NATIONAL PRISON PROJECT LITIGATION DOCKET

ALABAMA

Henderson v. Thomas (M.D. Ala.)

On March 28, 2011, the NPP and the ACLU of Alabama filed a class action on behalf of all Alabama prisoners with HIV, challenging under the Americans with Disabilities Act the Alabama Department of Corrections' policies of segregating all prisoners with HIV, requiring all men with HIV to wear a white arm-band and otherwise publicly disclosing prisoners' HIV status, arbitrarily excluding prisoners with HIV from work release, and categorically denying them participation in a host of other critically important rehabilitative, vocational, and community re-entry programs. The trial began on September 17, 2012, before the Honorable Myron E. Thompson. At the end of closing arguments on October 17, 2012, Judge Thompson announced that he intends to issue an expedited decision because "time is of the essence." The case has been covered extensively in the national media, including an op-ed in the Washington Post by Sir Elton John.

ARIZONA

Parsons v. Ryan (D. Ariz.)

In March 2012 the NPP and the ACLU of Arizona filed this statewide lawsuit challenging the Arizona Department of Corrections' use of long-term solitary confinement and its failure to provide minimally adequate medical, mental health, and dental care to its 34,000 prisoners. Prisoners known to be seriously mentally ill are held in conditions of extreme social isolation and sensory deprivation, often causing catastrophic psychiatric harm. Chronic shortages of health care staff mean that desperately sick prisoners are told to "be patient" or "pray" to be cured. In October 2012 the court denied the State's motion to dismiss the case, and in November 2012 we filed our motion to certify the case as a class action.

Graves v. Arpaio (D. Ariz., 9th Cir.)

The NPP challenged the conditions of confinement for the 8,000 pretrial detainees in the Maricopa County Jail in Phoenix, the third-largest jail in the nation, run by Sheriff Joe Arpaio, the self-styled "toughest Sheriff in America." In October 2008, following a month-long trial, the district court found that the Sheriff and the County were subjecting detainees to unconstitutional overcrowding and denying them their rights to adequate nutrition, sanitation, exercise, and

medical and mental health care. The court entered a broad injunction and granted plaintiffs $1.2 million in attorney fees. The Sheriff appealed; in October 2010 the court of appeals affirmed the district court judgment. We asked the district court to appoint independent experts to monitor the County's compliance with the judgment, and to report periodically to the court. The court adopted this proposal and in April 2010, based on the experts' reports, ordered the parties to formulate a remedial action plan to bring the County more quickly into full compliance with the judgment. In January 2011, defendants agreed to implement the remedial plans recommended by the experts. Plaintiffs continue to monitor defendants' implementation of these remedial plans.

CALIFORNIA

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

The Los Angeles County Jails, with an average daily population nearing 22,000, is the largest jail system in the world, and one of the most troubled in the U.S. It includes Men's Central Jail, a windowless dungeon in downtown Los Angeles that has been plagued by a long-entrenched culture of savage deputy-on-inmate violence. For years, Sheriff Lee Baca argued that the only way the County can safely house its vast jail population is by funding at least $1.4 billion in new jail construction. The crisis reached a boiling point in 2012 with the passage of AB 109, California's prison realignment plan, which will soon result in the influx of 7,000 more state prisoners into L.A. County's already swollen jail population.

In 2006, the NPP and the ACLU of Southern California revived a decades-old injunction in *Rutherford v. Baca* to address overcrowding and other grossly substandard conditions. The presiding federal judge in *Rutherford* toured Men's Central Jail, and concluded that conditions there were "not consistent with basic values" and "should not be permitted to exist." The ACLU won a temporary injunction limiting population and requiring safer conditions in the jail's intake center, and reaffirming the ACLU's right under the *Rutherford* judgment to monitor conditions in the jail.

In 2008, the ACLU's weekly monitoring showed mounting violence and an increase in prisoners experiencing mental breakdowns in Men's Central Jail. The ACLU issued a series of major reports in 2008, 2009, and 2010, which were widely covered by the media, documenting that a staggeringly high percentage of the jail's population is seriously mentally ill; that overcrowding, violence and other conditions make the jail an incubator of mental illness; and that a clique of violent deputies organized in gangs was essentially controlling Men's Central Jail.

The district court granted the ACLU's motion to reopen discovery under the *Rutherford* decree, and then presided over a series of meetings with the Sheriff's Department and the ACLU to discuss an ACLU proposal to divert the great majority of the Men's Central Jail population to community alternatives to incarceration, while increasing public safety and saving taxpayers a quarter-billion dollars annually.

The case broke wide open in January 2011 when the ACLU's jail monitor was eyewitness to a brutal beating of a prisoner by two deputies. The ACLU asked the U.S. Attorney's Office to launch an investigation, and in September 2011 the ACLU released a massive report substantiating the inmates' claims with dozens of sworn statements not only from inmate victims but also from civilian eyewitnesses to deputy violence.

Nevertheless, the district court was reluctant to hear the inmates' allegations under the existing injunction in the *Rutherford* case. Therefore, in January 2012, the ACLU and the law firm of Paul Hastings filed a new class-action lawsuit against the Sheriff, *Rosas v. Baca*, on behalf of all detainees in the jails, seeking injunctive relief from the violence.

The ACLU's allegations and the firestorm of publicity they triggered prompted the Los Angeles County Board of Supervisors to appoint a blue-ribbon commission to hold a series of public hearings on the allegations of deputy violence. Among the witnesses who testified to the commission were the jail monitor for the ACLU of Southern California, who was eyewitness to a brutal deputy assault, and the NPP's Margaret Winter, co-lead counsel in *Rutherford* and *Rosas*.

Under mounting pressure to resign, the Sheriff finally agreed to the ACLU's proposal for a study on the feasibility of closing Men's Central Jail. At an April 2012 press conference, the ACLU, Sheriff Baca, and Dr. James Austin released a groundbreaking report providing a roadmap for the closure of the jail within two years.

On September 28, 2012 the Los Angeles Citizens Commission on Jail Violence released its final report and recommendations. The Commission concluded that "[t]here has been a persistent pattern of unreasonable force in the Los Angeles County jails that dates back many years." The Commission's findings were remarkably similar to the allegations in plaintiffs' complaint in *Rosas v. Baca*, and its recommendations for reform in large part mirrored the plaintiffs' request for injunctive relief. At a settlement conference in *Rosas* following the release of the Commission's report and recommendations, the district court made clear that the Sheriff is now under powerful pressure to enter into a settlement agreement. The parties are currently in active settlement negotiations.

COLORADO

Clay v. Pelle, Martinez v. Maketa (D. Colo.)

These First Amendment cases challenged policies in Colorado's Boulder County Jail (*Clay*) and El Paso County Jail (*Martinez*) that limited prisoners' outgoing mail to postcards supplied by the jail. In *Martinez*, the County stipulated to a preliminary injunction blocking enforcement of the policy and then rescinded the policy in December 2010. In *Clay*, after the court granted plaintiffs' motion for class certification in March 2011, the County agreed to

rescind the policy. Both cases ultimately settled with enforceable court orders barring jail officials from enacting postcard-only policies.

FLORIDA

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

This is a longstanding class action suit regarding conditions at the Broward County Jail (BCJ). 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 Prison Litigation Reform Act, and the NPP joined the 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 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 prisoners 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 re-inspect the jail. In 2006, the jail was plagued by serious overcrowding. The NPP urged the Sheriff to contract with the U.S. Department of Justice, National Institute of Corrections (NIC), 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 2009, the Sheriff closed one of the five jail facilities, and the daily population climbed through 2010, resulting in overcrowding in the remaining jail buildings. We filed a motion asking the court to appoint Dr. James Austin, a nationally recognized expert on correctional population management, to conduct a jail and justice system assessment, and make recommendations for criminal justice reforms to lower the BCJ population. The court granted our motion. Dr. Austin has completed his draft assessment, and will be meeting with the chief judge and county officials to discuss his recommendations for significantly reducing the jail population.

MARYLAND

Duvall v. O'Malley (D. Md. and 4th Cir.)

This case involves conditions in the Baltimore City Detention Center, a jail operated by the State of Maryland. In 2002 the NPP, working with the ACLU of Maryland 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 a 1993 consent decree regarding conditions at the jail and an injunction safeguarding the women. Shortly before a scheduled hearing on our motion, 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 failure to provide medical, mental health, and dental care, as well as deficient housing, sanitation, laundry facilities, food services, plumbing, and vermin eradication. In 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. The court denied the termination motion, and the jail appealed to the Fourth Circuit. In 2005, the Fourth Circuit granted our motion to remand the case to the trial court. The parties ultimately negotiated a settlement agreement, which was approved by the court in May 2012. We continue to monitor the State's compliance with the settlement.

MISSISSIPPI

DePriest v. Walnut Grove Correctional Authority (S.D. Miss.)

In November 2010, the NPP and the Southern Poverty Law Center filed suit on behalf of the 1,500 young men, ages 13 to 22, sentenced as adults and confined in a secure facility in Walnut Grove, Mississippi, run by the GEO Group, the second-largest private prison operator in the world. The suit challenged a pattern of physical and sexual abuse by security staff, use of prolonged solitary confinement, abuse and neglect of mentally ill youth, failure to provide basic mental health care, and failure to provide federally-mandated education to young people with special needs. In March 2012, federal judge Carleton Reeves heard testimony from six youth — the youngest only 15 — on the horrors to which they had been subjected in the Walnut Grove prison. Judge Reeves shortly thereafter entered a groundbreaking decree that requires the State to move all youth under the age of 18, and all vulnerable youth under the age of 20, out of the privately-operated prison and into a separate facility operated by the state, governed in accordance with juvenile rather than adult correctional standards; categorically prohibits solitary confinement of youth; and provides all prisoners with protection from staff violence and abuse. In approving the consent decree, Judge Reeves wrote that the evidence left him "with the firm and unshakeable conviction that the consent decree must be entered WITHOUT DELAY. Those youth, some of whom are mere children, are at risk every minute, every hour, every day. Without court intervention, they will continue to suffer unconstitutional harms, some of which are due to aberrant and criminal behavior. [Walnut Grove] has allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate." He added, "The sum of these actions and inactions…

paints a picture of such horror as should be unrealized anywhere in the civilized world." The court and plaintiffs' counsel and experts are closely monitoring compliance with the decree.

MONTANA

Langford v. Schweitzer (D. Mont.)

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

In 2005, after eleven years of monitoring, during which time the defendants built an infirmary, doubled physician staff, hired a medical director, and revised their health care policies, the health care experts appointed pursuant to the settlement agreement found that the prison had complied with the agreement's medical provisions, and those provisions were dismissed. The defendants also filed a motion to dismiss the provision of the agreement requiring them 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 January 2011, the State agreed to make a number of long-overdue renovations to physical barriers faced by disabled MSP prisoners. Among the renovations are the retrofitting of more cells on the high security side of the prison, and the installation of an elevator in the support building on the low security side, which will for the first time allow disabled prisoners to use the library and to participate in classes and vocational programs offered on the second floor of that building.

In April 2011, the court ordered the defendants to produce a comprehensive status report on their compliance with the ADA by May 2011. In March 2012, the court ordered the parties to agree on an impartial ADA expert, or propose candidates for the court's choosing. In June 2012, the parties agreed on two experts who will conduct a comprehensive ADA assessment at MSP and produce a report on their findings.

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 class counsel in 1999. In March 2000, the parties negotiated a comprehensive revision of the consent decree. In 2002, with our active participation, Rhode Island agreed to construct a new juvenile facility and the state legislature appropriated $60 million to fund it. A dispute between the Governor and the legislature over siting the facility delayed construction, and we worked with state officials to resolve the issue. Ground was broken for the new facilities in November 2005, and two new state-of-the-art facilities have now been opened to replace the aging and decrepit facilities where boys were previously held.

In July 2008 the Rhode Island legislature passed a law capping the population of securely confined boys at 14 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. The population of incarcerated youth has substantially decreased in the last few years due to changes in sentencing policy and a focus on community placements. Rhode Island is also now a site for the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), which focuses on implementing evidence-based tools to divert low-risk youth from unnecessary detention. As a result of these initiatives, plans are now underway to consolidate the existing three facilities into two, so that the smaller population of detained girls will have direct access to all the services previously available only to boys. Ensuring that girls at the Training School are provided equitable and gender-responsive services is a continuing focus of our work. As part of the court's order we also worked with the State and the court's Special Master to create an updated handbook for youth held at the Training School that advises them of their rights and facility rules in an easy-to-understand format. The parties also developed a new grievance system that is responsive to youth needs, includes parents and guardians in the process, and provides for external oversight. We continue to work with the Special Master and Rhode Island officials to revise policies and procedures in the Training School to comply with standards for Juvenile Training Schools and Juvenile Detention Centers established by the American Correctional Association (ACA), with the goal of achieving ACA accreditation for the facility.

SOUTH CAROLINA

Prison Legal News v. DeWitt (D.S.C.)

Representing Prison Legal News, a monthly publication that provides information about prisoners' legal rights, the NPP and the ACLU of South Carolina obtained both a sweeping injunction that greatly expands detainees' access to publications and religious items and the largest-ever monetary settlement in a case involving censorship by a correctional institution. Filed in October 2010 against officials responsible for banning Prison Legal News at the Berkeley County Detention Center in South Carolina, the case challenged various Detention Center policies regarding publications, including a ban on all reading material – with the exception of the Bible. In April 2011, the U.S. Department of Justice intervened in the case, supporting the ACLU's position that the Detention Center's policies on access to publications violate the constitutional rights of detainees. Following the January 2012 settlement, the

injunction remains in force, and the NPP monitors the Detention Center's compliance with its provisions.

UNITED STATES VIRGIN ISLANDS

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

This class action case culminated in a comprehensive consent decree requiring the Virgin Islands government to remedy severe overcrowding, squalid conditions, and 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.

The court has held the defendants in contempt of the court-ordered remedies four times over the past dozen years, and has entered a number a specific remedial orders. In November 2004, the court ordered the government to construct 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.

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. Shortly thereafter, the government transferred that prisoner and several other severely mentally ill prisoners to psychiatric facilities in the mainland United States.

In February 2008, NPP staff testified before the Virgin Islands legislature in support of a bill to create an independent Bureau of Corrections (BOC) with a director appointed directly by the Governor. In April 2008 the Governor signed the bill, and the BOC began operating as an independent agency in September 2009.

In June 2009, the NPP's corrections and mental health experts testified in a contempt hearing in St. Thomas. The corrections expert testified that officers had used excessive and unnecessary force against prisoners; that the jail's security systems are in disrepair; and that prisoners are arbitrarily housed in the jail, and the jail is dangerously understaffed, resulting in a rash of prisoner-on-prisoner assaults. The expert also found that the jail had no working disciplinary or grievance systems. The mental health expert testified that the jail still lacks the basic components of a mental health system, and that seriously mentally ill prisoners have needlessly suffered as a result. He also testified that the jail does not have an adequate suicide prevention program, which likely contributed to the most recent suicide at the jail. After further hearings through 2010, the court entered a comprehensive remedial order requiring the defendants to make specific improvements to jail operations to address the problems the experts identified at the June 2009 hearing. In March 2011, we filed a motion asking the court to appoint a population management and classification expert to assess criminal justice practices and the jail's classification system and to make recommendations on how the territory can reduce its prisoner population and make the best use of the jail's limited bed space to safely house its

prisoners. The court granted our motion, and appointed Dr. James Austin as its classification and population management expert.

In October 2011 and April 2012, the court's security expert, Dr. Jeffrey Schwartz, testified about significant security breaches and hazards plaguing the jail that put the lives and safety of prisoners and staff at risk. He made over 100 specific recommendations for improvements to the jail's security operations, staffing, policies training, equipment, and leadership and oversight. Defendants are court-ordered to produce a remedial plan to address the deficiencies Dr. Schwartz has identified.

WISCONSIN

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 charged that the state prison system routinely puts the lives of women prisoners at risk through grossly deficient medical and mental health care.

The class action complaint also included an equal protection claim alleging that women prisoners at TCI receive a lower level of 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 was no equivalent facility for women prisoners, despite their disproportionate rates of mental illness and histories of abuse. As a result of this deficiency, an 18-year-old prisoner hanged herself while in "observation" in the mental health unit at TCI.

In March 2007, the court issued a decision denying a motion to dismiss filed by the State. The court also certified a class of prisoners and entered a comprehensive scheduling order. In January 2009, we filed a motion seeking a preliminary injunction to address the systemic failures to distribute medications appropriately. Among other things, TCI still used correctional officers to deliver medication, a practice that is known to be dangerous. The court granted an injunction containing all of the requested relief in April 2009.

In February 2009, defendants filed a motion for partial summary judgment. We completed briefing in October, and in late November the court issued a decision completely adopting our position and denying summary judgment on all contested issues.

On December 2, 2010, the court approved a comprehensive settlement of plaintiffs' medical, mental health, and disability access claims. The settlement agreement provides for monitoring by an expert in correctional medical care as well as by plaintiffs' counsel. Since that time, plaintiffs' counsel and the expert have been actively monitoring medical care at the facility to ensure that it meets appropriate standards. In September 2011, the Wisconsin Department of Corrections opened a 45-bed mental health facility dedicated to the needs of the

state's female prisoners. Since then, the state has constructed and opened a new treatment annex to provide care for women with serious mental illnesses at TCI.

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