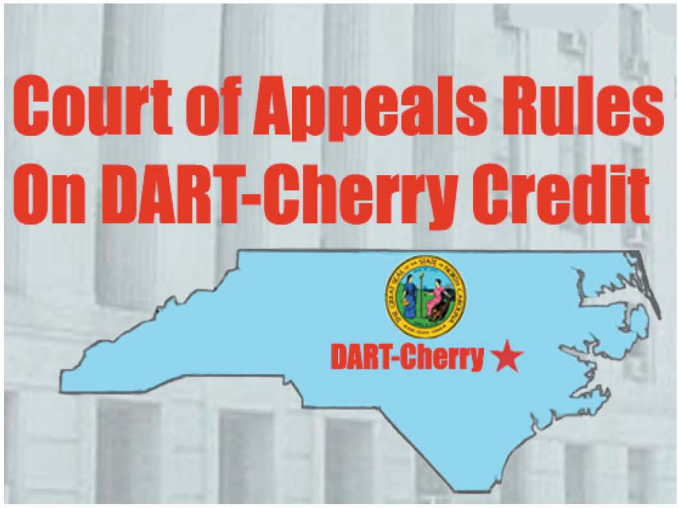
The Newsletter of North Carolina Prisoner Legal Services, Inc. *Volume VI, Issue 2, June 2006*

NCPLS ACCESS

Time Spent in DART-Cherry Program Reduces Sentence

By: Beth McNeill, NCPLS Staff Attorney

[***Editor's Note*:** Readers of *Access* will recall an earlier NCPLS victory in the case of *State v. Hearst*, 356 N.C. 132, 567 S.E.2d 124 (2002), in which the N.C. Supreme Court held that a prisoner who had spent time as a participant in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) was entitled to sentence reduction credits upon revocation of probation. The following case addresses whether participation in the DART-Cherry program qualifies for sentence reduction credits.]



In *State v. Lutz,* 628 S.E.2d 34, (N.C. App., Apr. 4, 2006), the N.C. Court of Appeals ruled that a defendant whose suspended sentence is activated is entitled to credit under N.C. Gen. Stat. §15-196.1 for time spent in the DART-Cherry (Drug Alcohol Recovery Treatment) program. In pertinent part, the statute provides: "The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence." NCPLS has always requested credit for DART-Cherry participation. However, prior to the *Lutz* decision, some counties refused to grant credit for DART-Cherry participation.

People who are ordered to participate in the DART-Cherry program receive probationary sentences and usually have relatively short prison sentences. Consequently, although plenty of prisoners were denied credit for participating in the program, it was difficult to identify anyone who would be imprisoned long enough to raise the matter in court. Defendants usually completed their sentences before a Superior Court Judge ruled on our motion for credit. (Once a person is released, a claim for sentence reduction credits doesn't present a genuine controversy because the person is already free. Thus, the case would be "moot.")

Finally, we were able to litigate the issue during April 2005 in Wayne County. Just as in the *Hearst* case, the legal question turned on the meaning of the statutory phrase, "committed to or in confinement." N.C. Gen. Stat. §15-196.1. We argued that the defendant had been ordered by the court to participate in the program as a condition of special probation, that

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In this Issue:

Access is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 37,000 prisoners and 14,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

PLEASE NOTE: Access is published four (4) times a year.

Articles, ideas and suggestions are welcome: *tsanders@ncpls.org*

DART-Cherry (Continued)

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he was not at liberty to walk away from the program, and thus, our client was "committed to or in confinement" of a State correctional institution. Our motion for credit was denied by the Superior Court and the Court of Appeals agreed to review the decision. In April 2006, the N.C. Court of Appeals ruled in our client's favor, clearly establishing that people who spent time in the program are entitled to sentence reduction credits.

NCPLS is making every effort to inform clerks and attorneys about the *Lutz* ruling. At the Public Defender's conference in May 2006, NCPLS presented a session on jail credit and included information on *Lutz*. In addition, our jail credit paralegals are including copies of the decision when they request jail credit from counties that formerly would not give credit for DART-Cherry participation. If NCPLS previously requested credit for time spent in DART-Cherry on your behalf and that request was denied, please let us know and we will reevaluate your case.

- Advertisement - Prison Legal News

Prison Legal News (*PLN*) is an independent, 48 page monthly magazine that has published since 1990. It reports on all aspects of the criminal justice system from all fifty states and around the world. It has the most extensive reporting on detention facility litigation and news of any publication. Contents include columns by lawyers aimed at assisting *pro se* prisoner litigants with *habeas corpus* and civil rights litigation. Regularly covered topics include verdicts and settlements, disciplinary hearings, medical issues, excessive force, death row, telephones, mail regulations, religious freedom, court access, habeas corpus, misconduct and corruption by prison and jail employees, state and federal legislation, the Prison Litigation Reform Act (PLRA), conditions of confinement and much, much more.

PLN also distributes books dealing with litigation, self-help and the criminal justice system. Each issue of *PLN* contains ads from many businesses and organizations providing services and products aimed at the prisoner market. Subscriptions are $18 per year for prisoners (subscriptions can be *pro rated* at $1.50 per issue - do not send less than $9.00); $25.00 per year for non-prisoners and $60 per year for professionals and institutions. Sample copies are available for $2.00. You can contact PLN at:
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PMB 148
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www.prionlegalnews.org
Tel: 206-246-1022.

[***Editor's Note*: *PLN* is not affiliated with NCPLS or *Access*.]

Proof of "Derivative" Citizenship Prevents Deportation

By: Hoang Lam, NCPLS Staff Attorney

Recently, NCPLS helped inmate Juda Ha correct his sentence and prove his United States citizenship. As a result of these efforts, Mr. Ha's overall prison time will be reduced by six to nine years, and he will not face deportation to Vietnam at the end of his sentences.

Juda N. Ha

In 2004, Mr. Ha pled guilty to robbery with a dangerous weapon. Because of mitigating circumstances in the case, the court imposed a sentence of 82 to 108 months, to be run concurrently with an existing sentence. However, the clerk mistakenly marked the sentence as consecutive on the judgment. Investigating Mr. Ha's claim that the sentence was to run concurrently, neither Mr. Ha's former defense attorney nor the court reporter could substantiate Mr. Ha's claim. NCPLS Attorney Ken Butler and Paralegal Kira Weiss sought the help of the assistant district attorney (ADA) prosecuting the case. The ADA acknowledged the clerical error and agreed to have it corrected.

Because of Mr. Ha's convictions, the government initiated deportation proceedings against him. Neither Mr. Ha nor the government realized that Mr. Ha is a "derivative" United States citizen. Although Mr. Ha was admitted to the United States as a permanent citizen, he was under eighteen years old when his mother subsequently became a naturalized citizen, at which time he automatically became a citizen as well by law.

In defense of the deportation proceedings, NCPLS helped Mr. Ha submit an application which explained the facts to an immigration agency. NCPLS Attorney Hoang Lam accompanied Mr. Ha to an interview conducted by the Citizenship and Immigration Services (formerly known as the Department of Immigration and Naturalization (INS)). After the interview, the agency issued Mr. Ha a Certificate of Citizenship, which settles the dispute. Consequently, the deportation proceedings against Mr. Ha will almost certainly be terminated, and he will be able to rejoin his family and community when he completes his sentences.

Poll Reveals Broad Support for Progressive Rehabilitation and Re-entry Policies

According to a poll recently conducted by Zogby International, 87% of Americans favor rehabilitation services for prisoners instead of a punishment-only approach. Eighty-two per cent feel that a lack of job training is a very significant barrier to successful re-entry. By overwhelming majorities, people feel that the availability of medical care (86%), public housing (84%), and student loans (83%) are key factors to a successful transition. The poll, commissioned by the National Council on Crime and Delinquency (NCCD), can be obtained by writing to:

NCCD Headquarters
1970 Broadway, Suite 500
Oakland, CA 94612

or on the Internet at:
www.nccd-crc.org

THE SUPREME COURT OF THE UNITED STATES (SCOTUS) REPORT

[*Editor's Note*: The Supreme Court of the United States (SCOTUS) has decided a number of cases that affect criminal defendants and prisoners during this term. Due to space limitations, the most significant developments are summarized in this article.]

Holly v. Scott, 548 U.S. ___, 126 S.Ct. 2333, 74 USLW 3668 (May 30, 2006). NCPLS sought review of the decision of the Fourth Circuit Court of Appeals which held that employees of private prisons do not act under color of state law because prison operation is not an exclusive government function, and because the plaintiff had a remedy in state court through a common law negligence action. Although other prisoner advocacy groups supported the NCPLS petition, the Supreme Court denied certiorari by order dated May 30, 2006.

The United States Supreme Court

Woodford v. Ngo, 548 U.S. ___, ___ S.Ct. ___, 2006 WL 1698937 (No. 05-416) (June 22, 2006). The Prison Litigation Reform Act of 1995 (PLRA) requires prisoners to exhaust all available administrative remedies before they can file a federal lawsuit. 42 U.S.C. §1997e(a). A prisoner who failed to meet procedural requirements of the prison grievance procedure was barred from maintaining a §1983 lawsuit due to failure to exhaust. According to the Court, it was the congressional intent to require administrative exhaustion, which gives prisoners an incentive to make full use of the grievance procedure and, provides prison officials an opportunity to correct errors. Additionally, the grievance procedure reduces the quantity and improves the quality of prisoner suits that are eventually filed, the Court opined. The Court left open the possibility that exhaustion might not be required when a grievance procedure failed to provide a meaningful opportunity to redress prisoner grievances, either due to a limitation on the subject matter that could constitute a grievance, or due to objectively unreasonable time-limits for filing or appealing a grievance.

Samson v. California, 548 U.S. ___ (No. 04-9728) (June 19, 2006). Prisoners who are paroled in California are required to agree in writing to be searched without a warrant and without cause. In a 6-3 decision, the Court held that requirement did not violate the 4th Amendment because it is "reasonable under 'a totality of the circumstances.'"

Davis v. Washington, 548 U.S. ___, 126 S.Ct. 2266, 74 USLW 4356 (No. 05-5224) (June 19, 2006) [together with *Hammon v. Indiana*, *Id.* (No. 05-5705)]. In *Crawford v. Washington*, 541 U.S. 36 (?), the Court held that "testimonial" statements of a witness are not admissible evidence unless the witness is unavailable to attend the trial and there was an opportunity to cross examine the witness at the time she made the statement. In these cases, the Court defined "non-testimonial" statements as those made under emergency circumstances that objectively show the witness was seeking police intervention or assistance. "Testimonial" statements, on the other hand, are those which are made under circumstances that objectively show there was no such emergency and the primary purpose of the police interrogation was to gather proof for a subsequent prosecution.

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SCOTUS Report (Continued)

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Hudson v. Michigan, 548 U.S. ___, 126 S.Ct. 2159, 74 USLW 4311 (No. 04-1360) (June 15, 2006). The common law and statutory rule (18 U.S.C. §3109) that in executing a search warrant, police must "knock and announce" their presence is based upon the 4th Amendment's prohibition against unreasonable searches. *Wilson v. Arkansas*, 514 U.S. 927, 931-932 (1995). The failure of police to "knock and announce" does not necessarily require the exclusion of evidence thereafter obtained, according to the Court. Instead, evidence will be excluded "only where the benefits of deterring an unannounced entry is outweighed by "substantial social costs." *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 363 (1998). Other than the exclusion of evidence, there are alternative mechanisms to deter police misconduct such as the increasing professionalism of law enforcement officers or [the remote possibility of successful] civil rights lawsuits. Thus, the exclusion of evidence to deter violations of the "knock and announce" rule is unjustified, accordign to the Court.

Beard v. Banks, 548 U. S. ____ (No. 04–1739) (2006). Prison policy forbidding inmates in level II Long Term Segregation Unit any access to newspapers, magazines, or photographs does not violate the First Amendment where prison officials set forth a "'valid, rational connection'" between the Policy and "'legitimate penological interests.'" *Turner v. Safley*, 482 U. S. 78, 89, 95 (1987). In this case, the primary rationale was to promote better behavior.

NCPLS Board Member Joins Blue-Ribbon Committee

Following the ground-breaking decision of the Supreme Court in the *Booker/Blakely* line of cases, a "blue-ribbon" committee has been formed to establish principles for constitutional sentencing systems and recommendations for revising sentencing laws.

The Constitution Project, an organization that seeks bi-partisan solutions to difficult legal issues, embarked upon the "Sentencing Initiative" in response to the *Blakely* decision. Readers of ***Access*** will recall that *Blakely* stands for the proposition that aggravating factors other than a prior conviction must be proven "beyond a reasonable doubt" as determined by the jury. *Blakely v. Washington*, 542 U.S. 296 (2004). See also *United States v. Booker*, _ __ U.S. ___, 125 S.Ct. 738 (2005). The Committee, co-chaired by Philip Heymann, Deputy Attorney General under President Clinton, and Edwin Meese III, Attorney General under President Reagan, includes other distinguished scholars and authorities on sentencing law, and notably NCPLS Board member Ronald Wright. Wright, who is a Professor of Law at Wake Forest Law School, is a nationally renowned authority on the Federal Sentencing Guidelines.

The Committee has developed principles for establishing post-*Booker* sentencing systems that both protect public safety and respect the constitutional rights of defendants. The Committee is also exploring opportunities to reform sentencing laws that have long been recognized as having unjustifiable, disparate impacts on minorities, as well as sentencing schemes that are costly and counter-productive.

Additional information can be obtained by writing to:

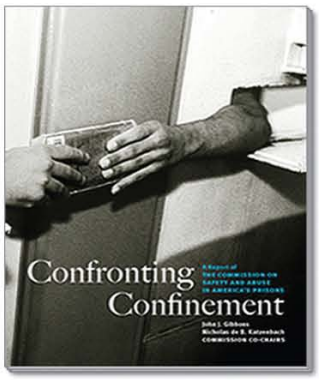
Constitution Project
1025 Vermont Ave., NW, 3rd Floor
Washington DC, 20005

www.constitutionproject.org

National Prison Commission Identifies Reforms to Curb Violence and Abuse

Washington, DC – After a year-long examination of correctional facilities in this country, on June 8, the National Commission on Safety and Abuse in America's Prisons released its report: *Confronting Confinement*. Although there are more than 5,000 correctional facilities in the U.S., the Commission identified four major challenges that are common to most: (1) Inadequate conditions of confinement (including violence, poor health care, and improper use of segregation); (2) labor/management relations; (3) a dearth of statistical data about prison operations, especially concerning violence and abuse; and (4) inadequate oversight of the closed environments of correctional settings. The Commission offers 30 recommendations for reform, including recommendations to reinvest in programming to enhance education and build skills necessary for success after release; reduce the use of high-security segregation; increase training and compensation for correctional professionals; amend the Prison Litigation Reform Act to broaden access to the courts; and develop a unified and consistent method for correctional facilities to report a range of data, and particularly statistics relating to violence and abuse.

The Commission was sponsored by the Vera Institute of Justice, a non-profit organization that works to improve governmental services upon which people depend for safety and justice. The organization conducts empirical investigations to formulate innovative programs which improve the quality of justice, sharing new approaches and positive results with city, state, and national governments.



Stephen Bright

Director
Gary D. Maynard

Hilary O. Shelton

In creating the National Commission on Safety and Abuse in America's Prisons, the Vera Institute brought together a diverse and prestigious group of professionals, including former prisoners and prisoner advocates, civic leaders, members of the religious community, and correctional professionals. The co-chairs of the Commission are the Honorable John J. Gibbons (formerly Chief Judge of the U.S. Court of Appeals, Third Circuit, and a professor of Constitutional Law at Seton Hall University Law School), and Nicholas de B. Katzenbach (former Attorney General of the United States). Distinguished Commission members include Stephen B. Bright, founder of the Southern Center for Human Rights – a non-governmental organization serving prisoners, and a nationally recognized expert who has testified before committees of both the U.S. Senate and House of Representatives. Another prominent member of the Commission is Gary Maynard, Director of the Iowa Department of Corrections and president-elect of the American Correctional Association. With more than 34 years in the field of corrections, Mr. Maynard has held senior positions in the Oklahoma, Arkansas, and South Carolina corrections systems. And a third key member of the Commission is Hilary Shelton, director of the NAACP's Washington Bureau, which is the federal government affairs and legislative policy division of oldest and largest civil

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CORRESPONDING WITH NCPLS

NCPLS receives 500 or more letters from inmates each week. Our goal is to try to assist each inmate who writes. The following suggestions are offered to help us serve the inmates who write.

1. Put your OPUS number on all your letters/envelopes. If you are in a jail that assigns you a jail ID number, please use that number. (Many inmates have the same name, but OPUS and jail ID numbers are unique. Using your OPUS number helps to ensure the mail will be delivered to you (and not someone with the same name) when we send you a response.)

2. Try to write as clearly as possible, especially when writing your name. Print clearly. Block letters are the best. Do not use small or elaborate handwriting (if your letter is hard to read, it could delay our response time).

3. If possible, write in ink.

4. If you ever have been known by, or are currently known by a different name (a nickname, an alias [a.k.a. - also known as]), let us know, especially if you have been or are corresponding with NCPLS by another name.

5. If you have a problem reading or writing, please let us know in your letter that someone else is writing the letter for you.

6. Be specific when describing your problem(s) or asking questions. Broad claims that your rights have been (or are being) violated without facts to support your claims, cannot be investigated. Broad (hypothetical) questions cannot be answered.

7. If you are writing to complain about a condition of confinement, an injury, or a medical issue, start the grievance process *before* you write to us. If you have begun the grievance process, be sure to let us know. ***Remember that NCPLS is NOT the place to file your DC-410 grievance forms.*** DC-410 forms must be submitted to staff at your unit, or in the case of a confidential grievance, to the Director of Prisons.

8. NCPLS will **NOT** forward mail for inmates. (That would violate DOC rules, and we cannot effectively function on your behalf if we jeopardize our relationship with the Department or abuse the trust we have built over the years.)

9. There are *many* types of lawsuits an inmate can file. If you are requesting one of our self-help packets to file on your own, be as specific as possible about the type of lawsuit you are planning to file so that we can send you the right packet. However, if you know the name of the specific packet, you can just write, "Please send me a _____ packet."

10. It is not necessary to cite cases when you write to us. NCPLS is familiar with prisoner rights law and stays up-to-date on changes in the laws that affect prisoners and their rights.

11. Do **NOT** send us any *physical* evidence (other than paperwork) that you believe supports your allegations. It is hard to store and keep-up with that kind of material. We will let you know if we need anything more than documents.

12. Be patient. Our goal is to respond to every letter we receive. If you follow the above suggestions and you are requesting forms or other information, it is likely that we will respond within 24 hours of receiving your request. For some requests for assistance, it will take a little longer, but we try at least to acknowledge all inquiries within 30 days.

ABA's Liaison to the ACA

At the end of July 2006, NCPLS Executive Director Michael Hamden will complete a term of service as the American Bar Association's (ABA) liaison to the American Correctional Association (ACA).

In 1998, Hamden began a four-year term on the ACA's Commission on Accreditation for Corrections (CAC). In addition, the President of the ACA appointed Hamden to the Standards Committee for a two-year term. A second two-year appointment to the Standards Committee was renewed in 2000. Hamden's second four-year term on the CAC began in August 2002. Hamden was elected to the CAC's Executive Committee, and in 2004, he was reappointed to another two-year term on the Standards Committee.

During his tenure, Hamden worked to enhance the procedural and substantive integrity of accreditation; contribute to a more meaningful process; and increase understanding and cooperation between correctional professionals, members of the legal profession, government officials, and others. In his role as ABA's liaison, Hamden collaborated with Professor Lynn S. Branham to develop the Crowding Protocol, a systematic and uniform approach to dealing with overcrowding in facilities seeking accreditation or reaccreditation. Hamden also played a role in shaping ACA Correctional Policy. For example, Hamden's initiative to address the problem of excessive charges for inmate-initiated telephone calls led to the adoption of the Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone Services (*unanimously ratified by the American Correctional Association Delegate Assembly of the Winter Conference in Nashville, Tenn., January 24, 2001.)* That policy provided the basis for a new standard that encourages correctional agencies and administrators to make telephone services available to inmates at "rates and surcharges that are commensurate with those charged to the general public for like services." Adopted by unanimous vote of the Standards Committee in August, 2002, that standard was incorporated into standards manuals for ten different types of correctional facilities.

The relationship with ACA had reciprocal benefits for the ABA. For example, the Corrections & Sentencing Committee, a body co-chaired by Hamden, proposed a Resolution & Report Regarding Telephone Services in the Correctional Setting for consideration by the ABA's Criminal Justice Section in May 2005. The Resolution provided: "RESOLVED, That the American Bar Association encourages federal, state, territorial and local governments, consistent with sound correctional management, law enforcement and national security principles, to afford prison and jail inmates reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates." The ACA's Correctional Policy and related standards provided supporting authority for the Resolution. The ABA's House of Delegates adopted the Resolution & Report in August 2005.

Through its liaison, the ABA had a salutary influence on ACA standards and accreditation. For instance, in 2001, Hamden chaired a subcommittee to compare ACA standards to the UN's *Minimum Rules for the Treatment of Prisoners*, and to recommend conforming changes. The Standards Committee acted on more than a dozen of the subcommittee's recommendations for the revision of then-existing standards and the adoption of new standards. Similarly, in 2002, Hamden chaired a subcommittee to update ACA standards to conform to the requirements of the *Americans with Disabilities Act* (ADA). Pursuant to the recommendations of that subcommittee, about a dozen standards were revised, two new standards were adopted, and the changes were reflected in standards manuals for twelve types of correctional facilities.

ACA accreditation procedures have been significantly improved as a result of the ABA's involvement. A case in point was an initiative to improve auditing and accreditation procedures for Bureau of Prisons facilities that began in 1999 and culminated with a Memorandum of Understanding (MOU) between the Bureau and ACA in 2003. The MOU regularized auditing procedures, specified those standards that were applicable to the Bureau,

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Excessive Telephone Fees

The problem of excessive fees charged for inmate telephone services is an issue with which NCPLS has been concerned for almost a decade. Regrettably, the problem is national in scope. For example, according to an article published in the Atlanta Journal-Constitution, telecommunications giant WorldCom was charging "a $3.95 connection charge and 69 cents per minute" for calls originating from correctional facilities in 2001. Atlanta Journal-Constitution, "*WorldCom May Pay Refunds for Prisoner Phone Calls*," by John McCosh (October 19, 2001). Similarly, from 1997 through 2000, AT&T raised its interstate long distance inmate service rates 57%. At $14.30 for a 15-minute interstate long distance call, AT&T's rate was about 15 times the $.85 rate for a 15-minute local call that then prevailed in Tennessee. (Rates vary among carriers, in different markets, and over time, but charges for inmate telephone services are uniformly priced well above rates charged the ordinary consumer.)

Families of prisoners are among the poorest, least able to pay excessive telephone charges, and they are completely powerless to choose alternative service providers. Inmates who wish to speak with family and friends by telephone are equally powerless to affect any change.

These exorbitant rates cannot be justified on the basis of any legitimate costs associated with the provision of inmate telephone services. Instead, industry practices of paying "commissions" drive ever-escalating charges. Telephone service providers compete for exclusive contracts with correctional facilities and entire systems by offering commissions on revenue ranging from 33 to 60%. [North Carolina reportedly receives no such commissions, a matter that is currently being investigated by this office.] Under these contracts, some correctional facilities generate huge sums of money.

Despite wide-spread abuses, the courts have refused to put a halt to the practice. There is no constitutional right for inmates to use a telephone, at least so long as they can communicate with the outside world through other means (such as correspondence.) See, for example, *Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. 2000). Illinois granted one phone company the exclusive right to provide telephone services to inmates in return for 50 percent of the revenues generated. Inmates and members of their families challenged the practice as a violation of their free speech rights, as a discriminatory denial of equal protection of the laws, and as a violation of federal anti-trust laws. In the *Arsberry* case, the U.S. Court of Appeals for the Seventh Circuit concluded that the practice did not violate the constitution or any federal law. See, also, *Daleure v. Kentucky*, 119 F. Supp. 2d 683 (W.D. Kentucky 2000) (The court found defendants' actions did not violate the Constitution); *Miranda v. Michigan*, 141 F. Supp. 2d 747 (E.D. Mich. 2001) (Plaintiff's Federal Telecommunications Act claims fell within the primary jurisdiction of the Federal Communications Commission and were dismissed).

But state utilities commissions and the Federal Communications Commission have also declined to impose regulations to reign-in the abuses. See, for example, North Carolina Utilities Commission, Docket No. P-100, Sub 84; Docket No. P-55, Sub 1005; Docket No. P-100, Sub 126; and Federal Communications Commission, CC Docket No. 96-128, Voluntary Remand of Inmate Telephone Services Issues. The North Carolina Utilities Commission cases and the Federal Communications Commission case were matters in which NCPLS filed several briefs, appeared at oral argument, and engaged in discussions with commission personnel, all without success.

Prisoner advocates have thus far met with no success in challenging the legality of exorbitant pricing schemes for inmate telephone services, either in the courts, in state utilities commissions, or in the Federal Communications Commission.

However, as readers of ***Access*** know, the American Correctional Association (ACA) has provided important leadership in the initiative to address this problem. In the year 2000, NCPLS asked the ACA to adopt a policy against excessive telephone rates. ACA's Delegate Assembly unanimously ratified the policy at its Winter Conference in Nashville, Tennessee on January 24, 2001. A conforming proposal for a new ACA standard was adopted in August 2002.

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Excessive Telephone Fees (Continued)

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Furthermore, on August 11th, the ABA's House of Delegates passed by overwhelming voice vote a resolution on correctional telephone services. Encouraging correctional professionals to provide prisoners reasonable opportunities "to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates," the resolution is now official ABA policy.

Recently, Congressman Bobby L. Rush introduced The Family Telephone Connection Protection Act (H.R.4466), legislation to amend the Communications Act of 1934 which would require the Federal Communications Commission to prescribe rules regulating inmate telephone service rates. The ABA has taken an official position strongly supporting the bill and urging the House of Representatives to pass the legislation.

You can express your support for H.R. 4466 by writing to Congressman Rush and your congressional representatives. Members of the House of Representatives can be reached at U. S. House of Representatives, Washington, DC 20515. Senator Richard Burr can be contacted at 217 Russell Senate Office Building, Washington, DC 20510; and Senator Elizabeth Dole's address is 555 Dirksen Senate Office Building, Washington, DC 20510.

Sexual Harassment, Assault, Exploitation & Abuse in Prison: A Case Study

by: Michele Luecking-Sunman, NCPLS Staff Attorney

[***Editor's Note*****:** *The following letter is a combination of letters/comments we have received from several clients in the past few months. This letter is not real, but it is a realistic example of some of the letters we've received. Each of the clients who wrote to us about sexual abuse and harassment has been involved in a situation similar to the one described below.*

We have been able to help some of the people who wrote to us. To date we have settled four such cases. We removed references to our clients' names and their specific situations to protect their privacy.]

Dear NCPLS,

I wrote to you about a year ago and told you that I had been victimized by an officer at the unit where I was housed. It was very difficult to write and explain that I had been involved in a sexual relationship with this man. I explained that I was scared and hurt that the prison where I was sent to serve time was not protecting me from a predator such as him, but subjecting me to him on a regular basis. I also explained that I was ashamed of what I had been forced to do and my friends and family were not even aware of what I had endured.

You responded quickly and asked for more information. You visited me and pursued a lawsuit on my behalf. Throughout the course of the past year we investigated the matter together and entered into settlement negotiations with the defendants. You were able to settle my case for monetary damages.

I do not feel that any amount of money could compensate me for what I experienced at the hands of an officer, but I can now begin my life over, now that I have been released. Thank you for listening and believing in me. I know there are other women like me in prisons across this state. I hope they will write and ask for the same help I received from you.
Sincerely, NCPLS Client

[***Editor's Post-Script*****:** *Prisoners are in no position to engage in "consensual" sexual relations with an officer. Officers have power over virtually every aspect of a prisoner's life. Acts of kindness, "special favors," or personal accommodations may be performed for the best of reasons or with ulterior motives. It is never alright for an officer to engage in intimate relations with a prisoner. It's against the law, the DOC won't stand for it, and the people who are involved will almost certainly be hurt in some way. If you feel that you're being victimized, you may contact NCPLS for assistance. We will hold the information you provide in confidence and work with you to handle the matter in a way that is attentive to your feelings and responsive to your needs.*]

ABA's Liaison to the ACA (Continued)

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and provided new statistical information about the particular facility seeking accreditation (including rated/design capacity, actual population, average daily population, and average length of stay, and population demographics). This statistical information proved so useful that it was incorporated into audit reports for all types of facilities.

Commenting on his involvement, Hamden stated, "It has been a privilege and an honor to serve for the past eight years as the American Bar Association's liaison to the American Correctional Association. The relationship between the two organizations has proven to be a productive and mutually beneficial alliance, and one that has great promise for the future."

Lynn S. Branham succeeds Hamden as the ABA's liaison to

National Prison Commission (Continued)

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rights organization in the United States. Previously, Mr. Shelton was Federal Liaison and Assistant Director of the Government Affairs Department of the College Fund/ UNCF, also known as The United Negro College Fund.

On the same day the Commission report was released, June 8, five Commission members testified before the U.S. Senate Judiciary Subcommittee on Corrections and Rehabilitation about the report's key findings and recommendations. While the report was well-received, it is unclear what further action will result from the Commission's recommendations.

To order a free copy of the report, *Confronting Confinement*, contact:
National Commission on Safety
and Abuse in America's Prisons
601 Thirteenth Street, NW
Suite 1150 South,
Washington, DC 20005

The report can also be downloaded at: *www.prisoncommission.org/report.asp*.

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