

# Memorandum



AEP:MHN:SYB:VBR:drb  
DJ 168-79-41

Subject

Date

Recommendation to Investigate --  
Virginia Jails

January 6, 1995

To  
Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

From  
Arthur E. Peabody, Jr.  
Chief  
Special Litigation Section

## RECOMMENDATION

Pursuant to the Civil Rights of Institutionalized Persons Act, we recommend an investigation into the conditions of confinement in the Newport News, Chesapeake, Hampton and Virginia Beach City Jails (hereinafter Virginia Jails) pursuant to 42 U.S.C. § 1997 et seq.

Recently, we investigated the Norfolk City Jail in Norfolk, Virginia, and discovered severe life-threatening conditions. In part, as a result of that successful investigation, we have received numerous allegations regarding unconstitutional jail conditions in other Virginia jails. Reportedly, these jails also pose severe life-threatening conditions. More specifically, diverse sources have made numerous complaints about deficiencies in the following areas: (1) staffing and supervision resulting in inmate upon inmate and staff upon inmate violence, (2) medical and mental health care, (3) physical plant, (4) exercise, (5) overcrowding, (6) due process, (7) access to courts, and (8) religious freedom.

This proposed investigation of four Virginia jails follows upon the successful completion of investigations of eighteen city and county jails in Mississippi and the new investigation of eleven jails in southwest Georgia. While patterned after the Mississippi and Georgia models, which focused on smaller rural jails, each of the Virginia jails serves a major metropolitan area. Indeed, the combined total population of the subject Virginia jails is over 2,000 prisoners. Accordingly, we believe the Virginia jails investigation will continue to maximize the results of investigative activities and will prove to be cost-efficient and productive.

## SOURCES OF INFORMATION

On August 18, 1994, Alvin Bronstein, Director, ACLU National Prison Project requested that the Special Litigation Section conduct an investigation into conditions of confinement at the Virginia jails, alleging a pattern or practice of

cc: Jackson

CRIPA Investigation, Virginia Beach (VA)



JC-VA-0004-0004

unconstitutional deprivations. Other sources of information include the U.S. Marshals Service, private attorneys, private citizens, letters from current and former inmates of the facilities, as well as newspaper articles.<sup>1/</sup>

#### FACTUAL ALLEGATIONS

The Virginia jails reportedly have unconstitutional conditions in many areas including overcrowding, staffing, violence, medical care, mental health care, due process, access to courts, religious freedom, exercise, and physical plant. Based on the information received, we recommend CRIPA investigations of the following Virginia jails:

I. Newport News City Jail, Newport News, Virginia

A. Severe Overcrowding and Understaffing

The Newport News City Jail (NNCJ), constructed in 1976, has a design capacity of 112 persons but currently houses approximately 536 prisoners in a structure devoid of windows.<sup>2/</sup> Over 6,000 inmates are admitted to the jail annually, including pretrial detainees and convicted persons.<sup>3/</sup>

The NNCJ is grossly overcrowded and severely understaffed.<sup>4/</sup> The jail is so severely crowded that inmates are forced to sleep on the floor in every cellblock and dayroom.<sup>5/</sup> For example, in a space intended for 14 prisoners 30 are currently housed.<sup>6/</sup> Even the disciplinary segregation

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<sup>1/</sup> While many of our sources had general comments about the Virginia jails, no network of legal services or prisoner advocacy groups exist in this geographic area to give us firsthand knowledge of conditions at these jails.

<sup>2/</sup> ACA National Directory of Jails and Adult Detention Facilities; U.S. Marshals Service, Inspection Report of Newport News City Jail (March 1, 1994); Newsday, July 20, 1993; Letters from Jonathan Smith, August 9, 1994 and September 11, 1994.

<sup>3/</sup> ACA National Directory of Jails and Adult Detention Facilities.

<sup>4/</sup> Telephone Interview with Phillip Duncan, U.S. Marshal Service (December 5, 1994); U.S. Marshals Service, Inspection Report of Newport News City Jail (March 1, 1994).

<sup>5/</sup> Telephone Interview with Phillip Duncan, U.S. Marshal Service (December 5, 1994); Letter from Jonathan Smith, August 9, 1994.

<sup>6/</sup> Id.

cells, which contain only one bunk each, are double-celled with one inmate sleeping on the floor due to a lack of space.<sup>7/</sup> Cells which are only 5 by 8 feet, house 2 prisoners.<sup>8/</sup> Even the dormitories of NNCJ are overcrowded. The dormitories, which are designed to accommodate 14 prisoners, now house 28 prisoners in beds and another 10 or more prisoners sleep on the floor.<sup>9/</sup> Each dorm contains one shower, two combination sinks/toilets, and one picnic table which is also used as a bunk at night for 38 plus inmates.<sup>10/</sup> This means that 38 plus inmates have only one shower and 2 toilets/sinks for personal hygiene. Due to the extensive overcrowding, juveniles are housed in isolation cells with solid steel doors which remain closed 24 hours per day.<sup>11/</sup> These isolation cells are designed to accommodate only one prisoner but house up to three juveniles.<sup>12/</sup> Juveniles are also reportedly housed in the lock-up section of NNCJ with adult prisoners.<sup>13/</sup> The lock-up section of NNCJ consists of forty-seven 5 by 8 feet cells containing only a single bed and a combination toilet/sink. Each of these cells reportedly house as many as five prisoners.<sup>14/</sup> Even the medical dormitory, which contains a total of seven beds, has as many as eight inmates sleeping on mattresses on the floor.

Additionally, the jail is reportedly understaffed with fewer than 12 jailers per shift to guard more than 536 inmates.<sup>15/</sup> This represents a ratio of inmates to guards of 45 to 1, creating an extremely dangerous environment for both inmates and jailers. As a result of the lack of staff, some inmates are required to

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<sup>7/</sup> Id.

<sup>8/</sup> Id.

<sup>9/</sup> Letter from inmate Jonathan Lee to Alvin Bronstein, Director, ACLU National Prison Project (August 9, 1994) (on file with the U.S. Dept. of Justice, Civil Rights Division, Special Litigation Section).

<sup>10/</sup> Id.

<sup>11/</sup> Letter from Jonathan Smith to Alvin Bronstein, Director, ACLU, National Prison Project (September 11, 1994) (on file with the U.S. Department of Justice, Civil Rights Division, Special Litigation Section).

<sup>12/</sup> Id.

<sup>13/</sup> Id.; Letter from Lee to Bronstein, supra note 9.

<sup>14/</sup> Id.

<sup>15/</sup> ACA National Jail and Adult Detention Directory.

wear leg irons and handcuffs while being transported within the jail, participating in outdoor recreation, and even while showering.16/

#### B. Violence

As a result of the severe overcrowding and understaffing, violence, including physical and sexual assaults, has increased, resulting in serious injuries. Several inmates who were beaten and sexually assaulted while confined in NNCJ have filed lawsuits against the jail administration charging that the attacks could have been prevented.17/ Additionally, inmate victims with serious injuries are reportedly treated and returned to the same cellblock with the prisoner or prisoners who inflicted their injuries.18/

Moreover, guard on inmate violence is at an all time high. On July 24, 1994, an inmate was allegedly hit in the head with a radio by a deputy for refusing to take his medication.19/ This incident resulted in the inmate being transported to the hospital for medical treatment, including 12 stitches to close his wound.20/ Upon his return from the hospital, the inmate was handcuffed and shackled in his cell for two weeks.21/ On August 29, 1994, another inmate was beaten and hog-tied by five deputies and denied medical treatment for his injuries.22/ In another violent incident, an inmate was reportedly maliciously and needlessly shocked by jailers with some type of electrical device resulting in permanent arm damage.23/ Another inmate was allegedly retaliated against by NNCJ personnel and subsequently transferred to another correctional facility for

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16/ Letter from Smith to Bronstein, supra note 11.

17/ USA Today, November 8, 1993 (Inmate filed \$5 million suit).

18/ Id.

19/ Letter from Tyrone Richardson to Shanetta Brown, Attorney, U.S. Department of Justice (August 15, 1994); supra note 9.

20/ Id.

21/ Id.

22/ Letter from Franco Harrison to Jan Elvin, Editor, ACLU National Prison Project (August 26, 1994) (on file with the U.S. Department of Justice, Civil Rights Division).

23/ Letter from Jonathan Smith to Alvin Bronstein, supra note 9.

bringing the jail conditions to the attention of the Department of Justice.<sup>24/</sup>

NNCJ affords no provision for privacy or sight and sound separation of females and juveniles from adult males. Male inmates, handcuffed and shackled in the nude, are placed in stripped cells, reportedly in full view of female prisoners, female deputies and recruits, as well as female reporters.<sup>25/</sup> In addition, male inmates housed in the lock-up section are unobstructedly observed by both female inmates and guards.<sup>26/</sup>

### C. Inadequate Medical Care

The overcrowding and understaffing has impacted the medical and mental care delivery system within NNCJ. Our information indicates that inmates are arbitrarily denied and delayed access to medical treatment on a routine basis. The decision to provide access to medical attention is solely at the discretion of the jailers. Recently, NNCJ officials instituted a medical copayment plan to reduce frivolous doctor visits by inmates. Under this plan, inmates would be charged \$10 per doctor or dentist visit and \$3 per prescription.<sup>27/</sup> Our sources reveal that the required copayment is used as a deterrent to necessary medical care. Additionally, indigent prisoners are reportedly denied care because they are unable to afford the copayment. Inmates report delays as long as five months to obtain access to a dentist if the inmate is unable to pay for his services.<sup>28/</sup> Reportedly, NNCJ is unable to access medical care during unscheduled physician hours.<sup>29/</sup> It is alleged that jail personnel are deliberately indifferent to the serious medical needs of inmates and fail to isolate inmates with contagious diseases. This is best illustrated by the following incident. Despite one inmate's warning that he had full blown AIDS and an active case of hepatitis, jailers totally ignored his warning and

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<sup>24/</sup> Letter to Arthur Peabody, Chief, Special Litigation Section, U.S. Department of Justice from Alvin Bronstein, Director, ACLU National Prison Project (September 20, 1994); Letter from Jonathan Smith to Alvin Bronstein, Director, ACLU National Prison Project (September 20, 1994) (on file with the U.S. Department of Justice, Civil Rights Division, Special Litigation Section).

<sup>25/</sup> Letter from Jonathan Lee to Alvin Bronstein, supra note 11.

<sup>26/</sup> Id.

<sup>27/</sup> The Washington Times, Washington, D.C., October 2, 1994.

<sup>28/</sup> Id.

<sup>29/</sup> Id.

placed him in a cell with three other inmates.<sup>30/</sup> In addition, the inmate was forced to sleep on the floor, without a blanket or a mattress, and was never provided any medical care during his entire incarceration at NNCJ.<sup>31/</sup>

D. Inadequate Mental Health Care

Reportedly, NNCJ fails to provide adequate mental health care. Allegedly, inmates prescribed psychotropic medications in the free world do not receive their prescribed medication once incarcerated at NNCJ.<sup>32/</sup> Further, prisoners with serious mental problems are reportedly housed for long periods of time without access to a psychologist or psychiatrist.<sup>33/</sup> It is even alleged that prisoners are denied their medication by medical staff if they are asleep when the medication is dispersed.<sup>34/</sup>

E. Inadequate Due Process and Access To Courts

NNCJ fails to afford prisoners even the minimum due process rights mandated by law before disciplinary action is taken.<sup>35/</sup> Prisoners are allegedly not allowed representation, witnesses, or advance notice of any disciplinary hearing which usually results in arbitrary punishment, i.e., isolation time, loss of all privileges and good time.<sup>36/</sup> The grievance procedure at NNCJ is inadequate and ineffective. Reportedly the jailer who is the subject of the grievance normally reviews and destroys the grievance against him, and then retaliates against the inmate.<sup>37/</sup> Grievances, therefore, are rarely ever answered or returned.<sup>38/</sup> Further, inmates placed in segregation are allegedly not provided monthly reviews to determine their

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<sup>30/</sup> Letter from Willie Wester to Arthur Peabody, Chief, Special Litigation Section (August 23, 1994).

<sup>31/</sup> Id.

<sup>32/</sup> Letter from Jonathan Lee to Alvin Bronstein, supra note 11.

<sup>33/</sup> Id.

<sup>34/</sup> Id.

<sup>35/</sup> Id.

<sup>36/</sup> Id.; Letter from Jonathan Smith to Alvin Bronstein, supra note 9.

<sup>37/</sup> Id.

<sup>38/</sup> Id.

eligibility for reassignment to general population, but rather are confined in segregation cells for months and even years.<sup>39/</sup> Moreover, jail personnel allegedly delay the release of prisoners they dislike for up to four hours after their release has been ordered by a judge.<sup>40/</sup> On August 24, 1994, the release of one inmate from NNCJ was ordered by a judge at 11:00 a.m.<sup>41/</sup> However, the deputies did not release this inmate until 3:30 p.m.<sup>42/</sup>

Our sources indicate that prisoners confined at NNCJ are reportedly denied access to courts. NNCJ does not provide a law library or any legal assistance for inmates. In fact, prisoners must purchase their own legal materials from the State's law library at a prohibitive cost. Prisoners are not even provided writing materials necessary for communicating with their attorneys or the courts, including paper, envelopes, pencils, or stamps.<sup>43/</sup> It is further alleged that incoming legal materials are confiscated or significantly delayed up to two weeks by the jailers.<sup>44/</sup>

#### F. Lack of Religious Freedom

NNCJ fails to allow all its inmates the opportunity to exercise their religious freedom. For example, Muslims are restricted to meeting one day per week in the TV room with other prisoners who are watching TV. Muslims are not allowed to have prayer rugs or religious caps or pork free meals.<sup>45/</sup> However, the NNCJ allows inmates of the Christian faith to meet several times per week and receive counseling from outside representatives as well as materials from the jail chaplain.<sup>46/</sup> Muslim inmates, therefore, allege disparate treatment in the provision of religious services, including space, materials and time.

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<sup>39/</sup> Id.

<sup>40/</sup> Letter from Jonathan Smith to Alvin Bronstein, supra note 11.

<sup>41/</sup> Id.

<sup>42/</sup> Id.

<sup>43/</sup> Id.

<sup>44/</sup> Id.

<sup>45/</sup> Id.

<sup>46/</sup> Id.

G. Lack of Exercise

Inmates confined to NNCJ are provided inadequate opportunities for exercise. Even though the jail is devoid of windows, prisoners confined at NNCJ are routinely not afforded outdoor recreation due to staff shortages.<sup>47/</sup> In addition, inmates confined in segregation status are not afforded any outdoor recreation, and are therefore forced to remain in their cells 24 hours per day.<sup>48/</sup>

In addition to the above allegations, NNCJ reportedly has an unsanitary and unhealthy living environment that is worse than Norfolk City Jail.<sup>49/</sup> Inmates are not provided any cleaning materials. Due to the overcrowding, incoming inmates are not provided showers nor basic hygiene items, *i.e.*, toothpaste, toothbrush, wash cloth, mattress, blanket or linen.<sup>50/</sup>

II. Chesapeake City Jail, Chesapeake, Virginia

Chesapeake City Jail (CCJ), built in 1961 and renovated in 1988, handles at least 5,300 inmate admissions yearly, including pretrial detainees and convicted persons.<sup>51/</sup>

A. Overcrowding and Understaffing

CCJ is severely overcrowded and grossly understaffed.<sup>52/</sup> The jail currently houses 461 prisoners in a facility designed for 159 inmates.<sup>53/</sup> As many as three inmates are housed in cells measuring less than 35 square feet. <sup>54/</sup> Exacerbating the overcrowding problem is the fact that the jail is severely understaffed with less than 24 jailers per shift to guard 461

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<sup>47/</sup> Id.; Newsday, July 20, 1993.

<sup>48/</sup> Id.

<sup>49/</sup> Letter from Jonathan Smith to Alvin Bronstein, supra note 9.

<sup>50/</sup> Id.

<sup>51/</sup> ACA National Jail and Adult Detention Directory.

<sup>52/</sup> Telephone conversation with Phillip Duncan, U.S. Marshals Service, December 5, 1994; U.S. Marshals Service, Inspection Report of Chesapeake City Jail, March 17, 1994.

<sup>53/</sup> Id.; The Virginian Pilot and The Ledger-Star, Norfolk, Virginia, June 23, 1994.

<sup>54/</sup> U.S. Marshals Service, Inspection Report of Chesapeake City Jail, March 17, 1994.



prisoners.<sup>55/</sup> The ratio of inmates to guards stands at 19 to 1, <sup>56/</sup> creating an extremely dangerous situation for both inmates and guards in terms of protection from harm. The most horrendous example of inadequate protection from harm is illustrated by the following incident. Two pretrial detainees were stripped naked, ordered to run through a gauntlet of inmates who beat, raped and forced them to perform oral sex on a whole cellblock of inmates.<sup>57/</sup> For three and a half hours these inmates "screamed their lungs out," while a jailer whose "desk was an easy listening distance from the block," ignored their cries for help. <sup>58/</sup> This egregious incident could have been prevented with adequate supervision and appropriate housing based upon an objective classification system.

B. Inadequate Medical Care

Allegedly, CCJ fails to provide adequate medical care to its inmates. As a way to eliminate unnecessary doctor visits, CCJ has instituted a medical copayment plan for inmates.<sup>59/</sup> Our sources indicate that the copayment plan is improperly used as a deterrent to obtaining necessary medical care.

III. Hampton City Jail, Hampton, Virginia

A. Overcrowding and Understaffing

The Hampton City Jail (HCJ), constructed in 1962 and renovated in 1979, is a three floor facility <sup>60/</sup> designed to house 156 prisoners but currently houses 358 pretrial detainees

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<sup>55/</sup> Id.

<sup>56/</sup> Id.

<sup>57/</sup> The Washington Post, Washington, D.C., November 28, 1994; United Press International, January 8, 1993; The Virginian Pilot and Ledger Star, Norfolk, Virginia, October 5, 1993. Interview of Jeffrey Breit, private attorney, in Norfolk, Virginia (September 22, 1994).

<sup>58/</sup> Id.

<sup>59/</sup> The Virginian Pilot and Ledger Star, Norfolk, Virginia, June 19, 1994 and June 17, 1994.

<sup>60/</sup> Letter from Horace Gray to Shanetta Brown, Attorney, U.S. Department of Justice (October 6, 1994).

and convicted persons.<sup>61/</sup> The jail services 9,106 inmates annually. <sup>62/</sup> HCJ is severely understaffed with less than 19 guards per shift to control 358 inmates.<sup>63/</sup> The ratio of inmates to guards is 19 to 1. Allegedly, HCJ is severely overcrowded with 20 prisoners living in a space designed to hold 14, resulting in 6 persons sleeping on the floor and tables.<sup>64/</sup> Reportedly, there is no space at HCJ for inmates to eat or to move around.<sup>65/</sup>

#### B. Violence

Inmates at HCJ are reportedly not afforded any protection from harm. Our sources indicate that inmates, who have been severely beaten, are not physically separated from their assailants, but must continue to share the same overcrowded cell.<sup>66/</sup> Reportedly, numerous inmates at HCJ have been beaten and maimed by other inmates. On August 19, 1994, inmate T.B. was savagely beaten by four inmates resulting in serious injuries which required the inmate to be hospitalized with a broken eye socket and two fractured sinus bones.<sup>67/</sup> On the same day, and in the same cellblock, another inmate, S.W., was severely beaten by five inmates, four of whom were assailants of the earlier maiming.<sup>68/</sup> This inmate's injuries included several chipped or broken teeth, bruises and facial injuries.<sup>69/</sup> In another incident, an inmate at HCJ was brutally beaten by inmates resulting in the loss of his spleen.<sup>70/</sup>

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<sup>61/</sup> ACA Directory of Jails and Adult Detention Facilities; U.S. Marshals Service, Inspection Report of Hampton City Jail, March 14, 1994.

<sup>62/</sup> Id.

<sup>63/</sup> ACA National Directory of Jails and Adult Detention Facilities.

<sup>64/</sup> Letter from Horace Gray to Shanetta Brown, supra note 60.

<sup>65/</sup> Id.

<sup>66/</sup> Letter from Philip Coswell to Shanetta Brown, Attorney, U.S. Department of Justice (August 19, 1994).

<sup>67/</sup> Daily Press, Newport News, Virginia, August 27, 1994.

<sup>68/</sup> Id.

<sup>69/</sup> Id.

<sup>70/</sup> Id.

C. Medical Care, Physical Plant and Fire Safety

In addition to the problems associated with crowding, understaffing, and the lack of protection from harm, HCJ allegedly fails to provide adequate medical care, sanitary physical plant, adequate fire safety, adequate food service, adequate ventilation and adequate exercise.<sup>71/</sup> Inmates reportedly receive no exercise and are forced to remain in their cells 24 hours per day even though the jail affords no ventilation.<sup>72/</sup> The jail is also reported to be roach and mice infested <sup>73/</sup> and is "nastier than Norfolk City Jail."<sup>74/</sup>

HCJ personnel allegedly tampers with inmate incoming legal mail. Allegedly, a letter from DOJ was torn in half and only half of the letter was delivered to the inmate.<sup>75/</sup>

IV. Virginia Beach City Jail, Virginia Beach, Virginia

Virginia Beach City Jail (VBCJ) constructed in 1979, and renovated in 1982, has a rated capacity of 563 inmates but houses 658 inmates in a physical plant which is modern, clean and well maintained.<sup>76/</sup> VBCJ admits over 10,000 pretrial and convicted inmates annually.<sup>77/</sup>

However, we have received information that prisoners confined at the Virginia Beach City Jail (VBCJ) are being sexually and physically assaulted by officers and inmates. In one incident as punishment for complaining about inoperative toilets, guards hit six inmates with stun guns while they were

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<sup>71/</sup> Letter from Floyd Addison to Shanetta Brown, Attorney, U.S. Department of Justice (October 12, 1994); Letter from Horace Gray to Shanetta Brown, supra note 60.

<sup>72/</sup> Id.

<sup>73/</sup> Letter from Horace Gray to Shanetta Brown, supra note 60.

<sup>74/</sup> Letter from Floyd Addison to Shanetta Brown, supra note 71.

<sup>75/</sup> Letter from Philip Cowell to Shanetta Brown, Attorney, U.S. Department of Justice (September 9, 1994).

<sup>76/</sup> ACA National Directory of Jails and Adult Detention Facilities.

<sup>77/</sup> Id.

lying on the floor in standing water.<sup>78/</sup> In another incident, an inmate was beaten by three guards in an unprovoked attack allegedly as retaliation for filing grievances concerning denial of religious practices and medical treatment.<sup>79/</sup> Reportedly, another inmate was raped and sodomized by two deputies in September, 1994.<sup>80/</sup> We have also received allegations on the improper use of restraints at VBCJ. Reportedly, inmates who "buck the system" are improperly restrained in a strait jacket and placed in either a "bucking chair" or a stretcher, for long periods of time, during which they are denied basic needs and medical attention.<sup>81/</sup>

Moreover, Muslim inmates allege that they are denied any opportunity to exercise their religious freedom.<sup>82/</sup>

#### CONCLUSION

We believe these allegations warrant an investigation of conditions at the Newport News, Chesapeake, Hampton and Virginia Beach City Jails. Accordingly, we have attached for your signature the appropriate letters notifying city officials of our intent to investigate these Virginia jails.

Attachments

Approved: \_\_\_\_\_

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

Comments:

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<sup>78/</sup> Letter from Jerry Belsky to Vonnie Ryan, Paralegal Specialist, U.S. Department of Justice (May 29, 1994).

<sup>79/</sup> Pro Se Complaint of Stephen Jackson-Bey from Jerry Belsky to Vonnie Ryan, Paralegal Specialist (December 11, 1994).

<sup>80/</sup> Affidavit of Anthony Brown from Jerry Belsky to Vonnie Ryan, Paralegal Specialist, U.S. Department of Justice (September 23, 1994).

<sup>81/</sup> Id.; Letter from Roy Perry to Vonnie Ryan, Paralegal Specialist, U.S. Department of Justice (May 13, 1994); Affidavit of Stephen Jackson from Jerry Belsky (September 23, 1994) (on file with the U.S. Department of Justice, Civil Rights Division, Special Litigation Section).

<sup>82/</sup> Id.

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<sup>82/</sup> Id.