The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume V, Issue 2, June 2005

NCPLS ACCESS

General Assembly Considers Restructuring Delivery of Legal Services to Prisoners

On May 5th, the North Carolina Senate passed the appropriations bill, a provision of which augments the responsibilities of the Office of Indigent Defense Services to encompass "Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction . . .." §7A-498.3(a)(2a). The bill further provides: "Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent Defense Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date."

Founded in 1978, NCPLS has been providing legal assistance to North Carolina prisoners for almost 27 years. The firm has developed expertise in the governing law; efficiency in delivering effective, efficient, and timely services to clients; and an excellent relationship with both the Department of Correction (DOC) and jail administrators across the State. NCPLS serves all people who are incarcerated in North Carolina - not just those in custody of the DOC - thanks to a modest grant from IOLTA. The appropriations bill makes no provision for the delivery of legal services to pre-trial detainees, a population of more than 14,000 people on any given day, and more than 250,000 people, annually.

The Legislative Building

Senate Bill 622: Transferring Responsibility for Providing Legal Assistance to Inmates from the Department of Correction to the Office of Indigent Defense Services

Requested by: Senators Kinnaird, Garrou, Dalton, Hagan

SECTION 14.9.(a) G.S. 7A 498.3 reads as rewritten:

"§7A 498.3. Responsibilities of Office of Indigent Defense Services.

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:

(1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;

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In this Issue:

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

NCPLS serves a population of more than 36,000 prisoners and 14,000 pretrial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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

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

GENERAL ASSEMBLY CONSIDERS RESTRUCTURING (CONTINUED)

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(2) Cases in which an indigent person is entitled to legal representation under G.S. 7A 451 and G.S. 7A 451.1; and

(2a) Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction; and

(3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. ~~The~~ Except in cases under subdivision (2a) of subsection (a) of this section, the court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed as provided in G.S. 7A 452.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office.

SECTION 14.9.(b) Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent Defense Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date.

The Director of Indigent Defense Services, in consultation with the Commission on Indigent Defense Services and the Department of Justice, shall determine which types of legal services can best be provided directly to inmates by staff employed by the Office of Indigent Defense Services, which services should be provided by counsel designated by the Office of Indigent Defense Services, and which services should be provided by contract between the Office of Indigent Defense Services and nonprofit organizations or other contract providers.

If the Director of Indigent Defense Services determines that, in order to facilitate the transfer of responsibility provided for in this section, it is necessary for Prisoner Legal Services, Inc., to continue providing legal services and access to

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General Assembly Considers Restructuring (Continued)

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the courts to inmates beyond the termination of its contract with the Department of Correction on September 30, 2005, the Director may contract with Prisoner Legal Services, Inc., for a period of time to be determined by the Director.

SECTION 14.9.(c) The sum of one million eight hundred eighty three thousand eight hundred sixty five dollars ($1,883,865) for the 2005 2006 fiscal year and the sum of two million five hundred eleven thousand eight hundred twenty dollars ($2,511,820) for the 2006-2007 fiscal year shall be transferred from the Department of Correction to the Office of Indigent Defense Services to implement this section.

SECTION 14.9.(d) Subsections (a) and (b) of this section become effective October 1, 2005. The remainder of this section becomes effective July 1, 2005."

How a Bill Becomes Law

Ordinarily, ideas for changes in the law are subjected to a rigorous process that allows for input from a broad range of citizens and the careful consideration of legislators. The idea is first written into a "bill," which is a proposal for a change in the law. A bill may be proposed in either house of the General Assembly – the Senate, or the House of Representatives. Once a bill has been drafted, it is then "introduced" by the legislator (or legislators) who support the idea. The introduction of a bill is the procedure by which the bill is formally submitted for consideration by the General Assembly.

After a bill has been introduced, it is normally referred to a legislative committee for study and a recommendation. The committee may take no action, in which case the measure dies. The committee may amend the bill by adding to it or changing it, or it can simply recommend the bill for consideration by the full membership.

During consideration by the full membership, the bill's sponsor is called upon to explain the proposal and its purpose. Afterward, any member of the house may ask questions or express an opinion about the proposal. When everyone who wishes to speak has been heard, a vote is taken. If the vote is favorable, the bill moves to a "third" and final hearing, during which there may be additional debate. If the second vote is favorable, the bill is sent to the other house for consideration.

When a bill has passed one house, it is referred to the other, where it usually goes through the same process. The bill is first referred to a committee for study and a recommendation, followed by votes on the measure by the full body. Often, the second house will modify the bill. When that happens, the measure is returned to the house where the bill originated with a request that the first house "concur in" (or agree with) the changes made. If the first house agrees with the changes, the measure is ready to be signed into law by the Governor. On the other hand, if the first house does not agree with the changes, members of the two houses are appointed to a "conference committee" to reconcile differences in the House and Senate bills. The conference committee then reports its recommendations to both houses, both of which vote on whether to accept the recommendations. If the measure passes in both houses, the measure is ready to be signed into law. If either house rejects the recommendation, new members may be appointed to the conference committee for further consideration of a compromise. Otherwise, the measure dies.

This process is illustrated in the following chart, and can also be found at: *www.ncleg.net/NCGAInfo/Bill-Law/bill-law.gif*.

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HOW AN IDEA BECOMES LAW

CONCERNED CITIZEN, GROUP ORGANIZATION., OR LEGISLATOR SUGGESTS LEGISLATION

REPRESENTATIVE
Authors Bill

BILL FILED WITH CLERK, NUMBERED

BILL READ FIRST TIME
SPEAKER ASSIGNS TO COMMITTEE

COMMITTEE CHAIR MAY ASSIGN TO SUBCOMMITTEE

SECOND READING
ADMENMENT, DEBATE
VOTES ON PASSAGE,

OR

OR

FULL COMMITTEE

SUBCOMMITTEE

THIRD READING
AMENDMENT, DEBATE,
VOTE ON PASSAGE

DELIVER TO SENATE DESK

(NOTE:In this example, the bill began in the House. A bill may also orginate in the Senate)

SIGNS ACT (AFTER 10 DAYS WITHOUT SIGNATUR) VETO RETURNS BILL TO ORIGIN

THREE-FIFTHS VOTE OVERIDES VETO

GOVERNOR

IF SUBJECT TO VETO

TO CONFERENCE COMMITTEE

HOUSE AND SENATE ADOPT CONFERENCE REPORT

IF HOUSE DOES NOT CONCUR

OR

TO HOUSE, IF HOUSE CONCURS

OR

TO ENROLLMENT IF PASSED

OR

OR

THIRD READING AMENDMENT DEBATE

SECOND READING AMENDMENT, DEBATE VOTES ON PASSAGE

COMMITTEE MEETS REPORTS TO FLOOR

BILL READ FIRST TIME CHAIRMAN OF RULES ASSIGNS TO COMMITTEE

General Assembly Considers Restructuring (Continued)

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Senate Bill 622 Adopted Through A Different Process

The provisions of Senate Bill 622 that propose to transfer the responsibility to provide legal assistance to prisoners from the Department of Correction to the Office of Indigent Defense Services were not adopted through the careful, deliberative process described above. Rather, the measure was added to the budget bill as one of dozens of amendments to the 360 page document. The measure was not the subject of study, debate, or substantive consideration by the Senate, but was instead adopted as part of the overall budget bill. Consequently, little consideration has been given to the rationale underlying the proposal or the consequences of its enactment into law.

State Bar Rules on NCPLS Ethics Inquiry

Editor's Note: As *Access* readers will recall, in the September 2004 edition, we reported new DOC regulations governing client/attorney visits. In light of the new regulations, NCPLS asked the North Carolina State Bar (the organization that governs the practice of law in this State) to provide guidance regarding the ethical obligations of North Carolina Prisoner Legal Services, Inc. (NCPLS) advocates, both for our own benefit to ensure that we comply with the State Bar's requirements, and for the benefit of the DOC in crafting regulations that permit attorney meetings with inmates on an appropriately confidential basis. The State Bar has proposed the following opinion that shows our concerns were well-founded.

July 2004 Inquiry: The North Carolina Department of Correction (DOC) recently promulgated new regulations governing lawyer meetings with inmates. As a prerequisite to a client-lawyer meeting, the lawyer must disclose to the facility supervisor that the inmate has designated the lawyer to "represent him/her in a matter now pending or which may be pending before a court of law. . . ." State of North Carolina Department of Correction, Division of Prisons Policy & Procedures, Chapter D, §.0202(a). The regulation is scheduled for statewide implementation beginning October 1, 2004.

Prior to the regulation's effective date, NCPLS lawyers, paralegals and interns routinely met with inmate clients in the correctional setting. Inmates might express a desire to meet with an attorney by writing letters or communicating with NCPLS through family members. Thereafter, meetings were arranged by giving correctional officials twenty-four hour advance notice (by telephone or facsimile) that a NCPLS representative wished to arrange a meeting with a particular inmate. The nature of the relationship between the inmate and the NCPLS representative would not be disclosed. Based upon this communication, prison officials would know that a meeting would occur but not whether the inmate was a client, a potential client, a witness or a potential witness.

NCPLS believes that the new DOC regulations require that a lawyer or his agent to disclose not only the fact of the meeting with an inmate, but also the nature of the relationship between the inmate and the lawyer prior to visitation. Disclosure of the fact that legal counsel has been sought may sometimes be embarrassing or harmful to the inmate/client. The DOC regulation also restricts the nature of the discussions between inmates and lawyers or paralegals to "pending legal proceedings only." §.0202(a). The regulation specifically prohibits legal solicitation.

A lawyer who does not represent an inmate (but may want to obtain information relevant to a client's legal claim) or who does not disclose to a facility supervisor that he represents an inmate in a pending matter under § .0202(a), may still arrange a meeting with an inmate, but must follow "special procedures" to do so. These special procedures require the lawyer to communicate with the inmate prior to the visit. The inmate must then

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About North Carolina Prisoner Legal Services (a nonprofit, public service law firm)

- 26-year history of service

- Staff of 40, (27 women, 13 men)
  - 18 lawyers, 15 paralegals, 7 support staff members
  - 12 parents (7 of whom are women (including 3 single mothers), and a single father
  - Average tenure: 7 years (6 years for attorneys; 9 years for paralegals)

- Efficiently delivers excellent legal services to a population of almost 37,000 DOC prisoners; 14,000 pretrial detainees (a changing population of about 250,000 people, annually)

- Services provided in more than 13,000 cases, annually

- NCPLS provides information and advice concerning legal rights and responsibilities, discourages frivolous litigation, works toward administrative resolutions of legitimate problems, and provides representation in court to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

- Governance -- the program is governed by a Board of Directors designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

- Cost/Benefit -- During the past five years, the contract with DOC has generated an average of less than $2.5 million for NCPLS, annually. During the same period of time, **NCPLS has saved the DOC more than $15 million ($3 million per year)** by ensuring that prisoners' convictions and sentences comport with the law, and that prisoners are properly credited with time served. **The contract with DOC more than pays for itself.**

Significant Activities & Litigation of NCPLS

Established in 1978, North Carolina Prisoner Legal Services, Inc., (NCPLS), is a non-profit, public service organization. No other entity in North Carolina routinely provides civil and post-conviction services to the State's incarcerated population.

NCPLS Activities

NCPLS engages in a broad range of advocacy on behalf of prisoners. Although litigation has always been an important focus of that advocacy, the program has placed greater emphasis on collaborative processes during the past decade. For example, the program has worked with the Department of Correction and county governments in partnership to resolve legal issues and potential disputes as an alternative to adversarial legal proceedings. Other activities include:

- **North Carolina Sentencing & Policy Advisory Commission** (NCPLS Office Administrator, Billy Sanders, Commissioner).

- **North Carolina Prisoner Litigation Conference** - NCPLS convened a conference to discuss improving efficiencies in prisoner litigation involving representatives of the United States District Court, the U.S. Marshal, the Department of Correction, the Inmate Grievance Resolution Board, and the Office of the Attorney General.

- **American Correctional Association** – NCPLS' Executive Director serves as a member on both the Standards Committee and the Commission on Accreditation for Corrections.

- **National Academies of Science, Institute of Medicine** – NCPLS' Executive Director serves as consultant regarding the use of prisoner-subjects in research.

NCPLS Litigation

West v. Atkins, 487 U.S. 42 (1988) (obligation to provide medical care to prisoners is non-delegable duty of the state).

Medley v. N.C. Dept. of Correction, 412 S.E. 2d 654 (N.C.S.Ct. 1992)(State-law duty to provide adequate medical care for prisoners cannot be delegated).

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About North Carolina Prisoner Legal Services (Continued)

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Small v. Martin, 85-987-CRT (EDNC 1985)(Class action challenging conditions at 48 of the State's prison units resulted in 1998 settlement, legislation that capped the prison population, and led to Structured Sentencing).

Hamilton v. Freeman, 554 S.E.2d 856 (NC App. 2001)(DOC required to honor judgment & commitment order as entered by court and could not unilaterally modify sentences based on its own determination that sentence violated state statute).

About Litigation Pending Against NCPLS

• For the first time in its 26-year history, NCPLS is presently defending against two legal proceedings (NLRB and Title VII action in federal court) brought by three former employees that allege unfair labor practices.

• The dispute grew out of an unprecedented demand for paid maternity leave. In response, the Board authorized payment in full, both to the employee who pressed the demand, and to a similarly situated employee who had not requested paid maternity leave. In addition, the Board acted in accordance with the request of 17 employees who asked the program to purchase a commercial short-term disability policy that expressly covers maternity leave.

• Claims that NCPLS discriminates against women or retaliates against employees are untrue.

• NCPLS employs a staff of 40 people, (27 of whom are women; including 12 parents, 7 mothers (3 single mothers), and a single father

• Although salaries are rather modest ($31,500 starting salary for attorneys), the program provides generous benefits and a supportive, family-friendly work environment.

• **NCPLS Commitment to Staff** – The program provides generous benefits and a supportive, family-friendly work environment.

— **Benefits** – life insurance, comprehensive health insurance, short- and long-term disability insurance (which expressly covers maternity leave), AFLAC supplemental insurance, an employer-sponsored pension plan, a retirement program, and medical and dependent care reimbursement accounts;

— **Paid Leave** – 14 paid holidays and six weeks of paid leave each year;

— **Professional Fees** – NCPLS pays all North Carolina State Bar license fees, all properly adopted district bar mandatory dues, fees for admission to the federal courts within the NCPLS service area, and other fees or dues which are legally required. In addition, when the financial position of the program permits, NCPLS pays dues for lawyers and paralegals who wish to be members of the North Carolina Bar Association and/or the North Carolina Academy of Trial Lawyers;

— **Professional Development** – NCPLS provides each of our employees $625 that may be used during the calendar year for approved education or training to develop or enhance job-related skills;

— **Family-Friendly Accommodations and Flexible Schedules** – To the extent consistent with our mission and the duty we owe our clients, NCPLS permits employees to bring children into the workplace and work at home. The program also accommodates flexible schedules and reduced work commitments.

• The average tenure of NCPLS staff is 7 years (6 years for attorneys; 9 years for paralegals)

NCPLS is the Most Cost-Effective and Efficient means of providing an essential public service

• Working with government officials and agencies to ensure the humane and lawful treatment of North Carolina prisoners, NCPLS has a 26-year history of excellence.

• After more than a decade of litigation in *Bounds v. Smith*, North Carolina has arrived at a mechanism to provide legal assistance to prisoners through NCPLS which passes constitutional muster. *Smith v. Bounds*, 430 U.S. 817 97 S.Ct. 1491, 52 L.Ed.2d 272 (1977); 657 F.Supp. 1322 (E.D.N.C. 1986), *aff'd*, 813 F.2d 1299 (4th Cir.

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About North Carolina Prisoner Legal Services (Continued)

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1987), *aff'd on reh'g*, 841 F.2d 77 (4th Cir.), *aff'd*, 430 U.S. 817, 109 S.Ct. 176 (1988).

• The constitutional sufficiency of the services provided by NCPLS has been tested in the courts and consistently affirmed. *Bradley v. NC Dept. of Correction*, No. 5:04-CT-44-FL (29 November 2004, E.D.N.C.)(claim that DOC and NCPLS failed to provide minimum standards of adequate access to the courts dismissed as frivolous); *Wrenn v. Freeman*, 894 F.Supp. 244 (E.D.N.C. 1995), *aff'd per curiam*, 92 F.3d 1184 (4th Cir. 1996) (Table), *cert. denied*, 519 U.S. 1136 (1997); *Ganey v. Johnson*, 908 F.2d 966 (4th Cir. 1990); *Murray v. NCPLS*, No. 5:94-CT-188-F (E.D.N.C. 9 March 1995), *affirmed*, No. 95-6428 (4th Cir. 28 June 1995)(Unpublished).

• Since the federal courts approved the contract between NCPLS and the Department of Correction, no court has found that any North Carolina prisoner has been deprived of access to the courts.

• ***Any*** alternative mechanism to fulfilling the state's constitutional obligation to provide legal assistance to prisoners would be the subject of protracted federal litigation.

• **NCPLS saves the DOC more than the cost of the service it provides.** During the past five years, the contract with the DOC has generated an average of less than $2.5 million for NCPLS annually. During the same period of time, **NCPLS has saved the DOC more than $15 million ($3 million per year)** by ensuring that prisoners' convictions and sentences comport with the law, and that prisoners are properly credited with time served. **The contract with DOC more than pays for itself.**

• The responsible advocacy provided by NCPLS has established credibility and provided the basis for positive and productive relationships with the courts, government officials, and state agencies, including the Department of Correction.

Update on RDM Legal Research Services

by Staff Attorney Ken Butler

NCPLS has reported on various groups and individuals that solicit business from inmates by claiming that they can secure a prisoner's release or get a conviction overturned. Several of these entities have been investigated by the North Carolina State Bar for the unauthorized practice of law. One such individual was Richard D. Meares, operating as RDM Legal Research Services, out of Mount Airy, N.C.

As previously reported in the December 2004 issue of ***Access***, Meares was convicted of 10 counts of mail fraud and two counts of wire fraud in federal court. These convictions stemmed from cases in which Meares told inmates or their families that for a fee, he had political connections who could arrange for commutations or pardons. Although Mr. Meares collected more than half a million dollars in fees, no prisoners were ever released from custody or had their sentences reduced as a result of Mr. Meares' involvement. At a sentencing hearing in Greensboro, Meares was recently sentenced to 9 ½ years in federal prison and was ordered to pay restitution in the amount of $146,500. He still remains obligated to pay a civil judgment in state court of more than $600,000.

Tour of Mountain View Correctional Institution

Editor's note: NCPLS representatives toured three DOC facilities in recent weeks. A report about one of those facilities follows.

On Thursday, April 7, 2005, nine NCPLS employees (Michael Hamden, Billy Sanders, Tricia-Mills-Hazzard, Eric Dratwa, Kim Church, Jen Pogue, Ismael Torres, Bruce Creecy, and Jo Ann Fennell) visited Mountain View Correctional Institution. The purpose of this tour was to investigate conditions of confinement as the facility implements double-bunking. What follows is a narrative of what the team observed and what the team learned from DOC officials.

Original Design

Mountain View Correctional Institution was designed and built in 1998 by Correctional Corporation of America (CCA) to house 528 inmates. CCA is a private, for-profit corporation that designs, builds, and operates correctional facilities. In 2000, the management and operation of Mountain View was assumed by the North Carolina Department of Correction (DOC).

To address crowding problems, the DOC plans to double-bunk most cells at Mountain View, providing beds for more than 900 inmates. Some cells have already been re-fitted and the transition is underway.

The Tour Guides

We were met by Steve Bailey, Division of Prisons Western Regional Director, David Mitchell, Superintendent of Mountain View Correctional Institution, LaVee Hamer, General Counsel for the DOC, and Deborah McSwain, Counsel for the DOC. Mr. Bailey and Superintendent Mitchell briefed us before we began the tour.

The Facility

Mountain View was chosen as the site of double-bunking by the Department of Correction to accommodate the pressing need for medium custody bed-space. (There are four custody levels maximum, close, medium and minimum. Medium custody prisons typically house inmates in dorms of 50 inmates per dorm. Mountain View was designed and built as a single-cell facility.)

There are two units at Mountain View with four wings in each unit. Each wing consists of three levels of cells, each level containing 22 cells. The first two levels of the wing will be double-bunked, with the top level containing single cells. The capacity of such a wing is 110 inmates. An additional 48 beds are used for segregation.

The top level single cells are used as an incentive to encourage good behavior among inmates. The longer an inmate goes infraction-free, the better his chance of obtaining a single cell.

The cells are 87 square feet, with a contiguous shared day room area. Each level has two shower areas. In the day room, which runs the length of the wing, there are two televisions, one at either end of the dayroom. Each inmate has a chair in his room that he can bring to the dayroom area to watch television. The televisions are "silent" – sound is transmitted electronically and can be heard through headphones that are provided. Except in "emergency" circumstances (as for example, a disturbance), inmates are allowed out of their rooms 18 hours a day.

There is an indoor gymnasium which contains a full-length basketball court. Two recreation yards also provide basketball courts and softball fields. Ping-pong, weights, horseshoes and shuffleboard were also present in the recreation areas.

At Mountain View, there is a library and a chapel, though each is relatively small given the projected population, which is expected to rise above 900 inmates.

Clothing is laundered on-site. Clothing items are deposited in mesh bags and labeled, so that after laundering, an inmate receives the same items that he delivered. Mountain View has been phasing-in jumpsuits (which are the same iron-brown color typically seen in medium custody prisons).

Initiatives, Programs, etc.

Each inmate is given a card (approximately the size of a business card) with his cell number and bunk level printed in large bold letters (Ex., 221L). In order to have his cell door opened, the inmate

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Tour of Mountain View (Continued)

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must show his cell card to the officer in the control booth. This measure will make it more difficult to obtain unauthorized access to the cells by someone other than the inmates assigned to the cell.

Prisoners will be permitted to express a preference for a roommate. To the extent possible, prison officials will try to match people who want to share a cell. Their will be cases in which inmates' choices will be overridden by custody and security considerations.

Video camera installation – which will allow continuous videotaping of various areas of the prison – is being planned. Video cameras are already operational in some areas.

The Superintendent takes pride in the availability of vocational and educational programs. Superintendent Mitchell reports a participation rate of about 91% of the population, on average. Currently, brick masonry, horticulture, computer repair, and computer desktop program courses are offered. Plans are underway to expand the programs to second shift to provide greater opportunity for participation by the projected increase in population. (Typically in medium custody facilities, programs run on first shift, only.)

Mountain View also has a Prison Industry Enhancement (P.I.E.) program in place. U.S. Textiles employs approximately 70 inmates in a plant within the prison that makes pantyhose. Inmate-workers earn at least $7.02 per hour and can make up to $12 or $14 dollars per hour. From their earnings, these inmates pay taxes, a room-and-board fee, child support, court fees, and they contribute to the Crime Victims' Compensation Fund. An institutional record of good behavior is required for employment in the P.I.E. facility, which provides a strong incentive to comply with the rules of conduct at the Institution.

Visits may be contact or non-contact. An inmate who tests positive for drugs will not receive contact visits. Other types of infractions can result in the loss of contact visits.

Medical and dental care is provided for routine matters through a clinic. Emergency cases are treated at an urgent care facility in Spruce Pine. Specialty care not available at the Institution is provided at the Catawba Valley Hospital, one wing of which is permanently staffed by DOC officers.

There are two segregation facilities: an Intensive Control (ICON) unit, and a Segregation Unit. Exercise areas (cages) are provided for those inmates, both inside and outdoors, in areas adjacent to those units.

Claims of Unconstitutional Conditions of Confinement

The Eighth Amendment to the United States Constitution expressly prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. The prohibition against such punishments "protects inmates from inhumane treatment and conditions while imprisoned." *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir.1996). However, the Supreme Court has also made it clear that "[t]he Constitution does not mandate comfortable prisons." *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981). Similarly, the ban on cruel and unusual punishment "does not require the most intelligent, progressive, humane, or efficacious prison management." *Anderson v. Romero*, 72 F.3d 518, 524 (7th Cir. 1995). To the extent that prison conditions are harsh or restrictive, they are viewed by the courts as part of the price that offenders must pay for their offenses against society. *Rhodes*, 452 U.S. at 347.

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NCPLS Joins Call for Moratorium on the Death Penalty

In 1997, following years of study, the American Bar Association urged jurisdictions that use capital punishment to observe a moratorium on executions until policies and procedures were reviewed and appropriate measures were instituted to ensure fair and impartial administration of the death penalty, and to minimize the risk of executing innocent people.

In North Carolina, a spate of cases drew the attention of the public when death penalty convictions were reversed after years of appeals. The cases of Alan Gell, Darryl Hunt, and Charles Munsey, for example, were widely publicized. In some cases, people who were sentenced to death were shown to be innocent of the charge after spending years in prison on death row.

In 1999, People of Faith Against the Death Penalty launched its "Moratorium Now!" campaign. The purpose of the campaign is to educate the citizens and leaders of the State about the need for an in-depth study of the death penalty system. Since the campaign began, literally tens of thousands of North Carolinians have endorsed the study, including more than 40 local governments.

In February 2005, the NCPLS Board of Directors approved the request of the NCPLS staff to endorse a two-year suspension of executions to allow time for study of the death penalty system to ensure its fairness and reliability so that no innocent North Carolinian will be put to death. Letters communicating that position were directed to the leadership of the General Assembly, urging the adoption of the Moratorium and a study of the death penalty system.

Further information concerning the Moratorium is available from the following organizations:

N.C. Coalition for a Moratorium
P.O. Box 358
Durham, NC 27702
1-888-283-4193
www.ncmoratorium.org

People of Faith Against
the Death Penalty
110 W. Main St., Ste 2-G
Carrboro, NC 27510
(919) 933-7567
Fax: (919) 933-5611
www.pfadp.org

NCBA Section Lends Strong Support to NCPLS

On Saturday, May 21, 2005, the North Carolina Bar Association's Constitutional Rights & Responsibilities Sectoin adopted the following Resolution:

RESOLUTION OPPOSING DEFUNDING OF THE CONTRACT BETWEEN THE DEPARTMENT OF CORRECTIONS AND NORTH CAROLINA PRISONER LEGAL SERVICES

WHEREAS, North Carolina Prisoner Legal Services, Inc. was formed on January 13, 1978, for the purpose of providing legal services for the inmates of North Carolina prisons; and

WHEREAS, since its inception, North Carolina Prisoner Legal Services, Inc. has been blessed with strong leadership from the bar, as exemplified by its initial Board of Directors which included Professor Robert Byrd, past Dean of the University of North Carolina School of Law; Duke Law School Professor and former Solicitor General Walter E. Dellinger, III; Professor Harry Groves, past Dean of the North Carolina Central University School of Law; and many other dedicated attorneys and educators; and the program has continued to maintain close ties with the North Carolina Bar Association and the law schools of this State through the years; and

WHEREAS, the federal courts have held in *Bounds v Smith* that North Carolina inmates are constitutionally entitled to legal assistance in filing habeas and civil rights petitions; and

WHEREAS, in response to that decision, the North Carolina Department of Corrections contracted and continues to contract with North Carolina Prisoner Legal Services to provide legal services to inmates; and

WHEREAS, the federal courts have held that the contract between the Department of Corrections and NCPLS, and the services provided by NCPLS, meet the constitutional requirements set forth in *Bounds v Smith*; and

WHEREAS, it is a goal of NCPLS to ensure that no inmates have their rights abridged, and that any deficiencies in DOC policies and procedures are identified and resolved in the most cost-effective way possible; and

WHEREAS, the services of NCPLS benefit not only the in-mates themselves but also the State of North Carolina, and the Department of Corrections has publicly advised the courts, most recently in a pleading filed April 26, 2005, that appointment of NCPLS as counsel would be helpful to the State in achieving an appropriate resolution of inmate litigation; and

WHEREAS, North Carolina Prisoner Legal Services now has a 26-year history of excellence working with government officials and agencies and in the courts to ensure the humane and lawful treatment of North Carolina prisoners; and

WHEREAS, since the federal courts approved the contract between NCPLS and the Department of Correction, no court has found that any North Carolina prisoner has been deprived of access to the courts; and

WHEREAS, the Senate Budget Bill, SB622, provides:

Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent Defense Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date.

The Director of Indigent Defense Services, in consultation with the Commission on Indigent Defense Services and the Department of Justice, shall determine which types of legal services can best be provided directly to inmates by staff employed by the Office of Indigent Defense Services, which services should be provided by counsel designated by the Office of Indigent Defense Services, and which services should be provided by contract between the Office of Indigent Defense Services and nonprofit organizations or other contract providers.

and

WHEREAS, the result of SB622 would be to fragment legal services to inmates, and is likely to reduce the quality of services to inmates and to increase the cost of those services;

NOW THEREFORE, the North Carolina Bar Association commends North Carolina Prisoner Legal Services for its steadfast and excellent work in the representation of inmates of North Carolina and opposes defunding the program as proposed in SB622. [Emphasis in the original.]

NC Center on Actual Innocence & The Actual Innocence Commission

by Staff Attorney Ken Butler

Christine Mumma is the Executive Director of both the North Carolina Center on Actual Innocence (NCCAI) (often referred to as the "Innocence Project" or the "Center") and the N.C. Actual Innocence Commission. On April 5, 2005, Ms. Mumma addressed the staff of NCPLS, describing both of these entities, as well as developments in the actual innocence movement in North Carolina.

NCCAI is an independent non-profit group which coordinates the effort by North Carolina law schools to review credible claims of innocence. In particular, NCCAI addresses cases in which DNA evidence may exonerate a defendant. Student volunteers, working under the supervision of law school faculty advisers to investigate and evaluate such cases. The Center receives over 500 requests for assistance each year. To qualify for review, a defendant must meet the following criteria:

a) Must have been convicted of a *felony* in North Carolina;

b) Must claim *actual innocence* of the crime (the Center will not review cases challenging only court procedures);

c) Must have at least 36 months remaining on the defendant's sentence;

d) If the inmate pursued a direct appeal, the appeal must have been decided (however, this would not apply to most guilty plea cases); and

e) Generally, the inmate must be without current legal representation.

Persons wishing to apply for assistance from the Center may contact them at the following address:

NCCAI
P.O. Box 52446
Shannon Plaza Station
Durham, NC 27717-2446

The North Carolina Actual Innocence Commission (NCAIC) is an entirley separate organization. The Commission was established by Chief Justice I. Beverly Lake, Jr., and serves as a forum in which representatives from all facets of the criminal justice process convene to address issues relating to wrongful convictions. The Commission is composed of prosecutors, judges, defense attorneys, members of law enforcement, victim advocates, and legal scholars. Among NCAIC's objectives are to identify factors that make convictions less reliable, to evaluate possible corrective measures, and to make recommendations to the appropriate bodies. One of the first tasks of the Commission was to review procedures relating to eyewitness identifications. The Commission's recommendations have since been adopted by the N.C. Training and Standards Commission for incorporation into Basic Law Enforcement Training (BLET) in North Carolina.

In 2004, the NCAIC began a study of the post-conviction review process for claims of actual innocence. As part of this study, the Commission conferred with members of the United Kingdom's Criminal Case Review Commission (CCRC). The CCRC is an independent body that reviews cases which are suspected of being "miscarriages of justice." If the CCRC finds that a particular case presents a valid claim of actual innocence, the case is referred back to the courts.

After completing its study, the NCAIC recommended that North Carolina adopt a new review process for *credible claims* of factual innocence, similar to that performed by the CCRC. "Credible claims" of innocence are those where the defendants asserts complete innocence of *any* criminal responsibility, supported by credible, verifiable evidence of innocence that has not previously been considered at a trial or post-conviction hearing. Such claims would be subject to a complete, non-adversarial, truth-seeking investigation and review.

The Commission's recommendations formed the basis for Senate Bill 1045, which was introduced during the present term of the General Assembly. SB 1045 would establish a North Carolina Innocence Inquiry Commission, the first such body in the United States. The Innocence Inquiry Commission would have the authority to establish procedures for the review of cases, review claims of actual innocence, and prepare reports and recommendations to the trial

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Tour of Mountain View (Continued)

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In order to establish that a condition of confinement violates the Eighth Amendment, an inmate must satisfy a two-pronged test. The first prong is an objective one, in which the inmate must show that he has suffered a "sufficiently serious" deprivation. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). A deprivation is "sufficiently serious" if it amounts to the denial of "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. at 347. Life's necessities, include things such as food, warmth, sanitation, shelter from the elements, medical care, and so forth. To measure the severity of a deprivation, the Fourth Circuit Court of Appeals requires an inmate to show that he has suffered "a serious or significant physical . . . injury resulting from the challenged conditions." *Strickler v. Waters*, 989 F.2d 1375, 1381 (4th Cir. 1993).

The second prong of an Eighth Amendment conditions claim is a *subjective* one, in which the inmate must show that prison officials acted with a sufficiently culpable or blameworthy state of mind. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). The "state of mind" element in Eighth Amendment cases requires proof of at least deliberate indifference to the deprivation of life's necessities. *Id*. at 303. In defining deliberate indifference, the Supreme Court has held that a prison official "may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

While the courts have developed the two-pronged Eighth Amendment test for prison conditions cases, Congress has acted to impose additional restrictions on inmate claims concerning prison conditions. Under the Prison Litigation Reform Act (PLRA), an inmate who is seeking to use the federal civil rights laws to challenge prison conditions must first exhaust his available administrative remedies to seek a solution to the complained of condition. 42 U.S.C. §1997e(a). *Porter v. Nussle*, 534 U.S. 516 (2002). In addition, the PLRA also prohibits an inmate from recovering damages for mental or emotional injury unless he can show a prior *physical* injury. 42 U.S.C. §1997e(e).

If you believe you are being subjected to a deprivation of life's necessities and you have unsuccessfully exhausted the grievance procedure, you can seek legal assistance from NCPLS. Please provide a description of the deprivation and the injury it is causing you, and provide copies of your grievance and all of the responses you received through Level III of the grievance process.

NC Center on Actual Innocence & The Actual Innocence Commission (Continued)

courts. One significant aspect of this bill is that, in order to obtain review by the Innocence Inquiry Commission, a defendant would have to waive procedural safeguards and privileges that would otherwise apply and agree to cooperate fully with the investigation. As of the date of this article, SB 1045 was still being reviewed by committee. It is uncertain whether the bill will become law. NCPLS will continue to monitor the status of this legislation and keep our clients informed of developments in future editions of ***Access***.

State Bar Rules on NCPLS Ethics Inquiry (Continued)

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make a written request to allow the special visit. § .0202(c). NCPLS believes these special procedures may delay the time of a meeting or penalize those inmates who are illiterate.

Where a client is in custody of correctional officials and disclosure of the fact that legal counsel has been sought will sometimes be embarrassing or harmful to the client, does Rule 1.6 and the duty of confidentiality prohibit NCPLS lawyers from disclosing the nature of the relationship in order to obtain access to the clients for purposes of meeting with them?

April 2005 Opinion: Rule 1.6 of the Rules of Professional Conduct prohibits a lawyer from revealing any information acquired during the course of the professional relationship unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or one of the exceptions to the rule applies. The confidentiality rule applies, not merely to harmful or embarrassing information, but to all information acquired during the representation. *See* Rule 1.6 cmt. [3]. The identity of a client or the fact that a client has retained legal counsel is considered confidential information under Rule 1.6.

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. If a lawyer determines that disclosure of the lawyer-client relationship would likely be detrimental to the client, a lawyer must not disclose that information unless authorized to do so by the client or until otherwise permitted to do so by Rule 1.6. *See* RPC 21. The client's authorization to disclose must flow from informed consent. Under circumstances in which the client is in custody and the client's custodians condition a lawyer-client consultation upon such disclosure, it may not be possible to obtain such authorization.

The Ethics Committee cannot interpret the DOC regulations nor should it opine as to the effect of such regulations on the lawyer-client relationship.

MAR Results in 6 ½-Year Sentence Reduction

by Staff Attorney Janine Zanin

In *State v. Cox*, NCPSL brought an MAR challenging our client's conviction on the grounds that it was obtained in violation of his right to a speedy trial. The client was accused of committing several forgery and uttering charges in 1988. While incarcerated in another state, our client attempted on several occasions to settle the North Carolina charges pending against him. However, the State repeatedly refused to issue a detainer and extradite him for trial. More than four years later, while our client was out on parole in a different jurisdiction, the State elected to proceed against him. In addition to the forgery and uttering charges, he was indicted as an habitual felon. He was sentenced to 113-145 months in prison. After the MAR was filed, a hearing was held in Buncombe County Superior Court. After the hearing, a settlement was negotiated (1) striking the client's status as an habitual felon, (2) dismissing the habitual felon indictments, and (3) re-sentencing the defendant on the forgery and uttering convictions to an active prison term of 36-44 months, followed by 36 months probation. Our client's family is thrilled that they will be reunited six and a half years earlier than they had anticipated.

Master Discipline, Expect Nothing

By Michael G. Santos

Editor's Note: The following article, "Master Discipline, Expect Nothing," follows a series of articles republished in ***Access*** by permission of the author, inmate Michael G. Santos. Mr. Santos was convicted of drug distribution and sentenced to 45 years in Federal prison. He is scheduled for release in 2013. While in prison he has earned Bachelors and Masters Degrees. He has also written three books available for review and purchase on his web site: *www.MichaelSantos.net.* Although Mr. Santos does not have direct access to the internet, he can be reached by email at: *info@michaelsantos.net*. Mr. Santos can also be reached at the following address:

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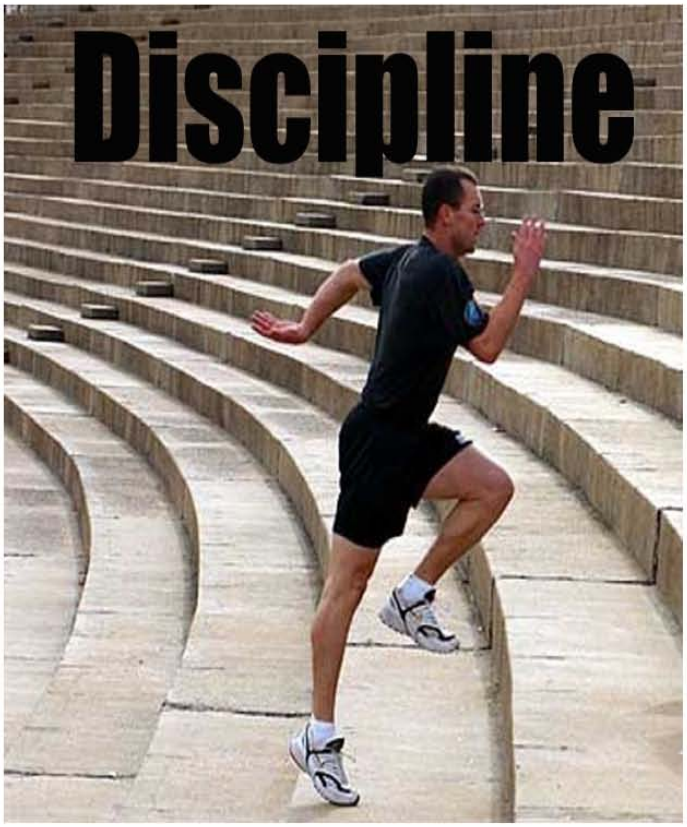
Florence, CO 81266-5000

When I was 23, in 1987, I began serving this 45-year sentence. I was convicted by a jury for having led a group of people who distributed cocaine. There were no weapons or acts of violence in the case or in my history. Nevertheless, Judge Jack Tanner thought a tough sentence appropriate, despite my not having served a single day in confinement before my arrest on these charges related to my leading a Continuing Criminal Enterprise. Now I am 16 years into this sentence. At 39, I'm a lot more experienced at setting goals and overcoming obstacles than I was when I hobbled through the sally-



port of USP Atlanta. Back then I didn't know anything about imprisonment. With a significant amount of time ahead of me, and knowing the potential for stabbings and murder was only a holler away, I recognized that life inside the 40-foot walls could have been the last stop for me. Now, of course, I realize that much life remains, and that one key to growth through imprisonment is discipline. It's a virtue I continually strive to master, and such a strategy is one I recommend to my fellow 2,000,000 prisoners.

During these times of impending war, we prisoners can learn much about discipline from soldiers. George Washington wrote that discipline is the soul of an army. In his letter of instructions to the captains of the Virginia regiments, Washington wrote that discipline makes small numbers formidable, procures success to the weak, and esteem to all.

As prisoners, our lives are in some way like the lives of soldiers who live under the control of others, and separated from loved ones. And like soldiers who use discipline to make themselves stronger and enhance their sense of self, we as prisoners can use discipline to help us achieve personal goals, the obstacles wrought by confinement notwithstanding.

Upon my arrest, my life descended from oceanfront penthouses to cellblocks permeated with a constant head-splitting clamor. I assessed my predicament and knew that the years ahead would not pass without struggle. I had been alive for only 23 years, so it wasn't easy to contemplate the decades my sentence would require me to serve. All I knew was that I wanted to make the most of my time, and that I could not allow prison administrators or other prisoners to limit the progress I needed to make.

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Master Discipline, Expect Nothing (Continued)

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At that time I didn't know whether I would ever leave prison, but I know that if I wanted release to come, I would need to discipline myself and become independent in order to conquer the challenges ahead.

Both the U.S. Congress and prison administrators have made it difficult for prisoners to educate themselves beyond the GED. Through discipline and persistence, however, I was able to generate support outside of prison walls, and that support opened opportunities to begin and complete both undergraduate and graduate academic degrees at accredited universities. I learned that even in prison, the pen is mightier than the sword (or a shank). Other prisoners can educate themselves, too, if they're willing to confront the hindrances along the way.

The Department of Justice proclaims that the Bureau of Prisons encourages inmates "to develop the skills necessary to become productive members of society upon release from prison." I have not found this to be the case during the 16 years that I have served. At least not formally. Although a prisoner can be convicted of infinite infractions to make time more difficult, there is no accomplishment a prisoner can make to enhance his status formally; the custody and classification manual does not distinguish the graduate student from the Jerry Springer fan.

My experience admonishes me to expect interference and impediments every day of my life. It's a struggle. As a disciplined prisoner, like a soldier, I have learned that it is imperative to detach myself from what is not in my power to control. Only through that detachment can I grow and prosper in spite of the rigidity of this system. And through that detachment a prisoner can attain an inward freedom, which brings with it an inner peace.

Prisoners should expect administrators to provide food, clothing, and shelter. They should not expect much else. They should not expect to eat the food they would like; they should not expect comfortable clothing; and they should not expect cozy living quarters. Sometimes the food will be better than other times, but as prisoners, they should not expect the delight of a well-prepared meal. Accept it. Move on. Prisoners will not know the satisfaction of wearing a good suit, but they will be issued clothing. Prisoners should not feel entitled to a particular bed, or even a particular prison, because administrators can and will move us as if we were chattel.

When prisoners learn to live without expectations, they remove the power of others to disappoint or frustrate them. As prisoners, there will always be more disappointment and frustration to come. That is one fact every prisoner can count upon.

It is the responsibility of all prisoners to determine how they will respond to the inevitable frustrations of confinement. During my term, I have been jammed by petty bureaucrats and prisoners alike. Some guards have held my mail

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Master Discipline, Expect Nothing (Continued)

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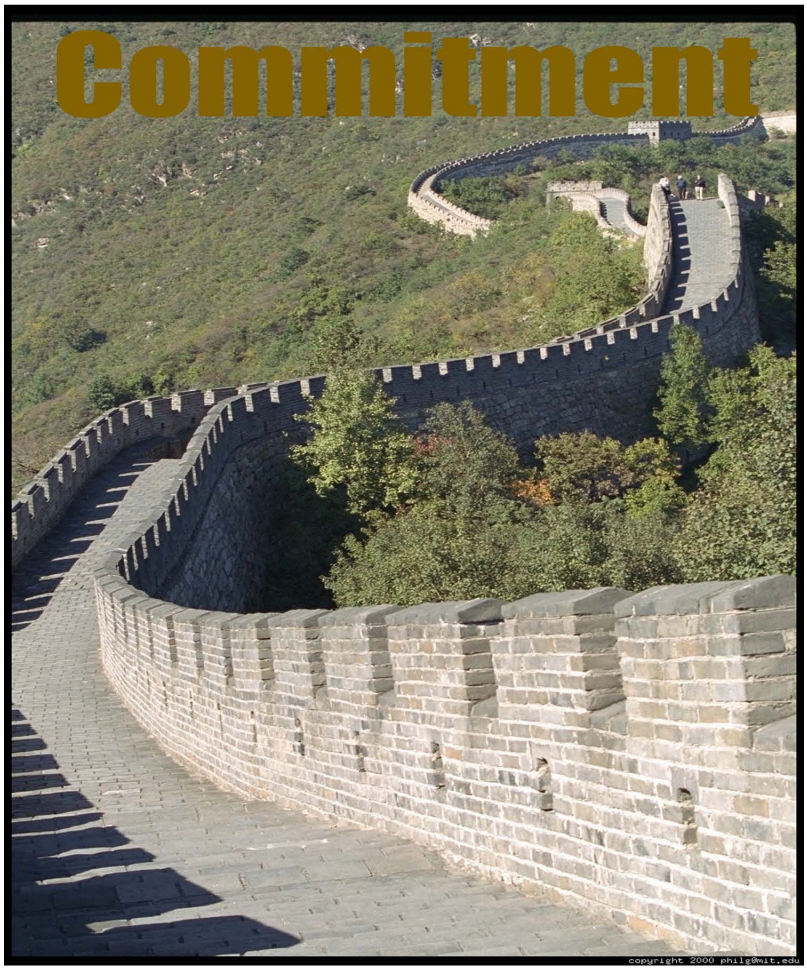
to impede my progress, and some prisoners have challenged my sang-froid. As a disciplined prisoner, it's been my responsibility to consider all options available in my response, and to understand the ramifications that would follow my actions. A tenacious focus on goals served as my compass to help me navigate my way through the labyrinth of confinement.



When prisoners control their minds and their perceptions, they give themselves the power to control their progress. Discipline helps them move forward toward their own goals, not for the meaningless accolades and certificates issued by bureaucrats, but for reasons that have personal meaning for the individual engaged in the struggle of imprisonment. Focus, discipline, and commitment to one's own goals diminish the power of others to frustrate and disappoint.

The prison system is punitive rather than encouraging. Expect it. Despite the progress of enlightened management, this system governs through the use of punishments and eschews incentive. This war on terror will make matters more onerous for prisoners, so I urge them to emulate soldiers and master discipline. As we incorporate discipline into our nature, and banish hope and expectations that anything inside these communities of coercion and deprivation exist to help us, we enable ourselves to achieve.

When we acknowledge that we are who we are today because of the choices we made yesterday, and that we will become what we want tomorrow because of the choices we made today, when we accept that we alone are responsible for our success or our failures, we transcend these American gulags, these wastelands of human spirit. Like Washington's soldiers, successful prisoners make discipline the soul of their adjustment.

The Newsletter of North Carolina Prisoner Legal Services, Inc.

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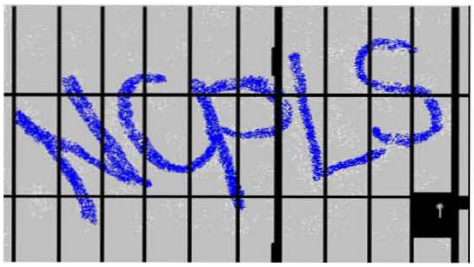

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