Memorandum

SHR:MHN:MS:KAK:cmw
DJ 168-35-41

Subject	Date
Findings Letter re: Washington County Detention Center (Hagerstown, MD)	March 27, 1997

To	From
Isabelle Katz Pinzler Acting Assistant Attorney General Civil Rights Division	Steven H. Rosenbaum Chief Special Litigation Section

We have completed our investigation of the Washington County Detention Center, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"). We recommend that you sign the attached letter advising county officials that unconstitutional conditions exist at the facility with respect to the County's failure to provide adequate suicide prevention, medical care, opportunity for outdoor exercise, hygiene during intake, sanitation in the female housing unit, and access to courts. As required by CRIPA, the minimal remedial measures necessary to redress the unconstitutional conditions are specified for each relevant area in this letter. Throughout the investigation of the facility, we have worked closely with the United States Attorney's office.

Attachment

Approved: ______________________

Disapproved: ______________________

Comments:

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 18, 1997

Mr. Gregory I. Snook
President
Board of County Commissioners
of Washington County, Maryland
100 West Washington Street
Hagerstown, MD 21740

Re: Washington County Detention Center

Dear Mr. Snook:

On April 22, 1996, we advised you that the Department of Justice would investigate conditions of confinement at the Washington County Detention Center (WCDC or the jail), pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 et seq. In October 1996, we toured the facility to examine conditions, accompanied by a medical doctor and a penologist as expert consultants. In addition, we have reviewed facility policy statements and documents. We did a second, more limited tour on March 5, 1997, focusing on use of force, and reviewing some of the areas we had examined on the first tour. Following both tours, we provided the Sheriff, the Warden, the County Attorney, and other Detention Center staff with preliminary assessments of the jail, including the most pressing problems.

We want to thank county officials and WCDC staff for their cooperation during this investigation. Everyone we dealt with was professional, and ready and willing to aid our investigation.

This letter is the official notification to you of our findings and recommendations. We will also send you the reports of our expert consultants under separate cover. As we informed the officials we met with, we were impressed by many features of the WCDC operation and facility. However, there are a number of areas that are constitutionally deficient. The deficiencies are in the following areas: suicide prevention, medical care, opportunity for outdoor exercise, hygiene in intake, sanitation in female housing, and access to courts.

The constitutional law governing conditions of confinement for inmates has two sources. With respect to inmates who have been convicted of criminal offenses, the Eighth Amendment's ban

on cruel and unusual punishment governs all aspects of conditions discussed here. The Eighth Amendment "imposes duties on [prison] officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care." Farmer v. Brennan, 114 S.Ct. 1970, 1976 (1994). It also forbids excessive physical force against prisoners. Hudson v. McMillian, 503 U.S. 1 (1992). Pretrial detainees "retain at least those constitutional rights . . . enjoyed by convicted prisoners." Id. at 545. With respect to pretrial detainees, the Fourteenth Amendment prohibits conditions or practices not reasonably related to the legitimate governmental objectives of safety, order, and security. Bell v. Wolfish, 441 U.S. 520 (1979). Pretrial detainees have not been convicted of anything, and therefore they may not be punished.

The facts that support our findings of unconstitutional conditions at WCDC are set forth below, along with the remedies required to correct the deficiencies.

A. Inadequate Suicide Prevention

Three WCDC inmates killed themselves between August 24, 1995 and November 16, 1995. Each of the first two victims hanged himself from a ventilation grate, using a bed sheet; the third slit his wrists, apparently with the blade from a safety razor. Less than two weeks later, on November 30, 1995, guards cut down an inmate who had hanged himself, again from a ventilation grate using a bed sheet. The inmate lived, though he was in serious medical condition. Five days later a fifth incident occurred — again a hanging, by the same method. The jail personnel caught this inmate in time, and cut him down. There was another serious suicide attempt in 1996, and another in early 1997.

In late 1995 and early 1996, jail authorities took a number of measures in an attempt to solve the obvious suicide problem: the ceiling grates (used by some of the victims to hang themselves) were covered; for a few weeks immediately following the third suicide, staff performed one-half hour checks on all inmates; some members of the staff (but not all) received emergency training on mental health and suicide; seat belt cutters were purchased to use to cut down hanging victims; portable radios were purchased, to allow quicker response time; a full-time psychiatric worker was hired through a grant (although his assigned task is not suicide prevention, but coordination of aftercare for seriously mentally ill inmates). After the serious attempt in 1996, when an inmate tried to slit his own throat, the only further action taken by the facility was a new practice of issuing shaving razors for just the short period of time it takes to shave, rather than leaving them in the possession of the inmates.

Suicide prevention remains inadequate. In general, it is apparent that WCDC has focused on the physical "hardware" problems to the exclusion of mental health and other less tangible issues. The screening instrument used by the jail is inadequate because it does not sufficiently assess the indicators of suicide risk. Further, there has been no use of 24-hour observation for inmates who present an acute risk of suicide. While 15 minute checks are done for some inmates exhibiting suicidal ideation, prolonged use of this "special watch," without the appropriate frequent reassessment of its necessity, appears to have desensitized the staff to the importance of the practice. And the psychological charts of persons with noted suicidal ideation indicate insufficient attention to their mental health needs. For example, one patient who was on special 15 minute watch for 60 days was, during that time, seen only twice by a psychiatrist. Finally, staff training on suicide prevention has not been institutionalized, though the Warden states that he hopes to repeat such training.

Recommendation: At a minimum, the gaps in prevention identified above should be filled: WCDC should revise its screening instrument; use 24-hour observation as a prevention tool where appropriate; revise its special watch practice; take steps to provide more comprehensive mental health services to inmates at risk for suicide; and arrange for annual staff training on the topic. In order to get more information and assistance with developing the best way to accomplish this end, we suggest that the Sheriff contact the National Institute of Corrections (NIC), which has consultants who specialize in suicide prevention. The NIC will make a consultant available to WCDC for free, for a site visit and assessment.

B. Inadequate Medical Care

1. *Generally Poor Quality Of Care*

Our investigation revealed that WCDC's medical care delivery system has a number of serious flaws. Most generally, we find that the quality of medical care at WCDC is substandard: intake physical exams are not comprehensive enough to ensure adequate treatment (especially for women), and the charting and the treatment itself is often inappropriate, with inadequate follow-up. Although staffing levels are much better than they used to be at the jail, some of the problem may be caused by insufficient staffing. WCDC has a doctor present at the facility for just eight hours each week. During this time, the doctor must conduct intake physical exams as well as the week's sick call. In addition, the full-time RN at the facility also serves as a full-time medical contract administrator, decreasing effective nursing coverage.

Compounding the problems of poor care, staff attitudes appear unprofessional in many instances. In addition, there is a complete absence of evaluation and correction of problems that become apparent during a crisis.

Recommendation: WCDC should improve intake, establish better quality review of treatment, and increase staffing coverage. In addition, the facility should improve oversight of the current physician and reassess his qualifications. To ensure that serious incidents are properly assessed and appropriate remedial steps taken, medical personnel should be assigned to review events leading up to each incident in which an inmate ends up in an acute care facility, to evaluate those events, assess causes, recommend improvements, and oversee implementation of the recommendations. Where necessary, senior non-medical staff should also be involved in this process.

2. *Treatment Of Inmates Infected With HIV*

Medical care for WCDC inmates infected with HIV is practically nonexistent, posing immediate danger to their health. Not one of the inmates identified by the jail at the time of our first tour as HIV-infected was receiving appropriate treatment, and a number were receiving no treatment at all. No patient was receiving appropriate antiretroviral medications or dosages; none had periodic T-cell or other laboratory monitoring; none was receiving appropriate prophylactic medications, and none was being followed regularly. In sum, WCDC's care for HIV-infected inmates exhibits indifference to their medical needs.

WCDC's inadequate treatment of inmates with HIV disease seems to have a number of causes. The facility's doctor admitted to our consultant that he has little experience treating individuals with HIV disease, and that he has never initiated treatment for any patient with HIV disease. Although the doctor stated that patients with HIV are usually referred to an outside specialist, we found no evidence that this has in fact occurred. In addition, the facility formulary lists only three HIV-related antiretroviral medications. The most potent medications, vital to a medication regimen, are not on the formulary, and appear not to have been prescribed for any patient.

Recommendation: WCDC should establish a chronic care clinic for all persons medical staff know are infected with HIV so that the patients receive regular, comprehensive health care by a physician knowledgeable, experienced, and comfortable in treating HIV disease. Protocols for treating HIV-infected individuals are a necessary part of this reform. The formulary should be expanded to include other HIV-related drugs, and all HIV-infected patients should receive appropriate therapy. WCDC should formalize its relationship with the county health department so

that HIV prevention can continue in continuity with other activities of medical services and so that HIV prevention is a recognized responsibility of the health care vendor.

3. *Other Chronic Illnesses*

Medical care for persons with other chronic illnesses at WCDC is also inadequate. The quality of the treatment provided chronic care patients is substandard. The problem is especially acute for asthma patients, but heart disease, diabetes, hypertension, and epilepsy are also habitually undertreated and disregarded at WCDC.

Besides inadequate treatment, patients with asthma face two other major problems at WCDC. Most important, asthma inhalers were, at the time of the first tour, kept by the officers, rather than by the patients. Because inmates are kept locked up in their cell for many hours each day, this made it difficult for them to access their inhalers, and was very dangerous for them during asthma attacks at night. It was unclear that this policy had been completely corrected at the time of the second visit. In addition, asthma patients apparently are discouraged from exercising, without an appropriate medical evaluation.

Recommendation: WCDC should establish protocols for treating individuals with chronic illnesses. Protocols should discuss the frequency of follow-up for reevaluation of the patient's condition, guidance to the practitioner in management, the type and frequency of laboratory and other diagnostic testing, instructions regarding medications, special therapies, exercise, diet, and maintenance education. If nurses participate in the screening or evaluation of persons with chronic illnesses, they should have training in appropriate physical diagnosis and assessment. Each patient identified with a chronic illness (such as asthma, heart disease, diabetes, hypertension, HIV infection, epilepsy, etc.) should be followed regularly with clear documentation in the chart. Patients with asthma should be allowed to keep their inhalers within ready reach, and should not be discouraged from exercising except for particular medical reasons.

4. *Unacceptable Delay In Responding To Inmate's Request For Health Care*

We received many complaints from inmates regarding the long delay in seeing a nurse after requesting medical attention. Inmate grievances and a past report of the Maryland Commission on Correctional Standards reveal that similar complaints have been made for years. (The situation had apparently improved somewhat by the time of our second visit, but remained a problem, according to both inmates and patient charts.) Timely disposition of requests for health services is essential to

adequate inmate health. Requests for health care services must be screened and handled promptly. Where necessary, evaluation and treatment must be available at any time.

Recommendation: WCDC should screen all requests for medical care promptly, and evaluate and treat inmates within a reasonable amount of time. A mechanism of triaging medical complaints should be developed and implemented.

5. *The Co-payment System Creates A Barrier To Health Care Access*

WCDC's policy is that inmates who have any money in their jail accounts are assessed a co-payment fee for medical care, unless care is "required as necessary treatment." The policy defines "necessary treatment" quite restrictively, as "treatment . . . which is necessary to diagnose, prevent, arrest, or correct any conditions of health which, if left untreated, could reasonably result in serious and/or permanent physical or mental disability or loss of life." The examples given of care that is not "necessary," however, are less stringent — "cosmetic procedures, custodial care, experimental procedures, sex changes, personal hygiene/convenience items, abortions not within the scope of this definition, weight/dietary control, and nonmedical self-help or self-care training."

Whatever this policy language means, it is not reflected in actual practice. Facility staff and inmates all report that each doctor's or nurse's visit is charged for, unless a clear emergency, such as a seizure or a dramatic bloody traumatic injury, exists. In general, inmates are charged for everything. In addition, patients are charged extra for any over-the-counter item recommended and dispensed during their visit, such as antifungal cream or acetaminophen.

The risks are especially great in a facility like WCDC, in which inmates have no ability to earn money, that fee-for-service programs for health care will impede access to care. Our tour revealed that the present WCDC practice creates unacceptable barriers to access; as a result, inmates are not receiving needed care.

Recommendation: WCDC should amend the co-payment policy to eliminate barriers to required treatment, which includes but is not limited to treatment for injury, fever, contagious disease, and mental health, as well as follow-up and preventative care.

C. Inadequate Opportunity For Outdoor Exercise

It is constitutionally required that inmates receive the chance for outdoor exercise. Yet staff and inmate interviews, along with activity logs, all confirmed that inmates are given a chance to exercise outdoors only during the most clement months, and only rarely even then. Inmates frequently go 1 to 4 months without the chance to be outside. This practice has particularly significant consequences for WCDC's substantial long-term inmate population.

Recommendation: Inmates should be allowed to exercise outside regularly.

D. Hygiene In Intake

Inmates at WCDC spend an inordinately long time in the intake area — 48 to 120 hours. Showers are rarely available to inmates in intake. In addition, inmates in intake are not given clean clothes or hygiene items, and at least sometimes they do not receive sheets and blankets.

Recommendations: WCDC should decrease the length of stay in intake to 48 hours or less, except in rare circumstances. If the stay is over 36 hours, the jail should provide clean clothes, hygiene items, and showers.

E. Sanitation In The Female Housing Unit

WCDC's female housing unit has numerous sanitation problems. Drinking water is scarce throughout the facility, but this is especially true in the female housing unit. The problem is exacerbated by the fact that the female bathroom sinks do not drain properly. As a result, female inmates use their mop room for drinking water and to brush their teeth. There is insufficient hot water in the female showers, and at least one of them, too, does not drain properly. In addition, it appears that air quality is inadequate in the unit.

Recommendation: WCDC should immediately and again in the summer months evaluate air quality in the female housing unit, and take any corrective steps necessary; improve availability of drinking water around the facility, especially in the female housing unit; and audit and address the drainage issues in the female housing unit.

F. Access To Courts

WCDC has a constitutional obligation to provide adequate access to courts to its inmates — i.e., access to a law library or to other legal assistance, for purposes of defending a criminal case (unless the inmate has counsel), directly or collaterally attacking their sentence, and challenging conditions

of confinement. The jail houses both pretrial detainees and sentenced inmates, with lengths of stay ranging from a few hours to over a year; the majority of the inmate population at any given time is medium to long term, with a length of stay of over 4 months. This is sufficient time for access to legal materials or assistance to be useful to inmates with legal needs.

The WCDC law library is inadequate, and the facility offers no alternative means to meet its obligation of access to the courts. First, access to the library is very limited. Second, the library itself lacks the resources that could make it useful: there is no set of the U.S. Code, no federal cases, no case finders, no treatises on relevant legal topics. Nor does the library have any "nutshell" guides to law, or legal reference books about prison law. There is no staff or trained inmate assistance. The facility does not make special provision for illiterate inmates. To supplement the law library, the facility uses an interlibrary loan system. But this system, too, is inadequate. Inmates may receive only precisely identified materials, such as cases identified by citation, and may not receive books or material from books.

This system does not provide inmates with adequate access to courts. Even a trained lawyer would be unable to defend or bring a case with the resources available to WCDC inmates. Even if the system worked quickly, because inmates have no access to case finders, they cannot know what to request; further, they completely lack access to any materials except cases.

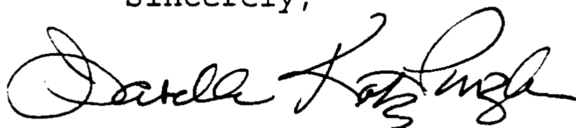
Recommendation: WCDC should develop and implement a new policy ensuring timely and adequate access to legal materials or legal assistance, with provision for illiterate and non-English speaking inmates. The jail should either provide legal assistance to inmates, or supplement its library and establish a better system for allowing inmates to get materials that are not in the library.

* * *

Pursuant to CRIPA, the Attorney General may institute a lawsuit to correct deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1). We would prefer to resolve the issues mentioned cooperatively, and we have every confidence that we will be able to do so. We look forward to working with you to

develop solutions. The line attorney assigned to this matter, Margo Schlanger, will be in contact with you soon, or you can call her at (202) 616-8657.

Sincerely,



Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Richard Douglas, Esquire
County Attorney

Mr. Charles F. Mades
Washington County Sheriff

Lieutenant Van Evans
Warden, Washington County Detention Center

Lynne Battaglia, Esquire
United States Attorney
District of Maryland