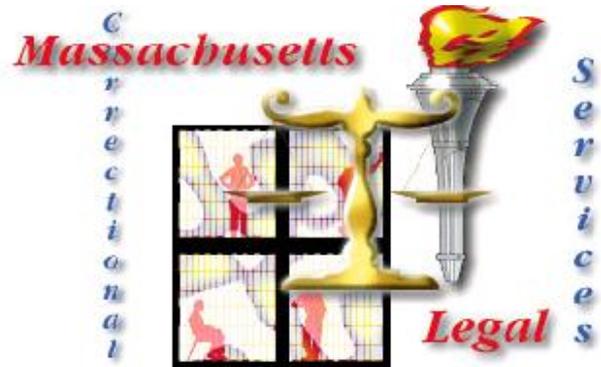


MCLS NOTES

April 2007

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MCLS Director Testifies Against New Classification Regulations

MCLS Director Leslie Walker was one of the many opponents of the DOC's proposed new classification system who spoke out against its adoption at a public hearing at Ashburton Place on January 11, 2007. Not one speaker favored the proposal. The DOC was clearly aware of the new scheme's unpopularity, because it handled the public hearing in a manner quite different from the process usually used for new regulations. The normal procedure is for one DOC lawyer to show up with a tape recorder, turn it on, and invite anyone who wants to say something to do so, and turn it on. The lawyer also accepts written submissions. When people are done speaking the lawyer packs up the tape recorder and goes away. There is no discussion of the regulations.

On January 11, there were a lot of bureaucrats present to defend the proposed regulations, but there was no tape recorder. Therefore the eloquent statements of those members of the public (including several ex-convicts) who chose to speak but not submit written materials are lost to posterity. The DOC provided Veronica Madden, Associate

Commissioner for Re-entry, Dianne Silva, Director of Placement, Carol Mici, Director of Classification, and Kevin Anahori, a DOC attorney who is currently in charge of regulations. Nancy White, DOC's chief counsel, was also present but did not speak.

So many people had so much to say that it is necessary to merely sample the points made, and MCLS Notes apologizes to those left out. **Jack McCambridge**, from AFSC, opened by pointing out that the the overrides, both mandatory and discretionary, which are contained in the new regulations, vitiate and render almost meaningless the point scores that will be assigned. The is especially true when you consider that the 15% limit on overrides in the new regulations, which the DOC makes much of, does not apply to *mandatory* overrides. **Chris Davis** recounted how in his case he found it very difficult to get the help he needed by way of programming to deal with the issues that landed him in prison because the classification officers he saw seemed only to be interested in his sentence length, not where the necessary programs were located. Veronica Madden responded to that by asserting that the DOC's "risk-needs assessment" process is a separate process from classification. Be that as it may, one is forced to wonder what sense it makes to separate assessment for programmatic needs

from assessment for institutional placement, which has the effect of failing to examine the convict as a whole individual. **Bobby Dellelo**, who also works with AFSC, provided examples of the ways in which the proposed classification system increases the opportunities for disruption of proper classification. For instance, d-reports jack up point scores and can easily provoke moves even before the hearing. He also pointed out that the time limit for filing classification appeals should run from the point when the prisoner receives written notice of the decision setting out the reasons for the decision, as you can't write an appeal when you don't know the rationale for the decision you are appealing. **Senator Jarrett Barrios** spoke briefly, indicating that he is keeping a close eye on how the new classification process develops – and that he has filed legislation addressing classification, just in case. **Rep. Mike Festa** pressed DOC panelists to explain how the proposed changes in the classification make sense and what the rationale for the changes is. Dianne Silva replied that the new procedures are designed to take subjectivity out of the system, a response that the audience received with some incredulity. **Brandon Keating** from the Criminal Justice Policy Coalition emphasized the importance of collecting and making available to the public data about what is actually happening to prisoners reclassified under the new system: are they going up or down, will the overall percentages in maximum, medium and minimum security change significantly at the end of the day? Veronica Madden replied that the process had not been running long enough to generate that data. **Nancy Bennett** from the Committee for Public Counsel Services pointed out that the new system's assignment of cumulative point scores for each offense even where the sentences for those offenses are *concurrent* changes the whole dynamic of plea

bargaining, because a man who knows he is destined to spend his whole sentence in Walpole is going to look at things very differently from a man who has a reasonable expectation of doing most of his time in medium and minimum security. As a consequence he is much less likely to take a plea.

MCLS' director, **Leslie Walker**, stressed procedural deficiencies in the new regulations. For example, under the new system the only supervision of classification decisions above the institutional level is in the case of discretionary overrides. Nothing else can even be appealed beyond the Superintendent. This one change wipes out almost all protection afforded by central office review of bad institutional decisions. Changing the basic review mechanism to snusl review by one CPO from review by a classification board every six months doesn't inspire much confidence, either. At least a board has a discussion.

We have to hope that once the results of the new classification system are apparent, the legislature will step in.

State prisoners can speed-dial MCLS at *9004#. County prisoners must call collect on (617) 482-4124. Intake call hours are on Monday from 1 to 4 P.M., or the same hours on Tuesday if Monday is a holiday.

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).

Lawsuit Charges DOC With Warehousing Mentally Ill Prisoners In Segregation

On March 8, the Disability Law Center (DLC) sued the Department of Correction 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. “We visited prisoners at Souza-Baranowski Correctional Center and MCI Cedar Junction, toured the units, reviewed records, and, after an intensive year-long investigation, had our worst fears confirmed,” said **Stanley J. Eichner**, executive director of the DLC. “The system is broken. These men are being subjected to intolerable conditions which cause them to gravely harm themselves – too often fatally. In the past year, eight prisoners have committed suicide while in segregation. DLC is bringing this suit to redress the wrongful treatment of prisoners with mental illness.”

“For nearly 20 years, the DOC has ignored recommendations from its own mental health providers and consultants, as well as from blue ribbon commissions appointed by two separate governors to create therapeutic units as an alternative to segregation,” added **Leslie Walker**, director of Massachusetts Correctional Legal Services and an attorney on the case. “In light of this history, we cannot rely on the DOC to provide what is needed. Many other states are already saving lives by removing mentally ill prisoners from segregation, including California, Ohio, Wisconsin, Indiana, Connecticut and New Mexico. We need an enforceable order to safeguard these vulnerable prisoners.”

The complaint filed in Federal Court in Boston alleges that DOC’s actions violate the 8th Amendment to the Constitution by subjecting the prisoners with serious mental illness to cruel and unusual punishment, and that the DOC discriminates against those prisoners in violation of the American with Disabilities Act. “Courts have repeatedly held that to warehouse mentally ill prisoners in this way violates the Constitution,” said **Robert Fleischner** of the Center for Public Representation. “We won’t be satisfied until our clients are guaranteed treatment units at all security levels, including the highest security, with enough capacity so that nobody with mental illness is wrongfully held in segregation.”

“This is an issue of great public concern,” said **Jim Rollins**, a partner in the Boston of Bingham McCutchen who is representing the DLC pro bono. “There have been eight suicides in the past year alone -- and many more prisoners continue to suffer outside the public view. In addition to this human tragedy, there are public safety concerns when mentally ill prisoners are released straight from isolation to the street. Bingham is committed to assisting DLC with enforcing these prisoners’ rights to humane treatment.”

As the state’s protection and advocacy agency, the DLC has federal statutory authority to represent the interests of prisoners with mental illness. It filed suit on their behalf after conducting a year-long investigation of conditions facing mentally ill prisoners in segregation. The legal team includes Massachusetts Correctional Legal Services; Disability Law Center, Inc.; Bingham McCutchen LLP, and the Center for Public Representation. .

The Health Care Litigation Project

Prisoners in Massachusetts face an increasing challenge in obtaining adequate health care. Rising incarceration rates and lengthier sentences translate into a larger and older prison population, with more (and more serious) health care needs. Health care has become one of the most common issues raised in the letters and phone calls that MCLS receives.

In certain respects the prisoner's dilemma is similar to that faced by people everywhere. Many people on the outside have difficulty getting access to health care for lack of insurance or other reasons, and they must navigate some large bureaucracies in order to receive that care. Prisoners likewise have difficulty obtaining access to care – be it a doctor's appointment, specialist referral, or a prescription – and they too must contend with a formidable bureaucracy that includes correctional and medical staff, both inside the prison and in central offices. As with the health care system in the community, the prison health care system is confronted with rising costs, resulting in pressure on prison authorities and the medical providers they employ to keep costs down.

One major difference between health care in the community and health care in the prison, however, is the availability of alternatives. Free patients who feel their condition is being inadequately treated may seek a second opinion, and if all else fails they can go to a hospital emergency room. Prisoners have no such option.

MCLS advocates for individual prisoners with serious medical or mental health concerns, where the prison is not meeting its duty to diagnose or treat. That advocacy may lead to more adequate care, or it may

not. If not, the Health Care Litigation Project (HCLP) at MCLS will consider litigating for treatment.

The HCLP reviews individual cases where the denial of treatment appears to violate the Eighth Amendment (when it comes to health care, prison authorities violate the Eighth Amendment if they are deliberately indifferent to a serious medical need). The HCLP will consider bringing a lawsuit on the prisoner patient's behalf, seeking injunctive relief – a court order to provide necessary treatment.

The HCLP is only bringing cases that seek treatment going forward. We are not filing actions for damages based on what happened in the past (under civil rights or medical malpractice law). Limited resources prevent us from taking damages cases, though on occasion we attempt to refer such cases to other attorneys.

So far, the HCLP has brought four lawsuits seeking treatment for individual prisoners. Two of them became moot when the plaintiff prisoners began to receive treatment, and the other two are still being litigated. If you would like MCLS to assist you (or someone you know) with a serious health care issue, please call or write to us. Please also keep in mind that with any serious health care issue, we will advise you to do the following:

- If you have received no relief after filing sick call slips, **file a medical grievance, and appeal that grievance all the way to completion.** For DOC prisoners, there are two appeals: first to the UMass Correctional Health Medical Director, and second to the DOC Health Services Division. Please keep copies of everything you submit; if you cannot obtain photocopies of your sick slips, grievances,

or appeals, please handwrite an identical version at the same time that you submit the original version.

- Obtain and hold onto your medical records, to the extent that you are able.
- Keep a journal of events that relate to your health care condition or issue. Write down anything important that happens – a cancelled appointment, a discussion with staff, a medical emergency – including the date and time, and any witnesses or people who spoke to you.

Getting Help For Hepatitis C

In 2000, the Massachusetts Department of Public Health found that about one-third of all prisoners starting state sentences are infected with the Hepatitis C virus. If you think that you may be infected with hepatitis C, you should consider being tested. The testing process for Hepatitis C is long and complicated, and even many people who have the virus are not sick enough to justify the risks and side effects of treatment. This complexity and delay often leads to misunderstandings with prison medical staff. The best rule of thumb for approaching Hepatitis C treatment in prison is to be patient and keep good records of all conversations you have with medical staff and of tests that you undergo. To get tested for Hep C, submit a sick call slip or speak to medical staff.

Most likely, you will first undergo a blood test called ALT to determine whether your liver is producing high levels of liver enzymes. This testing requires that medical providers draw blood. If the ALT test shows abnormally high levels you should be tested again between six months and a year

later. Your ALT levels must reach at least 1.5 times normal two times in a 6-12 month period in order to be considered for treatment.

The next step is usually another blood test, this time for Hepatitis C antibody. If the antibody test is positive, you should also request to be immunized for hepatitis A & B. You may also request testing for HIV at this time.

Under the current Umass - DOC Hepatitis C rules, once you have tested positive for HCV, you must meet certain requirements to be considered for treatment. Medical staff should explain those criteria to you. In order to determine whether you meet those requirements further tests, called a medical and laboratory evaluation, are necessary.

If you do **not** meet the criteria after both the medical evaluation and the laboratory evaluation, you most likely will be refused medication and put on the Chronic Care List until you meet the criteria for inclusion.

If you **do** meet the criteria after the Medical Evaluation and the Laboratory Evaluation, you may undergo a liver biopsy at Lemuel Shattuck Hospital to determine whether fibrosis (physical damage to the liver) exists. Ask your doctor for information regarding possible risks involved with liver biopsies. Most likely, you will be eligible for Hep C treatment medication only if your liver shows moderate fibrosis. Fibrosis is the development of fibrous tissue in the liver that replaces normal cells. It is measured on a scale of 1-4 with 4 being cirrhosis of the liver, 3 being severe fibrosis, 2 being moderate fibrosis, and 1 being mild fibrosis.

In order to receive medication for Hep C, a gastrointestinal specialist at Lemuel Shattuck Hospital must recommend it. Once

you are recommended for treatment, you will be placed on a waiting list for medication. Umass - DOC treats only a small number of prisoners at one time.

Waiting a year or more to begin treatment is not uncommon. Luckily, Hepatitis C is a very slow moving virus, and many people can wait long periods before starting the treatment without causing further damage to the liver. Some people even clear the virus on their own, without treatment. There are many things people can do to slow the progression of the virus. A booklet called *Living With Hepatitis C* produced by the Massachusetts Department of Public Health contains information about ways for people with Hepatitis C to live as healthily as possible.

If you feel you meet all the criteria for treatment, but are not recommended for treatment, you should file a medical grievance. If you request testing for Hep C, but are denied or ignored, you should file a medical grievance. You must fully appeal your grievance to all levels if you are dissatisfied with any part of the response you receive or you will lose your right to sue. You must also treat a non-response to your grievance as a denial of the grievance. That means that if you get no response to your grievance, you must appeal and mention that your original grievance got no response. Please remember that there are 2 levels of appeals that must be filed in order to preserve your rights. Medical grievance forms should be available from medical staff. If you cannot get a medical grievance form, MCLS can send you one.

MCLS encourages you to request a free copy of *Conquering Hepatitis C* by Dr. Willis C. Maddrey. This booklet is available from:

American Liver Foundation
75 Maiden Lane, Suite 603
New York, NY 10038

If you feel you are eligible for testing or treatment but are not being tested or treated and you have exhausted the medical grievance procedure, please request your medical records directly relating to hepatitis C testing and diagnosis. Forward them to Al Troisi at Massachusetts Correctional Legal Services, 8 Winter Street, 11th floor, Boston, MA 02108. Upon receipt of these materials, we will assess whether we can conduct advocacy on your behalf.

Other Litigation

Denial of Legal Assistance to Prisoners on Mental Health Watch

Brown, et al. v. Maloney, et al. opposed 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. Initially, the Superior Court enjoined DOC from denying a lawyer visit for more than 72 hours to any person held on mental health watch, but the case was subsequently dismissed as moot. However, Lindsay Hayes, a mental health expert hired by the DOC to review its mental health operations, recommended in his final report that attorneys have free access to prisoners on mental health watch. The DOC has said that it will implement Hayes' recommendations, but it remains to be seen whether it will follow through with respect to that one.

Punitive Segregation in Disgusting Conditions.

The case of *Ashman, et al. v. Marshall, et al.*, is being tried to a jury before Judge Cratsley in Suffolk Superior Court as this issue of MCLS Notes is being produced. The trial began on April 3 and is scheduled to take a month. The plaintiffs seek damages for a period in February and March of 1999 when they were locked down in Orientation Unit 1 at MCI-Cedar Junction under appalling physical conditions that included extended periods of time when the unit was strewn with feces and rotting food with the heat turned up and the water turned off. MCLS attorneys Peter Berkowitz and Bonnie Tenneriello are trying the case with the able assistance of paralegal Al Troisi.

Foxworth Struggle Continues

By MCLS Board Member Tony Gaskins

The Foxworth case was filed by some prisoners at Cedar Junction in regards to their conditions within the Awaiting Action Unit in Ten BLock where they are being denied their televisions and canteen purchase of limited food items. It also dealt with other issues of confinement, but the judge (Botsford) only granted summary judgment on the televisions and food-item canteen purchases. Since the DOC designated all segregation units "SMUs," the plaintiffs in Foxworth thought that they were entitled to canteen purchase and their televisions under 103 CMR 423.00 et seq. The judge agreed with the plaintiffs.

However, although the judge gave a final order for the DOC to provide "all" prisoners within Massachusetts prison segregation units these rights, and the DOC refused to appeal the order, the DOC refuses to abide by the order and provide all segregation

prisoners (who are not being punished) with their televisions and the right to buy canteen food items out of the canteen. In response to grievances filed by segregation prisoners seeking compliance with the Foxworth order, the Inmate Grievance Coordinator is telling the prisoners that "an emergency modification of 103 CMR 423 has been implemented." This is a violation of Judge Botsford's order and the plaintiffs moved for contempt and modification of the previous order. The DOC filked their response to that motion on DEcember 15, 2006 arguing that none of the plaintiffs are presently locked up in segregation so they should not be held in contempt for non-compliance.

The Foxworth case is still an ongoing fight between the plaintiffs and the prison administration because the commissioner and "some" superintendents at various prisons don't want prisoners to be afforded televisions and canteen purchase on AA status -- although they are not being punished under that status. The guard's union want the televisions and canteen purchases returned, the court has ordered such privileges are to be returned immediately, but the struggle continues.

All prisoners who the order applies to need to file grievances seeking compliance with the order because since AA prisoners are not being punished, they are entitled to be treated with the same kindness as prisoner in general population, i.e., afforded the same property rights. Any changes in the Foxworth case will be provided to all those who are concerned.

Director's Note

MCLS is now a 7.5 attorney, four paralegal office. Since we couldn't possibly meet the legitimate civil legal services needs of the more than 23,000 men and women in Massachusetts prison and jails, in 2001 the MCLS Board of Directors decided that the office should focus its work on four priorities: health including mental health care, guard brutality, segregation and extreme conditions of confinement.

Each year, MCLS advocates open between 2,500 and 3,000 intakes or brief service matters. These range from giving prisoners and their families advice, *pro se* materials, referrals to other agencies and sometimes litigation. All too often we tell prisoners that we cannot help them and that it is unlikely that no one else can.

The only individual cases MCLS brings are brutality cases and recently, failure to treat medical cases. MCLS also has several class action/multiple plaintiff cases pending and several more getting prepared for filing. In January MCLS participated in filing a major case seeking the creation of housing units for mentally ill prisoners (see article above).

I sometimes hear about prisoners who say their letters are not answered. If that happens, I want to hear about it. I have been at MCLS for 5 years now and was delighted to find a very efficient intake database and systems for dealing with all incoming correspondence already in place. Sometimes letters don't make it out of prison so if you don't hear from us, please don't assume MCLS is not interested in your issue. Write again or call on Mondays (Tuesdays after a Monday holiday) from 1-4 pm at *9004#.

We all wish we had more staff and more hours in the day to fight for you. We all hate having to turn people away.

Additionally, as many of you know, prison law has gone from bad to worse in the past ten years and "prisoners rights" are few and far between. MCLS is committed, however, to helping as many people as we can and do so by prioritizing the most serious, egregious intakes and cases and fighting like hell for you when we do. That does not mean any of us are perfect. Please send me your ideas and any constructive criticism you have. Thanks.

- Leslie Walker

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**

your claim before suing, your lawsuit will be dismissed.

Disciplinary Hearings

MCLS does not provide representation at disciplinary hearings. For assistance with disciplinary hearings, contact PLAP, Austin Hall, Harvard Law School, Cambridge, MA 02138, collect calls: (617) 495-3127.

Parole Hearings

The Prisoners Assistance Project at Northeastern University Law School may be able to help people (especially lifers) with parole hearings coming up next fall and winter. Write to: Prisoners Assistance Project, 716 Columbus Ave., Rm. 212, Roxbury, MA 02120

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

The Women's Bar Association has a Framingham Project that provides volunteer 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 the name of the court and the docket number(s) of the cases they need help with.

Apuntes de MCLS está disponible en español

MCLS Notes is available in Spanish. Please share this information with Spanish-speaking prisoners. MCLS has also translated many of its information packets into Spanish. They will be provided, where available, to people who request them over the phone or in writing. *Acceptamos cartas escritas en español.*

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

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New phone number for MCLS for state prisoners: *9004#

MCLS has arranged with the DOC for a new **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 on 1-800-882-1413 toll free from anywhere in the state. Prisoners who cannot reach us by phone should write to: MCLS, Eight Winter St., Boston, MA 02108.

Regular call-in hours have not changed: 1 to 4 on Monday afternoons unless you are in segregation, in which case you can call between 9 and 4, 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 to 4.

