



Parchman Farm Blues: Pushing for Prison Reforms at Mississippi State Penitentiary

by Margaret Winter and Stephen F. Hanlon

*Oh listen you men, I don't mean no harm
If you wanna do good you better stay off old Parchman Farm.
We got to work in the mornin', just at dawn of day
Just at the settin' of the sun, that's when the work is done.*
—Bukka White, *Parchman Farm Blues*

In the summer of 1998, the American Civil Liberties Union (ACLU) started getting dozens of letters from prisoners with HIV in Mississippi State Penitentiary—the legendary Parchman Farm.

Parchman Farm was a product of the Reconstruction era movement to restore white supremacy and ensure a source of cheap free labor to replace slave labor. Opened in 1903 under the administration of “the White Chief,” Governor James K. Vardaman, it was set on 20,000 acres in the Mississippi Delta. In the words of the governor, Parchman Farm was run “like an efficient slave plantation,” in order to provide young black men with the “proper discipline, strong work habits, and respect for white authority.”

For most of the twentieth century, Parchman Farm continued to function as a virtual slave plantation, complete with a small army of “trusty shooters,” inmates armed with guns who had the primary duty of overseeing inmates working in the fields and throughout the prison camp. But in 1971, four prisoners brought suit in federal court to challenge conditions at the Farm. That case was *Gates v. Collier*, and in 1972, the presiding judge, the Honorable William C. Keady, found that Parchman Farm was “an affront ‘to modern standards of decency.’” *Gates*, 349 F. Supp. 881 (N.D. Miss. 1972). Judge Keady ordered an immediate end to all of the unconstitutional conditions and practices—including punishment by putting inmates naked in a dark hole without a toilet, or by “beating,

Margaret Winter is associate director of the National Prison Project of the American Civil Liberties Union in Washington, D.C. Stephen F. Hanlon is a partner at Holland & Knight LLP in Washington, D.C.

shooting, administering milk of magnesia, or stripping inmates of their clothes, turning fans on inmates while they are naked and wet, depriving inmates of mattresses, hygienic materials and/or adequate food, handcuffing or otherwise binding inmates to fences, bars, or other fixtures, using a cattle prod to keep inmates standing or moving, or forcing inmates to stand, sit or lie on crates, stumps or otherwise maintain awkward positions for prolonged periods.”

Big changes resulted from the decree in *Gates v. Collier* and from subsequent enforcement activities over the years. But by the 1990s, we were to learn, horrific conditions again prevailed in many parts of the prison.

The HIV-positive prisoners who wrote to us in the summer of 1998 claimed they were living in squalor, categorically segregated from the rest of the prison population, and barred from all prison educational and vocational programs and jobs. They told us that they were dying like flies because prison doctors refused to give them the “cocktail” (the triple-drug combination therapy that since 1997 had begun to change HIV from an inevitably fatal disease to a treatable chronic illness).

So that fall, we traveled to Mississippi State Penitentiary at Parchman, a sprawling prison that rises out of vast cotton fields. We interviewed dozens of the prisoners in their segregated unit. At least 80 percent of the 120 men in the unit were African-American. Most were young. Most were in prison for nonviolent and relatively trivial offenses, often drug-related. They gave profoundly moving accounts of what it was like to be HIV-positive at Mississippi State Penitentiary, warehoused in a virtual leper colony and left to die.

We were fired up to offer our help, but the first step was to figure out whether they were already represented. We knew that in 1992, two HIV-positive prisoners (both of whom had since died) had brought a pro se lawsuit challenging the conditions of their confinement. The trial court had dismissed

their case, but the Fifth Circuit had reversed and ordered that counsel be appointed to represent the inmates. *See Moore v. Mabus*, 976 F.2d 268 (1992).

On remand, the district court appointed Ronald Welch, who some years earlier had inherited the role of class counsel to provide ongoing post-judgment monitoring in *Gates v. Collier*.

We were told that Welch settled the HIV-positive prisoners' case without consulting them, without providing notice as required under Fed. R. Civ. P. 23(e), and without obtaining for them any meaningful relief on any of their core issues: medical care, access to prison programs, and humane living conditions. The district court approved the settlement, certified a class of all HIV-positive prisoners in the custody of the Mississippi Department of Corrections (MDOC), and appointed Welch as class counsel.

According to the prisoners, after Welch was appointed, he did nothing to help them. They tried to bring motions pro se to get injunctive relief on their own, but a standing court order prohibited them from seeking injunctive relief concerning the conditions of their confinement except through Welch.

We went to the courthouse to review the docket. The clerk told us that the case had been dismissed some time ago and the case files sent to storage. It seemed there was no obstacle to our proceeding with what promised to be an important and inspiring case. We ordered the files from storage, and made arrangements to have an eminent HIV specialist and correctional medicine expert visit Parchman to review medical records.

Shortly thereafter we got a telephone call from Welch. He said he had heard at a local watering-hole that we were in communication with his clients (the HIV-positive inmates). He told us that the court clerk had been mistaken; the decree had not been terminated, the case was merely dormant, and he still represented the prisoners.

We explained to Welch that we wanted to bring in a medical expert, and we offered to substitute in as class counsel. He said he would be delighted to have us take over the case, but he believed the medical care was fine and we shouldn't rely

too heavily on prisoner complaints; we could save ourselves a lot of time and trouble by simply questioning the prison's doctors about the adequacy of the medical care they were providing. He added, "Of course, I may be wrong since I have by far less knowledge than you all and zero access to any outside expertise, but my layman's impression is that MDOC has kept reasonably abreast of and has implemented generally accepted HIV treatment."

He added that he had just negotiated a fee agreement with the state entitling him to fees for post-judgment monitoring of the overall *Gates* decree, up to 100 hours per annum, and said "I hope you can get what you want without cutting me out of the payday I just negotiated with MDOC."

The next day, our expert, Dr. Cohen, went to Parchman to review prisoners' medical charts. He was horrified by what he found. In his preliminary report, he stated, "In case after case prisoners were deliberately denied the standards of care promulgated by the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), and it threatens the survival of these men. It is my professional opinion that the grossly inappropriate care currently being provided is resulting in unnecessary pain and suffering and will be responsible for unnecessary deaths for patients who would respond to appropriate treatment." We decided to file an application for emergency relief.

Meanwhile, however, Ron Welch had changed his mind about substitution of counsel. He sent a letter to the ACLU, with a copy to the district court, withdrawing his written agreement for substitution of counsel, in order to prevent "open poaching season" on his attorneys' fees by "johnny-come-lately, aggressive, national counsel" who "will typically want to believe dissident/hostile stories in order to oust class counsel and secure class counsel's attorney's fees for themselves."

On February 8, 1999, the ACLU filed an emergency motion to intervene in the case on behalf of 10 of the HIV-positive prisoners, the *Moore* class, with a motion for substitution of counsel that was supported by a petition signed by a majority of the class members and a copy of Dr. Cohen's preliminary



report. Welch moved to dismiss on the ground that he believed the ACLU “would immediately, upon substitution, attack the *Gates* consolidated cases order, and thus, jeopardize the fees award to class counsel in the same order.”

The trial judge, U.S. Magistrate Judge Jerry A. Davis, acted swiftly. He said that the prisoners’ medical claims were so serious that they had to take precedence over the representation dispute. He granted the ACLU motion to appear *pro hac vice* to represent the plaintiff-intervenors, and set the case down for an emergency evidentiary hearing. He said he would sort out the representation issue later.

The hearing was to be held in the federal courthouse in Oxford, a picturesque little town near Ole Miss. We set up camp down the street from court in the lovely old high-ceilinged law offices of Thomas Freeman III and Thomas Freeman IV. The elder Freeman told us his secretary had decades earlier typed up the manuscripts of William Faulkner’s novels in this very building.

The testimony at the hearing was gut-wrenching. Our medical expert testified that the medical care MDOC was providing was so grossly substandard that it was causing horrific

MDOC moved the prisoners to a feces-smearred, vermin-infested unit.

suffering and premature deaths. One of the many examples he cited was the case of Rob S., who had tested HIV-positive less than a year earlier while he was a scholarship student at the University of Mississippi. He had been put on triple-drug combination therapy, and had an undetectable viral load at the time he was arrested (for an unsuccessful attempt to rob a convenience store, with a toy pistol, a first offense, for which he received a 25-year sentence). When Rob was sent to Parchman, however, the prison doctor immediately discontinued his triple-drug therapy. Rob’s viral load soared, his immune system rapidly deteriorated, and he developed resistance to all the HIV drugs he had been taking.

Rob and a number of other prisoners also took the stand. Welch’s contribution to the hearing was hostile cross-examinations of our witnesses.

On July 16, 1999, the judge issued an opinion finding that MDOC was providing constitutionally inadequate medical care. He entered an injunction, the first of its kind in a contested case in federal court, requiring a state to provide HIV treatment in conformity with the CDC and NIH guidelines.

To our consternation, however, the judge denied the prisoners’ motion for substitution of counsel or intervention, and he declined to order independent monitoring of the injunction. This meant, for all practical purposes, that the injunction on HIV treatment would not be enforced. Welch himself could not monitor; his position was that he could not afford, and need not retain, a medical expert, and that it was sufficient to rely on the prison doctors.

In the days following the District Court’s decision, we got frantic messages from the prisoners reporting that MDOC had

moved them all to a feces-smearred, vermin-infested unit and that correctional staff were retaliating against those who had played leading roles in the litigation—one had been beaten, a number had been thrown into “the hole” on bogus disciplinary reports.

We tried to investigate these complaints, but Welch barred the door. He sent MDOC a letter instructing it “not to admit any ACLU National Prison Project Attorney, expert or paralegal to any MDOC facility to interview any member of the *Moore* class, to examine the records of any member of the *Moore* class, or otherwise conduct investigation/representation with respect to the *Moore* injunctive relief subject matter.” MDOC’s lawyers notified the ACLU that MDOC would no longer permit us to interview or review the medical files of any class member.

We were confident that a judge, who had just demonstrated such humanity and courage in enforcing prisoners’ constitutional rights, would understand their fundamental right to consult with any lawyer they chose. We asked Judge Davis for a status conference.

The telephonic status conference began pleasantly, with good-natured teasing from Judge Davis and MDOC counsel as to whether the Yankee ACLU lawyers were missing the fried okra in Mississippi. When we got down to business, however, and asked the judge to clarify that we must be allowed to communicate with any individual inmates who sought the ACLU’s counsel, the tone changed.

The judge said that he had great confidence in Mr. Welch, and he warned that if we interfered with Mr. Welch’s relationship with the inmates, he would sanction us to the full extent of his powers. He said that he would not enter an order prohibiting us from communicating with the prisoners because that might be construed as a prior restraint on speech, but that if he saw any evidence of “alienation of affection,” he would make us regret it.

Stunned, we asked him to clarify what activities on the part of the ACLU were prohibited. The judge refused, saying he had made himself clear.

It was at this time that Holland & Knight offered the assistance of its pro bono program to the ACLU. The offer was eagerly accepted.

Meanwhile, frustrated by their inability to consult with the ACLU, the prisoners decided to take matters into their own hands. They sent Ronald Welch a letter accusing him of acting like their adversary rather than their advocate, and demanding that he either resign or else start representing their interests.

Welch responded in a furious letter that he not only sent to the prisoners but also filed in the court docket. He taunted his clients, “Guys, I guess you missed or chose to ignore the news: The battle to have me replaced has been lost! And it’s going to stay lost. So get used to it!” He declared that the “ACLU loyalist class members” (that is, the class representatives and the overwhelming majority of the class) were his “opponents.” He said, “The real issue here is not my credibility with class members, but class members’ credibility with me.” He claimed to have “substantial evidence” that his clients’ retaliation claims were false, and he warned them to “stop pulling [his] chain.”

Welch’s publication of this letter was a declaration of war against the class he insisted on representing. But what were we to do? The judge had made it clear that he considered the representation matter closed.

We called the *National Law Journal*, and the *NLJ* called Welch and quoted him as saying that the 110 inmates who petitioned for his replacement—essentially the entire class—were “spoiled kids” and “half-truth manipulators,” and that he didn’t “have any sympathy for them any damn more. They have used [their HIV status] to get everyone’s sympathy.” David E. Rovella, “A Civil Rights Civil War,” *The National Law Journal*, October 11, 1999, at page A1.

We could now return to the district court with a renewed motion for substitution and intervention of counsel, based on new support for our position that Welch was not satisfying his fundamental obligations to his clients of loyalty and zealous representation.

On December 8, 1999, the *Moore* class representatives, supported by 100 percent of the class members, submitted a Motion for Substitution of Counsel requesting that the ACLU lawyers be substituted for Welch, along with a renewed Motion for Intervention. The prisoners alleged that Welch’s failure to represent the interests of the class on its core claims proved that he did not, and could not, provide them adequate representation.

Meanwhile, the class members had been pleading with the ACLU to visit to discuss their ongoing concerns over medical care, retaliation, and the brutal conditions in punitive segregation, where two of the class representatives had been confined since the court denied intervention five months earlier. We made arrangements with the prison and with MDOC’s lawyers for the legal visit. On January 5, 2000, a crisp, sunny morning, we made the three-hour drive west to Yazoo City and then north through the Delta to Parchman.

But when we arrived at the prison gate, the guard at the entry said, “The judge has ordered you to report immediately to the prison legal office!” It felt strangely like being under arrest. In the prison legal office, we found the Department of Corrections’ lawyers plus a Special Assistant Attorney General from Jackson waiting for us. They gave us a copy of a declaration that Welch had filed in federal court that very morning, stating that the ACLU had “provided class members gifts of food, candy, and other items.” (The accusation was based on the ACLU lawyers’ unhealthy habit during the preceding spring of fortifying themselves with candy bars and other junk food during long days in the HIV Unit, preparing witnesses for the preliminary injunction hearing, and sharing the food with whatever inmate they happened to be interviewing at the time.)

The state’s lawyers also handed us two orders entered that same morning by Judge Davis: an order prohibiting the ACLU from communicating with any Mississippi prisoner over the conditions of their confinement; and an order requiring the ACLU to appear in two weeks to show cause why we should not be sanctioned for our violation of professional ethics in furnishing candy “and other favors” to class members.

We decided to retain Robert McDuff, a solo practitioner in Jackson, to defend us on the Show Cause Order. McDuff, a latter-day Atticus Finch who is one of the best civil rights lawyers in Mississippi—and one of the best in the country—prepared a response that included affidavits from ethics expert Stephen Gillers and several distinguished Mississippi legal scholars and practitioners, stating that the conduct of which the ACLU was accused did not infringe on any ethical rules, norms, or principles whatsoever.

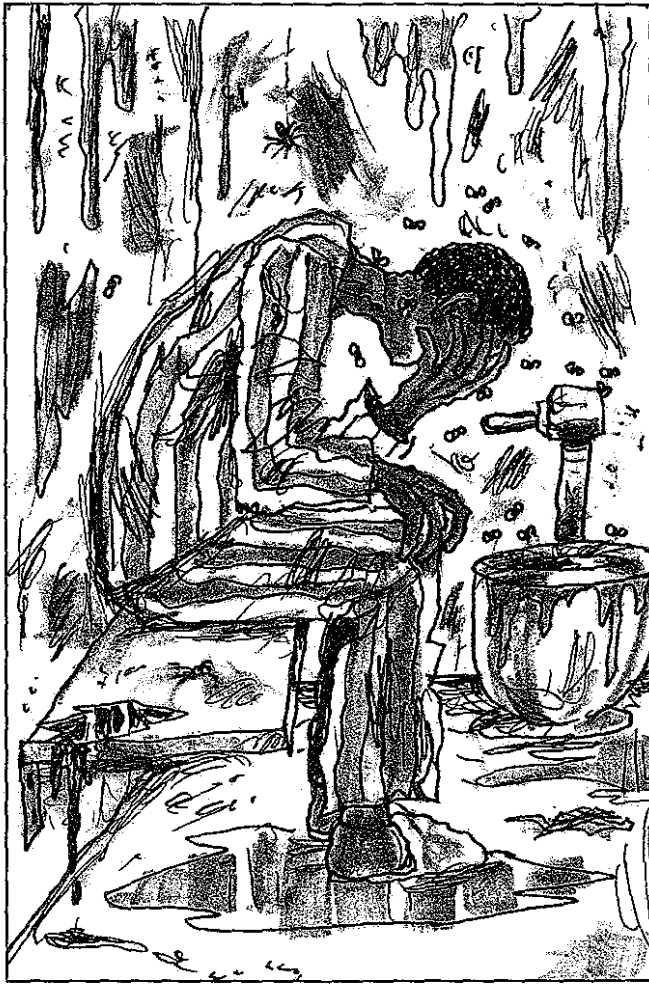


On February 1, 2000, Judge Davis vacated the Show Cause Order based on McDuff’s submission. At the same time, however, the judge not only denied the prisoners’ renewed motions for intervention and substitution, but he also entered a permanent gag order, providing that “the ACLU shall cease contact with inmates on matters that fall within the jurisdiction of class counsel” (that is, anything concerning the conditions of Mississippi prisoners’ confinement).

It was a relief to finally have an appealable order. We filed notices of appeal and a motion asking the Court of Appeals to stay the “no-contact” order pending appeal. In June 2000, the Fifth Circuit granted our motion to stay the gag order.

Meanwhile, because we couldn’t litigate anything in the trial court with our appeal of the representation issue still undecided, we decided to tackle the HIV segregation policy in a non-adversarial way, seizing on a political opening: the appointment of a new commissioner of the Department of Corrections, Robert L. Johnson.

In September 2000, we organized a coalition of local clergy, community activists, and family of prisoners with HIV and prepared a briefing paper for the commissioner. We explained that Mississippi and Alabama were the only two remaining states in the union that segregated all HIV-positive prisoners and excluded them from all prison programs, that this resulted in their serving longer sentences under harsher conditions than similarly situated HIV-negative



inmates, and that there was no legitimate scientific, medical, or correctional basis for the segregation policy.

Commissioner Johnson agreed to meet with the delegation. The meeting was successful beyond our wildest dreams. Within the month, the Commissioner convened a 15-member task force, composed of MDOC officials, state public health officials, an inmate's mother, and the ACLU. The mission of the task force was to study the issue and prepare a report on HIV-positive prisoners' access to programs.

In March 2001, after some months of investigation, the task force met for a two-day retreat. The outcome was very much in doubt for most of those two days. There were deeply entrenched positions against allowing HIV-positive prisoners to have any contact with other prisoners, in any prison program whatsoever.

At last, after an intense debate in which Parchman's security chief Lawrence Kelly, who would later become superintendent of Parchman, played a critically important role arguing in favor of integration, the task force voted unanimously to recommend an end to the policy of segregated prison programs. The task force also recommended that integration be preceded by a mandatory educational course on HIV for all prison correctional staff, administrators, and prisoners throughout the MDOC system. In May 2001, Commissioner Johnson announced that he was adopting the task force's recommendations.

The HIV-positive inmates were uneasy and fearful as the first day of integrated programming approached. They had

been warned by prison employees that they probably would be met with insults, abuse, and perhaps even physical violence by other prisoners, and that they would be ignored or treated with contempt by the teachers. But in September 2001, when HIV-positive prisoners at Parchman entered an integrated adult literacy class—the very first integrated class since the HIV segregation policy had gone into effect a dozen years earlier—prisoners and staff alike warmly welcomed the HIV-positive inmates. A huge milestone had been reached.

Meanwhile, in November 2000, the Fifth Circuit issued its decision on the prisoners' appeal. *Gates v. Cook*, 234 F.3d 221 (5th Cir. 2000). The court (with Judge Edith Jones vigorously dissenting) vacated the no-contact order, and also held that the district court abused its discretion in denying the inmates' request to substitute class counsel. Substitution was required, the court explained, not only because "the sentiments of the class indicate[d] a clear preference" for the ACLU lawyers, but also, "and more importantly, Welch's nonfeasance and the constraints upon his ability to adequately prosecute the sub-class' case urge the rare remedy of substitution." The court pointed to Welch's failure to give the class adequate notice and opportunity to object to the settlement; his disclosure in the public record of a class member's confidential communications; his failure to secure outside expert review of the HIV-positive prisoners' medical claims; his deliberate substitution of his own subjective judgment regarding appropriate relief for the class, even against the explicit wishes of a majority of the class; and his publicly expressed hostility to his clients. The Fifth Circuit's decision occupies six pages of discussion in Newberg on Class Actions. See 5 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 15:9 (4th ed. 2002).

The state's lawyer called that day to congratulate us on the victory. He said that the state had no intention of seeking a rehearing, and that he looked forward to working with us.

All this time, we had been pursuing the troubling issue of retaliation against class members who submitted grievances about the conditions of their confinement. With the help of the office of the U.S. Attorney in Oxford, we got the FBI to secretly administer polygraph tests to two of our key retaliation witnesses, Robert S. and Martin G., who under threat of severe punishment by prison administrators in the HIV unit, had been drafting bogus rules violation reports against inmates whom prison staff wished to punish. On the basis of these fake reports, correctional staff would get even with inmates who filed grievances, by getting them "jacked to the hole" on false charges. The hole was truly a hellhole.

Marty and Rob passed the FBI polygraph tests with flying colors. We decided we should proceed with a retaliation case. In October 2001, the ACLU and Holland & Knight filed suit on behalf of the class members who had been beaten, thrown into the hole, or suffered other severe retaliation for bringing grievances over the conditions of their confinement.

When we appeared before Judge Davis in the retaliation case, it was the first time we had appeared before him in person in three years. During that time, he had threatened us with contempt, entered an Order to Show Cause and gag order against the ACLU, and been reversed by the Fifth Circuit. We didn't know how he would respond to having us back in his courtroom.

We need not have been concerned. He warmly welcomed us back. Judge Davis had already shown, in decisively

granting the injunction on HIV care, his unshakeable commitment to upholding prisoners' fundamental right to humane treatment. We were to witness the strength of that commitment time and again over the course of the next several years.

We eventually tried the retaliation case before Judge Davis and lost. The public airing of the facts in court nevertheless had a thoroughly salutary effect. MDOC removed the most pernicious officers from the HIV Unit and put a new administrator in charge, and the toxic culture of retaliation and bogus charges came to an end.

But a much bigger challenge lay just ahead of us at Parchman Farm. In January 2002, prisoners on Mississippi's death row, which is located inside Unit 32, Mississippi's super-maximum security prison at Mississippi State Penitentiary, went on a hunger strike to protest the brutal conditions of their confinement.

The death row prisoners described profound isolation, unrelieved idleness and monotony, denial of exercise, intolerable stench and pervasive filth, grossly malfunctioning plumbing, and constant exposure to human excrement. Each cell had a "ping-pong" toilet, allowing waste from one cell to back up into the toilet in the adjoining cell. The temperatures in the cells during the long Delta summers were lethal, with heat indexes, we later proved, of over 130 degrees Fahrenheit.

The cells were so infested with mosquitoes that inmates had to keep their windows closed and their bodies completely covered even in the hottest weather. Leaking rain-water and foul water from flooded toilets on upper floors soaked inmates' beds and personal items; prisoners weren't provided clean water, soap, and other basic cleaning supplies, even when they were moved into a cell smeared with excrement by the previous tenants.

Lighting in the cells was so dim that the prisoners couldn't see to read, write, groom themselves, or clean their cells. They were denied basic medical, dental, and mental health

Corrections officers beat prisoners already in full restraints.

care. They were exposed day and night to the screams and ravings of severely mentally ill inmates in adjoining cells.

It was impossible to ignore this cry of pain from out of the depths, but without a doubt, this was going to be a hard case in many ways. There is little sympathy for death-sentenced prisoners in the United States, and we found that in Mississippi, it is widely considered fitting that these prisoners should suffer as much as possible before their execution. Ironically, as a result of constitutionally defective trials, as many Mississippi death-sentenced prisoners are eventually released from death row as are executed.

We made the hard decision to first try to help the death row prisoners; with a class of only 65, housed in a small part of the prison, we could move swiftly through discovery, and if we won, we could go on to extend the victory for the benefit of the remaining prisoners in Unit 32.

Because we had established a good rapport with Commissioner Johnson, we agreed to try to persuade him to improve the conditions on death row to avoid suit. We had a cordial meeting with him in early March, in which MDOC agreed to change a few egregiously arbitrary policies.

But June arrived, and with it scorching weather, and MDOC still had done almost nothing to relieve the hellish conditions on death row. We filed the complaint and motion for class certification in July, together with a motion for a temporary restraining order and preliminary injunction that requested nothing more than a court order directing the MDOC to allow us to tour death row with our emergency medicine doctor, psychiatrist, environmental health and safety expert, and corrections expert.

Judge Davis granted our motion to tour death row, and in early August 2002, plaintiffs' lawyers and experts met in Clarksdale, the "Birthplace of the Blues," a few miles north of Parchman. We had assembled a stellar team of four experts on mental health, corrections issues, environmental health and safety, and heat-related illness. By the time we gathered in Clarksdale, we were all pretty well-acquainted with one another through e-mails and conference calls, but dinner at the best home-style barbecue and beer joint in town was our first face-to-face meeting. We spent a few hours over dinner until closing time, mapping out our strategy for the tour.

At the crack of dawn the next morning, we arrived at the prison and proceeded to conduct our tour of death row—14 unforgettable hours of bedlam and hellish heat. We entered the cells of many prisoners to interview them and heard their accounts of life on death row. We marveled that anyone at all could be confined there without going insane. Our environmental expert found heat index readings in excess of 120 degrees Fahrenheit; even at 10 PM that night, the temperature in some cells was in the 90s. Our medical expert found that it was inevitable that the excessive heat would result in illness, permanent disabilities, and premature deaths.

One of the cases that particularly shocked us was the situation of our lead plaintiff, Willie Russell, a handsome, gaunt, dark-skinned, imposing man standing more than six-foot-seven. Willie was being held in a "special punishment cell" covered by a Plexiglas door, which cut off air flow to the cell. He was removed from the cell for a few minutes so that we could enter it one by one. Our medical expert said afterward, "It was just like getting into a car parked in the hot Texas sun and sitting with the windows rolled up. I needed to breathe deeply just to feel that I was getting enough air. I was immediately reminded of the reports of Mexican nationals dying in closed boxcars as they tried to cross into the United States. I couldn't understand how anyone could be locked up in that hot box for any length of time without losing control."

Willie described an incident a few weeks earlier, when there had been no water on death row for a week. The sewage backed up in every cell, and people started to throw their wastes out into the hall. It was hard to breathe from the stench. No one cleaned the tier. The inmates were given only a small amount of liquid to drink three times a day. He said, "I felt myself drying out and getting weaker. My mouth was cracked and my throat was rough. It was getting hard to concentrate. I couldn't think of anything but getting water, but there was no way I could get any."

A few days later, we filed a motion for expedited discovery and trial, which the judge granted. We went to trial in

February 2003. Judge Davis took care, as usual, to appear impassive, but there were moments during the testimony—including the descriptions of sane men being driven raving mad by the conditions in Unit 32—when he was visibly moved. In May 2003, he entered an opinion and far-reaching injunction granting most of the relief we had asked for. The Fifth Circuit issued a unanimous decision upholding, with a few minor exceptions, all the relief ordered by Judge Davis. *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004).

As soon as the Fifth Circuit issued its decision, we knew it was time to redeem the pledge we had made to ourselves and to the prisoners: to extend the relief we had won for the death row prisoners to the other 1,000 men in Unit 32.

Ever since 1999, when we first started litigating at Parchman, prisoners and their families had been pleading with the ACLU to challenge the conditions in Unit 32. The lethal heat, the filth and stench, the malfunctioning plumbing, and the lack of access to exercise, fresh air, and basic medical and mental health care were just as bad as on death row, but in some ways, conditions were even worse.

The men in Unit 32 in administrative segregation were all locked down 23 to 24 hours a day in even more profound isolation and unrelieved idleness than on death row. There was a pervasive culture of violence and sadistic use of excessive force. Corrections officers gratuitously beat prisoners already in full restraints. Take-down teams forcibly extracted shackled prisoners from their cells, sprayed them with a chemical agent that causes vomiting and shortness of breath, and then assaulted them again.

The combination of all these conditions was causing serious mental illness to emerge in previously healthy prisoners, and causing psychosis and complete mental breakdown in less healthy prisoners. Suicides and attempted suicides occurred with alarming frequency.

For example, in November 2003, Christopher S., a youthful prisoner on psychiatric medications, threw a glass of water at a corrections officer. The officer screamed that she was going to kill him, and a take-down team of several officers



was summoned. The officers put him in full restraint gear, then gassed him, and dragged him into a hallway where they severely beat him. Then they put him naked in a freezing punishment cell, where he spent the night without clothes or bedding. Officers refused to give him his psychiatric medications and denied him meals. The next day an officer told him “you’d better be gone when I come to work tonight.” Prisoners in neighboring cells heard him moaning all night in terror. The next day he was found dead, hanging in his cell. A few weeks later another prisoner, Patrick P., who was in Unit 32 simply because he needed protective custody, was found hanged in his cell.

In some ways, this case would be easy because all the horrendous conditions we had successfully challenged in the death row case were identical throughout the rest of Unit 32. We knew where the bodies were buried, so to speak, and we had a detailed road map for trying those issues.

The problem was that the additional issues in Unit 32 would not be so easy to resolve. Chief among them was the fundamental problem that the overwhelming majority of the 1,000 men in Unit 32 did not belong there at all.

Although Unit 32 is supposedly used to incarcerate the most dangerous and incorrigible offenders in the state, in reality, the vast majority of the men housed in Unit 32—for years, sometimes for decades—did not have the kind of criminal or institutional history that would justify incarceration under “supermax” conditions. Many prisoners were placed in Unit 32 simply because they had special medical needs, were severely mentally ill, or had requested protective custody. And once classified to Unit 32, there was no emerging from it. Hundreds of prisoners were doomed to stay there forever. “Abandon all hope, ye who enter here” might as well have been carved over the entry gate.

So the Unit 32 case wasn’t just a “simple” Eighth Amendment case as the death row case had been. It was to be, in addition, and above all, a challenge to *classification*—to the arbitrary assignment and retention of prisoners in permanent administrative segregation. And that was indeed a daunting task. It was firmly established in the Fifth Circuit that prison officials had essentially unfettered discretion to classify prisoners and to confine them to whatever degree of isolation they saw fit.

We filed the Complaint on June 22, 2005. In August, Judge Davis told the parties that we ought to be able to resolve the Unit 32 case without further discovery or litigation, and asked if we would be willing to sit down together to negotiate. He made it clear that his opinion of the facts had not changed since the death row trial, and that he wanted to extend his remedial order to all of Unit 32.

In November 2005, we all met for settlement discussions in Judge Davis’s courtroom. By the end of the day, we had hammered out a proposed consent decree.

We strongly suspected that Leonard Vincent and Jim Norris, MDOC’s in-house counsel, had used considerable persuasive power to get the department on board with that consent decree. By that time, we had been litigating against Leonard and Jim over conditions at Parchman for almost seven years. We’d spent many long hours with Jim on tours of Parchman in the Delta heat, and we’d listened to Leonard preface numerous keen cross-examinations of our expert witnesses with the disarming phrase, “Now, I’m just an old country lawyer, I don’t have the intelligence to trip up a

highly educated man like you.” We had developed a strong respect for their skills and admiration for their integrity and civility as litigators. Our hunch was that Leonard and Jim knew that reform was desperately needed and was very much in their clients’ best interests, as well as the public interest. In November 2005, and again and again in the days to come as we worked together to bring about profound changes in Unit 32, we felt that Leonard and Jim were working with their clients to make things right.

The proposed settlement incorporated all the relief upheld by the Fifth Circuit in the death row case, and on that foundation added provisions on excessive force, procedural due process, and classification. The provision on classification was only 65 words long. It read, simply,

Defendants will formulate and implement a plan, clearly communicated to prisoners, whereby all prisoners who are assigned to Unit 32 and not sentenced to death may, through good behavior and a step-down system, earn their way to less restrictive housing. The Parties agree to work together to prepare a written plan to effectuate the goals of this paragraph and to present the agreed-upon plan to the Court for approval.

That brief paragraph looked like an awfully fragile little vehicle to carry us to our goal—nothing less than emptying Mississippi’s super-max prison of all but a small fraction of the 1,000 prisoners incarcerated there. But we figured this was likely to be the best shot we would ever have. The guarantee that *all* prisoners in Unit 32 “may, through good behavior, earn their way to less restrictive housing” was the very essence of what the men in Unit 32 wanted.

Getting the defendants’ agreement to the provision in a court-enforceable consent decree was a stroke of amazing good fortune. We all knew that it would have been virtually impossible to win that remedy from the judiciary in the Fifth Circuit. But how in the world could we actually turn that consent decree from a piece of paper to a living reality?

We constantly mulled over that problem during the process of notice to and comments from the class about the proposed settlement, leading up to the Rule 23(e) Fairness Hearing at the end of April 2006. Dozens of class members submitted comments stressing the importance of the classification provision, and questioning whether MDOC could possibly be made to abide by it.

That was the very question we were asking ourselves, and we told class members again and again that we could guarantee only that we would try, and keep trying. Judge Davis approved the consent decree at the end of the fairness hearing, noting that the relief we had obtained for the class probably went well beyond what he could have ordered had we gone to trial and won.

When we stepped out of the courthouse on that gorgeous clear blue April day, we were jubilant. At last, after long years of suffering in the harshest prison in Mississippi, the prisoners in Unit 32 had a bill of rights enforceable in the federal court.

But even that day our emotions were mixed. We couldn’t help thinking about what a monumental job we had ahead of us. Winning this piece of paper was only the first step. Now we had to begin the huge task of monitoring and enforcement to transform those paper rights into a living reality.

At the core of the problem was MDOC’s classification system. Our classification expert, Dr. James Austin, did an analysis of the population in Unit 32 and concluded that about 80 percent of the 1,000 men did not belong in administrative segregation at all and should be released from lockdown into the general prison population.

In December 2006, we met with Commissioner Christopher Epps, Deputy Commissioner of Institutions Emmitt Sparkman, and MDOC’s classification officials. Dr. Austin made a presentation on the results of his analysis and gave

Unit 32 was a tinderbox about to explode.

his view that under widely accepted correctional standards, prisoners should be housed in administrative segregation only when there is evidence of the prisoner’s potential for violence resulting in serious injury to others, based on recent acts of assault while in custody. He proposed collaborating with MDOC to help them reform their system within a 12-month period.

We were elated when Commissioner Epps accepted this proposal. Epps promptly established a “Classification Task Force” under the direction of Deputy Director Sparkman to work closely with Dr. Austin and other key MDOC officials. The classification task force spent the next several months considering options for reform of the system.

But we were having less success negotiating with MDOC on mental health. The mental health issues were too complex and far-reaching for any simple fix. The psychosis-inducing effect of permanent administrative segregation, the culture of excessive force in Unit 32, and the lack of basic mental health treatment made Unit 32 an incubator for serious mental illness and violence. Prisoners with untreated mental illness became more disturbed in isolated confinement; their illness led them to break rules; security staff routinely sprayed them with pepper spray to forcibly subdue them, and then threw them into extraordinarily harsh “special management isolation cells” where their mental health deteriorated to the point of no return.

In April 2007, we had an evidentiary hearing on the mental health issues. The testimony of our mental health expert, Dr. Terry Kupers, provided graphic and compelling examples of the crazy-making conditions in Unit 32. One case he described was that of James C. This prisoner had a long history of bizarre and disruptive behaviors that the MDOC psychiatrist characterized as merely “manipulative,” and which security staff punished with extreme and increasing harshness and brutality. Mr. C’s behavior became more and more desperate, and he repeatedly tried to kill himself. At last, one of Mr. C’s botched suicide attempts, by hanging, left him in a permanent vegetative state. Dr. Kupers testified that the very same conditions that resulted in this tragedy were bound to result in dozens more such cases unless these conditions were changed.

At the end of six hours of such testimony, Judge Davis called the lawyers into chambers. He told the state’s lawyers

that they simply had to remedy this situation. And he told us we should be prepared to start “cutting the baby in half to get an agreement from the state.” We said that we had to get the whole baby on the table, and address the classification and use of force provisions together with the mental health issues, because these problems were so linked that the solutions would have to be linked, too. When we left his courtroom that day, Judge Davis made it very clear to the parties that he feared Unit 32 was a tinderbox about to explode.

And only a few weeks later, Unit 32 did explode. Beginning at the end of May 2007, and continuing throughout June, July, and into August, there was an outburst of gang warfare in which many inmates were stabbed and some died. There was a suicide. A gun was found in one inmate’s cell.

The bloody conflict had a devastating effect on the entire population of Unit 32. The institution was under such stress that for weeks on end during high summer, prisoners weren’t even let out of their cells to shower or for their daily allotted hour of exercise. There was a breakdown in basic services such as sanitation, maintenance of plumbing, and food service. A mood of anxiety and despair prevailed among the prisoners. The legal team was frustrated and essentially helpless. It appeared that the tremendous progress we had been achieving had been not only halted but reversed.

But then there was a really extraordinary development. Commissioner Epps, instead of allowing MDOC to retreat into its old ways in the face of this deep crisis in security, decided to plow forward to implement the recommendations of Dr. Austin and the classification task force. Deputy Commissioner Sparkman left his home in Jackson in order to be at Parchman round the clock. Sparkman essentially lived in the prison for the next several weeks, overseeing the release of several hundred carefully selected men into the general population, walking among them, speaking and interacting with them, getting to know their histories, showing his staff at the prison that these men were not so dangerous that they needed to be in 23-hour-a-day lockdown.

It was a remarkable act of courage—and it worked.

Within a very few months, a striking transformation of Unit 32 had taken place. Nearly 80 percent of Unit 32’s total population had been reclassified from administrative segregation to general population. Construction of program and recreation areas at Unit 32, and the creation of work assignments, was

underway. General population housing areas had been created in housing areas that had always been used to lock down prisoners. The inmates in these housing areas were spending several hours a day out of their cells. The task force was developing a clearly defined incentive program that would allow prisoners to earn their return to the general population as they met behavior-based criteria. Education and general mental health services were being expanded. Plans were in the works to offer remedial classes and even two college courses. There were plans to allow contact visits for the first time. A dining hall was being constructed so that for the first time, prisoners would be able to eat meals together rather than in their cells. Prisoners were being allowed for the first time to play sports and to recreate together.

Most remarkable of all, violence and incidents of use of force had plummeted. Monthly statistics showed a drop of almost 70 percent in incidents of use of force, coinciding with the reforms of the classification system.

When we visited Parchman in October 2007, and entered the courtyard of Unit 32, we came upon an amazing, almost unbelievable, scene: dozens of prisoners laughing and shouting as they played basketball in the sunshine.

In November 2007, we entered into a far-reaching supplemental consent decree with MDOC on classification, mental health, and use of force and took it to Judge Davis in Aberdeen to have him approve the settlement. He greeted us all by saying, “I’ve seen with this Consent Decree, and what y’all have been able to agree to, I’m just floored, candidly. I just think it’s a tremendous step forward in corrections.” He approved the settlement and signed the decree, making it a court-enforceable order, and closed the hearing with these words:

I think that that is a tremendous step that 80 percent of the people basically, what you’re saying, now are able to go back into general population and to have some contact with everybody. That’s wonderful. . . . I—want to commend both sides. Y’all did exactly what I hoped you would do. I had my fingers crossed, and I was holding my breath because I—you did a lot better than I could have done—I have spent an awful lot of my career dealing with prison cases and prison. . . . The State of Mississippi should be real proud of all of y’all, because we’ve made tremendous progress. □

