APPENDIX F

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ROBERT R. DI TROLIO
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W.D. OF TN, MEMPHIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARIUS D. LITTLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 96-2520 M1/A
	)	
SHELBY COUNTY, TENNESSEE, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

On December 22, 2000, the Court entered an Opinion Finding Defendants In Contempt Of Court, in which the Court held that the Defendants had failed to comply with several provisions of Judge Turner's remedial orders that established specific remedial steps necessary to correct the unconstitutional conditions in the Shelby County Jail (the "Jail"). After the entry of the December 22, 2000, Opinion, the Court held a series of public, working status conferences with the parties and received a significant amount of statistical information, much of it newly generated by Shelby County at the Court's request, on the inmate population of the Jail, the flow of inmates within the entire criminal justice system, the allocation of the Sheriff's and Shelby County's resources within the system, and bottlenecks identified within the system which can be addressed by either the Sheriff or Shelby

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County.[1] Defendants also submitted plans aimed at bringing the Jail into compliance with the Court's orders. On April 20, 23, and 24, 2001, the Court held hearings to determine whether the Defendants had purged themselves of the contempt and whether the Court should grant Plaintiff's motion for sanctions. The Court hereby HOLDS that, to date, Defendants have not purged themselves of contempt of Court, but that the Defendants' good faith efforts to come into compliance with the orders of this Court are sufficient to avoid sanctions at this point.

I. Facts

The background of this case is well documented in the Court's previous orders and will not be repeated here.[2] The case, asserting unconstitutional conditions in the Jail, was filed in April 1996. Judge Jerome Turner found the conditions in the Jail to be unconstitutional and entered an Order Granting Injunctive Relief To Remedy Unconstitutional Conditions In Shelby County Jail (the "Court Order") on November 12, 1997. After Judge Turner's death, the case was transferred to this Court. Plaintiff's counsel

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[1] This analysis includes analysis of information systems for Shelby County, the Jail, the court system in Shelby County, the Criminal Court Clerk's Office, and the Office of the Shelby County Attorney General. Information was also received from the Criminal Defense Bar and the Public Defender.

[2] For a brief summary of this case, see the Opinion Finding Defendants In Contempt Of Court, entered on December 22, 2000, at pages 2-14.

filed a Motion To Hold Defendants In Contempt Of Court on June 29, 2000. The Court entered its detailed Opinion Finding Defendants In Contempt Of Court on December 22, 2000, and instructed the parties to develop short, intermediate, and long-term plans to correct the unconstitutional conditions in the Jail. The Defendants filed the plans on January 4, January 25, and February 9, 2001, respectively. All of these plans have now been abandoned by Defendants, and a new plan was submitted on April 9, 2001, which has only been partially developed. No expert contends[3] that the conditions in the Jail are currently constitutional, and no expert asserts that even the April 9, 2001, plan, if implemented without modification, would correct the unconstitutional conditions at the Jail.

As previously noted, the Court also held a series of status conferences to examine the development of information systems for the Jail and various county and state agencies to better understand the work flow and inmate flow in the Jail and the entire criminal justice system. From that analysis, data-gathering tools were developed to allow for the rapid and continuous examination of the entire criminal justice system and, thus, to develop solutions for specific problems manifesting themselves in unconstitutional conditions within the Jail. As a result of the process, the

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[3] Dr. Arnett Gaston testified that a plan for gang intelligence still needs to be developed (Tr. at 273, ll. 6-12), and Dr. Jeffrey Schwartz testified that the Defendants are not in compliance with regard to inmate supervision or the 55/5 requirement, (Tr. at 239-40).

Defendants have now put forward a plan that, if augmented and implemented fully, has the potential to remedy the unconstitutional conditions in the Jail.

II. Purgation Standards

In a civil contempt proceeding, the burden is on the petitioner to "prove by clear and convincing evidence that the respondent violated the court's prior order." Glover v. Johnson, 934 F.2d 703, 707 (6th Cir. 1991). A party may be found in contempt if the petitioner shows that the respondent "violate[d] a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." Id. (quoting NRLB v. Cincinnati Bronze, Inc., 829 F.2d 585, 591 (6th Cir. 1987)). In a contempt proceeding, "the basic proposition [is] that all orders and judgments of courts must be complied with promptly." NRLB, 829 F.2d at 590 (quoting Jim Walter Res., Inc. v. Int'l Union, United Mine Workers, 609 F.2d 165, 168 (5th Cir. 1980)). As the Sixth Circuit has held, "civil contempt may be either intended to coerce future compliance with a court's order, or to compensate for the injuries resulting from the noncompliance." Glover v. Johnson, 199 F.3d 310, 313 (6th Cir. 1999)(internal citations omitted). Good faith is not a defense in civil contempt proceedings. Glover, 934 F.2d at 708. Likewise, willfulness is not an element of civil

contempt, but the state of mind of the contemnor is relevant only in the consideration of sanctions. Rogers v. Webster, 776 F.2d 607, 612 (6th Cir. 1985). The standard is whether "the defendants took all reasonable steps within their power to comply with the court's order," which includes whether the defendants have "marshal[ed] their own resources, assert[ed] their high authority, and demand[ed] the results needed from subordinate persons and agencies in order to effectuate the course of action required by the [court's order]." Glover, 934 F.2d at 708 (emphasis added).

In a purgation hearing, the party who has been found to be in contempt has the burden of establishing, by the greater weight or preponderance of the evidence, that it has now come into compliance with the order with which it previously failed to comply. Thus, in the instant case, the question before this Court is whether the Defendants have achieved, as of the date of the hearing on purgation, substantial compliance with the Court orders of November 11, 1997, (the Court Order), and November 24, 1999, (the Final Order).

III. Discussion

The Court held hearings on April 20, 23, and 24, 2001, to determine whether Defendants had purged themselves of contempt. The Court heard testimony from nineteen witnesses and received thirty-six exhibits. The Court will discuss in turn each point on

which the Defendants have been held in contempt.

A. Single celling of inmates prior to full classification

In the contempt opinion entered on December 22, 2000, the Court held the Defendants in contempt of Court for failing to comply with the single-celling requirement of the Court Order. In the contempt proceedings, the parties stipulated that the Jail had never, and was not then, single-celling inmates during the intake process while they were being classified. At the purgation hearings, the Defendants introduced no evidence to demonstrate that they had begun single-celling inmates, and in fact admitted that they had not. (Tr. at 487.)

In the contempt opinion, the Court left open the possibility that if the goals of the single-celling requirement, i.e., protecting inmates from predatory violence, were met through some other means, the Defendants could purge the contempt without having to single cell inmates during the intake process. (Contempt Op. at 33-34 n. 16.) Defendants produced evidence of changes to the intake area that they believe will reduce violence in the intake area of the Jail, including: (1) use of an AFIS fingerprint machine that can quickly verify the identity of the arrestee and provide the criminal and jail history of the arrestee; (2) separating the assaultive arrestees from the non-assaultive arrestees while in intake; (3) replacing the solid holding tank doors with bar doors

to provide better supervision of the holding tanks; (4) use of a bench with a rail to which arrestees can be handcuffed if they are violent or disruptive; (5) assigning additional guards to the intake area with specific instruction that if there is more than one arrestee in a holding tank, a guard must be positioned outside the tank; and (6) the assignment of two jailers at the rank of captain to oversee the intake and classification area of the Jail. (Tr. at 17-26; Ex. 1-3.) The effect of these provisions, if consistently implemented, may be to lower the level of violence in the intake area of the Jail, but a reduction in the level of violence has not yet been shown. Defendants have not carried their burden to show that these changes have lowered the level of violence in the intake area to a constitutional level nor have they shown that these alternatives are sufficient to warrant a modification of the Court Order with regard to single celling. Quite simply, Defendants have not shown that they are in compliance with the Court's orders with regard to single-celling of inmates prior to full classification. Accordingly, the Defendants remain in contempt of Court on this point.

B. Supervision of Inmates

The Court also held Defendants in contempt of Court with regard to the supervision of inmates in the Jail. Specifically, the Court held the Defendants in contempt for (1) failing to

adequately staff the third and fourth floors of the Jail during the night shift and (2) failing to supervise the inmates and to ensure compatible housing assignments, i.e., failing to maintain a level of supervision sufficient to protect inmates within the pods from each other. As to the first issue, Defendants simply presented no proof regarding the assignment of Deputy Jailers to court-ordered posts in the night shift. There was significant proof on the number of Deputy Jailers that have been hired and the number of applications for Jailer positions that are currently being reviewed for hire, but there was no proof on the assignment of Deputy Jailers to those posts. As such, Defendants have failed to carry their burden on this point and are still in contempt of Court.

As to the second issue, Defendants presented proof of better tools to increase the quality and the level of supervision provided to the inmates of the Jail. Among other methods of increasing the level of supervision, Defendants removed the chairs used by the Deputy Jailers outside the pods, thus requiring Deputy Jailers to spend more time actively supervising inmate activity. At the hearing, Defendants submitted disciplinary forms for Deputy Jailers who were not "on-post" at the required times or who failed to make their appointed catwalk rounds, in an attempt to show that the Defendants were marshaling their resources through compelling the appropriate level of action of their subordinates to come into compliance with the Court's orders. However, Defendants have not

yet demonstrated that these actions have lowered the level of violence in the Jail or ensured that there were fewer inmate-on-inmate and inmate-on-guard assaults.

Defendants have put forward a comparison of the number of inmate-on-inmate and inmate-on-officer assaults in February 2000 and February 2001 that shows fewer assaults in February 2001 than in February 2000. (Ex. 11.) However, the Court also received in evidence a letter purportedly written by the board of directors of the Gangster Disciples within the Jail that instructed all the Gangster Disciples to stop "klenching" [sic], screaming, and "representing," because of the increased federal prosecutions of inmates for gang affiliations and the increased regulation of the televisions, telephones, and other amenities because of Jail assaults. (Ex. 18.) The letter is dated January 15, 2001, and is addressed to the entire membership of the Gangster Disciples in the Jail instructing the gang members to put everything on hold, i.e., quit assaulting other inmates, and to focus on their legal battles. (Ex. 18.) Counsel for Defendants admitted that Defendants cannot determine what part of the reduction in Jail violence is attributable to the actions of Defendants and what part is attributable to the instructions of the gang members. (Tr. at 512.) Finally, Defendants were unable to establish that the number of incident reports that provided the basis for the comparison of Jail violence between February 2000 and February 2001 was an

accurate total of all the incidents of Jail violence rather than mere under-reporting.[4] Therefore, the Defendants have not carried their burden to show that they are in compliance with the Court's orders with regard to inmate supervision,[5] and, accordingly, Defendants are still in contempt of Court.

C. 55/5 provision

The Court held Defendants in contempt of Court on the 55/5 provision of the Court Order because the proof in the contempt hearings was that there was no uniform training, operation, or enforcement of the 55/5 policy in the Jail. Of great significance was that the control mechanism for the opening and closing of the cell doors is located such that one officer cannot open and close the cell doors while supervising the inmates to ensure that they are only going in and out of their own cells. Defendants put on proof of steps they have employed to improve their compliance with the 55/5 policy through re-training, requiring the pod officer to call the control room when the doors are opened and closed, and routine auditing of the report sheets for the opening and closing of the doors. However, Defendants admit that they still have not

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[4] Plaintiff, on the other hand, submitted substantial testimony that jail violence remains at an unconstitutional level. (Testimony of Doe II, Tr. at 538-42.)

[5] Dr. Schwartz, one of the Defense experts, testified that Defendants were not supervising the inmates of the Jail as required by the Court's orders. (Tr. at 239, ll. 7-11.)

implemented a mechanism that would allow the pod officer to even see the inmates while the doors are being opened or closed, nor have they assigned a second officer to assist in the supervision of the inmates while the doors are being opened and closed.[6] As such, they are still not in compliance with the Court Order and remain in contempt of Court on this point.

D. Overtime

The Court also held Defendants in contempt of Court for violating the provisions of the Consent Order Adopting Recommendations Of Special Master, Final Order Granting Injunctive Relief As To Conditions In The Shelby County Jail (the "Final Order"), entered on November 24, 1999, with regard to use of mandatory overtime on Court-ordered posts. Defendants put forward proof to show that new Jailers had been hired to decrease the need for mandatory overtime on Court-ordered posts. However, the only proof put forward by Defendants with regard to the use of mandatory overtime in the Jail was stricken from the proof because Defendants failed to comply with Rule 1006 of the Federal Rules of Evidence and for the other reasons stated at the hearing.[7] As such, no

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[6] Dr. Schwartz, one of the Defense experts, testified that Defendants were not in compliance with the 55/5 provision. (Tr. at 239, ll. 12-16.)

[7] Inspector Mary Peete, through whom Defendants offered Exhibit 6, acknowledged on cross-examination that she did not compile the data, and that she "cannot say that everything on

evidence was received showing that Defendants are not requiring Deputy Jailers to work overtime.[8] The proof that the Court can consider is the April 20, 2001, Monitoring Report that states that the Jail has reduced the use of mandatory overtime on Court-ordered posts, but it is still being used. The testimony by Inspector Peete on this issue also shows that it is possible for a Deputy Jailer to be required to work a non-Court-ordered post before or after a shift at a Court-ordered post. (Tr. at 41-47.) The evidence considered as a whole shows that Defendants have not met their burden of showing that they are in compliance with the overtime provisions of the Final Order, and as such, Defendants are still in contempt of Court on this point.

E. Sanctions

While good faith or bad faith with regard to steps taken to coming into compliance is irrelevant on the issue of contempt and purgation, it is relevant to the nature and amount of possible sanctions imposed to coerce the contemnor into compliance with the Court's orders. Plaintiff agrees that the revised plan for remedying the unconstitutional conditions in the Jail submitted by

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there is correct." (Tr. at 46-47.) Inspector Peete went on to say that she "did not verify [Exhibit 6], compile it, or type it." (Tr. at 46-47.)

[8] Plaintiff's counsel elicited evidence that, in fact, overtime continues to be used within the Jail. (Tr. at 43.)

Defendants on April 9, 2001, was prepared in good faith and, if augmented and implemented, could begin to remedy those conditions.

Moreover, the Court specifically finds that the efforts testified to by Mayor Jim Rout, Commissioner Cleo Kirk, and Commissioner Thomas Hart, and the County's active employment of a new strategy to greatly improve data accumulation and to pinpoint bottlenecks within the system show promise of leading to the ultimate remediation of the unconstitutional conditions within the Jail. Specifically, the plan to seek relief with those agencies most directly able to improve performance in the Jail is an extremely promising development. Mayor Rout testified that his "administration is committed to do whatever it takes to comply with the plan" submitted by the County. (Tr. at 568.) Similarly, Commissioners Kirk and Hart both testified that they supported the implementation of the plan. (Tr. at 556, 582.) The employment of William Powell, the Criminal Justice Coordinator, and Kim Hackney, the Population Management Analyst, combined with the efforts of Brian Douglas, Administrator Over Budget and Finance in the Sheriff's Department, already appear to be having an impact in managing the Jail population.[9] The consistent implementation of the changes receiving the support of the County government and the cooperation of the elected officials, shows promise in terms of

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[9] A graph tracking inmate population prepared by the Sheriff's Department is attached as Exhibit 1.

reaching the most efficient and least intrusive resolution of the unconstitutional conditions existing at the Shelby County Jail.

The Court reserves the ruling on the revised plan until the Defendants file with the Court a final, consolidated plan with regard to remedying the unconstitutional conditions of the Jail.[10] However, the Court also notes that the Court's expert Charles Fisher and both of Defendants' experts, Jeffrey Schwartz and Arnett Gaston, believe this plan to be one that can, if augmented and implemented, cure the unconstitutional conditions in the Jail.[11] The Court, therefore, while finding that the Defendants remain in contempt of Court on the issues set out in the December 22, 2000, opinion, declines to impose a sanction at this point in order to

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[10] While the April 9, 2001, plan covers some areas comprehensively, other provisions merely state that the Defendants will, in consultation with their experts, develop plans to remedy certain conditions in the Jail. Once the final plan has been submitted, Plaintiff and the Monitors will have a chance to comment on it, and the Court will proceed from that point.

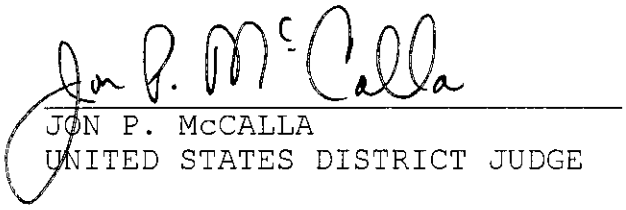
[11] The Defendants' experts informed the Court that in order to have a truly meaningful impact on the safety conditions in the Jail, the County and the Sheriff would have to secure the cooperation of all the other participants in the criminal justice system. For example, the Court heard testimony from Commissioner Kirk and Mayor Rout that the County funds nearly half of the District Attorney General's annual budget, a significant portion of which is at the discretion of the County. (Tr. at 553, 562.) While the County has secured the cooperation of some of the participants in the criminal justice system in an information system that will better track inmates as they move through the system, it appears that the County still needs to marshal its resources to secure overall cooperation in resolving the unconstitutional conditions in the Jail.

allow Defendants to continue to expeditiously implement corrective action to eliminate the unconstitutional conditions in the Jail. The Court will review the question of purgation at a date to be set 120 days from the entry of this order to determine whether Defendants have continued to work in good faith, or if coercive sanctions are necessary to create compliance with the Court's orders.

IV. Conclusion

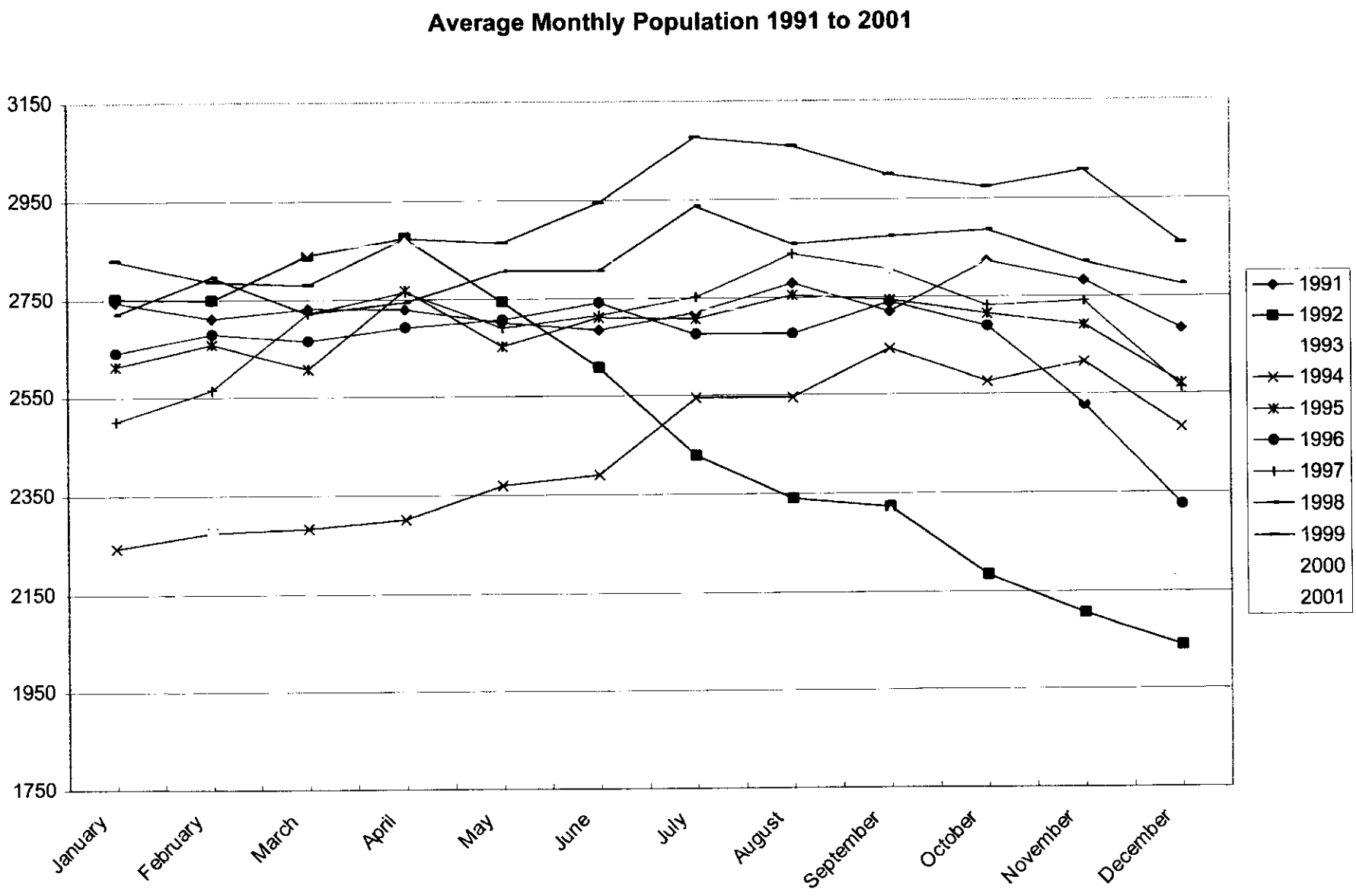
For the foregoing reasons, the Court FINDS that Defendants remain in contempt but imposes no sanction at this point because Defendants have been working expeditiously, efficiently, and in good faith to cure the unconstitutional conditions in the Jail.

So ORDERED this 21 day of June, 2001.



JON P. McCALLA
UNITED STATES DISTRICT JUDGE

EXHIBIT 1


Average Monthly Population 1991 to 2001
3150
2950
2750
2550
2350
2150
1950
1750
January
February
March
April
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July
August
September
October
November
December
1991
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