NATIONAL PRISON PROJECT LITIGATION DOCKET

ALABAMA

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

On March 28, 2011, NPP and the Alabama ACLU 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 many other critically important rehabilitative, vocational, and community re-entry programs.

ARIZONA

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

NPP challenged the conditions of confinement for the 8,000 pretrial detainees in Maricopa County Jail in Phoenix, the third-largest jail in the nation, which is 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, access to exercise, and medical and mental health care. The court entered a broad injunction and granted plaintiffs $1.2 million in attorneys' 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, the court ordered the parties to formulate a remedial action plan to bring the County more quickly into full compliance with the judgment. In April 2011 plaintiffs filed a motion for a further, more detailed order on medical and mental health care and an evidentiary hearing; the hearing has been scheduled for June 2011.

CALIFORNIA

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

The Los Angeles County Jail is the nation's largest jail system, with an average daily population of approximately 20,000. In February 2006, a federal judge toured Men's Central Jail, a windowless, dungeon-like, grossly overcrowded facility in the LA County jail complex, and concluded that conditions were "not consistent with basic

values" and "should not be permitted to exist." NPP entered the case at the request of the ACLU of Southern California, and won a temporary injunction limiting population and requiring safer conditions in the Jail's intake center.

In 2008, the ACLU's weekly monitoring showed mounting violence and an increase in prisoners experiencing mental breakdowns in Men's Central Jail, We brought in a nationally-known mental health expert to investigate; he issued a blistering report, finding that a staggeringly high percentage of the jail's population is seriously mentally ill and that the conditions in the jail, and particularly the overcrowding, make the jail an incubator of mental illness. The report was widely covered by the media throughout Southern California and in September 2009 the court granted the ACLU's motion to reopen discovery. The Court then presided over a series of meetings in chambers with the Sheriff's Department and the ACLU's classification expert, Dr. James Austin, to discuss a proposal for diversion of the great majority of the MCJ population to community alternatives to incarceration, while increasing public safety and saving taxpayers a quarter-billion dollars annually.

In December 2010, the Sheriff rejected the Austin proposal; plaintiffs immediately moved the court to schedule an evidentiary hearing on deputy violence, excessive force, abuse of mentally ill prisoners, and overcrowding. We supported the motion with dozens of affidavits attesting to savage deputy-on-prisoner assaults – including an affidavit from the ACLU's jail monitor, who was an eyewitness in January 2011 to a brutal beating of a prisoner by two deputies. The ACLU asked the US Attorney's office to launch an investigation, and the LA Times and other media began covering the story. On March 24, 2011, the court granted our motion for an evidentiary hearing, and scheduled further proceedings in April to determine a trial date. The court also agreed to enter a protective order prohibiting the Sheriff's security staff from retaliating against prisoners for communicating with the ACLU. We are now gathering hundreds of declarations on deputy abuse to present in support of a motion for a preliminary injunction against the Sheriff, requiring him to take measures to halt the pattern and practice of deputy violence against prisoners.

COLORADO

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

These First Amendment cases challenge policies in Colorado's Boulder County Jail (Clay) and El Paso County Jail (Martinez) that limit 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 it 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 are currently awaiting court

approval of settlement agreements that provide for enforceable court orders barring jail officials from enacting postcard-only policies.

DISTRICT OF COLUMBIA

American Civil Liberties Union v. United States Dept. of Homeland Security (D.D.C.)

In 2008, NPP and IRP brought suit against the Department of Homeland Security (DHS) because DHS failed to respond adequately to a Freedom of Information Act request that sought to shed light on the deaths of immigration detainees in DHS custody. Documents obtained during the litigation enabled the ACLU to uncover deaths that previously had not been disclosed and prompted DHS to commence an investigation that, by August 2009, resulted in the discovery of ten previously unknown detainee deaths. The documents obtained have led to several news stories in the New York Times and the Wall Street Journal. In September 2010, the court ordered the government to provide additional documents to the ACLU, and the ACLU has also filed two additional Freedom of Information Act requests for records related to more recent detainee deaths.

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 Prison Litigation Reform Act, 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 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 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 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 in September 2010, and Dr. Austin is expecting to complete his assessment by September 2011.

MARYLAND

Duvall v. Glendening (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 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 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 that resolves all issues except protection of male prisoners from heat injury. The court approved the partial settlement in April 2010, and the parties continue to work toward resolution of the heat issue.

MISSISSIPPI

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

In November 2010, 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 challenges a pattern of horrendous 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 2011 we had an initial settlement meeting with the Department's Commissioner and Deputy Commissioner, and formulated a plan to arrive at a consent decree enforceable in federal court; settlement discussions with the Commissioner resume on May 9, this time with the expert witnesses for both sides invited to attend, to help hammer out settlement terms.

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

In July 2002, in response to a hunger strike by Mississippi's death row prisoners, the NPP filed a class action lawsuit challenging brutally harsh conditions on death row, including lethally hot cells, pervasive filth, nonfunctional plumbing, uncontrolled mosquito infestations, utter isolation and enforced idleness, and the ceaseless din created by prisoners with untreated serious mental illness. After trial in February 2003, the court found that the conditions were so harsh as to induce madness, and issued a sweeping injunction, which the Court of Appeals affirmed almost in its entirety in June 2004.

In June 2005, we brought suit to extend the relief we had won for death row prisoners to all of the remaining 1,000 prisoners living in permanent solitary confinement in the prison that also housed death row: the notorious Unit 32, Mississippi's supermax. In April 2006 the district court entered a consent decree that incorporated all the relief ordered for the death row prisoners; in addition, the state was required to curb excessive force by security staff, reform mental health care, and allow every prisoner the opportunity to earn his way out of solitary confinement through good behavior.

In April 2007, with the State not yet complying with the reforms we had won, we moved for an evidentiary hearing and proved that security staff was still routinely brutalizing mentally ill prisoners; in one case, a severely psychotic prisoner who had been tormented and abused hanged himself. Under pressure from the judge, defendants agreed to a supplemental consent decree requiring that all seriously mentally ill prisoners be transferred from Unit 32 to a psychiatric hospital, and requiring the creation of a mental health step-down unit at Unit 32.

The most critical breakthrough in the case occurred when the DOC Commissioner agreed to form a task force headed by the Deputy Commissioner and the ACLU's corrections expert to review and reform the Department's entire classification system, with a goal to release the majority of Unit 32's population from solitary confinement. By November 2007, 85 percent of the supermax population had been released to general population; at the same time, incidents of force fell by 70% while incidents of prisoner-on-prisoner violence also plummeted. In July 2009, the professional journal *Criminal Justice and Behavior* published an article on the Mississippi experience, "Beyond Supermax Confinement," co-authored by Mississippi prison officials and plaintiffs' counsel and experts. In August 2010, Governing magazine published a cover story, "How America's Reddest State Became a Model of Corrections Reform," describing the far-reaching criminal justice reforms triggered by the ACLU litigation.

In August 2010, plaintiffs negotiated an agreement terminating the lawsuit: the Department agreed to permanently shutter Unit 32 and relocate all the prisoners housed there to more modern facilities; to extend all the classification and mental health reforms plaintiffs had won at Unit 32 to all other prisons in the state; and to provide plaintiffs' counsel and their experts complete unimpeded access to every prison in Mississippi where the Department transferred the former Unit 32 prisoners. Unit 32 was shuttered on January 1, 2011. Since that time we have been actively monitoring the prisons where the former Unit 32 prisoners are now housed, including East Mississippi Correctional Facility, the state's only correctional mental health facility.

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 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 March 2008, the court entered an order appointing a disabilities expert to assess the state's compliance with the ADA. The expert failed to produce a report by the court-ordered deadline, and he was dismissed. The court is now considering the NPP's request that it appoint a new slate of experts to assess the prison's current compliance with the ADA.

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.

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 claims 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 prisoner 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 medical care at Ely State Prison as "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 followed months of unsuccessful negotiations with the prison system seeking necessary medical reforms. In March 2009 the court issued an order certifying the class. In October 2010, the federal court approved a comprehensive settlement agreement and dismissed the case. The agreement requires extensive changes in

policy and practice for chronic care patients, medical intake procedures, medications, specialty care and infirmary services; it also requires two years of inspection and monitoring by an independent medical expert.

RHODE ISLAND

Prisoners 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. 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 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 just two facilities, so that the smaller population of detained girls will now have direct access to all the services previously available only to boys. Ensuring that girls at the Training School are provided both equitable and gender-responsive services is a continuing focus of our work. We also continue to work with the court's Special Master and Rhode Island officials to revise policies and procedures in the Training School in order 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, NPP and the ACLU of South Carolina brought suit in October 2010 against officials responsible for banning Prison Legal News at the Berkeley County Detention Center in South Carolina. The case challenges various Detention Center policies regarding publications, including a ban on all reading material – with the exception of the Bible. In April 2011, the United States 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.

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 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.

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 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 in order 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.

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 charges that the state prison system routinely puts 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 was 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. 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 on April 24, 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.

Last Updated: April 15, 2011