

March 30, 2009

Nye County Board of Commissioners
Commissioners' Chambers
101 Radar Rd.
Tonopah, NV 89049

By U.S. Mail

Re: Constitutional Issues Raised By Substandard Conditions at the Nye County Detention Facility in Pahrump

Dear Board of Commissioners:

In October 2008, attorneys and staff from the American Civil Liberties Union of Nevada visited the Nye County Detention Facility in Pahrump, also known as the Pahrump jail, to investigate and document several conditions that could potentially form the basis of a legal challenge. The ACLU of Nevada is not the first entity to take notice of the substandard conditions at the jail. Nye County Commissioners have been on notice of the jail's substandard conditions since at least 2003, if not earlier. We reviewed two reports detailing the substandard conditions at the Pahrump jail: one prepared by the National Institute of Corrections (NIC), a division of the Bureau of Prisons, and another prepared by Kitchell CEM, one of the nation's leading program/construction managers for correctional facilities. Based on these reports and our recent investigation, many of the serious violations detailed in those reports continue to exist or have worsened and the ACLU of Nevada is deeply concerned.¹ The NIC report was issued on December 13, 2003, and the Kitchell Report was issued on November 1, 2005.

While the list of deficiencies is long, the main concerns for the ACLU of Nevada are that the Pahrump jail is overcrowded, understaffed, and the living conditions created by the deterioration of the current facility make it uninhabitable. These conditions violate the rights of inmates, the majority of whom are still awaiting trial (95% of inmates according to the 2003 NIC audit). The inmates are being subjected to many potentially unconstitutional prison conditions, such as overcrowding, lack of access to medical care, potential exposure to rust, mold, and lack of air circulation, and lack of access to legal materials with which to prepare for their upcoming trials. While it is true that many innocent people are arrested and charged with offenses, even those who are found guilty are still entitled to constitutional minimum standards of treatment and living conditions.

¹ The ACLU of Nevada has expertise assessing unconstitutional conditions at facilities in Nevada. In concert with the ACLU's National Prison Project, it has filed a lawsuit against the Nevada Department of Corrections to remedy similar problems at Ely State Prison ("ESP"). The ACLU filed suit because the grossly inadequate medical care at ESP is depriving the prisoners at of the minimal civilized measure of life's necessities as required by the Eight and Fourteenth Amendments to the U.S. Constitution.

As noted above, the problems with Pahrump jail facility are well documented. In December 2003, the National Institute of Corrections conducted an audit of the Pahrump jail ("NIC audit"). The NIC audit noted several troubling deficiencies at the facility, including overcrowding and substandard medical care, and warned that major renovations would be necessary to keep it from falling below minimum legal standards.

In December of 2004, Nye County Commissioners contracted with Kitchell CEM, a private company, to develop a Needs Assessment & Master Plan for a new Pahrump jail. This report, known as "the Kitchell report," was finalized in December 2005. The report found that expansion of the existing facility was impracticable and that the jail needed to be rebuilt.

Although it appeared that the County initially took appropriate measures to remedy the overcrowding situation by hiring Kitchell to create a Master Plan, the County has failed to follow through on the plans outlined in the Kitchell report or to take any other remedial steps to correct the conditions at the Pahrump jail.

The current issues at the facility are as follows:

1. The Jail Is Severely Understaffed.

As noted by the NIC audit, the jail is not adequately staffed. In 2003, the then current staffing levels at the Pahrump facility were insufficient to provide for a safe and secure detention center. During the midnight shift, there was only one officer on duty to supervise the entire inmate population. In the event of an emergency or other crisis situation, then-existing staffing patterns would not have allowed for the safe and orderly evacuation of prisoners to a secure area. It is not hard to imagine a female inmate being assaulted in such a situation.

The understaffing is a concern not only for the inmates, but it also creates a danger for those who do work at the jail.

2. The Current Pahrump Facility is Chronically Overcrowded Resulting in Substandard Living Conditions Which May Result in Constitutional Violations of Inmates' Eighth and Fourteenth Amendment Rights.

The Pahrump jail, which became operational in 1986, is made of a modular steel structure. It was designed to house a maximum 36 inmates (28 males and 8 females) for a short period of time while these inmates are awaiting trial. During 2008, the inmate population averaged 40 inmates per day at any given time. The current facility cannot meet the city's detention needs. It should come as no surprise that the jail has outlived its usefulness: the jail has been chronically at, or over, maximum capacity for a number of years, and due to the type of structure, is nearly impossible to expand.

The 2003 NIC audit noted that the Pahrump facility often had as many as 53 inmates in its 36-bed capacity facility - a 47 % over crowding rate. Since 2003, the male eight person cells have had up to 14 inmates at a time, and the female eight person cells have held up to 11 at one time. Furthermore, the one-man observation cell which is used to house unruly inmates, detoxing inmates, and suicidal inmates has held up to three inmates at a time.²

The 2003 NIC audit found that 95% of inmates in the Pahrump Jail are pre-trial offenders. The inmate population was broken down into the following categories:

Charged with violent offenses:	4%
Charged with non-violent offenses:	18%
Charged with traffic offenses:	72%

In other words, the vast majority of inmates in Pahrump jail are persons charged with non-violent crimes, and are being subjected to substandard living conditions that would not be even be suitable for convicted felons.

These facts raise not only serious concerns about the conditions at the Pahrump Jail, but also why so many low level offenders are being held in detention. Not only does public safety not require that such offenders be imprisoned, but

After the 2003 NIC audit, Nye County Board of Commissioners was on notice of the substandard conditions at the Pahrump jail. In 2004, the Nye County Board of Commissioners decided to enter a contract with the Kitchell CEM to conduct a more thorough assessment of the Pahrump jail and develop a master plan for a new jail facility. At the request of the Nye County Board, Kitchell prepared a Needs Assessment and Master Plan, addressing the County's detention facility needs in Pahrump. The study found that the Nye County detention facility in Pahrump was then currently overcrowded and unable to house the increase in bookings that had risen by 50% since 1995. The overcrowding problem was still evident in October 2008.

The 2005 Kitchell report highlights similar increases in the jail population. It found that between 1995 and 2004 the total number of adult arrests in the Nye County, Pahrump's jurisdiction increased by 50%, with a 96% increase in number of female arrestees. At its worst, the study found that 61 inmates have been held in the facility at a single time: that's a 69% over crowding rate.

The Kitchell consultant team, in concert with County representatives, developed a Master Plan to build an expandable jail facility in Pahrump. Part of the plan assumed that the existing Pahrump jail would be demolished eventually. The proposed new facility would

² This cell can only house male inmates because it is not separated by sight and sound from the cells for female inmates.

have housed the inmate population in single and double occupancy cells and dormitories, which would allow for the necessary separation of disorderly, violent, vulnerable and physically or mentally impaired inmates and male and female inmates, something the current jail facility is incapable of doing.

The ACLU of Nevada strongly urges the Nye County Board of Commissioners to remedy the overcrowded conditions at the Pahrump Jail. By allowing these conditions to continue, the County is at risk of violating the Constitution and faces serious legal liability exposure. Regardless of whether the County chooses to follow the recommendations of the Kitchell report or implement some other remedy, the County must begin the process of rectifying the overcrowded living conditions at the Pahrump jail.

3. The Current Pahrump Facility Does Not Provide For Adequate Medical Care or Emergency Medical Procedures For Inmates.

In the 2003 NIC audit, one of the most disturbing features of the current Pahrump facility was that there were no medical personnel on premises. Arriving inmates did not receive any kind of pre-intake medical or psychological screening by a doctor or nurse before being placed into the general population. At the time of the audit, there were no subsequent medical screenings performed during the inmates stay either.

There are still no medical personnel stationed at the jail to examine arriving inmates before they are placed in the general population. Although a physician now visits the jail once a month, inmates must still be transported to a local hospital for medical emergencies and other illnesses. Inmates' requests for medical assistance are reviewed by jail command staff who determine if they are sick enough to see a doctor even though the staff has no medical training nor are there written criteria for the evaluation of medical requests.

The 2003 NIC audit found that the provision of health services at the Pahrump facility was inadequate and recommended that the provision of medical services be improved so that it is in compliance with applicable detention and healthcare standards.

The 2003 NIC audit also found that "there are no policy and procedures for dealing with blood and air borne pathogens..." Furthermore, access to adequate treatment both as an individual and a public health concern. If diseases such as tuberculosis are not treated correctly, than it could become a problem for the safety of both staff and detainees. The NIC audit also noted that pervasive rust in the cells especially around plumbing fixtures and noted the presence of mold in one cell. Furthermore, the air circulation in the jail was virtually non-existent resulting in stagnate air in all the cells.

As of October 2008, there is still no policy or procedure for dealing with and isolating inmates with blood and airborne illnesses such as tuberculosis, hepatitis and AIDS and the jail recently experience another mold infestation in the kitchen walls.

Based on the inspection by the ACLU of Nevada, it appears that medical services at the Pahrump jail are still below legal standards. The Pahrump jail lacks many of the required elements of an adequate health care system, including a system of ready access to adequate medical care; readily available medical staff competent to examine prisoners and diagnose illnesses; a system of adequate, accurate, and up-to-date medical record-keeping; and trained on-site staff for responding to medical and psychological emergencies within the jail.

The new Detention Facility which was proposed by the Kitchell report, at the request of the county commissioners, would house primary medical and mental health facilities for the entire county detention system including provisions for daily sick call, medications and minor treatments.

4. Inadequate Separation and Protection of Female Prisoners from Male Prisoners and Lack of Work Opportunities for Female Inmates Also Raise Constitutional Issues.

Female inmates must be separated by sight and sound from male inmates. Neither of these requirements is being met at the Pahrump jail. The female cell, which can hold up to 8 women, has large windows which look into the hall way in plain view of one of the male cells. The 2003 NIC audit noted that the female cell is on the central corridor of the facility across from and adjacent to cells housing male inmates. Such a configuration does not provide sound separation from the male inmates. The cell door window is covered with foil and paper in an attempt to provide visual separation from male inmates; however, the food slot in the door to the women's cell remains open thus allowing male kitchen and laundry workers to peek in on the women. Furthermore, because only male inmates can work in the kitchen and laundry, males must interact with females to deliver their meals and pick up and drop off their laundry.

Furthermore, because there aren't enough deputies to supervise the inmates, female inmates are not allowed out of their cell to work in the kitchen or laundry room. Only male inmates can serve as inmate workers. Inmate workers earn a dollar a day for their labor and receive other privileges that regular inmates, including all female inmates, do not. Inmate workers are allowed to move through out the jail during the day, they are allowed to have more personal supplies, have personal shoes to wear and have a DVD player and DVDs. They also receive extra TV time, and are allowed to have one non-conjugal visit with family members once per month.

Finally, as noted above, the lack of staffing creates the very real danger that a female inmate could be assaulted.

5. Lack of Ready Access to Legal Materials May Result in Denial of Inmates' Constitutional Right to Due Process.

The vast majority of inmates at the Pahrump jail are still awaiting trial, yet there is no law library or access to legal materials that they can use to help them prepare for their defense. In other words, although a detainee is innocent until proven guilty, that inmate is being deprived of material that could help them prove their innocence. Even prisoners, already convicted of the most heinous crimes have access to law libraries.

If an inmate wishes to do legal research to prepare for trial, he must request to be sent to the detention facility in Tonopah. Transports to Tonopah usually run twice a week. While the Sheriff's office is working to set computer access to legal material it is not currently operational, and inmates must wait to go to Tonopah, ask their attorney, or ask family members to research legal issues.³

6. Structural Integrity and Security Hardware at the Pahrump Jail is Substandard and Could Lead to a Break Out.

It should be of concern to every resident of Pahrump is that the 2003 NIC audit found the existing perimeter security at the Pahrump facility to be inadequate to protect the facility from inmate escape attempts or break out attempts from the interior or exterior of the facility. Furthermore, the NIC noted that dangerous and deadly weapons and ordinance are stored in areas that are accessible to inmates or new arrestees.

The NIC audit noted a serious understaffing at the Pahrump facility in 2003. At the time of the NIC audit, there were maximum security prisoners held in the Pahrump facility and one staff member would not have been able to deal with a security or crisis situation involving a high security/escape risk prisoner.

There are still staffing deficiencies at the Pahrump jail. Jail staff consists of two Sergeants and eight jail deputies. During the evening shift there are two deputies for an average of 40 inmates. At night, there is usually only one deputy for an average of 40 inmates. It is not hard to imagine a scenario where the jail must be evacuated and due to the limited number of deputies, a female inmate gets assaulted.

³ Under Supreme Court precedent, prison officials must "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds v. Smith* 430 US 817, 828 (1977).

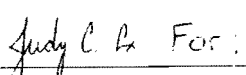
7. The County is Aware of These Issues and Has the Means and Opportunity to Remedy Them.

The DOJ audit and the Kitchell report have made it clear that something must be done about the Pahrump jail. The Kitchell report cost Nye County nearly \$99,000 and it is disheartening that the County would willingly spend this much money to develop a plan that it now seems unwilling to implement. Proposed construction on a new Pahrump facility was to begin in 2007. The proposed new facility could be expanded in the future if the need arose.

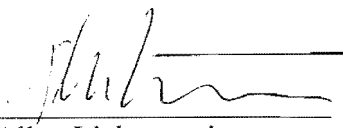
In conclusion, the ACLU of Nevada strongly urges the Nye County Board of Commissioners to remedy substandard conditions at the Pahrump jail, including overcrowding, lack of ready access to adequate medical care, as well as lack of access to legal materials, and the unequal treatment and protection of female inmates. Regardless of whether the County chooses to follow the recommendations of the Kitchell report or implement some other remedy, the County must begin the process of rectifying the unconstitutional conditions at the Pahrump jail.

The ACLU of Nevada is genuinely concerned about the conditions at the Pahrump jail; therefore, we are requesting that the Nye County Board of Commissioners or another Nye County representative contact our office to discuss the resolution of these problems. We look forward to your response, and would welcome the opportunity to discuss these matters with you.

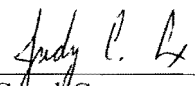
Sincerely,



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cc: Gary Peck, Executive Director, ACLU of Nevada
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U.S. Department of Justice Division