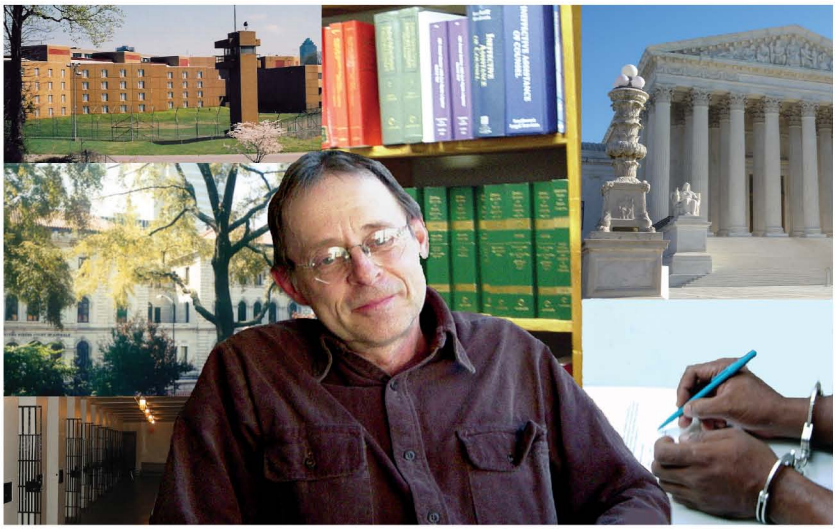
The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume VI, Issue 1, March 2006

NCPLS Access

Richard E. Giroux, Esq.
27 Years of Service to Prisoners

After 27 years as an attorney with NCPLS, Richard E. Giroux retired at the end of February 2006. His service will be long remembered, both by his clients and by his colleagues.



Richard E. Giroux
Senior Staff Attorney

Rich graduated from law school at the University of North Carolina. In 1979, he accepted a position as a staff attorney with North Carolina Prisoner Legal Services, Inc. As a staff attorney, he advised prisoners of their legal rights, interviewed applicants for legal services, and when necessary, engaged in the negotiation, trial, and appeal of legal issues that affected the rights of indigent prisoners.

In 1985, he entered an appearance in the case of a prisoner who had filed a federal lawsuit on his own. The inmate alleged that a prison doctor provided inadequate treatment for a torn Achilles tendon. The federal district court had already dismissed the case and the prisoner had appealed when Rich became involved. Rich briefed and argued the case before a three-judge panel of the Fourth Circuit Court of Appeals and won a partial victory. *West v. Atkins*, 799 F.2d 923 (4th Cir. 1986). However, the Department of Correction's lawyers successfully sought review of the panel's decision by all of the judges of the court of appeals, sitting *en banc*. Rich briefed and argued the case again, but this time the *en banc* court vacated the panel decision and affirmed the lower court's dismissal of the case. The appellate court held that correction officials were not liable for the actions of the prison doctor because the doctor exercised "independent professional judgement." *West v. Atkins*, 815 F.2d 993 (4th Cir. 1987) (*en banc*). Unwilling to accept such a result, Rich petitioned the U.S. Supreme Court, asking the Court to accept the case for final review. Against extremely long odds (the Supreme Court grants only a very small percentage of such petitions), the Court agreed to hear the case.

To argue a case before the U.S. Supreme Court is the dream of many lawyers, and a pinnacle of any legal career. But despite Rich's considerable experience and skills, his knowledge of the case, his success in securing review by the Court, and his own personal investment, Rich concluded that his client's interests would best be served if the

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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 36,000 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*

Richard E. Giroux (Continued)

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case were argued by an attorney with experience in that forum. Consequently, Adam Stein, an accomplished and renowned appellate lawyer, was retained for that purpose.

In preparing the case for argument in the Supreme Court, Rich assisted in drafting and revising the brief. He provided tireless support to Mr. Stein concerning the factual background of the case, information about relevant Supreme Court precedent, and advice regarding strategy. Rich also participated in a moot court argument to help Mr. Stein prepare. In all of these activities, Rich was characteristically cooperative and supportive, never loosing sight of his client's interests and objectives.

After briefing and oral argument, the U.S. Supreme Court issued its opinion. According to the Court, prison officials could not shield themselves from liability for deliberate indifference to the serious medical needs of a prisoner through the device of a contract with a "private" physician. In reversing the lower courts, the Supreme Court established the principle that prison officials throughout the country are responsible for meeting the basic health needs of prisoners, irrespective of the methodology they employ to meet those needs. *West v. Atkins*, 487 U.S. 42 (1988). As a result, hundreds of thousands of prisoners have benefited. That case also has had profound implications with respect to the privatization of prisons, an industry that has grown dramatically in recent years.

In the aftermath of that remarkable victory, Rich somehow managed to re-direct accolades and attention to others, preferring instead quietly to continue his work for Mr. West in the district court on remand.

The year following the *West* decision, practically the same issue was resurrected when prison officials argued that the alleged negligence of a contract doctor was not attributable to the State for purposes of a tort claim brought in the North Carolina Industrial Commission. The most significant difference in this case was that State law, and not federal law, controlled. (Thus, *West* was not binding precedent on North Carolina courts.)

It was again Rich who championed the prisoner's cause, but this time he won in the trial court and had the advantage of defending favorable decisions from the Industrial Commission to the North Carolina Court of Appeals, *Medley v. The North Carolina Department of Correction*, 393 S.E.2d 288 (N.C. App. 1990), and from the Court of Appeals to the North Carolina Supreme Court. In the State Supreme Court, Rich argued that prison officials should not be permitted to evade their responsibility to provide for the medical needs of prisoners through a contractual device. Instead, he urged, cor-

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BLAKELY, *BOOKER*, AND THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION: A SCHOLARLY WORK BY NCPLS BOARD MEMBER RON WRIGHT

By Billy Sanders, CLAS
Commissioner, NC Sentencing & Policy Advisory Commission

In *Blakely v. Washington*, 124 S.Ct. 2531 (2004), and in *United States v. Booker*, 125 S.Ct. 738 (2005), the U.S. Supreme Court held that juries rather than judges had to find beyond a reasonable doubt any facts that provided the basis for a longer prison sentence after conviction. Previously, North Carolina and many other jurisdictions allowed judges, acting alone, to find aggravating factors which could increase the length of the sentence a convicted defendant might receive. North Carolina had to modify its sentencing procedures to conform to the mandate of *Blakely* and *Booker*.

NCPLS Board member, Ronald F. Wright, recently penned an article entitled "The Power of Bureaucracy in the Response to *Blakely* and *Booker*." Wright, a professor of law at Wake Forrest University, is recognized nationally as an expert in federal sentencing and as an advocate for sentencing reform. In the article, Professor Wright examines sentencing commissions to predict the way in which such entities are likely to react to the changes in criminal justice procedures required by these landmark cases. The article highlights how the North Carolina Sentencing and Policy Advisory Commission helps North Carolina stay in the forefront of sentencing reform nationally, and how the Commission helped North Carolina break the cycle of ever-increasing criminal penalties that resulted from the "tough

Professor Ronald F. Wright

on crime" approach of the '70's, '80's, and '90's. Wright observes that, prior to the development of such commissions, lawmakers were often unduly influenced by prosecutors without regard to financial concerns, or even at times, fairness.

As a member of the Commission, it was my privilege to be part of the process in North Carolina that Professor Wright describes. The Commission is comprised of representatives from various sectors of the criminal justice system - defense attorneys, prosecutors, judges (at all levels), victim's rights groups, county commissioners, sheriffs and police chiefs, as well as legislative and gubernatorial appointees. Working in partnership with an excellent and dedicated staff that provides incredibly accurate data and analysis, the Commission has earned credibility with the Legislature, which ultimately considers and acts on the Commission's proposals. In the context of legal requirements imposed by *Blakely* and *Booker*, the General Assembly adopted the Commission's recommendations, almost in their entirety.

North Carolina is recognized as a leader in sentencing reform, but what might not be well known is that NCPLS played a role in creating the initiative for the creation of the Sentencing Commission. In the 1990's, NCPLS litigated a class action law suit, *Small v. Martin*, which challenged the conditions of confinement in 48 prisons in North Carolina, alleging that overcrowding created conditions of confinement that were unconstitutional. As a result of this lawsuit, the political leaders became alarmed that the *Small* litigation might result in a federal takeover of the state prison system. Lawmakers took several emergency measures to forestall a federal takeover, including the adoption of legislation that limited or "capped" the prison population. As a long-term measure, the Legislature created the Sentencing and Policy Advisory Commission to create a sentencing policy that, among other things, would help prevent the type of overcrowding that led to the *Small* litigation. While *Small* might not have been the only motivation for the creation of the Commission, it is fair to say that the Commission might never have come into being without the impetus of *Small*.

[***Editor's note*:** "The Power of Bureaucracy in the Response to *Blakely* and *Booker*" can be obtained for free: *www.ssrn.com/abstract=885513*; or by writing to Wake Forest University at P.O. Box 7206, Rm 3336, Worrell Professional Center, Winston-Salem, NC 27109 - WFU Legal Studies Paper No. 885513.]

NCPLS Renews Contract with IDS

Legislation passed by the General Assembly in the summer of 2005 transferred the authority to contract for prisoner legal services from the Department of Correction to the Office of Indigent Defense Services (IDS). Senate Bill 622, Session Law 2005-0276, §14.9(b). Initial negotiations between NCPLS and IDS were concluded on September 29, 2005 when the parties executed a five-month contract.

On February 24, 2006, NCPLS and IDS agreed upon a renewal of the contract which provides a term of 19 months and a continuation of funding at the 2002 level. However, IDS also agreed to work with NCPLS to seek additional funding from the Legislature so that resources will be adequate to serve a prison population that has increased by 12 per cent, while business costs have increased by a like amount.

Session Law 2005-0276 at §14.9(b) also directed IDS to evaluate NCPLS over a two-year period, reporting on the evaluation process, criteria, status and preliminary findings by May 1, 2006, with a final report due by May 1, 2007. NCPLS and IDS have agreed to the broad outlines of that evaluation process. IDS, with assistance from the School of Government at UNC-Chapel Hill ("SOG") and a team of legal experts to be designated by IDS ("the evaluation team"), will conduct an evaluation of the NCPLS case-management process and will review a random sample of cases to be drawn from NCPLS' files. The review will focus on the appropriateness and quality of NCPLS' response in light of the requirements of the contract, the standards prescribed by the Rules of Professional Conduct, NCPLS' case acceptance priorities, and the needs and interests of the prison population.

The findings of the evaluation team and the results of the audit will be reported in future editions of ***Access***.

- 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, 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 for prisoners 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.

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

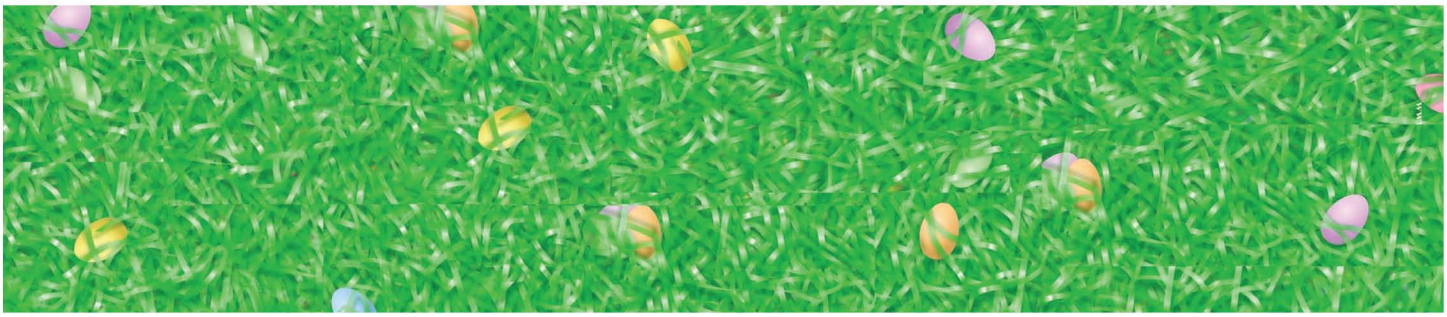
NCPLS Seeks Cert. in *Holly v. Scott*

J. Phillip Griffin, Senior Staff Attorney and Civil Team Leader, represented the prisoner-plaintiff in *Holly v. Scott*. NCPLS was appointed several years ago to represent Mr. Holly, a federal inmate at Rivers Correctional Institution. The prisoner had filed a *Bivens* action against the staff of a federal contract prison operated by Wackenhut (now known as "Geo Group"). [A *Bivens* action is much like an action filed pursuant to 42 U.S.C. §1983 – it is a lawsuit to vindicate a federally protected right. The difference is that a §1983 lawsuit can be filed only against a person who acts "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory," but not against a person who acts under the authority of the Federal government. See, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). See also, 42 U.S.C. §1983.]

Fourth Circuit Court of Appeals

In the district court the defendants moved to dismiss, arguing that private contractor employees are not subject to *Bivens* liability. The district court ruled in favor of the plaintiff and the defendants took an interlocutory appeal. The Fourth Circuit Court of Appeals unanimously reversed the trial court, but split 2-1 on the reasoning. The majority opinion held that the employees were not acting under color of state law because operation of prisons is not a function reserved to the government as prisons are often outsourced. Judge Motz concurred in the result of the majority, reasoning that *Bivens* should not apply because the plaintiff had a remedy in state court through a common law negligence action.

After careful consideration and consultation with other prisoner advocacy groups and civil rights attorneys, NCPLS has decided to seek review of the decision through a petition for writ of *certiorari* to the United States Supreme Court. Although the Supreme Court grants *certiorari* in only a small fraction of the cases in which review is sought, it seems clear that private prisons and their employees should be held to the same legal standards as their state and federal counterparts.



NCPLS Board Member Instrumental in Passage of ABA Resolution on Immigration

By Lisa Chun, Esq.
NCPLS Staff Attorney

In February, the American Bar Association's Criminal Justice Section Immigration Committee put forward a three-part Resolution that addresses some of the problems regarding how a non-citizen can obtain relief from deportation or removal proceedings as a result of a criminal conviction. In 2002, NCPLS Board member, Ron Wright, (a professor of law at Wake Forest University) co-authored an article with Margaret H. Taylor titled "*The Sentencing Judge as Immigration Judge*," 51 Emory L.J. 1131 (2002). The chair of the ABA Immigration Committee was familiar with that article and contacted Professor Wright to ask that he draft the proposed resolution.

The first part of the ABA Resolution urges Congress to restore authority to state and federal sentencing judges to find that deportation or removal of a non-citizen is unwarranted in a particular case. Alternatively, such authority should be vested in an administrative court or agency. [Under former law, state and federal judges could issue a "judicial recommendation against deportation" which was binding on immigration authorities that deportation was not warranted on the facts of the case. With the repeal of this judicial authority in 1990, case-specific relief to those facing removal based upon conviction is almost non-existent. Many injustices have resulted, both for individuals and for their families.]

Under existing law, an "aggravated felony" provides the basis for mandatory deportation. The second part of the Resolution states that federal immigration authorities should not interpret immigration laws so expansively as to include low-level offenses (misdemeanors under either state or federal law), or state dispositions other than conviction, to constitute an "aggravated felony."

The third part of the Resolution urges states, territories, and the federal government to expand the use of the pardon power to provide relief to non-citizens who would otherwise be subject to deportation or removal on grounds related to conviction, where the circumstances of the particular case warrant it. In particular, the resolution encourages the establishment of standards governing pardon applications to avert removal, specify the procedures an individual must follow to apply, ensure that these procedures are reasonably accessible to all persons, and ensure that the applications are processed expeditiously. The Resolution urges reinvigorated use of "full and unconditional" pardons that satisfy the requirements of federal immigration law in light of the limited relief from removal otherwise available to non-citizens under immigration law.

The Resolution was adopted on voice vote by the American Bar Association's House of Delegates in February 2006 and is now official policy of the ABA.

Postal Delivery of Access Discontinued

As we reported in the last edition of ***Access***, NCPLS no longer delivers our newsletter by mail except to subscribers and people who are incarcerated. **Prisoner-subscribers will continue to receive the newsletter through the mail at no cost.** Other people who are incarcerated may subscribe simply by sending us a request to receive future editions (which will be provided at no cost). We are also happy to deliver ***Access*** free of charge by electronic delivery. Finally, by paying a modest subscription fee to offset postage costs, we will be happy to send the newsletter by mail.

To register for electronic delivery, please address an e-mail message to *rfolwell@ncpls.org*. Write "subscribe" in the subject-line. Nothing more is required. To subscribe for a year's subscription by mail, forward a check in the amount of $8.00 made payable to NCPLS. (Donations in excess of the $8.00 fee will be gratefully received and are tax-deductible.)

CA Prison Racial Segregation Case Settles

Last year, the U.S. Supreme Court held that a prison policy based entirely on race is subject to rigorous review by the courts. *Johnson v. California*, ___ U.S.___, 2005 WL 415281 (23 February 2005). The Court explained: "The right not to be discriminated against based on one's race is . . . a right that need [not] necessarily be compromised for the sake of proper prison administration. On the contrary, compliance with the Fourteenth Amendment's ban on racial discrimination is not only consistent with proper prison administration, but also bolsters the legitimacy of the entire criminal justice system." The Court concluded that such policies must be examined under "strict scrutiny" to "guard against invidious [racial] discrimination." On remand to the trial court, prison officials were required to "demonstrate that race-based policies are 'necessary to further a compelling governmental interest,' and that the policies are 'narrowly tailored to that end.'"

United States Supreme Court

When the case was returned to the district court, the parties agreed to a settlement. The California Department of Corrections and Rehabilitation (CDCR) had a long-standing policy to segregate inmates by race during the first 60 days following admission or transfer. Following the decision of the Supreme Court last February, that practice was viewed as legally suspect. Indeed, no other correctional system in the country had a similar policy.

Under the December 2005 settlement agreement, the CDCR has started to implement a new policy: race will be only one of several factors to be considered in classifying prisoners. Other factors include known gang affiliations and the prisoner's criminal history and proclivity for violence. Prison officials have continuing concerns about violence between gangs that form along racial lines – like the White Supremacists or the Mexican Mafia. However, during the two-year transition period, officials believe they can create a culture where racism is no longer tolerated and prisoners will be safe from race-based violence.

U.S. Sentencing Commission Releases Report

Earlier this month, the U.S. Sentencing Commission released a long-awaited study, "Report on the Impact of *United States v. Booker* on Federal Sentencing." The 277-page report contains considerable detail about the way the federal courts have applied *Booker* in imposing sentences upon convicted criminal defendants. The report's main finding seems to be that average sentence-lengths have increased since *Booker*.

The report is timely, as the U.S. House of Representatives began hearings in mid-March to examine the impact of *Booker*, and to consider whether legislative action is needed. The report is accessible at *www.ussc.gov/booker_report/Booker_Report.pdf* . Contact information follows: Office of Public Affairs, U.S. Sentencing Commission, One Columbus Circle, N.E., Washington, DC, 20002-8002. Telephone (202) 502-4500.

On The Acceptance of Responsibility

By Michael G. Santos

Editor's Note*:** The following article, "On the Acceptance of Responsibility," follows a series of articles republished in ***Access by permission of the author, Inmate Michael G. Santos. Mr. Santos was convicted of drug distribution and sentenced to serve 45 years in Federal prison. He is scheduled for release in 2013. While in prison he has earned Bachelors and Masters Degrees. He has also written three books available for review and purchase on his web site: *www.MichaelSantos.net.* Although he does not have direct access to the internet, he can be reached by email at: *info@michaelsantos.net.* Mr. Santos can also be reached at the following address: Michael G. Santos (Reg. No. 16377-004), USP Lompoc, Satellite Camp, 3705 W. Farm Road, Lompoc, CA 93436.

It pleases me that hundreds of thousands of people from across the world visit MichaelSantos.net and express support for the efforts I make to reconcile with society. I am grateful and will continue working to prove myself worthy of this advocation. Some citizens, however, oppose my efforts to connect with the world. They prefer that I "rot in prison" or assert that I should "be a man and accept my punishment." The preparations I make to lead a law abiding life upon release offends them. It is to these opponents of forgiveness or redemption that I write this response.

First of all, I must say that I welcome any opportunity to interact with those who assail my character and intentions. I consider it both a privilege and a possibility when people from society feel strongly enough to share their convictions with me. In fact, I write the content for MichaelSantos.net with the commitment to living a transparent life, an open book. I invite all citizens of the world to consider and judge both the criminally bad decisions I made in the mid-1980s, when I was in my early twenties, as well as the response I have made during the eighteen-plus years I have served so far.

As an aside, I urge my readers to note that I never say or write that it was my mistakes that brought me to prison. There was no mistake. I knew exactly what I was doing. I was a young man driven by greed and inappropriate values; I made decisions with the lack of a strong moral compass. I did not understand or consider all of the ramifications of my actions, but I knew what I was doing. I was wrong to have engaged in the trafficking of cocaine and there is no one to blame but myself for the consequences of my actions.

As I read the anger of those who so diametrically oppose any steps I take to atone, the better I am able to prepare for the vengeance and cynicism that I expect to meet upon my release. Readers should note that I expect to serve my full sentence in accordance with the law. According to the way the law exists today, that means I will serve just over a quarter century of my life in prison. The choices I have made since prison boundaries swallowed me inside strengthen me. They prepare me spiritually, physically, emotionally, and intellectually to endure these seven-plus years of confinement that await me.

I freely acknowledge the unlikelihood that I will receive any type of relief from my sentence. That does not imply that I agree with those who call for me to endure the time silently. I am convinced that sentences of multiple decades for offenders with no personal history of violence makes for bad public policy. Similarly, a criminal justice system that fails to provide a mechanism for individuals to earn freedom through merit, I am certain, contributes to high recidivism rates and weakens rather than strengthens our nation's body of laws. As a citizen of this republic, then, it is my duty to express ideas and contribute to this ongoing debate of justice. Naturally, I do so with the understanding that readers will consider my station in life as they weigh the persuasiveness of my arguments.

In challenging these contributions I make to help others understand America's prison system, some writers insist upon my bearing partial responsibility for the ongoing violence associated with illicit drug use. I wonder what that means. Although I wish that I could undo the bad decisions I made in my early twenties, I cannot.

When I was twenty-one I orchestrated a scheme to distribute cocaine to consenting adults. Those crimes continued until I was twenty-three, at which time I was incarcerated for those actions. There were no weapons, threats, intimidations, or violence of which I had knowledge or involvement. Yet now that I have advanced into

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On The Acceptance of Responsibility (Continued)

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my early forties, I recognize that a considerable amount of ancillary violence is associated with drug trafficking. In my early twenties I did not have the intellectual maturity to connect-the-dots in contemplation of everything happening before or after the transactions in which I inappropriately participated.

Among the questions I have for those who insist that I was "a willing participant in a murderous commercial enterprise that is directly responsible for the deaths of thousands each year" is whether that condemning and unforgiving theory of liability is universally applicable? If it is, wouldn't that imply that the shareholders of tobacco companies should bear partial responsibility for their participation and profit from a murderous commercial enterprise that is directly responsible for the deaths of [hundreds of] thousands each year? How about the steel worker who builds the machines producing firearms that fuel ongoing violence in society? According to the theories of responsibility my detractors use against me, wouldn't such people live as a part of the chain of events that damage society?

Perhaps such theorists cling to the fact that although tobacco and guns kill millions of people, those commercial ventures are legal. Cocaine trafficking is not. I agree. Does the legality of the enterprise influence the responsibility that millions of people should bear when they participate in ventures without thinking about ancillary consequences of their participation? And does the legal status of a commercial enterprise have a bearing on whether it is right or wrong?

Slavery was once legal as a commercial enterprise in this country. Was that right when it was legal? Did it become wrong only when it became illegal? The consumption of alcohol was once illegal in this country. Yet millions of people willingly broke those prohibition laws. Violence exploded as gangsters fought to supply an insatiable demand. Was the individual who purchased a few cases of rum that he could sell to customers in his speakeasy "responsible" for the murderous behavior of others whom he did not know or have knowledge of in the supply chain? Is the receptionist at Seagram's partially responsible for the drunk driver who crashes his automobile into a school yard? How far does responsibility go? How much should we pay for bad decisions we make that have ancillary ramifications?

My actions prior to prison certainly did not contribute much positively to the world. Since my term began, however, my record reflects a continuous effort to atone for the bad decisions that led to my confinement. That is my way of accepting responsibility, my way of accepting punishment as a man. No one has ever heard me whine or complain about the quarter century of confinement that I must serve. Yet that does not mean I think such a sentence is right or just. I continuously ask whether there is anything that an offender without a history of violence can do to earn freedom. I do not mean by squealing on others to save oneself. I ask whether a nonviolent offender can reconcile with society through a sustained period of continuous effort. If the answer is no, then how can we call ourselves a compassionate, Judeo-Christian society? Such an implication would value the virtues of forgiveness and atonement. To deny a path to redemption implies a society of vengeance, which seems inconsistent with the evolving, enlightened way in which Americans like to think of themselves.

On the other hand, if there is an objective way in which a nonviolent offender can reconcile with society, can anyone define it? During the eighteen-plus years that I have served so far, I have worked to build such a record. Through the help of others I have become an educated man with credentials from accredited universities. I have a long record of mentoring others, both inside and outside of prison boundaries. I work full-time jobs in the prisons where I am held. I discipline myself by obeying prison rules. I acknowledge the bad decisions of my early twenties and work to help others make better decisions. Yet in our absurd so-called system of corrections, the steps I have taken qualify for nothing. They do not entitle me to a lower bunk, much less to any relief from my sentence. That is why so few in prison follow the example that I try to set.

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Corrections – Foothills Opens Security Threat Group Unit

In the December 2005 issue of ***Access*** (Volume V, Issue 4), pages 4–6, we reported on the new Security Threat Group (STG) Unit that recently opened at Foothills Correctional Institution. We were subsequently contacted by Robert C. Lewis, Assistant Director of Support Services, who advised that some of the information contained in the article was inaccurate.

Specifically, our description of the process by which a prisoner is selected for assignment to the STG Unit was not accurate. The process is as follows. The prisoner must first be "validated," or identified as a member of a gang. If the facility intelligence officer determines that the validated inmate meets the criteria for placement into the STG program, a recommendation is forwarded to the superintendent. If the superintendent agrees, the recommendation is forwarded for review by the Regional Director. When the Regional Director approves the recommendation, it is forwarded to the Chief of Security for review and approval. If approved, the prisoner is notified and is transferred to Foothills, where the Classification Review Committee assesses the prisoner for inclusion in the program, again, based upon certain undisclosed criteria. No matter what the Classification Review Committee decides, that decision may be appealed. [Our article incorrectly placed the right of appeal prior to a transfer to Foothills.]

We also incorrectly reported that a prisoner who successfully completes the program is returned to general population and loses his "gang member" validation status. In fact, removal of the gang member validation is not automatic. However, after successful completion of the program, inmates may continue to work towards removal of their STG status through the post-monitoring program. The post-monitoring program could continue for a period of six months to one year. The duration of the post-monitoring period depends upon the prisoner's progress and upon maintaining a record of good conduct. Successful completion of the post-monitoring program may result in the removal of gang member validation status.

We constantly strive to provide complete and accurate information through this publication. We regret these two inaccuracies and extend our appreciation to Mr. Lewis for bringing them to our attention.

On The Acceptance of Responsibility (Continued)

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I can understand why correctional administrators erect barriers that discourage people from preparing for law-abiding lives. Their jobs, their promotions, their overtime pay depends upon high recidivism rates. The more people who fail upon release and return to prison, the more need for higher prison budgets. What I do not understand is why any taxpaying citizen who is not beholden to the correctional complex would oppose these efforts I make to reconcile with society and prepare for a law-abiding life upon my release.

I welcome these opportunities to learn through a constructive debate from those who oppose me. Until next time, I wish you all well.

Editor's Note: It is sound – and just – to suggest that our shared beliefs in the inherent value of all human beings (as well as the objects of our criminal justice system) would be better served by encouraging the rehabilitation of prisoners. It is not sound – or just – to suggest that all correctional professionals are motivated by a desire to further what the author sees as their occupational self-interest. Prisoners are often unjustly vilified with similarly flawed reasoning. All concerned in the criminal justice system have a stake in removing barriers to rational dialogue on the subject of rehabilitation, including the author.

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rectional officials should be held responsible for the negligent medical practices of physicians who act as agents of the state in providing medical care to prisoners. That argument prevailed. *Medley v. The North Carolina Department of Correction*, 412 S.E.2d 654 (N.C. Supreme Court 1992).

After more than seven years of litigation, Rich succeeded in firmly establishing the principle that the provision of medical care for prisoners is a non-delegable duty, for which responsibility lies in correctional officials. It would be hard to overstate the favorable impact that principle has had on the lives of North Carolina inmates, as well as prisoners across the nation. *West* and *Medley* are only two of literally hundreds of cases Rich handled during his tenure at NCPLS. Anecdotes of the many services Rich has provided his clients, his experiences in the courts, and the care and compassion he brought to his work, are legion. Perhaps one of the most telling involves a gift presented to Rich by one of his clients. After representing a prisoner in an unsuccessful effort to obtain compensation for an injury the inmate sustained on a prison work assignment, Rich's client presented him with a beautiful scale model of a sailing ship, accurate in every respect. The object evidenced incredible detail and uncommon craftsmanship. The wonder that it could have been created in prison and bestowed as a gift was only equaled by a fact that became apparent upon closer inspection. The entire ship had been constructed of wooden coffee stirrers!

Rich's commitment to his clients and the broader principles of social justice is an inspiration to all of Rich's colleagues. With appreciation for his 27 years of service to prisoners, we wish Rich happiness and continuing success.

Campbell Law School's Prisoner Assistance and Legal Services Program

For several years, students of the Campbell Law School have provided limited services to North Carolina prisoners through the Project for Older Prisoners (POPS). The project addresses the special problems of these prisoners, as well as the concerns that the "graying" of America's prisons pose for the nation in the future, through legislative reform measures and advocating parole for qualified older prisoners.

Campbell law students are developing a second initiative that will expand the services they provide to inmates – the Prisoner Assistance and Legal Services (PALS) Program. The mission of PALS will be twofold. First, the students will continue to provide services to older prisoners through the POPS program. Second, the PALS program will provide opportunities for students to gain legal skills through providing legal and non-legal assistance to prisoners incarcerated in North Carolina. Law students will assist attorneys at NCPLS by providing legal research and legal assistance under the direction and supervision of our attorneys. The project coordinator at NCPLS will be Staff Attorney Erica Greenberg. Campbell law student Natalia Isenberg will serve as the President of the student organization, Michelle McEntire will serve as PALS's Vice President, and first-year student Jeff Gillette, will serve as liaison to NCPLS.

The rules of conduct that govern the legal profession provide a reminder that every lawyer has a duty to engage in public interest legal service, especially with regard to the disadvantaged. North Carolina Revised Rules of Professional Conduct, Preamble, Section 0.1, ¶ 6 (1997). It seems that students at Campbell Law School take that responsibility seriously.

The Newsletter of North Carolina Prisoner Legal Services, Inc.

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