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MEMORANDUM
December 1, 2003

To: Anthony Tangeman, Deputy Executive Associate Commissioner, Office of Detention and Removal, United States Immigration and Customs Enforcement

From: American Bar Association Delegation to Bergen County Jail (IGSA) in New Jersey¹

File no: 502130.0011

Copies to: [redacted] ABA Commission on Immigration Policy, Practice and Pro Bono

Subject: ABA Detention Center Review Project – Bergen County Jail Delegation

I. Introduction

This memorandum evaluates and summarizes facts gathered and findings regarding the Bergen County Jail, an Intergovernmental Service Agreement (IGSA) facility in Hackensack, New Jersey. The information was gathered via observation of the facility by the delegation and interviews with detainees and facility staff on August 20, 2003.

The Immigration and Naturalization Service (INS) promulgated the “INS Detention Standards” in November 2000 to insure the “safe, secure and humane treatment of individuals detained by the INS.” The thirty-six Standards contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to Service Processing Centers (“SPC”), Contract Detention Facilities (“CDF”), and state and local government facilities used through Intergovernmental Service Agreements (“IGSA”). The Detention Standards went into effect on January 1, 2001, and were to have been implemented at each facility by January 2003. The Standards constitute a “floor” not a “ceiling” for treatment of detainees. In other words, they are meant to establish the minimal requirements that BCIS must adhere to in the operation of its facilities. Each District Office or Officer in Charge (“OIC”) of a facility may, in his or her discretion, promulgate policies and practices affording detainees more rights and protections than those provided for by the Standards.

¹ The delegation was comprised of Latham & Watkins attorneys [redacted] and [redacted]

Overall, the delegation felt that the facility is attempting to comply with the *Standards*. However, the following problems were noted by the delegates during the course of our visit:

- Inadequate legal materials;
- Inadequate access to legal materials; and
- Inadequate access to religious services.

II. General

There are currently 795 prisoners and detainees in the Bergen County Jail (“BCJ”). The maximum capacity of the facility is 1029. However, because of the number of guards currently employed at the jail, the current capacity of the facility is 850. There are currently 60 women in the jail; the total capacity of the facility for women prisoners is approximately 120.

There are approximately 120 detainees at the Bergen County facility. The detainee population is not dominated by any particular race or national origin. According to Lt. [REDACTED] there are many Dominicans, Cubans and Asians in the facility. There are also some Arabic, Pakistani and Indian detainees. There are few detainees from Europe. According to Lt. [REDACTED] detainees are given a handbook upon arrival. The handbook is available in both English and Spanish.² However, interviews with detainees indicated that they are not provided with such a handbook.³

III. OBSERVATIONS OF IMPLEMENTATION OF LEGAL ACCESS STANDARDS

A. VISITATION

i. General Matters

According to Lt. [REDACTED] visitation schedules for the Bergen County Jail (“BCJ”) are posted near the telephones within the immigration detainee units. The visitation room for family and friends is non-contact, with telephone units used for talking between detainee and family. Visitation rooms for attorneys, which number either four or six booths per unit depending upon the unit, allow contact to permit the attorney and detainee to review documents. With the doors closed the attorney visitation rooms are quiet. The attorney rooms are equipped with a table and four or more chairs.

² Copies of each are attached as Exhibit “A” and Exhibit “B.”

³ See, e.g., Notes of Interview with [REDACTED]

ii. Legal

According to Lt. [b6, b7C] attorney visitations are not limited in either duration or frequency so long as such flexibility is not abused by either the detainee or attorney. This includes detainees who are currently in administrative or disciplinary segregation. If a non-attorney, such as a paralegal or law student, wishes to meet with a detainee, that person needs to call ahead and speak with the tour commander on duty at that time. Lt. [b6, b7C] stated that the BCJ will always accommodate such persons provided they call ahead. Additionally, independent medical service providers, experts, and interpreters are allowed to visit provided that the attorney calls ahead to alert BCJ personnel.

To determine if a detainee is present at BCJ, an attorney simply calls BCJ and asks for the tour commander on duty at the time. That tour commander will have a list of all detainees held at the BCJ. When attorneys appear at BCJ to meet with a detainee, they must present a picture I.D., usually a driver's license, and a business card. Specific attorney Bar I.D. cards are not required.

Attorney visitations may be continuous upon the election of the detainee. If a detainee wishes to continue a visitation during a meal, the detainee's meal is wrapped up and may be reheated in a microwave oven that is available on the unit.

After meeting with an attorney, a detainee is subject to a pat search. According to Lt. [b6, b7C] if BCJ personnel suspect that an attorney has passed contraband to a detainee, BCJ personnel will subject that detainee to a strip search.

According to detainees interviewed, detainees are permitted to use the telephones in the law library to call their attorneys; however, they cannot receive telephone calls or messages from their attorneys.

iii. Family and Friends

Anyone may visit a detainee during visiting hours, including friends, associates, and children. Visits are not limited to just family members. Each detainee unit has four hours of visiting time for family and friends per week. For example, the S5 Housing Unit at BCJ has visiting hours on Thursday from 9 p.m. to 11 p.m., and on Saturday from 9 a.m. to 11 a.m. According to the detainees interviewed, visitations may not exceed a half hour. Furthermore, if the visiting schedule gets backed up, instead of extending the period of visitation, BCJ personnel shorten the length of the visits. According to Lt. [b6, b7C], if normal visiting hours are a hardship for family members, arrangements can be made with BCJ personnel on a case by case basis.

With respect to deposits for detainees' accounts, visitors may leave up to \$65 per week for a detainee. Money orders may also be sent to BCJ for deposit in a detainee's account. Cash may not be sent and will be returned to the sender. Detainee accounts are updated weekly.

The detainees interviewed explained that there is a significant problem with the weekly deposit system. If money received by money order or during a visit comes in after the weekly deposits have been made, then a detainee must wait until the next deposit date for the recently received money to appear in an account. A detainee can only use money that appears in his or her account to purchase items at the commissary. If money is received but has not yet been deposited in a detainee's account, the detainee does not have access to that money.

B. Telephone Access

We were informed by Lt. [b6, b7C] that the facility takes telephone messages from attorneys and delivers them timely to prisoners. The facility will also take and deliver messages from consulates, ICE, and other legal-related sources. While some telephone calls may be recorded, telephone calls from lawyers are not. In the case of an emergency, prisoners are permitted to make collect telephone calls from the payphone in their housing unit. There were complaints from prisoners, acknowledged by Lt. [b6, b7C] that collect calls are extremely expensive. Although Lt. [b6, b7C] said the cost was approximately \$1.45 per minute, detainees indicated it was over \$4 per minute. The telephone service provider is Verizon. There are pre-paid telephone calling cards available in the commissary, but only for international calls.

C. Legal Materials

The Standards mandate that the Bergen facility shall establish and maintain a law library.⁴ The library must be adequately lighted, reasonably quiet, and large enough to support legal research and writing. It must also contain an adequate number of tables and chairs to accommodate all detainees who wish to use the facility, and must provide a flexible schedule in order to permit all detainees use of the law library for a minimum of five hours per week. Finally, the library should provide one typewriter or computer per five detainees, as well as sufficient writing materials and texts to enable detainees to conduct research and prepare legal documents.

As set forth below, the Bergen facility library does not meet many of the law library requirements set forth in the Standards. Most significantly, the Bergen library does not maintain most of the legal materials required by the Standards and does not provide sufficient access as required by the Standards.

i. Materials Identified in Attachment A-2 of the Standards

⁴ Detention Operations Manual, Detainee Services Chapter 1: Access to Legal Materials.

The Standards require the Bergen library to maintain the legal materials listed in Attachment A-2 of the Access to Legal Materials section of the Detention Operations Manual. These materials must be updated regularly and supplemented with timely information regarding significant regulatory and statutory changes affecting the detention and deportation of aliens. A current list of available texts and materials should be posted in the library. To ensure these requirements are met, the facility must designate an employee with responsibility for inspecting, updating and maintaining the library materials in good order.⁵

The Bergen library does not contain most of the texts listed on Attachment A-2. Indeed, the facility library officer, [REDACTED] b6 expressed a lack of awareness of the Attachment A-2 list. Mr. [REDACTED] b6 concurrently expressed an interest in obtaining the Attachment A-2 list in order to work towards compliance. A copy of Attachment A-2 was therefore promptly provided to Mr. [REDACTED] b6. The Bergen library also does not contain the Florence Project's "Know Your Rights" packets.

Of the thirty (30) materials listed in Attachment A-2, the Bergen library contains hard copies of only the following five (5) materials:

- #2. United States Code, Title 8, Aliens and Nationality (August 2002);
- #18. Federal Civil Judicial Procedure and Rules (2003);
- #20. Federal Criminal Code and Rules (2003);
- #24. Black's Law Dictionary (1990); and
- #30. Telephone books (Yellow pages) for local areas and nearby metropolitan areas where counsel may be located.

In addition, the Bergen library contains or provides access to the following legal materials in electronic format:

- #4. Bender's Immigration and Nationality Act Service;
- #5. Bender's INS Regulation Service; and
- #19. United States Code, Title 28 (CD-ROM, 2000).

⁵ Detention Operations Manual, Detainee Services Chapter 1: Access to Legal Materials.

Thus, the Bergen library clearly fails to maintain most of the legal materials in Attachment A-2, much less to maintain a procedure for checking on and updating those materials.⁶ In addition, the Bergen library fails to post a list of available texts and materials.

ii. Library Conditions

In accordance with the Standards, the Bergen library is adequately lit and located in a quiet area off a hallway without excessive or noisy traffic. The room is sufficiently large to accommodate legal research and writing. It contains four reading/writing tables, with adequate seating to accommodate 10-12 reasonably comfortably.

The Standards also indicate that the library should provide adequate writing materials. However, writing implements, paper, and office supplies are not generally available in the library, and can only be purchased at the commissary. Indigent detainees may request an “indigent package.” The indigent package contains a writing pad, pencil, pen, and envelopes.

The Standards require that the Bergen library devise a flexible schedule, in order to permit all detainees’ use of the law library for a minimum of five hours per week. These five hours cannot cause a detainee to miss a meal, recreation time or any other planned activity. The Bergen library falls far short of those requirements. According to Mr. [REDACTED] the library is available for detainees Monday evening for two hours, and Friday during the day for two hours. During these times, Mr. [REDACTED] indicated that up to twelve detainees (six from each pod) may be picked to use the library.

When asked how the twelve detainees were chosen, Mr. [REDACTED] related the following procedure: all detainees can put their names on a sign-up list to use the library for a given time slot; if the number of detainees requesting library use exceeds six per pod, Mr. [REDACTED] would allow access to the first six from each pod; however, if a particular individual among the first six from each pod had recently received access to the library, Mr. [REDACTED] would skip over that individual and provide access instead to an individual who had not recently received access to the library (unless Mr. [REDACTED] deemed that the particular individual had a pressing need to use the library often).

Accepting Mr. [REDACTED] version of the procedure for gaining access to the library as accurate, detainees would be fortunate to gain access to the library for 2 hours per week. This is below the mandated 5 hours per week per detainee, particularly given that most of the

⁶ Mr. [REDACTED] did indicate, however, that the library receives automatic updates of those materials it does have for which automatic renewal is available.

detainees seek access to the library most of the time.⁷ As a result, approximately 120 detainees are competing for 24 slots each week, giving each detainee only a 20% chance of getting any library time in a given week. Moreover, interviews with detainees indicated that, at most, a detainee could gain access to the library for 1-2 hours per week.⁸ Thus, in an average week, an average detainee could expect a 20% chance of getting 1-2 hours in the library, rather than the 100% chance of 5 hours mandated by the Standards. In order to achieve compliance with the Standards, the library would need to be open to 12 detainees at a time for a total of approximately 50 hours per week (which hours must not conflict with meal times or any other planned activity), thus ensuring all 121 detainees at least 5 hours per week.

Mr. [b6] also indicated that he is currently the sole library officer and that he is putting in several hours of overtime per week just to accommodate the present schedule. In order to achieve the mandatory number of hours, the library will almost certainly require increased staffing. Lt. [b6, b7C] indicated that the facility is considering hiring another librarian or opening another law library elsewhere in the facility.

In accordance with the Standards, detainees do not have to choose between library and recreation time. (Recreation facilities are open all day.)

iii. Photocopies and Mail

The library contains a photocopier and detainees are allowed to make photocopies of materials upon request. The cost for copies is \$.10 per copy. For indigent detainees, there is no charge for the copies; the indigent detainees fill out a form requesting free copies, and Mr. [b6] keeps track of the number of copies made, but does not charge the indigent detainees for those copies. There is no limit to the number of copies allowed; however, Mr. [b6] limits the number of copies at one time to 100, absent special circumstances.

If an indigent detainee requires stamps, Mr. [b6] will first verify that the detainee does not have any money in her account, and will then provide free stamps. Stamps are limited to 12 per month, absent special circumstances requiring more than that amount.

iv. Computers

The Standards indicate that the optimal number of computers/typewriters is one for every five detainees. The library contains five (5) computers, and one (1) printer. This

⁷ See Notes of Interview with [b6, b7C].

⁸ See, e.g., Notes of Interview with [b6, b7C] Notes of Interview with [b6, b7C] Notes of Interview with [b6, b7C]

appears to be an inadequate number for a facility of this size, particularly given that the Bergen facility holds 121 detainees. In order to comply with the optimal implementation number in the Standards, the library would need to add approximately 20 computers.

Two of the five computers are dedicated for immigration research and contain links to Bender's Immigration and Nationality Act Service and Bender's INS Regulation Service. In addition to these two dedicated immigration computers, the other three computers may also be used for immigration research via online legal services. The computers are all equipped with CD-ROMs. Mr. [b6] also indicated that general internet access is not available to detainees. However, Mr. [b6] indicated that, upon being presented with a request for access to a particular web page address, Mr. [b6] would print out the requested web page for a detainee.

Detainees are able to save information on diskettes. Mr. [b6] keeps the diskettes for the detainees.

v. *Assistance*

The Standards provide that detainees who are not proficient in English, or who need other assistance in preparing legal documents, should have the opportunity to seek such assistance from other detainees, or pro bono counsel. Mr. [b6] indicated that non-English speakers have the opportunity to work with fellow detainees as translators. (The library does not contain Spanish-English or other translating dictionaries.) At least one interviewee, however, stated that the library provides "no help, no advice, no consultation" regarding the legal materials provided.⁹

D. Group Rights Presentations

According to BCJ staff, group rights presentations are conducted once a month in the housing units. However, Lieutenant [b6, b7C] did not give specifics regarding the presentations and was unable to provide the authorization documentation for the previous month's presentation visit. Moreover, the Lieutenant was not familiar with The Florence Project "Know Your Rights" video. Finally, the BCJ's representation that monthly group presentations are conducted was undermined by Detainee [b6, b7C] who stated that he had not seen a single group rights presentation in the six weeks that he had been at the facility, and Detainee [b6, b7C] who also stated that he had not seen any such presentations. However, one member of the delegation spoke to a representative of the American Friends Service Committee who indicated that the AFSC does conduct monthly presentations at BCJ.

⁹ See Notes of Interview with [b6, b7C]

II. GENERAL OBSERVATIONS UNRELATED TO LEGAL ACCESS STANDARDS

A. Recreation Issues

Detainees are permitted access to an “indoor/outdoor” activity area containing two basketball goals. The activity area is approximately 50 x 20 with the upper portion of the outside wall covered with netting permitting fresh air and sunlight. Detainees are also permitted access to a small fitness center containing a single multi-station universal machine. Detainees have access to these recreational facilities seven days a week between the hours of 9:00 a.m. to 9:00 p.m.

B. Education Classes

At present, the BCJ does not offer detainees any educational classes.

C. Medical Issues/Health Access

The BCJ infirmary is administered by Correctional Health Services (“CHS”) via an administration contract with Bergen County. Like the rest of the facility, the infirmary is modern with a full examination/treatment room containing three treatment beds, a dental office, and approximately ten (10) custodial hospital rooms.

The BCJ infirmary is staffed by a fully accredited team consisting of two doctors (Dr. [b6] and Dr. [b6]) and eight full-time nurses. The infirmary is staffed by nurses twenty-four hours a day, seven days a week. Head Nurse [b6] is bilingual, fluent in English and Spanish. Dr. [b6] is fluent in English and Korean. In the event a detainee does not speak English or Spanish, the BCJ utilizes a telephonic translation service.

In a non-emergent situation, Detainees can obtain medical treatment by completing a medical request form and depositing the form in the housing unit drop-box. The forms are collected daily, reviewed by the medical staff, and prioritized. If a detainee requires immediate medical treatment, the detainee can contact the officer on duty in the housing unit and the officer will contact the infirmary.

The infirmary provides non-emergent medical treatment and dental care Monday through Friday. The medical call is conducted by housing unit, thus there is no co-mingling between detainees and county inmates. In addition, the infirmary offers mental health treatment, Monday through Friday, on a referral basis.

While the infirmary staff indicated that they attempt to provide non-emergent medical treatment within one day of the medical request, Detainees [b6, b7C], [b6, b7C] and

b6, b7C indicated that it took a number of days for the infirmary to call them down for medical treatment.

D. Religious Issues

According to Lt. b6, b7C the BCJ generally affords detainees full and equal opportunity to practice their religions as provided for by the New Jersey Administrative Code §§ 10A:31-14.5 and 10A:31-26.3. The BCJ, however, faces two problems with regard to the provision of religious services. First, the BCJ does not appear to have adequate staffing for religious services. The facility does not have a Catholic priest or Jewish rabbi willing to serve the detainee population. Apparently, the priest and rabbi on contract to serve the county inmates refuse to serve the religious needs of the Catholic and Jewish detainees because they are already performing the number of services required by their contracts. According to BCJ staff, the Catholic priest has gone so far as to threaten to sue the facility if another priest is brought in to serve the detainees. In addition, the imam is a volunteer and does not visit the facility regularly.

Second, the BCJ does not provide Muslim detainees with a reserved space for conducting daily group prayer, a requirement of Islam.¹⁰ Instead, the Muslim detainees sought the cooperation of other detainees to work out a schedule for when the recreational area would be used for daily prayer. The Muslim detainees then attempted to post the schedule. The BCJ refused to allow the schedule to be posted, and the Muslim detainees are therefore left to seek the cooperation of all other detainees in scheduling their prayers each day on an *ad hoc* basis.

BCJ staff indicated that detainees are permitted to retain religious items such as bibles, however, b6, b7C a Catholic detainee, indicated that he was not permitted to retain his crucifix necklace.

Finally, BCJ staff stated that the institution accommodates detainees seeking compliance with religious dietary laws. However, it appears that the facility does not provide halal food to Muslim detainees.¹¹ Instead, for detainees who request halal food, the BCJ provides kosher meat or poultry once per week, which detainees consider an inadequate substitute.¹²

E. Other issues

i. *Detainee Classification*

¹⁰ See, e.g., Notes of Interview with b6, b7C

¹¹ See Notes of Interview with b6, b7C

¹² *Id.*

Individuals held at the Bergen County Jail are organized within the facility by housing unit. The general prison population is housed according to criminal classification, but the detainees are not similarly classified. Instead, all of the detainees are housed together in two separate housing units. Lieutenant [REDACTED] b6, b7C indicated that when the corrections academy graduates its next class, he expects to have enough staff members to open a third housing unit for detainees. The addition of this third housing unit would allow the BCJ to classify the detainees and house them according to their criminal classification. The detainees are not co-mingled with the general prison population.

ii. Accommodations

The detainees are currently housed in two separate housing units, S7 and S8. Each unit holds a maximum of sixty-four detainees. The detainees were randomly assigned to one of the two units. Each housing unit is two stories. The detainees have use of an open living and dining space. Detainees receive all of their meals in this area. They also have access to a microwave oven and a hot water spout.¹³ Each housing unit has two private meeting rooms, where detainees may meet with their attorneys for contact visits. The detainees also have access to an enclosed recreation area that has partial exposure to fresh air, and a small gym-like room, with a universal weight machine. Detainees also have access to another sitting room off of the main living and dining area. This smaller room contains a television and some books. There are also televisions mounted in the main room.

iii. Work Programs

According to Lieutenant [REDACTED] b6, b7C the general prison population may work within the housing units for \$.50 a day, or outside the units for \$1.00 each day. Jobs outside the housing units include working in the kitchen or the laundry. Detainees, however, are not permitted to work outside their housing units. Therefore, there is only one type of work program available to detainees; they may clean inside their housing units for \$.50 a day.

We were told by the detainees that only three people are allowed to participate in this program. Other detainees choose to clean their units in exchange for extra trays of food.¹⁴

According to Lieutenant [REDACTED] b6, b7C ICE originally refused to let the detainees participate in any type of work program. Lieutenant [REDACTED] b6, b7C requested that the detainees be

¹³ During our visit, the detainees complained that the hot water spout had been broken for some period of time. Lieutenant [REDACTED] b6, b7C explained that the BCJ's policy was to wait thirty days before replacing or repairing anything damaged by the detainees.

¹⁴ See Notes of Interview with [REDACTED] b6, b7C

allowed to participate after he realized that many of the detainees were remaining with the BCJ longer than originally anticipated.

iv. Grievance and Disciplinary Procedures

a. Grievance Procedures

According to Lieutenant [REDACTED], detainees are required to complete grievance forms when seeking resolution of a problem. The forms are available in the law library, and can also be obtained at the main desk in each housing unit. Our inspection of the law library revealed that two different grievance forms were available to the detainees and other inmates: (1) a Bergen County Jail Ombudsman Request Form, and (2) a Bergen County Jail Inmate Grievance Complaint Form.¹⁵ Lieutenant [REDACTED] is responsible for reviewing those forms.

The detainees we interviewed, however, were not familiar with these forms. According to Mr. [REDACTED] all grievances must be logged in a book. He was not aware of any type of grievance form, and he said that no one ever responded to any of his grievances.¹⁶ Mr. [REDACTED] also claimed that he had never seen a grievance form, although he was familiar with the ombudsman request form.¹⁷

Lieutenant [REDACTED] also told us that there was a specific grievance form available to detainees.¹⁸ However, when he tried to obtain one of those forms from the desk in housing unit S8, the officer on duty could not locate the forms. Lieutenant [REDACTED] had to return to his office to print us a copy of the form from his computer system. Neither Mr. [REDACTED] nor Mr. [REDACTED] had seen or heard of such a form.

b. Disciplinary Procedures

According to Lieutenant [REDACTED], the BCJ follows New Jersey Administrative Code title 10A:4, which concerns inmate discipline.

¹⁵ A sample of each is attached as Exhibit “C” and “D,” respectively.

¹⁶ See Notes of Interview with [REDACTED].

¹⁷ See Notes of Interview with [REDACTED].

¹⁸ A sample is attached as Exhibit “E.”

During the detainee interviews, several of the inmates discussed a lock down situation that resulted in several detainees being placed in solitary confinement.¹⁹ Lieutenant [b6, b7C] also mentioned the incident. He explained that one evening, the officer on duty thought that he was being threatened by the detainees, and he pressed the emergency button, which prompted other officers to enter the housing unit and exert force against the detainees. Lieutenant [b6, b7C] admitted that the officer on duty may have panicked, and most likely was not being threatened by the detainees. However, according to Lieutenant [b6, b7C], none of the detainees were injured during this incident. Lieutenant [b6, b7C] version of the story differs from that told by Mr. [b6, b7C], one of the detainees.

v. Immigration Court

There is no immigration court located in the BCJ facility. The detainees are taken to Newark for scheduled court appearances. ICE provides transportation for the detainees, and they are not transported with the general prison population. They are, however, shackled and handcuffed for the trip. We were told by one of the detainees that ICE overcrowds the van it uses to transport the detainees to court. According to Mr. [b6, b7C] ICE transported thirteen people in a van that had a maximum capacity of nine.

vi. ICE Presence in the Facility

There is no daily ICE presence at the BCJ. [b6, b7C] ICE representative who accompanied us on our tour, told us that deportation and detention officers make frequent visits to the BCJ. Detention officers visit the detainees to discuss health and welfare issues, while deportation officers visit the detainees to discuss their case issues. At least one of the detainees claimed that he did not receive adequate attention from his deportation officer.²⁰

Lieutenant [b6, b7C] also provided us with a sample of a form that he completes each day and forwards to ICE.²¹ Lieutenant [b6, b7C] must make a daily report regarding the number of detainees, and any medical problems, hunger strikes, and disciplinary incidents.

IV. CONCLUSION

The facility still has substantial steps to take in order to implement the *Standards'* requirements for legal materials, access to legal materials, and access to religious services.

¹⁹ See Notes of Interview with [b6, b7C] and attached memorandum for a more detailed description of the detainees' version of the incident.

²⁰ See Notes of Interview with [b6, b7C]

²¹ Attached as Exhibit "F."