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April 23, 2008

Honorable Michael B. Mukasey
Attorney General of the United States
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Request for Civil Rights Investigation of the Sheriff of
Maricopa County, Arizona

Dear Mr. Attorney General:

I write to request an investigation into a pattern and practice of cruelty, abuse, deliberate indifference, and willful civil right's violations against detainees and inmates by Sheriff Joseph Arpaio and the Maricopa County Sheriff's Office.

I am a commercial litigation attorney practicing in Phoenix, Arizona, but have served several families as counsel in wrongful death cases against Sheriff Arpaio and his Maricopa County's Sheriff's Office. It is my belief that the Maricopa County jails have become unconstitutional places of punishment. In support of this statement, the following is a summary of some of the cases I have litigated against Sheriff Arpaio. Other attorneys in this community have similar summaries.

Let me begin with an inmate death civil rights case against Sheriff Arpaio that settled recently for \$2,000,000. The case was about the death of Brian Crenshaw. Brian went into MCSO's jail for shoplifting dishtowels for his girlfriend. He was legally blind and mentally disabled. Jail doctors told MCSO four times in writing that Brian was too disabled and too vulnerable to be put in Tent City. MCSO ignored their own doctor's orders and put him into Tent City. Brian could manage his mental disability if he took his prescribed medicine each day. MCSO compounded the cruelty of the dangerous placement into Tent City by deciding not to give Brian the medicine he needed. Later, an overworked jail guard picked a fight with Brian, cuffed him, then roughed him up badly enough that he had to be sent to the jail infirmary. Without any hearing or investigation of Brian's claim of the guard's excessive force, MCSO put him in solitary confinement, refused him his mental health medication for six days, refused him the pain medication which had been ordered by the jail doctor after the altercation, and offered Brian food only twice in six days. Jail doctors were supposed to check on Brian's well-being three days into his solitary confinement – they never did.

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On the sixth day, according to the MCSO, Brian “fell out of his bed” and broke his neck. After Brian died we warned MCSO not to destroy any evidence. But, MCSO destroyed the digital video (MCSO replaced the digital video with an intentionally denigrated analog video with conspicuous time gaps), evidence that would have shown whether or not MCSO’s improbable story of how his neck was broken was true.

A Couple of Earlier Cases

I fell into litigation tension with Sheriff Arpaio in 1998 by accident of my friendship with the father and mother of a young man who was killed in MCSO’s medieval metal Restraint Chair. I was cozy, comfortable, and confident in my commercial litigation career, when the father approached me about taking the case over from another lawyer as a “fixer-upper.” I had never been involved in a civil rights case, never carried the card of the ACLU, was a Reagan Independent, thought Sheriff Arpaio was a pretty harmless and unusually humorous caricature, and was even concerned that Sheriff Arpaio’s press spin that blamed the son for his own death might well be true.

I took the case over and soon discovered the Sheriff’s press spin was utterly untruthful, and they knew it. We proved that the jailers provoked the lethal incident, kicked the inmate in the throat so hard that they broke his larynx while the inmate was curled up on the floor, strapped him into their Restraint Chair and then, when two of the jailers were warned by another jailer that they were killing this young man, one said, “who gives a f---” and the other said “who gives a s---.” The warning was accurate; the inmate was asphyxiated while the guards continued to push his head into his chest. The jailers were never disciplined and several were actually awarded MCSO promotions! As shockingly, we discovered the Sheriff’s Office had destroyed important evidence and altered other key evidence. For example, the MCSO destroyed the contemporaneous notes of jailers who witnessed the incident, x-rays of his throat, medical records, and even parts of the deceased’s body. As if that weren’t enough, we learned that the MCSO had created “dossiers” on our trial judge, on one of the important witnesses, and on me. We soon settled that civil rights/wrongful death case for \$8.25 million. I was sure that this would not be the last “fixer-upper” case that I would take in my career; but I was equally sure that it would be the last inmate death/civil rights case I would do.

Then, awhile later, in 2001, MCSO guards in the same jail killed another young man in the same Restraint Chair. This time it was a 125 lb. retarded man that lived with his Mom and Dad. We took that case on and tried it before a jury. That jury unanimously awarded our clients \$9,000,009. The judge properly reduced that award down to \$4,000,009, but also awarded the family \$2,389,000 in additional attorneys’ fees. Eight MCSO jailers were found liable for taking this man’s life; none were ever disciplined and most were actually given MCSO promotions! In that case we also caught the MCSO destroying key evidence, altering key evidence, and

backdating other evidence in order to hide their needless and lethal brutality toward this helpless little man. For example, records were altered to show that a doctor had ordered the Restraint Chair, when, in fact, no order was given, and records of the timing of the events leading to the death were clumsily altered and forged. In subsequent cases, we have continued to discover more evidence that has been destroyed or altered, like video surveillance, inmate files, and use of force forms.

Tampering With Evidence

Before taking on my first case against Sheriff Arpaio, I was the veteran of dozens of nasty, trench warfare-like commercial cases. In those cases, we caught culprits like Charles Keating, a European drug cartel attempting to monopolize the U.S. market, and a Mobbed-up money broker from New York destroying evidence, forging documents, threatening witnesses, and otherwise corrupting our precious judicial process. The dishonorable and unethical behavior by those types of commercial fraud adversaries was never surprising to our team or to me. But, when we discovered that type of conduct by a law enforcement agency, like the MCSO, it had a gut-wrenching impact on all of us. It was one thing to needlessly take the life of vulnerable citizens. But, to compound the cruelty by corrupting the system that they were sworn to uphold was heartbreaking and maddening.

Of course, the reality of our society is that the loss of an inmate's life, even petty misdemeanor offenders, is not as publicly impactful as is the life of a veteran in a VA Hospital or school children on a playground. No one would argue that those kind of deaths are rightly considered more heartbreaking. And, while we may not all agree that every life is truly equal, most of us grew up believing that what distinguishes our great society from less sophisticated societies is a rule of our Constitution that protects lives without regard to privilege or position. We do not expect felons to follow or honor those precious protections but we surely expect our law enforcement agencies to do so. After all, that is their oath and that is why we lionize them in our most popular TV shows.

Ignoring Warnings

It is reprehensible when our corporations are warned that their products or services are so dangerous that, if they do not remediate that danger, citizens will be killed or injured. Of course, it does not surprise us too much when those corporations ignore the warnings as they chase profits and corporate bonuses. But, when elected officials and law enforcement officers ignore warnings of potentially lethal dangers and citizens die, that threatens our culture, our legacy, and the well-earned pride that our New World really is the greatest form of society and governance ever designed by man and blessed by a higher being.

We did not believe that there was any way that the MCSO and our County's leadership could add further insult to the injury to our system. We were wrong. A

few years ago we uncovered evidence of a greater sin against our society and our community.

We learned that our County leaders had been warned, since 1996, by expert jail consultants – many actually hired by the County itself – that our jails were inhumanely and unconstitutionally unsafe and, if changes were not made, expensive jury verdicts and settlements would follow. Many of those warnings would have cost nothing or little to fix. They were told to stop using their medieval Restraint Chair years before three sons were killed in that chair, but did not. The MCSO's and our County's reaction to such warnings was shocking and irresponsible. Those reports and warnings were buried in locked credenzas or were destroyed by MCSO so that families of those killed or maimed in MCSO jails would not be able to show juries or judges that Sheriff Arpaio and our Board of Supervisors were well aware of those dangerous conditions before these sons, dads, daughters, and mothers lost their lives, limbs, or livelihoods.

Our seven death cases against MCSO have involved sons, fathers, daughters, and mothers that had offended or had been accused of offending our laws by committing misdemeanors. And, all those deaths produced the expected family grief. But, the full depth of their grief was not reached at the death of their son, daughter, mother, or father.

There was something more dangerous and dastardly than the cruelty and inhumanity of the moment of each tragic death and the predictable MCSO cover-ups and destruction of evidence that always followed. The lower depth of the family grief was reached when we discovered that our County leaders have known since 1996 that, irrespective of available budget dollars, Sheriff Arpaio was intentionally running unsafe, unconstitutional, and inhumane jails! Financial resources from the taxpayers was not the issue. The Sheriff admitted to me in a recent trial that he would run his jails the same way even if he had a billion dollars! And, all had been warned that this political gimmick by Arpaio would cost our County millions of tax dollars if those conditions were ignored.

In a deposition I took of Chief Deputy Dave Hendershott, the Second-in-Command of the MCSO, he admitted that it would be “unconscionable” and “irresponsible” if the MCSO and our County knew of dangerous and inhumane conditions in our jails and did not fix those conditions. Here is a brief history of what our County leaders knew, when they knew it, and what they unconscionably and irresponsibly ignored:

The Miller Report of 1996

One of the country's most prominent jail experts, Eugene Miller, was hired by the Department of Justice to do a study of MCSO jails. He warned:

- A culture of cruelty existed in MCSO jails

- MCSO jailers were using a pattern and practice of “excessive force”
- MCSO was not honestly investigating complaints of “excessive force”
- MCSO was intentionally and dangerously understaffing its jails
- Fixing these dangerous conditions would not require additional funds, except for hiring additional staff
- Expensive lawsuits would cost our County much more money if the warnings were ignored

1996 Department of Justice Warning Memorandum

Months after Miller’s Report, the Department of Justice warned our County leaders:

- “We have concluded that unconstitutional conditions exist at the Jails with respect to (1) the use of excessive force against inmates, and (2) deliberate indifference to inmates’ serious medical needs”
- Force was being applied against inmates without any justification
- Reports of excessive force were not being investigated
- The jails were seriously understaffed; there was inadequate In-Service training
- Inmates were denied humane healthcare and not given their prescribed medicine

Sheriff Arpaio’s Own Secret Admission of 1996

In 1996, Sheriff Arpaio wrote a confidential letter to the Board of Supervisors, admitting:

- His jails were not functioning safely or legally because of inadequate staffing
- Many of the essential elements required to run the jails were failing
- Further violence was “bound to erupt”

A month later, Sheriff Arpaio published his book: *America’s Toughest Sheriff*. He boasted about many of these same conditions; that he was intentionally guarding as many as 800 inmates, some murderers, drug dealers, mixed in with

shoplifters, DUI offenders, and child support violators with only 2 guards to ensure the safety of those unconvicted detainees and misdemeanor inmates.

The Sullivan Report of 1997

The Sheriff and County hired another nationally prominent jail expert to review our jails. In 1997, George Sullivan, among other things, warned:

- “Excessive force” was still being allowed in our jails
- Stop using their Restraint Chair
- Jail staffing was still well-below safe and basic humane levels
- A “Code of Silence” was allowed to exist; guards and jail medical staff “looked the other way” when people were being abused
- The MCSO was not providing appropriate In-Service training for its jailers
- Sheriff Arpaio was creating a culture of cruelty with his “get tough” talk about spending more money each day to feed his dogs than his inmates and, during our brutally hot summers, housing his dogs in air conditioning but not his inmates
- There were inhumane conditions in Tent City
- Verdicts and settlements against the County would increase to expensive levels

1997 Settlement Agreement with the United States Department of Justice

In a 1997 Settlement Agreement filed in Federal Court, the MCSO and County officials promised to fix these dangerous conditions identified by Miller and Sullivan. They did not.

- Only inmates that were assessed and medically cleared would be put in Tent City
- Jailers must receive 40 hours of In-Service training
- Any use of force upon inmates incidents would be thoroughly investigated
- Understaffing issues were ordered to be corrected

The Liebert Report of 1997

In 1997, the County and MCSO hired yet another nationally renowned jail expert, Dennis Liebert, to review the jails. Once again our County and MCSO were warned:

- MCSO was intentionally using an “operational philosophy” to run the jails at “below minimum staffing” needed for inmate safety. The ratios of jailers to inmates were as high as 1:266. National standards called for no more than 1:64
- MCSO’s own jailers admitted that our jails were dangerously unsafe
- MCSO had canceled safety training for the jailers
- MCSO’s “operational philosophy” will make the County and MCSO’s lawsuit liability much higher
- There was an increased number of assaults in the jails
- Tent City should be closed down

Late in 1999 Jail Doctors Warned County Management

A group of jail doctors were so concerned about conditions in the jails, they wrote a confidential letter to County leaders in 1999. Among other things, they warned:

- County’s jail medical personnel were “indifferent toward the medical health needs of inmates
- System was “crumbling;” very serious risks were ahead
- County’s jail medical management was attempting to hide evidence of inmate abuse from Department of Justice investigators.

1999 Department of Justice Settlement

In December 1999, County leaders entered into another Settlement Agreement with the Department of Justice, promising to fix the “constitutionally inadequate medical care for inmates at the Maricopa County Jails.” They did not.

- MCSO and County must provide constitutionally acceptable medical care
- MCSO and County must ensure inmates received their prescription medications

- Deaths and injuries to inmates involving jailers would be fully investigated to ensure against continued “Excessive Force.”

2000 Moore Audit

In 2000, the County hired nationally renowned jail health consultant, Dr. Jacqueline Moore. Among other things, she warned the County and MCSO that:

- There were serious systemic deficiencies in the delivery of healthcare
- The Restraint Chair was being used to punish inmates
- Inmates were being denied mental healthcare
- Inmates’ health records from previous admissions were not being reviewed
- Inmates were not receiving the required health assessment
- Inmates were not receiving their prescribed medication
- Inmates or detainees who exhibited psychiatric symptoms were often abused by jailers

2002 – MCSO’s Own Retired Captain Warned MCSO

A retired MCSO Captain, Jerry Swatzell, was hired by MCSO to study the safety of MCSO jails in 2002.

- He warned MCSO that jails were understaffed and were unsafe
- He warned that understaffing problems at the jails had “placed the MCSO’s jail system’s staffing at a critical stage”
- He warned that if the problem was not fixed, it would be “impossible” to maintain a safe and professionally operated jail system.

Liebert Report of 2003

In early 2003 the County spent over \$250,000 to rehire Liebert & Associates to do another review of MCSO’s jails. The 2003 Liebert Report warned the County and MCSO that:

- Current jail conditions were unconstitutionally unsafe and well-below minimum U.S. standards

- Current jail conditions violated the 1995 Federal Court Order against the MCSO
- MCSO jails were still dangerously understaffed
- In-Service training had not increased. Only 8 hours a year of training was provided. The MCSO had agreed to provide 40, as required by national standards
- Inmates were not being given their prescribed medications
- Healthcare services were not meeting national accreditation standards

So, now it is 2008 and nearly a dozen years since our County management and our Sheriff first received warnings from highly paid jail professionals and experts. Taxpayers have, thus far, paid over \$1,000,000 in expert consulting fees for those warnings and over \$43,000,000 in jury verdicts, settlements, expenses, and attorneys' fees in connection with deaths and injuries that have occurred since. Sadly, all of those numbers will increase in the coming years based upon the deaths and injuries already in current litigation.

Our County leaders continue to disregard the warnings that taxpayers have paid for, and they continue to overlook the dangerous conditions and loss of human lives. The Sheriff has said publicly that he's tired of the criticism and that no one will tell him how to run his jails. Apparently, he means that—when he read Liebert's 2003 warnings he dismissed them as “garbage.”

A Needless Culture of Cruelty

Shortly after Sheriff Arpaio took office he wrote that he wanted the Arpaio-era jails to be “places of punishment.” Lawyers, judges, legislators, and professional law enforcement personnel know that statement announces a dangerous constitutional violation; jails in our Country are never permitted to be “places of punishment.” Jails are for pretrial detainees awaiting trial and for minor misdemeanor inmates. Our prisons are for felons and dangerous criminals.

The tragedy is that our unconstitutional jails have, indeed, become unconstitutional “places of punishment.” And for no good reason. The Sheriff's “get tough” political rhetoric has ensured his elections and has created a culture of cruelty in our jails but has made absolutely no difference in deterring crime. In fact, the MCSO commissioned a group of Arizona State University criminologists to study Arpaio-era recidivism rates in the County jails. They concluded that the Sheriff's bluster and fist shaking has been no deterrent.

More judges and juries in the months and years to come will learn of these warnings that MCSO and our County leaders have kept secret for so many years.

And, their likely reaction, according to the County's own well-paid expert consultants and the County's own Risk Management Department, will be more and larger verdicts and settlements.

The best leaders of our nation's proud past have been politicians who valued the legacy of their service more than the power of their position. That high-mindedness and courage has provided us with an extra check and balance against demagogues. We miss that in our current County leaders. Our County leaders fear the political retribution of Sheriff Arpaio. For good reason: the Sheriff will brazenly use his elite "Threat Squad" to investigate and attack anyone who dares to irritate him. Thus, we cannot count on any *Profile in Courage* to rise above the Sheriff's political intimidation. And, we certainly cannot expect Sheriff Arpaio to abandon his well-rehearsed and well-rewarded appeal to the dark side of our human nature. He knows that brutality toward the vulnerable brings in the November vote. In a recent trial, Sheriff Arpaio admitted to me and to a jury that he wanted his jails to be "bad jails" even if he had "all the money in the world."

These lives that have been needlessly and inhumanely lost in our jails do not really outrage us to outcry, mostly because those who died had been arrested for crimes. In our cases the deceased were sons, daughters, fathers, and mothers that were accused of minor offenses because they were retarded, blind, mentally disabled, diabetic, or high on illegal drugs. But, they were placed in our Sheriff's "place of punishment" and into "bad jails" that our County knew were inhumanely and unconstitutionally dangerous.

I close in complete agreement with our Sheriff that "jail should not be a place where people live in better conditions than they did on the outside" and that we should not "coddle" criminals. But, in this Country and in our County, neither should our jails be a "place of punishment" and death. This sad series has cost us more than money. Permitting it to continue demeans and damages the dignity of our community.

I urge the scrutiny of an investigation.

Sincerely,

STINSON MORRISON HECKER LLP



Michael C. Manning

cc: Hon. Diane Humetewa, U.S. Attorney, District of Arizona
John Lewis, SAC, Federal Bureau of Investigation, Phoenix