The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume IV, Issue 3, September 2004

NCPLS ACCESS

Motion For Appropriate Relief (MAR) Results in 17-Year Sentence Reduction

In *State v. Harrison*, our client was convicted of first degree burglary (Class D) and two counts of second degree kidnapping (Class E). The court found that he used a firearm in each of these crimes and added 60 months to each of the three consecutive sentences. Although the court imposed mitigated sentences, our client faced a total sentence of 280-327 months.

Fortunately, Harrison's case was pending on appeal when the decision in *State v. Lucas*, 353 N.C. 568 (2001), was announced. *Lucas* held unconstitutional a sentencing enhancement for use of a firearm where the indictment did not set forth use of a firearm as an element of the crime. The *Lucas* court further held that this new rule would apply to all cases not yet final.

Our client's case was not yet final, so NCPLS filed a motion for appropriate relief asking that the firearm enhancement of the sentences be arrested and that the client receive a new sentencing hearing. The court granted the motion. At the hearing, the client presented evidence of his rehabilitation during his five years of incarceration. He testified that he had completed the DART program, obtained his GED, and had enrolled in community college courses. His parents both testified to the positive changes in his character since his conviction. The district attorney opposed leniency and presented testimony from the crime victim that she was afraid of the defendant and dreaded his release from prison.

The court decided to suspend the two sentences for the kidnapping convictions, and imposed a single active sentence of 70-94 months for the burglary, removing more than seventeen years from his original sentence. Consequently, our client expects to be released, not in 2022, but in March of 2005. So pleased were our clients' parents that his mom hugged our attorney around the neck.

Congratulations to our client and Senior Attorney J. Phillip Griffin for good work and an outstanding outcome!

Inside 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 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*

NCPLS Welcomes New Board Members

NCPLS is governed by a 14-member Board of Directors. The dean of the law schools at UNC, Wake Forest, Duke and Campbell, each designates a director to the Board. Other Board members are designated by the North Carolina Bar Association, the North Carolina Civil Liberties Union, the Southern Prisoners' Defense Committee, the North Carolina Association of Black Attorneys, and the North Carolina Association of Women Attorneys. The remaining members are elected by the Board to include a member of the General Assembly, a former judge, two former inmates, and others.

Dean Ronald Steven Douglas is newly designated to the NCPLS Board of Directors by North Carolina Central University Law School. Dean Douglas earned his law degree from Central and thereafter accepted the position of Legal Advisor to the OSHA Review Board for the State of North Carolina. Attorney Douglas was in private practice for many years in the Washington, D.C. area concentrating in criminal defense before returning to North Carolina, where he presently serves as Assistant Dean for the Day Program at NCCU Law School. In that capacity, Dean Douglas is responsible for admissions, scholarships, grants, financial aid, and disciplinary matters.

Dean Ronald Steven Douglas

Representative Alice L. Bordsen also recently joined the NCPLS Board of Directors. Ms. Bordsen is a member of the North Carolina House of Representatives who serves the people of Alamance County. Ms. Bordsen's service on the House education and judiciary committees reflects her interest in education and social justice issues and her experience as a lawyer. Representative Bordsen is a 1981 graduate of the law school at the University of North Carolina, and a member of the North Carolina Bar Association, the North Carolina Association of Trial Lawyers, and the North Carolina Association of Women Attorneys, among others.

Representative Alice L. Bordsen

NCPLS is fortunate to have the involvement of these accomplished individuals, and grateful for the leadership and guidance provided by all of the folks who volunteer as members of the Board of Directors.

New DOC Attorney Visitation Regs to Take Effect October 1, 2004

In June, the Department of Correction promulgated new regulations governing visitation. The new rules govern all aspects of inmate visits, including meetings with attorneys. Under these regulations, before being allowed to see an inmate, attorneys must disclose that the inmate has designated that attorney 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 (DOC), Division of Prisons Policy & Procedures, Chapter D, §.0202(a). The regulation further provides that "[t]he attorney or paralegal assistant is to be admitted to discuss pending legal proceedings only. . . . Solicitation attempts will not be tolerated." In other words, the attorney must specifically disclose that there is a client-attorney relationship and that the meeting concerns representation of the client in ongoing or prospective litigation. Attorneys who do not represent the inmate (but who may wish to obtain information relevant to a client's legal claim) must follow "special procedures." *Id.*, §.0202(c). Following the "special procedures" process will delay the time of the meeting.

The new regulations, which are being "field-tested" at six prisons, are scheduled for statewide implementation on October 1, 2004. NCPLS is concerned that compliance with these regulations may sometimes require our advocates to disclose confidential information.

Most of the communication between NCPLS advocates and our clients is accomplished by mail. But there are matters that can be addressed only in-person, so client-attorney meetings are sometimes necessary. In some of those cases, our clients will not want us to say whether we represent them in litigation. In other cases, we may ask to meet with an inmate who we expect to appear as a witness. In still other cases, an inmate-attorney meeting may be arranged for the purpose of sharing information regarding matters that don't involve litigation.

NCPLS attorneys, paralegals, and interns have routinely met with inmate clients in the correctional setting. In the past, these meetings have been arranged by giving correctional officials 24-hour advance notice (sometimes by telephone, and more recently, by fax) that an NCPLS representative wishes to meet with a particular inmate. The nature of the relationship between the NCPLS representative and the inmate has not been disclosed. Prison officials have known that a meeting would occur but not whether the inmate was a client, was providing information as a witness, or was being spoken with for some other purpose. Thus, while the fact of the meeting cannot be kept confidential, the purpose of it can and has been kept confidential. Over its twenty-five year history, no formal complaint has ever been lodged with NCPLS concerning any of these inmate-attorney meetings.

In any case, the new DOC regulation seems to improperly intrude into the client-attorney relationship and to require the disclosure of confidential information. For this reason, NCPLS recently asked the North Carolina State Bar to provide an opinion as to whether the duty to maintain client confidences under Revised Rule 1.6 prohibits the disclosures required by the new DOC regulations. The State Bar is the agency responsible for regulating the practice of law in North Carolina.

NCPLS asked the State Bar to provide guidance with respect to the following specific questions:

Question 1. 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 Revised Rule 1.6 and the duty to maintain client confidences prohibit NCPLS lawyers from disclosing the nature of the relationship in order to obtain access to the clients for purposes of meeting with them?

Question 2. If NCPLS lawyers believe that such disclosure is likely to be embarrassing or harmful to the client, does Revised Rule 1.6 and the duty to maintain client confidences prohibit NCPLS lawyers from disclosing the nature of the relationship in order to obtain access to the clients for purposes of meeting with them?

Question 3. Where a meeting between an inmate-client and an attorney is conditioned upon

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Visitation Regs (Continued)

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the attorney's disclosure to the inmate's custodians of the nature of the client-attorney relationship, are these circumstances so coercive as to render meaningless the inmate-client's "consent" to such disclosure?

Revised Rule 1.6 provides in relevant part:

(a) "Confidential information" refers to information . . . gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. . . .

(c) Except when permitted under paragraph (d), a lawyer shall not knowingly:

(1) reveal confidential information of a client; [or]

(2) use confidential information of a client to the disadvantage of the client . . ..

(d) A lawyer may reveal:

(1) confidential information, the disclosure of which is impliedly authorized by the client as necessary to carry out the goals of the representation;

(2) confidential information with the consent of the client or clients affected, but only after consultation with them; [and]

(3) confidential information when permitted under the Rules of Professional Conduct or required by law or court order . . ..

Revised Rule of Professional Conduct 1.6 (in part).

In response to these inquiries, the North Carolina State Bar is expected to issue a formal ethics opinion in October 2004.

IMPACT Update:

Credit For IMPACT a Continuing Problem in Probation Revocations

By Susan H. Pollitt, Senior Attorney

In August 2002, the North Carolina Supreme Court ruled that active sentence terms must be reduced by the time a defendant spent in IMPACT (Intensive Motivational Program of Alternative Correctional Treatment). *State v. Hearst*, 356 N.C. 132, 567 S.E.2d 124 (N.C. 2002). Unfortunately, some prisoners still are not receiving their IMPACT credit when their probation is revoked.

Since our September 2003 update on IMPACT, NCPLS paralegals have helped 37 prisoners get their IMPACT credit. A total of 3,385 days have been applied to reduce their active sentences.

When prisoners write us for help in getting credit for the days they spent in IMPACT, we often find that they are also entitled to additional credit for time spent in jail or in the DART program. For example, over the past year, we helped 15 people get 1,454 days of DART credit.

No prisoner should have to serve a sentence longer than required by law. However, only a judge can order sentence reduction credits. When NCPLS receives a request for help with IMPACT credit, our legal staff quickly investigates to determine whether there is a meritorious claim to the credit. When there is, NCPLS contacts the Superior Court seeking an Order. But, we can offer that help only to people who contact us in time. If you went to IMPACT and do not think you received all the credit you are entitled to, write and let us know. We may be able to help.

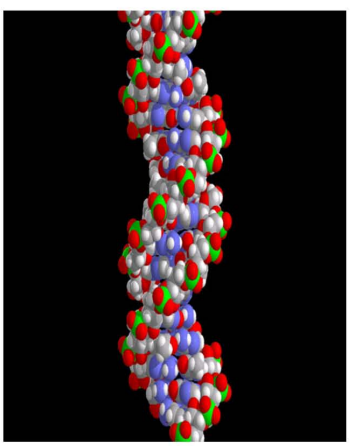
DNA Database Testing – A Brief Summary

By NCPLS Staff Attorney Ken Butler

Deoxyribonucleic acid (DNA) is the hereditary material found in the cells of living organisms. Each individual carries the same DNA in every cell of their body and every person has a unique DNA, with the exception of identical twins. *See*, *Nicholas v. Goord*, 2004 U.S. Dist. Lexis 11708 (SDNY 2004). The unique nature of DNA, like fingerprint analysis before it, has made it an important part in criminal investigation. It has led to the establishment of a DNA database and to state and federal legislation that makes DNA testing mandatory for offenders convicted of certain crimes.

Since 1994, North Carolina has performed DNA testing and contributed to the DNA database. Under the original *DNA Database and Databank Act of 1993*, persons convicted of 22 listed crimes were subject to having a DNA sample obtained, either when they enter prison, when they are released, or as a condition of probation. N.C. Gen. Stat. §15A-266.4 (2000). The offenses originally listed included both first and second degrees of murder, rape, and sexual offense, armed and common law robbery, certain types of assaults, malicious maiming, and indecent liberties with children. In 2003, the N.C. General Assembly expanded the coverage of the *DNA Database Act* to include those persons convicted of *any* felony, as well as the misdemeanor offenses of assaults on handicapped persons and stalking.

Since such legislation was enacted, inmates throughout the country have challenged the laws on various constitutional grounds. Typically, the challenges are based on claims that these statutes constitute an unreasonable search under the Fourth Amendment, or that they violate the constitutional prohibition against *ex post facto* laws. Every appellate court, with one exception, has upheld DNA testing statutes against both Fourth Amendment and *ex post facto* challenges. *See State of Maryland v. Raines*, 2004 Md. Lexis 504 (Md. App., Aug. 26, 2004) (collecting a nation-wide review of cases).



In *Jones v. Murray,* 962 F.2d 302 (4th Cir.), *cert. denied*, 506 U.S. 977, 121 L.Ed.2d 378, 113 S. Ct. 472, 1992 U.S. LEXIS 7119, 61 U.S.L.W. 3355 (1992), the U.S. Court of Appeals for the Fourth Circuit addressed a case brought by several Virginia inmates to that state's policy of obtaining DNA samples from convicted felons. The inmates argued that this violated their right to be free from unreasonable search and seizure, as protected by the Fourth Amendment to the U.S. Constitution, as well as the prohibition against *ex post facto* laws. The *Jones* court ultimately held that "the state interest in combating and deterring felony recidivism justified the involuntary taking of blood samples and the creation of the DNA data bank, considering appellants' questionable claim of privacy to protect their identification and the minimal intrusion resulting from taking a small sample of blood; and the requirement that all incarcerated felons provide a blood sample prior to release did not constitute a retroactive increase in the sentence of any inmate in violation of the Ex Post Facto Clause." Essentially, the court held that the usefulness of a DNA databank outweighs the minor intrusion involved in the collection of the DNA, and that the creation of such a databank did not violate the Fourth Amendment. *Jones*, 962 F.3d at 308. The court also noted that inmates who did not comply with the blood testing regulations could be properly subjected to prison disciplinary punishment. *Id*. at 309.

Many inmates have written to NCPLS asserting that North Carolina's *DNA Database Act* should be held unconstitutional. In support of that argument is a Ninth Circuit Court of Appeals decision that struck down a similar statute. *United States v. Kincade*, 345 F.3d 1095, 2003 U.S. App. LEXIS 20123 (9th Cir. Cal., 2003). In that decision, a federal parolee challenged the requirement that he submit to DNA testing under a federal statute, the *DNA Analysis*

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DNA Database Testing (Continued)

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Backlog Elimination Act of 2000, 42 U.S.C.S. §14135a. A three-judge panel of the Ninth Circuit Court held that such DNA testing was a search under the Fourth Amendment and that "reasonable suspicion" must exist before the government could compel the parolee to submit to DNA testing against his will. However, the *en banc* Court of Appeals for the Ninth Circuit recently *reversed* the panel decision. *United States v. Kincade,* 2004 U.S. App. LEXIS 17191 (9th Cir. Cal. Aug. 18, 2004). The *en banc* court held that:

> "In light of conditional releasees' (parolees') substantially diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances. Therefore, today we realign ourselves with every other state and federal appellate court to have considered these issues -- squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment."

United States v. Kincade, 2004 U.S. App. LEXIS 17191 at *71.

Thus, there is now no federal appellate authority that supports a claim that DNA testing violates the Fourth Amendment, even when done against the inmate's will. Most courts assume that such a test does constitute a "search" within the meaning of the Fourth Amendment. *But see, Nicholas v. Goord*, 2004 U.S. Dist. Lexis 11708 *5 n.4 (questioning whether a reasonable expectation of privacy exists which would trigger Fourth Amendment protection). Nevertheless, the courts that have considered this issue have found that such "searches" are not unreasonable, given the important governmental interest in obtaining DNA samples from convicted offenders, the minimally intrusive nature of DNA testing, and the greatly reduced expectation of privacy possessed by inmates. Similarly, courts have declined to find any violation of *ex post facto* in such statutes. These statutes are construed to be "civil," or "regulatory" in nature, and not criminal or punitive in nature. Nor are they seen as increasing punishment for past convicted crimes, or otherwise subjecting those persons required to submit to testing to some additional restraint or disability. *See generally State of Maryland v. Raines*, 2004 Md. Lexis 504 at *42-68. For these reasons, the *ex post facto* protections of the Constitution have not been applied to DNA testing.

Sentencing Law Rumors

NCPLS regularly receives letters from prisoners concerning rumors that circulate about changes in the sentencing laws. Some such rumors include:

- Sentences for "non-violent" offenders are going to be reduced.

- Habitual felon sentencing laws have been changed, particularly for non-violent offenders.

- North Carolina is going to depart from the "85% law" (structured sentencing) and is going to re-institute the "65% law."

- Habitual felon laws have been declared to be unconstitutional.

Unfortunately, none of these rumors are true.

It is true that the North Carolina Sentencing and Policy Advisory Commission has made certain recommendations concerning sentencing laws to the N.C. General Assembly. One recommendation is that habitual felons be sentenced at three class-levels higher than the defendants' underlying offense. At present, an habitual felon conviction automatically places an offender in Class C, regardless of the underlying offense. Under the Sentencing Commission's recommended change, habitual felons would on average serve a little less time in prison. However, in order for such a change to become law, it must be enacted by the General Assembly. Such a process involves legislative debate, and there are groups who oppose making this change in the sentencing laws. Although the Sentencing Commission recommendation has been pending for more than a year, the General Assembly has thus far passed no such legislation.

Kaposi's Sarcoma - An Inmate's Guide

Khalief E. Hamden and Shaw M. Akula, M.V.Sc., Ph.D.
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Kaposi's Sarcoma

Kaposi's sarcoma (KS) is an unusual form of cancer that is characterized by the presence and growth of numerous lesions that develop on the skin or in the internal organs. KS is a cancer of blood vessel tissue, which results in tumors or lesions that are red, purple or brown in color and can grow to about the size of a half dollar. This same condition afflicted the character portrayed by Tom Hanks in the movie *Philadelphia*.

KS lesions on the leg

Typically, there are three stages of progression of KS, referred to as: early patch stage, plaque stage, and late nodular stage. Early patch stage involves the presentation of one to several small splotches that may be reddish in color and may spontaneously regress or progress into plaque stage. Progression of these lesions into plaque stage is thought to be a reactive process that may be the result of an inflammatory response elicited by inflammatory cytokines of the immune system. Plaques tend to have better defined borders and may slightly protrude from the skin. Lesions that advance to the late nodular stage are considered a true cancer or sarcoma because they are often transformed cells and may have the ability to spread to other parts of the body. These nodular tumors may become highly defined and protrude extensively from the skin and may even rupture and bleed. It is at this stage that the disease can become a serious threat to survival as lesions may disseminate to other organs such as the lungs, gastrointestinal tract, liver and spleen.

At least four clinical variations of KS have been observed. Classical KS was the first form to be described, which most commonly affects elderly males of Mediterranean or Jewish descent. Endemic or African KS is a much more aggressive form that is common in some parts of Africa and is known to affect both males and females of all ages. Iatrogenic KS is a mild form that typically emerges in transplant recipients that are treated with particular immune suppressing drugs such as cyclosporin. Probably the most common and deadly form in North America is acquired immunodeficiency syndrome (AIDS) related KS. AIDS-KS is another aggressive form of KS that has been one of the leading causes of death among AIDS patients. The advent of highly active antiretroviral therapy (HAART) has significantly reduced the number of KS related deaths among human immunodeficiency virus (HIV) infected patients.

Kaposi's Sarcoma-Associated Herpesvirus

Kaposi's sarcoma is one of several diseases that is caused by a recently recognized virus known as Kaposi's sarcoma-associated herpesvirus (KSHV) or human herpesvirus-8 (HHV-8). This virus was first isolated and characterized in 1994; however, classical KS was originally described more than a century ago. KSHV has also been linked to two rare leukemia type cancers known as primary effusion lymphoma and multicentric Castleman's disease.

KSHV has a poor ability to reproduce itself and infect cells in a healthy human host. KSHV establishes what is known as latency in most cells that it infects. Latency describes a type of viral infection in which the virus has infected a cell but is not actively replicating and thus is not killing the cell. There are only a small percentage of infected cells in which the virus is undergoing lytic replication at any given time. A healthy person can effectively fight this infection with little problem. Unfortunately, KSHV establishes a more productive infection in persons that have a compromised or weakened immune system and so KS has become a problematic and deadly disease for people with AIDS.

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Kaposi's Sarcoma
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One of the interesting features of this virus, which makes it an important focus of study, is its ability to cause cancer. KSHV is one of several viruses that has recently been identified as a stimulus for cellular transformation, which means that infection of normal cells by the virus can change the cells in such a way that the cells become tumor forming (tumorigenic). Other viruses that have this capability include human papilloma virus, polyomavirus (JC and BK), hepatitis viruses (HBV and HCV), and another human herpesvirus (EBV). All of these viruses present major problems of disease and cancer among HIV infected individuals.

Treatment

There is currently no vaccine available to prevent KSHV infection and little chance that one will be developed due to the natural ability of the immune system of healthy patients to control the infection. For this reason, the best preventive measure is to avoid behaviors that increase the risk of infection. KSHV is a sexually transmitted pathogen but the mechanism of transmission is not thoroughly understood. Evidence suggests that homosexual partnering may contribute to a higher rate of transmission than heterosexual coupling. The basis for this pattern has not been characterized but there may be lifestyle differences among homosexual males such as increased promiscuity and increased exposure to oral-anal and oral-genital contact that are contributing factors. Thus, it is advised that precautionary measures and safe sex practices be used when engaging in sexual activity. It has also been shown that KSHV has the ability to infect and proliferate in some types of blood cells. This means that besides sexual transmission, the virus might also be transmitted by needle sharing, transfusion and other exchange of blood material, although evidence for this type of transmission has not been well documented. Finally, some researchers have reported the presence of infectious material in saliva and mucous but the relationship to transmission of KSHV has not been definitively demonstrated. Once infected with KSHV, it does not seem that the virus can be completely eradicated. Some drugs used to treat other herpesvirus infections, such as ganciclovir and foscarnet, have been shown to be effective against the infection of KSHV because of their ability to target and abrogate the lytic cycle, which makes them exciting alternatives to more drastic surgical and chemical treatments. In mild cases of KS, topical agents and cryotherapy (freezing) are typically used to destroy the lesions. In more severe cases, combinations of topical agents, as well as radiation, surgical measures and chemotherapy (drugs and chemicals) are used to control the spread of the tumor. Unfortunately, such treatments tend to focus on the tumor and not on the underlying viral infection, which will continue to cause more tumors. Hence, for HIV-infected AIDS patients or other immunocompromised patients the best treatment consists of boosting the immune system. For AIDS patients, HAART medications will reinstate immune function to an adequate degree to fight KSHV when the patient takes the medications as directed and is monitored closely by a physician.

KSHV and Prison

Prisoners suffering from infectious disease have a more serious predicament than the typical patient because they do not have the same access to health care and the ability to choose their physicians. In North Carolina, inmates ordinarily must rely on prison health care professionals. (Minimum custody inmates may be permitted to seek medical care outside of the prison at the inmates' own expense.)

It is often difficult for inmates to comply with a doctor's orders. Some studies have shown that many prisoners who would otherwise be compliant with their medicine regimens, fail to comply due to scheduled feeding times, pill calls, and directly observed therapy (DOT) protocols. Such difficulties should be discussed with the treating health care professional, as well as with custodial staff, to ensure that the prescribed course of treatment is workable.

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Kaposi's Sarcoma
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Another confounding issue regarding treatment for prisoners is the lack of privacy inherent in the prison system. Some inmates will shun treatment for life threatening and contagious disease in an effort to protect their privacy and avoid exclusion by the general population. Although it is nearly impossible to maintain anonymity while taking medications and treatments in the correctional setting, it is imperative that treatment is sought to control infection, reduce the risk of spreading disease, and prevent further suffering. According to the US Department of Justice, nearly two percent of all inmates in North Carolina prisons were infected with HIV in 2001. This was nearly twice the rate of infection observed in the civilian population at that time. These data indicate a desperate need for education among incarcerated people to assist in controlling the spread of infectious disease. From a moral perspective, the obligation not to spread disease is perhaps the single greatest imperative. Whether it be loved ones or fellow inmates, knowing that you have caused another person to become infected is a heavy burden, and one that is not lightened by regret.

Under federal law, prison officials and health care professionals may not be "deliberately indifferent" to the serious medical needs of inmates. *Estelle v. Gamble*, 429 U.S. 97 (1971). Failure to provide proper medical attention to a patient suffering from AIDS or AIDS associated pathogenesis, such as KS, may constitute an unnecessary and unjustifiable infliction of pain and suffering, in violation of the inmate's Eighth Amendment constitutional rights. *Id.* If you are experiencing any health problems, you should seek the help of a health care professional promptly.

Ulceration of a KS on the foot

Magnification of the ulcer on the foot

About the Authors: ***Khalief Hamden*** *is a masters' candidate at East Carolina University in the Molecular Biology and Biotechnology program. Hamden received his Bachelor of Science in Pre-professional Biology from Appalachian State University in North Carolina. Hamden is currently pursuing a thesis concerning the entry of KSHV into target cells and aspects of cellular signaling, under the auspices of Dr. Shaw Akula, in the Department of Microbiology and Immunology at the Brody School of Medicine. Hamden, who serves as Vice President of the Biology Graduate Student Association at ECU, has earned authorship in several scientific papers and reviews that have been published in peer-reviewed, professional journals. Hamden is a volunteer student-assistant in the Department of Infectious Disease at the Brody School of Medicine and also is an active volunteer at the Pitt County Care Clinic, a free clinic for underprivileged families.*

Dr. Shaw Akula *is an Assistant Professor at the Brody School of Medicine in the department of Microbiology and Immunology. Dr. Akula is a veterinarian by training, who received a Masters in Veterinary Science from the Madras Veterinary College, India. Dr. Akula holds a Doctorate of Philosophy from South Dakota State University. Dr. Akula is the recipient of several grants and an expert in the field of herpes virology. Dr. Akula's lab has contributed to the understanding of Kaposi's sarcoma and associated pathogenesis. Dr. Akula has authored a number of peer-reviewed manuscripts that have been published in some of the top professional journals.*

Think Differently from the Herd

By Michael G. Santos - Reg. No. 16377-004

Editor's Note: *The following article, "Think Differently from the Herd," follows a series of articles by Inmate Michael G. Santos. They have been republished in ACCESS by permission of the author. 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. Mr. Santos can also be reached by writing to him at the following address:* Mr. Michael G. Santos (Reg. No. 16377-004), Federal Correctional Institution – Florence, Teller 6-212, P.O. Box 5000, Florence, CO 81266-5000.

I was 23 when the gates of a maximum-security prison locked behind me. I had never been confined before, and I was ignorant of what to expect. Rico, another prisoner, advised me to find a weapon. He suggested that I respond to even the slightest provocation with lethal violence, and he indicated that such aggression would keep predators away.

"It's easy to survive in prison," Rico said. "All you need is a pool of hatred in your stomach, and a knife. Hate keeps me going."

Rico lived by the imbecilic codes that govern prison behavior. He had begun serving a five-year sentence more than a decade before I was confined. During his early years, his adjustment led him into a series of bad decisions. One of those decisions was to kill a man whom Rico thought had disrespected him. For that offense, Rico was prosecuted, and after his conviction he was sentenced to serve life in prison. Now Rico's body is covered with the skull and demon tattoos that are so ubiquitous behind these walls, and he lives as a permanent fixture in the institutions that hold him. I knew that I had to serve my time differently.

Prison is a bizarre world. It is a place where a man might stab another 20 or 30 times because he stayed on the telephone too long, or because he moved too slowly in a chess game. It is a world where one may think it appropriate to smash a steel pipe down upon the skull of another man. Many prisoners respond with violence when they feel their honor has been challenged, or when they perceive that they have not been given the level of respect to which they believe themselves entitled. It is a world where people enjoy the spectacle of blood shooting from a human body, just as children enjoy the spectacle of water shooting from a fountain.

Those who choose to succeed in such an environment must think differently from the herd.

Prisoners must expect that others will make bad decisions around them with regularity. These closed communities foster a kind of groupthink where failure proliferates. Rather than acting in accordance with the principles of good conduct, many prisoners forsake common sense and live their life in prison according to the loser's code that so many follow.

For example, I wrote of honor and respect above. A significant amount of violence in prison erupts over misconceptions about those terms. Outside, people achieve distinction by educating themselves, by providing for their family and contributing to their community. Although such behavior brings a man a stellar reputation in the real world, it has no value or meaning inside these fences.

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Excessive Force: An Incident of Incarceration?

By James D. Oakes, NCPLS Summer Intern

Early one morning, nine young men were arrested in their homes by police officers. Journalists with television cameras recorded the commotion as neighbors looked on, horrified. These particular arrests were only one part of a larger operation in which about 70 other young men were rounded-up. About a dozen of these men were eventually taken to a local lock-up, blindfolded, processed, and taken to a makeshift prison. Over the coming days, the prison guards' behavior towards the inmates became increasingly aggressive and degrading. Inmates were tripped, ridiculed, and forced to clean out the buckets serving as their toilets with their bare hands. In one incident, inmates were stripped naked and forced to simulate sodomy on one another. Although this may seem to be a description of the recent events surrounding prisoner abuse in Iraq or the detainees at Guantanamo Bay, it is instead a brief synopsis of what is now infamously known as the Stanford Prison Experiment. It took place in the basement of a hall on Stanford University's California campus in 1971.

Much attention has been given lately to the prisoner abuse that took place at the hands of the U.S. Military in the Abu-Ghraib Prison in Iraq. Among other incidents, inmates were stripped naked and photographed while simulating sexual acts; others were blindfolded and forced to hold wires they were told would deliver deadly shocks; still others were led around on their hands and knees by a leash. More recently, reports of abuses of detainees at Guantanamo Bay are beginning to reach the news media. For decades now, American movies and television shows have portrayed abuses of American inmates by prisoners as well as guards. It does not take a Ph.D. in psychology to understand, or at least recognize, this phenomenon. Here at North Carolina Prisoner Legal Services (NCPLS), the discussion that led to this article was initiated by an inmate's letter asking us to consider "the type of person who would be attracted to a job with bad pay and the opportunity to carry a club." A desire to serve the public or to be involved in law enforcement, a family tradition, convenience, or the chance for a stable job and a respectable career may be some of the reasons for seeking employment in a correctional setting. But the question remains: why do some officers abuse inmates? Is there something about the prison environment in particular that leads to such abuses?

Dr. Philip G. Zimbardo, a well respected psychologist and the architect of the Stanford Prison Experiment, suggested in a recent *Boston Globe* article that the abusers at Abu-Ghraib should not be looked at as "'bad apples' in a good barrel of American soldiers," but as "once-good apples soured and corrupted by an evil barrel." He points to the fact that the abusive guards in the Stanford Prison Experiment were specifically chosen for their "mental health and positive values." That led Dr. Zimbardo to theorize that such abusive behavior may be a function of the prison environment itself, and not entirely attributable to the psychological quirks or evil tendencies of individuals.

Zimbardo and other researchers have identified some of the conditions that lead to abusive behavior by otherwise normal people. Among those conditions are: 1) the diffusion of responsibility -- in

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situations where it is unclear who is in charge, it is difficult for a person to put a stop to the misbehavior of their co-workers; 2) anonymity -- in the Stanford Prison Experiment, the inmates did not know the names of the guards even when guards were wearing uniforms with nametags attached (a circumstance that probably existed in Iraq due to the language barrier); 3) dehumanization -- in a prison environment this is almost inevitable, encompassing the process of being numbered and put into a uniform, and stripped of personal identity; 4) peers who model harmful behavior -- if one officer abuses an inmate without adverse consequences, then others will be more likely to follow suit; and 5) bystanders who do not intervene -- the abuser is likely to understand that his behavior has been condoned and is therefore acceptable; moreover, inaction allows the abuse to continue and makes it more difficult, socially, for other bystanders to speak up.

In Iraq, it should have been foreseeable that these factors would be present, and therefore the abuses were predictable and possibly preventable. The guards apparently had inadequate training and supervision, there were no consequences for the violation of basic human rights, there were no clear lines of authority, there were no generally understood or shared ethical constraints, no challenges by other guards or bystanders to the abusive behavior, and, as discussed above, there was as a significant language barrier.

It is also clear, however, that not all of these conditions need to be present for abuses to take place. The guards in the Stanford Prison Experiment, for example, knew that their actions were being videotaped and monitored by researchers. Yet, that did not provide a sufficient deterrent to moderate their conduct.

Do such conditions exist in North Carolina prisons? In most cases, anonymity would not seem to be a problem. Officers and inmates are sometimes well acquainted, and generally at least know each others' names. There is a fairly rigorous chain-of-command in place, known to all officers and most inmates.

On the other hand, in North Carolina's prisons, as in nearly all prisons, inmates are assigned numbers and made to wear uniforms. There are sometimes language and educational barriers, as well as communications difficulties that result from mental or physical disabilities.

Certainly, some officers are more aggressive than others, and it is widely known that correctional officers will generally "stick together" when they recount incidents involving inmates.

But the loyalty demonstrated by officers for their colleagues is also present among inmates. Prisoners who are seen to be too friendly with officers, or who provide information to prison authorities are labeled "rats," or "snitches." They are outcasts among their fellows, and they are sometimes targeted for violent attacks.

It seems that this kind of group loyalty is an incident of the adversarial structure of the correctional setting. The prison environment creates an "us against them" mentality, whether you're an officer or an inmate. It doesn't have to work that way.

Some of the factors that have been identified as contributing to abuse are not present in North Carolina's prison system, but others are. The potential for abuse exists – even among officers who are otherwise good people with strong values. The question becomes – how can the potential for abuse be reduced or eliminated? Under our existing system, the answer can only be vigilance. Where the potential for abuse exists, and where the tendency to abuse cannot be definitively pre-determined, there would seem to be no other effective approach. The responsibility for that vigilance is shared equally among four groups – inmates, correctional officers and their supervisors, the Department of Correction (DOC), and NCPLS. First, inmates must understand that they have a responsibility to obey the lawful orders of correctional

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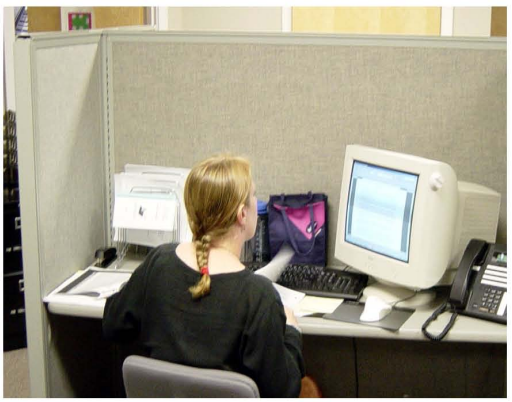
NCPLS Intern & Volunteer Program: Law Students in Public Service

The study of law is demanding, highly competitive, and largely academic. Students spend several hours each day in classes that are intellectually challenging. For each hour of class time, many hours are spent in preparation, reading cases, treatises, and outlining course materials. Amidst all these rigors, students sometimes lose touch with the reasons that they undertook the study of law. Summer employment in a law firm can help students to regain that focus and provide opportunities to explore different kinds of careers in law.

NCPLS has a dynamic and rewarding program for legal interns that provides the student many opportunities to gain experience in public service law. While we always offer plenty of chances to show off research and writing skills, we figure that law students generally prefer to work in the field, interviewing clients, conducting investigations, and assisting in litigation. Guided



by the personal interests and preferences of the individual and the needs of the supervising attorneys and our program, we try to develop an agenda that will spark the creativity and fully engage the interest of the intern.

The NCPLS Intern and Volunteer Class of 2004 was perhaps the best ever. James D. Oakes, Bracken Mayes, Emily Mistr, and Pamela Jones hail from the law schools at UNC-Chapel Hill and NC Central University. This bright and well-motivated group contributed more than 500 hours over a twelve-week period to serving our clients.

We also had outstanding contributions from two NCCU law students who volunteered time to help us serve our clients. We were deeply honored to have been chosen as the first law firm with which the North Carolina Bar Association (NCBA) partnered to bestow special recognition upon our volunteers. Laura Price, a rising second-year law student, and Barbara Szombatfalby, a third-year law student, were awarded the NCBA's Certificate of Appreciation for their work with NCPLS over the summer.

Our intern program is directed by Senior Attorneys Letitia Echols and Elizabeth Raghunanan.

Client Contributions Sought

At NCPLS, we often receive letters from our clients that show remarkable artistic talent. Our clients frequently demonstrate the ability to use language in sophisticated, creative, and expressive ways, and we occasionally receive drawings that reveal skill and accomplishment. These works communicate the full range of human intellect and emotion, often in unique and moving ways.

In recognition of the fundamental humanity and the artistic talent of our clients, we seek submissions from North Carolina inmates to share with our readers in our December 2004 edition of ***Access***. Short stories, poems and drawings will be considered for publication. Entries should be submitted on standard 81/2 x 11 inch paper, should not exceed 600 words (in the case of writings), and should be addressed to the Editor. Please understand that we will consider a submission to constitute authorization by the author or the artist to publish the work, and that all submissions will become the property of NCPLS. We look forward to sharing your creativity with our readers.

Think Differently
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In prison a man earns the distinction of a stand-up convict, or achieves honor and respect by living according to a set of values that are completely at odds with law-abiding citizens. Those who choose success must think differently from the perverse but prevalent mentality that pervades every prison community. They must realize that thinking like the herd leads to behavior like the herd. And behavior like the herd leads to failure heaped upon failure. Thinking differently is essential to those who choose success.

Rather than listening to Rico and the collective but questionable wisdom that prevails inside the walls, when I began serving my term I thought about the obstacles I would face upon my release. I had no idea how prospective employers would respond to my criminal record or to the many years in confinement that I would have by then served. I did not expect that they would perceive me differently from other job applicants. Thinking about such challenges impressed upon me the urgency of making provisions for release; even though I was staring down the long end of a 45-year sentence. I thought it much more critical to prime myself for society rather than behave in a manner that would distinguish me in the dubious prison community. Like others who choose success, in order to avoid the cycle of failure in which I lived I had to think differently.

For more information on prisoners who choose success, I invite readers to write me, to read my books or to visit *MichaelSantos.net*, where I offer extensive amounts of free content on prisons, the people they hold, and strategies for growing through confinement.

Tips on Corresponding with NCPLS

NCPLS receives hundreds of letters from inmates each week. While we like to hear from prisoners and are anxious to see whether we can assist them, the following steps will make it easier for us to provide better service to our clients.

1. Put your OPUS number on all your correspondence with NCPLS. Many inmates have the same name, but OPUS numbers are unique. Using your OPUS number helps to insure that your mail gets into the correct file for the staff member who is handling your case.

2. Try to write as clearly as possible, especially when writing your name, the name of any witnesses to an incident, or the staff member(s) about whom you are complaining.

3. If you have previously been known by another name (an alias), particularly if you corresponded with NCPLS under that name, please let us know.

4. It would help us to know if you have any problems with reading or writing, including whether anyone else is writing the letter for you.

5. Try to be specific when describing your problem(s) or asking questions. Broad claims that your rights have been violated without facts to support your claims, cannot be investigated.

6. If you have grieved a matter, please let us know. In most cases, we will need to see copies of any grievance(s) that you

have submitted concerning your problem. We will also need to see all the administrative responses and appeal results. ***Please remember that NCPLS is not the place to file your DC-410 grievance forms***. These forms must be submitted to staff at your unit or, in the case of a confidential grievance, to the Director of Prisons. Our office will **not** forward grievances outside the normal administrative process.

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officers. That can be especially difficult when an order seems unjust or arbitrary. Such matters can be addressed after-the-fact through the Inmate Grievance Process. But the refusal to follow a direct order provides legal authority for the use of force, which can quickly escalate, especially when an inmate offers physical resistance.

It is also the responsibility of inmates to honestly report instances of abuse that they have witnessed. Honest reporting does not require making-up facts, trying to help a fellow inmate, or trying to cause trouble for an officer. It means faithfully reporting what you have seen, heard, or have directly experienced. Your credibility is your most valuable asset, and it is especially important in this context.

Correctional officers must recognize abuse, intervene to bring it to a halt, and report such abuse. That, too, is a responsibility imposed by law, and it is the duty of every officer who aspires to correctional professionalism. Correctional officers who undertake a duty to protect the public and to protect the health and safety of inmates owe a higher duty to the public and the profession than mindless loyalty to an irresponsible colleague. Moreover, true loyalty to the colleague demands admonishment when

shared professional and moral values are disregarded.

When such reports are received, and when there is credible evidence to support the allegations, the DOC must punish abusers. But the DOC has an independent duty to closely monitor uses of force, and to provide continuous training and reinforcement of policy. DOC should also continue to study developments in the field of corrections, compare experiences with other agencies, and continuously re-visit practices and policy to minimize the range of circumstances that provide the potential for physical confrontations.

Finally, independent organizations must continue to provide inmates with the tools necessary to avoid confrontation, and to remedy violations of the law when they occur. In that regard, North Carolina inmates are particularly well situated to protect their rights because, unlike inmates in many other states, you have the ability to report abuses not only to DOC officials, but also to NCPLS.

NCPLS is a non-profit organization made up of attorneys, paralegals, and support staff. NCPLS receives and answers thousands of inmate letters each year. NCPLS has assisted North Carolina inmates with many different issues surrounding conditions of confinement, including abuse by officers. That assistance has been provided in the form of information, advice, and in some cases, representation in litigation.

Generations of incarceration as a tool of the criminal justice system, decades of scientific research, and the recent events in Iraq and Guantanamo Bay, all demonstrate the difficult challenge of eliminating abuse in the institutional setting. We all have a part in meeting that challenge. Organizations like NCPLS exist to defend the rights of those whom society would rather forget. To paraphrase a famous quote, if we look the other way while others are singled out and abused, there will be no one left to defend our rights when at last our time comes.

The Newsletter of North Carolina Prisoner Legal Services, Inc.

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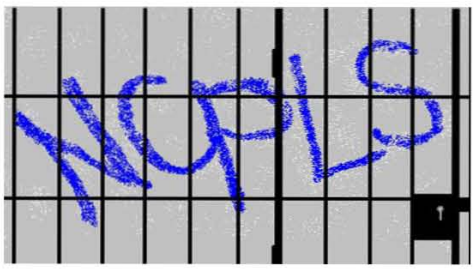

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http://www.ncpls.org