date upon which it was filed, the complaint made and other pertinent information.

The Jail should maintain a log which reflects when each grievance is received and when it is resolved. The Auditor should review the log regularly and class

counsel should be permitted to inspect it. It is the only way to guarantee accountability and to measure the length of the grievance process.

Finally, the grievance procedure should be simple and grievances should be resolved expeditiously in order to be meaningful at the Jail where some inmates are there only weeks or months.

### **ACCESS TO DOCUMENTS**

The Consent Order provides in paragraph 110 that Plaintiffs counsel shall have “reasonable access” to “documents maintained at the Jail and the Jail facility.” There is no exception for matters “under investigation.” However, an assertion that incidents are “under investigation” has been used to deny plaintiffs access to documents. Plaintiffs have not received documents requested as long ago as September despite many requests. Since the Use of Force Review Board did not find any incident at the Jail in the last six months worthy of review, it is unclear what “investigation” is being carried out.

As the Sheriff points out repeatedly in his response, having accurate information about the Jail operations is essential if issues are to be properly considered. Denying documents to plaintiffs’ counsel – or taking an extraordinarily

long time to provide them – is contrary to this objective as well as violative of the Consent Order.

### **CONCLUSION**

Much has been done in many areas covered by the Consent Order to improve the conditions at the Jail. The Sheriff and the County are to be commended for that progress. However, there remain areas where full compliance with the Order have not been achieved and, as set out herein, some are related to the safety and security of inmates and staff. Plaintiffs provide this information to the Court, the Monitor, and the parties to assist in identifying and addressing these problems and to encourage all parties to continue their diligent efforts to remedy these problems and bring the Jail into full compliance with the Order.

Respectfully submitted this 22nd day of June, 2007.

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**CERTIFICATE OF COMPLIANCE**

I, Stephen B. Bright, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with LR 5.1B.

/s/ Stephen B. Bright  
Stephen B. Bright

**CERTIFICATE OF SERVICE**

I, Stephen B. Bright, do hereby certify that on this 22nd day of June, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically notify all counsel in this case of the filing of this document including

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