IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CIVIL ACTION NO. KC-3163
WYANDOTTE COUNTY, KANSAS, et al., Defendants.	)	

PRE-TRIAL MEMORANDUM OF THE UNITED STATES

This action was filed by the United States of America on June 5, 1970. The complaint alleges that Wyandotte County, Kansas, its named county commissioners, its sheriff, and named deputy sheriffs, have followed a pattern and practice of racial discrimination in the operation of the Wyandotte County Jail, in violation of Title III of the Civil Rights Act of 1964, the equal protection clause of the Fourteenth Amendment, and the contractual rights of the United States. The complaint further alleges that the defendants have failed to meet their constitutional and contractual obligations to supervise,

classify and separate inmates in the Wyandotte County Jail on the basis of valid and reasonable non-racial standards designed to provide full protection for the safety of the inmates in their custody. Injunctive relief is sought to require the defendants to make inmate cell and work assignments according to valid and reasonable non-racial standards so as to end racial segregation in the jail and to assure inmate safety.

The County and its Board of Commissioners filed an answer on October 1, 1970, in which certain allegations were admitted but in which these defendants denied legal responsibility for control of the jail and denied knowledge of the mode of operation of the jail. The sheriff, undersheriff and warden of the jail, by separate answer filed on October 5, 1970, denied jurisdiction, discrimination and failure to assure prisoner safety and security in the jail.

JURISDICTION

The threshold question of law in this case is one of standing and jurisdiction. This suit is brought pursuant to Title III of the Civil Rights Act of 1964, 42 U.S.C. §2000b. The complaint states that this Court has jurisdiction over this suit under Title III. The complaint also alleges violation of

a federal contract under which the defendants have certain obligations to the United States. The defendants all admit the validity and applicability of the contract,[1] but the defendant sheriff and his deputies deny Title III jurisdiction because they say a public jail is not a public facility within the meaning of Title III of the Civil Rights Act of 1964.

Title III of the Civil Rights Act of 1964 creates no substantive law, but simply confers standing on the Attorney General to enforce the equal protection clause of the Fourteenth Amendment in certain specified circumstances. The statute provides, in relevant part, that the Attorney General may sue for injunctive relief whenever he:

> receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his rights to equal protection of the laws, on account of his race, . . . by being denied equal utilization of any public facility which is owned, operated or managed by or on behalf of any state or subdivision thereof other than a public school . . . 42 U.S.C. 2000b(a).

1/ Even if the Court should conclude that the Attorney General lacks standing to sue a jail under Title III, the cases clearly indicate he has standing to enforce nondiscrimination clauses in valid federal contracts. See United States v. Frazer, 297 F. Supp. 319, 322 (M.D. Ala. 1968). Here the existence of a contract containing such a clause between the county commissioners and the Federal Bureau of Prisons is admitted.

The sheriff admits that the suit was brought pursuant to this statute. However, the reasoning by which the sheriff reaches the conclusion that a jail is not a public facility within the meaning of the statute is not clear.[2/] There is no denial that the jail is "owned, operated or managed by or on behalf of" the county, and the breadth of the statute, which reaches "any public facility . . . other than a public school or public college," would seem to encompass a county-owned and operated jail located in the county courthouse. Nor would a limitation upon the statute's reach, preventing it from reaching jails, as opposed to public parks or libraries, serve any useful legislative purpose; indeed, such a limitation would be inconsistent with the overall goal of Title III, which was to expand enforcement of the equal protection clause of the

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2/ In discussion with counsel for these defendants, we have learned of an alleged distinction between public parks, playgrounds, and the like, to which the public regularly goes voluntarily to obtain some service, and jails to which no one goes voluntarily. No basis for this distinction is found in the statute; indeed, the statutory language reaching "any public facility . . . other than a public school," where Congress know school attendance is often required by state law, would seem to indicate a specific congressional intent to include state institutions to which citizens are committed involuntarily as well as voluntarily sought out institutions. While the legislative history fails to indicate specific mention of jails, mention was made of courtrooms and hospitals to which persons often are committed, as well as recreation and library facilities and the like. See, e.g., 110 Cong. Rec. 6558 (March 20, 1964) (Remarks of Senator Kuchel); 110 Cong. Rec. 6783 (April 2, 1964) (Remarks of Senator Javits) Opponents (continued)

Fourteenth Amendment to the Constitution by granting enforcement powers, theretofore reserved by statute to private citizens, to the federal government. In the only jail case so far disposed of under the statute, United States v. Ashley, (D. S.C. Feb. 26, 1970) (Consent Judgment), the Court had no difficulty in finding jurisdiction. See attached order.

I. Fear of Racial Violence Does Not Justify A Generalized Policy of Racial Segregation in A Jail

The complaint in this action alleges that the defendants have systematically discriminated against Negroes in the operation of the Wyandotte County Jail and have failed to supervise, classify and separate inmates of this jail on the basis of valid and reasonable non-racial standards designed to provide full protection for the safety of the inmates of the jail. Specifically, the complaint alleges that Negro and white prisoners are assigned to racially separate cells and cell blocks on the basis of race. This segregation is alleged to violate both the federal contract and the Fourteenth Amendment.

The evidence to be put on by the government will show such racial segregation is admittedly practiced by the defendants. In justification for

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2/ (Continued from preceding page)
of the bill also recognized the broad impact of its coverage. Representative Ashmore, for instance, said it would authorize the Attorney Genral to sue "anybody and everybody almost," 110 Cong. Rec. 2251 (February 6, 1964), and Senator McClelland said it covered all public facilities except schools. 110 Cong. Rec. 9106 (April 27, 1964).

this segregation the defendants will argue that it prevents violence among the prisoners of the jail. The evidence will show, however, that no effort has been made to prevent such violence by keeping jail personnel inside the walls of the jail on a full-time basis, by separating prisoners with known violence potential from other inmates, or by adopting certain remedial reforms designed to rehabilitate the inmates and thereby relieve pressures on them to engage in aggressive behavior toward one another. The evidence will also show that incidents of violence have erupted in the jail which were not related to race but were related to the failure of the jail officials to attempt to adopt reasonable precautions for the supervision and control of prisoners' activities.

It is settled that racial segregation of prisoners such as is generally practiced by the officials at the Wyandotte County Jail is illegal and cannot be justified by statements that it is practiced to maintain prison security and safety. Lee v. Washington, 390 U.S. 333 (1968), affirming 263 F. Supp. 327, 331 (M.D. Ala. 1966); Wilson v. Kelley, 294 F. Supp. 1005, 1009 (N.D. Ga. 1968); Rentfrow v. Carter, 296 F. Supp. 301, 303 (N.D. Ga. 1968).

In ordering desegregation of jail facilities, courts are concerned with prisoner safety and security. See, e.g., Washington v. Lee, supra, 263 F. Supp. at 331, 332; Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Wilson v. Kelley, supra, 294 F. Supp. at 1009. This concern arises, no doubt, from the courts' recognition that jail officials have an affirmative duty, arising from the Eighth Amendment's ban on the cruel and unusual punishment,[3/] the Fourteenth Amendment[4/] and the law of tort,[5/] to guard prisoners from harm from jailers and from other prisoners. Cf., Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Wilson v. Kelley, supra, 294 F. Supp. at 1009; Rentfrow v. Carter, supra, 296 F. Supp. at 303. This concern is consistent with the law of Kansas, which imposes duties on county officials with regard to the safety and well-being of prisoners.[6/] See K.S.A. 19-1902,

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3/ Compare Holt v. Sarver, supra, 309 F. Supp. 362; Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Calif. 1966); Gordon v. Garrison, 77 F. Supp. 477 (E.D. Ill. 1948).

4/ Compare Screws v. United States, 325 U.S. 91 (1945); Lynch v. United States, 189 F. 2d 476, 479-480 (5th Cir. 1951); Jordan v. Fitzharris, supra; Gordon v. Garrison, supra; see also Logan v. United States, 144 U.S. 263 (1892) and Coffin v. Reichard, 143 F. 2d 443 (6th Cir. 1944), which find such a duty in the due process clause of the Fifth Amendment.

5/ Compare United States v. Muniz, 374 U.S. 150 (1963); Cohen v. United States, 252 F. Supp. 679 (N.D. Ga. 1966); Indiana v. Gobin, 94 Fed. 48 (D. Ind. 1899).

6/ This statute requires annual reporting to the County Commissioners regarding the "safekeeping . . . accommodations and health" of prisoners.

and 19-1919;[7] see also, Bukaty v. Bergund, 179 Kans. 259, 294 P. 2d 228 (1956); Pffannesteil v. Doerfler, 152 Kans. 479, 105 P. 2d 886 (1940); Nortan v. Simms, 85 Kans. 822, 118 P. 1071 (1911).

The courts' concern for prisoner safety and security has not led them to sanction generalized racial segregation, however. Instead the courts have held that prison officials may not follow a general policy of racial segregation of prisoners in anticipation of future violence arising from racial tensions, Wilson v. Kelley, supra, 294 F. Supp. at 1009, Rentfrow v. Carter, supra, 296 F. Supp. at 303, but may only consider such tensions in certain narrow and particularized circumstances, Lee v. Washington, 390 U.S. 333, 334 (concurring opinion), as where the prisoners are peculiarly violence prone because of temporary loss of self-control (e.g., drunks, insane persons, etc.)[8] or jail officials learn of a particular animus between individual prisoners (e.g., prior combatants in a race riot or street brawl).[9]

7/ This statute provides, that all prisoners "shall be treated with humanity, and in a manner calculated to promote their reformation."

8/ Washington v. Lee, supra, 263 F. Supp. at 331 n. 6.

9/ Wilson v. Kelley, supra, 294 F. Supp. at 1009 n. 5.

II. The Problems of Racial Segregation and Prisoner Safety Require Relief Which Will Substantially Revise the Administration of the Wyandotte County Jail

In the instant case, the United States seeks the total disestablishment of the racially segregated mode of operating the Wyandotte County Jail. Because of the defendants' claims that such desegregation will lead to in-prison violence, the evidence which will show an absence of proper safety precautions at the present time, and the government's concern for prisoners' safety, the relief believed appropriate in this case should include substantial revision of the mode of operation of the county jail.

The general reluctance of courts to interfere with the administration of state or local penal institutions must give way to the formulation of relief necessary to vindicate federally created rights, Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), and to correct abuses of discretion by local jail officials. Rentfrow v. Carter, supra, 296 F. Supp. 301, 302. The Court should order the defendants, after consultation with officials of the Federal Bureau of Prisons and the Law Enforcement Assistance Administration, to adopt and implement a desegregation plan meeting the Court's approval.

Such a plan should include at least four elements. First, provision should be made for continuous supervision of prisoner activity by paid jail personnel. Heretofore, as the evidence will show, the absence of jail personnel inside the jail has contributed to prisoner violence. Such relief has been ordered by a federal court in a related context. See Holt v. Sarver, supra, 309 F. Supp. at 376-378, 381, 384 (E.D. Ark. 1970).[10/]

Second, provision should be made for the separation of prisoners according to valid and reasonable non-racial standards, rather than on the basis of race. Compare, Holt v. Sarver, supra, 309 F. Supp. at 384. The goal in this regard would be to isolate, insofar as feasible, persons awaiting trial from those convicted and serving sentences, felons and chronic drunkenness offenders from other prisoners, and recidivists from those charged for the first time with criminal offenses.[11/]

10/ Even under Kansas law, the state courts have ordered county commissioners to provide funds for maintenance of a jailer's quarters on the premises. See Norton v. Simms, 85 Kans. 822, 118 P. 1071 (1911).

11/ The Kansas statutes already provide for the separation of male and female prisoners and of juvenile and adult offenders. See K.S.A. 19-1903, 19-1919.

Third, the defendants should be required to explore and develop rehabilitative work assignments for sentenced prisoners, a minimum of two hours daily exercise for prisoners, and educational programs for the inmates. Such programs are envisioned by the Kansas statute providing that prisoners be treated "in a manner calculated to promote their reformation," K.S.A. 19-1919, and their development will undoubtedly contribute to a lessening of tension within the jail. Cf., Holt v. Sarver, supra, 309 F. Supp. at 379.

Finally, the defendants should be required to present their desegregation plan to the plaintiff and this Court within a reasonable time and once it is implemented, to maintain appropriate records indicating each prisoner's race, cell assignments, appropriate classification, and enrollment in rehabilitation and work programs required by this Court.

It is conceded by the plaintiff that changes in procedure may entail expenditure of extra monies by the defendants. While a "Kansas sheriff, by statute, has charge and custody of the jail and of the prisoners contained therein (K.S.A. 19-811) and is held responsible for the manner in which the jail

is kept (K.S.A. 19-1903)," Robinson v. State, 198 Kans. 543, 546, 426 P.2d 95 (1967), Kansas law imposes financial responsibility for jail maintenance, purchases and repairs upon the County and its Commissioners, K.S.A. 19-104, 19-1901, 19-1902; Norton v. Simms, 85 Kans. 822, 118 P. 1701 (1911), and prohibits the expenditure of county funds without authorization from the County Board. Withers v. Root, 146 Kans. 822, 73 P. 2d 1113 (1937); Roberts v. Commissioners of Pottawatomie County, 10 Kans. 29, 32 (1872). For this reason and because the County Commissioners are parties to the federal contract requiring them to maintain a safe and non-segregated jail, they are necessary parties to this litigation. They should be required to assist the sheriff in formulating his desegregation plan and should be on notice that whatever jail system they support must be "countenanced by the Constitution of the United States." Holt v. Sarver, supra, 309 F. Supp. 385.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Pre-Trial Memorandum of the United States upon counsel for the defendants by personal delivery on April 30, 1971.

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