

2007-2008 LITIGATION DOCKET 9/13/08

ARIZONA

Graves 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. After an unsuccessful attempt to persuade the Ninth Circuit to terminate the consent decree without waiting for plaintiffs’ presentation, in July 2006 the Sheriff petitioned for Supreme Court review of whether the consent decree should be terminated. The Supreme Court denied the Sheriff’s request in October 2006. Throughout 2007, plaintiffs sought discovery and a hearing date. After the judge failed to rule on any of those requests, in early 2008 the plaintiffs sought to have the case reassigned to a different judge. In late April 2008 the case was reassigned, and the new judge promptly set a trial schedule. Trial began on August 12 and ended on September 5, 2008.

ARKANSAS

Nelson v. Norris (8th Cir.)

The plaintiff, a minimum security prisoner, had her legs shackled to opposite sides of her bed by correctional staff while she going through labor at a community hospital. She suffered enormous pain and humiliation as a result. After a district court agreed that her civil rights complaint could go to a jury against the staff and the Director of the Arkansas Department of Corrections, who was responsible for the shackling policy, a panel of the Eighth Circuit on the ground that the policy does not violate the Constitution. The NPP assisted with a successful petition for a rehearing before the entire Eighth Circuit. NPP staff will argue the case on September 24, 2008.

CALIFORNIA

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

Housing approximately 600-800 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. Medical care at SDCF is provided by the U.S. Public Health Service and contract employees pursuant to Division of Immigration Health Services policies. Detainees housed in the facility remain in immigration custody for periods of time ranging from several months to several years.

In January 2007, the ACLU joined an existing lawsuit filed by a detainee without counsel. At the time, 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 Kiniti 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. The court has denied defendants' motions to dismiss the case as moot and in August 2007 it certified the case as a class action. Following months of negotiations, the parties agreed to a settlement that ends all triple-celling, and allows us to monitor that the overcrowding does not return during the life of the agreement. The court approved the settlement following a hearing in August 2008.

In June 2007, the ACLU filed a second case regarding extraordinarily deficient medical and mental health care at SDCF. The eleven named plaintiffs in Woods are seeking to represent a class of detainees who, like them, are routinely subjected to long delays before treatment, denied necessary medication for chronic illnesses, and refused essentials prescribed by medical staff. One of the detainees denied necessary medical care was Francisco Castaneda, whose story has been recounted in a number of newspapers and CBS's "60 Minutes." ICE denied several requests from physicians to get him a biopsy for cancer over a prolonged period, then suddenly released him, after tremendous suffering, at a time when his cancer was terminal. He died after testifying before Congress about the failures of care he endured. In December 2007, the court denied class certification to the medical claims. We asked the Ninth Circuit to allow an appeal of that decision, and we were heartened in March 2008 when the court of appeals took the relatively unusual step of granting that request. Our opening brief in the court of appeals was filed in June 2008 and our reply brief will be filed in September.

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 August 2006, the NPP entered the case at the request of the ACLU of Southern California Affiliate to assist in the development and implementation of workable remedies. In October 2006, the Affiliate, with our assistance, won a temporary injunction limiting population and requiring safer conditions in the Jail's intake center. With the assistance of the ACLU working with a compliance panel, the County began development of a plan to tear down half of the Men's Central Jail, where conditions are worst, to build new facilities and reconfigure others, and to reduce the jail population. The County's plan includes the construction of a thousand new high-security beds, at a cost of \$329.7 million. The ACLU continues to negotiate with the County and the Sheriff over these plans, urging the County to reallocate resources to diversion and treatment programs, particularly treatment for the mentally ill, as well as other programs to reduce recidivism, rather than the County's proposed building program.

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. Briefing has been completed and oral argument took place in January 2008. In August 2008, a panel of the Tenth Circuit ruled against us, and in September the NPP asked the entire Tenth Circuit to grant rehearing in the case.

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

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

In August 2008 the court appointed the NPP to represent the family in mediation in a wrongful death case growing out of a suicide in the District of Columbia Central Detention Unit in February 2006. The first mediation session is set for September 15, 2008.

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 developed a compliance plan with the parties.

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. A new state-of-the-art but smaller facility for committed youth is scheduled to replace the decrepit Oak Hill facility in January 2009. In September 2007, the parties agreed on a new work plan that was adopted by the court in November 2007, with minor subsequent modifications. In July 2008 the Special Arbiter appointed reported substantial progress by the District in meeting the requirements of the compliance plan developed by the parties. If this plan is successfully implemented, it will allow the case to be dismissed.

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. After he informed staff that he needed a ventilator to breathe at night, he was transferred to a hospital, but the hospital unaccountably discharged him. 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 including the hospital that failed to provide him with a ventilator. The district court 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, the hospital, 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 protect persons with severe medical problems and physical disabilities. The two remaining physician defendants moved for summary judgment in February 2008. We opposed that motion and are awaiting a decision from the court.

FLORIDA

Carruthers v. Lamberti (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.

In August 2007 the Sheriff pled guilty to criminal charges. We requested a status conference with the court because we believe that the court-appointed experts need to reinspect the jail. The court has tentatively set that status conference in November 2008.

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. In May 2007 we received an excellent decision granting our request for appellate

fees. Following an unsuccessful attempt to settle fees, we filed a renewed request for fees in the district court in January 2008. In April the court held oral argument on our request and we received a decision awarding substantial fees in August 2008.

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. Because of subsequent changes in the settlement, a hearing to consider the fairness of the settlement to the prisoner class was rescheduled from June 2007 to November 2007. Following the November 2007 fairness hearing, the court approved the settlement. We are now monitoring implementation.

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. In December 2007, the Eighth Circuit Court of Appeals upheld the district court's decision that the program violated the Establishment Clause, although it ruled that Prison Fellowship Ministries was not required to refund the Iowa Department of Corrections' payments to the program.

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 worked 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*.

In August 2007, the ACLU released a follow-up report, *Broken Promises*, which describes current conditions within the jail. Unfortunately, OPP remains one of the most overcrowded, dangerous, and mismanaged jails in the country. The report also describes the collapse of the mental health system in New Orleans, and the indigent defender crisis that plagues Louisiana. The report includes a set of recommendations to local, state, and federal officials to transform OPP into a smaller, safer, and better-managed jail. Prompted by the findings in the report, the state's epidemiologist has opened an investigation into potential outbreaks of *staphylococcus aureus* ("staph") infections at the jail. The report received significant local and national press attention, and NPP staff have taken part in a number of panels with activists, journalists, and lawyers to discuss conditions at OPP, as well as the criminal justice crisis in Louisiana.

One week after *Broken Promises* was released, the federal magistrate judge assigned to the case granted the Sheriff's motion to dismiss without prejudice the remaining civil rights claims in the case. In June 2008, the district judge adopted the recommendation that the case be dismissed over the objection of the state defendants. Those defendants have now appealed the dismissal to the Fifth Circuit Court of Appeals. A dismissal without prejudice will clear the path for new litigation that could provide meaningful remedies for the squalid and dangerous conditions in the jail.

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 indices 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. We began formal mediation before a magistrate judge in May 2008.

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 of 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 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 an unventilated 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 developed, and obtained 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 granted in part in June 2007.

In September 2007, shortly after oral argument, a panel of the Sixth Circuit remanded all of the pending appeals to the district court on the ground that changed circumstances produced by the state's attempts to close various facilities warranted a reconsideration by the district court. In April 2008, the district court began a rehearing on the mental health issues. In August 2008 the court held oral argument and we are now awaiting a decision. In addition, in October 2007, plaintiffs appealed an order excluding from the class prisoners in two housing units. The parties completed briefing in the Sixth Circuit in May 2008 and we will argue the appeal in October 2008.

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. In January 2007, 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 2002, Mississippi's death row prisoners at Mississippi State Penitentiary in Parchman went on a hunger strike to protest brutally harsh conditions. The NPP filed a class action lawsuit in July 2002 on behalf of the prisoners, challenging lethal extremes of heat and humidity, pervasive filth, uncontrolled infestation of mosquitoes and other pests, nonfunctional plumbing, lack of water, arbitrary and draconian discipline, inadequate provisions for 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 injunction, which has now been merged with the consent 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). Once classified to supermax confinement, prisoners had essentially no way out; they could not earn their way through good behavior to a less restrictive environment, so prisoners stayed at the supermax indefinitely, sometimes for decades. In June 2005 the NPP 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. In April 2006 the district court entered a consent decree that incorporated 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 provisions intended to end arbitrary assignment to administrative segregation.

By the spring of 2006, following a year of intensive monitoring, the litigation achieved far-reaching reforms. First, our corrections expert demonstrated through an analysis of the Department of Corrections' classification system that the great majority of the prisoners in Unit 32 did not require administrative segregation. The Commissioner of Corrections agreed to work with our

expert on a plan to reform the classification system that would allow the release from segregation of the great majority of the prisoners in Unit 32. Second, the state entered into a supplemental consent decree guaranteeing major increases in medical staff. Third, we conducted an evidentiary hearing on our motion for contempt regarding the state's treatment of seriously mentally ill prisoners. We proved that severely mentally ill prisoners were not only being warehoused without treatment, but also were routinely brutalized by staff, exacerbating prisoners' mental illnesses. In one case, a severely psychotic prisoner who had been tormented and abused by security staff hung himself, and was cut down only after he had suffered brain damage, leaving him 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.

In the summer of 2007, Unit 32 experienced a major outbreak of gang warfare in which three prisoners died. In October 2007 our experts in classification, security staffing, and gang violence conducted an audit in the unit to make findings and recommendations to the Commissioner. The following month the NPP and Mississippi reached agreement on the supplemental consent decree that will result in creation of a mental health step-down unit. As a result of our implementation efforts, all seriously mentally ill prisoners have now been removed from Unit 32 and over half of the remaining prisoners are now in the general population and receiving programming and recreation together, so that they are no longer exposed to conditions of sensory deprivation by almost continual lock-ups. Use of force incidents have dropped by 75% since the original consent decree was signed. We will be working cooperatively with Mississippi to complete the transformation process.

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. In March 2008, the court entered an order appointing a disabilities expert to assess the state's compliance with the ADA. The expert conducted a four-day inspection of MSP in July 2008, and we expect him to file his report in the next 60 days.

NEVADA

Riker v. Gibbons (D. Nev.)

In March 2008 the NPP filed this class action against the Director of Nevada's Department of Corrections and other top governmental officials for failing to rectify a pervasive failure to provide necessary medical care at the Ely State Prison in Ely, Nevada. The lawsuit challenges that the prison with a population of over 1000 men, including the state's death row, lacks the most basic elements of an adequate health care system, and places each prisoner at substantial risk of serious harm. One diabetic suffered a slow, agonizing death as his body rotted from gangrene after his insulin was cut off; another diabetic cut off from insulin went into a coma. Ten of twelve death row prisoners who have been executed by the state dropped their appeals, in large part, advocates believe, because of the lack of medical care and other terrible conditions at the prison.

Prior to filing the lawsuit, the NPP released an expert report by a physician consultant who described a "the most shocking and callous disregard for human life and suffering" that he had encountered in 35 years of practice. That report also called the health care system "broken and dysfunctional." The lawsuit also followed months of unsuccessful negotiations with the prison system seeking necessary medical reforms. Briefing on our motion for class certification is complete and awaiting decision. Until the class certification motion is decided, discovery on the merits is stayed.

NEW YORK

Amador v. Superintendents of the Department of Correctional Services (2d. Cir.)

In June 2008 the NPP signed on to an amicus brief in the Second Circuit supporting an appeal of women prisoners whose challenge to a pattern and practice of sexual abuse and assault was dismissed based on the district court's conclusion that the women had failed to exhaust the New York prison system's grievance procedure properly.

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. The new, state-of-the-art juvenile facilities required under the consent decree are set to open in May and July 2008.

In July 2008 the Rhode Island legislature passed a law capping the population of securely confined boys at 140 and girls at 12. The legislature also passed a law requiring the development of a risk assessment instrument to help keep youth in the community and out of secure confinement. We continue to advocate for a lower juvenile population in Rhode Island in compliance with the consent decree and state law.

TEXAS

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

The T. Don Hutto Family Residential Facility is a converted medium security prison run by the Corrections Corporation of America that houses entire families of immigration detainees. The facility generally houses approximately 200 adults and 200 children, including infants. The ACLU initially filed individual lawsuits on behalf of ten children detained at the facility. The lawsuits contended 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. Among other things, the lawsuits contended that Hutto was among the most restrictive settings at which children could be housed although the *Flores* Settlement requires that children be housed in the least restrictive setting appropriate to their ages and needs,

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. During the course of the litigation, the ACLU filed sixteen additional lawsuits on behalf of children detained at Hutto. The court consolidated the individual actions. In May 2007, the court denied the government's motion to dismiss the consolidated cases. While preparing for an August trial, the parties engaged in court-ordered mediation throughout the summer. On August 29, 2007, the court approved a negotiated settlement that ended the litigation.

In response to the litigation, even before the settlement, the Hutto authorities began to improve the conditions. Children are no longer required to wear prison uniforms and have more time outdoors. Educational programming has expanded and staff have been instructed not to discipline children by threatening them with separation from their parents. ICE now detains at Hutto only families placed in expedited removal proceedings and it has begun to issue bonds for some asylum seekers.

Under the settlement, children aged 12 and above are allowed to move freely around the facility; a full-time pediatrician is on staff; families are no longer forced to stay in their cells 12 hours a day; toilets now have privacy curtains; children get field trips; and children get more toys and books, as well as better food. Compliance with the settlement will be assured through external oversight. All 26 of the children represented by the ACLU were released with their parents during the litigation, the last six only days before the settlement agreement was completed.

K.C. v. Nedelkoff (W.D. Tex.)

The Texas Youth Commission, which runs the state's juvenile system, has been plagued by widespread scandal involving the sexual abuse of youth by staff, and a cover-up by high level officials. In June 2008, the NPP joined as co-counsel with the Women's Rights Project and the ACLU of Texas in suing the Brownwood State School, where most girls in the TYC are confined. The lawsuit challenges the unnecessary strip searches and isolated confinement to which these girls are subjected. The practices at Brownwood cause serious emotional damage to these girls, and the effects of the strip searches and isolated confinement are exacerbated because most of the girls suffer from prior histories of physical and sexual abuse.

VIRGIN ISLANDS

Carty v. DeJongh (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 prisoner 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, and that the jail remained plagued with environmental hazards due to inadequate maintenance staff. 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, 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. 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.

After defendants failed to comply with those orders and agreements, the court held a hearing in November 2007 to determine whether to impose contempt fines, and whether to appoint a medical receiver to administer the health care system for the Bureau of Correction (BOC). At the hearing, a psychiatric expert testified that the government had failed to provide adequate treatment to the most seriously mentally ill prisoners in the territory, and that prisoners adjudged not guilty by reason of insanity continued to languish untreated in the territory's jails and prisons. In January 2008, National Public Radio broadcast a story about our lawsuit and a seriously mentally ill prisoner who had been incarcerated for over five years after he allegedly attempted to steal a bicycle. Finally, shortly thereafter, the government transferred that prisoner and several other severely mentally ill prisoners to psychiatric facilities in the United States.

In February 2008, NPP staff testified before the Virgin Islands legislature in support of a bill to create an independent BOC with a director appointed directly by the Governor. The bill has passed the legislature, and awaits the Governor's signature. In April 2008, we filed a motion alleging that prisoners had been subjected to a pattern of excessive force, and that the BOC is plagued by mismanagement and a lack of on-site supervision and leadership. Three months later, the Governor appointed a new warden for the Criminal Justice Complex (CJC), the pretrial facility for the territory. The court also ordered the NPP to retain a corrections expert to assess the use of force and the management structure of the BOC. The corrections expert is set to tour the CJC and and review BOC operations in October 2008.

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 exacerbations 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 negotiated 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 extensive document discovery, and will be filing dispositive motions in the fall of 2008.