2006-2007 LITIGATION DOCKET 5/17/07

ARIZONA

Hart v. Arpaio (D. Ariz.).

Sheriff Joe Arpaio, the self-styled "toughest Sheriff in America," who runs the Maricopa County Jail in Phoenix, filed a motion to terminate an existing consent decree that protects the rights of pre-trial detainees regarding medical care, mental health care, overcrowding, and protection from assault, among other provisions. The NPP entered the case at the request of local counsel to protect the decree from termination. On January 22, 2004, the Sheriff completed the presentation of his motion for termination. Since that time, the parties have filed a substantial number of motions, and in January 2005 the judge issued an order referring discovery and pretrial motions to a magistrate judge. In July 2006, the Sheriff filed a petition for a writ of certiorari from the Ninth Circuit's denial of their writ of mandamus asking the Ninth Circuit to terminate the consent decree. The Supreme Court denied certiorari in October. We are awaiting the district court's action on various pending motions.

CALIFORNIA

Kiniti v. Myers (S.D. Cal.)

Housing approximately 1000 civil immigration detainees on any given day, the San Diego Correctional Facility (SDCF) is one of the largest detention facilities in the country. SDCF is managed by the Corrections Corporation of America, Inc. (CCA), the largest private, for-profit provider of detention and corrections services in the nation. Detainees housed in the facility remain in immigration custody for periods of time ranging from several months to several years. When the ACLU joined an existing lawsuit filed by a detainee without counsel in January 2007, SDCF was chronically and dangerously overcrowded. Three detainees were routinely assigned to sleep and spend significant blocks of time in small cells designed for two people, and additional detainees were housed on makeshift beds in common dayroom spaces. The lawsuit claims that overcrowding is the root cause of numerous unsafe and intolerable conditions that afflict detainees. These conditions include increased violence, tension, discomfort, stress, mental suffering, psychiatric problems, and exposure to respiratory and other infections, as well as diminished access to medical, mental health, and dental services; decreased access to exercise and dayroom space and other facility services; poor sanitation and deprivation of the means to maintain personal hygiene; overburdened and unsanitary shower and toilet facilities; and the loss of personal dignity. Since the lawsuit was filed, SDCF appears to have ceased the practice of triple-celling and it has moved to dismiss the lawsuit as moot. We oppose dismissal and we expect to proceed to certify the class in the near future.

Rutherford v. Baca (C.D. Cal.)

The Los Angeles County Jail is the nation's largest, with approximately 19,000 detainees and prisoners. The jail is grossly overcrowded, with four persons routinely housed in cells built for two, and dormitories housing two to four times as many persons as permitted by state regulations. Some prisoners are virtually never allowed to leave their cells. In February 2006, the federal judge toured the jail and concluded that conditions were "not consistent with basic values" and "should not be

permitted to exist." In June 2006 an expert panel was formed, with members from the ACLU of Southern California and from the county, to recommend solutions to the extreme crowding, fire safety hazards, and other health and safety risks in the jail. In August 2006, the NPP entered the case at the request of the ACLU of Southern California to assist with the development and implementation of appropriate remedies. An NPP staff member is a member of the panel. In October 2006, the Affiliate, with our assistance, won a temporary injunction limiting population and requiring safer conditions in the jail's intake center. In April 2007, faced with continuing noncompliance with the temporary injunction, the ACLU filed a motion to hold county officials in contempt.

Woodford v. Ngo (U.S. S. Ct.)

This case involves the issue of whether the Prison Litigation Reform Act exhaustion provision includes a procedural default provision, so that prisoners are barred from filing lawsuits about their conditions of confinement in federal court if their internal prison grievances are rejected as untimely. In June 2006, the Supreme Court held that the exhaustion provision requires "proper" exhaustion and so prisoners are forever barred from filing a complaint in federal court if they miss a procedural deadline or otherwise fail to comply with a grievance systems rules. The Supreme Court remanded the case to allow the lower court to determine whether the prisoner had actually exhausted properly. We had filed an amicus brief in support of the prisoner plaintiff.

COLORADO

Shook v. Board of County Commissioners of the County of El Paso (D. Colo. & 10th Cir.)

This is a challenge to inadequate mental health care in the El Paso County Jail in Colorado Springs, Colorado. The badly overcrowded jail, whose population regularly exceeds 1,000, has only two hours of psychiatric services per week. Ten prisoners have died in the jail since May 1998, including five who have committed suicide since 2001; one who died while tied to the jail's "restraint board"; and a prisoner suffering from alcohol withdrawal who died after being repeatedly pepper-sprayed by deputies. The jail also fails to provide necessary psychotropic medication; fails to provide inpatient hospitalization for mentally ill prisoners who need it; and uses restraints on mentally ill prisoners in an improper and unsafe manner. On July 29, 2003, the court denied the jail's motion to dismiss but denied class certification. We appealed the denial of class certification to the Tenth Circuit. In October 2004, that court reversed and ordered the case remanded to the trial court to reconsider the appropriateness of class certification. The jail sought review by the U.S. Supreme Court, which was denied. In January 2005, following the denial of the jail's request for a stay, and its request that the full court rehear the case, the Tenth Circuit sent the case back to the district court. Subsequently, the district judge again denied class certification and we are again appealing to the Tenth Circuit.

CONNECTICUT

Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Choinski (D. Conn.)

This case, filed in August 2003, challenges the conditions under which mentally ill prisoners are held at Connecticut's "supermax" prison. The plaintiff is the independent agency empowered under federal law to sue to protect the rights of persons with disabilities. The parties reached a tentative settlement in March 2004, which has now been approved by the state legislature. The court approved the settlement in September 2005. In May 2006 we filed a motion seeking improved access to prisoner records to ensure that we are able to monitor effectively the state's compliance with the agreement. The court granted this motion in part in March 2007, greatly enhancing our ability to monitor.

DISTRICT OF COLUMBIA

Jerry M. v. District of Columbia (D.C. Super.)

In 1986 the NPP negotiated a consent decree on behalf of youth committed or detained as a result of juvenile charges. The NPP reentered the case in 2001 when the District of Columbia continued to violate that decree. The court set new deadlines for compliance, but the court monitors continued to document pervasive failures by the District. Following a series of hearings, court orders documenting continued non-compliance by the District, and the imposition of contempt citations, in December 2003 we filed a motion seeking appointment of a receiver to take over operation of the system. In May 2004 the parties agreed to put that motion on hold while a Special Arbiter develops a compliance plan with the parties. If the District fails to implement the compliance plan within the time line developed by the Arbiter, the Arbiter is empowered to decide that a receiver must be imposed. The parties are currently working with the Arbiter to develop and implement the compliance plan. As one of the first fruits of that endeavor, the agency responsible for the juvenile system was reorganized and given cabinet-level status. Vincent Schiraldi, a nationally-known reformer, was appointed head of the new agency in February 2005, following initially unsuccessful efforts to develop a work plan that would cure the violations of the Consent Decree. Since Mr. Schiraldi's appointment, the agreement has resulted in a substantial reduction in the numbers of youth in secure custody in the District of Columbia, and we are hopeful that meaningful reform will be instituted across the board.

Scott v. District of Columbia (D.D.C.)

In September 2004, 27-year old Jonathan Magbie, who had suffered from quadriplegia since childhood and had no previous criminal convictions, was sentenced to ten days in the D.C. Jail for possession of a single marijuana cigarette. Staff ignored an x-ray showing probable pneumonia, and failed to provide him with the ventilator that he needed to breathe at night. He was transferred to the Correction Corporation of America's D.C. facility. Four days later, when he was discovered unresponsive, ambulance workers reported that he was sitting in his own filth and that his tracheostomy tube had not been suctioned. A few hours later he died of respiratory failure. In September 2005 we filed suit on behalf of his mother, seeking damages for his death and suffering from the District of Columbia jail, Corrections Corporation of America and other defendants. Since that time the district court has rejected motions from the District of Columbia and the former head of

the D.C. Department of Corrections seeking dismissal from the case. A number of defendants, including the District of Columbia, the District's contractual medical provider, and Corrections Corporation of America, have now settled with an agreement to pay substantial damages. The District has also agreed to implement changed policies to protected persons with severe medical problems and physical disabilities.

FLORIDA

Carruthers v. Jenne (S.D. Fla.)

This is a longstanding class action suit regarding conditions at the Broward County Jail. The case was settled in 1994, resulting in a consent decree mandating a population cap, and improvements in various operations at the jail. On August 30, 1996, the jail filed a motion to terminate the decree pursuant to the PLRA, arguing that it was in compliance with the terms of the decree. The NPP joined this case to assist local counsel in preparing for the evidentiary hearing. On March 15, 2002, three court-appointed experts filed reports regarding conditions at the jail. The experts identified numerous overarching and systemic problems, including that unnecessary and excessive force is often employed by correctional staff; that reviews of use-of-force incidents are inadequate; that there is a lack of meaningful disciplinary sanctions for serious violations of use-of-force policies; that use of the restraint chair is not properly regulated or documented; that the jail does not provide medical staff with appropriate training; that medical staff do not exercise appropriate medical judgment; and that "many inmates with serious mental disorders (often associated with active psychotic features) were not receiving adequate mental health treatment."

Subsequently the parties have repeatedly agreed to postpone the termination hearing while the court-appointed experts reinspected the jail. In June 2004, the parties agreed to a fourth round of inspections, which found some continued significant problems. In 2006, the jail was plagued with serious overcrowding. The NPP urged the Sheriff to contract with the U.S. Department of Justice, National Institute of Corrections, to conduct an audit and determine the cause of the overcrowding. The Sheriff agreed, and the NIC completed its audit in April 2007. As a result of the audit, the Sheriff has asked the county commission to nearly double the size of the supervised release program.

Because the jail authorities are making significant progress as the inspections continue, the NPP is hopeful that the violations in the jail can ultimately be resolved. The corrections and mental health experts will inspect the jail in 2007. If they report continued serious problems, the NPP will seek relief from the court.

GEORGIA

Goodman v. Georgia (U. S. S. Ct.)

A paraplegic Georgia prisoner sued the state under the Americans with Disabilities Act (ADA), challenging the failure of the Department of Corrections to provide him with housing and sanitary facilities adapted to his special needs, and claiming that as a result he had suffered several broken bones when he attempted to use the toilet and shower. He also alleged that he was forced to sit in his own bodily waste on several occasions, that he was deprived of the ability to shower or

bathe himself for long periods of time, and that he has been denied access to almost all prison programs because of his disabilities. The Eleventh Circuit Court of Appeals held that the prisoner's claims stated a claim for violation of his constitutional rights against cruel and unusual punishment, but did not state a claim under the ADA, because the relevant portion of the ADA could not constitutionally be applied to prisons. The Supreme Court granted review of that decision and in June 2005 the NPP joined an amicus brief arguing that the ADA can be constitutionally applied to prisons. In January 2006 the Supreme Court unanimously reversed the Eleventh Circuit, holding that because Mr. Goodman's claims were, at least in large part, based on conduct that independently violated the Eighth Amendment, Congress clearly had the power under the Fourteenth Amendment to apply the ADA to prison officials.

IDAHO

Gomez v. Vernon (D. Idaho & 9th Cir)

This case challenged a long-standing pattern and practice of retaliation by correctional staff against prisoners who brought civil rights lawsuits or submitted grievances about the conditions of their confinement. On the eve of trial, we learned that Deputy Attorneys General for the state had been secretly reading the confidential lawyer-client mail between the ACLU and the prisoners. An eight-week trial ended in March 1998. In 1999, the court issued an opinion finding that a number of prisoners had suffered retaliation, and it ordered injunctive relief for those prisoners. Subsequently, the court issued an opinion sanctioning the prison's lawyers for secretly reading our lawyer-client mail. The prison appealed to the Ninth Circuit, which affirmed all aspects of the District Court's rulings. The prison then filed a petition for review by Supreme Court, which was denied in December 2001. The Supreme Court of Idaho subsequently publicly reprimanded the two state lawyers. We are still awaiting a decision from the Ninth Circuit on attorneys' fees for our appellate work.

INDIANA

Mast v. Donahue (S.D. Ind.)

As part of our ongoing initiative challenging supermax prisons, in February 2005, working with the Indiana ACLU affiliate, we filed suit challenging the confinement of mentally ill prisoners at the Wabash Valley Correctional Facility's Secured Housing Unit, because the extremes of social isolation and sensory deprivation imposed by such confinement substantially worsen their mental condition. Four prisoners have committed suicide in the Unit since 2001, including one who set himself on fire and another who choked himself to death with a washcloth. Trial was set for August 2006, but in the midst of discovery the prison announced that it was abandoning the policy of housing seriously mentally ill prisoners in the Secured Housing Unit. A settlement was reached in January 2007; a hearing at which the court will consider the fairness of the settlement to the prisoner class is scheduled for June 2007.

IOWA

Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc. (8th Cir.)

The NPP assisted the ACLU's Program on Freedom of Religion and Belief in filing an amicus brief defending the district court's holding that the deferential standard of review applicable to prisoners' First Amendment claims does not apply to Establishment Clause cases, and that Prison Fellowship Ministries' contract with Iowa to implement, at taxpayer expense, a prison rehabilitation program promoting a particular brand of Evangelical Christianity must be subjected to strict scrutiny under the usual Establishment Clause analysis, and that the pervasively sectarian program implemented at an Iowa prison could not withstand such scrutiny.

LOUISIANA

Doe v. Foti (E.D. La.)

The NPP serves as co-counsel with the Youth Law Center in this class action challenging conditions at the Conchetta Facility which houses juveniles as part of the Orleans Parish Prison in New Orleans. The case challenges physical abuse of juveniles, lack of educational programs, lack of medical and mental health care, unsafe environmental conditions, and inadequate visitation policies. The parties have now settled all issues, and the case has become part of the *Hamilton* litigation, discussed below.

Hamilton v. Morial (E.D. La.)

This class action, initially filed in 1969, challenges conditions at the Orleans Parish Prison (New Orleans Jail). The NPP entered the case in 1989 as class counsel, and over the next six years negotiated settlements on the medical care, mental health care, physical plant, and fire safety claims. In 2002 the court held a hearing on the use of restraints in the jail after a mentally ill prisoner died of dehydration while he was in four-point restraints. The court denied relief in a decision on December 23, 2003. In addition, in early 2003 plaintiffs filed a motion regarding the failures to treat prisoners with Hepatitis C. As a result, in December 2003, the court-appointed medical expert recommended changes in Hepatitis C treatment, which the jail agreed to implement. Following our unsuccessful efforts to reopen the restraints issue after the suicide of another detainee while he was in restraints, the court placed mental health issues on the inactive docket, except for staff issues and the problems of removing seriously mentally ill prisoners from the jail.

When Hurricane Katrina struck New Orleans, staff at the jail abandoned the detainees, many of whom were still locked in their cells. Eventually the thousands of detainees and prisoners were transferred to prisons around the state. Many pretrial detainees continued to be held in prisons despite the failure to pursue charges against them. We filed motions seeking access to our clients, and also filed federal and state requests for public information attempting to find out what happened to the detainees during their ordeal. We also collected scores of narratives from prisoners and detainees abandoned in the jail during Katrina, detailing their confinement under horrifying and life-threatening conditions. We are also working with a coalition of local and national groups attempting to address the non-functional justice system in New Orleans since Katrina. The story of the mistreatment of OPP prisoners and detainees after Katrina is recounted in the NPP's widely praised report, *Abandoned & Abused: Orleans Parish Prisoners in the Wake of Katrina*. The NPP plans to return to New Orleans in the spring of 2007 to investigate current conditions at OPP.

Lambert v. Morial (E.D. La.)

This case challenged the conditions for women prisoners in the Orleans County Parish (New Orleans Jail). It has been consolidated with *Hamilton, supra.*

MARYLAND

Duvall v. Glendening (D. Md. and 4th Cir.)

In August 2002, the NPP, working with the Maryland ACLU and local counsel, discovered that female detainees in the jail were being exposed to heat in excess of 115 degrees because the facility was unventilated. As a result, pregnant women and women with chronic diseases were at great danger of immediate injury or death. We sought partial reopening of an old consent decree regarding conditions at the jail and an injunction safeguarding the women. Shortly before a scheduled hearing on our motion was set to begin, the jail agreed to a new consent order admitting that conditions related to the heat and lack of ventilation in the facility violated the Eighth Amendment. Following a subsequent hearing, the jail agreed to air condition the entire Women's Detention Facility; installation of the air conditioning has now been completed.

After the consent order, we continued to investigate other problems at the jail involving failures to provide medical, mental health, and dental care, as well as deficient housing, sanitation, laundry facilities, food services, plumbing, and vermin eradication. On December 18, 2003, we filed a motion to reopen the portions of the 1993 consent decree covering these conditions, and the jail filed a motion to terminate that decree. Following oral argument on August 25, 2004, the court denied that motion for termination without prejudice to its renewal following discovery. The jail appealed that order to the Fourth Circuit. In April 2005, the Fourth Circuit granted our motion to remand the case to the trial court. The jail subsequently dismissed its appeal. The trial court then established a schedule for discovery, with an evidentiary hearing to follow if necessary. The parties are now engaged in settlement discussions.

MICHIGAN

Hadix v. Caruso (W.D. Mich. & 6th Cir.)

In 1992 the NPP was asked to enter this case by local counsel. In 1996 the state filed a Prison Litigation Reform Act motion to terminate a consent decree covering medical and mental health issues, and asked the court to recognize an "automatic stay" (suspension) of the consent decree. The district court held this stay provision of PLRA unconstitutional, and the state appealed to the Sixth Circuit. In May 1998, the Sixth Circuit rejected the state's contentions on statutory rather than constitutional grounds.

In May 2002 the court conducted another trial on medical care, disability accommodations, heat and ventilation, and fire safety issues. Our evidence demonstrated, among other things that delivery of medications for chronic diseases is completely unreliable, that prisoners who need specialized treatment like chemotherapy routinely have that treatment interrupted and delayed, that prisoners who report symptoms that require urgent attention frequently are not seen in a timely fashion and suffer harm as a result, and that a number of prisoners have suffered harm because of

exposure to excessive heat. On October 29, 2002, the court issued a comprehensive decision finding in our favor on all issues. In connection with that decision, the court issued an order requiring that the state develop a plan to protect all prisoners at heightened risk for heat injury by placing them in temperature-controlled housing when the heat index rises above 90 degrees. In a subsequent order following further briefing from the parties, the court mandated major structural changes to provide necessary fire safety.

The state appealed to the Sixth Circuit regarding the fire safety order. In May 2004 the Sixth Circuit vacated the fire safety order and sent the case back to the district court for further fact finding. In September 2005 the district court, following a May evidentiary hearing, issued a new fire safety injunction, adding new relief to the injunction previously entered. The state subsequently suggested a new remedial plan, which the district court accepted in April 2006, and the state has now begun to implement the ordered relief.

In addition, in August 2005, the medical monitor issued a report finding continued violations regarding medical care and disabilities. As a result of that report, we filed a motion seeking a preliminary injunction regarding the denial of medical care for seriously ill prisoners. The court issued the requested injunction in October 2005. In September 2006, following a widely publicized death of a mentally ill prisoner from dehydration and exposure to excessive heat after custody staff placed him in a hot segregation cell in mechanical restraints, we asked the court to order further relief. In November 2006, the court granted our request regarding mental health, and issued a preliminary injunction barring the in-cell use of mechanical restraints except in a medical setting. The court also ordered the state to prepare a plan to increase mental health staffing, to institute mental health rounds in segregation, and to improve coordination of mental health and medical care staff. In December 2006, the court adjudged prison officials in contempt of court on staffing issues and required submission of a plan to fix a large number of other medical deficiencies. Our work in this case also led the Governor to order an investigation into the quality of medical care in the entire prison system.

In January 2007 the court held a hearing on the remedy for the constitutional violation for heat injury, and it issued an opinion in March 2007 ordering that defendants provide air conditioning during hot weather for prisoners at high risk of heat injury. A few weeks before that opinion, the state announced plans to close many of the *Hadix* facilities. Because the state had no plans to transfer the many chronically ill prisoners at high risk, such as dialysis patients, we have opposed the closing until a plan for safe transfer is developed. The court granted a preliminary injunction until the state develops, and obtains court approval for, an appropriate plan. The state appealed from that preliminary injunction and sought an emergency stay from the Sixth Circuit, which that court denied without prejudice to later renewal in April 2007. The district court has now denied the state's first proposed transfer plans.

Jones v. Bock (U.S. S. Ct.)

The Sixth Circuit developed a series of procedural rules purportedly based on the exhaustion requirement of the Prison Litigation Reform Act (PLRA) that have resulted in the dismissal of the vast majority of prisoner challenges to their conditions of confinement in federal court. The

Supreme Court granted review of these rules in three consolidated Michigan cases. In August 2006 we filed a brief arguing that the Sixth Circuit had wrongly interpreted PLRA and that PLRA must be interpreted in a manner consistent with the right of access to the courts. The Supreme Court reversed the Sixth Circuit in all respects in a unanimous opinion written by Chief Justice Roberts that cited our amicus brief.

MISSISSIPPI

Gates v. Cook; Russell v. Johnson (N.D. Miss. & 5th Cir.)

In January 2001, a number of Mississippi's death row prisoners at Mississippi State Penitentiary in Parchman went on a hunger strike to protest brutally harsh conditions. A majority of the death-sentenced prisoners spend many years on death row while they pursue their appeals, and many of those appeals eventually succeed: Of 183 death sentences imposed in Mississippi since 1976, the Mississippi Supreme Court has reversed the death penalty in 41% of the direct appeals it has considered. In fact, almost as many people have had their convictions reversed as have been executed.

The NPP and other national and local counsel filed a class action lawsuit in 2002 on behalf of the prisoners, challenging conditions so inhumane as to amount to torture, including lethal extremes of heat and humidity, pervasive filth, uncontrolled infestation of mosquitoes and other pests, nonfunctional plumbing, lack of water, arbitrary and draconian discipline, grossly inadequate lack of opportunity to exercise, solitary confinement with extreme deprivation of social contact, and grossly deficient mental health and medical care. The trial took place in February 2003. In May 2003 the court issued a comprehensive decision finding the conditions unconstitutional and ordering specific steps to remedy the constitutional violations. The state appealed this decision to the Fifth Circuit Court of Appeals. The Fifth Circuit issued its decision in June 2004, affirming almost all of the relief ordered by the district court. We continue to monitor implementation of the court order, as part of the decree in *Presley v. Epps*, *infra*.

Gates v. Cook; Presley v. Epps (N.D. Miss.)

Mississippi's super-maximum security facility, which contains death row, also houses 1000 men in administrative segregation, in conditions that are even more violent and more likely to induce mental illness than the conditions on death row. (See *Russell* above). In June 2005 we filed suit, seeking to extend the relief afforded to death row prisoners to all the prisoners in this facility. In addition, we challenged the state's practice of arbitrarily assigning prisoners to the supermax without any legitimate security rationale. Once classified to supermax confinement, prisoners have no meaningful way to challenge their classification or to earn their way through good behavior to a less restrictive environment. The harm from these arbitrary classifications is exacerbated because, once sent to the supermax, prisoners stay their indefinitely, sometimes for decades. In April 2006 the district court entered a consent decree that incorporates all the relief ordered in *Russell* plus additional remedies addressing medical care, treatment of the mentally ill, and prohibitions on the use of excessive force, as well as substantive and procedural provisions to prevent arbitrary classification to administrative segregation.

In the fall of 2006, our classification expert analyzed the Department of Corrections' classification system and concluded that it was so arbitrary that the great majority of the prisoners did not require the extreme conditions in administrative segregation. The Commissioner of Corrections agreed to work with our expert on a plan to revise the classification system to allow the great majority of the prisoners to gain release from administrative segregation.

Also in the fall of 2006, we filed contempt motions to compel the state to comply with the consent decree's provisions on medical and mental health care. In April 2007, just before the contempt hearing began, the state agreed to enter into a supplemental consent decree on medical care, which committed the Department of Corrections to essentially all of the measures that we were seeking. The hearing on mental health went forward, and we presented basically uncontradicted evidence that the Department was failing to treat the mentally ill. We also presented evidence that these prisoners were being abused by staff, including a practice of constantly gassing them with mace and pepper spray. The combination of neglect and abuse resulted in increased numbers of prisoners experiencing psychosis or attempting suicide. Indeed, in one case, a seriously mentally ill prisoner who attempted to hang himself was left in a permanent vegetative state. After we had presented our case, the judge called the parties into his chambers and offered to mediate a settlement. We are currently negotiating a far-reaching supplemental consent decree on use of force, treatment of the mentally ill, and classification.

MONTANA

Langford v. Schweitzer (D. Mont.)

This case was filed following a serious disturbance at the Montana State Prison that resulted in seven deaths. The lawsuit challenges medical and mental health care, overcrowding, environmental and fire safety conditions, classification policy, and sex offender policies. The parties settled all issues except those issues related to treatment of protective custody prisoners. These protective custody issues were ultimately tried in a separate case filed by the Department of Justice.

In 2002 the health care experts appointed pursuant to the settlement concluded that prisoners suffering from chronic illnesses were not receiving appropriate treatment, and were not being monitored at regular intervals by medical staff. The experts recommended that a physician be responsible for monitoring seriously chronically ill patients and that the prison revise its medication procurement contract to assure that medications prescribed to prisoners are renewed promptly. On November 10, 2003, the parties negotiated an agreement extending the life of the settlement agreement provisions regarding medical care.

In September 2004, the court-appointed experts found that the prison had complied with the medical provisions of the settlement agreement, and those provisions were dismissed. The state also filed a motion to dismiss the provision of the agreement requiring the prison to comply with the Americans with Disabilities Act (ADA). The NPP opposed the motion, and asked the district court to appoint a disabilities expert to inspect the prison. In January 2006, the district court denied the state's motion to dismiss the ADA provision and appointed a disabilities expert. The state appealed that order to the Ninth Circuit. In April 2007, a unanimous panel of the Ninth Circuit upheld the

district court's order. The case has been sent back to the district court, and the parties will soon begin discovery on the treatment of disabled prisoners at MSP.

PENNSYLVANIA

Beard v. Banks (U.S. S. Ct.)

Pennsylvania prisoners challenged a policy of the Department of Corrections that denied certain prisoners in segregation nearly all newspapers and magazines. The policy was justified primarily as a behavior modification tool under the theory that the prisoners' behavior would improve if they were deprived of enough rights and privileges. The Third Circuit reversed the district court's grant of summary judgment to the prison officials. In a narrow ruling in June 2006, the Supreme Court held that the prisoners had failed to show evidence that would rebut the evidence submitted by the state supporting the reasonableness of the restriction. Significantly, the Court expressly declined to hold that behavior modification programs are always constitutional. The Court also indicated that prison authorities must show more than a formalistic logical connection between a regulation that restricts a prisoner's constitutional rights and a valid penological objective. We filed an amicus brief supporting the prisoner plaintiffs.

RHODE ISLAND

Inmates of the Rhode Island Training School v. Martinez (D.R.I.)

This class action involves conditions of confinement and program management at the central juvenile facility in Rhode Island. It was originally settled by entry of a consent decree in 1979. In 1997, because of continuing failures to obey the consent decree, the court reactivated the Special Master to work with the parties to resolve compliance issues. The NPP entered this case as the youth's class counsel in 1999. Following the NPP's entry into the case, in March 2000, the parties negotiated a comprehensive revision of the consent decree. We continue to monitor compliance. In 2002, with our active participation, Rhode Island agreed to construct a new juvenile facility and the state legislature appropriated sixty million dollars to fund it. A dispute between the Governor and the State Legislature over siting the facility delayed construction, and we worked with state officials to resolve the issue. Ground was broken for the new facility in November 2005, and a new Special Master was appointed in April 2006. In January 2007, the court ordered the state to pay the ACLU its reasonable attorney's fees and costs incurred in monitoring compliance with the consent decree, refusing to apply state law as interpreted by the Rhode Island Supreme Court.

TEXAS

In re Hutto Family Detention Center (W.D. Tex.)

The T. Don Hutto Family Residential Facility is an old medium security jail that houses entire families of immigration detainees. The facility generally houses approximately 200 adults and 200 children, including infants. The ACLU initially filed ten separate lawsuits on behalf of ten children detained at the facility. The lawsuits contend that the conditions inside Hutto violate

numerous provisions of a 1997 court settlement (the "*Flores* Settlement") that established minimum standards and conditions for the confinement and release of all minors in federal immigration custody. The *Flores* Settlement requires that children be housed in the least restrictive setting appropriate to their ages and needs, and the lawsuits contend that Hutto is among the most restrictive settings at which children could be housed.

On April 9, 2007, the district court found that the detainee children were "highly likely to prevail" on their claims that placing them at Hutto involved an abuse of discretion by government officials. The court also found the living conditions "questionable." All ten of the original children have been released from Hutto and are now living with family members. Seven new lawsuits have been filed on behalf of detained children, and additional lawsuits may yet be filed in advance of the scheduled August trial date. In May 2007 the court denied the facility's motion to dismiss several of the complaints, and made clear that we will be allowed to conduct discovery before these cases go to trial.

VIRGIN ISLANDS

Carty v. Turnbull (D.V.I.)

This class action case culminated in a comprehensive consent decree requiring the Virgin Islands government to rectify severe overcrowding, to address squalid conditions, to remedy deficient medical and mental health care, and to institute inmate classification and fire safety measures to ensure the safety and security of prisoners at the two facilities in the system. In 1997, the district court held the prison officials in contempt of court for their failure to comply with the consent decree. During 1998, the government sharply reduced the population at the facility that is predominantly used for pre-trial confinement.

Through 2000, the court held periodic hearings, and entered several detailed remedial orders requiring improvements in virtually every aspect of operations and conditions at the facilities. In June 2001, the court held the officials in contempt for failing to comply with the decree and the court's remedial orders. The court found that the government had failed to install a reliable fire detection system or institute fire safety and evacuation procedures, that the jail remained plagued with environmental hazards due to inadequate maintenance staff, that severely mentally ill prisoners received inadequate treatment at the jail, that prisoners did not have access to working telephones to contact their attorneys or families, and that prisoners were denied basic hygiene supplies such as toilet paper and shampoo. In September 2001, the court ordered the government to create a remedial fund to pay for rectifying conditions within the system.

In November 2002, at another contempt hearing, the court received expert testimony that the jail was still not equipped with a complete fire detection and alarm system, that critical security posts often were unmanned, and that jail personnel were unable to open key exit doors, thus endangering the lives of prisoners and staff in the event of a fire. A medical expert testified that severely mentally ill prisoners continued to receive inadequate mental health treatment, and that prisoners suffering from chronic illnesses were not appropriately treated for their conditions. Following the hearing, the judge entered an order for interim relief requiring the government to hire

an independent medical expert to assist it in augmenting existing health care policies and procedures, and implementing a health care quality assurance program.

Following another series of hearings and interim orders, the court in November 2004 ordered the government to construct and open a certified forensic facility to house persons found not guilty of criminal offenses by reason of mental illness, and those who are chronically mentally ill. At a follow-up April 2005 hearing, the government agreed to increase psychiatric staffing hours, enhance mental health programming, and construct the forensic facility in two phases–first a step-down unit, followed by construction of a facility for hospital care.

In June 2006 we filed motions seeking contempt citations and appointment of a medical receiver based on government's continued failure to implement the court's orders. In March 2007, the court found officials in contempt in a 40-page decision documenting serious problems in mental health and medical services at the jail. The court plans to hold a hearing in the summer of 2007 to determine whether to impose contempt fines.

WASHINGTON

Orndorff v. Jefferson County (W.D. Wash.)

This lawsuit challenges conditions at the Jefferson County Jail in Port Hadlock, Washington. The Jail had no salaried health care staff, and prisoners were denied necessary medical, mental health, and dental care. As a result of severe overcrowding, many prisoners were forced to sleep on the floor. Plumbing and climate control were inadequate, and prisoners were denied basic hygiene supplies, such as toilet paper and sanitary napkins. Overcrowding and squalid conditions led to heightened tension and fighting among prisoners, which security staff were unable or unwilling to prevent. On September 3, 2002, the district court certified the plaintiff class. On February 14, 2003 the parties reached a settlement that calls for a comprehensive overhaul of jail operations. Following a fairness hearing, the court gave final approval to the settlement on January 27, 2004. We continue to monitor.

WISCONSIN

Jones'El v. Berge (W.D. Wis. & 7th Cir.).

The NPP is co-counsel with the ACLU of Wisconsin and a coalition of Wisconsin lawyers in this challenge to conditions at the Supermax Correctional Institution (SMCI) in Boscobel, Wisconsin. Opened in 1999 in a remote part of the state, SMCI was designed to subject prisoners to extreme social isolation and sensory deprivation. Conditions included 24 hour illumination and "bed checks" in which prisoners were awakened hourly throughout the night. Prisoners were locked in their windowless cells for all but four hours a week. They received no outdoor exercise. All visits, except with attorneys, were conducted via video screen. Some prisoners were allowed only one 6-minute telephone call per month. These conditions were particularly devastating to mentally ill prisoners, who suffered exacerbation of their illness and often attempted self-harm or suicide.

In October 2001, the court issued a preliminary injunction ordering the state to remove a number of identified mentally ill prisoners from SMCI, and to evaluate other SMCI prisoners to determine if they are mentally ill. This resulted in over 30 mentally ill prisoners being removed from SMCI. In March 2002, the remaining issues in the case were settled with the entry of a consent decree. A court-appointed monitor is now overseeing implementation of the decree's provisions. On November 26, 2003, the court issued an order enforcing the consent decree and requiring the state to air-condition the cells prior to the summer of 2004. The state appealed, but in July 2004 the Seventh Circuit affirmed the district court's order, and air-conditioning has now been installed. We are continuing to monitor implementation of the settlement, and pursuant to the settlement, the prison has been renamed the Wisconsin Secure Program Facility. In February 2007, an evidentiary hearing was held to determine whether the consent decree should be modified or terminated; after several days of trial, the parties agreed on a modified settlement agreement.

Flynn v. Doyle (E.D. Wis.)

In May 2006, the NPP and the ACLU of Wisconsin filed suit on behalf of over 700 women at Taycheedah Correctional Institution (TCI), the largest women's prison in Wisconsin. The lawsuit charges that the state prison system routinely put the lives of women prisoners at risk through grossly deficient medical and mental health care. Extremely poor correctional health care in the state has been documented in a series of external reports and self-audits since 2000. For example, a 2002 study by the National Institute of Corrections found inadequate staffing, confused lines of supervision, and almost no mechanism for preventing medical errors throughout the system. Compounding this problem, medicine is distributed by untrained correctional officers rather than medical staff.

The class action complaint also includes an equal protection claim alleging that women prisoners at TCI receive poorer mental health care than their male counterparts. Male prisoners have access to the Wisconsin Resource Center, which provides individualized in-patient mental health treatment. There is no equivalent facility for women prisoners, despite their disproportionate rates of mental illness and histories of abuse. As a result of this deficiency, for example, an 18-year-old prisoner successfully hanged herself while in "observation" in the mental health unit at TCI.

In March 2007, the court issued an excellent decision denying a motion to dismiss filed by the state. The court also certified a class of prisoners and entered a comprehensive scheduling order. The parties are now engaged in discovery, and we are preparing for our first expert tours of TCI.