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U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General *Washington, D.C. 20530*

NOV 20 1989

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Honorable Joseph F. Ada
Governor
Territory of Guam
Executive Chamber
Agana, Guam 96910

Re: Notice of Findings Regarding Investigation of Guam Correctional and Mental Health Facilities

Dear Governor Ada:

On May 12, 1986 we informed you of our intent to open an investigation into conditions at the Guam Adult Correctional Facility (ACF), the Agana jail and the Department of Mental Health and Substance Abuse (DMHSA) Inpatient Unit pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997. By letter dated August 11, 1987 we advised you of our findings that conditions at ACF (and the Rosario Detention Facility which houses arrestees and pretrial detainees because the Agana jail is closed for renovation) and the DMHSA Inpatient Unit violated the constitutional rights of the persons confined within them.

Specifically, with respect to ACF and Rosario we found an unacceptable level of violence which presented a serious threat to the safety of inmates. We attributed such violence to: the lack of an appropriate classification system; inadequate institutional security procedures, including staff training and deployment of correctional officers; and inequitites in treatment of inmates. We advised of a wide range of life safety threats to the safety of inmates including severe fire hazards (such as large amounts of combustible property in inmate cells), the lack of a detection and alarm system, inadequate emergency equipment such as fire extinguishers and back-up lights, highly dangerous electrical wiring and two buildings in the older unit that were in such disrepair as to pose a safety threat.

We found that the complete absence of medical staff, the unacceptable delay in emergency care and improper medication practices constituted deliberate indifference to the serious medical needs of the inmates. We further advised of an unacceptable level of sanitation throughout the units, including food services, and the violation of inmates' rights of access to the courts and counsel. Finally, our 1987 letter advised of major deficiencies of a constitutional magnitude at the DMHSA Inpatient Unit in staffing, treatment, medication and restraint policies.

In order to update our investigation and to determine what steps the Territory of Guam has taken to remedy the unconstitutional conditions cited in our 1987 findings letter, on June 14-16, 1989, we examined conditions at ACF, the Rosario Detention facility (which continues to serve as the overnight and pretrial detention facility) and the DMHSA Inpatient Unit. The investigation consisted of extensive tours of ACF and Rosario by our expert consultant accompanied by Department attorneys and a tour of the DMHSA Inpatient Unit. The team reviewed documents in depth and interviewed a large number of inmates, staff and officials. Throughout our investigation representatives of the Attorney General, the Department of Corrections, the Police Chief and the DMHSA were most helpful and cooperative.

Based upon this recent investigation, we have concluded that the Territory has taken substantial steps toward improving many of the deficiencies noted in our 1987 findings letters. We commend those improvements, discuss them in more detail below, and continue to encourage prompt and similar correction of those conditions which still fail to meet minimum constitutional requirements. Immediate corrective action is required in those areas identified below where serious deficiencies remain. It has been two years since we provided our original findings that conditions at the three facilities do not meet constitutional requirements.

From this recent investigation, we conclude that there continue to exist certain conditions, primarily in the areas of fire safety and sanitation practices, which subject persons confined to the three facilities to flagrant or egregious conditions that deprive them of certain of their constitutional rights.

As we noted in our earlier letter on this matter, the appropriate legal standard (extended to Guam by 42 U.S.C. §1421b(u)) that must be applied to the ACF inmates is the Eighth Amendment's proscription against cruel and unusual punishment. For the pretrial detainees at Rosario we have applied the protections of the Fourteenth Amendment under which restrictions

on liberty beyond initial incarceration must be reasonably related to some legitimate governmental objective -- rehabilitation, safety, or internal order and security. Bell v. Wolfish, 441 U.S. 520 (1979). We have also applied Fourteenth Amendment guarantees to the patients at the DMHSA Inpatient Unit. Youngberg v. Romeo, 457 U.S. 307 (1982).

I. Unconstitutional Conditions

A. ACF. Numerous fire hazards exist at ACF which pose an unreasonable risk of harm to the inmates. The smoke detection and fire alarm system remains a major problem at ACF. In D Unit, none of the smoke detectors or alarm pull stations work and they have been in disrepair since a fire several months ago. Further, they are not wired into Central Control. Similarly, smoke detectors in the maximum security area have not worked since the last fire. Although the smoke detectors and alarms work in F Unit, they also are not wired into Central Control. In our consultant's opinion, all smoke detection and alarm systems should be wired into a central control area. Further, because F Unit was never intended for inmate housing, its gerrymandered electrical wiring system makes the unit hazardous and unsafe. Finally, the kitchen and dining room areas do not have smoke detectors and there are no smoke detectors in the older portion of the Women's Unit which contains much wood construction.

While ACF has done a commendable job in limiting the amount of combustible property in cell and dorm areas, several problems remain. Inmates' use of combustible material to cover door windows in their cells is a significant fire hazard as well as a security risk. Similarly, clothes-drying practices in F Unit pose an extreme risk to safety and security. In F Unit inmates dry clothes on makeshift clothes lines inside the dormitory area, because of the absence of sufficient laundry facilities. This practice also poses a danger to inmates should emergency evacuation become necessary. Finally, flammable/toxic material in the TV room of the infirmary is not controlled.

Additionally, some of the storage areas at ACF do not provide adequate fire protection for surrounding areas. For example, an unsprinklered storage room containing combustible material adjacent to the receiving and discharge area had a wooden door. A fire starting in this room would quickly spread to the adjacent areas. Finally, while it is ACF policy to conduct monthly fire drills, no fire drills have been conducted in recent memory.

Certain sanitation conditions exist at ACF which pose serious risks to the health of inmates. Specifically, most areas at ACF do not have hot water. Inmates are washing clothes in cold water which does not provide sufficient safeguards against the spread of disease and infection.

Showers in most living areas are dirty and many of the shower heads are broken or in other states of disrepair. Many of the toilet areas are also dirty and toilets are in disrepair. Often there are shortages of personal hygiene items such as toilet paper, toothpaste and soap.

While the ACF food service area is clean and food preparation practices appear adequate, significant maintenance problems pose an unnecessary risk to inmates. In the kitchen area the large "walk-in" and two smaller refrigerators were not working. The lack of adequate refrigeration for food creates potential hazards, including a risk of food-borne illness. Also, the dishwasher heating element was broken and dishes had to be sanitized in clorox before being washed in cold water.

Finally, at ACF medical care problems exist which seriously compromise the health of inmates. As noted, at the time of our 1987 findings, there was no on-site medical care at ACF. Since that time the facility has taken an important step with the hiring of Dr. Percival Ong, part-time. Dr. Ong, in turn, has done an admirable job in revising medication practices and procedures and running the poorly equipped, limited infirmary. However, the part-time physician is the only licensed medical person at ACF -- there is not one nurse or licensed aid. At the same time, ACF's medical unit is responsible not only for the inmates at ACF and the Women's Unit, but also for services to the Rosario Detention Facility. Staffing and equipment on-site at ACF are inadequate for initial management and stabilization of medical emergencies. Equipment for emergency response is limited. For example, the facility does not have an ambu bag for maintaining respiration, nor does it have a back board for stablizing back injuries. Stitches must be made without benefit of a goose neck lamp for sufficient lighting. While there is part-time physician coverage, at all other times correctional staff are required to make decisions in emergency situations regarding initial response and when to call the ambulance.

With regard to routine, non-emergency medical care, staffing is similarly lacking. Records show that inmates can wait from three to eight days before seeing the physician. This deficiency in physician availability results in a lack of access and indifference to the medical needs of inmates at ACF, the Women's Unit and Rosario. Similarly, the lack of nursing personnel or physician assistants results in lack of access to medical care. The facility does not have sufficient medical staff to care for the serious medical needs of this number of inmates. At a minimum, a second health professional, either a physician assistant or a registered nurse is required.

Similarly, specialized medical care and services, including mental health care, are often denied or delayed. Dental care, except for acute problems, is totally lacking. No provision exists for regular, routine dental care. And, where dental treatment has been obtained, follow-up care is not available. For what dental care that exists, and for other specialized services, there often is a shortage of officers to transport inmates to specialized medical services. The absence or undue delay in attention to such needs of inmates for specialized medical service impinges upon their constitutional rights.

Finally, medications are obtained from local pharmacies by correctional officers assigned to the infirmary. However, it appears that on occasion the transporting officers, instead of the infirmary officers, obtain prescriptions and that medication changes made by outside medical specialists are not noted for several days. This problem particularly has been observed with forensic and other mental health consultations.

B. Rosario. Unreasonable fire and life safety practices threaten the detainees' right to be free from unreasonable risks to personal safety. The entire smoke detection and fire alarm system at Rosario does not work and, at the time of our tour, it had not worked for a month. Of additional concern at a time of an emergency is that there is no central mechanism for unlocking cells doors and, further, some cells are individually padlocked, thereby substantially increasing the time necessary for evacuation. Further, the facility conducts no fire drills. Finally, the police officers who are in charge of daily operations at Rosario have no fire safety training and no correctional training. This lack of training seriously compromises safety.

Inadequate sanitation also poses a threat to detainees' health and safety at Rosario. Outside the building, there is a trench of standing water apparently caused, in part, by leakage from a nearby sewer. Apart from the stench, stagnant water poses health risks from diseases spread by mosquitoes and other insects.

Inside Rosario, ventilation is inadequate. The shower and toilet areas are dirty and several of the toilets and showers do not work or need repairs. There is no hot water at the detention facility and laundry is done in a "home" washing machine which is incapable of washing clothes at a sufficiently high temperature, without a booster, to prevent the transmission of disease and infection.

Rosario does not provide mattresses and sheets to all detainees and some inmates sleep directly on the concrete cell floor. The practice of sleeping "overflow" detainees on mattresses on a concrete floor is constitutionally intolerable. Further, although Rosario's concrete cell construction is typical of most construction in Guam, the facility lacks any cell to house a detainee who may be out-of-control because of alcohol, drugs or mental illness and for whom such construction poses a hazard to the detainee's safety.

Finally, Rosario is fairly crowded with most of its cells holding two persons who, for the most part, are spending from several months up to a year at the facility. With meals taken in the cells, and no provision for exercise, the out-of-cell time of two 30 minute periods per day in the limited hall area in front of the detainees' cells is inadequate.

C. DMHSA Inpatient Unit. Substantial improvements in patient care and treatment have occurred since our 1987 findings. However, at this time one significant condition of confinement violates the constitutional rights of the patients at the facility -- that is in the area of life and fire safety. The fire safety risks at the inpatient unit and throughout the entire building are substantial and pose a significant danger to the safety of the patients at the facility. The building construction is highly flammable and not sprinklered. The inpatient unit contains no detection or alarm system. Fire extinguishers are too few and what few there are are not maintained. For example, one extinguisher in the kitchen area had not been checked or serviced in five years. Additionally, fire extinguishers throughout the building are not properly serviced. In this building a fire starting anywhere is a substantial risk to inhabitants of the entire structure.

II. Conditions That No Longer Violate Constitutional Rights

As noted above, we found numerous improvements since the time of our findings letter. At ACF, it now appears that institutional violence, a major problem within the past few years, is under control. ACF staff have improved classification and security procedures, provided for more equitable treatment of inmates, increased inmate work opportunities and improved correctional officer training, all of which have worked together to reduce the level of violence at the facility. A law library has also been added at ACF and it appears that inmates have adequate access to attorneys and local courts. With regard to security, however, we note that the perimeter fence at the Women's Unit is about to fall down and should be repaired.

At the DMHSA inpatient unit, a more than adequate level of psychiatric staffing has been achieved and it appears that this level will be maintained, at least while the current psychiatrists available to the DMHSA patients serve out three-year commitments to the Public Health Service. There is also adequate staffing in the other areas of clinical services required for the provision of constitutionally adequate psychiatric care.

Restraint, seclusion and medication practices have also improved greatly. Our 1987 findings letter cited instances of patients being restrained for periods of 36 hours and inappropriately medicated. The use of restraint is currently almost non-existent and we saw no evidence of any inappropriate medication practices.

An area of earlier concern was the practice of commingling forensic patients with other inpatients. We are pleased that presently they are housed seperately and we recommend that this practice continue.

III. Minimum Remedial Measures

While we are encouraged by the major improvements in the areas discussed above, nevertheless the conditions described in Section I require that certain measures must be taken at ACF, Rosario and the DMHSA inpatient unit to ensure that persons confined in those facilities are not deprived of rights guaranteed them under the Constitution of the United States. Listed below are the minimum measures necessary to remedy the constitutional violations:

ACF

1. Adequate fire safety practices, procedures and equipment must be implemented and/or installed, repaired and maintained;

2. Complete the rewiring of F Unit;

3. Adequate sanitation practices must be implemented and maintained; kitchen refrigerators and dishwasher must be repaired or replaced and maintained;

4. Repair perimeter fence at the Women's Unit;

5. The current level of licensed medical personnel must be maintained and augmented by adding a physician assistant or registered nurse;

6. Equipment and supplies should be obtained for appropriate on-site management of medical emergencies and for adequate physcial evaluations, examinations and treatment;

7. Access to dental and other medical specialties must be provided as needed.

Rosario

1. Adequate fire safety practices, procedures and equipment must be implemented and/or installed, repaired and maintained;

2. Adequate sanitation practices must be implemented and maintained;

3. Adequate ventilation must be provided;

4. Nonflammable mattresses and sheets must be provided for each individual except where provision of these items to a particular person would pose a risk to safety or security;

4. Steps must be taken to eliminate health risks caused by mosquitoes and other insects breeding in nearby stagnant water;

5. Adequate out-of-cell time must be provided;

6. Training must be provided the police officers at the facility.

DMHSA Inpatient Unit

1. Adequate fire safety practices, procedures and equipment must be implemented and/or installed, repaired and maintained.

Following the June tour, the Department's attorneys and expert consultant met with representatives from the Guam Attorney General's office to discuss our findings and the possibility of entering into a judicially enforceable consent decree concerning the minimum measures outlined above. That Office advised that the Territory would not enter into a consent decree and that the steps necessary to correct the deficiencies would be complete within sixty (60) days or, for those items which would take longer, a plan for their completion would be formulated and implemented in a timely fashion. Therefore, the Attorney General's office requested additional time in which to correct the remaining deficiencies.

Based upon the significant progress at all three facilities since our 1987 findings letter and the assurances we received from your Attorney General's office that the remaining constitutional deficiencies will be corrected within a short time, we have decided to forego, for the moment, any enforcement action available to us at this time. Rather, we propose to accept the assurances that the deficiencies will be promptly corrected and request that the Attorney General provide us a plan

of correction for each of the facilities setting forth the timeframe within which the corrective measures will be completed. We anticipate making another trip to Guam early next year. At that time we shall review the Territory's progress in eliminating the deficiencies with a view toward closing this matter or taking further enforcement action.

As we advised the Attorney General's representative, in order to aid your government in this process, we are enclosing a copy of our expert consultant's report detailing his observations and conclusions.

Finally, let me take this opportunity to thank the officials and staff of the Attorney General's office, the Department of Corrections, the Guam Police Department, and the Department Mental Health and Substance Abuse, for the courtesy extended to us on our recent visit.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc with enclosure:

Elizabeth Barrett-Anderson
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