

**THE UNITED STATES 6<sup>TH</sup> PERIODIC REVIEW (DUE JUNE 27, 2016):  
SUBMISSION TO COMMITTEE ON THE CONVENTION AGAINST TORTURE  
[CAT] ON LIST OF ISSUES PRIOR TO REPORTING [LOIPR]**

**Issue of Concern: Jail Practices and Conditions in the U.S. (San Jose, CA)**

Submitted C/O the US Human Rights Network (USHRN)

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**Authors:**

William Armaline, Ph.D.  
Director, SJSU Human Rights Program  
Associate Professor, Dept. of Justice Studies  
[William.Armaline@sjsu.edu](mailto:William.Armaline@sjsu.edu)

Edith Kinney, Ph.D., J.D.  
SJSU Human Rights Working Group  
Assistant Professor, Dept. of Justice Studies  
[Edith.Kinney@sjsu.edu](mailto:Edith.Kinney@sjsu.edu)

**The SJSU Human Rights Program**, directed by Dr. William Armaline and governed by the SJSU Human Rights Working Group, provides human rights centered education, programming, and public policy reporting to San Jose and the San Francisco Bay area. From January-May 2016 Drs. Armaline and Kinney partnered with the Santa Clara County Human Relations Commission [SCC HRC] to write one of two commissioned reports on human rights and constitutional rights violations in the SCC Main Jail<sup>1</sup>, located in downtown San Jose, CA. The following LOIPR shadow report summarizes the findings of these two investigative reports: The Santa Clara County Human Relations Commission Report on the “Public Forum for Family and Friends of Inmates”<sup>2</sup> and the (120) recommendations of the Blue Ribbon Commission on Improving Custody Relations<sup>3</sup>.

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<sup>1</sup> See the SCC Main Jail website: <https://www.sccgov.org/sites/sheriff/Pages/main-jail.aspx>.

<sup>2</sup> See full text here: [https://www.sccgov.org/sites/ohr/Publications/Documents/Family-and-Friends-of-Inmates2\\_FINAL\\_03-19-16.pdf](https://www.sccgov.org/sites/ohr/Publications/Documents/Family-and-Friends-of-Inmates2_FINAL_03-19-16.pdf).

<sup>3</sup> For all materials and information relating to the Blue Ribbon Commission and their recommendations regarding human rights and civil rights violations in the Santa Clara County jail, please see: <https://www.sccgov.org/sites/scc/Pages/brc.aspx>.

**The Santa Clara County Human Relations Commission**, chaired by Harry Adams and their Justice Review Committee, chaired by Carol Turpen, were charged with creating a report to document the human rights issues in the SCC Main Jail facility, specifically focused on collecting the narratives of prisoners, their friends, and their families. Commissioners worked with Drs. Armaline and Kinney and SCC Office of Human Relations staff to collect, analyze, and present submitted testimony to the SCC Board of Supervisors (BOS) and the public.

The mission of the SCC HRC is to (a) advise the SCC Board of Supervisors on issues that affect the human and civil rights of all County residents, and (b) advocate for and take positive action to eliminate prejudice and discrimination in the County. The 15-member Commission is appointed by the BOS to represent Supervisors' respective districts. The HRC works closely with the SCC Office of Human Relations (OHR) to hear community concerns and to build positive inter-group relations. Within the HRC, the Justice Review Committee (JRC) is a standing committee chartered to "review and make recommendations regarding human rights concerns involving relations between law enforcement or Department of Corrections and Santa Clara County community members or inmates."<sup>4</sup> Due to the subject matter, the "Public Forum for the Family and Friends of Inmates" and its associated report fell under the primary responsibilities of the JRC.

### **Why were investigations of the SCC Main Jail required?**

#### *Three Deaths in 33 Days*<sup>5</sup>

The SCC jail system, run by the SCC Sheriff's Office Custody Division, is the fifth largest jail system in California and one of the 20 largest systems in the nation.<sup>6</sup>

Although complaints about civil and human rights abuses in SCC jail facilities have been surfacing for some time,<sup>7</sup> public backlash and media scrutiny peaked following the apparent beating death of a mentally ill inmate, Michael Tyree, at the hands of three correctional officials [COs] in the Main Jail on August 27, 2015. Tyree, 31, suffered from bipolar disorder and other complicating medical conditions, and was being held in the Main Jail on a charge of petty theft. Though he had been assigned to a mental health facility for treatment,

<sup>4</sup> For complete information on the HRC's mission, standing committees, membership, and meetings, see: <https://www.sccgov.org/sites/ohr/human%20relations%20commission/Pages/default.aspx>.

<sup>5</sup> This section is adapted from the original SCC HRC "Friends and Families of Inmates" report.

<sup>6</sup> See <https://www.sccgov.org/sites/sheriff/Pages/custody.aspx>.

<sup>7</sup> See [http://www.mercurynews.com/crime-courts/ci\\_29282094/after-inmates-death-whats-really-going-inside-santa](http://www.mercurynews.com/crime-courts/ci_29282094/after-inmates-death-whats-really-going-inside-santa).

Tyree remained at the Main Jail due to the lack of available bed space for mental health treatment in Santa Clara County.

Tyree's case is of particular concern for human rights advocates because it highlights the disastrous effects of treating the mentally ill via the criminal justice system – a revolving door of arrest-incarceration-release that undermines effective treatment at high cost to the individual as well as the community. According to a recent Treatment Advocacy Report, individuals with severe mental illness (less than 4% of the U.S. population) occupy one in five jail and prison beds throughout the nation.<sup>8</sup> Moreover, the SCC Sheriff reports that almost half of the inmates in SCC jails suffer from mental illness.<sup>9</sup> Not only are those with mental illness more likely to be arrested and held in jail; those with acute mental illness *are 16 times more likely to be killed by law enforcement officials.*<sup>10</sup>

According to charges brought by the Santa Clara County District Attorney's office and to medical reports, Tyree was violently beaten by COs who entered his cell, and who then left him naked and bleeding for over an hour before medical attention was requested. Reports indicate that Tyree died over the course of approximately one hour due to internal lacerations to his spleen and liver; he also suffered extensive bruising on his eye, chin, cheek, legs, back, and both hips, and a contusion behind his ear, all consistent with having been beaten on his head, legs, and body. The medical examiner found that 40% of Tyree's blood had leaked into the lining of his abdominal cavity, and that he had suffered a hemorrhage on the left side of his skull and a lacerated liver and spleen.<sup>11</sup> Three COs – Matthew Farris, 27, Jereh Lubrin, 28, and Rafael Rodriguez, 27 – currently face murder charges for Tyree's death, and have been released on \$1.5 million bail each. Charging documents allege that the three officers beat Tyree to death in his cell during evening inspections, after he refused to take medications distributed by jail nursing staff.<sup>12</sup>

Days later, on August 31, 2015, a female inmate at SCC's only other facility--Elmwood Jail—died “of natural causes” while in custody. Less than a month later, on September 28,

<sup>8</sup> See

<http://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf>.

<sup>9</sup> See <http://www.nbcbayarea.com/news/local/Text-Messages-Santa-Clara-County-Correctional-Deputies-Accused-of-Murdering-Inmate-328121321.html>.

<sup>10</sup> See <http://www.telesurvtv.net/english/news/US-Police-16-Times-More-Likely-to-Kill-Mentally-Ill-People-20151210-0037.html>.

<sup>11</sup> See [http://www.mercurynews.com/breaking-news/ci\\_29361631/claims-detail-conscience-shockingabuse-against-mentally-ill?source=autofeed#](http://www.mercurynews.com/breaking-news/ci_29361631/claims-detail-conscience-shockingabuse-against-mentally-ill?source=autofeed#).

<sup>12</sup> See <http://www.dailymail.co.uk/news/article-3226911/Three-prison-guards-charged-murder-mentally-illman-naked-beaten-death-cell.html#ixzz3yHHuBFfq>.

another 33-year-old male inmate was found dead in his cell in the Main Jail facility. Investigations are still underway to determine whether or not his death was related to two cell extractions on September 21 and 22 that involved the use of pepper spray, less-lethal plastic projectiles, and ultimately forceful, hands-on extraction from his cell.<sup>13</sup>

In response to repeated complaints about SCC jail conditions from current and formerly incarcerated people, the in-custody deaths of three inmates in just 33 days, and the massive public outcry that followed, the BOS formed a Blue Ribbon Commission (BRC) to investigate jail custody operations and recommend improvements.<sup>14</sup>

A series of investigative reports by the San José Mercury News also detailed the events leading to the creation of the BRC and the HRC’s “Public Forum for the Family and Friends of Inmates,” and provided additional insights based on interviews with current and former inmates and jail staff.<sup>15</sup> These investigations found that beating, coercion, intimidation, and denial of services to jail inmates—including inmates suffering from physical and mental illness—were commonplace.

The following section briefly highlights each issue that dominated the SCC HRC and Blue Ribbon Commission Reports on conditions and practices at the SCC Main Jail complex. The human rights and civil rights abuses exposed by these investigations represents a legitimate concern of the CAT committee for questioning of the U.S. Department of State regarding criminal justice and correctional practices in U.S. jails and prisons.

### **Human Rights Issues of Concern**

The following jail practices and conditions point to violations of the Convention Against Torture, Article 1(1)<sup>16</sup>, as forms of “torture” committed by agents of the state against those in

<sup>13</sup> See <http://www.sfgate.com/crime/article/Another-Santa-Clara-County-jail-inmate-death-6537985.php>.

<sup>14</sup> See <https://www.sccgov.org/sites/opa/nr/Pages/Blue-Ribbon-Commission-Set-to-Evaluate-Custody-Operations-.aspx>.

<sup>15</sup> See [http://www.mercurynews.com/crime-courts/ci\\_29282094/after-inmates-death-whats-really-goinginside-santa](http://www.mercurynews.com/crime-courts/ci_29282094/after-inmates-death-whats-really-goinginside-santa).

<sup>16</sup> CAT Article 1(1): “For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not

state custody, that cannot be reasonably defined as “inherent in or incidental to lawful sanctions.” Treatment and conditions of confinement are of particular concern in U.S. jails, due to their role in forms of “preventative” or “pretrial” detention. The vast majority of people (approximately 75% of men and 69% of women) held in Santa Clara County jails are in pretrial detention for weeks or months, often simply because they do not have sufficient money for bail.

### ***1) Inadequate Physical Living Conditions<sup>17</sup>***

Research participants in both reports described a range of inadequate physical living conditions, from deteriorating buildings to the lack or denial of basic needs, including food, clothes, heat/shelter, and potable running water. Many inmates and inmate family members specifically highlighted insufficient temperature control (“freezing”), problems with sewage in cells and a lack of potable water, degrading practices and a lack of privacy for bathing and medical examinations, and the failure to provide adequate—if any—exposure to the outdoors and sunlight.

Some testimony described physical conditions and neglect of those conditions by jail staff that arguably amounted to “cruel or unusual punishment” (i.e. torture) under both Constitutional (Eighth Amendment) and international human rights (CAT, ICCPR) standards. Indeed, perhaps the most shocking and disturbing testimony collected involved the conditions of confinement and treatment of one young woman while she was in custody awaiting trial for a vandalism charge:

On January 15th, 2015, [she] was booked into the Elmwood Jail on charges of vandalism. On January 16th, [she] was transferred to the Main Jail in downtown San Jose, placed in Cell 13 in a single cell on Floor 8-A, where inmates seem to have mental health issues. On arrival, [she] was stripped of her clothing, placed in Cell 13 naked, no blanket, no toothbrush, no soap, no eating utensils, and no access to shower.

On January 17th, a toilet overflowed and flooded the cell. There was nearly an inch of water and fecal matter covering the entire cell, and [she] remained in Cell 13 for two more days. During this time, because the water had been turned off to stop the flooding for three days, [she] had no access to clean, running water, and had to resort to drinking water from the toilet...During this time in Cell 13, [she] developed severe diarrhea, had no functional toilet, [was] severely dehydrated, and experienced what she believed to be a fever in excess of 100 degrees. She was naked, cold, alone, and denied medical

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include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” See here for full text: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

<sup>17</sup> Each “issue” section is adapted from the original SCC HRC “Friends and Families of Inmates” report.

attention...

On January 21st, [she] was removed from the flooded Cell 13 and placed in another cell and given jail-issued clothing and underwear. Because of the chronic and severe diarrhea, [she] quickly ran out of toilet paper. Over the next approximately 18 hours, she requested toilet paper 50 times [but was ignored by the guards].

According to the testimony, the treatment of this particular detainee escalated to include direct sexual harassment and severe physical abuse:

Furthermore, guards periodically taunted [her] through making lewd, crude, and obscene comments about her— and I quote—“ male genitalia.” These verbal assaults were persistent and aggressive, causing [her] to be in constant fear she was going to be raped... On January 27th, [a correctional officer] came to the jail cell with a pair of underwear that she threw in the cell. [The officer] entered the jail cell and grabbed her by the hair along with two other deputies... Upon entering Cell 13, the three officers threw [her] on the floor, slammed [her] face against the floor. The only thing [she] remembers at the end of the attack is the [first correctional officer] saying, “ I hope that hurt, bitch.” [She] has no idea how long she was unconscious and lying on the floor. She was left naked from the waist down, bloody, with two severely swollen and blackened eyes, possible broken nose, swollen and bruised elbow, enlarging of organs, bruising on her arms, legs, and torso with a severe head injury... [She] repeatedly requested medical attention and was not seen by medical staff for a period of five days.

In sum, this particular detainee was allegedly held in brutally degrading and dangerous conditions for days at a time, sexually harassed, severely physically abused, and denied medical treatment—all without having been convicted of a crime (she was only charged and awaiting trial). This was one of the most extreme description of inadequate and manifestly inhumane physical conditions inside the jail facilities among all the collected testimony. However, stories of physical abuse—beatings by COs during evening shifts and cell extractions in particular—were repeatedly mentioned in testimony, and were described by some participants as “routine.”

## ***2) Violent Abuse by Corrections Officers [COs]***

Reports of violence committed by jail COs were also prevalent in the submitted testimony, as was the anxiety inmates’ family and friends experienced over the perceived physical safety of their loved ones. Reports of violence by COs illustrated specific patterns of conduct:

- Violent abuse often took place during evening shifts and during cell extractions, when an inmate is forcefully removed from a cell by several COs.
- In every case of violence described, more than one CO was involved (violence was committed in groups).

- Testimonies about violent abuse tended to include beatings and pepper spraying of inmates, at times while the inmate was handcuffed. In addition, several testimonies described inmates being choked with a towel by COs.

One inmate's written testimony illustrated all of these common patterns in his narrative. He described a cell extraction that followed his attempt to protest what he and others thought were unfair practices in the Main Jail:

When it was my turn [for extraction], the door opened. I immediately laid down so as to demonstrate submission; that didn't work. I was met with a multitude of kicks and punches. I was eye gouged. I was maced first. My face was slammed forward, and then my head was forced back and held so the next person had a better angle. My legs/ankle were stomped on. When I was cuffed, the clamps were squeezed so tight—tight enough to cut right through my skin. I was told they weren't made for comfort. I was strangled with a towel... My cellmate also said he was strangled the same way... This is routine.

Inmates and their communities of support also reported that such violence occurred with impunity, despite many attempts to report abuse through all available channels. Of even greater concern, as reflected in the high profile case of murdered inmate Michael Tyree, is the inhumane treatment of mentally and physically ill inmates in the SCC jail facilities, and facilities throughout the U.S.

### ***3) Denial or Absence of Appropriate Medical and Psychiatric Care***

The denial or absence of appropriate medical and/or psychiatric care was another dominant theme in both reports. Participants described the denial of medical services, denial of necessary medications, failure to recognize and appropriately address mental illness, and delayed or inappropriate provision of medical care when required by medical necessity or requested by an inmate.

Many participants described the pursuit of medical attention as a daunting task for inmates, and written complaints from inmates and family members consistently focused on the jails' lack of response to inmates' medical requests and seemingly arbitrary cancellation of inmates' medical appointments. In addition, inmates with chronic health conditions reported similar difficulties obtaining necessary medications. The denial of medication and appropriate care for chronically ill inmates presents a severe—and potentially fatal—threat. Such cases demonstrate why the provision of basic health care in custody is a Constitutional requirement—so that detention does not amount to a death sentence. This is particularly important in the context of pretrial detention, when suspects are presumably detained to ensure their appearance in court and have not been convicted of any crime for which they can

be punished. Inmates and their advocates also described the lack of appropriate psychiatric care—specifically for depression, anxiety, and post-traumatic stress disorder.

Finally, inmates and their families protested the lack of dedicated, private space for inmates to consult with and receive treatment from medical staff. Participants described incidents of medical care and sensitive medical consultations taking place “in the open,” with little regard for inmates’ privacy or discretion.

The provision of basic medical and psychiatric care in correctional facilities is absolutely required by regulation and by Constitutional and international law. The collected testimony indicates that this basic care is often absent or willfully denied in SCC jails. In addition, it appears that the SCC jails lack or fail to employ sufficient resources to ensure even minimum standards for private examinations, consultations, and general care.

### **Note on the State’s Obligation to Act**

Both the SCC HRC and BRC reports include lists of recommendations, according to local, Constitutional, and international legal standards for the improvement of practices and conditions in the SCC jail facilities. These recommendations have been formally accepted by the SCC Board of Supervisors, which is now in the process of exploring avenues for implementation. That said, it is not entirely clear whether or when the issues of concern highlighted above will be addressed. To date, there have been no significant public changes in jail (County Sheriff) leadership, general personnel, facilities management (repairs, etc.), or publically stated policies/procedures. Though there have been individual indictments handed down as the result of Tyree’s death and the physical abuse of other inmates during cell extractions, CAT articles 6(1)<sup>18</sup> and 10(1)<sup>19</sup> suggest the state’s obligation to a more robust and aggressive response to addressing forms of torture in local jail facilities.

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<sup>18</sup> CAT Article 6(1): “Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.”

<sup>19</sup> CAT Article 10(1): “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

