

Memorandum



WRY:AEP:RSF:JCP
DJ 168-32M-20

Subject
Recommendation to Investigate
Secure Correctional Facilities
for Children in Louisiana

Date
April 16, 1996

To Deval L. Patrick
Assistant Attorney General
Civil Rights Division

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

Introduction

We recommend initiating an investigation into conditions of confinement at the four secure correctional facilities for children in Louisiana, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq. Former President Carter wrote to Attorney General Reno asking us to investigate problems in these facilities identified in a recent report issued by the Human Rights Watch Children's Rights Project.^{1/}

Louisiana operates 1,500 beds in four secure correctional facilities for children between the ages of eleven and eighteen ordered into the custody of the State.^{2/} Each of the facilities is governed by a very limited consent decree, administered by Judge Frank Polozola, in the Middle District of Louisiana. Judge Polozola's jurisdiction arose out of Williams v. Edwards ("Williams I"), litigation filed in 1971 concerning the Louisiana State Penitentiary at Angola. As set forth below, the scope of the consent decrees is inadequate to address the serious problems

^{1/} On October 9, 1995, the Human Rights Watch Children's Rights Project issued its Report, Children in Confinement in Louisiana. Based on visits to each of the four facilities and interviews with staff and over 60 children confined in the institutions, Human Rights Watch found that the conditions at the facilities violate numerous international human rights standards. The group found that children in these facilities are regularly physically abused by the guards, kept in isolation for long periods of time, improperly restrained, and often hungry.

^{2/} Shinkle, P., "Overcrowding, Education among Juvenile Concerns," The Baton Rouge Advocate, November 30, 1995. Because there are court-ordered population caps on each of the juvenile facilities, there is a backlog of about 215 juveniles who are awaiting placement in one of the four facilities; most of these 215 children are being held in Parish detention centers. Ibid.

identified in the Human Rights Watch Report, monitoring and oversight of the decrees have been non-existent, and Judge Polozola's jurisdiction to enforce the decrees is questionable.

The information we have obtained suggests that the treatment and conditions at Louisiana's secure juvenile facilities violate the constitutional and federal statutory rights of children confined there. The allegations reported include pervasive abuse and undue restraint, inadequate educational services and treatment, and failure to provide adequate food. Such conditions, if they exist, deprive the children of their constitutional rights to "adequate food, shelter, clothing and medical care," as well as "conditions of reasonable care and safety." Youngberg v. Romeo, 457 U.S. 307, 315, 324 (1982).

Sources of Information

Once we received President Carter's letter, we reviewed the Human Rights Watch Report. We then interviewed one of the investigators from Human Rights Watch and a lawyer from the Youth Law Center who has brought suit against a juvenile facility operated by a Parish (as opposed to the State).^{3/} We also interviewed local advocates, including counsel for the Williams plaintiffs and a lawyer who has brought a § 1983 action on behalf of a juvenile who was abused in one of the facilities. Counsel generally confirmed the accuracy of the Human Rights Watch Report. Our information is also derived from newspaper articles describing conditions at the facilities and the State's reaction to the Human Rights Watch Report.

Factual Allegations

1. Abuse

The Human Rights Watch Report indicates that physical abuse of the children in the facilities is pervasive.^{4/} Children at each facility reported that guards hit children (even pregnant girls) with handcuffs and fists, sometimes breaking noses, jaws, or eardrums or knocking teeth out; use mace on the children; kick the children (causing one child to urinate blood); throw chairs at the children; hit the children in the face with radios; and break the children's bones.^{5/} At one facility, the nurse

^{3/} Doe v. Foti, CA No. 93-1227 (E.D. La.) (class action on behalf of juveniles confined in the Conchetta Facility, Orleans Parish Prison, run by the Sheriff of Orleans Parish).

^{4/} Human Rights Watch Report at 3.

^{5/} Human Rights Watch Report at 28-33. For instance, in
(continued...)

reported that the most common illnesses for which children came to the infirmary were orthopedic injuries such as broken jaws, broken hands, and broken noses.6/ Children reported being beaten while in handcuffs or shackles.7/ The abuse problem is compounded by the fact that there is no functioning complaint system by which the children can bring situations involving abuse to the attention of authorities.8/ Moreover, it appears that the children have a strong fear of reprisal if they report abuse.9/

2. Undue Restraint

The environment at all of the facilities is punitive. Isolation cells, which are generally cold, small, bare, windowless and sometimes painted dark colors, are often used for extended periods of time to punish children, rather than to protect children from immediate threats to themselves or others. Children in isolation cells are not permitted to leave their cells except once a day to take a shower.10/ One child is forced to wear shackles at all times except when confined to his room.11/

5/(...continued)

November 1994, Kerbert B. asked a guard for and was given permission to go to the bathroom. On his way to the bathroom, another guard stopped him and said Kerbert did not have permission. When Kerbert said that he had gotten permission, the second guard punched Kerbert in the face and broke his jaw. March 19, 1996 telephone interview, Nelson Cameron, attorney for Kerbert B., who has filed a § 1983 action on behalf of Kerbert; the case has been assigned to Judge Polozola. Mr. Cameron states that his client has been subject to other episodes of abuse and has witnessed several incidents of abuse involving other children and guards.

6/ Human Rights Watch Report at 31.

7/ Human Rights Watch Report at 26.

8/ Human Rights Watch Report at 4.

9/ Human Rights Watch Report at 34.

10/ Human Rights Watch Report at 21-22.

11/ Human Rights Watch Report at 26.

3. Inadequate Educational Services and Treatment

Juvenile judges in Louisiana have called upon State officials to provide educational services to the children confined in the juvenile facilities.^{12/} At every facility, there were empty classrooms at times when school should have been in session and a substantial portion of the children were not in school.^{13/} Louisiana also does not provide rehabilitative services to the children in the facilities.^{14/} In addition, Louisiana fails to provide aftercare services for children released from the facilities and sometimes confines a child longer than required by a court due to the lack of available aftercare services.^{15/}

4. Inadequate Food

Virtually every child interviewed by Human Rights Watch indicated that he or she was hungry.^{16/}

Additional Considerations

In 1971, Angola was the only secure correctional facility operated by the State, and housed both adults and children.^{17/} After Williams I was filed, the United States intervened pursuant to Title IX on the issue of racial discrimination. Shortly thereafter, the court asked the United States to participate as

^{12/} March 20, 1996 telephone interview of June Denlinger, one of plaintiffs' counsel in Williams ("Denlinger interview").

^{13/} Human Rights Watch Report at 38.

^{14/} Human Rights Watch Report at 40-41. Dr. Cecile Guin, who has worked in the field of juvenile justice in Louisiana for 18 years told Human Rights Watch, "No one cares enough to rock the boat so that the system can be changed. . . . Once the youth enters a juvenile institution, his or her chances of becoming a productive member of society are significantly decreased. . . . It is more likely that the youth has serious educational deficiencies that are not addressed during incarceration, is brutalized one way or another through the system and is released at a full term date with little or no preparation for reintegration into society. . . . Louisiana has never really implemented a comprehensive treatment program in this state." Id. at 41.

^{15/} Human Rights Watch Report at 41.

^{16/} Human Rights Watch Report at 36.

^{17/} Denlinger interview.

amicus curiae on the other issues as well.^{18/} The United States has never participated in Williams I under its CRIPA authority.

As part of the remedy to the court's 1975 finding of unconstitutional conditions in Williams I, Louisiana agreed to build twelve new adult facilities and four facilities to hold children in confinement. As each of these facilities opened, Judge Polozola made the State enter into a limited consent decree concerning conditions at the facilities, such as population caps and staffing levels.^{19/} The United States is not a party to these consent decrees. Moreover, these consent decrees do not address the issues that are typically presented in our juvenile cases under CRIPA -- namely, treatment, education, medical and mental health care, protection from abuse and other harms, diversion of children who do not need to be institutionalized, and after-care services. A court-appointed monitor, Margaret Severson, is supposed to receive complaints about each facility, but the monitor does not spend much of her time investigating conditions at the juvenile facilities.^{20/} Counsel for plaintiffs have never pushed issues concerning the juvenile facilities because the court's jurisdiction over these facilities is "so tangential. If we get out on that limb, someone will surely saw it off."^{21/}

From 1981 until 1990, Williams I plaintiffs' counsel "disappeared" and was not replaced; plaintiffs were therefore left with no one representing them for nearly a decade.^{22/} The

^{18/} Williams v. Edwards, 547 F.2d 1206, 1208 (5th Cir. 1977) (affirming trial court's conclusion that totality of conditions at Angola violated Eighth Amendment).

^{19/} Denlinger interview. The Fifth Circuit has held that Judge Polozola has the authority to monitor such a decree. Williams v. McKeithen, 963 F.2d 70, 72 (5th Cir. 1992). Strangely enough, although the Fifth Circuit held that he had authority to monitor the decree, it refused to address the issue of whether Judge Polozola had jurisdiction over the jail that was the subject of the decree. Ibid.

^{20/} Telephone interview, Mina Samuels, Consultant, Human Rights Watch Children's Rights Project, March 18, 1996. The previous court monitor toured the juvenile facilities and prepared reports on the facilities. However, the current court monitor does not go into the juvenile facilities. The last time that a monitor prepared a report on one of the juvenile facilities was in late 1991 or early 1992. Denlinger interview.

^{21/} Denlinger interview.

^{22/} Denlinger interview.

United States' involvement also became inactive until a few years ago, when Judge Polozola wrote to the United States asking us to look into conditions in the Louisiana penal facilities. At that time, pursuant to its CRIPA authority and not as a party or amicus in Williams I, the Special Litigation Section conducted an investigation of conditions at Angola. The Section's investigation revealed that there was no longer a race issue at Angola, but that there were problems with the medical care there.

In the meantime, plaintiffs' counsel in Williams I brought an entirely new lawsuit regarding the inadequate medical care at Angola. This new lawsuit, called Williams II, only covers Angola and has nothing to do with the juvenile facilities operated by the State. It was assigned to Judge Polozola. Following the Section's investigation, Judge Polozola allowed the United States to intervene in Williams II pursuant to our CRIPA authority, but denied us the ability to present witnesses at the hearing. At the recommendation of the appellate section, the Division did not appeal the decision, preferring to wait for the outcome of the case. Judge Polozola has not yet ruled on the merits of Williams II.^{23/}

During the last week of April, the Fifth Circuit will hear oral argument on Louisiana's argument that Judge Polozola lost jurisdiction over Williams I in 1989 when the terms of the consent decrees expired. The United States is not participating in this appeal. Plaintiffs are currently trying to settle the case before the Fifth Circuit does it for them; they are trying to put an end to the old litigation.^{24/}

Following release of the Human Rights Watch Report, Louisiana officials acknowledged the abuse at a news conference, but disputed that the abuse was widespread. The secretary of Louisiana's Department of Public Safety and Corrections, Richard Stalder, admitted that "We have a problem that we must deal with and are dealing with."^{25/} Louisiana's then-governor, Edwin Edwards, questioned the validity of the Human Rights Watch Report, calling the study "suspect."^{26/} A group of Louisiana juvenile judges have called upon Louisiana's elected officials to

^{23/} Interview of William Maddox, Senior Trial Attorney, Special Litigation Section, March 19, 1996.

^{24/} Denlinger interview.

^{25/} Shinkle, P., "Group, Officials Dispute Level of Juvenile Inmate Abuse," The Baton Rouge Advocate, October 10, 1995.

^{26/} Myers, D., "Edwards Says Prison Abuse Study Suspect," The Baton Rouge Advocate, October 11, 1995 at page 1-B Acadiana.

solve the problems in the juvenile system.^{27/} Since the Human Rights Report, Judge Polozola has twice convened Louisiana's juvenile judges in his courtroom and ordered Department of Corrections' officials to answer the judges' questions, which concerned many conditions at the juvenile facilities, particularly abuse and lack of educational services.^{28/} Counsel for plaintiffs in Williams knows of nothing substantive that Louisiana has done in response to the findings of the Human Rights Watch or the concerns of the juvenile judges.^{29/}

Conclusion

We recommend that an investigation of Louisiana's four secure correctional facilities for children be initiated pursuant to the Civil Rights of Institutionalized Persons Act. Given that: 1) the United States is only a party in Williams I concerning the issue of racial discrimination and our 1992 investigation revealed no continuing racial discrimination at Angola; 2) there are significant questions surrounding Judge Polozola's jurisdiction over the juvenile facilities in Williams I in any event; 3) the United States is not a party to the juvenile consent decrees; and 4) the consent decrees are very limited to begin with, we recommend against filing a motion for relief in Williams I. A foreseeable outcome of such a strategy would tie the United States up in an immediate appeal that would impede our ability to get relief to the children confined to the facilities. Williams II does not provide a vehicle to get concerns about the juvenile facilities before the court because Williams II only involves the issue of medical care at Angola. We therefore recommend initiating a fresh investigation of the juvenile facilities, and, if necessary, filing a new lawsuit that would address issues identified in our investigation. It may be that a new lawsuit would be assigned, as a related case, to Judge Polozola. By proceeding in this manner, however, we circumvent the jurisdictional nightmare of the Angola case.

Based on our understanding of the treatment and conditions at the facilities, it appears that an investigation is appropriate and necessary to protect the constitutional rights of the children confined there. We have attached for your signature the appropriate letter notifying State officials of our intent to commence an investigation. We recommend that Judge Polozola be notified of our intent to commence an investigation at the same time that State officials are notified. All three United States

^{27/} Editorial, "Juvenile Jails -- Elected Officials Must Respond to Alarms," Shreveport Times' Opinion, November 10, 1995.

^{28/} Denlinger interview.

^{29/} Denlinger interview.

Attorneys in Louisiana have expressed their support of this investigation. Funds are available to conduct the investigation.

Attachment

Approved:

A handwritten signature in black ink, consisting of a large loop on the left and several strokes on the right, positioned above a horizontal line.

Disapproved:

Comments: