

MCLS NOTES

May 2008

Published by MCLS d/b/a Prisoners Legal Services, 8 Winter Street, 11th Floor, Boston MA 02108-4705. Director: Leslie Walker.

Phones: (617) 482-2773; WATS (800) 882-1413
County prisoner collect: (617) 482-4124
Massachusetts state prisoner calls: *9004#

Right: MCLS Director Leslie Walker testifies at DOC hearing on “new” classification regulations.



MCLS Name Change

Massachusetts Correctional Legal Services has changed the name under which it does business to MCLS d/b/a **Prisoners Legal Services**.

The name change authorization took effect on April 15, 2008. It makes clear that MCLS is a legal services office for prisoners, not a state agency or affiliated with the Department of Correction, and that it is committed to protecting prisoners' legal rights and to advocating for reform of the prison system. The name change will be phased in over a few months.

MCLS' speed dial phone number is automatically authorized on all DOC pin cards. The speed dial number is *9004#. The office accepts calls about new matters on Monday afternoons from 1 to 4. County prisoners should call (617) 482-4124, collect, during that same time.

Developments In The Lawsuit Challenging Warehousing Of Mentally Ill Prisoners In Segregation

The Disability Law Center (“DLC”) has federal statutory authority to represent the interests of prisoners with mental illness. In March of 2007, DLC sued the Department of Correction (*Disability Law Center v. Commissioner of Correction, et al.*) to end the practice of holding prisoners with serious mental illness in segregation, where they are locked in their cell at least 23 hours a day. DLC filed suit after conducting a year-long investigation of conditions facing mentally ill prisoners in segregation. The investigation revealed that mentally ill men are being subjected to horrifying conditions which cause them to harm themselves – too often fatally. The legal team includes Massachusetts Correctional Legal Services; Disability Law Center, Inc.; Bingham McCutchen LLP, the Center for Public Representation, and Wolf Block LLP.

The complaint was filed in Federal Court in Boston. It alleges that the DOC subjects mentally ill prisoners to violations of the 8th Amendment to the Constitution and that the DOC also discriminates against those prisoners in violation of the Americans with Disabilities Act.

During the past year the parties have engaged in extensive discovery of documents, depositions, and by means of plaintiffs' expert evaluation of some of the affected prisoners. At the same time settlement discussions have sought a path to an agreement over procedures for treatment of mentally ill prisoners and the construction of treatment units capable of providing effective and humane programming and treatment instead of the relentless brutal discipline and isolation to which ill men have been subjected. The case is not resolved, but MCLS remains optimistic that a plan for classifying and treating prisoners with mental illness can be devised that will be acceptable to the DOC and the plaintiffs.

New Classification Regulations Largely a Failure

By Tony Gaskins, MCI-CJ

The last issue of this newsletter described the objections that MCLS raised at the hearing for adoption of the new classification regulations. This opinion piece by MCLS board member Tony Gaskins, who is a prisoner at MCI-CJ, gives an example of the kind of problem that we were concerned about at that hearing.

The classification system that was recently put in place, supposedly to make classification more efficient and fair, is already broken. For instance, the point system is ineffective because many prisoners' point scores are being overridden

for inappropriate personal reasons, one of the principal evils that the "new" system was supposedly adopted to overcome. The point system was put in place to assure the prisoner that if his points met the proper requirements for lower security placement, i.e., 11 points or less, that nothing would deter that prisoner from being transferred to lower security. However, the system in effect today is basically the old system in the guise of the "new" system.

For example, one prisoner has only three points and was, although a lifer, entitled under the new system to placement in a minimum security facility. The classification board voted him to go to MCI-Norfolk, but he was overridden "downtown," and his move was modified to SBCC, a maximum security facility. Although he followed the rules and significantly lowered his point base, it was all for nothing.

Another thing of importance is that if you are classed to a lower security facility from maximum security, the wait for the actual transfer can be from eight months to two years. There is a danger to this because if within that long period the prisoner receives a disciplinary report or two, that effectively nullifies the classification to lower security and the prisoner has to start all over again. There are overrides for the administration to impose or stop a move, but there is no override for the prisoner to expedite a transfer to lower security.

The way this system is set up now will effectively back log the system and hold up transfers, not only because there is not enough bed space, but because the moves are stalled by the evolving point base of the prisoner during the wait, which leads to fewer transfers and even longer waits. So far, for too many prisoners, the current classification system is "business as usual."

Overcrowding Overview

Massachusetts state law, Chapter 799 of Section 21 of the Acts of 1985, requires the Department of Correction to publish a quarterly report showing the population of every prison and jail in the state in relation to the official capacity of each. The resulting publication, which is called “Quarterly Report on the Status of Prison Overcrowding,” is compiled by the Research Division of the DOC and published on the DOC web site.

These reports usually are available about four months after the close of the quarter to which they pertain, and the most recent available report at this time is for the last quarter of 2007. It shows that on December 31, 2007, Massachusetts had 11,138 DOC prisoners and 13,394 county jail and house of correction prisoners, for a total of 24,532. Three months earlier the total population was almost a thousand more, 25,463. It is fair to say that the average incarcerated population in the state is running about 25,000 people at this time. This number is as high as it has ever been. It is stunning proof of the abject failure of all efforts at so-called “sentencing reform” that have been trumpeted by the powers that be for the past several years. No popular initiative, no political party, and no political “leadership” has yet had an appreciable braking effect on the relentless expansion of Massachusetts prisons and jails, which now costs the state about 1.2 billion dollars per year

On the level of individual prisons and jails these numbers mean that on the last day of 2007, MCI-Concord was at 229% of capacity, NCCI-Gardner was at 172% of capacity, the Awaiting Trial Unit at MCI-Framingham was at 339% of capacity, OCCC and Shirley Medium were at about 170% of capacity, and Bristol County HOC

at North Dartmouth was at 380% of capacity (and that’s *with a cell population limit in place*). These are only a few of the more outrageous situations. In short, the bad old days of people sleeping on the floor and under stairs and three to a cell are back.

Massachusetts has never been willing to face the reality of its bankrupt sentencing practices. True, the Governor has ordered a comprehensive review of all of the county jails and state prisons, and has hired respected consultants to prepare the reports, which are due by the end of the year. Even if the reports prove accurate and honest, there is no indication that the state has the political will to resolve the crisis with any combination of the only two factors that can address it: (1) real sentencing reform, meaning shorter sentences, elimination of mandatories or non-incarceration options for many offenses for which incarceration is the only presently politically acceptable alternative, or (2) hundreds of millions of dollars in new prison construction, money that could otherwise be spent on roads, parks, medical care, and schools. The governor has already filed a bond bill in the house that contains \$450 million dollars for construction and expansion of prisons and jails.

Overcrowding From the Ground Up: A View From Inside

By Hernan Cruz and Bobby Grady

Hernan Cruz and Bobby Grady are prisoners at OCCC.

The Dawes II Unit at OCCC was originally designed to house 61 men. Gradually, bunk beds were added to the first floor cells. At some point, Dawes II became the federal

pre-trial awaiting trial block and every cell was given a double bunk bed. Three years ago the federal detainees were removed from Old Colony and this block went back to being general population. At that time the superintendent told the men that 35 of the 60 cells in the block would house only one man. He said that he understood that the block's infrastructure could not support more than 85 men. We (the prisoners) were of course skeptical.

Sure enough, 12 months ago 29 men were moved into the empty top bunks. In mid-March, the remaining six bunks were filled. The block now houses 115 men, almost double its intended capacity. The men have repeatedly asked the administration to make simple changes that would make the overcrowding bearable. We have recreation decks off each unit that could be opened (they were all closed three years ago) allowing for more common area space. We've asked for a couple of extra tables for the day room and a couple of more phones. Many DOC staff at least verbally agree that these are reasonable changes and have even said that they would be forthcoming. Obviously, additional showers can't be added to the block but in light of the overcrowding more shower access could be made available. We've asked for additional cleaning supplies as well. Staff often agrees (but never on the record) that this makes sense, but nobody makes it happen.

Right now, this is the way it's going to work this summer: mid-July, ninety-five degrees. At 3:30 the yard closes and everyone heads for the blocks hoping to shower after recreating. Afternoon count is at 4:10, meaning we have 40 minutes. There are 8 showers and 115 men. 115 men divided by 8 showers (assuming all the showers work) is 14.375 men per shower. Forty minutes divided by 14.375 is less than 2.8 minutes

per man. But it's worse than that, because the showers are on timers, 6 minutes on and 4 minutes off, which means that there will be running water in each shower only 24 out of those 40 minutes. Twenty-four minutes divided by 14.375 men is 1.67 minutes or 100 seconds per man. Put another way, this is about 3.6 men through the spray for every 6 minute water-on cycle. This does not count drying off time or transit time or anything other than standing under the water. Fourth grade math tells you this won't work. Apparently some people in the DOC need GEDs at least as badly as some of the men in their custody do. No matter how you cut it, it leaves a lot of very sweaty men in cells for the next hour or so.

We understand that overcrowding is a systemic problem. But why, when sensible suggestions are made to alleviate collateral consequences of overcrowding, are the DOC administrators so reluctant to even consider them? Will they ever consider listening to the human beings actually living in these conditions? None of these suggestions would cost the DOC a cent. In fact, a couple of extra phones would generate more "kick back" revenue from calls under their unfortunate phone rate policy. But that's a story for another day.

Dealing With D-Tickets

Many jailhouse lawyers are familiar with the Prisoners Self-Help Litigation Manual, a comprehensive guide to prison law which now unfortunately is out of print. However, one of its co-authors, Daniel Manville, has a new publication: The Disciplinary Self Help Litigation Manual. This is a multi-state guide. Although there is no substitute for being familiar with the Massachusetts DOC disciplinary regulations, this manual

provides a state by state discussion of disciplinary procedures in each state as well as the procedural requirements for bringing a challenge to a disciplinary conviction in the courts of that state. The volume comes with a supplement (no extra charge) discussing the effect of the Supreme Court's 2004 decision in *Muhammad v. Close*, which further refines the complex law regarding the distinction between matters that must be litigated via habeas corpus and those subject to litigation pursuant to 42 USC 1983.

The [Disciplinary Self - Help Litigation Manual](#) is available from

Daniel E. Manville, P.C.
P.O. Box 20321
Ferndale, MI 48220

The price is \$34.95 for prisoners (which includes postage) and \$64.95 to non-prisoners.

Prisoners Legal Services (formerly MCLS) also provides, at no charge, information packets in both English and Spanish discussing how to handle disciplinary hearings in Massachusetts. Unlike the [Disciplinary Self-Help Litigation Manual](#), the MCLS materials do not provide advice regarding disciplinary proceedings in other states.

Prisoners Legal Services / MCLS does not, however, provide direct representation at disciplinary hearings. For direct assistance with d-hearings, contact PLAP, Austin Hall, Harvard Law School, Cambridge, MA 02138, collect calls: (617) 495-3127. Send PLAP a letter asking for help and include a copy of the disciplinary report.

Other Litigation

Legal Visits for Prisoners on Mental Health Watch

MCLS has settled a case called *Brown v. Maloney* that challenged the DOC's practice of denying prisoners on mental health watch status *all* attorney access by preventing them from receiving legal visits, making legal phone calls, or mailing or receiving any legal mail. Under present DOC regulations, 103 CMR 650, the procedure is for an attorney seeking to visit a prisoner on mental health watch to mail or fax a written request for an attorney visit to the DOC. Counsel will be permitted to visit a prisoner on eyeball watch within 72 hours and a prisoner not on eyeball watch within 36 hours.

Damages for Being Held Long Beyond Release Date

Jones v. Commonwealth demands damages on behalf of a prisoner who was kept in prison for more than *four years* after his sentence had expired. Although DOC said it was committed to an immediate and fair resolution of this matter, it has refused to make an offer because MCLS will not agree not to talk about it with other individuals held too long by the DOC. The Complaint was filed in November of 2007, immediately after the Chapter 258 waiting period expired.

Damages for a Beating

Karnes v. Nolan was a brutality case brought by three prisoners who were gassed on order of the Superintendent while they were trying to cuff up in the 10 Block exercise yard. As a result of this incident the Superintendent was forced to resign. This case has settled

with the three plaintiffs dividing an award of thirty thousand dollars, and MCLS receiving five thousand in attorneys' fees.

Human Rights Watch Confirms What We Already Know: Drug Law Enforcement Targets Black Americans

In May of 2008, the respected international organization Human Rights Watch released a report on the effect of drug law enforcement on African American people in this country. The report is called "Targeting Blacks: Drug Law Enforcement and Race in the United States." The report is based on a comprehensive survey of sentencing and incarceration rates in 34 states (Mass. is not one of the states surveyed). It finds that "drug law enforcement in the United States continues to produce extraordinarily high and disproportionate rates of black incarceration, particularly for black men."

Among the report's findings are that African-Americans comprise 53.5% of all persons sent to prison for drugs, that blacks are *ten times* more likely than whites to be sent to prison for drugs, and that over the past twelve years, despite all the attention that this injustice has received, in some of the biggest states, these disparities are getting worse. Bear in mind, too, that the vast majority of drug possession and sales offenses are committed by white people, simply because there are many more white than black people in the USA. The report says that "Since the mid 1980s, the nation's drug problem has been perceived to be primarily an urban black problem, even though ... available data suggests that there may be six times as many white drug offenders as black." The report compares the

effect on black communities of the drug war to the famous line from a Vietnam-era military commander that "we had to destroy the village in order to save it."

What to Do About it

Sensibly, the report does not conclude that things will be helped by locking up ten times as many white people for drugs. Rather, the report makes eight recommendations:

- replace incarceration with community-based sanctions for low level drug offenders,
- put more resources into substance abuse treatment for all who need it, both in and out of prison,
- increase investment in community health, education, and economic programs,
- eliminate mandatory minimum sentences for all drug offenses,
- adopt public health based strategies to reduce the harms caused by drug abuse
- conduct a comprehensive review of all aspects of law enforcement from arrest to incarceration and devise procedures to reduce the existing racial disparities
- to enact legislation that comports with the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination that prohibits policies and practices that either have the purpose or have the effect of restricting the exercise and enjoyment of human rights and fundamental freedoms on the basis of race, color, or national origin,
- immediately eliminate anti drug polices that have either the purpose or effect of discrimination against black people.

The vicious inequalities of drug law enforcement are by now categorically unacceptable. Not only do they not stop drug use and drug sales, but they pander to and support racist attitudes and strip government of its moral authority. Eliminating this

discrimination should be a priority for every decent American.

Short Advice: Grieve It or Forget About It

Nowadays almost no claim that a prisoner may have against a prison or its staff members can be pursued in court unless the prisoner can prove that he or she grieved the matter as far as the grievance process permits before filing a lawsuit. A federal law called the Prison Litigation “Reform” Act (Title 18 U.S.C. Section 3626) requires such grievances for all claims of violation of federal law whether constitutional or statutory made by prisoners. The PLRA applies to prisoner claims of violations of federally protected civil rights, whether the case is filed in federal court or state court.

In addition, separate Massachusetts statutes require that prisoners exhaust administrative remedies before filing state law claims as well. The Massachusetts statutes limiting prisoner law suits are found at G.L. c. 127, §§ 38E and 38F; at G.L. c. 261, §§27A and 29; and G.L. c. 231, § 6F. Prisoners (and attorneys) who wish to file law suits on behalf of prisoners should familiarize themselves with these statutes before filing any complaint. **The bottom line is, if you cannot show the court that you grieved and appealed your claim before suing, your lawsuit will be dismissed.**

MCLS has changed its name to MCLS d/b/a Prisoners Legal Services effective April 15, 2008.

Warrant Clearing and Civil Legal Aid for Women at MCI-Framingham

The Women’s Bar Association operates the Framingham Project, which provides volunteer attorney services for women at MCI-Framingham who need assistance with legal matters related to their incarceration but not directly related to the prison system. The project assists women with custody matters, guardianships, protective orders, and the like. The project can now also assist a limited number of women with warrant clearing. **The procedure for getting help from the Women’s Bar Association Framingham Project has changed. For referrals to the WBA Framingham Project, call the Harvard Prisoner Legal Assistance Project at (617) 495-3127. That number may be called collect.** Women who need help clearing warrants should have handy the name of the court and the docket number(s) of the cases they need help with when they call.

Apuntes de MCLS está disponible en español

MCLS Notes is available in Spanish. Please share this information with Spanish-speaking prisoners. Por favor informe a los presos que hablan español. MCLS has also translated many of its information packets into Spanish. También hemos traducido muchos de nuestras hojas informativas, los cuales son disponibles a personas que las piden. They will be provided, where available, to people who request them over the phone or in writing. Aceptamos cartas escritas en español y tambien

Massachusetts Correctional Legal Services
Eight Winter Street, 11th Floor
Boston, MA 02108-4705

Non-Profit Organization
U.S. Postage Paid
Boston, MA

Permit No. 58866

Speed Dial phone number for MCLS for state prisoners: *9004#

MCLS has arranged with the DOC for a **toll free speed dial number** that is accessible to all **state** prisoners on the PIN system. **County prisoners must call collect on (617) 482-4124.**

Families and friends of prisoners can also call MCLS for free on 1-800-882-1413 toll free from anywhere in the state. Prisoners who cannot reach us by phone should write to: MCLS / Prisoners Legal Services, Eight Winter St., Boston, MA 02108.

Regular call-in hours are 1:00 to 4:00 on Monday afternoons unless you are in segregation, in which case you can call between 9:00 and 4:00, Monday to Friday. If you are calling from seg, please state your unit to our receptionist to get through. On weeks when Monday is a holiday, MCLS accepts calls on Tuesday from 1:00 to 4:00.

En la oficina de MCLS (Servicios Legales para Prisioneros) se habla español. El número directo de MCLS para los presos del DOC es *9004#. Los presos de los condados deben llamar el número (617) 482-4124 (a carga reversada).