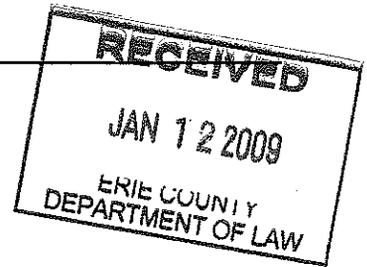




U.S. Department of Justice
Civil Rights Division

SYC:DHW:ZIL:AF:BJ:NA:kc
DJ 168-53-41, 168-53-42

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530



January 8, 2009

VIA FIRST CLASS MAIL AND FACSIMILE

Cheryl A. Green
County Attorney
Erie County
69 Delaware Avenue
Buffalo, NY 14202

RE: Investigation of the Erie County Holding Center and
the Erie County Correctional Facility

Dear Ms. Green:

It is regrettable that your level of discourse with the United States Department of Justice has been reduced to inaccurate statements and unwarranted name calling. The assertion in your letter of December 29, 2008 that the Department, which is authorized to investigate conditions in the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF") pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, is somehow engaged in "inappropriate pre-trial discovery" by interviewing inmates with knowledge about conditions in these facilities is perplexing.

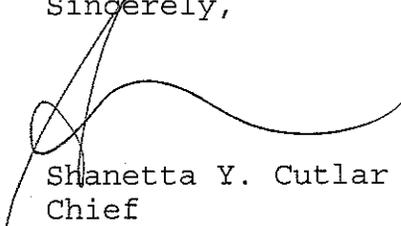
As we have repeatedly explained, our office is conducting an investigation of conditions at ECHC and ECCF. We have repeatedly offered to meet with you in person to discuss the manner in which we conduct our investigation, and these offers have been refused. You also have made it clear in no uncertain terms that the County of Erie is unwilling to cooperate in any way with our investigation. While that position is unfortunate, we must continue to fulfill our duty of conducting a fair and objective investigation based upon the information available to us without the County's cooperation. This is precisely what we are doing. Interviewing inmates is only one part of the fact-gathering process through which we will determine whether the current conditions at the facilities give rise to a pattern or practice of constitutional violations.

We note that in your December 29 letter, you fail to respond to our request that you preserve the videotaped interview of Ernest Wallace and to provide us with a copy of that tape and any documents that your office asked Mr. Wallace to sign. Rather than responding to this request, you assert that "anyone who speaks to the County of Erie is merely exercising their first amendment right to do so." We have very serious reservations about the veracity of that assertion, given that the federal inmates interviewed by your office were incarcerated in your facility at the time of the interview and singled out for interviews because of their meetings with Department of Justice representatives. Purposefully singling out an inmate for questioning merely because he met with representatives of the Department of Justice appears to be in violation of Subsection 1997d of the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, and other federal statutes. As we explained in our December 24, 2008 letter, "[i]nmates who exercise their First Amendment rights to inform the United States of any potential constitutional violations to which they are being subjected should not be subsequently targeted for interrogation by the Jail or the County, nor should they be made to believe that their participation in an on-going investigation would result in harm."

As we have not received the videotapes, the documents or any legal basis for refusing to provide these materials, we must draw a negative inference about their content from your failure to respond.

We continue to encourage the County of Erie to cooperate with our investigation. Our previous offer to confer in person regarding this investigation and to address any questions you may have about our investigative process remains open. It is still our hope that our two governmental agencies can work cooperatively to resolve our investigation. As always, should you wish to discuss this matter further, please feel free to contact me at [REDACTED]

Sincerely,



Shanetta Y. Cutlar
Chief
Special Litigation Section

cc: Terrance P. Flynn
United States Attorney
Western District of New York