

Facility Name: Keogh Dwyer Correctional Facility (Sussex County, NJ)

Date of Tour: July 21, 2004

Tour participants: (b)(6) (Latham & Watkins, LLP)

ICE Standard	Tour Observation	Source of Observation	ICE Response
<p>Telephone Access</p> <ul style="list-style-type: none"> <li>III.E.4 “[the facility shall permit the detainee to make direct calls] to legal service providers...”</li> </ul>	<ul style="list-style-type: none"> <li>Direct calls to courts, consulates – not legal service providers(P9, line 18)</li> </ul>	<ul style="list-style-type: none"> <li>According to delegation notes</li> </ul>	<p><b>Not noted in 2004 Review.</b></p>
<ul style="list-style-type: none"> <li>III.J “Facility staff shall not electronically monitor detainee telephone calls on their legal matters, absent a court order” and III.K “A detainee’s call to a court, legal representative, or for the purposes of obtaining legal representation will not be aurally monitored, absent a court order.”</li> </ul>	<ul style="list-style-type: none"> <li>All calls, including legal, are monitored and recorded (p10, line 11)</li> </ul>	<ul style="list-style-type: none"> <li>According to delegation notes</li> </ul>	<p><b>Not noted in 2004 Review.</b></p>
<p>Legal Materials</p> <ul style="list-style-type: none"> <li>III.A “The facility shall provide a law library in a designated room with sufficient space to facilitate detainees’ legal research and writing”</li> </ul>	<ul style="list-style-type: none"> <li>There is no actual law library, rather a mobile cart with legal materials (p5, line 18)</li> <li>There is a general library, with few legal materials, no immigration materials and is dimly lit with little space to conduct research (p5, line 29)</li> <li>A Westlaw CD is available in a small computer room (p6, line 3)</li> </ul>	<ul style="list-style-type: none"> <li>Conversation with Undersheriff <span style="background-color: #cccccc;">(b)(6), (b)(7)c</span></li> <li>Delegation observations</li> <li>According to conversation with Undersheriff <span style="background-color: #cccccc;">D (b)(6), (b)(7)c</span> and delegation observations</li> </ul>	<p><b>Not noted in 2004 Review.</b></p>
<ul style="list-style-type: none"> <li>III.G “Detainees may not be forced to forgo their minimal recreation time ...to use the law library”</li> </ul>	<ul style="list-style-type: none"> <li>Access to the general library conflicts with detainee recreation (p7, line 32)</li> </ul>	<ul style="list-style-type: none"> <li>According to observations by delegation and library schedule</li> </ul>	<p><b>Not noted in 2004 Review.</b></p>
<ul style="list-style-type: none"> <li>III.N “The facility will provide indigent detainees with free envelopes and stamps for mail related to a legal matter”</li> </ul>	<ul style="list-style-type: none"> <li>Indigent detainees given only 3 envelopes/postage per month (p8, line 10)</li> </ul>	<ul style="list-style-type: none"> <li>According to conversations with Undersheriff <span style="background-color: #cccccc;">(b)(6), (b)(7)c</span></li> </ul>	<p><b>Not noted in 2004 Review.</b></p>

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MEMORANDUM

August 11, 2004

**To:** Victor Cerda, Acting Director, Office of Detention and Removal, Immigration and Customs Enforcement

**From:** American Bar Association Delegation to Keogh Dwyer Correctional Facility in New Jersey<sup>1</sup>

**File no:** 502130-0015

**Copies to:** (b)(6), Detention Standards Implementation Initiative, Commission on Immigration, American Bar Association

**Subject:** Observational Tour of Keogh Dwyer Correctional Facility

**I. Introduction**

This memorandum summarizes and evaluates information gathered at the Keogh Dwyer Correctional Facility (“KDCF” or “Sussex County Jail”), an Intergovernmental Service Agreement facility in Newton, New Jersey. The information was gathered via observation of the facility by the delegation and interviews with Undersheriff (b)(6), (b)(7)c (“Undersheriff (b)(6), (b)(7)c”) on July 21, 2004. Undersheriff (b)(6), (b)(7)c provided the delegation with a tour of the facility. (b)(6), (b)(7)c an officer from the ICE detention facility in Elizabeth, New Jersey accompanied the delegation on the tour.

The primary purpose behind the delegation’s visit to KDCF was to observe the facility and determine whether it has implemented the *INS Detention Standards* (“Standards”) and in particular the legal access standards therein. The U.S. Immigration and Customs Enforcement (“ICE”), formerly the Immigration and Naturalization Service (“INS”), promulgated the *Standards* in November 2000 to ensure the “safe, secure and humane treatment of individuals detained by the INS.” The thirty-six *Standards* contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to Service Processing Centers (“SPCs”), Contract Detention Facilities (“CDF”), and state and local government facilities used through Intergovernmental

<sup>1</sup> The delegation was comprised of Latham and Watkins attorneys (b)(6), (b)(6) and summer associates (b)(6), (b)(6).

Service Agreements (“IGSA”). The Detention Standards went into effect on January 1, 2001, and were to have been implemented at each facility by January 2003. The *Standards* only establish the minimal requirements to which the KDCF must adhere in the operation of its facilities. Thus, each Field Office or Officer in Charge (“OIC”) of a facility may, in his or her discretion, promulgate policies and practices affording detainees more rights and protections than those provided for by the *Standards*.

Overall, the delegation felt that the facility adheres to most of the *Standards*. The following concerns, however, were noted by the delegates during the course of the visit:

- Inadequate access to legal materials;
- Lack of privacy for telephone calls concerning legal matters; and
- Monitoring and recording by KDCF of telephone calls concerning legal matters

## II. General Information About KDCF and the Current Detainee Group

KDCF is a county facility that houses both male and female inmates at all stages of judicial proceedings, although most inmates are awaiting hearings or trials. The facility’s average population is between 130 and 140 inmates, and it is authorized to house a total of 32 ICE detainees. On the morning of our delegation’s visit to the detention center, there were 129 inmates, eight of whom were ICE detainees. (b)(6), (b)(7)c explained that ICE only sends detainees to KDCF when the ICE detention center in Elizabeth reaches capacity.

Prior to the delegation’s visit to KDCF, a number of pro-bono and non-governmental organizations informed the delegation that they had no knowledge of any ICE detainees currently housed at KDCF. As a result, the delegation was unable to schedule or conduct interviews with any of the eight ICE detainees.

The eight current ICE detainees, the majority of whom are Chinese, are housed in a separate unit from the facility’s general population. These individuals have been in the detention center for the past few months, and are all represented by counsel and have appeals pending. While the detainees have immigration status violations, none of the detainees in this group have committed any crime.

Undersheriff (b)(6), (b)(7)c explained that each detainee is required to watch an orientation video upon his arrival to the facility and receives a handout of the KDCF Inmate Rules and Regulations, which he must sign.<sup>2</sup> KDCF has housed ICE detainees for approximately three years, and ICE inspects the facility approximately once every year. KDCF is also inspected annually by the state.

## III. Implementation of the Legal Access Standards

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<sup>2</sup> A copy of the KDCF Inmate Rules and Regulations is attached hereto as Exhibit A. This is the same set of rules that is distributed to the general population.

**A. Legal Access/Visitation**

***I. Visitation by Attorneys***

The *Detention Standards* provide that facilities should allow detainees to meet privately with their current or prospective legal representatives and legal assistants. Further, according to the *Standards*, legal visitation should be allowed seven days a week, for a minimum of eight hours on weekdays and four hours on the weekends. KDCF permits attorney access to their clients at any time. Attorney visitations are not limited in either duration or frequency, and Undersheriff (b)(6), (b)(7)c stated that he has never received a complaint regarding attorney access. Although attorneys are encouraged not to visit during scheduled meal times, detainees have the option to continue a meeting with a legal representative through a meal and receive a meal afterwards, in accordance with the *Standards*. Additionally, the *Standards* provide that a detainee who is in administrative or disciplinary status should ordinarily retain visiting privileges. Detainees at KDCF who are in administrative or disciplinary segregation may meet with their attorneys at any time.

The *Standards* require that each facility establish a written procedure to allow legal service providers and legal assistants to telephone the facility in advance of a visit to determine whether a particular individual is detained in that facility. Although it is unclear whether this procedure is in writing, the Undersheriff explained that attorneys have direct access to KDCF. Social services or an attorney may simply call the facility at any time and ask whether a particular individual is currently detained at the facility, in accordance with the *Standards*.

The *Detention Standards* require that prior to each visit, all legal service providers and assistants shall be required to provide identification. Although state bar cards are the preferred forms of identification, attorneys who are members of state bars that do not provide a bar card will be required to present other available documentation demonstrating bar membership. KDCF complies with these standards. Upon visiting the facility, attorneys or legal representatives must show a valid form of identification to the officer on duty, in accordance with the detention center's standard visitation procedures.

The *Standards* require that the facility's visiting area be appropriately furnished and arranged, and as pleasant and comfortable as practicable. The visitor waiting room, on the first floor of the facility, is adequately furnished with a sufficient number of chairs. KDCF provides three private rooms for contact visits with attorneys, which are located adjacent to the visitor waiting room. In addition to the private attorney rooms, detainees may also speak with visitors through non-contact telephone units. These five units contain Plexiglas dividers that physically separate the detainees from their attorneys or visitors.

The *Standards* provide that if a facility's standard operating procedures require strip searches after every contact visit with a legal representative, the facility must provide an option for non-contact visits with legal representatives in an environment that allows confidentiality. For security purposes, KDCF requires strip searches of detainees after every contact visit with a legal representative. However, in accordance with the *Standards*, if a detainee wishes to have a non-contact visit with a legal representative, the facility will arrange for the detainee and his

representative to exchange documents. Further, all detainees are permitted to retain paper documents provided by their attorneys.

## **2. Visits by Family and Friends**

The *Standards* require that facilities provide written notification of visitation rules and hours in the detainee handbook or equivalent. In addition, facilities must post these rules and hours where detainees can easily see them. KDCF visiting hours are posted in and outside of the visitor waiting room.<sup>3</sup> Furthermore, section 18 of the Inmate Rules and Regulations, distributed to all detainees upon arrival to the facility, provides information regarding visitation.

The *Standards* require that facilities shall establish visitation schedules based on the detainee population and the demand for visits. Visits shall be permitted during set hours on Saturday, Sundays, and holidays. However, to accommodate the volume of visitors within the limits of space and staff availability, and to ensure adequate security, the OIC may restrict visits. For example, the *Standards* provide that some or all detainees and visitors may be limited to visiting on Saturday or Sunday, but not both days. According to KDCF's visitation schedule, ICE detainees may receive visitors on Sundays between the hours of 8:00 a.m. and 3:45 p.m. Since ICE does not require facilities to permit every detainee to have visits on both days of the weekend, KDCF's schedule complies with the *Standards*. Furthermore, all detainees are allowed to receive visits from minors.

The *Standards* require that facilities have written procedures regarding incoming property and money for detainees. Additionally, the OIC shall allow a visitor to leave money with a designated staff member for deposit in a detainee's account. Undersheriff (b)(6), (b)(7)c explained that detainees are allowed to retain personal items.<sup>4</sup> However, the amount of such items is limited, and some belongings may have to be placed into storage or sent away from the facility.

Finally, KDCF detainees must provide the name of address of each visitor on a visitation card. Prior to each visit, the detainees must review and approve the name of the visitor. Upon the visitor's arrival, the officer on duty verifies that the visitor is on the approved list. As explained in the Inmate Rules and Regulations, a person whose name does not appear on the visiting list will not be permitted to visit.

## **B. Access to Legal Materials**

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<sup>3</sup> A copy of the "Visiting Hours" bulletin is attached hereto as Exhibit B.

<sup>4</sup> The delegation noted that the Undersheriff's statement appears to conflict with the KDCF Inmate Rules and Regulations, which provides that "[m]oney will be the only item accepted from visitors." See Exhibit A, Keogh-Dwyer Correctional Facility Inmate Rules and Regulations. Section 18. VISITATION.

The *Detention Standards* provide that all facilities shall permit detainees access to a law library and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.

The KDCF has implemented some sections of the *Standards* regarding access to legal materials. However, KDCF has not implemented other sections of these *Standards* and, on the whole, fails to provide immigration detainees with meaningful access to legal materials.<sup>5</sup>

### ***1. Library Conditions***

The *Detention Standards* provide that each facility shall provide a law library in a designated room with sufficient space to facilitate detainees' legal research and writing. The library shall contain a sufficient number of tables and chairs in a well-lit room, reasonably isolated from noisy areas.

The delegation observed inadequate implementation of this section of the *Standards*. The KDCF has no designated room for a law library. The facility stores the legal materials on a mobile cart, which is then transported to a different floor of the facility each day. Many of the materials on the cart appear to be in a state of disrepair. Moreover, the materials are not organized neatly on the cart and instead are stacked haphazardly, making it difficult to view what is on the cart.

There is, however, a computer room in the ICE unit in which research and writing can be conducted. The computer room is reasonably lit and reasonably isolated from high-traffic or noisy areas that might interfere with research and writing. The computer room is quite small, with enough space to accommodate two small tables and two chairs.

The delegation also toured the "general library" which contained some legal materials, namely the New Jersey Superior Court Reporters and New Jersey Supreme Court Reporters. The general library is located immediately adjacent to the recreation room. It is very poorly lit and contains no chairs. There are also two large tables in front of the book stacks, making them very difficult to access.

### ***2. Equipment and Computer Access***

The *Detention Standards* require that the law library provide an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings. The *Standards* indicate that the optimal number of computers/typewriters is one for every five detainees.

It appears that the facility has largely implemented this section of the *Standards*, however some issues remain. The computer room mentioned above contains two computers and a

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<sup>5</sup> Undersheriff (b)(6), (b)(7)(C) indicated, however, that the eight detainees currently housed at KDCF already have legal representation and have appeals pending.

typewriter. Given that there are eight detainees currently housed at KDCF, the number of available computers/typewriters meets the *Standards*. However, the computers appear old and do not have general internet access. The Undersheriff indicated, however, that there are Westlaw CD-ROMs in the room which detainees can use to conduct research. The delegation, however, did not see such Westlaw CDs.

Although there is no printer in the computer room, Undersheriff (b)(6), (b)(7)c informed the delegation that if detainees need to print materials they can contact the social services worker who will assist them. It is unclear exactly how the social workers assist detainees. The Undersheriff also indicated that detainees are provided paper when they ask for it. Detainees are permitted to keep their legal materials and papers with them in their cells.

Finally, the Undersheriff indicated that if there are problems with the computer equipment, detainees will contact social services.

### 3. *Materials Identified in the Standards*

The *Detention Standards* require all law libraries to contain the materials listed in Attachment A to the chapter on Access to Legal Material. These materials must be updated regularly and information must be added on significant regulatory and statutory changes regarding detention and deportation of aliens in a timely manner. Damaged or stolen materials must be promptly replaced. In addition, the *Standards* require that the facility post a list of holdings in the law library and designate an employee with responsibility for updating materials, inspecting them weekly, and maintaining them in good working order.

The KDCF law library does not meet this section of the *Standards*. As discussed above, the KDCF stores its law library on a mobile cart. Undersheriff (b)(6), (b)(7)c provided the delegation with a list of legal materials that were alleged to be on the law library cart.<sup>6</sup> This list, however, is not posted anywhere for detainees to view, as required by the *Standards*. The list provided by the Undersheriff contains only two of the thirty materials required by the *Standards*, namely the *Black's Law Dictionary (4<sup>th</sup> Edition)* and self-help materials (specifically *Moore's Pamphlets on Self-Help Litigation*). Although the *Standards* require *Legal Research in a Nutshell*, the KDCF list contained *Legal Writing in a Nutshell (1982)*. A cursory review of the actual library cart revealed two additional materials listed in the *Standards*: #6 *Administrative Decisions Under the Immigration & Nationality Laws* and #17 *Federal Habeas Corpus Practice & Procedure*. The *Administrative Decisions*, however, were from 1983 to 1989. In addition to these materials, the KDCF reportedly has Westlaw CD-ROMS which are available in the computer room at all times.

Undersheriff (b)(6), (b)(7)c also informed the delegation that KDCF has contracted with the Prisoners Self-Help Legal Clinic, which will assist detainees with pro se litigation. The Inmate Rules and Regulations, which are provided to each detainee upon entering KDCF, informs the detainees that this service is available. According to the Inmate Rules and Regulations, the

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<sup>6</sup> A copy of the list of legal materials is attached hereto as Exhibit C.

Prisoner's Clinic will conduct legal research for detainees and provide guidance in the preparation of pleadings. Detainees can place free telephone calls to the clinic at any time.

The Undersheriff informed the delegation that KDCF subscribes to update services for the legal materials. However, the delegation's review of the legal materials did not corroborate this claim. He also stated that if a detainee requests specific legal materials, KDCF will acquire them for him. In addition, if an inmate informs KDCF that materials are damaged, KDCF will replace them. Based on this information, it appears that KDCF does not have a designated employee who is responsible for updating and maintaining the legal materials, as required by the *Standards*.

Lastly, under the *Standards*, if a facility receives published material for the law library from outside persons or organizations, the facility may accept or decline the material based on considerations of usefulness and space limitations. The facility must notify the submitter and the ICE in writing of the reasons if published materials related to immigration law or procedure are declined. Undersheriff (b)(6), (b)(7)c informed the delegation that when outside organizations submit legal materials to KDCF, they are added to the library cart if they are required materials or if they are materials in which the inmates are interested.

#### **4. Access to the Library**

The *Detention Standards* require that a facility devise a flexible schedule to permit all detainees, regardless of housing or classification, to use the law library on a regular basis for a minimum of five hours per week. These five hours should not cause a detainee to miss a meal, recreation time, or any other planned activity.

The KDCF facility has not implemented this section of the *Standards*. The law library cart is placed on a different floor every day of the week. The cart remains on that one floor between 8:30 to 11:00 am and 12:30 to 2:30 pm and can be accessed by detainees during these times.<sup>7</sup> Based on this schedule, detainees have access to the law library cart for 4.5 hours per week, which does not meet the five-hour minimum required by the *Standards*. The "general" library mentioned above can be accessed five days a week for 45 minutes to an hour. Detainees, however, only have access to this "general" library during their recreation time.

When asked if detainees are ever prevented from using the law library cart or computer room, Undersheriff (b)(6), (b)(7)c replied that a detainee might be denied access if he were ever "disruptive" or destructive of the legal materials or computer equipment.

#### **5. Photocopies and Mail**

The *Detention Standards* provide that each facility shall ensure that detainees can obtain photocopies of legal materials, when such copies are reasonable and necessary for legal

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<sup>7</sup> A copy of the law library schedule is attached hereto as Exhibit D.



proceedings involving the detainee. Enough copies must be provided so that a detainee can fulfill court procedural rules and retain a copy for his records.

The KDCF facility seemingly fulfills this section of the *Standard* though there is no photocopier in the computer room or “general” library, Undersheriff (b)(6), (b)(7)c informed the delegation that KDCF will provide copies of “reasonable” requests.

The *Standards* also require that facilities provide indigent detainees with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential representative, or any court. The Undersheriff indicated that indigent detainees are permitted to mail three envelopes per month for free. Since the *Standards* do not specify the number of free envelopes and stamps that must be provided, it appears that KDCF has technically met this section of the *Standards*, although three envelopes per month probably would be insufficient to a detainee involved in ongoing litigation.

## **6. Assistance**

The *Standards* provide that detainees who are not proficient in English or who need other assistance in preparing legal documents should have the opportunity to seek such assistance from other detainees or pro bono counsel. Undersheriff (b)(6), (b)(7)c indicated that non-English speaking detainees have the opportunity to work with fellow detainees as translators. All legal materials at KDCF are in English. However, the Undersheriff also stated that KDCF has on occasion sent the social services workers to purchase materials for non-English speakers when specific requests have been made by detainees.

### **C. Telephone Access**

#### **1. General Requirements**

The *Standards* require that facilities provide detainees with reasonable and equitable access to telephones. In order to meet this requirement, facilities must provide at least one telephone for every 25 detainees and written telephone access rules to each detainee.

KDCF has implemented this section of the standards. The detainees’ housing unit has its own set of telephones, providing two telephones for eight detainees. According to Undersheriff (b)(6), (b)(7)c, the detainees may access the telephones at any time during the facility’s established waking hours. KDCF, however, may cut off telephone access as part of disciplinary action taken against a detainee. Detainees in disciplinary detention remain entitled to one phone call to their counsel per day.

Upon their initial arrival at KDCF, the detainees are provided with a written copy of, as well as a video presentation about, the facility’s rules and regulations, including telephone access rules. Although the delegation did not see general telephone access rules posted in areas where detainees could easily view them, the bulletin board in the housing unit did list instructions on how to place direct calls to consulate offices.

#### **2. Direct vs. Collect Calls**

According to the *Standards*, a facility may restrict telephone service to collect calls, but it must permit the detainees to make direct calls to a number of organizations, including the local immigration court, the Board of Immigration Appeals, Federal and State courts, consular officials, legal service providers, and relevant government offices. The facility must also provide detainees with the ability to make calls to the ICE-approved list of legal service providers and consulates at no charge to the detainee or receiving party.

As already noted, KDCF has provided detainees with direct access to consulate offices. Detainees can locate the direct dial numbers for these offices by referring to a bulletin board in the housing unit. Detainees can also place direct calls to immigration officials via KDCF's social service worker, who provides them with access to the staff's phone and fax machines for the purpose of such calls. According to Undersheriff (b)(6), (b)(7)c the detainees can contact the social service worker by simply asking to see him.

While inmates have direct access to consulate offices and immigration officials, according to written KDCF rules and regulations, all other telephone calls must be collect and third party billing is not permitted. It is unclear whether KDCF has provided detainees with the ability to make calls to ICE approved legal service providers at no charge to the detainee or receiving party.

In 1997, KDCF entered into an agreement with the Prisoner's Self Help Legal Clinic ("PSHLC") in Newark, New Jersey that allows inmates to place collect calls to the clinic for legal assistance in civil litigation. PSHLC accepts collect calls from inmates on Thursday evenings between 6:00 p.m. to 9:00 p.m. The clinic provides legal services in the following areas: (1) federal Section 1983 civil rights litigation; (2) tort claims; (3) small claims; (4) family (child support) actions; and (5) disciplinary appeals. The PSHLC, however, does not provide legal services concerning the inmate's criminal or immigration case.

### ***3. Privacy and Telephone Usage Restrictions for Legal Phone Calls***

The *Standards* provide two sets of rules regarding telephone usage restrictions. One set of rules governs calls regarding legal matters, while the other set governs calls unrelated to legal matters.

With respect to legal phone calls, the facility must ensure privacy for all detainee phone calls regarding legal matters. The facility must provide a reasonable number of telephones on which detainees can make such calls without being overheard by officers, other staff or other detainees. The *Standards* also explicitly prohibit the facility and its personnel from monitoring or recording telephone calls on legal matters, absent a court order.

Furthermore, with respect to restrictions on the duration of legal phone calls, the *Standards* provide:

The facility shall not restrict the number of calls a detainee places to his/her legal representatives, nor limit the duration of such calls by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to

telephones. If time limits are necessary for such calls, they shall be no shorter than 20 minutes and the detainee shall be allowed to continue the call if desired, at the first available opportunity.

KDCF has not implemented this section of the *Standards*. First, KDCF does not provide detainees with an opportunity to make legal phone calls without being overheard by KDCF personnel or other detainees. The telephones in the housing unit are located in open areas. No privacy panels are installed, nor are areas designated for legal phone calls to ensure privacy.

Second, although the *Standards* prohibit, absent a court order, monitoring or recording of phone calls regarding legal matters, KDCF monitors and records all inmate phone calls, including those between detainees and their attorneys. The communication center, otherwise referred to by Undersheriff DiMarco as KDCF's "central nervous system," is responsible for monitoring and recording these phone calls. KDCF sends the recorded conversations to the Enforcement Bureau, who retains the tapes in storage.

Automated phone instructions, which play into the phone receiver prior to every call, notify detainees that their phone calls may be monitored or recorded. According to Undersheriff (b)(6), (b)(7)c although the facility monitors and records all phone calls, KDCF personnel do not listen to the content of phone conversations regarding legal matters.

The delegation is concerned about the overall lack of privacy for legal telephone calls, specifically KDCF's practice of monitoring and recording all legal phone calls. These practices necessarily interfere with attorney-client relationships and confidentiality. For example, were a detainee to place a call to the Prisoner's Self Help Legal Clinic to discuss alleged violations of his civil rights at the hands of facility personnel, he would be discouraged from being candid with his legal representative for fear of being overheard by facility personnel in the housing unit or communication center.

Third, although the *Standards* allow for restrictions on the duration of legal phone calls, such restrictions are allowed only if necessary "for security purposes or to maintain orderly and fair access to telephones." According to KDCF's written Inmate Rules and Regulations, all telephone calls are limited to fifteen minutes per call. The delegation did not confirm that this fifteen-minute restriction also applies to legal phone calls.

As a general matter, it is unclear whether any restrictions on the duration of legal phone calls are necessary at KDCF to "maintain orderly and fair access to telephones." As already noted, KDCF's practice of providing one telephone for every four detainees is well within the *Standard's* requirement that facilities provide at least one telephone for every twenty-five detainees. Furthermore, according to Sheriff (b)(6), (b)(7)c since many of the current detainees have cases pending before the Third Circuit, detainees do not frequently use the telephones to place legal phone calls.

With regard to restrictions on the duration of legal phone calls for "security purposes," Undersheriff (b)(6), (b)(7)c informed the delegation that detainees in disciplinary detention lose all phone privileges except for the right to one phone call to their attorney per day. Although this practice does not conflict with the *Standards*, it does appear to conflict with the KDCF's written

Inmate Rules and Regulations which expressly prohibits disciplinary or punitive measures that restrict telephone calls or visits with attorneys and legal representatives.

Even if restrictions on the duration of legal phone calls are necessary at KDCF “for security purposes or to maintain orderly and fair access to telephones,” the *Standards* provide that legal phone calls cannot be limited to a time period of less than 20 minutes. As already noted, the delegation did not confirm whether the KDCF’s written Inmate Rules and Regulations restriction of all telephone calls to fifteen minutes also applies to phone calls regarding legal matters.

#### **4. *Privacy and Telephone Usage Restrictions for Other Calls***

As for telephone calls not related to legal matters, the facility may restrict the number and duration of such calls for the following reasons only:

1. availability (i.e., the usage demands of other detainees);
2. orderly operation of the facility (e.g., scheduled detainee movements, court schedules, meals, counts, etc.); and
3. emergencies (e.g., escapes, escape attempts, disturbances, fires, power outages, etc.).

The *Standards* also provide that a facility may monitor all detainee phone calls of a non-legal nature. If a facility monitors calls, it must notify detainees upon admission and place a notice at each monitored telephone. The notice must state that detainee calls are subject to monitoring and must provide the procedure for obtaining an unmonitored call for legal purposes.

KDCF has partially implemented this section of the *Standards*. First, and as noted above, it is unclear whether telephone usage restrictions are necessary at KDCF to accommodate the usage demands of detainees. Second, although automated phone instructions notify detainees that their phone calls may be monitored or recorded, KDCF does not provide detainees with a procedure for obtaining an unmonitored call for legal purposes.

#### **5. *Incoming Calls and Messages***

The *Detention Standards* require facilities to take and deliver messages from emergency and non-emergency incoming telephone calls to detainee as promptly as possible. If the facility receives an emergency telephone call for a detainee, the facility is required to obtain the caller’s name and telephone number and permit the detainee to “return the emergency call as soon as reasonably possible.” Moreover, the facility must enable the indigent detainees to make free return emergency calls.

KDCF has not fully implemented this section of the *Standards*. According to Undersheriff (b)(6), (b)(7)c, KDCF does not take or deliver non-emergency phone messages to detainees. KDCF, however, does accept and deliver *bona fide* emergency phone messages to the detainees. It is unclear whether the facility allows indigent detainees to return these calls free of

charge. Additionally, according to Undersheriff (b)(6), (b)(7)c KDCF does take telephone messages from attorneys and delivers them to prisoners.

## **B. Group Presentations on Legal Rights**

The *Detention Standards* provide that facilities shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures consistent with the security and orderly operation of the ICE facility.

KDCF has substantially implemented this section of the *Standards*. According to Undersheriff (b)(6), (b)(7)c there are very few restrictions on group presentations. Individuals interested in providing a presentation must write a letter directly to the Undersheriff informing him of the subject matter and date of the presentation. Once the Undersheriff approves the request, KDCF personnel post the presenters' informational posters in the housing unit.

Since KDCF is currently housing only eight detainees, and since most of these detainees' immigration cases are currently pending before the Third Circuit Court of Appeals, there have been an extremely limited number of outside groups requesting permission to provide presentations on legal rights. In fact, Undersheriff (b)(6), (b)(7)c informed the delegation that he only receives an average of two requests for presentations per year. According to (b)(6), (b)(7)c the officer from the ICE detention facility in Elizabeth, New Jersey, detainees can request to attend the "Know Your Rights" presentation at the Elizabeth facility.

## **IV. Other General Observations Unrelated to the Legal Access Standards**

### **A. Site-Specific Detainee Handbook**

According to the *Standards*, handbooks should be distributed to detainees upon their admission to any facility in which they will be detained for more than 72 hours. Handbooks should also be available in languages other than English. KDCF only partially meets these requirements. As explained previously, all detainees are given the KDCF Inmate Rules and Regulations, which qualifies as a site-specific handbook. However, this document appears to only be available in English.

### **B. Recreation**

The *Standards* require that all facilities provide detainees with access to recreational activities. Detainees should also be placed in facilities that provide outdoor recreation. KDCF substantially complies with these provisions, as there is an outdoor recreational area that detainees are permitted to spend time in five days per week, for about forty-five minutes to an hour each day. Additionally, there are two televisions in the detainees' housing unit, which the delegation observed several detainees viewing.

### **C. Access to Medical Care**

The *Standards* require that facilities provide detainees with an initial medical screening, primary medical care, routine dental check-ups, and emergency care. Each facility should have

an arrangement with a nearby facility to provide health care services not provided at the detention facility. A physician or qualified medical officer should be available to examine detainees, and at a facility of KDCF's size, with 50-200 detainees, sick calls should be scheduled three days per week.

KDCF has contracts with local medical service providers. Physicians are sent to the facility every Monday, Wednesday, and Friday to conduct examinations on all incoming inmates. The physicians also conduct limited consultations during these days that are prescheduled by the nursing staff. ICE pays for major medical care.

There are four full time registered nurses ("RNs") on staff at KDCF. The RNs pre-screen detainees and determine if it is necessary for the detainee to see a physician. Undersheriff (b)(6), (b)(7)(c) explained that if an inmate disagrees with the RNs' recommendation, he can complete the facility's standard four-part complaint form, which will then go through the facility's chain of command. The Undersheriff further explained that if there is a dispute, he will interview the RN, and on occasion, the inmate.

If necessary, a KDCF detainee may also be seen by his own physician. Currently, there is an AIDS patient who is seen by his own physician. Inmates can also request to meet with a mental health clinician ("MHC"), who visits the facility once per week. Inmates on suicide watch must meet with the MHC. An RN can also send individual cases to a local mental health center for evaluations.

The *Standards* further require that an initial dental screening exam be performed within 14 days of the detainee's arrival, and that detainees be provided with emergency dental treatment when necessary. The Undersheriff explained that a dentist visits the facility once per week. The Inmate Rules and Regulations further provide that "[l]imited dental care is available for emergencies."<sup>8</sup>

#### **D. Detainee Classification**

Individuals held at KDCF are organized within the facility according to housing unit. According to the Inmate Rules and Regulations, objective classification places inmates into specific housing units based on certain criteria, and levels of classification range from "Trusty" status through "Disciplinary Detention."<sup>9</sup> The eight ICE detainees are housed in a separate, two-tiered unit from the rest of the prison population. There does not appear to be any sub-classification system for detainees.

#### **E. Detainee Work Program**

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<sup>8</sup> See Exhibit A, Keogh-Dwyer Correctional Facility Inmate Rules and Regulations. Section 7. MEDICAL.

<sup>9</sup> See Exhibit A, Keogh-Dwyer Correctional Facility Inmate Rules and Regulations. Section 1. MANAGEMENT.

The *Standards* require that every facility with a work program provide detainees who are physically and mentally able to work with the opportunity to work and earn money. The Undersheriff explained that ICE detainees and general prison inmates receive similar work assignments, such as kitchen detail and daily cleaning, and are compensated for this work.

## **F. Grievance and Disciplinary Procedures**

### **1. Grievance Procedures**

The *Standards* require that each facility develop standard operating procedures that address detainee grievances. According to the rules, “[a]ll grievances can be made in known in writing to a Shift-Commander, who in turn, will discuss the situation [with the inmate/detainee], and a copy of the grievance will be forwarded to the Undersheriff.”<sup>10</sup> Detainees are encouraged to complete the facility’s standard four-part complaint form, which is processed through KDCF’s “chain of command.” The Undersheriff further explained that he directly communicates with the detainees, as many detainees write memoranda directly to him and he attempts to be responsive to their needs.

### **2. Disciplinary Procedures**

The *Standards* require that rules of conduct and disciplinary sanctions be posted in English, Spanish, and/or other languages spoken by a significant number of detainees. The delegation did not see such postings throughout KDCF. The Inmate Rules and Regulations, however, provide numerous provisions regarding discipline.<sup>11</sup> The Undersheriff explained that detainees may receive disciplinary segregation, although the current group of detainees are generally well behaved and do not cause problems in the facility.

## **V. Conclusion**

KDCF appears to have substantially implemented some sections of the *Standards*, including visitation, group presentations on legal rights, access to medical care, and recreation. The delegation, however, recommends that the facility take greater measures to fulfill its obligations under other *Standards*. Specifically, the delegation feels that KDCF must make a substantial effort to provide its detainees with adequate access to legal materials. Additionally, KDCF should remedy the current lack of privacy for legal telephone calls, in particular, the monitoring and recording of all phone calls regarding legal matters and the inadequate access to telephones on which detainees can make legal calls without being heard by facility personnel or detainees.

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<sup>10</sup> See Exhibit A, Keogh-Dwyer Correctional Facility Inmate Rules and Regulations. Section 21. GRIEVANCE PROCEDURE.

<sup>11</sup> See Exhibit A, Keogh-Dwyer Correctional Facility Inmate Rules and Regulations. Section 22. DISCIPLINE.