The original documents are located in Box 102, folder "324-Cook County Jails (2)" of the Stanley J. Pottinger Papers at the Gerald R. Ford Presidential Library.

ILL.

U.S. V. ELROD

1. 10/31/75 - Pottinger to Levi requesting authorization to file complaint
2. 11/21/75 - Buckley to Pottinger requesting memo on jurisditional basis
3. 12/8/75 - Dunbaugh to Pottinger with revision of two-part memo to Buckley
4. 1/19/76 - Levi to Pottinger suggesting conference and raising additional issues
5. 2/13/76 - Queen to Pottinger in response to additional issues raised by AG
6. 2/13/76 - Dunbaugh to Pottinger re: AG's note on U.S. v. Elrod

ASSISTANT ATTORNEY GENERAL

(1)

7/14/76 4(-) MO.
K. Howell Π Counsels
Judge McMillen dismissed part of complaint visiting & exercise
7TH 4/21/76
Judg 4/20/76 TRO no discipline w/o hearing
Δ 6/15/76 moved to dismiss TRO dismissed discovery
W. Moore
no cart [illegible] re fines

Department of Justice
Washington, D.C. 20530

31 OCT 1975

MEMORANDUM FOR THE ATTORNEY GENERAL

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

I recommend that you authorize me to file the attached complaint which alleges that inmates of the Cook Co., Illinois, jail are being deprived of rights secured to them by the federal constitution. The jail is the largest in the United States. Its inmate population of about 4900 consists 90% of pre-trial detainees.

The State Department of Corrections is authorized under Illinois law to inspect local jails and to compel compliance with state jail standards. Their reports and an FBI investigation reveal that the Cook Co. jail is severely overcrowded, so that inmates are required to sleep on the floor, the heating, lighting, ventilation and plumbing facilities are not adequate, and visits have been severely limited. The total environment is such that incarceration in the Cook Co. jail amounts to cruel and unusual punishment in violation of the Eighth Amendment and the restrictions therein constitute denials of liberty without due process of law in violation of the Fourteenth Amendment, at least for pre-trial detainees. A federal court has already removed juvenile pre-trial detainees from this jail because of violations of their federal rights.

In an interview in the Corrections Digest of October 1, 1975, the director of the Cook County Corrections Department stated that "We have more than 3,000 inmates crammed into space built for 1,306. Sometimes we have 5,000 inmates. There are more men sleeping on the outside than on the inside of cells. We have 100 or more in tiers built for 39.". Earlier this year two inmates awaiting trial on disorderly conduct charges were burned to death in a 65 year old cellhouse that had been condemned by the state. Conditions, particularly overcrowding, are so notorious that the jail has received substantial adverse coverage in the national media (see attached).

cc: Records
Chrono
Pottinger
Dunbaugh ✓
Queen
DAG

The seriously deficient conditions in the Cook County jail are not disputed by the administrators. Indeed, because of its size and problems, the jail has become a symbol of many of the failings of our criminal justice system. There is already a private suit dealing with some of the same issues. By filing our own suit and having the other joined with it, we could insure adequate fact gathering, and by insisting that the relief be developed with appropriate guidance from state corrections officials, and by reference to the standards adopted by the American Correctional Association, and the National Sheriffs Association, we will avoid ad hoc judgments with regard to relief in this case.

The matter of relying upon state officials to do their job raises an important point with regard to this and other jail cases which are arising. Most experts, including Norm Carlson, agree that jail facilities and conditions are a seriously growing problem. In most cases they are worse than state prisons. According to the 1970 jail census conducted by LEAA, there are 4,037 jails in the country with a average daily population of 160,863 of whom about one half are pre-trial detainees. Nearly half of the jails have no medical facilities, and over a quarter of them have no visiting facilities. More than 55% of the cells are over 25 years old; over 5,000 cells (5.5%) were built a century or more ago. Some jails have no toilets. Jail construction and modernization is usually a low priority item. Many jails which were designed as short term facilities are holding inmates for extraordinary periods of time because of delays in the criminal justice system. The consequent restlessness and overcrowding brings about inmate assaults and other criminalization of inmates. Large city jails in New York, New Orleans and St. Louis have been ordered closed by federal courts because of an inability to rehabilitate aging and unsafe buildings. Other jails have been ordered to reduce their populations, to hire additional staff, and to expand visiting and recreational opportunities for inmates.

Given the seriousness of these problems and the growing litigation in the field, we are faced with an important question about how we ought to enforce the law in this area, including where violations are clear and egregious. It is my view that instead of focusing on individual jails and trying to discern facts and tailor relief on an ad hoc basis from Washington, we ought

to focus on requiring the states to enforce their own standards.[1] Illinois, for instance, is one of twenty states whose statutes already provide for setting and enforcing statewide jail standards.[2] The Illinois statute authorizes the state corrections agency to perform the oversight and enforcement function necessary to maintain jails in a constitutional status. If they fulfill their authority, we should not have to litigate further. Like other states, however, Illinois has not enforced the state's standards in the Cook County jail.

Requiring the states to enforce their own developed standards has many obvious advantages: we do not have the resources to deal with jails individually; state corrections officials have more time and are better qualified than federal judges to develop remedies; and priorities with respect to available state and federal funding can best be developed at the state level. In addition, there is almost unanimous consensus among concerned organizations that getting the states to do their job is the appropriate law enforcement approach. Specifically, the statewide standards approach has been endorsed by the President's Commission on Law Enforcement and the Administration of Justice; the National Advisory Commission on Criminal Justice Standards and Goals; the American Correctional Association; the National Council on Crime and Delinquency; the National Governors' Conference; the Advisory Commission on Intergovernmental Relations; and the American Bar Association's Commission on Correctional Facilities and Services.

1/ We propose to name local officials responsible for the Cook County jail, as well as state defendants, in order to sort out the division of responsibilities between state and local authorities in this case. As a rule, however, we would focus on state responsibility for enforcement.

2/ Illinois and Alabama have failed to implement this statutory scheme. Another ten states provide for state standards and inspections, but have not yet established any enforcement authority. Three states only inspect local jails and seventeen states have not legislated any state control over local jails.

If you concur with this suit, please sign the attached complaint and return it to me. The United States Attorney and I will work out appropriate negotiation tactics and the appropriate time for filing suit.3/

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

3/ I have spoken with the U.S. Attorney on this matter and he agrees that the facts justify legal action. He feels at present that because of a local political controversy involving the Director of the County Corrections Department, who is charged with corruption and mismanagement (but nothing affecting the constitutional rights of inmates), our action might better be postponed until the controversy is resolved. We will work this out.

cc: Deputy Attorney General

OPTIONAL FORM 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

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 & I'll want to see response when done.

T. S

Orig. to Jose Queen for draft memo

cc: Jim

LF

JSP r'cvd. 11/21/75

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.

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.

cc: Whinston

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

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.

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

UNITED STATES GOVERNMENT

Memorandum

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

DATE: DEC. 17, 1975

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

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

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, 513 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 141 CFR 101-11.6

UNITED STATES GOVERNMENT

Memorandum

DATE: January 19, 1976

TO : S. Pottinger

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.
JP 2/4/76
Rig & gSP
cc: FMD
Jesse Green

Please prepare comments on AG's decision

T. 2/13/76

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

FEB 13 1976

Jesse H. Queen, Chief
Public Accommodations and
Facilities Section

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

Attorney General's Memo on U.S. v. Elrod
INFORMATION MEMORANDUM

This is in response to the Attorney General's memorandum expressing concern over the proposed suit to remedy alleged deprivations of constitutional rights of persons incarcerated in the Cook County Jail. The Attorney General mentions two points.

I. Whether to abstain from exercising the nonstatutory authority to sue pending legislation

The first point is that we are pressing nonstatutory litigation at the same time that we are sponsoring legislation which would codify our standing to sue. The Department has followed this course of action many times in the past. In the early 1960's for example, cases seeking to desegregate public facilities were brought during the period when various Civil Rights Acts were either under consideration within the Department or introduced in Congress. See, e.g., United States v. Lassiter, 203 F. Supp. 20 (W.D. La.), aff'd, 371 U.S. 10 (1962); United States v. City of Jackson, 318 F.2d 1 (5th Cir. 1963); United States v. Klans, 194 F. Supp. 897 (M.D. Ala. 1961); United States v. City of Montgomery, 201 F. Supp. 590 (M.D. Ala. 1962).

The point then was that an alternative jurisdictional basis existed - the nonstatutory use of the Commerce Clause. The same is true now. While it is always preferable to have specific legislation, the Government's standing is not dependent on it.

cc: Records
Chrono
Queen
Lawrence
Trial File (Whinston)
Hold

This legislation has been proposed by the Civil Rights Division for at least the past four years. In 1972, it was questioned by the Office of Legal Counsel as being unnecessary since we had the nonstatutory authority to sue. In August, 1971, the United States intervened in Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd, 501 F.2d 1291 (5th Cir. 1974). The complaint in intervention alleged violations of constitutional rights both in the areas of racial segregation and conditions of confinement at the Parchman Prison in Mississippi. Attorney General Mitchell signed a certificate which in incorporated into the language of Title IX of the 1964 Civil Rights Act, 42 U.S.C. §2000h-2, the additional grounds of "infliction of cruel and unusual punishment and . . . other denials of constitutional rights." The Department's Budget requests dating since fiscal year 1973 have all mentioned the nonstatutory litigation activities of the Civil Rights Division, both in the prison and mental health areas. In 1974, Attorney General Saxbe signed two complaints employing the nonstatutory authority, United States v. Solomon, No. N-74-181 (D. Md.), and United States v. Pellmer, No. 74-1-318 BU (D. Mont.), both relating to alleged deprivations of constitutional rights in institutions for the mentally retarded.

Thus, while legislation concerning our nonstatutory authority to sue has been recommended since 1972, litigation has continued, with the approval of various Attorneys General.

II. Whether to abstain from exercising nonstatutory authority to sue before the exhaustion of other measures

The Attorney General's second point is whether litigation should be the government's first move in trying to improve jail conditions. The simple answer is that both in general and in this specific instance the Federal Government has tried other

things. The Federal Government has been responsible for a massive infusion of funds into correctional and detention facilities through LEAA. The Cook County Jail has received its share of these funds. A second, and continuing, Federal effort to assist this institution has been supplied by the Federal Bureau of Prisons which has provided significant technical assistance and training to Jail officials. Clearly, then, other measures (in fact all other measures at the disposal of the Federal Government) have indeed been tried. The withdrawal of these two types of assistance would be counterproductive. When coordinated with litigation, however, financial and technical assistance may become more effective in addressing those problems which are rightly the Government's concerns - constitutional deprivations.

It may be argued that such litigation would be an invasion by the executive and the judiciary into what is a legislative matter. A constitutional violation under color of state law gives rise to a cause of action in Federal court. The Supreme Court and lower Federal courts have held time and time again that a legislature's failure to appropriate funds transcends the pure legislative sphere and involves the judicial sphere when it results in constitutional violations. Legislatures throughout the nation have failed in their responsibilities toward people in institutions. This legislative failure is the primary reason for the conditions in the country's prisons and for the necessity of Federal action. Since financial and technical support possibilities are limited, it is only with the use of litigation that the desired end can be achieved.

Litigation involving conditions within institutions will continue with or without the Federal presence. In the past, the Department's position during litigation has been one of moderation, agreeing with the plaintiffs on some issues and

with the defendants on others. Our views have been particularly persuasive with the courts and have generally been upheld. Real improvements have occurred as a result of our efforts. We would urge upon the Attorney General that he continue to exercise his authority to sue in institutional litigation in general, and this matter in particular.

Should he decide against litigation, we ask that the decision be related to our program as a whole and other devices that we have used, such as non-Title IX intervention and litigating amicus participation.

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*/ U.S. v. Lassiter, 203 F. Supp. 20 (W.D. La.), aff'd, 371 U.S. 10 (1962). This case involves action by the United States against state statutes which prohibits separation of the races on common carriers. The court held that the United States has a right to sue to enforce the equal protection and commerce clauses of the federal constitution; and that such right encompasses the supremacy clause of the federal constitution.

U.S. v. City of Jackson, 313 F.2d 1 (5th Cir. 1963). In this case involving segregation of railroad and bus terminals mandated by state law the promoting interest of all gives United States standing to challenge in the courts a state which by law or pattern of conduct has taken action motivated by a policy which collides with national policy as embodied in federal constitution.

United States v. Klans, 194 F. Supp. 897 (M.D. Ala. 1961). This civil action sought injunctive relief against certain organizations who were interferring with the right of persons to travel unmolested in interstate commerce. The courts held that the transportation of passengers in commerce and right of a passenger to travel in commerce is right of citizenship which cannot be deprived without due process of law under the Fifth Amendment.

(Footnote continued on next page)

(Footnote continued)

Federal District Courts sitting as a court of equality has inherent power to grant complete relief in a matter before it. If public interest is involved in a proceeding, equitable powers of a federal district court assume a broader and more flexible character than when only a private controversy is at stake.

United States v. City of Montgomery, 201 F. Supp. 590 (M.D. Ala. 1962). This case involves segregation of facilities at an airport terminal. The court held in ruling such discrimination in violation of the constitution that the United States has a legal right to maintain an action to relieve burdens on interstate commerce.

February 13, 1976

TO: J. Stanley Pottinger

FROM: Frank Dunbaugh

RE: AG's Note on U.S. v. Elrod (Cook Co. Jail)

On January 19, 1976, the Attorney General asked to discuss this case with you, raising two points:

1. "[W]e are proposing legislation for a jurisdictional basis.

2. "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."

His note appears to concede, for purposes of the proposed discussion, that he has standing to initiate this suit. Thus, his inquiry is policy oriented rather than a legal matter.

The Attorney General's first point can be translated to inquire: Should I abstain from exercising my non-statutory authority to file jail reform suits until I have obtained Congressional approval of our legislative proposal?

The Attorney General's second point is less clear. Its main thrust is: Are alternatives effective remedies available? But he is also concerned about federal intrusion in a state "legislative situation," particularly "through the courts." Perhaps, he is asking: Are there effective alternatives which would encroach less upon the state legislative process than the proposed court action? [And, if so, shouldn't I abstain from suing and pursue such other remedies?] For the reasons set out below, I recommend that you answer both questions in the negative.

I. The AG should not abstain from jail reform suits while awaiting approval by Congress of our legislative proposal.

The legislation we are seeking would authorize the Attorney General to initiate civil suits whenever he or she has reasonable cause to believe "that a state or its agents are subjecting persons involuntarily confined in an institution to conditions which deprive them of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges or immunities. . . ." The legislation would also limit inmates' access to federal courts by imposing a requirement that they exhaust "such plain, speedy and efficient state administrative remedy as is available.

Our purposes in seeking this legislation are: (1) to clarify the AG's standing to sue, (2) to provide a more efficient remedy for constitutional violations than multiple, individual inmate suits brought under 42 U.S.C. 1983, (3) to encourage states to provide "plain, speedy and efficient" administrative remedies for inmate grievances and (4) to reduce, thereby, the burdens on the federal court system occasioned by individual inmate suits.

In proposing that the legislation include authority for AG initiated suits, we were not of the view that such authority does not already exist. Our research and that of OLC persuaded us that the authority does exist without a statutory basis, but exercising it has been somewhat inhibited because it is difficult to articulate and because the theory has a built-in element of restraint--that is, it is an extraordinary power which should be used to remedy only widespread, systemic violations. Therefore, although no court has yet denied us access for lack of standing, we decided to firm up our authority by legislation.

To abstain from litigation at this point would appear to be a reversal of our previously asserted legal position and, if applied to intervention and amicus participation, */

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*/ If the AG decides to abstain only from AG initiated suits and to continue participating in inmate initiated suits, we can not avoid having our program dictated to a great extent by the private civil rights bar. We would be in a much stronger position to shape the development of legal principles if we could choose our own cases.

would require shutting down an on-going program of nearly five years duration -- a program which has been publically announced through AG annual reports, budget justifications and press releases. */

If Congressional action on our proposal were imminent, abstention might be called for, but we cannot expect passage of our Bill in this session. It hasn't even been introduced yet. **/ In the meantime, immediate injury is occurring - both to the rights of inmates and to the sanctity of our constitution. ***/ As officers of the United States, sworn to uphold the constitution, we have a duty to act. To the extent that litigative action is appropriate (see Part II, infra.), we should not abstain from using it for an extended, indefinite period, particularly since such litigation might help us to achieve some of the ends sought by the legislation. For example, continued litigation is likely to result eventually in a definitive court decision regarding our authority. In addition, individual inmate suits are frequently disposed of on the basis of the relief we obtain in a pattern type case.

Finally, the concept that "justice delayed is justice denied" is particularly appropriate to jail reform suits. The turnover in jails is very high, so that new victims of constitutional violations are being booked every day that we wait.

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**/ Mike Uhlmann sent the Bill to the AG last Friday (Feb. 6, 1976).

***/ As you pointed out to the AG in your October 31, 1975, memorandum, jail conditions are a serious problem nationwide. We have a statewide case in Alabama and another ready to go in Washington.

II. The alternatives to AG initiated litigation either are not effective or would encroach on the state legislative process.

The national problem we seek to solve through our jail reform litigation program is that most persons confined in jails are being subjected to conditions of confinement that infringe on the constitutionally protected rights of such persons - particularly pre-trial detainees, who constitute about one half of the jail population and who are presumed to be innocent. The violations are generally of two types:

1. The jail is unsafe, so that confinement therein constitutes cruel and unusual punishment as well as a due process violation.

2. The terms of confinement are punative, so that pre-trial detainees are deprived of their liberty without due process to the extent that the restrictions on their behavior exceed what are necessary to ensure their appearance at trial.

The dangerous condition of jails stems from a variety of causes. The usual categories where failures occur are: (1) protection from inmate assaults, (2) protection from bacterial assaults, (3) adequate environment (including food, heat, light, air, exercise, and rest) to maintain physical and mental health, and (4) adequate medical care delivery system.

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*/ Personally, I would favor eliminating virtually all pretrial detention. To the extent that it is retained, we should urge that such presumptively innocent inmates be allowed maximum freedom, including the ability to control (within reasonable limits) their privacy, their activities, and the noise, heat, light, and air in their rooms, which should be safe and comfortable.

The present focus of our litigative program is to urge each of the states to adopt and enforce minimum standards for local jails. While the Cook County case would not intrude on the state legislative process, because the Illinois Legislature has already authorized the executive branch to develop and enforce jail standards, we are proposing cases in states where such authorization does not exist. For example, in Washington State the executive has been authorized to develop standards, but the legislature has withheld enforcement powers. Our proposed suit there would necessarily intrude on the state legislative process. We would justify such intrusion by arguing that a state may not fail to act when its agents or subdivisions systematically deprive persons of due process rights. We would assert that the state must establish a remedial program commensurate in scope with the violations. Because of its reliance on state officials to develop and implement this program, this approach is more deferential to state sovereignty than most of the alternatives.

The alternatives to our present program are:

1. Limit our litigation to individual jails.

While this approach would encroach less on the state legislative process, it would be far less effective (there are over 4000 local jails) and would encroach on more local functions. Such an approach would also result in uneven and uncoordinated results. Coordination at the state level is important both for setting standards and for funding, particularly where state funds or federal funds channeled through state agencies are involved. Our experience with school desegregation demonstrated that local cooperation with compliance was more likely when all jurisdictions were required to progress simultaneously.

2. Defer to private inmate suits.

This has been the major force in jail reform litigation thus far. It has been reasonably effective for developing the legal principles of liability, but the private bar lacks the resources to provide adequate follow-up on the relief. In addition, the private suits tend to be one-jail cases, frequently dealing with limited issues rather than with the jail as a whole. As we approach the point calling for a national effort to achieve large-scale, voluntary compliance with established legal principles, this tool becomes less useful.

3. Negotiate at the state level.

If we have a clear picture of what the states should do, a nationwide effort of this type would be worthwhile, particularly if done in tandem with LEAA. In my judgment, it is a little premature. We need first to develop some experience with statewide relief, especially the compliance problems. The Alabama, Illinois, Washington and perhaps one or two other cases should give us such experience. More importantly, we need to demonstrate our determination to insist on results if the negotiation route is to be effective. To this end we must be assured that the Attorney General will sue should negotiations fail. This is the approach we have already adopted. Your original memorandum to the AG concerning Cook Co. advised that you and the U.S. Attorney would work out a negotiation strategy. We decided (with Skinner) to seek the AG's approval before approaching state and local officials, because we didn't want to negotiate with an empty holster.

4. Seek definitive legislation from Congress

To enforce rights secured by the Fourteenth Amendment, Congress could legislate specific jail standards. Perhaps it is time to start urging such a public debate. It is not likely to get off the ground before the election anyway, so we will not be creating a political issue. Such a debate might result in more widespread reforms, such as ROR programs and speedy trial requirements. I have three major reservations about this approach. First, we might be deterred from needed immediate action on the basis of such a vague prospect. Second, the development of the least restrictive alternative principle and its application to pretrial detainees is only in its earliest formative stages. Congressional codification of existing well-established law could thwart further development for a generation. Third, direct Congressional action setting standards would increase the states' expectations of federal funding which is not likely to be forthcoming.

A NOTE FROM
NANCY G. SWEESY

2/13/76

Stan:

Memos from both FMD and Jesse Queen are attached.

Nancy

ASSISTANT ATTORNEY GENERAL

2/13/76

Stan -

Here is a talking paper for your meeting with the AG on our proposed Cook Co. jail case. Jesse has also done a memo which you should read, because it covers some different ground.

This is a crucial issue which goes way beyond this case. We could lose the major programs of two sections.

Frank

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

February 13, 1976

TO: J. Stanley Pottinger

FROM: Frank Dunbaugh

RE: AG's Note on U.S. v. Elrod (Cook Co. Jail)

On January 19, 1976, the Attorney General asked to discuss this case with you, raising two points:

1. "[W]e are proposing legislation for a jurisdictional basis.

2. "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."

His note appears to concede, for purposes of the proposed discussion, that he has standing to initiate this suit. Thus, his inquiry is policy oriented rather than a legal matter.

The Attorney General's first point can be translated to inquire: Should I abstain from exercising my non-statutory authority to file jail reform suits until I have obtained Congressional approval of our legislative proposal?

The Attorney General's second point is less clear. Its main thrust is: Are alternatives effective remedies available? But he is also concerned about federal intrusion in a state "legislative situation," particularly "through the courts." Perhaps, he is asking: Are there effective alternatives which would encroach less upon the state legislative process than the proposed court action? [And, if so, shouldn't I abstain from suing and pursue such other remedies?] For the reasons set out below, I recommend that you answer both questions in the negative.

I. The AG should not abstain from jail reform suits while awaiting approval by Congress of our legislative proposal.

The legislation we are seeking would authorize the Attorney General to initiate civil suits whenever he or she has reasonable cause to believe "that a state or its agents are subjecting persons involuntarily confined in an institution to conditions which deprive them of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges or immunities. . . ." The legislation would also limit inmates' access to federal courts by imposing a requirement that they exhaust "such plain, speedy and efficient state administrative remedy as is available.

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If Congressional action on our proposal were imminent, abstention might be called for, but we cannot expect passage of our Bill in this session. It hasn't even been introduced yet. **/ In the meantime, immediate injury is occurring - both to the rights of inmates and to the sanctity of our constitution. ***/ As officers of the United States, sworn to uphold the constitution, we have a duty to act. To the extent that litigative action is appropriate (see Part II, infra.), we should not abstain from using it for an extended, indefinite period, particularly since such litigation might help us to achieve some of the ends sought by the legislation. For example, continued litigation is likely to result eventually in a definitive court decision regarding our authority. In addition, individual inmate suits are frequently disposed of on the basis of the relief we obtain in a pattern type case.

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***/ As you pointed out to the AG in your October 31, 1975, memorandum, jail conditions are a serious problem nationwide. We have a statewide case in Alabama and another ready to go in Washington.

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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:

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

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

SUBJECT: Attorney General's Memo on U.S. v. Elrod
INFORMATION MEMORANDUM

This is in response to the Attorney General's memorandum expressing concern over the proposed suit to remedy alleged deprivations of constitutional rights of persons incarcerated in the Cook County Jail. The Attorney General mentions two points.

I. Whether to abstain from exercising the nonstatutory authority to sue pending legislation

The first point is that we are pressing nonstatutory litigation at the same time that we are sponsoring legislation which would codify our standing to sue. The Department has followed this course of action many times in the past. In the early 1960's for example, cases seeking to desegregate public facilities were brought during the period when various Civil Rights Acts were either under consideration within the Department or introduced in Congress. See, e.g., United States v. Lassiter, 203 F. Supp. 20 (W.D. La.), aff'd, 371 U.S. 10 (1962); United States v. City of Jackson, 318 F.2d 1 (5th Cir. 1963); United States v. Klans, 194 F. Supp. 897 (M.D. Ala. 1961); United States v. City of Montgomery, 201 F. Supp. 590 (M.D. Ala. 1962). */

The point then was that an alternative jurisdictional basis existed - the nonstatutory use of the Commerce Clause. The same is true now. While it is always preferable to have specific legislation, the Government's standing is not dependent on it.

This legislation has been proposed by the Civil Rights Division for at least the past four years. In 1972, it was questioned by the Office of Legal Counsel as being unnecessary since we had the nonstatutory authority to sue. In August, 1971, the United States intervened in Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd, 501 F.2d 1291 (5th Cir. 1974). The complaint in intervention alleged violations of constitutional rights both in the areas of racial segregation and conditions of confinement at the Parchman Prison in Mississippi. Attorney General Mitchell signed a certificate which in incorporated into the language of Title IX of the 1964 Civil Rights Act, 42 U.S.C. §2000h-2, the additional grounds of "infliction of cruel and unusual punishment and . . . other denials of constitutional rights." The Department's Budget requests dating since fiscal year 1973 have all mentioned the nonstatutory litigation activities of the Civil Rights Division, both in the prison and mental health areas. In 1974, Attorney General Saxbe signed two complaints employing the nonstatutory authority, United States v. Solomon, No. N-74-181 (D. Md.), and United States v. Kellner, No. 74-1-318 BU (D. Mont.), both relating to alleged deprivations of constitutional rights in institutions for the mentally retarded.

Thus, while legislation concerning our nonstatutory authority to sue has been recommended since 1972, litigation has continued, with the approval of various Attorneys General.

II. Whether to abstain from exercising nonstatutory authority to sue before the exhaustion of other measures

The Attorney General's second point is whether litigation should be the government's first move in trying to improve jail conditions. The simple answer is that both in general and in this specific instance the Federal Government has tried other

things. The Federal Government has been responsible for a massive infusion of funds into correctional and detention facilities through LEAA. The Cook County Jail has received its share of these funds. A second, and continuing, Federal effort to assist this institution has been supplied by the Federal Bureau of Prisons which has provided significant technical assistance and training to Jail officials. Clearly, then, other measures (in fact all other measures at the disposal of the Federal Government) have indeed been tried. The withdrawal of these two types of assistance would be counterproductive. When coordinated with litigation, however, financial and technical assistance may become more effective in addressing those problems which are rightly the Government's concerns - constitutional deprivations.

It may be argued that such litigation would be an invasion by the executive and the judiciary into what is a legislative matter. A constitutional violation under color of state law gives rise to a cause of action in Federal court. The Supreme Court and lower Federal courts have held time and time again that a legislature's failure to appropriate funds transcends the pure legislative sphere and involves the judicial sphere when it results in constitutional violations. Legislatures throughout the nation have failed in their responsibilities toward people in institutions. This legislative failure is the primary reason for the conditions in the country's prisons and for the necessity of Federal action. Since financial and technical support possibilities are limited, it is only with the use of litigation that the desired end can be achieved.

Litigation involving conditions within institutions will continue with or without the Federal presence. In the past, the Department's position during litigation has been one of moderation, agreeing with the plaintiffs on some issues and

with the defendants on others. Our views have been particularly persuasive with the courts and have generally been upheld. Real improvements have occurred as a result of our efforts. We would urge upon the Attorney General that he continue to exercise his authority to sue in institutional litigation in general, and this matter in particular.

Should he decide against litigation, we ask that the decision be related to our program as a whole and other devices that we have used, such as non-Title IX intervention and litigating amicus participation.

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*/ U.S. v. Lassiter, 203 F. Supp. 20 (W.D. La.), aff'd, 371 U.S. 10 (1962). This case involves action by the United States against state statutes which prohibits separation of the races on common carriers. The court held that the United States has a right to sue to enforce the equal protection and commerce clauses of the federal constitution; and that such right encompasses the supremacy clause of the federal constitution.

U.S. v. City of Jackson, 318 F.2d 1 (5th Cir. 1963). In this case involving segregation of railroad and bus terminals mandated by state law, the promoting interest of all gives United States standing to challenge in the courts a state which by law or pattern of conduct has taken action motivated by a policy which collides with national policy as embodied in federal constitution.

United States v. Klans, 194 F. Supp. 897 (M.D. Ala. 1961). This civil action sought injunctive relief against certain organizations who were interferring with the right of persons to travel unmolested in interstate commerce. The courts held that the transportation of passengers in commerce and right of a passenger to travel in commerce is right of citizenship which cannot be deprived without due process of law under the Fifth Amendment.

(Footnote continued on next page)

(Footnote continued)

Federal District Courts sitting as a court of equality has inherent power to grant complete relief in a matter before it. If public interest is involved in a proceeding, equitable powers of a federal district court assume a broader and more flexible character than when only a private controversy is at stake.

United States v. City of Montgomery, 201 F. Supp. 590 (M.D. Ala. 1962). This case involves segregation of facilities at an airport terminal. The court held in ruling such discrimination in violation of the constitution that the United States has a legal right to maintain an action to relieve burdens on inter-state commerce.

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

UNITED STATES GOVERNMENT

Memorandum

TO : Frank M. Dunbaugh, Deputy
Assistant Attorney General
Civil Rights Division

DATE: FEB 17 1976

JHQ:PSL:eh

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

SUBJECT: Current Prison and Jail Matters

You asked to be informed of matters in active investigation stage. I have not included in the following list cases already filed or justification memorandums with you.

1. Detroit House of Corrections

General conditions investigation. Initial FBI reports have been received and the Bureau has been sent back for further information. Does not appear to be so serious as to require suit.

2. Arizona State Penitentiary

Allegations of segregation and general conditions comprehensive. FBI request out and expected to be completed March 15.

3. Missouri State Penitentiary

Segregation and general conditions. FBI request out.

4. State of Missouri Jails

This investigation was predicated by information concerning Missouri jails that we received as a result of the Tyler case. Presently we are formulating a plan to enable the Bureau to investigate a sufficient sample of the state jails to determine whether a class action can be filed.

5. Clement Correction Facilities, New York

FBI report being evaluated for possible justification memorandum.

6. Utah State Penitentiary

FBI report being evaluated for possible justification memorandum.

7. Puerto Rico

Justification memorandum being prepared.

8. Virgin Islands

Negotiations are being conducted by this office and the United States Attorney's office with the governor. The governor has indicated he will take positive action to correct the conditions. We contemplate allowing a reasonable time before filing a suit. If you recall this is what we had done in Indiana prior to filing.

9. State of Georgia Jails

FBI is continuing to investigate selected jails in the state and we see a possible class action against the statewide jail system. This is in addition to our continuing compliance investigation of Wilson v. Kelley.

10. North Carolina State Prisons

A justification memorandum is being prepared for a Title III suit. There is a private suit which we may decide to join and then possibly have the Title III and the private suit joined.

11. Tennessee State Penitentiary

An extensive FBI request has been sent out to investigate general conditions.

OFFICE OF THE
DEPUTY ATTORNEY GENERAL

July 12, 1976

MEMO FOR: Frank Dunbaugh

FROM: Mary E. Wagner

Returning your files, per our conversation.

Thanks.

Attachments

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 AUG 31 1976
JHQ:PSL:SAW:lrs
DJ 168-23-3

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

SUBJECT: 8/27/76
Cook County Jail Update

INFORMATION MEMORANDUM

I. Facts

Pursuant to Mr. Dunbaugh's suggestion, I inspected the Cook County Jail along with two of our consultants 1/ on August 20, 1976, to update the facts as presented in the justification memorandum of July 14, 1975.

Briefly, the findings are as follows: 2/

1. Living conditions for most of the inmates of the Cook County Jail fail to meet contemporary standards.

2. Certain improvements have taken place, most prominently a reduction of 700 in the average daily population, 3/ and the opening of a new housing unit currently holding 650 inmates.

1/ Dr. Bailus Walker, Director, and Mr. Theodore J. Gordon, Chief, Institutional Hygiene Division, District of Columbia Environmental Health Administration.

2/ A copy of the Walker-Gordon report will be forwarded to you when it is completed.

3/ This is due to the creation of additional judgeships to handle the increased caseload volume.

JSP r'cvd. 9/1/76

3. Of the current daily average of 4200 inmates, over half are held in Division I. Inmates there are doubled up in cells that are so small that both occupants cannot stand up at the same time. The area is infested with roaches and mice. Lighting and ventilation do not meet accepted standards. Pre-trial inmates (90% of the total population) are allowed one ten minute visit every other week, the most severe limitation of visiting opportunities we have ever encountered in any of the institutions involved in any of our cases, prisons or jails. Despite large outdoor exercise areas, inmates are allowed outside only once each week. Each correctional officer is charged with responsibility for 150 inmates. In cell areas where there are more inmates than can be accommodated, the surplus inmates sleep on tables or on floors.

4. Approximately 1100 inmates are housed in dormitory quarters in Division II. These housing arrangements are overcrowded, roach and mice infested. The dorms were inadequately ventilated. Some dormitories were completely unsupervised by guards.

5. Division III, the new women's quarters, was designed for 197 inmates and currently houses over 230. About half the cells were double-bunked to provide accommodations for the surplus inmates. The sanitary facilities, not designed to handle this volume, can be expected to deteriorate at a rapid pace. The area was infested with mice.

6. Division IV, the new work release center, houses 650 inmates in space designed for 350. As with the women's area, this overtaxes the facility and rapid deterioration can be expected. These two newest units, incidentally, house mainly the small number of convicted inmates at the Jail rather than pre-trial detainees.

7. Two new buildings, designed to house 500 inmates each, are under construction. Cook County officials estimate that these buildings will be opened by May, 1978. They hope that this additional space will allow them to reduce population in Division I to one man per cell. However, whether these new units will reduce overcrowding to constitutional levels is conjectual since this projection is based on zero population growth in the county and a zero increase in the crime rate.

8. The private suit, Duran v. Elrod, has stalled. Part of the case is now on appeal, while no discovery on the remainder of the suit has been taken in the past six months. Essentially, the private suit is no further along then when this case was initially proposed in July, 1975. Therefore, time would still permit our effective participation in a consolidated litigation.

AUG 31 1976

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

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

Stephen A. Whinston, Attorney
Public Accommodations and
Facilities Section

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3/ This is due to the creation of additional judgeships to handle the increased caseload volume.

3. Of the current daily average of 4200 inmates, over half are held in Division I. Inmates there are doubled up in cells that are so small that both occupants cannot stand up at the same time. The area is infested with roaches and mice. Lighting and ventilation do not meet accepted standards. Pre-trial inmates (90% of the total population) are allowed one ten minute visit every other week, the most severe limitation of visiting opportunities we have ever encountered in any of the institutions involved in any of our cases, prisons or jails. Despite large outdoor exercise areas, inmates are allowed outside only once each week. Each correctional officer is charged with responsibility for 150 inmates. In cell areas where there are more inmates than can be accommodated, the surplus inmates sleep on tables or on floors.

4. Approximately 1100 inmates are housed in dormitory quarters in Division II. These housing arrangements are overcrowded, roach and mice infested. The dorms were inadequately ventilated. Some dormitories were completely unsupervised by guards.

5. Division III, the new women's quarters, was designed for 197 inmates and currently houses over 230. About half the cells were double-bunked to provide accommodations for the surplus inmates. The sanitary facilities, not designed to handle this volume, can be expected to deteriorate at a rapid pace. The area was infested with mice.

6. Division IV, the new work release center, houses 650 inmates in space designed for 350. As with the women's area, this overtaxes the facility and rapid deterioration can be expected. These two newest units, incidentally, house mainly the small number of convicted inmates at the Jail rather than pre-trial detainees.

7. Two new buildings, designed to house 500 inmates each, are under construction. Cook County officials estimate that these buildings will be opened by May, 1978. They hope that this additional space will allow them to reduce population in Division I to one man per cell. However, whether these new units will reduce overcrowding to constitutional levels is conjectual since this projection is based on zero population growth in the county and a zero increase in the crime rate.

8. The private suit, Duran v. Kirod, has stalled. Part of the case is now on appeal, while no discovery on the remainder of the suit has been taken in the past six months. Essentially, the private suit is no further along then when this case was initially proposed in July, 1975. Therefore, time would still permit our effective participation in a consolidated litigation.

Pottinger
324

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DJ 168-23-3

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PSL

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: United States v. Elrod
(Cook County Jail)

I recommend that we meet to discuss this case as you suggested earlier this year. At my request, Deputy Attorney General Tyler has reviewed this case and agrees that it would be appropriate to proceed.

Pursuant to the suggestion of the United States Attorney we have conducted an additional investigation to update our facts. The offensive conditions previously found still exist.

As you can see from the attached letter, there is some public interest in this matter.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: Records
Chrono
Queen
Lawrence
Investigation File (Whinston)
Hold

JOHN HOWARD ASSOCIATION

67 East Madison Street, Suite 1216 Chicago, Illinois 60603 (312) 263-1901

Activities: Survey and Consultation Services in the Crime and Delinquency Field.

September 8, 1976

Mr. Jesse H. Queen
Chief
Public Accommodation and Facilities Section
U. S. Department of Justice
Room 5712
Maine Justice Building
10th and Constitution Avenue N.W.
Washington, D.C.

Dear Mr. Queen:

Over the past one and one-half years numerous abuses inflicted on inmates at the Cook County Jail have surfaced. These abuses have been consistently highlighted in the news media, by responsible criminal justice reform organizations and by independent citizen monitoring groups.

In general, the abuses have taken the following forms:

1. Sexual assaults amongst inmates.

2. Guard brutality toward inmates.

3. Inadequate provision and denial of basic living necessities such as food, clothing, eating utensils and bedding.

4. Inadequate provision of and denial of proper medical and psychiatric attention.

5. Preferential treatment given towards some inmates including federal prisoners.

6. Various other forms of misconduct such as staff solicitation of inmates' wives for sexual favors in return for special visiting privileges, staff solicitation of monies in return for special visiting privileges, staff negligence resulting in escapes, staff receiving dual payment for the performance of one job, faulty record-keeping and accounting systems, poor inventory control, and a breakdown of security measures.

Mr. Jesse H. Queen
Chief
U. S. Department of Justice
- continued -

In at least one instance, the "foul-ups" regarding the provision of adequate mental health care, even though prescribed by a physician, resulted in the suicide of one inmate.

The situation at the Cook County Jail is scandalous to say the least and requires immediate attention. I have written to U. S. Attorney Samuel Skinner requesting that his office inquire into these matters. I am writing to you in the same regard. It is my belief that the conditions at the Cook County Jail and what has taken place there over the past one and one-half years warrants an immediate and thorough investigation by your office. It appears that many of these issues lie within the realm of the provisions of the Civil Rights Act and fall within the purview of your Department.

Naturally, our office will cooperate with you in any way possible. We are anxious to see the problems at the Cook County Jail resolved and that proper care and treatment is afforded to the inmates. In advance, thank you for your consideration and we hope that you shall give this matter your prompt and considerate attention.

Sincerely,

Ira M. Schwartz
Executive Director

IMS:nb
cc: U. S. Attorney Samuel Skinner

ASSISTANT ATTORNEY GENERAL

September 20, 1976

Stan -

This is a vehicle for reviving the Cook Co. jail case.

Frank Dunbaugh