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UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Jerris Leonard
Assistant Attorney General
Civil Rights Division

DATE: APR 24 1970

GWJ:RWB:clk

FROM : Gerald W. Jones
Chief
Voting & Public Accommodations

DJ 168-29-2
#15-209-32

SUBJECT: Proposed Title III Litigation Against Wyandotte County, Kansas, et al., Regarding the Segregated Wyandotte County Jail

We are prepared to file the attached complaint under Title III of the Civil Rights Act of 1964.

FACTS

A. Ownership and Operation

Wyandotte County, Kansas, owns and operates a racially segregated jail in Kansas City, Kansas. The jail has a prisoner capacity of 144 inmates. It is operated by Wyandotte County Sheriff Glen Brunk, Undersheriff Jess F. Boring, and Captain Sallee Pacheco, warden and deputy sheriff. Cordell D. Meeks, Albert J. Sachen, and Richard F. Walsh, the other named defendants, are members of the County Board of Commissioners and as such have financial and general governing responsibility for all county institutions, including the county jail.

B. Coverage

On October 16, 1968, a group of Wyandotte County residents known as the Citizens for the

Improvement of the County Jail made a resolution requesting reform of the county jail, including desegregation of the jail. The resolution was signed by 30 black and white citizens, and a copy was sent to the Attorney General. One of the signatories, Lewis C. Jones, was a former inmate of the jail and a victim of violence allegedly perpetrated at the jail by prisoners at the behest of prison authorities. Negro contacts in Kansas City, Kansas report that all of the signatories to the letter are relatively poor and unlikely to bring legal action to end the segregation. 1/

The resolution is a proper Title III complaint and the jail is owned and operated by the county, an agency of the state.

The facts also reflect that Wyandotte County has obligations to this Department beyond those arising under Title III of the Civil Rights Act. The jail facility houses federal prisoners on a fee basis pursuant to a contract executed on November 1, 1969 with the Bureau of Prisons. The contract incorporates by reference a standard provision of such contracts

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1/ Only one signatory, Allen T. Fletcher, appears to have contacts with civil rights organizations. Mr. Fletcher was contacted by an attorney of this Division and stated that he is president of the Bonner Springs Chapter, National Association for the Advancement of Colored People. Mr. Fletcher said that the citizens' group has disbanded and he was unaware of the present method of operation of the county jail. He said that he had sent a copy of the citizens' group resolution to the state conference of the NAACP but had received no reply, and he was sure his organization had no plans for taking legal action against the county jail.

which requires that "[n]o person confined in a jail . . . shall on the basis of race . . . be subjected to discrimination." 2/ The contract also requires that the county "keep the prisoners in safe custody and to maintain proper discipline and control."

C. Noncompliance

At the request of the Department, the FBI has conducted investigations to determine whether the county jail is being operated in a racially discriminatory manner. Two investigations have been completed, one on December 27, 1968, and the other on January 29, 1970. On both occasions county officials acknowledged to the FBI that the prison facilities are segregated on the basis of race.

In approximately November 1968, prison officials said they determined to segregate the prisoners on the basis of race after consulting the prisoners by holding a prisoner referendum on the issue which resulted in a unanimous vote to racially segregate the jail.

The jail is divided into seven tanks, each containing from two to five cells of capacity varying from four to 40 prisoners. Each cell has its own shower and toilet facilities. A census of the jail taken in January 1970 indicates the following racial composition of these units:

2/ A copy of this contract and the attachments containing the nondiscrimination and safe custody clauses is attached to this memorandum.

Designated Area	Maximum Capacity	Present Prisoner Census		
		W	N	T
East Tank	40	0	23	23
West Tank	32			
Cells 1 & 2	16	0	13	13
Cells 3 & 4	16	15	0	15
North-West Tank	8			
Cell 1	2	0	1	1
Cells 2 & 4	6	4	0	4
North-East Tank	8			
Cell 1	2	1	0	1
Cell 2	2	2	0	2
Cells 3 & 4	4		vacant	
South Tank (juveniles)	24			
Cell 1	6	2	0	2
Cell 2	6	0	2	2
Cells 3 & 4	12		vacant	
Drunk Tank	4	3	0	3
Women's Tank	4	4	2	6 3/
Kitchen (trustees)	8	5	3	8
Totals	144	36	44	80
Percentage in Bi-racial Cells		30.6	11.4	
Percentage in Mono-racial Cells		69.4	88.6	

3/ This cell is filled beyond capacity. Jail authorities told the FBI two of the females slept "by choice" on mattresses on the floor of the tank outside the cells.

Included in the totals set out above were seventeen federal prisoners falling into the following categories:

6 white males	-	West Tank, cells 3 & 4 Northwest Tank, cell 4 Northeast Tank, cell 2
9 Negro males	-	East Tank West Tanks, cells 1 & 2
2 white females	-	Women's Tank
0 Negro females		

It should be noted that all fifteen male federal prisoners were housed in segregated cells with members of their own race.

The Bureau of Prisons carried out an inspection of the Wyandotte County Jail on January 8, 1969. The inspection report reflects no evidence that the Wyandotte County Jail was segregated.

County officials told the FBI they segregate prisoners on the basis of race in order to assure prisoner safety. The FBI investigation showed that the jail fails to employ, aside from race and sex, any objective criteria for the assignment of prisoners to cells, such as separating the very young from older inmates, misdemeanants from felons, convicted from merely charged prisoners, or single from multiple offenders. The Bureau of Prisons inspection reports indicate only two persons are available at any one time for supervision of prisoners. The Department has previously received reports of prisoner homosexuality and assaults upon other inmates, including one aggravated incident which led

to the Title III complaint in this case. In that incident, the jail officials, in denying complicity in the violence, pointed out to the FBI that their office is located so far from the area where the prisoners were housed that they could not possibly have heard what was going on.

LAW

A state may not segregate its jail facilities on the basis of race without violating the equal protection clause of the Fourteenth Amendment. Washington v. Lee, 390 U.S. 333 (1968). The Attorney General has statutory standing to sue to enforce Title III of the Civil Rights Act of 1964, where he has received a complaint in writing, signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to equal protection of the laws on account of race. Here the complainant is a former inmate of the Wyandotte County Jail. Since former prisoners have standing to sue to obtain desegregation of state jails, Washington v. Lee, 263 F. Supp. 327 (M.D. Ala. 1966), affirmed, 390 U.S. 333 (1968), the Attorney General has derivative standing under Title III.

Also, the Attorney General has standing to sue a state to enforce nondiscrimination clauses in governmental contracts. United States v. Frazer, 297 F. Supp. 319 (M.D. Ala. 1968). He may therefore sue to require enforcement of the nondiscrimination clause of the contract with Wyandotte County.

Wyandotte County officials do not use objective criteria for assigning prisoners to cells and do not provide adequate supervision of the jail which would contribute to prisoner safety in the jail. As a result, jail officials have determined that prisoner control is such a problem that they must segregate prisoners racially. Aside from the insufficiency of jail security as a reason for generalized racial segregation, Washington v. Lee, supra, this failure may constitute violations of the county's obligations under the federal contract and of the due process clause of the Fourteenth Amendment, which has been held to require officers to provide prisoners in custody with protection from harm. Williams v. United States, 341 U.S. 97, 103 (1951); Lynch v. United States, 189 F.2d 476, 479 (5th Cir. 1951).

Since generally this Department lacks standing to sue unless specifically authorized to do so by Congressional statute, 4/ the question arises whether we have standing to raise these issues in the instant complaint. Several related but essentially independent grounds for raising the issue exist.

1. The contract itself, by obligating the county to care for the safety of the federal prisoners, provides us with standing to sue to enforce it. Relief in such a suit cannot be limited to federal prisoners, however, since their safety is necessarily tied to the safety and security of the whole jail facility.

4/ But see United States v. Mississippi, 229 F. Supp. 925, 974, 975-976 (S.D. Miss. 1964) (Brown, J., dissenting) reversed on other grounds, 380 U.S. 129; United States v. City of Jackson, 318 F.2d 1, 14-16 (5th Cir. 1963).

2. The government, because of its constitutional obligations not to segregate prisoners and to protect them from harm, because it stands in parens patriae over them, and because of its interest in using state jails for housing federal prisoners as reflected by 18 U.S.C. 4002, may bring suit to protect the due process rights 5/ of federal prisoners it has housed in a state jail. While there is no authority directly on this question, the government has been found to have non-statutory standing to sue to enforce individuals' rights in similar circumstances. See, e.g., Heckman v. United States, 224 U.S. 413, 437-442 (1912) (government suit on behalf of individual Indians to void sales contract of reservation lands previously allotted by government to Indians, permitted in light of government's interest in honoring its treaty obligations to Indians, which required the government to protect Indians' welfare and livelihood); United States v. Arlington County, 326 F.2d 929 (4th Cir. 1964) (right of government to raise and maintain armies for national defense gives it standing to challenge state taxation of its servicemen which might burden its power to assign them across the country); United States v. LeMay, 322 F.2d 100 (5th Cir. 1963) (United States may sue, on behalf of corporations created by Congress in which it owns stock to collect debt owed corporations);

5/ Under this theory, the failure of prison officials to use constitutional means of providing for prisoner safety is a denial of the prisoners' due process rights. The Court will have pendent jurisdiction to determine the due process issue since it shares a "common nucleus of operative fact" with the main claim, equal protection. Cf., United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

United States v. Gray, 201 F.2d 291, 293-294 (8th Cir. 1912) (government may sue for damages from breach of lease agreement entered into between defendant and individual Indian allottee of reservation land, because of government guardianship of Indians, despite fact government lacked legal title, pecuniary interest or contract right and the suit was not brought to enforce any federal law). 6/

3. In prior desegregation cases, courts have been concerned with the issue of prisoner safety when they grant relief relating to cell assignments. See, e.g., Washington v. Lee, supra; Wilson v. Kelley, 294 F. Supp. 1005 (N.D. Ga. 1968) (three-judge court). These courts have held that prison officials may not racially segregate prisoners in anticipation of future violence arising from racial tensions, but may only consider such tensions in certain narrow and particularized circumstances, as where the prisoners are pecularly violence-prone because of temporary loss of self control (e.g., drunks, insane persons, etc.) or jail officials know of a particular animus between the individual prisoners involved (e.g., prior combatants in a race riot or street brawl). Ibid. Failure of prison officials to provide for prisoner safety in a desegregated jail involves the

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6/ These cases are but an extension of the doctrine enunciated in cases brought by others than the government, that if the nexus between the party in the lawsuit and the person having personal rights is sufficiently close, the Court will allow the party in the lawsuit to assert the other persons' rights. See, e.g., NAACP v. Alabama, 357 U.S. 449, 459-460 (1958); Barrows v. Jackson, 346 U.S. 249 (1953); Columbia Broadcasting System v. United States, 316 U.S. 407 (1942); Pierce v. Society of Sisters, 346 U.S. 249 (1925); Brewer v. Hoxie School District No. 46, 238 F.2d 91, 104 (8th Cir. 1956).

due process right to safe custody of the prisoners but the courts are reluctant to interfere with prison administration unless they have evidence of failure of prison officials to provide for prisoner safety amounting to an abuse of their discretion. Rentfrow v. Carter, 296 F. Supp. 301 (N.D. Ga. 1968). Here we have evidence of unsafe prison procedures and of the utility and availability of procedural changes which would alleviate the safety problem. Moreover, the relief we are requesting, non-racial assignment, can reasonably be anticipated to increase problems of prisoner safety once desegregation is ordered. Because we are requesting this relief and already know there is a safety problem in the jail, we have standing to present evidence on the safety issue in order to obtain full and effective relief. Since an equity court desires to do complete not truncated justice, Camp v. Boyd, 229 U.S. 530, 551-552 (1913); United States v. U.S. Klans, 194 F. Supp. 897, 905 (M.D. Ala. 1961), the court will desire such evidence so as to fashion proper relief.

CONCLUSION

For the reasons stated above, we recommend that the attached complaint be filed. No notice letter has been sent. In view of the contractual provisions of the county's agreement with the Bureau of Prisons, the two widely spaced investigations by the FBI, and the fact that the jail is operated by a state agency, there is no question that the county has notice of its legal obligations not to discriminate against or segregate Negroes on the basis of race and has consciously operated its jail in opposition to these obligations. For this reason, it would be inappropriate to delay filing the attached complaint.