

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 LARRY D.
MIESNER; EXHIBIT 1

DECLARATION OF LARRY D. MIESNER

I, Larry Miesner, 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. I have been a practitioner, administrator, educator and consultant in juvenile justice, child welfare, and social welfare since 1966. I am currently the Director of the Division of Strategic and Effective Practices at the National Juvenile Detention Association's Center for Research & Professional Development at Michigan State University ("NJDA CRPD") and serve there as an Adjunct Professor in the School of Criminal Justice. Prior to my work at NJDA CRPD, I supervised and administered child welfare and juvenile justice programs and systems for over thirty years in both the private and public sectors. I recently directed Michigan's Bureau of Juvenile Justice where I was responsible for state juvenile justice policy; the operation of the State of Michigan's juvenile detention and detention alternatives programs; operation of state juvenile corrections programs, community-based through high security treatment; and administration of state and federal funds for state and county-delivered juvenile programs and services. Coupled with my experience directing these juvenile justice programs for eleven years is five years of experience administering a full range of public assistance and adult and child social service programs in Michigan's second largest

county. A true and correct copy of my biography and curriculum vitae are attached hereto as Exhibit 1.

3. In 2004, the Hawaii Office of Youth Services (“OYS”) contracted with the NJDA CRPD to provide an assessment and report on the conditions of confinement at the Hawaii Youth Correctional Facility (“HYCF”) 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, David Roush and Nelson Griffis.

4. 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 was the most critical piece of the project) was cancelled at the direction of Sharon Agnew, the Executive Director of OYS.

5. We conducted a lengthy exit interview and provided to OYS and HYCF written reports concerning the staffing study and the training needs assessment. We opined that HYCF was in desperate need of reform due in part to the fact that it was being operated on an adult model, with an oppressive atmosphere more typical of adult correctional facilities which has no place in the context of juvenile corrections or juvenile treatment. I was struck by the facts that HYCF did not have sufficient staff, that the staff was not properly trained and that

most of the staff did not have the proper attitudes or demeanor to work with troubled youth.

6. During our June visit, Nelson Griffis and I observed two male-to-female (“MTF”) transgender wards who were being housed with the girls in the Observation and Assessment Cottage (“O & A”). Nelson and I interviewed these two MTF transgender wards in a group setting together with a small number of female wards for approximately 90 minutes.

7. I was of the impression that the MTF transgender wards would be better served if they could be placed in a specialized treatment program rather than at HYCF. However, the MTF transgender wards appeared to be socially interactive and actively engaged in programming and other activities with the girls at O & A. In general, I found that the placement of the MTF transgender wards with the girls at O & A kept them physically and psychologically safe.

8. 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.

9. Ms. Tufono-Iosefa states in her declaration at paragraphs 10-11 that she retained Nelson Griffis and myself as experts in the field of juvenile corrections to provide guidance in operating HYCF and the she “was advised by

[their] retained experts that juvenile facilities were divided in to male wards 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 further 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.

10. Contrary to Ms. Tufono-Iosefa statements, I never made any such statement nor do I condone the placement of MTF transgender wards with the male wards at HYCF. Indeed, based on my observations and experience, it is my opinion that placement of a MTF transgender ward with the male wards (particularly at the Secured Confinement Facility) is the last place that the MTF transgender ward would be safe at HYCF. Such a placement is not only outside my professional judgment; it is a decision that defies common logic.

11. 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 nor for purposes of punishment." This statement does not reflect generally accepted standards and practices. While seclusion or isolation may have a legitimate use at juvenile justice facilities when used sparingly and in response to serious behavioral infractions, a practice of isolating wards for prolonged periods of time is not in compliance with accepted practices. Instead, the generally accepted practice is to employ seclusion and isolation only for serious behavioral infractions and then only for brief periods of time while the ward poses an imminent danger to others. Even when used in those situations the youth should be closely monitored for purposes of his or her safety. Prolonged isolation or seclusion is punitive in nature and can cause serious psychological consequences. The use of such seclusion and isolation for other purposes is not merely outside of generally accepted standards and practices — it is inexcusable.

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

Executed on the 13th of November, 2005 in Sebring, Florida.

A handwritten signature in black ink, appearing to read "Larry D. Miesner". The signature is fluid and cursive, with a large initial "L" and "M".

Larry D. Miesner

LARRY D. MIESNER

Biography

Larry Miesner has been a practitioner, administrator, educator and consultant in juvenile justice, child welfare, and social welfare since 1966. He currently directs the Division of Strategic and Effective Practices at the National Juvenile Detention Association's Center for Research & Professional Development at Michigan State University and serves there as Adjunct Professor in the School of Criminal Justice. Larry comes to the Center following over thirty years of work in both the private and public sectors. He most recently directed Michigan's Bureau of Juvenile Justice where he was responsible for state juvenile justice policy; the operation of the State of Michigan's juvenile detention and detention alternatives programs; operation of state juvenile corrections programs, community-based through high security treatment; and administration of state and federal funds for state and county-delivered juvenile programs and services. Coupled with Larry's experience directing these juvenile justice programs for 11 years is 5 years of experience administering a full range of public assistance and adult and child social service programs in Michigan's second largest county. Between 1979 and 1985, as director of the Division of Child Care Resources, Larry had responsibility for administration and monitoring of the Michigan's contracts with private agencies which provided foster care and institutional services for abused, neglected and delinquent children and youth. Earlier Larry served as licensing consultant and licensing supervisor, evaluating and providing consultation to public and private agencies and institutions throughout the state. This followed five years as director of a private residential treatment program for adolescent youth and supervisor of foster care and adoption services.

Most recently, as director of the Bureau of Juvenile Justice, Larry led the incorporation of Balanced and Restorative Justice into the Michigan juvenile justice system, including the state-operated institutions. Also, under his leadership a comprehensive recidivism measurement approach was developed, Performance-based Standards were implemented in state-operated institutions, and a statewide web-based management information system was initiated in the private and public sectors, including state offices and facilities, courts and prosecutors offices.

Larry has served on numerous boards including: The Michigan Juvenile Accountability Incentive Block Grant Committee; American Correctional Association's Delegate Assembly and President's ad hoc Committee to Develop National Juvenile Justice Policy; Council of Juvenile Correctional Administrators State and National Legislative Committee; Michigan County Social Service Association Board of Directors' Ad Hoc Committee on Welfare Reform, Director's Advisory Committee, Legislative Committee and Co-chair Annual Conference Planning Committee; Michigan Association of Children's Alliances Board of Directors; Bethlehem Lutheran Church Boards of Trustees and Finance; President of the Grand Ledge Country Club.

He has participated in a range of professional and educational activities including: Guest Lecturer and/or Field Instructor at Michigan State University Schools of Criminal Justice and Social Work, Western Michigan University, Central Michigan University, Eastern Michigan University, Grand Valley State University; Guest Lecturer at the University of Michigan School of Law and Instructor at Delta College; Institute For Educational Leadership, a fellowship program to study national and state human services policy issues; Child Welfare League of America committee to revise national standards for children's institutions; The Ohio State University Institutional Child Protection Project advisory committee, a national study of abuse in children's institutions; Michigan Association of Children's Alliances instructing child care workers in social work and child management techniques.

In 1969 Larry received a Master of Social Work degree from Washington University, St. Louis, Missouri, following receipt of a B.A. degree in sociology from the University of Tulsa, Tulsa, Oklahoma.

Larry also provides juvenile justice planning and consultation through MW Associates at 7659 Philwood Drive, Lansing, MI 48917, (517) 214-6440.

EXHIBIT 1

Vitae

LARRY D. MIESNER

Director, Division of Strategic and Effective Practices, Center for Research and Professional Development, National Partnership for Juvenile Services, 2002 – present

Directing programs funded by the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Michigan State Court Administrative Office, Michigan Supreme Court, for selected jurisdictions throughout the nation using a strategic planning model which enables jurisdictions, whether local, regional, state or tribal, to address crowding in juvenile facilities, unacceptable conditions of confinement, potential litigation, consent decrees, or similar problems in their juvenile justice or child welfare systems. The process involves intensive analysis and planning, through active involvement of key community stakeholders to develop and support community synergy leading to a more effective and cost efficient juvenile justice or child welfare system. The Center is located at Michigan State University and is affiliated with the National Juvenile Detention Association, the National Partnership for Juvenile Services, and the MSU School of Criminal Justice.

Senior Consultant, MW Associates, 2002-present

Providing planning and consultation to public and private juvenile justice, and child welfare organizations; serving as expert witness in juvenile justice and child welfare litigation; and developing and implementing case management systems.

Director, Bureau of Juvenile Justice, Family Independence Agency, State of Michigan, 1997-2002

Directed policy development, program operations, and managed state, local and federal funds for Michigan's juvenile justice system. Administered a \$350M operating budget, a \$50M capital outlay budget, and a staff of 1100 and facilities and offices throughout Michigan. Administered the state's high, medium and low security treatment facilities for serious and chronic offenders (including mentally ill offenders) and detention facilities for court and state delinquent wards (800 to 1100 beds); oversaw Michigan's detention and jail alternative program; managed the state's system for assigning state-supervised juvenile offenders into the state operated and approximately 2500 privately operated treatment beds; developed and implemented a statewide juvenile justice computerized case management system; implemented Balanced and Restorative Justice philosophy and principles and established related programs statewide; implemented Performance-based Standards throughout state-operated secure institutions; managed the State Child Care Fund, federal grant programs for education, substance abuse, delinquency prevention and juvenile accountability. Worked with local courts, county governments, local FIA offices, universities, advocacy groups, private provider groups, state supreme court and other state departments, national organizations, the governor's office and the legislature to develop, operate and improve Michigan's juvenile justice system through improved community safety, more competent and productive youth and more greatly involved and restored victims.

Deputy Director, Genesee County, Family Independence Agency, State of Michigan, 1991-1997

Responsible (with director) for total range of programs to implement state and local policy to provide public financial and medical assistance, employment services and adult protective, child welfare and juvenile justice services. Directed a staff of 650 through five district offices and a central administrative and service office. Worked with Genesee County Social Service Board, Genesee County Board of Commissioners, Genesee County Juvenile Court and numerous other local and state organizations in development and operation of programs for the children and adults of Genesee County.

Director, Residential Care Division, Department of Social Services, State of Michigan, 1985-1991

Administered the state's treatment and detention facilities for juvenile offenders, and the state's detention and jail alternative program. Operated 950 beds statewide, overseeing a \$66M operational budget, a \$30M capital outlay budget and a staff of 1200. Developed a public/private detention and treatment network, furthered the reduction of jailing of youth, initiated specialized treatment programs for juvenile sex offenders, incorporated work with families of youth in state treatment and detention facilities and brought all state operated facilities into compliance with state licensing regulations. Developed alternative programs with the private sector, and contracted and jointly operated two major statewide juvenile justice programs involving seven large private agencies.

Director, Child Care Resources Division, Department of Social Services, State of Michigan, 1979-1985

Responsible for development and implementation of state-administered contracts with 120 private providers to assure provision of foster care, adoptive and residential treatment services for neglected and delinquent children and youth. Responsible for administering a statewide network of 12 community-based facilities for state delinquent wards, and managing a staff of 120. Responsible for policy development related to and management of the state foster care account (\$110 million) to fund services to children in private foster homes and institutions statewide.

Licensing Consultant Supervisor, Child Welfare Licensing Division, Department of Social Services, State of Michigan, 1977-1979

Responsible for supervision and staff development for eight masters degree level child welfare licensing consultants statewide, each of whom monitored the operation of 40-50 child welfare or juvenile justice organizations, including private child placing agencies and child caring institutions agencies, state and county operated detention and treatment programs, and state and local mental health facilities. Division responsibility included the provision of program consultation and administration of state licensing laws and administrative rules for both public and private programs statewide to assure program quality and protection of children and youth placed in out of home care by assessing safety of facilities, competency of staff and adequacy of services to children and their families.

Consultant to Children's Agencies, Child Welfare Licensing Division, Department of Social Services, State of Michigan, 1974-1977

Administered state licensing rules and provided program consultation to 40-50 public and private child welfare, juvenile justice and mental health programs within a 7 county region of Michigan. Program evaluation and monitoring was provided to assure program and facility safety in private, court, county and state operated programs. Provided staff support to committees developing revised administrative rules to implement Michigan's newly enacted child welfare licensing law.

Residential Director, Lutheran Child and Family Services, Bay City, Michigan, 1969-1974

Administered private not-for-profit residential treatment center for emotionally disturbed, delinquent, neglected/abused, and mentally ill adolescents. Planned, developed and implemented policy, budget, program and services, and directed professional and support staff. In addition to administration of residential treatment, responsibilities included service delivery and supervision in the family counseling, problem pregnancy, family foster care and adoption programs.

ADDITIONAL EXPERIENCE

Adjunct Professor, Michigan State University, School of Criminal Justice, 2002-present.

Governor's Appointee - Michigan Juvenile Accountability Block Grant Committee, 1998 to 2003.

Guest Lecturer - Michigan State University, Schools of Criminal Justice and Social Work and University of Michigan School of Law, 1988-2000.

Field Instructor in social work and criminal justice - Michigan State University, Western Michigan University, Central Michigan University, Eastern Michigan University, and Grand Valley State University, 1970-2000.

Instructor - Michigan Association of Children's Alliances (taught social work and child management techniques for child care workers), 1973-1974.

Instructor - Delta College, University Center, Michigan (developed and taught courses in social problems), 1972-1973.

EDUCATION

Master of Social Work, Washington University, St. Louis, Missouri, 1969.

Bachelor of Arts (Sociology), University of Tulsa, Tulsa, Oklahoma, 1967.

Associate of Arts, St. John's College, Winfield, Kansas, 1965.

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

National Juvenile Detention Association

American Correctional Association-Past member of Delegate Assembly and President's ad hoc Committee to Develop National Juvenile Justice Policy.

Council of Juvenile Correctional Administrators-Past member of State and National Legislative Committee.

Michigan County Social Service Association-Past member of Board of Directors, Director's Advisory Committee, Ad Hoc Committee on Welfare Reform, Legislative Committee and Co-chair Annual Conference Planning Committee.

Institute For Educational Leadership, Inc.-Participated in yearlong fellowship with national institute to study national and state human services policy issues.

Child Welfare League Of America-Served on committee to revise national standards for children's institutions.

Institutional Child Protection Project, The Ohio State University - Served on advisory committee for national research project to study abuse in children's institutions.

Michigan Association of Children's Alliances-Served on Board of Directors and as Board Liaison to M.A.C.A. Training Project providing staff development and consultation to public and private child care institutions.

Transitional School of Bay City (MI)-Co-founded and served as member of Board of Directors of alternative school.

Presented workshops at numerous state and national conferences in areas of regulatory administration, juvenile justice administration, strategic planning, and case management systems.

PUBLICATION

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.

PERSONAL

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