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A Lawyer Looks Back at 16 Years With Case:

Monitoring Committee on Prisons in Alabama Folds; Court Gives Up Jurisdiction

Ralph I. Knowles Jr.

On December 29, 1988, Judge Robert Varner, United States District Judge for the Middle District of Alabama, ended "the Alabama prison case"—*Newman v. Alabama*. Unfortunately, 16 years of litigation and monitoring of this case could not end with a celebration, as players in the case over the years had hoped. A political climate demanding longer, sometimes mandatory sentences along with serious state budgetary problems caused the dream of the creation of a constitutional and humane prison system to cruelly and persistently elude us.[1]

Ralph Knowles has been a litigator in Tuscaloosa, Alabama for the last 19 years except for three years from 1978 to 1981 when he served as associate director of the National Prison Project. His firm engages primarily in civil litigation but continues to be involved in major constitutional and political litigation. The firm was involved in the primary landmark mental health cases arising from Alabama as well as the prison litigation.

More than 16 years after Federal Judge Frank M. Johnson Jr. cited the state of Alabama for "barbarous" and "shocking" treatment of prisoners, the lawsuit has been dismissed.

After Judge Johnson turned the case over to Judge Robert E. Varner, Varner in 1983 established the Prison Implementation Committee to recommend improvements in the system and monitor prisoner complaints.

In December of last year the committee recommended to the judge that he dismiss the lawsuit and disband the committee. Ralph Knowles was one of the lawyers working on behalf of the prisoners for 14 of the 16 years. He was also a member of the committee.

My involvement in the case began in 1974, as one of the lawyers who tried the "totality of conditions" case against the entire Alabama prison system.[2]

The Case Had National Importance

I thought the case was of enormous importance, not only for Alabama, but for the nation. All the ingredients were there: horrible facts; a humane, creative and respected judge who was interested

NPP photo

The 4x8 cell in the "doghouse" which held six prisoners in almost total darkness. Draper Correctional Center, Alabama, 1975.

in the case; and, good lawyers ready to give the judge a record to support a broad order. I became the local lawyer for the National Prison Project of the American Civil Liberties Union (NPP) after Johnson allowed the NPP to enter the case as *amicus curiae* with rights of a party.[3]

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[1]On May 9, 1989, John Hale, spokesperson for the Alabama prison system, issued a press statement that the rapid growth in the prison population (averaging a net increase of over 100 per month since the end of the litigation) might quickly put the system back under federal court control. For a detailed, accurate and readable history of litigative action and strategy in the Alabama Prison case from its inception until 1985, see Yackle, L., *Reform and Regret, The Story of Federal Involvement in the Alabama Prison System*, (Oxford University Press, 1989).

[2]*Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972).

[3]Matt Myers did most of the day-to-day work for the NPP at this stage of the litigation; Al Bronstein provided a guiding and experienced hand in preparing and presenting the case. Judge Johnson also appointed United States Attorney Ira DeMent and the United States of America as *amicus curiae* with rights of a party. Until the Reagan years brought William Bradford Reynolds to the scene, the United States, and particularly attorney Steve Whinston, was of enormous assistance in protecting the constitutional rights of prisoners in the Alabama prison system. After Reynolds took control of the Civil Rights Division at the Justice Department, other counsel tried to keep the United States out of the litigation because of its negative impact.

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On January 13, 1976, Judge Johnson issued his landmark, comprehensive order affecting every important aspect of the entire Alabama prison system.[4]

From the outset, Judge Johnson wanted a monitoring mechanism to help achieve implementation of the wide scope of the order. Thus, instead of appointing a "Receiver or Special Master" as suggested by the plaintiffs and *amici*, he appointed a blue ribbon "Human Rights Committee" composed of 39 prominent Alabama citizens.[5] He selected a Montgomery lawyer, Rod Nachman, as chairman of the committee, and allowed Nachman to hire George Beto, the well-known former head of the Texas Department of Corrections, as chief consultant. The experience of the Human Rights Committee was difficult and frustrating to the committee and to the litigants. Nachman zealously attempted to move an incompetent Board of Corrections to carry out the terms of the orders.[6] He and Beto succeeded in getting the Alabama legislature to pass progressive legislation which would have

The case was of enormous importance, not only for Alabama, but for the nation.

enabled the Department of Corrections to dramatically improve educational programs and prison industries, and to give expanded good time to prisoners. However, Johnson put meaningful, swift compliance efforts on hold when he informed the litigants that he would entertain no major compliance hearings until the appeal of his order was completed. Then, in the spring of 1977, the court of appeals upheld the substantive relief ordered by Johnson but struck down the Human Rights Committee as being "too intrusive" because of its size, credentials and its mandate to "take any action."[7]

This left Judge Johnson with no monitoring mechanism other than the parties themselves.

In February 1978, Judge Johnson ordered the Department of Corrections to file a "complete and detailed compliance report." Plaintiffs and *amici* objected to the contents and conclusions of the report. A hearing showed that much remained to be done; plaintiffs and *amici* filed motions for further relief, including the appointment of a receiver to run the prison system. Little did they realize that their wish would be granted in a most unusual way.

Newman v. Alabama

1971: Alabama prisoner medical care declared unconstitutional.

1975: Trial held on statewide totality of conditions.

1976: Judge Frank M. Johnson declares entire state prison system violates Constitution.

1979: Alabama governor appointed Receiver of prison system.

1980: Judge Johnson appointed to court of appeals, turning over prison case to Judge Robert E. Varner.

1983: Prison Implementation Committee established.

1988: Committee disbands. Judge Varner dismisses lawsuit.

Change of Command

The 1978 Alabama governor's election altered the course of the litigation in a way none of the litigants had foreseen. George Wallace could not succeed himself; a previously little-known Auburn football star who had become a millionaire by producing barbells and dumbbells was elected. Fob James had simplistic, conservative views about government.

James enlisted Rod Nachman to execute an innovative and courageous, although somewhat bizarre, plan.

He thought all problems of institutions could be solved by the application of simple management principles. In his view, federal court intervention had been brought about by the ineptitude of his predecessors. After election, but before taking office, he met privately with Judge Johnson. He wanted, as governor of the state of Alabama, to be appointed as receiver.

His plan was to get rid of the inept, but independent, Board of Corrections, and at the same time, keep control out of the hands of outsiders and in the hands of the highest elected official of the state. James enlisted Rod Nachman to execute an innovative, courageous, although somewhat bizarre, plan. In February 1979, the court entered its extraordinary order appointing Fob James "temporary receiver" of the Alabama prison system and transferring all powers of the Board of Corrections to him.[8]

James did not function as a receiver. Instead, he hired a new—albeit more competent—commissioner of corrections and went about business as usual, assuming that his new commissioner would implement simple management principles and that the problems and the federal court would go away. Naturally, although improvements were made, such was not in the cards. Population problems continued to grow; county jails were loaded with state prisoners living

Judge Varner told defendants they had better "quit cursing the darkness" and "light some candles."

in horrible conditions; overcrowded prisons were still understaffed and poorly maintained; there continued to be a lack of adequate mental health

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[4]*Pugh v. Locke*, 406 F. Supp. 318 (1976).
[5]The art and science of "mastering" in institutional litigation had not really been developed in 1976.
[6]Indeed, Nachman's aggressive activities on behalf of the judge caused his "intrusive role" to be a major focus of the state's attack on the order in the court of appeals.
[7]*Newman v. Alabama*, 559 F.2d 283 (5th Cir. 1977).
[8]*Newman v. Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979).

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The National Prison Project is a tax-exempt foundation-funded project of the ACLU Foundation which seeks to strengthen and protect the rights of adult and juvenile offenders; to improve overall conditions in correctional facilities by using existing administrative, legislative and judicial channels; and to develop alternatives to incarceration.

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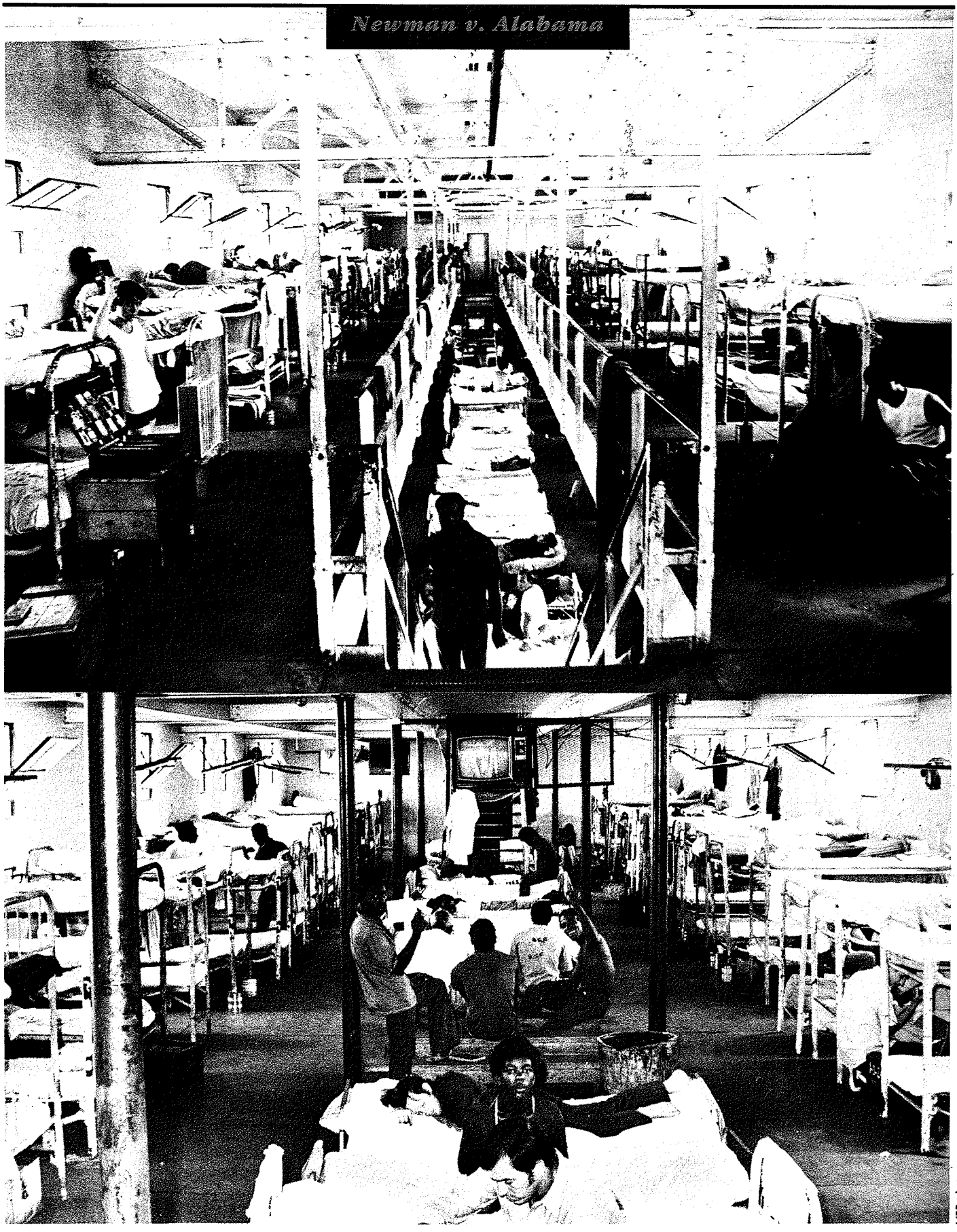

NPP photos

Dormitories at Draper Correctional Center in Alabama were so dangerous that no guard dared venture inside.

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care—and on and on.

Meanwhile, Judge Johnson was elevated to the 11th Circuit Court of Appeals and the case was transferred to a conservative Republican judge, Robert Varner. Surprisingly, Varner was willing to be more forceful in attempting to force compliance with the court's orders than Judge Johnson had been.

Motions to hold the defendants and the receiver in contempt for noncompliance were filed. Another hearing was set for early January 1983. Contemporaneously, George Wallace won the gubernatorial election again. The stage was set for the establishment of one of the oddest monitoring mechanisms ever employed in institutional litigation—the Prison Implementation Committee.

Receiver/Governor James had become disenchanted with his role. In spite of hiring more competent managers and taking some courageous political positions to attempt to deal with the crowding, things just were not as simple as he had thought. Moreover, he seemed to have second thoughts about being party to such "intrusive" federal intervention. Enough had been done, James felt, to merit release from federal court intervention, even though he had failed to gain substantial compliance with the order as it had been amended by agreement of the parties in October 1980.[9]

Nachman was unwilling to let the prison system to which he had devoted so much time over the years simply be turned back over to the state under George Wallace. He knew also that the evidence would not support James' effort to end federal court supervision. Those of us on the other side of the litigative table were in our own quandary. We knew we would "win" at the hearing and, in the process, paint a dismal picture of continued overcrowding and other gross deviations from the October 9 order. Nonetheless, we were concerned about what would happen on the inevitable appeal of any strong action that Varner might take.

The hearing proceeded as we expected. At the end of a long day of testimony, Judge Varner gathered the lawyers around the bench, saying: the evidence given so far showed serious noncompliance with the October 9 order; under a prior 11th Circuit order he might be forced to hold Attorney General Graddick and Governor James in contempt; and, they "had better quit cursing the darkness" and "light some candles." Varner's message moved the parties to serious settlement discussions.

The plaintiffs and *amici* originally had two goals in mind: first, to keep the October 9 standards intact as much as possible; and, second, to get a real master or monitor in place this time.[10] Graddick blindly resisted any compromise while Nachman pushed forward to try to reach accord before Governor Wallace's inauguration.

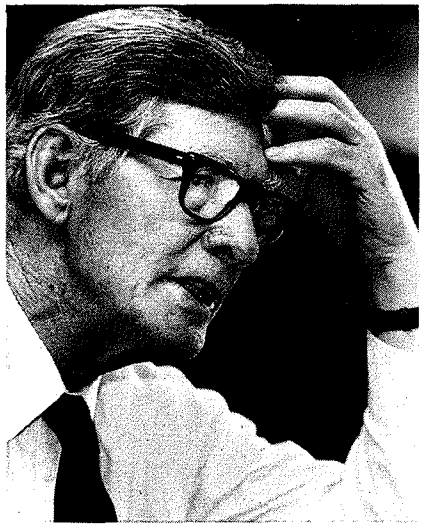
The Implementation Committee

Nachman and, through him, James, maneuvered to avoid an outside enforcement mechanism and, instead, to have a committee which would include Nachman as a member.[11] Although we felt Nachman was sometimes too willing to chalk off serious deprivations as mere administrative error not subject to court review, he was committed to forcing the state to meet minimal standards as he saw them. The question for the negotiators quickly became the make-up of the rest of the proposed implementation committee and the committee's role.

[9]James, in fact, resigned as receiver while on the witness stand at the hearing after delivering a nonsensical, meandering statement about the role of courts and other matters.

[10]See, e.g., Porter, *Order By The Court: Special Masters in Corrections* (Edna McConnell Clark Foundation, 1988).

[11]I am confident that this was based on Nachman's heartfelt desire that his longstanding work on the Alabama prison system not be lost.



Mickey Welsh, The Alabama Journal

Judge Johnson's descriptions of the "rampant violence and jungle atmosphere" in the Alabama prisons captured the nation's attention.

Judge Frank M. Johnson Jr. presided over the 1975 Alabama prison trial. When Johnson issued his landmark opinion, he cited the State for its "barbarous" treatment of prisoners.

In this excerpt from his recent book, Professor Larry Yackle describes Johnson's courtroom demeanor.

Judge Johnson presided at trial in the firm style for which he was famous. Anyone in the room must be vitally concerned with the business at hand; marshals instructed spectators to stop talking and put aside newspapers. The judge peered down at the proceedings over glasses that seemed to slip lower as the hours passed. Occasionally, he rose, stood behind his chair, or walked back and forth behind the bench—perhaps to encourage circulation, perhaps to register disapproval. Johnson showed no favorites. He was severe with all the lawyers, intending, as he had throughout his career, to strike an intimidating posture in order to foster the appropriate decorum in his courtroom. By contrast, he was extremely cordial to witnesses. Johnson understood that the expert witnesses had inconvenienced themselves to testify and made it clear that he appreciated their efforts. If anything, the judge was even more sensitive to the prisoners whom Taylor and Segall brought to Montgomery. Unlike other judges, who preferred to maintain tight security when prison inmates were in court, Johnson allowed no distracting precautionary measures. During trial, Worley James and another named plaintiff in the *James* case, William Campbell, were in the custody of federal marshals. Yet there were no handcuffs, no chains. At recesses, James and Campbell joined everyone else in the corridor outside. Inmates called to testify were also well treated. It was inconceivable that anyone, even a convicted felon, would dare disturb proceedings before Judge Johnson. The marshals anticipated that prisoners would behave themselves and they did. ■

Excerpted from Larry W. Yackle, *Reform and Regret: The Story of Federal Involvement in the Alabama Prison System* (New York: Oxford University Press, 1989), p.79.

Ultimately, an agreement between the governor and the plaintiffs was reached which established an "Implementation Committee" of four: Rod Nachman and Ralph Knowles or John Carroll,[12] and two members nominated by the first two and approved by the court. I would represent the plaintiff side on the committee. The sides had agreed in advance to nominate "corrections experts" George Beto (selected by Nachman) and John Conrad (selected by Carroll and me) as the two other representatives.

The Implementation Committee was given broad authority to "work with the Governor, the Commissioner of Corrections and all other relevant state officials in monitoring and assuring implementation of the Court's orders in the most expeditious and fiscally sound manner possible." The defendants were to "make expeditious progress in fully meeting the orders of the Court *in all facilities housing state prisoners.*" (Emphasis added.) Thus, the plaintiffs again managed to keep the strong and specific provisions of the October 9 order intact. The committee was given authority to require reports from the commissioner. It had access to all institutions, staff, prisoners and records of the department and other relevant state agencies. Reasonable fees and expenses for the committee members and any experts it might hire were to be paid by the Department of Corrections. The committee was to make reports to the court as necessary and, as "a course of last resort to be utilized only after the Committee ha[s] done everything within its powers to work with the Commissioner to achieve compliance without intervention of the court," it could recommend further action to the court. Finally, the agreement gave the incoming Wallace administration the ability to dissolve the committee. Then, in effect, it took this power away by stating that if the committee was dissolved, "the Court will take whatever actions are necessary to assure compliance with the orders."[13] The agreement recognized priorities for the committee: state prisoners housed in county jails; mental health care; and, conditions in segregation.

Over objections of the incoming Wallace administration and Attorney General Graddick, and with the grudging oral approval of the Justice Department, Judge Varner entered the order approving the settlement one day after George Wallace resumed the governorship of Alabama.

Ralph I. Knowles Jr., a member of the Prison Implementation Committee, said the committee was not willing to put a "Good Housekeeping Seal of Approval" on the prison system.

The Personalities of the Committee

Rod Nachman was a prominent business defense litigator known for taking an aggressive, sometimes insulting posture toward anyone he deemed adversarial to him or the position he was espousing at the moment. While president of the Alabama State Bar Association he had studied, and condemned, the conditions in Alabama's prisons. During that time, he had become friends with George Beto, the controversial former director of the Texas Department of Corrections.

We never once in six years issued a report that was not unanimous.

Lutheran minister George Beto had become director of the Texas Department of Corrections and then taught in and administered the Criminal Justice Center at Sam Houston State University in Huntsville, Texas. He certainly was not viewed as a friend to prisoners' rights by those of us who litigated on the side of prisoners. Further, he had recently testified as an expert that great improvements had been made in Alabama's prisons under the James receivership.

John Conrad grew up professionally in the California Department of Corrections and was a true practitioner and scholar of corrections, particularly violent offenders. He was a primary corrections expert for plaintiffs and *amici* in the original trial in 1975. He continued thereafter to consult with, and testify for, prisoners in conditions cases. Once described by a corrections official in Alabama as "a bearded liberal from California," Conrad responded that it was an outright lie—he did not have a beard.

My litigation background was steeped in constitutional and civil rights litigation on the plaintiffs' side. I served for three years as the associate director of the National Prison Project of the American Civil Liberties Union, supervising and conducting litigation against jails, prisons and juvenile institutions. Although I hope my reputation is that of a reasonable person, some view me as having radical beliefs on some topics.

The success of the Implementation Committee may be owed to the varying personalities and the structure of the committee. From its inception, it was the committee's job to "work with" counsel for state officials and prisoners to bring about compliance with the Constitution and the court's orders. Terms of the order required that three out of the four would agree before the court could be requested to take further action. Moreover, we all knew that if we spoke with more than one voice on any substantial issue we would diminish whatever power we might have to get results. Corrections and state officials knew, of course, of our different perspectives. Frequent efforts were made to play upon these differences to fragment and lessen our efforts. Nonetheless, even though there were often strong and heated disagreements, we never once in six years issued a report that was not unanimous.

Group dynamics and external forces tended to bring us closer together, not just as colleagues but as friends. I had long known John Conrad to be a kind and decent person. My beliefs about George Beto were not the same. However, Conrad had known Beto from various American Correctional Association ventures and assured me that he was not what I believed him to be. I now believe he is an extremely well-educated man who honestly cares about and actively contemplates the human condition. Interestingly, although Conrad and I were usually on the same side of disagreements within the committee, that

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[12]John Carroll, now a United States Magistrate, had done yeoman service in representing the plaintiffs.

[13]In spite of this explicit provision and regular complaints about the continued existence of the committee over the next six years, the state never moved for its dissolution.

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was not always so. Indeed, more times than one would expect, Beto and I worked together to persuade Nachman and/or Conrad to take a different position. We had, and have, strong disagreements, yet I never saw any member of the committee take a position for corrupt or personal reasons.

The Wallace/Smith Years

George Wallace was not going to allow Governor James' people to run his prison system. He quickly appointed Freddie Smith, the Department of Corrections' associate commissioner of research, monitoring and evaluation, as commissioner of corrections. Smith skillfully instituted a Supervised Intensive Restitution (SIR) program to give prisoners early release to reduce the population. He preached the right gospel around the state on not being able to afford building new prisons and the need for alternatives. On the other hand, he was absolutely untrustworthy.

Smith demanded specifics from the committee of what he had to do to get the system out from under federal court supervision. The obvious answer was to eliminate state prisoners from county jails and comply with the terms of the extensive and specific October 9, 1980 order. This he refused to accept. Further, he demanded that if at any point there was compliance with any part of the court's orders, then there should be a dismissal of that part of the order. We succeeded in sticking together on the position that this was, after all, a totality of conditions case and that compliance would be judged overall.

Smith waged a constant news media battle with the committee, calling for its end and claiming that we were in it only for the money. Despite these attacks, his associates continually came with new plans in response to substantive issues raised by the committee or John Carroll. Movements toward a better system included: development of the SIR program; development of a credible study to determine the need for correctional officers; promising activities for prisoners in administrative segregation; and modifying cells used to house prisoners in need of mental health care.

In July of 1983, Smith filed what he called a "Federal Court Order Final Compliance Report," and announced to the media that this would be his final report to us. He further demanded that the Implementation Committee's scheduled meeting to review the report be held at his office, not Nachman's. Unwilling to allow the court to be manipulated in such a crude way, we proceeded with our meeting as scheduled. Smith continued his guerrilla warfare against the committee by setting up name cards (printed by prison industries) around a table at his office and holding a televised press conference to lambast us for "finding reasons to continue our existence."

The committee overcame its initial bitterness towards Smith's cheap tactics and instead looked at the good changes that had been made. Nachman, Beto and, to some extent, Conrad, were actually optimistic that by year's end the committee could declare that the prison system should be released from court order. I, on the other hand, still insisted on a system that met all the terms of the October 9 order. The winter of 1983 and spring of 1984, however, discouraged us all.

Smith was absolutely untrustworthy.

The numbers of prisoners could not be managed in spite of the SIR program and the opening of a 1,000-person facility in St. Clair County in the summer of 1983. Attorney General Graddick continued to undermine any effort to reduce crowding through prisoner release by attacking the parole board and the SIR program. A meeting of the Implementation Committee with the parole board to encourage more paroles of nonviolent offenders succeeded in getting members to agree that more paroles should be granted. We were unsuccessful, though, in persuading them to have the political guts to do anything about it.

Graddick ultimately filed a successful lawsuit in state court challenging the SIR program—the linchpin of Smith's population control effort.[14] The committee then joined with the plaintiffs in urging contempt sanctions against Graddick for interfering in compliance with the orders. Judge Varner once again obliged, because of a previous 11th Circuit mandate, which he believed required that he hold officials in contempt before ordering the release of prisoners. He also held Commissioner Smith in contempt for noncompliance. Since he was holding state officials in contempt, he finally ordered Smith to select inmates "least deserving of confinement" to be released if any state facilities remained overcrowded as of March 15, 1984. Graddick appealed the orders.

At the same time, the committee recommended that the legislature pass a "population cap" statute, allowing the commissioner to release prisoners when the population limit was exceeded. Needless to say, that proposal went nowhere. After legislation was passed continuing the SIR program, we urged Smith to increase the number of people in the program to save money and space. At this point, however, Graddick's demagoguery had taken hold and Smith instead decided to load industrial barracks at the new West Jefferson facility with bunks and prisoners. We toured the facility and issued a strong report condemning this action as foolhardy and dangerous. Yet no immediate relief was taken. Appeal of the contempt citations was pending, further stifling our efforts.

In September 1984, the 11th Circuit issued a bittersweet order. On the one hand, it glowingly approved of the Implementation Committee and ratified its powers. On the other hand, it substantially damaged the power of the committee and the court to act decisively in the future by reversing the contempt citations. The Circuit held that before Varner could order releases, he would have to hold a full hearing and consider the constitutionality of conditions in Alabama's prisons anew in light of more recent Supreme Court edicts concerning conditions of confinement. Through the rest of our tenure, we studiously avoided showing any concern about this order. I was able to pull language from it to support the view that the prior orders were still persuasive in determining the constitutionality of the system. In reality, it caused us to be much more circumspect in our actions.

Smith continued to demand publicly that we go out of existence, but did not file proper motions. We debated among ourselves whether the committee could continue to be useful. Nachman and Beto thought that the state did deserve some credit for the progress that had been made. John Carroll did not relish the thought of another full-fledged trial before Varner on prison conditions and the inevitable appeals of those decisions. Nachman again began to contemplate a compromise.

The Court Relinquishes Jurisdiction

In a pleading worthy of notation in legal history, the committee filed a "Consent Order of Dismissal" with Judge Varner in November 1984, entered on behalf of all parties except At-

[14]The Legislature later took appropriate actions to allow the SIR program to continue.

torney General Graddick, who objected. Consequently, the court entered an order finding that conditions in the prison system, except West Jefferson, were "in sufficient compliance" to recommend "dismissal of this action" subject to the other conditions of the order. Plainly and concisely, the court relinquished jurisdiction as of December 3, 1984.

In the next paragraph, however, the order extended the life of the Implementation Committee until January 1, 1988, to "conduct such monitoring activities as it deems appropriate in accordance with the fulfillment of its role in these cases." Finally, Judge Varner held that "the jurisdiction" of the court could only be reactivated upon petition of a majority of the committee. If the committee did not recommend reactivation, the case would be dismissed with prejudice on January 1, 1988. However, now the committee had total control of the agenda even if weakened somewhat by the 11th Circuit order. Curiously (and by design), the committee and lawyers for the parties held a ceremony with Governor Wallace and Commissioner Smith announcing that the prison system was no longer under federal court jurisdiction.

The committee met for a meeting in October 1985 to review the status of the prisons. Carroll again raised the old problems of crowding, idleness and lack of adequate mental health care. We demanded reports on all issues and met again in February 1986. We did our usual thrusting and parrying and, as usual, made some progress on identified problems. Separately, I became involved in litigation through the summer and fall of 1986 which resulted in Attorney General Graddick's removal as the Democratic nominee for governor. Because of voter anger, it resulted, to my chagrin, in the first Republican being elected governor in over a hundred years. Nonetheless, Graddick's defeat was probably my major contribution to the Alabama prison system.

Unsatisfactory Meetings

In the meantime, corrections was badly underfunded for 1986. A new facility could not open because of a lack of money for staff. More bunks were placed in overcrowded facilities. The committee met with the new governor, Guy Hunt, just before he took office.

We prepared a detailed memo for the Hunt meeting about the prison system and state sentencing practices. We advised him to seek alternatives to incarceration; to extend the good time laws; to do away with the Draconian habitual offender act; and to move away from new building as an answer to crime since the state simply could not afford it. We were quite proud of our collaborative effort.

I will never forget the day of the meeting. It was rainy and cold. We had agreed to pay a farewell visit to George Wallace after seeing Hunt. We walked to the Hunt meeting with unjustified enthusiasm. After cooling our heels outside his office while various political hacks walked in, we were finally ushered into his office. He clearly had no clue as to who we were, why we were there or what we were talking about. After 15 minutes of a blank face, there was a loud knock at the door and the governor-elect said he had to go. In dismay, we left to go to the governor's mansion and Wallace.

Governor-elect Hunt clearly had no idea who we were, why we were there, or what we were talking about.

Nachman and I had both been foes of Wallace for many years. Nonetheless, it was depressing to see this once strong and feisty man dressed in a stiff white shirt and tie lying in bed barely able to hear and to sit up only for a few minutes at a time. After 30 minutes of listening to the pitiful rambling of a very sick man, we tried to leave. His last question was, did I really think his man Freddie Smith had done all right? I grimaced and allowed as how he had done some good things and then he had not done so good on some things. He didn't seem satisfied.[15]

Hunt appointed Morris Thigpen commissioner. He had directed the Mississippi system and was known as a thoughtful and progressive administrator. He subscribed to the need for alternatives to incarceration to deal with overcrowding. Further, members of his staff communicated to us that they wanted to do what was necessary to get out from under the court's jurisdiction. In the summer of 1987, the committee met with trial judges from around the state to discuss the crowding problem and the need for alternatives. Chief Justice C.C. Torbert activated a broad-based Prison Task Force, which included corrections officials, law enforcement officers, victims' rights advocates, legislators and others who met often and around the state. The Task Force developed a broad agenda for change which called for a zero-based growth rate in the prison system within two years.

Overcrowding Clogs the System

Nonetheless, the numbers continued to far outpace the spaces available. The parole board became even more paralyzed as a result of a grand jury investigation over the release of a prisoner who committed a particularly brutal crime. Thus, as the date for the committee's termination approached, we once again agonized over our role and what we should do. Many in state government and in the criminal justice system told us the system would go backwards without the pressure of the committee. The governor's office told us they would help in getting the parole board to reduce the numbers; they thought the job could be done in six months. Some of us on the committee believed there were still serious systemic problems relating to physical conditions, staffing, housing and care for the mentally ill, and idleness. Others considered crowding to be the evil which exacerbated the other problems. Our quandary was worse because, in truth, we all were burned out on the case. Finally, we decided we could not in good conscience fold up and leave.

We issued a lengthy report to the judge, outlining the history of the crowding problem, recognizing the other problems in the system, asking that the committee life be extended until July 1, 1988, and recommending that the court appoint Commissioner Thigpen as "temporary receiver" of the parole board with all its powers if the crowding problem was not solved by then. On December 30, the court entered the requested order and opined that the state would save much money in welfare benefits if people who were now being housed in prisons were out working.

We met monthly thereafter with the parole board and corrections officials. Under our threat and aid from the governor's office, and under the new leadership of a Republican former police officer, Joel Barfoot, the parole board moved forward. Between March and July, there was a net decrease of over 900 prisoners as a result of its activities.

When July came, we could see the results of our efforts but they were cer-

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[15]Smith was later indicted and convicted for double-billing on trips to New York. He died in a single car accident while speeding and drunk.

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tainly not complete because of overcrowding. We also had little confidence—despite assurances to the contrary—that the parole board would continue that pace or anything close to it. We commended the actions of the board to the court and, once again, recommended an extension until December 31, 1988. This time the Department of Corrections formally moved that the court dismiss the case and discontinue the committee. We were informed in no uncertain terms of Thigpen's and the governor's office's displeasure with our request to extend. On the other hand, some high officials continued to tell us privately that it would be disastrous for us to leave. The judge granted the committee's request and denied their motions.

A Frustrated Committee Disbands

At this point, the tired and frustrated committee was moving inexorably toward abolition. The case had gone on for over 16 years. John Carroll, the able lawyer for the plaintiffs, was now a United States Magistrate. Thus, we were in the awkward position of becoming adversaries instead of remaining a neutral body meant to mediate and force action when necessary. Without any doubt, the barbaric conditions that existed at the time of Judge Johnson's order were long since gone. Yet, in addition to the crowding, other persistent problems with staffing, mental health care, conditions in segregation, and idleness continued to dog the system. All four of us had been involved in the case in some way from the beginning. We wanted it over.

John Conrad and I decided we could not make a final report without reviewing conditions in at least some facilities one last time. Beto and Nachman deemed such tours unnecessary because they knew they would continue to find the problems identified in the past. We did not announce our tour until an hour before we arrived at Holman prison.

What we saw was discouraging. Physical conditions at three of the older major prisons were deplorable. The "mental health prison" at Union Springs seemed to be questionable in operation. There was much idleness. Many prisoners should not have been incarcerated at all. While the improvements since the beginning were obvious, we certainly would not be able to give the prison system a "Good Housekeeping Seal of Approval." Conrad and I reported our findings to our colleagues who also reviewed snapshots I had taken. Both were chagrined. Again, we were barraged with advice not to end the case. Unfortunately, the parole board had greatly reduced its parole rate. We all became emotional about what we should ethically do—ranging from further strong action to simply letting the case end without comment.

> *The case had gone on for over 16 years. . . . We wanted it over.*

Finally, we all came to a unanimous conclusion. Much progress had been made. While serious problems existed and while we all thought the overcrowding would ultimately have the system back in court, the Implementation Committee's tenure should end. Over time, in spite of enormous achievements, our structure was no longer adequate to the task. Additionally, we were burdened with the knowledge that the 11th Circuit had recently held that as long as we continued, all complaints from Alabama prisoners which related to our broad order must be consolidated into our case. We had never functioned in that manner and would be a fraud if we continued.

We filed a report which detailed the historical improvements made; gave well-deserved praise where due; identified our concern over existing problems; and warned that the statistics were ominous for the future. The judge accepted our report and on December 31, 1988, the Prison Implementation Committee became history.

The Prison Implementation Committee was, in many ways, a successful mechanism for progressive change and movement towards substantial compliance with constitutional standards. Its flexible approach allowed victories in the political arena which probably would not have been possible under a more traditional approach. The committee was, on the other hand, aberrational in origin and personnel. Although lessons have been learned from its existence, it may not be a model for other institutional cases. ■

Georgia Study Reveals Racial Bias in Sentencing

Maria Martino

According to a three-and-a-half-year study of prison and probation case files handled in Georgia courts between January 1, 1985 and August 31, 1988, black men convicted of a wide range of offenses in Georgia were at least twice as likely to go to prison as white men convicted of the same crimes.

Evidence of racial disparities in sentencing emerged from an *Atlanta Journal-Constitution* study based on data obtained from the Georgia Department of Corrections.

The study suggests that race may play more of a role in sentencing than Georgia judges realize. Findings indicate that black men convicted of burglary were 50% more likely than white men to go to jail; black men in 12 circuits were more than twice as likely to face prison terms for violent crimes; and in 22 of the 38 circuits, black men were 20% more likely to go to prison in drug sale cases.

In a time of prison overcrowding and law-and-order public sentiment, the issue of fair sentencing has never been more urgent.

Although most Georgia judges reported that they try to be consistent rather than race-conscious, a few say the defendants' race may inevitably get factored into the sentence.

"People don't necessarily lose their biases when they're elevated to the bench," John H. Ruffin Jr., a superior court judge in the Augusta Judicial Circuit told the *Atlanta Constitution*. "It's naive to think that the judiciary is insulated from the attitudes that exist in other segments of society." ■

Maria Martino is a staff assistant at the National Prison Project.

Correction

In our last issue, the article on Washington's prison system (*Washington State's Prisoner Numbers Stabilize As National Rate Soars*) omitted Michigan from a list of states which have developed or are developing sentencing guidelines. Michigan has used sentencing guidelines developed and implemented by the Supreme Court since 1984.

Dramatic Rise in Numbers of Elderly Prisoners Means Special Care, Increased Costs

Betsy Bernat

> *I worked for the state as oyster inspector. That was at Chincoteague up on the Eastern Shore, the forgotten part of Virginia, from out here that is. I had to do with water all my life. I'm a boatman. I was told when I came here that the only water I would see was that which come out of the spigot, and I reckon that's about right. I love the water and I miss that so bad that it hurts.*[1]

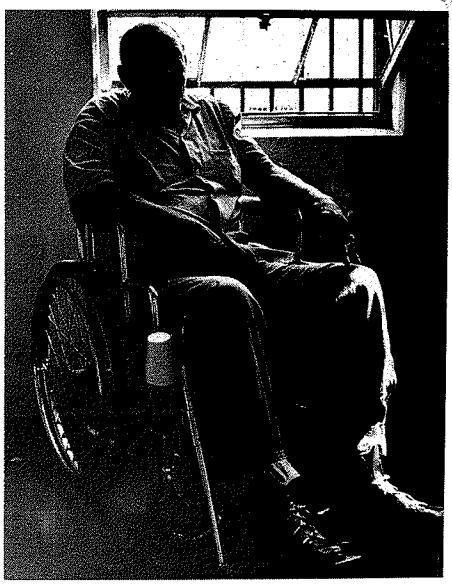
A Small But Growing Number

For years they were easy to forget. "Old joes," as they've been called, were relatively quiet, their numbers few. But elderly prisoners, both male and female, are now one of the fastest growing segments of the prison population, and evidence points to greater increases to come. Care of the elderly is a specialized, complex field in which few corrections administrators are trained. Their care is also expensive. Corrections administrators are facing a problem growing quickly in dimension, involving unique solutions and prohibitive costs, with little precedent to guide their response.

Statistics illustrate the steady increase:

- In 1985, 10,563 persons over 55 were incarcerated in state and federal prisons. In just three years, that number rose to 12,878.[2]
- In 1987, Florida housed 1,350 prisoners aged 50 and over. Projections put that number at 3,094 by the year 2000. Also, the number of inmates in Florida aged 56-65 grew by 56% between 1981 and 1987. The general population increased by just 25%.[3]

No wonder, then, that the National



NPP photo

Population projections forecast an alarming rise in the numbers of elderly prisoners, whose care can cost three times that of younger inmates.

Council on Crime and Delinquency (NCCD), in its 1988 prison population forecast, predicted the advent of "correctional 'senior citizen' rest homes."

The Forgotten Few

> *I have a 40-year sentence, at 74 years of age. It's so long and I work as hard as I can, and I've never had a charge and I'm trying to get home before I die, you see.*

One of the major forces behind the increase in elderly offenders is the trend toward mandatory and longer sentences. More and more inmates are being sentenced to terms which practically guarantee they'll grow old in prison. The effect of this trend will become even more critical as these young offenders, sentenced now, begin to age. Their numbers are already staggering and point to potential disaster down the road.

- In 1988, 49% of Virginia's state prisoners—5,567 of 11,410 inmates—were serving sentences of 20 years or more.[4] Furthermore, the confined felon population was serving an average sentence of 25.1 years according to a February 1989 profile of the state's prison population.[5]
- 49%, or 3,578, of Tennessee's 7,253 state prisoners were serving sentences of 20 years or more in 1988 as were 44%, or 4,845, of Alabama's 11,020 prisoners.[6]
- In 1982, 42,451 offenders in 42 states and the federal system were sentenced to 20 years or more in prison. By 1988 the figure had risen to 71,848 in 45 states, including 8,569 inmates sentenced to natural life imprisonment.[7]
- In New Jersey, in 1979 just 51 of that state's inmates were sentenced to prison terms of over 10 years. By 1985, that figure had jumped to 1,645.[8]

As these inmates age, they will need all the special treatment and medical attention normally required for proper elderly care.

"When I began working with elderly offenders back in 1973," says Dr. Braden L. Walter, a private consultant in Pennsylvania, "there were only a handful [of elderly inmates]." They included inmates serving long sentences and career criminals who'd been in and out of prison all their lives.

"In 1980, we saw this third kind start to emerge: people who had been model Americans all their lives," says Dr. Walter, "but at the age of 60, 65, 70 were committing serious crimes: sex offenses, arson."

Elderly crime has increased partly as a result of demographics: our population is aging, therefore we have more elderly criminals. What's surprising, however, is how many have been convicted of violent crimes: homicide, rape, child molestation. Naturally these crimes command longer sentences, thereby doubly impacting statistics.

"Getting people interested in geriatric offenders is an uphill battle," says

—*continued on next page*

Betsy Bernat is the editorial assistant for the NPP JOURNAL.

[1]The author thanks Eve Kupferman of National Public Radio for making available tapes of elderly inmates at Virginia's Staunton Correctional Center from which quotations throughout this article were taken.

[2]American Correctional Association, *Directory*, (1986, 1989).

[3]Richard L. Dugger, "The Graying of America's Prisons," *Corrections Today*, The American Correctional Association, June 1988.

[4]*1988 Corrections Yearbook*, Criminal Justice Institute, (South Salem, NY).

[5]*Characteristics of the Felon Population*, Virginia Department of Corrections Research and Evaluation Unit.

[6]*1988 Corrections Yearbook*, Criminal Justice Institute, (South Salem, NY).

[7]*1982 and 1988 Corrections Yearbook*, Criminal Justice Institute, (South Salem, NY).

[8]Andrew H. Malcolm, "Prisons Seen Facing Surge of the Elderly," *New York Times*, (December 24, 1988).

—continued from previous page
Dr. Joann Morton, former director of special projects for the South Carolina Department of Corrections. "Problems such as overcrowding strain the entire prison system. We have the need, but we don't have the resources to meet the need. The elderly tend to be forgotten."

Classification

You just can't associate with everyone here because there are different types of people. I try to associate with people more my age. You can discuss things with people my age and they'll understand what you're talking about. I like to read a lot and discuss things I read. I cut articles out of the paper. I go and discuss them with those young boys out there and they look at me like I'm crazy.

Should elderly inmates be housed by themselves, where they won't be victimized by younger inmates, or with the general population? Dr. Larry Fultz, a staff psychologist for the Maryland Parole Commission, surveyed the state's elderly inmates and found that "over 90% wanted to be housed with their own age group."

A sizable percentage of elderly inmates committed brutal crimes; do they themselves pose a security risk?: sometimes, but not always.

"There's this belief that if someone's old and infirm, they can't hurt anyone," says Dr. Walter. "That's just silly." A few older inmates are dangerous and require maximum security placement.

"Security is a complicating factor," Dr. Morton acknowledges. "We have three choices. You can centralize based on age, decentralize or do both. What you find you have to do is provide services in minimum, medium and maximum facilities.

"If they can't function, especially medically," Morton continues, "or they can't cope, then we bring them into a special unit." South Carolina has a geriatric and handicapped unit in a minimum facility and a smaller one in a medium/maximum facility.

Special Care

"Medical needs are paramount," says Dr. Morton. Elderly inmates require such frequent, and often acute, medical care that their cost of incarceration is estimated to be three times that of younger inmates.[9] The expense so

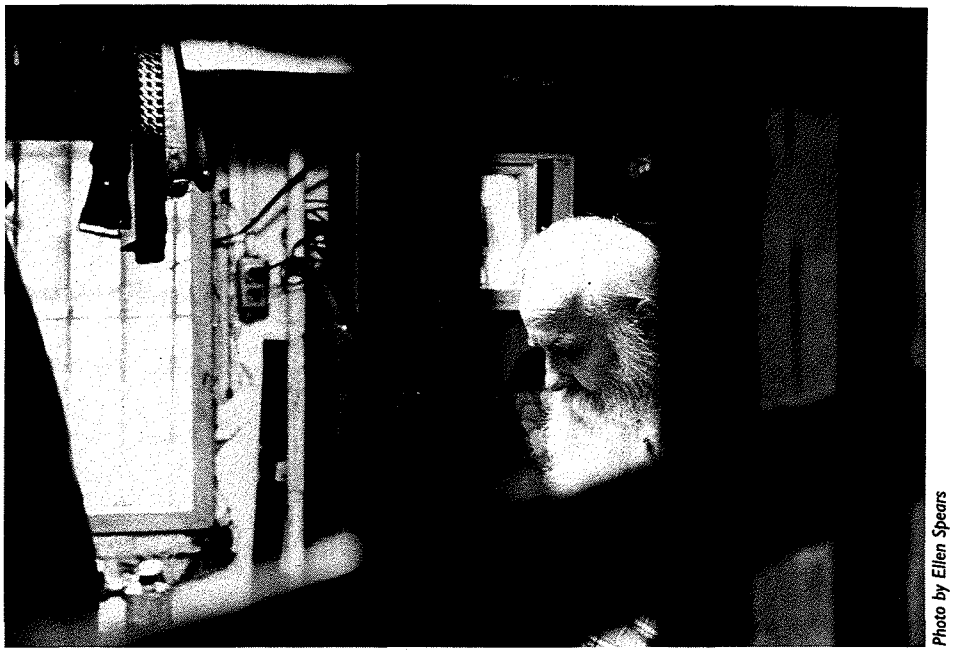


Photo by Ellen Spears

The older prisoner often requires special medical attention rarely available in prisons.

alarmed Pennsylvania officials in the late 70s that they released many older inmates.

Many inmates may even require skilled nursing home care, beyond that which the prison can financially provide, yet they can't be paroled.

Experts also often recommend soft, bland diets. Facilities should be fitted with railings in the hallways, and ramps for prisoners who use walkers or wheelchairs. The elderly inmate's lowered resistance to illness gives more importance to a clean environment.[10]

Staff need to be trained in gerontology. "They don't know what it's like to be old, how this presents certain psychological, economic and social problems," comments Dr. Julia Hall, a social psychologist specializing in criminology and gerontology at Drexel University.

Programming for Elderly Offenders

I attend a group and go to AA meetings over here every week. I go around this track so many times now every day when it's open, and the fella been telling me that every time I go around five times, it's three miles or something if you walk. So I go around every day. Sometimes I go to the library and sit around and read different books and the newspaper.

"To keep somebody busy for 20 years is a trick," says Barbara Gottleib, staff psychologist at the Correctional Center for Women in North Carolina. "What do you do to give your life meaning?"

Many benefit from substance abuse programs. A strikingly high number have substance abuse problems; their crimes are often alcohol-related.

Older offenders are not too aged to profit from educational programs, though some experts suggest separate classes to ease the frustration they might feel among younger, faster learners.[11]

Recreational programs are also popular. A South Carolina program combines crafts and horticulture, encouraging inmates to build on experiences from their youth. One man had been taught to crochet by his grandmother; he then taught the skill to other inmates.

Programs which focus on the aging process itself have proved rewarding, too. Dr. Hall meets weekly with the Concerned Seniors at Graterford, a group of elderly offenders at Pennsylvania's Graterford Prison who look at issues of aging and at the older community to which they'll be returning.

Recently, Maggie Kuhn, national convener of the Gray Panthers, visited the group. The result? "They're forming the first prison chapter of the Gray Panthers!" Dr. Hall exclaims.

Experts also stressed the importance of community involvement, for instance, through church and senior citizen groups. Besides providing a link to the outside world, these contacts can be useful at parole time as elderly offenders return to the community.

When they do return, the elderly often have no place to live, and are too

[9] *Id.*

[10] Joann B. Morton and Judy C. Anderson, "Elderly Offenders: The Forgotten Minority," *Corrections Today*, (December 1982).

[11] Gennaro F. Vito and Deborah Wilson, "Forgotten People: Elderly Inmates," *Federal Probation*, 49 (1), (1985).

old to work. They don't know where to turn for medical care and other services. Both Dr. Walter and Dr. Hall have developed programs aimed at making return to the community successful.

Elderly Women in Prison

Perhaps the fastest growing population of all is the female offender, many of whom carry long-term sentences. "A lot of the women are here for violent crimes against an abusive spouse and in this state they get life for it," says North Carolina's Gottlieb.

But because there are fewer female prisoners, their facilities tend to be more centralized, often making visits difficult. "Their family might be five hours away," Gottlieb explains. "They might not have the money to visit or reliable transportation. What happens is the family stops visiting after a year or two."

One advantage elderly female offenders have over their male counterparts is the tendency in women's prisons to create 'families.' Older women take on a motherly role and often are referred to as "Mom" or "Granny."

This sense of family, though comforting, can make release time even more difficult, particularly if a woman has lost touch with her real family on the outside. "A lot of them feel tremendous anxiety," Gottlieb says. "Who will hire you? Who will be there for them? People aren't isolated here. When they leave, the isolation's pretty extreme. A lot of women commit infractions to come back in."

Questions and Options

I don't think jails are the proper answer. I never thought you could make a dog better by being cruel to him and deprive him of his rights, like you chain him and keep him in a close place.

"A lot of the older offenders are not a danger to themselves or others and could be supervised in the community if alternative resources were widely available," says Dick Franklin of the National Institute of Corrections. "Many police, courts, and probation staff lack knowledge of the aging process and so many of the older offenders end up in prison because people don't know what else to do with them."

Is the public being well-served by incarcerating them, in terms of both security and economics?

Marci Brown of the National Center on Crime and Delinquency replies, "It depends on how you judge that. Ages 18 to 22 are the high crime ages. It tapers off after that, so we can figure there would sort of be a natural tendency for this person not to commit as many crimes. Second, do you measure success as it affects the crime rate? This country's attempts to do that with get-tough laws have been a miserable failure. We have more people locked up than ever before with very little change in the crime rate.

"Corrections departments need to conduct statewide projections to see how their present system will look 10 years down the road."

According to Bud Walsh, executive assistant to Adult Institutions in New Jersey, "Some people have proposed separate sentencing courts as we do with juveniles. Say you get a person who's 70. Despite the fact that the person could logically receive a 30-year sentence, would you mitigate that because of age? Do you need to give that person a longer sentence, or reduce it so he has some life left when he gets out?"

Despite the recent interest in elderly offenders, is it realistic to think they'll receive more attention and better funding in the future?

Brown is skeptical. "If policies stay the same as they are now, and if the prison population grows as much as our projections figure it will, then it's very doubtful that those needs will be met. It will put a further strain on correctional budgets. The prison system is going to be so overcrowded that all services will be more limited." ■

When you look at [the younger people] you see how you went into prison. You just have to go to the mirror to see how it made you. I didn't have that white hair when I started. Now I've got it. Prison made that white hair.

For further information: The National Institute of Corrections plans to publish a report on the elderly offender this summer. Contact Dick Franklin, NIC, 320 First St., N.W., Washington, D.C. 20534.

Parole

"The elderly often don't have families," points out Dr. Julia Hall, a social psychologist specializing in criminology and gerontology at Drexel University. "They may have expended all their funds on legal costs. Many have not had regular employment so they don't have pensions." They often can't afford proper housing and many require nursing home care.

"It's tough enough to find a job when you're old," she says. "As an ex-offender, you've got a double stigma. And if you've been imprisoned for a while and haven't had a chance to upgrade or learn new skills, you're not very marketable."

Also, elderly ex-offenders often lack a social support system, particularly if they have no family, and may find it difficult to develop one with people their age. "Crime is one of the greatest fears among elderly, so imagine an ex-offender coming to a senior citizen center," Dr. Hall explains.

She has developed a program which trains parole and probation agents and readies the elderly inmates for release. Agents learn to understand their clients' special concerns, and to identify the services, programs and benefits available to them. "Information and referrals can make the difference whether these older people survive," Dr. Hall says.

Dr. Hall meets weekly with the Concerned Seniors at Graterford to discuss the older community to which they'll be returning. Recently she invited a group of senior citizens from the community to a meeting. "They walked in apprehensive," she says, "but then they started talking with the inmates about their mutual concerns and found they had more in common than not. There's a great deal of empathy where there was hostility and apprehension before."

Dr. Braden Walter, a private consultant, is developing an elderly offender project under the auspices of Consilium, Inc., a nonprofit group based in Pittsburgh. This program will target elderly offenders while they're incarcerated and follow them closely through the pre- and post-release process.

Based on the "notion of finding the right thing that works for each person," according to Dr. Walter, the program calls for lots of personal attention, individual and group counseling, and life and personal skills training in subjects ranging from reading to grandparenting. Project support follows the inmate upon release, assisting with housing and job placement, and allows the inmate to transfer his dependency on the prison system to the project until he or she is able to function alone. ■

Citizen Involvement Can Play Key Role in Corrections

Margot C. Lindsay

At a recent conference a circuit judge asked the people in the audience to put themselves in his shoes. He presented two cases, and asked his listeners to decide whether to grant probation without any conditions as requested by the offender, or to send him to prison. To many in the audience, neither punishment seemed a good fit, and that was exactly the point the judge wanted to make.

"There are very few open and shut cases," he said. "We need a middle ground." Or, in the words of another judge echoing his appeal: "We need tough, meaningful punishment outside the walls."

The untenable number of inmates in our prisons make this "middle ground," this "tough, meaningful punishment outside the walls," not just a good idea from the point of view of justice, but an urgent need, lest state after state sink under the cost of building the cells which will be required if present sentencing patterns continue.

Development of these options can be difficult. Legislative and public support are needed to make these changes successful, but the changes aren't comfortable ones. As long as offenders are put in prison the public feels safe. But middle ground options, be they intensive supervision probation or intensive parole, community service or restitution centers, halfway houses or house arrest, directly affect the public. Offenders end up on the street rather than behind bars. To citizens already upset about crime, this can seem extraordinarily threatening to their own safety and to the safety of their families and neighbors. To many, prison is the only valid form of punishment; anything less is but the proverbial "slap on the wrist." Middle ground options can be very hard to sell.

A Role for the Public

These feelings on the part of the public are understandable. In the past, prison reformers have not paid much attention to those with different priorities. In the 1970s, many prison bills, enacted in the wake of the uprising at Attica, were intended to provide more humane conditions for inmates. It was difficult for many people to see why that was important. There was little mention that these reforms could also serve the public's safety, that more humane conditions would produce more humane individuals coming out from behind the walls.

The best way for citizens to become informed is to be offered a ringside seat.

No comparable measures were being enacted on behalf of victims, who were left to organize and make their own demands a few years later. This conveyed an impression that advocates of prison reform were "soft on crime" and more interested in the welfare of the inmates than in the welfare of the general population.

Furthermore, the development of community-based sanctions may seem to be yet another government policy which considers the rights of special groups at the expense of the rights of "ordinary people." The community-based trend in corrections follows the community-based trends for other populations: juveniles, addicts, the mentally ill and the mentally retarded.

Therefore, it becomes vital in planning community-based sanctions for the public to be brought into the process. They need to learn early on just what they are being asked to accept from those directly involved in planning and implementation. They need a chance to respond, and to feel they have been heard. Here are some of the things members of the community will want to consider:

- which community-based sanctions are being considered and why they represent true punishment;
- which procedures will provide for the safety of nonoffenders and why they will be effective;
- what impact these programs are likely to have on the tax rates and the demands they may make on local fire and police departments and on other community resources;
- how these programs will be monitored and evaluated, and who will decide whether they should be continued; and above all,
- how the concerns of the public will be heard and addressed.

We believe the best way for citizens to become informed, reassured, and finally supportive of "middle ground" options is to become involved, to be offered a ringside seat, a role in reviewing the plans and monitoring their implementation. Many states with "middle ground" options have already developed such a role for the public:

- In Virginia, citizen panels screen offenders from their area to see whether they are acceptable candidates for community sentences;
- In Iowa, citizen advisory groups to individual programs join with district boards of directors to form a monitoring, as well as supportive, network around the whole array of community-based correctional programs;
- In Idaho, advisory board members of community correctional work centers meet monthly to monitor operations, to voice needs of the community and see that they are met, as well as to help residents gain access to local resources;
- In counties included in their states' Community Corrections Act, citizens sit with criminal justice professionals to plan programs, to see that procedures respond to citizen anxieties, to allocate funds, and to receive progress reports.

Over half the states in this country have some mechanism for citizen participation built into their community-based programs.

Community-Based Programs

Residential programs in particular require the involvement of those most directly affected. Such successful pioneers as Bryan Riley of Massachusetts Half-way Houses, Inc., have long recognized the value of community involvement. Riley always walks the neighborhood with the local legislator before opening a new home. Each of his halfway houses has a community committee drawn from the neighborhood and chaired by one of his board members. The neighbors then have a chance to see how the program operates, how supervision works, and to voice any concerns and, incidentally, to add to the quality of offenders' lives by providing access to community resources and an occasional ticket to a sports event!

Legislators, too, are recognizing this need, and are building a role for the public into statutes. In Illinois, for example, Citizens' Advisory Councils are required in order to "strengthen and assist" in the operation of each community correctional center (and parole district). The goals of the Council are listed as follows:

1. pursue ways and means of commu-

Margot C. Lindsay is the chair of the National Center for Citizen Participation in the Administration of Justice. She has worked extensively with advisory board members and administrators and serves on a number of justice-related boards.

nicating the Community Services Division's mission to the public;

2. assist in the identification of public service projects;

3. develop resources which will benefit inmates/releasees;

4. assist in the development of private business enterprises to provide employment to the inmates/releasees;

5. advise the Chief Administrative Officer on policies which affect the community; and

6. provide other advice and input which will enhance the Community Services Division's position in the community.

Florida has regional advisory councils for its residential programs "to communicate the ideas of the community and the local criminal justice system to the regional administration of the Department of Corrections ... [To] provide a forum for receiving citizen complaints and holding hearings on general problems relating to the Department." Ohio, Idaho, Iowa, Pennsylvania, Montana and Texas also require boards for each of their community-based centers. Minnesota, Oregon, Kansas, Tennessee and other states which have a Community Corrections Act involve citizens on their county criminal justice planning boards. California, Massachusetts, Missouri and New Jersey have advisory boards to many of their county or district probation offices, although not statutorily required. And this is not an exhaustive list. In fact, over half the states in this country have some mechanism for citizen participation built into their community-based programs.

There is no better tool for public education than to allow small groups to see, firsthand, the hard facts and implications of overcrowding.

Citizen Advisory Boards

A compelling case can also be made for the public's role in prisons. There is no better tool for public education than to allow small groups to see, firsthand, the hard facts and implications of overcrowding; to understand the makeup of the inmate population so they understand that some categories of offenders could serve their time outside the walls; to review the criteria for early release, and then convey this information to their peers in the community.

Citizen advisory boards are an effective and popular way to provide this role. While advisory boards used to be decorative objects, today's models are taken seriously and deal with substantive issues. Board members, offered the chance to see programs at work and to suggest changes, can then serve as educators of their peers whenever the need arises, and testify to an agency's concern for, and responsiveness to, the citizens of the area.

Benefits derived from citizen boards can go beyond the development of public support. Board members can significantly improve services by providing access to local resources, finding volunteers for programs, and, above all, by serving as advocates for resources and change. Citizen advisory boards to prisons can also assure that improvements mandated by court order remain in place once the court relinquishes jurisdiction. A board in Massachusetts has been written into a consent agreement for just that purpose.

Many an administrator has used its citizen board to good advantage. Kevin Lucey, chief probation officer of a rural district court in Massachusetts, was having trouble gaining the attention of the regional offices of two state agencies whose cooperation he desperately needed. With the encouragement of his commissioner and local judge, he formed a citizen advisory committee. Members of the committee quickly carried the issue to the executive branch, a move which assured the eventual cooperation of the two agencies.

To advocate a role for the public is not to suggest that correctional administrators share their authority, responsibilities or their ultimate accountability. It is simply to recognize that local officials and members of the community have a valid and constructive role to play in the success of community-based corrections, and particularly in the residential programs that most affect their daily lives. Such a role, well-defined and understood, will not interfere with management needs, but will help the public accept the programs, and feel a sense of commitment to their success.

Creating a Dialogue With the Public

Some officials have developed public education programs. Others speak of "marketing community corrections." But public education and marketing are essentially one-way streets. By themselves, they are not enough. In order to gain acceptance from the public, there must be dialogue and mutual responsiveness. The public must have a chance to discuss, to digest, and then to discuss again with those who can respond to their concerns and suggestions. The delivery of facts and figures, though important, represents an intellectual response to what is fundamentally an emotional issue. Because the public is so woefully uninformed about corrections, it is vital to provide a forum in which fears can be openly expressed, validated and addressed.

The recent presidential campaign shows how destructive the public's lack of knowledge can be. Joel Barfoot knew little of corrections before he became chairman of Alabama's Board of Pardons and Paroles a little over a year ago. He worries about this lack of knowledge. "I thought everybody should go to prison before I got informed. Now I know there are different types of criminals. I'm a good Republican but I've got to tell you—that Willie Horton thing has hurt the whole of corrections across the country. Not that he should have gotten out, not that he should have gotten a furlough, but it got all out of proportion and hurt us all. People just aren't informed and so get taken in by something like [that]. It made everybody think that everyone in prison was a Willie Horton."

Citizen involvement is not a comfortable thought for many public officials. Pictures of the '60s come to mind—frazzled administrators dealing with confrontational tactics and disorderly groups occupying their offices. While this is not the model of the '80s, that may be hard for some to believe.

NCCPAJ Promotes Public Involvement

The National Center for Citizen Participation in the Administration of Justice[1] was formed a couple of years ago in order to help court and correctional administrators develop constructive and mutually beneficial channels of communication with the public, primarily through advisory boards. Drawing on successful models across the country, we work with administrators on strategies where no public involvement exists, and train and troubleshoot where boards or other public mechanisms exist but are not working very well.

We worry about the public's lack of knowledge about corrections at a time when public understanding of corrections is so badly needed. We worry about the lack of a constituency for court and correctional administrators to speak up on their behalf, whether to the media, to legislators or to neighbors; whether it is to gain access to resources or simply to explain an incident and put it in perspective. Most other human service administrators have had such constituencies for some time—citizens to whom they can turn when allies are

—*continued on next page*

[1]The National Center for Citizen Participation in the Administration of Justice, 20 West Street, 4th Floor, Boston, MA 02111, 617/350-6150.

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needed, when money gets tight, when changes need to be made or advances need to be safeguarded.

Corrections has no comparable group, although a handful of citizen criminal justice organizations and the boards that many states have put in place provide the potential. Board members can serve as the catalyst, working with outside groups and the public at large, to provide the support needed for the "middle ground options," for the "tough, meaningful punishment outside the walls" which will allow the overcrowding crisis in our prisons to subside.

Without public involvement, the changes so badly needed may be difficult to bring about and even more difficult to sustain. ■

FOR THE RECORD

■ The National Sheriffs' Association (NSA) has announced the formation of the Center for Research and Policy Development, Inc., to be based at its Alexandria, Virginia headquarters.

The new subsidiary was established in response to increasing demands for research, model policy and procedures, training and technical assistance, program development and implementation, and program and policy evaluation.

Currently, the NSA is funded by the Bureau of Justice Assistance to conduct research, develop policy, and conduct training and technical assistance in

AIDS UPDATE

Judy Greenspan

A. Billy S. Jones is the assistant director of education for the Sunnye Sherman AIDS Education Project of Whitman-Walker Clinic in Washington, D.C. Billy, an ex-prisoner, divides his busy schedule between supervising the clinic's growing street outreach AIDS education program and conducting AIDS education/training seminars for prisoners, correctional staff and organizations around the country. I was lucky to catch up with Billy for an interview after his return from the International Lesbian and Gay Health Conference in San Francisco, and a training session at the NIDA Addiction Research Center in Florida.

Greenspan: How did you get involved with AIDS education?

Jones: I started doing AIDS work while incarcerated at San Bruno in the San Francisco Bay area. Prisoners, I knew, were likely to have been involved in some high-risk behavior. Working with the medical department at San Bruno, I soon realized that we should be doing some seminars around these issues. When I came out of prison and went to work with the National Coalition of Black Lesbians and Gays, I became very interested in their prison project. More and more inmates were writing in—talking about AIDS and HIV infection. A lot of the letters were about how they were treated—placed in isolation, threats from other inmates and correctional officers.

In 1986, I went to work for Whitman-Walker Clinic in Washington, D.C. to develop and coordinate a street outreach project. I am on probation until 1991, and I feel a strong commitment to provide service and sensitivity to persons who are incarcerated. I expanded the outreach project to include not only IV drug users, prostitutes, and male hustlers, but also prisoners.

Greenspan: What kind of programs have you developed?

Jones: Comprehensive AIDS education, prevention and intervention programs that would target everyone, regardless of how they went through the system: those in detention centers, the pre-release and half-way house programs, and those on probation as well as in drug treatment programs. The frustration here boils down to what people regard as good education. Just showing a video or giving a brochure is not a comprehensive education program. What we really need is time for people to work through their anxiety, fears, and phobias about AIDS. Often anxiety centers on groups of people, specifically about gays, lesbians or cross-dressers. In some cases, prostitutes or IV drug users. Many times the educational process cannot begin until the consciousness has been raised—until sensitivity and compassion have been reached.

I don't like the video, "AIDS, A Bad Way to Die," except perhaps as a last resort for persons who are insisting on continuing that risk behavior. I am not convinced that it is effective in bringing about attitudinal and behavioral changes.

Greenspan: At whom do you aim your educational programs?

Jones: From the very beginning, the Sunnye Sherman AIDS Education Project of Whitman-Walker Clinic felt that whatever education efforts we did in prisons should be targeted at all inmates, regardless of HIV status. We have no way of knowing who is positive and who is not. The powers-that-be tend to direct educational seminars to the gay unit or those who identify themselves as gay or to persons who they know to be HIV-positive or IV drug users. When going into any system, we simply insist that the seminars are to be for everyone.

We also insist on conducting seminars for staff as well. Correctional officers are encouraged to express their concerns and fears. We also try to get them to understand their at-risk behavior when they are off duty.

Unfortunately, our comprehensive education effort has been sabotaged because of lack of funding. We were proud of the fact that we had an education program in five counties in Virginia and two in Maryland, and in the District of Columbia. We have not been able to keep the staff needed for that effort. While some counties have taken on the educational effort themselves, often the "educational efforts" consist of just showing a video and having some literature. Despite the lack of funding, we have continued our one-on-one counseling.

Greenspan: What kind of discrimination do you find faces HIV-positive inmates?

Jones: For example, often when the inmate's attorney finds out that that person is infected, the attorney may not go to visit them until the last minute. Marshals won't bring them into court—they're afraid they'll contaminate the court. Once the system finds out someone is infected, it goes on their docket and follows them everywhere. No confidentiality. It will say, "AIDS, blood contaminated." Just trying to get through the criminal justice system for an HIV-infected inmate is difficult. When a person's antibody status is known, doors of opportunity close. ■

Judy Greenspan is the AIDS information coordinator at the National Prison Project, and contributes a regular column to the NPP JOURNAL on AIDS.

such diverse areas as stress management, clandestine laboratory investigations, and the management of persons with HIV, the virus that causes AIDS.

Under the latter project, model AIDS-related policies and training curricula are being developed for corrections and law enforcement, as well as for juvenile justice, juvenile/adult probation/parole, drug treatment, residential placement, victim services, pretrial services, and foster placement agencies.

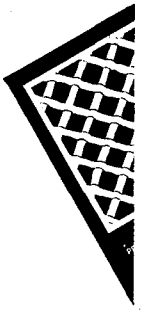
■ "Punishment or Payback? Emerging Perspectives on Criminal Justice Reform for the 1990s" will be the subject of a conference sponsored by the National Community Service Sentencing Association (NCSSA), the American Restitution Association (ARA), and Restitution Education Specialized Training and Technical Association (RESTTA). The conference is scheduled for October 31-November 3, 1989 in San Antonio, Texas. For more information, contact Dottie Brennan, 408/995-6555.

■ *Presos Y Oficiales, El Sida Y Las Cárceles: La Realidad,* a Spanish version of the NPP booklet, *AIDS & Prisons: The Facts* is now available along with an updated edition of the English version. Single copies of the booklets are available free of charge, and bulk orders are available as follows: 100 copies, $25; 500 copies, $100; 1,000 copies, $150. Direct orders and inquiries to Judy Greenspan, National Prison Project, 1616 P Street, NW, Suite 340, Washington, D.C. 20036, 202/331-0500.

PUBLICATIONS

_____ **The National Prison Project *JOURNAL,*** $25/yr. $2/yr. to prisoners.

_____ **The Prisoners Assistance Directory,** the result of a national survey, identifies and describes various organizations and agencies that provide assistance to prisoners. Lists national, state, and local organizations and sources of assistance including legal, library, medical, educational, employment and financial aid. 8th Edition, published December 1988. Paperback, $25 prepaid from NPP.

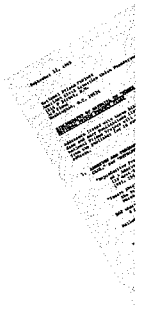


_____ **Offender Rights Litigation: Historical and Future Developments.** A book chapter by Alvin J. Bronstein published in the **Prisoners' Rights Sourcebook** (1980). Traces the history of the prisoners' rights movement and surveys the state of the law on various prison issues (many case citations). 24 pages, $2.50 prepaid from NPP.

QTY. COST

_____ **The National Prison Project Status Report** lists by state those presently under court order, or those which have pending litigation either involving the entire state prison system or major institutions within the state. Lists only cases which deal with overcrowding and/or the total conditions of confinement. (No jails except District of Columbia.) Periodically updated. $3 prepaid from NPP.

_____ **Bibliography of Women in Prison Issues.** A bibliography of all the information on this subject contained in our files. Includes information on abortion, behavior modification programs, lists of other bibliographies, Bureau of Prison policies affecting women in prison, juvenile girls, women in jail, the problem of incarcerated mothers, health care, and general articles and books. $5 prepaid from NPP.



_____ **A Primer For Jail Litigators** is a detailed manual with practical suggestions for jail litigation. It includes chapters on legal analysis, the use of expert witnesses, class actions, attorneys' fees, enforcement, discovery, defenses' proof, remedies, and many practical suggestions. Relevant case citations and correctional standards. 1st Edition, February 1984. 180 pages, paperback $15 prepaid from NPP.

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_____ The **Jail Litigation Status Report** gives a state-by-state listing of cases involving jail conditions in both federal and state courts. The **Report** covers unpublished opinions, consent decrees and cases in progress as well as published decisions. The **Report** is the first nationwide compilation of litigation involving jails. 1st Edition, published September 1985. $15 prepaid from NPP.

_____ **AIDS in Prison Bibliography** lists resources on AIDS in prison that are available from the National Prison Project and other sources, including corrections policies on AIDS, educational materials, medical and legal articles, and recent AIDS studies. 31 pages. $5 prepaid from NPP.

_____ **AIDS in Prisons: The Facts for Inmates and Officers** is a simply written educational tool for prisoners, corrections staff, and AIDS service providers. The booklet answers in an easy-to-read format commonly asked questions concerning the meaning of AIDS, the medical treatment available, legal rights and responsibilities. Sample copies free. Bulk orders: 100 copies/$25. 500 copies/$100. 1,000 copies/$150 prepaid.

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HIGHLIGHTS

The following are major developments in the Prison Project's litigation program since March 1, 1989. Further details of any of the listed cases may be obtained by writing the Project.

Abbott v. Thornburgh—This national class action suit challenges the literature policies of the Federal Bureau of Prisons. In a May 15 decision, the Supreme Court reversed a favorable circuit court decision and held that federal prison officials have wide discretion in censoring publications received by prisoners.

Anderson v. Orr—In 1987, the National Prison Project joined as co-counsel in this pending suit challenging conditions at the Westville Correctional Center in Westville, Indiana. Parties reached a comprehensive settlement which was approved by the court on March 31, mandating sweeping reforms in the operation of the prison and the addition of numerous professional staff to carry out those reforms, primarily in the areas of medical and mental health care.

Bates v. Lynn—This new case, filed in January 1989, deals with access to the courts for all death row prisoners in Louisiana. The court stayed our motions on class certification and discovery. By judicial order, we prepared a settlement proposal for the defendants, and a status conference was held June 8.

Duran v. Carruthers—This is a totality of conditions case against the entire New Mexico state prison system. Defendants filed appeals from two recent fee awards. The appeals were argued in the 10th Circuit on May 9, 1989, in conjunction with the state's appeal on their motion to modify or vacate the consent decree entered into in 1980.

Harris v. Thigpen—This case challenges the Alabama Department of Corrections' program to test all prisoners for HIV antibodies, and to segregate those who test HIV-positive. The first phase of trial was held March 27 through 30 in Decatur, and the second phase commenced on June 12 in Montgomery.

Knop v. Johnson—This is a statewide Michigan prison conditions case. A hearing on the fees issues was held on March 9 and 10. On April 5, 1989, the court awarded fees of $1,484,006 to plaintiffs' attorneys. Post-judgment settlement discussions have not yet produced any result and appeals have been filed in the 6th Circuit.

Maryland Jails: Hendricks v. Welch, Macer v. DiNisio, Dotson v. Satterfield—These cases, filed by the Prison Project and the Maryland ACLU, challenge conditions and practices in three jails on Maryland's Eastern Shore. In *Dotson*, the old jail was permanently closed on March 1, 1989 and prisoners were moved into temporary quarters in new portable living units.

Murray v. Giarratano—This case, filed by a former named plaintiff in the Mecklenburg Correctional Center case, seeks the appointment of counsel in state post-conviction proceedings to guarantee access to court for prisoners on death row in Virginia. We filed an *amicus* brief in the Supreme Court urging affirmance of a favorable court of appeals decision. On June 23, the Court, overturning the district and circuit court decisions, and in a split plurality decision, held that Virginia did not have to appoint counsel.

Palmigiano v. DiPrete—This case challenges conditions in the Rhode Island state prison system. Defendants failed to meet the February 20 deadline for compliance with population caps, and we renewed our request for sanctions at a March 13 evidentiary hearing. In a decision on April 6, the court found the Governor and Director of Corrections still in contempt and ordered them to pay fines of $164,250 to be applied to a bail fund. Defendants obtained a temporary stay, which we opposed, from the 1st Circuit. Parties filed appeal briefs in May and argument was held in the court of appeals on June 9, 1989, and on June 19, the court of appeals vacated the temporary stay of the April 6 order.

Spear v. Waihee—This case challenges conditions at two Hawaii prisons. In response to a highly critical legislative audit of the Department of Corrections, the Hawaii Senate adopted a resolution requesting that the Governor appoint a special master to oversee the department. We interviewed candidates for the post and made recommendations to the Senate Corrections Committee. ■

NOTICE: Stay current in the law! Beginning in the next issue, the *JOURNAL* will publish *Case Law REPORT*, an up-to-date summary of the latest in prison litigation.

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Change is what people fear most. —Fedor M. Dostoevski