The original documents are located in Box 102, folder "324-Cook County Jails (1)" of the Stanley J. Pottinger Papers at the Gerald R. Ford Presidential Library.

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

130

May 13, 1975

TO: Frank Dunbaugh

FROM: Stan Pottinger

SUBJECT: Cook County Jails

Would you or Jesse Queen please keep USA Jim Thompson and/or his staff apprised of the progress of any investigation of the Cook County Jails. He has requested advisory status on a regular basis in light of the federal/state relationship he has there. I told him that I would so advise you and Jesse.

CC: Jesse Queen

JSP:slj
CC: File
Chron

130

August 1, 1975

TO: Bob Murphy
Jesse Queen

FROM: Stan Pottinger

SUBJECT: Cook County Jails

Please see the attached article entitled, "Jailhouse Shock" from NEWSWEEK, August 4, 1975.

The allegations of wholesale violations of rights set forth in this article need to be investigated (I see that the FBI has reported to be doing so now.) Please make sure that appropriate investigations are undertaken and completed--whether state and local, US Attorney's office, or with your participation. Anything that you do should be with knowledge in the US Attorney's office.

CC: Frank Dunbaugh
Jim Turner

JSP:slj
CC: File
Chron

bered less for their achievements than for their macabre decline and fall.

—JAMES R. GAINES with DEBORAH W. BEERS in New York

SCANDALS:

Jailhouse Shock

The guard patrolling tier G-4 of Cook County Jail in Chicago earlier this month was only mildly curious when he saw a rope of braided bedsheets in one of the cells. "Oh, we use that for exercise," an

said to have free rein to terrorize other prisoners, and just last week a former inmate sued jail officials for $11 million in damages, charging that he had been beaten and sexually abused. A local gangster reportedly got royal service during his stay, and arranged a junket to Las Vegas for jail staffers.

The most shocking story appeared in The Chicago Sun-Times last week. Brutal guards, the newspaper said, forced mentally ill prisoners to stage bloody "cockfights"—bare-hand combats in a

are beyond Moore's control, the group urged his dismissal, charging that "an all-pervasive atmosphere of corruption and moral decay" makes the jail "more crime than corrections." Since Chicago Mayor Richard J. Daley himself reportedly endorsed that verdict, Moore's ouster was considered just a matter of time. What remained to be seen was whether the cleanup would stop there, or whether Cook County would finally deal with the deeper mess at its jail.

—DENNIS A. WILLIAMS with FRANK MAIER in Chicago

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

130 ✓

TO : J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DATE: August 4, 1975

JHQ:bpm

DJ 168-23-3

FROM: Jesse H. Queen, Chief
Public Accommodations and
Facilities Section

SUBJECT: Cook County Jails
INFORMATION MEMORANDUM

Reference your memorandum of August 1, 1975, with attached article entitled "Jailhouse Shock."

This Section has conducted an investigation of the Cook County Jail and, based upon the results, submitted a justification memorandum on July 14, 1975, recommending that suit be filed. We sent a copy of the justification memorandum and proposed complaint to the United States Attorney and requested his views and comments.

cc: Frank M. Dunbaugh
Deputy Assistant Attorney General

JSP r'cvd. 8/5/75

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

August 4, 1975

JHQ:bpm

DJ 168-23-3

Jesse H. Queen, Chief
Public Accommodations and
Facilities Section

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cc: Frank M. Dumbaugh
Deputy Assistant Attorney General

130

August 19, 1975

TO: Jesse Queen

FROM: Stan Pottinger

SUBJECT: Cook County jails

The Acting United States Attorney in Chicago, Sam Skinner, called to apprise me of the current controversy between the Cook County Corrections Board and the sheriffs' office, and the director of the Cook County Department of Corrections. He indicated that there is a 90-day probation period before a decision will be made on whether the director will be fired.

He said that he is providing all this information in expanded form to your office, and wanted to have an opportunity to give his views before suit is filed, in the event that we complete our investigation and propose a suit within the 90-day period. I told him that we would continue working with his office on the matter, and would go forward with our investigation as you have been, with which he agrees.

cc: Frank Dunbaugh

JSP:ng
File
Chron
FYI

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DATE:
JHQ:PSL:SAW:lrs
DJ 168-23-3

FROM : Stephen A. Whinston, Attorney
Public Accommodations and
Facilities Section

SUBJECT: Cook County Jail

INFORMATION MEMORANDUM

1. Our investigation is completed and we have recommended litigation against Sheriff Richard Elrod, Executive Director Winston Moore, the County Commissioners, and the State Department of Corrections and its Director.

2. Litigation against this facility fits into our program since we will be suing the state, for failing to enforce its standards. In addition, due to the size of the Jail (the largest in the country, with a population of close to 5000) and the notoriety of its conditions (2200 over capacity), we have the opportunity to improve conditions for a maximum number of detainees in one lawsuit.

3. Winston Moore is the Executive Director of the Cook County Department of Corrections. He is responsible to and appointed by the County Sheriff. He is currently under attack for mismanagement of the Jail, particularly with regard to the large number of escapes and the mishandling of commissary funds. None of the charges relate to the constitutional rights of the Jail inmates. Efforts to have Mr. Moore fired have progressed to the point where he is now under 90 days probation. At the end of this period, the Sheriff and Commissioners may choose to drop charges or to proceed administratively against Mr. Moore.

U. S. Attorney Skinner suggests that we not file suit during this 90 day period.

4. Private Litigation

In January, 1975, the amended complaint in Duran, et al. v. Elrod and Moore, No. 74-C-2949 was filed. This is a class action attacking a broad range of conditions of confinement at the Jail. Judge McMillen has dismissed part of the suit and has indicated he will not grant effective relief. Plaintiff's counsel (Legal Assistance Foundation of Chicago) has requested our assistance, stating he does not have the resources (money, staff, experts) to do the best job. He further states that our presence in court will have a favorable impact on Judge McMillen. His timetable anticipates finishing discovery by January.

5. Conclusion

Due to the size of the institution and the anticipated difficulty in forming relief, our pretrial discovery will have to be extensive. A delay of 60-90 days will not enable us to prepare fully for a very important case. Although we suggest filing our own suit, local rules require us to inform the court of all similar suits pending. It is inevitable that the defendants will move for consolidation with Duran and we have no justification to oppose this. Thus, we are tied to the Duran schedule, whether we like it or not.

The U. S. Attorney fears that our filing will be perceived by the public as a call for Moore's ouster. One possible way around this is to drop Moore as a defendant in our suit. All relief can be afforded through the Sheriff who is statutorily in charge of the Jail. We feel it is essential to the proper preparation of this case that we file suit as soon as possible.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Stephen A. Whinston, Attorney
Public Accommodations and
Facilities Section
Cook County Jail

JHQ:PSL:SAW:lrs
DJ 168-23-3

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T. 7-2-75 JUL 14 1975

Jesse H. Queen, Chief
Public Accommodations and
Facilities Section
Stephen A. Whinston, Attorney
Public Accommodations and
Facilities Section

JHQ:PSL:SAW:lrs
DJ 168-23-3

Proposed Litigation Concerning the Cook County Jail

I. Introduction

The Cook County Jail is the largest jail in the United States. Conditions at the Jail were brought to our attention when we received inspection reports on all Illinois county jails prepared pursuant to statute by the Illinois Department of Corrections. The State report detailed conditions of severe overcrowding. An F.B.I. investigation was then initiated.

The Jail is located on a 52 acre tract in southwestern Chicago, Illinois. Originally designed to house 2,890 inmates, the Jail had an average daily population of 4,773 in 1974. On the date of the F.B.I.'s inquiry, April 21, 1975, the institution held over 4900 inmates, including 135 Federal prisoners. Over 90% of the male State inmates were pre-trial detainees, being held only because of an inability to post bond set by the State criminal courts.

The Jail is composed of four major parts. Division I, constructed in 1929 and not renovated since, is a maximum security facility. Designed for 1,395 inmates, the average daily population in 1974 was 2,731. On April 21, there were over 2,800 inmates in Division I, including 110 Federal prisoners. Division II (formerly the House of Correction) is a maximum/medium security facility, designed for 1,135. The average daily population

cc: Records
Chrono
Queen
Whinston
Trial File
USA, Chicago, Ill.
Hold

in 1974 was 1,857, and the population on April 21, 1975, was over 1,900. Division III (the Women's Correctional Center) was opened in late 1973 and has a designed capacity of 186. The average population in 1974 was 185, and the population on April 21, 1975, was 196, including 25 Federal prisoners. The fourth element of the Jail is the Anton Cermak Memorial Hospital. The Jail population averages 78% black, 20% white and 2% other.

II. Conditions of Confinement

A. Overcrowding

Overcrowding is the key factor to nearly all the deficiencies outlined herein. While the Jail may be adequate for 2500 inmates, facilities for visiting, recreation, sanitation, and even sleeping are past the breaking point with its current population.

Inmates in Division I are housed in four cell houses. Each cell house has one floor for administration and four floors on which inmates are housed. Each floor is composed of two wings or blocks, with four tiers per block. Each tier is composed of two rows of 20 cells and a day room. One cell per tier is a shower cell.

Each cell in Division I measures 8' by 6' and is occupied by two inmates.[1/] In addition, some inmates

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1/ According to the National Sheriffs Association and the American Correctional Association, 50 square feet of cell space per inmate is the acceptable minimum. Division I cells would house one inmate each under these standards. National Sheriffs Association, Guidelines for Jail Operations; American Correctional Association, Manual of Correctional Standards, 49. This standard has also been adopted by the State of Illinois for housing inmates in its prisons. Ill. Rev. Stat. ch. 38, §1003-7-3(b).

sleep on beds placed in the dayroom, and others sleep on mattresses placed on the dayroom floor. Tier population ranges as high as 100.

The consequences of overcrowding in Division I are many and varied. The number of inmates in the tier has increased the damage done to plumbing, heating, and lighting fixtures. 2/ According to Sheriff Richard Elrod, "in order to effectuate repairs properly, an entire tier must be evacuated for one or several weeks. This is patently impossible when all tiers are as overcrowded as they are." 3/

According to architects retained by Cook County to evaluate the facility, Division I is "not acceptable by modern day standards." The heating system, and the lighting level are given special mention as being inadequate. 4/

Division II has three cellhouses. Inmates are housed in dormitories as well as cellblocks similar to those in Division I.

2/ Sheriff Richard Elrod to George W. Dunne, President, Cook County Board of Commissioners, letter of April 2, 1975.

3/ Id. Damage noted by State inspectors in December, 1974, included leaking pipes, broken washbasins, broken bunks, broken windows, and inoperable plumbing fixtures.

4/ A. Epstein & Sons, Inc., Master Plan and Building Program For Cook County Department of Corrections, 29-30, (6/1/75), hereinafter cited as Master Plan. For further details of this plan see III, infra.

The West Cellhouse, opened in 1909, housed 150 inmates at the time of the initial F.B.I. inquiry in April, despite the recommendation of the Illinois Department of Corrections that the building be remodeled or abandoned. In March, 1975, two inmates died during a fire in the West Cellhouse. According to Winston E. Moore, Executive Director of the Cook County Department of Corrections, "we had them in a building nobody should have been in." 5/ The West Cellhouse was closed by June and its 150 inmates transferred to other parts of the Jail, adding to the overcrowding in the other units.

The Men's Dormitory houses inmates on two floors, with four dormitories per floor. The Illinois Department of Corrections characterized these dorms, housing between 53 and 59 inmates each, as "very crowded."

Dormitory 3 consists of eight dormitories, housing between 48 and 54 inmates. There are 3 or 4 shower heads, 4 sinks, and 4 toilets in each unit. This is significantly below the accepted standard in the field of corrections. 6/

5/ Chicago Daily News, 3/31/75. In this article, Moore blames the overcrowding on a backlog of convicts not yet transported to state prisons. The total number of such inmates in the Jail (average: 325) would seem to belie that argument. In another statement, Moore has blamed the overcrowding on the political ambitions of the local prosecutor. Chicago Defender, 3/5/75.

6/ The American Correctional Association standards call for one toilet and one washbowl for every 8 jail inmates and one shower head for every fifteen inmates, or fraction thereof. Manual of Correctional Standards, 49.

The Youth Unit contains six dorms and two 26-cell tiers, housing over 400 inmates.

Division III is a modern structure, housing inmates in 26-cell living units. The State inspection report noted serious understaffing. On the date inspected, during the day shift, there was only one officer on duty on each floor. 7/ The report also noted numerous broken windows and "stifling heat" in the cellblocks.

B. Visiting

Largely due to the overcrowded situation, inmates in Division I are allowed only two visiting days per month. Visitors must be at least 18 years old, and are limited to 20 to 40 minutes with the inmates. Visiting opportunities may be withdrawn as a sanction for violating Jail rules.

Visits in Division II are limited to one day per week. Visitors must be at least 18 years old. Both inmate and visitor must stand during the visit, which is limited to 15 minutes. 8/

Division III inmates are allowed visits five days each week and there is no age restriction placed on the visitor. Visits may be limited to 10 minutes if other inmates are waiting for visits. There is no physical contact permitted between inmate and visitor in any of the Jail's divisions.

7/ Each floor of Division III has two wings, with each wing having two cellblocks. On the date of inspection, each cellblock held between 26 and 40 inmates.

8/ There are 19 visiting booths for the nearly 2,000 Division II inmates. Master Plan, 42.

III. The Master Plan

In 1971, the Cook County Department of Corrections initiated a $75 million building program. To date, the major achievement of this program has been the construction of Division III, the Women's Correctional Center. A Work Release Center, with a capacity of 352, is under construction. Remaining on the agenda for this program are the construction of a Reception, Classification and Diagnostic Center with a designed capacity of 496, and a new Men's Dormitory, also with a designed capacity of 496. Construction on these latter buildings is scheduled to begin in July, 1975, with an expected completion date of July, 1977. 9/ There is also a long range plan to phase out the remaining Division II buildings. There are no dates or funds set for this plan. No plans have been made for Division I.

Thus, there will be no relief for the present "inhumane overcrowding" 10/ for at least two years, and no relief at all for Division I, where the overcrowding is most severe.

The overcrowding has already had its effects on the use of the major accomplishment of the building plan, Division III. The architects clearly state that Division III's cells were constructed for the occupancy of one inmate. 11/ Yet less than one year after its completion, these cells were being occupied by two inmates. 12/

9/ Master Plan, Exhibit 6.

10/ Master Plan, 10.

11/ Master Plan, 55.

12/ Statement of Assistant Superintendent Robert Glotz to F.B.I.

Ironically, the entire plan is oriented toward facilities for the convicted inmates at the Jail rather than the pre-trial detainees. Other buildings included in the plan are not used for inmate housing. 13/

IV. Federal Inmates

There are now over 100 male Federal inmates in Division I. These inmates will be moved to the brand new Federal Detention Center in Chicago on September 1, 1975. According to Warden Ray Nelson, the new Federal jail has a capacity of 400. Female Federal prisoners will remain in Division III of the Cook County Jail.

V. Law

A. Jurisdiction

Jurisdiction is based on the power of the Attorney General to bring suit to enjoin widespread deprivations of Constitutional rights. U.S. v. Brand Jewelers, 318 F. Supp. 1293 (S.D. N.Y. 1970). This Division has filed two suits alleging such jurisdiction. U.S. v. Solomon, No. M-74-181 (D. Md.), filed 2/21/74; U.S. v. Kellner, (D. Mont.), filed 11/8/74.

B. Parties

Under Illinois law, the Sheriff is in charge of the county jail. A special statute dealing with Cook County creates, "within the office of the Sheriff," a county department of corrections, with an executive director appointed by the Sheriff. 14/ The department has

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13/ These buildings, which are now under construction, are a central kitchen, an addition to the power house, and a transportation, storage and maintenance building.

14/ Ill. Rev. Stat., ch. 125, §§202, 212.

jurisdiction over any "penal, correction, or prisoner diagnostic center facility" operated by either the county or any of its municipalities. 15/

The Cook County Board of Commissioners pays the employees of the department 16/ and "must appropriate and provide funds for the necessary, ordinary and contingent costs incurred by the office of the Sheriff. . ." 17/ The County Board is also responsible for providing food for jail inmates. 18/

C. Overcrowding

The Cruel and Unusual Punishment clause "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958). In the area of Jail overcrowding, courts have generally accepted the judgment of the major professional associations in the field of corrections, the American Correctional Association and the National Sheriffs Association, that 50 square feet of cell living space per inmate provides a minimum standard. In Tyler and U.S. v. Percich, No. 74-40-C(2)(E.D. Mo.), aff'd, No. 74-1845 (8th Cir. 1974), the court ordered that cells similar in size to those in Division I then holding two, and often three, inmates be reduced in 30 days to single occupancy. In Campbell v. McGruder, No. 1462-71 (D.D.C. 1975), the court ordered that double occupant 6' x 8' cells

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15/ Ill. Rev. Stat., ch. 125, §203.

16/ Ill. Rev. Stat., ch. 125, §213.

17/ Ill. Rev. Stat., ch. 125, §215.

18/ Ill. Rev. Stat., ch. 75, §16.

be reduced to single occupancy within 15 days. See also, Costello v. Wainwright, No. 72-109-Civ-J-S (M.D. Fla. 5/22/75), where the court ordered 7' x 7' cells, then housing four inmates each, be reduced to single occupancy. The 50 square feet standard has also been adopted by the Illinois legislature for inmate housing in the state prisons. Ill. Rev. Stat. ch. 38, §1003-7-3(b). Due to the overcrowding, among other conditions confinement in the Cook County Jail has been held to be cruel and unusual punishment for pre-trial detainees less than 18 years old. Swansey v. Elrod, 386 F. Supp. 1186 (N.D. Ill. 1975).

D. Visiting

This claim applies only to the pre-trial detainees in the Jail. As with all types of confinement, "Due process requires that the nature and duration of commitment bear some reasonable relationship to the purpose for which the individual is committed." Jackson v. Indiana, 406 U.S. 715, 738 (1972). Pre-trial detainees, innocent under the law, are committed solely to assure their appearance at the trial. See, Stack v. Boyle, 342 U.S. 1, 4 (1951). As a result restrictions placed on pre-trial detainees based on theories of punishment, deterrence, or even rehabilitation cannot withstand Constitutional scrutiny. E.g., Anderson v. Nosser, 456 F.2d 835 (5th Cir. 1972); Rhem v. Malcolm, 507 F.2d 333 (2nd Cir. 1974).

Courts dealing with the conditions of confinement of pre-trial detainees have generally held that the Constitution prohibits "depriving pre-trial detainees of the rights of other citizens to a greater extent than necessary to assure appearance at trial and security

of the jail. . ." Rhem v. Malcolm, supra, at 380. 19/

Applying this general theory to the area of visits, limitations which have no rational relationship to the above-mentioned purposes of detention violate the detainee's Fourteenth Amendment rights. E.g., Inmates v. Eisenstadt, supra; Rhem v. Malcolm, supra.

The limitation of visits to a bi-monthly or weekly frequency has nothing whatever to do with the safekeeping of an inmate. The only possible rationales supporting such a limitation are the numerical inadequacy of the Jail staff to supervise visiting, or the lack of physical facilities to accommodate the numbers of inmates involved. Both these rationales, however, deal with the failure to expend funds. This is not an acceptable justification for the denial of rights secured by the Constitution. Watson v. City of Memphis, 373 U.S. 526 (1963).

In Jones v. Wittenberg, supra, and Brenneman v. Madigan, supra., the court ordered that daily visitation periods in the day and evening be implemented. In Jones v. Wittenberg, 357 F. Supp. 686 (N.D. Ohio 1973), the court ordered the construction of additional visiting facilities at a county jail.

19/ See also, Inmates v. Eisenstadt, supra; Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark. 1971); Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio 1971), aff'd sub nom. Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972); Inmates of Milwaukee County Jail v. Petersen, 353 F. Supp. 1157 (E.D. Wis. 1973); Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972); Collins v. Schoonfield, 344 F. Supp. 257 (D. Md. 1972); Seale v. Manson, 326 F. Supp. 1375 (D. Conn. 1971); Wilson v. Beame, 380 F. Supp. 1232 (E.D. N.Y. 1974); Hamilton v. Landrieu, 351 F. Supp. 549 (E.D. La. 1972). No case has applied a more restrictive standard.

Time limits as short as 15 minutes reduce visits, such as they are, to little more than formalities. Visitation periods of at least one hour are the accepted standard in the corrections profession. 20/ Hour-long visits were ordered in Inmates v. Eisenstadt, supra. Blanket limits on the type of visitor allowed also unnecessarily restrict the associational rights of inmates. While the facts of individual cases may justify particular limitations, other less onerous techniques than the across-the-board limitations now in effect are available to weed out visitors considered undesireable. The Constitution requires that these less onerous alternatives be employed. Shelton v. Tucker, 364 U.S. 479 (1960). Similar limits on visitors have been struck down as unconstitutional in Jones v. Wittenberg, supra, and Brenneman v. Madigan, supra. Convicted Illinois prison inmates are allowed visitors under the age of 18. Adm. Regs. §829, Ill. Dept. of Corr., Adult Div.

All visits at the Jail are conducted through booths. In Rhem v. Malcolm, 371 F. Supp. at 626, the court ordered that a program of contact visits be instituted at the Manhattan House of Detention. The court's holding was based to a significant degree on the testimony of the Warden of the Federal Detention Center in New York. According to the Warden, Louis Gengler, booth visits are obsolete. "To our way of thinking, that has gone out a number of years ago." 371 F. Supp. at 603.

E. Pending Litigation

Two lawsuits involving conditions of confinement at the Cook County Jail are presently on file in Federal

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20/ American Correctional Association, Manual, 543.

Court. In Harrington v. Leavitt, No. 74-C-3290, plaintiffs challenge the medical care, or lack thereof, for pre-trial inmates identified by the Jail classification procedure as in need of psychiatric treatment. In Duran v. Elrod, No.74-C-2949, plaintiffs challenge the entire range of conditions at the Jail including overcrowding, visitation, diet, exercise, and disciplinary procedure. The amended complaint in Duran was filed in January, 1975, and discovery has been proceeding slowly. Both plaintiff classes are represented by counsel from the Legal Assistance Foundation of Chicago.

On June 20, 1975, Judge McMillen certified Duran as a class action. He also dismissed plaintiffs' complaints regarding visitation and recreation for the pre-trial inmates of the Jail, citing Pinkston v. Bensinger, 359 F. Supp. 95 (N.D. Ill. 1973), a decision dealing with convicted inmates placed on disciplinary segregation in Illinois prisons. The Court went on to state "in our opinion, verbal and tactile communication with non-professionals is a privilege, not a right, and a Federal court should not attempt to define the limits or conditions on which this privilege is to be granted to pre-trial detainees." 21/ At other points in the opinion, the Court noted that the defendants have no funds to build additional housing units. Id.

Progress towards trial in Duran has been slow. Plaintiffs have filed preliminary interrogatories and have taken one deposition. No expert witnesses have been retained or consulted.

I have spoken with plaintiff's counsel a number of times, most recently on July 9. He states that his

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21/ Duran v. Elrod, No. 74-C-2949, p. 6 (6/20/75).

resources available for Duran are limited. The initial opinion by Judge McMillen is not favorable. He does not recognize any constitutional distinctions between convicts and pre-trial detainees. His use of the right/privilege dichotomy as an analytical took is clearly erroneous 22/ Plaintiffs' counsel feels that our presence in the courtroom would be persuasive with the court. He also states that his organization's financial situation will not allow him to devote the time, manpower, and funds necessary to the presentation of the best case.

F. Conclusion

Inmates of the Cook County Jail, most of whom are pre-trial detainees, are being held under conditions that fall far below both statutory mandates for Illinois prisons and the accepted standards of the corrections profession. No relief to the chronic and severe overcrowding is in sight.

As Cook County is the largest Jail in the country, we have the opportunity to have a maximum impact on the developing law and on the actual conditions of confinement for jail inmates. More inmates are held in the Cook County Jail than in all the 230 jails in Alabama, the subject of our intervention in Adams. Form the statements of plaintiffs' counsel and the initial opinion of Judge McMillen, the Duran case appears to be in jeopardy. Even if plaintiffs win on the merits, an effective remedy is doubtful. If, as it appears, our participation at the trial level might be crucial to the resolution of these issues, we should file now rather than waiting to see what happens.

22/ "This Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.'" Graham v. Richardson, 403 U.S. 365, 374 (1971).

I recommend that the attached complaint be filed as soon as possible. If we do not act with some speed, the Duran case may proceed to the point where our participation would not be effective.

copy

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RICHARD ELROD, Sheriff, Cook County, WINSTON MOORE, Executive Director, Cook County Department of Corrections, GEORGE W. DUNNE, President, and MATHEW W. BIESZCZAT, CHARLES S. BONK, MILDRED CASEY, FRANK W. CHESROW, FLOYD T. FULLE, CARL R. HANSEN, IRENE C. HERNANDEZ, JEROME HUPPERT, RONALD R. LARSON, MARY M. McDONALD, RUBY RYAN, JOHN H. STROGER, JR., MARTIN TUCHOW, HAROLD L. TYRRELL, and JOSEPH I. WOODS, Members, Cook County Board of Commissioners, STATE OF ILLINOIS, ALLYN R. SIELAFF, Director, Illinois Department of Corrections, Defendants.	CIVIL ACTION NO. COMPLAINT

1. This is a civil action commenced by the Attorney General of the United States for the purpose of enjoining serious and systemic violations of rights secured by the Eighth and Fourteenth Amendments to the Constitution of the United States to individuals incarcerated in the Cook County Jail.

2. This Court has jurisdiction over this action under 28 U.S.C. §1345 and the Eighth and Fourteenth Amendments to the United States Constitution.

3(a) Defendant RICHARD ELROD is the Sheriff of Cook County and, as such, has responsibility for the operation and administration of the Cook County Department of Corrections and the Cook County Jail.

(b) Defendant WINSTON MOORE is the Executive Director of the Cook County Department of Corrections and, as such, exercises immediate responsibility for the operation and administration of the Cook County Jail.

(c) Defendant GEORGE W. DUNNE is the President and defendants MATHEW W. BIESZCZAT, CHARLES S. BONK, MILDRED CASEY, FRANK W. CHESROW, FLOYD T. FULLE, CARL R. HANSEN, IRENE C. HERNANDEZ, JEROME HUPPERT, RONALD R. LARSON, MARY M. McDONALD, RUBY RYAN, JOHN H. STROGER, JR., MARTIN TUCHOW, HAROLD L. TYRRELL and JOSEPH I. WOODS are members of the Cook County Board of Commissioners and, as such, are responsible for the appropriation of funds for the necessary, ordinary and contingent costs involved in the operation and administration of the Cook County Jail.

(d) Defendant STATE OF ILLINOIS through its Department of Corrections, sets minimum standards for the operation of county and municipal jails, including the Cook County Jail, and inspects such jails to insure compliance with the established standards;

(e) Defendant ALLYN B. SIELAFF is the Director of the Illinois Department of Corrections and has statutory authority to secure appropriate relief for noncompliance with such standards. Despite good cause, defendant Sielaff has failed to exercise that power with respect to the Cook County Jail.

4. At all times pertinent to the matters alleged in this Complaint, defendants were and are acting under the color of the laws, statutes, ordinances, regulations, customs, and/or usages of the State of Illinois and Cook County.

5. Individuals charged with violating the criminal laws of the State of Illinois within Cook County are incarcerated in the Cook County Jail unless and until they post the monetary bail set by the local courts. If they cannot meet such bail and are not otherwise released, this incarceration lasts until final disposition of the criminal charge.

6. Individuals convicted of crimes may be sentenced to terms of confinement of up to one year in the Cook County Jail.

7. Under the Eighth and Fourteenth Amendments to the United States Constitution, the defendants owe a duty to each inmate incarcerated in the Cook County Jail not to impose cruel and unusual punishment on such inmate and not to deprive such inmate of life, liberty, or property without due process of law. This constitutionally mandated duty includes, but is not limited to, the following:

(a) The duty to provide safe and sanitary living conditions;

(b) The duty to provide an opportunity for adequate visitation and communication;

8. Defendants have violated the rights of inmates confined in the Cook County Jail by maintaining it in an unconscionable, unsafe, and hazardous state in the following ways, among others:

a) Maintaining overcrowded inmate living areas, injurious to the physical and mental health of the inmates;

b) Failing to insure that toilets, sinks, and showers are adequate in number, operable, and sanitary;

c) Failing to provide adequate lighting, heating, and ventilation.

9. Defendants have violated the rights of pre-trial detainees confined in the County Jail by imposing arbitrary and unreasonable limitations on visitation and communication in the following ways, among others:

a) Prohibiting an inmate from receiving visitors on all except two or four days per month;

b) Limiting the duration of visits to as short as fifteen minutes;

c) Limiting visitors to those over 18 years old;

d) Limiting visiting facilities so as to deny physical contact between inmate and visitor.

10. The acts and practices described in paragraphs 8 and 9 are in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States in that they impose cruel and unusual punishment and deprive individuals incarcerated in the Cook County Jail of life, liberty, and property without due process of law.

11. The acts and practices described in paragraphs 8 and 9 constitute large-scale and systemic deprivations of the rights of the approximately 5000 individuals incarcerated in the Cook County Jail. The proper treatment of individuals confined in the Cook County Jail is a matter of direct concern to the United States as evidenced by Congressional enactments such as the Omnibus Crime and Safe Streets Act of 1968, as amended, 42 U.S.C. §3701 et seq. and the substantial sums of money expended annually pursuant to programs and activities funded under this statute by the Law Enforcement Assistance Administration.

12. The relief sought herein is the only adequate or available remedy for the unconstitutional and unlawful acts and practices described in paragraphs 8 and 9.

13. Unless restrained by order of this Court, defendants will continue to engage in the above described practices to the immediate and irreparable injury of the United States.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining the defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the unconstitutional and unlawful acts and practices described in paragraphs 8 and 9 above, and from failing or refusing to provide proper facilities for and treatment of the individuals incarcerated in the Cook County Jail in accordance with the standards to be developed and adopted by the Court upon the basis of the record in this case.

The United States further prays that this Court grant such other, different, and further relief as the interests of justice may require, together with the costs and disbursements of this action.

Edward H. Levi
Attorney General

J. Stanley Pottinger
Assistant Attorney General

Samuel K. Skinner
United States Attorney

Jesse H. Queen
Attorney
Department of Justice
Washington, D. C. 20530

Stephen A. Whinston
Attorney
Department of Justice
Washington, D. C. 20530

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

324

TO : J. Stanley Pottinger, Assistant Attorney General, Civil Rights

DATE: Nov. 21, 1975

FROM : John J. Buckley, Jr., Special Assistant to the Attorney General

SUBJECT: United States v. Richard Elrod, et al, (Cook County, Illinois - Jail Standards)

In view of the uncertain jurisdictional basis for bringing this suit, it would appear to be appropriate to have a memorandum from the Division discussing the theory and authority for the suit. I will hold on to the complaint in the meantime.

11/28

FYI—
Will want to see response when done.
T.
S

Orig. to Jess Queen for draft memo
cc: FMC
LF

JSP r'cvd. 11/21/75

ASSISTANT ATTORNEY GENERAL

130

Department of Justice
Washington, D.C. 20530

December 8, 1975

TO: J. Stanley Pottinger

FROM: Frank M. Dunbaugh

Here is the response to John Buckley you wanted to see. I have put it in two parts:

1. A formal memo to him setting out the legal and factual basis for the Attorney General's standing to sue.

2. An informal cover note discussing the program and questioning whether he should suggest that the AG review the whole program.

I am not privy to Buckley's relationship to the AG. It may be that the note is not appropriate, because the original request really came from Levi, not Buckley. If you decide not to send the note, you should consider whether some of what is in it should be pointed out to the AG in some other form.

I tried to get a reading from Buckley before we wrote the memo, but he didn't say much, except to note that we are breaking new ground since the previous Brand Jewelers type cases did not involve jails. I think this misses the point. If we have decided to use litigation to correct jail conditions, it doesn't make sense to hesitate about initiating cases if we have a plausible argument. The only way to test our standing is to try it. The only alternative is to limit our activity to messing with other people's law suits and to wait for legislation.

The statewide jail suit in Washington is nearly ready to go. The U.S. Attorneys have come around most of the way. I have asked Jesse to have the papers ready Thursday. You may wish to get this paper in shape and then hold it to be sent up with Washington. That may impress the AG with the nationwide impact. Whether that will move him forward or back I can't say.

I plan to bet out of town Monday through Wednesday. I'll be in the office Thursday, but plan to take Friday off. If you can arrange it, please let's get together on Thursday so we can close of these cases.

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

December 8, 1975

TO: John J. Buckley, Jr.

FROM: J. Stanley Pottinger

Here is the memorandum you requested on standing. Does your requesting it mean that you are considering a change in the Department's present policy of using litigation to secure the constitutionally protected rights of inmates?

We reached this policy position several years ago based on the facts that (1) serious constitutional deprivations are occuring nationwide, (2) the federal courts are going to deal with the problem with or without us, (3) we can make respectable arguments in support of our standing (Indeed OLC once said we did not need a statute, because we already had standing), and the litigative approach, as opposed to legislative or regulatory, is best suited to gradual, deliberate change. Hedging against the possibility of losing the standing through adverse court decisions, the Department has proposed to OMB new legislation which would specifically authorize this type of suit.

At this point, unless we change our present course, each case is only a question of where and when we choose to exercise the authority we are asserting and to risk a legal confrontation.

Attorney General Levi has not personally and specifically reviewed and endorsed the continuation of this program, anyone than he has reviewed many other programs, but it is a reasonably well established program. We have advised Congress of it in each of the last three budget submissions and included it in each of the annual reports of the Attorney General since FY 1972. In Ruiz we argued our standing to the Court of Appeals for the Fifth Circuit pointing out that prisoner rights is a matter of national significance. And, as already noted, we have recently asked OMB to approve a new statute.

Under this theory of nonstatutory standing, we have initiated two lawsuits (both in 1974) and intervened in eight others. Currently, we have approximately twelve investigations of penal institutions or systems under way with a view toward possible litigation under the nonstatutory theory.

We are not asking the Attorney General to impose on defendants liability that does not already exist. The rights and liabilities are constitutionally created and the victims already have a statutory right to sue. (In Cook Co there is a private suit.) The only question is whether the Attorney General should use his resources to enforce what the constitution has mandated, or to frame it less palatably, should he decide now to discontinue protecting constitutional rights which we have been enforcing? I would not ask him to do so.

There were two reasons that I sought his review of this case. First, his review ensures that the matter is of sufficient public importance to support our standing. Second, I want his approval of the enforcement technique we are proposing. That is, placing greater responsibility on state officials to secure compliance by local jails. If he approves, we plan to use this technique in other states. The Alabama case has already headed in this direction. We are also proposing a statewide suit in Washington State.

December 8, 1975

TO: John J. Buckley, Jr.

FROM: J. Stanley Pottinger

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c: Pottinger ✓
cc: Records

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OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

130

TO : John J. Buckley, Jr.
Special Assistant to the
Attorney General

DATE: 17 DEC 1975

FROM : J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JSP:JHQ:PSL:SAW:eh
DJ 168-23-3

SUBJECT: United States v. Richard Elrod, et al. (Cook County Jail)

This is in response to your memorandum dated November 21, 1975, discussing our nonstatutory authority to bring suit.

Jurisdiction is based on 28 U.S.C. §1345, which refers to cases in which the United States is a plaintiff. The real question, therefore, is one of standing. The issue was well phrased by the Supreme Court in Sierra Club v. Morton, 404 U.S. 727, 732 (1972).

> Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a 'personal stake in the outcome of the controversy' as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution' (citations omitted).

The proposed lawsuit is based on the nonstatutory authority and standing of the United States to sue to enjoin widespread deprivations of Fourteenth Amendment rights. This authority finds its support from two sources. The first source is the Government's interest in the general welfare of its citizens. The second source is the Government's interest in enforcing the criminal laws of the United States.

A. The United States May Sue In The Public Interest

The authority of the United States, absent specific statutory authorization, to litigate - either through initiation of an action or through intervention - has been recognized in a variety of situations. In such situations the United States has been permitted to initiate litigation to protect its proprietary interests,1/ to protect the national security,2/ to protect interests secured through the war powers clause,3/ to protect the public from the monopoly of a patent procured by fraud,4/ to remove burdens from interstate commerce,5/ and, on alternative grounds, to

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1/ See e.g., Cotton v. United States, 52 U.S. 241 (1850); United States v. San Jacinto Tin Co., 125 U.S. 273 (1888); Kern River Co. v. United States, 257 U.S. 147 (1921).

2/ See United States v. New York Times, 327 F. Supp. 324, 327 (S.D. N.Y.), rev'd on other grounds, 444 F.2d 544 (2nd Cir.), rev'd on other grounds, 403 U.S. 713 (1971).

3/ See e.g., United States v. Arlington County, 326 F.2d 929 (4th Cir., 1964); United States v. Brittain, 319 F. Supp. 1058 (N.D. Ala., 1970); contra United States v. Madison County Board of Education, 326 F.2d 237 (5th Cir.), cert. denied, 379 U.S. 929 (1964).

4/ United States v. Bell Telephone Co., 128 U.S. 315 (1888).

5/ See e.g., In re Debs, 158 U.S. 564 (1895); Sanitary District v. United States, 266 U.S. 405 (1925); United States v. Republic Steel Corp., 362 U.S. 482 (1960); United States v. City of Jackson, 518 F.2d 1 rehearing denied, 320 F.2d 870 (5th Cir., 1963); United States v. Lassiter 203 F. Supp. 20 (W.D. La.) (three judge court), aff'd 371 U.S. 10 (1962); United States v. United States Klans, 194 F. Supp. 897 (M.D. Ala., 1961).

enjoin widespread deprivations of rights secured by the Fourteenth Amendment and to remove burdens from interstate commerce.6/

The Supreme Court has stressed that the United States need have no pecuniary interests to participate in litigation; rather the Court has emphasized the right of the United States to apply to its courts to protect the public and the interests of all. In rejecting a challenge to the United States' authority, absent statutory authorization, to initiate civil litigation in a patent fraud case, the Supreme Court said: "The essence of the right of the United States to interfere in the present case is its obligation to protect the public from the monopoly of the patent which was procured by fraud..." United States v. Bell Telephone Co., 128 U.S. at 367. See also United States v. San Jacinto Tin Co., 125 U.S. at 285, 286.

In In re Debs, supra the United States brought an action to obtain an injunction against continuation of a strike and boycott, attended by acts of violence, affecting the operation of certain railroads. In upholding the right of the United States to commence such an action, the Supreme Court said:

> "Every government, entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one, and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to

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6/ United States v. Brand Jewelers, 318 F. Supp. 1293 (S.D. N.Y., 1970).

> promote the interests of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court." 158 U.S. at 584.

After reviewing its decisions in United States v. San Jacinto Tin Co., supra, and United States v. Bell Telephone Co., supra, the Supreme Court, in Debs, set forth the nature of the controversy which will justify the initiation of litigation by the United States:

> "It is obvious from these decisions that while it is not the province of the government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the constitution are entrusted to the care of the Nation, concerning which the Nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties." 158 U.S. at 586.

The ground relied on in Debs to sustain the right of the United States, absent express statutory authority, to initiate litigation was an interference with interstate

commerce with alleged national impact, an area entrusted to governmental concern by the Constitution.

In United States v. Brand Jewelers, 318 F. Supp. 1293 (S.D. N.Y., 1970), the United States sought to enjoin a widespread practice of obtaining default judgments against economically disadvantaged consumers by filing false affidavits of service of process. In rejecting the argument that the Government lacked the standing to sue, the court held that the due process clause of the Fourteenth Amendment, as well as the commerce clause, furnished the necessary authority. "There appears to be no pertinent constitutional difference between the national power to regulate commerce and the prohibition in the Fourteenth Amendment which the United States seeks in this suit to enforce." Id., at 1300.

The major argument presented in opposition to this line of cases is that such a power is too broad and is subject to abuse. This argument, however, has already been rejected. "The fact that the exercise of power may be abused is no sufficient reason for denying its existence. . ." United States v. San Jacinto Tin Co., 125 U.S. 273, 284 (1888).

The unconstitutional conditions alleged to exist in the Cook Co. jail warrant interference by the government of the United States, because (1) serious constitutional violations are occurring in the Cook Co. jail which is the nation's largest jail, (2) the problems of disregard for constitutional principles in jails, (3) the state and local governments have demonstrated that they are not capable of remedying the situation (even though the state officials in Illinois have the tools to remedy it), and (4) the remedies will require state level planning and federal funding and should touch on other aspects of the criminal justice system. Any systematic approach to solving this national problem will require involvement by the federal executive, particularly the Attorney General. The federal courts are already involved. The litigative approach permits a great deal of latitude for developing different remedial techniques on a case-by case basis with considered input by a variety of local, state and federal officials. In addition, by taking one problem at a time, we tend to build up experience with remedial techniques without having to adopt or impose them as nationwide requirements.

B. The United States May Sue To Enjoin Future Criminal Violations

The proposed complaint alleges "large-scale and systemic deprivations" which result in the imposition on Cook County Jail inmates of cruel and unusual punishment and the deprivation of life, liberty, and property without due process of law (paragraphs 11 and 12). Such action, if taken with specific intent or through a conspiracy, constitutes a criminal violation under 18 U.S.C. 241 and 242. The existence of such possible criminal jurisdiction provides an additional basis for sustaining the authority of the United States to participate in litigative action. Wyandotte Transportation Co. v. United States, 389 U.S. 191 (1967); United States v. Republic Steel, supra; Cotton v. United States, supra.

Civil Actions of private parties may be based on violations of criminal statutes. See Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33 (1916); J. I. Case Co. v. Borak, 377 U.S. 426 (1964). In Wyandotte Transportation Co. v. United States, the Supreme Court, holding that the United States might similarly bring a civil action, said: "In those cases we concluded that criminal liability was inadequate to insure the full effectiveness of the statute wich Congress had intended. Because the interest of the plaintiffs in those cases fell within the class that the statute was intended to protect, and because the harm that had occurred was of the type that the statute was intended to forestall, we held that civil actions were proper.* * * We see no reason to distinguish the Government, and to deprive the United States of the benefit of that rule" 389 U.S. at 202.

In In re Estelle, No. 75-1464 (5th Cir., 7/24/75), the Texas Department of Corrections sought a writ of mandamus to prevent further participation by the United States as plaintiff-intervenor in Ruiz v. Estelle, No. 5523 (W.D. Tex.), a case similar to this proposed suit. The panel's decision was that mandamus was not the appropriate remedy. In a separate opinion, however, Judge Tuttle reached the merits and held that "the United States was entitled to seek civil relief in Ruiz based on the scope and the mandate of the protection guaranteed by analogous criminal statutes." Id., at 8.

Judge Tuttle's opinion was followed by a similar ruling in Adams and United States v. Mathis, No. 74-70-S (M.D. Ala. 9/16/75), a defendant class action alleging constitutional deprivations in Alabama's 233 county and municipal jails. In denying the defendants' motions to dismiss the complaint in intervention, the court held that "while it is clear that the United States may not sue to enforce the constitutional rights of an individual, it is equally clear that the United States has standing to redress widespread and systematic deprivation of constitutional rights. Courts have repeatedly upheld this interest in a variety of proceedings." Id., at 2.

We feel litigation under this theory is particularly appropriate in this situation. The Cook County Jail is the largest jail in the country. Its deficiencies are severe and notorious. And, despite the clear power to do so, the State of Illinois has taken no action to remedy the situation.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : S. Pottinger

DATE: January 19, 1976

FROM : Attorney General

SUBJECT:

I am concerned about the proposed U.S. v. Elrod complaint.

First, my recollection is that we are proposing legislation for a jurisdictional basis.

Second, I wonder at this approach to a Federal presence through the courts to a legislative situation within a state until other measures have been tried.

Let's talk about it.

Circulate.
JPP 2/4/76

Rig & J SP
cc: FMD
Jesse Green

Please prepare comments on AG's concerns