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JUVENILE • Apr. 26, 2006

Violence-Prone Youth Authority Still Fails Its Children, Its Taxpayers

Forum Column

By Sue Burrell and Jonathan Laba

Beginning in 2000, the California Youth Authority, the state's institutional system for our most serious juvenile offenders, occupied the headlines on a regular basis. Local and national media reported rampant violence, staff-on-ward beatings, canine attacks, multiple suicides, extended 23-hour lockdowns, and kids going to school in cages.

In January 2002, the Prison Law Office filed a federal conditions lawsuit with the assistance of Latham & Watkins, Pillsbury Winthrop and Disability Rights Advocates. In January 2003, the case was refiled as a taxpayer action in state court. *Farrell v. Harper*, RG 03079344 (Alameda County Super. Ct., filed January 2003). While the state initially sought millions of dollars to fight the litigation, it quickly became apparent this would be a costly and losing battle. The parties agreed to employ the services of jointly selected national experts to determine the nature and extent of the system's problems.

The expert reports in what had now become *Farrell v. Hickman* were released in January 2004 at a press conference in Sacramento. They confirmed horrible abuses and major deficiencies in almost every aspect of institutional operation, and blasted the agency for utterly failing in its rehabilitative and public safety mission. The CYA was found to be shockingly incompetent in every area reviewed: the safety of the facilities; the quality of the school and health care systems; and the efficacy of the mental health, substance abuse and other treatment programs. The system was not simply failing to rehabilitate. It was affirmatively damaging its youthful population, who often were discharged with increased criminal sophistication, entrenched gang involvement and exacerbated mental illness.

The reports had a galvanizing effect. Many counties sent representatives to visit their youth committed to the CYA, and some even declared a moratorium on new CYA commitments. Families of wards organized protests, marches and candlelight vigils. The Legislature held hearings. Commendably, the attorney general and the CYA acknowledged that the reports were substantially correct, and committed to working with the Farrell lawyers to improve conditions rather than defend the failed system in court.

Gov. Arnold Schwarzenegger, newly installed in Sacramento, joined the call for drastic reform. His CYA director, Walter Allen III, set out to educate himself about better models. Entourages of agency and legislative officials visited well-regarded state systems throughout the country to find out what good programs looked like. The first ever Governor's Juvenile Justice Working Group was convened - a broad stakeholder group whose mission was to explore and, to the extent possible, reach consensus on juvenile justice policy issues.

For those who represent children in the justice system, it was a time for cautious optimism. The CYA's failings had been documented repeatedly over the years, but meaningful reform had proved elusive. This time things seemed different. The Youth Authority was acknowledging its failings. The attorney general pledged to remediate the system's deficiencies and agreed the CYA must transform into a rehabilitative and therapeutic model. The Legislature seemed dedicated to seeing reform through. In July

2005, Bernard Warner, viewed as a rehabilitation-minded juvenile professional, was hired from Florida to oversee these efforts.

In fall 2005 and early 2006, remedial plans were filed in the Farrell litigation, and quarterly status reports on the plans were filed with the Legislature. Some of the plans were considered conceptually good, but were so lacking in implementation detail that additional national experts were brought in to help. While efforts to refine the reform package dragged on, living conditions for the youth at CYA-now known as the Division of Juvenile Justice - deteriorated rather than improved. Reports of ongoing problems continued to surface. The California Inspector General released audits of the DJJ that mirrored the conclusions of the *Farrell* experts, and DJJ's own safety audits did the same. Yet at some point the media grew weary. Reporters wanted to know what was newsworthy about yet another damning report or public dispute about the adequacy of progress. Media coverage declined.

Unfortunately, some in the juvenile justice system viewed the absence of news as evidence that conditions had improved. As long as the abuses and litigation were in the limelight, courts were forced to think long and hard about sentencing youth to the Division of Juvenile Justice. But in the recent past, some in the juvenile justice system have begun to believe the reform rhetoric as reflecting actual change. Courts have rejected the 2004 expert reports as stale, and embraced reform plans as evidence of changed circumstances. But while continuing bad news about the DJJ may no longer make the front section, there is little reason for celebration.

The sad truth is that very little has changed in the day-to-day reality faced by young people committed to the system. In recent weeks, two new reports have been issued that find little change from the devastating conditions that prompted the *Farrell* lawsuit four years ago. On March 31, the panel of national experts selected by the Attorney General, the DJJ and the *Farrell* lawyers issued a revised Safety and Welfare Plan. Concluding that the DJJ remains "broken almost everywhere you look," the experts enumerate the same problems found by the first wave of expert reports: high levels of violence and fear; unsafe conditions for residents and staff; antiquated facilities; an adult corrections mentality; management by crisis; frequent lockdowns to manage violence; hours on end with nothing to do; and capitulation to gang culture. The plan also reported time adds for infractions adding more than eight months to average lengths of stay, making the lengths of stay almost triple the national average. In addition, the re-entry planning was found to be poor, with too few services for parolees.

With low levels of staffing and vocational classrooms that were idle or running half-speed, the experts reported abysmal achievement despite enormous outlays for education. The panel also discovered information systems incapable of supporting management, minimal partnership with counties and an overall fragmented system. In short, say the experts, the system is "failing its children ... [and] failing its taxpayers."

On April 6, Donna Brorby, the special master in *Farrell*, filed her first report. She concluded that "[t]he constant and pervasive violence in DJJ remains 'stunning,' just as [the experts] found in 2003," and that the violence "undermines DJJ's control of its facilities and impedes any rehabilitative programming." She found the violence to be "a consequence of systemic issues including overpopulation in housing units, inadequate staff to youth ratios, insufficient programs to occupy youth, insufficient resources to meet youths' individual treatment and rehabilitation needs and insufficient capacity to monitor conditions and practices at the facility level."

These two reports arrive at a time when many juvenile courts, prosecutors, probation officers and even defenders might otherwise believe that the worst is past. It is not. "Improvements" such as the fact that more youth get to eat outside their cells may be momentous for the Division of Juvenile Justice, but hardly worthy of congratulations. The indoor educational "cages" are gone, but many youth spend their single out-of-cell hour each day "exercising" in bare 8-by-10 outdoor cages made of chain-link fence and cement. Youth at some facilities ask to be held in protective custody lock-up under punitive conditions to escape racial violence in crowded dorms. Many youth miss school every day because long-promised teachers still are not on the job.

DJJ wards who have been released on parole are reincarcerated for lengthy terms for

technical violations such as drug or alcohol use. Those same parolees may spend months in custody before having a violation hearing, and then with no lawyer. Parole authorities have steadfastly resisted giving simple due process protections, such as counsel and a timely hearing to DJJ parolees, even though those basic rights are now afforded adult parolees pursuant to a stipulated permanent injunction in *Valdivia v. Davis* (E.D. 2002) 206 F.Supp.2d 1068.

We applaud the hard work of the many reformers, including senior DJJ administrators, seeking to fix these problems. We sympathize with the many dedicated front-line staff who endure terrible working conditions every day in the DJJ system. But we write out of frustration that things are not yet as they should be, and to ask that every juvenile court professional and every policy maker whose reach extends over juvenile justice remember this. The experts say the system is failing to protect community safety, damaging our state's children and wasting the taxpayers' money. These considerations must be at the forefront of any decision whether a young person should be committed to or kept in the DJJ. Courts need to ask whether the finding of "probable benefit," legally required for DJJ commitments, may truly be made in any juvenile case at the present time.

As this article goes to press, a new wave of resignations and changes has swept through the highest levels of the Department of Corrections and Rehabilitation. Bernard Warner, who arrived from Florida only nine months ago to fix the DJJ, has been tapped for a promotion, which would remove him from direct oversight of reform efforts. Should this occur, DJJ staff would meet their fifth boss in six years, with inevitable delay as yet another director gets up to speed.

For the sake of our young people and for all Californians, we hope the strength of Schwarzenegger's earlier commitment to reform will return, whatever direction it may take. We hope that county officials who initially viewed the DJJ crisis as an occasion to develop quality, local alternatives to DJJ commitments will redouble those efforts. We ask judges and probation departments contemplating DJJ commitments to reflect carefully about the true impact of such a sentence on the life of each young person, as well as the greater community affected by a failure to rehabilitate.

The headlines may one day proclaim success in California's efforts to reform its juvenile correctional system. But that news is a long way off.

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