



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 3, 1996

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *DAG by DWS 9/15/96*
THROUGH: THE ASSOCIATE ATTORNEY GENERAL *(Signature) 9/12/96*
FROM: Deval L. Patrick *(Signature)*
Assistant Attorney General
Civil Rights Division
SUBJECT: Proposed CRIPA lawsuit
Norfolk City Jail, Norfolk, Virginia

PURPOSE: To provide you with background information regarding our investigation of the Norfolk City Jail, located in Norfolk, Virginia, and to recommend that you sign the attached complaint and certificate to initiate a civil lawsuit regarding alleged unconstitutional conditions at this facility pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA).

TIMETABLE: Signatures are required as soon as possible.

SYNOPSIS: We initiated a CRIPA investigation of the Norfolk City Jail on October 27, 1993. We conducted on-site reviews of conditions at the jail with a number of correctional consultants. On August 3, 1994, we issued our findings detailing unconstitutional conditions in numerous areas. We subsequently conducted further on-site reviews and have determined that unconstitutional conditions continue to exist. We have attempted to cooperatively resolve this matter through settlement negotiations, and have offered to participate in Alternative Dispute Resolution (ADR). Norfolk officials have, however, refused to sign any settlement agreement and are unwilling to submit the matter to ADR. Apparently, the possibility of litigation does not appear credible to Norfolk officials. Once advised that we have a signed complaint, we believe that Norfolk officials will be willing to resolve this matter by agreement. Should Norfolk's lack of cooperation continue, however, we need to proceed by filing suit.



DISCUSSION: We determined from our investigation of the Norfolk City Jail that numerous unconstitutional conditions exist. While Norfolk officials have made efforts to address some of the conditions we noted in our findings, severe unconstitutional conditions continue to exist; specifically, inadequate medical care, inadequate fire safety, lack of out-of-cell time, unsanitary living conditions, excessive overcrowding and inadequate access to legal materials.

Our attempts to negotiate with Norfolk officials have been unsuccessful. Norfolk City officials assert that any deficient conditions at the Norfolk City Jail do not rise to the level of constitutional violations and, therefore, there is nothing to settle. Moreover, Norfolk officials allege that the Commonwealth of Virginia is ultimately responsible for the jail because it provides funding to the City for its operation. Accordingly, Norfolk officials refuse to agree to any consent decree without the Commonwealth of Virginia. Relevant caselaw holds that the sheriff and the city, not the Commonwealth of Virginia, are responsible for the maintenance and operation of a local jail. Accordingly, we do not believe that the Commonwealth of Virginia is a necessary party to resolve this matter.

Based upon the refusal of Norfolk officials to enter a consent decree, we attempted to resolve this matter through ADR. Despite our numerous requests, Norfolk officials are unwilling to submit the matter to ADR. We believe that Norfolk's refusal is based upon their belief that the federal government will not initiate litigation. We believe that a signed and, if necessary, filed complaint, will motivate Norfolk officials to enter mediation. We have worked closely with Peter Steenland and Deborah Kant, Senior and Deputy Counsel, respectively, for Alternative Dispute Resolution, Office of the Associate Attorney General, in attempting to resolve this matter through ADR. They concur with this proposed means of reinvigorating the possibility for a mediated resolution.

The unconstitutional conditions at Norfolk City Jail have existed for quite some time and given Norfolk's unwillingness to resolve this matter cooperatively, a CRIPA lawsuit appears to be the only remedy available. We need to obtain remedies for these violations as soon as practicable.

The United States Attorney for the Eastern District of Virginia has been briefed on this matter and has asked that we inform her if our attempt at mediation fails and litigation becomes necessary.

RECOMMENDATION: We recommend that you sign the proposed complaint and certificate necessary to initiate this action.

Attachments