Citizens United for the Rehabilitation of Errants—
Adherence to the Rehabilitative Mandate

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THE CRIMINAL AMERICAN CRIMINAL JUSTICE SYSTEM

A CURE-ARM POSITION PAPER

by: George Nassar

Its modern variety began in 1972 with the passage in Massachusetts of the penal reform law hard upon the heels of the Attica Prison massacre – the indiscriminate slaughter of convicts and guards to "solve" a reform protest.

Massachusetts called upon its religious, intellectual, and political heritage to inform its legislative intent - - namely the 1648 Pilgrim's first codification of law in America ("The General Laws and Liberties Concerning the Inhabitants of the Massachusetts"), admonishing that learning is the saving grace against "that old deluder, Satan" - - the same period Harvard College established secular dedication to learning – and the John Adams' drafting in 1780 of the Massachusetts Constitution's Chapter V to "cherish" the bequest of learning from the religious and intellectual inheritance as the saving political grace of a true and creative democracy. As the Laws and Liberties would put the betrayal of such trust of learning's "light and law of nature": "nations [would be] corrupting his Ordinances (both of Religion and Justice)," wherefore as consequence "God withdrew his preference from them proportionately whereby they were given up to abominable lusts."

That corruption is exactly what happened when Massachusetts betrayed faithful implementation of its penal reform law, which we are here introducing, will narratively review, and then summarize.

THE NARRATIVE REVIEW

Though statutorily entitling prisoners to rehabilitation ("shall rehabilitate" -- Mass. Gen. Law Chapter 124 § 1), within the Massachusetts general law framework of entitlements of professional treatment (M.G.L. c112 § 163 -- "Practice of Rehabilitation Counseling...maximizing... social functioning"), the Executive branch, through the Department of Correction (D.O.C.) agency, withheld such treatment of licensed social work practitioners. The trick of the Executive and Legislative branches was how to play out the shell game these past 43 years.

They did so right at the start when the Legislature barred for prisoners application of § 11 of the Administrative Procedures Act (Mass. Gen. Law Chapter 30A) – the Act a necessary regulatory guide to implement a statute. If § 11 had not been voided for prisoners, it would have provided for an appeal of an adverse administrative agency decision (say a denial of a prisoner's transfer to lower custody) to a quasi-judicial proceeding in which the aggrieved would be assisted by an attorney, who could offer evidence of expert testimony (read, of a licensed rehabilitation counselor), and the judge would necessarily require the agency to offer opposing evidence of expert testimony (read, of the unlicensed agency employee).

Not satisfied with the void barrier of an excised § 11, the Legislature in 1977 inserted a modification in the middle of the social work laws themselves of c.112 to "exempt" (§ 131) the D.O.C. from employment of licensed professionals.

And just to be sure there was no mistaking intent to exclude licensed social work, in 1994 the Legislature

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passed a law to oust the Department of Mental Health from treating sexual offenders (civilly committed or otherwise) at the prison Treatment Center, and empowered the D.O.C. to challenge a federal court consent decree going back to 1974 that entitled such inmates to licensed care. The case is King v. Greenblatt, 149 F.3d 9 (1998), the court reluctantly agreeing, provisionally, to vacate the decree, allowing the D.O.C. its "experiment" of providing care, but reminding that when it comes to a contestation of accredited treatment modalities, the judiciary has the final word as arbiter on professional judgment.

The constitutional perniciousness of this governmental duplicity and deprivation did not stop there. For prisoners, their family, friends, and supporters, protested through court action (as they were obligated as citizens to do) that the operative D.O.C. administrative program regulations were on their face or in practice in noncompliance with the statutory rehab mandate, and from 1974 through 2010 they so engaged and prevailed in state and federal court, all the while suffering a failed and suppressed good faith application of corrective programming, including the regular punishment of prisoners who would expose the corruption.

These landmark cases against the D.O.C. were: Blaney (374 Mass 337, (1978))-- right to programming though insolated in Protective Custody; Hoffer (SJC Suffolk County No. 85-71 (1993))-- right to programming though in administrative segregation, with an uncontested judgment that, under the reform statute and following Blaney, a Massachusetts constitutional ("liberty interest") right to rehab treatment programming now existed; Haverty (437 Mass. 737 (2002)-- programming right reaffirmed no matter what label the D.O.C. puts on placements); Tyree/ Peterson (federal court 2010 WL 145892, 1st (District Mass.) affirmation that Haverty following its precursors conclusively establishes that the deprivatory violations were both a State and Federal constitutional violation.

These four-decade conclusions of law by the judicial branch of government in and of itself establishes the unconstitutional conduct of the legislative and executive branches, and a crisis of governance and "professional judgment" under the separation of powers doctrine.

If there is any doubt about the depth and reach of it, the as-far-back-as-1985 admonition by three justices of the Supreme Court in Superintendent v. Hill, 472 U.S. 445 dispels it: the D.O.C. "somewhat inexplicably" did not "know the State's laws" on prisoners' procedural rights, though an "opaque footnote... confirms he was aware" – which signaled a "warning" to "the Court itself" of hazard "to the maintenance of standards that should govern procedures in this Court." Following 1985 was indeed the warning made real in Hoffer (1993), King (1998), Haverty (2002), and Tyree/ Peterson (2010) – namely, the repetitive contempt of the Executive and Legislative of constitutional rights and of the power of the judicial to require compliance with its judgments.

SUMMARY

The jurisprudential disregard and defiance goes equally to the sanctity of the methodologies of science – here the social science professional judgments of rehab counseling. The Pilgrims were right: the sacred applies to learning as "the light and law of nature" that licensed rehab counselors seek, in strict protocols of recognized practice under peer review. When the Executive and Legislative truncated the laws of social work, they most certainly "corrupted his Ordinances (both of Religion and Justice)"; they decapitated the mind of social reason in its search for its truth, and were indeed "given up to abominable lusts" of the notorious failures of the criminal justice system.

And if there's any doubt about the national corruption of social science truth and reason, it was disabused with the "Remarks" addressed by the Massachusetts governor in 1992 to the assembled attorneys general of the States of the Union in Washington, D.C. The chief law enforcement officers of the country sat in silent approval as the governor said flatly that social work protocols were definitively excised from Massachusetts "corrections" and in their place was to be the programming of a "trip through hell." Thereby that "old deluder, Satan" was officially ensconced as the criminal justice new learner, and all the country's institutions and public-spirited societies bowed in obeisance – the politicians, the press, the churches, the colleges – in a collective carceral orgy of prison construction, extended mandatory sentences, juveniles legislated as adults, supermax segregations, a sub-population of felony-record disenfranchised – a Frankenstein social science complementing the new "free society" normal of gated communities, body-searches, and terror alerts.

Jean-Paul Sartre had it right 60 years ago: America lacks a "valid theory" in social science ("sociology") to guide and empower it. Hence, the debility of licensed practioners themselves to have asserted their rightful place in the jurisprudential constitution of applied learning. Which is another way of saying that the American schools of learning mime the corrupted faculty of the government's mind and conduct of American criminal justice. Their vaunted scholastic "excellence" services a perverted social science application, hence in abysmal ignorance of Sartrean philosophical anthropology and Simone de Beauvoir's feminist critique, upon which this paper is founded. And that conclusion is prima facie. †

The Law Enforcement Racketeering Enterprise - and Why

A follow-up to the CURE-ARM position paper lead article

by: George Nassar

The Position paper of CURE-ARM of May 2015 conclusively established – in forty years of state and federal court judgments – that the policing power of the Executive branch co-opted and corrupted the constitutional balance of the separation of power of the judiciary in service of its special interest of gainful employment and the political force to expand its policing of the mind and soul of the body politic.

As the Position paper noted, most critically, the usurpation of the co-equal power of the judiciary was not simply the repeated refusal to comply with court orders; it was the flat out denial of the judiciary to render its essential public good – the impartial *professional judgment* to decide an issue of legality or reasonableness between contending professional assessments (as in the case of two rehabilitation models); in short, the power to direct the resources of social order in the most promising constitutional way, but subject to the review of its tested practical effect.

That methodology is exactly that of all sciences – and its violation is a universal intellectual and moral fault, a grievous, mortal sin religiously as it is an intellectual and socio-political abomination – as the Position paper detailed of the Massachusetts 1972 penal reform law's historical development.

Anyone who doesn't understand that historical nexus of the federal and Massachusetts state constitution principle of the Spirit of the Law and the perversion of the power of the judiciary – the seat of body politic *judgment* – is in a state of ignorance, and the willful manipulation to effect that perversity is treasonous and criminal in its very nature.

Now there is a law defining such willful malfeasance: it's called RICO – Racketeer Influenced and Corrupt Organization. Intended or not – conscious or not - the practices of the policing powers defined in the Position paper are just such a high crime. And most vitally, there is no real distinction, between lobotomizing of the judiciary to render professional judgments, and the criminal hebetudes of the policing forces as described. It is one and the same *constitutional* brain drain, one and the same pervasive, uncontrolled criminality – a criminality the 1972 reform law aspired to engage scientifically, as in employment of licensed professionals in rehab counseling –

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CURE-ARM CAN NEVER FORGET

by: Timothy J. Muise, Steering Committee Director

We here at CURE-ARM do all we can to expose the abuse of the modern "corruptions" systems as well as to propose our solutions based on our first hand educated experience. It is a noble effort we believe, but there is one underlying "issue" that we dare not ever forget; that being the fact that it is the guards and administrators that ruin all positive endeavors and rehabilitation offerings in prison. If we cannot change the "guard culture" we will be destined to more decades of abuse and the deliberate criminal suppression of our right to rehabilitation here in the Commonwealth of Massachusetts. This MUST be job one for CURE-ARM and we pledge to make it so.

National CURE, MA CURE, and other CURE Chapters just don't have our educated experience. Not a criticism, just fact. They cannot "guide" us as to how to handle our business. We must take the lead here in this state and do what we know will work: agitate, disrupt, and expose. We will never sit still while our purported "advocates" fiddle as Rome burns. Their dog-tail chasing will also be exposed just like the abuse of the guards and wardens will be. It was not the "conservatives" who "took away" our rights, but the "liberals" who sacrificed them on the altar of cowardly compromises. Never again!

Our work is not for the faint of heart, nor is it for the boot-polishers or sycophants the mental abuse of the gulag can produce. The work is for those who know they have fallen short but wish to strive for self-realization: the definition of rehabilitation. Our work is for those willing to stand up and say, "I'm not going to take it anymore!" That is who we are. That is CURE-ARM!! Join us!!! †

The Law Enforcement Racketeering Enterprise - and Why

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a national aspiration going back to the 1968 "President's Crime Commission Report."

When, therefore, the policing forces forced out the social science professionals, they assumed a role of "correctional" officials to service their own bogus social science in an unconscionable profiteering enterprise. A glance at the array of their "command and control" penal architecture this past generation sums up their brand of "corrections":

- The prison/jail population has increased over 500% to 2.2 million.
- A U.S., which consists of 5% of the global population, houses 25% of the world's prisoners.
- American jails process twelve million people a year.
- Between 70 and 100 million (1 in 3 of all Americans) now have a criminal record.
- The payoff "benefit" cost of such a system is $80 billion a year.

(Source: Coalition for Public Safety www.facebook.com/coalitionforpublicsafety)

The good, though belated intentions of the Coalition and their counterparts to correct the system masks a scandalous default. They knew or should have known the Position paper historical development long ago - should have known how the Chief Justice of the (Mass.) Supreme Judicial Court was forced to retire because he had guided the court in ruling fairly on the prisoners' complaints – forced by the Legislature's choking off of judicial funding.

There's only one way such a scandalous constitutional coup d'état could have taken place in this democracy – namely, the United States' legal establishment and their allied estates of business and academia turned a blind eye to the degradation of the judicial power to render professional judgment in the Massachusetts' instance that was cloned in all other states and the federal government.

In the 2000 federal case, Dellelo v. Maloney (CA No. 00-11813 EFH), the court and the attorney general of the United States were presented with the documentation the Position paper outlined. Under CRIPA (Civil Rights of Institutionalized Persons Act), Dellelo petitioned the federal government to participate (as obliged under the Act) in the civil court action exposing the corruption. They declined to do so simply by acknowledging receipt of the information and request – a reply of silence.

The same reply of silence was the answer of the Mass. Bar Counsel and the criminal division of the state's office of the attorney general in 2010.

Such silent acknowledgment was eloquent admission that the judicial independence as co-equal power of governance had been sorely compromised, that the *judgment* of the nation in the field of social evil called crime had been truncated by a group imposing its own opposing judgment on the Constitution to be faithful to fair and impartial considerations of developing social rehabilitation science. In short, the nation had lost its constitutional guidance of creative social discovery to a coterie of "law enforcement" cabalists imposing a Frankenstein science on how to remake human beings.

Until those who now would "correct the system" admit the true history of the Position paper and restore to the judiciary its rightful place as the seat of professional judgment, all of us – excluding no one – who participated in the criminalization of America by act or default will continue to suffer the malaise of social evil, for it is to ourselves we create and undermine our true constitutional way of life. We are our own correction, if we would.

That demand of our religious and intellectual inheritance of conscience is exactly what the convict must see as the experience of those who represent the law, else he is "legally" confirmed to continue to live a life of copycat sham. ‡

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THE GERMANS GOT IT RIGHT

by: Shawn Fisher

Not too long ago I authored an article entitled "Invitation to MCOFU" (http://betweenthebars.org/blogs/101). The article highlighted the fact that the D.O.C., and more specifically the guards' union, cares little about rehabilitation. In a recent article from the New York Times entitled ***"What We Learned From German Prisons,"*** Nicholas Turner, President of the Vera Institute of Justice, and Jeremy Travis, President of John Jay College of Criminal Justice both appeared to echo this belief.

The following are excerpts taken from the NY Times article:

"Earlier this summer, we visited some prisons in Germany to observe their conditions. What we saw was astonishing. The men serving time wore their own clothes, not prison uniforms. When entering their cells, they slipped out of their sneakers and into slippers. They lived one person per cell. Each cell was bright with natural light, decorated with personalized items such as wall hangings, plants, family photos and colorful linens brought from home. Each cell also had its own bathroom separate from the sleeping area and a phone to call home with. The men had access to communal kitchens, with the utensils a regular kitchen would have, where they could cook fresh food purchased with wages earned in vocational programs. We hoped that we were getting a glimpse of what the future of the American criminal justice system could look like.

After decades of callousness and complacency, the United States has finally started to take significant steps to reverse what a recent report by the National Research Council called a "historically unprecedented and internationally unique" experiment in mass incarceration.

In Germany we saw a potential model: a system that is premised on the protection of human dignity and the idea that the aim of incarceration is to prepare prisoners to lead socially responsible lives, free of crime, upon release. While the US incarcerates 2.2mil. people, Germany has an incarceration rate that is 1/10th of ours.

The process of training and hiring corrections officers is more demanding in Germany. Whereas the American corrections leaders in our delegation described labor shortages and training regimes of just a few months, in the German state of Mecklenburg-Western Pomerania, less than 10% of those who applied to be C.O.'s from 2011 to 2015 were accepted to the two year training program. This seems to produce results: In one prison we visited, there were no recorded assaults between inmates or on staff members from 2013 to 2014.

Germans, like Americans, are greatly concerned with public safety. But they think about recidivism differently. During our visit, we heard prison professionals discussing failure in refreshingly unfamiliar terms: If, after release, an individual were to end up back in prison, that would be seen as a reason for the prison staff members to ask what they should have done better. When we told them stories of American politicians who closed a work-release parole program after a single high-profile crime by a released inmate, they shook their heads in disbelief: Why would you close an otherwise effective program just because one client failed?

In Germany we found that respect for human dignity provides palpable guidance to those who run its prisons. Through court-imposed rules, staff training and shared mission, dignity is more than legal abstraction.

The question to ask is whether we can learn something from a country that has learned from its own terrible legacy—the Holocaust—with an impressive commitment to promoting human dignity, especially for those in prison. This principle resonates, though still too dimly at the moment, with bedrock American values." †

FROM THE DIRECTOR'S DESK

by: Shawn Fisher

Members of CURE-ARM are working with The Harm Reduction & Drug Law Reform Caucus to hear the issues related to prison reform/rehabilitation. The caucus works in partnership with various entities to provide a forum where legislators who are aligned on these issues can come together to collaborate on, support, and pursue reform, together.

CURE-ARM supports and believes in the work the Caucus pursues and the hundred-plus members who continue to work in raising awareness. Below is a list of the caucus's priority legislation for the 2015-2016 session. Please show your support by contacting your representative/senator to pass this legislation.

Repealing Mandatory Minimum Sentences for Drug Offences- Rep. Swan (HD1921) & Sen. Creem SD1770)

Pretrial and Bail Reform – Rep. Sannicandro (HD3156) & Sen. Donnelly (SD1491)

Restorative Justice – Rep. Garballey (HD 2089) & Sen. Eldridge (SD1105)

Expungement – Rep. Dykema (HD2308) & Sen. Eldridge (SD1105)

Extraordinary Medical Placement – Rep. Toomey (HD2997) & Sen. Jehlen (SD1417)

Ending Collateral Sanctions at the Registry of Motor Vehicles – Rep. Malia (HD2584) & Sen. Chandler (SD1665) †

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CURE-ARM
MISSION STATEMENT

The Commonwealth of Massachusetts has a very unique distinction in that General Laws of this state **MANDATE** that prisoners be rehabilitated as stated under the Powers and Duties of the commissioner of Corrections, M.G.L. 124 § 1(e):

In addition to exercising the powers and performing the duties which are otherwise given him by law, the commissioner of corrections, shall: ...

(e) establish, maintain, and administer programs of rehabilitation, including but not limited to education, training and employment, of persons committed to the custody of the department, designed as far as practicably to prepare and assist each person to assume the responsibilities and exercise the rights of a citizen of the Commonwealth.

It is apparent to our organization that the Department of Corrections has engaged in efforts to usurp the legal mandate to rehabilitate here in the Commonwealth of Massachusetts. The Massachusetts special interest group of CURE-ARM will work toward the melioration of that failure in accordance with justice and the enhancement of public safety.

Our Platform Issues are:

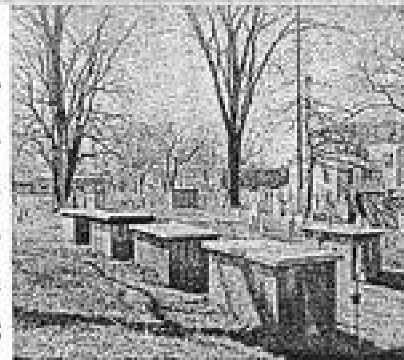
- Re-establish a viable commutation system in Massachusetts
- Enacting a presumptive parole system focusing on managed successful reintegration to society as well as motivated and effective rehabilitation during incarceration
- Working toward the implementation of compassionate medical releases dovetailing into viable commutations and effective parole with more cost effective management of the D.O.C. medical budget.
- Effective use of the Massachusetts Department of Corrections medical budget which is the 2nd largest portion of their budget. Cost effective preventative care is the goal.
- Work toward realization of the mandated duty that the D.O.C. focus on care and custody that promotes successful reentry and goes beyond a predominant focus of security-only.

Easy Pay as They Fall Like Flies
A case study for Compassionate Medical Release

by: Ken Seguin

MCI Shirley, a medium security prison, calls itself the "medical facility" of the D.O.C. There are 41 total beds: *four wards with five beds, eight "bubbles"- cells* with one wall being all plexiglass, no TV, no appliances and typically used for prisoners from segregation who are ripping out (why not put them with guys who are seriously infirmed on their death beds), *four medical singles,* and one big *ward of 11 beds* called assisted daily living. Forty-one beds! Impressive right? Not when you look at the Corrections Master Plan that estimates a near-term need to care for 635 long-term acute care prisoners.

Most men in the hospital are incapable of walking, many are not in their right mind, and many go on outside hospital trips a few times a month. Each trip requires an ambulance accompanied by a chaser D.O.C. vehicle with two correctional officers to assure "public safety". The cost is astronomical. The public safety risk is minimal. So why would a public safety department that spends approximately 87% of its budget on manpower and medical keep people who can't walk, drive, or even think (in many cases) under guard? Could it be to keep the manpower employed in their self-serving "jobs program"?



In the last 18 months, to the best of my knowledge, the following prisoners have died while being "cared for" in the MCI Shirley hospital unit - **Frank Ferdinand, Bernard Sanderson, Glen Breese, Humberto Feijoo, Peter Ladetto, David McCall, David Owens, Franz Kebrew, Edward Parragh, Everard Genius, Kevin Hicks, Richard Schulman, John Early, Herbert Earl, and Modesto Espejo**. Several others are on the verge of dying. But one thing the public can be sure of is these blind, lame, dementia, bed ridden terminally ill patients are well guarded in prison and on trips to outside hospitals so they can't make a run for it and cause criminal mayhem.

More sound criminal justice policy! Why not pass the no-brainer medical compassionate release bills H1628 & S843? Or is the guard union really that strong to keep the insanity of not passing it intact? †