

## *The Marionization of American Prisons*

**BY RUSS IMMARIGEON**

*In some prisons an unusual degree of good conduct is induced, and the number of punishments kept low, by the personal influence of the officers, and by their care in reasoning with prisoners before resorting to punishment.*

—Inspector of Prisons for Scotland, 1844<sup>1</sup>

*...[I]t is interesting to note that as violence increases in correctional settings, reliance on static security and punitive forms of control commonly increases, whereas more subtle and dynamic forms of control (i.e., direct supervision and interaction with inmates) become less prominent. The very measures that may be most effective are the ones that are less likely to be used.*

—Frank J. Poporino  
Ministry of the Solicitor General  
of Canada, 1986<sup>2</sup>

In the United States, there is an accelerating movement toward housing prisoners officially categorized as violent or disruptive in separate, free-standing facilities where they are locked in their cells approximately 23 hours per day. These prisoners are allowed out of their cells one hour a day only for recreation and other specific purposes such as family visits or medical call, and on these occasions they are heavily shackled and tightly escorted by two or three correctional officers. While in these cells, prisoners are afforded minimal amenities.

Prison officials readily concede that the only purpose of this level of security is to inflict punishment. Other purposes—or the consequences—of this extreme form of incarceration, they say, are secondary and beside the correctional point.

While reliance on solitary and harsh confinement is hardly new in American correctional history—witness Charles Dickens' observations at the Eastern Penitentiary in 1842 or prisoners' lives at Alcatraz before it was closed in 1963—the expansion and widespread acceptance of supermax confinement is nonetheless a bleak, damaging, and potentially dangerous prison practice.

A news reporter once asked Pablo Picasso what he would do if he were locked in solitary confinement in a bare cell (an arrangement not too far removed from prisoners being housed in these new super-maximum security facilities). He said that he would draw on the walls with his feces. Prisoners in this new generation of punitive segregation cells also use their feces, as the brief history of these institutions shows, albeit to throw at passing correctional officers. It is a cruder form of expression. A form of last-ditch desperation. A matter of being pissed off and angry. A continuation of dysfunctional behavior. A sign of deterioration.

In the past year, prisoners have rebelled in at least two of these supermaximum security prisons. In Southport, New York, prisoners held a handful of correctional officers hostage. In Indiana, prisoners went on a hunger strike for several weeks, protesting conditions of their confinement.

Nonetheless, "maxi-maxi" prisons have received scant media attention, and few prison administrators or observers have proposed alternatives to these modern day dungeons.

### **The Trend Toward Control Units**

The Human Rights Watch report on *Prison Conditions in the United States*

Over the last several years we have seen an alarming increase in the number of supermaximum security prisons, sometimes called control units. Prisoners who have been categorized as violent or disruptive are held in almost total isolation. To live in one of these institutions means to relinquish not only physical but psychological control over your life. Indeed, prisoners are often subjected to practices and conditions which would be condemned by international human rights standards and treaties.

Largely hidden from public view, these modern-day dungeons have gone almost unnoticed by the media. We are devoting three articles in this issue of the *NPP JOURNAL* to the subject. Russ Immarigeon gives an overview of the trend toward the supermax and suggests some alternative ways of dealing with the high-level security prisoner. Jan Elvin takes a closer look at Pelican Bay, California's "answer" to the gang problem. Many of us feel that Pelican Bay is the most frightening supermax built to date. Peter McKinlay, former head of the Scottish Prison System, writes about "the Barlinnie experiment," a success by most measures and surely a more constructive and humane supermax than its U.S. counterparts.

—J.E.

## INSIDE ...

High-tech deprivation at  
Pelican Bay.....5

Case Law Report  
TB Damage Award.....6

A Scottish Supermax—  
It's Humane!.....22

**INDEX**  
Eight Years  
of *JOURNAL*  
articles



**Prisoners in supermax facilities generally are allowed just one hour of out-of-cell time a day. They spend the remaining hours in solitary confinement.**

referred to the "Marionization" of American prisons. Heretofore, the U.S. Penitentiary in Marion, Illinois was considered the "toughest prison in America." It was the place where allegedly the country's most violent prisoners were held under the harshest, most control-oriented penal conditions in the nation. The "Marionization" of American prisons, therefore, suggests that prison systems across the country are increasingly relying on penal regimes that emulate or exaggerate conditions and policies found at Marion.

There are unreleased reports citing that at least 33 states have Marion-like facilities. This figure is probably overstated. Many states have punishment cells, solitary confinement units, or disciplinary segregation housing, but so far there is no evidence that they have separate facilities designed to lock up prisoners approximately 23-hours per day.

Still, there is an extremely troubling trend toward increased correctional reliance of such facilities and policies. The Federal Bureau of Prisons, in addition to Marion, built a facility in Lexington, Kentucky for women (now closed and removed to Marianna, Florida) and is now planning construction of a Florence, Colorado facility that will replace Marion.<sup>3</sup>

Supermaximum security facilities can now be found in many states. In Florence, Arizona, a 960-bed Special Management Unit (SMU), which served as a model for high-security prisons in California and

Israel, opened in 1988 with 8-cell pod units, non-contact visits, and a high level of coercive force, which has abated somewhat in recent years. In California, 3,700 redwoods were cleared in the late 1980s to construct the Pelican Bay prison complex that includes an SHU housing more than 1,000 prisoners (each SHU cell cost \$74,000). (See *NPP JOURNAL* story, page 5.) "In this high-tech world of incarceration," the *California Prisoner* reported, "prisoners are watched on screens in a central control room. Their movements are monitored by video cameras. Doors open and close electronically. Prisoners move at verbal commands issued over a loudspeaker. The SHU cells have no windows, and a steel door with rows of 2-inch round holes."<sup>4</sup>

In Southport, New York, the Department of Correctional Services (DOCS) converted a maximum-security prison into a large-scale SHU housing over 600 prisoners. DOCS maintains that this facility is no different than smaller SHUs (generally housing from 30 to 90 inmates) located at other prisons in the state. This facility is being used, according to DOCS officials, to save operational funds and more effectively manage a booming SHU population. Officials in Connecticut have also opted to isolate SHU prisoners at a facility that will open next year. Smaller supermaximum security prisons are operating in Indiana, Maryland, and Missouri.

By and large, reliance and use of these

high-security facilities has expanded without thorough investigation of either what impact these facilities will have on prison operations and the behavior of prisoners housed under these conditions or, especially, what alternatives exist to extreme forms of punitive confinement. Few states have seriously questioned the high-security concept, even when investigated. Instead states, and some local jurisdictions, have expediently opted for these facilities under various guises, including more effective correctional management, cost-savings, and deterrence of violent behavior.

In the case of Pennsylvania, however, one can see how seeds for the "Marion model" were proposed (and in some cases implanted) without adequate research and development.

On October 23, 1989, a riot occurred at SCI Huntingdon, a maximum security facility. Several days later another riot occurred at SCI Camp Hill, a medium security prison.

In its investigation of the causes of these riots, the bi-partisan Senate Judiciary Committee retained the services of Stephen Grzegorek, a private prison management consultant and a retired regional director

**THE NATIONAL PRISON PROJECT**  
**JOURNAL**

**Editor: Jan Elvin**  
**Editorial Asst.: Betsy Bernat**

**Alvin J. Bronstein, Executive Director**  
**The National Prison Project of the**  
**American Civil Liberties Union Foundation**  
**1875 Connecticut Ave., NW, #410**  
**Washington, DC 20009**  
**(202) 234-4830 FAX (202) 234-4890**

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

The reprinting of *JOURNAL* material is encouraged with the stipulation that the National Prison Project *JOURNAL* be credited with the reprint, and that a copy of the reprint be sent to the editor.

The *JOURNAL* is scheduled for publication quarterly by the National Prison Project. Materials and suggestions are welcome.

The *NPP JOURNAL* is available on 16mm microfilm, 35mm microfilm and 105mm microfiche from University Microfilms International, 300 North Zeeb Rd., Ann Arbor, MI 48106-1346.

of the Federal Bureau of Prisons.

The following passage from the Committee's report shows the germination of a federal concept onto state soil:

*"Mr. Grzegorek's testimony was consistent with that of the Department of Corrections personnel, in observing that one of the major causes of the Camp Hill riots was confining maximum-security inmates in a medium-security facility...He also testified that classification of facilities on a broader scale (several levels of classification from minimum-to maximum-security), while not a panacea, would allow removal of the predators, whether they are a small band of terrorists acting in concert or individuals acting singly. These inmates could be housed in a super-maximum security institution such as the Federal facility at Marion, Illinois."*<sup>5</sup>

### Critical Issues in the Use of Super-maximum Security Prisons

The use of supermaximum security confinement raises many important issues:

1. *Definition:* The language of corrections is reliably imprecise or misleading in the case of super-maximum confinement. In the literature, one quickly comes across an array of terms: maxi-maxi prisons, high-security prisons, supermaxes, last resort penitentiaries, control unit prisons, special housing unit prisons, and so on. All of these phrases are used to cover a generally similar territory. This article groups all these measures under the umbrella phrase, supermaximum confinement.

2. *Reliance:* The mere existence of free-standing supermaximum confinement prisons, or Special Housing Units at maximum-security prisons for that matter, may encourage and institutionalize expansion of their use. In part, this argument is an extension of the general prison-building/prison-population dilemma (if you build more prison space, it will soon be filled). With limited supermaximum security space (solitary confinement cells, etc.) prison officials are essentially forced to overlook or downplay certain forms of disruptive or assaultive behavior or to work creatively to address the roots of this behavior. There are limits to this argument, however, particularly within specific correctional systems. At the U.S. Penitentiary at Marion, for instance, the number of prisoners in its Control Unit dropped from 470 in 1989 to approximately 330 two years later, a period in which the federal prison population

was growing dramatically. Still, it is not difficult to find that certain numbers of prisoners sent to these facilities have been overclassified for one reason or another.

3. *Legal or Legislative Review:* In this article, I do not cover court decisions that address the constitutionality of conditions or of procedures that guide the operation of these facilities. However, in 1991 a class action suit (*Madrid, et al. vs. Gomez*, Case

*"Maxi-maxi" prisons have received scant media attention.*

No. C-90-3094, U.S. District Court for Northern California) was filed by Pelican Bay prisoners alleging that the prison does not provide adequate medical services, segregates prisoners without adequate hearings and on the basis of uncorroborated allegations, allows excessive force, denies meaningful access to the courts, and submits prisoners to isolated conditions that are cruel, dehumanizing, and inhumane. Legal suits brought by the Committee to End the Marion Lock-Down have so far failed to result in judicial condemnation of practices at the U.S. Penitentiary in Marion.

In New York, an unprecedented number of groups, organizations, and watchdog functionaries examining the Southport Correctional Facility either approved of the supermaximum security concept or failed to raise concerns requiring deeper investigation. Investigations of the Southport Correctional Facility started after prisoners seized a handful of prison officers as hostages. The Department of Correctional Services (DOCS) limited its review to what occurred at the prison when inmates broke out of confinement. Council 82, the state's correctional officer union, argued that DOCS converted a new maximum-security prison into "maxi-maxi" confinement for the wrong reasons (to save money).

Indeed, a legislative report found that "(a)ny cost savings, that resulted from program reduction, have occurred in the areas of program services, academic education, vocational training, physical education and recreation, music education, and arts and crafts, have been more than offset by cost increases in two vital areas: the supervision of inmates (security) and health services." Nonetheless, the report found that "the Southport SHU is a workable system and that the existence of Southport will improve the disciplinary

system (of all prisons in the state)."<sup>6</sup>

The State Commission of Correction, originally established to serve as an official watchdog agency, weakly concluded that "a central punitive segregation facility is a desirable and feasible concept that can be successfully implemented....depend (ing) on a cooperative and mutually supportive effort by line staff and facility management." Only Prisoners' Legal Services (PLS) of New York challenged the current disciplinary system in New York's prisons. PLS argued that a "reparative justice" approach should be taken. Hearings, PLS recommended, should be held whenever an inmate faces 30 days of confinement; no disposition should be made without regard to a range of reparative factors; no confinement should exceed six months except for murder or attempted murder, and the Alternative to Violence Program (described later in this article) should be used more extensively.<sup>7</sup>

### Gender Issues

With the sole exception of the control unit at Lexington, all the new facilities, as far as I know, house men. No new supermaximum security prison is being built for women prisoners. This does not mean, however, that women are not being held in SHUs at different prisons in the U.S.

In Canada, Jane Miller-Ashton, national coordinator for Correctional Services of Canada's Federally Sentenced Women's Initiative, reports that "Federally sentenced women are not generally a risk to others; however many do present a risk to themselves. Research suggests that a punitive environment exacerbates and may contribute to women's self-directed violence. Individuals in crisis who self-injure require supportive intervention. Punitive responses, such as segregation, are inappropriate."

It is imperative that shifts toward greater equity are directed toward least restrictive alternatives, not augmentation of stricter than necessary policies. It would be tragic if disruptive female prisoners are treated "similarly" to male disruptive inmates without investigating more effective, less intensive and costly approaches.

### Recommendations for Reducing Reliance on Super-maximum Security Prisons:

1. A national survey of disciplinary or punitive segregation, including the use of super-maximum security facilities, should investigate the nature and extent of these practices, the fiscal and behavioral impact of these facilities, and alternatives to such restrictive housing.

The information presented in this article is cursory and incomplete. The article is intended to raise, not settle, issues. There has been, as far as I know, no effort to conduct comprehensive, policy-oriented research on the use of more restrictive forms of penal confinement. Several years ago, PLS of New York conducted a national survey of the comparative amounts of time states allowed prisoners to remain in solitary confinement.<sup>8</sup> Last year, Human Rights Watch's Prison Project released its overview of conditions within local jails, state and federal prisons, and INS facilities, partially focusing on growing use of high-security confinement. These studies provide useful information and raise important questions, but they are neither up-to-date nor comprehensive.

Such a research project should be supported either by the U.S. Department of Justice or a private foundation. Regardless of funding source, the study must include a wide range of persons knowledgeable and sensitive to dynamics central to the causes and prevention of violence within correctional institutions. Such a project should include academic researchers, correctional administrators and practitioners, prisoners who have been housed in conditions under review in this study, and prisoner rights advocates.

2. States using or considering the use of supermaximum security custody facilities should undertake comprehensive study of the impact or potential impact of such facilities.

In particular, states should critically examine the conditions and factors that created the perception that such facilities are needed, as well as examine what alternatives to supermaximum security confinement can be used to address the problems that drive proposals for their use.

3. States should minimize length of stay in such facilities. Currently, no national standard-setting group has produced standards that regulate appropriate or inappropriate lengths of stay under these conditions. As a result, practices vary widely from state to state.

4. States should establish Alternative to Violence Programs (AVPs) to reduce prisoners' use of violence or threatening behavior as a conflict resolution measure. Information about the availability of AVP workshops should be part of intake materials provided to offenders entering prison.

The Alternative to Violence Program (AVP) is designed to help prisoners learn "new skills and attitudes" that will lead to non-violent methods of resolving prison (and eventually non-prison) conflicts.

AVP was established in 1975 by prisoners at the Green Haven Correctional Facility in upstate New York. Inmates at Green Haven working with delinquent and at-risk teenagers felt they were unable to commu-

*"I didn't want to give up the machismo in me."*

nicate the destructive consequences of violence to these youngsters. The prisoners invited local Quakers to help them devise a process to address the problem of using violence to settle disputes.

Basic AVP workshops consist of presentations, discussions, and exercises organized around five themes: self-awareness, affirmation, communication, conflict resolution skills, and community-building. Advanced workshops deal with fear, anger, communication, stereotyping, power and powerlessness, and forgiveness.

A New York prisoner told a reporter that he remembered his first AVP workshop: "I didn't want to give up the machismo in me in a prison atmosphere. But the program has taught me a lot. It's taught me how to think before I react."<sup>9</sup>

5. Correctional officers should receive training in non-violent conflict resolution methods as part of their initial, and subsequent, training.

Programs such as AVP have been used as a training tool with correctional officers. Often, these techniques are inappropriately supplied to officers in the midst of, or fresh from, traditional assault-oriented training. Other forms of correctional management, such as unit management, may also be effective in reducing tensions, conflicts, and fights among or between inmates and prison staff. There is, however, no overview available that examines the feasibility or consequences of such initiatives.

6. States should explore international experiments with hard-core prisoners.

Other nations are also increasing their use of supermaximum security confinement, although the United States relies on it far more extensively. Furthermore, the nature of these regimes outside the U.S. are decidedly different.<sup>10</sup>

In Canada, for instance, the first Special Handling Unit (SHU) was opened in 1977. By 1989, only two prisons contained SHUs. Instead of merely punishing offenders, however, Canadian SHUs are designed to help prisoners change their behavior, reduce their risk to others, and reintegrate successfully into maximum-security cus-

tody as quickly as possible. There are also formal policies to assure these objectives are met, including 90-day assessment periods for inmates under consideration for admission to a SHU; correctional plans that integrate psychiatric, employment, and personal development services; a national review committee to provide objective procedures for deciding who is admitted to SHUs; and an annual review of SHUs that includes recommendations for improvement.<sup>11</sup>

In Scotland, the Barlinnie Special Unit (BSU), established in 1973, is perhaps the world's most famous example of an innovative approach to prison violence. Interestingly, the BSU was first proposed by a Scottish Home and Health Department working party shortly after the death penalty was abolished, and there was a rash of assaults against prison officers. David J. Cooke, a chief evaluator of this regime, recently described aspects of this new regime: "officer-prisoner relationships were modified to resemble nurse-patient relationships; prisoners were given a significant role in decision-making; they were held responsible for their own behavior and that of their peers; and they were taught to verbalize their aggressive feelings."

Assaultive behavior was reduced dramatically. Behavioral changes were observed almost from the point of entry to the unit. Cooke explains: "On entry to the unit, prisoners gain relative autonomy; they become responsible for forming their own daily routine; together with others, they become responsible for the day-to-day running of the community. In such a setting a prisoner is less able to display anti-authority feelings because he can have some influence in decision-making. As control is less overt, it is less likely to stimulate resistance."<sup>12</sup>

#### A Call for Research

Experts such as Hans Toch argue that super-maximum security prisons are used as symbols to assure citizens that prisons are under control and that disruptive prisoners are held in check. Nonetheless, Toch also observes, in an interview with the *NPP JOURNAL*, that "a civilized prison system shouldn't be in the business of expanding this segregation system." But the "Marionization" of American prisons is likely to continue unless research is conducted on the behavioral, fiscal, and psychological consequences of these regimes. At the Southport hearings in New York recently, sociologist David Ward, who is completing the only longitudinal study ever conducted on the men who were imprisoned at Alcatraz, bemoaned the fact that so

few criminologists or other social scientists were examining the effects of long-term confinement, or confinement under harsher than usual conditions.

Opponents of supermaximum security prisons need to focus further attention on innovative yet practical alternatives. If experiences in Canada and Scotland are any guide, this would include, at a minimum, establishing new working relationships between prisoners and their keepers. In the long run, a "reparative approach," starting with PLS' recommendations, deserves more detailed attention. ■

*Russ Immarigeon, a freelance writer living in Hillsdale, New York, is a regular contributor to the NPP JOURNAL.*

<sup>1</sup> Inspector of Prisons for Scotland, *1844 Annual Report*, Her Majesty's Special Office, 1844, p. 5.

<sup>2</sup> Frank J. Poporino, "Managing Violent Individuals in Correctional Settings." *Journal of Interpersonal Violence*, 1(2): 218, June 1986.

<sup>3</sup> For a description of the High Security Unit for

women in Lexington, Ky. see 1) "Report of the High Security Unit for Women, Federal Correctional Institution, Lexington, Kentucky" by the National Prison Project, Aug. 25, 1987, and 2) Richard Korn, "The Effects of Confinement in the High Security Unit at Lexington." *Social Justice*, 15(1):8-19, Spring 1988. Information about the Florence Prison can be regularly found in *Walking Steel: A Newsletter Devoted to the Abolition of Control Unit Prisons*, a publication of the Committee to End the Marion Lockdown (P.O. Box 578172, Chicago, Illinois 60657-8172).

<sup>4</sup> Corey Weinstein, "Supermax Blues at Pelican Bay SHU." *California Prisoner*, August 1990, p. 7.

<sup>5</sup> Senator Stewart J. Greenleaf, Chairman, *After Camp Hill: The Keys to Ending Crisis*. Harrisburg, PA: Senate Judiciary Committee, 1990, pp. 14-15.

<sup>6</sup> Daniel L. Feldman, Chairman, *The Southport Correctional Facility: A Report from the New York State Assembly Committee on Corrections*. Albany, NY: NYS Assembly, December 1991, p. 10.

<sup>7</sup> David C. Leven, "The Southport Correctional Facility Rebellion: Inhumanity Breeds Inhumanity." Testimony Submitted to the New York State Commission of Correction, June 25, 1991 (Revised). New York, NY: Prisoners' Legal Services of New York, Inc., 1991, pp. 8-14.

<sup>8</sup> Prisoners' Legal Services, "A General Description of the Disciplinary and Administrative Segregation

Programs for 40 States, the Federal System, and Canada." New York, NY: Prisoners' Legal Services, 1989. Also see Thadd Johnson, "Nationwide Survey of Restrictive Housing Bedspace in State Prison Systems." Oklahoma City, OK: Oklahoma Department of Corrections, January 15, 1985.

<sup>9</sup> Sue Rochman, "Alternatives to Prison Violence." *Corrections Compendium*, 16(6): June 1991, p. 7.

<sup>10</sup> For a general comparison of international solitary confinement practices, see Penal Reform International, "Facts about Solitary Confinement," *PRI Newsletter*, No. 10, June 1992, pp. 2-3. Penal Reform International is an international group dedicated to the use of human rights standards for penal confinement, the elimination of discrimination in penal measures, abolition of the death penalty, reducing the use of incarceration worldwide, and use of constructive, non-custodial sanctions that encourage social reintegration and victim-sensitivity. For further information about the organization and its membership, contact: Ms. Vivien Stern, Secretary General, PRI, 169 Clapham Road, London SW9 0PU, UK.

<sup>11</sup> Rosemary L. O'Brien, "Special Handling Units." *Forum on Corrections Research*, 4(3): September 1992, pp. 11-13.

<sup>12</sup> David J. Cooke, "Containing Violent Prisoners: An Analysis of the Barlinnie Special Unit." *British Journal of Criminology*, 29(2): 140, Spring 1989.

## Isolation, Excessive Force Under Attack at California's Supermax

BY JAN ELVIN

Out of a remote corner of Northern California where redwoods once thrived rises the Pelican Bay State Prison, described by some as a "neo-Orwellian hell." Pelican Bay was designed to weed out the prisoners officials term the "worst troublemakers" from the California prison system and house them in one intensely regimented and secure institution.

It appears to have succeeded in that purpose, at least from the officials' point of view, but the human cost of that success may be far greater than the gain.

Pictured from the air, the four-year-old prison grounds resemble a photo of an airplane crash in the wilderness—all trees and greenery are shaved off the earth. Concrete, asphalt and gravel have replaced the redwoods. There is not a living thing within reach of the 1,056 prisoners housed in the Security Housing Unit



**Prisoners at Pelican Bay never leave their cells without being handcuffed and put in chains. Here a prisoner is handcuffed through his food slot by an officer.**

(SHU), the most restrictive housing. Even sunlight has been removed.

"Pelican Bay officials have deliberately designed a correctional facility which subjects its inmates to isolation, violence and terror," alleges a lawsuit filed on behalf of Pelican Bay inmates in the fall of 1991 by attorneys from the San Francisco firm of Wilson, Sonsini, Goodrich & Rosati.

"State-of-the-art," said former Governor George Deukmejian when he dedicated the \$218 million facility in 1989. "It will serve as a model for the rest of the nation."

While these two opposing views continue to polarize, the high-tech supermax has come under scrutiny from a federal court. Since it opened, prisoners have flooded the courts with complaints, the most serious of which came from the SHU, where prisoners are locked up 22-1/2 hours a day in a heavily monitored and highly restricted environment.

Referring to the number of petitions, Chief U.S. District Judge Thelton Henderson told a California newspaper, "It was just very dramatic. There was a sense

(cont'd on page 21)

BY JOHN BOSTON

## Highlights of Most Important Cases

### TUBERCULOSIS CASE A WAKE-UP CALL

#### Medical Care/Damages

A recent federal court decision from Ohio provides a foretaste of some of the potential consequences for prison officials of the developing prison tuberculosis epidemic. In *Hill v. Marshall*, 962 F.2d 1209 (6th Cir. 1992), the appeals court upheld a damage award against a prison official of \$95,000 in compensatory damages plus an as-yet-unspecified amount in punitive damages to a prisoner who did not receive prescribed preventive treatment for tuberculosis.

The plaintiff, while incarcerated in a county jail in Cincinnati, had had a positive skin test for TB exposure and had been prescribed a year's course of Isoniazid ("INH") and Vitamin B-6. After a month he was transferred to a state prison, where his medication was continued. Two months later, he was transferred to another state prison, the Southern Ohio Correctional Facility, where he was issued a new prescription. However, he alleged, he never received the medication, despite appearing day after day at the "pill line" and making repeated written complaints to the infirmary administrator and the deputy superintendent of treatment.

Prison officials contested the plaintiff's allegations, but a jury found them convincing and awarded him \$95,000 in compensatory damages and \$900,000 in punitive damages against the deputy superintendent for treatment. (The punitive damage award was set aside entirely by the trial judge, but the appellate court has directed that an appropriate punitive award be made on remand.)

On appeal, the verdict was upheld. As to liability, the court was unswayed by the defendant's argument that "the mere failure to act, even in the face of a statistical pattern of misconduct, is an insufficient basis for holding a supervisor liable for the constitutional viola-

tions of her employee." It emphasized that the plaintiff had alleged the defendant had personally ignored his complaints, an allegation supported by the defendant's admission that he referred inmate complaints concerning medication to a head nurse "whom he knew to be wrongly altering and destroying some of the inmates' prescriptions." (This nurse's misconduct with regard to inmates' medication is reflected in at least one other published opinion. *Wolfel v. Ferguson*, 689 F.Supp. 756, 759 [S.D. Ohio 1987].) This evidence met the §1983 "personal involvement" requirement, a conclusion the court states in admirably concrete terms: "Hill does not seek to hold Morris vicariously liable for the head nurse's misconduct. Rather, Morris *personally* had a job to do, and he did not do it." 962 F.2d at 1213 (emphasis in original).

The jury's finding of deliberate indifference was supported by the plaintiff's "strong proof"—based upon a report commissioned by the state legislature—of a "pervasive pattern of indifference to the inmates' medical needs generally" in the prison. In that factual context, the defendant's "failure to do his job—to review and respond to inmates' medical needs—was so likely to result in the violation of the inmates' constitutional rights that we find that he was deliberately indifferent to their serious medical needs." 962 F.2d at 1214. In other words, the fact that a medical care system is generally disorganized or nonfunctional serves to heighten the responsibility of supervisory officials to attend personally to individuals' complaints of egregious medical deprivations.

Practitioners should note this last point well, since it supports the relevance of broad-ranging discovery and evidentiary presentations even in individual damage cases arising from deficiencies in prison medical care. Indeed, the appeals court had earlier reversed a defendant's verdict in this case reached during a trial in which the above-mentioned legislative report was excluded from evidence. On retrial, with that report before it, the jury returned the present plaintiff's verdict.

#### Where's the Damage?

The events at issue in *Hill v. Marshall* took place in 1981, but the case is of particular interest because of the more recent resurgence of tuberculosis in prisons and jails. In addition, the decision addresses what is sure to be a much-litigated issue with respect to damages, and resolves it in a way that raises the stakes for prison officials in maintaining a reliable system of follow-up care and medication delivery.

Despite the size of the damage award, Mr. Hill did not develop active tuberculosis in the nine years that passed before the 1990 trial. Defendants therefore alleged that he had suffered no compensable loss. But the court held:

*Hill has suffered an actual injury, in that he was prevented, by Morris's indifference to his medical needs, from reducing his risk of developing tuberculosis by approximately ninety percent through INH. Because he received INH for part, but not all, of the prescribed year, Hill may be in an even worse position than if he had not received INH at all, because the tuberculosis bacteria that are in his system may have become resistant to the drug. Hill testified that he suffered a great deal of mental anguish on this account....*

962 F.2d 1209. With respect to his increased risk of developing the disease, the court held that he "did not have to show a more than 50% risk of developing active tuberculosis, only that his risk had increased due to the deprivation." *Id.* at 1214. *Accord*, *Clark v. Taylor*, 710 F.2d 4, 14 (1st Cir. 1983) (permitting §1983 award based on 10% likelihood of developing bladder cancer).

Under this ruling, then, *any* prisoner whose tuberculosis medication program is substantially interrupted by a malfunctioning prison medication delivery system may be entitled to a substantial award of damages, even if there have been no measurable medical consequences by the time of trial. If the prospect of civil damage awards has any deterrent effect on official behavior, *Hill v. Marshall* ought to be a loud wake-up call.

Hill's view of damages will probably not go uncontested in future cases. In fact, there is already a difference among jurisdictions as to part of it. In *Sypert v. United States*, 559 F.Supp. 546 (D.D.C. 1983), the federal court, applying Virginia law under the Federal Tort Claims Act, held that exposure to tuberculosis without development of the active disease did not constitute the "physical injury" that is required before a plaintiff may recover tort damages for mental anguish. By contrast, in *Plummer v. United States*, 580 F.2d 72 (3rd Cir. 1978), another Federal Tort Claims Act case, the court observed that under Pennsylvania law, such damages may be awarded on a showing of a "physical impact, however slight"—a requirement easily met by the "impact" of the tubercle bacillus. In addition, Pennsylvania has adopted the "zone of danger" rule, which permits damages to be awarded to persons placed in physical danger, without regard to actual "impact." 580 F.2d at 76. (Neither *Sypert* nor *Plummer* addressed the future risk of developing the disease, since the plaintiffs in those cases had received appropriate treatment and any risk of activation of the disease was held to be balanced by their increased immunity to outside infection.)

The Supreme Court has been supremely unhelpful in spelling out a clear method for deriving damage rules for civil rights cases. See *Smith v. Wade*, 461 U.S. 30, 34 (1983) ("In the absence of more specific guidance, we looked first to the common law of torts [both modern and as of 1871], with such modification or adaptation as might be necessary to carry out the purpose and policy of the statute."); cf. *id.* at 93 (O'Connor, J., dissenting) ("The battle of the string citations can have no winner.") However, the federal courts have generally avoided tort law technicalities in determining the basic measure of damages, and have taken a broadly inclusive approach reflecting all elements of damages that are supported by the record and proximately related to the defendant's misconduct. See, e.g., *Wright v. Sheppard*, 919 F.2d 665, 669-70 (11th Cir. 1990) (trial court directed to consider evidence of plaintiff's pain, humiliation, emotional distress, mental anguish, physical injuries and resulting limitation of ability to work, nightmares, and loss of his house, his job, and his wife).

Prisoners and their counsel should therefore be optimistic that the approach of *Hill v. Marshall* will prevail in §1983 litigation and that substantial damage awards are likely in TB-risk cases where they can prove deliberate indifference. If only negligence can be proven, the damage rules of the forum state will be determinative.

### TB's Back? It Never Left

*Hill v. Marshall* is far from the first prison tuberculosis case. Prisoners' complaints about official neglect of TB surfaced in court long before the modern era of prison litigation, and were dealt with in the fashion of the times. See, e.g., *State ex rel. Baldwin v. Superintendent*, 63 A.2d 323 (Md.App. 1949) (prisoner's complaint that he had been denied proper treatment for TB in the prison hospital and that the superintendent had ignored his complaints did not afford a basis for *habeas corpus* relief and "should be addressed to the Board of Correction which is responsible for proper prison management"); *Bush v. Babb*, 23 Ill.App.2d 285, 162 N.E.2d 594 (Ill.App. 1959) (failure of Cook County Jail authorities to provide adequate TB care was not actionable because decisions concerning jail medical care are "quasi-judicial" and protected by immunity).

After the demise of the "hands-off" doctrine, courts recognized exposure to or failure to treat tuberculosis as actionable on the same basis as other claims of deliberate indifference to serious medical needs. See, e.g., *Freeman v. Lockhart*, 503 F.2d 1016 (8th Cir. 1974); *Waltenberg v. New York City Department of Correction*, 376 F.Supp. 41 (S.D.N.Y. 1974); see also *Woolsey v. Beto*, 450 F.2d 321 (5th Cir. 1971) (allegation that plaintiff's TB was activated by inappropriate work assignments and segregation stated a claim). Failure to isolate or treat for TB periodically surfaced in conditions-of-confinement litigation of the 1970s and 1980s, especially in Southern prisons and jails. See, e.g., *Grubbs v. Bradley*, 552 F.Supp. 1052, 1069, 1129 (M.D.Tenn. 1982) (citing failures to comply with internal procedures and state law for TB monitoring, reporting and screening; relief limited to upgrading medical staff); *Nicholson v. Choctaw County, Ala.*, 498 F.Supp. 295, 299-300, 309 (S.D.Ala. 1980) (citing failure to respond to tuberculosis among jail population); *Feliciano v. Barcelo*, 497 F.Supp. 14, 28, 38 (D.P.R. 1979) (noting the occurrence of TB epidemics and requiring medical screening for TB and other diseases); *Holt v. Hutto*, 363 F.Supp. 194, 200 (E.D.Ark. 1973) (it "goes without saying" that tubercular inmates must be segregated; the court notes that prison officials' problem is complicated by the closing of the state tuberculosis sanatorium).

The most thorough judicial examination of prison tuberculosis issues appears in a case arising from a tuberculosis epidemic at the Minnesota Correctional Facility that began after the prolonged neglect of an inmate admitted with active TB in early 1982 and that ultimately resulted in the infection of several hundred inmates and the development of active TB in at

least eight. *DeGidio v. Pung*, 704 F.Supp. 922, 933 (D.Minn. 1989).

In a lengthy opinion, the federal district court found that the response by prison officials and the state Department of Health amounted to deliberate indifference. It cited the failure to diagnose promptly and treat the initial cases, the failure to advise inmates of their exposure, the failure to test all inmates even after all staff had been tested, the failure to develop a policy and protocol, and leaving patient education to an unqualified laboratory technician. *Id.* at 937-59.

More generally, the court cited a "failure of coordination" in which "[n]o one claims ultimate responsibility for the many supervisory functions within the health services unit." It described a "passing of blame and responsibility between the Department of Health, the administrative director of health services, and the staff physicians" in which "[e]ach person describes his or her role narrowly, and disclaims ultimate responsibility for directing the effort at controlling tuberculosis." *Id.* at 957.

The defendants argued that viewed individually, the specific claims of inadequate or improper medical care did not violate the Constitution, but the district court rejected their approach: "When all of defendants' omissions and instances of negligence are viewed in the whole...the breaches of established norms are more than trivial." *Id.* at 956.

Despite these findings, the district court denied injunctive relief on the ground that after 1986 defendants had made "great progress" and that the constitutional violation was not likely to recur as of the time of trial. *Id.* at 959-60; see also *DeGidio v. Pung*, 125 F.R.D. 503 (D.Minn. 1989) (denying the parties' post-trial motions). (Damages were not at issue; the plaintiffs' damage claims were pursued separately in state court.)

This judgment was not directly appealed, but the district court's conclusions came under appellate review in the unusual context of an attorneys' fees application. The district court found that the plaintiffs were "prevailing parties" entitled to attorneys' fees because the suit was a "catalyst" that in large part prompted the defendants' reform efforts. *DeGidio v. Pung*, 723 F.Supp. 135, 138 (D.Minn. 1989). On appeal, the Eighth Circuit had to determine whether these reform efforts were "required by law," and therefore had to review the district court's findings that the Eighth Amendment had been violated. It affirmed the district court's conclusion that "a consistent pattern of reckless or negligent conduct is sufficient to establish deliberate indifference" and that the record showed such a pattern on the defendants'

part. *Id.* at 533. In particular, it cited with approval the district court's findings concerning the lack of adequate organization, control and overall supervision in the health services program *Id.* at 531.

### Better Get Organized

*DeGidio* is only the latest and clearest judicial authority for what ought to be a self-evident proposition: that delivering medical care to hundreds or thousands of people, especially those confined in a coercive institution that limits their ability to seek medical care freely and directly, is a systems problem requiring systemic solutions. See, e.g., *Newman v. Alabama*, 503 F.2d 1320, 1331 (5th Cir. 1974) ("disorganized lines of therapeutic responsibility" contributed to an Eighth Amendment violation); *Tillery v. Owens*, 719 F.Supp. 1256, 1305-06 (W.D.Pa. 1989) (lack of proper administration of medical services and "general disorganization" of nursing services contributed to an Eighth Amendment violation), *aff'd*, 907 F.2d 418 (3rd Cir. 1990); *Lightfoot v. Walker*, 486 F.Supp. 504, 522-24 (S.D.Ill. 1980) (organization and administration of health care generally found inadequate).

Contagious diseases present the clearest need for systemic approaches to prison health care, including supervision and follow-up to ensure that both overall policies and individual treatment decisions that are adequate on paper are actually carried out in the institutional setting. The need is particularly great in connection with tuberculosis, for two reasons. First, in many people it has a long and asymptomatic incubation period, presenting a risk of widespread undetected transmission in an institution that lacks proper detection and control procedures or that fails to carry them out consistently and vigilantly. This is exactly what happened in *DeGidio*. Second, TB requires long-term follow-up treatment to ensure that the disease is eradicated and that it does not develop into a drug-resistant, possibly intractable strain as a result of truncated or interrupted courses of medication. These concerns are heightened by the prevalence of HIV infection in prison populations, since HIV-infected persons are particularly susceptible to the disease and since their depressed immune systems render the usual diagnostic methods ineffective in many cases.

Ultimately, both *DeGidio* and *Hill v. Marshall* are about the same thing: the necessity of coordination, follow-up and supervision in prison medical care systems. As the quality and quantity of prison medical care personnel have improved over the past two decades, these issues of organization and administration have emerged as the most significant set of problems in prison health care.

With the spread of HIV infection among the poor populations who are concentrated in prison and with the development of drug-resistant strains of the disease, the importance of solving them, for prison administrators and for the public health generally, can only become greater.

## Other Cases Worth Noting

### U.S. COURT OF APPEALS

#### Sanitation/Heat and Ventilation/Negligence, Deliberate Indifference and Intent

*Jackson v. Duckworth*, 955 F.2d 21 (7th Cir. 1992). The plaintiff alleged that he was forced to live with "filth, leaking and inadequate plumbing, roaches, rodents, the constant smell of human waste, poor lighting, inadequate heating, unfit water to drink, dirty and unclean bedding, without toilet paper, rusted out toilets, broken windows, [and]...drinking water contain[ing] small black worms which would eventually turn into small black flies." (22) These allegations met the "objective" component of the Eighth Amendment. A subjective component is also required: "actual knowledge of impending harm easily preventable." (Citation omitted, emphasis added by court.) At 22: "A failure of prison officials to act in such circumstances suggests that the officials actually want the prisoner to suffer the harm. If the harm is remote rather than immediate, or the officials don't know about it or can't do anything about it, the subjective component is not established and the suit fails."

#### Use of Force/Damages—Assault and Injury

*Flowers v. Phelps*, 956 F.2d 488 (5th Cir., vacated in part on other grounds, 964 F.2d 400 (5th Cir. 1992)). The plaintiff was beaten while in restraints with no provocation in the same prison that gave the world *Hudson v. McMillian*. (This time, a supervisor notified of the incident told the officers that "when they pulled off something like that to be sure no one sees it.") The district court awarded \$3,000 in actual damages, \$25,000 in punitive damages, and \$1,406.25 in attorneys' fees.

The district court's finding of a deliberate use of totally unnecessary force was sufficient to establish liability even without any "objectively significant injury." (The injuries included moderate swelling and probable sprain of the plaintiff's ankle, a small abrasion, and limited range of motion because of pain.)

#### Protection from Inmate Assault/Damages—Assault and Injury

*Doe v. Sullivan County, Tenn.*, 956 F.2d 545 (6th Cir. 1992). The 19-year-old, slight and mentally deficient plaintiff was sexually assaulted with a toothbrush in his anus when he and other inmates were "slammed" together while officers were removing another inmate from the multiple-inmate cell. The jury awarded \$100,000 in compensatory damages against the county, the sheriff and the chief jailer, and the court awarded \$40,000 on state-law claims against the county.

Evidence that the rate of violence reached about four incidents per month per 100 inmates, plus a jailer's testimony that inmates stated every day that they were in danger and wanted to be moved, supported an Eighth Amendment claim.

Eighth Amendment instructions holding that there must be a "pervasive risk of harm," and not "pervasive risk of homosexual attack," were proper. The jury could properly consider the inmate's appearance and intelligence level in determining the likelihood he would be attacked. The instructions are quoted at length. They define deliberate indifference as requiring that a defendant "was aware that a particular act or inaction was certain or substantially...certain to deprive the plaintiff of his constitutional rights and that the defendant decided to act or not to act in spite of that knowledge." (555)

#### Pleading/Confiscation and Destruction of Legal Materials/Protection from Inmate Assault/Law Libraries and Law Books

*Brownlee v. Conine*, 957 F.2d 353 (7th Cir. 1992). A complaint may not be dismissed because it is "conclusory." At 354: "All the complaint need do to withstand a motion to dismiss for failure to state a claim is 'outline or adumbrate' a violation of the statute or constitutional provision upon which the plaintiff relies,...and connect the violation to the named defendants...."

An allegation that documents the plaintiff needed for a lawsuit were confiscated and that defendants refused to return them, resulting in dismissal of the plaintiff's suit, was not frivolous under *Bounds*.

An allegation that a defendant "deliberately loosed mentally ill inmates on the plaintiff so that they would assault him" was not frivolous under the *Wolfish* "punishment" standard.

An allegation that a defendant refused to allow the plaintiff to see a dentist though he was in severe pain was not frivolous under the *Wolfish* "punishment" standard.

At 355: "Most prisoner civil rights cases



are frivolous, but district judges, busy as they are, must not assume that all are and dismiss them by rote. They may not throw out the haystack, needle and all."

### Religion—Practices

*Richards v. White*, 957 F.2d 471 (7th Cir. 1992). The plaintiff alleged that his "Thelemic" religion required him to meditate for half an hour in privacy each day, requiring either that he be placed in a single cell or be provided with a private place in the institution. Denial of this request was reasonable under *Turner/O'Lone* because either alternative would have been substantially burdensome to the prison administration.

The Thelemic faith is allegedly "a private religion where each disciple or aspirant follows his own path without need to congregate or receive any instruction other than that included in books," with no prescribed religious practices. Defendants conceded it is a bona fide religion, and the plaintiff apparently established that it is tax exempt. The court chides prison officials for their cavalier treatment of it even though they did not act illegally.

### Use of Force—Beating/Damages—Assault and Injury

*Bogan v. Stroud*, 958 F.2d 180 (7th Cir. 1992). The plaintiff, who admittedly stabbed an officer with a homemade knife and pled guilty to attempted murder for it, complained that the officer stabbed him back and that other officers physically abused him after he had been subdued. A jury awarded him no compensatory damages and \$5,000, \$1,000 and \$1,000 respectively in punitive damages against the three officers.

The district court ruled that the defendant's guilty plea established that he had stabbed the officer without legal justification but did not preclude him from alleging excessive force before and after that stabbing. That ruling is not at issue on appeal.

Defendants waived their argument that an award of zero compensatory damages barred an award of punitive damages by failing to object to the relevant instruction at trial. The failure to award compensatory damages does not require a remittitur of the punitive award, and the award is reasonable in amount.

The finding of liability is upheld. At 185: "Repeatedly stabbing, beating and kicking a prisoner who has been disarmed and knocked to the ground does qualify as a use of force 'for the very purpose of inflicting or causing harm...rather than...a good faith effort to maintain security or discipline.'"

### Location

*Bannum, Inc. v. City of Louisville, Ky.*, 958 F.2d 1354 (6th Cir. 1992). A zoning

ordinance requiring a special permit for "community treatment centers" for prisoners but not other kinds of group homes denied equal protection under the holding of *City of Cleburne v. Cleburne Living Center*.

### Prison Records/Federal Officials and Prisons

*Sellers v. Bureau of Prisons*, 959 F.2d 307 (D.C.Cir. 1992), *superseding* 952 F.2d 1423 (D.C.Cir. 1992). The plaintiff complained that the Bureau of Prisons and the Parole Commission maintained incorrect information about him. His claim was not mooted by the Parole Commission's subsequent decision that they would not have granted him parole anyway since he also made claims about the use of the misinformation by the Bureau of Prisons and about other uses of it by the Parole Commission.

The agencies did not satisfy the mandates of the Privacy Act merely by noting that the plaintiff disputed the information in the records. At 312:

*Appellees contend that they cannot be expected to verify conclusively the accuracy of their inmate files, especially files used as evidence in a parole decision, anytime an inmate challenges the information contained in those files. We disagree. As long as the information contained in an agency's files is capable of being verified, then, under [the Privacy] Act, the agency must take reasonable steps to maintain the accuracy of the information to assure fairness to the individual. If the agency wilfully or intentionally fails to maintain its records in that way and, as a result, it makes a determination adverse to an individual, then it will be liable to that person for money damages.*

### Hazardous Conditions and Substances

*McKinney v. Anderson*, 959 F.2d 853 (9th Cir. 1992). The plaintiff complained of exposure to environmental tobacco smoke. The appeals court held that he had stated a claim for injunctive relief and the Supreme Court vacated and remanded after *Wilson v. Seiter*. At 854:

*The Court's establishment in Seiter of a subjective component for an Eighth Amendment claim does not vitiate our determination of what satisfies the objective component. Our holding that it is cruel and unusual punishment to house a prisoner in an environment that exposes him to levels of ETS that*

*pose an unreasonable risk of harming his health constitutes the objective component of McKinney's Eighth Amendment claim. Seiter simply adds another element to an Eighth Amendment claim that McKinney must prove.*

The Supreme Court has granted *certiorari* in this case. *Helling v. McKinney*, #91-1958 (6/29/92).

### Protection from Inmate Assault/Hygiene/Negligence, Deliberate Indifference, and Intent/AIDS

*Young v. Guinlan*, 960 F.2d 351 (3rd Cir. 1992). The plaintiff, who described himself as "small, young, white and effeminate," alleged that he was raped and threatened with rape and assault by a series of cellmates at Lewisburg. His repeated requests for protective custody and to be moved away from his cellmates were ignored, and he flooded his cell. He was then put into a "dry cell" with no toilet, toilet paper or running water for four days, and was not let out to use a toilet or to empty the plastic urinal he was given. After his release, he was again repeatedly denied protective custody.

At n.20: "In Young's case, we find that the totality of the conditions of his imprisonment, namely the protection and sanitation afforded to him, are sufficiently serious to satisfy the objective component of the *Wilson* Eighth Amendment analysis."

At 360-61:

*...[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate. We stress, however, that in constitutional context "should have known"...is a phrase of art with a meaning distinct from its usual meaning in the context of the law of torts...*

*It connotes something more than a negligent failure to appreciate the risk..., though something less than subjective appreciation of that risk. The "strong likelihood" of [harm] must be "so obvious that a lay person would easily recognize the necessity for" protective action,...; the risk of... injury must be not only great, but also sufficiently apparent that a lay custodian's failure to appreciate it evidences an absence of any concern for the welfare of his or her charges.*

[Emphasis in original, citations omitted.]

The plaintiff's evidence that he was subjected to "pervasive harm" and that he repeatedly notified, but failed to get action from, prison officials, precluded summary judgment for defendants under the deliberate indifference

standard. The court notes that Lewisburg, with 2.8% of the federal prison population, had 10% of inmate assaults and 50% of inmate homicides, suggesting that prison authorities "could not have lightly dismissed Young's allegations as improbable."

At 23: "Prison officials...are not required to provide protective custody to every inmate who asserts he was assaulted or threatened. Nonetheless, prison officials should, at a minimum, investigate each allegation of violence or threat of violence."

The plaintiff's allegations of placement in a "dry cell" state an Eighth Amendment claim given his reason for flooding his cell, as did the denial of access to toilet facilities, toilet paper, drinking water, the opportunity to empty his plastic urinal and to wash his hands, and the officers' threats to chain him to a steel slab if he complained. (In fact, these allegations would be an "abomination" if proved.) The court notes that the plaintiff's conditions are all the more revolting because he is HIV positive and therefore more susceptible to infection and disease.

### **Procedural Due Process— Disciplinary Proceedings/Grievances and Complaints about Prison**

*Nicholson v. Moran*, 961 F.2d 996 (1st Cir. 1992). The plaintiff complained to various law enforcement agencies that he had been beaten by officers; the Department of Justice concluded there was no "prosecutable violation"; the plaintiff was then disciplined for "providing false or fabricated information."

The plaintiff, by way of the "Morris Rules," has a state-created liberty interest in staying in general population. His allegation that he was found guilty without "substantial evidence" (required by the Morris Rules) stated a claim. The district court's dismissal is reversed and the court is directed to consider the plaintiff's First Amendment claim as well.

### **DISTRICT COURTS**

#### **Mental Health Care/Medical Care— Access to Outside Care**

*Cameron v. Tomes*, 783 F.Supp. 1511 (D.Mass. 1992). The plaintiff was adjudged a "sexually dangerous person" based on two previous sexual assault convictions and involuntarily committed to a "Treatment Center for the Sexually Dangerous." His claim concerning his treatment is adjudicated under the *Youngberg* standard, as well as the deliberate indifference standard, since he was committed for "treatment—not punishment." (1515) Deliberate indifference *a fortiori* violated the *Youngberg* standard.

The denial by security personnel of plaintiff's request for medical treatment outside the prison, contrary to the unanimous recommendations of the mental health professionals, violated the *Youngberg* standard.

Transportation of the plaintiff, who has only one leg, to outside appointments under armed guard and in shackles, violated the *Youngberg* standard in the absence of any evidence of its necessity.

Leaving the plaintiff in the hospital unit, where he could not receive mental health care that he required, because he refused to sign a consent form for double-bunking and because they refused to consider modifying a room to accommodate his wheelchair, violated the *Youngberg* standard and constituted deliberate indifference.

Subjecting the plaintiff to a forcible strip search without consultation with a mental health professional violated the *Youngberg* standard. The court reaches the same conclusion with respect to oral cavity searches after the plaintiff takes his medication.

The application of standard disciplinary procedures to the plaintiff, which sometimes amounted to punishing him for manifestations of his psychological problems, violated the *Youngberg* standard when done without consultation with mental health clinicians.

#### **Law Libraries and Law Books**

*Story v. Morgan*, 786 F.Supp. 523 (W.D.Pa. 1992). The plaintiff, a Pennsylvania prisoner, was transferred to a federal prison in Indiana. The plaintiff's allegations that he lacked the ability to pursue his Pennsylvania court case because of the lack of Pennsylvania legal materials stated a claim for denial of access to courts. At n.3: prior cases "make it quite clear that when a state prisoner is transferred out of state to a federal prison, the transferring state, and not the federal government, bears the responsibility for safeguarding the prisoner's right of access to the courts."

#### **Crowding/Modification of Judgments**

*Baker v. Holden*, 787 F.Supp. 1008 (D.Utah 1992). Defendants moved to vacate preliminary injunctions imposed in 1986 and 1988 barring double-celling in certain cell areas. The court treats the question presented as the merits of the constitutional claim rather than the modification of a judgment, presumably because there was no final judgment.

Adequacy of shelter is a basic human need. In determining whether double-celling denies it, the court considers (at 1017):

- (1) cell size;
- (2) length of required time within the cell;
- (3) adequacy of ventilation;
- (4) availability of adjacent common space and other gener-

al common space during hours outside the cell; (5) adequacy of showers; (6) personal safety from violence within the cell; and (7) opportunities for participation in educational or employment programs.

At 1018:

*Deliberate indifference...appears to require the showing of knowledge of a need and an unwillingness to act on the part of the prison officials...*

\* \* \*

*This court finds that the subjective state of mind of "deliberate indifference" has existed and presently exists as to areas where double celling objectively would render the conditions of confinement unconstitutional [and defendants persist in their intention to double cell].*

The court dissolves the injunction as to some cell areas, citing improvements in fire safety and other renovations, limited lock-in times, etc. The court continues the injunction as to areas with small cells with no windows, no adjacent common area, and inadequate fire escape and cell-opening mechanisms, and as to areas that have not yet been renovated.

#### **Suicide Prevention**

*Bragado v. City of Zion/Police Dept.*, 788 F.Supp. 366 (N.D.Ill. 1992). The plaintiff's decedent hanged herself in jail after her sisters notified the police of her suicidal condition; the police were also aware of a note she had written stating that her "life is over now," and she threatened to kill herself while in her cell. The defendants also violated several aspects of the Illinois Municipal Jails and Lockup Standards, which violations "arguably show 'deliberate indifference' or recklessness amounting to such indifference." (372)

It was clearly established in 1988 that "the 'deliberate indifference' standard applied to the handling of suicidal pretrial detainees, and that failure to take special precautions toward such detainees could violate that standard." (372)

Defendants were not entitled to summary judgment on state law claims based on a state statute that immunizes them unless their conduct is "willful and wanton." The definition of that phrase is essentially the same as deliberate indifference.

#### **Procedural Due Process—Visiting**

*Gavin v. McGinnis*, 788 F.Supp. 1012 (N.D.Ill. 1992). An allegation that prison officials denied the plaintiff visits with his family for six months stated a claim, but the court declines to determine at this stage whether

regulations providing that prisons "shall permit every committed person to receive visitors" create a liberty interest.

## FEDERAL RULES

### Discovery/In Forma Pauperis

*Badman v. Stark*, 139 F.R.D. 601 (M.D.Pa. 1991). The court declines to issue a document subpoena against non-party witnesses because the plaintiff did not tender witness fees and the *in forma pauperis* statute does not excuse litigants from paying witness fees. The defendants cannot be required to pay the expenses of depositions or other discovery either. However, they must provide the plaintiff with a copy of the deposition they took of him.

### Appointment of Counsel

*Rose v. Racine Correctional Institution*, 141 F.R.D. 105 (E.D.Wis. 1992). The plaintiff claimed that he has a learning disability and is unfamiliar with the law and sought the appointment of counsel.

The Seventh Circuit has held that such requests should be denied outright unless the plaintiff has made reasonable efforts to retain

counsel. The court expresses "great concern with the reasoning of the circuit court as it applies to indigent prisoners" and expresses this concern eloquently and in great and intelligent detail.

The court denies the motion for appointment of counsel subject to renewal upon a showing that he tried to retain counsel or was effectively precluded from doing so.

### Discovery/Use of Force

*Miller v. Pancucci*, 141 F.R.D. 292 (C.D.Cal. 1992). The plaintiff in a police brutality case is entitled to discovery of complaints, tort claims, and investigative files against the individual defendants alleging brutality, excessive or unreasonable use of force, or various forms of dishonesty, but not those alleging types of conduct not pled in the complaint, such as racism, prejudice, or misuse of firearms or equipment. The court can discern "few more relevant documents" than these defendants' training and psychiatric-psychological records. (296)

Defendants' privilege claims are governed by federal law; the court rejects the view that state law should be applied because it is

inconsistent with federal law and policy. Claims of "official information" privilege are governed by a balancing test that is "moderately pre-weighted in favor of disclosure." (300)

Procedurally, the official information privilege must be invoked by name with respect to each question or request and must sufficiently identify the documents so as to afford the requesting party an opportunity to challenge the assertion of privilege. The party must submit *with its response* a declaration or affidavit from the head of the department which has control over the matter. At that point, the requesting party must make a good faith determination of whether to proceed and attempt to work the matter out with opposing counsel; the court endorses the use of protective orders. If the threshold requirements for invoking the privilege do not appear in the papers, the privilege assertion will be overruled in its entirety without *in camera* inspection. ■

*John Boston is the director of the Prisoners' Rights Project, Legal Aid Society of New York. He regularly contributes this column to the NPP JOURNAL.*

# Index to Articles

## KEY

The *NPP JOURNAL* is published quarterly, each Winter, Spring, Summer and Fall. The following key identifies the quarter and year of publication by issue number.

### Issue#:

#1-2	Fall-Winter 1984
#3-6	Spring-Winter 1985
#7-10	Spring-Winter 1986
#11-14	Spring-Winter 1987
#15-17	Spring-Fall 1988
#18-21	Winter-Fall 1989
#22	Winter 1990
Vol. 5, No. 2-4	Spring-Fall 1990
Vol. 6, No. 1-4	Winter-Fall 1991
Vol. 7, No. 1-3	Winter-Summer 1992

**Note:** In Spring 1990, the *NPP JOURNAL* began using a volume-numbering system. In the index below, articles from issues prior to Spring 1990 list issue and page numbers only (i.e., 3/2). Articles from the Spring 1990 issue onward list volume, issue and page numbers (i.e., Vol.5/2/6). Please note that this Index includes only select listings from

the Case Law Report section. Those listings are identified by a "CL" at the end of the issue reference, i.e., Vol.7/2/6CL.

## -A-

### ACCESS TO THE COURTS

Mecklenburg prison obstructs lawyer access	3/2
Florida opens capital appeals office	7/1
The serious shortage of death penalty lawyers	12/1
Lawsuit increases legal access on Louisiana death row	Vol.6/2/15

### ADMINISTRATIVE SEGREGATION

Ad. seg. conditions in Arizona prison challenged	1/3
Settlement reached in Arizona case	5/4

### AIDS (Acquired Immunodeficiency Syndrome)

#### HIV VIRUS

NPP gathers the facts on AIDS in prison	6/1
Results of AIDS in prison survey (1985)	6/4
Medical expert cites problems in AIDS screening	6/5
Balanced response needed to AIDS in prison	7/1
AIDS policies raise civil liberties concerns	10/10

NPP establishes AIDS Project	11/16
NPP releases AIDS Bibliography	12/13
Correctional health care: past and future	13/29
A study of New York inmates with AIDS	15/7
NPP gathers statistics on AIDS in prison	16/5
Results of AIDS in prison survey (1988)	16/6
NPP hires AIDS project coordinator	16/14
Alabama case challenges AIDS policies	17/8
NPP releases three AIDS publications	17/26
A brief history of AIDS in prison	19/13
Interview with Billy S. Jones, Whitman-Walker Clinic	20/14
Spanish AIDS booklet available	20/15
No uniformity in AIDS policies	21/14
Prisoners form AIDS peer education groups	21/14
More states mainstreaming HIV prisoners	22/18
Mandatory AIDS testing on the rise	22/18
Not all states providing AIDS drugs	22/18
Review of N. Freudenberg's AIDS education book	Vol. 5/2/17
AIDS education program for Rikers Island women	Vol. 5/3/18
Natl. Commission on AIDS holds hearing	Vol.5/4/26
NPP's AIDS Project advocates AIDS programs, education	Vol.6/1/3
Criminalizing the AIDS epidemic	Vol.6/1/18

States mainstreaming HIV+ prisoners	Vol.6/2/18
Ex-prisoner with AIDS speaks at NPP forum	Vol.6/3/18
Women prisoners develop AIDS education program	Vol.6/4/18
TB a threat to prisoners, especially if HIV+	Vol.7/1/1
NPP AIDS Coordinator looks back	Vol.7/1/21
NY alliance advocates for inmates with AIDS	Vol.7/2/18
Progress slow on medical parole	Vol.7/3/18
<b>AIYETORO, ADJOA A.</b>	
Profile of NPP lawyer, political activist	Vol.5/4/3
<b>ALABAMA</b>	
An expert's view of the Alabama case	8/12
Former NPP lawyer remembers Alabama case	13/8
Reflections of an expert witness	13/13
Alabama case challenges AIDS policies	17/8
Alabama prison-monitoring committee folds	20/1
Alabama changes policy on juveniles in adult jails	Vol. 5/2/6
<b>ALEXANDER, ELIZABETH</b>	
Interview with NPP attorney Alexander	Vol.6/4/14
<b>ALTERNATIVES TO INCARCERATION</b>	
Surveys show support for alternatives	9/1
Examining community service alternatives	10/13
Prison not always answer for female offenders	10/11
Alternatives only option for D.C.	11/13
Few alternative programs exist for women	12/9
Imprisoned mothers face extra hardships	14/1
Involving victims and offenders in sentencing	14/9
Alternatives part of agreement in Maryland jail case	15/13
Sentencing planning, guidelines encourage alternatives	18/1
Maryland jail case encourages alternatives	18/11
Alternatives aid Washington prison population decrease	19/1
Citizen participation in corrections	20/12
Electronic monitoring in use and history	21/5
ACLU demands spur alternatives in Hawaii juvenile system	Vol. 5/2/5
<i>Palmigiano</i> judge urges alternatives	Vol.6/2/5
Alternative programs that work	Vol.6/3/2
ABA report urges sentencing, corrections reform	Vol.7/3/1
<b>AMERICAN BAR ASSOCIATION</b>	
ABA report urges sentencing, corrections reform	Vol.7/3/1

<b>AMERICAN CIVIL LIBERTIES UNION</b>	
ACLU opens death penalty centers in South	7/7
ACLU of Montana inspects Montana jails	10/9
ACLU's <i>Rights of Prisoners</i> revised	15/14
Death penalty lawyers accept ACLU award	Vol.6/4/1
<b>AMERICAN CORRECTIONAL ASSOCIATION</b>	
ACA asked to ease housing standards	Vol.6/3/14
NPP denounces ACA stance on brutality question	Vol.7/1/5
ACA votes to ease housing standards	Vol.7/1/5
<b>ARIAS V. WAINWRIGHT</b>	
NPP case challenges conditions in Florida jails	3/1
<b>ARIZONA</b>	
Parties move toward settlement in <i>Black</i>	1/3
Revived settlement halts trial in <i>Black</i>	5/4
A lighter view of the Arizona case	5/5
<b>ATTICA</b>	
Remembering the Attica uprising	13/5
NPP lawyer's work rooted in Attica	16/12
Twenty years after Attica	Vol.6/4/17
<b>AUSTIN V. LEHMAN</b>	
Community coalition boosts PA litigation	Vol.7/2/12
<b>AUTHORS</b>	
<b>Adams, Stuart</b>	
"Louisiana Death Row Gains Greater Legal Access"	Vol.6/2/15
<b>Aiyetoro, Adjoa A.</b>	
"Vestiges of Slavery: Racism in Sentencing"	2/12
"Bureau Continues Totalitarian Measures at Marion"	5/8
"NPP Goes Beyond Litigation in Pennsylvania"	Vol.7/2/12
<b>Alexander, Elizabeth</b>	
"Justice Department Retreats: The Michigan Case"	1/1
"Judge Halts Meddling with Access to Clients"	3/2
"Violations in South Dakota Prison Lead to Lawsuit"	4/6
" <i>U.S. v. Michigan</i> : An Update from the Battlefield"	12/8
"Prisoners' Lawyers Face Critical Issues"	13/22
"Can Contract Care Cure Prison Health Ailments?"	22/5
"Proving 'Deliberate Indifference' in the Wake of <i>Wilson v. Setter</i> "	Vol.6/4/3
<b>Andersen, Erik</b>	
"Denmark's Radical Approach to Super-Max Yields Success"	6/8
<b>Bagdikian, Ben H.</b>	
"Media Treat Crimes As Isolated, Random Events"	13/31

<b>Baird, Katy</b>	
"Death Penalty Law Still Tolerates Inequities"	14/8
<b>Barbarett, Rosemary</b>	
"Political Fallout Means Fewer Furloughs"	19/10
<b>Barry, Ellen</b>	
"Imprisoned Mothers Face Extra Hardships"	14/1
<b>Bell, James</b>	
"Kids in Adult Jails: Still a Problem in 1990"	Vol. 5/2/6
<b>Bernat, Betsy</b>	
"How Some Folks Do It In the Lone Star State"	1/8
"Chock Full of Nuts"	2/10
"How the West Was Won, Part II"	5/5
"Hold Your Nose! NPP Examines the Diet Loaf"	8/10
"Fourth Circuit Upholds Lower Court Order in South Carolina"	11/13
"Another Day, Another Dead Roach In the Mail"	13/35
"NPP Lawyer Ed Koren: Attica Started It All"	16/12
"Dramatic Rise in Numbers of Elderly Prisoners Means Special Care, Increased Costs"	20/9
"Early Prison Reforms Give Way to Present-Day Crowding"	Vol. 5/3/16
"NPP Lawyer Discusses <i>Wilson</i> , Legal Trends"	Vol.6/4/14
"NPP Denounces ACA's Failure to Back Use of Force Standards"	Vol.7/1/5
"ABA Report Urges Reform in Sentencing, Corrections"	Vol.7/3/1
<b>Bonnyman, Gordon</b>	
"Recent Federal Court Orders Spur Tennessee Toward Prison Reform"	8/1
<b>Boston, John</b>	
"Case Law Report"	21/9, 22/9, Vol. 5/2/9, 5/3/10, 5/4/9, 6/1/6, 6/2/6, 6/3/6, 6/4/6, 7/1/6, 7/2/6, 7/3/6
<b>Brantley, Robert L. (with Olinda Moyd)</b>	
"Tomorrow's Neighbors' Celebrate NAACP Inmate Chapter"	18/13
<b>Breed, Allen</b>	
"Special Masters: Debate Needed on Role of Masters in Litigation"	13/15
<b>Bright, Stephen B.</b>	
"Judicial System Inconsistent in Doling Out Death"	6/12
"ACLU Awards Medal of Liberty to Bryan Stevenson, Stephen Bright"	Vol.6/4/1
<b>Bronstein, Alvin J.</b>	
"Opening Remarks"	1/2
"Court Says Hands Off on Contact Visits and Cell Privacy"	1/9
"The Legal Implications of Privatization"	2/1
"Rhode Island Prisons Changing After Seven-Year Litigation Effort"	3/1
"Super-Max Prisons Have Potential for Unnecessary Pain and Suffering"	4/1

- "Neglect of Prisons Reaps High Costs for Society" 7/12
- "Sweeping New Order in Rhode Island Case Promises Further Relief" 8/5
- "15 Years of Prison Litigation: What Has It Accomplished?" 11/6
- "Supreme Court Agrees to Hear Brutality Case" Vol.6/3/1
- "U.S. Policies Create Prison Human Rights Violations" Vol.6/3/4
- "High Court Hands Down Prisoners' Rights Victory in Beating Case" Vol.7/2/1
- Burns, Haywood**
- "Remembering Attica" 13/5
- Burr, Richard**
- "Book Review: *Death Work: A Study of the Modern Execution Process* by Robert Johnson" Vol. 5/3/16
- Cade, Julia**
- "No More Quick Options for District of Columbia" 11/13
- "Lack of Resources No Defense for Constitutional Violations" 11/14
- "ABA Funds Death Penalty Project" 12/8
- "Prisoners With AIDS in New York Live Half as Long as Those on Outside" (with Jan Elvin) 15/7
- "Machine Administers Fatal Injection" 17/4
- "Court Denounces Practices at Lexington Control Unit" 17/19
- "NPP Status Report: The Courts and the Prisons" (1990) 22/7
- Cheney, Catherine**
- "Crowded Prisons and Jails Unable to Meet Needs of Mentally Ill" (with Mark Lopez) Vol.7/3/15
- Clements, Carl B.**
- "How to Evaluate Offender Needs Assessment" 18/1
- Cohen, Robert L., M.D.**
- "Medical Expert Views Potential for Abuse in AIDS Screening" 6/5
- Conrad, John**
- "An Expert Reflects on the Changing Face of Prison Litigation" 8/12
- Courlander, Michael** (with David E. Tracey)
- "Third Party Supervision Bolsters Probation Programs" Vol.6/1/16
- Curtis, Dennis**
- "The Reform of Federal Sentencing and Parole Laws" 13/21
- Dorsey, L.C.**
- "The Death Penalty is Still Wrong" 3/8
- Dubler, Nancy**
- "Medical Care: Past and Future" 13/29
- Elvin, Jan**
- "Private Firms Cash in on Crime" 1/6
- "Private Prison Plans Dropped by Buckingham" 6/11
- "Florida Death Penalty Appeals Office Opens" 7/1
- "Oklahoma Prisoner Earns Place in History: The Story of *Battle v. Anderson*" 10/1
- "Where Are The Lawyers?" 12/1
- "NPP Celebrates 15 Years with Memories of Past, Hope for Future" 14/11
- "Prisoners With AIDS in New York Live Half as Long as Those on Outside" (with Julia Cade) 15/7
- "Washington State's Prisoner Numbers Stabilize as National Rate Soars" 19/1
- "Doubts Raised in Virginia Death Row Prisoner Case" 22/1
- "Adjoa Aiyetoro: Political Activist" Vol.5/4/3
- "U.S. Now Leads World in Rate of Incarceration" Vol.6/1/1
- "Judge Orders Changes at Virginia Penitentiary" Vol.6/1/14
- "Prisoners Need Protection From Environmental Hazards" Vol.6/4/12
- "TB Comes Back, Poses Special Threat to Jails, Prisons" Vol.7/1/1
- "Citizens Protest Taking of Farmland for Federal Prison Site" Vol.7/3/3
- "Film Review: 'Cancelled Lives'" Vol.7/3/17
- Fathi, David** (with Mark Lopez)
- "The Lost Meaning of *Whitley v. Albers*" Vol. 5/3/3
- "U.S. Punishes Political Dissidents" Vol.5/4/6
- Interview with Alvin J. Bronstein Vol.6/2/1
- "Modification of Consent Decrees Goes to High Court" Vol.6/3/17
- Flittie, Roger G.**
- "The Class Representative: A Personal Experience" 13/19
- Freeman, Alexa** (with Judy Greenspan)
- "AIDS Project Presses for Programs Behind Walls" Vol.6/1/3
- Geballe, Shelley** (with Martha Stone)
- "The New Focus on Medical Care Issues in Women's Prison Cases" 15/1
- Giarratano, Joseph**
- "Prison Reform Viewed from the Inside" 13/18
- "Book Review: *Last Rights: Thirteen Fatal Encounters with the State's Justice*, by Joseph B. Ingle" Vol. 5/4/25
- Goering, Susan** (with Claudia Wright)
- "Maryland: Litigation Can Stop Unnecessary Jail Building" 18/11
- Goldberg, Judy** (with Nadine Marsh)
- "Ex-Offenders Find Doors Closed On Voting Rights" 3/3
- Goldstein, David B.**
- "Supreme Court Summary" 14/6
- Gostin, Larry**
- "AIDS in Prison: AIDS Policies Raise Civil Liberties Concerns" 10/10
- Greenspan, Judy**
- "NPP Gathers Statistics on AIDS in Prison" 16/5
- "Minnesota's Newest Prison Provides Humane Environment" 17/16
- AIDS Update
- 19/13, 20/14, 21/14, 22/18, Vol. 5/2/17
- 5/3/18, 5/4/26, 6/1/18, 6/2/18, 6/3/18, 6/4/18, 7/1/21
- "AIDS Project Presses for Programs Behind Walls" (with Alexa Freeman) Vol.6/1/3
- Harrell, William C.**
- "ASCA Proposes Watering Down of Single-Celling Standards" Vol.6/3/14
- Harris, M. Kay**
- "Exploring the Connections Between Feminism and Justice" 13/33
- Immarigeon, Russ**
- "Community Service Sentences Pose Problems, Show Potential" 10/13
- "Women in Prison: Is Locking Them Up the Only Answer?" 11/1
- "Few Diversion Programs Offered Female Offenders" 12/9
- "Victim and Offender Participation Important to Criminal Sentencing Process" 14/9
- "Critics Urge Caution in Interpreting Justice Department Study" 15/10
- "Despite New Laws, Juveniles Still Locked in Adult Jails" 17/21
- "Sentencing: Guidelines and Planning Services Foster Wider Use of Alternatives" 18/1
- "Four States Study Policies Affecting Women Offenders" 19/4
- "Electronic Monitoring: Humane Alternative or Just Another 'Gizmo'?" 21/5
- "Instead of Death: Alternatives to Capital Punishment" Vol. 5/3/6
- "Book Review: *Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools*, by Jerome Miller" Vol. 7/2/16
- Janger, Ted**
- "Expert Negotiation Brings New Approach to Prison Litigation in Hawaii" 6/6
- Jurado, Rebecca**
- "California Project Stands Up For Women in Prison" 7/10
- Keating, J. Michael**
- "How to Work With Special Masters" Vol. 5/4/1
- Keller, O.J.**
- "Cuban Detainees Face Further Frustration, Unfair Treatment" 7/24
- Kluger, Mark**
- "South Carolina Settlement Limits Population, Enforces Standards" 5/1
- Knowles, Ralph**
- "Strategies For Future Prison Litigation" 2/1
- "Monitoring Committee on Prisons in Alabama Folds; Court Gives Up Jurisdiction" 20/1
- Koren, Edward I.**
- "Dramatic Change in Oklahoma Juvenile Justice System" 2/3
- "Status Report: State Prisons and the Courts—January 1, 1992" Vol.7/1/13

- Lancaster, Jennie**  
"Corrections Staff Are 'Silent Actors' in Executions" 17/6
- Lasker, Morris E.**  
"The Tombs, On Reflection: Prison Litigation: Many Years Toward Compliance" 11/9
- Levine, Jody**  
"Private Prison Planned on Toxic Waste Site" 5/10
- Lindsay, Margot C.**  
"Citizen Involvement Can Play Key Role in Corrections" 20/12
- Lopez, Mark J.**  
"Decisions in *Safley* and *O'Lone* Undo Years of Progress" 15/8  
"New Mexico Seeks to Elude Obligations of Consent Decree" 16/1  
"Forced Drugging of Mentally Ill Prisoners" 19/7  
"Court Fines Rhode Island Officials Over Non-Compliance" 21/1  
"The Lost Meaning of *Whitley v. Albers*" (with David Fathi) Vol. 5/3/3  
"Reactivated New Orleans Jail Case Uncovers Same Old Problems, Divisions" Vol.7/2/4  
"Crowded Prisons and Jails Unable to Meet Needs of Mentally Ill" (with Catherine Cheney) Vol.7/3/15
- Macallair, Dan**  
"ACLU's Demands Trigger Change in Hawaii's Juvenile System" Vol. 5/2/5
- Marnell, Gunnar**  
"Swedes See U.S. Death Penalty as Premeditated Killing" 4/9
- Marsh, Nadine** (with Judy Goldberg)  
"Ex-Offenders Find Doors Closed on Voting Rights" 3/3
- Martino, Maria**  
"Georgia Study Reveals Racial Bias in Sentencing" 20/8  
"Seven Alternatives Punishment Programs That Work" Vol.6/3/2
- McClymont, Mary E.**  
"Prison Litigation: Making Reform a Reality, Part I" 1/8  
"Prison Litigation..., Part II" 2/4  
"Hard-Fought Settlement Reached in Hawaii Case" 5/3  
"Execution for Juvenile Crime Raises Questions of International Law" 7/13  
"*Jerry M.*: Settlement Reached in Juvenile Case" 10/12
- Miles, Steven H.**  
"Health Professionals and a Preventable Death at Butner" 16/9
- Millemann, Michael**  
"VA Prisoners Find Advocates in Early Prison Reformers" 13/3
- Morton, Chuck**  
"Resolved: High Schoolers Should Debate Prison Overcrowding" Vol. 5/2/15
- Moyd, Olinda** (with Robert L. Brantley)  
"Tomorrow's Neighbors' Celebrate NAACP Inmate Chapter" 18/13
- Mushlin, Michael B.**  
"*Rhodes v. Chapman* Analyzed for Effect on Prison Overcrowding" 14/4
- Myers, Matthew L.**  
"The Alabama Case: 12 Years After *James v. Wallace*" 13/8
- Nagel, William G.**  
"Reflections of an Expert Witness" 13/13
- Nathan, Vincent**  
"Lawsuits Fundamental to Prison Reform" 13/16
- Ney, Steven**  
"Statewide Attack on Florida Jails Brings Improvement" 3/1  
"Judge Bans Further Intake of Prisoners at D.C. Jail" 5/6  
"D.C. Pushes Panic Button in Jail Population Crisis" 8/8
- Novick, Steven A.**  
"Bitter Legal Combat Leads Oklahoma Out of Dark Ages in Care of Juveniles" Vol. 5/2/1
- Ogletree, Charles J.**  
"Book Review: *The Myth of a Racist Criminal Justice System*, by William Wilbanks" 11/10
- Ortega, Nancy**  
"AIDS Policy Tested in Alabama Prison Case" 17/8
- Pettine, Raymond J.**  
"Rhode Island Judge Reflects on *Palmigiano*" Vol. 6/2/5
- Presser, Stefan**  
"In Pennsylvania, 200 Years of Practice Doesn't Make Perfect" Vol. 5/3/1
- Resnik, Judith**  
"The Limits of Parity in Prison" 13/26
- Restrepo, L. Felipe**  
"Weighing Privilege to Smoke Against Rights of Non-Smokers" 12/12
- Rosenthal, Liz**  
"Tax Reform Package Caught in Catch-22" 1/12
- Schwartz, Herman**  
"Prisoners' Rights Lawyers in VA and NY Merge to Form NPP" 13/5
- Start, Armond**  
"Nor Will I Prescribe a Deadly Drug..." 17/3
- Stone, Martha** (with Shelley Geballe)  
"The New Focus on Medical Care Issues in Women's Prison Cases" 15/1
- Stevenson, Bryan**  
"ACLU Awards Medal of Liberty to Bryan Stevenson, Stephen Bright" Vol.6/4/1
- Sturm, Susan**  
"Special Masters Aid in Compliance Efforts" 6/9
- Taifa-Caldwell, Nkechi**  
"Muslims in Prison Seek Religious Recognition" 8/3
- Thorburn, Kim Marie**  
"Doctors' Involvement in Death Penalty Creates Ethical Dilemma" 17/2
- Tracey, David E.** (with Michael Courlander)  
"Third Party Supervision Bolsters Probation Programs" Vol.6/1/16
- Tushnet, Mark**  
"Supreme Court Briefs" 8/7
- Tushnet, Rebecca**  
"Resolved: High Schoolers Should Debate Prison Overcrowding" Vol. 5/2/15
- Vaid, Urvasi**  
"Depo-Provera: Blessing or Curse?" 4/1  
"NPP Gathers the Facts on AIDS in Prison" 6/1  
"Balanced Response Needed to AIDS in Prison" 7/1
- Verstraete, Grey**  
"Jail Inspections Trigger Improvements" 10/9
- Walker, Jackie**  
AIDS Update Vol. 7/2/18, 7/3/18
- Walker, Sam**  
"The Beginning: Sixties Civil Rights Gave Momentum to Prisoners' Rights" 13/2
- Wood, Frank**  
"Oak Park Heights Sets High Super-Max Standards" 4/3
- Wright, Claudia**  
"Parties Move Toward Settlement in Arizona" 1/3  
"Revived Settlement Halts Trial In *Black*" 5/4  
"Expert Witnesses: Expanding Their Role in Prison Cases" 13/12  
"Maryland: Litigation Can Stop Unnecessary Jail Building" (with Susan Goering) 18/11
- B-**  
**BARALDINI V. THORNBURGH** (formerly *Baraldini v. Meese*)  
Court denounces Lexington Control Unit 17/19  
Political prisoners do exist in U.S. Vol.5/4/6
- BATES V. LYNN**  
Case increases legal access on LA death row Vol.6/2/15
- BATTLE V. ANDERSON**  
Looking back at *Battle v. Anderson* 10/1
- BEHAVIOR MODIFICATION PROGRAMS**  
Program challenged in Arizona prison 1/3  
AZ settlement addresses behavior modification 5/4
- BELL V. WOLFISH**  
Prisoners' lawyers face critical issues 13/22
- BLACK V. RICKETTS**  
Ad. seg. conditions challenged in AZ lawsuit 1/3

Revived settlement halts Arizona trial	5/4
A lighter look at Arizona case	5/5
<b>BLOCK V. RUTHERFORD</b>	
Supreme Court case re: search, visitation rights of detainees	1/9
<b>BODY CAVITY SEARCHES</b>	
Searches challenged at AZ State Prison	1/3
AZ settlement limits body cavity searches	5/4
<b>BRONSTEIN, ALVIN J.</b>	
Interview with NPP's Executive Director	Vol.6/2/1
<b>BROWN V. MURRAY</b>	
Lawyer access problems at Mecklenburg	3/2
Inmate's view of prison reform, litigation	13/18
<b>BRUTALITY</b>	
Circuit courts decide <i>Huguet, Miller</i>	Vol.5/4/10CL
Supreme Court to hear <i>Hudson</i>	Vol.6/3/1
NPP denounces ACA stance on brutality question	Vol.7/1/5
Supreme Court decides <i>Hudson</i> in prisoner's favor	Vol.7/2/1
<b>BUREAU OF PRISONS, FEDERAL</b>	
Totalitarian conditions at Marion	5/8
Cubans detained in Atlanta Penitentiary	9/1
Court denounces Lexington Control Unit	17/19
Cuban detainees suffering unfair treatment	17/24
Political prisoners do exist in U.S.	Vol.5/4/6
Citizens protest proposed prison	Vol.7/3/3
<b>BUSH V. VITERNA</b>	
Unusual practices found in Texas jails	1/8
<b>-C-</b>	
<b>CALIFORNIA</b>	
ACLU starts Women Prisoners' Rights Project	7/10
<b>CALIFORNIA INSTITUTION FOR WOMEN</b>	
Conditions challenged by ACLU	7/10
Imprisoned mothers face extra hardships	14/1
Litigation targets medical care in women's prisons	15/1
<b>CAPITAL COLLATERAL REPRESENTATIVE (CCR)</b>	
Florida opens capital appeals office	7/1
CCR handles death penalty appeals	12/6
<b>CASE LAW REPORT</b>	
A review of recent federal court decisions affecting corrections and prisoners' rights	21/9, 22/9, Vol. 5/2/9, 5/3/10, 5/4/9, 6/1/6, 6/2/6, 6/3/6, 6/4/6, 7/1/6, 7/2/6, 7/3/6

<b>CELL SEARCHES</b>	
Searches issue in <i>Block v. Rutherford</i>	1/9
<b>CLASSIFICATION</b>	
Assessing offender needs	18/1
<b>COMMUNITY ACTIVISM</b>	
Citizen participation in corrections	20/12
Coalition boosts Pennsylvania litigation	Vol.7/2/12
Citizens protest proposed prison	Vol.7/3/3
<b>COMPLIANCE</b>	
Making prison reform a reality (2 parts)	1/8, 2/1
Special masters aid in compliance	6/9
Judge discusses "Tombs" case	11/9
Debating the role of special masters	13/15
New Mexico falls short on compliance	16/1
Alabama prison-monitoring committee folds	20/1
Court fines RI on noncompliance	21/1
Compliance a struggle in OK juvenile case	Vol. 5/2/1
<b>CONGDON V. MURRAY</b>	
Judge orders changes at VA penitentiary	Vol.6/1/14
<b>CONSENT DECREES/ SETTLEMENT AGREEMENTS</b>	
NPP challenges decree in <i>U.S. v. Michigan</i>	1/1
Settlement in AZ	1/3, 5/4
NPP's Status Report on the courts and the prisons	3/10, 13/24, 18/7, 22/7, Vol.7/1/13
SC decree limits population	5/1
Consent decree entered in Hawaii	5/3
Experts negotiate Hawaii settlement	6/6
SC ordered to comply with decree	9/4
DC juvenile case settles	10/12
Appeals court upholds cap in SC	11/13
New Mexico fails to comply with decree	16/1
Supreme Court to review modification of consent decrees	Vol.6/3/17
An analysis of <i>Rufo</i>	Vol. 7/2/7CL
<b>CONTACT VISITS</b>	
Visits for detainees issue in <i>Block v. Rutherford</i>	1/9
<b>CONTEMPT</b>	
Making prison reform a reality	2/4
<b>CRIME</b>	
Making sense of crime statistics	9/6
Media promotes vicious criminal justice cycle	13/31
Interpreting BJS public opinion study	15/10
<b>CUBAN DETAINEES</b>	
Cubans detained in Atlanta penitentiary	9/1
Cuban detainees suffering unfair treatment	17/24
<b>-D-</b>	
<b>DANIELS V. WILLIAMS</b>	
Supreme Court decides negligence case	8/7

<b>DEATH PENALTY</b>	
Death penalty information packet	3/6
Death penalty: a personal view	3/8
Swedes confused by U.S. death penalty	4/9
Courts inconsistent in issuing death penalty	6/12
Florida opens capital appeals office	7/1
Model offices for centralized capital appeals	7/6
ACLU opens death penalty centers in South	7/7
Jury override can backfire into death sentence	7/8
Execution for juvenile crime challenged	7/13
Shortage of death penalty lawyers	12/1
Trial-level errors in capital cases	12/4
Florida's CCR handles capital appeals	12/6
ABA funds death penalty project	12/8
Death penalty law tolerates inequities	14/8
Executions pose ethical dilemma for doctors	17/2
Doctors' role in executions	17/3
New machine administers lethal injection	17/4
Corrections staff "silent actors" in execution	17/6
Is Virginia's Joe Giarratano innocent?	22/1
Alternatives to the death penalty	Vol. 5/3/6
Richard Burr reviews Robert Johnson's <i>Death Work</i>	Vol. 5/3/16
Joseph Giarratano reviews Ingle's <i>Last Rights</i>	Vol.5/4/25
Lawsuit increases legal access on LA death row	Vol.6/2/15
Death penalty lawyers accept ACLU award	Vol.6/4/1
<b>DELAWARE</b>	
Delaware studying women offender policies	19/4
<b>DELIBERATE INDIFFERENCE</b>	
An analysis of <i>Wilson v. Seiter</i>	Vol.6/3/6CL
Proving deliberate indifference after <i>Wilson</i>	Vol.6/4/3
A look at post- <i>Wilson</i> decisions	Vol.6/4/6CL
<b>DENMARK</b>	
Danish super-max far cry from U.S. counterparts	6/8
<b>DEPO-PROVERA</b>	
Depo-provera treatment raises questions	4/1
<b>DIET</b>	
Muslim prisoners seek right to religious diet	8/3
<b>DIET LOAF</b>	
"Diet loaf" challenged in Arizona case	1/3
Arizona settlement outlaws "diet loaf"	5/4
A lighter look at the diet loaf	8/10
<b>DISTRICT OF COLUMBIA</b>	
Judge sets population cap at D.C. Jail	5/6
D.C. panics over jail population crisis	8/8
Settlement reached in D.C. juvenile case	10/12

Alternatives only option for D.C.	11/13
<b>DOUBLE-CELLING</b>	
Double-ceiling ban upheld	Vol. 5/4/9CL
ACA asked to ease housing standards	Vol.6/3/14
Supreme Court to review modification of consent decrees	Vol.6/3/17
<b>DRUGS</b>	
Forcing psychotropic drugs on mentally ill prisoners	19/7
<b>DURAN V. CARRUTHERS</b>	
Budget cuts don't excuse violations, says court	11/14
New Mexico falls short on compliance	16/1
<b>-E-</b>	
<b>EIGHTH AMENDMENT</b> (Also see "Litigation," "Overcrowding," and "Brutality")	
Courts stretch meaning of <i>Whitley v. Albers</i>	Vol. 5/3/3
An analysis of <i>Wilson</i> decision	Vol.6/3/6CL
Proving deliberate indifference after <i>Wilson</i>	Vol.6/4/3
<b>ELDERLY PRISONERS</b>	
More elderly prisoners raises problems	20/9
<b>ELECTRONIC MONITORING</b>	
Electronic monitoring in use and history	21/5
<b>ELISA TEST</b>	
Use of ELISA test in prisons	6/1
Medical expert on problems in AIDS screening	6/5
AIDS screening policies and ELISA test	7/1
<b>ENVIRONMENT</b>	
Environmental hazards threaten prisoners	Vol.6/4/12
<b>EXPERTS</b>	
Expert panel negotiates settlement in Hawaii	6/6
An expert's view of the Alabama case	8/12
The expanding role of experts in prison cases	13/12
Nagel: reflections of an expert witness	13/13
<b>-F-</b>	
<b>FEDERAL BUREAU OF PRISONS</b>	
See BUREAU OF PRISONS, FEDERAL	
<b>FEMINISM</b>	
The connections between feminism and justice	13/33
<b>FIRST AMENDMENT</b>	
Prisoners' lawyers face critical issues	13/22
Supreme Court decisions affect First Amendment rights	14/6
Supreme Court decisions in <i>O'Lone</i> and <i>Safley</i>	15/8
<b>FLITTIE V. HILLARD</b>	
NPP lawsuit filed in South Dakota	4/6

Inmate's experience as a class representative	13/19
<b>FLORIDA</b>	
NPP files suit against Florida jails	3/1
Florida opens capital appeals office	7/1
Florida's CCR handles capital appeals	12/6
<b>FURLOUGHS</b>	
Presidential campaign impacts furloughs	19/10
<b>-G-</b>	
<b>GEORGIA</b>	
Study shows racial bias in sentencing	20/8
<b>GRUBBS V. BRADLEY</b>	
Court orders spur reforms in Tennessee	8/1
Special Master's role in Tennessee case	8/2
<b>-H-</b>	
<b>HAMILTON V. MORIAL</b>	
New Orleans jail case plagued by old problems	Vol.7/2/4
<b>HANDGUNS</b>	
Canadian gun control legislation studied	19/14
<b>HARRIS V. THIGPEN</b>	
Alabama case challenges AIDS policies	17/8
<b>HAWAII</b>	
Settlement reached in <i>Spear v. Ariyoshi</i>	5/3
Expert panel negotiates settlement in Hawaii	6/6
ACLU demands bring change in Hawaii juvenile system	Vol. 5/2/5
<b>HENDRICKSON V. WELCH</b>	
Agreement reached in Maryland jail case	15/13
<b>HUDSON V. MCMILLIAN</b>	
Supreme Court to hear brutality case	Vol.6/3/1
NPP denounces ACA's stance on brutality question	Vol.7/1/5
Supreme Court decides <i>Hudson</i> in prisoner's favor	Vol.7/2/1
An analysis of <i>Hudson</i> decision	Vol.7/2/6CL
<b>-I-</b>	
<b>ILLINOIS</b>	
Lockdown at Marion investigated	5/8
Illinois studying women offender policies	19/4
<b>INCARCERATION RATES</b>	
U.S. has world's highest incarceration rate	Vol.6/1/1
<b>-J-</b>	
<b>JAILS</b>	
National Jail Project of ACLU underway	1/1
Unusual practices in Texas jails	1/8

Detainee rights at issue in <i>Block v. Rutherford</i>	1/9
Women in jails have special problems	2/9
<i>Arias v. Wainwright</i> challenges Florida jails	3/1
Judge sets population cap at DC Jail	5/6
National Jail Project releases Jail Status Report	5/12
D.C. panics over jail population crisis	8/8
ACLU inspects Montana jails	10/9
NIC studies jail suicides	11/12
Agreement reached in Maryland jail case	15/13
Removing juveniles from adult jails	17/21
MD jail litigation encourages alternatives	18/11
Jail suicide study released	18/14
Many juveniles still detained in adult jails	Vol.5/2/6
Supreme Court to review modification of consent decrees ( <i>Rufo</i> )	Vol.6/3/17
New Orleans jail case plagued by old problems	Vol.7/2/4
Jails failing mentally ill	Vol.7/3/15
<b>JAIL COALITION</b> (National Coalition for Jail Reform)	
Coalition reorganizes	4/2
Removing juveniles from adult jails	17/21
1990 Jail Suicide Update available	Vol.6/1/5
<b>JERRY M. V. DISTRICT OF COLUMBIA</b>	
Settlement reached in DC juvenile case	10/12
<b>JUSTICE, U.S. DEPARTMENT OF</b>	
NPP challenges consent decree in Michigan	1/1
An update on the Michigan case	12/8
A.G. Barr holds "Corrections Summit"	Vol.7/2/3
<b>JUVENILES</b>	
<i>Terry D. v. Rader</i> challenges OK juvenile system	2/3
Execution for juvenile crime challenged	7/12
Settlement reached in DC juvenile case	10/12
Removing juveniles from adult jails	17/21
Case brings reforms to OK juvenile system	Vol. 5/2/1
ACLU demands change Hawaii juvenile system	Vol. 5/2/5
Many juveniles still detained in adult jails	Vol. 5/2/6
Juvenile rights: significant cases	Vol. 5/2/7
Forum held on minority youth incarceration rates	Vol. 5/2/17
High number of girls held as status offenders	Vol. 5/2/18
NCCD reports on community sanctions for juveniles	Vol. 5/2/18



Book review: Jerome Miller's *Last One Over the Wall* Vol.7/2/16  
 Film review: "Cancelled Lives" Vol.7/3/17

**-K-**

**KOREN, EDWARD I.**

Interview with NPP lawyer 16/12

**-L-**

**LEGAL ACCESS** (See ACCESS TO THE COURTS)

**LEGISLATION**

Texas prison reform package 1/12

**LETHAL INJECTION**

Executions pose ethical dilemma for doctors 17/2

Doctors' role in executions 17/3

New machine can administer lethal injection 17/4

**LEWISBURG PRISON PROJECT**

LPP distributes booklets 12/15

**LEXINGTON (KY) FEDERAL CORRECTIONAL INSTITUTION**

Court denounces Lexington Control Unit 17/19

Political prisoners do exist in U.S. Vol.5/4/6

**LITIGATION** (Also see "Overcrowding," "Consent Decrees," "Case Law Report," "Compliance")

NPP Highlights

2/9, 3/12, 4/12, 5/12, 6/16, 7/16, 8/14, 9/16, 10/16, 11/16, 12/16, 14/16, 15/16, 16/16, 17/28, 18/16, 19/16, 20/16, 21/16, 22/20, Vol. 5/2/20, 5/3/20, 5/4/28, 6/1/20, 6/2/20, 6/3/20, 6/4/20, 7/1/24, 7/2/20, 7/3/20

NPP's Status Report on the courts and the prisons 3/10, 13/24, 18/7, 22/7, Vol.7/1/13

Strategies for future prison litigation (2 parts) 1/8, 2/1

Expert reflects on prison litigation 8/12

Evaluating 15 years of prison litigation 11/6

Judge discusses "Tombs" litigation 11/9

Judicial commentary on prison cases 13/2

Civil rights movement a catalyst for prisoners' rights 13/2

The expanding role of experts in prison cases 13/12

Lawsuits fundamental to prison reform 13/16

An inmate's view of prison litigation 13/18

Inmate's experience as class representative 13/19

Litigation increasingly costly, complex 13/22

15 years of prison litigation: a timeline 13/26

Alabama prison-monitoring committee folds 20/1  
 Courts stretch meaning of *Whitley v. Albers* Vol. 5/3/3

Judge orders changes at VA penitentiary Vol.6/1/14

An analysis of *Wilson* decision Vol.6/3/6CL

Proving deliberate indifference after *Wilson* Vol.6/4/3

A look at post-*Wilson* decisions Vol.6/4/6CL

New Orleans jail case plagued by old problems Vol.7/2/4

**LOUISIANA**

Lawsuit increases legal access on death row Vol.6/2/15

Supreme Court to hear brutality case (*Hudson*) Vol.6/3/1

Supreme Court decides brutality case in prisoner's favor Vol.7/2/1

New Orleans jail case plagued by old problems Vol.7/2/4

**-M-**

**MAGID, JUDITH**

In Memory 5/2

**MARION, ILLINOIS, U.S. PENITENTIARY**

Examining super-max prisons 4/1

Lockdown at Marion investigated 5/8

**MARRIAGE**

Supreme Court strikes down marriage restrictions 14/6

**MARYLAND**

Agreement reached in Maryland jail case 15/13

Jail litigation encourages alternatives 18/11

NAACP established at Maryland Penitentiary 18/13

Maryland studying women offender policies 19/4

**MASSACHUSETTS**

Massachusetts studying women offender policies 19/4

Book review: Jerome Miller's *Last One Over the Wall* Vol.7/2/16

**MAXIMUM SECURITY PRISONS**

Examining super-max prisons 4/1

Minnesota facility sets high super-max standards 4/3

Lockdown investigated at Marion 5/8

Danish super-max differs from U.S. counterparts 6/8

Court denounces FCI-Lexington Control Unit 17/19

U.S. prisons violate human rights Vol.6/3/4

**MEDIA**

Media promotes vicious criminal justice cycle 13/31

**MEDICAL CARE**

(See also: AIDS)

NCCHC publishes health care standards 11/12

Correctional health care: past and future 13/29

Imprisoned mothers face extra hardships 14/1

Litigation targets medical care in women's prisons 15/1

Health professionals and the mistreatment of prisoners 16/9

Executions pose ethical dilemma for doctors 17/2

Doctors' role in executions 17/3

Machine can administer lethal injection 17/4

Contract medical care generates concerns 22/5

Courts differ on medical care standard Vol.5/4/10CL

TB poses threat to prisoners Vol.7/1/1

Prison health care in crisis Vol.7/3/14

**MENTAL HEALTH CARE**

Forcing psychotropic drugs on mentally ill prisoners 19/7

Prisons, jails failing mentally ill Vol.7/3/15

**MICHIGAN**

NPP challenges consent decree in Michigan 1/1

An update on the Michigan case 12/8

**MINNESOTA**

Oak Park Heights sets high super-max standard 4/3

Minnesota women's prison is humane 17/16

**MONTANA**

ACLU inspects Montana jails 10/9

**MOUNDSVILLE, WEST VIRGINIA PENITENTIARY**

Conditions spark disturbance 7/13

**MUSLIMS**

Muslims prisoners seek religious recognition 8/3

Supreme Court decides *O'Lone v. Estate of Shabazz* 14/6

Effects of Supreme Court decision in *O'Lone* 15/8

Post-*Shabazz* decisions on religious rights Vol.5/4/9

**-N-**

**NATION OF ISLAM**

See: MUSLIMS

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)**

Branch established at Maryland Penitentiary 18/13

**NATIONAL INSTITUTE OF CORRECTIONS**

NIC to study jail suicides 11/12

NIC publishes "Research in Corrections" series 16/14

**NATIONAL JAIL PROJECT OF THE ACLU**

National Jail Project of the ACLU underway 1/1  
 Jail Project releases Jail Status Report 5/12

**NATIONAL PRISON PROJECT OF THE ACLU**

NPP's Status Report on the courts and the prisons 3/10, 13/24, 18/7, 22/7  
 Vol. 7/1/13  
 NPP staff changes 11/12, 12/13, 14/14, 16/14  
 NPP establishes AIDS Project 11/16  
 NPP releases AIDS Bibliography 12/13  
 Civil rights movement a catalyst for prisoners' rights 13/2  
 The founding of the NPP 13/5  
 Who are the NPP staff lawyers? 13/12  
 NPP law interns recall favorite moments 13/14  
 Catching up with former interns 13/30  
 NPP staff, past and present 13/34  
 Inside look at the Prison Project 13/35  
 NPP marks 15 years with conference, celebration 14/11  
 Interview with NPP's Edward Koren 16/12

ACLU's *The Rights of Prisoners* revised 15/14  
 Bronstein wins MacArthur Award 21/14  
 Interview with NPP's Alvin Bronstein Vol. 6/2/1  
 Interview with NPP's Elizabeth Alexander Vol. 6/4/14  
 Results of NPP JOURNAL readers' survey Vol. 7/1/12

**NATIVE AMERICANS**

Post-*Shabazz* decisions on religious rights Vol. 5/4/9

**NELSON V. LEEKE**

See: *PLYLER V. LEEKE*

**NEW MEXICO**

Attorney general comments on prison riot 7/13  
 Budget cuts don't excuse violations, says court 11/14  
 New Mexico falls short on compliance 16/1

**NEW YORK**

Examining community alternatives 10/13  
 Judge discusses "Tombs" litigation 11/9  
 Remembering the Attica uprising 13/5  
 A study of NY inmates with AIDS 15/7  
 NPP lawyer's work rooted in New York, Attica 16/12  
 Twenty years after Attica Vol. 6/4/17  
 TB poses threat to prisons, jails Vol. 7/1/1  
 NY alliance advocates for inmates with AIDS Vol. 7/2/18  
 Progress slow on medical parole Vol. 7/3/18

**NORTH CAROLINA**

Examining community service alternatives 10/13  
 A preventable death at Butner 16/9  
 BOP response to death of Vinson Harris 16/11  
 Corrections staff involvement in execution 17/6

**-O-****OAK PARK HEIGHTS**

Super-max facility sets high standards 4/3

**OHIO**

An analysis of *Wilson v. Seiter* decision Vol. 6/3/6CL  
 Proving deliberate indifference after *Wilson* Vol. 6/4/3  
 Citizens protest proposed prison Vol. 7/3/3

**OKLAHOMA**

Juvenile system challenged in *Terry D. v. Rader* 2/3  
 Looking back at *Battle v. Anderson* 10/1  
 Case brings reforms to Oklahoma juvenile system Vol. 5/2/1

**O'LONE V. ESTATE OF SHABAZZ**

Effect of Supreme Court decisions in *O'Lone and Safley* 15/8  
 Religious rights, post-*Shabazz* Vol. 5/4/9CL

**OVERCROWDING**

NPP's Status Report on the courts and the prisons 3/10, 13/24, 18/7, 22/7, Vol. 7/1/13  
 SC settlement limits population 5/1  
 Hawaii settlement sets populations caps 5/3  
 Judge sets population cap at DC Jail 5/6  
 Population reduction program in Tennessee 8/1  
 Court imposes population caps in RI 8/5  
 D.C. panics over jail population 8/8  
 Court orders SC to comply with population limits 9/4  
 The effects of 15 years of prison litigation 11/6  
 Judge discusses "Tombs" case 11/9  
 Appeals court upholds pop. cap in SC 11/13  
 Lawsuits fundamental to prison reform 13/16  
 Prisoners' lawyers face critical issues 13/22  
 The effect of *Rhodes v. Chapman* on overcrowding 14/4  
 Overcrowding addressed in MD jail case agreement 15/13  
 New books on prison overcrowding 18/14  
 High school students debate prison overcrowding Vol. 5/2/15  
 High school debater discusses overcrowding debate Vol. 5/2/15

After 200 years, PA prisons still have problems Vol. 5/3/1  
 Appeals courts differ on overcrowding decisions Vol. 5/4/9CL  
 Judge orders changes at VA penitentiary Vol. 6/1/14

US prisons violate human rights Vol. 6/3/4  
 ACA asked to ease housing standards Vol. 6/3/14  
 ACA votes to ease housing standards Vol. 7/1/5  
 ABA report urges sentencing, corrections reform Vol. 7/3/1

**-P-****PALMIGIANO V. DIPRETE** (formerly *Palmigiano v. Garraby*)

Improvements evident in RI prisons 3/1  
 Court order promises further relief 8/5  
 Court fines RI officials for noncompliance 21/1  
*Palmigiano* judge urges use of alternatives Vol. 6/2/5

**PAT SEARCHES**

Muslims contest searches by female guards 8/3

**PAROLE**

Reforming federal parole laws 13/21  
 Supreme Court decides *Board of Pardons v. Allen* 14/6

**PELTIER, LEONARD**

Political prisoners do exist in U.S. Vol. 5/4/6

**PENITENTIARY**

200th anniversary of penitentiary spurs debate Vol. 5/3/5  
 Today's penitentiary differs from original Vol. 5/3/16

**PENNSYLVANIA**

Private prison planned on toxic waste site 5/10  
 Plans dropped for prison on toxic waste site 6/11  
 After 200 years, PA prisons still have problems Vol. 5/3/1  
 Today's penitentiary differs from original Vol. 5/3/16  
 Community coalition boosts PA litigation Vol. 7/2/12

**PLYLER V. LEEKE** (formerly *Nelson v. Leeke*)

SC settlement limits population 5/1  
 Court orders SC to comply with decree 9/4  
 Appeals court upholds pop. cap in SC case 11/13

**POLITICAL PRISONERS**

Court denounces FCI-Lexington Control Unit 17/19

Political prisoners do exist in US	Vol.5/4/6
<b>PRATT, GERONIMO</b>	
Political prisoners do exist in US	Vol.5/4/6
<b>PRETRIAL DETAINEES</b>	
Searches, visits argued in <i>Block</i>	1/9
Judge urges use of alternatives for detainees	Vol.6/2/5
<b>PRISON POPULATION</b>	
US has world's highest incarceration rate	Vol.6/1/1
<b>PRISONER CORRESPONDENCE</b>	
Supreme Court decides <i>Turner v. Safley</i>	14/6
Effect of <i>Safley</i> on inmate correspondence	15/8
<b>PRISONER VISITATION AND SUPPORT</b>	
PVS provides prisoners link to outside	5/2
<b>PRIVACY</b>	
Court says "hands off" in <i>Block</i> decision	1/9
<b>PRIVATIZATION</b>	
Private firms venture into prison business	1/6
Legal implications of privatization	2/1
Private prison planned on toxic waste site	5/10
Prison plans dropped at toxic waste site	6/11
Correctional health care: past and future	13/29
Contract medical care generates concerns	22/5
<b>PROBATION</b>	
Third party supervision aids probation	Vol.6/1/16
<b>PROCUNIER V. MARTINEZ</b>	
Supreme Court rejects <i>Martinez</i> standards in <i>Turner</i>	14/6
<i>Martinez</i> and the <i>Turner</i> decision	15/8
<b>PSYCHOTROPIC DRUGS</b>	
Forcing psychotropic drugs on mentally ill prisoners	19/7
<b>PUGH V. LOCKE</b>	
Expert reflects on Alabama case	8/13
Former NPP lawyer remembers Alabama case	13/8
Nagel: an expert witness reflects	13/13
Alabama prison-monitoring committee folds	20/1
<b>-R-</b>	
<b>RACE AND CRIMINAL JUSTICE SYSTEM</b>	
Racism in sentencing extensive problem	2/12
<i>Battle</i> revealed racial discrimination in Oklahoma	10/1
Review of Wilbanks' book on racism, criminal justice	11/10
Remembering the Attica uprising	13/5
Alabama case exposed racism	13/8

<i>McCleskey</i> decision tolerates racial bias in death penalty cases	14/8
Study reveals racial bias in sentencing	20/8
Report finds racism in NY system	Vol.5/4/6
ABA report urges reforms	Vol.7/3/1
<b>RELIGION</b>	
Muslim prisoners seek religious recognition	8/3
Supreme Court decides <i>O'Lone v. Estate of Shabazz</i>	14/6
Effects of <i>O'Lone</i> decision	15/8
Religious rights decisions, <i>post-Shabazz</i>	Vol.5/4/9CL
<b>RHODE ISLAND</b>	
Litigation in Rhode Island brings change	3/1
Order promises further relief in RI prisons	8/5
Court fines officials over noncompliance	21/1
<i>Palmigiano</i> judge urges use of alternatives	Vol.6/2/5
<b>RHODES V. CHAPMAN</b>	
<i>Rhodes</i> presents litigators with critical issues	13/22
Analyzing the effects of <i>Rhodes</i>	14/4
<b>RIOTS</b>	
Disturbance at W.Va. Pen.	7/13
Remembering the Attica uprising	13/5
NPP lawyer's work rooted in Attica	16/12
20 years after Attica	Vol.6/4/17
<b>RUF0 V. INMATES OF SUFFOLK COUNTY JAIL</b>	
Supreme Court to review modification of consent decrees	Vol.6/3/17
An analysis of the <i>Ruf0</i> decision	Vol.7/2/7CL
<b>-S-</b>	
<b>SENTENCING</b>	
Racism in sentencing extensive problem	2/12
Sentencing Project publishes sentencing directory	12/13
Reforming federal sentencing and parole laws	13/21
Involving victims and offenders in sentencing	14/9
Interpreting BJS public opinion study	15/10
Sentencing planning services, guidelines encourage alternatives	18/1
Sentencing bibliography published	18/15
Washington's sentencing guidelines effective	19/1
Study reveals racial bias in sentencing	20/8
Alternatives to the death penalty	Vol.5/3/6
Judge resigns over sentencing guidelines	Vol.5/4/8

ABA report urges sentencing, corrections reform	Vol.7/3/1
<b>SENTENCING PROJECT, THE</b>	
Project publishes sentencing directory	12/13
Project publishes analysis of NJ study	15/14
Project publishes sentencing bibliography	18/15
Incarceration rate highest in US, says report	Vol.6/1/1
<b>SETTLEMENT AGREEMENTS</b>	
(See CONSENT DECREE/SETTLEMENT AGREEMENTS)	
<b>SEX OFFENDERS</b>	
Depo-provera treatment raises questions	4/1
<b>SMOKING</b>	
Smoking in prison: a question of rights	12/12
<b>SOUTH CAROLINA</b>	
SC settlement limits population	5/1
Execution for juvenile crime challenged	7/13
Court orders SC to comply with decree	9/4
Appeals court upholds pop. cap in SC	11/13
<b>SOUTH DAKOTA</b>	
Lawsuit challenges violations at penitentiary	4/6
Inmate describes being a class representative	13/19
<b>SOUTHERN CENTER FOR HUMAN RIGHTS</b>	
Death penalty lawyers accept ACLU award	Vol.6/4/1
<b>SPEAR V. ARIYOSHI</b>	
Settlement reached in Hawaii case	5/3
Expert panel negotiates settlement in Hawaii	6/6
<b>SPECIAL MASTERS</b>	
Special masters aid in compliance efforts	6/9
Special master appointed in Tennessee	8/1
Special master's role in Tennessee case	8/2
Judge discusses special masters	11/9
Role of special masters ripe for debate	13/15
How to work effectively with special masters	Vol.5/4/1
<b>SUICIDE</b>	
NIC to study jail suicides	11/12
Jail suicide study, training curriculum released	18/14
1990 Jail Suicide Update available	Vol.6/1/5
<b>SUPREME COURT, U.S.</b>	
Court says 'hands off' in <i>Block v. Rutherford</i>	1/9
Death penalty upheld for juvenile crime	7/13

Recent prisoners' rights decisions	8/7
Recent prisoners' rights decisions	14/6
Effect of <i>O'Lone</i> and <i>Safley</i>	15/8
Court to hear brutality case ( <i>Hudson v. McMillian</i> )	Vol.6/3/1
An analysis of <i>Wilson</i>	Vol.6/3/6CL
Court to review modification of consent decrees ( <i>Rufo v. Inmates of Suffolk Co. Jail</i> )	Vol.6/3/17
Court decides <i>Hudson</i>	Vol.7/2/1
An analysis of <i>Rufo</i>	Vol.7/2/7CL

**SWEDEN**

Swedes confused by U.S. death penalty	4/9
Swedes enact animal treatment legislation	19/9

**-T-**

**TENNESSEE**

Court orders spur reforms	8/1
Special Master's role in Tennessee case	8/2

**TERRY D. V. RADER**

Lawsuit challenges Oklahoma juvenile system	2/3
Lawsuit leads to reform in Oklahoma juvenile system	Vol. 5/2/1

**TEXAS**

Unusual practices found in Texas jails	1/8
Legislature develops prison reform package	1/12

**TILLERY V. OWENS**

Third Circuit upholds ban on double-celling	Vol.5/4/9CL
---	-------------

**TUBERCULOSIS**

TB poses threat to prisoners	Vol.7/1/1
------------------------------	-----------

**TURNER V. SAFLEY**

Effect of Supreme Court decisions in <i>O'Lone</i> and <i>Safley</i>	15/8
--	------

**-U-**

**U.S. V. MICHIGAN**

NPP challenges Michigan consent decree	1/1
An update on the Michigan case	12/8

**URINALYSIS**

Urinalysis not always reliable	9/13
--------------------------------	------

**USE OF FORCE (See BRUTALITY)**

**-V-**

**VICTIMS' RIGHTS**

PACT publishes VORP Network News	12/15
Involving victims and offenders in sentencing	14/9
Victim-Offender mediation assn. established	19/13
Victim services and alternatives to the death penalty	Vol.5/3/6

**VIRGINIA**

Lawyer access a problem at Mecklenburg	3/2
--	-----

Early prisoner advocacy efforts in Virginia	13/3
Is Joe Giarratano innocent?	22/1
Judge orders changes at VA penitentiary	Vol.6/1/14

**VOTING RIGHTS**

Ex-offenders find barriers to voting	3/3
--------------------------------------	-----

**-W-**

**WASHINGTON**

Reforms, guidelines reduce prison population	19/1
Prison population may increase	22/18

**WEST VIRGINIA**

Conditions spark Moundsville disturbance	7/12
--	------

**WHITLEY V. ALBERS**

Supreme Court decides use of force case	8/7
Courts stretch meaning of <i>Whitley v. Albers</i>	Vol.5/3/3


**WILSON V. SEITER**

An analysis of <i>Wilson</i> decision	Vol.6/3/6CL
Proving deliberate indifference after <i>Wilson</i>	Vol.6/4/3
A look at post- <i>Wilson</i> decisions	Vol.6/4/6CL
NPP attorney discusses <i>Wilson</i>	Vol.6/4/14

**WOMEN**

Women in jail have special problems	2/9
-------------------------------------	-----

ACLU opens Women Prisoners' Rights Project	7/10
Prison not always answer for female offenders	11/1
Few alternative programs exist for women	12/9
Pursuing equal treatment for women in prison	13/26
The connections between feminism and justice	13/33
Imprisoned mothers face extra hardships	14/1
Litigation targets medical care in women's prisons	15/1
New Minnesota women's prison is humane	17/16
Court denounces FCI-Lexington Control Unit	17/19
States study policies affecting women offenders	19/4
Elderly prison population includes women	20/9
High number of girls held as status offenders	Vol.5/2/18
AIDS education program for women at Rikers Island	Vol.5/3/18
Alternative programs that work	Vol.6/3/2
NPP releases new bibliography on women in prison	Vol.6/4/11
Women prisoners develop AIDS education program	Vol.6/4/18



Mark Lopez, an attorney with the National Prison Project since 1987, recently left to become a staff attorney at the ACLU of Illinois where he worked before joining the Project. While with the Prison Project, he served as counsel on cases challenging conditions in the Rhode Island prison system, the Parish Prison in New Orleans, the Westville (Indiana) Correctional Center, Maine State Prison and others. He was also a frequent contributor to the *NPP JOURNAL*.

Says Lopez, "I never quite got used to telling a prisoner serving a long bid that I wasn't here to help try to get him out of prison or help his family. I could only try to improve conditions in prison."

(cont'd from page 5)

on the court that it required heightened scrutiny on our part."

In July of 1991, in a rare move, concerned Northern District of California federal judges held a meeting with Pelican Bay warden Charles Marshall and two top attorneys from the California attorney general's office. Subsequently, Judge Henderson appointed Wilson, Sonsini to represent one prisoner at Pelican Bay. The firm has since converted that one case into a class action because of the extreme conditions at the prison.

Plaintiffs allege that defendants' deliberate use of excessive force and isolation, and failure to provide medical care, meaningful access to the courts, and due process in segregation assignments subject prisoners to needless suffering and violate their rights under the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

*Madrid v. Gomez* (Case No. C-90-3094, U.S. District Court for Northern California) covers the entire Pelican Bay State Prison, which includes not only the SHU and the Violence Control Unit (VCU) within it, but the entire "regular" maximum security sections of the prison. For purposes of this article, however, focus will be on the section of the prison known as the SHU.

### Excessive Force

The lawsuit specifically alleges brutality and excessive use of force by correctional officers in the SHU. Violent incidents between staff and inmates are commonplace: "Because of the improper training and supervision given to correctional staff, and the failure of the defendants to investigate and discipline correctional staff when appropriate, an atmosphere of terror and violence exists at Pelican Bay State Prison."

In the lexicon of prison euphemisms, "cell extraction" is surely among the most bizarre. The Cell Extraction Team is equipped with shields, helmets, a wooden-bullet weapon called Big Bertha, baton sticks and Taser guns. "Cell extraction" takes place when a prisoner needs to be moved for a cell change, a trip to court, the infirmary, to a disciplinary hearing, the Violence Control Unit, or whatever other reason the prison officials deem important. Prisoners have been extracted for refusing to return a food tray. Some observers say that prisoners, desperate for human contact, may even set the stage for the extraction, out of the skull-numbing boredom of endless 22-1/2 hour days without a blip on the screen.

A deaf prisoner was beaten by officers

because he could not hear orders given him. He had earlier been denied batteries for his hearing aid.

### Isolation

In a direct attack on the underlying ideology of the institution, the class action suit

*One of Pelican Bay's stated purposes is to eradicate, or...control, the prison gangs within the California system.*

makes the claim that the extreme use of isolation violates the Eighth Amendment ban on cruel and unusual punishment, calling it inhumane, cruel and dehumanizing.

Twenty-two-and-a-half hours a day are spent in the cells. The "free" hour and a half is spent in an "exercise yard" which is essentially a small bare concrete room with high ceilings. Handcuffed and in waist chains, prisoners are put under double escort when they go to the "yard," and once there, they are continually monitored by cameras while they exercise in solitude. Officers communicate with prisoners through disembodied speakers in the walls. The ceiling is covered with heavy mesh on one side and heavy plastic on the other, and the resulting filtered light allowed through the screen is the closest the prisoners in the SHU ever get to feeling the sunlight.

Every move is monitored by a closed-circuit camera. Activity is severely limited. There are no training programs for prisoners, no correspondence courses, and no vocational training.

Inside the SHU, four 500-foot long corridors are monitored by video cameras. Every 100 feet there are "crash gates" which can be closed during an emergency. All staff carry pocket alarms, which, if activated, set off red lights in the hallways. Each set of four corridors is overseen from a control room where all cameras are monitored.

Each concrete cell contains a concrete stool, concrete bed, concrete writing table, and a toilet and sink made of heavy stainless steel. Nothing is allowed on the walls. The cells of SHU prisoners are lined with opaque materials, so that prisoners cannot see out. Prisoners never walk freely, they never emerge from their cells without being handcuffed and in chains. They shuffle to the law library single file, chained to each other at the ankles. Prisoners eat on trays of food which are passed through a

slot in the cell door. Toothpaste is removed from the tube. There is no unread mail. No personal calls are permitted unless there is a verifiable emergency such as a death in the family. Smoking is not allowed.

According to the complaint, "Pelican Bay disciplines VCU prisoners by denying them basic necessities. Prison officials, for example, put VCU prisoners on 'sheet restriction,' by which prisoners receive no bedding, or 'cup restriction,' by which prisoners are denied cups to drink from. Pelican Bay officials may also deny VCU prisoners eating utensils; or leave prisoners handcuffed or hogtied (with hands tied behind their backs), forcing them to lap their food from their plates as best they can. Pelican Bay officials also put VCU prisoners on 'paper gown' status....Over time the gown becomes shredded and may not be replaced."

James Park, former assistant warden at San Quentin, now a consultant on prison policy to the state Legislature and retired from the California Department of Corrections after 31 years in corrections, told the *San Jose Mercury News*, "The amount of isolation and limited sensory input isn't a good thing. I'd keep it tough, strict, not a lot of fun. But I'd provide an expanded opportunity for inmates to work off their problems. They need counseling and rehabilitation work. I'd say that when people are released from the SHU into the community they're not prepared to adjust."

### Classification

One of Pelican Bay's stated purposes is to eradicate, or at least control, the prison gangs within the California system. Pelican Bay officials frequently assign prisoners indeterminate SHU sentences based upon suspected prison gang affiliations. The prisoner has no opportunity to challenge the assignment, which may be made only on the basis of a tattoo.

"Once assigned an indeterminate SHU sentence," alleges the lawsuit, "prison officials routinely tell prisoners accused of gang affiliation that the only way out of the SHU is to 'snitch, parole or die.' By this statement, prison officials demand that prisoners provide information relating to prison gang activities. If prisoners do not 'snitch,' prison officials promise that they will only leave SHU if they parole or die."

### Medical Care

The lawsuit alleges that medical technicians are inadequately trained to perform their duties. These "gatekeepers" for prisoner access to the medical care system are

called upon to make medical diagnoses and are grossly unprepared to do so. One prisoner repeatedly complained of stomach pains, requested medical attention, and eventually required emergency surgery. The physician who performed the surgery discovered that the prisoner's appendix had burst several days earlier and that he was suffering from gangrene as a result. The doctor who finally performed surgery in the local hospital told the prisoner he was "lucky to be alive."

Psychiatric care is inadequate as well. "Instead of providing proper psychiatric treatment and/or therapy to these prisoners, Pelican Bay officials routinely house prisoners suffering from these grave conditions in the Violence Control Unit [VCU, a 40-50 bed subsection of the SHU].... Prisoners housed in the SHU and VCU frequently engage in behavior so extreme and disturbing that in and of itself it should give notice to guards and Pelican Bay medical staff that psychiatric treatment is required," states the lawsuit.

#### Legal Access

"Pelican Bay officials are not permitted to read prisoner legal mail. Nevertheless, they do," alleges the federal court complaint. Officials also demand that prisoners

recount their conversations with attorneys who visit them.

SHU and VCU prisoners must submit to a strip search before going to and upon returning from the library.

#### A Remote Location

Called "Skeleton Bay" by prisoners, Pelican Bay is located in Del Norte County near the Oregon border, in a spot distant

*The staff is... free from the community scrutiny which would take place in a less remote location.*

from where most of them call home. When visitors do come, they speak through a plexiglass wall by phone in a tiny windowless room. Because a large number of the prisoners in the SHU are Hispanics from the Los Angeles area (900 miles away) and have so far to travel, visitors are a rare sight at Pelican Bay.

Not only are the prisoners who are housed in Pelican Bay's SHU living virtually in solitary confinement, the staff of

the entire prison is isolated. They are free from the kind of community scrutiny that would exist in a less remote location, and are more able to reinforce the belief that their behavior is appropriate. Fortunately, the whole notion and philosophy behind Pelican Bay is now being seriously challenged, as well as specific practices.

State officials at the highest level—policy makers in California—conceived of this throwback to the medieval dungeon. California officials have implemented policies and practices which are prohibited by all international human rights standards and treaties,<sup>1</sup> and then boast about practices that our own Department of State condemns in the prisons of other countries. ■

*Jan Elvin is editor of the NPP JOURNAL.*

<sup>1</sup> Eg., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 16) at 197 (1984) (entered into force June 26, 1987).

*For more information, contact the Pelican Bay Information Project, 2489 Mission St. #28, San Francisco, CA 94110, 415/821-6545.*

## Good Staff-Prisoner Relations Key to Success of Scotland's Supermax

BY PETER MCKINLAY

I met Al Bronstein at the International Conference on the Future of Corrections in Ottawa, Canada, in June 1991. During a conversation over dinner one evening, I described the Barlinnie Special Unit (BSU) in Scotland. Al wrote to me later and asked if I would write this article. I agreed, albeit with some hesitation.

This article does not pretend to have the weight of academic research of the BSU. Others better able than I have done—and are doing—this. Nor can I claim the length and depth of experience of the Unit that many other commentators have. But I do have a unique insight into the Unit from the vantage point of director of the Scottish Prison Service (SPS) from January 1988 to October 1991 (when the Service as a whole began a process of fundamental change) and from a Civil Service career background of total ignorance of the penal

system in Scotland before taking up that post.

It is a mistake to consider prison systems in a vacuum. Every nation gets the prison service it deserves. Equally, it is impossible to judge every nation's prison system on exactly the same basis. Prisons reflect differences which obtain among countries. Third World prisons must differ in this sense from those of modern, rich industrial nations. Again, social and religious mores will inevitably lead to different criteria being applied to socially aberrant or criminal behavior. Different political, economic, and legal systems also have different impacts on prison systems. Finally—and most importantly—the "will of a nation," for want of a better phrase, has a profound impact. In a democracy, the "will of the nation" is determined through the ballot box and the politicians who control the mechanisms which fill or empty prisons. They decide what areas will merit custodial punishment, they appoint the judges, empower the police and prose-

cuting authorities, and establish the ground rules for the legal process and the running of prisons. All of this they do in the name of the people and they will only do it differently when the "will of the nation" indicates that if they do not change, they will lose power. Prisons in Scandinavian countries reflect what the people of these countries demand of the system for dealing with people sentenced to prison terms. So do those in the USA and the United Kingdom. Comparison of the systems in these countries speak for themselves.<sup>1</sup>

Again, prison systems do not operate in a vacuum. They—and the Governors [wardens], staff and prisoners—remain part of society. In the case of prisoners it is only too easy to see them as having been exiled from society. They are not. The system itself is an integral part of the social and criminal justice system of a nation.

#### The Birth of the BSU

Prison systems, therefore, have to be seen in a wider context. So the BSU must be seen in the wider context of the SPS, itself a part of the Scottish justice system.

There were special units in the SPS before the BSU. In 1951 a form of

Segregation Unit was established in Peterhead Prison. This unit was short-lived, being abandoned in 1957. But it nevertheless established the notion that for violent and disruptive prisoners a period of segregation in small groups in designated units was a good idea.

#### "The Inverness Cages"

In 1966 a new Segregation Unit was opened in Inverness prison—to serve the prison service as a whole—not just Peterhead. Over the years the regime changed as did the physical layout. But it was always intended to operate as a "limited" regime, broadly along the lines of a mainstream prison, but with the prisoner having restricted association and movement. The basic principle remained one of allowing the prisoner to mend his ways and demonstrate, in time, his fitness to be

returned to a normal prison. As with the earlier Unit, an Advisory Board met every

### *Every nation gets the prison system it deserves.*

two months to consider a prisoner's behavior. The recommended maximum stay was six months.

The Inverness Unit, while never closed as such, was unoccupied between March 1973 and December 1978. The rules then became much stricter and the layout of the five cells—for a maximum of five prisoners—was very different.

The design of the cell is unique in Scotland. The prisoner was in a cage that

is part of a larger cage, allowing staff to enter the cell in the knowledge that they could not be attacked. Typically inmates spent 23 out of 24 hours a day locked in. Over the years the unit gained a reputation as the unit of last resort in the system. Its regime was based on the assumption that the prisoners could only be controlled by coercion. There was little or no trust between staff and prisoners and an atmosphere of violence permeated the place. In 1991, at the suggestion of a joint group of trade union and management representatives, the Unit was closed. During its lifetime, it had gained in the media a great deal of notoriety attached to violent incidents and, to a degree, the design of the cells themselves, which earned the Unit the soubriquet "the Inverness Cages."

(cont'd on next page)

## "Community Meetings" Invoke Personal Responsibility

The Barlinnie Unit was evaluated by David Cooke, a clinical psychologist who conducted his research as a Cropwood Fellow at the Institute of Criminology, the University of Cambridge.<sup>1</sup> For the case study, he used a variety of sources, including prison records, psychiatric and psychological reports, criminal records, and independent observations. The following summarizes his findings:

The majority of the prisoners at Barlinnie are serving life sentences. Sixty-eight percent had received additional sentences while in prison. The unit, thus, was designed for those who would engage in long-term disruptive and violent behavior. A large proportion (76%) have psychopathic traits, although individuals with severe functional or organic disturbance are screened out. Confinement in the Special Unit, Cooke found, resulted in a significant and substantial decrease in the numbers of physical assaults and levels of disruptive behavior. The reason for this may be that the Unit places special emphasis on "personal problem orientation," "practical orientation," "autonomy," "support," "expressiveness," and "involvement." Other prisons ("the usual regime") rated higher on "staff control" and "order and organization."

Certain features of the "usual" prison environment may actively promote violent behavior (such as concentration on control, poor food, limited access to education, "closed" visits, problems with mail, lack of work, monotony, etc.), but they may also passively affect behavior by denying prisoners the normal means of expressing or dealing with aggressive feelings.

Prisoners in the Barlinnie Special Unit are responsible for the day-to-day running of the community, for forming their daily routine. They hold "community meetings" which are central to the Unit's success, the author says, for two reasons: First, the meetings provide a safety valve for aggressive feelings,

allowing prisoners to discharge emotions verbally rather than in the traditional physical manner. Prisoners may call a meeting at any time, giving them immediate access to a forum where a grievance can be discussed and perhaps resolved. Second, community meetings provide a means to impose social control to conform to group norms. In the early days of the Unit a group decision was made that all violent behavior was unacceptable, and the community meetings maintain that norm.

The relations between staff and prisoners are "at the heart of the whole prison system." J. Boyle, perhaps the best-known prisoner, said, "What made the Unit unlike any other place was the way staff and prisoners were allowed and encouraged to sit down and talk together. This was the single most important factor of the Unit." The program puts social relationships in general in high regard. The greatest privilege of the regime is access to regular and frequent visits from family and friends; prisoners value their visiting right above all else. Threat of its loss acts as a powerful control, and can be used by the community as a sanction against bad behavior.

Lower assault rates and less disruption evidence the behavior changes made possible by the Unit. However, the study also notes that there are long-term, "intrinsic" changes associated with the Barlinnie Unit, such as:

- 1) Prisoners may learn to relate to people in a nonaggressive way, or they may learn to express feelings verbally rather than physically. The experience of regular community meetings resulted in improved verbal skills for many who had poor verbal facility upon entry;
- 2) Over several years, some prisoners were able to develop new, nonprisoner social contacts, allowing them to absorb different values;
- 3) Some prisoners were able to develop talents, especially artistic talents, which provided them with skills and interests of value to them upon release.

—J.E.

<sup>1</sup> David J. Cooke, "Containing Violent Prisoners: An Analysis of the Barlinnie Unit," *Brit. J. Criminology*, Vol. 29, No. 2, (Spring 1989).

## Barlinnie Special Unit

Against this background of use of segregation units in 1979, a working party, under the chairmanship of Alex Stephen, considered the topic of "The Treatment of Certain Male Long-Term Prisoners and Potentially Violent Prisoners." The working party included senior prison service officials, a psychiatrist, two prison governors and representatives of the prison officers' association. The report was published in 1971 and implemented in 1973 with the opening of the Barlinnie Special Unit.

What prompted the government of the day to take what was—and is still acknowledged as—a major risk in penal reform? Alex Stephen himself said in an interview in 1982, "In my mind the possible need for some type of special unit arose in 1965 when capital punishment was abolished, albeit on a trial basis in the first instance. If one took history as a guide the prison service was going to be faced with the strong possibility that it would have to contain a prisoner for the rest of his life. This was based on the assumption that before 1965, the 'bad' murderer was hanged and the others reprieved and eventually released on license. To my mind, it would be necessary to make some kind of prison to contain the unreleasable lifer at the stage when, for one reason or another, he could no longer be contained by the routine of the ordinary prison system.

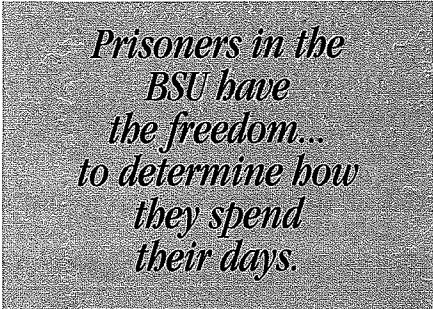
"There were two other factors," says Stephen, "which suggested to me that some special provision might be required. The first was the increasing reluctance of the psychiatric profession to accept psychopaths into the mental hospital setting—a reluctance based genuinely on the growing belief that the most effective treatment was to allow the psychopath to mature in conditions of security, a purpose which the prison service could fulfill.

"The second of these factors was the growing evidence of violence by prisoners against prison staff. It seemed to me that the reasons for such violence had to be examined and, if possible, steps taken to ensure that the atmosphere which produced such violence should, as far as possible, be changed," Stephen continued.

Stephen subsequently filled the post of Controller, Operations, 1973-74 in the SPS. In 1974 he was able to state, "By all accounts, the Barlinnie experiment has had a significant depressurising effect. Since the Unit was set up, there has been no violent assault of any gravity in a Scottish Prison." This was not to last.

## How the BSU Operates

The rules by which the Barlinnie Special Unit is run cannot, of themselves, describe the extent to which it differed from mainstream prison regimes. The essence of the Barlinnie Special Unit lies in the attitudes of the staff and the prisoners. Up to that point, the culture of the SPS had been, by and large, that prisoners were on one side and Governors and staff on the other. In many ways and for long periods, the majority of staff and prisoners had rubbed along reasonably well. But in order



*Prisoners in the  
BSU have  
the freedom...  
to determine how  
they spend  
their days.*

to prosper, prisoners had to conform. The ones who could not come to terms with the normal regime ended up fighting it—literally and figuratively.

*The community meeting*—This was the key to breaking down the traditional culture. These meetings take place every Tuesday, but anyone can call one for any reason at any time, day or night. At the meetings, minutes are taken and staff and prisoners have an equal opportunity to speak. Grievances can be aired and hostility expressed orally, but without physical violence. The group establishes the norms for individual behavior. No formal penalties apply—such as loss of remission or privileges—if anyone is judged to have offended. Peer pressure then transcends the "them" and "us" barrier which normally obtains in a mainstream prison. It becomes, effectively, "us."

*Choice and responsibility*—Prisoners in the BSU have the freedom, within very broad parameters, to determine how they spend their days. Over the years, several have found a useful and rewarding outlet for many of their problems in the arts—painting, writing, sculpture, etc. This has always been encouraged and, in the early days especially, it helped enormously to establish the BSU's reputation as a useful experience for hitherto violent and disruptive prisoners. But the key feature is the power to choose, which is given to a prisoner, and the concomitant responsibility.

*Visiting*—Visiting rights are much more extensive than in a mainstream prison. Access to regular and frequent visits from families and friends helps prisoners to

develop new relationships and renew or strengthen old ones. These visits are so important to prisoners that the fear of losing them acts as a powerful incentive to self-control.

These factors combine to create an environment within which real personal relationships can be formed between staff and prisoners. It leads to mutual understanding and respect—if not to friendship. This in turn enables prisoners and staff to establish mutual trust. Lack of trust lies at the heart of the problems in mainstream prisons.

It is, nevertheless, salutary to reflect that even after 18 years of existence, the BSU is still regarded as an experiment. From its early days, it was derided by the media as a "grave train" and "holiday camp" for evil men whose shocking behavior in mainstream prisons was "rewarded" by the soft life. Scandal stories from time to time hit the headlines suggesting that prisoners could obtain women, drugs and alcohol in the Unit. Equally, the Unit had many vocal and prominent supporters who saw it as "an imaginative and enlightened experiment in penal reform."<sup>2</sup> Thus the debate, as happens all too frequently, was polarized into "liberal do-gooders" versus "right-wing fascists." It has been fortunate indeed that on the occasions when these outbursts occurred, neither the government of the day (Conservative and Labour) nor the prison authorities lost their nerve. They refused to be panicked or pressured into closing it.

But, unfortunately, Alex Stephen's hope that the BSU would lead to extensive changes in mainstream prisoners and a reduction in violence has not materialized. The Unit's success is relative and narrow. The prisoners who have gone there have clearly benefited, and the prison system has benefited from having them sent there.<sup>3</sup> But the Unit has never been integrated into the system; it is separate from it. Indeed, it operated throughout the period that the Inverness Unit operated and many of the BSU prisoners had experienced the Inverness Unit. It has also proved well nigh impossible to translate the culture of the BSU to staff and prisoners in mainstream prisons. Not surprising, perhaps, when you consider that the staff/prisoner ratio is much higher in the BSU than in a mainstream hall in Barlinnie Prison. The staff costs alone make it impossible to translate the BSU model to mainstream prisons.

The existence of the BSU has done nothing to avert the wave of violence, involving staff hostages, riots, wholesale destruction of halls and a general increase in unrest in



Scottish prisons during 1986-1988. The system came close to breaking point; implementing the lessons of the BSU took second place to halting the steady decline into anarchy and regaining control. But while these steps were being taken, thought was being given to the root causes of the problems. Perhaps not surprisingly, special units to contain the most dangerous and disruptive prisoners were once again considered. A document entitled "Assessment and Control: The Management of Violent and Disruptive Prisoners" was issued widely for consultation by the SPS. Fortunately, the Service listened to what some people said in response to it and a new policy was enunciated in two documents, "A Shared Enterprise" which is a strategy outline for the Service, and "Opportunity and Responsibility: Developing New Approaches to the Management of the Long-Term Prison System in Scotland."

### The Future

I believe the lessons of the BSU experiment are now beginning to be put into practice in the SPS. Plans for the future management of long-term prisoners will be based on a belief that the prisoner is a responsible individual who should be presented with a range of opportunities to allow him or her to use the time in custody responsibly for personal development. The SPS will continue to press for measures to reduce overcrowding in prisons through, for example, more noncustodial community-based punishments. It will continue to open up the system to the public by edu-

cating it into a better appreciation of the problems, opportunities and costs of the system. Increasing investment in the training and personal development of the staff and Governors will heighten their self-esteem and self-confidence and the regard in which they are held by the public. The

*The debate, as happens all too frequently, was polarized into 'liberal do-gooders' versus 'right-wing fascists.'*

SPS has begun to improve visiting arrangements including escorted and unescorted home leaves in order to strengthen family ties and personal relationships. A better balance is being sought among the competing demands of security—no escapes; control—no riots; and opportunities—prisoners exercising a degree of choice over how they spend their own time. Finally, there is a commitment to developing a greater number of small regimes within the mainstream prisons. These small units must be regarded as an integral part of the whole prison system and each should be encouraged to develop its own *persona*.

### Conclusion

The BSU was and is ahead of its time. It should continue to flourish and help pris-

oners who found no other hope in the system. But I believe its impact—and that of other similarly inspired units—will always be relatively limited in relation to the problems of the SPS. Ultimately, the solution to these problems lies in the hearts and minds of *all* the people in the *whole* system—not just prisons, and in Ministers continuing to support sensible, cost-effective management policies which resist labels such as "liberal," "authoritarian," or "punitive." I have great faith in the ability of the people who manage Scotland's prisons today to incorporate the lessons of the BSU into the rest of the system. ■

*Peter McKinlay, former director of the Scottish Prison Service, is chief executive of Scottish Homes, a government-funded housing development agency.*

<sup>1</sup> Prisons in the United States and United Kingdom are more arbitrary, much harsher and more punitive than those in Scandinavia (Ed. note).

<sup>2</sup> Ludovic Kennedy.

<sup>3</sup> D. Cooke, "Current Issues in Scottish Prisons: Systems of Accountability and Regimes for Difficult Prisoners," Scottish Prison Service Occasional Papers, No. 2/1989.

### References:

Third Eye Centre, *The Special Unit: Barlinnie Prison—Its Evolution Through its Art*, Glasgow (1982).

David J. Cooke, "Violence in Prisons: The Influence of Regime Factors," *The Howard Journal of Criminal Justice*, Vol. 30, No. 2 (May 1991).

David J. Cooke, "Containing Violent Prisoners: An Analysis of the Barlinnie Special Unit," *British Journal of Criminology*, 29(2):140, Spring 1989.

## "Dear Prison Project..."

*The National Prison Project receives over 500 letters each week from prisoners. Many of those letters include legal questions which, unfortunately, we have neither the time nor the staff to answer individually. In order to give prisoners some of the information requested, we have begun an "advice" column, a sort of "Dear Abby" for prisoners on legal questions. This issue's "Dear Abby" is Solomon N'jie.*

Dear Prison Project:

I filed a "class action" suit. However, it was treated by the court as a personal suit. I am not looking for any money relief. I only want the prison officials to make the proper changes and fall in line with the Constitution and the courts. What did I do wrong? Can't a prisoner file a class action suit?

Rejected

Dear Rejected:

It is possible that you may have violated any number of federal or state rules of civil procedure, depending on whether you filed in federal or state court.

To answer your second question, of course a prisoner can file a class action suit. But, you must, 1) retain an attorney who will represent the class or ask the court to appoint one; 2) meet the requirements for a class action (see the Federal Rules of Civil Procedure: Rule 23, or your State (local) Rules of Civil Procedure regarding class actions). In addition, the court in which you file must have jurisdiction (that is, the authority to hear the case) and it must certify the class. In other words, it must agree that the case qualifies as a class action and must be willing to appoint counsel.

Finally, a class action cannot involve only the complaints of one prisoner. The action must be on behalf of numerous prisoners and there must be a claim that the same questions of law or fact are involved for all the prisoners. Your court rules on class actions must be checked carefully.

BY JACKIE WALKER

## Condom Distribution

Community-based organizations, angry taxpayers, and prisoners call me periodically in search of strategies for condom distribution. I have talked with prisoners who tell me that, without condoms in prison, they've made do with what's available to protect themselves: men save bread wrappers, plastic baggies and garbage bags to provide some type of barrier during sex; women make do with sheets of plastic wrap.

Currently five jurisdictions make condoms available to prisoners—New York City, San Francisco, Mississippi, Vermont and Philadelphia. The latest condom-availability program is underway in Washington, D.C. Most correctional departments have looked the other way regarding rules against sex in prison due to the public health crisis of HIV/AIDS. Women are excluded from most programs because they do not provide dental dams, the only method of HIV prevention for women having sex with women. Only San Francisco provides both dental dams and condoms to prisoners. None of the systems have evaluated their programs to see if condom availability has decreased the rate of HIV infection. What follows is an overview of each program and its progress.

### New York City-One Per Sick Visit

New York City started condom distribution in 1988 and now distributes roughly 1,200 condoms a year, according to Iris Solis, director of the Corrections AIDS Prevention Program. Although there were some security concerns, there have been few problems. Prisoners register for sick call and can receive only one condom per visit from the medical staff.

Solis offers this advice to other systems considering condom distribution: "First start a small pilot program and monitor it. I would strongly recommend using the

medical model and giving out one condom. Also monitor prisoners who are coming down on a daily basis. If it is successful expand it to other facilities."

### San Francisco-A No Nonsense Approach

The Forensic AIDS Project (FAP) started San Francisco's condom-distribution program in 1988. Since under California penal laws sex in correctional facilities is punishable as a felony, FAP persuaded state officials to agree not to charge prisoners under this statute. FAP provides HIV/AIDS education five times a week and prisoners may receive two condoms during any of these educational programs. And although women were not written into the original policy concerning condom distribution, they have been given dental dams.

Ralle Greenberg, director of the Forensic AIDS Project, takes a no-nonsense approach to condom distribution: "We basically integrate it as part of our education program. I'd advise correctional people not to make a big deal about it. Also, if prisoners begin using condoms while in custody they'll be more likely to continue that use once they're released into the community."

### Mississippi-Condoms From the Canteen

Condoms are not new in Mississippi, since they have always been provided for conjugal visits. In 1987, William Steiger, hospital administrator at the state facility in Parchman proposed making condoms available in response to the HIV/AIDS epidemic. Prisoners must buy condoms at the canteen, and there is no limit on the amount a prisoner may buy. Initially they cost five cents but the price was later increased to 25 cents by state law. Outside groups have repeatedly offered to provide condoms for the indigent. Hospital administration has noted that condom sales usually increase after the end of HIV/AIDS educational programs. Steiger can only remember one incident when a condom was used for contraband.

Steiger is pragmatic. "Education is the most essential part. Everything after that is common-sense. Being realistic, if we don't provide condoms we're just asking for

something to arise later on that's going to be far more costly. And as a taxpayer, providing condoms as a preventive measure makes perfect sense."

### Vermont-Condoms As A Public Health Issue

Vermont's condom-distribution program began in 1988. Thomas Powell, director of clinical services for the Vermont Department of Corrections says, "The condom issue is based on HIV prevention." Prisoners can only receive condoms during sick call and are limited to one per visit.

According to Powell, "Condom distribution has to be viewed in the context of public health policy instead of correctional policy. Since 99% of all prisoners return to the streets, one of our imperatives should be not to make the HIV/AIDS epidemic worse." Powell also offers the following advice for systems considering condom programs: "Look at condom distribution as one component of a comprehensive program of education, confidential testing and counseling. Condom distribution needs to be embedded in a comprehensive policy of risk reduction. Otherwise you're kidding yourself."

### Philadelphia—Sending a Message

Philadelphia's condom distribution was implemented as part of an comprehensive HIV/AIDS education program in 1988. This program allows prisoners to receive condoms through on-going educational programs, during sick call, or at HIV antibody-test counseling sessions. The original idea was to allow prisoners to pick up condoms with as little discussion as possible.

Louis Tanner Moore, AIDS education program supervisor, says, "I think you can do some things without it [condom distribution]. But if you have people in an adult setting they're going to make certain choices. Some people will choose to be sexually active. Having condoms available sends the message that a prisoner's health is important." ■

*Jackie Walker is the Project's AIDS information coordinator.*



**The National Prison Project JOURNAL**, \$30/yr. \$2/yr. to prisoners.

**The Prisoners Assistance Directory**, the result of a national survey, identifies and describes various organizations and agencies that provide assistance to prisoners. Lists national, state, and local organizations and sources of assistance including legal, library, AIDS, family support, and ex-offender aid. 9th Edition, published September 1990. Paperback, \$30 prepaid from NPP.

**Offender Rights Litigation: Historical and Future Developments.** A book chapter by Alvin J. Bronstein published in the Prisoners' Rights Sourcebook (1980). Traces the history of the prisoners' rights movement and surveys the state of the law on various prison issues (many case citations). 24 pages, \$3 prepaid from NPP.

QTY. COST

**The National Prison Project Status Report** lists by state those presently under court order, or those which have pending litigation either involving the entire state prison system or major institutions within the state. Lists cases which deal with overcrowding and/or the total conditions of confinement. (No jails except District of Columbia.) Updated January 1992. \$5 prepaid from NPP.

**Bibliography of Material on Women in Prison** lists information on this subject available from the National Prison Project and other sources concerning health care, drug treatment, incarcerated mothers, juveniles, legislation, parole, the death penalty, sex discrimination, race and more. 35 pages. \$5 prepaid from NPP.

**A Primer for Jail Litigators** is a detailed manual with practical suggestions for jail litigation. It includes chapters on legal analysis, the use of expert witnesses, class actions, attorneys' fees, enforcement, discovery, defenses' proof, remedies, and many practical suggestions. Relevant case citations and correctional standards. 1st Edition, February 1984. 180 pages, paperback. (Note: This is not a "jailhouse lawyers" manual.) \$20 prepaid from NPP.

QTY. COST

**1990 AIDS in Prison Bibliography** lists resources on AIDS in prison that are available from the National Prison Project and other sources, including corrections policies on AIDS, educational materials, medical and legal articles, and recent AIDS studies. \$5 prepaid from NPP.

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

(order from ACLU)

**ACLU Handbook, The Rights of Prisoners.** Guide to the legal rights of prisoners, parolees, pre-trial detainees, etc., in question-and-answer form. Contains citations. \$7.95; \$5 for prisoners. ACLU Dept. L, P.O. Box 794, Medford, NY 11763.

QTY. COST

Fill out and send with check payable to:

**The National Prison Project**  
1875 Connecticut Ave, NW, #410  
Washington, D.C. 20009

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

The following are major developments in the Prison Project's litigation program since July 1, 1992. Further details of any of the listed cases may be obtained by writing the Project.

**Austin v. Lehman**—This case challenges overcrowding and conditions in 14 Pennsylvania state prisons. On August 6, plaintiffs filed a motion for a preliminary injunction challenging the failure of defendants to implement an appropriate program of tuberculosis (TB) control. The motion followed an outbreak of tuberculosis at the Muncy facility. On September 6, the state announced a new TB control policy; a three-day hearing on plaintiffs' motion was held soon after. On September 29, the judge issued the preliminary injunction, ordering the state to implement its new TB control policy.

**Hamilton v. Morial** challenges conditions at the Orleans Parish Prison, the municipal jail for the City of New Orleans. Plaintiffs moved for contempt sanctions upon learning that officials had failed to

meet the terms of a consent decree which enjoined physical abuse of juveniles who had been moved from the jail to a juvenile facility. In lieu of a hearing on sanctions, the Sheriff agreed to transfer the three officers who were the source of the most complaints. He also agreed to allow the judge to appoint an independent expert to evaluate disciplinary procedures. Plaintiffs also learned that there had been a total breakdown in tuberculosis screening at the jail. In September, at plaintiffs' request, the judge ordered jail officials to adopt screening procedures which incorporated the guidelines recommended by the Centers for Disease Control.

**Helling v. McKinney**—The NPP is appearing as *amicus curiae* in this case of whether the Constitution is violated when a prisoner is exposed to levels of environmental tobacco smoke (ETS) that pose a serious risk to his or her health. Nevada state prisoner William McKinney filed suit in federal court alleging that he was forced to share a small, poorly ventilated cell with a prisoner who smoked five packs of ciga-

rettes a day. The district court's decision in favor of prison officials was reversed by the Ninth Circuit Court of Appeals. The Supreme Court granted *certiorari* in June 1992; oral argument will be heard in December 1992 or January 1993.

**Inman v. Board of Supervisors**—This case challenges overcrowding and conditions at the Northampton, Virginia County Jail. The Sheriff has made considerable improvements at the jail as result of the lawsuit. On August 5, at the request of both parties, the judge dismissed the case. However, he denied our request for attorneys' fees; we have appealed this decision to the Fourth Circuit.

**U.S. v. Michigan/Knop v. Johnson**—This is a statewide prison conditions case; the National Prison Project appears as *amicus* in *U.S. v. Michigan*. On September 8, the court issued an order rejecting the stipulation filed in April by the Department of Justice to withdraw their motion to find the state in contempt on mental health issues.

**National Prison Project**  
American Civil Liberties Union Foundation  
1875 Connecticut Ave., NW, #410  
Washington, D.C. 20009  
(202) 234-4830



Nonprofit Org.  
U.S. Postage  
**PAID**  
Washington D.C.  
Permit No. 5248