

SACRAMENTO COUNTY
REVIEW OF
NACHT & LEWIS MAIN JAIL CAPACITY TO MEET
CONSENT DECREE REPORT
AND
KEVIN O'CONNELL SACRAMENTO JAIL STUDY

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Basis for Expert Opinion, Qualifications and Methodology

A. Basis for and Scope of Expert Opinion

I have been retained by Defendant's Counsel in the Mays et al. v. County of Sacramento, Case No. 2:18-cv-02081 to review the *Main Jail Capacity to Meet The Consent Decree Report* and source material prepared and compiled by Nacht and Lewis regarding the population capacity at Sacramento County's main jail located at 651 I Street in Sacramento, California to determine if the Nacht and Lewis opinion on the number of inmates that need to be removed from the Average Daily Population (ADP) for the County to comply with the Mays Consent Decree is supported by the source material and the Consent Decree. I have also been retained to review the reports and source material provided and compiled by Kevin O'Connell in the *Sacramento Jail Study* regarding the strategies that the County could employ to reduce the ADP in the County's jails. My review will determine if the strategies set forth are reasonable and if the number of inmates that Mr. O'Connell believes could be removed from the ADP is accurate. My findings regarding the review of the Nacht and Lewis report are contained in Section C. My findings regarding the Kevin O'Connell, O'Connell Research, Inc. Sacramento Jail Study are contained in Section D. In addition to reviewing the Nacht and Lewis and O'Connell reports, I also conducted an onsite tour of the Sacramento County Jail on April 26, 2022, and interviewed Sacramento County Jail staff during the tour. I relied upon my review of the Main Jail Capacity to Meet the Consent Decree Report, the Sacramento Jail Study, and the tour of the Sacramento County Main Jail to form the basis for my opinion and findings.

B. Expert Qualifications

I am an expert corrections consultant. My educational background includes a Bachelor of Science in Organizational Behavior from the University of San Francisco and a master's degree in Criminology, Law, and Society from the University of California at Irvine. My 37 years of correctional experience includes operating, managing, and performing direct supervision and oversight for up to ten male and female prisons with approximately 40,000 inmates and 15,000 staff for the California Department of Corrections and Rehabilitation (CDCR), where I served as Southern Regional Prison Administrator, Associate Director

Female Offender Programs and Services, Deputy Director of Finance, Chief of Regulation and Policy Management, and Prison Rape Elimination Act (PREA) Executive Project Director. I was also hired by the Federal Medical Receiver in the *Plata v. Schwarzenegger* (now *Plata v. Newsom*) litigation related to prison healthcare to be the Director of Rehabilitation Programs. My responsibilities included creating the rehabilitation programs for the new Healthcare Prison, and I worked embedded with architects for 18 months to create the model, define the physical space needs, and create the rehabilitation physical plant designs. I was also retained as a Special Consultant by the Federal Medical Receiver to establish a Gender Responsive Women's Correctional Health Care Program for the California Prison System.

As the first Governor appointed Associate Director of Female Offender Programs and Services, I was responsible for leadership, oversight, and reform of CDCR's women's prisons and mother-infant community corrections programs which housed approximately 11,700 female inmates. Working with Assemblywoman Sally Lieber, I helped draft a law, approved by the California legislature and now codified in California Penal Code 3430, which mandated the Department of Corrections and Rehabilitation to, among other things: a) create a Female Offender Reform Master Plan, and present this plan to the Legislature by March 1, 2008; b) create policies and operational practices designed to ensure a safe and productive institutional environment for female offenders; c) conduct a staffing analysis of all current job classifications assigned to each prison that houses only females and provide a plan to the Legislature by March 1, 2009, that incorporates those recommendations and details the changes that are needed to address any identified unmet needs of female inmates and develop programs and training for department staff in correctional facilities; d) create a gender responsive female classification system; e) create a gender responsive staffing pattern for female institutions and community-based offender beds; and f) create a needs-based case and risk management tool designed specifically for female offenders that includes an assessment upon intake, and annually thereafter, that gauges an inmate's educational and vocational needs, including mental health needs and trauma-treatment needs.

In 2005 I drafted the language for an amendment to the California Code of Regulations Title 15 §3287 Cell, Property and Body Inspections, adding new subsections (b)(2)-(4), which were then enacted by the

Secretary of CDCR. This regulatory change eliminated cross-gender clothed body searches of female inmates except in emergency situations and mandated that male correctional employees shall not under any circumstances, perform non-emergency body searches of female inmates. This regulation also defined emergency situations as requiring the immediate search of an inmate to avoid the threat of death, escape or great bodily injury. This regulatory change was promulgated based on gender responsive principals recognizing that female inmates have been disparately subjected to sexual trauma and abuse and male officers touching female bodies during a strip search is a trauma trigger of past sexual abuse and trauma.

In 2006 I was Executive Project Director responsible for the development of the CDCR's Sexual Abuse in Detention and Prison Rape Elimination Act (PREA) compliance program which includes departmental policy and regulations, staff training, inmate education, and investigation and response protocols for thirty-three female and male prisons that housed approximately 165,000 inmates. I was certified as a PREA Auditor by the Department of Justice in lockups, jails, prisons, and community corrections for the period of July 2014- December 2017.

I have also assisted the Department of Homeland Security, Office for Civil Rights and Civil Liberties in the development of the Sexual Abuse and Assault Prevention and Intervention audit protocols and tools for jails and detention centers housing male and female detainees. I have provided expert reports and testimony for prison-related litigation in the State of Hawaii, the State of Massachusetts, the State of Pennsylvania, the State of Illinois, and the State of California, both for plaintiffs and for defendants, and testified in over three hundred California Senate and Assembly legislative hearings related to prison and probation (community supervision) issues. I have also been a contract expert for the Department of Justice to investigate and provide a report of my findings related to allegations of abuse, harassment, and conditions of confinement complaints by female inmates housed in an Arkansas prison.

My experience also includes teaching criminal justice related subject matter at Stanford University, guest lecturing at University of California at Berkeley, University of California, Hastings College of Law, and Sonoma State University on criminal justice topics, and serving as an expert panelist for criminal justice research, sentencing, gender, transgender, correctional operations, probation, and 2011 Public Safety

Realignment issues. I testified before the U. S. Commission on Civil Rights on February 22, 2019, during a public briefing held regarding Women in Prison: Seeking Justice Behind Bars.

I was the Chief Adult Probation Officer for the City and County of San Francisco and a member of the California Rehabilitation Oversight Board (CROB) appointed by the California State Legislature from 2010 until I retired in 2015. CROB provides oversight of the California Department of Corrections and Rehabilitation's inmate prison rehabilitation programs and reports to the State Legislature.

I have performed civil rights and conditions of confinement and sexual assault and abuse prevention investigations since 2011 to current for the Department of Homeland Security, Office for Civil Rights and Civil Liberties and provide expert advice on new policy development. These investigations include jail facilities, seventy two-hour hold facilities, family residential centers, and on coast guard cutters located throughout the United States that house female and male detainees and inmates.

I have also performed investigations of sexual abuse of female inmates in prison on behalf of the Department of Justice (DOJ) and review and opine on proposed prison policies as a DOJ's gender responsive female prison operational expert and certified DOJ Prison Rape Elimination Act auditor.

I am also currently a member of the American Correctional Association and the American Probation and Parole Association and a prior board member of the Association of Criminal Justice Researchers.

The San Francisco Adult Probation Department under my leadership was awarded the American Probation and Parole Association 2013 President's Award for outstanding contributions to the field of community corrections. In December 2014 I was the recipient of a Public Official of the Year Award by Governing Magazine for my successful efforts to reform San Francisco's Probation Department and criminal justice system. I was also the Chief Probation Officer for the County of Alameda from 2016-2021. I had the responsibility for the community supervision of approximately eight thousand male and female probationers and prison community releases; oversight of a 300-bed juvenile detention facility and 90- bed camp; supervision of approximately 750 juvenile probationers; and making sentencing recommendations to the court in felony adult and juvenile court cases. I also Chaired the Community Correctional Partnership responsible for the coordination of the Justice, Health and Social Service County agencies, and the court to

implement rehabilitation, housing, health, and correctional programs designed to improved outcomes and reduce recidivism for inmates and justice involved individuals returning to the community and diverting those directly into program when appropriate.

I have extensive experience in jail, prison, and juvenile detention practices. In the past eleven years, in my work for Homeland Security, I have personally visited approximately fifty county or local jails, detention centers, holding facilities, family residential centers and coast guard cutters located in California and throughout the United States to investigate complaints and observe various aspects of the handling and managing male and female detainee inmates. In my role as Chief Probation Officer, I frequently collaborated with the City and County of San Francisco's (SF) Sheriff and staff creating rehabilitative programs inside the jails. The SF Sheriff and I jointly released the Women's Community Justice Reform Blueprint: A Gender Responsive, Family Focused Approach to Integrating Criminal and Community Justice. In the State Budget process for Fiscal Year 2013-14 I collaborated with Senator Loni Hancock, Chair of the Senate Public Safety Committee on the development of legislative language to create up to four pilot re-entry programs in San Francisco, Marin, San Diego, and Los Angeles County Jails which was approved with funding during the current budget process. As Chief Probation Officer in Alameda County, I had responsibility for a 300-bed juvenile hall and 90-bed juvenile camp. I was responsible for all policies related to the juvenile hall and detention center and collaborating closely with the Sheriff's Office on jail related programs and justice partners on creating diversion programs and a pre-trial program in the jail. I have regularly provided expert testimony on legislation that impacts jails, community corrections and prisons to both the Assembly and Senate Public Safety Committees at the request of legislators. I am considered by the legislature to be an expert on female and male inmate/ward issues and correctional practices. In addition, I regularly review reports or other materials regarding jail, prison, and detention practices.

I am also the current Public Safety Advisor for Alameda County and lead the Re-imagine Adult Justice Project and on behalf of the Public Protection Committee coordinate the Public Protection Justice and Health Collaborative which includes, health behavioral health, homelessness, Care First and Jails last, and Alliance for Health initiatives.

C. Review of Nacht and Lewis Main Jail Capacity to Meet the Consent Decree Report

The validity of any report is reliant upon having an experienced team composed of organizations and individuals that have the necessary experience to present reliable findings. Nacht and Lewis have over 50 years of justice experience and 38 years of designing correctional environments such as new county jails, juvenile halls and California State Prison medical and mental health facilities providing professional planning and architectural design services. Nacht and Lewis' experience working with Sacramento County on Correctional Design Services began in 1980 working on various new facility and renovation at the Rio Cosumnes Correctional facility and later in partnership with HOK on the design of the downtown Sacramento Main Jail. Nacht and Lewis is a respected organization having successfully completed many correctional design related projects in the State of California and Nevada in over fourteen correctional jurisdictions. The Nacht and Lewis team was supported by Jay Farbstein & Associates also experts in adult and juvenile correctional facility planning and Falcon, Inc a nationwide consulting and management firm with expertise in designing and implementing custom programs to meet complex mental health needs. The Nacht and Lewis team is well-qualified to conduct the Main Jail Capacity to Meet the Consent Decree Study and Report.

As a criminologist I also reviewed the methodology utilized by the Nacht and Lewis team to determine if the approach and methodology were sound and could be relied upon to produce reliable results. The study approach included collecting data on the jail's special populations, classified as Seriously Mentally Ill, inmates needing de-tox or long-term medical care and or in Administrative Segregation. These populations comprise approximately 25% of the main Jail's population. It is understood that all detainees are "members of the class." Utilizing this information, the Nacht and Lewis team assessed how the main jail might be utilized to meet the needs of the special populations and how much of the jail's population would have to be reduced to accommodate as many as possible of this group, and then assessed the degree to which compliance with the consent decree could be achieved using this approach.

The key findings included meeting the needs of the acute psychiatric and intensive outpatient cohorts which are resource-intensive and place the highest demand on infrastructure, staff, and services would reduce the jail's capacity to 1,357 beds from its rated capacity of 2,397, which is a 44% reduction and results in a loss of 1,040 beds. An estimated 306 lower acuity "outpatient" mental health (OPP) and twenty-seven long-term medical and medical detox patients could not be housed in the main jail and 707 general population beds cannot be occupied due to needing to be dedicated to higher need inmates. Additionally, housing pods cannot be fully occupied because high risk individuals cannot be double celled due to their high risk of harming themselves or others resulting in cells that were designed to house two inmates must be utilized as a single cell. Group program rooms must be dedicated to high-acuity patients for small group therapy use and general population inmates would not have sufficient program space and be highly underserved. The main jail original recreation design was not intended for long term housing of inmates and the recreation space does not currently meet the needs of the entire population. Most inmate-patients must recreate as individuals or in small groups which severely impacts all populations use of the extremely limited recreation space. The recreation space cannot be-reconfigured to meet the constitutional conditions of confinement recreation requirements for all populations.

Nacht and Lewis concluded in the *Main Jail Capacity to Meet the Consent Decree Report*: 1) "substantial compliance with all consent decree requirements is not possible within the Main Jail; and 2) "even major renovation projects would not solve the problems and in any case would not be possible technically, financially, or operationally." I fully concur with these findings.

D. Review of Kevin O'Connell Sacramento Jail Study

Kevin O'Connell, Research, Inc. has a wealth of experience conducting statewide and local justice and behavioral systems analyses including re-entry analysis, behavioral health trajectories, process improvement, and recidivism analysis integrating large cross-agency administrative databases from health, jails, courts, probation, and housing to improve systems, improve resource coordination and for process improvement. O'Connell Research, Inc. has also provided technical assistance to jurisdictions implementing

cost-benefit analysis for effective programs including program inventory, cost analysis, and system usage in multiple states and California counties covering criminal justice, behavioral health, and child welfare. Mr. O'Connell's experience includes policy and quantitative analysis of justice issues, assessment and evaluation of pre-trial justice systems including cost-benefit analysis, risk assessment, process improvement, and outcome analysis; development of customized Cost-Benefit Models and policy planning tools giving jurisdictions the ability to estimate impacts of policy changes on budgets and capacity; creation of public data strategies and visualizations using tools like SAP Dashboards and Tableau; and design and delivery of trainings for data driven decision making curriculum for county executives, analysts, and IT professionals. O'Connell Research is well qualified to complete the analysis and Sacramento County Jail Report which is designed to answer the following two questions posed by Sacramento County : 1) How much can the population of Sacramento County Jails be reduced through diversion or early release programs; and 2) What are the programs that are reasonable to implement and are most likely to be successful at reducing the jail population?

I reviewed the methodology utilized by O'Connell Research, Inc. to determine if the approach and methodology was sound and can be relied upon to produce reliable results. The O'Connell Sacramento Jail Study approach included an in-depth review of Sacramento County jail's inmate population. The review findings included:

1. Underlying felony crime make up most of the jail ADP-felons make up 95% of jail ADP and felons stay 56 days on average in the jail.
2. Pre-Trial detention drives the jail population-75% of the jail ADP is unsentenced and there is a growing number of people found incompetent to stand trial while pre-trial.
3. Most jail admissions result in short stays-20% of jail releases stay less than one day and 55% of population is released in less than three days.
4. Stark racial disparities persist for Black people-39% of the jail population is Black, they stay longer on average, and are more likely to be booked for felonies.

5. Behavioral Health conditions are a large factor in the jail-55% of the jail population has a serious mental illness, co-occurring disorder, or substance use disorder (SUD) and 50% of jail entries for Seriously Mentally Ill (SMI) are not new crimes.
6. Readmission is a key driver of the jail population-60% return to jail within two years and 70% of the jail population are recidivists.

Based on the above findings O'Connell found through the implementation of ten recommendations using a combination of strategies to avoid jail admissions, reduce the length of inmate stays and the reduction of return to custody rate, the County could reduce the jail population by an estimated 592 ADP.¹

The ten reduction strategies include:

1. Jail Admission Reduction
 - a. Deflect people with Statutes or circumstances likely to be released the same day they enter.
 - b. Augment crisis response to deflect more people not requiring jail admissions who have mental health needs
 - c. Cite in the field or develop alternative booking sites for people usually booked on non-violent misdemeanors or infractions.
2. Length of Stay Reduction and Reducing Returns to Custody
 - a. Expand the release of low-risk detainees staying up to arraignment.
 - b. Expand use of custody alternatives for low risk sentenced inmates.
 - c. Expand the use of pre-trial release for low-risk inmates staying past arraignment through pre-trial monitoring or support.
 - d. Reduce the length of stay for people booked on warrants alone.
 - e. Reduce warrants around "Failures to Appear" for mental health clients.
 - f. Expand the use of mental health diversion for felonies for people at low risk of recidivism.
 - g. Expand the use of mental health treatment courts for people at medium levels of risk of recidivism.

The strategies that O'Connell recommends in the Sacramento Jail Study to reduce the jail population are based on policies, programs, and approaches that are evidence based have been professionally researched to produce the estimated results identified in the study. I have personally been involved in the design and collaborated with justice partners in two California Counties, San Francisco, and Alameda, to implement

¹ Page 7 of the Sacramento Jail Study identifies a 592 ADP reduction and a 600 ADP reduction. The 600 ADP reduction is a rounding of the 592 ADP.

these and similar strategies that have produced the anticipated reductions. I do provide a few cautions. The implementation of these ten strategies will take extraordinary efforts and strong collaboration on the part of the County's Administration, Justice, Health, and Social Service partners. Additionally, culture change will be required within the County with these same partners. Rehabilitative programming and diversion programs are only effective when implemented correctly, and staff are sufficiently trained. Also, the successful implementation of these strategies will take strong leadership, adequate fiscal resources, planning, collaboration, and a commitment by the County to overcome barriers to implementation. Data sharing and information system interoperability will also be an extremely essential element for success of the jail population reduction strategy.

In conclusion, I concur with the findings of the O'Connell Research, Inc. Sacramento County Jail Study with the above cautions.