The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume IV, Issue 1, March 2004

# NCPLS Access

## NCPLS Celebrates 25th Anniversary with Open House at New Office

The twenty-five year history of North Carolina Prisoner Legal Services, Inc., can be traced in a record of important and successful litigation in cases such as *Small v. Martin*, 85-987-CRT (EDNC 1985) (class action challenge to living conditions in 48 of the state's "road-camp" prison units, which led to a legislatively im-posed prison cap and structured sentencing); *West v. Atkins*, 487 U.S. 42 (1988), and *Medley v. N.C. Dept. of Correction*, 412 S.E.2d 654 (N.C. S.Ct. 1992) (affirming the state's non-delegable duty to provide medical care to prisoners); *Simeon v. Hardin*, 92-CV-04318 (Durham Co. Superior Court, 1992) (challenging docketing practices of the district attorney); *Law, v. Britt*, 93-300-CT-BR (EDNC 1993) (class action challenging living conditions in state-run juvenile detention centers); *Hamilton v. Freeman*, 96-CVS-06321 (Wake Co. Superior Court 1996) (class action requiring DOC to honor facially valid judgment and commitment orders); *Thebaud v. Jarvis*, 5:97-CT-463-BO(3) (EDNC 1997) (class action challenging medical services at Women's Correctional Institution), and hundreds of other lawsuits brought on behalf of prisoners to remedy inhumane living conditions or to correct illegal convictions or sentences.


*NCPLS's New Office*

After 25 years, NCPLS has begun to write a new chapter in the program's history. Beginning in August 2003, we re-examined our operations to develop a structure that will allow us to provide more efficient and timelier service to our clients. In the past, our advocates were generally expected to master the law governing all of the areas of our practice. Based upon our reassessment, we concluded that specialization would promote efficiency and improve the quality of services we offer. So, capitalizing on our experience and strengths, we

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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 33,500 prisoners and 14,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.



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

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

# NCPLS Celebrates 25th Anniversary (Continued)

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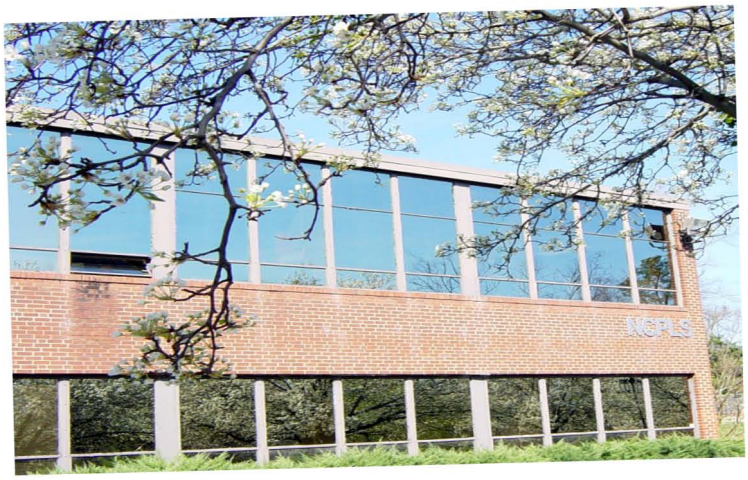
created the Support Team, the Intake Team, the Civil Team, and the Post-Conviction Team. The development of these specialty teams will allow our staff to focus their time and energy on matters within their particular knowledge and areas of expertise.

In addition, our tenancy at 224 South Dawson Street was terminated and the relocation of our office became a priority. New office space was located and, late last year, renovations of the building at 1110 Wake Forest Road were undertaken. In a project supervised by NCPLS Finance Officer Rick Lennon, and with the assistance of Executive Assistant Brenda M. Richardson, the space was specifically designed and fitted to accommodate the needs of the program. Major renovations were completed and the office moved mid-February. But, we have not changed our phone number – (919) 856-2200 – or our mailing address (P.O. Box 25397, Raleigh, NC 27611). In short, our clients and their families can contact us as they always have.

As you can imagine, despite careful preparation and planning, the move was disruptive. Moving office furniture, files, books, computers, and equipment took time away from providing services to our clients. Consequently, we are scrambling to catch up. If you have written to NCPLS in recent months, or if you write to us soon, you may experience a longer delay than usual in receiving a response. (Generally, we try to answer every request for assistance and all client correspondence within 30 days.) Your understanding and patience are much appreciated.

Meanwhile, we are adding the finishing touches to our building in preparation for an Open House and 25th Anniversary Celebration on March 26. The public is invited and (for those who cannot attend) the event will be the subject of an article in the next issue of ***Access***.




*The Back of NCPLS's New Office*

# Goals Lead to Action

*By Michael G. Santos*
*(Reg. No. 16377-004) FCI Fort Dix, New Jersey*

***Editor's Note:*** The following articles, "Goals Lead to Action," and "Pursue Learning," follow articles that appeared in our last edition, "Choose Success," and "Use Goals to Guide." They are republished by permission of the author, Michael G. Santos. Mr. Santos was convicted of drug distribution and sentenced to serve 45 years in Federal prison. He is scheduled for release in 2013. While in prison, he has earned Bachelors and Masters Degrees. He has also written three books available for review and purchase on his web site: www. MichaelSantos.net. Although Mr. Santos does not have direct access to the internet, he can be reached by email at: info@michaelsantos.net. He can also be reached by writing to him at: Michael G. Santos, Reg. No. 16377-004, FCI – Fort Dix, P.O. Box 38, Fort Dix, NJ 08640.

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When a man walks into prison and hears steel gates lock behind him, he has to make a choice. He can choose the loser's path of immersing himself into the prison society, or he can choose success. The choice begins with how he thinks. Many will blame informants, prosecutors, or incompetent attorneys for their woes. Doing so, however, is a recipe for continued failure.

Those who choose success acknowledge their own responsibility for their station in life. Then they set a series of goals that will push them toward the point in their journey where they envision themselves in years to come. Those goals lead to action. And with the long sentences being imposed today, action is more important than ever.

Society has become considerably more punitive. Judges now routinely cast felons into an ocean of time, and it is incumbent upon each prisoner who chooses success to use goals as his guide. Those goals lead successful prisoners home. They prepare prisoners to overcome the obstacles they expect to encounter upon release.

Like anyone who chooses success, a prisoner must leave the past behind and focus on the future. He must drop the weight of bad decisions and negative thinking which led to his confinement. He must transform himself into the man he wants to become. Instead of allowing himself to drown in the sea of time, the prisoner who chooses success learns to float and then sail through the gales and hurricanes of confinement.

The successful prisoner pictures himself with his feet standing on the firm ground of happiness. And as Ghandi said, happiness will only come when everything we think and everything we say and everything we do are in harmony. Those who choose success know exactly where they want to go, and then implement strategies that will help them reach their destination. Success does not come by accident, but requires conscious choice and commitment.

The goals we set must match the picture we have of ourselves in years to come. Those without concern for continuing problems with law enforcement, for difficulties in finding employment, for trouble in maintaining family relationships can languish. They can waste their time however they choose because they are content to float along in the sea of misdirection, unconcerned with currents that keep them immersed in a cycle of failure.

Those who choose success, on the other hand, have clearly defined long-term goals, and a series of shorter-term goals against which they measure themselves every day. Those who choose success know that every day brings opportunities to make further progress. As time passes, they develop more confidence in their ability to navigate their way through seas of adversity.

My experience suggests that prisoners can do well by establishing a ten-year goal. Rather than saying, "My goal is to be very successful," the successful prisoner knows that he must clearly define his goals in order to hold himself accountable. For example, he might say, "In ten years I will speak and write both Spanish and English with fluency and eloquence. I will weigh 170 pounds and have the endurance to run 40 miles each week. I will not eat fried or fatty foods. I will live as a faithful, loving husband who nurtures love with my wife every day. I will have prepared myself to bring value to prospective employers. I will live as a man

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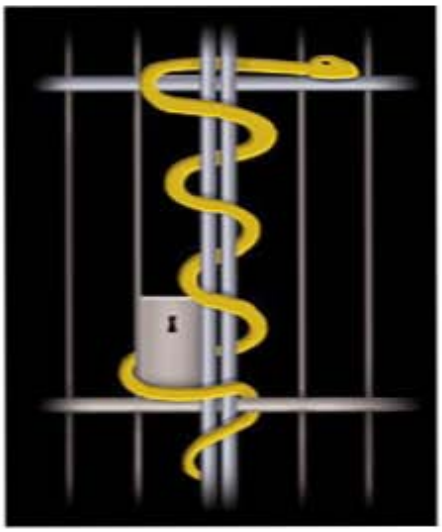
# HIV Diagnosis and Testing: What You Should Know

*By Will Hawkins, Staff Medical Paralegal*

The number of chronic illnesses and infectious diseases among inmates continues to increase in our state's penitentiaries. On a weekly basis, our office receives a substantial number of complaints from inmates with chronic ailments, such as HIV and Hepatitis C infection. Inmates afflicted with these viral infections are often misinformed or not informed at all about their particular illness. When an individual suffers from long-term, life-threatening disease, information about the condition can be one of the most effective tools for treatment.

With this article, we hope to better inform our clients about some common chronic health issues and possibly explain why health professionals take the measures they do when providing treatment for a particular disease process. The focus of this article will be HIV/AIDS. Inmates receive a lot of general information regarding the transmission and risk factors involved with HIV infection. However, it may be useful to provide information about the testing and diagnosis of these diseases.

HIV testing can be especially confusing for an HIV patient. Often, an individual initially tests negative for HIV on a blood screen test, and then a month later, tests positive for HIV on a second test. The result of a positive test is stressful enough for any patient, but even more so for a patient that recently tested negative. A patient who previously tested negative, has since had no form of sexual contact, and has not engaged in any other risky behavior that may lead to transmission, is overwhelmed to learn that a second test is positive. How can this be possible?



First, an important thing to remember is this; *HIV infection is not the same thing as AIDS*. AIDS is the clinical presentation of any number of infections or complications that result from a breakdown of a person's immune system as a result of HIV activity. Just because you are HIV positive does not mean that you have AIDS. With the development of newer and stronger antiviral drug combinations, HIV positive patients can sometimes go several decades, or even a lifetime, without ever experiencing the actual disease process of AIDS. However, an HIV positive result means you will always be a carrier of the virus and will have the ability to transmit it to others, even though you are not actively experiencing AIDS complications.

The reason a patient might test negative at one point and positive in a subsequent test a short time afterward is simple: *timing*. A person who is infected with HIV does not immediately test positive. Unfortunately, an individual may be able to transmit the virus to others during the time it takes for the current tests to detect the virus. It may take as long as 12 weeks after exposure to develop the HIV virus to a level that can be detected by the tests commonly available. So, it is possible for a person to test negative for three months and fall into a false sense of security. The individual then returns to normal activities, including sexual contacts, and unknowingly places other people at risk for infection. This is why DOC, hospitals, and the military to name a few, conduct HIV screenings on a regular and continual basis.

The reason the virus can't be detected immediately has to do with the method currently used in testing. As it stands now, testing for HIV is based on the immunological response by the body of the infected individual. What does immunological response mean? When our body is invaded by destructive foreign material (such as bacteria, viruses, protists, etc.) our body defends itself by activating antibodies against the invading organism. An antibody then has the responsibility for "labeling" an invader for destruction by the immune system. We can equate

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# HIV Diagnosis and Testing (Continued)

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it to modern laser guided "smart bomb" systems. The laser (or antibody) identifies a target (the invader) while the bomb (immune system agent) destroys it.
It is through the detection of antibodies produced by the patient through blood screening tests that HIV infection is diagnosed. With bacteria and some other microbes, antibody response is rather fast. Anyone who has experienced a whitehead (zit) or cyst has seen first-hand that rate of the body's immunological response to bacteria. It is not uncommon to wake up in the morning with a pimple that you did not see the night before. However, viruses are a different sort of creature. (In fact, there remains a friendly controversy among microbiologists as to whether viruses should be considered *living organisms* in light of the criteria we use to define something as living.)

Like bacteria, viruses enter the person in several ways. All viruses undergo a period of replication. During replication, a single virus can enter the host, tear itself apart, mass produce each of its unassembled parts by using the host cells, and reassemble them within the host. That process leads to a systemic infection of the host by the virus. In some cases, a single virus can replicate itself to produce hundreds of thousands of viruses during reassembly. It is due to the virus tearing itself apart that it often evades the initial detection by antibodies. Not until after reassembly of the numerous "new" viruses is complete can antibodies begin to detect viral infection. This period during which antibodies cannot detect the virus is known as a period of *incubation*.
The ELISA (enzyme-linked immunosorbent assay) test is the most commonly used test in determining HIV infection. This test is very accurate in determining whether HIV has been present in the host for 12 weeks or more. ELISA is a blood test that detects the antibodies produced by the body in response to HIV infection. But because it is based on the antibody response, it is ineffective in detecting HIV in its initial and earliest stages. That is because the body has not yet had time to respond to the viral infection and has not yet produced the antibodies ELISA measures.

ELISA has a very low chance of giving a "false negative" after 12 weeks of infection; conversely, it has a very high chance of yielding a negative in people who have been infected for less than 12 weeks. The Western Blot Test is an immunofluorescence assay that is used with the ELISA test to verify a positive result. This test has a different method for virus detection and therefore is used mainly as a confirmation test for a positive ELISA result, even though ELISA has been proven to be very accurate on its own accord after 12 weeks of infection.


Science has recently developed a way to detect HIV in as little as two weeks after initial infection. This latest test is known as the p24 Antigen Capture Assay. The p24 antigen test does not detect the antibody response by the host, but rather seeks to detect a protein found on the coat of the HIV virus itself. This is the first *direct method* for identifying HIV infection to date. This protein has been found to be specific to HIV. By detecting the protein, the virus is identified. Usually, this test can identify HIV presence in the blood from 2 – 6 weeks after infection. This is a much more useful diagnostic tool than the current ELISA/ Western Blot method, both in terms of speed and accuracy. Hopefully this method for detection will become readily available in the near future to help in the fight against HIV and AIDS.

Finally, when testing for HIV, there are interfering factors that need to be understood – *false positive results* and *false negative results*. A false positive result can occur in patients that have any one of several disorders. These disorders include complications such as lupus, leukemia, lymphomas, syphilis, and alcoholism. There are other conditions that may cause a false positive, as well. Just be

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# SPOTLIGHT ON PARALEGALS

With training, experience, and proper supervision, paralegal professionals enhance the efficiency and effectiveness of lawyers and the legal system for the benefit of clients and the general public. In recognition of their contribution to the legal profession, Governor Michael F. Easely designated March 14-20, 2004 as Paralegal Week. Paralegals at NCPLS exemplify the qualities deserving of such recognition.

NCPLS paralegals have taken a leading role to promote professionalism and to enhance understanding of the important role of legal assistants in the justice system. For instance, Sharon Robertson, CLAS, presently serves as a Regional Director for the National Association of Legal Assistants (NALA). Additionally, she has served as President and Chairman of the Board of the North Carolina Paralegal Association, and Chair of the Legal Assistants Division (LAD) of the North Carolina Bar Association. She continues to serve as a member of LAD's governing council, together with another NCPLS paralegal, Yvonne Lewis, CLA.

Our paralegals provide leadership in our program, as well. Billy Sanders, CLAS, headed the project to restructure our office and was recently promoted to Office Administrator. Kady McDonald, CLA, has provided initiative and continuity in the development of our family law work. And, Patricia Sanders, CLA, is the editor of our newsletter.

NCPLS employs 14 paralegals who continually strive to increase their knowledge, enhance their skills, and deliver excellent services to our attorneys and our clients. For example, eight of our paralegals have earned certification from NALA, including two who earned certification as specialists in criminal law and/or civil trial work. Certification provides objective assurance that the recipient has a command of fundamental legal principles and a mastery of basic paralegal skills.

All of these activities demonstrate the importance and value of the work performed and the leadership provided by our paralegals.

But, nothing could speak more eloquently about the work these individuals do than a measure of some of the outcomes they have achieved for our clients. For example, during the period of January 1 through December 31, 2003, NCPLS paralegals succeeded in having at least 38,709 days of credit applied against our clients' sentences. (This credit was owed due to a failure to properly calculate or apply credit for time spent in a jail, or credit for participation in correctional programs such as DART (Drug and Alcohol Rehabilitation Treatment) or IMPACT (Intensive Motivational Program of Alternative Correctional Treatment).) Consequently, our clients enjoyed more than 106 years of freedom. At an average cost of $57.92 (DOC 2003 Annual Report, p. 6), North Carolina taxpayers saved more than $2 million dollars.

The paralegal professionls employed by NCPLS have increased the efficiency and effectiveness of our organization and the legal system for the benefit of our clients and the citizens of North Carolina.

The National Association of Legal Assistants (NALA) is the leading professional association for legal assistants and paralegals, providing continuing education and professional development programs. Incorporated in 1975, NALA works to improve the quality and effectiveness of the delivery of legal services.

Founded in 1980, the North Carolina Paralegal Association (NCPA) is a self-governing organization run by paralegals to provide its membership with current national information. Through its educational and informational network, NCPA helps its members better assist the legal community in fulfilling its duty to clients and the public.

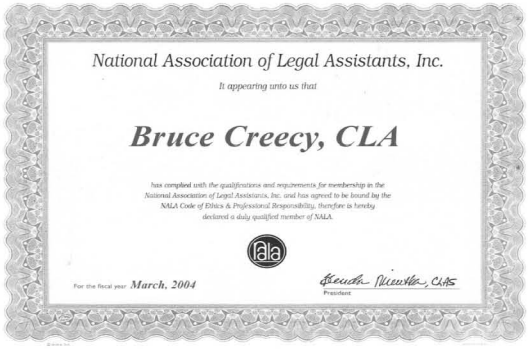
# ANOTHER NCPLS PARALEGAL EARNS CERTIFICATION

Bruce Creecy, an NCPLS Paralegal, recently earned the Certified Legal Assistant credential from the National Association of Legal Assistants (NALA). Bruce, who studied at Shaw University and the American Institute for Paralegal Studies, spent the first decade of his career working with troubled youth. His interest in children and the law intersected in an internship with the Civil Rights Division of the North Carolina Office of the Attorney General in the summer of 1995. Afterward, Bruce accepted a position with Carolina Legal Assistance, a mental disability law project. He provided support for staff attorneys, conducting legal research, interviewing clients, attending depositions, drafting legal documents, and providing litigation support.

Beginning in 1995, Carolina Legal Assistance partnered with NCPLS in bringing litigation that challenged the adequacy of training and education provided by the DOC to young people who had special educational needs. *Anthony D., et al., v. Freeman, et al.*, 5:95-CV-1053-BR(1) (EDNC 1995). Bruce's work on that class action lawsuit helped achieve comprehensive reforms which substantially improved the chance that incarcerated youths in need of special educational services will be prepared to lead productive lives when they return to their communities.

NCPLS hired Bruce as a paralegal in 1998. With the resolution of the Anthony D. case, Bruce became involved in the *Safe & Humane Jail Project*. The *Project* monitors conditions in detention facilities across North Carolina and provides legal advice and assistance to pretrial detainees. However, Bruce also had an interest in criminal law, which drew him to the work that has become his passion; the law governing collateral challenges to convictions. Now, Bruce spends most of his time reviewing court documents and records, interviewing clients and witnesses, and conducting research to determine the validity of our clients' criminal convictions and sentences.

*Bruce Creecy, CLA*


National Association of Legal Assistants, Inc.

It appearing unto us that

**Bruce Creecy, CLA**

has complied with the qualifications and requirements for membership in the National Association of Legal Assistants, Inc. and has agreed to be bound by the NALA Code of Ethics & Professional Responsibility, therefore is hereby declared a duly qualified member of NALA.

For the fiscal year March, 2004

President

In an effort to further develop his knowledge and skills, and in order to deliver comprehensive support services to NCPLS attorneys and clients, Bruce resolved to seek certification. NALA administers an examination of legal competency that includes legal research, ethics, interviewing techniques, and substantive law, among other subjects. Successful completion of the two-day examination confers the credential of "Certified Legal Assistant (CLA)." Certification provides objective assurance that the recipient has a command of fundamental legal principles and a mastery of basic paralegal skills. More than two years of preparation and study paid off for Bruce this January, when he successfully completed that exam and earned the CLA credential.

In passing that milestone, he joins seven other NCPLS paralegals who have earned the CLA distinction.

# U.S. SUPREME COURT REPORT

*By Senior Attorney J. Phillip Griffin*

*Crawford v. Washington*

On March 8, the U.S. Supreme Court announced its decision in *Crawford v. Washington. Crawford* overruled a line of prior decisions that allowed out-of-court statements to be used to obtain a conviction when the statements either fell within an historic exception to the hearsay rule or had independent indicia of reliability. In *Crawford,* when the defendant and his wife were in the victim's residence, the defendant stabbed the victim. The defendant testified that during a heated discussion, the victim reached into his pocket. The defendant believed the victim had a weapon in his pocket and stabbed him in self-defense. However, Crawford's wife had told police that the victim was holding out his hands when her husband stabbed him. The defendant's wife did not testify at trial because of the marital privilege. (The marital privilege can be used by a spouse to prevent the other party to a marriage from testifying in court.) The prosecution used that statement to defeat the self-defense claim. The defendant was convicted of assault and attempted murder.


On appeal, the Washington Supreme Court held that the wife's statement was admissible even though it had not been given under oath, and although there had been no opportunity for the defense to cross-examine the wife. The court found the statement was reliable because it was nearly identical to the defendant's version of events and was given to a "neutral police officer."

The U.S. Supreme Court agreed to review the case. In a 7-2 opinion written by Justice Scalia, the U.S. Supreme Court reversed the Washington Supreme Court (and in so doing, overruled *Ohio v. Roberts*, 448 US 56). The Court relied on the Confrontation Clause of the Sixth Amendment, which provides in pertinent part, that "In all criminal prosecutions, the accused shall enjoy the right to ... be confronted with the witnesses against him... ." According to the Court, the Confrontation Clause prohibits the state from using "testimonial" statements against the defendant unless the defendant has had an opportunity to cross-examine the declarant (the person who made the statement). The Court did not define "testimonial," other than to say it is a statement that the person making it could reasonably assume would be used in a trial. That sort of statement would include, but would not be limited to, statements made to the police, grand jury testimony, and testimony from depositions and prior trials. However, the Court indicated that there might be some exceptions, which would be governed by the rules of evidence, such as business records or off-hand comments to an acquaintance. The Court left those questions for another day.

This case is very important to criminal law because, until now, courts have routinely allowed the states to use the very kinds of statements that *Crawford* excludes. However, it is unclear whether *Crawford* will benefit prisoners whose convictions are already final. The reason is the rule in *Teague v. Lane*, 489 U.S. 288 (1989). In *Teague*, the U.S. Supreme Court held that, absent specific exceptions, a new rule of constitutional law should not be applied on collateral review to convictions that were final when the decision setting forth the rule was announced. A conviction is final under Teague when the state court appeals are complete and the period for seeking a writ of certiorari in the Supreme Court has expired.

*Baldwin v. Reese*

The federal courts have jurisdiction to grant a writ of habeas corpus to prisoners convicted in state courts if the conviction was obtained

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# U.S. Supreme Court Report (Continued)

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through a violation of the prisoner's rights under federal law. 28 USC §2254(a). However, the federal court cannot grant the writ unless the prisoner has "exhausted the remedies available in the courts of the state." 28 USC §2254(b). In order to exhaust state court remedies, the prisoner must present to the state courts his claim that his federal rights were violated. The exhaustion requirement is satisfied when the prisoner presents the federal claim to the state's highest appellate court, either in a direct appeal or in collateral proceedings. In a recent decision reviewing an Oregon conviction, the U.S. Supreme Court re-emphasized the importance of this requirement.

In *Baldwin v. Reese*, decided March 2, 2004, the Supreme Court reversed a ruling of the Court of Appeals for the Ninth Circuit. The Ninth Circuit held that a prisoner had fairly presented his federal claim of ineffective assistance of appellate counsel to the Oregon Supreme Court. Although the prisoner's petition to the Oregon Supreme Court did not cite federal law in connection with the claim of ineffective assistance of appellate counsel, the Ninth Circuit held that the Oregon Court would have realized the federal basis for the claim because the basis for the claim was clear in lower court opinions. The Supreme Court ruled that the problem with the Ninth Circuit's analysis was that it would force an appellate court to read the lower court's opinion to understand the grounds for a petition. Because of the workload of appellate courts, the Supreme Court found it unreasonable to require appellate judges to read lower court opinions in all the cases they must review. Instead, the Supreme Court ruled that, in order to exhaust a federal claim in state court, the prisoner must show the federal nature of the claim with a specific citation to federal law, or by simply labeling the claim as "federal."

Although the rules for exhaustion seem straight forward and easy to follow, sometimes a habeas petitioner discovers a federal claim that did not seem important earlier in the case. However, after the state courts have refused relief on state law claims (for which there is no federal review), the federal claim may become the only viable basis for relief. For example, sometimes hearsay testimony offered by the prosecution can be the basis for an appeal alleging a violation of the state rules of evidence. The same facts may support a federal claim under the Confrontation Clause of the Constitution. But to bring a federal petition alleging a Confrontation Clause violation, the facts must have been argued to the state courts as a federal question under the U.S. Constitution. Therefore, it is important at each stage of litigation that federal claims are set forth explicitly so that when a federal petition is brought, the claim will not be dismissed for failure to exhaust state remedies.

# HIV Diagnosis and Testing (Continued)

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aware that some pre-existing conditions may lead to an inaccurate positive result. Because many of these disorders cause an antibody response like HIV does, ELISA and Western Blot sometimes yield invalid results. Regarding false negative results, remember what we have previously discussed. During the incubation stage of HIV infection (usually up to 12 weeks) a negative result does not necessarily mean you are not infected. It is important that additional regular blood screens be performed to ensure that you are not infected.

For those who have been diagnosed with HIV, do not lose hope. Modern medicine is proving to be very effective in providing treatment that continues a quality of life for an infected individual. Follow your treatment regimens to the letter and protect others from contracting your virus.

# Michael Santos' Articles (continued)

## Goals Lead To Action

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of character and integrity." There are so many goals we can set for ourselves, but no matter how many we set, we must hold ourselves accountable. Prisoners who choose to succeed pursue excellence.

With ten-year goals in place, those who choose success can work their way backwards. When they know where they want to be in ten years, then they know where they should be in five years, three years, and in one year. If they know the progress they must make by year-end, and they know how much they must accomplish in six months, in three months, and in one month. Now they have a series of short-term goals against which they can measure their daily progress. Those goals, then, lead to action. And that is a recipe for success.

Those who want to see how goals help me succeed may visit the BIOGRAPHY section of *MichaelSantos.net*, where I list my short and long term goals. The next article will describe the importance of learning.

## Pursue Learning

No one wants to live in confinement. Even so, more than two million people will eat their meals in American prisons today, and sleep under the watchful eyes of guards tonight. Our country has a growing subculture of felons, and it is in the interest of every one of them to use the time wisely, to make the most of every day. A constant pursuit of learning will help each prisoner overcome the obstacles that follow imprisonment and reduce the likelihood of a return trip to daily census counts and strip searches.

The prisoner experience confines our bodies. Guards assign our living quarters, dictate when we eat, sleep, or even use the bathroom. They tell us what to wear and they choose the people with whom we share space. Prisons are total institutions, restricting our physical movements and our ability to interact with others. Despite the bars and fences, the rules and regulations, prisons cannot seize control of our minds. Inside we are free and we can build upon that freedom to prepare ourselves for happiness upon release. The pursuit of knowledge can become our solace. It is like a magic carpet that lifts us above the filth and ugliness of prison, delivering us to the freedom and purity of the mind.

In some ways, living in prison gives us opportunities that many people outside consider a luxury. We have the blessing of time. The key to serving time successfully is in becoming the master of our minutes, making choices to use them in ways to help us succeed upon release. We may lack the freedom of community, but we can turn our solitude to advantage by living like monks in a monastery, coming to know ourselves, our spirit, and the world in which we live.

My body has been confined continuously in one prison or another since 1987, but when I focus my mind on learning, I could be anywhere. When I am learning I am far removed from these nicotine-stained walls, from the smell of dried urine, from the cacophony that clamors with the competing sounds of blaring televisions, institutional loudspeakers, and the hundreds of voices constantly screaming around me. When I am learning I don't notice the intrusive guards, the prisoners around me, the utter lack of privacy. All I know is the freedom that comes with an expanding mind. As the poet Longfellow wrote, the love of learning brings us to sequestered nooks, and all the sweet serenity of books.

When I am alone in my cell, missing my beloved wife and my family, I have found that books can comfort me. During those moments of despair I read novels,

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# Pursue Learning (continued)

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stories that introduce me to new characters and places. Earlier this year I read the immortal classic Don Quijote, perhaps the first novel ever written and certainly the most beautiful novel I have ever read. It made me laugh and it made me cry, it taught me courage and it taught me love. Through that treasure piece of literature by Miguel Cervantes I was able to travel through Spain, to learn legends of France and England. Those 1,000 plus pages of adventure gave me a secret key that took me far away from this caged community in which I live.

I have read philosophy to help me learn more about the meaning of life. I read biographies to help me learn from the lives of others. I especially like reading books by other prisoners and former prisoners, as they know this twisted world in which I live. Reading of their experiences helps me through the struggle. This lengthy sentence I must serve, like all of life, is a journey. The pursuit of knowledge, this learning and more learning, keeps me moving through it.

Prisoners should pursue the freedom that comes through learning. They should learn about themselves and they should learn about the world in which they live. The more they learn, the more resources they will have to draw upon as they battle the challenges that come with a criminal history. The more we learn, the better we're able to communicate, to persuade others that despite our past, our futures have much to offer.

# *State v. Jones* Update

NCPLS receives numerous inquires about the N.C. Court of Appeals decisions in *State v. Jones*, No. COA 02-1404 (Nov. 4, 2003), and *State v. Sneed*, No. COA 02-1746 (N.C. App. Nov. 18, 2003), which hold that simple possession of cocaine is a misdemeanor under North Carolina law. As might be expected, these cases have received a considerable amount of attention. They been covered in newspapers throughout the state leaving many inmates wondering if these decisions will mean that they can obtain some form of relief from their sentences.

In *Jones,* the defendant pled guilty to possession with intent to sell and deliver cocaine, and to being an habitual felon. Jones entered his plea conditionally, with the understanding that he could appeal three issues, including the court's denial of a motion to suppress evidence. The Court of Appeals determined that, under the statutes and rules governing a criminal defendant's right to appeal, it only had jurisdiction to consider the appeal of the motion to suppress. Since Jones had bargained for appellate consideration of *three* motions and the court could only address one, he could not have received the benefit of his plea bargain. However, before sending the case back to the lower court, the Court of Appeals also addressed the issue of jurisdiction concerning the habitual felon indictment.

# *State v. Jones* Update (Continued)

Jones argued that the habitual felon indictment was invalid because one of the three convictions used to classify him as an habitual felon was a conviction for possession of cocaine. According to the law as it existed at the time of the crime, Jones argued that possession of cocaine was a misdemeanor and could not be used as a predicate offense for an habitual felon indictment. Howevr, the state noted that N.C. Gen. Stat. 90-95(d)(2) provided that possession of cocaine "shall be punishable as a Class I felony," and argued that this meant that possession of cocaine *was* a felony. After reviewing general principles of statutory construction, including the principle that criminal statutes are to be "strictly construed against the State," the Court of Appeals held that possession of cocaine was a misdemeanor and Jones' indictment as an habitual felon was defective.

The N.C. Supreme Court has issued orders staying the Court of Appeals' decision in *Jones* and *Sneed*. The Court heard oral arguments concerning both cases in February 2004, but has not rendered a decision. NCPLS will continue to monitor developments in this area.

**The Newsletter of North Carolina Prisoner Legal Services, Inc.**

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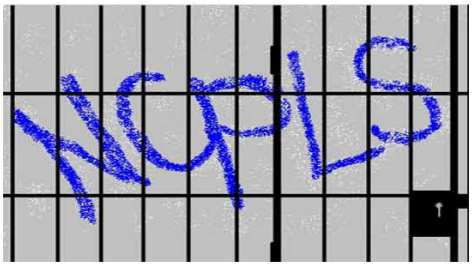


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