



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

The Honorable Barry E. DuVal
Mayor, City of Newport News
Office of the Mayor
2400 Washington Avenue
Newport News, Virginia 23607

April 16, 1996

Re: Notice of Findings from Investigation of
Newport News City Jail

Dear Mayor DuVal:

On February 8, 1995, we notified you of our intent to investigate the Newport News City Jail ("NNCJ") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq. Consistent with the requirements of CRIPA, the purpose of this letter is to advise you of our findings from this investigation, the supporting facts, and to recommend necessary remedial measures.

Our investigation consisted of a tour of the facility with expert consultants, the examination of documents, and extensive interviews with prisoners and staff at the facility. We were accompanied on our tours by three consultants: a penologist, a medical expert, and a fire safety/environmental sanitarian, all with expertise in jail facilities. Throughout the course of this investigation, City officials and NNCJ staff extended to us and our consultants their cooperation, for which we wish to convey our thanks.

In making our findings, we recognize that NNCJ confines both pretrial detainees and post-conviction inmates. In general, inmates may not be subjected to conditions that are incompatible with evolving standards of decency or deprive them of their basic human needs while incarcerated. See Estelle v. Gamble, 429 U.S. 97 (1976). With respect to the pretrial detainees, the Fourteenth Amendment prohibits punishment of these persons and restrictive conditions or practices that are not reasonably related to the legitimate governmental objectives of safety, order, and security. Bell v. Wolfish, 441 U.S. 520 (1979). For

CRIPA Investigation



JC-VA-005-001

those convicted of a crime, the standard to be applied is the Eighth Amendment's proscription against cruel and unusual punishment. Wilson v. Seiter, 501 U.S. 294 (1991); Rhodes v. Chapman, 452 U.S. 337 (1981). When convicted prisoners are not, as here, separated from pretrial detainees, the Fourteenth Amendment standard applies to all inmates. Based on our investigation, we believe that conditions at NNCJ violate the constitutional rights of prisoners housed there.

The Newport News City Jail was opened in 1976, with major renovations completed in 1991. The Jail has a reported capacity of 248 inmates. On the day of our tour the Jail housed 482 inmates. Several months before our tour the Jail housed as many as 596 inmates.

I. Correctional Deficiencies.

A. Incidents of Violence. There is an unacceptable risk of harm at NNCJ, specifically, inmate-upon-inmate assaults. Our consultant reviewed numerous documents detailing occurrences of inmate fights. Significantly, such documentation appears to "under-report" incidents. Only reported or staff-observed acts of violence result in documentation. Unless injured seriously enough to require medical attention, many inmates do not report attacks to staff out of fear of being labeled a "snitch" and suffering potential retaliation. Indeed, one inmate told our consultant of a homosexual rape which occurred in a holding cell. Our consultant's search of Jail incident reports revealed no record of this alleged rape.

Our consultant believes that the unacceptable risk of harm at NNCJ is a result of two factors: (1) severe crowding and (2) inadequate supervision.

1. Severe crowding. NNCJ's rated capacity is 248 inmates and yet it routinely houses nearly 500 inmates at any given time. Numerous inmates sleep on mattresses on the floor. This practice results in increased tension and is unacceptable. While NNCJ is planning to participate in a regional jail, this plan does not appear adequate to alleviate the severe crowding which is customary at the Jail.

The severe crowding at NNCJ affects the implementation of a sound classification system at the Jail. Although NNCJ's classification system is consistent with current correctional standards, we note that it has not been validated. Validation of the classification system is necessary to ensure proper housing of inmates, i.e., that the system actually separates prisoners properly. Nonetheless, the system is unacceptably compromised by NNCJ's excessive crowding.

2. Inadequate supervision. NNCJ fails to provide adequate inmate supervision. The configuration of the housing areas makes officer observation of the inmate population exceedingly difficult and creates conditions conducive to inmate assaults. For example, housing units are significantly separated by numerous corridors so that officers cannot readily detect potential problems in housing areas. Further, many of the dormitories, particularly those referred to as "bays," consist of large rectangular areas that extend back from a hallway. Officers can observe only one short side of the rectangular room from the hallway. Additionally, according to Jail personnel and inmates, officers rarely enter the bays.

The Jail's staffing pattern contains absolutely no flexibility to deal with unforeseen problems. Indeed, NNCJ only has one deputy per floor at night and has no provision for relief deputies. As a consequence, if a deputy is required to leave a floor for any reason, the floor is unsupervised for that period of time. NNCJ's current staffing and supervision practices are unacceptable. Inadequate supervision results in unnecessary violence.

We note also that at the time of our tour several inmates were engaged in gambling activity, a practice which is unacceptable in a correctional setting. The accumulation of gambling debts (usually paid off in commissary goods) is one of the major causes of violence.

B. Out-of-cell/exercise time is insufficient. NNCJ fails to provide adequate out-of-cell opportunities for exercise. NNCJ has both an outdoor recreation yard and an indoor room for passive activities. Prisoners participate in outdoor and indoor recreation activities once per week for a total of three hours. Three hours of exercise per week is insufficient and counter to generally accepted correctional standards. Exercise is fundamental in serving to reduce tension. Indeed, one inmate told our consultant that "fighting is a way of letting off stress." Significantly, NNCJ has only one officer assigned to supervise the outdoor yard. Shortly before our visit, according to prisoners, there were no opportunities for outdoor exercise for several weeks because the officer with responsibility to supervise the outdoor yard was off duty.

II. Medical Care and Suicide Prevention.

With the exception of the following significant deficiencies, the medical services provided to the inmates at NNCJ meet generally accepted medical standards.

A. Deficiencies in continuity of care. Our consultant discovered that outside medical consultants fail to provide NNCJ medical staff with progress notes, reports or written summaries regarding inmates who have been treated. It is imperative that NNCJ receive such information as the failure to obtain written feedback from consultants threatens the continuity of care provided to inmates.

B. Insufficient medical staffing. NNCJ does not have a registered nurse. Accordingly, licensed practical nurses ("LPNs") are working without proper supervision. The training and licensure level of an LPN are not sufficient to permit an LPN to exercise clinical responsibility for the medical care provided to inmates/patients.

C. Gynecological care is deficient. Our consultant concluded that basic gynecological services are not available to inmates. Only those inmates who present acute urgent and/or emergent pain or bleeding are referred for treatment. This practice is unacceptable.

Further, NNCJ fails to provide adequate prenatal care. For example, NNCJ does not have a listening device necessary to monitor fetal heart tones. Additionally, pregnant inmates are not provided prenatal education. Moreover, as noted above, NNCJ fails to receive reports from outside medical consultants who provide medical services to NNCJ inmates. This failure poses a risk of significant adverse consequences with respect to pregnant inmates.

D. Security of dental facility. Our consultant noted a significant lack of security at the dental facility. Given the nature of this issue, the specific details will be disclosed via a phone conversation with appropriate officials of NNCJ.

E. Medical copayment program. NNCJ fails to maintain essential data regarding the copayment program to ensure the effectiveness of the program. Although a payment system is not illegal per se, it is imperative that all inmates receive adequate medical treatment irrespective of their ability to pay.

F. Suicide prevention deficiencies. Our consultant noted that cells used to house suicidal inmates contain fixtures which are conducive to attempting suicide. Specifically, each cell has a shelf with fixed clothing hooks, bunks with holes, and cells which have open bars with cross-members, all of which are conducive to suicide.

III. Environmental Health and Safety Deficiencies.

A. Fire safety is inadequate. During the time of our inspection, NNCJ did not have a fire alarm system in place. We were informed that the system would be installed and operative within three months. It is absolutely necessary that the system be in place as soon as possible.

Our consultant noted several housing areas with excessive amounts of clothing hung in housing units for purposes of drying. Excessive amounts of combustibles are dangerous. Such combustibles increase the possible spread of fire and interfere with evacuation in the event of fire.

Finally, our consultant noted electrical hazards, namely the inappropriate use of extension cords.

B. General sanitation deficiencies. Numerous housing areas in NNCJ are dirty and unsanitary. Notably, inmates reported that adequate cleaning supplies are not routinely provided. Our consultant found evidence of roaches in at least two housing areas. Additionally, our consultant found the showers at NNCJ to be particularly dirty, moldy and clogged with debris.

C. Inadequate ventilation. The ventilation at NNCJ is inadequate. A number of the air exchange vents are blocked with debris, such as cardboard, paper and grease. Inadequate ventilation increases the risk of transfer of infectious diseases and therefore poses a threat to the safety of inmates.

D. Plumbing is deficient. A number of the plumbing facilities at NNCJ are inoperative. Our consultant discovered basins and showers that had little or no water pressure and several leaking toilets. In at least one area, the shower leaked onto the mattress of an inmate who has to sleep on the floor. Additionally, NNCJ fails to provide an adequate number of showers for the number of inmates housed at the Jail.

E. Lighting is inadequate. Numerous light fixtures in NNCJ are inoperative. A number of housing units have inadequate lighting, which inhibits adequate cleaning and maintenance of cells, as well as personal hygiene.

F. Food services are deficient. The food service operations at NNCJ are deficient. Among the critical deficiencies noted by our consultant are: improper food serving temperatures; low water temperature in the dishwasher; and failure of food service workers to perform routinely their duties consistent with generally accepted sanitation standards.

IV. Additional Issues

A. Staff abuse of inmates. Our consultant received a number of allegations of staff abuse of inmates. It is unclear whether improper staff conduct actually occurs. Importantly, however, NNCJ fails to document adequately incidents involving use of force. Moreover, inmate allegations of staff abuse are reviewed and investigated entirely within NNCJ's chain-of-command and are, therefore, prone to charges of lack of objectivity.

Additionally, our consultant received a number of detailed allegations that inmates had been "hog-tied," that is arms and legs handcuffed and connected behind the back. Our penologist and medical consultant informed Jail personnel of these allegations and the life-threatening danger of this practice. NNCJ immediately reported that such practices never occurred in the past and would not occur in the future.

B. Equal Protection. NNCJ currently provides substance abuse programs for both male and female inmates. Our consultant commended the Jail for these programs. Unfortunately, due to staff shortages, we were informed that this program would be discontinued for the female inmates. It is imperative that programs continue on the same basis for females as they do for males.

V. Remedial Measures Regarding Correctional Deficiencies.

A. Incidents of Violence.

1. Crowding. Take immediate measures to significantly reduce the inmate population. Inmates must be provided safe sleeping accommodations i.e., a bed. NNCJ must explore long-term housing solutions in addition to planned participation in the regional jail.

2. Staffing and supervision. Security and supervision of inmates must be significantly enhanced by increasing the number of qualified deputies and other security personnel to reduce violence and otherwise ensure the reasonable safety of inmates. Records regarding violent incidents must be evaluated at appropriate intervals to enable jail administrators to deploy properly security personnel. Conduct and properly document routine and, as needed, visual inspections of all housing areas. Supervision of the housing areas must not be compromised due to staff scheduling.

B. Out-of-cell/exercise time. Inmates must be provided with exercise, outdoors when weather permits, one hour per day, five days per week. Reasonable exercise equipment and activities must be provided for both indoor and outdoor exercise.

VI. Remedial Measures Regarding Medical and Suicide Prevention.

A. Continuity of care. NNCJ must require that outside consultants provide NNCJ with written progress notes, reports or summaries for each inmate rendered medical service. It is so imperative that such documentation be received that our consultant suggests that NNCJ should condition payment of consultant fees upon receipt of such documentation.

B. Medical staffing. Ensure that LPNs are properly supervised. At least one full-time registered nurse should be on-site in order to provide adequate supervision.

C. Gynecological Services. Provide on-site services of an obstetrician/gynecologist, at least twice per month, for routine gynecological services. Provide adequate prenatal care, including basic prenatal education that includes information on the anatomy and physiology of pregnancy, labor and delivery, reproductive health, and parenting and family planning.

D. Security of dental facility. In light of security concerns, this issue will be specifically addressed in direct conversation with NNCJ officials.

E. Medical copayment program. Essential data regarding the effectiveness of the copayment program, the adverse consequences of the disincentive to seek care, and the specific problem areas that require resolution, must be maintained to ensure that all inmates, irrespective of their ability to pay, receive adequate medical treatment.

VII. Environmental Health and Safety.

A. Fire safety. Complete installation of the new fire alarm system as soon as possible and ensure that the system is maintained properly.

Ensure the removal of unreasonable amounts of clothing hung on or attached to cell bars.

Eliminate all hazardous electrical conditions.

B. General sanitation. Ensure the proper routine cleaning of housing and shower areas. Adequate cleaning supplies must be provided to inmates. Ensure that proper pest control services are utilized.

C. Ventilation. Ensure that adequate ventilation is provided throughout inmate housing areas.

D. Plumbing. Repair, clean and maintain plumbing facilities. Provide an adequate number of showers for the number of inmates in each cell block.

E. Lighting. Provide adequate lighting throughout inmate housing units.

F. Food services. Ensure proper food service operations, particularly maintaining proper food temperatures, maintaining proper water temperatures in the dishwasher, and ensuring the routine use of hand and hair coverings by food workers.

VIII. Remedial Measures Regarding Additional Issues.

A. Staff abuse of inmates. Ensure adequate documentation of incidents involving use of force. Inmate allegations of staff abuse should be investigated by a member within the Sheriff's department who is not Jail personnel.

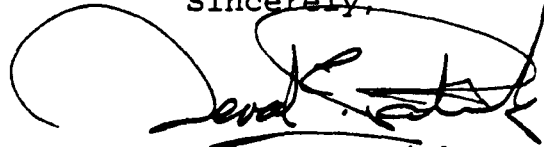
Ensure that inmates are not handcuffed in an inappropriate manner.

B. Equal protection. Ensure that programs continue on an equal basis for male and female inmates.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution 49 days after appropriate local officials are notified of them. 42 U.S.C. Section 1997b(a) (1). We expect to hear from you as soon as possible, but no later than 49 days after receipt of this letter, with your response to our findings and a description of the specific steps you have taken, or intend to take, to implement each of the minimum remedies set forth above. If you do not respond within the stated time period, we will consider initiating an action against your jurisdiction to remedy the unlawful conditions.

We look forward to working with you and other City officials to resolve this matter in a reasonable and expeditious manner. If you or any member of your staff have any questions, please feel free to contact the attorney in the Special Litigation Section assigned to this matter, Shanetta Y. Brown (202) 514-0195.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Mr. Edgar E. Maroney
Newport News City Manager

Stuart Katz, Esquire
Newport News City Attorney

Mr. Clay Hester, Sheriff
Newport News City Jail

Helen F. Fahey, Esquire
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