

RECEIVED IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
96 SEP 24 PM 4:25 NORTHERN DIVISION

MICHAEL A. AUSTIN, et al.,

MIDDLE DISTRICT ALA

Plaintiffs,

vs.

JOE HOPPER,

Defendant.

Case No. 95-T-637-N

STIPULATION

The plaintiffs have alleged that the toilet facilities provided to inmates on outdoor chain gang work squads violate the Eighth Amendment in two ways. First, plaintiffs contend that forcing inmates to defecate while chained together is humiliating and demeaning. Second, plaintiffs contend that the absence of adequate toilet facilities, toilet paper, soap, and water exposes them to unsanitary conditions. The Defendant Commissioner of the Department of Corrections (DOC) denies these allegations.

The plaintiffs' challenge to the chain gang toilet facilities has been asserted only against the Commissioner of the DOC. The plaintiffs have never alleged that Governor James was responsible for the challenged toilet practices. No evidence has been adduced that the Governor was aware of the toilet conditions or had any involvement with the challenged practices.

The parties recognize that the plaintiffs' privacy concerns were exacerbated by the practice of chaining inmates together -- a practice that has now ceased. The parties also recognize that the privacy concerns of the plaintiffs are heightened when the plaintiffs are laboring alongside the highways in public view. The Defendant Commissioner reports that the DOC

has voluntarily begun providing soap and water in a more consistent manner to all work squads on the highway and on the prison grounds.

In order to resolve the claim regarding the toilet facilities, the Defendant Commissioner agrees to promulgate a Standard Operating Procedure, applicable to all outside work squads under the direct supervision of the Department of Corrections, that includes the following provisions:

1. Soap and sufficient water to be used for the purpose of hand-washing shall be available to all inmates. If necessary, an additional water container will be brought to the worksite.
2. Toilet paper shall be available to all inmates.
3. The portable toilet facilities provided to work squads that labor outside of the prison grounds shall contain a heavyweight canvas screen for increased privacy. The facilities shall be kept in good repair. At least one portable toilet shall be available for each squad of forty inmates.
4. Because no toilet facilities are provided to medium custody work squads that labor on the prison grounds, reasonable efforts shall be made to allow privacy to medium custody inmates who must relieve themselves. A shovel or other implement suitable for digging a hole shall be brought to all work sites on the prison grounds. In the event that a medium custody inmate must defecate without the use of a toilet facility on the prison grounds, he must do so into a hole in the ground and the waste shall be adequately covered.

The Defendant agrees that the Commissioner or his designee will conduct an unannounced inspection of all outdoor worksites at all facilities within four to eight months after this Stipulation is approved by the Court. The Defendant agrees to take any corrective action necessary to ensure compliance with the Standard Operating Procedure. The Defendant will

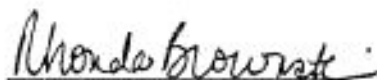
report the results of his inspection and any corrective action taken to the plaintiffs' counsel.

The plaintiffs agree to waive their right to seek fees and costs incurred in pursuing this claim.

In light of the agreement of the Defendant Commissioner to adopt a Standard Operating Procedure that contains the provisions outlined in this Stipulation, the parties agree that the plaintiffs' challenge to the Defendant's toilet facilities should be dismissed without prejudice. In the event that the Defendant Commissioner breaches this Stipulation, the plaintiffs may reinstate their claim and/or enforce the Stipulation as a contract between the parties in State court.

Stipulated and agreed to this 24th day of September, 1996.

For the Plaintiffs:



Morris S. Dees
J. Richard Cohen
Rhonda Brownstein
Ellen Bowden
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104

For Defendant Hopper:



Andrew W. Redd
General Counsel
Department of Corrections
P.O. Box 301501
Montgomery, AL 36130

Approved by the Court on this ____ day of ____, 1996.

UNITED STATES MAGISTRATE JUDGE