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MCLS NOTES  
January 2001

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### Legislature Investigates Shirley Shakedown

In mid-October of 2000 a tactical team shook down MCI-Shirley Medium over a three-day period. A substantial number of men (between twelve and twenty) were injured badly enough by the tactical team to require medical attention. Strangely, the tactical team filed only three use of force reports. Within a few days of the shakedown a number of the men spoke to a Protestant chaplain at the prison named Paul Poyser. Rev. Poyser has worked at MCI-Shirley Medium for several years, and prior to becoming a chaplain had worked as a prison administrator. Disturbed by what he heard from the men at services, Rev. Poyser interviewed all of the men he could find who had been injured. He was outraged by what he learned, and he prepared a report of the men's stories, the injuries he had observed and other evidence on unlawful behavior by the tactical team and sent it to Commissioner Maloney.

The commissioner called Rev. Poyser to his office, met with him, and promised that he would conduct an internal investigation of the shakedown. Commissioner Maloney also told Rev. Poyser that he would tell him the results of the internal investigation. Three weeks later the Commissioner called Rev. Poyser back to his office and informed him that his "internal investigation" had revealed that nothing had been done wrong during the shakedown. At this point, Rev. Poyser concluded that the DOC administration was not going to deal with the unlawful behavior he had uncovered, and he decided to go public with his findings. MCLS placed Rev. Poyser in contact with a number of legislators, who met with him and determined that they should investigate the matter themselves.

On Monday, December 18 a delegation of state legislators paid a surprise visit to MCI-Shirley and demanded to see the men who they knew had been injured during the shakedown. The legislators who appeared at MCI-Shirley that morning are Representatives Kay Khan, Anne Paulsen, Jarrett Barrios, Alice Wolf, Gloria Fox, Pat Jehlen, Byron Rushing, and Senator Dianne Wilkerson. Senator Pamela Resor also sent a member of her staff. Prison officials were deferential to the legislative delegation and allowed the legislators to meet all together in the visiting room with the men they asked to interview for several hours. Legislators came equipped with CORI and medical releases for the men to sign to facilitate their later access to the men's institutional and medical records. Between twenty and thirty men were interviewed and extensive reports gathered from them regarding the mistreatment they suffered during the shakedown.

At the beginning of January, the legislative delegation met with Governor Cellucci and emphasized their view that a full and *impartial* investigation of the shakedown will be necessary. At that time, Commissioner Maloney, who was also present at that meeting, asserted that in internal DOC investigation was still underway. Given the "results" of the first DOC investigation of itself, the legislative group is unsatisfied with that approach and has so indicated to the governor. Legislators are considering holding public hearings on the shakedown and shakedown procedures, and have also asked the United States Department of Justice to investigate.

MCLS has been active in assisting these senators and representatives with their investigation and plans to continue to back their efforts to get to the bottom of the matter and take whatever steps are necessary to prevent a repetition of the senseless brutality inflicted on the men, either at

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MCI-Shirley or other prisons.

## Spectacular Opposition to Regulations Prohibiting Ex-Prisoners From Working in Human Services

More than 250 people materialized at a public hearing on new regulations of the Department of Public Health (DPH) that would effectively bar most former prisoners from ever working in the human services field. The hearing was held at the DPH on Washington Street in Boston on Friday, January 19. Scores of people testified against the regulations, which are numbered 105 CMR 950. Not a single person testified in favor. Opposition came from a broad spectrum of human services organizations, all of whom pointed out that the regulations will keep them from hiring people who have "been there," who are the best people to work with populations at risk for AIDS and other substance abuse related problems. Leadership of the African-American community including Gloria Fox, Charles Yancey, Charles Turner, and Dianne Wilkerson, as well as Minister Don Muhammad and other clergymen, were especially outspoken and vowed that these restrictions, which force people with CORI records towards permanent unemployment, will never be permitted to stand. MCLS Acting Director Peter Costanza also testified, stating that these anti-employment regulations need to be placed in the larger context of a nationwide increase in the use of civil punishments that go on damaging people after their criminal sentences are over. DNA registration, sex offender registration, welfare and housing disqualifications are all forms of civil punishment, and they all attack African-American, Latino and other minority communities disproportionately because the criminal justice system convicts and incarcerates minorities disproportionately.

### Legal Notes

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**STG Classification and Segregation:** *Haverty v. DuBois, et al.*

*Haverty v. DuBois* is a class action which challenges the confinement of prisoners at MCI-Cedar Junction in "Security Threat Group" (STG) and other restrictive East Wing blocks.

There are two claims in the case, due process and equal protection. The due process claim says that the DOC's methods for determining who is a gang member are completely irrational and arbitrary.

The equal protection claim says that the manner in which the DOC classifies people as gang members is hopelessly infected by racial bias against Latino prisoners, who constitute 90% of the people in the gang blocks. The superior court entered summary judgment on the due process claims in favor of the prisoner plaintiffs. That decision is currently on appeal - the briefs are filed, and a motion for Direct Appellate Review by the Supreme Judicial Court is pending. The superior court set the equal protection claim for trial. That trial is now scheduled for the end of April and the parties are now supplementing their discovery.

**Collective Punishment by Immersion in Filth:** *Ashman v. Marshall, et al.*

*Ashman v. Marshall*, filed in January 2001, seeks damages on behalf of a number of men deliberately forced to live in a slurry of human waste and garbage for a period of weeks in a cell block at Walpole during 1999. The suit alleges that prison officials turned off the water for days and turned the heat all the way up after some of men on the unit threw garbage and human waste onto the tier to protest their movement from the minimum to the maximum end of Walpole with no explanation and no prior acts that could have justified the transfer. The plaintiffs in this case were not among the men who threw waste onto the tiers and none of them received disciplinary reports alleging such actions. They were nevertheless forced to endure unspeakable conditions and a number of them were sickened.

***Ex Post Facto Lengthening of Parole Reconsideration Period: Collette v. Pomarol***

*Collette, et al. v. Pomarol*, filed in the spring of 2000, challenges the retroactive application of a change in the law governing parole reconsideration for second degree lifers, G.L. c. 127, sec. 133A, that permits the parole board to review them every five rather than every three years. There have been a series of U.S. Supreme Court decisions over the past three years, each of which has made this claim much more difficult to prove. MCLS is pursuing this matter nevertheless because of the terrible effects that the policy change has for second degree lifers, most of whom are already not really being considered for parole for at least a decade after their "official" parole eligibility at fifteen years. The parole board's motion to dismiss this action will be argued at the beginning of March.

***Expropriation of Funds for DNA Testing: Winters and Colon v. Maloney***

*Winters and Colon v. Maloney*, amended complaint filed by MCLS January 2001, challenges the unlawful expropriation of prisoner funds by the DOC under its notorious ten-dollars-within-sixty-days standard of indigence, which directly contradicts the express reference in the DNA law itself to the general civil indigence standard found in G.L. c. 261, sec. 27A. The superior court (Neel. J.) entered a preliminary injunction in this case requiring the DOC to determine the indigence of the two named plaintiffs

as the law requires, and specifically stating that prisoners may be found indigent for purposes of DNA fees under section A, B, or C of sec. 27A. At least four other *pro se* actions challenging this practice of the DOC have been filed, and there have also been thirty to forty motions to intervene filed in *Winters* and the other actions, all of which have been denied. Because all of the actions and motions to intervene involve identical claims of law, the amended complaint filed by MCLS seeks class-wide relief for all prisoners subject to DNA collection. If class certification is granted and if the case is successful, all prisoners whose money has been seized despite their inability to pay will benefit. It will not be necessary to file motions to intervene in this action unless class certification is denied.

**Prison Violence Project: *Gaskins v. Marshall***

*Gaskins v. Marshall* (the defendant in this action is a guard, not the superintendent of the same name) is one of the first half-dozen lawsuits filed by MCLS in Massachusetts state district courts against guards who beat prisoners. As every prisoner knows, beat-downs are a fact of prison life. They are also very difficult to redress in court, particularly in the absence of serious, permanent, visible injuries. MCLS has decided to go after the problem anyway by filing actions in the local courts of the communities where the prisons are located. So far six have been filed.

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Announcements

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**Staff Changes at MCLS**

MCLS has a new, permanent Executive Director. She is **Leslie Walker**, who has for many years been a supervising attorney at the Committee for Public Counsel Services (CPCS). Ms. Walker has served on the MCLS Board of Directors for several years, and most recently served as President of the Board. She will start work at MCLS at the end of February.

**Jim Pingeon**, a veteran MCLS lawyer who went to work for the Center for Public Representation about five years ago, has returned to MCLS. Jim will start work on February 5.

**Peter Berkowitz** is a police misconduct litigator who has spent most of the past twenty years working in Puerto Rico. He has tried more than thirty police misconduct cases in federal court. He is fully bilingual in Spanish and English. Mr. Berkowitz began work at MCLS this past December.

Attorneys Lisa Otero and Amy Goldstein have left MCLS. All staff wish them well in their new positions.

**MCLS Website**

MCLS has set up a website with information about our work and links to other prison-related

websites: <http://www.mcls.net>. Although this website is not available to prisoners, it is accessible to friends and family and can serve as a link to MCLS as well as to other organizations concerned about the deterioration of prison conditions in Massachusetts and elsewhere in the United States.

### **MCLS Staff Available for Group Meetings**

The staff of MCLS would like to assist prisoners by attending more meetings of prisoner advocacy groups inside the prisons. For many years, MCLS staff attorneys and paralegals spoke regularly with lifers' groups at several prisons, with American Veterans in Prison in several prisons, with the African American Heritage Group at MCI-Norfolk, and with the Hispanic Heritage Group at MCI-Norfolk.

In the last two years the present DOC administration has regularly refused MCLS permission to make these presentations. They have never specified the reason for this change in policy, nor has there ever been an incident associated with our presentations that could have served as a predicate to this change in policy.

MCLS is prepared to address this cutoff of access to prisoner groups in court, as it interferes with our core mission of "being there" for prisoners. We accordingly welcome invitations from any of the above groups to which we have traditionally made presentations, and will carry the matter forward as necessary.

### **Prison Legal News**

Prison Legal News is a monthly publication edited by Washington state prisoners that reports on prison-related court rulings nationwide. Subscriptions are \$15/year for prisoners (\$7.50 for 6 months); \$20/year for non-prisoners; and \$50/year for attorneys. Write to Prison Legal News, 2400 NW 80th St. #148, Seattle, WA 98117.

### **MCLS Attorney Telephone Assistance**

Inmates who wish to speak to an MCLS attorney, please call collect: (617) 482-4124, Mondays from 1 p.m. to 4 p.m. Families and friends of inmates may call our toll free number (within MA): 1-800-882-1413. Prisoners who cannot reach us by phone are encouraged to write. Over 80% of our intake is handled by mail.

### **Notas de MCLS en español**

MCLS Notes is available in Spanish. MCLS has also begun translating many of its information packets into Spanish. Spanish versions of our information materials will be provided, where available, to people who request them over the phone or in writing. Please share this information with Spanish-speaking prisoners.

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## **Coping Tips**

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### **Medical Information for Family Members**

Concerned family members often have a hard time getting information about a prisoner who is hospitalized or is having life-threatening medical problems. Medical care providers cannot release confidential information without the consent of the prisoner. We suggest that prisoners who are planning to have surgery or who are seriously ill sign a power of attorney naming a close friend or family member as their agent. It is also a good idea to sign medical releases to the same person. The signed power of attorney should be sent to the named person, who can request information about you from the medical provider. Power of attorney forms and DOC medical releases are available from MCLS.

### **Summary Judgment Rule 9A**

If you are litigating civil cases *pro se* (without an attorney), you should be aware that a 1998

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amendment to Superior Court Rule 9A requires that all summary judgment motions must be accompanied by 1) a concise statement of the material facts that are not in dispute, with page or paragraph references to pleadings, affidavits or other discovery documents (with copies of the referenced documents included), and 2) a statement of the legal elements of each claim upon which summary judgment is sought, with citations to supporting law. Oppositions to summary judgment must also include this information. These requirements apply to cases that prisoners are litigating *pro se*, unlike the motion packaging requirements elsewhere in Rule 9A.

### **Child Support Orders**

If you are under a court order to pay child support, child support arrears will accumulate even if you are unable to pay because you are in jail. The statute governing child support provides that an order for child support cannot be modified retroactively. G.L. c. 119A, sec. 13(a). This means that the debt you accumulate while in jail cannot be modified when you are released. *D'Avella v. McGonigle*, 429 Mass. 820 (1999). That this is completely unrealistic given that you now have to pay for haircuts, medical care, DNA tests, underwear and toilet paper on the \$1.50 a day you get at your prison job doesn't matter to the courts. To avoid having a huge debt on release you should file a Complaint for Modification of the child support order with the court which issued the support order.

### **Disciplinary Hearings**

MCLS does not normally handle disciplinary hearings. There are more than ten thousand d-tickets written each year. Sometimes we provide advice about how to handle a specific hearing. For direct assistance with d-hearings, contact:

1) PLAP, Austin Hall, Harvard Law School, Cambridge, MA 02138, collect calls: (617) 495-3127;

2) Prisoner Assistance Project (Sept. to Feb. only), Northeastern University School of Law, 716 Columbus Ave., Suite 212, Roxbury, MA 02120, collect calls: (617) 373-3660 (Sept. to Feb. ONLY).

Send them a copy of your disciplinary report with a brief explanation. You may be able to obtain a continuance until you find out whether representation is available. Where direct representation is not available, the law schools can provide self-help materials. Please be aware that the law school programs concentrate on the most serious d-hearings, especially DDU hearings.

Be aware of the time limitations in the disciplinary hearing process set forth in 103 CMR 430. The reporting officer and other witnesses (as well as physical and documentary evidence) must be requested in writing within 24 hours of receiving the request for witness / representation form (103 CMR 430.11). You must provide a brief summary of what each requested witness will say (or the significance of other evidence that is requested, such as videotapes) on the request for witness / representation form. You may appeal a guilty finding and sanction to the superintendent within 5 days of receiving the hearing officer's decision (103 CMR 430.18). You must first appeal the finding and sanction to the superintendent in order to be able to challenge the disciplinary conviction in court. All court challenges to disciplinary convictions should be filed within **sixty days** of the superintendent's denial of your administrative appeal, or your complaint will probably be dismissed.

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