IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WILLIE RUSSELL, et al.,

Plaintiffs,

Case No. 1:02CV261-D-D

v.

ROBERT L. JOHNSON, et al.,

Defendants.
_____/

REBUTTAL DECLARATION OF MARGARET WINTER REGARDING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES

MARGARET WINTER, pursuant to 28 U.S.C. § 1746, hereby makes the following declaration:

1. I submit this Declaration as the ACLU's response to the factual allegations in Defendants' Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Expenses. The vast majority of Defendants' complaints are factually incorrect or otherwise unfounded. As to the small number of their complaints that do have merit, I herein withdraw my claim for the items in question.

2. In the following paragraphs, I address Defendants' factual allegations pertaining to the ACLU in the order in which they are raised in their Memorandum. Plaintiffs' responses to Defendants' legal arguments are contained in Stephen Hanlon's Declaration filed herewith.

3. Defendants complain that I spent half an hour on March 7, 2002 on "logistics for trip,"

rather than delegating the task to a paralegal or clerk *See* Memorandum at 6 [Mem.6]). The trip in question was my March 12, 2002 trip to Jackson to meet with Commissioner Robert L. Johnson and Deputy Commissioner Christopher Epps and their lawyers, in an effort to resolve Plaintiffs' complaints without litigation. I could not possibly have delegated to a secretary or paralegal the task of planning the trip logistics. I had to coordinate my travel plans with co-counsel Stephen Hanlon and local counsel Robert McDuff, and I could only do this by communicating directly with them, not through an intermediary. Mr. Hanlon and I had to travel on different flights, and we had to find a narrow window of time to allow us time to confer together with Mr. McDuff before our meeting with the Commissioner. Had I tried to use a secretary or paralegal to perform this task, he or she could only have acted as a go-between, doubling or trebling the time necessary for each to arrive at an itinerary.

4. Defendants similarly claim that the fifty-four minutes I spent on February 19, 2002 conferring with Plaintiffs' experts Vincent Nathan and James Balsamo regarding logistics was a task for a paralegal or clerk. [Mem. 6] That is incorrect. I was in negotiations with Plaintiffs' experts at this time regarding their willingness and availability to provide services in the case, and a major point of concern for all the experts was the remoteness of Parchman from major airports, and the considerable time that would be involved in travel for tours. There was a rapid back-and-forth between us in discussing these issues, while we viewed flight costs and availability together on the Internet. It would have taken far longer for me to conduct these negotiations had I involved a clerk as an intermediary, and the experts would properly have refused to waste their time communicating on these issues with a clerk who would have had no authority to make final decisions.

5. Defendants claim that the 3.5 hours I spent on February 7, 2003 assembling trial

documents was a clerical task. [Mem. 6] I could not possibly have delegated this job even to another lawyer on the litigation team, let alone to a clerk or paralegal. Since Plaintiffs' counsel had to travel from Washington, D.C. to Oxford, Mississippi for trial, and the enormous case file could not be moved in its entirety, I had to review large quantities of documents to winnow them down to those documents I would likely use as exhibits or for impeachment or cross-examination, and those I might need during procedural or evidentiary disputes, and to organize them so that they would be of most utility to me at trial.

6. For similar reasons, most of Defendants' list of complaints that NPP's litigation fellow Amy Fettig billed for time that should have been performed by a paralegal or clerk [Mem. 7] are meritless. Almost all of the challenged entries (for January 16, 17, 22, 23 and 24, February 4, and June 23 and 26, 2003) relate to logistics for the second tour of Parchman on the eve of trial and for the trial itself, or to logistics for the July 2003 post-judgment monitoring tour. These entries come to a grand total of 3 hours eighteen minutes. Ms. Fettig could not have delegated these tasks to a paralegal or clerk, for the same reasons as explained above in ¶ 5. Logistics for the Parchman tours and the trial were completely intertwined with litigation decisions, and involved coordinating the travel schedules of Plaintiffs' four expert witnesses and five lawyers from cities around the country, and negotiating with MDOC's lawyers on limitations as to dates and hours of touring and order of appearance of the expert witnesses at trial.

7. Ms. Fettig claimed six minutes (0.1 hour) on January 27, 2003 for setting up an attorney client call with one of the Plaintiffs; Defendants say this task should have been done by a clerk or paralegal [Mem. 7]. The reason why Ms. Fettig had to set up a call on certain occasions, rather than having a paralegal or clerk perform the task, is that MDOC staff resisted placing our legal calls to

the death-row clients, a problem requiring an attorney's intervention. Note, for example, the entry for Margaret Winter for January 21, 2003 ("Telephone call/write to L[eonard] Vincent re problems getting confidential legal calls with clients").

8. Ms. Fettig claimed 2.5 hours on July 17, 2002 for "coordination of court filing." On that date Plaintiffs were preparing to file and serve multiple documents, including the Complaint, motion for preliminary injunction, and discovery requests, requiring direct and extensive coordination between the National Prison Project, local counsel McDuff, and the Mississippi ACLU. Legal and tactical decisions were being made as to the timing and sequence of these filings, and it would have been impossible for Ms. Fettig to delegate these decisions to a paralegal or clerk.

9. A tiny handful of Ms. Fettig's entries – totaling altogether 1.1 hour – do appear on their face to relate to paralegal or clerical tasks: (7/16 attempts to fax documents to the court; 1/17 filing discovery requests; 3/28 cover letter, certificate of service, prepare for filing findings of fact) [Def. 7]. We withdraw our request for compensation for these entries, totaling 1.1 hour.

10. Defendants' claims that certain of my time entries were apparently "unrelated to the case" [Mem. 8] are incorrect. First, Defendants challenge the entry of eighteen minutes (0.3 hour) on 02/04/02 for "gathering documents for Department of Justice inquiry." This DOJ inquiry was intimately connected with the case: counsel for DOJ's Special Litigation Section had expressed an interest in bringing suit regarding the very conditions in Unit 32 about which the named Plaintiffs complained. As this might have benefitted the class greatly, bringing to the case additional experts beyond Plaintiffs' means, I provided DOJ's counsel with documents to assist them in making their decision.

11. Defendants also complain that the twenty-four minutes I spent on July 9, 2002,

conferring with Robert McDuff regarding Tracy Hansen's motion for stay of execution was "unrelated to the case." [Mem. 8] This allegation, too, is incorrect: Hansen was a named plaintiff, and when he received an execution date it was necessary for Plaintiff's counsel to confer concerning the impact of the impending execution on the litigation. Plaintiffs did *not* bill Defendants for bringing the motion for stay of execution.

12. Defendants complain that the 1.90 hour I spent on August 19, 2004, researching execution statistics, and the forty-two minutes I spent on August 22 conferring with Plaintiffs' experts Terry Kupers and Vincent Nathan regarding those statistics, were "unrelated to the case." [Mem. at 8] In fact, however, Dr. Kupers prominently cited to and relied on those statistics at page 1 of his final report.

13. Defendants complain that the twenty-four minutes (0.4 hour) I spent doing legal research on dismissal without prejudice, in connection with "S. Brown claim." (Mem. at 8) was "unrelated to this case. In fact, the claims of named plaintiff Sherwood Brown were the subject of extensive discussion and negotiation between Commissioner Johnson and myself between April and mid- June of 2002, when Plaintiffs were attempting to settle their claims administratively. Sherwood Brown had brought a case pro se concerning the permanent confiscation of his fan for a minor infraction – a problem affecting a significant portion of the class, and which was to figure centrally in the lawsuit. Therefore, Plaintiffs needed to have Mr. Brown dismiss his individual lawsuit in order to have him proceed as a named plaintiff in the class action, so as not to create a risk of inconsistent rulings; to this end, I had to assist him in dismissing his individual case without prejudice.

14. Defendants state that on "07/11 through 07/17" [of 2003], I made "entries for work on appeal – duplicate entries for same dates for work in the trial court. 11.50 hours." [Mem. 8]

Defendants are correct: half of a page of the computer print-out for my hours for the dates in question contained entries for both District Court hours and Court of Appeals hours. This page was submitted with the original District Court fee petition, and then later inadvertently submitted as an exhibit with the fee petition to the Court of Appeals without redaction of all of the duplicate items. I apologize for the oversight and request that the Court simply omit from the fee award the claim for the 11.5 hours that were inadvertently billed twice.

15. Defendants contend that four of Ms. Fettigs' time entries for legal research are unrelated to this case. [Mem. 8] On May 22, 2003, she spent a total of 1.9 hours reviewing 5th Circuit cases citing *Lewis v. Casey*. We undertook the research in question because *Lewis* addresses the authority of district courts to extend relief to facilities other than that where federal violations have been proved at trial. The Court's May 21 order had extended to all of Unit 32 some of the remedies the death row plaintiffs had requested, and we anticipated that Defendants would seek a stay on this ground. I believe it was for similar reasons that on May 22 and May 27 Ms. Fettig undertook legal research in Westlaw's 5th Circuit and Allfeds databases ("Allfedo" is a typographical error for "Allfeds") for application of the *Turner* standard to Eighth Amendment cases; however, because I no longer recall the specific need for that particular inquiry, we withdraw the request for compensation for the 5.5 hours Ms. Fettig spent on it.

16. Defendants contend that Amy Fettig's time traveling to trial is objectionable "based upon her limited role at trial." [Mem. 9] Ms. Fettig not only assisted me and the experts in many ways at trial, she also handled the examination of the only named plaintiff who testified in the case, and that examination covered virtually every claim in the Complaint. Furthermore, it is incorrect that the travel time from Washington to Mississippi to which Defendants object was for the trial alone: As

Ms. Fettig's time records show, her trip to Mississippi in February 2003 was also for the tour of death row on the eve of trial to prepare witnesses and gather evidence on current conditions.

17. Defendants ask the Court to reduce the rate of compensation for lawyers' travel time to fifty percent of the reasonable hourly rate. [Mem. 9] There is no factual basis for such a reduction in this case. Ronald Welch, long-time *Gates* class counsel, did not have the resources to retain the necessary experts to litigate the case and because Plaintiffs' case was considered a particularly undesirable one by the civil rights bar it would have been impossible for the Plaintiffs to find competent local counsel willing and able to take this case. (See the Declarations of Mississippi civil rights lawyers Robert McDuff and Ronald Lewis, submitted in support of Plaintiffs' July 2003 fee petition.) The travel we undertook was simply unavoidable if the *Russell* subclass was to be adequately represented.

18. Defendants further contend that Mississippi ACLU lawyer Sandi Farrell's round-trip between Jackson, MS and Oxford, MS for the trial "is particularly objectionable as she did not actively participate at trial." [Mem. 9] That is factually wrong. Ms. Farrell conducted the direct and re-direct examinations of three prisoner witnesses in rebuttal to Defendants' testimony that they had "fixed" the toilets in Unit 32 between the first and second days of trial. These examinations were essential in rebutting Defendants' claims that the "ping-pong toilets" issue was moot.

19. Defendants object to the 36 minutes I claimed on July 17, 2003 for responding to reporters' queries regarding a statement Commissioner Epps had made to the Associated Press about this case. [Mem. 9] I did not seek out these reporters; evidently the Commissioner did, and the press called me for a response. Since the statement the Commissioner had issued was factually inaccurate and misleading, and damaging to the cause of my clients, I was obliged to respond.

20. Defendants contend that "all hours spent on the preliminary injunction should be disallowed because Plaintiffs were not successful in that pursuit." [Mem. 10] That statement is simply wrong: Plaintiffs' motion was one hundred per cent successful. On July 17, 2002, within a few days of filing the Complaint, Plaintiffs filed a Motion for TRO and/or Preliminary Injunction ordering Defendants to permit an immediate tour of Death Row by Plaintiffs' experts and counsel; the motion was set for oral argument on an expedited basis, and after argument on July 19 the Court granted the very relief Plaintiffs requested. Defendants may have confused this motion for preliminary injunction with the unsuccessful motion for stay of execution of Tracy Hansen, for which Plaintiffs did not seek fees.

21. Defendants also attack the hours that Amy Fettig spent on the preliminary injunction motion, and on gathering affidavits in support of for the motion, on the ground that the motion was "unsuccessful." (Mem. 10-11) As explained in the previous paragraph, this argument is baseless since the motion was in fact entirely successful.

22. Defendants further claim that all hours expended by Plaintiffs in opposing Defendants' motion for a stay of judgment and moving to dismiss their appeal should be disallowed because those efforts were unsuccessful. [Mem. 11] Those efforts were essential to protect the benefits won by the class in the District Court. Plaintiffs had brought this suit to trial with extraordinary speed, winning both a preliminary injunction and a motion to expedite discovery and trial because of the life-threatening conditions in Unit 32 during the hot summer months. This Court had likewise ordered expedited post-trial briefing, and issued its own memorandum opinion and final judgment on a highly expedited basis, in May 2003. Defendants moved to stay the judgment in June, when the Plaintiffs were already being exposed to another summer of deadly heat and lack of sanitation.

Plaintiffs' counsel could not ethically have refrained from opposing the stay, and there was solid legal ground for opposing it. What is more, Plaintiffs' efforts opposing any stay of the Court's injunctions were not only ethically required but also partially successful: they resulted in an order by the 5th Circuit expediting the appeal in lieu of denying the stay.

23. Defendants list what they characterize as "particularly egregious examples of excessive time spent on a particular task"by me and by Ms. Fettig. [Mem. 12-13] The time spent on the tasks at issue was by no means excessive, but rather was essential to the success of pivotally important stages of the case, as shown below.

24. Defendants complain that I spent 5.3 hours on March 6-7, 2002 drafting a memo to the MDOC Commissioner. [Mem. 12] The March 8, 2002 memo in question was time-consuming to produce because it was intended to be the basis of any future Complaint that might be filed. It was a four-page, single-spaced document summarizing all the salient facts that Plaintiffs' counsel had gathered up to that time regarding death row conditions as to which my office and Holland & Knight were contemplating bringing suit. We presented the memorandum to Commissioner Johnson in advance of a face-to-face meeting between Stephen Hanlon, Robert McDuff and myself with the Commissioner, Deputy Commissioner Epps, and their counsel, in an effort to resolve the Plaintiffs' claims administratively. The memorandum was intended to, and did, serve not only as a detailed agenda for the meeting but also as a good-faith effort to avoid litigation. Equally important, the memorandum was a written record of those efforts in the event that negotiations failed. Plaintiffs relied upon that memorandum in opposing Defendants' motion to dismiss for failure to exhaust administrative remedies, and this Court as well as the Court of Appeals relied upon it in rejecting that defense. I used my time efficiently in preparing the memorandum and given the nature and

quality of the document I am confident that it was prepared in a reasonable amount of time.

25. Defendants complain that I spent 6.5 hours, from May through June 5, 2002, negotiating with a pro bono organization known as Doctors of the World ("DOW") concerning Plaintiffs' request that the organization locate for us an expert witness on the subject of heat-related illness. [Mem. 12] Doctors of the World accepts requests from pro bono legal organizations to locate medical specialists through the organization's network of volunteers, but it requires applicants for such assistance to demonstrate that they meet rigorous criteria, and to prepare detailed memoranda describing the nature and the importance of the project, the precise expert qualifications desired, and details and timing of the tasks the expert would be expected to undertake. We needed DOW's assistance for several reasons: First, plaintiffs' resources for expert witnesses were quite limited; second, medical experts with special expertise on the subject of heat-related illness were difficult to locate, and this was especially true because Plaintiffs were breaking new ground in their attempt to use medical evidence to prove that the intense unmitigated heat in Unit 32 threatened prisoners' lives; and third, we needed a highly-qualified expert who would be not only willing but available to provide services to us on an expedited basis, giving us a report almost immediately as a basis for seeking a preliminary injunction to gain access to Unit 32, and then touring death row during the hot summer weather. It took several conferences and several memos to DOW's directors before the organization granted our application and located for us an extraordinarily well-qualified physician, Dr. Susi Vassallo. Since the task of locating an expert with the necessary qualifications was so difficult, and since our diligence in locating an expert of the calibre of Dr. Vassallo had a decisive impact on the success of Plaintiffs' litigation efforts, the 6.5 hours I spent in identifying Dr. Vassallo and negotiating for her services in this case were hardly excessive. All of this time was spent on

necessary tasks that I carried out in an efficient manner.

26. Defendants complain that the 19.8 hours I spent drafting the Complaint between June 27 and July 11, 2002 were excessive. [Mem. 12] That amount of time was necessary, however, to produce a Complaint where many if not most of Plaintiffs' Eighth Amendment claims would withstand a motion to dismiss only if the Complaint on its face made it clear that certain conditions which might not in and of themselves violate the Eighth Amendment (*e.g.*, infrequent access to showers, inadequate pest control, exposure to severely mentally ill prisoners) nevertheless, in combination, deprived the Plaintiffs of specifically identifiable basic human needs. The Complaint necessarily went through a number of versions and redrafting as allegations were checked and rechecked for accuracy, new information was obtained, and capital-case counsel for certain of the prisoners identified in the Complaint decided that it was too risky for their clients to be identified. I have drafted class action complaints in many prisoner rights cases, and I am confident based on my experience that the time I claimed for work on the Complaint was reasonably spent on necessary tasks.

27. Defendants complain that on July 29, 2002 I spent two hours preparing a detailed letter and list of documents to inform MDOC's counsel about all aspects of the experts' upcoming tour of Unit 32, including an itinerary and a list of all the documents the experts would need to review. [Mem. 12] The letter took two hours to write because I had to attempt to anticipate every aspect of the tour and clarify to MDOC's counsel in advance the cooperation we would need. I was aware from the experience of several expert tours at Parchman over the previous four years that this kind of detailed anticipation of possible problems was essential to a productive tour.

28. Defendants complain that I spent an excessive amount of time preparing the post-trial

brief (34.9 hours). [Mem. 12] Based on the experience of more than two decades working on such briefs and in mentoring other lawyers in preparing such briefs, I feel confident that those hours were spent efficiently and productively. My time records show how many hours I devoted to each portion of the brief, separating out the time I spent for the proposed factual findings on environmental health and safety, mental illness and psychiatric care, heat-related illness, and corrections issues, on the proposed conclusions of law, and on the editing of the entire brief for succinctness, thoroughness and clarity. Since the post-trial brief is intended to assist the district court and to help shape the issues in case of an appeal, it was important that the facts be marshaled in as clear and persuasive a fashion as possible and with ample supporting authority from the record.

29. Defendants claim that the hours I spent on Plaintiffs' brief in the 5th Circuit and on preparation for oral argument in the Court of Appeals were excessive. [Mem. 12] Based on my appellate experience in prisoners' rights cases, I am confident that all of the time for which I claimed compensation was productively spent in producing a first-rate brief and oral argument in order to protect the District Court's decision on appeal. On appeal, Plaintiffs' counsel had to address not only all the substantive issues decided in the District Court but also a host of procedural issues and arguments that Defendants had scarcely touched on in the District Court, including arguments on exhaustion, on the PLRA termination provisions, on class certification, and on the procedural implications and consequences of the *Gates* decree.

30. Defendants claim that Ms. Fettig billed 15.6 hours on January 17 and February 6, 2003 for "Reviewing W. Russell file." [Mem. 13] That is incorrect. Ms. Fettig billed a total of six hours eighteen minutes on those dates, for review of Willie Russell's file and also for preparing an outline, because at this time Plaintiffs' counsel were anticipating that Mr. Russell would be one of the key

prisoner witnesses at trial. (See Ms. Fettig's January 17 entry, billing three hours six minutes for "Review of W. Russell file"; February 6 entry billing 3 hours twelve minutes for "Review of W. Russell file and outline.)

31. Defendants suggest that because there were four lawyers in this case (Mr. Hanlon and I as lead counsel, with Ms. Fettig, Ms. Caramello and Ms Farrell in more junior roles) the case was "overstaffed." [Mem. 15-16] Defendants complain that I spent 89.5 hours on trial preparation while Ms. Fettig spent 46.20 hours, Mr. Hanlon 44.10 hours, and Ms. Caramello 43.1 hours. [Mem. 16] I am confident that my work was not duplicative of work by Mr. Hanlon, Ms. Fettig or Ms. Caramello because Mr. Hanlon and I took care to divide the labor in the case in a rational manner and to assign discrete tasks accordingly to the more junior lawyers.

32. Moreover not a single one of my time entries is designated as "trial preparation." Rather, each entry identifies a specific task. Thus, for example, in the weeks and days leading up to the trial, I made specific separate entries for reviewing Defendants' expert reports (*e.g.*, January 13, 2003); drafting letters to Defendants' counsel regarding document production and reviewing Defendants' discovery responses (*e.g.*, January 13, February 5); conferring with Plaintiffs' experts Vincent Nathan and Dr. Kupers about documents produced by Defendants in discovery (*e.g.*, January 13, February 5); reviewing defendants' document productions on correctional, environmental and psychiatric issues (*e.g.*, January 17 and 20); conferring with Defendants' counsel about scheduling the testimony of expert witnesses and expert reports(*e.g.*, January 23, 27, 29); conferring with Defendants' counsel about the pre-trial tour and the new ACA report abd other documents produced by Defendants in discovery (February 2, 3); drafting testimony outlines for expert witnesses (February 4, 5, 6); conferring with and writing to Defendants' counsel about irregularities in their

psychiatric expert's report (February 6, 7); meeting with expert witnesses to prepare trial testimony (February 10, 11); drafting an opening statement (February 11); and drafting questions for cross-examination of Defendants and their experts (February 12). Defendants' unsubstantiated claim that my pretrial time entries are duplicative of work done by the other lawyers is simply untrue.

33. Defendants claim that the 8.1 hours I spent researching heat stroke should be discounted, as should the 6.6 hours Ms. Fettig spent researching ACA accreditation standards, as these are "topics that are more than adequately covered by and spent on expert opinions." [Mem. 16] I did the research on heat stroke in April and very early May 2002, *before* we had retained a medical expert, when my task was to determine how to show that exposure to excessive heat violates the Eighth Amendment – a proposition for which there was very little precedent. It was through this research that I determined that we needed a medical expert with qualifications like Dr. Vassallo's. Ms. Fettig's research in January 2003 on ACA's accreditation of correctional facilities was also perfectly appropriate and nonduplicative; it was part of a successful effort to rebut MDOC's claim that ACA's accreditation of Parchman on the eve of trial proved that conditions in Unit 32 were constitutional.

34. Defendants make the completely unfounded charge that "all of the 77 hours claimed by Sandi Farrell are objectionable in whole as duplicative and unproductive as she played no active role in the litigation." [Mem. 16] In additional to the valuable role she played at trial putting on rebuttal witnesses, Ms. Farrell's time records show that the hours in question were spent interviewing prisoners at Parchman on May 21, 22, 23, 24, June 6 and July 2, 2002, in preparation for drafting the Complaint; in preparing witnesses at Parchman to testify, and in assisting Plaintiffs' experts in touring and gathering facts in Unit 32 on the eve of trial, on February 10, 11 and 12, 2003. I know

that the hours spent on these tasks were non-redundant; I assigned Ms. Farrell to these essential tasks because it was the most efficient division of labor among the members of the litigation team.

35. Defendants' assertion that "the number of telephone calls, conferences and e-mails exhibited in this case are excessive" (Mem. 17) is incorrect. Defendants do not point to any specific communication; they do not even name any particular lawyer as being guilty of "excessive" communications. I made time-entries *only* for communications that I knew were non-superfluous and nontrivial. To take only a few examples, among scores of entries: telephone conferences with potential named plaintiffs to decide whether they were qualified to serve as class representatives (May 13, 2002); telephone calls with the Mississippi ACLU to assign the task of gathering public health information regarding conditions in Unit 32 (May 14, 30, 31, June 5); discussion with opposing counsel regarding the designation of the magistrate judge as the trial court (July 17); conference with attorney Ronald Welch concerning his views on the coverage of the *Gates* decree (July 23); conferences with class members' capital case lawyers to obtain permission to interview their clients as potential witnesses in the conditions case (July 25); meeting with the experts on the eve of the death row tours to decide what prisoners to interview and what cells to view (August 7); discussion with the expert witnesses on the issues to be addressed in their post-tour reports (August 13, 14, 18, 19, 20, 28, 29); communications with the Court and with opposing counsel to schedule a hearing on Plaintiffs' motion for expedited trial (September 23, 24); telephone calls to the experts to determine their availability for trial (October 16, 22); letters and telephone calls to opposing counsel concerning discovery (November 22, 2002, January 3, 27, 28, 29, February 5, 6, 7).

36. Defendants claim that Plaintiffs seek to bill them for their experts' fees in this case. [Mem. 22] That is incorrect. My office billed only for the reasonable, reimburseable out-of-pocket

expenses (lodging, meals, airfare, ground transportation) that we paid the four experts for their trips to Mississippi for tours and the trial, and the list of expenses attached to my original fees declaration specifies, as to each payment to the experts, that it is for their expenses. The expenses incurred by the experts were modest: Each attempted to book flights at the lowest available rates, they stayed in moderately-priced lodgings, and their expenditures for meals were very low. The grand total that my office paid out to cover the experts' reimburseable expenses for their combined eight trips to Mississippi (two trips each by four experts) was $4,927.84; the remainder was paid by Holland & Knight.

37. The inclusion of charges for toiletries and clothing for Ms. Fettig on February 9, 2003 (which she purchased because the airline had lost her suitcase when she arrived in Mississippi for the February pre-trial tour and the trial) was completely inadvertent. Plaintiffs do not claim reimbursement for these items and the total ($78) should be subtracted from Plaintiffs' claim.

38. Defendants incorrectly state that Plaintiffs do not identify the nature of Federal Express mailings or fax charges. The Expense Schedule attached to my original affidavit in support of the fee petition identifies the nature of each such expenditure, *e.g.*, September 3, 2002, Federal Express to M. Winter from [Dr.] S. Vassallo; September 3, 2002, Federal Express from M. Winter to U.S. Magistrate; September 24, 2002, Fax from M. Winter to Judge Davis. I made a judgment in each instance as to the degree of urgency involved in deciding whether a document should be sent by fax, Federal Express or regular mail, also taking into consideration that, in my experience over the last several years, mail delivery between Mississippi and Washington, D.C. routinely takes several days. In this case, in which discovery and trial were expedited, time was frequently of the essence in delivering documents to experts, the Court, and opposing counsel.

39. Defendants' complaint that our charges for photocopying were excessive and not properly documented is unfounded. My office did almost all of the photocopying that was required in litigating this case from its inception through discovery, trial, and appeal; and because the case involved a class action, pretrial motions and affidavits, extensive legal research, post-trial briefing, and multiple motions and briefs in the Court of Appeals, the case necessary involved a large amount of photocopying. Based on my experience in litigating prisoners' rights class action cases, I am confident that the amount of photocopying in this case was not only necessary but well within the limits of the amount of copying normally required in such cases All photocopying for the case was done in accord with my office's strict policy of entering a case code into the copier before each and every photocopying job, and keeping exact account of the number of photocopies made in each case.

40. In summary, Plaintiffs withdraw the following items challenged by Defendants: Six hours thirty-six minutes (6.6 hour) of Ms. Fettig's time (see ¶ 9, above); eleven and a half hours (11.5 hours) of my time, which was inadvertently claimed in both the District Court and the Court of Appeals fee petitions (see ¶ 14); and seventy-eight dollars in expenses, for non-reimburseable items inadvertently charged to Defendants (see ¶ 37).

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief, this 2nd day of December 2004.

Margaret Winter

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December 2004 I served the following document on the Defendants in *Russell v. Johnson,* 1:02CV261-D-D:

REBUTTAL DECLARATION OF MARGARET WINTER REGARDING PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND EXPENSES

and

REBUTTAL DECLARATION OF STEPHEN F. HANLON REGARDING PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND EXPENSES

by causing photocopies of the forgoing document to be sent by first class mail, postage prepaid, to the following counsel of record:

John L. Clay, Esq.
Special Assistant Attorney General
Office of the Attorney General for the State of Mississippi
450 High Street
Gartin Justice Building, 5th Floor
Jackson, MS 39201

Margaret Winter