

SPECIAL ASSISTANT TO
THE ATTORNEY GENERAL



12/3/81

TO: Brad Reynolds
AAG/Civil Rights Division

FROM: John Roberts *JR*

I agree with your suggestion that you rather than the AG should sign the response to Eikenberry. I've redrafted the letter to conform. Please send a copy to me for files.

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National Archives & Records Administration
Record Group 60 Department of Justice
Files of William Bradford Reynolds 1981-88
Accession # 60-89-0172 Box: 38
Folder: 1110- AAG Civil Rights Division;
Hoptowit v. Ray

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 8, 1981

Honorable Ken Eikenberry
Attorney General
Temple of Justice
Olympia, Washington 98504

Dear General Eikenberry:

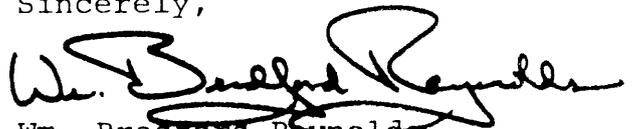
The Attorney General has referred to me your letter of November 4, 1981, concerning the involvement of the United States as amicus curiae in the case of Hoptowit v. Ray, USDC, E.D. Wash. 79-359. In that letter you note the significant strides taken by Washington state corrections officials to improve conditions at the state penitentiary, and request the Department of Justice to reevaluate the basis for its continued involvement in the litigation.

It is indeed the policy of this Department to cooperate with the states whenever possible and to work together with state and local governments to achieve mutual goals. I would expect this approach to be evident in any future dealings you may have with the local United States Attorneys office.

So far as the particular matter of Hoptowit v. Ray is concerned, it is my understanding that the case on the merits is now in the hands of the Court of Appeals for the Ninth Circuit. While I understand that the case has not been stayed in the District Court and that proceedings are continuing at that level, any question of the continued involvement of the United States would seem to be best presented after decision by the Court of Appeals eventuating either in remand or further appeal. When such an occasion arises we will certainly assess the circumstances and determine what appropriate role, if any, remains for the United States in this case. Our involvement even prior to that point will be tempered by appropriate respect for state institutions.

Thank you for sharing your concerns about this case with us.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



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OFFICE OF THE ATTORNEY GENERAL

November 4, 1981

Honorable William French Smith
United States Attorney
Department of Justice
Washington, D.C. 20004

Re: Hoptowit v. Ray
USDC, E.D. Wash. 79-359

Dear Mr. Attorney General:

I applaud the policy you have promulgated to reduce federal involvement in matters which are primarily of state interest, and I would like to make a request which I believe is totally consistent with that policy.

My reason for writing this letter is to point out activity in prison litigation in federal court by the prior administration's Department of Justice and to express my hope that the Department of Justice will terminate its participation in the litigation.

Background

In 1979, prisoners in the State of Washington's largest penitentiary, which is located in Walla Walla, represented by Legal Services and several private counsel, sued the governor of this state for conditions existing at the state penitentiary. That litigation resulted in a judgment against the governor and other state officials which is now pending for resolution by the Ninth Circuit Court of Appeals, argument having been made and the decision being awaited. The District Court decision was not stayed and various compliance questions have arisen during the appeal period.

Your staff may advise you that the participation by the United States Attorney in this case as an amicus was in response to a sue sponte order by the trial judge. However, an Assistant United States Attorney admitted in a post-trial affidavit that they had worked with the plaintiffs' counsel on this case even before the complaint was filed. Further, from the very beginning of the case the United States Attorney's office served as a functional co-counsel for the plaintiffs. Never once in the case, at least from what was apparent to our attorneys, did the United States and the plaintiffs take inconsistent and opposing positions. More than

Ken Eikenberry Attorney General
Temple of Justice, Olympia, Washington 98504

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OFFICE OF THE ATTORNEY GENERAL

Honorable William French Smith

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once the United States Attorney's office was deeply involved in pressing issues involving individual prisoners, which had little or nothing to do with the major constitutional issues of the case. The commitment of time by the United States Attorney's office was such that there was never less than one attorney working full-time on the case, and at times there were four or five federal attorneys active in the case. Four federal attorneys actively participated in the trial. Had it not been for the substantial presence of the Justice Department personnel, it is extremely doubtful that the plaintiffs' counsel could have complied with the pre-trial schedule set by the court.

The unusual participation by attorneys for the Justice Department continued even with reference to the appeal to the Ninth Circuit. The United States did not participate in the appeal until after all of the scheduled briefs had been filed with the court. Only then, after all the other briefs had been filed, did the United States, acting directly from the Justice Department in Washington, D.C., attempt to file a lengthy brief. This brief was entirely supportive of the plaintiffs' position. Had it been accepted by the court, in light of its lack of timeliness, the state would have been virtually precluded from responding to the brief. The Court of Appeals refused to allow the United States' participation in the appeal as an amicus, but did allow the brief to be lodged.

The Washington State corrections officials have strenuously worked to improve conditions at the state penitentiary and have made significant strides since the time that the complaint was filed. While our officials have not denied the existence of problems at the institution, they have vigorously contested the alleged severity of the same. Regardless of conditions in the Fall of 1979, when the complaint was filed, I do not believe that the conditions at the penitentiary warranted, nor do they presently warrant, federal intervention under the standards contained in the Civil Rights of Institutionalized Persons Act (Public Law 96-247). I believe any fair evaluation of the institution would lead to the same conclusion. I emphasize "fair" because the approach taken by the prior administration's attorney has been solely that of an adversary and has never been impartial.

Request

I would suggest there be an evaluation of the penitentiary under the Institutionalized Persons Act standards by your office to determine whether the United States should continue its involvement in this litigation. If that review leads you to the conclusion

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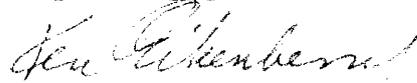
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November 4, 1981

that some continued involvement is appropriate, I would then urge that the involvement take the form of positive assistance rather than adversarial challenges to institutional acts and energies be directed toward implementation of desired improvements.

I hope that you will reassess the positions taken by the Department of Justice in this proceeding. I am confident that such review will result in your declining to further participate in this proceeding.

Very truly yours,



KENNETH O. EIKENBERRY
Attorney General

KOE:jd