It is often said that you can tell a lot about a society by checking the condition of its prisons. Based on the way prisoners in Alabama are treated (or, more accurately stated, not treated), citizens of that state have a lot to be worried about. With only a few months left to go on his sentence for marijuana possession, 43-year-old prisoner Timothy Oliff caught a cold that he just couldn’t shake. Oliff’s complaints went ignored by prison health care workers at the Elmore Correctional Facility until several days later when he became so ill that fellow prisoners had to carry him to the gate for emergency help.

Three days later Oliff died at the Montgomery Baptist South Hospital. Although neither prison officials nor hospital brass would comment on his death, Oliff’s sister, Diane Aman, said doctors at the hospital told her he had died of pneumonia and had the worst stomach infection they’d ever seen. Aman also said they told her that prison health care workers had been too late in getting Oliff to the hospital for the emergency care he needed.

Also refusing to comment on his death are officials of NaphCare, Inc., the for-profit company that, until recently, had been contracted by Alabama to provide health care services for prisoners at its 13 correctional facilities. But while Naphcare’s contract was going to be cancelled, its problems stemming from numerous lawsuits filed over the substandard and, at times, non-existent medical care they provided to their prisoner-clients, have not.

Oliff’s case is just the tip of the iceberg as far as Naphcare and the Alabama Department of Corrections (DOC) are concerned. Not only does Alabama spend less on health care per prisoner-patient than any other state, the prisoner death rate in Alabama far outnumbers that of most other states.

High Prisoner Death Rate

A simple review of previously unpublished DOC statistics, obtained only after repeated requests by the media, reveal a death toll in Alabama prisons that is stunning when compared to rates in other states. The documents also revealed that the death rate has been especially high in the two years since Naphcare started delivering health care to prisoners in 2001.

For example, in 2002 Alabama had 88 prisoner deaths out of a prison population of 24,000 excluding those in county jail awaiting a prison bed. In comparison, North Carolina had only 61 prisoner deaths out of a prison population of 32,000. Not surprisingly, North Carolina spends significantly more for health care per prisoner than Alabama, and does not use a for-profit company to do it.

According to the latest study from the U.S. Department of Justice, state prisoners across the country have been dying at an annual rate of 23 per 10,000. In each of the last four years, the Alabama death rate has exceeded the national average, and has risen above 35 deaths per 10,000 in three of them. Although these numbers exclude deaths by execution and include the occasional death by accident, suicide or homicide, the overwhelming majority result from illness.

DOC’s own statistics show that the year before Naphcare took over prison health care, Alabama had 61 prisoner deaths. That number jumped to 87 deaths from March 1, 2001 through February 28, 2002, Naphcare’s first year of the just-terminated contract.

In Naphcare’s second year, which was completed February 28, 2003, that number rose again to 95 deaths. In that same year, as Alabama’s prison population grew, so did the prisoner death rate, to 39 deaths per 10,000 prisoners, or nearly twice the national average. No other state had a death rate that high during 2000, the last year the Justice Department compiled state-by-state numbers.
Due to improved drug regimens, the HIV prisoner death rate has seen a sharp drop throughout the country in recent years. Not so in Alabama, one of two states that segregate HIV-positive prisoners. According to DOC statistics, Alabama had 12 HIV prisoner deaths in 2002, out of a HIV population of 280.

That same year though, Florida, with an HIV-positive prisoner population of 2,845, had 43 deaths, according to Yolinda Murphy, spokeswoman for the Florida Department of Corrections. Put another way, Florida has 10 times the number of HIV-positive prisoners than Alabama, but only three and a half times the number of deaths. Those numbers translate into a 4.3% HIV death rate in Alabama compared to Florida’s 1.6%. And a report issued by Chicago-based medical consultants Moore and Associates showed an HIV death rate at Alabama’s Limestone Correctional Facility of 0.23 deaths per thousand – more than twice the national AIDS prison death rate.

Deplorable Conditions Lead to Avoidable Deaths

In their report released in February 2003, Moore and Associates described the health care, system at Limestone as “dangerous and extremely poor quality.” Conditions at Tutwiler Prison for Women have been described by lawyers and judges alike as brutally violent and dangerously overcrowded. The 1,500 prisoners at the St. Clair Correctional Facility of 0.23 deaths per thousand – more than twice the national AIDS prison death rate.

Naphcare (continued)

The dangerous powder keg conditions at Tutwiler, and the unsafe and inhumane living conditions, combined with the ineptitude of health care provider Naphcare, make for a lethal one-two punch, and deadly consequences for the women prisoners there.

Men confined at the St. Clair prison fair a little better than the women, but not in receiving any sort of meaningful medical care there. Problems at St. Clair include a severe shortage of trained medical staff, little access to dental care, and decisions on medical treatments based on cost rather than the needs of the patients.
Prescriptions go unfilled. Prisoners who are unable to eat because of no teeth suffer extreme weight loss which is ignored by staff. Many conditions simply go untreated unless and until the prisoner is rushed to the hospital for emergency care. Requests for hearing aids, optical exams and treatments, pain medications, wheelchairs and walkers are denied to those who need them. And required surgeries and other preventive medical treatments are simply not provided. At least not until it is too late to avoid permanent damage. It is alleged that Naphcare makes a calculated decision that it is more cost-effective to delay or deny treatment than provide it.

At the Birmingham Work Center for women, a 55-year-old woman with heart problems by the name of Claudia Muller died in an extremely hot cell in July 2002, despite screaming for help for days. Prison staff and Naphcare knew she had heart problems, as well as a serious mental illness, yet she still was not provided needed medications nor monitored by staff at the overcrowded facility.

Overall, Naphcare’s treatment of chronic conditions like asthma, diabetes, seizure disorders, kidney disease, HIV, Hepatitis C, and hypertension fell far below the standard of care that is well-established in the medical community for the treatment of such illnesses. The result is that prisoners are put at unnecessary and substantial risk of serious medical problems such as seizures, strokes, heart attacks, and worst of all, death.

“It is shameful that the Alabama Department of Corrections has allowed the medical care and consequently the health of . . . prisoners to deteriorate as severely as it has,” said Tamara Serwer of the Southern Center for Human Rights. “It’s disheartening that lawsuits must be filed in order to get the state to fulfill its constitutionally required responsibilities.”

Naphcare’s Short and Shameful History

Nearly all of the lawsuitsSerwer is referring to have named Naphcare as a principal defendant. Naphcare was started in 1989 by James McLane, a Birmingham pharmacist and its sole owner, as a provider of pharmacy services at a small Georgia jail. Over the next 10 years or so, Naphcare provided only nephrology (kidney) services to a small number of prisons.

Alabama was Naphcare’s first contract to provide comprehensive healthcare services to an entire prison system, although Naphcare did have contracts with several Alabama county jails. Naphcare’s web page touts their success as the States of North Carolina and Washington have recently renewed contracts to provide only nephrology services in state facilities. Naphcare further notes that a federal prison in Massachusetts also contracts for their nephrology services.

“At Naphcare, we have based our business on recognizing and meeting the needs of our clients, cutting the red tape without cutting the corners,” claims Naphcare’s web site, www.naphcare.com.

Prior to Naphcare, prison health services in Alabama were provided by Correctional Medical Services of St. Louis, at $26 million per year. However, because of rising costs and a rapidly growing prison population, CMS demanded substantially more money — from $38 million to $46 million — to continue to provide sufficient health care services. The state then sought bids for the lowest possible contract that would purportedly satisfy the constitutionally-mandated requirement of adequate prisoner health care. After two rounds of bidding — a process which CMS claims was done in violation of state law — Naphcare won the contract with a bid of $30 million. A spokesman for then-Alabama Gov. Don Siegelman announced that the new contract had saved Alabamians millions.

Critics immediately questioned how Naphcare could possibly provide adequate health care for 25,000 prisoners for $30 million and still make a profit. Naphcare had never before provided comprehensive care to a state prison system.

“The average state spends $2,500 to $3,000 per inmate [per year], and Alabama’s spending a little over $1,000,” said Ron Shansky, co-founder of the Society of Correctional Physicians.

“It’s off the charts.”

Even before Alabama and Naphcare signed their contract in early 2001, there were many substantiated complaints regarding the level and quality of health care provided by Naphcare in the county jails. Jefferson County officials complained publicly about Naphcare’s performance at its jails in Bessemer and Birmingham. In addition, amid a flood of complaints from prisoners, family members and jail officials, Jefferson, Morgan and Madison counties all cancelled their contracts with Naphcare last year. All found new jail health care providers.

The audit report “is totally consistent with what the prisoners have been telling us, that they have to wait for weeks for dental services, for things such as abscesses which are so painful that some of the women are pulling their own teeth,” said Serwer, who is representing prisoners by Naphcare.

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Naphcare’s contract was set to run through 2003, with an option to extend. DOC spokesman Brian Corbett, however, said the contract was initially cancelled not for reasons relating to Naphcare’s deficient performance, but “more for reasons of the deficiency in the contract itself.” Corbett said the contract provided DOC with no leverage to demand changes from Naphcare in areas such as staffing, policy and costs overruns. “This does not relate to the quality of care as provided by Naphcare per se,” claimed Corbett.

But whether that is true, or whether DOC as a co-defendant in all of the pending lawsuits is trying to play both sides of the fence by getting rid of the problem while claiming there is no problem, is unclear. What is clear though is that Alabama does not spend enough on prisoner health care and that for-profit health care companies cannot survive the prison atmosphere, i.e., providing adequate health care services while always keeping an eye on the bottom line.

“It was not realistic from the word go,” said Gary McWilliams, vice president of sales and marketing at CMS — the company that owned the Alabama contract before Naphcare. “Now the chickens are coming home to roost.”

“They cut corners,” said Sam Eichold, a physician who serves on a prison medical oversight committee. “That’s how they make their profit.” He notes that Naphcare is no better or worse than CMS.

But getting rid of Naphcare will not necessarily solve the problem, claims Rhonda Brownstein, a lawyer for the Southern Poverty Law Center. “The DOC, and ultimately the Alabama taxpayers, will have to bite the bullet and triple the amount currently spent on [prison] medical care,” she said.

Until that happens, though, and Alabama decides to spend upwards of the $45-$50 million to bring health care service to the level seen in most other states, the complaints, lawsuits, and deaths will continue to grow.

Lawsuits, Lawsuits, Lawsuits

“When the state takes away a person’s freedom — including the freedom to go to a doctor when you are sick — the law is clear that the state must provide care for serious medical needs. That is not happening in Alabama’s prisons.” So says Lisa Kung, an attorney from the Southern Center for Human Rights (SCHR) representing the women prisoners in the class action suit filed over conditions at the Tutwiler Prison for Women.

The 69-page second amended complaint filed in Dec. 2002 has 34 named plaintiffs, all with specific complaints of medical neglect.

The suit alleges that long delays in health care services provided by Naphcare at Tutwiler (as well as the women’s Birmingham Work Release Center) are the practice, not the exception. The suit also details dangerous lapses in providing prescription medication, along with a severe shortage of qualified medical personnel.

The complaint also details how the dangerous and overcrowded conditions at Tutwiler cause extremely high levels of psychological stress and chronic sleep deprivation. Such conditions lower a prisoner’s threshold for illness as well as exacerbating symptoms of chronic diseases such as seizures, hypertension, and mental illness. And there are only seven infirmary beds, some in the hallway, for the 1,500 female prisoners confined in Alabama.

Dental care is not provided for the women, sometimes for years. Many prisoners, in excruciating pain and left without dental care, have resorted to pulling their own teeth, the lawsuit says.

Finally the suit claims that many of the 91 assaults were avoidable, the result of mentally ill prisoners being forced to live amongst the general population and without adequate mental health treatment. Most of the recent assaults with razors were committed by mentally ill prisoners. Alabama’s women prisoners have access to a far fewer number of psychiatrists and mental health counselors in comparison to male prisoners, according to the suit.

The suit seeks a declaration that the conditions at the women’s prisons violate the Eighth and Fourteenth Amendments to the U.S. Constitution, and injunctive relief, as well as costs and attorneys fees. See: Laube, et al. v. Haley, et al., No. CV-02-T-957-N, U.S. District Court, Middle District of Alabama, Montgomery Division.

A separate wrongful death lawsuit against DOC and Naphcare was filed by the family of Pamela Brown. Brown was a 28-year-old prisoner at Tutwiler in 2001, when she died suddenly on March 14. The suit charges that Brown was refused medical treatment for her heart condition, severe headaches, and blackouts.

An autopsy revealed that Brown had an undiagnosed condition called coronary hypoplasia, or abnormally small arteries supplying the heart. The report said that Brown had a “history of tightness of the chest during the last several months,” and had collapsed in the prison yard on February 27, 2001. An echocardiogram, which would have detected the heart defect, had been scheduled, but never performed.

Another suit over conditions at the Elmore Correctional Facility was settled in December 2002. Many prisoners at Elmore are employed at a recycling plant, and sued claiming they were denied treatment when injured while handling hazardous materials.

The suit, filed in 2001 and certified as a class action, was actually settled in January 2001. In the settlement agreement, Naphcare agreed to provide blood tests, vaccines, counseling, and other treatment to prisoners stuck by dirty needles or otherwise injured while working at the recycling plant. But Ty Apler, another lawyer from SCHR representing the Elmore plaintiffs, told the court Naphcare is not living up to the January agreement.

“When you agree to it, you’re stuck with it,” Circuit Judge Tracy McCooey of Montgomery told DOC attorney Jane LeCroy Brannan. McCooey gave the state and Naphcare 30 days to fully comply with the settlement agreement or face fines of $100 per day. Following the hearing Brennan said McCooey’s order “was very fair and we’re happy to comply with it.”

A fourth lawsuit was filed by two out-of-state lawyers claiming that HIV positive male prisoners at the Limestone facility receive negligent medical care. The suit, which names DOC and Naphcare as co-defendants, alleges that the death rate among HIV prisoners at Limestone is twice the national rate.

Still yet another suit claims that DOC and Naphcare are providing inadequate care for diabetic prisoners. The complaint, filed April 9, 2003 in the U.S. District Court for the Middle District of Alabama, is another class action with five named plaintiffs. According to the complaint, “prisoners with diabetes are at serious risk of substantial harm and death as a result of the grossly inadequate medical care provided to them by the Alabama Department of Corrections.”
Among the ailments the plaintiffs claim are the direct result of Naphcare’s “deliberate indifference” to the medical needs of diabetic prisoners are: Blurred vision, amputation of toes, kidney damage, hypoglycemia, dizziness, and pain. The plaintiffs and the class are placed at further risk of blindness, amputation of feet and legs, kidney failure, nerve damage and numbness, pneumonia, strokes, heart attacks, and death, because of Naphcare’s deliberate negligence, the suit claims.

Diabetic prisoner Michael Gaddis has had two toes amputated and suffers from nerve damage and severe numbness. The suit links these ailments “to the grossly inadequate” medical care provided by Naphcare.

24-year-old Alabama prisoner Edward Hamilton has been a diabetic since the age of five and is currently incarcerated at Easterling prison. He had not been seen by a doctor in five months and does not receive adequate blood sugar tests. He began losing his peripheral vision about a year ago, yet his repeated requests to see an eye doctor went unfulfilled. On April 5, 2003, Hamilton had a seizure yet guards refused to transport him to the infirmary for medical attention because it was count time.

The remainder of the plaintiffs in this case all complain of slow treatment or no treatment at all. Infrequent finger stick blood tests, a complete lack of urine testing, infirmaries that routinely run out of needed medications, and a lack of treatment for high blood sugar typify the complaints the plaintiffs say are bound to lead to permanent damage or death if not remedied.

The plaintiffs, represented by attorneys Rhonda Brownstein, Grace Graham and Danielle Lipow of the Southern Poverty Law Center, seek declaratory and injunctive relief as well as statutory costs and attorneys’ fees. See: Gaddis et al., v. Campbell, No. CV-03-T-390-N, U.S. District Court for the Middle District of Alabama.

The 12 named plaintiffs in a final suit — also a class action (amended complaint filed May 23 of this year) are also represented by attorney of the Southern Poverty Law Center. The complaint seeks relief on behalf of seriously ill prisoners locked up at the St. Clair Correctional Facility. DOC, Naphcare and St. Clair warden Ralph Hooks are the defendants named in the suit.

Prisoners at St. Clair are “suffering from serious harm and are at great risk of further harm, including death,” due to the “grossly inadequate medical care” provided there, the suit says.

Among the most serious complaints in the suit include prisoners lying in beds unable to control their bowels that sometimes go for hours without being changed or cleaned. “Because of the shortage of nursing staff, nurses depend on inmates to perform these tasks,” the suit contends.

Prisoners with colostomies must wear a bag attached to their abdomen to collect their stool. The prison exchanges these bags only three time a week instead of daily. Some prisoners have gone a month without a new bag, requiring them to clean the bags out in the sink in their cells without gloves or disinfectant. Their

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**Temporary Injunction Issued in Alabama Suit**

On June 26, 2003, the parties in *Baker v. Campbell* agreed to the entry of a temporary preliminary injunction which, among other things, provides for “immediate” and “adequate” medical care for Alabama prisoners with serious illnesses.

The “Preliminary Injunction Settlement Agreement” stems from a class action suit filed by prisoners at the St. Clair Correctional Facility against the Alabama Department of Corrections (DOC) and Naphcare, a for-profit company that contracts with Alabama to provide medical services to its prisoners. (See: *Baker et al., v. Campbell, et al.*, No. CV-03-C-1114-Mt U.S. District-Court for the Northern District of Alabama.) The suit was brought because of “the grossly inadequate medical care provided to them” by ADOC and Naphcare. Among the illnesses the 11 named plaintiffs claim the defendants allowed to go untreated are cancer, lung disease, hemophilia, Hepatitis C, deafness, and other serious medical conditions. The suit alleged that defendants’ negligence is causing plaintiff’s to suffer “serious harm and are at great risk of further harm, including death.”

In fact, after the original complaint was filed, lead plaintiff Jerry Baker, suffering from lung disease, died on May 15, 2003 from “the failure to fill his prescribed medications,” according to the amended complaint filed May 23.

The same day plaintiffs’ attorneys Morris Dees, Rhonda Brownstein, Grace Graham, and Kelley Bruner — all of the Southern Poverty Law Center in Montgomery — filed the amended complaint, they also filed a motion for a preliminary injunction on behalf of their clients seeking “immediate relief.” The agreement states that it is in the parties’ “best interests to resolve the motion” without going to court. Among the provisions agreed to in the injunction:

- **Defendants must immediately hire a full-time, forty-hour-per-week primary care physician who will be assigned to the St. Clair facility. The physician must not be duplicative of the oncologist, nephrologist and dentist already at work at St. Clair.**

- **Defendants must immediately hire 13 full-time and 2 part-time registered and licensed practical nurses, as well as one part-time nurse practitioner.** Naphcare is additionally required to hire additional nursing staff “as necessary” and to keep plaintiffs apprised of their “good faith effort” to fill the additional staff positions in a timely manner.

- **Defendants agreed to provide all prescribed medication and necessary medical supplies” in a timely manner.**

- **Defendants agreed to provide all “necessary off-site medical specialty consultants and treatment” in a timely manner.**

The injunction agreement is temporary and is valid pending final resolution of the litigation. The defendants also agreed to make the agreement enforceable by the court, while at the same time maintaining that “this agreement does not constitute an admission of liability.”

While prisoners at one Alabama prison might now, as a result of this agreement, receive the medical treatment they deserve, it is a sad commentary that it took a court injunction to get even that far.
cellmates must then use the same sink to wash, brush their teeth, and drink.

Prisoner Billy Ray Davis, 47, who has been at St. Clair since 1987, complained to prison doctors that he had difficulty breathing. Naphcare doctors told Davis his condition couldn’t be diagnosed. An outside doctor later examined Davis and told him his lung had collapsed. The damage could have been corrected had prison medical staff diagnosed and treated his condition properly, the suit said.

Another prisoner who had been at St. Clair for 19 years, was diagnosed with testicular cancer in Nov. 2002. The cancer later spread to 45-year-old Darryl Mullins’ lymph nodes. However, he did not receive chemotherapy at St. Clair until April 29 because “there was not a nurse [who was] certified to provide it,” the suit stated. And after having a testicle removed Jan. 22, Mullins was given pain medication for only a week. Despite begging for more, he was not provided any until March 10 when one of the prisoners’ lawyers wrote a letter.

And prisoner Jerry Baker suffered from a serious lung disease. The 63-year-old man had been at St. Clair for 14 years. The lawsuit details how Baker was not receive chemotherapy at St. Clair for 14 years. The lawsuit details how Baker was not given any of his necessary medications for several months in 2003. His weight dropped dramatically from 155 to 115 pounds, but he received no medical treatment for the severe weight loss. Baker had only two teeth on the top of his mouth yet was given no replacement for his broken denture plate. The suit says that this may have contributed to his rapid weight loss due to his inability to eat.

Prison staff also refused to provide Baker with any sort of nutritional supplements, such as a nutrient drink, to help him combat his weight loss.

Baker died on May 16, 2003 — after the original complaint was filed in this case. In the amended complaint, lawyers charge that the failure to prescribe him his needed lung medication and the lack of adequate nutrition led to his death. The Alabama DOC and Naphcare both refused to comment on his death.

Other allegations in the lengthy suit include charges that Naphcare and the St. Clair prison implemented a sick call system which is designed to dissuade prisoners from seeking medical services. Prisoners are charged $3.00 when they sign up for sick call and then often are not even seen by medical staff. Prisoners often have to wait so long for health care they refuse to sign up altogether. As a result, preventable illnesses and disease progress into serious medical problems. Lack of other necessary medical care such as inhalers, antibiotics, gauze treatments, low protein diets, antiviral drugs, liver treatments, pain medications, hearing aids and surgeries are also alleged in the complaint.

The suit seeks declaratory and injunctive relief, and all costs and attorneys’ fees. The plaintiffs are represented by attorney Morris S. Dees, Rhonda Browstein, Grace Graham and Kelly Bruner, all of the Southern Poverty Law Center in Montgomery. See: Baker et al., v. Campbell, et al., No. CV-03-C-1114-N, U.S. District Court, Northern: District of Alabama.

It should be noted that all plaintiff attorneys mentioned in this article are loyal PLN supporters and subscribers, and are dedicated to protecting the rights of prisoners. Their efforts do not go unrecognized.

Will Anything Change?

The new bidding process now underway for Alabama’s medical care services contract promises to substantially increase the amount the state spends on prisoner health care. The number is expected to rise to $46-$50 million a year over the term of the next contract. However, as critics point out, this would still rank Alabama last in the nation in per-prisoner health care spending.

The disparity in money spent appears to translate into lethally inferior care in Alabama prisons, and has had obvious consequences in prisoners’ access to doctors. According to information compiled by local media, Alabama employs only one doctor for every 3,000 prisoners. Compare that to a state like Georgia which employs one doctor per 1,100 prisoners.

Reports contained in the recent audits by Moore and Associates found that no mortality reviews were on file in facilities where prisoners have died in the last year, as required by law. Under Naphcare, those reviews have been late or not done at all, confirmed DOC spokesman Brian Corbett. “We used to do it in every case,” a DOC lawyer said. “We do it now [only] in the worst cases.”

DOC has recently had to ask the state legislature for an extra $6.9 million to cover cost overruns incurred by Naphcare. This number does not include the cost of defending the numerous lawsuits nor paying out settlements on them. Under the terms of the prior contract, the state is responsible for all cost overruns.

With the new bidding process underway for the next DOC health care contract, one might reasonably assume that a more responsible care provider would be found and that conditions for prisoners seeking medical treatment in Alabama would vastly improve. Not necessarily so, says CMS’ McWilliams.

He said that Alabama needs to get the bidding process completed quickly, or risk the possibility of prisoners getting no care at all. “Normally on these statewide programs, you have a minimum of 90 days — many times 120 to 150 days — to transition and get a program up and running. They’re putting themselves behind the eight ball.”

Serwer agrees. “My experience with these kinds of situations is that this is often a very difficult period, as far as patients actually getting care.”

Naphcare retains the contract for now, and, amazingly, there is a very real possibility that they can join the new round of bidding. Corbett said that Naphcare could theoretically win the contract again. However, he expects that DOC will require that any bidders have at least five years experience in providing comprehensive care to a large prison system — something Naphcare doesn’t have.

Sources: Associated Press, Birmingham News, Prison Talk, Mobile Register, Southern Center for Human Rights, Montgomery Advertiser.
The heavily revised third edition (2000) of *Crime Control As Industry: Towards Gulags, Western Style* is an essential guide to understanding the incarceration boom and considering how we can turn it around. The first book of Norwegian criminologist Nils Christie, *Limits to Pain*, argued that the criminal justice system is in fact a pain delivery system, with the size of the system controlled not by the number of committed acts labeled as crimes but by the amount of pain that a society is willing to impose on its citizens. *Crime Control as Industry* expands upon that theme, and tracks how an industry has arisen to manage crime. And like any industry, the crime control industry is not about to say on its own: “Stop, we have enough of the market. We don’t need to grow.”

Christie does an important job providing an international perspective to incarceration, comparing disparate incarceration rates between otherwise similar European countries. Hope can be found in his story of Finland becoming accustomed to a high level of pain delivery and then deciding in the 1970s that its incarceration rate associated the country more with its enemy the Soviet Union than with its political allies in Western Europe. Finland’s incarceration rate quickly dropped from the highest in Europe, to the second lowest after Iceland at 54 per 100,000.

Christie traces the extent to which crime control has come to dominate the economic structure by absorbing the unemployed into the roles of keeper and kept and then supplying services to each. Limited by space, let me highlight two of Christie’s many sharp observations. First Christie argues that the applicable political economy to describe prisons is not slavery, but of the old work-houses, where the objective was not profit for the State, but for private parties to relieve the State of its unwanted population at the lowest cost possible.

The second sharp observation is that justice itself has been mechanized to cope with the influx of raw materials and remove a democratic restraint upon growth. Mandatory minimums and the sentencing guidelines have served to remove discretion from judges, turning them into little more than secretaries for the legislature. While judges are in a unique position to learn details about victims and the accused; and could adopt sentences to match the needs of the offender and the community; that takes time. Time costs money, and the industry’s conveyor must be kept moving, hence the removal of judge’s discretion.

In the United States, the combined populations in prison, on parole and on probation exceed the incarceration rate of the old gulags. Christie’s excellent book asks: Do we want a culture with this much depersonalized pain delivery?

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Wackenhut’s Legacy of Shame in Austin

by Matthew T. Clarke

October 2003

Prater’s chief problem has been one of standing. Federal district judge William Wayne Justice refused to allow the jury to be instructed on contract law. Asked only to determine who was at fault for Prater’s injuries and whether there was unconstitutional cruel and unusual punishment involved, the jury rejected the constitutional issue and decided that Wackenhut was 5% negligent while Prater was 95%. This led Justice to summarily dismiss the case.

On appeal, Childress fared even worse, drawing sanctions from the Fifth Circuit against him and his client for filing a frivolous appeal. This may be indicative of the Fifth Circuit’s hostility toward prisoner litigation.

“The courts have really moved in the last 10 years to limit access to themselves, especially in prison cases,” said Jim Harrington, director of the Texas Civil Rights Project, who described the Fifth Circuit as “very punitive.”

Supporting Prater’s allegations is the testimony of former TCCJC guard Kathryne Cool, who filed a sexual, racial, and age-based discrimination suit against Wackenhut. Cool claims to have suffered harassment after documenting and reporting several incidents of staff misconduct while serving as a grievance officer from 1997 until 2000. In that capacity, she also became privy to the circumstances surrounding the beating of Prater and several other similar beatings of prisoners. In January 1999, Cool composed a memo to her supervisor suggesting that the Prater beating was racially-motivated attempted murder and should have been referred to the district attorney’s office. Cool confirmed that the beating occurred while two guards watched and noted that such incidents were common. “I was one of the few morons who would actually walk in there and break it up,” said Cool.

Undisputed is the fact that TCCJC was a disaster-in-the-making while it was operated by Wackenhut. Cool blamed many of the problems on Wackenhut’s failure to hire sufficient personnel, noting that there was sometimes as few as one guard for 178 prisoners. Further problems were caused by the kind of employee attracted by Wackenhut’s $6.50 per hour average pay. The guards were often gang members themselves, or related to the prisoners according to Cool. In addition to the beatings, Cool alleges she witnessed guards asleep and/or intoxicated while on duty, guards leaving loaded weapons and security keys in prisoner areas, prisoners allowed into guards’ ar-
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October 2003

eas, male prisoners allowed into female prisoners’ dorm area while the females were naked, guards trafficking in drugs, and guards denying prisoners access to prescription medication.

Not long after TCCJC opened in March 1997, county officials realized there were problems according to Dinah Dinwiddie, Executive Manager of the Travis County Justice and Public Safety Division. Wackenhut was not providing the required number of 158 well-trained guards and was nowhere near the required level of educational programs. By November 4, 1997, the county felt compelled to send Wackenhut a default notice based on understaffing and the high guard turnover rate. Despite angry notes, improvement at Wackenhut-run TCCJC seemed unattainable so that, by May 1999, Dinwiddie was calling it a “frigging dilemma” and questioning Wackenhut’s good faith in attempting to solve the staffing shortage.

“We finally got the idea that they were double-dipping (counting one guard working overtime as two filled guard positions),” said Dinwiddie.

Additionally, when Dinwiddie finally received long requested documents from Wackenhut, they showed that the participation rates in educational programs “were nowhere near the 95% participation the corporation boasted.”

What happened to the money paid to Wackenhut to fulfill the contract? “I’d say Wackenhut scammed us pretty well,” said Cool. “Somewhere between just pocketing the money and 100% putting it where it was supposed to be, is what was happening,” according to County Commissioner Darwin McKee.

Oddly enough, although Wackenhut was fined $625,000 by the state over the three year they operated TCCJC, there is no record of any money ever having been withheld from the payments to pay the fines. This raises questions about how well the state was monitoring its subcontractor.

“What you’re seeing is pretty much what happens elsewhere,” according to Edith Flynn, a professor at Northwestern University’s College of Criminal Justice. “It is routine for private companies to oversell and under deliver,” said Flynn. Furthermore, according to Flynn, states often fail to properly budget for oversight of private prison companies, spending all their allocated money on the contracts and leaving nothing for oversight.

Clearly, Wackenhut is in need of oversight. TCCJC was taken over by the state after widespread sexual abuse of female prisoners was discovered [PLN, Aug. ’00 and May ’01]. A total of 14 guards were indicted for sexually assaulting 16 different female prisoners. In Louisiana, widespread accusations of abuse of juvenile prisoners by Wackenhut guards led to the state taking control of the Jena Juvenile Justice Center [PLN, Jan. ‘99, Aug. ‘00, and Feb. ‘01]. Reportedly, the Jena prison also suffered from a lack of rehabilitation programs, and shortages of food, supplies, medical care, and clothing.

In New Mexico, riots, guards beating prisoners, and prisoner-on-prisoner assaults lead to the deaths of one guard and four prisoners at Wackenhut-run prisons in Santa Rosa and Hobbs [PLN, Jun., Sep., Dec. ‘99; Jun. ‘00]. Additionally, the warden and six guards at the Hobbs prison were recently convicted in federal court of brutally beating prisoners and attempting to cover up the beatings. [PLN, Jan. ‘03].

In Florida, an escape and allegations of sex between guards and prisoners led to disciplinary action—including firings—against five Wackenhut guards at a Broward County work release center. Recently a former prisoner at a Wackenhut-run private prison in Lockhart, Texas, filed suit against Wackenhut alleging that she was repeatedly raped by Wackenhut guards and that Wackenhut failed to discipline the guards even after a prison internal affairs investigation concluded that the sex was not consensual.

What was Wackenhut’s reaction to the lawsuits spawned by the aforementioned abuses?

“The lawsuits were filed against us on allegations by inmates who are convicted felons,” a Wackenhut spokesman told the St. Petersburg Times, “So they have a record of dishonesty and misleading people.” One must wonder if Wackenhut will impute the same characteristics to its former employees who are now convicted felons.

Sources: www.austinchronicle.com, St. Petersburg Times, Austin American-Statesman, Albuquerque Journal, Baton Rouge Advocate, Palm Beach Post

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Written by
Robert E. Toone
A Project of the
Southern Poverty Law Center
A new study examining 25 years of economic data finds that despite the many claims and promises, building prisons in rural communities has had no positive effect on either employment or per capita income. The study by The Sentencing Project examined prison development trends in upstate New York State over the past two decades of record prison expansion, when 38 prisons were built in mostly rural areas.

The report compared rural counties in New York that built prisons since 1982 with those rural counties that did not construct prisons, finding that prisons have produced no advantages to rural areas in either income or unemployment rates. Overall, between 1982 and 2000, per capita income rose slightly higher in non-prison counties (141%) than in those with prisons (132%).

The study also reveals that unemployment levels throughout the economic swings in New York State since 1982 have consistently moved in the same basic directions for both prison and non-prison counties, following overall state trends. In fact, during two of the three distinct economic periods between 1982 and 2001, the non-prison counties performed marginally better than the prison counties.

Prisons have become a growth industry in rural America, with approximately 350 rural counties building prisons since 1980, representing more than half of all new prison construction. This growth has been fueled by harsher sentencing and drug policies that have led to a quadrupling of the prisoner population, along with the availability of relatively inexpensive land in rural communities. Many rural leaders faced with a declining economy have aggressively sought new prison construction, viewing it as a form of economic development. State and local corrections spending overall has increased 601% during this period, with corrections spending becoming the fastest growing component of state budgets for much of the 1990s.

The study outlines a number of possible reasons local counties do not benefit from new prison construction and operation:

- Local residents are often not qualified or able to obtain prison jobs;
- Job competition from existing prison employees;
- Inability of local business and infrastructure to provide prison services;
- Multiplier effect fails—prisons do not generate spin-off or “cluster-based economic development.”

Previous studies that have analyzed prison job creation have failed to examine, as research from California, Missouri and Washington state shows that most jobs are taken by those outside the prison town itself.

“Despite 20 years of claims by those who have gained financially or politically in building so many prisons, we now know that prisons do nothing to lift rural areas economically in jobs, income or sustainable growth,” stated Ryan King, Research Associate at The Sentencing Project. “Their economic claim to fame is that prison construction swells state budgets substantially. Reliance on prisons as an economic tool is at best short-sighted and may lead to limiting local economic growth options.”

The study, “Big Prisons, Small Towns: Prison Economics in Rural America,” was authored by Ryan S. King, Marc Maier, and Tracy Huling. The Sentencing Project is a national non-profit organization that analyzes criminal justice policy. The report is available to media at www.sentencingproject.org/media.

**Hawaii: High Recidivism for Mainland Prisoners**

Hawaii prisoners housed out of state are virtually guaranteed to return to prison after release, according to a Jan. 21, 2003, story by the Honolulu Star-Bulletin. Currently, 90 percent of prisoners housed on the mainland return to prison, while those housed in state have a recidivism rate of between 47 percent and 57 percent.

State Rep. Glenn Wakai (D-Moanalua Valley) found the disparity in recidivism rates startling. “What’s the public good of us sending them to the mainland to just house them there so they can come back X number of years later and go and prey on us again?” he said.

State Rep. Colleen Meyer (R-Laie) believes the numbers imply that prisoners housed on the mainland are not being rehabilitated. Public safety officials testified in Jan. 20, 2003 that an overwhelming 85 percent of Hawaii state prisoners need substance abuse treatment. Apparently, this treatment is either non-existent or ineffective for those housed out of state.

Severe prison overcrowding has forced Hawaii to contract with out of state private prisons. Currently, more than one-fourth of Hawaii’s 5,093 prisoners are housed on the mainland, at a cost of $25 million to state taxpayers.

Not noted in the article is the fact that all the mainland prisons used by Hawaii are run by either Wackenhut or Corrections Corporation of America. Private prisons tend not to have programs geared toward rehabilitation because these programs cut into potential profits—yet no one seems to be making this connection.
From the Editor
by Paul Wright

Subscribers should soon receive PLN’s fall fundraiser letter along with our reader survey. Periodically we send readers a survey asking readers what they think of PLN’s coverage and content and what they would like to see in future issues. We welcome suggestions and comments so that we can better serve our readers’ needs. By the same token, just because we do reader surveys doesn’t mean that you should wait until we do one to submit any suggestions or ideas.

Starting October 1, 2003, we are also starting our Subscription Madness campaign, which was very successful last year. One of the best ways to get new readers and let people know about PLN is to mail out sample copies to potential subscribers. However, sample mailings are expensive and time consuming to prepare and even the most successful sample mailings usually only have a response rate of one or two percent. By allowing readers to buy gift subscriptions at an introductory low rate we allow for the expansion of our subscriber base and pass the savings on to the buyer of the gift subscription.

Potential people to give gift subscriptions to include journalists, legislators and judges as well as public, prison and school libraries where PLN can reach a wider number of people than we otherwise would. Don’t know anyone to give a gift subscription to? Fill out the form and send it in to PLN’s office with a note that you would like PLN to provide the recipients of the subscriptions. Every day PLN receives requests from indigent prisoners, many in control units and on death row, who are unable to afford a subscription. PLN lacks the resources to give gift subscriptions to the many prisoners who write to request them.

The number of women prisoners in the US has rapidly increased in the past 20 years, mainly due to determinate sentencing. While PLN has prisoner subscribers in all 50 states, that is not the case for all women’s prisons in the country, where PLN has readers in around half. We would like to increase the number of women prisoners who subscribe to PLN. Part of the problem is letting them know PLN exists and the fact that most women in prison tend to be serving relatively short prison sentences. One project PLN has been unsuccessful in seeking funding for was to provide a one or two year subscription to the law libraries of all women’s prisons in the US to help raise awareness of their rights. If this is of interest to anyone, let PLN know and we can discuss the details.

As always, it is reader donations and support which keep the presses going at PLN and allows us to publish each month. Subscription and advertising income cover only a portion of PLN’s operating expenses. We rely on donations from readers to make up the difference.

As this issue of PLN goes to press, PLN is preparing to file suit against the federal Bureau of Prisons ADX “supermax” prison in Florence, Colorado, which since 2000 has banned all issues of PLN, claiming it constitutes “inmate correspondence.” We are also suing the Florida DOC for its blanket ban on PLN due to our discount phone service ads. The details of each suit will be reported in an upcoming PLN as soon as they are filed. PLN is the only publication in the country which consistently stands up for the free speech rights of prisoners and publishers who wish to communicate with prisoners. PLN’s censorship litigation results in significant changes. Right now PLN has a consent decree in Nevada, permanent injunctions in Washington and Oregon and binding settlements in Alabama, Oregon and Michigan. These suits are complex and expensive. They typically require extensive amounts of staff time from PLN’s office employees to document, track and prepare our claims for submission to PLN’s lawyers. Even when we win the case, this is time for which PLN is not always compensated, as sometimes prison officials lose on the merits but obtain qualified immunity from damages. PLN’s staff time in answering discovery and such also cannot be compensated.

We hope that recipients of gift subscriptions will subscribe for themselves once their subscription runs out. Which will help build PLN’s long term subscriber base.

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A renewed four-year no-bid prisoner phone contract was awarded in June, 2002 by the California Department of General Services to MCI WorldCom, a telephone conglomerate whose recent bankruptcy exposed the largest accounting fraud in US business history - $11 billion. The non-competitive award, giving MCI exclusive control of prisoner phone calls in 29 of California’s state prisons (the other four went to Verizon Corp.) was let two months after MCI gave $13,000 and one month after Verizon gave $25,000 to Governor Gray Davis’ political campaign fund. MCI spokesman Natasha Haubold called the timing “purely coincidental.” Gov. Davis, under intense media pressure, had recently returned a $25,000 donation that preceded an $85 million no-bid award to software supplier Oracle Corp.

Charles Carbone, legal director of California Prison Focus - a San Francisco non-profit prisoner rights group - called the award “very disconcerting” because the contract “should have been opened to competitive bidding.” But even if it had been, it is unclear for what factor the “winner” would have been selected. California, like many other states, exacts a contractor “kickback” as a flat percentage of all prisoner phone revenues. The previous two-year MCI contract generated approximately $35 million in annual kickbacks to California. In the new contract, with annual revenues estimated to be $60 million, the state is reportedly scheduled to receive $26 million per year - a 43% slice before costs and profits to MCI.

MCI, with similar lucrative contracts in New York, Georgia and Florida, charges recipients of prisoner collect calls $4.84 for the first minute and from 15 to 89 cents for each additional minute. MCI spokeswoman Haubold reported that - in spite of MCI’s assertion that prices for prisoner calls are driven by costly required security measures, let alone the 43% kickback - prison prices are now cheaper than public pay phone calls.

California has extensive rules requiring competitive bidding, but the San Francisco Chronicle reports that notwithstanding those rules, California has “awarded billions of dollars in no-bid deals over the past three years” such as the Oracle scandal. Circumventing of the bidding rules seems to track “favored companies and campaign contributors,” the Chronicle said.

One explanation, offered by General Services lawyer Laurie Giberson, was that the requests for proposals are so confusing that vendors don’t bid. Such a “failed competition” then results in a “no-bid” award. Presumably, such industry giants as AT&T, Verizon and SBC’s Pacific Telephone are simply incapable of comprehending telephone system proposals; only recent Davis campaign donors are possessed of this skill.

State Senator John Vasconcellos called the no-bid process “grossly immoral”; Senator Debra Bowen called it “a mess.” “I am much more concerned about the policy of socking it to the families of prisoners,” she said. In fact, California passed legislation requiring the prisoner phone contracts be awarded to the company offering the lowest rates, not the biggest kickback. But Gov. Gray Davis vetoed it, saying he didn’t want to give up the revenue stream.

Six months later, MCI tangled with Pacific Bell by disconnecting Pacific Bell’s pay phones in juvenile prisons and hooking up its own local lines instead. Thus, “long-distance” vendor MCI allegedly illegally invaded Pacific Bell’s “local turf.” MCI claimed it had the right to do so under a February, 2002 state contract. Ironically, the pitched business sector battle between the two firms might be resolved in favor of MCI when bankruptcy gives them a financial advantage by absolving their fraud-grounded debt.

MCI’s lust for prisoner families’ phone dollars isn’t limited to California. In 1999, MCI gave a 60% kickback to New York - which awarded the contract to the firm guaranteeing the biggest payola. New York’s Department of Correctional Services (NY DOCS) spokesman James Plateau called it “smart to charge a commission ... to offset ... taxpayer costs for inmate programs.” MCI’s contract resulted in a 10 minute call rising from $3.83 (using an 800 number-based collect calling system) to $5.03. Prisoners’ families (often poor and of color) should bear some of the cost of running the prison system, Plateau pointed out, because prisoners are in prison for punishment. The state’s 60% pays for cable TV, free buses, postage stamps, nurseries in women’s prisons and the $40 cash and civilian clothing paroling prisoners receive, he added. Prisoner advocates countered that the 60% also went for prisoner health care, something the state is obligated to pay for.

The New York Times, citing Florida House of Representatives sources, tabulated the 1999 annual prisoner telephone contract kickbacks by state: New York, $20-21 million; Illinois, $12-16 million; California, $15 million; Ohio, $14 million; Florida, $14 million; Georgia, $10-12 million; Missouri, $9-10 million; Virginia, $10 million; Michigan, $10 million; Pennsylvania, $3 million.

In April, 2003, SBC Corp. negotiated a Cook County, Illinois, jail phone contract with a 45% kickback provision. Some jail commissioners wondered why the families of jailed, unconvicted (and presumably some innocent) prisoners were thus being punished. SBC was given the non-competitive contract because their deal was “very attractive” and they had been a “good partner.” A minority subcontractor to SBC, Crucial Communications, is run by the son of Nation of Islam founder Elijah Muhammad, whose business partners had donated over $12,000 to the county commissioners who awarded the contract, including a $5,000 donation to Commissioner John Daley, brother of Chicago Mayor Richard Daley. Notably, the President of SBC is yet another brother - William Daley.

Previous MCI phone overcharges and scandals were reported in PLN. California’s Public Utilities Commission ordered MCI to rebate $522,458 in overcharges [PLN, Nov. ’01]. A $1.5 million MCI overcharge/rebate in Georgia implicated State Senator Majority Leader Charles Walker [PLN, Apr. ’02]. Recent technology has spawned a middleman cottage industry offering call...
Florida, an MCI-contract state, has unilaterally banned prisoners from receiving PLN because it contains such advertisements. PLN is preparing to litigate this issue. In a rare victory, a user suing to enjoin prison rules banning such calls won a Louisiana court ruling that will save her approximately $1400/year.

Far beyond its stateside reach for no-bid contracts, MCI recently won a $45 million no-bid award from the US Government for a wireless network in Iraq. Not even Motorola, an established vendor in the field, knew of the pending procurement. Maine Senator Susan Collins is spearheading a Govt. Affairs Committee investigation into such federal contracts – wondering all the while if the federal government should even be doing business with such a corrupt firm.

The state of Oklahoma has recently filed criminal charges against MCI and its corporate officers. The federal government has belatedly banned MCI/WorldCom from soliciting federal contracts - wondering all the while if the federal government should even be doing business with such a corrupt firm.

The $500,000 Settlement in Connecticut Suicide

On April 14, 2003, the family of a prisoner who committed suicide in 1996 while in a Connecticut prison settled with the state for $500,000.

William Dumais, 19, was imprisoned in the Corrigan Correctional Institution in Uncasville from December 1995 to February 1996 on a charge of fourth-degree larceny. On his first full day at the prison, he was seen by a psychiatric nurse and placed on medication after he was discovered “crying and talking about killing himself,” according to the lawsuit filed by his family.

Dumais was released in February but returned to Corrigan in April 1996 after he failed to appear on time at a court hearing. According to the lawsuit, which was scheduled for trial May 21, 2003, a nurse at Corrigan failed to properly review medical records and therefore did not notice his psychiatric history. Two days later, Dumais hung himself.

Dumais had a history of depression. He had tried to kill himself on many occasions, the lawsuit revealed. In one incident, at the age of 14, he commandeered his father’s car and crashed it into a tree. He told medical personnel he had “wanted to kill himself.” In other incidents he had cut his wrists and had been caught by police laying on railroad tracks.

Dumais’ suicide attempts continued at Corrigan. According to the lawsuit, Dumais cut himself in one incident, at the age of 14, he commanded his father’s car and crashed it into a tree. He told medical personnel he had “wanted to kill himself.” In other incidents he had cut his wrists and had been caught by police laying on railroad tracks.

Dumais’ suicide attempts continued at Corrigan. According to the lawsuit, Dumais cut himself in one incident, in another he confided to a fellow prisoner that he was either going to leap from a second-story balcony or poison himself.

Attorney for the family, Robert Reardon, says the state was wrong for dragging out the case for so long and then settling just before trial. “I’m sure they could have done so years ago,” Reardon said. “It was a very painful experience for the family to go through.”

Source: Hartford Courant
Dead Man Waking
by Bruce Shapiro

Is it possible Timothy McVeigh was fully alert and utterly sentient when potassium chloride shot through his leg and stopped his heart? The tear witnesses saw well up in his left eye suggests that he might have been very conscious as lethal drugs burned his veins, took his breath, and seized his heart. There are lots of people who hope so. But Mark Heath is not one of them. “It gave me the creeps,” Heath, an anesthesiologist and neuroscientist at Columbia Presbyterian Medical Center in New York, says of the tear. “It is a classic sign of an anesthetized patient being awake.” Heath found it disturbing to think that the federal government would torture McVeigh and other citizens it puts to death.

In fact lethal injection has become the execution method of choice in most jurisdictions precisely because it seems to induce a more dignified dispatch than either the electric chair or gas chamber. The idea is to “show respect and dignity for everyone involved,” says Federal Bureau of Prisons spokesman Dan Dunne. Toward this end a sedative, sodium thiopental, or Pentothal, is pumped into the condemned prisoner’s blood stream, rendering him or her unconscious.

Prompted by reports of McVeigh’s tear, however, Heath cast a clinical eye on this sequence of execution drugs. He did not like what he saw. For one thing he was puzzled by the choice of sedative. Sodium thiopental says Heath, “is an ultra-short acting barbiturate and we use it all the time in the operating room. There’s a lot of room for error, and a lot of room for someone to wake up.” Instances of patients waking up during surgery are well documented, he points out.

But what really disturbed Heath was the use of the second drug, pancuronium bromide. It is not, Heath realized, strictly necessary for the execution. Instead it paralyzes the condemned prisoner so thoroughly “that he looks peaceful and relaxed no matter what he is experiencing.” A prisoner could awaken mid-execution and find himself “in incredible pain as the potassium is injected, and even worse, fully aware of suffocation as his lungs filled with fluid”- and yet the witnesses would get no indication that anything like this was taking place. To Heath this means just one thing: Pancuronium is administered primarily “so witnesses do not need to look at something unpleasant.” The drug is “a chemical veil,” says Heath. “It’s like the leather mask they used to put over the faces of people in the electric chair, except it masks what is happening to the whole body. And you can’t see that it is there.”

Heath—who previously had been, in his words, “ambivalent” about the death penalty—began calling federal prison officials to learn more about what scientists call the protocol for execution drugs. His findings alarmed him as much as the drugs themselves: The guidelines for lethal injections, he was told, are a closely guarded secret, a startling fact confirmed by Bureau of Prisons spokesman Dunne. “We don’t really make it available” Dunne says. The Bureau of Prisons will not say how much of each drug is used or whether the injection is administered by machine or directly by human executioners. “We just don’t provide those details.”

The secrecy, Dunne claims, is necessary “to protect the privacy of everyone involved”- even though the effect is to mask objective assessment of the federal government’s execution methods as thoroughly as pancuronium can obscure a dying prisoner’s agony.

The advent of lethal injection is itself a strange story involving much politics, scant science, and more than a little fraud. As long ago as 1973 Ronald Reagan, then governor of California, speculated that a “simple shot or tranquilizer” might make capital punishment more palatable to uneasy judges and the public. “Being a former farmer and horse raiser, I know what it’s like to try to eliminate an injured horse by shooting him,” Reagan said. Four years later Oklahoma passed the first lethal injection bill after one legislator received a single endorsement of the proposal from an anesthesiologist. Soon one state legislature after another made lethal injection their execution method of choice.

The sticky problem of how the process ought to work was left to prison wardens, who often sought help from veterinarians, the nearest stand-ins for doctors; their Hippocratic Oath prohibits giving advice on killing. In 1982 a New Jersey dentist in the state assembly sponsored a law specifying the combination of barbiturates and paralytic agent. To concoct the precise formulation, New Jersey and then Missouri called upon Fred Leuchter, who advertised himself as an engineer with execution expertise. Leuchter is also a notorious Holocaust revisionist and the subject of a 1999 documentary, Mr. Death. Leuchter tells Talk he constructed a device to deliver the drugs and that he came up with a formula after he examined medical studies on rabbits and pigs, and “extrapolated from there.”

After a 1991 lawsuit exposed him as a charlatan, Leuchter left the execution consulting business, but the recipe he formulated for New Jersey and Missouri may well have been adopted by other states.

The Bureau of Prisons will not say whether it too relies on Leuchter’s recipe but Leuchter himself believes the federal execution protocol is based on his work. Curiously, Leuchter agrees with part of Heath’s assessment: Timothy McVeigh’s execution, Leuchter claims, “took longer than it should have” leaving open the possibility that McVeigh was awake during his final minutes.

If McVeigh was indeed awake during his execution, it would not be the first time a lethal injection went awry. Indeed some lethal injection scenes can only be described as horrendous. Stephen McCoy began heaving and shaking and gasping during his execution in Texas in 1989, a reaction so violent that one witness fainted. In Illinois in 1990 a kink in IV tubing slowed the flow of drugs into Charles Walker, leaving him in prolonged and excruciating pain. In Missouri 1995 Emmitt Foster was seven minutes into his lethal injection when the chemicals abruptly stopped working. Foster gasped and convulsed; officials stopped the execution and drew blinds, blocking witnesses’ view. And in June 2000 Bert Leroy Hunter of Missouri went into repeated and violent convulsions, his head and body jerking back and forth against his restraints in what
one witness called “a violent and agonizing death.”

Heath isn’t the only scientist to have raised questions about the drugs used for lethal injection. “It’s obvious to any anesthesiologist who looks into it that it’s not a good protocol,” he says. But his contention that pancuronium works to fool witnesses, reporters and even judges in to believing that execution is peaceful, “just like going to sleep,” as witnesses often report- has never been brought before a federal appeals court. Indeed, though several state courts have upheld lethal injection, no federal appellate court has ever addressed the question of whether today’s favored execution method constitutes cruel and unusual punishment. McVeigh’s lawyers may have raised the issue had the Oklahoma City Bomber not abandoned his appeals.

McVeigh’s, the first federal execution is 38 years, signals a new season and controversy. At a time when public support for the death penalty had eroded, polls showing that support for capital punishment has dropped 15% in the past 7 years, Heath’s questions could spark renewed debate.

Heath has filed a Freedom of Information Act request with the Bureau of Prisons, hoping for more details about the federal government’s lethal injections. He is not interested, he says, in designing a better mouse trap. Rather, he wants to show what he has come to see as “insidiousness” in an execution system that claims to be humane but that disguises a dying prisoner’s agony from witnesses and the public.

The question of whether lethal injections is cruel and unusual punishment prohibited by the Eighth Amendment and whether it gives rise to indescribably agonizing death or torture prohibited under international treaties and conventions is of more than passing interest to the 19 prisoners currently on federal death row. When the issue is raised in federal court, which it no doubt will be, Heath predicts that the “chemical veil” drawn over execution by pancuronium will prove central: Judges, this scientists is convinced, “have not realized how the very process of execution can cover up the evidence of cruelty.”

This article originally appeared in Talk Magazine. It is reprinted with permission.

Family Awarded $229,000 Against CMS in Illinois Hepatitis C Jail Death

A jury has awarded the family of a prisoner who died while in the Kane County Illinois Jail $229,500. On May 16, 2002, after 92 hours of deliberation, the jury returned a verdict against Correctional Medical Services of Illinois, the jail’s health care contractor. The total award was originally $450,000 ($50,000 disability; $100,000 pain and suffering; $300,000 pecuniary loss). However, the jury found that prisoner Ethel Hare was 49 percent responsible for her death and therefore awarded the family 51 percent of the total damages.

Hare, who suffered from hepatitis C, chronic liver disease and was HIV positive, was a prisoner at the jail in 1997. According to the lawsuit, Hare tried unsuccessfully to obtain help from CMS nurses five times over a 32 hour period beginning on March 20. At one point she informed the nurses she had been vomiting blood, but they did nothing. On March 22, five hours after her last attempt to get help, Hare was discovered comatose in her bunk. She did not regain consciousness and died two days later.

In their lawsuit, family members contended that CMS ignored the warning signs of Hare’s worsening liver disease. “One of the dangers of liver disease is that you will bleed,” says Attorney Susan Clancy-Boles. “She was slowly dying before their eyes and they didn’t do anything.” CMS argued that Hare’s vomiting had seemed to resolve itself and that her medical problems were not due to recent illness, but rather her history of alcohol and drug abuse and chronic liver disease.

CMS lost its contract with Kane County Jail in 2000. Jail officials indicated that bid forms had been filled out improperly. The family was represented by Michael W. Clancy and Susan Clancy Boles of Clancy Law Offices in St. Charles. See: Hare v. Zeglar, Correctional Medical Services of Illinois, Inc., Kane Co. Sup. Ct. Case No. OOL-485.

Sources: Jury Verdict, Daily Herald

15  October 2003
Honduras Prison Massacre: What Really Happened

On April 5, 2003, 68 people were murdered inside the walls of the El Porvenir prison in Honduras. The story that initially came out of that country said that 59 of the dead were gang members who shot at other prisoners, then barricaded themselves inside the cellblocks. Original reports went on to say that the “vicious” group then set a suicidal fire, killing innocent victims in the process. All the while, the report said, as police were rushing in to restore order.

The only problem with the story though is that it was all false. According to outside experts, it was all made up to cover up what really happened in what turns out to be the worst Honduran prison massacre in many, many years.

According to the new report commissioned by the nation’s president, 51 of the dead, all members of a street gang, were actually executed by state police, soldiers, prison guards, and other prisoners working with the guards. The murdered prisoners were either shot, stabbed, beaten or burned to death by the force.

The prison was a time bomb,” said Jose Edgardo Coca, a former police sergeant known as the prisons “leading inmate.” The day of the killings the prison held 550 men, 200 over capacity. About 80 percent of those are pretrial detainees, awaiting trials in the severely congested Honduran court system.

About 80 members of a feared youth gang call Mara 18 were transferred to the prison March 18. Mara 18 is an offshoot of Los Angeles’ 18th Street gang. It was formed by criminal immigrants deported from the U.S. back to Honduras. Tension immediately ignited between Mara 18 and El Porvenir’s established prisoners’ association.

The violence began on the morning of Saturday, April 5, when the head of Mara 18, Mario Cerrato, shot Coca with a smuggled pistol. The Mara 18 gang then fought with guards from 9:55 a.m. to 10:05 a.m., until soldiers from a nearby camp along with national police units and members of a special operations squad called the Cobras arrived at the prison.

Cerrato was immediately shot by police. With their leader out of action, the remainder of the Mara 18 group retreated to their cells. Coca’s followers then barricaded them in their cell block and set portions of it on fire in front of police.

According to the report, police then “opened fire on gang members who came out of their cells barefoot, their hands raised above their head in surrender.” One prisoner was shot as he staggered from his cell in flames. Other prisoners who had already surrendered, were beaten and stabbed as they laid face down in the prison yard, according to the new report.

Despite an exhaustive search after the melee, the pistol was never found.

“What became of the gun?” asked Coca. “That is the question of the millennium.”

“Of the 68 bodies received at the morgue in San Pedro Sula, 18 had gunshot wounds, 17 had knife wounds, and 24 were burned,” the report said. “It is important to note that no firearms were found among the victims.”

“It is not true [as the original report stated] that the police opened fire to break up a chaotic fight, as some have attempted to establish,” the report continued. “They fired on a defined group within the prison population.” Almost every member of Mara 18 who survived was wounded.”

The horrifying incident was played down by Armando Celidonio, Honduras’ vice minister of state security, calling the deaths an aberration and a momentary loss of control. “It’s admirable that nothing happened the other 364 days of the year,” he said.

But others, such as Bishop Emiliani, who preached at the prison only two weeks after the murders, labelled the deaths of the Mara 18 youths “an assassination.”

“It’s one thing to put down a rebellion,” he said. “It’s quite another to commit murder.”

Source: The New York Times

Proud member of the Better Business Bureau of Central Florida.
Cheap Mexican Prison Labor Exploited by U.S. Firms

Even with U.S. laws prohibiting the importation of commodities produced with prison labor, prison officials in northern Mexico report that prisoners there are making furniture headed for Texas. Moreover, they’re pursuing more contracts with American companies to produce a variety of goods, even offering to label the products in such a way that their origin is hidden. “Our products don’t say they are made in prison,” said Manuel del Riego, the Tamaulipas state prison director. “They put a fancy tag on them and say they are made in a faraway country.”

Prison factories are seen by some Mexican authorities as a way to counter the outflow of foreign-owned business from within Mexico’s borders to even cheaper labor in Asia. Prison labor, however, faces global criticism. The importation of prison made goods is banned by many countries — including the U.S. — on the basis it siphons jobs from the public sector, weakens unions, and creates a fertile breeding ground for human rights abuses.

Even so, one U.S. businessman, Clint Hough of Austin, Texas has been purchasing prison-made furniture for over a year, says del Riego. Asked during an interview at the prison whether or not he was transporting furniture to the U.S., Hough replied, “That I would really rather not discuss because I’m afraid U.S. Customs would ruin it.” Hough went on to say that U.S. Customs can be narrow-minded “So it’s really important that this is not reported.”

Prisoners at the Ciudad Victoria prison said they manufactured 60 chairs and 3 dining room sets for a Corpus Christi barbecue chain under contract with Hough. Prisoner Serafin Hernandez Jr., who is in charge of the manufacturing, said “[Hough] calls me each week and asks how things are going or tells me, ‘I need two more chairs, a bedroom set,’ and we get everything ready for when his trailer comes.”

According to del Riego, 150 foreign-owned companies have shown interest in using convict-labor at Tamaulipas’ 11 prisons to produce goods. Cheap labor of about 45 pesos ($4.50) a day and savings in worker benefits such as retirement and health insurance makes Mexican prison labor attractive. These are the same things that attract companies to U.S. prison labor.

Paula Keicer of the U.S. Customs Service in Washington D.C. says that the importation of goods made with prison labor are prohibited by U.S. law “no matter what the circumstances.” Ironically, the U.S. has no qualms about exporting its own prison made goods.

Source: The Associated Press

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On June 16, 2003, the United States Supreme Court unanimously upheld visiting restrictions imposed by the Michigan Department of Corrections (MDOC). The decision reverses contrary rulings by the U.S. Sixth Circuit Court of Appeals and a Michigan federal district court. Twenty-one states plus the federal government filed amicus curiae briefs on Michigan’s behalf. The decision makes it possible for other states to impose the same sweeping restrictions on their prisoners by adopting Michigan’s rules.

In 1995 MDOC imposed broad restrictions on the number of visitors prisoners could have. The Department was responding to prison overcrowding, alleged drug smuggling into prisons by visitors, and allegations that prisoners had harmed unsupervised children during visits. The rules prohibited visits by minors who were not children, stepchildren, or grandchildren of prisoners; prohibited visits by former prisoners who were not immediate family; prohibited visits by children where a prisoner parent had lost custody of the children; and allowed only ten selected other persons, not counting clergy and attorneys, on each prisoner’s visiting list. The rule also banned visits for at least two years, excluding clergy and attorneys, for anyone disciplined two or more times for a drug offense. After the case began, MDOC changed the rules in 2001 to allow minor siblings to visit, and in 2002 to allow minor nieces and nephews to visit and to ban visits after a single substance abuse disciplinary infraction.

Michelle Bazzetta and numerous other MDOC prisoners sued the Department under 42 U.S.C. §1983 claiming that the rules violated their constitutional right of intimate association and their Eighth Amendment right to be free from cruel and unusual punishment. The district court upheld MDOC’s rules as to contact visits but sided with prisoners on non-contact visits. The appeals court reversed. See: Bazzetta v. McGinnis, 148 F.Supp.2d 813 (2001); Bazzetta v. McGinnis, 286 F.3d 311(2002) [PLN, June and Nov. ’02].

The U.S. Supreme Court disagreed. Writing for the Court, Justice Kennedy noted that the Constitution does protect “certain kinds of highly personal relationships,” including, “...a right to maintain certain familial relationships ... among members of an immediate family and ... between grandchildren and grandparents.” These rights are lost by incarceration. “The very object of imprisonment is confinement... And, as our cases have established, freedom of association is among the rights least compatible with incarceration. ... Some curtailment of that freedom must be expected in the prison context.”

The Court explicitly refused to hold “that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners.” MDOC’s visiting restrictions were upheld, however, as being rationally related to a legitimate penological interest. Citing, Turner v. Safley, 482 U.S. 78 (1987), among other cases, and applying the Turner four-factor test, the Court held that the regulations were valid. Moreover, “the burden ... is not on the State to prove the validity of prison regulations, but on the prisoner to disprove it.... Respondents have failed to do so here.”

Analyzing MDOC’s regulations under Turner, the Supreme Court first found that the visiting restrictions were rationally related to MDOC’s important, legitimate interests “in maintaining internal security and protecting child visitors” from various harms. The Court rejected the prisoners’ argument that excluding minor nieces and nephews was unreasonable, holding that MDOC had to draw a line somewhere, and where they drew the line was reasonable. The ban on visits by former prisoners was also reasonable and “self-evident.”

The court found the loss of visits for two years for substance abuse violations was reasonable as a legitimate management tool “especially for high-security prisoners who have few other privileges to lose.” If the ban on visits was permanent, in rule or in fact, the Court noted, “we might reach a different conclusion.... Those issues are not presented in this case....” The Court refused to substitute its judgment for MDOC’s conclusions as to how best to discipline substance-abusing prisoners.

The Court also found that alternative means of communicating with friends and family were available to prisoners. The prisoners protested that letter writing was inadequate for illiterate prisoners and young children and that phone calls were too brief and too expensive. The court deemed the protests irrelevant, ruling that visitation alternatives didn’t need to be ideal, only available.

The Court further held that the impact of the prisoner’s asserted associational rights on guards, other prisoners, MDOC resources, and visitors’ safety would be “significant,” affecting both MDOC finances and guards’ ability to protect everyone. The Court gave particular deference to this Turner factor.

Finally, the prisoners did not advance, and the High Court could not find, “some obvious regulatory alternative that fully accommodates the asserted right while not imposing more than a de minimis cost to the valid penological goal.” Thus, the prisoners’ claims failed the fourth Turner factor.

In a brief paragraph, the Supreme Court disposed of the prisoners’ Eighth Amendment claim. Though the ban made prison life harder, it was temporary, not permanent, and “not a dramatic departure from standards for conditions of confinement.” Arbitrary application of the ban to particular prisoners might violate those individual’s rights, but could not serve as a basis for striking down the whole regulatory scheme. The judgment of the Sixth Circuit Court of Appeals was reversed. See: Overton v. Bazzetta, 123 S.Ct. 2162 (2003).

Justice Stevens, joined by Justices Souter, Ginsberg, and Breyer wrote a concurring opinion emphasizing that the Court’s decision did not resurrect “the view once held by some state courts that a [prisoner] is a mere slave.”

Justices Thomas and Scalia wrote an opinion concurring in the judgment on different grounds from the rest of the Court. Thomas and Scalia urged reexamination of Turner and of Pell v. Procunier, 417 U.S. 817 (1974), and a return to earlier, harsher Eighth Amendment standards for prisoners.

Additional Source: Associated Press
Thomas and Scalia Flunk History

by Scott Christianson

The unanimous decision of the United States Supreme Court in Overton v. Bazzetta, upholding Michigan’s punitive restrictions on prisoners’ visiting rights, showed again how antagonistic the Rehnquist Court is toward prisoners’ rights compared to the Burger Court. But the Court’s two most conservative justices showed they would like the clock turned back even further.

In his concurring opinion in Overton, Justice Clarence Thomas (joined by Justice Antonin Scalia) asserted that "the history of incarceration as punishment supports the view that the prisoner is not a man, but a beast of burden, to be used and discarded as the masters see fit, and if it comes to the point, to be beheaded and cast to the dogs who bring it down.” Their opinion included examples of some early prison practices from slavery days, without condemning them or suggesting that society might do well to progress from such barbarism.

Thomas and Scalia seemed to indicate that whatever prison policies existed then should be constitutional today. They also pointedly left it to the states to determine whatever punishment they want to impose, so long as it doesn’t violate the Eighth Amendment.

Their opinion carefully avoided mentioning the Thirteenth Amendment. To establish prisoners’ legal status, however, they implicitly seemed to hang their hat on that provision. In other words, because the Constitution specifies that there shall be no slavery or involuntary servitude except for those convicted of a crime, then by extension, anyone so convicted can be treated with as much rights as a slave — just as they were in the “good old days.”

As the author of one of the works they cited, but obviously hadn’t read, I think the justices would do well to recognize that those who fail to heed history’s lessons are bound to repeat its mistakes.

Scott Christianson is author of With Liberty for Some: 500 Years of Imprisonment in America (1998), Prison Legal News pg 37-38) and other books.

Federal Appeals Courts Address Finality of Dismissals, Grievance Contents

In two, separate, unrelated cases, the Third and Seventh U.S. Circuit Courts of Appeals have addressed the finality of dismissals without prejudice, the contents of grievances, and various procedural points under the Prison Litigation Reform Act (PLRA) and prisoner suits brought under 42 U.S.C. § 1983.


Ahmed was released from prison in July 2000. He did not appeal the dismissal. Subsequently, Ahmed moved to amend his complaint to relate back to the prior complaint. The district court denied the motion, and Ahmed appealed.

Ahmed argued that since the original dismissal was “without prejudice,” he should be granted leave to amend. Pennsylvania argued that the original dismissal was a final, appealable order, which Ahmed failed timely to appeal. The appeals court held that, though designated a dismissal without prejudice, Ahmed’s complaint had incurable defects — failure to exhaust administrative remedies and expiration of the statute of limitations prior to the dismissal — and was, thus, a final, appealable order. Consequently, Ahmed could not amend his complaint and failed to appeal timely.

The court agreed with Ahmed that the PLRA does not apply to released prisoners; however, Ahmed did not file a timely complaint after release from prison. Rather, he sought to amend a complaint filed while he was in prison. In such a case, even though no longer a prisoner, the PLRA applied. The district court decision was affirmed. See: Ahmed v. Dragovich, 297 F.3d 201 (3rd Cir. 2002).

In a separate case, Illinois prisoner Dion Strong appealed a dismissal of a 42 U.S.C. §1983 case claiming sexual assault by prison doctor Alphonso David. Strong filed two grievances against David and various Illinois prison officials accused of covering up the assault. After exhausting administrative remedies, Strong sued, the district court dismissed, and Strong appealed.

On appeal, the defendants conceded that Strong had exhausted his administrative remedies. They argued, however, that Strong should still be dismissed for lack of specificity in his complaint.

The appeals court addressed the question: “What body of law governs the specificity inquiry?” The court handbook was silent on the question, and, the court noted, different federal circuits have reached different conclusions on the relevant degree of specificity required in a grievance. Prisons may establish any system they desire so long as federal policy is not violated.

Since Illinois had no set degree of specificity in grievances, the appeals court held that it would use the “notice pleading” standard. Under this standard, “a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought. ... All the grievance need do is object intelligibly to some asserted shortcoming.” Strong’s grievances both met this standard.

The district court decision was reversed. The case was remanded with specific instructions for handling the claims against various defendants and for further proceedings. This is not a ruling on the merits of the claims. See: Strong v. David, 297 F.3d 646 (7th Cir. 2002).
Washington SCC Injunction and Contempt Order Upheld

On February 26, 2003, U.S. District Judge Barbara Rothstein upheld an injunction and contempt order issued against the superintendent and clinical director of the Special Commitment Center ("SCC") at McNeil Island, Washington. The SCC houses former prisoners civilly committed as "sexually violent predators." In 1994, U.S. District Judge William Dwyer issued an injunction that required SCC to provide constitutionally adequate mental health treatment to its residents. In 1999, Judge Dwyer held SCC in contempt for failing to take all reasonable steps to comply with the injunction. Since that time, the court has on several occasions held that SCC has yet to comply with the injunction and continued the 1999 contempt sanctions. A detailed history of the SCC and the litigation its creation spawned was discussed in the following issues of PLN: May 2000, pg. 8; Sept. 2000, pg. 20; Aug. 2001, pg. 21 & 32.

Judge Rothstein held a two-day evidentiary hearing in December 2002 to determine whether SCC had achieved substantial compliance with the injunction and, if so, whether the contempt sanctions against it should be purged. The court noted six specific steps SCC must take in order to achieve injunction compliance: (1) fund and establish less restrictive alternative ("LRA") facilities in locations other than McNeil Island; (2) develop additional LRA space soon enough so that residents can apply for LRA status and receive prompt placement if they are found eligible; (3) appoint a new ombudsman; (4) develop vocational training facilities and programs; (5) fully implement an effective grievance procedure; and (6) revive and continue regular consultations regarding the special needs population, and finalize the "Measures of Progress" program for the special needs population.

After reviewing testimony and evidence presented at the December hearing regarding these six issues, Judge Rothstein concluded that SCC remains in contempt of the 1994 injunction provisions. Although the court recognized that SCC had made "progress toward injunction compliance in several important areas," it nonetheless concluded that SCC’s "progress appears influenced by the impending date of the compliance hearing," that it is "evident that the improvements [SCC has] made come, in no small part, in response to the court’s contempt orders and to the accrual of sanctions," and that "injunction compliance remains incomplete."

For example, SCC has yet to fund and establish off-island LRAs. Although SCC officials have identified three potential sites for an LRA in King County, they have failed to garner the support of local officials and have faced "fierce community opposition" to the placement of any LRA within King County. Moreover, SCC does not have funding for the construction or operation of an off-island LRA.

The court also determined that SCC has failed to ensure that sufficient LRA space will be available for residents approved for such placements. The on-island LRA site will reach its capacity by mid-2003 and is not an option for many residents who have obtained court-ordered LRA status without the approval of SCC staff. Residents who obtain LRA status without the support of SCC staff are not eligible for placement at the on-island site, meaning that most will remain within the secure facility unless they can afford to arrange for home placements. This absurd procedure has resulted in more than half of the LRA-eligible residents remaining confined to a closed environment, and does not amount to substantial injunction compliance. To date no SCC resident has been released by SCC officials. All releases have been judicially ordered.

SCC also failed to substantially comply with its duty to establish a vocational training program. Although SCC hired an expert with numerous years of experience in the vocational rehabilitation field, SCC lacks the funds and facilities necessary to properly implement the programs suggested by the expert. Thus, because most of the vocational programs suggested by the expert are still in the "development phase," injunction compliance remains elusive.

SCC likewise has not made sufficient progress in providing for "special needs" residents—residents who have developmental disabilities, major psychiatric disorders, or brain injuries. Although SCC has developed a program entitled "Measures of Progress," which is aimed at addressing the mental health issues of the special needs population, it is only in a trial period "and therefore the efficacy and adequacy of these tools remain uncertain." Additionally, SCC has failed to request and secure adequate funding for maintaining the Measures of Progress program. Thus, injunction compliance cannot be obtained until these obstacles are overcome.

Finally, Judge Rothstein found that substantial evidence of "backsliding" demonstrated a lack of injunction compliance. Specifically, the court concluded that "SCC has not achieved consistency in the way treatment plans are conceived and recorded," that SCC’s treatment program "continues to suffer from frequent changes in policy and practice," that "confusion exists as to eligibility for LRA consideration and the steps necessary to gain release," and that the overall "quality of treatment plans has actually decreased." Because these deficiencies seriously undermine a resident’s ability to obtain release, Judge Rothstein concluded that they must be corrected before SCC would be deemed in compliance with the court’s injunction.

In light of the foregoing, the court denied SCC’s motion to dissolve the injunction and continued the accrual of contempt sanctions, but refused to order SCC to remit the financial sanctions to SCC residents. The court also scheduled another injunction compliance hearing for October 20, 2003. See Turay, et al. v. Seling, et al., USDC WD WS, Case No. C91-664R.
A greeing to pay $10,000 for ethics violations, the director of Florida’s agency overseeing private prison contracts resigned in April, 2002. The Florida Ethics Commission has accepted the settlement. C. Mark Hodges was in charge of Florida’s Correctional Privatization Commission (CPC), a state agency empowered to award contracts to private prison companies where it would save the state money over the cost of state-run prisons. As director, he was the natural target of the Florida state prison guards union, the Florida Police Benevolent Association (FPBA).

In November, 2001, FPBA tipped off the Florida Department of Management Services that out-of-use computers at CPC had been illegally used to access porn websites. This proved to be true. Under Florida’s open records law, it was legal for FPBA to download the computers’ hard drives. Ken Kopczynski, an FPBA political affairs assistant, claimed he was only looking “to find evidence of Hodges doing private consulting” by checking the computers. “That’s when we hit the porno.” Hodges retorted that inspection of the unlocked computers was but another attempt by FPBA to discredit him with a smear campaign whose true motive was to derail non-union jobs. The union’s complaint further alleged that Hodges failed to hold companies accountable for not delivering the promised savings. In the current year, Florida’s Legislature ordered the companies running all five private prisons to deliver at least the 7% savings they had promised or their contracts would be revoked.

FPBA also alleged that Hodges was using state employees and equipment for his private consultation work. Acting on FPBA’s complaint, the Ethics Commission found probable cause for seven ethics violations, including those allegations. Additionally, he failed to disclose speaking fees paid him by the companies bidding for state contracts, and he edited and sold a state manual on private prisons to the city of Youngstown, Ohio, for $7,500 instead of just charging copying costs. He also allegedly attempted to mislead investigators.

Saying “it was time to move on,” Hodges resigned and took a position with Homeland Security, Inc., a Nashville, Tennessee, firm run by Doctor Grants, a founder of private prison conglomerate Corrections Corp. of America. With his resignation, Carol Atkinson was appointed Board of Directors for CPC appointed by Florida Governor Jeb Bush to oversee the Commission. State auditors have questioned several awards to private contractors where Kopczynski alleged that they had cost the state millions of dollars instead of saving millions. In a November, 2002, attempt to save money through privatization, Florida’s Department of Juvenile Justice had to get an emergency appropriation of $730,000 to keep 45 state maintenance employees on the job. The bids for outsourcing it came in between $2.3 and $10.2 million.

Sources: Tampa Tribune, Tallahassee Democrat
Eight Washington Prison Premises Liabilities Claims
Settled for $35,058

Premises liabilities claims by inmates and visitors were settled in eight unrelated claims totaling $35,058 over a two year period in 2001 and 2002.

Pro per Walla Walla State Penitentiary prisoner Marcus Ogans filed a 42 U.S.C. § 1983 complaint in state superior court under RCW 4.96.020 against prison officials for their negligence when Ogans, while climbing to his upper bunk using the cell bars, caught his foot and fell to the floor, injuring his back. He alleged that officials were negligent because they failed to provide necessary climbing aids, e.g., a ladder, steps or a stool, to aid upper bunk occupants, and that his injuries were thus foreseeable. Without admitting wrongdoing, on January 28, 2002, defendants settled his $100,000 claim for $7,500 plus expungement of his medical co-payment fees. See: Ogans v. Lambert, Walla Walla Superior Court No. 00-200572-6.

Walla Walla prisoner Terry Ezell sued under 42 U.S.C. § 1983 in superior court for injuries he sustained to his right hip, shoulder and forearm when, as he sat back in his unit’s barber chair, it - with Ezell - slid backwards and fell off the box it was sitting on. His negligence tort claim for pain, discomfort and limitation of movement was settled for $5,000 on June 17, 2002. Since Ezell owed back child support of $3,150, this amount was seized and paid directly to the Dept. of Social and Health Services. His Seattle attorney was Edward Harper of Olmstead Gibbs & Harper, LLC. See: Ezell v. State of Washington, et al., Thurston County Superior Court No. 01-2-00802-9.

In another upper bunk access injury claim, Washington Corrections Center (Shelton) prisoner Sidney Jenkins fell while descending, using the toilet/cell bars as the only climbing aid, injuring his patella (knee). Recommended orthopedic surgery was declined by DOC because of his impending release. They suggested he seek surgery afterwards. Jenkins sued pro se in federal district court under 42 U.S.C. § 1983. With a stipulation that Jenkins be preferentially moved to Washington State Reformatory in Monroe, WA, the state paid Jenkins $2,000 in complete settlement of all claims on December 20, 2001. See: Jenkins v. Maynard, US District Court (W.D. WA [Tacoma]), No. C99-0286 FDB, Settlement Agreement, December 20, 2001.

Washington Corrections Center for Women prisoner Valerie Mondini, a kitchen worker, was injured when she was required to repeatedly lift frozen chicken packages from the freezer. Although kitchen post orders specifically limited box sizes to no more than 45 lbs., the Food Manager ordered from a new vendor who shipped 69 lb. boxes, which Mondini was ordered to lift - even after the safety concerns she raised prior to the order as to possible injury. Represented by Seattle attorney Melton Crawford of McDonald, Hoague & Bayless, Mondini sued the state in her home county of Snohomish for damages resulting from tortious negligence, on a respondeat superior theory of liability. The state settled all claims for $8,308.70 on October 21, 2002. See: Mondini v. State of Washington, Snohomish County Superior Court Case No. 97-2-09511-3.

Tacoma attorney L. Michael Golden (Law Offices of Monte Hester) presented a Notice of Claim on June 11, 2001 under RCW 4.92.100 for prisoner Elmer Baker for injuries Baker suffered when he slipped and fell in a puddle of water next to the ice machine in the McNeil Island Correction Center chow hall. The rubber mats normally protecting that area were missing that day. For injuries to Baker’s spine and soft tissue, and for mental and emotional injuries, the parties settled for a lump sum payment of $2,000 made on March 21, 2002; Elmer Baker, DRM Case No. 31052695.

Karen Paschke, a visitor to the McNeil Island Correctional Facility, stepped in a hole in the roadway leading to the dock all visitors are required to transit, and fractured her fifth right metatarsal. Suing the state for negligence for failure to properly maintain the roadway, to warn of a defect in it, or to provide alternate transportation, Paschke settled the claim for $8,000 on August 1, 2002. Paschke was represented by Seattle attorney Ronald Meltzer of Sinsheimer & Meltzer. See: Paschke v. State of Washington, Pierce County Superior Court No. 01-2-14270-0.

Airway Heights prisoner Donald Roberts cracked a tooth in the chow hall when he bit down on his baked beans and hit metal - apparently a shaving from a kitchen-opened can lid. The kitchen had had previous similar complaints, and subsequently changed the type of can opener it used. Roberts filed a grievance and a Tort Claim Form (SF 210) in pro per demanding $3,000 in damages. The state settled for $500 on December 31, 2001 after his tooth was fitted with a crown. See: Donald Roberts, DRM Case No. 31053550.

McNeil Island prisoner Floyd Richards also filed a standard Tort Claim Form in pro per, demanding $15,000 when his hand was broken while using a defective elevator in the kitchen. The elevator doors close from below and above when one pulls on the strap. While there should be straps both on the inside and outside for this purpose, one strap was missing. Richards wasn’t quick enough in letting go of the strap on the other side, resulting in his injury. A report of this needed repair written by the Department of Labor and Industries over eight months before was ignored. This report provided the proof of knowing negligence Richards needed to prevail on his claim. The state settled for $4,500 for his pain and suffering on September 11, 2002. See: Floyd Richards, DRM Case No. 31053934.
Nebraska Prisons Get Progressive Phone Contract

by Matthew T. Clarke

In February, 2003, The Nebraska Department of Corrections (DOC) has contracted with AT&T to set up what may be the most progressive prisoner phone service in the United States. The five-year contract makes AT&T the sole provider of local and long distance services, associated equipment, maintenance and administrative services to the approximately 3,700 prisoners in the Community Corrections Centers at Lincoln and Omaha, the Diagnostic and Evaluation Center at Lincoln, Hastings Corrections Center, Lincoln Correction Center, Nebraska Correction Center for Women, Nebraska Correctional Youth Facility at Omaha, Nebraska State Penitentiary, Omaha Correctional Center, Work Ethic Camp at McCook, and the Youth Rehab Treatment Centers at Geneva and Kearney.

AT&T operates more than 49,000 prisoner phone stations at over 3,000 U.S. prisons and jails. AT&T invented prisoner “collect calling only,” 23 years ago. However, the contract calls for AT&T to offer the dialer a choice of calling collect or charging the call to a debit account. The ability of prisoners to call using a debit account has two favorable features: a 20% lower call rate and the ability to place international calls (which may not be done collect).

Prisoners are limited to 15 minutes of phone calls a day. The DOC is not accepting a commission. This allows for remarkably low rates. Local collect calls cost $1.00 regardless of length. Local debit calls cost 80¢, regardless of length. Each non-local call involves a service charge plus a call rate. The service charge for collect calls is 75¢; for debit calls it is 60¢. Thus, the charge on calls is as follows: 75¢ + 7¢/min (collect) or 60¢ + 5.6¢/min (debit) for a non-local call within the same area code; 75¢ + 10¢/min (collect) or 60¢ + 8¢/min (debit) for non-local calls outside the same area code, but within NE; 75¢ + 20¢/min (collect) or 60¢ + 16¢/min (debit) for out-of-state calls; and 50¢ per international unit (debit only). International calls to Canada, Mexico, Europe, and most South American, Central American, and Asian countries cost one international unit per minute. Very remote countries and those lacking modern digital telephone technology cost up to five international units a minute.

The prisoner phone system has digital switching with sophisticated security features. All calls are digitally recorded and the recordings backed up and archived for years. CDs can be made of the recordings for evidentiary purposes. The system detects call-forwarding and 3-way calling. Once detected, the call can be automatically disconnected or its recording automatically flagged for review. The system also automatically blocks prisoners from dialing additional digits once the call is placed.

AT&T provides the DOC with monitoring stations and the DOC has exclusive control over blocking some or all of the phone stations. The DOC will be able to block individual prisoners and individual telephone numbers. The system can alert monitors to calls of specific prisoners, allowing real time monitoring. Recipients of collect calls have the option of hearing the rates before accepting or even blocking all future calls from the prison. Attorney telephone numbers are identified from a database and supposedly will not be recorded or monitored. Each facility will be provided with a TDD unit for hearing-impaired prisoners.

AT&T says it will assist recipients of calls in managing their telephone bills. Released prisoners would receive a refund for the remainder of their debit account. Prisoners calling lists, which may contain up to 20 numbers, may be updated every 90 days. The recipient of a call can accept it using a rotary-dial phone. Rates will be locked in for the entire 5-year run of the contract.

Source: AT&T Contract

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“Mailbox Rule” Interpreted By Three Courts

by John E. Dannenberg

In separate decisions, the U.S. Court of Appeals interpreted the “prison mailbox rule” in cases where (1) the legal document mailed by the prisoner was never received or filed by the court or (2) the document was first sent by the prisoner to an outside party for mailing to the court. Under the “mailbox rule,” a prisoner’s court papers are deemed filed at the moment he delivers them to prison authorities for mailing, postage pre-paid.

Frank Huizar, a California state prisoner, delivered a state superior court habeas petition to prison authorities for mailing on April 15, 1996 - as confirmed by the prison’s mail log. It was never received by the court. However, a subsequent refiling was eventually received on December 30, 1998 and denied three weeks later. Huizar then exhausted remedies in the state appellate and supreme courts.

Upon his ensuing 28 USC §2254 federal habeas corpus petition, the state alleged Huizar had missed the AEDPA filing deadline with his Superior Court filing in 1998. Huizar countered that his filing was timely in 1996 because he properly delivered it to prison authorities.

The Ninth Circuit US Court of Appeals decided that Huizar was entitled to the earlier filing date under the “mailbox rule” created in Houston v. Lack, 487 US 266 (1998). The Ninth Circuit held that because the prisoner’s control over the mail ceases when he delivers it to prison authorities, he cannot be held accountable for subsequent processing. Accordingly, they gave Huizar the benefit of the mailbox rule here where the document was never received by the Superior Court, by denying the state’s motion for a procedural default. See: Huizar v. Carey, 273 F.3d 1220 (9th Cir. 2001).

George Knickerbocker is a New York state prisoner who sent his notice of appeal (from the dismissal of his habeas petition in the US District Court, S.D. N.Y.) to his sister outside the prison, who in turn mailed the notice to the Clerk of the Second Circuit US Court of Appeals. The date the sister’s remailing reached the clerk was beyond the statutory filing time. Knickerbocker argued that he should have had the benefit of the mailbox rule because he timely delivered the letter to prison authorities for mailing to his sister.

The Second Circuit disagreed. Houston v. Lack restricted such mailing to the date the prisoner “delivers it to the prison authorities for forwarding to the clerk of the court.” That rule protects the prisoner from delays caused by prison officials, who otherwise might have an incentive to delay a prisoner’s mail. No such incentive attaches to the prisoner’s sister, however, and the rule would therefore not apply.

Considerately, the Second Circuit did remand the matter to the district court to determine if the circuitous mailing could yet be construed as a motion for extension of time to file the notice of appeal. See: Knickerbocker v. Artuz, 271 F.3d 35 (2d Cir. 2001).

In a subsequent ruling the Sixth Circuit also held that the mailbox rule does not apply to mail to third parties for forwarding to the courts. See: Cook v. Siegall, 295 F.3d 517 (6th Cir. 2002).

Washington DOC Settles
Failure-To-Protect Case for $13,000

On March 16, 2002, the Washington Department of Corrections (WA DOC) settled an Eighth Amendment complaint for failure-to-protect at the Washington State Reformatory (WSR) where a high security prisoner was attacked and seriously injured by another prisoner known to want to kill him.

Ryan Bartlett, a maximum security prisoner at Clallam Bay Correctional Center’s Intensive Management Unit (IMU), was moved to the segregation unit of WSR. While working there as a tier tender, he was “gassed” with feces and urine by another prisoner who announced he wanted to kill Bartlett. Although this event precipitated a keep-away order in their files, the aggressor was soon returned to Bartlett’s tier, resulting in their having a common yard period, albeit in separate cages. During one such outing, the aggressor scaled the 14 ft. fences isolating them and attacked Bartlett with a shank, inflicting severe lung and liver injuries. After much delay, he was finally taken to an outside hospital for emergency 3-1/2 hour surgery to close his wounds. Nine days later, he was transported to Shelton Correctional Center’s IMU, with no further medical attention or pain medication.

On January 11, 2000, Bartlett sued, initially in pro per, under 42 U.S.C. § 1983, naming medical staff for recklessly disregarding his serious injuries when delaying his outside medical treatment. Bartlett demanded a jury trial and sought actual and punitive damages against eight named defendants.

Later represented by attorney Jonathan Winemiller, Bartlett settled his 42 U.S.C. § 1983 complaint for $13,000. Terms of the agreement included out-of-state placement consistent with the Interstate Corrections Compact and/or the Western Corrections Compact in RCW Title 72. The funds were to be deposited into his prison trust account without the deductions of RCW 72.09.480. However, per § 807 of the Prison Litigation Reform Act, 18 U.S.C. § 3626, any restitution legally owed by Bartlett shall first be paid in full, and any other debts on his trust account may be paid per-DOC policy. See: Bartlett v. Lehman, No. CO0-W5 C, Bartlett v. Morgan, No. CO0-5748 RJB, Bartlett v. Zavodsky, No. CO 1-5109 JKA, United States District Court (WD WA).

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See Page 37 for more information.
Washington Retaliation Suit Settled for $2,500

O
n February 27, 2002, the Wash-
ington DOC settled a prisoner claim of retaliation for his having filed a grievance and a lawsuit, for $2,500.

Airway Heights Correctional Center prisoner Douglas Gallagher was employed in the food factory production facility on a day when three door handles were broken off and missing. Defendant Sgt. Michael Runnion grilled Gallagher, among other prisoners, to try to find both the handles and the culprits. Although Gallagher denied any knowledge, Runnion kept upping the pressure on him, including denying him security access to his job site.

Gallagher grieved the “stealth” job action; Runnion returned the fire by infracting Gallagher. Gallagher appealed the infraction and won, based upon insufficient evidence - but was unsuccessful in getting his job back. He sued pro se under 42 U.S.C. § 1983 in US District Court for retaliation, whereupon Runnion increased the level of confrontation. Pertinent papers disappeared from Gallagher’s central file, and his custody was increased - calling him a “security risk.”

Gallagher alleged in court both the facts of his experiences as well as the history of retaliatory practices at Airway Heights against those who grieve or sue. He added claims of violation of the Public Disclosure Act for failure to timely disclose a tape of his disciplinary hearing.

When Gallagher failed to crumble under the continuing retaliatory pressure, the state was faced with his suit. One year after Gallagher filed his first amended complaint with demand for jury trial, they settled for $2,500, with no admission of wrongdoing. It was further agreed that any outstanding debts against Gallagher’s prison trust account would be paid before he could have access to the funds. See: Gallagher v. Runnion, USDC ED WA, Case No. CS-00-446 LRS. ■

Kansas Sheriff, Lawyer, Jailed for Sweetheart Jail Contract

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egotiating their way out of 21 felony bribery charges, a former Kansas sheriff and a lawyer-cum-executive for a private prison contractor each pled guilty to two misdemeanor counts of conflict of interest on December 18, 2002, getting only one year in county jail and a $750,000 restitution order.

Reno County Sheriff Larry Leslie entered into a “prohibited contract” with lawyer Gerald Hertach when Leslie accepted $285,000 in bribes from Hertach for Leslie’s part in awarding first a $1.5 million three-year-contract and then an over $2 million four-year contract to Hertach’s corrections company MgtGp Inc to run the Reno County jail annex. They had been indicted in May, 2001 after which Leslie resigned [PLN, Aug. ’02].

Sentencing Judge Michael Barbera rejected a plea agreement involving only $750,000 in restitution because he doubted the two would pay. He did offer them a chance to do so after serving 90 days, however. Leslie said the $285,000, on top of his $59,762 annual salary, was “all gone.” Leslie, Hertach and MgtGp Inc. were ordered to pay the $750,000.

Hertach’s attorney Steve Joseph opined that the punishment was “a little bit harsh for a class B misdemeanor.” Hertach had funneled the shared illicit profits to Leslie through dummy Nevada corporations.

For their protection, Leslie was transferred to Saline County jail while Hertach went to Rice County jail. Saline County Sheriff Glen Kochanowski, who used to fraternize with Leslie at Kansas Sheriff Association meetings, promised to segregate Leslie from the general population, saying “we would do that for any law enforcement officer in our custody.”

The illegal scheme was reported to the Kansas Bureau of Investigation and the FBI by long time Leslie friend Reno County narcotics detective Howard Shipley. Shipley became suspicious when Leslie irritatedly complained that expensive Styrofoam cups were being used in the jail instead of cheaper plastic cups - while the jail’s costs were fixed under the private contract with MgtGp Inc. “I don’t know I’d ever seen him that upset,” Shipley said. ■

Source: Wichita Eagle
California “Taxpayer Action” Forces Private Employer to Pay Prisoners Prevailing Wages

by John E. Dannenberg

Under California Code of Civil Procedure §526a, a private citizen taxpayer may bring an action to compel an officer or agent of a municipality to restrain him from wasteful or injurious expenditure of government funds. In a novel application of this law, the state was compelled to discharge its duty to pay prisoners prevailing wages under California Proposition 139, the Prison Inmate Labor Initiative of 1990, for work they had performed for CMS Blues (a private contractor) - on the theory that the state had opened itself to citizen watchdog oversight when it became financially accountable by attaching part of the prisoners’ wages for the purpose of defraying incarceration costs.

Christina Vasquez is an officer of the Union of Needle trades, Industrial and Textile Employees, which had been involved in protecting the interests of prisoners at the R.J. Donovan Correctional Facility who were cheated out of wages by CMT Blues, a contractor using prisoners to manufacture clothing articles. (See: PLN, December, 2002, p.16.) Although the Union had appeared for the prisoners there, the instant action was taken by Vasquez in her capacity as a private citizen taxpayer to ensure that the wages paid the prisoners would continue for the benefit of the taxpayers. Thus, a “waste” of incarceration cost offsets was “restrained” by Vasquez’ action protecting the public fisc.

Finally, the state tried to escape responsibility by claiming that defendant Assistant Director Noreen Blonien of CDC’s Joint Venture program could not be held liable because she did not sign the underlying agreement. However, because §526a applies expressly to the government or to “any officer thereof,” the court held that Blonien was a proper party to Vasquez’ suit.


Washington Posts Health Care Provider Information Online

Past issues of PLN have reported on the checkered pasts of many prison health care employees. Before being employed by prisons and jails many medical staff have been disciplined, had their licenses revoked and suffered other forms of license limitations designed to protect the public from sex predators and assorted incompetents. Washington has more than its share of incompetent prison medical personnel. In a major step towards government accountability and consumer protection, on April 15, 2003, the Medical Quality Assurance Commission of the Washington state Department of Health began to post the disciplinary histories of all medical care professionals licensed to practice in Washington state.

The MQAC website lists all pending and past disciplinary actions against the 260,000 medical care providers licensed in Washington state. This ranges from doctors, dentists, nurses, x ray technicians, acupuncturists and much more. Where discipline has occurred after July, 1998, the action taken is listed. Likewise in cases where charges are pending. For disciplinary actions occurring before that date, those will be indicated on the website and the information can then be requested from the MQAC in a hard copy format. The site is also useful to anyone, in prison or out, concerned about the quality of their health care.

“The public really wants information on health care professionals. They want to know that they’re making wise decisions about their health care,” said Bonnie King, acting director of health professions quality assurance for the DOH.

Other states have similar information. Medical care providers disciplinary histories are useful in medical malpractice actions. As past articles in PLN have indicated, typically when medical malpractice occurs in prisons or jails, the perpetrator has a lengthy history of misconduct. PLN currently has a public records suit pending against the Washington Department of Corrections seeking disclosure of the names of its employees who have been disciplined for medical neglect and misconduct. That case is awaiting a decision from a state appeals court and PLN will report the outcome when it is decided. The DOH website address is: www.doh.wa.gov. Complaints and requests for information about disciplined medical staff can also be submitted by letter to the MQAC.
U.S. Supreme Court: Reviving Expired Statute of Limitations Violates Ex Post Facto Clause

Reversing the California Court of Appeal, the U.S. Supreme Court ruled that California’s recent law reviving criminal liability for previously time-barred prosecutions violated the Constitutional proscription against ex post facto laws.

Catering to public outrage against child molesters, the California Legislature in 1993 enacted a revised statute of limitations for such crimes - Penal Code (PC) §803(g). In place of the previous general three-year felony statute of limitations, §803(g) permitted sex crimes against children to be prosecuted within one year of the victim’s report to the police. Moreover, in a 1996 amendment (PC §803(g)(3)(A)), the Legislature acknowledged that it intended such retroactivity to apply regardless of how old the offense was.

In 1998, based upon these intervening new laws, Marion Stogner was indicted for such crimes occurring between 1955 and 1973 - 40 to 22 years after the previous statutes of limitations had expired. After the trial court denied his motion to dismiss, Stogner petitioned the high court on writ of certiorari, claiming his indictment was barred because statutes of limitations had expired. After the state had, in effect, granted him amnesty, was “unfair” and accordingly reversed the California Court of Appeal. Stogner petitioned the high court on writ of certiorari, claiming his indictment was unconstitutional under the Ex Post Facto and Due Process clauses of the Fourteenth Amendment to the U.S. Constitution.

A divided 5 - 4 Court held that three factors, taken together here, produced the kind of retroactivity that the Constitution forbids: (1) creation of a new criminal limitations period, (2) permitting prosecutions that the passage of time had previously barred, and (3) enacting such a statute after prior limitations periods had expired.

The Court first relied upon its venerable 1798 ex post facto precedent in Calder v. Bull, 3 Dall. 386. Interpreting U.S. Const. Art. I, §9, cl.3 [federal government] and Art. I, § 10, cl. 1 [states], the Court noted that liberty is protected by preventing governments from enacting statutes with “manifestly unjust and oppressive” retroactive effects. Citing precedent, the Court observed others had described such retroactivity of a newly revised statute of limitations period as “unfair and dishonest,” a denial of “fair warning” and a failing of the government “to play by its own rules.” The Court noted such retroactive laws invite “arbitrary and potentially vindictive legislation,” “violent acts which might grow out of the feelings of the moment” - such as California’s PC §§803(g) and (g)(3)(A).

Second, in reviewing 18th century British Parliament precedent - from whence our ex post facto jurisprudence stems - the Court noted the prohibition recognized against new punishments “where the party was not [previously], by law, liable to any punishment.” This category, including any law that “aggravates a crime” or “makes it greater than it was, when committed,” exemplifies the evil of California’s §803(g) because it creates a “forfeiture or disability, not incurred in the ordinary course of law.”

Third, the Court reviewed approvingly a litany of historical interpretations of the Ex Post Facto Clause that forbade resurrection of a time-barred prosecution.

In sum, the Court held that California’s law subjecting Stogner to prosecution long after the state had, in effect, granted him amnesty, was “unfair” and accordingly reversed the California Court of Appeal. The dissent would not have given Calder such weight, and morally criticized the majority’s view as “disregarding the interests of those victims of child abuse who have found the courage to face their accusers and bring them to justice.”

Indeed, a disturbing consequence of the Stogner ruling is that a sizeable number of lately discovered long-suppressed child molestation cases will now go unprosecuted. These include an estimated 1,000 molestations over the past 60 years in the Boston Archdiocese of the Catholic Church alone. And within the criminal justice system, examples include Calvin Eugene Moore, a former Fresno, California juvenile-hall guard turned Baptist pastor, whose charges for alleged abuse 20 years ago have now been dropped and who will soon return to work as a juvenile-corrections officer, and former Orange County, California Superior Court Judge Ronald Kline, accused of a 1979 molestation, whose charges have recently been dropped.

But as USC Law School Professor Erwin Chemerinsky reflected on Stogner, “[a]lthough providing for the prosecution of sex offenders is a crucial government interest, it does not justify a law that violates the Ex Post Facto Clause.” See: Stogner v. California, 155 L.Ed.2nd 194, 123 S.Ct. 1382 (2003).

Additional Sources: Seattle Times, San Francisco Daily Journal

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California Prisoner Who Received First Heart Transplant Dies

A California man, who is believed to be the first prisoner in the nation to receive a heart transplant while incarcerated, died last December from complications relating to the operation. The man, whose name has never been released, was serving a 14-year sentence for robbing a Los Angeles convenience store, but had been suffering from a viral heart infection from the time of his sentencing in 1996.

Though according to a prison spokesman the prisoner died because “his body was rejecting the heart,” it is not clear whether he received proper and adequate post-surgery medical care from the California Department of Corrections.

The transplant itself, which took place on January 3, 2002, set off a nationwide controversy and debate over whether a prisoner should be eligible to receive an organ transplant when so many “law-abiding” citizens are on waiting lists. But both medical professionals and organ transplant centers alike say that their decisions about organ allocation is very disturbing,” said Guy Micco, director of the Center for Medicine, the Humanities and Law at the University of California, Berkeley. “Because that puts value on one life compared to another.”

Critics also cite the cost of the prisoner’s medical care, $1.25 million, which includes recent post-operative care at Stanford, as a further reason to deny prisoners the same level of medical care as free citizens.

Prison officials were apologetic, indicating that the only reason they provided the prisoner with the transplant was because they were forced to. “The U.S. Supreme Court requires us to supply community-level health care,” said CDC spokesman Margaret Bach. “We had no choice. It was not our decision to make.”

Bach further stated that had the state blocked the operation and the prisoner died as a result, the state would have faced a lawsuit it surely would have lost.

The California legislature has now begun to take steps to prevent or limit the ability of prisoners to receive organ transplants. In January 2003, freshman California Sen. Jeff Denham (R-Salinas), whose own father died while awaiting a transplant, introduced SB 38. That bill would allow potential donors to check a box to indicate their desire to not allow their organs to go to anyone incarcerated in jail or prison.

Scholars and other critics vehemently denounced the bill. “The statement that someone should not get [an organ] because they are not worthy is very disturbing,” said Guy Micco, director of the Center for Medicine, the Humanities and Law at the University of California, Berkeley. “Because that puts value on one life compared to another.”

Others warned of the “slippery slope” created by such legislation. Former Butte County prosecutor Shawn Stinson, who estimates that he sent over 1,000 people to jail, said that should an organ fail, a prisoner should have the same right to an organ that he himself does.

Stinson has been waiting since April 2001 for a liver.

And Senate President Pro Tem John Burton (D-San Francisco) wondered who might be the next group set for exclusion. “I guess I should have the right to say that I don’t want my organs going to a right-wing Republican,” he said.

Recently, a Nebraska woman, Carolyn Joy, was the subject of a public outcry when she was placed on the liver transplant waiting list. Joy, 49, was convicted of murder in 1983 and is currently serving time at the Nebraska Correctional Center for Women. Many believe that her status as a convicted felon should disqualify her from transplant consideration. She was placed on the waiting list February 3, 2003.

Stoking the fires of resentment concerning Joy’s placement on the transplant list is the fact that she admits her liver was ruined by almost nine years of daily heroin and alcohol abuse. The other major complaint registered by people who have called or e-mailed Nebraska Health Officials is that taxpayers would have to foot the nearly $200,000 bill for the surgery. In a recent non-scientific MSNBC poll, 68% of those who responded said prisoners should not be allowed to receive donated organs. The poll received 21,360 votes.

But not everybody takes such a draconian view to prisoner health care. Dr. Alan Langnas, head of transplant surgery at the University of Nebraska Medical Center, said doctors only consider a transplant from the standpoint of whether a patient is a good candidate medically, not socially.

“Whether or not she’s a prisoner does not enter the equation,” said Langnas. “Ethically as a physician, it’s our responsibility to be advocates for the patients we are treating.”

But in order to receive a new liver, Joy must first lose 30 pounds from her 5-foot-10, 195 pound frame, and get her diabetes under control. In the last two years, she has already lost 20 pounds and gives herself until mid-April to lose the rest.

Joy says she believes she has paid her debt to society but doesn’t know if she deserves a new liver when there are so many other people waiting for one. “I want a chance just like they do,” she said.

She also said she would consider passing up a liver if someone in a more dire situation needed one. If that person were a young mother, Joy said she would be more apt to pass up her chance at a new liver. “I’d step back and let that lady have the liver because she has a child . . . she has a life.”

Sources: The Sacramento Bee, Seattle Times, Associated Press

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October 2003

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Prison Legal News
PLRA Physical Injury Rule Not Applicable in Non-Prison State Cases

The Eleventh U.S. Circuit Court of Appeals has vacated and remanded part of an Alabama Federal District Court’s dismissal of a federal prisoner’s suit against tobacco companies. The Court held that prisoner suits unrelated to prison conditions that are brought in state court do not have to satisfy the “physical injury” rule of the Prison Litigation Reform Act (PLRA), 42 U.S.C. §1997e(e).

William Mitchell is a federal prisoner. In December 1999, he filed suit in an Alabama Circuit Court against five tobacco companies including Brown & Williamson Tobacco Corporation and Liggett Group, Incorporated. All of Mitchell’s claims involved Alabama tort law. Mitchell claimed physical and emotional injury from the companies in the form of shortness of breath, headaches, nicotine addiction, and fear of dying of cancer. Mitchell asked for $10,000,000 in actual and general damages from all defendants, $750,000 in actual damages from each defendant for nicotine addiction, and $1,000,000 in punitive damages from each defendant.

The tobacco companies had the case removed to federal court, citing 28 U.S.C. §1332. The complaint was referred to a magistrate judge for review. The magistrate ordered the parties to show cause why 42 U.S.C. §1997e(e) did not bar Mitchell’s complaint. Section 1997e(e) bars prisoner claims for mental or emotional damage without a prior showing of physical injury that is more than de minimis. Mitchell argued that §1997e(e) did not apply to his case. He also argued that the legislative history of §1997e(e) showed that it applied to Mitchell’s complaint.

The tobacco companies moved for judgment on the pleadings. Mitchell filed notice that he wanted to file an amended complaint. Mitchell also moved for default judgment against Liggett Group for failure to respond to his complaint. The magistrate dismissed the notice of amended complaint for Mitchell’s failure to certify service to the parties as required by Federal Rule of Civil Procedure 5(d). The magistrate also denied default judgment against Liggett Group.

The magistrate’s report and recommendation on the complaint held that 42 U.S.C. §1997e(e) applied to Mitchell, that Mitchell’s physical injuries were de minimis, and that the case should be dismissed as frivolous. The district court adopted the report and recommendation and dismissed the case. Mitchell appealed.

Mitchell argued for remand to state court. He further argued that §1997e(e) did not apply to his case. He also challenged denial of default judgment and dismissal of his notice of amended complaint. The tobacco companies argued that the legislative history of §1997e(e) showed that it applied to Mitchell’s complaint.

The Court of Appeals affirmed the dismissal of the amended complaint notice and denial of default judgment. The court found that federal jurisdiction of the case was proper due to diversity of citizenship of the parties and the amount of damages asked.

The court held, however, that the plain language of §1997e(e) showed that it did not apply to Mitchell’s complaint, because the complaint only involved state laws and was not a complaint about Mitchell’s conditions of confinement in prison.

Moreover, the case originated in state court and was removed to federal court. Taken together, these conditions made §1997e(e) inapplicable to Mitchell’s case and made dismissal for failure to allege more than de minimis physical injury improper.

The appeals court vacated the dismissal of Mitchell’s complaint and remanded with instructions to the district court to evaluate his state law claims. This is not a ruling on the merits of the case. See: Mitchell v. Brown & Williamson Tobacco Corporation, 294 F.3d 1309 (11th Cir. 2002).

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First Amendment Protects Witnessing of California Executions

by John E. Dannenberg

The Ninth Circuit U.S. Court of Appeals, finding a restrictive state prison regulation unconstitutional, ruled that public witnesses enjoy a First Amendment right to view California executions uninterrupted from the moment the condemned prisoner enters the death chamber.

The American Civil Liberties Union (ACLU), joined by a coalition of news media corporations as amici curiae, sued the California Department of Corrections (CDC) under 42 U.S.C. § 1983 to gain unrestricted viewing of the entire execution death chamber procedure. At issue was CDC’s San Quentin Institutional Procedure (IP) 770. Whereas when cyanide gas was the method of execution, full viewing was permitted (IP 769), now that lethal injection is used, restrictions were placed on the process (IP 770) to shield the identity of the executioners during “set-up” when they insert needles and start an initial saline solution intravenous (IV) flow. Under IP 770, witnesses could only see the condemned prisoner after the saline IV was switched over to the lethal cocktail. The question ultimately was whether the First Amendment right of the public to witness executions trumped CDC’s “legitimate penological interest” in hiding the identity of its executioners.

Initially, the district court ruled in favor of the plaintiffs on summary judgment. California First Amendment Coalition v. Calderon, 956 F.Supp. 883 (ND Cal. 1997). Later, the Ninth Circuit reversed (138 F.3d 1298, 9th Cir. 1998), but superceded that decision on rehearing (150 F.3d 976 (9th Cir. 1998)) to remand to the district court for a determination as to whether IP 770 was an “exaggerated response” to CDC’s asserted need to protect prison security and for staff safety. The burden was for plaintiffs to present “substantial evidence” of such exaggeration.

On remand, the district court again found for plaintiffs (C-96-1291 VRW, 2000 WL 33173913), prior to which four executions were conducted with restrictions, but following which two were fully viewed – pending the instant appeal.

The Ninth Circuit reviewed the history of the execution process dating back to 1196. It discussed at length the functional importance of public access to executions. Relying on the law-of-the-case doctrine (citing U.S. v. Scrivner; 189 F.3d 825, 827 (9th Cir. 1999)), it again applied the “exaggerated response” standard of scrutiny. Additionally relying on Thornburgh v. Abbott, 490 US 401, 412 (1989), the court imposed a “closer fit” test between IP 770 and the alleged legitimate penological interest in the security of the execution team.

Examining IP 770 for a valid, rational connection to such an interest, the court found such a common sense connection to be “too remote,” rendering the policy “arbitrary or irrational.” Moreover, the court found there were ready, low-cost alternatives such as surgical garb and masks, which would accommodate security concerns.

The Ninth Circuit, having analyzed all such concerns per Turner v. Safley (1987) 482 U.S. 78, agreed with the district court that IP 770 was thus unconstitutional under the First Amendment and affirmed the district court’s permanent injunction - allowing uninterrupted viewing of the entire execution chamber process. See: California First Amendment Coalition v. Woodford, 299 F.3d 868 (9th Cir. 2002).

Survivors of North Carolina Jail Fire Settle for $1.94 Million

On January 9, 2003, Mitchell County (NC) Superior Court Judge Marlene Hyatt approved a settlement in which the families of the eight fatalities and the nine survivors of the May 3, 2002, Mitchell County Jail fire will split $1.94 million. $60,000 had already been paid as funeral expenses for the eight victims. The settlement provides for the immediate payment of $50,000, minus fees, to each survivor and each family of a fatality. Another $4,013 will be reimbursed to a law firm that paid an expert to inspect the jail after the fire. The remaining $1.09 million will be divided among the plaintiffs by an arbitration panel.

The $1.94 million is close to the maximum the plaintiffs could have received under state law. It is also the maximum allowed by the county’s insurance coverage. As a part of the settlement, the county admitted no guilt and the plaintiffs relinquished the right to sue the county or its employees.

Scott MacLatchie, the attorney for the county, said that fighting the claim would have resulted in huge legal expenses. “It was a wise business and economic decision, and somewhat of a moral decision,” said MacLatchie.

The fire started when cardboard boxes—which were piled up against an electric space heater in a wood frame storage shed which had been added on to the back of the jail in 1965—ignited sending a plume of smoke and hot gasses throughout the jail’s cellblocks. This was reported in the January 2003 PLN.

A state Labor Department report released in November 2002 said state and county inspectors had failed to detect “serious safety deficiencies.” This included the storage room having been built without a firewall and with a combustible door, roof, and shingles. The report also noted that the Department of Health and Human Services failed to note the safety violations in its twice annual inspections.

Fire survivor Johnny Robinson and several families of fire victims plan to file claims with the North Carolina Industrial Commission (NCIC), which oversees claims against state employees. NCIC allows a maximum $500,000 payment per claim. Although the district attorney did not pursue criminal charges against anyone for the fire, he expressed himself as open minded should NCIC hearings turn up new evidence of criminal wrongdoing.

William Diggs, a Myrtle Beach attorney who represents the families of four survivors and one fatality, said he may pursue a federal civil rights action. “All seventeen of these people could do that in my opinion,” said Diggs.

Mark Thomas, father of fatality Mark Haleen Thomas, said he had also discussed a federal lawsuit with his attorney, Ben Baker of Montgomery. He expressed a belief that wrongdoing was involved.

“I think them paying $2 million shows something’s wrong here,” said Thomas. “The families want to know the truth. If people have done wrong, they should pay for what they have done.”

Sources: Charlotte Observer, Raleigh News Observer, AP
Receipt of Federal Funds Waives Eleventh Amendment Immunity for Rehabilitation Act

The U.S. Third Circuit Court of Appeals has affirmed in part and reversed in part a Pennsylvania Federal District Court’s grant of summary judgment to state defendants in a prison employee’s claim involving the Rehabilitation Act (RA) and Americans with Disabilities Act (ADA).

George Koslow, a water treatment plant supervisor at the State Correctional Institution - Graterford (SCI-Graterford) injured and reinjured his back while on the job. SCI-Graterford officials refused to grant Koslow relief from lifting water softener bags and climbing stairs, both of which Koslow claimed aggravated his injuries, and ordered Koslow to return to full work duties. Subsequently, Koslow was dismissed for being unable to perform essential functions of his job.


The district court granted summary judgment to the defendants on authority of Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). Garrett held that Congress invalidly attempted to abrogate States’ Eleventh Amendment immunity under Title I of the ADA, and that States’ Eleventh Amendment immunity was not waived under the RA. Koslow appealed.

The Court of Appeals noted that SCI-Graterford received federal funds from the State Criminal Alien Assistance Program (SCAAP). The program provides federal assistance to state prisons housing illegal aliens incarcerated for criminal offenses. The RA provides that a state or state institution receiving federal funds for any purpose waives its Eleventh Amendment immunity from suit for violations of the RA, 29 U.S.C. §794. The court cited precedent cases holding that the RA’s waiver of immunity is valid.

The court held also that, although the Eleventh Amendment and Garrett prohibited claims for damages under the ADA, prospective injunctive relief was not prohibited. Therefore, it was error for the court to dismiss Koslow’s injunctive relief claims. Prisoners raising claims under the RA and RLUIPA should use discovery to elicit details about federal funds received by prisons or corrections departments. Any funds received waive Eleventh Amendment immunity under the RA and RLUIPA.

The appeals court reversed summary judgment on the RA claims on grounds of Eleventh Amendment immunity. The court also reversed summary judgment on Koslow’s prospective injunctive relief claims under the ADA. The remaining claims for which defendants were granted summary judgment were affirmed. The case was remanded for further proceedings. This is not a ruling on the merits of Koslow’s claims. See: Koslow v. Commonwealth of Pennsylvania, 302 F.3d 161 (3rd Cir. 2002).

Diagnosis, Not Exposure, Triggers Limitation Period in HCV Action

The Iowa Supreme Court held in a workers compensation case that the statute of limitations in a hepatitis C exposure case begins to run on the date of diagnosis, rather than the date of exposure.

On October 2, 1990, Diane Perkins was employed by an Iowa retirement facility. On that date she was sprayed with blood when a shunt in a patient’s leg ruptured. She had blood all over her body and in her mouth, eyes, and ears. Unbeknownst to Perkins, the patient was infected with the hepatitis C virus (HCV).

Perkins was tested for HCV on October 11, 1990, and the test results were negative. No other testing was performed until late 1995 or early 1996. Those tests revealed abnormal liver function, but Perkins was not actually diagnosed with HCV until April 1996.

In October 1996, Perkins filed a workers’ compensation claim. The industrial commissioner denied her claim, conclud-
PLRA Does Not Apply to Challenges to Civil Commitment
by Matthew T. Clarke

The Eleventh Circuit Court of Appeals has held that the PLRA does not apply to challenges to conditions of confinement by persons detained under the Florida sexually violent predator program.

Bryant S. Troville, a Florida civil detainee committed pursuant to the Jimmy Ryce Act, Fla. Stat. ch. 394.910, et seq., (allowing civil commitment for sexually violent predators), filed suit under 42 U.S.C. § 1983 challenging his conditions of confinement. The magistrate judge granted him in forma pauperis status, then recommended dismissal of the suit under the PLRA, 42 U.S.C. § 1915(e)(2)(B)(ii), based upon his complaint containing “only generalized allegation with no effort to alleged what each defendant allegedly did or failed to do.”

Troville filed objections to the magistrate’s recommendations, conceding that he failed to allege facts regarding each particular defendant’s violations. Troville also filed a motion requesting leave to amend his complaint. The district court adopted the magistrate judge’s recommendations, dismissed the suit, and denied the motion. The district court granted Troville’s motion to appeal in forma pauperis.

The clerk of the court of appeals sent Troville a “notice to incarcerate appellant of the $105.00 fee requirement (under the full-payment provision of the PLRA),” 28 U.S.C. § 1915(b)(1). Troville sent the clerk a letter “stating his belief that the PLRA's full-payment provision did not apply to him because he is a civilly committed detainee under the Ryce Act, not a prisoner.” The Eleventh Circuit interpreted the letter as a motion for clarification of weather the full-payment provision applies to civilly committed detainees.

The Eleventh Circuit joined all of the other courts which have addressed the issue in holding that a “prisoner” within the meaning of the PLRA is a person detained “as a result of being accused of, convicted of, or sentenced for” a criminal offense. Thus, the PLRA did not apply to a person civilly committed under a sexually violent predator program.

Therefore, the Eleventh Circuit held that Troville did not have to pay a filing fee prior to his appeal being decided. Similarly, the district court could not use the PLRA to dismiss Troville’s complaint. However, the Eleventh Circuit found “no error in the district court’s dismissal of the complaint for failure to state a claim upon which relief may be granted.” Nonetheless, the Eleventh Circuit held that, under the circumstances of this case, the district court should have permitted Troville to amend his complaint. The dismissal was reversed and the case returned to the district court with instructions to allow Troville to amend the complaint. See: Troville v. Venz, 303 F.3d 1256 (11th Cir. 2002).

Stun Belt Prejudice Reverses California Conviction
by John E. Dannenberg

The California Supreme Court overturned a three-strikes conviction and remanded the case for a new trial because of the potential for psychological prejudice from a remote-controlled electronic stun belt on a defendant’s demeanor during testimony, where it was an abuse of discretion to use the belt at all absent a manifest need to impose it. James Allen Mar was convicted of interfering with a peace officer and resisting arrest that resulted in great bodily injury to the officer. Because Mar had two prior serious felony convictions, he was sentenced under the “Three Strikes” law to 26 years-life.

At issue was the prejudice that inhered from requiring him to wear a 50,000 volt stun belt, remotely controlled to disable him with an eight second shock. The trial court had imposed the belt, over objection, because Mar had been reportedly physically violent in jail. The California Supreme Court held that the trial court abused its discretion in denying the objection because the record did not support a “manifest need” for the belt.

While restraint at trial using shackles is common, the purpose is solely to restrain escape from or violent physical disruption of the courtroom proceedings. Mar’s complaint was that the psychological trauma attending the fear of being shocked during testimony prejudiced his demeanor before the jury. The trial court had relied solely on court security personnel to make the call to use the belt. However, the Supreme Court ruled that the trial court was obliged to base its determination of the need for such a step on facts, not rumor or innuendo, and that the trial court must independently determine - based on record evidence - that there is a manifest need for such extreme measures.

Here, the record showed there was no such restraint during the first day of trial, when two key prosecution witnesses testified against Mar without incident. On the second day of trial, when Mar was scheduled to testify, courtroom security personnel independently decided to fit him with the stun belt. There was no record evidence of manifest need for the belt. Indeed, the trial court, when overruling Mar’s objection, stated the belt would be in his best interest because it would help him control his conduct before the jury.

Since Mar’s demeanor during testimony was crucial to his defense, there was a likelihood the belt had some effect on his anxiety and ability to think while he testified against the police - whose comrades stood by in the courtroom holding the remote control for the belt. Even the fear of accidental activation carried with it an unacceptable risk of prejudicing Mar’s demeanor on the stand, the court ruled.

Absent an evidence-based manifest need determined in a trial court hearing, the use of the stun belt here was prejudicial. Accordingly, the conviction was reversed and remanded to the superior court for a new trial. See: People v. Mar; 28 Cal.4th 120; 52 P.3d 95 (Cal. 2002).
Alabama: In April, 2003, St. Clair Correctional Facility guard Cedric Bothwell, 39, was fired after being indicted in federal court on extortion charges. Bothwell is accused of selling crack cocaine to a prisoner in exchange for $4,000 and when the prisoner couldn’t pay an additional $3,500 for another 2 ounces of crack, Bothwell threatened the prisoner. The prisoner’s mother reported the extortion to FBI agents after Bothwell agreed to accept $2,000. She gave him the money in marked bills which was recorded by the FBI. After his arrest, Bothwell denied selling drugs and claimed the FBI had “set him up.” Bothwell’s brother Kelvn and Cedric’s defense lawyer John Floyd, were also indicted on witness tampering charges in the case. Both maintain their innocence as well. Cedric had previously been accused of assaulting prisoners but those charges were dismissed after administrative investigations deemed the prisoners’ account and injuries of being assaulted were insufficient to overcome Bothwell’s denials.

Arizona: In July, 2003, temperatures in Phoenix averaged 110 degrees Fahrenheit, making it the hottest July since records were first kept in 1896. Over 2,000 prisoners in the Maricopa county jail live year round in tents where temperatures reached 138 degrees. Jail prisoner James Zanzo said “It feels like you are in a furnace. It’s inhumane.” Sheriff Joe Arpaio, the malevolent buffoon who runs the jail, told prisoners: “It’s 120 degrees in Iraq and the soldiers are living in tents and they didn’t commit any crimes. So shut your mouths.” In reality, American occupation forces in Iraq live in former government buildings, palaces, and barracks. Only prisoners are living in tents in Baghdad, see below.

Arkansas: On July 1, 2003, Danny Scarbrough, 29, escaped from the Cross County jail in Wynne by climbing over a wall topped with razor wire. In the process of escaping, Scarbrough cut himself and left his pants stuck in the razor wire. He had been awaiting trial on methamphetamine charges.

Brazil: On August 9, 2003, 84 prisoners escaped from a Rio de Janeiro prison through a 50 yard tunnel they dug.

California: In June, 2003, the National Park Service began selling boxed pieces of concrete from the cellblocks of the former federal prison on Alcatraz for $4.95 each. The project is designed as an alternative to moving tons of rubble off the island to landfills as well as to raise money to restore the jail cells and guard’s quarters which are now a popular tourist attraction. Park staff said the concrete chunks are selling at a rate of 20-30 pieces a day. The souvenirs are also sold online at www.savetherock.org.

India: In March, 2003, Pratap Nayak, 28, was belatedly released from jail even though in 1994 he had been found innocent of the assault charges for which he had originally been jailed. Court and jail officials forgot to tell him he was free to leave. Nayak told media: “No one bothered about me, not even my family. They spoiled my life.”

Iowa: In 2003 state Senator Ron Wieck sponsored “tort reform” legislation, vetoed by the governor, that would make it harder for injured plaintiffs to sue wrongdoers for damages. In July, 2003, it was revealed that Wieck is suing a dog owner whose dog bit him in the crotch while he was campaigning. Which illustrates that some people support “tort reform” only until they are injured.

Iran: On July 11, 2003, Canadian photojournalist Zahra Kazemi, died in a Tehran hospital after being beaten into a coma by Iranian police. Kazemi was arrested on June 23, 2003, and charged with espionage for taking photos of a prison in Tehran. Taking pictures of prisons in the Middle East appears to be a death defying act for journalists in the region. Four policemen were later charged with murder in her death.

Iraq: On August 16, 2003, six Iraqi prisoners were killed and 58 wounded when unknown parties fired mortar rounds into the American run Abu Ghairib prison near Baghdad. The prison holds around 1,000 Iraqi prisoner who are housed in tents, just like prisoners in Arizona.

Iraq: On August 17, 2003, American occupation troops shot and killed Mazen Dana, 41, a Reuters television camera man who was filming the American run Abu Gharib prison near Baghdad. Reuters journalist Essam Nadim said Dana was filming a military convoy passing in front of the prison when American soldiers opened fire without warning and shot him in the chest, killing him on the spot. “He didn’t do anything. He was filming,” Nadim said.

Maryland: On Father’s Day, 2003, prison guard Charlotte Leach and Captain Keith Butler delivered a baby boy born to a woman visiting a prisoner at the Patuxent Institution in Jessup. Leach and Butler received certificates of commendation for their actions. During a visit, the woman, who was not identified, told Leach she was going into labor. When Leach saw the woman’s water had broken she knew an ambulance would not arrive in time. She and Butler delivered the baby on a table in the visitor’s gatehouse. Both Leach and Butler have children and admitted to some experience in delivery rooms, “but not like this we didn’t,” Leach said. Mother and child were fine.

Maryland: On June 20, 2002, Marcie Betts, 22, a former guard at the Roxbury Correctional Institution in Hagerstown, filed a complaint with the Equal Employment Opportunities Commission claiming she was wrongly fired for exercising her first amendment rights. Betts was fired by the prison after nude photos of her appeared on the Internet and in an unidentified “adult magazine.” She began working at the prison on January 15, 2003 and was fired two weeks later. Betts also noted the photos were taken before she was hired.

Maryland: On June 20, 2003, Caroline county jail guard Joseph Thompson, 25, was charged with having sex with female prisoners at the jail. Police also claim he exposed himself to two female prisoners and solicited sexual favors from them as well.

Maryland: On June 26, 2003, eight prisoners and a guard and a motorist suffered injuries when the motorist rear ended the van filled with Baltimore jail prisoners on a work detail. Hospital officials said none of the injuries were life threatening.

Massachusetts: On August 4, 2003, Boston immigration judge Thomas Ragno was placed on administrative leave for his behavior during a Ugandan woman’s immigration hearing in June, 2003. The woman, named Jane, sought political asylum because her husband was killed and she was beaten, raped and tortured in Uganda. Ragno denied her bid for asylum and during the hearing said “Jane, come here. Me Tarzan.” Ragno has been an immigration judge for over 30 years.

Massachusetts: On July 31, 2003, Lisa Rennie, 37, a former communications

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News in Brief (continued)

technician at the Federal Medical Center at Ft. Devens was sentenced to six months probation after pleading guilty to one count of giving contraband to a prisoner. Rennie had a sexual relationship with an unidentified prisoner at the facility and gave him a cell phone “in order to facilitate the relationship” in June, 2001. Interestingly, she was not charged with sexual misconduct since it is a crime for federal prison employees to indulge in sexual relations with prisoners.

Nebraska: On June 17, 2003, Larry Baker, 45, a guard at the Tecumseh State Correctional Institution was arrested after a random search uncovered a pound of tobacco, rolling paper and $400 in cash in his lunch box. Since Nebraska banned tobacco products on February, 2002, it has disciplined 46 employees, mostly with warning letters. Prisoners have received 1,560 disciplinary infractions during the same period. Nebraska holds around 4,100 prisoners. Since the ban, hand rolled tobacco cigarettes sell for $3-12 each, factory made for $4-15 each. While tobacco is not illegal, bringing it into a state prison is a felony. Nebraska prison officials claim Baker is an isolated example of employee misconduct. However, they do not explain how more than a third of the state’s prisoners obtained the tobacco for which they were punished if not through prison employees.

New York: On July 13, 2003, Westchester jail guards Charles Williams, 40, and Angelita Pulliam, 38, were arrested and charged with various counts of assault. After arguing all day, Pulliam used a knife to puncture a tire on Williams’ car, then cut him and accidentally cut herself. Williams responded by pistol whipping her with his revolver. Both were suspended from their jail jobs pending the outcome of the criminal charges.

New York: On July 17, 2003, prisoner Richard Rodriguez, 31, was stabbed to death in the recreation yard of the Green Haven Correctional Facility in Stormville. The prison was locked down as prison officials and state police investigate.

New York: On June 12, 2003, Westchester county prosecutor Grant McClellan, 44, was sentenced to five years probation after pleading guilty to manslaughter for killing his 79 year old mother Lethea Bledsoe. Bledsoe, who suffered from Alzheimer’s, was found dead on April 29, 2003, outside McClellan’s home where she lived in squalor. Police investigated due to the condition of her body and the filthiness of her bedroom, which had locks on the outside. Orange county prosecutors, who handled the case to avoid a conflict of interest claim, had sought a prison sentence McClellan was fired by Westchester county prosecutor Jeannine Pirro on April 30. Pirro’s husband Albert, a real estate lawyer, was convicted of tax fraud in 2000

North Carolina: On May 22, 2003, a tractor trailer rear ended a van from the Tyrell Prison Work Farm in Columbia carrying ten prisoners on a work crew and a driver. Everyone in the crash was injured including four prisoners who suffered serious injuries. Two prisoners spent several hours trapped inside the van until they were cut out.

Pakistan: On July 27, 2003, 11 judges were taken hostage by prisoners while inspecting the Sialkot Penitentiary in Punjab province. The prisoners demanded a bus, weapons and safe passage in exchange for the judges. A police official said the prisoners threatened to kill the judges if commandos were brought in. Commandos were promptly brought in and in the ensuing rescue attempt and gun battle, three judges and all five prisoners were killed; three judges and a policeman were injured and the remainder were freed unharmed. Police stated the five hostage takers were serving sentences for kidnapping people for ransom.

Texas: On August 7, 2003, Isabella Wilson, 53, a 15 year employee at the federal Immigration Detention Center in Bayview was arrested on charges that she took $70,000 in bribes to help M&M Supply, a local company, win $720,000 in supply contracts for the facility by providing them with competitors’ bid and price quote information. She was indicted on bribery and conspiracy charges.

Texas: On July 18, 2003, Texas prison guard John Bennett, 40, was killed in a vehicle accident near the Polunsky unit in Livingston. Bennett was riding in a prison van driven by Steven Gardner, 45, while they delivered condemned prisoner Danny Bible, 51, to death row at the prison. A pick up truck veered out of its lane and struck the prison vehicle head on, killing its driver as well. Bible was being taken to death row after being convicted the month before of the 1979 rape murder of a Houston woman. He had been paroled in 1993 after serving 9 years after pleading guilty to the 1984 killing of another woman. Bible and Gardner were hospitalized with minor injuries.

Texas: On July 24, 2003, La’ Keisha Mackey, 22, gave birth to Ja’Kaira Herbert in her cell at the Tom Green County Jail in San Angelo after jail guards refused to provide her with medical attention or take her to a hospital. Mackey was arrested on July 22 on a probation violation of failing to report to her probation officer or perform community service after being convicted of possessing marijuana. She was placed in a holding cell at the jail. Eight months pregnant, she was denied a mattress or cot. When she told guards she was having contractions and needed to go to a hospital, she was ignored. “They didn’t come in there until they heard the baby crying,” she said. Mackey was on the toilet and had given birth to the baby.

United States: In June, 2003, a report by the University of Nebraska disclosed that in 2002 alone over a dozen children had been raped or sexually abused by police while participating in the Boy Scouts Law Enforcement Explorers Program. Over 40,000 children participate in the program, which is designed to encourage careers in law enforcement.

Virginia: On July 17, 2003, Olivia Perkins, 28, was sentenced to 60 days in jail after pleading guilty to two counts of delivering drugs in prison. Perkins was charged with smuggling marijuana to her boyfriend concealed in bibles while he was imprisoned in the Christiansburg jail. Perkins claimed he needed the marijuana to relieve his headaches.

Washington: On August 16, 2003, the Commission on Judicial Conduct reprimanded state supreme court justice Bobbe Bridge, 58, after she agreed to the terms of the reprimand, which stem from her February 28, 2003, arrest for drunk driving and hit and run. Bridge received a deferred criminal prosecution in exchange for entering a two year alcoholism treatment program. Bridge ran unopposed for reelection to the
court in 2002. As part of the agreement, Bridge agreed to recuse herself from drunk driving and hit and run cases in the next two years if requested. This is ironic since Bridge has recently authored several court opinions on those topics and typically rules against criminal defendants.

Seventh Circuit Reverses BOP’s Denial of Death Row Prisoner’s Interviews

The Seventh Circuit Court of Appeals has reversed an Indiana Federal District Court’s dismissal of a Bureau of Prisons (BOP) prisoner’s complaint that he was unconstitutionally denied media interviews.

David Paul Hammer is a BOP prisoner in the Federal Death Row Unit, United States Penitentiary, Terre Haute, Indiana. Prior to March 2000, Hammer gave a number of news media interviews without incident. Following public outcry over an interview given by Timothy McVeigh in March 2000, Warden Harley Lappin denied every news media request for an interview with Hammer.

Hammer sued Attorney General John Ashcroft, Warden Lappin, and others under 42 U.S.C. §1983, claiming that denial of the interviews was not motivated by legitimate penological reasons but by a desire to censor death row prisoners. Moreover, Hammer alleged that the interview restrictions placed on him by Warden Lappin were much broader than BOP rules required.

Following screening under 28 U.S.C. § 1915A, the District Court dismissed for failure to state a claim. The district court held that Hammer had no right to face-to-face media interviews, and that Lappin’s restrictions were related to penological interests. Hammer appealed. The defendants did not file a brief on appeal.

The appeals court agreed with the district court that Hammer had no constitutional right to face-to-face media interviews. Taking all well-pleaded allegations in the complaint as true, and drawing all reasonable inferences in Hammer’s favor, however, the appeals court ruled that Hammer stated a claim for relief in light of the tests of Turner v. Safley, 482 U.S. 78, 89 (1987); and Pell v. Procunier, 417 U.S. 817, 827-828 (1974). Under the Turner test, Lappin’s denial of all forms of interviews with the media (not just face-to-face interviews) stated a valid claim of unconstitutional restriction on freedom of speech, as pleaded by Hammer. Further, the district court relied on materials outside the record to judge the validity of Hammer’s claim; this was erroneous.

Refusing to address the merits of Hammer’s claims, the Court of Appeals held that Hammer did state a valid claim for relief. The district court’s dismissal was reversed and the case remanded for further proceedings. This case is published in the Federal Appendix and is subject to rules governing unpublished opinions. See: Hammer v. Ashcroft, 42 Fed.Appx. 861 (7th Cir. 2002).
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No Equal Justice: Race and Class in the American Criminal Justice System, by David Cole; The New Press, 218 pages. $15.95. Shows how the criminal justice system perpetuates race and class inequality, creating a two tiered system of justice. 1028

Ten Men Dead: the story of the 1981 Irish hunger strike, by David Beresford; Atlantic Monthly Press, 334 pages. $13.50. Relies on secret IRA documents and letters smuggled out from the IRA political prisoners during their 1981 hunger strike at the infamous Long Kesh prison in Belfast. 1006

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