Ohio Criminal Sentencing Commission Update
By John Perotti

There have been a lot of rumors of abolishing the parole board in Ohio. Here are the facts in relation to this rumor. In 1990 former Governor D. Celeste created the Ohio Criminal Sentencing Commission to study Ohio's sentencing scheme and to issue recommendations for changes to the general assembly. It will be their job to transform the recommendations into statutory law.

Members of the commission include five judges, two senators, one state representative, head of Ohio's Public Defender Commission, a prosecutor, and a sheriff. The Bar Association has a delegate and their is an advisory council consisting of representatives from the Ohio Halfway House Association, Correctional Institution Inspection Committee, Case Western College of Law, Ohio Chief Probation Officers, County Commission Association and Department of Rehabilitation and Corrections.

The commission is in consensus that violent and career criminals should be incarcerated in prisons, while third and fourth degree non-violent offenders be placed in local facilities. Also that post release (parole) conditions and services [be] imposed on all offenders released from serving their minimum sentence.

A consensus was also reached that the sentence meted out would consist of a basic minimum sentence, determined by the judge who considers the offense and history of the offender. This minimum sentence would be what is served in prison (flat time) subject to "bad time" (rather than good time) which would extend the minimum sentence for misbehavior in prison. The parole board would be limited to determining the imposition of bad time and the manner and length of post-release supervision upon serving the minimum sentence.

A consensus was also reached that the caps on consecutive sentences be removed under a system that allows reviews of consecutive sentences at a future date, with the initial sentencing decision subject to appellate review. Also, the mandatory ranges of sentence enhancements for repeat aggravated felonies should be eliminated, leaving one range of penalty for each level of offense, with presumption that repeat offenders go to prison (i.e., 3, 4, 5, 6, 7, to 15 years).

Reviews of sentences by the sentencing judge at a future time, to take into consideration changes in circumstances demonstrated by the prisoner's behavior for possible release will also be instituted. This would help counter the removal of caps and allow a judge to release a prisoner deemed "rehabilitated" yet serving a lengthy sentence.

All in all, due to the present state of overcrowding and actual incarceration sentences which don't provide for the turnover of prisoners it appears Ohio will be returning to the same sentencing scheme that was in effect prior to the sentencing changes in 1989. However there will be a flat minimum sentence that gives a presumption of release unless bad time is added on. The parole board will be limited to this function and supervising post release conditions.

The commission will issue its final recommendations in June 1993. Input regarding the commission can be sent to:

David Diroll, Executive Director
Ohio Criminal Sentencing Commission
400 East Tower Street, Suite 120
Columbus, Ohio 43215
(614) 466-1833

Washington Lifers Litigation Update
By John Midgley

This is a further update on the "lifers" litigation. The current status of the Powell case is as follows: US District Court Judge Thomas Zilly has held that SBH 1457 is ex post facto as applied to Mr. Powell. The state has appealed to the US Court of Appeals for the Ninth Circuit. The states attorney has agreed with us to brief the case on an expedited schedule and to ask the Ninth Circuit to expedite the hearing. This means that we will be able to get the parties' briefs to the court more quickly than is usually the case. Of course, we cannot control how quickly the Ninth Circuit will hear or decide the case, but we have filed with the court an agreed motion asking for the expedited hearing and chances are good the court will respond favorably given that both parties have agreed.

In the meantime, as many of you know, prison superintendents have refused, on advice of the Attorney General's office, to even decide whether to grant any certificates of meritorious conduct. Therefore, the certification process is currently on hold.

We have decided, given the expedited schedule in the Ninth Circuit and the current posture of the case, not to challenge at this time the refusal to consider requests for superintendent certifications. We recognize that many people are anxiously awaiting the outcome and so we have moved the case as fast as we can given the pace of the legal system. Our strongest consideration is being in court in the best possible position to try to win the case, in the hope that many lifers will ultimately benefit. We believe that we are now in that position, and we are very reluctant to do anything that could distract from our strong position, such as engaging in further litigation about exactly what is required of Superintendents by Judge Zilly's order (both for Mr. Powell, and even more complicated, for other people).

If the Ninth Circuit does not grant expedited review or the case drags on for other reasons, we will reconsider whether to try to obtain more immediate relief. As always, we will try to keep interested people informed. Thank you to everyone who has responded to previous letters with information and encouragement.
High AIDS Rate Behind Bars

People entering U.S. prisons have high HIV infection rates and transmission of the virus that causes AIDS continues among prisoners because of intravenous drug use and homosexual activity, Federal health officials said June 4 in Atlanta.

As of November 1990, there were 4,519 cases of AIDS reported among inmates in federal prisons and 45 state prisons, and another 2,466 cases in 25 city and county jail systems, the Center for Disease Control (CDC) reported. Those cases reflect the prevalence of HIV infection among the men and women entering the nation’s prison, the agency said.

The CDC said a recent report indicated that among entrants to 10 selected U.S. jails and federal and state prisons, the HIV rate was between 2.1 and 7.6 percent for men and between 2.7 and 14.7 percent for women. That compares to a rate of just .04 for male blood donors and .02 percent for female donors in the general population.

After incarceration, transmission of the AIDS virus continues among the prisoners, said Gary West, assistant deputy director for the CDC’s National Center for Prevention Services. "There is evidence that transmission does occur in prison," said West. To combat the spread of the disease, some prisons have even begun providing condoms to inmates, he said.

The risk of HIV transmission may be higher in prisons in which inmates serve longer terms or with large inmate populations, the CDC said. The CDC said 67 percent of prisons tested for AIDS identified themselves as intravenous drug users, one of the high-risk activities for transmission of the HIV virus. Four percent of the drug-using prisons tested positive for the AIDS virus.

Blacks Likely To Spend More Time In Jail

Without sentencing guidelines, employed blacks are almost six times as likely as their white counterparts to face jail for drug crimes, a new Florida State University (FSU) study says. The study by FSU criminology Professor Theodore Chiricos also found that young unemployed blacks serve jail time more often than older employed whites or blacks, even for the same crime.

"Being unemployed is more of an indicator than being black in terms of whether someone is incarcerated," said Chiricos. "But being both black and unemployed is more of an indicator that simply being unemployed."

Chiricos studied incarceration rates for 1,480 felons and 490 misdemeanants in two Florida counties in 1982, just prior to the implementation of state guidelines to standardize sentences. The study analyzed actual jail time served, both before trial and after conviction.

For all crimes combined, employed blacks were 1.5 times as likely as employed whites to serve jail time before trial. Unemployed blacks were five times as likely, while unemployed whites were only three times as likely, to spend time in jail than employed whites.

The study found that after conviction employed blacks found guilty of drug crimes were sent to jail 5.9 percent times more often than employed whites. "That means that blacks were 590 percent more likely to go to jail for the same drug offense as whites," Chiricos said.

1991 Prison Population Up 6.2%

The population of state and federal prisons (not counting jails) rose 6.2 percent last year, reaching a new record high of more than 823,000, according to a study by the federal Bureau of Justice Statistics (BJS). The increase amounted to a need for 900 prison beds each week last year. The latest increase meant that the nation’s prison population is now 2.5 times what it was in 1980.

The highest percentage increase last year were in Rhode Island (15.9 percent), Washington state (14.5 percent), New Hampshire (14.2 percent), and Arkansas (13.9 percent). California's increase of 4,500 inmates was the largest number of new prisoners, but 1991 was the first year since 1977 that California’s percentage increase fell below the national average.

Depending on how prison capacities are defined, the nation’s state and federal prisons were operating at 16 to 31 percent above capacity, BJS said. More than 12,000 state prisoners were being held in local jails or other facilities because of crowding in state institutions.

See, Prisoners in 1991 (NCJ-134729), a ten-page bulletin, include state-by-state listings of inmate populations, increases, crowding levels, and other information. Write the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850.

From: Criminal Justice Newsletter

Interstate Compact Does Not Create Liberty Interest

Fred Pletka was an Iowa prisoner in disciplinary confinement at the Iowa State Penitentiary when he was transferred to Texas under the interstate corrections compact. Shortly after arriving in Texas Pletka was released into the general prison population. Later, when he was returned to Iowa, he was placed back into disciplinary segregation without a new hearing.

Pletka filed a federal civil rights suit claiming he was denied due process because he had "served" his disciplinary segregation time as soon as he was released into population in Texas. The district court agreed and issued an injunction releasing Pletka into the prison population and ordering prison officials to change their records to show he had completed his disciplinary time, but the court did not award money damages, finding prison officials were entitled to qualified immunity.

On appeal the U.S. Court of Appeals for the Eighth Circuit affirmed the injunction and reversed the qualified immunity ruling by holding the defendants were not protected against an award of money damages. This ruling was reported in 943 F.2d 916 (8 Cir. 1992).

The state applied for, and obtained, a rehearing en banc at which the full court of appeals vacated the earlier opinion and judgment by the prior panel. This time they ruled wholly in favor of prison officials. The en banc opinion held that the interstate corrections compact does not create a liberty interest when it states the receiving state acts as an agent for the sending state. Thus a release into population of a prisoner in disciplinary segregation does not amount to a "pardon" or exoneration of the sanction. The court thus held that no conduct in violation of the constitution took place, and hence Pletka in not entitled to any form of relief. See, Pletka v. Nix, 957 F.2d 1480 (8 Cir. 1992).
Guards Need Not Disclose Identity Of HIV-Positive Cons

A prisoner in the medium security unit of a Nebraska state prison brought a federal civil rights lawsuit against the warden and other prison personnel, claiming that they subjected him to cruel and unusual punishment by: (1) conspiring to conceal the identity of prisoners testing positive for HIV, the virus which causes AIDS; and (2) failing to take precautions to protect healthy prisoners from exposure to the AIDS virus, such as segregating all HIV-positive prisoners.

The plaintiff prisoner alleged that he comes into contact with infected prisoners through his work as a prison barber, but did not claim that he was denied any safeguards that barbers regularly employ, or that his exposure to infectious and contagious disease was not substantially the same as the exposure of barbers (or anyone else) to infectious and contagious diseases outside the prison setting.

An appeals court has upheld the dismissal of the prisoner’s lawsuit as frivolous. It noted that there could be no legal claim for conspiracy "unless the alleged object of the conspiracy is illegal." Since "prison officials who decline to reveal to the general population the identities of HIV-positive prisoners do not by so declining commit an illegal act," no conspiracy claim was possible. It also found that his claim that the prison officials failed to adequately protect him from exposure to AIDS was barred by the decision in a prior suit he brought against prison authorities, challenging the totality of the conditions of his confinement as violative of the Eighth Amendment.

In that earlier case, the trial court found that the conditions, including the presence of HIV-positive prisoners in the general population, did not constitute cruel and unusual punishment. Kitt v. Ferguson, 750 F. Supp. 1014 (D.Neb. 1990).

Having had a "full and fair opportunity" to litigate the issue of whether the presence of HIV-positive prisoners in the general population infringed on his Eighth Amendment rights in the Kitt case, he could not again raise the same issue in this one. See, Robbins v. Clarke, 946 F.2d 1331 (8 Cir. 1991).

Prison Chief Gains Right to Counter-sue Cons for Riot Damage

Pennsylvania Corrections Commissioner Joseph D. Lehman has been granted standing by a federal district court to litigate against inmates for extensive property damages caused by rioting at the Camp Hill prison in October of 1989.

A magistrate judge in the U.S. District Court for the Middle District of Pennsylvania granted Lehman’s motion to intervene as a defendant/counter-claimant in a class-action lawsuit filed earlier by inmates seeking damages for alleged loss of personal property, abuse and general conditions during and after the 1989 disturbances.

The magistrate granted the motion to intervene under local rules of court after counsel for the plaintiff prisoners filed no opposition.

The action clears the way for Lehman to lodge a counter-claim against the suing inmates seeking compensation for damage to the Camp Hill facility during the three days of rioting that destroyed or extensively damaged half the prison’s buildings.

Source: Pennsylvania Department of Corrections

Study Finds Sentencing Bias In Washington State

A new study has found that Hispanics in Yakima County are more likely to receive long prison sentences than whites. The study was performed by political scientist David Hood and sociologist Ruey-Lin Lin, both of Eastern Montana College in Billings. It was based on data from the Washington state Sentencing Guidelines Commission.

"Hispanic defendants continue to experience inequalities in Yakima County for certain categories of crime," said the report, which was released at the annual conference of the Western Social Science Association in Denver in April. Those crimes were burglary and drug and sexual offenses. Prosecutors say any disparity is minimal and results from logistics problems such as lack of interpreters. "Any disparity is minimal and results from logistics problems such as lack of interpreters."

Among the findings were that sentences for Hispanics convicted of burglary were nearly one and half times those for whites. Drug sentences for Hispanics averaged nearly twice as long as those for whites. And for some sex crimes, Hispanics went to prison about three and a half times longer than whites.

"It must be remembered that this situation occurs for defendants guilty of the same seriousness-level crime, similar criminal record and offense type," the study said.

Supreme Court Defines "Frivolous" Lawsuits

The U.S. Supreme Court further defined when federal judges can dismiss as "frivolous" certain lawsuits brought by convicts and others who cannot afford to pay normal court costs. The court, in a 7-2 ruling, said it is largely up to a federal judge to determine when an lawsuit is legally frivolous and thus need not be litigated.

The ruling reversed a decision of the Ninth Circuit Court of Appeals, which had said a federal judge could dismiss a lawsuit against the government as frivolous only if the allegations "conflicted with judicially noticeable facts." The Ninth Circuit said, in effect, a judge could invoke the frivolous standard only if he had factual evidence that an allegation could not be true.

"A court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff’s allegations," Justice Sandra O'Connor wrote for the court. While on this first glance, charges "must be weighted in favor of the plaintiff," judges are left largely to their common sense in deciding whether to dismiss a case, the court said. But O’Connor wrote such a complaint cannot be dismissed "simply because the court finds the plaintiff’s allegations unlikely," noting the "age-old insight that many allegations might be 'strange, but true.'"

The ruling further defined the court’s 1989 Neitzke v. Williams ruling. The issue was important to prisoners because they often cannot afford the normal court filing fees. In a one-paragraph dissent, Justice John Paul Stevens, joined by Justice Harry Blackmun, wrote that while he agreed with the court’s standard announced in this opinion, it is "entirely consistent" with the Ninth Circuit’s ruling and Hernandez should be allowed to pursue his case. See Denton v. Hernandez, ___ S.Ct. ___ (1992).
ABA Says Use Of Prisons Not Effective Way To Fight Crime

The increasing reliance in the U.S. on the use of incarceration as a criminal sanction is a costly and ineffective way to combat crime, according to a new report by the American Bar Association's (ABA) Criminal Justice Section. The report, authored by Professor Lynn S. Branham for the ABA Criminal Justice Section's Corrections and Sentencing Committee, examines what it calls the "astronomical" rise in prison population in the U.S. in recent years, and current criminal sentencing practices and makes a number of specific recommendations to change present policies.

"Studies have repeatedly shown that the problems plaguing our nation's corrections system, such as jail overcrowding and cost overruns, are not being alleviated by using current sentencing practices," explains Committee Chairman Barry Mahoney. "We must move past relying solely on traditional cost overruns, are not being alleviated by using current sentencing practices," explains Committee Chairman Barry Mahoney. "We must move past relying solely on traditional practices, and look for more effective ways of handling convicted persons."

According to the report, the U.S. has the highest incarceration rate of any country in the world. In the last 10 years alone, the number of people confined in the nation's prisons has more than doubled. In fact, it reveals, in 1990 "1,100 bedscores had to be added each week to provide room for the increased number of prisoners."

The report raises the question of whether or not we are any safer because we are incarcerating so many people. It cites statistics on crime and incarceration rates that over time show that an increase in the incarceration rate does not translate into a decrease in crime rate. It found that "during the almost 20 years that the incarceration rate has been climbing, the crime rate, both overall and reported, has sometimes increased, sometimes decreased and sometimes stayed about the same."

Further, the Committee found that incarceration itself may be crime-provoking. "It may be that the experience of being incarcerated inculcates or solidifies anti-social attitudes and behavior and/or fosters such dependency that the likelihood of criminal behavior upon release is much greater for some people than if they had not been incarcerated," the report said.

Meanwhile, the Committee suggests, the costs to society are high. Experts have estimated that the average true cost of incarcerating one person is at least $30,000 a year, the report states. The report points to a Delaware study that found it took all of the state income tax paid by eighteen residents to pay the cost of keeping one person in prison for a year--taxes that could "not be used for education, health care, environmental protection, or the myriad of other services provided by the government."

The ABA report notes that in Wisconsin, "the money spent operating and financing the construction of a prison holding 1,000 prisoners for one year would pay for 11,000 children in the Head Start program. There are currently 30,000 children in that state eligible for the program who are excluded because of lack of funding."

The Committee notes that "as expenditures for prisons and jail have increased dramatically in recent years, other programs have suffered.... For example, while California added more prisoners than any other jurisdiction in 1990 to what was already the country's largest prison system, it cut funding to education by $2 billion."

The Committee spent three years examining available information, statistics and talking to those involved in the sys-
**High Court To Decide If Convict Group Is "Person" For IFP Status**

A prisoners' association, elected by the general prison population, filed a federal civil rights suit under 42 U.S.C. § 1983 against prison authorities, alleging violations of the eighth and fourteenth amendment rights of prisoners based on a Department of Correction's directive discontinuing a long-standing program of providing free tobacco to inmates who are unable to afford it. The association filed a motion, under 28 U.S.C. § 1915(a) to proceed in forma pauperis in the suit.

This statute allows "a person" to proceed with a lawsuit in federal court without pre-payment of fees and costs when he submits an affidavit "that he is unable to pay such costs or give security therefore." The trial court denied the association's motion. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that an association was a "person" within the meaning of the statute, and that this inmate association was entitled to proceed in forma pauperis on the basis of its' submitted affidavit showing that it was prohibited by prison regulation from maintaining any assets.

Other federal courts have held that Congress intended that only "natural persons," and not associations or corporations, be allowed to proceed in forma pauperis. Cf. FDM Mgj Co., Inc v. Scottsdale Ins. Co., 855 F.2d 213 (5 Cir. 1988). The U.S. Supreme Court has granted review to resolve this conflict. See, *California Men's Colony, Unit II Men's Adv. Council v. Rowland*, 939 F.2d 854 (9 Cir. 1991), cert. granted, 112 S.Ct. 1261 (1992).

**Infracing Cop Cannot Hear Own Infraction**

John Diercks is a prison informant in protective custody (PC) in Jefferson City, MO. While in PC Diercks approached a prison official and asked him to make the urine samples of two prisoners "disappear" in exchange for which Diercks would supply the names of several other prisoners whose urine samples would test positive for drug use. The guard dutifully reported this conversation to his supervisor, Lynda Durham, who ordered the officer to infract Diercks for bribery. Durham later sat on the disciplinary board which found Diercks guilty of the infraction and punished him.

Diercks filed suit, pursuant to 42 U.S.C. § 1983, claiming that Durham's ordering the infraction to be written and then sitting on the disciplinary board violated his right to due process of law. The district court agreed and awarded Diercks $3,600.00 in Damages.

On appeal the U.S. Eighth Circuit Court of Appeals affirmed the lower court ruling in Diercks' favor. Durham argued she was entitled to qualified immunity from damages. The court rejected this argument, holding that the law was clearly established that prison officials directly involved in investigating or commencing disciplinary action against a prisoner could not sit in judgment of that same disciplinary action, and that Durham knew or should have known that her actions violated Diercks' due process rights.

Durham also argued that award of damages should be reduced to $1.00 in nominal damages. The appeals court rejected this argument as well, holding that Durham presented different arguments in the lower court than she did on appeal. See, *Diercks v. Durham*, 959 F.2d 710 (8 Cir. 1992).

**NCCHC Asks Congress To Improve Prison Health Care**

Carl C. Bell, M.D., chairman of the National Commission on Correctional Health Care's (NCCHC) Board of Directors, in testifying to a congressional subcommittee, stated that "...the Federal Government must act to improve health care provided to the incarcerated in order to protect the health of the nation's communities.

"Over one million Americans are incarcerated in the jails and prisons in America and 10 times that number will pass through the correctional institutions in a year's time," Bell said.

Bell's testimony, titled "Correctional and Community Health Care: A prescription for a Healthier America," was given on April 28 before the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Appropriations Committee at the House of Representatives.

Bell cited numerous statistics indicating that those behind bars suffer from a number of maladies--mental illness, homelessness, substance abuse, violent behavior in the community, Human Immunodeficiency Virus (HIV), tuberculosis--at a rate higher than that reported in the general population. He went on to say that these illnesses often-times contribute to the arrest and incarceration of people.

Further, Bell explained that most of these people will be released back into our communities within the year so that "...the opportunity exists to address their problems while they're incarcerated and return them, in a healthier state, back to their community where they can hopefully live productive and healthy lives."

One of Bell's many recommendations was that Congress consider continuing Medicaid and Medicare benefit eligibility for those incarcerated. At present, these benefits are lost upon incarceration and the states and counties must pay for prisoners' health care.

For more information contact: Jamie Budd, NCCHC, 2105 N. Southport, Chicago, IL 60614.

From: Corrections Digest

**Supreme Court To Define "Prevailing Party" For Purposes Of Attorney Fees**

Under 42 U.S.C. § 1983, a "prevailing party" in a federal civil rights suit may be awarded attorneys' fees. In civil rights cases such attorneys' fees may, in some instances, be much higher than the dollar value of the damages awarded. some courts have even made awards of attorneys' fees to plaintiffs who are only awarded "nominal damages," such as one dollar. In a recent case, however, a federal appeals court found that plaintiffs who had obtained a favorable jury verdict and a "prevailing parties" who would be entitled to attorneys' fees.

The suit in question did not seek injunctive relief, but rather solely sought damages in the amount of several million dollars. The appeals court reasoned that the award of nominal damages, if it was a "victory" at all, was a "technical" victory insufficient to support an attorney's fee award. The U.S. Supreme Court has granted review of the case to decide the question. See, *Farrar v. Hobby*, 941 F.2d 1311 (5 Cir. 1991), cert. granted, 112 S.Ct. 1159.
Criticism Of Peru Articles

I am a Native American transsexual incarcerated in Pelican Bay SMU. I am a jailhouse lawyer and paralegal student, and learned of PLN through fellow jailhouse lawyers here. Thank you for your free subscription as a control unit prisoner. I myself pass the newsletter around to those who are interested. I hope to be able to make a contribution soon.

I am writing concerning a commentary which appeared in the March '92 issue, "Peoples' War in Peru."

As a Native American I do not recognize the U.S. government or its authority. I consider myself neither legally nor morally bound to obey its laws. Though I do not recognize its validity or authority over me, it is practical to oppose it, under the circumstances, by any and all means necessary, including, but not limited to, within the arena of its judicial apparatus.

Accordingly, as a transsexual in prison I have been very active in the legal struggle for medical treatment of transsexualism in prison, which sprouts from an animosity based on ignorance and makes us common prey in penal environs. Naturally my concern also extends to our social plight, both here and in other lands. I have spoken to transsexuals from Central American countries, South America, and Cuba, who came here because in their countries they were officially persecuted on the basis of their gender orientation. They were disliked, imprisoned and killed, not only by government elements and right-wing death squads, but by the revolutionaries as well. Peru is an example. There, both Shining Path and Tupac Araru kill transsexuals, transvestites, and homosexuals--who have nothing to do with the civil war--merely because they are that way. This is no secret. People from these persecuted groups attempt to educate against these atrocities, but they continue. In Cuba, a transsexually inclined person would be arrested for dying her hair, for wearing makeup, for wearing female clothes, for being herself. The government, death squads, and revolutionaries maltreat and kill them in El Salvador. So they come here, where they are still oppressed but not so extremely. They are survivors.

There is a large transsexual population in the California prisons, city and county jails, numbering into the hundreds. Many come from these countries as immigrants and refugees without formal documentation, so-called "illegal aliens."

The correlating factor offered in the commentary for bringing up the civil war in Peru in PLN was the class struggle against the oppression of the many by the few, that it is the duty of all progressive elements to support the revolutionaries who are implementing that struggle, and because the U.S. government supports the Peruvian regime. There are many alternative news sources which focus on those types of socio-political issues and which are free to prisoners who seek them, as we are well aware.

As a prisoner, recipient, and utilizer of PLN I feel that we who are struggling day to day in the prisons and courts are better served by being provided with legal news in legal newsletters. Some readers have expressed their ideas that PLN should add more pages and deepen its reporting of legal developments relevant to our plight. To this PLN responded that it would like to do so but due to lack of funding it cannot. The Peru article took up 1 2/5 pages, which I feel could have been better used to report legal news.

As a transsexual, I feel that if PLN feels it must advocate moral support for socio-political struggles in other lands it should look closer at those struggles support and what they oppose, and the ideas and feelings of its constituency at home. I know of at least one more transsexual jailhouse law-

yer, in federal prison, who receives PLN. We are few, but we exist.

My criticism is constructive, not adversarial. I continue to be very impressed by PLN and have used some of its reported cases in my legal briefs. Next to lawyer-produced legal journals it's the best I've seen in my 12 years of incarceration and legal activism. Perhaps an article for PLN regarding the legal plight of transsexuals in prison may spark some awareness in this much neglected and misunderstood field.

I would like to thank the PLN staff very much for your concern and hard work. May we continue to progress towards the horizon, and beyond.

L.C., Crescent City, CA

[Editor's Note: Homophobia does exist within supposedly revolutionary movements and nations, although probably not to the extent you suggest. We too are in disagreement by the homophobia exhibited by supposedly socialist comrades. But we also understand the role of reactionary institutions such as the Catholic Church in places like Latin America, and the negative impact these have had on the regional culture.

With regards to the PCP's (Communist Party of Peru-Sendero Luminoso) policy toward homosexuals, at this point it is not clear whether or not they persecute gays in the liberated areas of Peru under their control. I have translated a large number of PCP materials and read virtually all PCP materials available outside of Peru, and I have yet to see any anti-gay remarks or positions in their party platform or other materials. I too have been concerned about reports in the bourgeois media that the PCP has persecuted gays and I have tried to confirm this by asking Carol Andrea, a professor at the University of Colorado who has written several books on Peru, traveled extensively in Peru and who publishes a newsletter on events in Peru. Ms. Andrea states that she has been unable to confirm any reports that the PCP persecutes gays in the areas it controls, however, she did say that the Tupac Amaru Revolutionary Movement does persecute gays as a matter of policy. The mainstream media has been vicious in its attacks on the PCP and it may well be that these allegations fall into this category. Based on your letter, we have passed your concerns on to PCP representatives and asked for a clarification of PCP policy/practice with regards to gays and lesbians.

The reason PLN has covered the struggle of PCP prisoners is because virtually no one else in the English language does. PCP prisoners have been subjected to vicious repression that left over 300 dead in 1986. Recently, in April of 1992, government troops stormed Canto Grande prison in Lima, killing an estimated 40 PCP prisoners, including nearly all leading cadre.

We extend our solidarity to fellow prisoners struggling for progressive change, whether it is in Attica, Long Kesh, Robben Island, Ansar 3 or Canto Grande. The high levels of discipline and organization, and the advanced level of revolutionary consciousness shown by PCP prisoners is an example we can all learn from. In times like these, when there is not a lot being done in the way of prison struggle here in the U.S. it is important to know that such struggles are happening elsewhere.

As for limiting our political coverage in order to reserve space for more material on law, Paul and I think we have reached a reasonable balance. Were we to eliminate articles such as those on Peru, where else would most prisoners read about such struggles? More to the point, what would distinguish us from being just another reformist rag full of bourgeois clap-trap?]
Adverse Change In Board Rules Is Ex Post Facto

The Oregon Court of Appeals has reaffirmed its holding that application of parole board rules not in effect when a prison committed his crime, and which had the effect of potentially extending his or her prison term, violated the ex post facto clauses of the state and federal constitutions. An issue of the case was whether board rules that govern the setting of parole release dates are "laws" within the meaning of the ex post facto clause. The court relied on Ross v. Oregon, 227, 162-63, U.S. 150, 33 S.Ct. 220, 57 L.Ed. 458 (1913), which held that rules made pursuant to delegated legislative authority are subject to ex post facto analysis.

The ruling in this case is a good one to study for those interested in challenging the applicability of newly adopted parole board rules to their situations. Since nearly all of these new rules are more harsh, they would fall under the court's reasoning here. The analysis is done using cases from the U.S. Supreme Court, so it can be applied to any state or federal parole authority. See, Williams v. Board of Parole, 828 P.2d 465 (Or. App. 1992).

Prison Costs More Than Harvard

By Ralph Hakim 'Walker

An April 4, 1992 William Raspberry article on alternatives to imprisonment pointed out the folly of continuing to waste tax dollars on a system (imprisonment) that is ineffective, does not deter crime, and could inadvertently provide impetus to a problem that is already epidemic.

Raspberry's position is that increased imprisonment will inevitably do more to exacerbate this nation's crime problem than to provide solutions with long term remedial value. Paraphrasing Andrew Rutherford, a noted British criminologist, Raspberry points to the experience of Europe, "...particularly Germany and England, where the prison population has declined with no discernible increase in criminality." West Germany's prison population peaked in 1983, with 62,300 inmates and steadily declined thereafter. Today their prison population numbers about 51,000. The same phenomenon has taken place in Great Britain which has had an eight percent decrease in prison population since 1988.

The Great Britain criminologist Rutherford says the European decrease has taken place in both countries without the invention of new alternatives. He emphasizes that prosecutors and courts in Europe have begun to view imprisonment as more of a problem than a solution. "They have concluded," he says, "that the criminal justice process can have damaging and self-defeating effects and that every effort should be made to keep people far away from courts and, in particular, the prisons."

Raspberry said that American policy makers know that what Rutherford is saying is right. In fact, he points out that room, board, and tuition at a prestigious institute such as Harvard costs just over $18,000 annually, while the average cost of incarcerating a juvenile for that same period costs well above $29,000.

The question now he insists, in reference to what Rutherford reveals about judicial and prison policy in Europe, "...is not whether we believe him--most of know he's right--but whether our fear of crime will lead us to keep calling for ever stiffer sentences no matter how counter-productive (and costly) it may be."

Although Raspberry's Prison Cost More Than Harvard has somewhat of a biased slant, it also has the potential of being extremely effective in its attempt to shock readers into realizing that the amount of dollars being spent to imprison people here in the U.S. could probably be better spent giving those same people quality educations.

Juxtaposing the amount of money required for a quality education at an institute as prestigious as Harvard with the exorbitant amount being spent on imprisoning our youth was an excellent gimmick to get readers to view his argument from the perspective he desired. And validating his assessment with current statistical data as well as a concurring analysis from a British criminologist simply added weight to the position taken by Raspberry. The problem now is getting policymakers to wake up and listen.

From: The Prison Mirror, May 29, 1992

Federal Prisoner Must Exhaust BOP Remedies Before Seeking Habeas Corpus Relief

Federal prisoner Ivan Gonzalez was convicted of possession with intent to distribute three kilograms of cocaine. He was sentenced to five years of imprisonment. The U.S. Parole Commission calculated a presumptive parole date of May 30, 1990. When that date came and went the Bureau of Prisons (BOP) did not release Gonzalez, and he remained incarcerated. In February of 1991 Gonzalez filed for a writ of habeas corpus in federal court. He claimed that because his release date had passed he did not have to exhaust administrative remedies before seeking judicial relief. The district court denied the petition.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the dismissal of the writ. The appeals court held that while the courts have original jurisdiction in imposing sentences, the BOP is responsible for computing that sentence and applying the appropriate good time credits.

Because the BOP has established regulations that set forth procedures for prisoners to follow before seeking relief from a district court, the administrative remedies must be exhausted before a federal court has jurisdiction to hear a petition for writ of habeas corpus. See, Gonzalez v. United States, 959 F.2d 211 (11 Cir. 1992).

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With the gracious assistance of mailing helpers Michael Misrok, Cindy Susat, and Sandy Judd. Thanks to the University Friends Center (4001 - 9th Avenue N.E.) in Seattle for the use of their space to do the mailing. We invite anyone interested to join us at the mailing party held on the last Tuesday of each month at 3 p.m. The mailing lasts for about one hour, and generally includes a lively discussion of prison issues.
**Virginia Sets Guidelines For Terminally-Ill Prisoners**

The state of Virginia has released a policy to handle requests by terminally-ill prisoners for early release. The policy was developed in response to a request by Alex Velazquez, a prisoner at Powhatan Correctional Center, to be allowed to go home to Brooklyn, N.Y., to die. Velazquez, who is serving a 23-year sentence for selling cocaine in Virginia Beach, had AIDS.

Under the new policy, a four-member committee will review the request and the inmate's record and make a recommendation to the Virginia Parole Board, which will consider the case and report to the governor. The governor will make the final decision.

The committee members will be Corrections Department employees and will include a doctor, counselor, warden or assistant warden, and a deputy director.

About 60 prisoners in Virginia prisons have been diagnosed with AIDS.

From: *Corrections Compendium*

**Detroit's Former Chief Guilty Of Embezzling**

Former Detroit Police Chief William Hart has been found guilty of stealing nearly $2.6 million from a special "Secret Service Fund" that was meant to fund undercover operations. A federal jury convicted the former chief of two counts of embezzlement and two counts of tax evasion.

Hart, who had been allowed to remain on the city's payroll pending the outcome of his trial, resigned one day after his conviction. He is to be sentenced on August 4. U.S. Attorney Stephen Markman said Hart probably faces a prison term of about five years.

The case also included testimony by three women who said Hart gave them thousands of dollars and expensive gifts, as well as testimony about a bundle of cash falling from the ceiling of Hart's kitchen when the room was being renovated.

From: *Criminal Justice Newsletter*

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Monroe, Washington 98272

If you are located in Europe or the Middle East, send financial contributions to Oxford ABC, Box ZZ, 34 Cowley Road, Oxford, England. Readers in Latin America, Australia and New Zealand should send their PLN donations to Arm The Spirit, P.O. Box 57584, Jackson Station, Hamilton, Ont., Canada L8P 4X3.

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**Washington's DOC Boss Talks That Talk. Can He Walk That Walk?**

A month or so ago Chase Riveland, the Washington state's chief corrections officer, went to Washington, D.C. for what he thought would be a dialogue, an exchange of ideas about crime and punishment. Instead he got a U.S. Justice Department monologue, a sermon on how to lock up more people.

Riveland believes the national monologue on corrections has gone on long enough. He wants to help start a debate. Few dare to challenge the get-tough talk, despite mounting evidence that existing policies are not working and that we cannot afford them—in either human or dollar terms.

After years of law-and-order policies at all levels of government, a so-called war on drugs, sentencing reforms and construction of thousands of new prison cells, crime rates continue to rise.

Offended by the Justice Department sham conference, Riveland said, "It's time to ask if we're getting what we're paying for."

Here's what we're getting: Violent crimes in Washington were up 7.1 percent last year over the previous year, mirroring the national trend. According to the latest figures from the Association of Sheriffs and Police Chiefs, over the decade, 1981-1991, violent crimes rose 40.9 percent while the state's population increased by 17.7 percent.

Here's what we're paying for: New state prisons and additions to existing ones to house over 12,000 inmates by 1995, nearly double the inmate population in 1990. The price tag is $1 billion.

State prison population is projected to grow at least another 2,000 by the year 2000. Riveland warns that "prison population forecasts are terribly accurate."

He noted, with hyperbolic irony, that if the prison population trend of the late '80s and early '90s were to continue for the next 50 years, "everyone in Washington would be in prison."

It's a frenzy that leads to more than just construction costs. Someone has to run the prisons.

In the 1989-91 biennium the operating budget for the Department of Corrections was $440 million. Under those "terribly accurate" inmate population projects, the department will need more than a $1 billion annual operating budget by the 1997-99 biennium. And that assumes no new laws will be passed increasing prison population. No legislature in 70 years has refrained from doing that, he said.

Worse yet, none of this includes costs to build and operate new city and county jails across the state.

Central to the debate Riveland wants to start are these facts:

- The state spends an average of $4,000 a year on each student in the K-12 educational system.
- It spends an average of $26,000 a year on each inmate in the state's correction system.
- Enrollment is capped on the state's colleges and universities while prison population expands unchecked.

Riveland calls those facts "a confusing message about our priorities."

As Riveland said in a letter to U.S. Attorney William Barr after the recent Justice Department conference, "the incarceration of millions of Americans should be treated with alarm and concern, not with self-righteous smugness."

From: *Crime & Delinquency News*
From The Editor
By Paul Wright

Welcome to another issue of PLN. Please check your mailing label. If it says "Aug. 92" this means this is your next to last issue and unless we receive a donation you will be dropped from the mailing list. When your label says "final issue" that is the last issue of PLN you will receive unless we receive a donation from you. If you are in a control unit or on death row and unable to afford a donation you need to write and let us know, otherwise we have no way of knowing if you are receiving PLN. If you still wish to receive it, we have a new mailing list system that will automatically send “final issue” notices when previous donations no longer cover the cost of sending you PLN. We also need to know if you are moved or transferred because the post office will not forward PLN and it costs us $.40 for every issue returned.

A number of readers have written and asked us about receiving back issues of PLN. Unfortunately we do not have any back issues available. We really do have a shoestring budget, so what this means is that we can only afford to print the exact number of PLN’s that we have mailing labels for. So once that issue is mailed out and whatever extras we have are mailed as samples in response to inquiries that issue is no longer available.

From reading PLN you might get the impression that prisoners only win cases and never lose. This isn’t true by any means. Published cases tend to run against prisoners for the most part. Our thinking is that what prisoner litigants need to know is the winning cases, the losers will more than likely be brought to their attention by either the attorney general or the court. An exception to this is instructive losses where the court gives its reasons for ruling against the prisoner and leaves open the possibility that a different argument or factual setting would have resulted in a different outcome. We welcome articles from readers discussing prisoner rights litigation, differences between court opinions, etc.

Last month we sent a sample copy of PLN, along with subscription information, to every prison law library in a medium and maximum security prison in the US. If any of your prison readers have any input in the decision to subscribe to publications please try to get your law library to subscribe to PLN. This will make PLN available to a wider pool of readers and by subscribing at our institutional rate of $25.00 a year it will help subsidize our indigent readers who are unable to afford donations. If the law library is unwilling or unable to subscribe perhaps funds can be appropriated from the inmate welfare fund or other sources within the prison system.

We encourage readers to send us articles on efforts to improve prison conditions at the prisons they are located in and on any newsworthy events or happenings. Do not worry about your writing skills, none of us are professional writers, so you are in good company. The mainstream media all too often ignores the plight and struggle of prisoners which is why PLN is here, but we need your input to be able to inform more people of what is happening in the American gulag archipelago.

The astute reader will notice that we are not running our customary plug for the Prison/Community Alliance (PCA) on the last page of the newsletter. This is at the request of PCA representative Carrie Roth, who has disassociated herself from PLN over differences in our respective approaches to doing legislative work. The PLN drafted, and the PCA backed, last year’s proposed citizen’s initiative to abolish the parole board. When law-makers offered a questionable compromise, one that increased penalties and contained many draconian provisions but eliminated the parole board, PLN held its nose and went along with the PCA’s support for the bill. When the provision to abolish the board was removed from the bill, however, PLN stopped its support. But Mrs. Roth continued her support for the proposed law to the very end. This support was criticized by a reader in the letters section of our July issue. It was the printing of this letter, and PLN’s agreement with the letter writer, that resulted in Mrs. Roth’s departure.

The difference here is a political one. PLN does not want to stoop to lobbying state legislators for relief, as we see them as a part of the problem rather than the solution. We prefer to focus our limited energies on the people who are directly impacted by these ongoing injustices. Thus, we were behind the reformist citizen’s initiative because we would have been organizing otherwise powerless people to participate in the democratic process. We put our faith in the people, not in bourgeois politicians. The politicians are the very people who are responsible for most of this mess. We will miss the active and consistent support Mrs. Roth and the PCA have given to PLN. We are sorry she insists on looking toward the government for our salvation, rather than to the masses of poor and working people.

For any of our readers in the Seattle area, we still need volunteers who are able to help staple, fold and mail PLN on the last Tuesday of each month, if you are interested in helping please contact either Ed or myself.

I was recently transferred back to the Washington State Reformatory in Monroe, which is where my co editor Ed Mead has been. Now that we are in the same prison we expect PLN to improve in terms of content and style because it’s far easier to discuss newsletter business in person than it is through the mail as we have been doing since we started. If you correspond with me please note my new address in the editor box on page 2.

If we exchange publications with you, please make sure they are sent directly to Ed or myself and not to our Florida publishing address, otherwise they have to be forwarded to us which causes delays and additional postage costs.

On a closing note I will remind folks that we are always in need of more subscribers. If you can afford a donation please send it. If you know of anyone who might be interested in subscribing to PLN please tell them about us. We have PLN subscription forms available on request, if you need some just write and ask. I hope you enjoy this issue of PLN; pass it along to others when you are done with it.

Lompoc Prison Strike

Immediately following the Los Angeles uprising, prisoners at FCI (Federal Correctional Institution) Lompoc, North of LA, joined in a prison wide general strike for 3 days. Prison officials were greatly threatened by the unity of the prisoners: hundreds of men were put in the hole and teargassed, five hundred men were immediately transferred out.

New African political prisoner Dr. Mutulu Shakur, convicted of conspiracy in the liberation of imprisoned New African freedom fighter Assata Shakur, faces transfer to the US Penitentiary at Marion, IL. He is charged with "encouraging a disturbance". We will keep readers posted of new developments in this story.

Source: Out of Time, 3543 18th St. Box # 30, San Francisco, CA. 94110
**Rectal Search Upheld**

James Terrovona is a Washington state prisoner who was transferred from IMU (Intensive Management Unit) in Walla Walla to IMU in Shelton. Upon arrival at Shelton and before being put in the IMU there Terrovona was subjected to a digital rectal search by DOC officials. He then filed suit under § 1983 claiming the search violated his rights under the 4th, 8th and 14th amendments and was conducted in unsanitary conditions and caused him pain. The district court, Judge Bryan and Magistrate Burgess granted summary judgement to the defendants.

The court specifically found that DOC Policy 420.110 (effective 1 October, 1985) on rectal searches to be constitutional under the Tumer reasonableness standard.

The court held that Terrovona did not specifically state how the search was unhygienic and the court did not discuss the issue of pain caused by the search. See: Terrovona Vs. Brown, 783 F. Supp 1281 (WD WA, 1991)

This appears to directly conflict with Wetmore Vs. Gardner, 735 F.Supp 974 (ED WA 1990) which held the DOC rectal search policy was unconstitutional because it did not rely on individualized suspicion but was instead an intrusive blanket search policy of all IMU prisoners. Wetmore is currently under appeal by the state to the 9th Circuit and a ruling is expected soon.

**Court Bans Double Ceiling**

Since 1986 Utah state prison officials have planned to double cell the Wasatch unit of the Utah State Prison in Draper, Utah. In the 1970's Utah prison officials entered into a consent decree with prisoners obligating them to avoid double ceiling. The prisoners had sought, and received, injunctions forbidding double ceiling. The DOC now seeks to dissolve the injunctions.

The district court gives a detailed statement of facts concerning the physical conditions of the prison and identifies those areas that would significantly deteriorate if double ceiling took place.

The Court outlines the legal standards under which double ceiling must be evaluated. Double ceiling in and of itself is not unconstitutional but the totality of circumstances may rise to a violation of the constitution. The court found prison officials had the requisite intent and state of mind to show liability based on their deliberate indifference to prisoners needs by their double ceiling plans. The court banned double ceiling in some areas of the prison and allowed it in others. See: Baker Vs. Holden, 787 F. Supp 1008 (D. Utah, 1992).

**DOC Must Provide Involuntarily Committed With Treatment**

Robert Cameron was convicted of rape in Massachusetts and because of prior sex offenses was found to be a "sexually dangerous"person and involuntarily committed to a treatment center operated by the Massachusetts DOC and Dept. of Mental Health. Cameron filed suit seeking equitable relief claiming that by denying him minimally adequate treatment his medical needs were not provided. After a 6 day bench trial the court ruled in Cameron's favor.

The court held that both the 8th and 14th amendment require that both the involuntarily committed and mentally ill prisoners receive minimally adequate treatment for mental health needs based upon the exercise of professional judgement.

Several medical experts testified that due to his disorder Cameron needed to be treated in a non confrontational manner impossible to achieve in a prison setting. The evidence showed the "treatment" Cameron was receiving was harmful to his mental and physical health. The court said that by withholding the medical treatment prescribed by Camerons physicians the defendants showed deliberate indifference to his medical needs. This was heightened because decision making officials did not exercise their professional judgment.

The court also held that transporting Cameron to a hospital in shackles under armed guard violated his due process rights because it was harmful to his treatment needs and not warranted by any security need.

The court also found unconstitutional the centers double bunking requirement, controlled movement regulations, strip search policy, oral search policy, DOC disciplinary rules and the denial of visiting as applied to Cameron. See: Cameron Vs. Tome, 783 F. Supp 1511 (DC MA, 1992).

**Censoring Mail From Courts Violates Due Process**

John Stone-El is an Illinois state prisoner whose mail to and from the courts and government officials was opened and read outside his presence. Stone-El filed suit seeking money damages and injunctive relief for the violation of his constitutional rights. He then moved for summary judgement which the court denied. The Court then dismissed the complaint.

The Court held that because mail from the courts to litigants are public documents which can be inspected by prison officials there is no reason to treat such mail as privileged communication. The Court also held that letters from Stone-El to the Illinois secretary of state and the national archives were not privileged.

The court found that prison officials did violate Stone-El’s rights when they opened and read his mail to the federal courts. The court notes that prisoners fear retaliation and delay when their mail to the courts is opened and read by prison officials.

Despite finding a violation of Stone-El's constitutional rights the court went on to grant qualified immunity to the defendants by holding the rights violated were not "clearly established" at the time they occurred. The Court cites two cases from other circuits but because they were not 7th Circuit cases holds they are not binding on Illinois DOC officials. The Court then dismissed Stone-El's complaint in it's entirety
In the middle of May, 1992, the Wisconsin DOC distributed a new set of property rules to all prisoners. It contained a lot of new restrictions but the most significant is that the total amount of property a prisoner may possess must fit into a footlocker measuring 32" x 16" x 16". Of course, TV's are exempted from the rules since no prison official would ever discourage an inmate from becoming addicted to TV. The rules are aimed directly at jailhouse lawyers and inmate writ writers because they accumulate all the books and paperwork.

Three years ago the Waupun prison tried to confiscate everyone’s legal papers saying they created a fire hazard. That didn’t fly so now this. Their justification? Inmate possession of property leads to theft and inmate property is used for gambling.

The new rules went into effect on June 1st for people entering the system after that date. Those of us already here have to be in compliance by June 1, 1993, or upon transfer to another prison, whichever happens first.

Needless to say, everyone is pissed. The Wisconsin chapter of CURE (Citizens United to Rehabilitate Errants) staged a demonstration at the state capitol on June 1st to protest the rules. Since then prison officials have rejected all mail sent to me by CURE.

700 of the 800 prisoners at one of the medium security prisons went on a one day food strike boycotting the dining hall on June 1st.

On May 23rd prisoners here at Waupun took over the messhall and beat up all the guards. We’ve been locked down ever since [Editors note: as we go to press the Waupun lockdown continues.] eating in our cells and allowed out twice a week for showers.

Nonviolent protests by prisoners are not often heard of because prison administrators ruthlessly oppress prisoners who organize such actions. Waupun prisoners have often attempted to organize nonviolent protests such as strikes and sit downs. In order to be effective, such collective efforts require mass participation. Organizers must inform the inmate population of the planned event and encourage participation.

It is impossible to conduct such efforts covertly. Prison officials will inevitably become aware of the organizing, and when they do, they immediately lockdown the prison and conduct an investigation. Any prisoners who can be identified as organizers will be sentenced to long terms in segregation and transferred, usually to prisons in the federal system or in other states. Prison officials simply do not tolerate prisoners who organize non violent protests. The Supreme Court has ruled that prisoners have no constitutional right to organize collective protests, so prisoners have no protection from such retaliation.

In April, 1988, I was confined at the Oshkosh Correctional Institution. A group of prisoners tried to organize a mass hunger strike to protest conditions. There is no rule in Wisconsin prisons against going on a hungerstrike. In fact, prison rules specifically state that prisoners may decline to eat any meals they choose. The activists in this case were therefore encouraging prisoners to do something that they're specifically authorized to do. Nonetheless, the organizers were rounded up, transferred to maximum security prisons (Oshkosh is medium security) and sentenced to lengthy terms in segregation.

Other states take the same approach. Marion Penitentiary, the federal prison that exists for the express purpose of isolating the most dangerous prisoners in the nation, is actually full of activists. Prisoners whose strike organizing in state prisons tests the limits of official patience are exiled to Marion, where the perpetual lockdown and control unit regimen disable the activists. The inmates prison officials consider the most dangerous are not the most violent, but the one with political consciousness and organizational skills.

Prisoners planning a violent protest, on the other hand, are able to organize covertly. Because they need only a small group of confederates, they are spared the necessity of organizing the mass of prisoners. The ability to plan covertly enables violent prisoner protestors to at least carry out their plans. Prisoners thinking of organizing a collective, non violent protest must always grapple with the grim likelihood that their prison will be locked down and they will find themselves in the segregation unit of a max prison in another state before the protest ever takes place.

Of course the prisoners who beat up the seven guards on May 23 will be confined in segregation, but they won’t be transferred to Marion. The fact that prison officials punish violent protestors less harshly than violent protestors is not lost upon prisoners.

Wisconsin has no administrative grievance system. While one exists on paper it is non existent in practice. The courts are also inaccessible to the vast majority of prisoners, who have neither the money to hire an attorney nor the legal expertise to proceed in court without counsel.

With the extreme, malicious persecution of non violent protestors and the lack of an operational grievance system, it is no surprise that prisoners turn to violent protest. Given the near certainty that the human spirit will rise up against the conditions that prisoners in this country are forced to endure, one might suppose that prison officials would prefer that prisoners choose to protest nonviolently. But prison officials adopt policies that encourage, and even ensure, violent protest.

Every act of violent protest by prisoners strengthens the correctional administrators hand. In the wake of the May 23 incident, DOC officials have called for increased funding, more oppressive security measures and the construction of more maximum security prisons.

When conservative DOC officials do battle with a Democrat controlled legislature for dollars to fund their severely repressive program, they can possess no stronger bargaining chip than a record of seemingly senseless inmate violence. Prison officials actually hope that inmates react violently to their conditions. It is of course, the guards, not the white collar officials who make policy, who will always be the victims of violent inmate protest.

The proposition that prison officials want inmates to lash out violently against guards is a radical one, but I am not alone in making it. Since the May 23 incident, AFSCME Local 18, the union that represents Waupun guards, has publicly alleged that Waupun administrators knew in advance that prisoners were planning the attack, and did nothing to prevent it.

As always, prison officials blame prisoners for the problems in Wisconsin prisons. But it is the administrators who hold the power and make policy. Appropriate policies would render violent prison protest non-existent.
On May 4, 1992, the Indiana Civil Liberties Union filed a class action suit in the Marion County, Indiana, Superior Court. The action is Taifa Vs. Bayh, and challenges numerous conditions of confinement at the Westville, IN, Maximum Control Center. It is interesting to note the action is being filed in state court. Because the suit claims prison officials have violated several state statutes only a state court can rule on the state law claims. It may also be that the Indiana state constitution provides more protection than the federal constitution. In recent years the US Supreme Court has steadily narrowed the scope of 8th amendment protection available to prisoners from the federal courts.

The suit directly challenges the philosophy behind the "supermax" control unit prison, both at Westville and another "supermax" under construction in Sullivan, IN. The plaintiff class is currently over 80 men housed at the MCC. The suit claims that Indiana prison officials have violated state law by administratively housing prisoners in MCC for long periods of time when Indiana statutes limit the conditions where prisoners can be segregated. The criteria for MCC placement is vague, subjective and discretionary allowing prisoners to be placed in MCC in retaliation for exercising their rights of free speech, access to the courts, etc. Several of the plaintiff's are in MCC because they have sued Indiana prison officials and assisted other prisoners in litigation.

Also challenged is the MCC behavior modification program which requires total submission of the prisoners to state power. Prisoners are denied telephone and visiting privileges for the first 90 days, then allowed 1 visit and 1 call every 30 days. Prisoners are not allowed to talk to other prisoners, talk back to staff, get under their blankets during the day despite cold cell temperatures and are locked in their cells for 23 hours a day with nothing to do. Guards routinely give prisoners "bad day" reports which deprive them of a months vested good time thus keeping the prisoner in MCC longer, there is no hearing or other means to contest such reports. The total program at 3 "levels" of repression within the MCC which calls for a prisoner to remain infraction free for 3 years means they have little hope of ever being released from isolation and returning to general population.

The conditions imposed are those of sensory deprivation and complete denial of human contact. There are no clocks in MCC and prisoners are not allowed to have watches or clocks and staff are prohibited from telling prisoners the date or time. Lights in the units and cell remain on for 24 hours a day. The cells have solid doors which remain shut except for a small slot opened for meals. Prisoners are deprived of virtually all property and are not allowed to display pictures of loved ones. Even when allowed to receive visits only members of their immediate family are allowed to visit.

Indiana law mandates the provision of vocational, educational and rehabilitative opportunities and mandates meaningful exercise and recreation for its prisoners yet these are completely absent from the MCC.

The prisoners are exposed to cell temperatures as low as 46 degrees F. Despite this they are denied warm clothing and are not allowed to get under the blankets during the day, if they do get under their blankets their cells are stripped of bedding and they are forced to lay on a cold steel bedframe or on the concrete floor. To increase the prisoners suffering their socks are taken away as well. The air is extremely dry and the water hard resulting in extreme skin irritations such as peeling, cracking and bleeding lips, feet and scalps. After prison doctors prescribed vaseline and skin lotions to treat these problems the warden, Charles Wright, refused to provide these items to the prisoners.

The suit challenges the denial of attorney visits to prisoners and the restriction of such visits when they do take place. Prisoners are handcuffed and in leg irons and separated from their counsel by a wall and window, communication takes place through an electronic device which allows the attorney-client conversations to be overhead by prison officials and other visitors. There are no inmates trained in law to help prisoners, prisoners cannot check out or buy lawbooks. Illiterate prisoners are not assisted nor provided with an attorney or lay advocates during disciplinary hearings.

The plaintiffs also challenge the numerous instances of physical and verbal abuse. This includes beatings by guards, the use of fire hoses and chemical agents, handcuffing prisoners and strapping them to steel bedframes then feeding them only two a day and routinely putting handcuffs on too tightly.

The medical care is grossly inadequate, one prisoner had a heart attack and did not receive treatment until 10 days later. Plaintiff Broadus is disabled and cannot walk and prison officials will not provide him with a wheelchair. Because he cannot walk he has been denied visits with his attorneys. Prison guards will firehose him to serve as a "shower". One prisoner had his four front teeth knocked out in April, 1991, and has been told he will not receive replacement teeth until sometime in 1993. There is no psychiatric care available and as a result of the extended isolation and cruel conditions several prisoners have had mental breakdowns and still did not receive treatment.

We have reported in past issues of PLN that MCC prisoners have gone on hungerstrikes and cut off their fingers to publicize their plight. We have received a letter from Paul Komyatti, an MCC prisoner, who informs us that they have begun another hungerstrike. His letter is dated June 15, 1992, and says in part: "Today is now the 31st day of the strike, myself and another prisoner are on 31, one is on 29, one is at 25, one is at 21 and 2 at 15. They should start the forcefeedings this week. Our body temperatures are dropping in the 95's, I've lost over 35 pounds and others are close to that much, we're all dehydrated, I'm pretty weak and can barely stand now. There were as many as 23 at one time but others have fallen off along the way going as far as they could."

A demonstration was scheduled outside the prison for Friday, July 11, 1992, but as we go to press we have not received information on how this went. The spread of control unit prisons is happening across the country as the response to overcrowding and deteriorating conditions. These control units serve the intimidate and try to destroy prisoners, especially those who organize or seek to improve prison conditions. So far the courts have rubberstamped the most hideous control unit conditions at the federal penitentiary at Marion and elsewhere. It will take grassroots organizing and support from the outside to shut these modern day torture chambers down. While the architecture is new and state of the art and does not fit the idea of the medieval dungeon we have to expose the nature of the

Continued on next page....
Continued from previous page ....

modern control unit for what it is: a sensory deprivation torture center designed to break people's mind, body and spirit. It was grassroots support that helped close down the fed's High Security Unit at the women's prison in Lexington, Kentucky and that is what we will need to halt these oppressive conditions as the courts are unlikely to intervene. We will continue to keep readers posted of developments in the struggle against control units but remember we also rely on you, our readers to let us know what is going on so keep us posted.

To protest conditions at MCC in Indiana write: James Aiken, Commissioner, Dept. of Corrections, 302 W. Washington, rm E 334, Indianapolis, IN. 46204 or call the MCC at (219) 289-9767 or 289-2126 ask for warden Charles Wright.

For more information on the MCC prisoners struggle contact their attorney: Mariel Nanasi, 134 N. Lasalle, Ste. 2106, Chicago, IL. 60602 (312) 855-0115 (no collect calls).

"Walking Steel" is the newsletter of the Committee to End the Marion Lockdown which is focused specifically on the struggle against control units. Write: CEML, P.O. Box 578172, Chicago, IL. 60657-8172.

Transfer Violates Access Rights

Stanton Story is a Pennsylvania state prisoner who was transferred to the federal Bureau of Prisons (BOP) to serve his sentence. Story filed suit under § 1983 claiming Pennsylvania DOC officials had violated his right of access to the courts because the BOP prison in Terre Haute, IN. did not have any Pennsylvania lawbooks which Story needed in order to prosecute cases he had pending in Pennsylvania state courts. The court granted Story In Forma Paupers status to pursue his complaint.

The Court held that while story had no federal due process right to remain in the Pennsylvania state prison system he may be able to establish a state created due process right to remain in Pennsylvania, thus entitling him to relief.

The court held that it is clearly established that a transferring state must provide it's prisoners with either the state law materials they need or legal representation by counsel and make this available at the out of state facility. Otherwise, the transferred prisoners would be denied their right of access to the courts.

At this early stage of the suit the court did not decide the case on it's merits, only that Story had stated a cause of action under the federal constitution. See: Story Vs. Morgan, 786 F. Supp 523 (WD PA 1992).

Court Rules on Service and Venue

Arnold Huskey is a BOP (Bureau of Prisons) prisoner confined at the US Penitentiary in Marion, Illinois. He filed suit in the District of Columbia claiming BOP officials had violated his constitutional rights by misclassifying him under 28 C.F.R. § 524.72 (h) resulting in his indefinite segregation and that the defendants had conspired to establish a pattern of discriminatory treatment against the group of prisoners he is a member of.

The defendants moved to dismiss the lawsuit and judge Richey granted it in part and denied it in part.

The Court dismissed the claims against the defendants in their individual capacities because Huskey did not have the US Marshall's Service serve the defendants with a summons and copy of the complaint in accordance with Fed.R.Civ.P. 4 (D)(1). Thus the court lacked personal jurisdiction over the defendants in their individual capacities.

The Court did not dismiss the claims against the defendants in their official capacities even though they were not properly served according to Fed.R.Civ.P. 4 (d)(5) because the government received copies of the summons and complaint and was able to defend against the suit, thus suffering no prejudice. The error in service on the US attorney was committed by the Marshall's service, not Huskey.

The Court transferred venue of the suit to the Southern District of Illinois. While noting that venue in the District of Columbia is proper under 28 U.S.C. § 1391(e), the court found a change of venue appropriate due to the difficulties in transporting witnesses, especially the prisoner plaintiff, and convenience to the defendants, most of whom were located in Illinois. See: Huskey Vs. Quinlan, 785 F. Supp 4 (DC DC, 1992).

Prisoner Entitled to Protection and Toilet Access

Kenneth Young is an HIV positive federal prisoner who was transferred to the US Penitentiary at Lewisburg, PA. While in the transfer segregation unit at Lewisburg Young was sexually assaulted by his cellmates several times. He repeatedly requested protective custody from a number of prison officials who repeatedly ignored his pleas and taunted him for seeking protection. After one prisoner had raped him and ordered him out of the cell, Young flooded the cell by stopping up the toilet in order to be removed from the cell. Prison officials placed Young in a "dry cell" with no toilet or running water. Young was allowed to use the toilet once in a three day period. He was provided with a plastic urinal 29 hours after being in the dry cell, he was not provided with toilet paper, drinking water nor allowed to wash his hands before meals nor to bathe. Young was forced to urinate and defecate on the floor of his cell which the orderly refused to clean. Yearned filed suit against prison officials under Bivens claiming violation of his 8th amendment rights. The district court dismissed the case for failure to state a claim.

The 3rd Circuit Court of Appeals affirmed in part and remanded in part.

The court's opinion gives an excellent discussion of the right to personal security in prison and the requisite knowledge needed to hold prison officials liable for attacks by other prisoners. Prisoners have a right to personal safety and Young notified prison officials after each assault and officials at all levels ignored his pleas despite knowledge Young was the subject of continuing abuse. The court also illustrates how statistics can be used to show indifference by prison officials. Lewisburg has 2.8 % of the BOP's prisoners yet accounted for 50 % of it's homicides and 10 % of it's assaults in a one year period, which meant prison officials could not have dismissed Youngs complaints as being improbable.

With regards to the dry cell claim, the court held that the prisoners health is the touchstone and prison officials cannot punish prisoners in a manner that threatens their physical or mental health. The court found the conditions in this case even more revolting because Young is HIV Positive (HIV is believed to be the virus that causes AIDS)and thus more susceptible to disease and infection. The court gives an extensive discussion of the minimal standards for segregation confinement. See: Young Vs. Quinlan, 960 F.2d 351 (3rd Cir. 1992).