Throughout the AFSC’s decades of prison work it has encouraged reconciliation and nonviolent alternatives to conflict. But Massachusetts Governor William Weld has declared that a stay in prison should replicate a tour of the circles of hell. Current prison management is supposed to be part of the war on crime. But it is not a war on crime — it is a war on prisoners.

A fundamental principle of American judicial practice is that people are sent to prison as punishment, not for punishment. However, the purity of this idea hardly ever exists in practice. The prisoners most vulnerable to the secondary punishments of confinement are long-term or lifers. When we talk about how severely we should punish, we always need to distinguish between long-term and short-term punishment. Some may detest the people in our prisons. Nonetheless, when they are old and ill, when they have served 20 years and can hardly be identified as the same individual who committed the crime, when the prison term is the person’s life and the prisoner struggles to imbue that life with meaning, punishing takes on a different character.

Then there is a most grave consideration: the culture of punishment and status degradation will eventually spill over onto the rest of us. In the design and implementation of punishment policy we must be vigilant, because whenever we deliberately inflict pain, we deform and diminish ourselves.

Reporters quote the average citizen as talking about sending people to prison and letting them rot, locking them up and throwing away the key. How much and what quality of poor or brutal treatment would be considered acceptable in our prisons? Since the perception that prisoners are not punished enough has been projected so effectively by people who, like Weld, have, for the most part, never been in a prison, this is a serious question.

Should we starve people? Or should we simply not give them enough food, as is happening now in the Massachusetts Departmental Disciplinary Unit (DDU) at Walpole? Should we violate our own laws that place a 30-day cap on total isolation time? Should we force old men with prostate cancer to urinate on the floor if there is no toilet in the cell? Should wives, mothers, and daughters of prisoners have to hand over their used tampons for inspection?

Under the Weld regime, medical and dental services have been cut back. Psychological services are gone. Vocational and education programs have been dramatically curtailed. Volunteers, severely restricted, are in many cases just giving up. Staff considered too ‘nice’ to the prisoners are fired. Visits are a harrowing experience. Property prisoners purchased at the canteen is being seized. In every realm of prison life, things have been taken away.

There will be a high cost for all of this. A prison run this way is a prison that produces deformed and wounded people. The current practice of punishment in Massachusetts is also a war on taxpayers, because our prisons are factories of vengeance and rage. Their inevitable products are more repeat offenses and more victims of those offenses, and the predictable returns to prison where once again citizens will be paying the rent.

In Massachusetts prison managers lack expertise, education, and training. They operate with a deficit of good sense and an abysmal absence of fair play. How else can we explain the lockdown at Walpole? In the wake of the recent escapes from Old Colony, prisoners with ‘poor’ profiles were transferred out of Old Colony to Walpole. Many of these were men who had been living on the
honor block for years. They were ‘good inmates,’ foolish enough to believe that if
they did what they were supposed to do, the Department of Correction would do
what it was supposed to do. These model prisoners are now locked down 23 hours a
day in the dreadful Phase III at Walpole.
Dramas like this are staged specifically to
justify the building of a corrections-industrial complex.
A lockdown is the equivalent of a break­down. Locking a prison down and con­stantly moving the scandal around the sys­tem is the administration’s way of throwing up its hands and saying there is nothing that
can be done with these folks. That is an
inadequate response. Massachusetts has a
Growing prison population whose mean age is dropping. We’d better do something be­sides chaining them to their beds.

NJ Prisoners’ Resource Center

In conjunction with the New Jersey American Friends Service Committee (AFSC) former prisoners have set up a Prisoner’s Resource Center (PRC) to pro­vide services and advocacy for both cur­rent and former prisoners in New Jersey.
Among the services provided for pris­oners are: assistance with parole plans, letters of assurance for the state parole board, information about available re­sources for education, vocational train­ing, family services, etc., advocacy on behalf of prisoners and assistance in ob­taining representation in civil/human rights matters.
Services for former prisoners include: referrals on how to effectively obtain and utilize community resources like food stamps, clothing, housing, welfare, etc., employment counseling, help in readjust­ing to life outside prison, substance abuse information and help in obtaining re­presentation on human/civil rights matters.
The PRC’s goal is to help both prisoners and former prisoners successfully make it back into society. Projects such as this are important and should be encouraged because they involve prisoners helping themselves. PRC hours are 9 AM to 12 noon, mon-thurs. For more inform­ation contact: PRC, 972 Broad St. 6th Fl. Newark, NJ. 07102. (201) 643-3079.

AZ Medical Care Unconstitutional

This lengthy (76 pages) opinion deals with a DOC-wide class action suit filed by Arizona state prisoners challenging the medical and dental care, treatment available for seriously mentally ill prisoners, and unequal medical treatment provided to females compared to that provided male prisoners. District court judge Muecke ruled in favor of the prisoners and ordered extensive injunctive relief.
The opinion sets forth extensive factual findings that give a great amount of detail concerning the provision of health care services in the Arizona DOC.
In its conclusions of law, the court sets forth the relevant legal standard to be used in reviewing prisoners’ eighth amendment claims regarding the adequacy of medical care. The court notes that the denial, delay or intentional interference with medical care shows deliberate indifference by prison officials. While courts may consider expert opinions in order to determine constitutional requirements for medical care such opinions do not establish constitutional minimums. Prison officials can be held liable for failing to implement a proper mental health care program or failing to adequately train or supervise their subordinates in medical care positions.
The court held that one of the most significant problems in the Arizona DOC medical and dental care systems was the inadequate number of trained medical staff. The DOC director testified that this was due to the legislature’s failure to provide adequate funding to the DOC’s budget requests. The court ruled this resulted in delays of treatment which would give rise to a constitutional violation.
The court ruled that security staff have inappropriate roles in the medical care system which included making medical judgements, overruling medical orders and interfering with access to medical care. Such actions can create deliberate indifference to prisoner’s serious medical needs.
The sick call system used in the Arizona DOC did not provide ready access to medical care because prisoners had to wait in line for long periods of time and reveal their medical problems within hearing of other prisoners. However, the DOC was revising its sick call procedures to remedy these problems. The court held that the lengthy delays in referrals to outside medical specialists violated constitutional standards where one diabetic prisoner went blind, one waited a month to see a specialist for a serious gynecological problem, and a prisoner with a history of skin cancer waited 16 months before seeing a specialist. The DOC has since implemented a new system intended to resolve these delays and provide continuity of care, especially for chronically ill prisoners.
The court ruled that the Arizona DOC medical/dental care system violated constitutional standards at the time the suit was filed but that the DOC had corrected many of the problems by the time the case came to trial. To ensure continued compliance with minimal standards of care, especially in the event of budget cuts, the court ordered continued monitoring of the medical care system.
Regarding mental health care, the court held that the Arizona DOC lacks a system to identify female prisoners with serious mental illness. It also found that mentally ill prisoners do not receive treatment unless they request it or regress to the point that security staff recognize the illness or place them in segregation for their mentally ill behavior. There is a shortage of qualified staff to treat mentally ill prisoners and programming is

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non-existent for the mentally ill. This results in lengthy delays for assessment and treatment of mentally ill prisoners.

The Arizona DOC routinely places mentally ill prisoners in segregation or control units despite testimony by psychiatrists that such lockdowns harm rather than help seriously mentally ill prisoners. Prisoners in lockdown receive no mental health care and remain locked down based on assessments by security staff rather than by medical staff. Psychotropic medication is prescribed, continued and discontinued without face to face evaluations by psychiatrists.

“The court finds the treatment of seriously mentally ill inmates to be appalling. Rather than providing treatment for serious mental illness, ADOC punishes these inmates by locking them down in small, bare segregation cells for their actions that are the result of their mental illnesses.” The lack of funding from the legislature was not a defense to these constitutional violations.

The court also found an equal protection violation because, as bad as the mental health care system was overall, it was worse still for female prisoners. The court ordered extensive declaratory and injunctive relief for the plaintiffs on all counts. See: Casey v. Lewis, 834 F. Supp 1477 (D AZ 1993).

**Coalition And Prisoners Fight For Better Health Care**

San Francisco, March 10, 1994 — Despite a demonstration of over 100 people at the gates of Chowchilla prison on January 29 for better health care, the daily medical neglect and abuse continues unabated. Since the beginning of the year, three women prisoners, two of whom had AIDS, have died at the Central California Women’s Facility at Chowchilla (Chowchilla prison).

The recent deaths of Sonja Stapels, Molly Reyes and Jackie Jenkins sparked a public outcry for an immediate, impartial legislative investigation. The Coalition to Support Women Prisoners at Chowchilla called this week upon the State Assembly Committee on Public Safety to begin an immediate investigation into both the deaths and the quality of medical care at the prison. (Last year, the Public Safety Committee’s scathing report on medical care at the California Medical Facility at Vacaville sparked substantive changes at that prison.)

Sonja Stapels died on January 2, 1994, of AIDS-related pneumonia and other complications. Stapels was not discovered to be HIV+ until two weeks before she died. Her cellmates tried in vain for over a month to bring her poor condition to the attention of medical staff. She never received any preventive care, monitoring or treatment which may have extended her life. Jackie Jenkins, a woman living with AIDS, became very ill after working with pesticides on the prison farm for nine months. Her cellmates tried unsuccessfully to get her appropriate care and later, compassionate release. Jenkins was finally taken to a hospital in a nearby town where she died at the beginning of March from Kaposi’s Sarcoma and other AIDS-related complications. Molly Reyes suffered an internal organ rupture and was violently vomiting blood all over her cell. She and her cellmates had to scream for over an hour to get any medical attention. Reyes was finally placed in the infirmary and died shortly thereafter.

Unfortunately, death and medical neglect are nothing new to women prisoners at Chowchilla. Women inside often have a 3-4 week wait to see the doctor who is a retired pediatrician with little knowledge of women’s health care and no knowledge of AIDS. Guards with an elementary first aid course (called MTA’s) dispense medication and diagnose illnesses. The prison administration contends that a gynecologist has been hired. However, none of the women, including those with level 4 (cancerous) pap smears, have seen the gynecologist. Most of the identified HIV+ women live in C yard. Big signs in every yard warn “Beware! There are HIV Infected Inmate Persons in this Facility.” What’s lacking is real HIV/AIDS education. The only AIDS education has been done by a loose-knit group of women prisoner peer educators organized by an inmate, Joann Walker. The prison refuses to officially sanction or support this program. In fact, Walker has been forced to choose between organizing and peer educating. The prison first gave Walker a support group to lead and then took that privilege away when she refused to stop talking to the media.

Approximately, a year ago, women prisoners with HIV contacted ACT UP/San Francisco and other organizations on the outside to ask for help in exposing the poor care and abuse faced by women prisoners with AIDS. Joann Walker’s organizing inside led to the formation of the Coalition to Support Women Prisoners with Chowchilla on the outside. Walker and other women with HIV formulated four key demands: 1) Quality health care for all women prisoners - hire an HIV/AIDS specialist now, 2) High nutritional diets and vitamin supplements for HIV+ prisoners; 3) Support peer education efforts; and 4) Compassionate release for all terminally ill prisoners!

Walker spearheaded a successful campaign to win compassionate release for Betty Jo Ross, a woman prisoner dying of AIDS-related complications. Walker got over 1,100 signatures on a petition demanding Ross’s release. Women prisoners pinned protest notes to their clothing. “Free Betty Now!” Outside, the Coalition organized a phone and fax “zap” campaign to the Director of the California Department of Corrections. Ross was finally released to her family at the beginning of January.

Supporting the four demands of the women at Chowchilla, over 100 people from the Bay Area made the three and a half hour journey to Chowchilla to demonstrate on January 29. Speakers included Yvonne Knuckles, former prisoner and member of Women Organized To Support Women Prisoners at the gates of Chowchilla prison on January 29 for better health care, the daily medical neglect and abuse continues unabated. Since the beginning of the year, three women prisoners, two of whom had AIDS, have died at the Central California Women’s Facility at Chowchilla (Chowchilla prison).

The Coalition urges everyone to join the campaign for justice and better medical care. Letters demanding a legislative investigation of Chowchilla should be.
Health Care (continued)

sent to: Assemblyman John Burton, 455 Golden Gate Avenue, San Francisco, CA 94103. Cards and letters (stamps too) expressing support for the women inside can be sent to Joann Walker, #W1572, C509-19-2L, P.O. Box 1508, Chowchilla CA 93610. For more information, contact the Coalition to Support Women Prisoners at Chowchilla, P.O. Box 14844, San Francisco, CA 94114; (510) 530-6214.

TB Alert
By David Gilbert

Tuberculosis (TB) is the leading infectious killer in the world. Long considered conquered in the industrialized nations, TB is now making a comeback in the U.S. Prison is one danger zone for this disease which can be spread by airborne bacteria. In recent mass screenings (with the PPD test) in New York State, 1/4 of the prisoners showed positive for exposure to TB. Ordinarily only a small portion of those who test positive, about 10%, will proceed to active TB, and it is only those who are actively sick who can transmit the germs to others. While New York has been particularly hard hit, including with treatment resistant strains, TB is an emerging problem in other prison systems as well.

Prisoners need to be aware of the particular problems of containing the spread of TB in populations with significant incidence of HIV (the AIDS virus). The typical TB screening with PPD tests, while a part of a public health program, is not adequate for finding every prisoner who may have active/contagious TB for purposes of isolation and treatment. Persons with compromised immune systems will often show false negatives on the PPD test and can convert from latent to active/contagious TB very rapidly. In addition, some prisoners don't trust medical staff and will live with possible TB symptoms rather than report to sick call. Adequate screening for active TB requires painstaking and expensive measures.

As a practical matter, the front-line of TB protection for prison populations is adequate ventilation. Bringing in fresh air and exhausting the old, along with good circulation, greatly reduce the risk by diluting the concentration of germs. In some situations, ultra violet lights to kill the TB germs are also needed. It is impossible to know without an engineering survey just how much the windows have to be open and how adequate the ventilation is. Prisoners should try to see that such surveys are done. In the meantime, prisoners should maximize fresh air and circulation in all buildings. It is much better to put on an extra sweatshirt for the chill than to catch TB.

More information can be found in: TB Information. Write to: The National Prison Project, 1875 Connecticut Ave. NW, Suite 410, Washington, DC 20009.

AIDS #1 Killer in FL DOC

According to Florida corrections officials, AIDS is the leading cause of death in Florida prisons and many prisoners are released without knowing if they are infected. Half of the people who die in Florida prisons die from AIDS. Prison officials estimate that about 8 percent of that state's 50,000 prisoners are infected with HIV, the virus which leads to AIDS. That is 20 times higher than the infection rate in the general population outside of prisons.

Dr. Charles Mathews, assistant state corrections secretary for medical services, told the St. Petersburg Times: "They go back home, and when they go back there they spread the disease. This is not really a prison problem. It's a public health problem." The Florida DOC does not test prisoners for HIV/AIDS unless they volunteer to be tested. Because many don't take the test no one knows for sure how many are infected or how often prisoners infect each other. Each of the 3,000 prisoners entering the Florida DOC each month are tested for syphilis, gonorrhea and tuberculosis, but not HIV/AIDS.

Florida state law prohibits compulsory AIDS/HIV testing. DOC Secretary Harry Singletary said he would not ask the legislature to modify the law because of money. Singletary said testing is more costly than it sounds because new tests will be used to test new HIV cases. Infected prisoners have a right to treatment and AIDS treatment is expensive, last year it cost the DOC $7.8 million.

Florida prisoners receive a booklet about AIDS which tells them to use latex condoms and limit the number of sexual partners that they have. But sex is illegal in prison so condoms are not allowed. Recognizing that sex goes on in prison a number of groups and individuals favor giving prisoners condoms. Among them: the Florida Governor's Red Ribbon Panel on AIDS and Mathews, the DOC's top health official.

Source: Palm Beach Post, May 23, 1994

Researching Medical Deliberate Indifference
By Dude J. Rose

Prisoners have an eighth amendment right to adequate medical treatment. When bringing a claim of inadequate medical treatment, the plaintiff/prisoner must allege and show deliberate indifference on the part of the defendants towards the prisoner's medical needs and treatment. The Supreme Court has adopted the "deliberate indifference" standard to determine whether officials display the requisite culpable state of mind with respect to conditions of confinement, as well as medical care and treatment of prisoners. See: Wilson v. Setter, 111 S. Ct at 2326-27 (1991).

What one must understand prior to bringing a § 1983 action dealing with inadequate medical treatment is, neither accidents nor inadvertent failure to provide adequate medical care constitutes deliberate indifference to a prisoner's serious medical needs. See: Estelle v. Gamble, 429 U.S. 97, 106 (1976). Also it should be noted that mere negligence does not constitute deliberate indifference. See: Wilson, 111 S.Ct at 2328.

The Circuit courts are unclear as to the requisite degree of subjective intent on the part of prison officials in order to raise an eighth amendment claim. Liability for violations of the eighth amendment has two components, objective and subjective. In a 1992 decision, the Seventh Circuit held, "The objective component is the nature of the acts or practices alleged to constitute cruel and unusual punishment... The subjective component is the intent with which the acts or practices are inflicted." See: Jackson v. Duckworth, 955 F.2d 21 (7th cir. 1992).

The Sixth Circuit held: "No deliberate indifference found when no objective evidence presented that prisoner suffered serious deprivation because injuries not serious enough to require immediate medical attention and no evidence presented to
show or prove a culpable state of mind by prison officials." See: Caldwell v. Moore, 966 F.2d 595 (6th Cir. 1992).

The Sixth Circuit seems to base their decisions in eighth amendment cases on the severity of the objective deprivation in order to decide if the alleged actions of officials support a finding of culpable state of mind. The Eighth Circuit, on the other hand, places emphasis on the subjective component. This requires the prisoner to present proof of reckless disregard by the officials in order to meet the deliberate indifference standard. See: Degidio v. Pung, 920 F.2d 525,533 (8th Cir. 1990).

The Ninth Circuit has ruled that access to medical personnel is absolutely meaningless if they are incompetent to provide prisoners with adequate care. See: Ortiz v. City of Imperial, 884 F.2d 1312 (9th Cir. 1989). The Eleventh Circuit, however, has declined to extend a requirement of medical competence to the treatment of HIV-positive prisoners. See: Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991).

In Hill v. Marshall, 962 F.2d 1209 (6th Cir. 1992), the prisoner was awarded $95,000 by a jury for injury and distress suffered when prison officials improperly administered a tuberculosis drug, placing the prisoner at high risk of contracting the disease. Punitive damages were proper in that case where the prisoner formulated and proved deliberate indifference to his medical needs — not an easy task.

So we come to the question of what type of claims will actually be proper under the deliberate indifference standard? Deliberate indifference to prisoner’s medical needs may be shown, for example, by proving that there are such systemic and gross deficiencies in medical staffing, facilities, equipment, or procedures that the inmate is effectively denied medical care and/or access to adequate medical care. See: Ramos v. Lamm, 639 F.2d 559,575 (10th Cir. 1980), cert denied, 450 U.S.1041,101 S.Ct.1759 (1981).

Although incidents of malpractice standing alone will not support a claim of eighth amendment violation, See: Mandel v. Doe, 888 F.2d 787-88 (11th Cir. 1989), a series of incidents closely related in time may disclose a pattern of conduct amounting to deliberate indifference. See: Rogers v. Evans, 792 F.2d 1052,1058 (11th Cir. 1986). Repeated examples of delayed or denied medical care may indicate a deliberate indifference by prison authorities to the suffering that results out of such delays and/or denials alleged. See: Todaro v. Ward, 656 F.2d 48,52 (2d Cir. 1977). Grossly incompetent medical care or choice of an easier but less efficacious course of treatment can constitute deliberate indifference. See: Nurell v. Bennett, 615 F.2d 306 (5th Cir. 1980).

You should know that treatment itself may violate eight amendment rights if it involves something more than a medical judgment call, an accident, or inadvertent failure. Prison personnel may not subject prisoners to acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. See: Estelle, Supra. The Supreme Court has, declared that such “deliberate indifference” by a correctional system to the serious medical needs of its prisoners constitutes the kind of “unnecessary and wanton infliction of pain” that is proscribed and prohibited by the eighth amendment as it applies to states through the due process clause of the fourteenth amendment. See: Robinson v. California, 390 U.S. 660, 66, 82 S.Ct. 1417,20(1962) See also: Gregg v. Georgia, 428 U.S. 153,73, 96 S.Ct. 2909,29 25 (1976).

A prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to a prisoner and fails to respond or intervene on behalf of the prisoner. See: Young v. Quinlan, 960 F.2d 351,360-61 (3rd Cir. 1992).

There is deliberate indifference when the state of mind of the officials indicated a recklessness in a "criminal - law sense, requiring actual knowledge of impending harm, easily preventable." See: DesRosiers v. Moran, 949 F.2d 15 (1st Cir. 1991).

I hope that I’ve shed light on this topic so that some of you readers out there may find helpful in some manner and to some degree. The issue of medical care for prisoners is a vast and complicated one which always requires a lot of research. It doesn’t help much that the circuits all seem to be split on the issue. A good piece of advice is to research the applicable standard relied upon by your respective circuit court for their findings of what may constitute deliberate indifference to a prisoner’s medical needs.

Here is a simple, four point summary of the steps required to research and prepare your case: 1) A § 1983 action must allege a violation of federal law(s). 2) A § 1983 eighth amendment claim based upon inadequate medical care must show proof of deliberate indifference by prison officials. 3) be sure the defendant(s) is/was an official acting under color of state law. 4) be precise about which official(s) committed or failed to do the acts you are alleging. If you have a legitimate claim, and you effectively comply with these four steps and support your claim with the proper case law, especially decisions from your area circuit court, your chances of surviving the state’s endless motions for summary judgment are dramatically increased.

One important thing to keep in mind, injuries caused by governmental negligence that have been dismissed upon initial review or simply are not redressable under the constitution may very well be sufficient to state a claim under your individual state tort law. The state code should be the first place you look to see if you actually can take your claim in that direction and forum. One final word of advice and a tactic which I have personally used and found to be strategically beneficial in this area: file grievances and written requests. We are all painfully aware that if prison officials aren’t willing to do the right thing, then that’s all there is to it. All the grievances and written or verbal requests in the world aren’t going to influence their decisions or lack thereof. Generally a properly formulated §1983 suit doesn’t require a claimant to exhaust available state judicial or administrative remedies before seeking federal judicial relief. See: Bressman v. Farrier, 900 F.2d 1305,1307 (8th Cir. 1990), cert. denied, 111 S.Ct. 1090 (1991). But as I said, this is a somewhat complicated issue which will require a lot of tedious research. The smarter litigators I’ve known at least try to get a good start on those methods of relief prior to the actual submission of their § 1983 complaint.

So go ahead and make the written requests and/or grievances to the proper officials. This tactic, regardless of its actual necessity, will provide you with crucial exhibits which may very well make and prove your case. If by some mere chance the officials do a flip-flop and act upon your grievances and written requests, you may get the proper treatment you should have been receiving and you may very well still have a claim due to the suffering that resulted out of their delay in providing the needed treatment. Not only can you still claim they are liable for their actions (or inaction), they will have basically admitted there was a delay and must now show a good reason why such delay occurred. I wish you all good luck and much success in the struggle we all face.
WA Initiative to Increase Gun Penalties

By Paul Wright

The Washington Citizens for Justice are the right-wingers headed by Dave Lasure, of the Public Policy Institute in Bellevue, WA; John Carlson, of KVI radio and Seattle Times columnist and Ida Ballasiotes, Republican state representative for Mercer Island. [Editor's Note: writing for the Times plugging I-593 Carlson referred to it in the third person, neglecting to inform readers that he was the chairman of the initiative and his mother the treasurer. A database search turned up 77 references to I-593 in the Times and not once was this mentioned.] In 1993 their main project was to get Initiative 593 on the ballot. Better known as “3 Strikes You’re Out” it was passed by Washington voters in 1993 [See PLN, Vol. 5, No. 6]. Not content with that, they have a new initiative going. This one is Initiative 159 with the slogan “Hard Time for Armed Crime.”

The main purposes of this initiative are to increase the sentences given to criminal defendants convicted of committing crimes with firearms; an expansion of the death penalty statute and elimination of good time for these additional mandatory minimum sentences. It also changes the seriousness level of several offenses that are currently set by the Washington state Sentencing Guidelines Commission, a non-partisan body appointed by the Governor.

If passed into law this initiative would require an automatic, mandatory sentence enhancement of five years for any class A felony; 3 years for any class B felony; and 18 months for any class C felony if a firearm is used to commit the underlying offense. The initiative establishes the following enhancements for the use of other deadly weapons (knives, clubs, rope, etc..) during the commission of a crime: 2 years for any class A felony; 1 year for any class B felony and 6 months for any class C felony. This applies only to first time offenders. The initiative requires that these deadly weapon enhancements be automatically doubled if the defendant is sentenced for using a deadly weapon in any subsequent crime. After that, presumably, it doesn’t matter because the defendant would likely be getting life without parole as a third striker. The initiative does not allow any reduction for good behavior, and the enhancement must be served consecutive to any other sentences imposed. Washington state law now currently allows only a two year enhancement for use of any deadly weapon used during the commission of certain specified crimes.

The initiative would also increase the penalty for current and newly created gun crimes. For example, the current sentencing range for first degree reckless endangerment (discharging a firearm) is 0-90 days. The Initiative would increase that to 15-20 months. Theft of a firearm is currently 0-90 days, it would increase to 12-14 months. Possession of a stolen firearm is currently 0-90 days, it would increase to 6-12 months. It also changes the manner in which prosecutors charge and prosecute crimes by automatically making any and all felony crimes committed with a deadly weapon into the more serious “crime against persons” category, whether or not anyone is actually injured, i.e. display of a weapon. This provision is to increase the likelihood defendants are charged and prosecuted. Its likely effect will be yet more cases going to trial.

In an effort to make prosecutors and judges accountable, the initiative requires a sentencing document be kept for all plea agreements and sentences involving a violent crime and any crime involving a weapon. The document has to include the sentence recommended by the prosecutor, the sentence actually imposed by the judge with the latter's printed name and legal signature. The court and prosecutor shall keep copies. A copy of these documents is to be sent to the state Sentencing Guidelines Commission which will compile a yearly and cumulative judicial record of the sentencing practices of each judge regarding their sentencing practices for crimes involving weapons, violent offenses etc. The Commission is mandated to make a comparison between the sentencing practices of each judge and the standard sentencing range for the specific offense, appropriate offender score and any applicable mandatory minimums. These records must be made public for review in an official published document by the Commission. In Washington state both prosecutors and judges are elected officials and this will likely increase the tendency, already present, to impose longer, harsher sentences, which is the goal of the initiative. Any sentences above or below the standard range will indicate what the prosecutor's recommendation was regarding the sentence.

Firearms are removed from all current property offenses in order to make them separate crimes with harsher penalties. The definition of first degree burglary is amended to include burglaries of any building where an offender was armed with a weapon or assaults anyone. Currently, state law defines first degree burglary as burglary of a dwelling.

The initiative will also expand the death penalty statute by creating whole new categories of offenses eligible for the death penalty. It authorizes the death penalty for any drive by shootings or where a firearm was discharged from or near a vehicle used to transport the shooter, firearm, or both, to the scene of the crime; and for murders committed “to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association or identifiable group.” [Like the U.S. Marines?] It is obvious these provisions are aimed at minority youth who will be targeted as “gang members.”

As previously predicted that the next logical step to the “3 strikes” law would be expansion of the death penalty, here it is: anyone who commits a murder in an attempt to avoid prosecution as a “persistent offender”, i.e. third striker, is eligible for the death penalty. Last but not least, the offense of residential burglary is added to the list of offenses qualifying for the death penalty in the event someone is killed during its commission.

Readers should note that this is an initiative to the legislature, not to the people like Initiative 593 (3 strikes) was. There are several important differences between these processes. As an initiative to the legislature its backers have until December 30, 1994, to gather the signatures of 182,000 voters. If they gather that many valid signatures the initiative is presented to the state legislature to pass into law in its next session. If the legislature does not pass the bill into law it will be placed on the November, 1995 ballot to be voted on directly by the voters. By contrast, an initiative directly to the people requires that the 182,000 signatures be gathered by early July. By submitting the initiative to the legislators the backers gain several additional months to gather signatures. If they gather the necessary
WSR Consent Decree Loses S. Ct. Challenge

By Paul Wright

As consistently reported in PLN, most recently in the March, 1994, issue, prisoners at the Washington State Reformatory (WSR) have been involved in nearly 13 years of litigation involving prison officials' challenge to the consent decree they entered into in 1981. The decree mandated that prison officials single cell prisoners at WSR in exchange for the prisoners dropping their other claims. The dropped claims dealt with medical care and virtually all aspects of prison conditions at WSR. Within one week of agreeing to a population cap which would forbid double celling at WSR, prison officials began trying to weasel out of it. As previously noted, they have finally succeeded in doing so. The district court ruled that the decree could be dissolved once prison officials complied with the decree and single celled WSR. In other words, the day they met the decree's requirements in 1987 they were free to do as they pleased as long as no continuing constitutional violations were occurring. The ninth circuit affirmed this interpretation at Collins v. Thompson, 8 F.3d 657 (9th Cir. 1993).

In doing so, the ninth circuit deviated from every other court to consider the matter of consent decrees. Consent decrees are contracts entered into between parties to an action. They often require more than the constitution would. The court created a conflict between the circuits and was the basis of the prisoners' appeal.

The petition for certiori, case number 93-1561, was filed with the US Supreme Court in April, 1994. The questions for review were: "(1) Must a consent decree be vacated solely because there is no showing of ongoing constitutional violations at the prison which is the subject of the decree? (2) Did the Ninth Circuit err when it refused to consider the consent decree language that governs the final disposition of the case and instead interpreted the decree to require that it be vacated once minimal constitutional standards have been achieved?"

On May 31, 1994, the Supreme Court denied the petition seeking certiori. That the suit was eventually lost was not due to a lack of talent or perseverance by our counsel, rather it was due to the courts' increasing willingness to sanction overcrowding and defer to prison officials, regardless of how legally or morally wrong their position and actions may be. In this case the DOC repeated its arguments and positions according to their whims of the moment. Doing quite literally anything to weasel out of the lawful agreement they had entered into, which goes to show how much their word is worth.

The practical legal effect is that the Collins decree is essentially a nullity now with the DOC free to once more overcrowd the Reformatory. The bad decision on consent decrees given by the ninth circuit will stand for some time until it is overruled en banc or at some future point by the supreme court. The ninth circuit is now unique in this interpretation of prison consent decrees.

For the past eleven years the litigation has been conducted by Bob Stalker of Evergreen Legal Services on behalf of the WSR prisoner-plaintiffs. He has consistently done an excellent job in presenting the prisoners' interests, both in terms of his perseverance and the skill and quality of his legal representation. WSR prisoners are grateful to Bob's efforts on our behalf over the years to forestall double celling at the antiquated prison.

Little Diversity in WA State Courts

A survey conducted by the Washington State Supreme Court's task force on diversity in the judiciary yielded not very surprising results. Out of 451 state judges in Washington 95 percent, all but 22, are white. Only three of those 22 are in courts other than King County (Seattle). Eastern Washington, with its substantial Hispanic population has no Hispanic judges.

By contrast, those sentenced for adult felonies (which ranges from theft to murder) in 1993 were 30 percent minorities, according to the state Sentencing Guidelines Commission.

The attitude of many court staffs towards judicial diversity tends to be cavalier. One Eastern Washington court responded to a survey question concerning judicial staff's racial background by replying "Asian," as in "Caucasian".

So far the only result of this survey has been a seminar on work force diversity in the judiciary held by the state's Minority and Justice Task Force. A question not asked in the survey, nor reflected in the felon population report, is the economic background of the state's judges as well as those of all people sentenced for felonies. It is quite likely that such statistics would show all or most of the judges, even the minorities, are relatively wealthy while the vast majority of criminal defendants are relatively poor. It has taken decades for race to become a focus in the criminal justice system. How long before class is raised or even measured?
WA Punishment for Use of Religious Name Illegal
By Dawud Halisi Malik

On January 5, 1978, the superior court of the county of Walla Walla accepted my petition for name change as I had adopted Al-Islam as my religion. On May 8, 1990, I arrived at the Clallam Bay Correction Center (CBCC). I requested that I be acknowledged by my religious name as I gave a copy of the court order decree to my counselor to have the information distributed to whoever needed it. I requested an identification badge change reflecting Dawud Halisi Malik, which was denied by superintendent Neal Brown.

I had several petitions pending in various courts under my Islamic name. The institution was so bold as to reject legal and personal mail sent to me under my Muslim name. CUS Kathy Kaatz was even bolder: she tore up legal documents she had initially notarized because I had placed both names on the legal documents, my slave name of David Riggins in conjunction with my Islamic name. CUS Kaatz’s display of arrogance, bias, bigotry and racism was very apparent by her totally unprofessional behavior. She had me escorted from her office and infracted for questioning her behavior.

The administration at Clallam Bay told me that I could not send out any mail in my Islamic name nor receive any. Should I attempt to mail any letters using my Islamic name I would be infracted and punished. I was duly infracted and disciplined by the hearing committee. I spent 40 days in segregation; 30 days on cell confinement and was given 80 hours of extra duty for using my legal religious name. As a result, I filed a 42 U.S.C. § 1983 and § 1985 suit alleging that prison officials violated my constitutional rights by refusing to process mail and documents in which I’d used my legal religious name. The district court dismissed my suit holding that use of my religious name was not from a “sincere religious belief” and that forcing me to use my committed name was reasonable.


The ninth circuit decision agreed with the other circuits that the adoption of Muslim names by converts to the Islamic faith is an exercise of religious freedom. See: Salaam v. Lockhart, 905 F.2d 1168, 1170 n.4 (8th Cir. 1990) (“It is common practice for a Muslim to change his name as the Qur’an provides, and the former Anglo name is thought to be a badge of a spiritually unenlightened state and a relic of slavery.”) Ali v. Dixon, 912 F.2d 86, 90 (4th Cir. 1990) (“The first amendment protects an inmate’s right to legal recognition of an adopted religious name.”) Felix v. Rolan, 833 F.2d 517, 518 (5th Cir. 1987) (“The adoption of Muslim names by inmates practicing that religion is generally recognized to be an exercise of both first amendment speech and religious freedom.”)

The appeals court rejected the lower court determination that my religious views were not sincerely held because they had developed over a period of time. The court held I had stated a valid free exercise claim. The court found no legitimate penological interest in preventing me from using both my religious and slave names. They agreed with other circuits who have found this to be “a reasonable middle ground between absolute recognition of the plaintiffs Muslim names and the prison interests of order, security and administrative efficiency.” Use of both names has no adverse impact on prison administration or security. “Malik’s right to free exercise is violated by any prison regulation to the contrary or by contrary enforcement of an ambiguous regulation.”

Summary judgment was improper in this case because there were material facts in dispute. Superintendent Brown claims that I sought to exclusively use my Islamic name. The court noted that my claims focus on not being able to use both names on my mail and legal documents and being punished for attempting to do so. The court held that the evidentiary record supports my assertions. The district court erred by weighing the evidence and finding in favor of prison officials where the matter was disputed.

“Malik’s adoption of a Muslim name is an expression of his religious faith. He is entitled to use both his religious and his committed names on correspondence, on legal documents, and in his daily affairs. Whether defendant prison officials violated this right and improperly disciplined Malik is a disputed matter that must be resolved at trial.” See: Malik v. Brown, 16 F.3d 330 (9th Cir. 1994).

OR DOC Held in Contempt for Retaliatory Transfer

In 1988 Arlen Smith and several other Oregon state prisoners sought judicial review of Oregon DOC administrative regulations in Oregon state courts. Shortly before the briefs were due, Smith, the initiator of the litigation, was transferred to the Nevada state prison system. Upon his transfer Smith was moved without any of his legal or other property. Several weeks later some, but not all, of his legal materials were sent to Nevada. Among the reasons given for the transfer, by the Assistant Attorney General assigned to the DOC, was that Smith’s “frivolous lawsuits were taking up too much of the staff’s time.” Realizing that such a motivation was illegal the AG and DOC changed the relevant documents.

Upon his transfer Smith filed a motion for contempt against the DOC alleging that the transfer was retaliatory and designed to interfere with his right of access to the courts. The Oregon court of appeals appointed a special master to resolve legal and factual issues. After extensive hearings the master concluded that Smith was transferred by the Oregon DOC to interfere with his access to the courts and that Oregon State Penitentiary (OSP) officials had destroyed Smith’s legal materials found in the OSP law library.

The court of appeals reviewed the master’s report and held the DOC in contempt and awarded the statutory maximum $100 fine. The court held that Smith’s transfer to Nevada delayed resolution of his challenges to administrative policies and this delay constituted prejudice. The destruction of Smith’s legal records was also held contemptible by the court who characterized it as “the ultimate separation of petitioner from his records.” Transferring Smith out of state in order to interfere with his access to the courts was also reason to find the DOC in contempt. This finding was supported by the fact that the DOC later tried to change the reason for the transfer, apparently after realizing that such a reason was unlawful. The facts of this case make it specific to prisoners in Oregon. See: Smith v. Department of Corrections, 870 F.2d 254, 126 Or App 721 (Or. App 1994).

August 1994 -8-
MDOC Sanctioned for Ex Parte Contacts with Prisoners in Court Cases

Over eight years ago, lawyers from the Michigan Attorney General's office sent interrogatories directly to prisoners about the Knop v. Johnson case without notifying the plaintiffs' lawyers. Judge Enslen entered a protective order on February 19, 1986, and he later relied upon that conduct by the defendant's counsel as one factor justifying a higher award of attorney fees to the plaintiffs' lawyers in that case. Knop v. Johnson, 712 F Supp 571, 586 (W.D. Mich. 1989).

In April 1994, the Michigan Attorney General and Department of Corrections sent one of their experts on classification, Jack Alexander of the New York DOC, to four Michigan prisons where he interviewed or tried to interview a total of sixteen male and female prisoners about the classification issues in the case of Cain et al v MDOC, No. 88-61119-AZ, a statewide class action case before the Ingham County Circuit Court, Hon. James R. Giddings. The MDOC did not notify the plaintiffs' representatives about these interviews, and Mr. Alexander did not make clear to the prisoners that he was working against their interests.

The Cain plaintiffs moved for a protective order and for sanctions. The court held a hearing on May 9, 1994, and granted the motion. On May 24, 1994, the judge signed an order which directed that the Defendants and those in their employ shall have no contact with plaintiff class members regarding matters at issue in this case without first obtaining a court order or the permission of the plaintiffs' representatives. He also ordered that Mr. Alexander shall turn over to the plaintiffs' representatives (1) the names and numbers of all plaintiff class members interviewed by him during April 1994, (2) all notes and reports made by Mr. Alexander concerning those ex parte interviews, (3) a description of the substance of all those ex parte interviews. And the judge ordered that any and all evidence obtained through the ex parte interviews shall be admissible at trial nor shall it be relied upon by Mr. Alexander in formulating his opinion as to any matter at issue in the case.

Suit Filed Over Conditions at Virgin Islands Criminal Justice Complex

For almost two years, prisoners at Criminal Justice Complex have been locked up for 23 hours a day in overcrowded, filthy, rat and roach infested cells. They are only allowed out for a short period each day to shower and for an hour of recreation twice a week. Cells designed for one person are being used to house four or five, with mattresses on the floor which are frequently soaked by malfunctioning, overflowing toilets. Prisoners eat in their cells, on beds or on the floor. The food is often stale, their drinking water is filtered shower water and is contaminated. There is no running water in the cells other than the toilets, not enough light to read or write by, and the cooling and ventilation systems frequently do not work.

These conditions have brought the National Prison Project of the American Civil Liberties Union Foundation to join with St. Thomas attorney Benjamin Currence in filing suit on behalf of the prisoners against Governor Farrelly and Bureau of Corrections Directory Aiken and his staff.

In a complaint filed June 20, 1994, the plaintiffs' counsel seek relief from unconstitutional conditions that they claim fall below standards of human decency and deny basic human needs for the 208 men and women, both sentenced prisoners and pretrial detainees, held at CJC.

The complaint describes the serious fire danger to the prisoners who are held on the third floor of a three story building that formerly housed the central police station and holding cells. The only way out in the event of fire is a locked stairway, and no plans for emergency evacuation exist. The electrical system is dangerously defective and exposed electrical wiring is found in some areas that are often flooded.

The extreme overcrowding at the facility increases the risk of transmission of infectious diseases and, when combined with the filthy conditions and lack of adequate air circulation, creates a particular threat for both prisoners and staff from airborne diseases such as tuberculosis. Medical care is grossly inadequate with untrained prison guards determining whether prisoners can see a nurse or physician with the result that serious problems are not diagnosed or treated. Prisoners with chronic diseases are not monitored or treated properly. Mental health care is dangerously deficient. Mentally ill prisoners do not receive proper treatment and are housed in among other prisoners, creating risks for the general population and for the mentally ill who are sometimes taken advantage of and abused. In some cases, staff have beaten mentally ill prisoners who are proving difficult to manage while keeping them handcuffed or shackled to chairs and tables.

The National Prison Project attorneys were originally asked to come to the Virgin Islands by local politicians, journalists and the families of prisoners trying to end the long lockdown. Attorney Mark Lopez says, "Now we have seen the appalling conditions here, we can see that the problems go far deeper than the lockdown. The Bureau of Corrections cannot be allowed to continue to risk the lives and health of the prisoners whose care they are charged with."

UNICOR Info Wanted

Editor's Note: In the June, 1994, issue of PLN we reported on a lawsuit filed by BOP prisoners Joe Mohwish and Duane Olson alleging racketeering and other illegal labor practices by UNICOR. We received the following from Joe. If you would like to hear from federal prisoners who have any past or present knowledge, or can obtain copies of any documentation (such as invoices, quotations, shipping receipts, memorandums, directives, etc.) of UNICOR manufacturing any products for or providing any kind of service or making sales of any kind to any private sector business or any customer other than the US Government.

Thank you in advance for your help. Please circulate this ad to a friend who can help. Please mail copies or correspondence to: Research Project, Box 920474, Norcross, GA. 300192
Suit Challenges Inadequate PD Funding

By Marc Lee

Many lawsuits have been filed throughout this country addressing the problems in indigent defense programs. Although many of these lawsuits have been successful in showing the inadequacies in the indigent defense programs, for the most part they have been unsuccessful in obtaining relief. On May 12, 1994, prisoners at Arizona State Prison in Florence filed a class-action lawsuit which has taken a different approach to the problem (Ernst v. Symington, U.S. District Court for the District of Arizona, Dist. Ct. No. CIV 94-0953-PHX-SMM (MM)). The defendants in the lawsuit are Fife Symington, Governor of Arizona, the Attorney General of Arizona, and the Boards of Supervisors for Pima and Maricopa Counties.

Instead of attacking excessive caseloads and workloads of indigent defense attorneys or the quality of indigent representation, as the other lawsuits have done, Ernst is attacking only the lack of funding and resources to indigent defense programs. This lack of funding and resources is so serious in Arizona that the indigent defense programs have no choice but to provide constitutionally inadequate representation to the vast majority of defendants. Few defendants are chosen to have their cases properly investigated, researched or prepared. This has resulted in many indigent defendants losing trials which could have been won; accepting plea bargains for outrageously long periods of incarceration (40 to 70 year plea bargains for nonviolent crimes are not unheard of); and completely inadequate appeals. To compound this problem, indigent defense programs also lack the funding and resources to properly investigate claims of ineffective assistance of counsel for post-conviction relief proceedings. Not only are indigent defendants receiving inadequate representation at trial, but they are also unable to prove it after trial.

Ernst has no pretensions about knowing what amount of funding would assure effective representation. The lawsuit is based on the budgets of Pima and Maricopa Counties which reveal that county prosecutors receive 2 to 3 times the amount of funding that indigent defense programs receive. This relationship is boosted to 6 to 7 times the amount of funding when indigent defense programs have access to the services of law enforcement agencies, which the county prosecutors receive at no cost, are added. The lawsuit also does not suggest that the funds and resources of indigent defense programs should be increased to the excessive amount given to the county prosecutors — only that the funds and resources of both sides of the justice system be equal or close. If the county prosecutors continue to receive the excessive amounts of funding and resources, as they do now, the prosecutors will continue to defeat the indigent defendant simply by outspending them.

"While criminal trial is not a game in which the participants are expected to enter the ring with a near match of skill, neither is it a sacrifice of unarmed prisoners to gladiators." U.S. v. Cronic, 466 U.S. 648, 104 S.Ct 2039, 80 L.Ed.2d 567. Ernst does not ask the court to look at the skill of indigent defense attorneys, or the skill of the county prosecutors, all it asks is that the indigent defendants in Arizona do not continue to be the "unarmed prisoners" as described above.

Help Get Mumia Abu-Jamal Back on the Air!

By Noelle Hanrahan

Sunday May 15th, 1994: The New York Times ran an AP article "From Death Row: A Radio Show" highlighting the next day's premier of Mumia Abu-Jamal's radio commentaries on All Things Considered (ATC). Most major dailies ran the article. That same day, NPR News Managing Editor Bruce Drake (who was left in charge while his boss was on vacation) stunned NPR weekend staff by single-handedly—without editorial consultations—canceling the debut. This was after NPR had selected, recorded, and launched a nationwide publicity campaign highlighting the debut of these "unique" commentaries. In fact, NPR does not usually set an air date for commentaries but the press interest was so high they scheduled an air date of Monday May 16th.

Since July of 1992 as the director of the Prison Radio Project I have been recording and producing Mumia's commentaries for public radio (heard in the S.F. Bay Area on Flashpoints, KPFA 94.1 FM, Wednesdays). In February 1993, I went to Washington D.C. and scheduled auditions of Mumia's demo tape with Gail Christian, Executive Director of Pacifica National Programming and Ellen Weiss, Executive Director of All Things Considered. I was accompanied by Jane Henderson of Equal Justice USA. NPR was immediately interested. Ellen Weiss was very impressed with Mumia's work. She said "I am honored, let's make this happen ... my audience needs to hear about these issues, this is a unique perspective... thank you."

NPR offered a producer, an engineer, and a commitment to air the material. Pacifica did not get back to me or pick up the series until the media racketus hit. It's interesting to note that local Pacifica stations WPFW in Washington, D.C. and WBAI in NYC as well as KPFA have been playing Mumia for years. All Things Considered has an audience of 7 million people. It is heard on 490 stations across the US, Canada, Mexico, South Africa, and Hungary.

Mumia Abu-Jamal is an insightful and brilliant analyst of the American condition. He was the minister of information of the Black Panther Party in Philadelphia in 1968 at age 16. As a trained radio journalist, he filed for ATC in 1981 while he was a reporter at WUHY (now WHYY), the Philadelphia NPR affiliate. Mumia won a Peabody, the highest award in public broadcasting, for a report on the pope's visit to Philadelphia that year. He has been on death row for 12 years, having been unjustly convicted of shooting a Philadelphia police officer in December of 1981.

Call NPR at 1-800-235-1212: Demand that All things be considered! Fax, e-mail or Write Bill Buzenberg, VP, NPR News at (fax 202-414-3329) 635 Massachusetts Ave. NW, Washington DC 20001-3753. For more information, contact: Noelle Hanrahan, Prison Radio Project 415-648-4505 or write 2420 24th St. San Francisco, CA 94110.
Oppression on the Rise in Arizona

By O'Neil Stough

Arizona has joined the ranks of many other prisons nationwide where oppressive and tried-and-failed barbaric methods of the distant past are being re-instituted.

Governor Fife Symington, up for re-election this year, and Director of Corrections, Sam Lewis whose experience is in law enforcement and kowtowing, both with no experience in corrections, have spearheaded the drive to make the Arizona prison system an environment of suffering, rage and cruelty.

At a recent Republican fund raising dinner, Symington, with Lewis in the wings, announced a new “get tough” program. Regarding one of the facilities being planned, Symington bragged of the cruelty, “It will be a hellhole no man will ever want to go.” Lewis boasted later that “troublemakers” (guess who defines that?) will be forced to perform hard labor in the hot Arizona desert without benefit of tools. “They will literally be breaking rocks with their bare hands,” Lewis stated.

Such “leadership” from the top has given rise to an increase in threats and abuse of prisoners by guards who perceive the “get-tough” philosophy as a green light to act out their basest hostilities.

Lewis has consistently demonstrated he has little regard for the suffering and abuse of prisoners. He has further shown little understanding of law other than the street cop mentality of using power and brute force, rather than reason or intelligence, to operate the prison system.

He is facing no less than two contempt of court violations for refusing to obey court orders aimed at the prisons. At a recent hearing regarding the Casey v. Lewis case designed to provide, among other things, proper law libraries in the state’s 29 institutions, and access to the courts, his demeanor was defiant and smug. He acknowledged he told staff not to worry about any fines that might be assessed against them for contempt for refusing to follow court orders in Casey. He informed staff any fines would be paid by the state.

During the hearing, Special Master Dan Pachoda, assigned to conduct the hearing, said that Lewis was being “contemptuous” and reminded the prison director that he, not Lewis, was running the hearing.

In a separate contempt hearing, Lewis was severely scolded by the Court for attempting to impose an adult magazine ban. Any magazines which showed exposed breasts, whether Playboy, Easy Rider or National Geographic, were slated to be taken in a massive shake-down, and forever banned. This action was in direct defiance of the 1973 Hook decree which affirmed 1st Amendment rights to receive such publications. Attorney John P. Franks, on behalf of plaintiffs in Hook, called Lewis a “tin horn dictator.” “I’ve never seen a grosser defiance of the federal court in all my life,” stated Frank to U.S. District Judge Carl Muecke.

Three days before the ban he was forced to rescind the directive. He has vowed to reverse the 1973 ruling.

Lewis recently took hot pots, and the foodstuffs for them, from the inmate store. Other store items, not only those for hot pot use, have been severely reduced. From a list that was once four pages long, it is now one page. Prisoners in large numbers now go hungry, and irritated, between sparse prison meals.

Also banned is personal clothing prisoners could obtain with their own funds such as t-shirts, underwear, socks and blue jeans. Now only used and/or soiled state-issue of these very same items is allowed and at a cost to the taxpayer.

Fans, which prisoners bought or family sent them, were also recently banned. In the intensely hot and humid conditions of Arizona, fans are needed ventilation in many of the state’s institutions where ventilation is poor, at best.

Following this, CD players and tape recorders were banned. Any radio with a cassette player taping capability is now not allowed. This poses a tremendous strain on those who are illiterate (roughly 72%), whose only means of communication with family was a correspondence tape.

Bills have been taken before the legislature to charge prisoners for medical care and one bill, which failed, sought to charge prisoners for electricity. For the few who have jobs, the average pay is 20 cents an hour.

The system is destined to reach epidemic overcrowding as the new “no parole” law took effect in January, 1994. Anyone sentenced after then must serve 85% of a mandatory sentence before consideration for parole. Another parole related law now in effect mandates that a parole panel must vote unanimously, not just a majority, for parole or it is denied.

Under Lewis, halfway houses have been closed and most all programs which aided a prisoners rehabilitation or reintegration into society have either been discontinued or severely cut back.

The claim by Lewis and Symington are that these so called “get-tough” measures somehow deter crime or criminals. No data whatsoever, past or present, supports this supposition. Quite the contrary, ill treatment breeds ill behavior.

Some ranking staff have resigned in protest at the barbaric and cruel policies being implemented. Escapes are rising in response to intolerable conditions, hunger strikes have taken place and the early signs of mass protests, and revolt, are emerging. Human suffering in a barren and desolate environment breeds hostility and rage. Sooner or later it will seek expression such as the massive riots of the late 1960’s and early 1970’s in prisons nationally; a fact Symington and Lewis obviously lack the experience to understand.

While such tough talk and actions sounds good to a fed-up public in these troubled times, it rings hollow. It is counterproductive, dangerous, expensive and a waste of hard-earned tax dollars. More prison cells do not a safer community make. And, for those who occupy those cells, harsher and tougher policies and restrictions do not reform, but rather, deform.

FBI Heroin Dealer

FBI agent Kenneth Withers stole one hundred pounds of high quality heroin from FBI evidence lockers and then sent mail solicitations with a one ounce sample packet of heroin, to drug dealers whose names he had acquired from FBI files. Withers, a seven year FBI veteran, instructed drug dealers to call him at a pager number and then asked them to send money, $75,000 per kilo, to private postal boxes in South Jersey. In his mail solicitation Withers offered drug dealers unlimited quantities of high grade heroin without prior payment and at half street prices. The FBI was tipped off to the scheme by drug dealers who received the offer. Withers was fired and then arrested in his FBI office. Apparently he had already made $75,000 on his idea.

Source: Seattle Times, June 4, 1994
Crimes Against Habeas Corpus

By Susan Blaustein

With its myriad new death penalty offenses, "three-strikes" provisions, mandatory minimums and moneys for prisons and police, Congress left only one thing out of its much-vaunted new crime package: any protection for Americans' most basic constitutional rights. In their poll-driven stampede to look tough on crime and improve the safety of the streets, members of Congress have once again compromised the safety of our individual liberties by voting to strip from both House and Senate versions of the crime bill all provisions aimed at safeguarding the right of habeas corpus.

In recent years habeas corpus has been threatened by a battery of Supreme Court decisions that have systematically narrowed prisoners' access to the federal courts. The provisions in the crime bill would have corrected the most egregious of these rulings, thereby restoring the historic balance between states' and individuals' rights in reviewing criminal convictions. Many constitutional scholars and lawyers and some Democratic legislators believe it is the duty of Congress—which first incorporated habeas provisions into Article One of the Constitution in 1789 and has been responsible for its oversight ever since—to make sure that the current Supreme Court does not jeopardize those essential rights habeas corpus was designed to protect.

Although most habeas petitions are filed by ordinary prisoners, the vast majority of these never make it to federal trial. It is the relatively few petitions filed by death-row inmates that are far more complex, expensive and time-consuming to litigate. Because so many capital defendants are assigned incompetent lawyers and are convicted in seriously flawed proceedings from the prosecutor to the prisoner, who must now demonstrate that he could never have been found guilty had there not been a constitutional violation at his trial—an almost impossible standard to meet. With this ruling the Court effectively lent its seal of approval to coerced confessions, the failure to inform prisoners of their right to counsel and the suppression of exculpatory evidence by prosecutors or police, so long as additional incriminating evidence exists. In Herrera v. Collins, perhaps the most shocking decision issued last year, the Chief Justice held that a condemned person whose appeal is based solely upon strong new evidence of his innocence is not entitled to a federal court hearing. The ominous formulation that one might be innocent but nevertheless may be executed because one's trial has been deemed constitutionally correct is the latest Orwellian twist in the Court's recent habeas jurisprudence.

Still another series of cases, originating in a 1977 Rehnquist opinion, have deprived inmates of federal court review when their lawyers have made mistakes. In 1991, for example, Justice Sandra Day O'Connor held that Virginia death-row inmate Roger Coleman would not be allowed to present new evidence of his innocence because his attorney had been a day late in filing Coleman's habeas petition. Coleman was executed. Apparently, in the High Court's view, punctuality takes precedence over possible innocence.

"The public thinks the defendants get off on technicalities," says veteran capital defender David Bruck. "But the truth is, defendants are being executed on technicalities, due to the thicket of procedural obstacles in habeas rulings by the Supreme Court."

The habeas provisions proffered by the House Judiciary Committee would have eliminated some of those new procedural obstacles and enabled inmates to have their day in federal court without being able to abuse that privilege by repeatedly filing last-minute, specious appeals. Most important, given what both sides acknowledge is the often deplorable quality of defense counsel in capital cases and the extraordinary complexity of habeas litigation, the provisions would have created a mechanism for assigning experienced attorneys both at the trial level and for post-conviction appeals.

But the 103rd Congress, caught up in heated debate over the horrors of violence and the virtues of capital punishment, was keener on eliminating inmates' weightlifting equipment and federal college education funds than on bolstering prisoners' rights—particularly with state prosecutors jamming members' fax machines with hyperbolic warnings that "to vote for the euphemistically entitled habeas reform...is to vote to end the death penalty."

Lest they be accused of "coddling criminals," House Republicans in particular strove to outdo another's rhetorical brandishes in denouncing the Democrat-led Judiciary Committee's measures.

"How can anyone explain to the American people," queried Representative Charles Canady, "that we should grant convicted murderers on death row more opportunities to delay the execution of their sentences, more opportunities to thwart justice — and more opportunities to torment the families of their victims? Let me tell you, the people will not buy it."

Judiciary Committee leaders countered that their habeas provisions did precisely what the critics wanted. "This is real streamlining," insisted Representative Don Edwards, chairman of the
Subcommittee on Civil and Constitutional Rights, which drafted the measures. "It takes care of these endless delays; it provides for counsel: It is a real reform."

But Representative Henry Hyde, the ranking minority subcommittee member, masterminded a successful campaign to have the entire habeas package, including the counsel provisions, deleted from the larger House crime bill. "This year it is the considered judgment of law-enforcement professionals to just leave habeas out," Hyde explained, when asked why he decided not to offer his own more limited substitute for Edwards' reform package. "They want several of the things that are in this bill, and they fear that habeas might torpedo the whole [crime] bill, the way it did in the last two Congresses." In mid-April the bill's habeas provisions, as Edwards quipped, "were executed" on a vote of 270 to 159.

Civil rights advocates and constitutional law experts were disappointed by House members' apparent allergic reaction to what Boston University law professor Larry Yackle called "an extremely modest and balanced and fair reform package."

"I would have thought they would have struck a balance," Yackle said. "If you extend the reach of criminal sanctions, you would want to do something to make sure the procedural machinery for protecting rights would be maintained."

"Basic issues of individual rights get lost in the hysteria," said habeas specialist Bruck. "If the House had to vote on the Bill of Rights itself last week, it would have lost by a good margin." Last fall Senate Judiciary Committee chairman Joseph Biden cut his even more controversial habeas provisions out of the Senate crime bill for similar reasons. "We couldn't get it passed," Biden admitted recently in a television interview. "We should leave it for another day; we should help the police with another 100,000 cops."

This sacrifice play by both houses of Congress was echoed by the President and Attorney General Janet Reno, neither of whom supported either the habeas provisions or the Racial Justice Act (RJA), another controversial measure in the crime bill that would allow death-row inmates to use statistical evidence of discrimination to challenge their sentences in court. After habeas's defeat the White House — apparently aware that it had inadvertently alienated Congressional Black Caucus members through its efforts to court conservatives by not backing the bill's most liberal measures — finally mustered some political will. It was able to do some last-minute lobbying for the RJA, which ultimately squeaked by in the House on a 217-to-212 vote, but the bill still must clear a hostile Senate to be included in the final package. [Editor's Note: The RJA was not in the final crime bill.]

The scars left by this epidemic of political expediency extend beyond the gaping absence of habeas protections in yet another crime bill. By abandoning habeas corpus to the ravages of the current Supreme Court, both the legislative and executive branches of government have, by default, endorsed the High Court's draconian agenda on habeas reform, thereby weakening the separation of powers. The entire apparatus of the state is now on record that individual rights rank well below the rights of states to preserve their convictions and the call for speed and finality in executing criminal judgments, in such a climate, a person wrongly convicted hasn't got a prayer.

Reprinted from The Nation

Recidivism Revisited

Michigan's corrections department recently released a five-year study of its paroled prisoners that reached the same conclusion as a similar six-year Louisiana study released last year: 55.2% of Michigan's 1986 parolees never returned to prison (nor did 56% of Louisiana's 1987 released prisoners).

5-year follow-up study on first-time Michigan parolees released in 1986

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<tr>
<td>Larceny</td>
<td>50.0</td>
<td>50.0</td>
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<tr>
<td>Auto Theft</td>
<td>49.5</td>
<td>50.5</td>
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<tr>
<td>Forgery</td>
<td>47.3</td>
<td>52.7</td>
</tr>
<tr>
<td>Burglary</td>
<td>45.3</td>
<td>54.7</td>
</tr>
</tbody>
</table>

3,574 released
1,973 parole discharges (55.2%)
1,601 parole violators (44.8%)

Source: The MCF Factor (Michigan)

These two studies debunk the popular myth that 70-80% of ex-cons return to prison. They are the latest to examine how people fare who were actually released from prison, providing sound data as to how many and which ex-cons pose a significant threat to the public.

Earlier studies by the U. S. Justice Department — "Prevalence of Imprisonment" (1985) and "Recidivism of Prisoners Released in 1983" (1989) — reached the same conclusions: Most ex-cons do not return to prison and the best risks are those who served time for violent crimes, especially murder. Apparently, the public perception "once violent, always violent, lock 'em up forever" is baseless. But, as a result, thieves and drug offenders shoot through the system too fast for it to have any effect, while many once-violent criminals are held past the point when they could safely be released. A poor ordering of priorities.

Statistics Under Attack

F.B.I. Director Speaks out in Support of DNA Profiling

By Dale Gardner

The method used by the FBI to calculate the frequency of a DNA match has been questioned in a recent paper. It is reported that the FBI calculates match probability based upon a database of large pools of "Caucasians" or "Blacks". In an article in Science, Volume 254,1745 (1994), two geneticists contend that more fine tuning of the database is needed to adequately reflect efforts of genetically differentiated subgroups. For example, it is claimed that there is a higher probability for a chance match of a Polish American with another Polish American than would be indicated by the larger "Caucasian" Database. The FBI Director has vigorously defended the FBI approach as reliable and acceptable for use in court.

A study of DNA profiling by the National Academy of Sciences, due for release within the next month is expected to address the issue of population genetics (just as it did with voice identification, this report should have a major impact on the presentation of DNA evidence in court.)
Prisoner Unrest in Georgia

By A Georgia Reader

On Sunday, June 19, 1994, prisoners at Hancock Correctional Institution in Sparta, Georgia revolted in one of the worst prison riots in Georgia history. Damages were estimated at over one million dollars. Establishment media reports erroneously blamed the disturbance on "faulty showers". In fact, captors at Hancock had forced prisoners at the 900 bed facility to go without running water for more than two days prior to the incident. Prison administrators offered no official explanation for the water cutoff, nor was there any attempt made to calm prisoner unrest during the weekend-long water shortage.

Problems began on Friday afternoon when water service to the prison's dormitories was turned off and prisoner sinks, toilets, showers and drinking fountains ceased to operate. Interestingly enough, water flow continued without interruption to utility rooms adjacent to each dorm and to the prison's kitchen. On Saturday afternoon water was delivered to the dorms by the prison fire truck, one bucket per room, for flushing toilets. Occasional deliveries of ice and drinking water were made to dorms through Sunday morning. The deliveries then ceased. Early Sunday evening ice chests containing dirty, foul-smelling water were delivered to the dorms for drinking. Immediately afterward, guards began emergency lockdown of Hancock's population. Prisoners resisted, the guards fled, and the uprising spread.

The Hancock disturbance raged for over four hours. Prisoners held the prison until after midnight Sunday, with three guards requiring hospitalization. Fires were set at various locations, including laundry hampers, yards and the gymnasium. The prison store and fast food training center, were destroyed, as were all dorm televisions, VCR's and control consoles. The water supply was miraculously restored just minutes before riot squad personnel entered prisoner areas and regained control.

Hancock officials deny any responsibility for the unrest leading to the June revolt, despite their failure to communicate the reason behind the water cutoff. Counselors blamed a lightning strike at the prison water tower, although local radio broadcasts reported a countywide water outage. Whatever the actual cause, Hancock's water tower had capacity to furnish water to the prison via gravity feed for an extended period of time.

The Hancock uprising was Georgia's third major prison incident in less than a month. A prisoner work strike at Rivers Correctional Institution in Milledgeville resulted in the transfer of 250 prisoners to other institutions in early June. A subsequent disturbance at the Georgia State Prison in Reidsville caused the hospitalization of two maximum security guards and the lockdown of the entire prison. Hancock's programs were suspended, and the lockdown is expected to be lifted gradually over a period of time.

It should be noted that a tense atmosphere has existed in Georgia's prisons for several months. Governor Zell Miller recently joined the 'get tough on crime' bandwagon, making the prison system a whipping boy for his re-election bid this year. Miller successfully introduced a crime bill in Georgia's 1994 legislative session, mandating 10 year no-parole sentences for first convictions of "violent crime", including most sex offenses. Under Miller's plan, second convictions would be punishable by mandatory life without parole (a "two-strikes" law!). The Miller crime bill was signed in April and awaits a November referendum to become law.

AIDS In WA DOC

Beth Anderson, health services administrator for the Washington DOC, said that since 1985, 7,604 WA DOC prisoners have been tested for the HIV virus and 135 have tested positive. Currently, the DOC claims there are 63 HIV positive prisoners in custody, with 38 not yet showing symptoms of AIDS. Since 1985, nine prisoners have died in state custody of AIDS.

In response to this, the Governor's Advisory Committee on HIV-AIDS is in the process of holding hearings to make recommendations to the governor on how to best contain the spread of AIDS/HIV within the state's prisons. Current Washington DOC policy does not allow prisoners to have or receive condoms except for Extended Family Visits. Homosexual behavior is punished as a major rules violation.

Tim Hilard, a former television news-caster who was recently appointed to the panel, told the committee on June 14, 1994, that he will strongly urge the Lowry administration to lift the ban on condoms in prison. DOC boss Chase Riveland said he would consider changing the policy if the number of HIV cases grow. There is no forced or mandatory HIV/AIDS testing in the Washington DOC unless a prisoner is accused of biting or attacking a person and there may be cause to suspect the prisoner may have infected the other person. AIDS prevention and awareness classes range from poor to non-existent depending on the facility.

Currently, city jails in San Francisco, New York, Philadelphia and Washington D.C. and the state DOCs in Vermont and Mississippi issue condoms to the prisoners in their custody. Phyllis Little, of PO-CAAN's People of Color Against AIDS Network (POC) recommends program believes that condom distribution should not stop at the prison gate. They (prisoners) have a double risk, with sex and possible needle sharing." It's the only population congregate who are at risk.

Lucasville Riot Tab $34 Million Plus

The 11 day rebellion at the Southern Ohio Correction Facility (SOCF) in Lucasville, OH, which began on Easter day, 1993, left cell block L in ruins. So far it has cost the state $19.2 million to repair cellblock L alone. It cost $32.5 million to build the entire maximum security prison in 1972.

The $34 million dollar tab to date, cited by state officials, includes costs such as the special prosecutors hired to pursue rebellion related criminal cases; the purchase of tear gas, gas masks and body bags; court costs, etc. This figure does not include the potential awards of damages to the guards and prisoners who have sued the state for injuries resulting from the rebellion.
How To Win Prison Disciplinary Hearings

Reviewed by Mark Cook

HTW is a manual for federal prisoners written by former federal prisoner Allan Parmelee. This gives the manual integrity from the get go but keep in mind that the undercurrent directions of how to beat a valid “shot” (rule infraction) should be taken with a grain of salt and a good sense of humor.

Parmelee gives detailed and positive directions on how to proceed with mandated due process rights to the best advantage. But one shouldn’t rely solely on Parmelee’s analysis of the law. Prisoners should research the law thoroughly as it is constantly being changed by the courts. For example, Parmelee incorrectly advises that prisoners have fourth amendment rights in regard to cell searches. The supreme court held otherwise in Hudson v. Palmer in 1984. But hey, if a dude can slide by the Disciplinary Hearing Officer (DHO) with such a claim, that is cool, but don’t try to lay that on a court of law if court litigation is needed. [Editor’s Note: this section has since been corrected.]

The manual correctly stresses the importance of establishing a sound case with evidence and witnesses if a dude loses at the administrative level and needs to go to court.

“Appendix A” in the manual provides information that is amended administratively quite frequently. It can be relied on as a rule of thumb but the information in this appendix will not remain accurate as time passes.

“Appendix B”, regarding drug and alcohol shots is interesting and presents some tongue in cheek humor. It would be advisable to check with local jailhouse lawyers as to the reliability of this information.

The footnoted authorities and resources give the manual legal credibility, but keep in mind that the law is in constant change. HTW is recommended as a must resource for federal prisoners and federal prison law libraries. The manual costs $3.00, postage paid. Order from: Allan Parmelee, 2802 E. Madison, Box 168, Seattle WA 98112.

Reviews

By Paul Wright

North Coast XPress is a magazine for people who care about Constitutional issues, U.S. foreign policy, the criminal “justice” system, labor news, animal rights, global and domestic economics, the environment and other topics that the mainstream media won’t touch. Each issue has prisoner art, poetry, and articles in the “Voices from prison” section. Recent issues have contained articles on AIDS, Hemp legalization and products, rethinking the war on drugs, the Pelican Bay trial, class justice and more. Subscriptions are $10 a year for prisoners (stamps accepted), $12 for others. Free to prisoners on death row or control units. Write: North Coast XPress, P.O. Box 1226, Occidental, CA. 95465.

Shut Them Down is the bi-monthly newsletter of the Colorado Coalition to Shut Down Isolation Prisons. Their primary campaign has been against the federal government’s plans to open a new control unit prison, to replace Marion, in Florence, CO. Each issue contains information concerning prison activism, control units and more. Subscriptions are $10.00 a year from: Rocky Mountain Peace Center, P.O. Box 1156, Boulder, CO. 80306-1156.

Pelican Bay Prison Express is the bi-monthly magazine of the Pelican Bay Information Project, an independent citizens group formed to monitor conditions and abuses at the Pelican Bay prison in California. This is an excellent publication filled with information of interest to prisoners and activists across the country. The latest issue had extensive coverage of the federal trial in Madrid v. Gomez, the class action suit challenging conditions at the control unit at Pelican Bay. This suit is the first to come to trial challenging the conditions and philosophy of control units. PBPE provides far more extensive coverage on this and similar issues than PLN can. Highly recommended. Subscriptions cost $10.00 per year. Write: PBPE, 2489 Mission St. #28, San Francisco, CA. 94110. (415) 821-6545.

National Liberator is a bi-monthly newsletter published by the Aleph Institute and bills itself as the “Newsletter of life for America’s imprisoned Jews.” The most recent issue has articles on Judaism, prison reform, sentencing reform, religious freedom in prison, political developments in the BOP and more. NL contains information of interest to non-Jewish prisoners as well as Jews. Subscriptions are free to prisoners and their families, $18.00 a year for others. Write: The Aleph Institute, P.O. Box 546564, Surfside, FL, 33154-0564.

Lifelines is the bi-monthly newsletter of the National Coalition to Abolish the Death Penalty. Each issue contains updates on abolitionist activities around the country, resources available, book reviews, and plenty of other information. Subscriptions are free to prisoners, $25.00 a year for others. Write: NCADP, 1325 G. St. NW, LL-B, Washington D.C. 20005.

Action Update is a bi-monthly newsletter published by the Quixote Center. Their main focus is on anti-death penalty activities, especially the case of Mumia Abu-Jamal, the former Black Panther now on death row in Pennsylvania. Each issue contains updates on Mumia’s situation, abolitionist activities around the country and prison developments in Pennsylvania. Subscriptions available for a donation. Write: Equal Justice, P.O. Box 5206, Hyattsville, MD. 20782.

Walkin’ Steel is the tabloid newspaper of the Committee to End the Marion Lockdown. Each issue is filled with information about control units and efforts to shut them down across the country. The latest issue has an article on the “crime of black imprisonment” comparing the incarceration rate of blacks and whites [personally I believe this is a flawed analysis. Prisoners as a rule are poor, regardless of race, there are few if any rich blacks or whites in prison. That more blacks and Hispanics tend to be poor does lead to more of them being in prison but I think it is simplistic to say it is a racial problem. I believe it to be a class problem.], the new federal control unit prison at Florence, CO; why control units exist; efforts to stop the building of one in IL; and struggle in NY control units. Each issue is highly informative and an excellent resource. They always need money to carry out the many prison projects they are involved in. They also sell T-Shirts. For information send a donation to: CEML, P.O. Box 578172, Chicago, IL. 60657-8172. (312) 235-0070.
From the Editor
By Paul Wright

Welcome to another issue of PLN. As we reported last month, the ACLU has filed suit against the Washington state parole board over their no-contact parole condition on Ed Mead, PLN's former co-editor, which terminated his involvement with PLN. So far the case has gotten some local publicity with minor articles in the Seattle Times (on the weather and obituary page) and Post-Intelligencer. National Public Radio interviewed both Ed and Frank Cuthbertson, our lawyer, and they have also been interviewed by journalist Nat Hentoff who will be doing an article on the suit. The Progressive has also reported on the suit. So in that sense the suit is already a "success" in terms of raising public awareness about prisoners' rights and free speech issues.

The attorney general, Talis Abolins, has responded on behalf of the parole board, with a boiler plate reply. When I asked Frank how he could tell it was a boiler plate reply he said "because he asked the court to stay the suit until we exhaust state remedies over loss of good time in a prison disciplinary hearing." The suit challenges only the parole boards conditions of release affecting Ed's involvement with PLN. We will be seeking a preliminary injunction shortly. Our readers will be kept posted as the suit progresses.

Everyone at PLN would like to thank Ellen Spertus who generously donated three sets of Microsoft Office Professional to PLN. This will enable us to synchronize our computer operations and, hopefully, achieve greater ease of operation for our computer stuff. Ellen's generosity is greatly appreciated. We wouldn't have been able to afford it and we were having some major problems with our word processing software, WordPerfect 6.0 for Windows, which does not work very well. The switch to MS Word, which does work, should make things go more smoothly now. We still need a 386 or higher computer to help with our desktop publishing end of things, anyone interested in donating one please contact me.

We continue to receive inquiries about how people will know when their subscription to PLN is going to expire. Institutional subscribers receive an invoice four months before their subscription expires. Four months before individual subscriptions expire they get a little card from me telling them that they need to donate if they want to keep getting PLN. Unless you've donated more than $10.00 in past that is the only notice you will get from us. Otherwise you'll get a letter from us the last month of your subscription to the effect that unless you donate, no more PLN. We are now printing the subscription expiration on all mailing labels if it is within one year of expiring. We would really appreciate it if you would donate on your own before we send you the card and/or letter. This saves us not only the money involved in printing and mailing the cards but, most importantly, the time and energy that goes into it. Commercial publications have whole sections of paid employees devoted to nothing but getting people to renew subscriptions. We don't have that luxury. Time and energy spent getting folks to renew their subscriptions takes us away from the time and energy we would otherwise use in improving PLN, writing articles, outreach, etc.

We also rely solely on reader donations to publish. So when you donate and/or re-subscribe please donate generously. We are also sending letters to our readers in the legal and/or correctional professions asking them to renew their subscriptions as institutional subscriptions, i.e. at $35.00 a year. That is because the institutional subscribers essentially serve the function of subsidizing our indigent subscribers. So as our number of indigent readers grows we need to increase our institutional subscriber base, otherwise we will be forced to cut back on our number of free subscriptions because we have to pay the printer and post office. So keep this in mind when you re-subscribe.

Please examine your mailing label and make sure it is correct. Prisoners, make sure we have your prison number correct. We occasionally get issues returned to us by prison mailrooms because DOC's numbers are mis-matched or such. This means you don't get your PLN and we have to pay the post office to get it back. Make sure your address is correct, it is amazing how often people don't know their own address, or if they do, they don't share it with us despite ordering a subscription.

With this issue of PLN we hope to begin a regular practice of mentioning other prison groups and publications which offer services and publications that will complement PLN. Basically, we try not to duplicate the work and effort that others do. We want to fill the legal and informational needs of those interested and involved in the criminal justice system and prison struggle. So we tend to assume that you are already informed about other publications and get those as well. Please support other elements of the prison press, all have been supportive of PLN over the years.

On page 12 and 13 of the July 1994 issue of PLN, we excluded the citation in "Retroactive Application". The cite is: Lawson v. Dugger, 844 F.Supp 1538 (SD Fl. 1994). Enjoy this issue of PLN and share it with others after you are done with it.

Freedom for Political Prisoners

In July, 1992, different groups from around the world meeting in Munich, Germany over the 500th anniversary of the Columbus Encounter, formed a group called "Libertad!" around the goal of organizing an International Day of Action around the issue of political prisoners. The primary organizers of Libertad! are the Movimiento de Liberacion Nacional/Puerto Rico, National Democratic Front/Philippines, FMLN/EI Salvador and the MLN-TupamaroslUruguay.

Libertad defines political prisoners as "Those comrades imprisoned because of their struggles, mobilizations and actions as well as those people oppressed in every country by their rulers. This includes prisoners of resistance, liberation and basis (sic) processes all over the world as well as prisoners of the class struggle fighting for the abolition of class society... it is only possible to succeed with an international campaign for the freedom of all political prisoners if it also has the aim of breaking the system of oppression and imprisonment as a whole."

There are currently over 150 political prisoners held in the US, over 800 in England, 700 in Spain, several dozen in Germany, Italy and other countries that normally don't come to mind as holding political prisoners. Thousands more are held in diverse countries around the world from Peru to Senegal, Israel, South Africa, etc. Libertad seeks to struggle for their freedom as well as social change and the political conditions needed for their freedom.

Right now the campaign is in the formative stages, they are seeking input and discussion with interested prisoners,
groups and people. They encourage people to devise their own approaches to the campaign. Their initial opening statement is four pages long, too lengthy to report here in PLN. We will report further developments as they occur. Those interested in further information should contact: Liberte!, C/O 3 Welt Haus, Westerbachstr. 40, 60489 Frankfurt am Main, Germany.

South African Prisoners Rebel

On June 10, 1994, prisoners in seven South African prisons rebelled, taking prison officials hostage and destroying prisons. Prisoners demanding an amnesty held a warden captive for nearly 24 hours at the Modderbee prison east of Johannesburg before releasing him. One prisoner was killed and at least 30 escaped from the prison which holds 4,000 prisoners, said Correctional Services spokesperson Chris Ockers.

Another prison spokesperson, Lt. Rudie Potgeiter, said at least 80 prisoners burned down 80 percent of the Brandwlei juvenile prison in the Cape Town area. One prisoner was in critical condition and more than 30 were taken to a hospital suffering from burns. Potgeiter said that there had been violence at two Witbank prisons east of Johannesburg after prisoners refused to return to their cells. 104 prisoners escaped from one unnamed prison during this time period.

Prisoners also rebelled at Leewkop Prison near Pretoria, J.C. Steyn Prison in Port Elizabeth and at the Neone Prison in KwaZulu. At Neone, 36 prisoners were injured when they attempted to take two guards captive. This series of rebellions follows earlier riots and rebellions in South African prisons shortly before the recent elections where South African prisoners demanded the right to vote, along with blacks outside prisons, for the first time in South African history. Their demands were not met.

South African president Nelson Mandela met with various government officials to discuss the rebellion. On June 11, 1994, Mandela announced that the government would cut six months off the sentences of virtually all prisoners in order to halt the rebellion. The concession fell short of the demand by prisoners and their outside advocates that all prisoners who did not pose a threat to the community be released. But the group called off the protests and prisoners discontinued their protests on that day. Correctional Services Minister Sipho Mzimela announced that the sentence reduction applied to all common law prisoners except for state debtors and the mentally ill.

On June 13, 1994, 600 prisoners at the St. Alban’s jail outside Port Elizabeth rioted and held a guard. They did not issue any demands which were reported by the wire services.

The historic context for these events are that South Africa has the second highest per capita incarceration rate after the United States. Despite the country’s recent election of Nelson Mandela as the nation’s first black president, virtually all of the country’s prisoners are those who were imprisoned by the apartheid regime. Some, but not all, political prisoners have been released. Social prisoners were not affected by the change in regimes and the riots and rebellions reflect their frustration at remaining in prison under sentences imposed by the previous apartheid regime. For them, nothing had changed. The prison rebellions represent the first major protests that Mandela has faced since taking office in May, 1994.

Medical Help Sought for Danish POW

An international campaign has been launched to obtain better conditions of confinement and medical care for Swiss militant Marc Rudin, who is currently serving an eight year prison sentence for alleged robbery in Denmark. Rudin is better known as the “fifth man” in the November, 1988, robbery of a post office. The proceeds, totaling over $2.5 million, were allegedly intended for the Palestinian cause.

In October, 1993, Rudin was sentenced to eight years imprisonment after being convicted solely on the basis of police allegations. Since being imprisoned he has been treated far worse than other prisoners. He is denied both exercise and normal association with other prisoners. Rudin is held in a provincial prison, making it difficult for his friends in Copenhagen to visit him. He is being held in semi-isolation in a 15 man unit for “problem” prisoners.

Campaigners are calling for an end to Rudin’s prison segregation and the petty restrictions placed on him. They are demanding his return to a Copenhagen jail and permission for him to resume exercise. They are also calling for independent medical treatment of Rudin’s high blood pressure and kidney problems. Further details can be obtained from: Anti-Repression Committee—Marc Rudin, International Kulturforum, BBC Box 286, Vesterbrogade 208, 1800 Frederikberg, Denmark.

The Global Prison

The Human Rights Watch Global report On Prisons


Review by David Gilbert

The Brazilian Military Police’s wanton murder of 111 prisoners involved in a disturbance is just one of the grim realities presented in The Human Rights Watch Global Report on Prisons (Global Report) in its study covering twenty countries around the world. We learn that brutal torture—men, women and children—is routine in Turkey. We are told how a Chinese prisoner may be handcuffed behind his back for several weeks—he can only eat by lying on his stomach and lapping food like a dog—for the offense of picking up a guard’s discarded cigarette butt. We’re apprised of Palestinian “security” prisoners from the occupied territories being illegally held in Israel—where their families and lawyers may be restricted from visiting—packed into desert tent camps with 100° summer heat. We witness the stuflifying overcrowding of a detention cell in Jamaica, where inmates sleep on a wet, filthy floor amid the stench of nearby pools of feces.

This volume is based on a six-year study that has already produced eighteen different books on specific countries. Scanning across nations, several general themes also emerge:

Corruption is common, resulting in the pilfering of supplies needed by prisoners and the extortion of their families.

Women are usually afforded a lot less in the way of programs and activities and (because there are fewer women’s pris-
ons) are often held at much greater distance from their families.

Many countries now have a separate category, with far more onerous conditions, for “security” (read political) prisoners. For example, Peru has arrested over 2,500 persons in one year under its 1992 “anti-terrorism” law, which strips such prisoners of virtually every basic right.

Prison systems routinely ignore or violate the laws that govern them. “By treating criminals and those accused of crimes in an inhuman and degrading manner, and by imposing penalties not authorized by law, a society betrays the very principles that its criminal laws purport to uphold.”

Perhaps the most heartrending situation is Zaire, where the general breakdown of society and rampant official corruption mean that almost no food or medical supplies are reaching the inmates. In 1991, malnutrition and lack of medical care resulted in 2,229 officially recorded deaths — a staggering eight percent of the prison population, most of whom are pretrial detainees. (Before feeling smug and superior, we need to recall the U.S.’s active historical role in Zaire, then called the Congo, in the sabotaging of the independence movement and the assassination of Patrice Lumumba. The result was the rise to power in 1965 of the U.S.-backed Mobutu Sese Seko, who now has an estimated personal fortune of five billion dollars while half of Zairean children died before age five.)

Global Report doesn’t take on such issues as the U.S. role in poverty and repression in the third world, nor does it measure each country’s conditions relative to its wealth. But the U.S., while not typified by the worst global examples of abuse, has its share of problems and actually leads in a couple of negative categories: 1) the highest prisoner to population ratios of any large country — 445/100,000 — for an average of 1.3 million in jail or prison on any given day; 2) the biggest death row, with 2,500 persons nationwide awaiting execution.

The Human Rights Watch inexcusably fails to examine the pervasive role of racism in the application of disciplinary sanctions, which can be a central determinant of one’s conditions in U.S. prisons. The study is on-point, however, in focusing on the burgeoning of super-security prisons modeled after the federal facility at Marion, Illinois. Thirty-six states have already followed suit with their own "maxi-maxi." “In Florida State Prison at Starke, some inmates are held in windowless cells from which they are allowed out only three times a week, for ten minutes, to shower. The rest of the time they are alone in the cell. This situation may last for a few years.” There are numerous reports of beating in such facilities, usually in retaliation for arguing with guards.

The book makes 117 specific recommendations under seventeen general topic headings. Almost all are intelligent and humane, but many are so tame and toothless as to be nugatory. For example, they don’t propose anything close to the level of independent, outside scrutiny need to put a dent in prison brutality, and they don’t even address the deadly AIDS and TB epidemics ravaging many prison systems.

Global Report does not provide any adequate solutions. It is, nevertheless, an invaluable and eye-opening study grounded in the right basic premise: prisoners “...are fellow human beings and are entitled to be treated as such.” When society does any less, it nullifies its own humanity. This book can be ordered (#1010) from Human Rights Watch, 485 Fifth Ave., N.Y., NY 10017-6104.

Peru’s Lawyers: a High Risk Profession

by Jose Enrique Gonzalez Ruiz

"In the eyes and ears of the sinister power, all of us are under suspicion." Oiga Magazine Feb 21, 1994, p.5

To defend political prisoners in Peru is a delicate matter. The war that has been going on in the Andean country since 1980 has atrophied the legal institutions because the government has applied the U.S. counter-insurgency policies.

State power is dictatorial and human rights exist only in dreams. Being lawyers before the military justice system, defending those accused of “terrorism” or “treason to the motherland” (which for the army is synonymous with the insurgency), is a dangerous profession.

Those who were present at the trials of the leader of the Communist Party of Peru (also known as Sendero Luminoso), Abimael Guzman Reinoso, and other political prisoners, suffer psychological torture that is not merely limited to threats. Many of them are now being held in Peruvian prisons, for the “grave crime” of representing presumed members of the insurgency.

With a blindfold covering their eyes, the defense lawyers are taken to the island where Manuel Ruben Abimael Guzman Reinoso is held prisoner. They are conducted in the midst of warnings like the above quoted to the place where the “judicial activities” are to take place. This form of torture takes around 45 minutes on each occasion.

To reach the island they must travel in a precarious unstable plastic boat for another 45 minutes, surrounded by armed marines and — sometimes — provided with lifevests, “in case of a fall into the sea”, as they are told.

The island is called San Lorenzo, and on that island there is a naval base linked to the prison “El Fronton.” The government rationalises the security measures taken with the lawyers by saying that the place is related to the military headquarters.

Once the hearings begin, the lawyers are prohibited from communicating with their clients. A hooded attorney — who sits in front of an investigative official — sits next to the lawyers, and the lawyers are prohibited from taking part. They are silent statues. This was the way the lawyer Alfredo Crespo Bragayrac was allowed to be with Abimael Guzman Reinoso. He had no opportunity to talk with him about his defense.

Procedures before the Peruvian military justices are done at high risk. They are carried out in military buildings and when a lawyer enters, no one knows if he will be allowed to leave the building or whether he will himself be accused and sentenced as a “terrorist.” That is what happened to Dr. Crespo, who is now serving a life sentence imprisonment in a prison in Puno, which is 800 kilometers from Lima.

Someone who wants to legally assist a person accused of being a “terrorist” is in turn accused of being a terrorist, as if the defender of a burgler or killer assumes the same crime of which his client is accused.

In the Rospigliosi Castillo (a building housing the military court) there is a “common room” where all papers sent to the military justice are received. The lawyer is called to a large door, which has a small hole through which the judge asks: “What is your request?” Once the lawyer answers, he has to give the guard his identification papers and the guard takes them to the superiors. “Only one person is allowed in”, he is warned. On the wall of the building, next to the door,
Indonesia's Final Solution to Crime

The American media was recently awash over the case of Michael Fay, an American youth sentenced to four months in jail and 6 lashes of a cane for vandalism by a court in Singapore. Singapore's laws and justice system received a fair amount of scrutiny resulting from the Fay case. However, compared to Indonesia, Singapore is pretty "soft on crime".

In 1965 the Indonesian military staged a coup against then President Sukarno. The CIA assisted both the coup and the bloody aftermath that left between 500,000 and 800,000 real or suspected members of the Indonesian Communist Party murdered, thousands more imprisoned and exiled. Since then the military dictatorship of General Suharto has ruled with an iron fist. His government is well supported by the United States and other West European countries. Labor costs are low which has resulted in mass impoverishment for the great majority of Indonesians. Any attempt at political or labor organizing is met with brutal repression. Not surprisingly, the poverty has resulted in a wave of petty crime by street criminals.

The Indonesian government's response has been to unify formed policemen to conduct public, summary executions of alleged criminal suspects. The killings take place in crowded urban areas with the bodies left on the streets to intimidate the public. This is considered "shock therapy against criminals." Police Major General Hindarto admits his men commit such murders. He says: "We want society to be peaceful and calm. There is nothing mysterious about it. Everything is clear. The police officer in charge takes responsibility. There is no petrus."

According to police statistics, in the first 2 months of 1994, 24 people were shot of whom 14 were killed on the spot with the rest treated in hospitals. Things have intensified, in the first week of March, 1994, ten were killed. According to police reports all the victims are people with a criminal record, they are under arrest during nighttime hours and the victim is shot trying to flee or resist arrest. The US state department reports 60 to 70 people were shot in the capital city of Jakarta alone in 1993. This policy has full government support. The military commander in chief, General Feisal Fanjung states: "Bandits have to be exterminated. No way will we foster them." Human rights groups and the Indonesian Bar Association have protested the policy and practice. For more information on human rights in Indonesia write: Tapol, 111 Northwood Rd. Thornton Heath, Surrey, CR7 8HW, England.