

# Memorandum

CRIPA Investigation



JC-MD-002-001



AEP:MHN:MS:cmw  
DJ 168-35-41

Subject  Proposed Investigation of the Washington County Detention Center, Hagerstown, Maryland	Date  March 7, 1996
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To  Deval L. Patrick Assistant Attorney General Civil Rights Division	From  R Arthur E. Peabody, Jr. Chief Special Litigation Section
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### Recommendation

We recommend investigating the conditions of confinement at the Washington County Detention Center ("WCDC" or "the jail"), Hagerstown, Maryland, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1977 et seq. Newspaper reports, interviews, and other information we have received suggest that suicide prevention at WCDC is unconstitutionally inadequate. There have been three suicides at WCDC since August 24, 1995, along with two serious (though unsuccessful) attempts, the most recent in December 1995. In addition, we have received allegations of overcrowding and unsanitary conditions; inadequate medical care, nutrition, and opportunities for exercise; lack of access to the courts resulting from an inadequate law library; physical and verbal abuse by staff; and failure to respond to inmate grievances.

It is important that we begin the investigation as soon as possible. First, the suicide problem appears extraordinarily acute. In addition, we believe the local authorities might welcome a timely offer of help. The county Sheriff, who has authority over the jail, was recently quoted as saying, "At this point, I think we've done everything humanly possible. . . . I'm open to any outside suggestions that are reasonable."<sup>1/</sup> If we go in quickly with a suicide expert and a general penologist, the problems at WCDC may be able to be solved in a collegial and cooperative way. This would be an effective use of our expertise on jail suicide prevention, including recent experience gained during our investigations and settlement of 18 Mississippi jail cases. Finally, because the facility is so close to Washington, an investigation would be an efficient use of scarce resources.

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<sup>1/</sup> Clyde Ford, Inmate Found Hanging in Cell, Morning Herald (Hagerstown), Dec. 1, 1995, at A1, A6.

### Sources of Information

The Washington County Detention Center came to our attention through a newspaper account of the rash of suicides there. In addition to fairly extensive information from the Hagerstown newspapers, we have talked to a number of people with information about the jail. We have conducted telephone interviews with Debra Gardner, the chief attorney of Washington County Legal Services; Michael Morrisette, who runs the Washington County Public Defenders Office; Suzanne Smith, Legal Program Administrator of the ACLU Foundation of Maryland; Rita Tate, a board member of the Maryland Alliance for the Mentally Ill; Louis Metzner, a private attorney in Hagerstown who is affiliated with the ACLU; Lindsay Hayes, a national expert on jail/prison suicide prevention at the National Center on Institutions and Alternatives; and Ken Kerle, of the American Jail Association, which is headquartered in Hagerstown.

### Background

WCDC is a medium-size jail with 128 cells. Apparently, it also has a new wing with numerous additional cells, but that section of the facility stands empty because of understaffing. The jail's current population is approximately 385,<sup>2/</sup> primarily defendants awaiting trial and people convicted and sentenced to less than 180 days imprisonment. The inmates who have already been convicted are subject to the jurisdiction of the Maryland Division of Corrections, which pays a per diem to the jail to house them. As far as we have been able to determine, WCDC is not under a court order of any type.

### Factual Allegations

#### I. Suicide Prevention

WCDC's first suicide since 1987 occurred on August 24, 1995; there was another on October 30, and another on November 16. Each of the first two victims hanged himself from a ventilation grate, using a bed sheet; the third slit his wrists, apparently with the blade from a safety razor. Less than two weeks later, on November 30, guards cut down an inmate who had hanged himself, again from a ventilation grate using a bed sheet. The inmate lived, though he was in serious medical condition. Five days later the fifth incident occurred -- again a hanging, by the same method. The jail personnel caught this inmate in time, and cut him down.<sup>3/</sup>

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2/ Telephone Interview of Michael Morrisette (Dec. 4, 1995).

3/ Clyde Ford, Suicides Have Jail Administrators Puzzled, Herald-Mail (Hagerstown), Nov. 18, 1995, at A1; Clyde Ford, Inmate Found Hanging in Cell, Morning Herald, Dec. 1, 1995, at A1; Terry Headlee, Officials 'At a Loss' to Explain Suicides,

(continued...)

This rate of suicides -- 1 per 100 population -- is extraordinarily high. The national rate of suicide deaths in jails is less than 1 per 1200 population, per year.<sup>4/</sup>

Based on local newspaper reports, it appears that the jail's response has been inadequate. Certain steps were taken immediately: the grates that provided an opportunity for hangings apparently have been modified to correct the problem, and cell check frequency was increased from every hour to every half hour. Also, inmates were, at least for a while, no longer assigned to single cells. But it does not appear that additional screening, observation or classification techniques, or facility modification are being undertaken.<sup>5/</sup> Experts believe that such steps, along with effective training, are all necessary parts of an adequate suicide prevention policy.<sup>6/</sup>

Thoroughgoing suicide prevention is remarkably effective. For example, prior to 1986, the State of New York averaged 26 to 30 suicides each year in its county and city jails, but following full implementation of a comprehensive suicide prevention program, the state experienced only three suicides in 1993 (the last year for which we have information).<sup>7/</sup> In Hagerstown, however, local newspapers that interviewed the Warden and the Sheriff in charge of the facility report that they are at a loss as to what to do:

"These [suicides] are without rhyme or reason," said Warden Lt. Van Evans."<sup>8/</sup>

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<sup>3/</sup> (...continued)  
Herald-Mail, Dec. 3, 1995, at A1; Clyde Ford, Jail Tries to Stop Suicides, Morning Herald, Dec. 7, at A1; Clyde Ford, Suicidal Inmates No Strangers to Legal System, Morning Herald, Dec. 7, 1995, at A3.

<sup>4/</sup> Bureau of Justice Statistics, 1 Census of Local Jails, 1988, Tables A, 10 (1988 statistics: 284 suicide deaths; total inmate population 341,893).

<sup>5/</sup> We have been unable to ascertain that any suicide screening or classification is performed at the jail.

<sup>6/</sup> See Joseph Rowan & Lindsay Hayes, Training Curriculum on Suicide Detection and Prevention in Jails and Lockups (2d ed., 1995).

<sup>7/</sup> Letter from Lindsay Hayes (May 31, 1994).

<sup>8/</sup> Clyde Ford, Suicides Have Jail Administrators Puzzled, Herald-Mail, Nov. 18, 1995, at A1.

"[Sheriff Charles F.] Mades said he does not think the problem is with the staff. He said if people are determined to take their own lives, they will find a way."<sup>9/</sup>

"[Sheriff Mades said,] 'If [an inmate] needs help, it's here. But if he doesn't [ask], what can we do? There's a certain responsibility on an inmate, who is an adult, to ask for help if they need it.'"<sup>10/</sup>

In addition to underscoring that the necessary, thorough review of factors contributing to the suicide problem is not being undertaken, such views function as obstacles to an effective suicide prevention program.<sup>11/</sup>

## II. Medical Care

In addition, the information we have indicates that medical care at WCDC may be unconstitutionally inadequate. We have received complaints about specific incidents of mistreatment and WCDC's failure to respond to inmate medical needs.<sup>12/</sup> In addition, and probably more important, we understand that it is the jail's health care policy to charge even indigent inmates for medical services.

The relevant statute and regulations seem to establish two distinct kinds of charges. First, by statute and according to WCDC regulations, inmates are required to reimburse the jail for all non-excepted medical treatment, including sick call procedures, doctor's visits, and psychologist, psychiatrist, or counseling visits. The exceptions in this category are fairly broad, including care received after a referral by a facility nurse or doctor, and care

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<sup>9/</sup> Id.

<sup>10/</sup> Terry Headlee, Officials 'at a loss' to Explain Suicides, Herald-Mail, Dec. 3, 1995, at A1, A3.

<sup>11/</sup> Joseph Rowan & Lindsay Hayes, Training Curriculum on Suicide Detention and Prevention in Jails and Lockups 1-2 (2d ed., 1995).

<sup>12/</sup> Telephone Interview of Debra Gardner, Washington County Legal Services (Dec. 7, 1995) (inmate died after being given Thorazine, which was obviously contraindicated; inmate was not allowed to refrigerate antibiotics, and suffered serious medical consequences; HIV+ inmate receiving inadequate treatment; other examples); Letter from Austin Gladhill to ACLU Foundation of Maryland (Dec. 2, 1995) (inmates not given cold and flu medication); Letter from Ira Green to ACLU Foundation of Maryland 6-8 (May 29, 1995) (inmates charged for necessary medical care); Letter from same to same, at 2 (June 13, 1995) (inmate subject to respiratory attacks not allowed access to his doctor until he almost died).

"required as necessary treatment" (that is, "treatment prescribed, performed, or guided by a licensed and qualified medical practitioner which is necessary to diagnose, prevent, arrest, or correct any condition of health which, if left untreated, could reasonably result in serious and/or permanent physical or mental disability or loss of life").<sup>13/</sup> Still, much needed medical care (and almost all mental health care) does not meet this definition of "necessary." Also, it seems that inmates are required to pay for any over-the-counter medication, prescribed or not.

In addition, by statute, inmates are required to pay the jail \$4 for each visit to an institutional medical unit or noninstitutional physician, dentist, or optometrist.<sup>14/</sup> This "copayment" fee appears to apply even if the treatment obtained is necessary, though we have insufficient information to be sure that is indeed how the statute is interpreted at WCDC. Cf. Johnson v. Department of Public Safety and Correctional Services, 885 F. Supp. 817, 818 (D. Md. 1995) (listing exceptions from copayment requirement under regulations for Maryland state prisons).

Given that inmates at WCDC apparently have little or no opportunity to earn money, and that many of the pretrial detainees are in jail precisely because they have insufficient funds to make bond, we are concerned about the impact of these policies on the adequacy of mental health and medical care.<sup>15/</sup> Though we do not believe that charging inmates for medical care (and perhaps even for mental health care) is unconstitutional per se, if such a policy in practice works a deprivation of adequate medical/mental health treatment, it would violate the Due Process Clause and amount to cruel and unusual punishment. Because of the recent spate of suicides, anything that deters inmates from seeking mental health counseling is particularly troubling.

### III. Other Conditions

Some of our sources have identified a number of other problems in conditions of confinement. In fact, an inmate letter to the ACLU Foundation of Maryland explains the suicides by pointing to inmate

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<sup>13/</sup> Md. Ann. Code art. 87, § 46(c) (1995); Washington County Detention Center, Health Care Policies and Procedures, Policy No. 39 (2/13/95).

<sup>14/</sup> Md. Ann. Code art. 87, § 46(d) (1995).


<sup>15/</sup> One of the suicide victims had only \$400, and so was unable to make his \$500 bond. Clyde Ford, Suicidal Inmates No Strangers to Legal System, Morning Herald (Hagerstown), Dec. 7, 1995, at A3.

frustration with a variety of jail conditions.<sup>16/</sup> That letter, written by one inmate on behalf of a group, makes a large number of complaints -- overcrowding; inadequate nutrition; unsanitary conditions (smelly and infested mattresses; inadequate hygiene opportunity); inadequate exercise time;<sup>17/</sup> inadequate heating of the cells; physical and verbal abuse by staff; failure to respond to grievances. In addition, the letter and other information lead us to believe that the law library at the jail is inadequate to its constitutionally required purpose of providing access to the courts for inmates.<sup>18/</sup> These are allegations of serious deficiencies, which, if true, also raise Fourteenth and Eighth Amendment issues.

Conclusion

In sum, we urge your prompt approval of a CRIPA investigation of the Washington County Detention Center, in Hagerstown, Maryland, to assess allegations of overcrowding and unsanitary conditions; inadequate medical care, nutrition, and opportunities for exercise; lack of access to the courts resulting from an inadequate law library; physical and verbal abuse by staff; and failure to respond to inmate grievances.

Attachment

Approved: 

Disapproved: \_\_\_\_\_

Comments:

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<sup>16/</sup> Letter from Austin Gladhill to ACLU Foundation of Maryland (Dec. 2, 1995).

<sup>17/</sup> Michael Morrisette, of the Washington County Public Defenders Office, concurs that WCDC has too much lockdown time. Conversation with Michael Morrisette (12/3).

<sup>18/</sup> Id.; Letter from Ira Green to ACLU Foundation of Maryland (May 29, 1995).