

**CORRECTIONAL EXPERT'S REPORT ON  
AUGUST 8, 2002 TOUR OF DEATH ROW,  
MISSISSIPPI STATE PENITENTIARY, PARCHMAN,  
MISSISSIPPI**

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For the American Civil Liberties Union's  
National Prison Project**

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## **Introduction**

**This is a report of my observations and tentative opinions concerning correctional policies and practices relating to death row in Unit 32 of the Mississippi State Penitentiary in Parchman, Mississippi. The report is based on my 12-hour tour of death row on August 8, 2002, during which I conducted interviews with 17 inmates and with several members of the correctional staff,<sup>1</sup> and on a review of documents provided to me during that day. I have requested and been told that I will receive additional documents, including documents concerning discipline and the inmate grievance procedure. I have attached my current curriculum vitae, setting forth my background and qualifications as an expert in corrections, as an exhibit to this report.**

## **Summary of Opinions Regarding the Need for Emergency Remedies**

**I identified a number of serious correctional problems relating to the operation of death row. These problems include certain policies or practices that have potential life- or health-threatening consequences, without any sound correctional justification. In my professional opinion, these problems should be remedied on an emergency basis. In identifying these issues, I leave to other expert consultants specific problems related to medical and mental health care and environmental conditions.**

**The emergency issues I have identified are the following:**

**1. Because the unavailability or deprivation of fans is inappropriately punitive in effect and lacks any sound security justification, all death-sentenced inmates should be provided with fans, if necessary at state expense. Absent inmate misconduct involving misuse of a fan that creates a serious security risk, staff should not deprive an inmate of his fan for any reason whatsoever. In making this recommendation, I do not wish to be understood as suggesting that the provision of fans alone will solve the very serious problems regarding heat in the death row cells that Mr. James Balsamo and Dr. Susan Vasallo describe in their**

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**<sup>1</sup> I interviewed Captain Larry Harris, the Unit Commander responsible for the day-to-day operation of Unit 32; Joan Ross, one of two chairpersons in the Office of Inmate Discipline; Patty Legg, one of two disciplinary hearing officers in the Office of Inmate Discipline; David Collins, an investigator assigned to Ms. Ross; John Hopkins, the central office administrator of the Administrative Remedy Program (the grievance process); and Gia McLeod, an attorney who serves as the Director of the Inmate Legal Assistance Program operated by the Mississippi Department of Corrections.**

reports.

2. Staff should make near-continuous rounds of all death row tiers until the intercom system connecting the cells in these tiers to the adjoining control room becomes operable. Steps should be taken to repair or reactivate the system as quickly as possible.

3. Staff should cease to use the unduly punitive “special management” isolation cells until appropriately constructed, habitable cells become available. Until that time, staff should use interim physical security measures (e.g., shields to prevent inmates from striking or throwing objects at staff) to provide adequate security.

4. Written criteria should exist for denominating a prisoner as “high security.” Staff should cease to move high-security inmates on a weekly basis, particularly when those moves affect non-high security prisoners. Adequate surveillance and cell and body searches are sufficient to alleviate legitimate security concerns with respect to these prisoners while avoiding the unduly punitive effects of the current practice.

### Observations and Findings

I conducted a physical inspection of death row, currently located in three cellblocks in C Building of Unit 32. Tiers 1, 2, and 3, each with 25 single-occupancy cells, comprise death row. Thus, the current capacity of the death row unit is 75. There were 65 death-sentenced prisoners in these three tiers on August 8: 15 in Tier 1, 24 in Tier 2, and 26 in Tier 3. Each of the three tiers has two enclosed shower areas for use by one inmate at a time. Each tier has a central control room outside the cellblock area. The officer in this control rooms controls all ingress into and egress from the tier, as well as all cell doors in the tier.

Each regular (i.e., non-“special management”) cell contains a concrete sleeping platform, a mattress, two shelves, a metal commode/lavatory unit, a wall-mounted mirror, and a light fixture. The cell’s occupant controls the light fixture until 10:30 p.m., when the control room officer turns off all cell lights for the night. There also is a storage area under the sleeping platform. Each of these cells also contains an electrical outlet and a television outside antenna connection, although some of these outlets and connections were inoperable at the time of my visit. A number, but by no means all, of the cells contain an electric fan, and some a radio or a television, the property of the inmate who lives in the cell. Each cell also has a small outside window covered by mesh screening and metal louvers.

I observed four “special management” cells on death row. These cells have solid

Plexiglas coverings over the metal-bar cell doors, and have no shelves or electrical outlets for a television set, radio, or fan. Plaintiff Willie Russell, whom staff denominates as a high security risk, occupied one of these cells (number 225) for approximately two years. The other "special management" cell on Tier 3 (number 226) held Stephen Powers, who is not designated as a high security risk and whose disciplinary record as of August 2, 2002 reflects no convictions of a disciplinary offense. Thus, I have no explanation for this inmate's placement in a "special management" cell. Until just before the tour, Jimmy Mack, whom staff also have denominated a high security risk, lived in that cell. Mr. Mack was transferred recently from his "special management" isolation cell on Tier 3 to a regular cell (number 003) on Tier 1.

I toured the outside recreation cages to which death-sentenced prisoners have access for one hour per day, five days per week, weather permitting. Each of these 32 cages, which are approximately 9 feet by 20 feet, consists of a concrete floor, four chain-link fence walls, and a chain-link fence roof. No recreation equipment of any kind is available, and the cages offer no protection from the sun. Prisoners complained to me that they have no access to water during exercise and that active exercise is rendered virtually impossible by the shower thongs that are the only shoes death-sentenced prisoners are allowed to wear. According to one prisoner to whom I spoke, the restriction on shoes commenced in November 2001. Interestingly, a subsequent December 27, 2001 first-step response to a grievance stated, "Gym shoes and work boots were confiscated from inmates housed in Unit 32 for security reasons. Inmates are re-issued work shoes or gym shoes when they leave the unit for any reasons." If this is the policy, prisoners' gym shoes could be stored and made available for exercise periods. Prisoners also informed me that an indoor recreation area was available to death-sentenced prisoners several years ago. According to one prisoner, prison administrators closed this room following a homicide that did not involve a death-sentenced prisoner. This is but one of a number of examples of reducing important inmate activities in response to an incident that required instead improved security practices, including, in all likelihood, more thorough body and area searches and direct surveillance of the indoor recreation area.

### Security problems on Death Row

It is my opinion that MDOC's failure to post a correctional officer in each death row tier on all shifts and its failure to require near-constant rounding create an unnecessary and dangerous risk of serious harm to inmates who have no authorized means of attracting an officer's attention except during the 30-minute rounds a tier officer performs. The current policy and practice also create a serious breach of security that could result not only in

serious injury to inmates or staff, but also could well contribute to an escape. The danger to prisoners is particularly acute because of the failure to maintain an operable intercom system connecting each cell to the control room for the tier. According to Captain Harris, the security staff complement in Building 32, in its entirety, consists of a captain (unit commander), a lieutenant (unit supervisor, who may be a Correctional Officer IV if a lieutenant is not available) on each of three shifts, and 41 correctional officers, including Level 4 Correctional Officers who act as sergeants. I assume, but do not know, that there is a captain who serves as the unit commander for each of the three shifts.

The tier officers are responsible for all inmate escort activities (showers, exercise, etc.), cell and body searches, delivery of mail, and a number of other duties. Tier officers are also responsible for conducting counts, including hourly counts on the third (4:00 p.m. through 12:00 a.m.) shift. The post orders also require these tier officers to conduct “security checks” every 30 minutes during the course of each day. However, no officers are actually posted in the death row tiers. Even if the half-hourly checks that are supposed to occur do in fact take place, they do not provide adequate surveillance and security for death-sentenced prisoners. Indeed, assuming that 30-minute rounds were made with absolute regularity, the limitation to 30-minute rounds seriously undermines the safety of prisoners, who may experience a medical or other emergency requiring immediate attention. (And of course, the limitation to 30-minute rounds would allow inmates to use the intervening period for illicit purposes.) Although there is an intercom in each cell that an inmate could use to contact the control station outside the tier, this system is inoperable, either because it has not been maintained or because staff deliberately disabled it.<sup>2</sup> As a result, all an inmate can do is to beat on his cell door or yell – which will result in disciplinary action.

In summary, it is my opinion that the failure to post a correctional officer in each death row tier on all shifts and to require near-constant rounding is a serious breach of security that also exposes inmates to an unnecessary and dangerous risk of serious harm, and the failure to maintain an operable intercom system connecting each cell to a control room exacerbates this risk. Moreover, although I did not discuss this matter with Captain Harris, it is my experience that regular rounds often do not occur with the required frequency, particularly on late-night and early-morning shifts. This is most likely to be the case in a facility in which officers often work two consecutive shifts on an overtime basis, and consequently suffer from

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<sup>2</sup> This fact notwithstanding, the post order for the tier officer’s post requires that the officer “instruct all inmates via intercom system to lie face down on the floor under their beds and cover their heads” in the event of a tornado. Post Order, § XIV.F at 12.

mental and physical fatigue. According to Captain Harris overtime double-shifts occur “regularly” in Building 32.

Another Unit 32 post order I reviewed was for the medical officer. According to medical staff and the text of the relevant post order, correctional officers who fill the medical officer’s post pick up medications at the clinic (Building 42) serving death row and actually distribute those medications to prisoners. To the extent that non-medical staff handle and distribute any medications other than approved over-the-counter medicines, this practice constitutes a serious security risk and is an inappropriate medical practice. It creates an unacceptable risk that prisoners will receive medications not intended for them, hoard medication, or sell medications to other prisoners.

A final point I wish to make in this section of my report relates to the presence of contraband in the cells on death row -- a subject to which I shall return in the next section of this report. Given the prisoners’ lack of access to contraband through visiting and free movement throughout the facility, even the presence of relatively harmless contraband, *e.g.*, tobacco, in death row cells raises a serious question about how such contraband reaches death row. The failure of staff to follow basic security practices to eliminate the introduction of contraband on death row undercuts the credibility of the assertion that legitimate security concerns underlie many of the most serious deprivations to which death-sentenced prisoners are subjected. And by failing to take reasonable steps to eliminate the entry of contraband into death row cells, the staff are tacitly inviting contraband-related disciplinary violations by death row prisoners that will result in serious consequences, including the deprivation of fans, television sets, and radios.

In summary, although it is appropriate to impose reasonable disciplinary sanctions against prisoners for the possession of contraband, the use of such sanctions cannot be a substitute for proactive efforts to eliminate the introduction of contraband onto death row. I emphasize, however, that even the implementation of sound interdiction policies will not justify some of the draconian disciplinary responses I describe in the next section of my report.

### Operation of the Inmate Disciplinary System for Death Row Prisoners

The basic policy and procedure regarding inmate discipline is SOP 18-02-01, effective June 1, 2002. This policy requires a written RVR (rule violation report) when an inmate violates any of 37 identified rules and establishes the range of penalties for a first, second, and third violation of most rules. The policy permits pre-hearing detention “when appropriate” if the RVR charges a “serious rule violation.” SOP 18-02-01 requires an

investigation within 24 hours of the offense, if requested by the offender, and a hearing chaired by a hearing officer. A second written policy and procedure affecting death-sentenced prisoners is SOP 18.02.02, which addresses the informal resolution of minor disciplinary infractions. The informal system does not require the issuance of an RVR, does not result in a record entry of disciplinary action, and encompasses only minor penalties. A third applicable policy and procedure, S.O.P. 18.03.01, outlines procedures to be followed in the event of an escape or escape attempt, and incorporates the regular disciplinary procedures following the issuance of an RVR.

According to Chairperson Ross, there are three levels of disciplinary infraction. A major infraction results in criminal prosecution; a serious infraction leads to a hearing chaired by a hearing officer from the Office of Inmate Discipline; and a minor violation will be heard by an institutional hearing officer (IHO) from the unit in which the charged inmate lives. According to Captain Harris, the IHO in the case of a death-sentenced inmate will be the captain or a lieutenant in Building 32 so long as that individual did not issue the RVR. I find nothing in SOP18-02-01 that defines major, serious, and minor offenses; nor do I find any provision in any SOP for the use of IHOs in connection with allegations of minor infractions. SOP 18-02-01 makes one reference to “the Institutional Hearing Officer and Hearing Officer” on page 28 of the SOP and defines a hearing officer as a “staff member whose names appears on the Executive Order approved by the Commissioner who is responsible for hearing Rules Violation Reports of nonconformance to the basic rules of conduct or acts that present a threat to the orderly operation of the institution.” SOP at 1.

The application of these different approaches to disciplinary hearings creates several anomalies in cases involving death-sentenced prisoners. Although hearing officers from the Office of Inmate Discipline hear all “major” cases, the nature of conditions in death row sharply limits the sanctions available to the hearing officer in these cases. According to Ms. Ross, the suspension of privileges (canteen, telephone, and personal visits) for periods of 7, 15, or 30 to 90 days is the only sanction available following a conviction of a major offense. On the other hand, institutional hearing officers from Building 32, who hear only “minor” infractions, may impose extremely harsh sanctions. For example, unit staff may impose a special diet (food loaf) for up to seven days if an inmate spits, throws food, or refuses to relinquish his food tray. Unit staff also may assign an inmate on an open-ended basis to an isolation cell, one of the cells with a Plexiglas front I have described earlier in this report. Assignment to such a cell carries with it the loss of all property (including a mattress) except for limited legal materials. Thus, the “minor” infractions heard by Building 32 IHOs cannot be the minor infractions that SOP 18-02-02 addresses.

**Unit 32 staff apply some punitive sanctions administratively to death-sentenced inmates without the benefit of any disciplinary hearing. On December 11, 2000, the Interim Superintendent at Mississippi State Prison issued a memorandum to the following effect:**

**“Effective upon receipt, any Death Row Inmate that is caught with contraband in his possession (person/cell) will lose his TV, radio, fan, coffee pot, along with other property. The property he will be allowed to keep are those hygiene items, legal materials and bedding. The Inmate will be given the allotted time to send these items home. Once confiscated he will not be allowed to receive these items again.”**

**On June 13, 2002, in response to negotiations between the Commissioner and the ACLU, MDOC modified this regulation to permit an inmate to earn the return of personal appliances based on positive institutional adjustment. According to all inmates and staff with whom I spoke, the criterion in actual effect is a 90-day period free of any disciplinary rule violation.**

**Nothing in the two memoranda I have described makes any reference to the formal disciplinary process. Nonetheless, it appears that the possession of contraband is a “serious” offense that will result in a disciplinary hearing chaired by a hearing officer from the Office of Inmate Discipline. Captain Harris confirmed that staff must issue an RVR before taking the inmate’s personal electrical appliances. In this connection, the captain told me that officers may overlook a single instance of minor contraband (e.g., an extra bar of soap) and remove that contraband without confiscating the inmate’s electrical appliances. If the inmate wishes to protest the removal of the contraband (soap), however, staff will issue an RVR for possession of contraband *and* remove the prisoner’s television, radio, and fan. This troubling disincentive for obtaining an outside hearing officer’s review of the officer’s decision regarding the alleged contraband is improperly coercive and, thus, inappropriate.**

**Any deprivations of personal appliances required by the two memoranda I have cited occur automatically and administratively and are not part of the formal sanction the hearing officer imposes. Apart from the complete absence of any due process, this practice leads to other problems. For example, the contraband that leads to this punitive response may be relatively insignificant, e.g., an extra bar of soap or small amounts of forbidden tobacco products. According to prisoners with whom I spoke, officers routinely overlook items of minor contraband during successive cell searches. If an inmate displeases a staff member, however, for example by complaining about some condition on the Unit, that officer in a**

subsequent cell search will treat the extra bar of soap or small amount of tobacco as contraband, and staff will automatically impose the full array of restrictions I have described.

The deprivation of electrical appliances, all of which are the personal property of the inmate, is particularly punitive in view of the context in which those deprivations occur. The inmate will be locked in his cell 23 or 24 hours a day, with a total of no more than five hours of outdoor exercise. He may shower and shave only three times each week, *and inmates reported that only a brief time is allowed in the shower.* [Omit the italicized language.] A death-sentenced prisoner may have a personal non-contact visit of one hour's length twice a month and may have an occasional non-contact visit with his attorney. Otherwise, a death-sentenced prisoner is locked in his cell 24 hours each day in near-total idleness. He may make one personal call per day (Monday through Friday) from his cell, and such calls are limited to 15 minutes. He may leave his cell to speak with his attorney by telephone on a daily basis for a call not to exceed one hour in length. Calls to attorneys, however, must be preceded by a call from the attorney to the institutional director of the Inmate Legal Assistance Program requesting that the inmate call the attorney. Contact with the institutional chaplain or other religious staff is infrequent and very limited, and occurs through the bars of the inmate's cell. Death-sentenced prisoners receive limited commissary services twice each month.

In the absence of a television set or a radio, an inmate spends virtually his entire day with nothing to do in his locked cell.

Environmental conditions in most if not all of these hot, filthy, and mosquito-ridden cells are deplorable. Particularly harmful to an inmate is the deprivation of his electric fan. Given the extreme temperatures in the death row tiers, a fan is a matter of necessity rather than luxury. Many inmates cannot afford to purchase fans through the prison commissary, and others who could afford to have fans have had their fans permanently confiscated for rules infractions, including minor infractions in many cases. The facility should provide fans to *all* death-sentenced inmates. Furthermore, fans should never be confiscated as a punishment for a rule infraction, unless the inmate has misused his fan in such a manner as to create a significant security risk.

Beyond the serious impact of these sanctions and deprivations imposed in the name of discipline, other disciplinary sanctions imposed by unit staff are even more draconian. Unit staff (but not the hearing officer from the Office of Inmate Discipline) may assign an inmate to a "special management" isolation cell as a result of a rule violation. In addition to the loss of virtually all property and privileges (including exercise) an inmate assigned to such a cell

suffers from acute heat resulting from the Plexiglas front covering the cell. Moreover, unless the food port in the cell door remains open, the prisoner is deprived of adequate ventilation. Protection from heat and cold and adequate ventilation are essential prerequisites for the use of solid cell fronts. Finally, the Plexiglas front reduces even further the already grossly inadequate level of lighting in the cell. There is no sound basis in security for permitting these conditions in these cells to persist.

Apart from the use of management isolation cells as a disciplinary sanction, staff may administratively identify a prisoner as “high risk” and subject him to indefinite placement in a “special management” isolation cell. In the alternative, if a high-risk inmate lives in a regular cell, he will be moved to another cell once each week. This affects not only the high-risk prisoner, but also the non-high risk prisoner who is required to exchange cells with him. It also results in the destruction of electrical wiring and television cable in cells to which high risk inmates, who cannot possess radios, televisions, or fans, are assigned. When non-high risk prisoners later move into these cells, there is no assurance that maintenance staff will make the necessary repairs. At the time of my visit there were five death-sentenced prisoners identified as high risk. One occupied a “special management” isolation cell with a Plexiglas front and thus was not moved on a weekly basis; four of the five were in regular death row cells and were subject to the weekly movement policy.

Although prisoners designated as “high risk” may be those who present especially significant security threats, I am not aware of any formal criteria or process by which staff make this determination. Moreover, one high risk inmate’s record reflected no disciplinary convictions whatsoever. Several inmates complained to me that this prisoner refused to bathe or to engage in any other personal hygiene efforts. While problematic, this behavior does not justify assignment to a management isolation cell. Providing appropriate mental health or other counseling or placing him in a cell relatively removed from those of other inmates in Tier 1 would appear to be a more rational response to this inmate’s behavior.

My first observation regarding this weekly movement practice, is that, in terms of sound security practices, it is a poor substitute for adequate direct surveillance of death-sentenced prisoners, particularly those who pose a special security threat. Second, it is a poor substitute for regular, frequent, and thorough cell searches to identify contraband and evidence of tampering with windows (it is apparent, from the widespread presence of tobacco and other contraband on the Unit, that cell-searches of this kind and frequency are simply not taking place). Moreover, the availability of empty cells on Tier 1 makes displacement of non-high risk inmates unnecessary. In my opinion the practice of weekly movement of designated high risk inmates is in fact and is intended to be punitive in nature and there is no

sound basis in security requiring or supporting such a practice.

### Inmate Grievance System

The Mississippi Department of Corrections operates an inmate grievance system known as the Administrative Remedy Program, which is available to death-sentenced prisoners. One person serves as a grievance investigator at the entire Parchman complex. I raised the subject of the grievance system with a number of death-sentenced inmates and reviewed approximately 20 grievance responses issued in 2001 and 2002 to prisoners on death row. The central office administrator of the program, Mr. John Hopkins, told me that he would provide additional documentation regarding the use of the grievance system by death-sentenced inmates.

One quite positive and unusual feature of the system is that inmates may file grievances regarding convictions of disciplinary offenses. I saw several grievance responses relating to this subject, including one that reversed two convictions.

Prisoners were quite critical of the system, citing delays in responses and the futility of obtaining meaningful relief as a result of filing a grievance. Their comments suggested to me that they believe the grievance system is intended primarily to serve as a precondition to litigation pursuant to the Prison Litigation Reform Act rather than as an effective problem-solving mechanism.

Although I need to review far more documents in order to generalize about the system's effectiveness, even from the small number of written grievance responses I reviewed, it appears that the inmates' complaints that the system is nonfunctional may have merit. An example is grievance number MSP-02-589, which identified the problem of the non-functioning intercom system in death row tiers. The response merely confirmed that the system was inoperable. One astonishingly insensitive second-level response was sent to the death-sentenced prisoner who filed MSP-02-930, complaining about the denial of regular shoes. The superintendent's response concluded, "When you are elevated in custody and exit the unit then State footwear will change to the desired items." The most charitable reading of this response is that the superintendent replied to this grievance with rote boilerplate that was grotesquely inappropriate.

### Security Issues Identified in Other Expert Reports

Earlier in this report, I mentioned that other consultants have prepared reports in the

areas of environmental conditions, medical care (with emphasis on heat-related disease), and mental health care on death row. These reports raise several issues that present serious concerns regarding the operation of a safe and secure unit for death-sentenced prisoners.

Mr. Balsamo, Dr. Vassallo, and Dr. Kupers refer to horrendous problems related to excessive heat, insects, noise, plumbing, water, and general sanitation. These issues implicate security in at least two respects. First, correctional officers and other staff suffer the effects of these conditions when they work in the death row unit. Such a working environment reduces the efficiency and alertness of staff. It also contributes to the staff's effort to find at least occasional havens from these conditions by ("MY" SHOULD BE "BY") spending time in air-conditioned offices or other cleaner, more comfortable areas that may be available. All of this reduces the extent and effectiveness of correctional staff's surveillance of inmates and their behavior.

Second, Dr. Kupers in his report identifies a number of seriously mentally ill prisoners who are receiving substandard treatment and who thus are acting out in ways that disturb other prisoners. These behaviors include yelling, pounding on cell doors, and spreading feces on cell walls and floors. As Dr. Kupers correctly points out, "the care provided to extremely disturbed individuals ... creates a threat to the well being of all prisoners on Death Row." Specifically such inattention to mentally ill inmates' needs causes "intense anxiety and rage." Anxiety and rage are precisely the emotions security staff wish to avoid in any population, particularly one including high security prisoners.

**Such inmates present unnecessarily severe management problems that challenge the most efficient and effective correctional staff, let alone the uncomfortable, highly stressed correctional employees assigned to duty on death row.**

**Respectfully submitted,**

**Vincent M. Nathan**