

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

R.G., an individual; C.P., an individual by
and through her next friend, A.W.; and
J.D., an individual,

Plaintiffs,

v.

LILLIAN KOLLER, Director of the State
Department of Human Services, in her
individual and official capacities;
SHARON AGNEW, Director of the Office
of Youth Services, in her individual and
official capacities; KALEVE TUFONO-
ISOSEFA, Hawaii Youth Correctional
Facility Administrator, in her individual
and official capacities; *et al.*,

Defendants.

CIVIL NO. 05-566 JMS/LEK
[CIVIL RIGHTS ACTION]

DECLARATION OF DAVID
ROUSH; EXHIBIT 1

DECLARATION OF DAVID ROUSH

I, David Roush, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows.

2. In 1995, the National Juvenile Detention Association (“NJDA”) at Eastern Kentucky University and its partner organizations received a grant from the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) a division of the federal Department of Justice) to implement a unified, multi-year strategy for training of line staff in juvenile detention and corrections facilities. Effective grant management resulted in combined efforts by government, academia, and practitioner organizations to maximize resources, resulting in the creation of the NJDA Center for Research and Professional Development (“NJDA CRPD”). I am currently a Director of the NJDA CRPD, which is a leading national agency providing comprehensive Conditions of Confinement Assessment to states. Our assessments are based on standards from the American Corrections Association, OJJDP, Performance-based Standards for Juvenile Corrections Facilities, case law, and professional practices.

3. I have served as a consultant in the field of juvenile corrections at least four times in the past 10 years. Additionally, I have served as an expert witness in approximately 13 federal and state court cases. My work as a consultant and as a witness has been based on my expertise in juvenile confinement facilities, education services in juvenile justice, and strategic implementation of best practice in juvenile detention and corrections. A true and correct copy of my curriculum vitae is attached hereto as Exhibit 1.

4. In October of 2003, the Judiciary of the State of Hawaii contracted with the NJDA to conduct a Conditions of Confinement study of Hale Ho'omalua, also known as the Alder Street Detention Home ("DH"). I coordinated this project and worked with Anne Nelsen and Nelson Griffis in conducting site visits and writing the report.

5. In February of 2004, Larry Miesner and I conducted the preliminary site visit for the Hawaii Jurisdictional Planning Assistance, a strategic planning workshop for juvenile justice stakeholders, requested by Sharon Agnew, the Executive Director of the Office of Youth Services ("OYS"), and approved by OJJDP. On Wednesday, February 11, 2004, our activities included a tour of the Hawaii Youth Correctional Facility ("HYCF") with Phil Tumminello, Acting Youth Facility Administrator. The tour included a walk-through of the girls' living unit, the Observation and Assessment Cottage ("O & A"). During my tour of

HYCF, I observed two male-to-female (“MTF”) transgender wards who were being housed with the girls in O & A. Mr. Tumminello told us this placement was for the transgender wards’ protection, and that there had been no major problems by having them on the girls’ living unit. Based on that conversation and on my personal observations, I was of the general impression that the MTF transgender wards were safe.

6. In 2004, OYS contracted with the NJDA CRPD to provide an assessment and report on the conditions of confinement at the Hawaii Youth Correctional Facility using national standards for juvenile facilities. This project was envisioned to have three parts: (1) a staffing study; (2) a training needs assessment; and (3) a conditions assessment. The NJDA CRPD team for this project consisted of myself, Larry Miesner, Nelson Griffis, and Carol Brooks. The assessments were scheduled to occur immediately following the Jurisdictional Planning Assistance to reduce travel costs.

7. The NJDA CRPD team assessed HYCF in June of 2004. Although we completed the staffing study and the training needs assessment, the conditions assessment (which in my opinion was the most critical piece of the project) was canceled at the direction of Sharon Agnew. This decision eliminated Carol Brooks from the assessment team.

8. We provided to OYS and HYCF written reports concerning the staffing study and the training needs assessment and conducted a lengthy exit interview with then-First Deputy Attorney General Richard Bissen, Sharon Agnew and Kaleve Tufono-Iosefa, the HYCF Administrator. Miesner and Griffis stated that HYCF was in desperate need of more staff to protect the safety of wards. Also, HYCF was being operated with policies and practices more appropriate for an adult correctional facility, which is problematic for juvenile facilities, and it should use revised and expanded staff training to establish a juvenile corrections culture.

9. I have reviewed the Declaration of Kaleve Tufono-Iosefa, the Youth Facility Administrator of HYCF, which was submitted in opposition to the Plaintiffs' Motion for Preliminary Injunction. I have also reviewed Defendant's Memorandum of Law in Opposition Plaintiffs' Motion for Preliminary Injunction.

10. Ms. Tufono-Iosefa states at paragraph 22 that she had been advised that "juvenile facilities are divided into male and female wards. The decision as to where to place a particular ward depended on the biological identity of the ward as established by the ward's genitalia, rather than the ward's psychological identity." Ms. Tufono-Iosefa also states in paragraph 24 that she made the decision to house Plaintiff C.P. (a MTF transgender ward) with the other male wards due to his

genitalia and the advice of the retained experts that placement of the ward depends on the ward's genitalia.

11. I did not make any statement to Ms. Tufono-Iosefa or to any other person at HYCF or OYS that the decision of placement of a MTF transgender ward should be based on the ward's genitalia. Moreover, I would not have said any such thing. Given my observations at HYCF as well as my experience in the field of juvenile corrections, it is my opinion that the MTF transgender wards at HYCF were safer and less subject to psychological and physical harm when they were housed with the female wards.

12. Defendants have stated in their Opposition at page 27 that "the fact that J.D. and C.P. were segregated from the remainder of the wards was based on HYCF's decision to ensure their safety or the safety of other wards. It was clearly not for purposes of punishment." This statement reflects generally faulty reasoning. There is widespread agreement among child psychologists and psychiatrists that social isolation is punishment. It is difficult to use an intervention that is recognized as inherently punishing but not intend it to be punishment. For this reason, psychiatrists in juvenile correctional settings have recommended the elimination of isolation due to its misuse by corrections staff. In fact, the National Commission on Correctional Health Care advises that any youth who is subject to isolation or segregation for a period of longer than 24-hours be

visited regularly by qualified medical and mental health professionals to safeguard the ward's mental and physical health.

13. The use of isolation or segregation in a juvenile facility must be used prudently, and for as short of a time as necessary to get the behavior modification message across to the ward. Typically, wards in a juvenile facility who are emotionally troubled, do not have a good repertoire of social skills, and are not good decision-makers require an intervention that is short-term and instructive. Thus, the point of isolation or segregation is to provide a corrective behavior intervention in direct response to a ward's misbehavior. Punishing a ward in order to protect that ward from the harmful actions of others is not an acceptable correctional practice for juveniles. Instead, it is the responsibility of the administration to create an environment that is physically and psychologically safe for the wards without violating the wards' rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 13th of November 2005 in East Lansing, Michigan.

A handwritten signature in cursive script, appearing to read "D. Roush", written over a horizontal line.

David Roush

Curriculum Vitae

David W. Roush

Michigan State University
1407 South Harrison Road, Suite 350
East Lansing, MI 48823-5239
(517) 432-1242; FAX (517) 432-0727

5 Locust Court
Albion, MI 49224-2200
(517) 629-8750; FAX (517) 629-8767
e-mail: roush@msu.edu

EDUCATION

- Doctor of Philosophy*
1989
Michigan State University, College of Social Science, East Lansing, MI 48824
Interdisciplinary Social Sciences: Criminal Justice and Criminology
Dissertation: "Exploring Institutional Quality of Life: A Study of the Relationship between Conditions of Confinement and Residents' Perceptions of Well-Being"
Committee: John McNamara, Ph.D. (Chair, Criminal Justice); Vincent Hoffman, Ph.D. (Criminal Justice); Cleo Cherryholmes, Ph.D. (Political Science); J. Kevin Ford, Ph.D. (Industrial & Organizational Psychology).
- Specialist in Education*
1978
Western Michigan University, College of Education, Kalamazoo, MI 49009
Counseling Psychology
Thesis: "The Use of Response-Contingent Time-Out to Manage Behavior of Incarcerated Juvenile Offenders in a Special Education Classroom"
Committee: Bill K. Richardson, Ph.D. (Chair); William J. Carlson, Ed.D.; Robert Hopson, Ph.D.
- 1975
University of Tennessee at Nashville, College of Education, Nashville, TN 37214
Graduate coursework in Counseling Psychology
- Master of Arts*
1973
Western Michigan University, College of Education, Kalamazoo, MI 49009
Counseling
Internship: Student Services, Albion College
- Bachelor of Arts*
1971
The College of Wooster, Wooster, OH 44691
Religion (with honors)
Independent Study Thesis: "If I Speak with Tongues of Men and Angels: A Comparative Analysis of the Epistles of Saint Paul"
Committee: Rev. J. Arthur Baird, Ph.D. (Chair), Rev. Ralph Young, M.Div.
- 1969-1970
The Ohio State University, Columbus, OH 43210
Undergraduate coursework

EXPERIENCE

- Assistant Professor
School of Criminal Justice, Michigan State University, 560 Baker Hall,
East Lansing, MI 48824-1118 1995 to present
Juvenile justice specialist in SCJ Outreach; manage Center for Research & Professional Development, MSU teaching experience: Juvenile Detention Services, Juvenile Delinquency, and Intro to Criminal Justice.

- Director** **Research & Professional Development, National Juvenile Detention Assn.,**
MSU 350 Nisbet, East Lansing, MI 48823-5239 1992 to present
Manage Federal grants to National Juvenile Detention Association for
training and technical assistance re: line staff in juvenile confinement
facilities, education services in juvenile justice, and strategic implemen-
tation of best practice in juvenile detention and corrections.
- School Safety Specialist** **Wexford Community School Project, Lansing, MI 1998 - 2000**
Multi-agency (Lansing School District, City of Lansing, Michigan
Department of Education, & Michigan State University) and multi-
disciplinary (Education, Human Ecology, Nursing, & Criminal Justice)
project to develop a model elementary education program.
- Principal Consultant** **The Renaissance Juvenile Justice Consultants, 5 Locust Court, Albion, MI**
49224-2200 (517) 629-8750 1992 to present
Sole proprietorship for counseling, consulting, training, social climate
assessments, and expert witness services. Grant writing for NJDA: \$6.8
million as of 2005.
- Instructor** **Wyoming Law Enforcement Academy, Douglas, WY 82633 1998 - 2002**
Taught advanced juvenile detention courses to county sheriffs deputies.
- Project Director** **Juvenile Justice Personnel Improvement Project (funded by OJJDP)**
National Juvenile Detention Association, Albion, MI 49224 1992 - 1994
Grant from OJJDP funded national survey of innovative programs,
practices, and concepts essential to effective juvenile detention.
Products include the *Desktop Guide*, the *Juvenile Detention Training Needs*
Assessment, and the *Innovative Programs Manual*.
- Instructor** **Center for Legal Studies, University of Illinois at Springfield, Springfield,**
IL 62794 1988 to present
Teach "Behavior Observation and Recording," "Daily Programming,"
and "Introduction to BARJ in Detention" to new juvenile detention line
staff in Illinois. Detention Basic Training is a national model for core
competency training in juvenile detention.
- Project Director** **Holistic Environmental Life-skills Project (H.E.L.P.), Marshall, MI 49069**
1990 - 1994
Grant from W. K. Kellogg Foundation to expand and strengthen
programs for detained juveniles in Calhoun County, MI. Evaluation
data resulted in the 1992 OJJDP Gould/Wysinger Award for
exceptional programs.
- Director** **Calhoun County Juvenile Home, 14555 18-1/2 Mile Rd., Marshall, MI**
49069 1975 - 1992
Juvenile court-operated, 42-bed detention and treatment facility.
Replicated the Nashville model, creating the Intensive Learning
Program (ILP), winner of the 1983 OJJDP Certificate of Merit for
outstanding program development.

- Director** Intensive Treatment Unit, Spencer Youth Center, Tennessee Department of Correction, Nashville, TN 37218 1973 - 1975
 Maximum security, 30-bed dorm for boys who could not adapt to the training school. Collaboration with Vanderbilt University Medical School, Division of Child Psychiatry led to the development of a model treatment approach to juvenile offenders.
- Child Care Worker** Calhoun County Juvenile Home, 14555 18-1/2 Mile Rd., Marshall, MI 49069 1971 - 1973

LICENSES & CERTIFICATIONS

- Licensed Professional Counselor (L.P.C.)** Michigan Department of Licensing & Regulation Board of Counseling (#6401001014)
- Certified Social Worker (C.S.W.)** Michigan Department of Licensing & Regulation Board of Examiners of Social Workers (#13326)
- Certified Staff Trainer** National Institute of Corrections Washington, DC 20534
- Certificate** Michigan Judicial Institute, Lansing, MI 48909 Juvenile Court Procedures
- Certificate** Skills for Adolescence (SFA) QUEST International, Granville, OH 43023
- Certified Group Leader** Active Parenting of Teens Active Parenting Programs, Marietta, GA 30067

CONSULTING EXPERIENCE

Expert Witness:

- Anders v. Duran, et al.* United States District Court (Central District of Illinois). Plaintiff's Attorney: Bart Markese. P.C., Joliet, IL 60432. Report filed and testified.
- C.N.H., et al. v Walker, et al.* United States District Court (Northern District of Georgia). Plaintiff's Attorney: Robert Cullen, Cullen & Miller, P.C., Atlanta, GA 30309. Report filed and testified.
- Doe v. Younger, et al.* United States District Court (Eastern District of Kentucky). Plaintiff's Attorney: James R. Bell, Youth Law Center, San Francisco, CA 94104-3820. Report filed and testified.
- Henderson v. Board of Sedgwick County Commissioners.* 18th Judicial District Court, Kansas. Defendant's Attorney: Coy M. Martin, Hinkle, Eberhart & Elkouri, Wichita, KS 67202. Report filed.
- Jane Doe, et al. v. Parish of Lafayette, et al.* United States District Court (Western District of Louisiana). Defendant's Attorney: Lane Roy and Tim Basden, Preis, Kraft & Roy, Lafayette, LA 70509. Report filed.
- Jane and Johnny Roe v. Butler County.* United States District Court (Southern District of Ohio, Western Division). Plaintiff's Attorney: Jennifer Branch, Laufman & Gerhardstein, Cincinnati, OH 45202.

Law v. Britt, et al. United States District Court (Eastern District of North Carolina). Defendant's Attorney: John Corne, Special Deputy Attorney, Raleigh, NC 27602-0629.

O'Connor et al. v. Washington State Department of Social and Health Services et al. King County (WA) Superior Court. Plaintiff's Attorney: David Babcock, Marler Clark, LLP, Seattle, WA 98104.

Olivas & Stevenson v. Brito et al. Bernalillo County (NM) Superior Court. Defendant's Attorney: Nancy Augustus, Miller & Stratvert Law Offices, Albuquerque, NM 87125. Report filed and testified.

Robles v. Clark County. District Court, Clark County, Nevada. Defendant's Attorney: Eva Garcia-Mendoza, Garcia-Mendoza & Snavelly, CHTD, Las Vegas, NV 89101

Schreier v. Washoe County. Second Judicial District, Washoe County, Nevada. Plaintiff's Attorney: Bob Herman, Reno, NV. Report filed.

T. I., et al. v. Delia, et al. King County (WA) Superior Court. Plaintiff's Attorney: Patricia Arthur, Evergreen Legal Services, Seattle, WA 98104. Report filed and testified.

Vergos v. County of Marin, et al. United States District Court (Northern District of California). Plaintiff's Attorney: Sheila A. Reid, Prentice & Scott, San Francisco, CA 94102. Report filed.

Consultant OJJDP Juvenile Confinement Services for the Navajo Nation, Bureau of Indian Affairs and American Indian Development Associates, Albuquerque, NM Bill McClure and Ada Pecos-Melton, Project Directors

OJJDP Study of Conditions of Confinement, Abt Associates, Cambridge, MA 02138-1168 Dale Parent, Project Director

OJJDP Juveniles Taken Into Custody, National Council on Crime and Delinquency, San Francisco, CA 94105 Dr. Bob DeComo, Project Director

Juvenile Health Care Standards, National Commission on Correctional Health Care, Chicago, IL 60613 Judith Stanley, Project Director

PROFESSIONAL INVOLVEMENT

Chair Board of Directors, National Commission on Correctional Health Care, 2000-01

President National Juvenile Detention Association, 1990-1992
Michigan Juvenile Detention Association, 1980-1982

Editor

- *Journal of Correctional Health Care*, 1999-2001
- *Journal for Juvenile Justice and Detention Services*, 1984-1995

Governor Board of Governors, American Correctional Association, 1988-1990

Board of Directors

- Children's Charter of the Courts of Michigan, 1986-1992
- National Commission on Correctional Health Care, 1991-present
- National Juvenile Detention Association, 1979-1994

HONORS AND AWARDS

Donald R. Hammergren Distinguished Service Award, National Juvenile Detention Association	2003
Meritorious Service to the Children of America, National Council of Juvenile & Family Court Judges	1994
Donald R. Hammergren Distinguished Service Award, National Juvenile Detention Association	1993
Gould/Wysinger Award for Exceptional Achievement in Juvenile Justice, U.S. Department of Justice, OJJDP	1992
Distinguished Program Award (the Holistic Environmental Life-skills Project), National Association of Counties	1992
Distinguished Alumni Hall of Fame, Lima (Ohio) Public Schools	1990
C. A. Zott Distinguished Service Award, Michigan Juvenile Detention Association	1989
Member of the Year, National Juvenile Detention Association	1987
Certificate of Merit for Outstanding Program Development, U.S. Department of Justice, OJJDP	1982
Distinguished Program Award (Intensive Learning Program), National Association of Counties	1978
R. E. Stevenson Award for Religious Studies, Department of Religion, College of Wooster	1971

PROFESSIONAL MEMBERSHIPS

Academy of Criminal Justice Sciences (ACJS)
 American Association of Christian Counselors (AACC)
 American Association for Correctional Psychology (AACP)
 American Correctional Association (ACA)
 American Counseling Association (ACA)
 Michigan Juvenile Detention Association (MJDA)
 Midwestern Criminal Justice Association (MCJA)
 National Juvenile Detention Association (NJDA)

COMMUNITY INVOLVEMENT

Albion Area United Way: Board of Directors, 1985-1990
 Albion Community Foundation: Trustee, 1989-1993; Executive Committee; Civic Dance Chair, 1993;
 Endowment and Community Support Committee Chair, 1993
 Albion Civic Life Project: Youth Study Committee Chair; Teen Center Advisory Board
 Albion High School Athletic Boosters
 Albion Jaycees
 Boy Scouts of America: Explorer Post 112
 First United Methodist Church: Sunday School Teacher; Staff-Parish and Nominating Committees
 P.O.W.E.R. For Kids: Citizens' Advisory Committee
 W.K. Kellogg Foundation, Kellogg Youth Initiatives Partnerships: Participant and Grantee
 West Michigan Conference of the United Methodist Church: Personnel Committee, 2004-06

PUBLICATIONS

U.S. Department of Justice Publications:

- Curry, D., Howell, J. C., & Roush, D. W. (2000, July). *National survey of youth gang problems in juvenile detention facilities*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W. (1996, April). *Juvenile detention training needs assessment: Research report*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W. (Ed.). (1996, October). *Desktop guide to good juvenile detention practice*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W., (Ed.). (1999, December). *Crowding in juvenile detention centers: Practitioner perspectives on what to do about it*. Richmond, KY: National Juvenile Detention Association & Youth Law Center.
- Roush, D. W. (Ed.). (2001, December). *Youth corrections compendium: Resources and reflections on strategic reform*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W., Miesner, L. D., & Winslow, C. M. (Eds.). (2002, January). *Youth gangs in juvenile detention: Lessons learned from effective management*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W., & McMillen, M. (2000, January). *Construction, operations, and staff training for juvenile confinement facilities* (JAIBG Bulletin). Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Roush, D. W., & Steelman, B. T. (1982, October). *The intensive learning program: A comprehensive approach to the institutional treatment of juvenile offenders*. Rockville, MD: National Criminal Justice Reference Service.
- Roush, D. W., & Wyss, T. (Eds.). (1994, August). *Effective and innovative programs: Resource manual*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Zimmermann, C. R, Hendrix, G., Moeser, J., & Roush, D. W. (Eds.) (2004, July). *Desktop guide to reentry for juvenile confinement facilities*. Washington, D.C.: U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Book Chapters:

- Roush, D. W. (1983). Content and process of detention education. In S. Chaneles, (Ed.), *Current trends in correctional education: Theory and practice*. New York: Haworth.
- Roush, D. W. (1995). Chapter 13 -- Juvenile detention programming. In R. A. Weisheit & R. G. Culbertson, (Eds.), *Juvenile delinquency: A justice perspective*. Prospect Heights, IL: Waveland.