U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

AUG 3 1994

Mr. Robert McCabe
Sheriff, Norfolk City Jail
811 E. City Hall Avenue
Norfolk, Virginia 23510

Re: Investigation of Norfolk City Jail, Norfolk, Virginia

Dear Sheriff McCabe:

On October 27, 1993, we notified your predecessor of our intent to investigate the Norfolk City Jail (NCJ) pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §1997 et seq. Consistent with the requirements of CRIPA, the purpose of this letter is to advise you of the conditions at the Norfolk City Jail that violate the federally protected rights of prisoners confined there, the supporting facts, and to recommend necessary remedial measures.

Our investigation consisted of three tours of the facility with expert consultants, the examination of numerous documents, including records, policies and procedures of NCJ, and extensive interviews with staff at the facility. We were accompanied on our tours by 4 consultants: a penologist, a medical expert, a fire safety expert, and an expert environmental sanitarian, all with expertise in jail facilities. Throughout the course of this investigation, City officials and NCJ staff extended to us and our consultants their cooperation, for which we wish to convey to you our thanks.

In making our findings, we recognize that NCJ confines both pre-trial detainees and post-conviction inmates. In general, inmates may not be subjected to conditions that are incompatible with evolving standards of decency or deprive them of their basic human needs while incarcerated. See Estelle v. Gamble, 429 U.S. 97 (1976). With respect to the pre-trial detainees, the Fourteenth Amendment prohibits punishment of these persons and restrictive conditions or practices that are not reasonably related to the legitimate governmental objectives of safety, order and security. Bell v. Wolfish, 441 U.S. 520 (1979). For those convicted of a crime, the standard to be applied is the Eighth Amendment's proscription against cruel and unusual punishment. Wilson v. Seiter, ___ U.S. ____, 111 S.Ct. 2321

(1991); Rhodes v. Chapman, 452 U.S. 337 (1981). When convicted prisoners are not, as here, separated from pretrial detainees, the Fourteenth Amendment standard applies to all inmates.

Based on our investigation, we believe that conditions at the Norfolk City Jail are grossly deficient and violate the constitutional rights of prisoners.

I. Serious Deficiencies in Fire Safety Result in a Life-Threatening Environment.

A. Physical Plant. Adequate, safe egress in the event of fire or other emergency is impossible at NCJ. Clearly, the lack of safe egress from the jail poses a severe threat of harm to prisoners.

NCJ is an eight story facility with an attached satellite area of two floors. The jail contains two main stairwells which are located near the central portion of the building. Due to the close proximity of the stairwells, a single fire could block both exits. Further, bolted doors inside each stairwell prevent exit from the facility. Thus, the stairs are not a viable exit from, or entrance into, the facility in an emergency.

Evacuation in the event of fire or other emergency is further compromised because the facility does not have a central unlocking mechanism for cells in most housing units. As a consequence, valuable time would be lost in the event of fire or an emergency individually unlocking each cell.

Egress from the building, as a practical matter, is limited to one, sole elevator. Although, as noted, two stairwells exist, movement between floors using the stairs is impossible. The doors between each floor are padlocked and the keys are inaccessible. In fact, the keys to the doors in the south stairwell are kept in the central control area located on the second floor of the jail. During our tour, one key could not be located and another did not work. Moreover, because the stairwell lights are inoperable, it is impossible to see. Emergency measures to provide lighting are inadequate. Finally, there are an inadequate number of exits in the large dormitory units.

NCJ fails to provide smoke barrier separations required to prevent the rapid spread of smoke in the event of a fire. The doors at the entrance to the cell block areas are generally kept open. These doors are not automatically closed by the operation of the fire alarm system. In these circumstances, smoke from a fire in one housing unit can spread and penetrate into other housing units on the floor and pose a serious risk of harm. Indeed, smoke inhalation caused 11 prisoners to be hospitalized as a result of one fire on December 1, 1993. Our investigatory

team was present in the jail during this fire. We observed thick smoke throughout the entire floor where the fire occurred, making it nearly impossible to see or to speak.

B. Fire Protection Systems. NCJ does not have a program for maintenance and testing of the alarm system. During our inspection, the entire alarm system, including the smoke detectors, was not operating. Indeed, as noted, our investigators were in the facility during fires on December 1, 1993. Unknowingly the investigators entered the floor of one fire, as no alarm was ever activated. Significantly, the fire department was alerted of the fire via a phone call from within the jail. The malfunctioning fire alarm system failed to automatically notify the fire department.

Automatic sprinklers significantly improve fire safety, permit an increase in combustible materials without reducing safety, allow for longer travel distances for egress and improve security by reducing the need for the immediate evacuation of all prisoners. Although NCJ has automatic wet pipe sprinklers installed on floors 1, 2 and 3, there are no such sprinklers on any other floors where the majority of the prisoners are housed. Finally, the inhouse fire pump is not routinely tested.

C. Combustible Materials. The amount of combustible materials at NCJ poses a serious threat of harm to prisoners. Inmates at NCJ hang clothing, plastic trash bags, towels, and other linen on the cell bars. Additionally, laundry is hung on makeshift ropes made of sheets, strung across the cells. Our fire safety expert found the hanging of materials on the cell bars particularly severe in the juvenile wing on the second floor. These items present a source of fuel for a rapidly developing fire and pose a serious danger to the inmates at NCJ. This threat is exacerbated by the severe overcrowding in NCJ.

Throughout the housing units at NCJ, extension cords and other "makeshift" wiring are often strung from electrical receptacles on an outside wall, across the corridor outside the cells, through the bars and into the cells. These "makeshift" arrangements also pose a serious fire hazard.

D. Evacuation Plan. NCJ has a written fire and evacuation plan. However, fire drills are not routinely conducted. The local Fire Marshal does not routinely inspect the facility to determine whether the facility can be evacuated in a timely manner safely. Finally, several NCJ guards failed to know the location of the stairs. In sum, there is inadequate preparedness for safe evacuation in the event of a fire or other emergency.

II. Measures Recommended to Ensure a Safe Environment.

A. Physical Plant.

1. Insure that all keys required for evacuation are immediately available on each occupied floor to appropriate staff. The keys should be readily identifiable by sight and touch.

2. Review requirements for unlocking of all doors needed for the safe evacuation of the jail in the event of a fire or other emergency, e.g., all doors into and out of stairs.

3. Provide a second door out of the large dormitory housing units.

4. Take all necessary steps to ensure appropriate smoke and fire compartmentation, including the installation of fire rated, self-closing or automatic doors as necessary, the sealing or enclosure of all vertical openings between floors.

5. Provide additional emergency lighting; test the emergency generators underload to determine which circuits, lights and equipment are powered by the emergency generators; repair inoperable lights in stairwells.

B. Fire Protection System.

1. Repair and maintain an appropriate fire alarm system; clean, maintain, and test at proper intervals all smoke detectors to assure that they operate properly; test the fire alarm system monthly to assure it operates correctly; check fire extinguishers monthly and maintain a log of such checks; and routinely test the inhouse fire pump.

2. Provide automatic sprinklers throughout the building.

C. Fuel Control.

1. Remove unreasonable amounts of clothing, blankets, towels, cardboard, and other combustible materials which are hung on or attached to cell bars and combustible materials from all other areas which are not safely housed, e.g., from rooms containing electrical panels.

2. Immediately remove make-shift electrical wire and cord arrangements throughout the cellblocks; provide fixed electrical equipment to eliminate such makeshift arrangements.

D. Evacuation Plan.

1. Conduct fire drills throughout the building on a regular basis. Drills should be conducted quarterly on each shift.

2. Ensure independent monitoring of evacuation procedures by the State Fire Marshal.

3. Train all staff in emergency evacuation procedures.

4. Review the current evacuation plan and modify, as necessary, to reflect all remedies described above and the further, more specific recommendations to ensure fire safety at the NCJ set forth in our fire safety consultant's report which is attached to this letter.

III. The Physical Plant is Unsanitary and Represents a Direct Threat to the Health and Well-Being of Prisoners.

A. General Sanitation. The general state of sanitation of the jail is grossly inadequate. The NCJ facility fails to meet minimum health and safety standards. NCJ does not have a preventative maintenance system. Moreover, NCJ fails to implement an operational safety and health program.

Pest Control in NCJ is poor and ineffective as roaches, rodents, and flying insects are evident throughout the entire jail, including the medical, cooking, and housing areas. Our environmentalist found numerous rodent droppings on bread packages and trays as well as noticeable mice tail and feet markings on a container of sugar.

The air quality and air circulation in the housing areas is inadequate. Moreover, temperatures in many of the housing areas are unacceptable. Further, NCJ lacks adequate and sanitary facilities for drinking water. The potable water system, for example, is in jeopardy of being contaminated by the absence of back-siphonage/back-flow devices.

B. Cell Sanitation, Safety, and Crowding. The sanitation of cells is extremely poor throughout the NCJ. The Jail even fails to provide prisoners with any supplies with which to clean their cells. Further, the housing units are not routinely inspected for sanitation and safety.

NCJ's plumbing is deficient and in need of repair. Throughout the jail's housing areas there are numerous broken and defective plumbing fixtures such as toilets, handwashing facilities, shower heads, and lavatories. In one housing unit, for example, there are only two operable toilets for 48 prisoners. In another housing area, there are two shower heads

for 55 inmates. Lavatories and showers lack adequate hot and cold water.

The lighting in the housing areas is inadequate for reading and sanitation. Indeed, in the Medical housing unit, the lighting was so poor that it did not register on our environmental sanitarian's light meter.

NCJ fails to provide prisoners with adequate sleeping accommodations. The mattresses provided to inmates are in poor repair, creating sanitation and fire safety problems. In most housing units, numerous prisoners are sleeping on dirty floors due to excessively crowded conditions.

C. Food Sanitation Practices. Our consultant found food preparation facilities and sanitation practices to be woefully inadequate, posing a danger to the health of the prisoners. Indeed, our expert found conditions at the satellite kitchen to be so egregious that it must be closed. NCJ fails to sanitize pots, pans, utensils, and eating tables. The entire cooking area is dirty. Moreover, NCJ fails to even provide handwashing soap and sanitary towels for kitchen staff. Further, food storage and service practices are very poor. Indeed, NCJ has previously been cited by the Health Department for failing to meet appropriate health standards. Finally, NCJ food facilities fail to maintain food at the temperature necessary to prevent bacterial growth. For example, our consultant measured the temperature of one of the freezers to be 30 degrees fahrenheit. The temperature must be at or below zero degrees fahrenheit to prevent spoilage.

D. Other Sanitation Procedures. NCJ does not have a policy and procedures manual regarding the laundering of prisoner clothing and bedding. Clothing and bedding contaminated with blood and other body fluids are improperly handled.

IV. Remedial Measures for Environmental Issues.

A. General Sanitation.

1. Renovate or repair the entire facility to ensure that the jail meets minimum health and safety standards.

2. Implement a preventive maintenance program to ensure timely repairs. Implement an operational safety and health program, with appropriate employee training.

3. Implement an effective pest control system throughout the jail. Steps must be taken to replace missing window screens, tiles and insulation around water pipes, as well as repairing holes in the ceilings.

4. Implement proper measures to ensure proper air quality and adequate air circulation and ventilation throughout the jail.

5. Provide adequate and sanitary drinking water and install devices to prevent the risk of contamination to the potable water system.

B. Cell Sanitation.

1. Develop and implement a housekeeping plan for cell sanitation, e.g., provide proper waste disposal, sanitary supplies, cleaning equipment. Inspect cells and areas used by prisoners weekly by qualified staff; yearly by local and state health inspectors; maintain a log of such inspections.

2. Insure proper maintenance of toilets, lavatories, and showers. Provide adequate hot and cold water in lavatories and showers. Provide a sufficient number of toilets and showers to meet the needs of prisoners.

3. Provide lighting adequate for reading and sanitation in the housing areas. The lighting level should be at least 20 foot-candles.

4. Insure proper temperatures throughout the housing units.

5. Provide all inmates with safe sleeping accommodations.

6. Provide each prisoner with adequate bedding, including sheets, pillow, and pillowcase, and sufficient blankets.

C. Food Facilities.

1. Close the satellite kitchen due to hazardous conditions. Provide appropriate, alternate kitchen facilities.

2. Develop and implement proper policies and procedures to insure appropriate sanitation practices throughout the main kitchen and dining area; provide kitchen staff with adequate handwashing soap and sanitary towels; ensure proper food and utensil storage practices; store all food in proper containers.

3. Develop and implement proper policies and procedures to insure that hot food is maintained at 140 degrees fahrenheit at all times and that frozen foods are properly refrigerated. All perishable foods are to be stored in freezers at or below zero degrees fahrenheit or in refrigeration units at or below 45 degrees fahrenheit. Provide proper drainage system for sinks.

D. Cleaning and Sanitation.

1. Develop and implement policies and procedures for routine clothes washing. Prisoners should have a clean clothes and linen exchange at least three times per week.

2. Develop and implement policies and procedures for the proper handling of clothing and bedding contaminated with blood, body fluids, crabs, or lice.

V. Medical Care is Grossly Inadequate and Fails to Meet the Serious Needs of Inmates.

A. Medical Screening. A member of NCJ's medical staff screens prisoners at intake for health concerns. The screening reportedly entails the completion of several forms and a physical exam. The majority of the intake screenings are performed by personnel who, according to our consultant, clearly lack adequate credentials to perform them. Routinely, NCJ personnel fail to obtain a medical history for each prisoner. Moreover, physical examinations do not include an examination of the ears or eyes, nor an examination below the abdomen. Further, there is no screening for scabies or lice. Thus, a person entering the facility with such conditions can easily cause the infection to spread throughout the facility.

Our physician consultant found the intake screening process woefully inadequate. He concluded that the absence of proper screening represents a serious public health risk.

B. Screening and Treatment of Tuberculosis. NCJ has a serious problem with the detection and surveillance of tuberculosis. A review of inmate medical records indicated that only a small minority of the inmates had a tuberculosis skin test implanted and read. Indeed, 14 of the 16 records randomly reviewed had no TB test at all. In one case, an inmate known to be HIV positive had no tuberculosis skin test and no chest x-ray. The prisoner died almost 8 months later as a result of AIDS and tuberculosis encephalopathy. The absence of an adequate tuberculosis detection program may have resulted in his inadvertently spreading this disease while confined at the NCJ.

Additionally, when TB skin tests are implanted and read, inmates with a positive test result frequently wait an unacceptable amount of time before getting a chest x-ray. Moreover, NCJ fails to follow generally accepted medical practice for the treatment of TB.

C. Treatment of Chronic Illnesses. NCJ fails to provide adequate evaluations and ongoing monitoring of individuals with asthma, seizure disorders, high blood pressure, diabetes, and HIV disease. Additionally, NCJ fails to provide minimally adequate

care to patients with special medical needs. In a particularly egregious situation, our physician consultant discovered that only sandwiches are available for "therapeutic" diets. Indeed, the head cook reported that with exception of the extra sandwich provided to pregnant females and diabetics, no special diets are prepared for the prisoners at all. Our physician consultant concluded that NCJ clearly does not have a therapeutic diet program.

D. Access to Medical Services. Aside from intake, NCJ uses a "kite" system to identify inmates who have health care problems -- inmates submit a form requesting medical attention to the LPN who makes rounds in the housing units. Our consultant observed an LPN in a routine distribution of medication and simultaneous sick call screening. Although NCJ's nurse screening protocols comport with medical standards, the sick call screening was conducted without any reference to the protocol. Our physician consultant concluded that the LPNs are not appropriately trained to conduct sick call evaluations.

The overwhelming complaint voiced by inmates was the difficulty in getting medical attention. Reportedly, medical rounds are made during early morning hours when most inmates are asleep, thereby making it nearly impossible to submit a form requesting medical attention. Moreover, inmates complained that they must convince both the LPN and a deputy that their medical problem is serious enough to warrant access to a doctor.

E. Medical Services. The physician at NCJ is the only individual at the Jail who has the appropriate credentials and training to perform medical examinations. He reportedly sees approximately 330 inmates per month, which, given his four day per week schedule, averages approximately 20 inmates per day. In view of NCJ's population of over 1300 prisoners, there are many inmates in need of the attention of a physician who do not see one. More physician coverage is required.

The physician sick call is conducted in a very small room which also serves as the office to both the physician and a nurse. The examining table is badly deteriorated and there is no sink in the room. In short, the physical surroundings are unprofessional and, according to our physician consultant, discourage professional examinations. Indeed, our consultant was told by numerous inmates that the physician does not actually perform physical examinations of the individuals with medical complaints prior to determining a diagnosis. Numerous records of prisoners seen by the physician, in fact, likewise failed to reflect that a physical exam was performed.

Additionally, NCJ purports to provide prosthetics to sentenced prisoners. Our consultant discovered, however, that prosthetics are unavailable to numerous prisoners, both sentenced and unsentenced.

F. Medical Emergency Response Program. In light of NCJ's dangerous crowding, our physician consultant concluded that it is incumbent upon the staff to receive training regularly in handling emergencies and disasters, and to test the adequacy of the emergency response system designed to address medical emergencies. While NCJ reported annual disaster drills, its records indicate there were only two such drills in the past two years -- and these so called drills evacuated only a single prisoner.

NCJ reports a five minute response time for emergency services, as the hospital is only two miles from the jail. A review, however, of deaths at NCJ raises serious questions. For example, a prisoner was noted to have fallen and hit his head, requiring emergency services. The ambulance took 25 minutes to arrive at the jail and 35 minutes to arrive at the hospital.

G. Medication Distribution. NCJ fails to observe appropriate and safe practices in its administration of medication.

Currently, all medications given to inmates outside the infirmary, including psychotropic medications, are administered by an LPN. The medication is administered in such a manner that frequently the inmate is forced to swallow the medication without any liquid. In addition, our consultant found no effort to ensure that inmates were, in fact, taking their medication. For example, inmates on medications such as those for tuberculosis who don't respond when called to take their medication are not pursued.

Medication at NCJ is stored in part of a long, narrow hallway which is used both for medications and medical records. The space, according to our medical consultant, is completely inadequate. The space was the worst our consultant had seen used in the last twenty years. Further, medications are routinely kept in unlocked drawers. There is no documentation of the use of stock medication. Indeed, our consultant discovered medication which had expired three months previously.

H. Medical Records. Medical records fail to meet any known professional standard. Forms in each medical file are loosely filed with complete disregard to chronology. Charts cannot be located; documents are misfiled or not filed at all. For example, our consultant located a form which indicated that a female prisoner had tested positive for pregnancy. The form was two months old and yet it remained in a large pile of unfiled

papers. Indeed, NCJ staff were unable to locate 36 percent of the files we randomly requested. The inadequacies in the medical records system at NCJ pose a danger for prisoners.

In brief, our consultant found that the medical record system was the worst he had seen in the last ten years and that it seriously compromised the provision of medical care.

I. Consultations. NCJ's provision of necessary specialty medical services is also inadequate due to unnecessary delay in the provision of specialized medical consultations and the absence of follow-up or monitoring by NCJ health care staff. Prisoners are sent off site for a variety of outside consultations. NCJ health care staff, however, fail to conduct any review of the results of the consultation or ensure that required medical services are provided in a timely manner.

J. Mental Health. NCJ fails to provide adequate mental health services. There are no written policies and procedures for identification and observation of suicidal prisoners. Moreover, although NCJ purports to have a "suicide watch" procedure, logs reveal that staff do not implement it. Moreover, several of the "suicide watch" cells are completely out of sight of staff. Mental health services for seriously mentally ill inmates are inadequate as well.

K. Dental. Although NCJ retains a dentist and a dental assistant, there is insufficient staff and dental facilities to meet the serious dental needs of inmates. The dental office is completely inadequate. It lacks even a sink with handwashing capability and towels.

L. Inadequate Medical Care Provided to Female Prisoners. Our physician consultant found very serious problems in the medical care delivery system for pregnant prisoners at NJC. Reportedly, pregnant females are to be evaluated, monitored and otherwise cared for at an outside clinic. Yet there is no documentation of any treatment at this clinic in any purported patient's medical record. In fact, such women receive only sporadic care at the jail.

Numerous inmates complained to our consultant that they were told that they were pregnant more than a month after they had been tested. Our consultant also found several cases in which vital signs of pregnant women undergoing medical evaluation were not reported. In one case a female inmate who was nine months pregnant tested positive for syphilis -- no further evaluation or treatment was afforded. In still another case, a female inmate who was four months pregnant was treated at NCJ for a vaginal infection without even so much as a physical examination. In short, our consultant found grossly inadequate medical care for

female inmates at NCJ and especially deficient care for pregnant inmates.

Finally, there is no routine screening for sexually transmitted diseases for women including gonorrhea, chlamydia, or scabies.

VI. Measures Recommended to Ensure Medical Care Satisfies Constitutional Standards.

A. Intake and Screening.

1. Ensure licensed and trained personnel perform intake screening within the first 24 hours of a prisoner's entry into NCJ. Results of the screening must be provided to the physician within the next working day and recorded in the prisoner's chart within four days. The intake screening must include a medical history and health care assessment. Inmates housed in the jail for more than seven days must be tested for tuberculosis and other communicable diseases, as appropriate.

2. Complete physical exams must be performed by qualified medical staff within 14 days of a prisoner's entry into NCJ.

3. Treat prisoners for scabies and lice on admission to the facility, as necessary.

B. Proper Screening and Treatment of Tuberculosis.

1. Ensure all TB skin test-positive prisoners are X-rayed within five days of a positive result and proper treatment afforded, as appropriate.

2. Implement Centers for Disease Control guidelines for TB and infection control.

C. Proper Treatment of Chronic Illnesses.

1. Organize and operate clinics for prisoners with chronic illnesses such as HIV, TB, hypertension, diabetes, seizures and asthma staffed by appropriate medical professionals. Treatment for prisoners with chronic illnesses must be implemented according to generally accepted medical protocols.

2. Develop and implement an infection control program.

3. Develop and implement proper special diets for prisoners with special dietary needs.

D. Access to Basic Medical Care.

1. Ensure sick call triaging is completed by appropriately trained and licensed professionals in accordance with generally accepted medical standards and documented in the medical record.

2. Implement policies and procedures to ensure that sick call triaging is readily accessible to prisoners.

3. Provide appropriate prosthetics to all inmates housed in NCJ for greater than four months.

E. Medical Services.

1. Provide sufficient physician and other medical staffing to ensure adequate medical evaluation and treatment of all inmates in need of access to a physician for medical care. Physical examinations of patients with medical complaints must be made a routine part of any medical evaluation.

2. Provide twenty four hour licensed medical coverage.

3. Equip all exam and procedure rooms with a proper sink, soap, towels, and maintain and operate such areas consistent with generally accepted medical standards.

F. Medical Emergency.

Conduct quarterly medical emergency drills and annual mass casualty drills and critique such drills in a written report. The timing of ambulance response to requests for assistance must be included in the drill report.

G. Medication Practices.

1. Ensure medication is administered on an individualized, dose-by-dose basis; psychotropic medication shall not be reviewed for the purpose of renewal without examination or review of the patient. Staff must be appropriately trained to administer medication.

2. Maintain all medication in locked cabinets. A log book indicating the use of stock medication must be kept.

H. Medical Records.

1. Develop and implement a medical records system which satisfies generally accepted medical standards. Supervision of medical records by an accredited records technician with proper clerical support must be provided.

2. Develop and implement a comprehensive professionally-based quality assurance program covering all aspects of medical services provided by the facility. The findings of the program must be reviewed monthly.

I. Consultations.

Ensure recommendations made by outside medical consultants are reviewed and implemented by an appropriate physician in a timely manner together with all necessary follow-up care.

J. Mental Health.

1. Take all necessary steps to ensure the delivery of mental health services to prisoners fully satisfies generally accepted medical standards.

2. Develop and implement proper suicide prevention and crisis intervention procedures.

3. Identify and evaluate mentally ill prisoners to determine their mental health needs in a timely manner.

K. Adequate Dental Services. Address the serious dental needs of inmates. Services must be provided by qualified professionals in a professional manner utilizing appropriate facilities; services may not be limited to extractions.

L. Adequate Medical Care for Women Prisoners.

Provide adequate care for pregnant prisoners, including timely evaluations, timely diagnosis of pregnancy and prompt follow-up care. Any outside ob/gyn and public health consultations must be returned with a report to be reviewed and followed-up by the physician. Provide routine screening for sexually transmitted diseases and appropriate treatment, as necessary.

VII. Gender-Based Discrimination.

Discriminatory Telephone Access. NCJ currently provides significantly less access to telephones to female prisoners than it does to male prisoners. Most housing units for male inmates in NCJ are equipped with jail-type, collect only phones. Most of the housing units for women do not have such phones. Currently, the women are allowed telephone access only when the guards bring them out of the cells periodically to make calls. The disparity in access to telephones for female prisoners is so severe that it represents gender based discrimination.

VIII. Remedial Measures for Gender-Based Discrimination.

Equal Access to the Telephone. Install collect-only phones in the female housing units on the same basis as they are provided in the male housing units.

IX. Lack of Protection from Harm.

A. Security practices threaten the safety and well-being of the inmates.

1. Incidents of Violence. Our consultant found that an unacceptably high incidence of violence occurs in the NCJ. Numerous inmates voluntarily told our consultant that they had been assaulted by other inmates and that such acts occur quite frequently. Our consultant found several reasons for the violence at NCJ, including the lack of opportunities for exercise and constructive activities, poor staff supervision, lack of a sufficient number of single cells, and the severe overcrowding.

Severe overcrowding at NCJ has greatly exacerbated the normal tensions and frustrations of confinement. Many of the assaults within the housing units occur as a result of the inmates fighting over who will receive an available bunk off of the floor.

Security staffing at NCJ is grossly inadequate. Indeed, NCJ operates below its designated staffing complement. Jail deputies are required to leave their designated posts to provide coverage of hospitalized prisoners. In addition, NCJ fails to provide the necessary amount of supervision for the juvenile population at NCJ. Finally, staff coverage is often reduced 25 to 33 per cent per floor when deputies escort prisoners for various reasons to other parts of the jail. Inadequate security personnel directly contributes to the incidence of violence at NCJ.

NCJ fails to maintain central reports concerning inmate-on-inmate violence. According to our consultant, this poor management practice severely limits the ability of jail administrators to evaluate incidents, identify trends and causes of violence, and take necessary steps.

Moreover, our consultant found that NCJ staff does not take appropriate measures to combat and otherwise control violence. NCJ deputies rarely assume a proactive, preventive posture needed to avoid unnecessary incidents of violence. Indeed, when the deputies react to incidents of violence, no meaningful disciplinary sanctions are imposed on inmates. At most, inmates who are involved in an assault are separated. Our consultant concluded that both lack of control and the failure to impose meaningful disciplinary measures is yet another cause of the unacceptably high incidence of violence at NCJ.

Finally, NCJ fails to frisk or pat down prisoners when necessary. Indeed, prisoners routinely exit the dining hall to return to their cells, without having been searched.

2. Classification Practice. Classification is the process by which prisoners are categorized by a variety of criteria and housed accordingly in order to prevent harm. Classification serves as an extremely important function at any jail. NCJ has a full-time staff of classification officers who interview all new inmates within a few hours of their booking. Our consultant concluded that although the classification process is adequate in theory, it is not implemented due to the severe overcrowding. The absence of classification increases the threat of harm to inmates. Frequently, pretrial detainees are housed with convicted felons, many of whom are serving state sentences following conviction for serious crimes.

3. Floor Checks. NCJ deputies make "floor checks" every 15 to 20 minutes. The jail deputies do not, however, check on the safety and well-being of the inmates. During the "floor check", jail deputies merely ensure that the physical plant is secure. The deputies then record that the check has been made in a log book that is kept on each floor. Our consultant found that every single entry for every check, in some instances going back a period of one full year, indicated that everything was "secure and normal." Our consultant found such entries beyond credibility given the significant number of violent incidents occurring at the jail.

Moreover, given the lack of lighting and the rags, clothing, and blankets that inmates tie to the bars for privacy, vision into the cells is severely limited. In fact, on several occasions, our penology consultant had difficulty ascertaining whether a cell was even occupied. Thus, it is nearly impossible for a guard to make a cursory check on the inmates in the cells during his routine "floor check."

Additionally, during our investigation we discovered that gaining assistance of a deputy, even in a life-threatening situation, was purely at the discretion of the deputies. Several inmates reported that they have had to scream for hours to gain assistance. During our investigation, we experienced these circumstances first hand. On one occasion, we yelled for the help of a deputy for approximately five minutes before we gained any assistance.

In sum, NCJ fails to protect inmates from harm or implement systems and practices designed to avoid harmful incidents.

B. Grievance System. Numerous inmates reported to our penologist that they never received an answer to their written

grievances. Our consultant concluded that although NCJ's grievance policy and procedure may be acceptable in writing, the grievance system is not consistently implemented. A non-functioning grievance process serves as an additional source of frustration for inmates and exascerbates unnecessary tensions, fear, and violence at the jail.

X. Measures Recommended to Insure Adequate Security.

A. Security Practices.

1. Violence. Security and supervision of inmates must be significantly enhanced by increasing the number of qualified deputies and other security personnel to reduce violence and otherwise ensure the reasonable safety of inmates. Records regarding violent incidents must be kept and evaluated at appropriate intervals to enable jail administrators to properly deploy security personnel. Random frisks of inmates, shakedowns and other security precautions should be implemented, as necessary.

2. Floor Checks. Floor deputies must make rounds of housing areas on a periodic, random basis at least once each hour to ensure the safety of inmates. Rounds shall include the visual observation of all inmates. All rounds shall be documented in an appropriate log.

3. Classification. NCJ must comply with its classification procedures. Pretrial detainees must not be housed with convicted felons; violent and violence prone prisoners must be separated from other inmates appropriately.

B. Grievance System.

NCJ must ensure that inmate grievances are investigated and responded to within a reasonable time frame.

XI. Inmates' Opportunities for Out-of-Cell/Exercise Time Is Inadequate.

NCJ makes no provision for inmate exercise whatsoever. Inmates are confined in unhealthy and overcrowded quarters for sustained periods. With exception of a 10 minute shower, once a week visitation, and a sick call visit to the medical ward if necessary, nearly all of the prisoners at NCJ remain in their cells 24 hours per day, seven days a week.

Adequate opportunity for regular exercise is essential for maintaining both physical and mental health. Moreover, our consultant concluded that regular exercise takes on added value in NCJ given its grossly overcrowded status in that it provides a constructive means of letting out the inevitable tensions which

arise in circumstances in which personal privacy and space are virtually non-existent.

XII. Crowding.

NCJ is severely overcrowded. With a capacity of 579 prisoners, the current inmate population is approximately 1,300 prisoners. Given the severe overcrowding, which forces inmates to sleep on floors and dayroom tables, prisoners have limited walk space within the housing areas. In the four-man housing units for example, space is so limited that only one prisoner can stand at a time. Significantly, more than 400 inmates in NCJ are serving felony sentences and are housed at NCJ for up to four years in unlawful conditions. For example, in one area housing 53 prisoners, there are only 24 beds; in another, there are 34 prisoners, but only 15 beds. In both instances, the remaining prisoners sleep on the floor. In several areas, prisoners have made unsafe makeshift hammocks above the floor. Due to such crowding the operation of NCJ has been stressed beyond all reasonable limits. Security, medical and mental health care, sanitation, fire and building safety are insufficient for such a large population. Indeed, many of the deficiencies outlined in this letter are a direct result of excessively crowded conditions of confinement at NCJ.

XIII. Measure to Address Excessive Crowding.

NCJ must take immediate steps to reduce and ultimately to eliminate unlawful crowding. Additional jail facilities, including appropriate temporary facilities, must be promptly identified or established. Prisoner diversion programs must be developed and implemented. A comprehensive plan to reduce the population to 750 or fewer inmates must be developed within 90 days and fully implemented within six months thereafter.

XIV. Juveniles.

NCJ houses male juveniles who have been certified to stand trial as adults. While the juveniles are housed separately from the adults, our penologist concluded that their housing conditions are deplorable. The juvenile area has no exposure to natural light at all. Indeed, our penologist had to strain to see that a cell was in fact occupied.

The juveniles have absolutely no access to exercise, activity, or any educational materials or instruction. They remain in their dirty, dark, 4-man cells for nearly 24 hours per day, seven days per week, with exception of a 10-minute shower, a 15-minute per week social visit, and, if needed, a visit to the jail's medical area. Our consultant found these conditions debilitating, harmful, and an abject failure to comply with any known penological standard.

The juveniles housed at NCJ are further harmed by NCJ's failure to provide any educational materials or regular teaching assistance.

XV. Remedial Measures Regarding the Juveniles Housed at NCJ.

1. NCJ must afford the juveniles the opportunity for regular exercise, for a minimum of two hours, at least five times per week. The exercise should be outdoors, weather permitting. Until provisions are made for the opportunity of regular exercise, NCJ must provide the juveniles the opportunity to, at a minimum, walk up and down the areas in front of their cells under supervision.

2. NCJ must make some arrangement with the local school system to provide appropriate educational materials and instruction to the juveniles.

XVI. Denial of Prisoners' Due Process.

NCJ's disciplinary policy and procedure appear acceptable as written. Numerous inmates and guards reported, however, that prisoners are subjected to summary punishment. Such punishments range from denial of privileges to placement in disciplinary segregation without the fundamental elements of procedural due process including a written disciplinary report, a hearing, and a right to appeal.

XVII. Remedial Measures Regarding Due Process.

NCJ staff must adhere to the written policy and procedure concerning discipline.

XVIII. Religious Services.

NCJ does not provide religious services whatsoever due to its space limitations.

Efforts should be taken to provide religious services.

XIX. Inadequate Access to the Courts.

The jail fails to afford inmates adequate access to the courts. The jail has a narrow closet which contains a random collection of law materials. These inadequate legal materials are referred to as the law library by jail personnel. This "library" is woefully inadequate. In these circumstances, inmates have inadequate access to legal materials for research and writing.

XXI. Remedial Measures Regarding Adequate Access to the Courts.

NCJ must bring the law library into compliance with constitutional standards. The numbers and types of legal materials available, the organization of such materials, and other materials, including typewriters, must be enhanced significantly.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution 49 days after appropriate local officials are notified of them. 42 U.S.C. Section 1997b(a) (1). We expect to hear from you as soon as possible, but no later than 49 days after receipt of this letter, with any response you may have to our findings and a description of the specific steps you have taken, or intend to take, to implement each of the minimum remedies set forth above. If you do not respond within the stated time period, we will consider initiating an action against your jurisdiction to remedy the unlawful conditions.

We look forward to working with you and other City officials to resolve this matter in a reasonable and expeditious manner. If you or any member of your staff have any questions, please feel free to contact Shanetta Y. Brown, Trial Attorney, Special Litigation Section, at (202) 514-0195.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable James S. Gilmore, III
Attorney General
Commonwealth of Virginia

Helen F. Fahey, Esquire
United States Attorney

The Honorable Paul D. Fraim
Mayor, City of Norfolk

Phillip Trapani, Esquire
Norfolk City Attorney

Jeffrey Breit, Esquire
Breit, Dreicsher and Breit

Mr. James B. Oliver, Jr.
Norfolk City Manager