PELICAN BAY PRISON EXPRESS

"Uplifting Prisoners' Rights to Preserve Human Rights"

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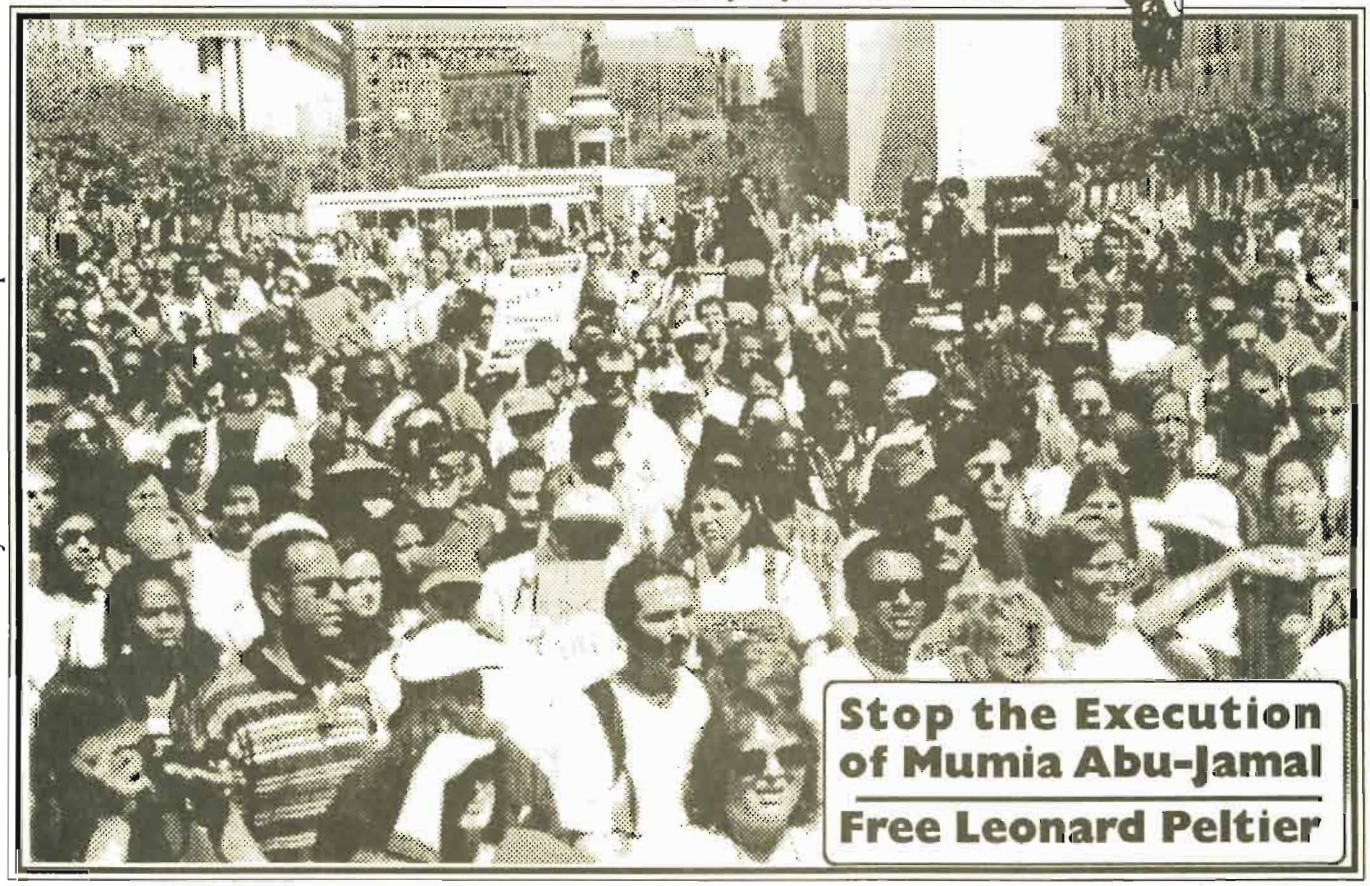

Photo by Leslie DiBenedetto-Skopek

March and Rally, National People's Campaign, May 6, 1995—UN Plaza in Background

Human Rights Violations on 50th UN Anniversary

THE CHARTER OF THE UNITED NATIONS celebrates its 50th anniversary, here in San Francisco where it all began. An eloquent expression of the highest human ideals, its words are as relevant today as they were on June 25, 1945, when a war weary world coalesced in San Francisco to commit itself to *"Save succeeding generations from the scourge of war. . . . To reaffirm faith in fundamental human rights . . . To establish conditions for maintaining international law and . . . To promote social progress and better standards of life in larger freedoms."*

Now a half-century later, 151 state leaders congregated at the UN Plaza here to voice platitudes and to flatter each other. Except for ceremonial trappings and political posturing, there was no acknowledgment of the increasing pervasive human rights violations going on in the nation's prisons and institutions of detention.

The UN's golden anniversary also marks the golden age of the U.S. prison-industrial complex. The U.S. leads the world in incarcerating its citizens. It is in these prisons, especially the super-maximum Control Units, like Pelican Bay Security Housing Unit near Crescent City, California, that torture is a daily fact of life. The use of excessive force, denial of due process rights, gross racial discrimination, forced confessions, and denial of medical/psychiatric care constitute torture under three UN Treaties signed by the U.S. in recent years.

Torture is always carried out to coerce and terrorize communities. It is the blunt instrument in the hands of a repressive social apparatus designed to injure and subdue a particular population. It is illegal authoritative rule under color of law. It is the complete abandonment of respect for life and liberty.

In the U.S., we torture our poor, our misfits, our people of color, our dissidents and non-conformists, and those perceived as revolutionaries, forgetting that this nation was born through revolution. State-sanctioned torture in California's prisons make a mockery of the UN's 50th anniversary

"Torturas Continua"

PBIP REPORT-BACK FROM PELICAN BAY STATE PRISON

THE PELICAN BAY INFORMATION PROJECT completed its eighth investigative visit to Pelican Bay State Prison on March 23-24, 1995. The ten-person team interviewed 52 prisoners, all of whom were housed in the Security Housing Unit (SHU). To insure the accuracy and confidentiality of this investigative report, the prisoners' comments are referenced by the initials of the PBIP legal investigator who conducted the interview.

The prisoners reported that the level of violence and abuse directed against them by prison staff is the same or worse since PBIP's last investigative visit in October 1994. On January 10, 1995, the Northern California Federal District Court ruled on a class action civil rights suit brought against the California Department of Corrections (CDoC) and Pelican Bay State Prison. The Judge found CDoC and Pelican Bay in violation of the U.S. Constitution (Madrid v. Gomez,C90-3094-TEH). Despite the historic ruling by Judge Thelton E. Henderson, the denial of medical and psychiatric care, the use of arbitrary and excessive force, and the daily program of taunting and general harassment of prisoners, continue unabated.

There was almost no optimism among the prisoners. They are aware of the California Department of Corrections' past reputation of resisting changes ordered by the courts. CDoC presently stands in contempt of the Northern District Federal Court for delays and lack of good faith in implementing the 1990 Gates Consent Decree concerning medical/psychiatric care and conditions at the Correctional Medical Facility (Vacaville).

In addition, Pelican Bay prisoners generally felt betrayed by their court-appointed attorneys in the suit (*Madrid v. Gomez*), because the attorneys didn't win relief of the oppressive Indeterminate SHU classification and sentencing policies. The prisoners initiated the class-action suit by filing more than 250 separate petitions in the Federal Court. The jailhouse lawyers in the SHU felt that the attorneys representing them in the suit did not present fully or with adequate authority, prisoners' claims of lack of due process during classification hearings. These "kangaroo court" hearings and confessions, forced under extreme duress, lead to gang-labeling and SHU placement for indeterminate sentences (Snitch, Parole or Die policy).

In-prison classification and disciplinary proceedings operate without First, Fourth, Eighth and Fourteenth Amendment safeguards. As regards conditions of confinement and sentence enhancements, CDoC's kangaroo courts wield more absolute power in the administering of punishment and punitive sentencing than do legally constituted courts. Gang-labeling is a severely flawed and arbitrary procedure. Hundreds of prisoners are falsely gang-labeled, and then subjected to systematic torture done under the guise of CDoC security concerns.

While little relief is anticipated by SHU prisoners, many we spoke with plan to push ahead with jailhouse legal action to seek change. They are working to expand the limits of issues adversely ruled upon or left silent in *Madrid*.

A promising avenue of redress is to appeal to the United Nations and the international human rights community to step forward and defend the basic human rights of all people, including those under confinement. The United States ratified three international human rights treaties in the last few years that bear directly on the SHU prisoners' circumstances. The United States is obligated to respect and ensure the rights in these three treaties: the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination. These treaties are the law of the land.* They guarantee that prisoners have access to *effective* remedies against the very conditions of confinement

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***1. International Covenant on Civil and Political Rights,** cite:
—Opened for signature 12/16/66, 999 U.N.T.S. 171
—Entered into force 3/23/76.
—Senate advice and consent: 138 Cong. REC. , S4783(4/2/92).
—Entered into force for US: 9/8/92.
—The text also appears at 61.L.M.368(1967) and the Senate Report at 311.L.M.645(1992).

2. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, cite:
—G.A.res39/46,39U.N.GAOR Supp.(No.51) at 197, U.N.Doc.A/39/51(1984), entered into force 6/26/87.
—Senate advice and consent: 136 Cong. Rec. S17491-2(10/27/90).
—Deposited with UN: 10/21/94
—Entered into force for US:11/20/94.
—Implementing legislation:adopted by Congress in the passage of the State Dept. Authorization Bill of 1994 (H.2785,4/26/94).

3. International Convention on the Elimination of All Forms of Racial Discrimination, cite:
—Opened for signature 3/7/66,660 U.N. T.S.195, entered into force 1/4/69.
—Senate advice and consent: 140 Cong. Rec. S7634(6/24/94)
—Deposited with the UN: 10/21/94
—Entered into force for US: 11/20/94

under which they suffer, including those matters like "Snitch, Parole or Die" which the *Madrid* ruling has left wholly intact.

The United Nations has already expressed its concern with the treatment of prisoners in the United States. Commenting on the obligations of the United States under the International Covenant on Civil and Political Rights (C[CPR/C/70/add50, para34,4/6/95]), the United Nations Human Rights Committeehas recommended that "measures be adopted to bring conditions of detention of persons deprived of their liberty in federal and state prisons in full conformity with article 10 of the Covenant. Conditions of detention in prisons, in particular in maximum security prisons, should be scrutinized with a view to guaranteeing that persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person, and implementing the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials therein."

INDETERMINATE SHU PLACEMENT

Classification hearings are used to assign a custody level to each prisoner. The custody level determines how much freedom of movement and activity will be allowed to that individual while incarcerated. Under the Indeterminate SHU policy devised over a decade ago, the CDoC indefinitely confines prisoners in the Security Housing Unit who are classified as prison gang members or gang associates/affiliates. Those in the SHU are kept in their cells 23 hours a day. There is no work, no education, no recreation (except a small bare, walk-alone yard), no religious services, no pictures on the walls, no sunlight, and minimal personal property allowed. Forced idleness is the order of the day. The only "program" offered is to "debrief." In order to successfully debrief, a prisoner must give names of others who are involved in prison gang activity. He must confess to crimes committed in or out of prison by anyone concerned, including himself. Having done that, the debriefer becomes a confidential informant for the CDoC. The only way for a gang-labelled prisoner to get out of the SHU is to snitch, complete his sentence and leave prison on parole, or die in custody—thus the name Snitch, Parole or Die. The CDoC justifies this draconian policy by asserting that prison gangs are such an imminent threat to institutional security that these severe measures are required. Yet, even during wartime, placing a prisoner into solitary confinement to extract information is not permissible and considered torture under the Geneva Accords which govern the conduct of nations at war.

Information gathered under coercion is never considered reliable in a court of law. Certainly, being told that you will be kept idle in a bare cell for years on end unless you snitch is coercion. Yet these confessions, forced under the threat of such deprivation, are used to mislabel hundreds of prisoners during classification hearings that can only be called a Kangaroo Court. No rule violation nor specific crime need be proven or even asserted to become gang-labeled. The gang label (being officially validated) becomes the violation that results in Indeterminate SHU. And the labeled prisoner never is faced with charges or his actual accuser, as it is all considered "confidential informant" information.

Pelican Bay prisoners want fair hearings. As a prisoner said, "Any prisoner in SHU on gang affiliation should have proven what he has done to further gang activity, when this act took place—prove it, don't just say it."[AW] Another prisoner stated, "The flaw here is that there is no one to oversee CDoC classification determinations. The lack of accountability was recognized in *Madrid v. Gomez* and the same goes for the classification issue."[LD]

One prisoner stated that he thought that about 60% of the SHU prisoners are on indeterminate status. "And it's for nothing. Association? Affiliation? You talk to somebody or if you lived with somebody, you're considered an associate. If you didn't get hit, and you didn't get taken out or whatever, then you're part of it, which is ridiculous."[AS] "If your cellie is in a gang, you might get an Indeterminate Sentence."[VF] "Racism has a lot to do with it as far as who ends up in the SHU. Guys with swastikas and other tatoos will be wandering free around the yards, and then you look in the hole and only see Blacks and Mexicans."[NC] "(The Pelican Bay State Prison Public Information Officer reports that the Pelican Bay

Volunteer PBIP Crew, March 1995
4 attorneys, 1 doctor, 1 nurse, 1 ex-con, 1 videographer, 1 Gray Panther, 1 wife.
One dozen volunteers

March, 1995, at PBSP, PBIP Investigative Trip
Attorneys and volunteers

SHU holds 87% men of color; and that while Black and Brown prisoners constitute about 70% of California's prisoners, they are an astonishing 92% of the prisoners assigned a gang label! [CW] "The gang coordinator is a joke, saying that people that are my enemies are actually people I would hang out with on the yard."[NC] Another man complained that no informant has identified him in more than two years, yet he is held despite no new or recent information. [AW] During an interview a prisoner described how a birthday card from a friend alleged to be a gang member was used to label him. His correspondence by mail with a political organization on the outside was said to be further evidence against him, even though the organization had nothing to do with prisons or prison gangs. He concluded that "Anyone who is looked up to or is a support to new inmates is who is gone after."[NC & JL] Prisoners who have fixed SHU terms for specific rule infractions are threatened with Indeterminate SHU placement by one or more of the Classification Committees that they are brought before. [AS] One gang-labeled prisoner was described as being determined to officially be in the gang that killed his brother. [LD] Despite a polygraph test being used to initially qualify confidential informants, prisoners have been denied polygraphs to prove their innocence. [SS & CW]

A long time prisoner offered this explanation for such a draconian classification system: "Originally the SHU was for staff assaults, but there are not enough violators to fill these facilities, so they created this gang hysteria."[VF] Another explanation was: "There are about 60 guys in the SHU who are serious political prisoners who the CDoC wants in here. The rest, like me, with flimsy association charges are padding to hide or camouflage those people."[SS]

EXCESSIVE FORCE

Prisoners reported that cell-extractions continue at the same frequency (1-3 times per week) that was found grossly excessive and unconstitutional in the *Madrid v. Gomez* decision. And brutal extractions by the helmeted, flak-jacketed, baton-wielding guards continue to be carried out for trivial and unpredictable reasons, such as the withholding of a food tray or making noise. In October 1994, twenty cell-extractions were used to subdue a joint protest by prisoners against the ongoing racist abuses of Chicano prisoners by staff. While the Taser stun-gun and the rubber-bullet gun were no longer being used during cell extractions, a new chemical weapon has been added to the guard's arsenal of abuse. Pepper spray is used to sudue a prisoner before the guards open the cell door and rush inside, at which time they beat and chain the prisoner. As with all weapons used by Pelican Bay guards, the pepper spray is administered excessively and dangerously. Prisoners described how guards thrill in the distress of the prisoner who, having been sprayed repeatedly in the face, falls to the floor coughing and choking, barely able to breathe, with tears streaming from his eyes and saliva dripping from his mouth. Prisoners continue to be beaten after restraint, hogtied in chains as punishment, and picked up by chains and carried in suitcase fashion. [CW, JL]

Pushing and prodding of prisoners by the Search and Escort guards is a routine daily abuse in the SHU. Cell extractions are used to mete out gross physical punishment and to instill institutional terror. But PBIP investigators were shocked and deeply moved by four dramatic cases of assault on prisoners by guards.

• One man described what started out as an ordinary work day in the Maximum Security A Facility adjacent to the SHU. Without any incident he was first verbally abused with racist taunts and then beaten by one guard. When he objected to the treatment and requested to see the guard's superior, two other guards entered and threw him to the floor, chained him, and continued the beating. His head was repeatedly bashed into the floor while he was being kicked and punched. He was charged with Assault on a Peace Officer. "There is no reason why I would assault anyone. After it happened I was just shocked—just couldn't believe it happened. The only way to explain it is that the guard is a racist. There are pictures showing my face looking like the Rocky Mountains, and where are *his* bruises—besides the ones on his knuckles? If you've got me trying to change my life [by working and following the rules], then don't ruin it for me." Despite this charge constituting a dreaded "third strike," the prisoner would not accept a plea bargain, choosing instead to fight in court for his rights. [NC & CW]

• The second investigative report came from a prisoner who arrived at Pelican Bay with an "Assault on Staff" charge as a result of injuries a guard suffered while breaking up a fight involving the prisoner who was being assaulted by an inmate. On arrival, the prisoner was taken aside and told by a guard, "You have to pay the piper for assaulting an officer." "Then while I was handcuffed, they beat me. The next day I asked to be taken to the hospital. Instead they took me out to the rotunda and made me face the wall. They spread my legs apart and kept kicking each leg 'til I fell, and they continued to beat me. I still have a broken rib from the incident. In another incident, "I was stripped naked, hand-cuffed, and forced to walk down the hallways to a room where they bound

my ankles and tied my feet and hands together behind, hogtied me, and left me face down on the cold floor like that for hours."[NC]

• A third prisoner described repetitive beatings and harassment in retaliation for events that occurred seven years ago. At Pelican Bay, guards had taken him to the infirmary and beaten and suitcased him. (PBIP considers "suitcasing" one of the most heinous torture techniques used in California prisons. It often results in serious permanent injury and psychological damage.) They have removed him from his cell a dozen times and escorted him to an area away from view. There, guards take off his cuffs and challenge him to a fight, all the time taunting him with racist slurs and information about the past. [VF & CW]

• Final testimony was given by a prisoner who was assaulted and stabbed by another prisoner in the SHU. Despite the sophisticated electronic equipment used to operate cell doors and monitor and track all prisoner movement, guards allowed another inmate to hide in the shower and assault and injure the prisoner interviewed by PBIP. The attack can be viewed as a deliberate "set-up" by guards to see the prisoner hurt or taught a lesson. The knife was allegedly made from part of a TV set that had been obviously tampered with. Despite cell searches and electronic failsafe equipment, guards could not or would not protect him from assault. [JL & CW]

HARASSMENT AND POLITICAL SUPPRESSION

Harassment is the daily routine in the SHU. "Disfavored people are hounded and provoked, then the officials 'do their thing' with the 'crash team.' [JL] "Guards hold down the button on the mike for the loud eerie-pitched sound it produces—just to disturb us."[AS] "They harass me at night by banging on my cell door, so I sleep during the day now. They try to humiliate me in front of the other prisoners."[JL] "The guards have been more aggressive and disrespectful. Since the decision [*Madrid*], guards taunt us with Prop 184 [California's "Three Strikes and You Are Out" law] to get people acting out. Guards want the third strike."[JL] Staff deliberately placed a prisoner of another race in his cell to provoke a fight. "They make derogatory remarks to prisoners and incite prisoners to make derogatory remarks to other prisoners."[AS] "The guards talk about a prisoner's psych problems and demean them. They call me a nut and needle me about my problems."[CW] "They give a guy a sack lunch with wet cookies or a wet sandwich and then walk away talking and laughing about a 'semen cookie' or a 'semen sandwich'."[CW]

Politically active prisoners who speak out against the human rights violations and assist others with demonstrations, protests, or jailhouse legal efforts are singled out for abuse. Prisoners who testified in the civil rights suit are harassed repeatedly. "The officer knows I can't cuff up behind my back because of an operation I had. She says [the doctor's orders for] my waist restraints are expired, so she won't take me out of my cell for a visit."[VF] Another man states, "I was validated [labeled] as a gang member and given Indeterminate SHU in retaliation for testifying in *Madrid*."[JL & VF] Another busy jailhouse lawyer was given Indeterminate SHU as punishment for his legal efforts on behalf of SHU prisoners and in an attempt to interfere with his activity. [VF] "My mail is cut now. I'm trying to establish small groups to help us and the prison discontinued my mail because I was rabble-rousing. My political magazines have been suspended. They stopped my media interviews."[LD & VF] One of the leaders trying to establish peace among the Hispanic prisoners has been isolated and harassed by guards seeking to interfere with his efforts.[AS & JL]

INTERFERENCE WITH JAILHOUSE LEGAL WORK

It was Pelican Bay prisoners who forced the Federal District Court to consolidate their 250 cases against the prison regime into a class-action civil rights suit, *Madrid v. Gomez*. Since the case was filed in 1991, the Pelican Bay prison administration has been placing restrictions on jailhouse legal activities and harassing jailhouse lawyers. In July 1994, new rules have hamstrung prisoner legal efforts. A jailhouse lawyer can only assist one prisoner at a time, and can only send six pages of legal work between them per week. A motion that has 30 pages will take six weeks to complete. Severe restrictions have been placed on talking in the law library. Any suspected conversation between prisoners in the law library is considered a serious rules violation. [NC, LD, VF, LD] Calls to outside attorneys are not private: "There are five guards around you."[LD]

MEDICAL AND PSYCHIATRIC CARE

PBIP interviewed four prisoners with severe psychiatric illness. Two were suicidal, having attempted to kill themselves during the last 14 months, and two others were severely depressed. One suicidal prisoner began hearing voices for the first time 6 months after entering

May 6, 1995, NPC March, Prison Rights Contingent
Photo by Leslie DiBenedetto-Skopek

the SHU. Another suicidal prisoner was repeatedly taken off psych medications, resulting in psychiatric crises. During each crisis he was beaten by guards, including three brutal cell extractions. Despite considering him anti-social, he was assigned a cellmate. One of the depressed prisoners described how he had been taken off medication repeatedly, despite a recognized history of hostility and violence against prison cellmates when off medication. He has overheard the attending psychiatric worker tell the guards about his therapy sessions, and then the guards used this confidential information to taunt and harass him. [JL, AS, LD, VF, CW, AW]

A number of prisoners expressed deep concern about the use of an newly implemented, security screen-shield in the Pelican Bay SHU. Since April 1995, sheets of Plexiglass have been attached to the cell doors of many of the floor-level cells. Prison staff are informing prisoners that the sealing of the doors is needed to protect staff from prisoners who throw liquids out through the honeycomb steel doors. Prisoners state that the air circulation in the tomb-like cells is very poor, and the cells become very hot at times. Prisoners with asthma and other lung problems have severe trouble breathing. They worry that prisoners on psychiatric medications will get overheated and die just like the three prisoners who suffered the "hot-box deaths" at the Correctional Medical Facility in Vacaville in 1992. The air quality is so bad that prisoners who are double-celled have to reduce their movements within the sealed chambers to avoid overheating and a feeling of suffocation. Plexiglass cell-door covers are nothing more than additional injury done to prisoners in the name of furthering staff security concerns.[SS]

Medical care remains substandard. Prisoners complained of lack of attention for blood in the urine, including never finding out the result of the urine test; having to choose between commissary and medical care because of the new $5 fee charged for a visit to the doctor; and long delays in seeing the doctor. One desperate prisoner in need of medical attention felt he must demonstrate his case by the withholding of his food-tray at pick-up time and immediately thereafter underwent a brutal cell-extraction. Attention to his needs were finally given but at a dreadful price. [AS, AW, CW]

PBIP wishes to thank the 52 prisoners who came out to be interviewed. We are submitting prisoner-complaints [as agreed during the interviews] to the Special Master assigned to the Madrid case. This will be done through the Prison Law Office. Submittals will also go to the Human Rights Watch organization for continued evaluation and investigation. PBIP also thanks the attorneys and investigators who made our March visit successful: Attorneys Victoria Fabella [VF] and Amanda Wilson [AW]. Investigators: Ann Sadler [AS], Leslie DiBenedetto-Skopek [LD], Sharon Sadler [SS], Judith Lindbloom [JL] and Niki Cousino [NC]. Thanks to our medico, Corey Weinstein [CW], and to our Project Coordinator, Luis Talamantez—all of whom have been instrumental in making past and present trips to PBSP productive. Our thanks to Attorneys Catherine Campbell and Ronald Ruiz who were not referenced in this report but accompanied us on the March 1995 investigation and contributed greatly to the overall success of the planned agenda.

PBIP appreciates the help of Attorney, Ann Wagley, of the Meikeljohn Civil Liberties Institute in providing addendum information on the Treaties in this report.

Today's Torture Chamber

By Gloria Zuurveen

THE MEN AND WOMEN CONFINED in the dark dungeons of California's Department of Correction prisons have no way of knowing that a very important strategy session took place in February at the Loyola School of Law, Los Angeles, centering around California prisons. This strategy session was hosted by Marti Hiken of the National Lawyers Guild. In attendance were concerned attorneys, community activists, and six delegates who represented the concerns and interests of men and women in Control Units akin to Pelican Bay's Security Housing Unit.

At issue were the directions that the prison movement should take. The Pelican Bay Support Project [of Los Angeles] put forth three premises for discussion: First, that the primary focus of the prison movement today should and must be Control Units; that all legal measures be exercised to liberate the men and women who have been held in SHU for indefinite periods of time, many for over a decade. Secondly, that we on the outside must devise strategies that will help to educate the Afrikan community and involve Afrikan churches in our effort to put a stop to the torture and brutalization that takes place in Control Units.

Thirdly, that attention must be focused on the collusion of the medical profession, doctors, in fashioning and maintaining the inhumane sensory-perception deprivation conditions that exist in Control Units. The Pelican Bay Support Project named names: Mata Johnson; Paul Jones; Fati Carter; and R.N. Dewberry, Afrikans who have been held in Security Housing Units at San Quentin, Folsom, and now at Pelican Bay for well over a decade.

The purpose of this particular session was to get input prior to any systematic legal effort so that the moves by the attorneys will be in line with those behind the walls and their front-line supporters. More will be heard from the attorneys, activists, and community workers; all who were in attendance seemed to have a passion for the long, difficult struggle ahead to eradicate the Houses of Torture at Pelican Bay-SHU and prisons across the nation.

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the SHU. Another suicidal prisoner was repeatedly taken off psych medications, resulting in psychiatric crises. During each crisis he was beaten by guards, including three brutal cell extractions. Despite considering him anti-social, he was assigned a cellmate. One of the depressed prisoners described how he had been taken off medication repeatedly, despite a recognized history of hostility and violence against prison cellmates when off medication. He has overheard the attending psychiatric worker tell the guards about his therapy sessions, and then the guards used this confidential information to taunt and harass him. [JL, AS, LD, VF, CW, AW]

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government/state that has adopted some of the fiendish, diabolical practices that Adolf Hitler's Death Head Guards used in Nazi Germany's concentration camps. These practices of systematic torture and brutality are being employed against prisoners, while the government and state turn a blind eye.

The mental and physical scars left on those who do survive will never go away until that individual dies. It is sad to think that in a country that espouses freedom and Constitutionality, there is a silent genocide going on everyday in our correctional facilities.

The PBIP apologizes for condensing this fine article but lack of space forced our hand. A longer version of this article appeared in Community News, Los Angeles Southwest College.To obtain it in its entirety or for more information contact: Pelican Bay Support Project (213) 733-2107. Or write PBSP, Attn Bro. Sawonde, Box 62744, Los Angeles, CA 90062.

Wardens Criticize Crime Bill Solutions

—From *Prison Life*, March 1995

PRISON WARDENS UNIFORMLY REJECT the popular crime-fighting solutions coming out of Washington, according to a national survey conducted by Sen. Paul Simon's (D-IL) subcommittee on the Constitution, a panel of the Senate Judiciary Committee. Instead, wardens call for additional prevention programs, smarter use of prison resources, the repeal of mandatory minimum sentences and an expansion of alternatives to incarceration.

Eighty-five percent of wardens surveyed said that election officials are not offering effective solutions to America's crime problem.

Simon sponsored the survey of 157 wardens and also polled 925 prisoners in an effort to introduce "a reality check" as Congress prepares to renew its debate on crime policy. Noting that Congress will be asked to consider popular but overly simplistic remedies for the nation's epidemic of violent crime, Simon sought the input of those on one front of the criminal justice system: wardens who oversee the nation's prisons. The surveys were distributed by the Department of Corrections in California, Delaware, Florida, Illinois, Michigan, Ohio, Pennsylvania and Texas. Sixty percent of wardens responded.

"We've just passed the dubious milestone of having 1 million people in prison," said Simon. "But for all the new prisons we've built and filled over the last two decades, we feel less safe today than we did before. Loading our prisons with nonviolent drug criminals means that, today, we are committing more nonviolent offenders to hard time than we are violent criminals, and there's little room left for the violent offenders who should be put away to make our streets safer.

"Chase Riveland, a corrections official in Washington State who looked at the survey results, said that focusing only on prisons and ignoring prevention is 'drive-by legislation,' at best," Simon continued. "He's right."

Despite the current "tough on crime" rhetoric favored by many politicians, the wardens who participated in the survey generally call for a more balanced approach that mixes punishment, prevention and treatment. For example, when asked how they would spend an additional $10 million in resources, wardens said they would allocate only 43% to law enforcement, while spending 57% on prevention programs. That ratio contrasts sharply with the spending in last year's crime bill, which allocated only a quarter of the $30 billion bill to prevention programs. The survey results also raise questions about proposals in the "Contract for America," which call for the repeal of much of the remaining prevention funds.

Wardens also urged a more intelligent use of prison space, expressing concerns that the nation is wasting scarce prison resources on nonviolent offenders. Wardens noted that, on average, half of the offenders under their supervision could be released without representing a danger to society. Similarly, 65% declared that the nation should use prison space more efficiently by imposing shorter sentences on nonviolent offenders and longer sentences on violent ones.

Wardens also questioned the use of a "one size fits all" approach to sentencing: 58% rejected mandatory minimum sentences for drug offenders. And 92% said that greater use should be made of alternatives to incarceration, such as home, detention, halfway houses and residential drug treatment programs. These results were confirmed in general terms by prisoners, who indicated that longer sentences did not represent a particularly effective crime deterrent.

When asked to identify the most effective way of fighting crime, wardens overwhelmingly chose prevention programs, especially those that address basic human development needs. Seventy-one percent said improving the educational quality of public schools would make a major difference in fighting crime; 66% favored increasing the number of job opportunities in the community; and 62% endorsed developing programs to help parents become better mothers and fathers. In contrast, only 54% said longer sentences for violent criminals would have a major effect on crime, and only 8% supported longer sentences for drug users.

Similarly, wardens and prisoners were nearly unanimous in calling for an expansion of rehabilitative programs in prisons themselves. For example, 93% of wardens recommend a significant expansion of literacy and other educational programs. Again, the result stands in sharp contrast to Congress' actions during the last year's crime debate when Congress eliminated all funding for Pell grants for prisoners.

"QUOTES" FROM THE SHU

These interview excerpts have been left anonymous to protect against retaliation of the prisoners interviewed by the PBIP during the month of March, 1995. These excerpts are randomly selected to provide the reader with an idea of the state of mind of prisoners kept inside the prison's maximum security SHU facility—many indefinitely, where the interviews were conducted (behind Plexiglas) by a 10-person team of volunteer attorneys and investigators over a two-day period.

"If somebody sends a letter to you and you'll get the letter 10 days later, 2 weeks later. I know the mail does take that long to get up here. Sometimes when it does get here, they do their little checks, gang coordinator—all that. "

"Been here since it opened [1989]. Double-celled. It's a tight-fight. It all depends on what his mindset is. What your mindset is."

"Tell Bato, I've been busy. Real upset. Mad. Depressed. Felt [he] wasn't getting my stuff or responding to it in the way I thought he would. I feel, maybe, he's not monitoring this place close enough.

"I'll personally do, basically, my own little opinion on the opinion [*Madrid*] and I'll send it down there to you. I have sent to Luis an additional complaint I did. I don't know if he got it. But it was when . . . . Because, it was when the guy threw that stuff in my face."

Q. Are you still in touch with Wilson Sonsini? "

"The attorneys, basically, shut me out."

"Like I said, I haven't seen no changes. They come here and talk to me and run a whole bunch of tests on me, and they told me they couldn't figure out what was causing the symptoms and left it at that. The problems started out with a cell-extraction at Calipatria. I got hit. I told them about I be having headaches, when I sit up in the morning I get dizzy. . . At Calipatria they beat me."

" I put into see the MTA [Medical Technical Assistant] a few times, and I seen them. But they never came back. Like one time, I told them I was discharging a little blood and I was suppose to — they pull'd me into the doctor-line but then, I never seen them: they sent me some pills. And I didn't take them.

"So when the MTA came into the Block, I'd ask her `What are they for?' And she said, `They're for dehydration.' And I go, `What do you mean? What's that got to do with me peeing blood?' About three months ago, I started drinking a lot of water and it stopped."

Q. " What did [they] change after the 'lockdown?""

"Y' got two SHU's up here—C and D Facility. What they did—it was [interruption] "What they essentially done, was this here. I'm in D facility.

"602's [prisoner-complaint-appeals] are a big joke. I sent to [atty.] Don Spector. I sent him a 602 and they sent it over — in December, just before Xmas—to Sacramento because I didn't want to send it from here and have it get "lost." I have not seen nobody on that 602 as of today. Don Spector sent it just before Christmas, and I had it done through him because I didn't want them—Sacramento—to say well, we never received it. That 602 was when I was trying to move in with [name omitted] so he could help me with my legal work. And [they] denied it because they said I was trying to circumvent the system."

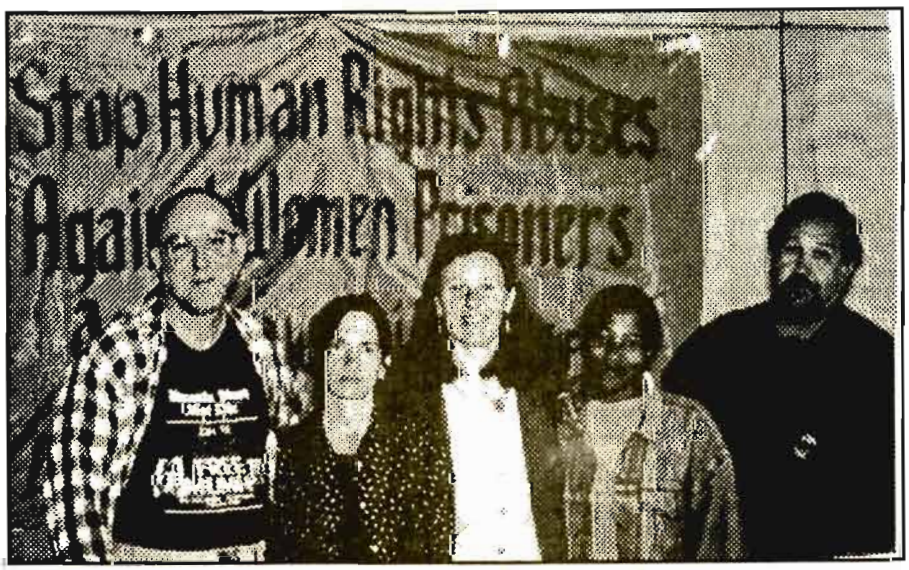
"I went to the IGI [Institutional Gang Investigator] for a 602 hearing. IGI is the same as the SSU [Special Security Unit] and he ordered [it] right on the phone, right there. But I have documentation—a 128 G form—a chrono, that says, we ordered your archive file back in July, and it hasn't arrived yet. And until it arrives you will remain in the SHU indeterminate status.

"Where it says, directly in my file, that there is insufficient evidence to hold me indeterminate-SHU-status—in the SHU. But [they] found I should remain here until it arrives. Even if it takes many years, I should remain here."

"Ain't nothing happening at Pelican Bay Prison. I read *Pelican Bay Express*, know what's happening— all these actions—but there's nothing happening here. It's a game. I just go to the library. Nothing has changed. I read it [*Madrid* decision] twice. The full decision. And when I go to the library I read it there. It cost about 40 some dollars.. and then [they] charge you for every section, to copy. I just read it there— if I get a chance.

"Well it's hard to talk about it specifically because [it] all sounds good. Everything [he] said, makes a lot of sense—a little sympathetic. But as far as putting any force behind it, any kind of actions to that—we haven't seen it. This Master—this guy, that its supposed to come around here—we haven't seen him. Nothing's changed."

"When you get back, can you send me a copy of that *Pelican Bay Express* news-



Corey, Leslie, Ann, Lauren, Luis, June 3, 1995
Criminal Justice Consortium Symposium

paper? . . . I got this stuff here that you should be aware of. . . in other words. . . guards. . . getting people who are mentally disturbed, all mad and all that... you know, so they can start yelling and hitting the doors, and disrupt our program in the pod. That's what's going on."

"My Mother, my sister and them— I send letters to my people and they never get `em.

"Every day, I get my lunch, I get spoiled meat. Every day my sandwich is smashed. My cookie is smashed.The potato chips is smashed. Some days you can see the spit, right up in front of my food. You know—things of that nature. I figure, I just live with that. I say, as long as it don't kill me. "

"I've been knowing Bato for many, many years—reading his articles, I know [they] don't really want him in here—especially, talking to [name omitted] female friend who visits me from Oakland.

"Another thing about visits—when they first started up here, they used to let you have 3 hours. Now, [they] just come up to your [visit] door and say, "Your time's up. Lets go!"

"The doctor, he checks, basically, after 90 days. He prescribes for 90 days and then he checks in 90 days. . . . MTA's take your blood pressure once a month—the first of the month. In the normal range, I was 128/over 88. Fortunately, I'm not on any psychiatric medication" [nervous laugh].

"I explained, I didn't have my I.D. [He] told me, I didn't need my I.D. He asked me to get up against the wall. I gets up against the wall. This is when he starts verbally abusing me, calling me all kinds of racist names. He picked me up from my backside, stood me on my head, kneed me in my chest and my stomach. And kicked me in the head.

I get up off the floor and he tells me to get up off the floor and get undressed and go to work now. And I'm like, I get my ass kicked and go to work now?

"I didn't deserve it. I didn't do anything to provoke it."

"Its not going to be easy... I'm aware of what we're up against, you know. I tried to get people out there to open their eyes and just stop and think about some of the things going on around them, try to. . . . these guys, the guards. they say I'm trying to indoctrinate people.

"It's not about indoctrinating. It's about opening their eyes. As a matter of fact, I was wanting to talk to Luis about that, because my mail has been cut. They stopped letting me receive mail because [they] claim, I'm rabble-rousing. And basically, what I've been doing, is writing people the last few years, to contact people—to establish peace."

" The IGI is the Institutional Gang Investigator. Or SSU. He calls me in there and asks me, "What's going on?" I tell him I really don't know. Then I ask him to call me up with two specific inmates that are also vocal about the peace process. He wouldn't do it. He tells me that unless I give him information, he's not gonna do nothing. I tell him that if he wants to, he can talk to his rat buddies, and he could find out that way, right? Well he says, if you're going to be like that, then you're going to stay the way you are. I took his request of giving him information as a slap in the face. There's a lot of guys working with the cops in here. Working against the peace proposal."

Q. Has there been any changes since the Madrid decision came down?

"Not much. No. The only thing I've seen them do is—as far as the VCU [Violent Control Unit] they move the inmates from the VCU to other parts of the prison. Where they've designated certain pods—in the blocks: in 1 Block, 6 Block, 7 Block and 12 Block — [they] designated F Pods into VCU. It's pretty ironic now that they're doing all this 'cause in fact, in October I was in the VCU, and that place is messed up, man. There's feces all over the place. . . .

Now *Madrid* comes in, and they want to clean it up. But the officers still treat you the same. . . What they've done is to distribute those inmates to other areas—1 Block, 6 and 7 and 12 Block in F pod, is where they got them now. . . with severe mental problems. "

"I'm an Indeterminate. And I'm a Lifer. That's another thing they're screwing us around on. Our "Lifer-hearings. Now, they're coming out with 5-year denials. Legally, I'm eligible after 7 years. But [they] shoot-you-down for 5 years. And when you go in there, they say, 'Debrief or you're not going anywhere'."

"My problem was—see— due to the situation I'm in, I got 5 suicides that you know of.."

"You got what!?"[startled response from investigator]."

"I got 5 suicides—on myself."

" I think they're getting stricter on us, now. Because now, when we come down the stairs to go to the yard, if we slow up to say, `good morning' to anybody—going all the way out—[they] give us a 115 [disciplinary report] and cancel our yard.

"I think [they] feel they got more leeway now to do things. That new amendment they're passing—where they don't want to give us aspirin, anymore."

Human Rights Violations in the United States

THE SECOND EMERGENCY SESSION to critique U.S. compliance with and enforce the International Covenant on Civil and Political Rights and to stop the Enforcement of Proposition 189 was attended by Corey Weinstein MD and Leslie DiBenedetto-Skopek from the Pelican Bay Information Project.

San Francisco University hosted this meeting that began with inspiring words from Aileen Hernandez, a well respected Urban Consultant.

Following Hernandez were speakers who addressed the three UN laws signed by the United States on Civil and Political Rights, Racism, Torture and Punishment. Next a speaker explained how laws could be enforced through publicizing, reporting and monitoring. Steve Rosenbaum [California Rural Legal Assistance], Corey Weinstein, M.D., PBIP, and Collen Rohan, Attorney General, Criminal Appeals, then spoke about the first U.S. Report submitted to the UN in regard to the three International Laws . The laws contained many errors, omissions, and misleading statements. Later, groups broke off from the main gathering and formed smaller discussion groups. Goals to develop issue-sheets for submittal to the United Nations were set. Possible local actions and demos will occur as a result of this meeting.

Skeleton bay

by Mumia Abu-Jamal

Distrust anyone in whom the desire to punish is powerful.
—*Friedrich Nietzsche.*

AS OF 1993, according to U.S. Bureau of justice statistics, there were 119,951 people including parolees imprisoned in California.* At last count, California had over 28 prisons and spends over $1 Billion annually ($1,000,000,000!) on prisons. One billion! And then there's Pelican Bay prison, a hellish home for thirty-seven hundred prisoners, located in an isolated rural area called Crescent City, California. If Pelican Bay prison is hell,† then its special housing unit [SHU] is the lower depths, where nearly thirteen hundred men are consigned to a state program of torture and governmental terrorism, so much so that major news agencies, such as CBS's *60 Minutes*, have reported on the unit. Prisoners there haven't taken the abusive treatment lying down, as evidenced by a civil suit filed in federal court, charging the state with "lawless" activity." The law stops at the gates of Pelican Bay," attorney Susan Creighton told the court in her opening argument late September in San Francisco. At the SHU, men are beaten, burned, and isolated by state officers. Prisoners spend twenty-two and a half hours a day in windowless, eight-by-ten cells, with no human contact or educational opportunities.

One defense psychologist, Dr. Craig Haney, found "chronic depression, hallucinations and thought disorders" at levels existing at no other prison in the United States. The symptoms were comparable only to findings from a psychiatric prison in the former East Germany, known for torture and solitary confinement, Haney testified. Indeed, the conditions are so horrendous that a former warden of the infamous hellhole Marion, Illinois, openly criticized Pelican, tracing a record of numerous injuries and deaths to guards' routine use of excessive force. Charles E. Fenton, ex-warden of Marion Federal Penitentiary testified in the suit, " There seems to be an attitude. . . that it's proper for staff to shoot at inmates" (*San Francisco Chronicle*, September 29, 1993). "They either don't know what they're doing or they're deliberately inflicting pain," said Fenton.

Marion Federal Penitentiary, known as Son of Alcatraz, was itself condemned as violative of fundamental human rights by Amnesty International. Pelican Bay (called Skeleton Bay by prisoners) is Son of Marion, taken to such an inhumane degree that even Marion's old warden gasps in shock at the ugliness that is his spawn. Five years from now, will we be moaning about Son of Pelican? If we don't rumble now against all fascistic control units, such as Pelican, Pennsylvania's SMU, Shawnee Unit at Marianna, Florida, and Colorado state Penitentiary, you may not be able to rumble later. The solution is not in the courts but in an awake, aware people. October 1993.

*A recent New York Times poll shows that more than one million people are now in U.S. state and federal prisons.

†In January 1995 the U.S. District Court held the state could continue operating Pelican Bay, and while the U.S. District Judge Thelton Henderson was critical of the unit, he declined to declare it unconstitutional, despite evidence that guards inflicted unjustified beatings upon and hog-tying of prisoners.

—From *Live from Death Row* By Mumia Abu-Jamal. Reprinted with permission of Addison-Wesley Publishing.

New Warden at Pelican Bay

STEVEN CAMBRA, JR. has been appointed warden of Pelican Bay State Prison by Governor Pete Wilson. The appointment was effective March 20, and Cambra has reported to Pelican Bay and assumed his duties. Cambra replaces acting warden Jerry Stainer, who was called out of retirement by the California Department of Corrections to replace Chuck Marshall, the prison's first warden. Marshall retired in December 1994. Cambra began his career with the CDoC in 1970 as a correctional officer at the California Men's Colony in San Luis Obispo.

He transferred to San Quentin in 1971, which was followed by a promotion to correctional lieutenant at Sierra Conservation Center and then the Deuel Vocational Institution. In 1983, he returned to Sierra as a correctional captain. Cambra was promoted to correctional administrator at San Quentin in 1984, where he managed the secure housing units. Three years later, he was appointed chief deputy warden at that facility. In 1990, he was promoted to assistant deputy director at CDoC headquarters in Sacramento. From September 1991 to January 1992, Cambra served as the interim warden at the California Medical Facility.

His last assignment prior to his appointment to Pelican Bay was as regional administrator at CDoC headquarters.

—Reprinted from the *Triplicate* , March 1994.

NATIONAL CAMPAIGN TO STOP CONTROL UNIT PRISONS (NCSCUP)

What is a Control Unit? Essentially a Control Unit is a super super maximum security unit or prison that systematically oppresses prisoners spiritually, psychologically and physically. The goal of a Control Unit is intentional oppression and punishment without the pretense of rehabilitation. The tactics include:

- Years of isolation from the rest of a prison and outside communities, inside solitary or small group isolation units with
- Severely limited access to educational, religious and vocational training services.
- Physical torture, including forced cell extractions, 4-point restraint, hog-tying, caging, beating after restraint, and administrative set ups for violence betweeen prisoners
- Mental torture, such as sensory deprivation, forced idleness, verbal harassment, mail tampering, disclosing cofidential information, confessions forced under torture, and threats against family and visitors.
- Sexual intimidation and violence, usually against women prisoners by male guards, using strip searches, sexual harassment, sexual touching, and rape as a means of control.
- Denial of access to medical and psychiatric care.

A Control Unit is known by many names: Adjustment Center, Security Housing Unit (SHU), Maximum Control Complex, Administrative Maximum (Ad Max) Special Housing Unit, Violence Control Unit, Special Management Unit, Intensive Management Unit, etc. Control units differentiate from ad seg (administrative segregation) units in that they are longterm vs. the relatively short term disciplinary use of ad seg units.

Alcatraz prison was shut down in 1963 as the highest security federal prison when the prison in Marion, Illinois, was opened to replace it. Marion was the first prison to have permanent lockdown conditions. It was also the the first to use sensory deprivation and administrative (rather than disciplinary) classifications in order to isolate prisoners that the prison administrators found objectionable, often because of their political beliefs and connections. These political prisoners are deemed high risk because of their power to influence others, both within and outside prison. Other prisoners are also placed in control units for racial and religious activities, and for reasons such as violence while imprisoned and/or escape attempts. Today, Marion is being replaced by the federal prison at Florence, Colorado, which uses even more oppressive high-tech methods of control.

Currently, NCSCUP has three regional monitoring committees and coordinators nationwide, dividing up the 50 states as follows:

AK, AZ, CA, HI, ID, MT, NM, NV, OR, TX, UT, WY, NCSCUP Western Region, under Corey Weinstein, Box 2218, Berkeley, CA 94702

AR, CO, IA, IL, IN, KS, LA, MI, MO, MS, NE, ND, OK, SD, TN, NCSCUP Central Region, under Christie Donner, Rocky Mt. Peace Center, 1523 6th St. Boulder, CO 80302.

AL, CT, DC, DE, FL, GA, KY, MA, MD, ME, NC, NH, NJ, NY, OH, PA, RI, SC, WV, VT, under Dema Mantooth, NCSCUP Eastern Region / Nightcrawlers ABC, Box1034, Mott St. Stn., Bronx, NY 10454.

PBIP Note: We at the PBIP actively support the newly formed NCSCUP. We encourage all prisoners who are inside a control unit, or suspect that they are, to contact NCSCUP at the place that corresponds to your area. NCSCUP is also looking to form wide-ranging connections with groups and individuals across the USA who are interested in monitoring and opposing control units.

If you are interested, please contact the coordinator corresponding to the state you are living in. For general national information about NSCUP, please contact Bonnie Kerness at AFSC, 972 Broad St., 6th floor, Newark, NJ 07102.

UPDATES

JESSE CASTILLO was shot down in the A-Yard at PBSP on August 6, 1993. Three other prisoners were either shot or injured. The shooting was in response to a fist fight on the yard which could have been broken up by non-lethal intervention. Prisoners from all backgrounds and associations have come forward to help the volunteer lawyers for the injured prisoners and for Jesse Castillo's family. In the last few weeks, eight more prisoners who were on the Yard that day have overcome their fear to tell what happened. Eight guards have been deposed as part of the lawsuit. Six said they saw no weapons, one said he saw one prisoner making stabbing motions, and one said he saw twenty prisoners who appeared to be using weapons. More depositions are being scheduled. The case will go to trial in 1996.

PRESTON TATE was shot down by guards in the Corcoran SHU on April 2, 1994. Our understanding of events is that prisoners in the SHU unit in which Preston Tate was housed were being released onto the Yard in groups which had conflicts, and the guards could watch the fight that inevitably ensued from the gun booth. The guards would film the fight and then watch it over and over on their video monitors. Often bets were made on who would win. On this date one of the guards shot Preston Tate and killed him. Since his death, one Lieutenant and another officer have come forward to decry the unlawful and perverse Corcoran gladiator rings. Because these prison

employees, who don't want their names released because they are afraid of retaliation from other guards, have exposed what is happening in Corcoran, the death of Preston Tate is being investigated by the FBI and a federal grand jury. A lawsuit on behalf of Preston Tate's family was filed in the Eastern District Court in Fresno.

Prisoners who were witnesses to either of these state killings should write to Catherine Campbell, P.O.Box 4470, Fresno, CA 93728. The descriptions we have provided of these events is based upon what we have learned so far. We are interested in knowing the truth, and if you saw something that is different from what is described here we want to hear your version.

Maintaining Control——And Humanity——In Our Prisons

By Milton Marks

AS REPORTED IN THE MEDIA on January 12, a federal judge has ordered changes made in the treatment of mentally ill prisoners in the Security Housing Unit at Pelican Bay State Prison on the Northern California coast. As chair of the state Senate Committee on Criminal Procedure since August of last year, I have been especially concerned about the safety of both correctional officers and inmates in California prisons. I visited Pelican Bay State Prison in October. I toured the Security Housing Unit—the infamous SHU—and saw firsthand how controlled and regimented it was. I talked to prison officials about the conditions in the SHU, and I watched shackled and handcuffed inmates move within the prison, accompanied by four correctional officers whenever such movement occurred. (I also visited San Quentin and the Men's Medical Facility at Vacaville, as well as the Prison Law Office in Marin. The PLO represents inmates who are seeking to protect their limited—but nevertheless real and legitimate—civil treatment rights while incarcerated.)

I understand that the Department of Corrections has a difficult task with real physical dangers inherent in the performance of that task. The safety of state personnel as well as the safety of inmates is of paramount importance. The Department of Corrections has for some time sought to improve safety within prisons by categorizing prisoners into different levels, with the most dangerous—to both correctional personnel and other prisoners—qualifying for level IV treatment. Level IV involves more restrictions on an inmate; and, within Level IV, the Security Housing Unit, both at Pelican Bay and at another prison, in Southern California, is reserved for the inmates whom the Department of Corrections classifies as the most dangerous within the prison system statewide.

Serving time in the SHU is not easy. Neither is working there. However, many of the inmates serving prison terms within the SHU are going to get out of prison after they have done their time and return to the community at large. [The "three strikes" law will soon result in many of those in the SHU serving longer sentences, but many will still be released from prison at the end of those sentences.] One of the questions i asked was how the CDoC handled releasing inmates from the SHU when their terms were up. The answer was that, while today those inmates are serving time in the most restrictive prisons in the state—especially at the state-of-the-art Pelican Bay site—tomorrow they might be returning to their communities to resume life as a civilian.

Chief U.S. District Court Judge Thelton Henderson has appointed a special master to develop a plan to address constitutional concerns about the treatment of mentally ill inmates and those at serious risk of mental illness in the Security Housing Unit at Pelican Bay. The opinion issued by Henderson is 345 pages long—which reflects how complicated the issues are. It may be easy for those who have not visited a prison to suggest that all inmates should be locked up and the key thrown away. But if you have been a visitor within the walls of Pelican Bay, as I have, you would be more likely to see how tough decisions are for anyone to make about incarceration and treatment.

No amount of inhumane treatment is going to right the wrong or the harm done to the victims of crime. But inhumane treatment is likely to perpetuate the cycle of crime that all of us want to stop. Judge Henderson did not tell the Department of Corrections that the Security Housing Unit at Pelican Bay would have to be abolished. He did say that, even within the SHU, there must be, and there are, limits on how inmates can be treated. The special master and the department must now work to satisfy that balance of security and the right to humane treatment.

Balancing—and judging—the needs of the Department of Corrections to keep control over the state's prison population with the legitimate rights of inmates to be treated fairly and humanely is a very, very hard job.

As chair of the Senate Committee on Criminal Procedure, I am ready to help, where appropriate, with legislation that will help the special master and the department of Corrections accomplish the charge they have from Judge Henderson.

Milton Marks represents San Francisco in the state Senate.

February 1995.

Stop the Execution of Mumia Abu-Jamal

SUPPORTERS OF RADIO JOUR-NALIST Mumia Abu-Jamal, on death row for the murder of a police officer, are escalating an international campaign to save him before his scheduled execution in August. More than 300 people demonstrated in Oakland Monday, accusing authorities of framing Mumia Abu-Jamal for the murder of a Philadelphia traffic officer in 1981. Abu-Jamal, whose book *Live From Death row* was recently published by Addison-Wesley, maintains he is innocent. His lawyers are demanding a new trial, saying Abu-Jamal's original trial was riddled with "widespread police and prosecutorial misconduct." Police and prosecutors stand by their investigation. But Abu-Jamal's attorneys contend that some witnesses were coerced while others who could clear Abu-Jamal were ignored. The lawyers also say blacks were excluded from the jury because of race, and claim that prosecutors used Abu-Jamal's long history as a black activist and police critic to whip up prejudice against him.

Abu-Jamal was a Black Panther spokesman in the late 1960s while he was still a teenager. The United States Supreme Court has refused to hear Abu-Jamal's case, and the Pennsylvania Supreme Court twice rejected his appeals. Pennsylvania Gov. Tom Ridge [has] signed a death warrant for Abu-Jamal. Last year, National Public Radio backed out of an offer to air Abu-Jamal's radio pieces after Philadelphia police objected.

At the corner of 14th Street and Broadway in Oakland, trade unionists, black nationalists and others joined together to protest Abu-Jamal's death sentence.

"I'm extremely upset," said Kiilu Nyasha, 56, a KPFA-FM radio broadcaster who is on a hunger strike in support of Abu-Jamal." This guy is a beautiful brother. We can't lose him." Nyasha has aired Abu-Jamal's pieces on her show, and she corresponds regularly with him. Judith Townsend, a former Philadelphia school teacher who moved to Oakland in December, said Abu-Jamal had spoken to her students about journalism in the late 1970s. She called him "a literary genius." Like others at the protest, she said she was sure Abu-Jamal had not received a fair trial. Frame-ups "happen a lot," said Adwa Nyame, 18. "This is just one way for me to show my support for all the people it happens to." Jack Heyman, executive board member of the International Longshoreman's and Warehousemen's Union Local 10, compared Abu-Jamal's case to the Scottsboro Boys, a group of nine black teenagers falsely accused and convicted of raping two white women in Alabama in 1931.

—Susan Ferris, *S.F. Examiner*

URGENT: Call and Fax these Judges, urging that Judge Sabo be recused [taken off the case]. Mumia deserves a fair trial!

Judge Sabo, Phone: 215-686-5100; fax: 215-563-1623. Judge Bonavitacola Phone: 215-686-3770, fax: 215-567-7328. Judge Legrome Davis, Phone 215-686-9534, fax: 215-686-2865.

Note: These numbers could be switched at the receiving end because of the volume of incoming calls. Please don't give up! If this should occur, Please Contact Equal Justice USA at 301-699-0042 for further information.

South Africa Asks Clemency

WITH THE EXECUTION OF FORMER BLACK PANTHER leader Mumia Abu-Jamal scheduled for Aug. 17, ANC Secretary General Cyril Ramaphosa sent a message to Gov. Tom Ridge of Pennsylvania, who signed Mumia's death warrant.

The message read: "We write to urge you to use your power as governor to commute the death sentence imposed upon Mumia Abu-Jamal and to allow a retrial. In addition, we ask for your compassionate reconsideration of the sentence that has been imposed and that he be removed from death row and allowed to appeal his sentence."

The Congress of South African Trade Unions, the biggest trade union federaton inside South Africa, also expressed solidarity with Mumia. A May 31 statement to Ridge issued by the International Relations Office read: "It is clear from the report we received that the trial procedures were fraught with bias and prejudice . . .

"Our organization has struggled against all forms of racism, opppression and the use of the death sentence to silence political activists. We are therefore vehemently oppposed to the death penalty on both ideological and humanitarian grounds. We urge you to grant clemency to Mumia Abu-Jamal."

—Monica Moorehead
Workers World

ACTIVITIES

NLG PRISON LAW PROJECT HOLDS NATIONWIDE ELECTION INSIDE PRISONS

By Marti Hiken from The Conspiracy

CONVICTED FELONS CANNOT VOTE in the United States. It is the poor that are being incarcerated. Laws favor the rich. There is no justice, much less democracy in the United States especially concerning electoral politics. Who can afford $25 million to run? And how can someone who has $25 million dollars to spend on a single election ever possibly understand someone who lives day to day? It is because of the unique position of Jailhouse Lawyers (JL) on the inside of America's prisons, representing literally tens of thousands of prisoners (and who more than others realize the discrepancies in the American system), that the National Steering Committee (NSC) of the National Lawyers Guild Prison Law Project (PLP) was compelled to hold its own election among NLG Jailhouse Lawyer members. The Project recently held an election among its over 500 Jailhouse Lawyers nationwide to vote for five representatives to its National Steering Committee. The decision to hold a national election was made at the Albuquerque convention last year.

Each candidate wrote about himself/herself, what she/he thinks the priorities of the PLP should be, and what the important issues are that JL's must deal with. The Project received many 25-page responses; all were well-thought out and revealed a high level of political and legal consciousness. It is clear that the NLG is thought of amongst the Jailhouse Lawyers as "Our Guild." It is interesting to note that several women ran for election, and several men voted only for the women candidates. Almost all the men voting included at least one women in their choices. Many of the ballots came with letters thanking the guild for the opportunity to vote for such qualified people. Most knew each other from their writings in *Prison Legal News* and *Prison News Service*, and from their study of each others' cases.

The NLG Jailhouse Lawyers clearly had the cream of the crop to choose from. Each statement was condensed into about two to four paragraphs and after everyone was contacted, there were 45 candidates. Six women ran and many ethnic groups were represented. Several ballots were not allowed into Parchman prison in Mississippi, which is par for the course given the mentality of the staff at that prison. We got those ballots returned unopened. In Huntsville, Texas, the majority of ballots were not returned. One candidate stated that when he was first put into prison, the only thing he knew about the law was how to break it. In this first national election ever held inside the Prisons (and probably the only honest election ever held in this country), reading the qualifications and the feelings of so many, it makes one wonder why people like these are locked up, many for years on end. Their spirit and determination is recognized and applauded.

As one inmate wrote,

Enclosed please find my ballot. You sent me two, but I'll be honest and only return one! Thank you for the opportunity to participate.

While my experience and background are not as passionately qualified as many listed, I continue to work everyday on clemencies, shock motions, appeals, writs. If a woman has experienced a dirty legal situation, one demand I make before helping her is to require she write letters to her local newspaper, about wrongdoing by local officials or prosecutor. [H]ere in Ohio, the public seems blind to the corruption.

I am working with a former inmate, Mike Grilliat, to try to establish a system whereby citizens can petition federal judges to order investigations into local corruption. We have over 100 signatures on petition now, for a gal I have represented over a year. We are working on a list of possible criminal charges against the local sheriff and deputy — I compiled a list of over 20 possible charges and just sent it out. We have a lawyer who will represent the group for free, and an investigator/author looking into it.

I have been absolutely sickened by the disgraceful violations of civil rights of the poor, powerless, minorities, politically astute, and women. We must expose them from inside prison, else their system continues to destroy this country. I had to work this past week just to straighten out the postage

here. They had no envelopes for us to buy at commissary here for three weeks and refused to allow the 29¢ embossed ones with 3¢ stamps that our supporters sent. Only the women's prison in Ohio had this insane problem—not one men's prison! I'll bet zoo animals in this state get better treatment than women!

Sincerely, Beverly Seymour

(They look at me like I'm not here because I even object and raise issues!)

If Outside Guild members want to read the statements, send $7.50 for the *Legal Journal* to the Prison Law Project at the Guild office.

Those elected to the National Steering Committee are Paul Wright, Marcia Bunney, Beverley Seymour, James McCourty and Joseph Everroad. (Little Rock Reed actually came in second after Paul, but he is out of jail now.) The five alternatives are Margaret Myers, Shep, Robert Relden, John Perotti and Steve Castillo. Congratulations to all the candidates and to those who voted!

Marti Hiken is director of the NLG prison Law Project and on the editorial board of The Conspiracy.

NATIONAL LAWYERS GUILD 1995 CONVENTION AUGUST 10-13, PORTLAND OREGON

ALL PRISON ACTIVISTS, lawyers, law students, legal workers, ex-prisoners, families and friends of prisoners are invited to the NLG's National convention in August.

Thursday, August 10th, there will be an all-day Prison Law Project Meeting to discuss the PLP; Friday, 9:00 a.m., a meeting on Control Units and the National Campaign to Stop Control Unit Prisons and Control Unit Monitoring Project; Saturday 10:15 a.m., will be the strategy session for dealing with the "monster" (Prison Industrial Complex) and a sharing of information. We need to know about debriefing-like policies nationwide. We also will discuss the emergency work concerning Mumia Abu-Jamal's case and the status of the movement work with all political prisoners.

Invited guests to the Prison meetings are Dorsey Nunn, Legal Services for Prisoners with Children; Luis Talamantez, Pelican Bay Information Project; Gahisi Sawonde, Pelican Bay Support Project/Los Angeles; Kay Cole, long-time political activist; and Dennis Banks.

Call the National Office of the NLG, (212) 966-5000 or the SF Chapter of the NLG (415) 285-5067 for more information.

MARCH TO DEFEAT CONTRACT WITH AMERICA

A CROWD ESTIMATED BY MANY to number 20,000 marched and then rallied at the San Francisco Civic Center on March 6, 1995, to defeat the right-wing Contract with America. Across the country, 40 other cities joined in the national day of protest to Defeat the Contract, which many people feel is a death warrant against the hungry and the homeless, the needy and poor, and for women and minorities.

A host of speakers, including Reverend Jesse Jackson, Dolores Huerta of the Farmworkers, Brian McWilliam of the ILWU, Gloria LaRiva of Workers World, three of San Francisco's Board of Supes, trade unionist, Housing, Healthcare, prison rights, Immigration and anti-Prop 187, Senior Citizen, and environmental activists, kept the crowd fired-up and vowing to fight the "Contract" all the way to Washington D.C. Prison contingents from the PBIP, Prisoners with Children, Concerned Citizens for Prisoners, Criminal Justice Consortium elements, Calif. Coalition for Women Prisoners, and NCSCUP, among others, brought up the rear of the march which took nearly an hour to pass any given point. Many observers commented that San Francisco had not seen such a closely united and determined coalition-march in many years.

For more information on the many aspects of fighting the Contract, please contact the National People's Campaign (NPC) at 2489 Mission St., #28, San Francisco, CA 94110, (415) 821-6545.

Bato and Gahisi
Honoring Comrade George Jackson

NOTICES

Criminal Justice Consortium Symposium

ON SATURDAY JUNE 3,1995, members of the PBIP joined with a medium-size but enthusiastic crowd at the First Presbyterian Church in Oakland for "Making Sense of the Madness: Post 3 Strikes," a symposium produced by the Criminal Justice Consortium. The event drew a diverse audience of organization members, former prisoners, relatives of people currently "inside," and other activists who spent the day discussing concerns, statistics, and strategies regarding the social and economic boom of the prison industry. The morning began with an open mike, which allowed representatives from many other groups to give updates of other upcoming events. Julianne Malveaux, a columnist for the *Sun Reporter* and the *S.F.Examiner* and a radio commentator for KPFA, gave the keynote address, concentrating on racism and bad economics in light of prison expansion at the expense of education and other urgent social needs. She commenced her speech with remarks about the Ohio death warrant issued against Mumia Abu-Jamal, an issue which overshadowed the symposium throughout the meeting.

Following a question-and-answer period with Ms. Malveaux, the audience divided into groups for workshops addressing an array of topics including "Control Units: The Movement Against Them," "Institutional Racism And Crime," and "Health Care & Women Prisoners."

Resolution

San Francisco Board of Supervisors Meeting June 27, 1995

On July 10, 1995, the San Francisco Board of Supervisors by unanimous vote passed this resolution:

Special Order File 12-95-37. Proposition 184, "Three Strikes" Resolution urging the San Francisco District Attorney to exercise his prosecutorial discretion under California Penal Sections 1170.12 and 1385 to move or dismiss or strike the pleading of prior felony convictions in cases where a "Strike" is not a violent felony. [Supervisor Hallinan].

Whereas, San Francisco voters rejected Proposition 184, "Three Strikes and You're Out" in November 8, 1994, general election by a vote of 57% to 42%; and

Whereas, According to the Legislative Analyst's Office, "Preliminary Assessment," January 6, 1995, states, "three out of four people prosecuted under Three Strikes since it became law in March 1994, were charged with non-violent felonies;" and

Whereas, According to statistics provided by the California Department of Corrections, "83% of the persons sent to state prison under Three Strikes provisions so far were non-violent offenders who had committed a less-than-serious crime as of March, 1995; and Whereas, Examples as to why Three Strikes proved to be a judicial fiasco in its first year are: A San Diego man was sentenced to life for stealing wooden pallets to a state beach bonfire for a friend's birthday party, and in Los Angeles, a man was given a life term for stealing a slice of pizza: and

Whereas, Even though institutional discrimination has been illegal now for many years, statistics overwhelmingly illustrate a disproportionate number of African-American and Latinos on Death row, and serving extreme sentences: and

Whereas, According to a July, 1994, report by the S. F. Sheriffs Department, "African-Americans are 11% of the adult population in San francisco but 48% of the jail population, and Latinos are 15% of the adult population but 29% of the jail population," and two out of every three second and third strike defendants in San Francisco is African American: and

Whereas, Increased incarceration rates have not reduced crime, according to local, state and federal statistics provided by the Violence Prevention Coalition, and that public fears about crime and safety have promulgated drastic and punitive measures such as the passage of Proposition 184 or "Three Strikes and You're Out," now codified as California Penal Code section 1170.12; and Whereas, The Rand Cooperation published a report in 1994 stating, that at the expense of enacting the Three Strikes law, state and local funding will severely diminish for education, social services, housing, health care, and job creation; and

Whereas, According to the Center on Juvenile and Criminal Justice, "the cost of incarcerating one prisoner for one year is $25,000, or the equivalent of educating 10 community college students, five CSU students, while civil cases languish, unable to get to court, according to the State Assembly Legislative Analyst Office on the 1994/1995 projected budget report; now, therefore be it

RESOLVED, That the San Francisco Board of Supervisors urges the San Francisco District Attorney to exercise his prosecutorial discretion under California Penal Code section 1170.12[d] and 1385 to move to dismiss or strike the pleading of non-violent convictions" in the furtherance of justice"; and be it

FURTHER RESOLVED, That scarce city and county funds should not be expended to charge strikes under Penal Code Section 1170.12 for non-violent felonies.

March 1995, PBIP Crew at Del Norte Courthouse to File 2nd Grand Jury Petition. No Results.

Alabama Revives Chain Gang

ANNISTON, ALABAMA, March 1995. Despite protests that leg irons represent a part of the American penal system that's best forgotten, the state prison commissioner is going ahead with plans to put 400 prisoners in irons and set them to work on Alabama's roadsides. The state's commissioner, Ron Jones, who believes prison should be hard, said there were a lot of reasons he decided to revive chain gangs but the main reason was "deterrence." He said the sight of a man in chains would leave a lasting impression on young people. But whether this sight would also remind them of the state's pro slavery past was a moot question. To Alabama officials the two subjects have little in common because many of the prisoners on the chain gangs will be white.

"Repeat offenders, men who have lost respect for the law and overcome their fear of a life behind bars, will rediscover it on the chain gang," said Jones, a former prison warden. This is no voluntary program, but 12-hour days of stoop labor by men shackled to 4 other men by eight feet of chain. "People say it's not human," said Jones, 53. "But I don't get much flak in Alabama." The chain gangs are part of a new kind of prison reform, one that frightens some human rights advocates. In Mississippi, the state plans to dress prisoners in old-fashioned striped uniforms, to humiliate them, advocates say, while prisons all over the country are denying prisoners television, weights, tobacco and even visits. The death penalty is seeing new acceptance, and some legislatures are weighing the implementing of caning. Politicians are responding to public sickening over crime, by campaigning on promises to punish criminals harshly and in innovative ways. But to put a man in chains, on public display, is inhuman, human rights advocates argue. "You are telling him he is an animal," said Alvin Bronstein, executive director of the National Prison Project of the American Civil Liberties Union. "People lose touch with humanity when you put them in chains." Jones was hired in January by Gov. Fob James, who ran on a get-tough-on-crime campaign. His mission is to make Alabama's prisons more efficient and less comfortable for prisoners. Alabama has not had chain gangs for more than 30 years. "We have guards with shotguns loaded with double-aught buckshot, and are obligated by law to shoot if a prisoner tried to escape," Jones said. "I don't want a lot of them shot full of holes, with a bunch of medical bills and bad publicity." If men on the chain gang run, he said, "they won't run far."

To date Arizona has followed suit and also installed chain gangs to save the state money in maintaining its highways.

Supreme Court Limits Rights in Prison Hearings

WASHINGTON: June 1995. The Supreme Court has made it more difficult for prisoners to file lawsuits that challenge disciplinary hearings, ruling that an inmate can be sent to solitary confinement without a full hearing. The case originated in 1987, at the Halawa Correctional Facility, a maximum security prison in central Oahu.

Speaking for the majority, Chief Justice Rehnquist said federal judges should not be involved "in the day-to-day management" of prisons and should give wardens more flexibility in handling "the ordinary incidents of prison life."

The conservative court majority, ruling in a case brought by a Hawaii inmate, was almost certainly reacting to reports that the number of lawsuits from prisoners has soared in recent years, as more prisoners claim that a failure to follow a particular written procedure denies then their constitutional right to " due process of law." In 1993, more than 33,000 lawsuits were filed by state prisoners in federal courts, a five-fold increase since 1977.

Raising the threshold for new lawsuits, Rehnquist said judges should not hear such claims unless a punishment or restriction "imposes atypical and significant hardship on the inmate." Confinement in a lock-up area removed from other prisoners is not a "significant deprivation" and could be normally expected as a punishment for misconduct, the chief justice added. This decision reverses a more liberal standard set by the federal Court of Appeals in San Francisco. *Cinda Sandin vs. Demont Conner et al.* Cite at 95 C.D.O.S. 4627.

Population of Local Jails Sets Record

MAY 1995. WASHINTON, D.C.—The number of inmates in local jails across the nation reached a record 490,442 last year, more than double the population a decade earlier, the Justice department said yesterday.

Drug offenders accounted for most of the increase, according to Bureau of Justice Statistics, which estimated that in 1993, more than 105,800 inmates were being held because of drug charges or convictions.

In June 1994, whites accounted for 39 percent of the jail population, compared with blacks (44 percent), Hispanics (15 percent) and other races (2 percent), the study said. Blacks were nine times more likely than people of other races to be held in a local jail, the report said.

Other Prisons

California Women Prisoners Sue over Deficient, "Life-threatening" Medical Care

ON APRIL 4, 1995, WOMEN PRISONERS confined at two large California prisons, the Central California Women's Facility (CCWF) in Chowchilla and the California Institution for Women (CIW) in Frontera, filed a federal class action lawsuit, *Shumate et al. vs. Wilson*, in U.S. District Court in Sacramento. The suit charges that the prisons' dramatically deficient medical care for chronically and terminally ill women has caused needless pain and suffering and threatened their health and lives. The plaintiffs-prisoners include women with cancer, heart disease, sickle cell anemia, AIDS, tuberculosis and other illnesses. They are suing Governor Wilson, the California Department of Corrections and the Youth and Adult Correctional Agency for systematic deprivation of essential care for their medical needs, inflicting needless pain and suffering and threatening their physical and mental well-being. The lawsuit also challenges practices of the Department of Corrections that disclose the HIV status of women prisoners.

Lead plaintiff Charisse Shumate is incarcerated at CCWF and suffers from sickle cell anemia, serious heart problems, pulmonary hypertension and asthma. In spite of her life-threatening conditions, Ms. Shumate frequently has been deprived of necessary medication and appropriate medical care and treatment. She does not receive a diet necessary to maintain her health. As of November 1, 1994, prison authorities began to require Ms. Shumate and all other women prisoners to pay $5.00 per medical visit. "There have been many times that I have not had the money to purchase necessary medical supplies because I have been forced to use my limited funds to pay for medical visits." Shumate explained. "This has also happened to other women here — women who have AIDS and other serious illnesses. That is why we have chosen to fight against these conditions."

The lawsuit describes case after case of shockingly deficient treatment: a seizure patient at CCWF who is paralyzed on her left side has never been given occupational or physical therapy; a sixty-eight year old woman at CIW with asthma and cardiac problems was placed in a locked room for approximately twelve hours without oxygen, necessary medication or treatment; a woman at CCWF who suffered burns over 54% of her body has gradually lost mobility because she was denied the special bandages which would prevent her burned skin from tightening; a prisoner at CCWF was confined naked in a filthy cell where she ingested her own bodily waste—she died of untreated pancreatis that went undiagnosed until she was terminally ill; a women at CCWF unsuccessfully begged staff for months to allow her to see a doctor. She was finally diagnosed with cancer. Though in enormous pain, she received almost no medication. Because of swelling in her legs, she could barely walk, yet she was required to walk to the dining hall if she wanted to eat. She died approximately nine months after the diagnosis.

Lead counsel Elizabeth Alexander of the National Prison Project of the ACLU stated, "The prison and state officials are shockingly indifferent to the needs of desperately ill women. This really amounts to cruel and unusual punishment."

Alexander, whose Project is based in Washington, D. C., noted that the CDoC has failed to utilize the abundance of medical expertise available in the state. Its systematic failure to provide adequate health care, she said, places it outside the mainstream of contemporary corrections. Alexander noted that the CDoC lacks basic, standardized systems for the delivery of health care so that women with chronic health problems come to expect disruptions in their treatment and chaotic follow-up. For example, many women with serious high risk factors for breast and cervical cancer have been denied necessary mammogram and pap smears. HIV-positive women at both prisons also have been denied necessary specialized care, pain medication and hospice treatment.

Fresno attorney Catherine Campbell stated, "What happens inside CCWF is an extreme example of what is happening to poor people's health care in general. The women do not receive basic services, such as access to routine care, examinations, follow-up care, pain medication, and a diet necessary to maintain optimum health with a chronic disease. I am so grateful that so many public interest law firms have heard the voices of women in California prisons. Their need for judicial intervention is very real." Campbell and other attorneys have been gathering information on medical conditions at CCWF and CIW for three years.

Ellen Berry of Legal Services for Prisoners with Children charged, "Often there is a misperception that prisoners are demanding 'cadillac care' when they complain of medical care in prison. On the contrary, the conditions that some of these women have had to endure are barbaric." Barry cited several instances when women with high-risk pregnancies received prenatal care resulting in serious complications and, in some cases, miscarriages.

The suit also alleges that women are routinely forced to wait for long periods of time to obtain necessary

medications and frequently experience interruptions of medications. Plaintiffs with diabetes, heart conditions and AIDS are denied medically necessary diets.

Charlie Freiberg, a partner in the law firm of Heller, Ehrman, White & McAuliffe added, "At both of these facilities, women experience great pain and unnecessary suffering due to long delays in receiving necessary medical and dental care. This is intolerable and inhumane. Medical care should never be used as a form of punishment by Department of Corrections." The federal class action lawsuit charges that the serious lack of medical care amounts to cruel and unusual punishment and therefore violates the Eighth Amendment of the U.S. Constitution. The plaintiffs are seeking declaratory and injunctive relief.

The plaintiffs-prisoners are represented by Elizabeth Alexander of the National Prison Project of the ACLU; Charles Freiberg, Dale Rice and Carol Lynn Thompson of Heller, Erhman, White and McAuliffe; Ellen Barry of Legal Services for Prisoners with Children; Fresno atty. Catherine Campbell; Jack Daniel of Central California Legal Services; Carrie Hempel of the USC Post-conviction Project; Alan Schlosser of the ACLU of Northern California, and Silvia Argueta of the ACLU of Southern California.

Much community organizing and supportive systems for an upcoming women's prisoner trial is needed. The community effort will be centered at the offices of California Coalition for Women Prisoners, 100 McAllister, San Francisco, CA 94102. (415) 255-9383. Please ask for either Ellen, Karin, Judy, River or Dorsey. Get involved. Support the Imprisoned Sisters. Support Medical Health Care as a Right for all. Stop torture in all Prisons.

S.Q. Prisoners to Pay for Taser Cell Extractions

Mr. Talamantez,

Recently here in San Quentin several inmates were subjected to cell extractions, after which they were forced to pay for the Taser cartridges and 37 mm foam baton rounds that were used on them. I had received information, although I know not how accurate, that inmates in Pelican Bay litigated just such an issue, over being forced to pay the cost when these weapons are/were used against them. I was told that the inmates' litigation was successful.

If this is true and you have knowledge of it or can get this information for me, please send me a copy of the court's ruling and if possible copies of motions filed in this matter so that we can take this matter into the Marin County courts and use the Del Norte County ruling in support of our contention that these fines aren't legal.

Thank you for your time and assistance. Siempre Unido,

Ricardo Roldan #H-62400 A C/ San Quentin State Prison. San Quentin, CA 94964

Montana Execution First in 52 Years

DEER LODGE, MONTANA—A man who raped and murdered a schoolteacher was put to death by injection early May 10, 1995, in the first execution in 52 years in a state that was legendary for dispensing swift frontier justice.

Duncan McKenzie Jr., 43, had lived on death row for 20 years and avoided eight scheduled executions. He denied ever committing the murder.

Governor Marc Racicot, a former attorney general, refused yesterday to grant clemency. Ninety minutes later, the 9th U.S. Circuit Court of Appeals denied a request for a stay of execution. The U.S. Supreme Court did the same.

Mario Marquez Executed in Texas

EARLY ON JANUARY 17, 1995, Huntville, Texas, a killer with the mind of a child was executed by lethal injection for the rape and strangulation of his 14-year niece.

Mario Marquez, 36, a sixth grade dropout with an I.Q. of 65, was also accused of raping and strangling his estranged wife but was never tried for it. In a final statement, Marquez apologized and said he was sorry but added that he was not responsible for all of what happened. After a brief prayer, Marquez said he was ready to "come home" and gasped once, after he was injected with state poison.

Several women present at the prison that day had either had someone already executed or awaiting execution. Many there expressed the desire to see executions stopped altogether. Texas has now had 259 executions since the US Supreme Court allowed states to resume the death penalty in 1976. Two to three executions are taking place per week in Texas.

South Africa Abolishes Death Penalty

JUNE 1995. JOHANNESBURG SOUTH AFRICA. In its first major decision, South Africa's highest court abolished the Death Penalty. Announcing the unanimous decision of its 11 members, Arthur Chaskalson, president of the Constitutional Court, said: "Everyone, including the most abominable of human beings, has a right to life, and capital punishment is therefore unconstitutional." South Africa stopped executing prisoners in 1992 on the orders of the former National Party government. With violent crime rampant, the number of prisoners awaiting execution on death rows has since swollen to 443. More than 1,100 people were executed in the 1980s.

Resources/Addresses

SAVE MUMIA ABU-JAMAL. Framed and awaiting execution on Pennsylvania's Death Row. Get in touch. Help lift the Brother's spirits. Contact Committee to Save Mumia, 163 Amsterdam Ave. #115, New York, NY 10023-5001. Fight racist state lynching. Write directly to JAMAL at, #AM-8335, SCI Greene, 1040 East Roy Furman Highway, Waynesburg, PA 15370-8090. • NLG Prison Law Project 558 Capp St. San Francisc,. CA. 94110, attn: Marti Hiken. " Where shall we seek justice when the injustice of power is our destruction?"—Euripides. • Fortune News, 39 West 19th St. NY,NY 10011. • NCSCUP (National Campaign to Stop Control Unit Prisons/ Western Region), P.O.Box 2218, Berkeley, CA 94702. Help support this fledgling organization attempting to get off the ground with the stupendous effort of slowing down the growth of Control Unit expansion. Write & ask how you can help. Much more regional monitoring needed nationwide. Is there a control unit in your area? • Erskine Johnson Defense Committee, Box 5101 Berkeley, CA 94705. Support an Innocent Man on San Quentin's Death Row • Conspiracy Newsletter of the NLG, 588 Capp St., San Francisco, CA, 94110. • Coalition to Support Women Prisoners at Chowchilla, Box 14844, San Francisco CA 94114. • Golden Gate University of Law, 536 Mission St. San Francisco, CA 94105-2968. • National Committee to Free Puerto Rican Prisoners of War and Political Prisoners, 3543 18th St,. #12, San Francisco, CA 94110. Publishes newsletter *El Bienteveo Libertad.* • Prisoner's Literature Project ,1369 Haight St.San Francisco., CA .94117. • Workers World Party, 55 West 17 St., New York, NY 10011. The PBIP extends its solidarity to these comrades/SF branch, without whose support we could not have organized and extended the prisoner struggle • Social Workers for Social Responsibility, Box 355, CSUS, 6000 `J 'St. Sacramento, CA. 95814. • Clerk Federal Judge Thelton Henderson, District Court for Northern California, 450 Golden Gate Ave, San Francisco, CA 94102. • Human Rights Watch. (attn: Mr Roy) 1522 `K' St. NW, #910, Washington, D.C. 20005. Will advocate for human rights violations at PBSP • *Madrid* decision. Complete transcript of this historic Prison case decision can be obtained for $30, includes S&H. Make payable to PBIP/Transcript; send to 2489 Mission St. #28, San Francisco, CA .94110. Allow two weeks for delivery. • CJC (Criminal Justice Consortium) Resource Guide: (510) 836-6065. • Center for Children of Incarcerated Parents, 714 West California Blvd., Attn Ms. Johnson. • Catholic Charities, 433 Jefferson St., Oakland, CA 94607. Organizes for compassionate release from prison, mostly for women prisoners. • *Progress Notes* , newsletter of the Correctional HIV Consortium (CHC), AIDS/HIV issues in prison, 3463 State St.,.#204, Santa Barbara, CA .93105. • National AIDS Hotline (1-800-342-AIDS) can give you information 24 hours a day. • Northern Californian Against Repressive Legislation (NCARL) Box 640354, San Francisco, CA 94164- 0354. Puts out various publications, e.g. "At War With Peace." & "The Right To Know And The Freedom To Act." • San Jose Peace Center, 48 So. 7th St., San Jose, CA 95112. 38 years in fighting for world peace. • Real Dragon Prison Project, Box 3294, S.Berkeley, Stn. 3175, Adeline, Berkeley, CA 94703-9991. Provides some reading materials to political prisoners and POWs. • National Prison Hospice Association, P.O. Box 941, Boulder, CO 80306-0941. National educational and professional organization dedicated to quality care and compassionate support for the seriously ill and dying prisoner and her/his family. • Paper Tiger Collective, 635 Haight St., San Francisco, CA 94117. Progressive collective concerned with social issues translated into documentary form. •The *Commemorator* (newspaper) put out by the Commemoration Committee for the Black Panther Party. • "With the Power of Justice in Our Eyes," a super handbook on prison activism and education. Journal of over 200 pages and illustrations. Call 510-845-8813 for more information or write to PARC, Box 3201, Berkeley, CA 94703. • CCWP (Calif Coalition for Women Prisoners), 100 McAllister, San Francisco, 94102. This group has organized in response to horrible conditions at Chowchilla and Frontera womens prisons. Get in touch. Support our imprisoned sisters. • KPFA-FM 94.1 (attn. Chuy Varela), 1929 Martin Luther King Way, Berkeley, CA 94704. PBIP Salutes Chuy for all his personal (and the station's) support over the years. Orale! • Kim Dvorchak, NLG Nat'l Office, 55 Avenue of the Americas, New York, NY 10013. • Pro Family Advocates, Box 14056, San Luis, CA 93403. • N.California Service League, 28 Boardman Pl., San Francisco, CA 94103. • Fresno/*Sactramento Bee* (attn. Pamela Podger), Box 15779, Sactramento, CA 95816. • CDC Policy/ Regulations Division, attn. Donna McKinney, Box 942883, Sactramento CA 94283. Contact to voice your complaints on CDC irrational operational policies. • People Organized to Stop Rape of Imprisoned Persons, Box 632, Ft. Bragg, CA 95437. • The Sentencing Project, 918 F St. N.W., #501, Washington D.C., 20004. • California Appellate Project, 1 Ecker Place, #400, San Francisco, CA 94105. • Hugo Pinell, #A88401, PBSP-SHU, Box 7500, Crescent City, CA 95532. One of the longest held political prisoners in the country. Now going on 30 years straight. Get in touch. Lift this brother's spirit. Close comrade of late George Jackson. • *East Bay Express,* Box 3198, Berkeley, CA 94703 One of the most progressive newspapers in Bay Area. • Friends of Justice, Box 6668, Moraga, CA 94570. Takes up case of extreme injustice when not already engaged in upholding justice. • Friends Outside National Office, 3031 Disch Way, San Jose, CA 95128. • *Maganda Magazine*, 201 Heller Lounge. MLK Student Union, Berkeley, CA 94720. Progressive Filipino American student literary publication. • CASA Frontera Visitor Center, Box 70407, Riverside, CA 92513-0407. Assists visitors of Women Prisoners. • Centerforce, non-profit Calif., organization which demonstrates concern for prison visitors through a network of Prison Visitor Hospitality Centers in California, (usually one at each prison site), 64 Main St., Box 336, San Quentin, CA 94964. • Post-Conviction Justice Project, USC Law Center, University Park, Los Angeles, CA 90089-0071 • Peace on the Streets, Box 40953, San Francisco, CA 94140. Get in touch. Work towards gang peace in all the free communities • *Louisiana Incarceration Review* newsletter, 2331 Esplanade, New Orleans, LA 70119. Free Hayes Williams, Gary Tyler, Percy "Baki" Tate—imprisoned Afrikans. Support their struggles. attn. Leslie Bary. Write for more information on their frame-ups and how you can help. Combined 85 years already served in Angola prison. Campaign for their release. • Families Against Mandatory Minimums (FAMM), Box 170375, San Francisco, CA 94117. A national organization of citizens working to eliminate grossly abusive sentencing laws and procedures designed to maximize

prison-industry profits and objectives. • Congressman Ronald V. Dellums, 9th District, California, 201 13th St., #105, Oakland, CA 94612 • California Visitors Corp., Box 985, Folsom, CA 95763. • Rocky Mt. Peace Center, Box 1156, Boulder CO 80306-1156. Dynamic group of activists. Help to unisolate them. Get in touch. • Legal Services For Prisoners With Children, 100 McAllister, San Francisco, CA 94102. One of Bay area's foremost activist groups fighting the unjust penal policies. • Workers World Party/Seattle, 1218 E. Cherry, #201, Seattle, WA 98122. • Workers World Party/Washington D.C., 1517 "U" St., NW, Washington, D.C. 20009 • Workers World Party/ Houston, P.O.Box 52115, Houston TX 77052. Leads the fight against injustice in the area. • U.S. Dept. of Justice, Civil Rights Division, 10th St. & Pennsylvania Ave, NW, Washington D.C., 20530. • International Indian Treaty Council, 54 Mint St.,#400, San Francisco, CA 94103. Native American Brothers get in touch. Let the world know of your imprisonment. • Pelican Bay Support Project, P.O.Box 62744, Los Angeles, CA 90062. Afrikan Prisoners get in touch. Support your communities under attack. • Association of World Citizens, 55 New Montgomery St., #224 San Francisco, CA 94105. Register to vote for world peace. • Books by Phone, Box 522, Berkeley, CA 94701, (510) 548-2124. Place orders, any kind of book. Supplies books to free thinking spirits in accordance with First Amendment Rights. • Project Rebound, Dept. of Sociology, San Francisco State U, 1600 Holloway Ave. San Francisco, CA 94132, attn. Robert Medina. Assistance to parolees and probationers reentering society • Criminal Justice Consortium, 1611 Telegraph Ave, #1501, Oakland, CA 94612. The CJC's mission is to change public policies that result in an over-reliance on incarceration and to promote the least restrictive, cost-effective alternatives to imprisonment. • Abdul Shakur Defense Committee (s/n) J.Harvey, #C-48884, PBSP, Box 7500, Crescent City, CA 95532. Has published several papers on the black prisoner experience. • Prisoner John Perotti, #167712, Box 45699, Lucasville, OH 45699. Support this political prisoner suffering injury and abuse in the aftermath of the Lucasville Prison uprising. Get in touch. Save a life. • Governor's Office, State Capitol, 1st Floor, Sacramento, CA 95814. (Good luck). • Senator Dianne Feinstein, 1700 Montgomery St., #305, San Francisco, CA. 94111. • All People's Congress, 2489 Mission St.,#28, San Francisco, CA 94110. A diverse political movement of people organized to unite and fight back in their communities. "What do we do?" Fight Back! Fight Back! • State Assemblyman John Vasconcellos, 100 Paseo de San Antonio, #106 San Jose, CA 95113. • State Senator Diane Watson, 4401 Crenshaw Blvd., #300, Los Angeles, CA 90043. • State Senator Tom Hayden, 10951 W. Pico Blvd., Los Angeles, CA 90064. • State Senator Charles Calderon, 617 W. Beverly Blvd., Montebello, CA 90640. • Casa Joaquin Murietta, 2336 Piedmont Ave, Berkeley, CA 94704. • Out of Time Newsletter, 3543 18th St., Box 30, San Francisco, CA 94110. • Pelican Bay State Prison Mailroom, Phone (707) 465-1000. • Prisoner Locator, Phone No.# for CDoC, (916) 455 6713. • Prison News Service, attn: Jim Campbell, Box 5052, Stn A, Toronto, Ontario, Canada, M5W IW4. The PBIP salutes and extends solidarity to this prison newsletter for consistently carrying the truth from inside America's Concentration Camps. • Coalition for Prisoners Rights, attn: Mara Taub, Box 1911, Santa Fe, NM 87504. Go Mara! • Black Kat Kollective, Box 1191, Newark, NJ 07101. Puts out newsletter called *Kollective Spirits*. • Erica Thompson, NLG, Box 578172, Chicago, IL 60657-8172 . • Campaign to Confront the Racist Imprisonment Binge, Box 578172, Chicago, IL 60657-8172. (312) 235-0070, (formerly the CEML). The PBIP hereby extends its solidarity to these staunch comrades who have been at the forefront of the prison struggle for many many years. • KPIX Channel 5, attn. Manny Ramos, 855 Battery St. San Francisco, CA 94111. • United Nations Human Rights Commission, UN Headquarters, New York, NY 10017. • Meiklejohn Civil Liberties Institute, attn: Ann Fagan Ginger, Box 673, Berkeley, CA 94701-0673. • Prisoners Self Help Legal Clinic, 2 Washington Place, Newark, NJ 07102. Organization that has history of working with prisoners on legal issues, attn Atty. Bomse, a very dedicated person as well as nationally known prison rights activist and litigator. • Victoria Prison Project/ Law Center Assoc., 1221 Broad St., Victoria, B.C., V8N 2A4, Canada. • Strait Arrow (Native American Newspaper), #16-1630 Crescent View Dr., Nanaimo, B.C., V9S 2N5, Canada. • Prison Match, 1080 Miller Ave., Berkeley, CA 94708. • M.A.T.A., Box 2500, Lincoln, Nebraska, 68502-0500. • California Prisoners Handbook, Prison Rights Union, Box 1019, Sacramento, CA 95812-1019, (916) 441-4214. • North Coast Xpress, attn. Doret, Box 1226, Occidental, CA 95465. Solidarity and support to this progressive news collective that helped make the P.B. Prison Express happen. • ACLU Prison Project, 1875 Connecticut Ave., NW, Washington, D.C. 20009. • Center For Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057. • *Writing on the Wall* magazine, Box 5334, Berkeley, CA 94705. • RX Justice-Las Madres, 1347 Sierra St., Redwood City, CA 94061. Volunteer group of mothers who fight against dangerous prison conditions and demand change. • KHSU Diverse Public Radio, Humboldt State University, Arcata, CA 95521. • Journal of Prisoners on Prisons, Box 54, University Center, University of Manitoba. Winnipeg, MN R3T 2N2. Canada. • Leonard Peltier Defense Committee, Box 583, Lawrence, KS 66044. Support this courageous Indian Brother. Get in touch. • *Human Rights Held Hostage* magazine, 3255 W. Belden, 2W, Chicago IL 60647, attn Melissa.

• KCUP Radio, attn. Ray Baeza, Box 2431, San Jose, CA 95109. • Lifers Information Center, Box 2331, West Sacramento, CA 95691-2331. • CCP (Concerned Citizens for Prisoners), Box 2331, West Sactramento, CA 95691-2331. This group of dedicated volunteers operate within the local legislative belly of state capitol and are the first to be "in the know" about changes affecting prisoners. Their Journal is an excellent piece of info. Support the CCP. They have recently had T-shirts made with heart and bars. Contact for more info: (916) 863-9165. Meetings held first Monday of each month. • CAPA (Coalition Against Police Abuse), attn: Brother Zinzun, 2824 S. Western Ave., Los Angeles, CA 90018. Longtime activist respected by many inside and out. Get in touch if you were done wrong in the past. • Courtroom Compendiums, Box 705, Woodlands Hills, CA 91365-0705, attn: Paul Comiskey, Esq. Case citations and courtroom texts available at a price. State your needs. Ask for index of material costs. • Merced Re-entry Mission Parolee Program, 149 W. 16th St., #C, Merced, CA 95340. • Senator Barbara Boxer, 1700 Montgomery St., 3240, San Francisco, CA 94111. • White House comment line ,(202) 456-1111. Voice your concern about treatment of prisoners. • The Search Light Project, 1586 27th Ave. San Francisco, CA 94122. Artist and activist group doing events around criminal injustice issues. • Immigrants' Rights Office of the Legal Aid Foundation of Los Angeles, 1636 W. Eighth St., #215, Los Angeles, CA 90017. • Bound Together Bookstore, 1369 Haight St., San Francisco, CA 94117. Sends books to prisoners. Contact first. • Peninsula Peace and Justice Center, Box 1725, Palo Alto, CA 94302. Puts out *Peace WORKS* newsletter. • Prison Law Office/Davis, attn. Millard Murphy, Box 4745, Davis, CA 95617. • La Raza Centro Legal, 474 Valencia St., # 295, San Francisco, CA 94114. • Wisconsin New Afrikan Prisoners, attn. Sister Antonia A. Drew, Box 12513, Milwaukee, WI 53212. • *Street Spirit* newsletter, Gateway Center for the Arts & Social Change, c/o A Central Place, 1212 Broadway, #830, Oakland, CA 94612. • Shaka Shakur Defense Campaign, P.O. Box 565, Madison, WI 53701. Support the struggle for imprisoned Afrikan Political prisoner. • Center on Juvenile and Criminal Justice, attn. Vincent Schiraldi, 1622 Folsom St., 2nd Floor, San Francisco, CA 94117. • University of California School of Law, Boalt Hall, Berkeley, CA 94720. • California State Law Library, Box 942837, Sacramento, CA 94237-0001. • Center for Investigative Reporting, 568 Howard St., 5th Floor, San Francisco, CA 94105. Deals with issues of Social Justice. • Northern California Service League, 28 Boardman, San Francisco, CA 94103. • Consulado General de Mexico, 870 Market St., #528, San Francisco, CA 94102. • Native American Studies, Contra Costa College, 2600 Mission Bell Dr., San Pablo, CA 94806. • Movimiento Nacional De La Raza [attn Alvaro Luna Hernandez] 2510 Broad, #200, Houston, TX 77087. Alvaro is a dedicated Chicano, X-political prisoner, and well respected inside TX prison system. Now working in La Raza community to lift community support and prisoner liberation consciousness. Get in touch. Help build support for the many death row Chicano prisoners on Texas' Death Row. La lucha continua. • National Commission on Correctional Heath Care, 2105 N. Southport Ave., #200, Chicago, IL 60614. • Norma Jean Croy Defense Committee, 473 Jackson St., 3rd. Floor, San Francisco, CA 94111. • Excellent article "Why Prisons Cost too Much" by prisoner Willie Wisely, D-74088 Box 1902-B / 1B-208L, Tehachapi, CA 93581-5902. Get in touch. * The Reporter, attn. Marvin Ramirez/Editor, 2601 Mission St.,9th Floor, San Francisco CA 94110. • Chicano-Mexicano Prison Project, Box 620095, San Diego, CA 92162. • Black Scholar Magazine, Box 2869, Oakland, CA 94609. • Native American Support Group, Box 8260, Santa Cruz, CA 95061. • KSJV Radio, 2014 Tulare St., #417, Fresno, CA 93721. Get in touch and tell it like it is. • *The*

Editorial Note:

We are, as usual, having financial difficulties getting *Pelican Bay Prison Express* out. Prisoners are in serious error in assuming we are a conventional establishment newspaper that society or the public as a whole actively supports. We have very few financial sponsors. Rarely does our mailing pay for itself. Prisoners should not have expectations of seeing us in print as often as we'd like to come out. The material and information is always there, piling up and waiting to be printed, finances or not. The public is not in a generous mood about prisoners/prisons/crime/injustices in general. The public appears at times to be openly hostile to our work. We—the PBIP & the PB Express, and other groups like ours—are relatively small, volunteer, and struggling just to get by. We lose meager resources everyday—usually on postage—by just trying to stay in touch. We do what we do from seeing injustices being committed and from wanting to help.

We ask prisoners and people out here who are standing by someone locked up—families, loved ones, and friends, all wanting information, assistance, the materials we send out—we ask you to please send us back our postage that we used to get our stuff to you. Even if it's only a dollar. If you can't do it because you're broke, or broke and in prison, this we understand. But if you can, but don't, or won't, if you forget, or think the hell with it, then you can be assured that we will not be around very much longer. That's the long and short of it. Likewise, other groups like our own will not be able to continue either for the sheer lack of support or consideration in helping us to do the work that so desperately needs doing.

WE ARE CLEANING UP OUR MAILING LIST!

RETURN THIS COUPON TO LET US KNOW IF YOU STILL WANT TO RECEIVE OUR NEWSLETTER

Name:_____

Address: _____

_____

_____

Sorry—we can only provide free subscriptions to Pelican Bay prisoners. Rates: $5/year for prisoners, $15/year for those outside, $35/year for institutions.

☐ I have a paid subscription for 1994-95

Times, San Jose City College Campus Paper, 2100 Moorepark Ave., Room 303, San Jose, CA 95128. Campus hotbed of learning and academic achievement. • *Jericho Newsletter*, Box 1983, Cincinnati OH 45201-1983. • Raymond Luc Levasseur, 10376/016 Box 8500, ADX, Florence, CO 81226-8500. The PBIP wishes to extend its solidarity and good will to this long held political prisoner who while incarcerated has helped many others in their hardships. Venceremos. • *Out of Bounds* magazine, William Head Institution, Box 4000, Sta. A, Victoria B.C., V8X 3Y8, Canada. • Hatcher Center for Human Rights, 120 Amber Rd., Hamlet, NC 28345. Indian Brother with AIDS. Help support his work. Congratulations on getting out of prison. • Spear and Shield Publications, 1340 W. Irving PK. Rd., #108, Chicago, IL 60613. • La Raza Law Students Assn., Boalt Hall, #7, School of Law, Univ. of Calif., Bancroft Way, Berkeley, CA 94602. •* *Unplug* newsletter, attn. Robin, 360 Grand Ave., Box 385, Oakland, CA 94610. • Swords to Plowshares (for Veterans) 400 Valencia St., San Francisco, CA 94103. • General Assistance Advocacy Project, 25 Taylor St., 3216, San Francisco, CA 94102. (Have to Get Out First). • Woman's Economic Agenda Project, 518 17th St., #200, Oakland, CA 94612. • Public Advocates, 1535 Mission St. San Francisco, CA 94103. • Center for Urban-Black Studies, attn. Brother Dorsey Blake, 2465 LeConte Ave., Berkeley, CA 94709. • Bay Area Women's Resource Center, 318 Leavenworth, San Francisco, CA 94102. • *San Jose Mercury News*, attn.Dawn Garcia, 750 Ridder Dr., San Jose, CA 95190. • *El Mundo* newspaper, Box 1350, Oakland, CA 94604-1120. • Asian Pacific American Legal Center, 1010 S. Flower St., Los Angeles, CA 90015. • *The Recorder* (a legal journal), 625 Polk St., #500, San Francisco, CA, 94102. • *Covert Action Quarterly*, 1500 Massachusetts Ave. NW Washington, DC 20005. • KPOO, attn. Brother Donald Lacey, Box 425000, San Francisco, CA 94142. • Committee For Prisoner Support in Birmingham, Box 12152, Birmingham, AL, 35202-2152, attn: Ms. Lake. Fight the revival of the Alabama chain gang. • Nolo Press, 950 Parker St., Berkeley, CA 94710. Pioneer publisher of legal self-help material. Puts out *Nolo News*, a quarterly magazine with a lot of useful legal info.Write for brochure. • Rock Against Racism, 1746 Shattuck Ave., #131, Berkeley, CA 94709. A unifying collective statement by the music community against Racism, Sexism, Fascism and Violence. • Freedom Press, Box 4458, Leesburg, VA 22075. Inquiries re sentencing. • TRANSPORTATION, most major cities, 1-800-318-0500. • *Prison Life* magazine. Inquiries/subscriptions: 4200 Westheimer, #160, Houston, TX 77027-4426, or call 1-800-207-2659. Editor office at *Prison Life* magazine, attn: Editor Richard Stratton, 175 5th Ave., # 2205, New York, NY 10010. Doing a great job being a national voice for the imprisoned. • Lawyers Committee for Civil Rights, 301 Mission St., #400, San Francisco CA 94105. • NAACP, Box 15609, San Francisco, CA 94115. Coping, 268 Bush St., Box 1325. San Francisco, CA 94104. • Chinese for Affirmative Action, 17 Walter U Lum Place, San Francisco, CA 94108. • Black Panther Newspaper Committee, Box 519, Berkeley, CA 94701. • *New Mexico Daily Lobo* (campus newsletter), UNM, Marron Hall, 131, Albuquerque, NM 87131-2061. • David Wolf Walker, Box 131, Cherry Creek, NY 14723; Michael Esperanza, #4152815, 2605 State St. Salem, OR 87310; Glenn Edward Seeley, Box 369, Springfield, SD 57062; David Allen Castillo, 770, Ellis I Unit, Huntsville, TX 77343. Help these Native American Brothers get in touch with their people. • *Third Force* (political magazine), Center for Third World Organizing, 1218 East 21st St., Oakland, CA 94606. Article on P.B. SHU by Dr.Corey Weinstein appeared in Winter 1994 edition. • Chicano Education Program, MS 170, Monroe Hall, 202, Cheney, WA 99004. • Berkeley Information Network, c/o Berkeley Public Library, 2090 Kittredge St., Berkeley, CA 94704. • People's Tribune, Workers Unite! Box 477113, Chicago, IL 60647. • *California Voice* ("the oldest Black paper west of the Rockies and dedicated to the people," 1366 Turk St., San Francisco, CA 94115. • Get It Out: Prose and Cons, 4200 Park Blvd., #118, Oakland, CA 94602. • Chicano Moratorium, Box 2031, Berkeley, CA 94702-0031. • Adopt a Prisoner, Inc., "Working to bring justice to the unjustly imprisoned." Write Achim Rodgers, #49983, Box 5003, Gila Unit, Douglas, AZ 85608. • Solidarity with Tommy Silverstein (cover artist for *NCX*), 14634-116, P.O. Box 1000, Leavenworth, KS 66048 • Solidarity with Tom Manning, 10373-016, P.O. Box 8500, ADX, Florence, CO 81226-8500; Robin "Zakia" Elliot, 24941, P.O. Box 665 /NCI-E-125, Somers, CT 06071; Standing Deer Wilson, 640289, Ellis I, Huntsville, TX 77343; Little Rock Reed, Center for Advocacy of Human Rights, P.O. Box 880, Rancho de Taos, NM 87557-0880; Zolo Agona Azania, 4969, P.O. Box 41, Michigan City, IN 46361-0041. Aaron Collins, P.O. Box 290066/FC-429U, Represa, CA 95671-0066, Charles Crawford, C/P 82068, C/P Unit 32-C, Parchman, MS 38738; Ronald Del Raine, 85462-132, P.O. Box 1000, Leavenworth, KS 66048-1000; Loretta Goins, 13024-056, Shawnee-SHU, P.O. Box 7006, Marianna, FL 32447-7006; Richard Carmichael, 632097, IMU, P.O. Box 520, Walla Walla, WA 99362; Steven King Ainsworth, P.O. Box C-13201 /4-E-81-L, San Quentin, CA 94974. • Irish Northern Aid, 1032 Irving St., Ste 722, San Francisco, CA 94122-2216, (510) 273-9833. Our international campaign, the saoirse ("freedom") to free all Irish political prisoners.

The PBIP will miss Jane Cutter and her family, Rachel and Andy. They have moved back East.

We will also miss Stephanie Hedgecock.

Take care, Jane. Thank you for all the help you've given us on behalf of yourself and Workers World Party. Right on.

—Editor

Photo by Gloria La Riva

LETTERS

3-13-95.
George Bustamante #68872-012,
Box 8500, E-A-206.
U.S.P. Florence. CO 81226-8500.

Say Homes, Just these few lines to let you know what's happening with me. First I want to say, I hope everything is everything on your end and in good health. As for myself I'm OK, same as always. As you can see I'm here now. Got here on 2-21-95. The only two good things about this place is the food is better. And the cells are bigger than at Marion. That's it. The cells get too hot in here because the solid door is always closed. The yard don't got nothing but a pull-up bar. You can play handball or basketball. Don't have no heavy punching bag at all. We come out to the yard every other day for 3 hours. We get 1 hour in this little room with only a pull up bar. That's it for the recreation time. They don't have any kind of programs, nothing really to do. It's not a General population unit. It's a lock-down unit just like Marion. I just found out [they] call it " special population," they had put that down on my remedy. I will make a copy to show you it. There is only three of us on this tier. I heard the Pelican Bay case came out. Good. the judge said, [they] can't do all that B.S. Well this is short. I just wanted to let you know where I'm at. Take care of yourself. Always with lots of respect. Tu homeboy.,George.

March 31, 1995
From PBSP
Greetings Bato,

Yesterday morning these folks covered our cells with thick plexiglass. They are doing it in just A-sections and F-sections on the bottom tiers only. I immediately filed a 602 appeal on behalf of me and my cellie demanding to be moved to one of the sections with no plexiglass covering. The ventilation is already poor and this plexiglass cuts off all circulation, Bro, causing respiratory problems for people with allergies and bronchitis like myself. This type of punitive punishment of plexiglass was for the spitters and defecation throwers, but I guess now it's been extended to non-spitters, etc.

[cont.] April 6, 1995.

Received the contract on America material. Bro, I am here trapped in this plexiglass (death chamber). Sweating like hell, suffocating. When our cell door opens it's like we've been given the right to breathe for a couple more minutes. I guess my 602 appeal has vanished without a trace. Bro. this is straight B.S. and dangerous, and these officials see nothing wrong with putting [this] over our cells. Keep marching on.

Paul Redd. B-72683.
P.O. Box 7500
Crescent Cty, CA 95532

[cont.] Inmate/parolee appeal form. cdc 602. 3/30/95. Appellant and his cellie was just informed the first tier A section C-2 cells will be covered today with thick plexiglas. Appellant and his cellmate are wrongfully being subjected to living in a cell covered with plexiglas designed for VCU [violent control unit] inmates who spit and gas staff and other prisoners. Subjecting us to live like this is cruel and unusual punishment and cutting our already poor ventilation causing respiratory problems we already suffer from. Action requested: [1] This 602 appeal be filed/processed as an emergency. [2] We be moved to one of the other sections first tier not subjected to plexiglas covering. Redd B-72683 & Brown H-35368.

Staff response: Unable to resolve at this level! 4-9-95.

Inmate response: Dissatisfied. Action requested was not granted. Additionally this plexiglas pose serious/dangerous health problem with the poor ventilation.

Paul Redd. 4-12-95.

Dear Pelican Bay Express,

I am a subscriber to the Express. I am writing because I have not received an Express in several months. I had an opportunity to read the latest one (vol. 2, no. 5) only as a result of one of the guys in the pod with me receiving one. As we know, it is not uncommon for certain prisoners to not receive their issue when it arrives. The use of pepper spray seems to be the "in thing" now. An incident recently occurred in the pod that I am housed in which pepper spray was used to extract some Hispanic prisoners. This was done because some Hispanic prisoners were demonstrating against the very racist disrespectful conduct of the unit C/O.

In closing I/we would like to extend our warm regards and undying support for the efforts that are constantly being made by those of you there at the PB Express. Maintain your spirit, we need you. Take care.

Zaharibu Kambon.

P.S. The use of the pepper spray incident was similar to the incident that was mentioned in the last Express in that the spray was sprayed so wildly that it affected everyone on the pod, as no one was moved out of the pod before the spray was used or during its use or after, although the policy requires that this be done.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO MADRID, et al., on behalf of themselves and all others similarly situated, Plaintiffs

v.

JAMES GOMEZ, Director California Department of Corrections, et al., Defendants

NO. C90-3094-TEH
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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I
INTRODUCTION

Plaintiffs represent a class of all prisoners who are, or will be, incarcerated by the State of California Department of Corrections at Pelican Bay State Prison, which is located in the remote northwest corner of California, seven miles northeast of Crescent City and 363 miles north of San Francisco. Pursuant to the civil rights statute 42 U.S.C. §1983,[256] plaintiffs challenge the constitutionality of a broad range of conditions and practices that intimately affect almost every facet of their prison life. They seek redress from the Court in the form of injunctive and declaratory relief.

Although referred to in the singular, Pelican Bay State Prison ("Pelican Bay") actually consists of three completely separate facilities. The first is a maximum security prison which houses approximately 2,000 "general population" maximum security inmates. The daily routine for these inmates is comparable to that in other maximum security prisons in California. The second is the Security Housing Unit, commonly referred to as the "SHU." Located in a completely separate complex inside the security perimeter, the SHU has gained a well-deserved reputation as a place which, by design, imposes conditions far harsher than those anywhere else in the California prison system. The roughly 1,000 - 1,500 inmates confined in the SHU remain isolated in windowless cells for 22 and 1/2 hours each day, and are denied access to prison work programs and group exercise yards. Assignment to the SHU is not based on the inmate's underlying offense; rather, SHU cells are reserved for those inmates in the California prison system who become affiliated with a prison gang or commit serious disciplinary infractions once in prison. They represent, according to a phrase coined by defendants, "the worst of the worst." Finally, there is a small minimum security facility that houses approximately 200 prisoners. All in all, there are between 3,500 and 3,900 prisoners confined at Pelican Bay on any given day.

Just over five years old, Pelican Bay was activated on December 1, 1989. Considered a "prison of the future," the buildings are modern in design, and employ cutting-edge technology and security devices. This, then, is not a case about inadequate or deteriorating physical conditions. There are no rat-infested cells, antiquated buildings, or unsanitary supplies. Rather, plaintiffs contend that behind the newly-minted walls and shiny equipment lies a prison that is coldly indifferent to the limited, but basic and elemental, rights that incarcerated persons—including "the worst of the worst"—retain under the

First, Eighth, and Fourteenth amendments of our United States Constitution. In particular, plaintiffs allege that defendants (1) condone a pattern and practice of using excessive force against inmates, (2) fail to provide inmates with adequate medical care, (3) fail to provide inmates with adequate mental health care, (4) impose inhumane conditions in the Security Housing Unit, (5) utilize cell-assignment procedures that expose inmates to an unreasonable risk of assault from other inmates, (6) fail to provide adequate procedural safeguards when segregating prison gang affiliates in the Security Housing Unit, and (7) fail to provide inmates with adequate access to the courts.

Named in their official capacity as defendants are Pelican Bay Warden Charles Marshall, Chief Deputy Warden Terry Peetz, Chief Medical Officer A. M. Astorga, and James Gomez, Director of the California Department of Corrections ("CDC").[257] They deny that any of plaintiffs' allegations have merit, and assert that Pelican Bay operates well within constitutional limits in each of the areas outlined above. Moreover, they argue, Pelican Bay, and the SHU in particular, does exactly what it was designed to do: it isolates the most brutal and disruptive elements of the inmate population while reducing violence in California state prisons overall.

The case was tried before the Court between September 14 and December 1, 1993. Immediately prior to the trial, the Court spent two days touring Pelican Bay, accompanied by counsel for both parties and prison officials. During the course of the trial, the Court heard testimony from 57 lay witnesses, including class members, defendants, [258] and correctional employees at all levels. It also received into evidence over 6,000 exhibits, including documents, tape recordings, and photographs, as well as thousands of pages of deposition excerpts.[259]

The Court recognizes that neither the inmates at Pelican Bay nor the Department of Corrections personnel can be considered neutral witnesses. For reasons that are self-evident, class members, as well as defendants and other prison staff, are interested in the outcome of the case. We also take into account the undeniable presence of a "code of silence" at Pelican Bay. As the evidence clearly shows, this unwritten but widely understood code is designed to encourage prison employees to remain silent regarding the improper behavior of their fellow employees, particularly where excessive force has been alleged. Those who defy the code risk retaliation and harassment.[260] We have considered all of the above, as well as the manner and demeanor of the witnesses, in assessing witness credibility and making our factual findings. The Court was also aided by the testimony of ten experts in the areas of medicine, psychiatry, psychology, and prison management and operation.[261] With respect to the claims regarding excessive force and cell assignment practices, plaintiffs presented three experts: Charles Fenton, a former warden of two maximum security prisons,[262] Steve Martin, who spent more than 20 years working in varying capacities for the Texas Department of Corrections,[263] and Vince Nathan, who has worked for nearly 20 years as a court-appointed monitor and expert in prison cases.[264] Defendants presented two experts: Daniel McCarthy, who worked for almost 40 years in varying capacities for the California Department of Corrections, most recently as its Director,[265] and Larry DuBois, the Commissioner of the Massachusetts Department of Corrections.[266]

With respect to the claims concerning medical care, mental health care, and conditions in the SHU, plaintiffs presented Dr. Armond Start, an associate professor at the University of Wisconsin Medical School and former director of health care services for the Oklahoma and Texas prison systems,[267] Dr. Stuart Grassian, a psychiatrist and a faculty member at Harvard Medical School and expert on the effects of solitary confinement,[268] and Dr. Craig Haney, a professor of psychology at the University of California at Santa Cruz, who has specialized in the psychological effects of incarceration.[269] Defendants presented Dr. Jay Harness, a professor of surgery at the University of California at Davis and former director of health care services for the Michigan prison system,[270] and Dr. Joel Dvoskin, a clinical psychologist and director of the Bureau of Forensic Services for the New York State Office of Mental Health.[271] We are mindful that the opinions of experts are entitled to little weight in determining whether a condition is "cruel and unusual punishment" under the Eighth Amendment. *Toussaint v. McCarthy (Toussaint IV)*, 801 F.2d 1080, 1107 n. 28 (9th Cir. 1986). As such, we have not relied upon expert opinion to make this ultimate legal determination. It is appropriate, however, for this Court to consider expert opinion in assessing subsidiary issues which inform the court's final determination. For example, expert opinion may be properly considered in assessing the effects of challenged conditions or practices. See *Helling v. McKinney*, U.S. , 113 S.Ct. 2475, 2482 (1993)(making reference to the "scientific and statistical inquir[ies]" that will be used to determine the seriousness of the harm caused by challenged conditions); *Jordan v. Gardner*, 986 F.2d 1521, 1526 (9th Cir. 1993)(en banc)(relying on expert testimony to establish psychological impact of challenged measure on inmates). See also *Slakan v. Porter*, 737 F.2d 368, 378 (4th Cir. 1984)(correctional expert's opinions concerning punitive nature of prison's water hosing practices properly admitted).

After the trial was completed, in December 1993, the parties filed proposed findings of fact and conclusions of law on January 28 and February 1, 1994. The case was taken under submission at that time.

II.
FINDINGS OF FACT (complete)
F.
SEGREGATION OF PRISON GANG AFFILIATES

The CDC has determined, and plaintiffs do not dispute, that gangs present a serious threat to the safety and

security of California prisons.[272] The CDC DOM statement of philosophy provides, in part, that "prison gangs and disruptive groups through their illegal activities are a threat to the security of all [prison] institutions . . . [and] are also a definite danger to public order and safety". DOM § 55070.5.

The term "prison gangs" refers to gangs that originate within the prison system. Such gangs first developed in California in the late 1950s and 1960s, and now include the Aryan Brotherhood, the Black Guerrilla Family ("BGF"), the Mexican Mafia ("EME"), and the Nuestra Familia ("NF"), as well as the Northern Structure ("NS"), the Texas Syndicate, the Vanguards, the Mexikanemi, and the New Mexico Syndicate. The term "disruptive groups" refers to gangs which originate outside of prison, such as street gangs, white supremacist groups, right- or left-wing revolutionary groups, and motorcycle gangs. DOM § 55070.17.4.

Although both prison gangs and disruptive groups pose threats to prison security, prison gangs are considered the greater threat. One gang investigator explained that this is because "prison gangs have within their own policy a mandatory ruling that [members] must participate in gang behavior, where the disruptive groups do not have that mandatory ruling . Prison gangs also attempt to control the criminal enterprises of the prison system and attempt to exercise unlawful influence over the other inmates to participate in their behavior." Hawkes Tr. 16-2613; see also *Gomez* Tr. 28-4610 (gang affiliated prisoners are the "most disruptive to the day-to-day management of a prison system").

Activities typically associated with prison gangs include loan sharking and extortion, drug trafficking, and premeditated assaults ranging from unarmed attacks to fatal stabbings. Gang members also pressure non-members in the general prison population to assist gang activities by smuggling or obtaining weapons or providing information. Inmates may join a prison gang for a variety of reasons, including the desire to gain increased status in the inmate population or to obtain the "protection" that gang affiliation may offer. Some inmates may join under pressure from other inmates. Any new member, however, must pledge allegiance to the gang for life.

Under California regulations, the prison may place any inmate in administrative segregation whose presence in the general prison population "endangers institution security." Cal. Code. Regs. tit. 15 § 3335(a).[273] Gang affiliation[274] is one such threat to prison security. Accordingly, once the CDC determines that an inmate is a member or associate of a prison gang, the inmate is routinely transferred to administrative segregation in the SHU.[275]

The aim of this policy is to promote the overall security of the California prison system by taking a "proactive stance in the arena of gang suppression." DOM § 55070.1; Gomez Tr. at 28-4610 (gang affiliated prisoners are not placed in the SHU as a form of punishment for specific behavior but for "the safety and security of both inmates and staff in the Department of Corrections"). At the time of trial, approximately 625 inmates were confined in the SHU based on prison gang affiliation.

Inmates transferred to the SHU for prison gang affiliation are normally given an indeterminate term. This means that the inmate will remain in the SHU for the duration of his prison term unless the inmate "drops out" of the prison gang by successfully completing what is referred to as a "debriefing" process. As one inmate succinctly testified, "the only way [a prison gang member] can get out of [the SHU] is to debrief, parole, or just die of old age." Trujillo Tr. 9-1469.

"Debriefing" requires the inmate to admit that he was a gang member, identify other gang affiliates, and reveal everything he knows about the gang's activities and organizational structure. Because prison gang members join "for life," the CDC considers debriefings necessary to prove that renunciations of gang membership are genuine. As the DOM explains, the purpose of a "debriefing" is to "obtain sufficient verifiable information from the subject which adversely impacts the gang so the gang will no longer accept the subject as either a member or associate." DOM §55070.20.1. Although no evidence of actual reprisals was introduced at trial, a number of prison staff agree that inmates who debrief and gain release from the SHU are considered "snitches," and thus face serious risks of being attacked or even killed by other inmates. Thus, a few inmates have elected to remain in the SHU for their own safety even after debriefing. Defendants do not permit gang members to "drop out" of the prison gang simply by refraining, or promising to refrain, from participating in gang activities or associating with gang affiliates while in the SHU.

1.

PROCEDURE FOR ESTABLISHING PRISON GANG AFFILIATION

The procedure for establishing gang membership or association is referred to as the "validation" process. Every institution within the CDC, including Pelican Bay, employs at least one Institutional Gang Investigator ("IGI")[276] who is responsible for tracking gang activities and investigating those suspected of gang membership. Whenever a gang investigator obtains evidence that an inmate has associated with other gang affiliates, it is noted in the inmate's central file ("C-file"). If the evidence is tangible, such as a membership list, gang constitution, letter, or photographs, the gang investigator will store the object itself in the C-file. If the evidence is intangible, such as the statement of a confidential informant, a staff observation of association, visits from persons with known gang connections, or an oral confession, the IGI prepares the appropriate paperwork memorializing the evidence and places it in the inmate's C-file. There is no written requirement that contemporary information be relied on in making the initial validation; however, the practice at Pelican Bay is to rely on at least some current information.

The most common item of evidence is the statement of another inmate, generally referred to as a statement from a "confidential informant" or "CI." California regulations preclude reliance on such statements, unless "other documentation corroborates information from the source, or unless the circumstances surrounding the event and the documented reliability of the source satisfies the decision makers(s) that the information is true." Cal. Code of Regs. tit. 15, § 3321(b)(1). These regulations also provide that reliability can be established if any one of the following criteria is satisfied: (1) the confidential source has previously provided information which proved to be true, (2) other confidential sources have independently provided the same information, (3) the information provided by the confidential source is self-incriminating, (4) part of the information provided is proven true, or (5) the confidential source is the victim. *Id.* at § 3121(c).

In order to "validate" an inmate as a full "member" of a gang, CDC regulations require that IGIs identify a minimum of three "original, independent source items of documentation indicative of actual membership." DOM § 55070.19.2. In order to validate an inmate as an "associate," CDC regulations require that IGIs identify a minimum of three "original, independent source items of documentation indicative of association with VALIDATED gang members and/or associates." DOM § 55070.19.3. (emphasis in original).[277]

Once an IGI believes that there is sufficient documentation to validate an inmate, the IGI prepares a "validation package" for submission to the Special Services Unit ("SSU") in Sacramento, California. This package includes photocopies of each source document relied upon, a written itemization of the evidence, and a description of the inmate's distinctive markings and tatoos, if any. Once the package is completed, the inmate is brought to the office of the IGI, where the inmate is told that he is suspected of gang affiliation, and provided a copy of a form summarizing the evidence relied upon.

When the evidence in the validation package includes information from a confidential informant, the inmate is provided with a Confidential Information Disclosure Form which briefly summarizes the substance of the accusation, insofar as that can be done without disclosing the informant's identity. The form also identifies the basis for the IGI's determination that the information is reliable. This typically consists of a conclusory statement that the informant has provided reliable information in the past. The cursory nature of the information provided to the inmate makes it difficult to challenge evidence provided by confidential informants.

Nonetheless, the inmate is given an opportunity to present his views to the IGI and contest his alleged gang affiliation. He is not, however, given an opportunity to present evidence, examine witnesses or obtain assistance. If the IGI decides to pursue the validation after meeting with the inmate, the IGI submits the validation package to the SSU in Sacramento.[278]

The SSU performs a quality review check to ensure consistency between institutions and to confirm that the IGI has submitted at least three items of evidence which satisfy CDC regulations. As a practical matter, this review is largely superficial since the SSU presumes that the documentation relied upon in the validation package is accurate unless there is an obvious or blatant flaw. The SSU does not interview the inmate as part of its review.

If a package contains more than the minimum three items of evidence, the SSU may reject certain items as "not acceptable" or "not usable," and still validate the inmate so long as at least three items remain that are not rejected. Bruce Depo. at 182.[279] In such a case, the SSU does not inform the IGI or the prison that certain items have been rejected. As SSU Agent Addison explained, "if [the IGI] had only sent in three pieces of gang evidence, then they would know that all three were relied on, but if there were more than three sent in they wouldn't know which three were relied on." Addison Depo. at 144.

If the package appears to be in order, the SSU will officially "validate" the inmate as a member or associate of a prison gang. This occurs in the overwhelming number of validation packages submitted for approval. Of over 300 packages submitted from Pelican Bay over a three-year period, only two were rejected. IGI Hawkes testified that only one of the packages he had submitted had ever been permanently rejected by the SSU, and that case involved a request to validate an inmate as a "drop out" of a prison gang. Hawkes Tr. 16-2676.[280]

2.

Assignment of Prison Gang Affiliates to the SHU

Once an inmate is validated as a gang member or associate by the SSU, an Institutional Classification Committee ("ICC") is convened to decide whether the inmate should be retained in the SHU for an indeterminate term based on his gang affiliation. Cal Code Regs. tit. 15, § 3338(d). ICCs are composed of an Associate Warden, a Program Administrator, a Correctional Counselor II, and a Correctional Counselor I, and are charged with the responsibility for major classification decisions, including transfers.

Given that it is CDC policy to confine validated gang affiliates to the SHU for an indeterminate term, this is invariably the outcome of the ICC meeting. ICCs do not, as a general matter, closely reexamine the underlying basis of a new validation. The inmate, however, is brought to the ICC meeting and given an opportunity to address the ICC before a final decision is made.[281] ICC recommendations of transfer to a security housing unit for an indeterminate term must be "endorsed" by a Classification Staff Representative. Cal. Code Regs., tit. 15, §§ 3341.5, 3379. In the case of assignments to the SHU for gang affiliation, this approval is routine.

3.

SUBSEQUENT REVIEWS OF STATUS IN THE SHU

Inmates assigned to indeterminate terms in the SHU for gang affiliation are afforded two types of periodic reviews. A Unit Classification Committee ("UCC") reviews an inmate's indeterminate SHU assignment every 120 days,[282] and the ICC, described above, reviews an inmate's SHU indeterminate status every 12 months. The inmate attends each UCC and ICC review and has an opportunity to address the committee, although sometimes the inmate will simply be asked if he is "ready to debrief." Trujillo Tr. 9-1467. The inmate does not have an opportunity to present or examine witnesses; staff assistance may be provided occasionally.

The UCCs are composed of a Program Administrator, a Correctional Counselor II and a Correctional Counselor I. They have less authority than the ICCs and usually attend to day-to-day programming and less significant classification matters. Thus, unlike the ICC, the UCC is not empowered to reconsider an inmate's validated status and order his release from segregation. However, the UCC can inquire into the propriety of the validation and recommend a change in status. One program administrator testified, regarding UCC reviews, that "[t]here have been occasions in the past where we have discovered information that was not corroborated or validated appropriately, in our view. When that has happened, we've returned the case to the IGI to re-evaluate their validation and to provide additional information to support the validation, if it exists." *Helsel* Tr. 21-3539-40.

Prior to the ICC annual review, an IGI reviews the inmate's file, compiles any new evidence pertaining to gang membership or activity, considers whether any previously relied upon evidence has been called into doubt, and determines whether there is still a sufficient evidentiary basis for satisfying current CDC validation requirements. The absence of any new evidence linking the inmate to gang activity or gang members is neither noted nor considered relevant. As long as the initial evidence used to validate the inmate still meets CDC requirements and has not been called into doubt, the inmate will be retained in the SHU as a validated gang affiliate.[283]

III.

CONCLUSIONS OF LAW

F.

SEGREGATION OF PRISON GANG AFFILIATES

The Due Process clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty or property, without due process of law." Under defendants' current policy, inmates who are found to be affiliated with a prison gang are removed from the general prison population and confined in the SHU for an indeterminate term. Whether this practice is implemented in a manner consistent with constitutional guarantees of procedural due process is the issue before the Court. Defendants assert that current procedures satisfy or exceed due process requirements, while plaintiffs argue that they are constitutionally flawed in a number of respects. These flaws fall into two categories: (1) flaws in the procedural safeguards afforded to inmates suspected of gang affiliation, and (2) flaws in procedures governing the periodic review of inmates assigned to indeterminate terms in the SHU for prison gang affiliation.[284]

To resolve this dispute we must first determine whether plaintiffs have a constitutionally protected liberty interest in remaining in the general prison population. *Toussaint IV*, 801 F.2d at 1089. If so, we must determine the amount of process due before they can be deprived of this liberty interest because of affiliation with a prison gang. *Id.* at 1098.[285] Finally, we must assess whether the plaintiff class has, in fact, been denied the quantum of process required by the Constitution.

1.

EXISTENCE OF A LIBERTY INTEREST

A liberty interest may arise from either of two sources: the due process clause itself or state law. *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 869 (1982); *Smith v. Noonan*, 992 F.2d 987, 989 (9th Cir. 1993); *Toussaint IV*, 801 F.2d at 1089. State law[286] creates a liberty interest if it substantively limits official discretion by establishing particularized standards or criteria that govern state decision-makers. Kentucky Dep't of *Corrections v. Thompson*, 490 U.S. 454, 462, 109 S.Ct. 1904, 1909 (1989); *Conner v. Sakai*, 994 F.2d 1408, 1411 (9th Cir. 1993), amended 15 F.3d 1463 (9th Cir. 1993), cert. granted in part, 115 S.Ct. 305 (1994). The state must also require, "in explicitly mandatory language," that if these standards or criteria are met, a particular outcome must follow. Kentucky Dep't of Corrections, 490 U.S. at 463, 109 S.Ct. at 1910 (internal quotations omitted); *Conner*, 994 F.2d at 1411; *Toussaint IV*, 801 F.2d at 1095 (regulations that follow a "shall/unless" formula create liberty interest); *Nelson v. Bryan*, 607 F. Supp. 959, 961 (D. Nev. 1985)(state creates liberty interest by requiring decision-makers to base decisions on objective and defined criteria).

The liberty interest at issue here is the interest of prisoners in remaining in the general prison population and not being confined in a security housing unit. As the higher courts have held, the due process clause itself does not protect such an interest. See, e.g., *Hewitt*, 459 U.S. at 467-468, 103 S.Ct. at 869-70; *Smith v. Noonan*, 992 F.2d at 989.

In *Toussaint IV*, however, the Ninth Circuit held that sections 3335(a) 3336, and 3339(a) of Title 15 of the California Code of Regulations, taken together, do create a constitutionally protected liberty interest to be free from placement in administrative segregation. 801 F.2d at 1097-98. As the Court explained, these regulations combine to prohibit state officials from retaining an inmate in administrative segregation unless one of three substantive predicates is met: (1) the inmate presents an immediate threat

to the safety of the inmate or others, (2) the inmate endangers institution security, or (3) the inmate jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity. As such, they sufficiently fetter official decision-making to create a protected liberty interest.

Although not addressed by *Toussaint IV*, we conclude that another California regulation, Cal. Code Regs. tit. 15, §3341.5(c)(3), also creates a liberty interest in freedom from administrative segregation. That section provides that an inmate shall not be retained in the SHU beyond 11 months absent a classification committee determination that retention in the SHU is required because of one of three specific reasons: "(A) The inmate has an unexpired [Minimum Eligible Release Date] from the SHU, (B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of a investigation into suspected criminal activity or serious misconduct, [or] (C) The inmate has voluntarily requested continued retention in segregation." Cal Code Regs. tit. 15, § 3341.5(c)(3).

Like the regulations examined in *Toussaint IV*, section 3341.5(c) explicitly and substantively limits the exercise of official discretion by imposing a mandatory duty on state officials to release an inmate from the SHU unless one of the above three predicates is met. Accordingly, section 3341.5(c) provides a separate basis for plaintiffs' liberty interest in being housed in the general prison population with respect to those inmates that have been confined in the SHU for over 11 months.[287]

Given the above, defendants may not confine prison gang members in the SHU, nor hold them there on indeterminate terms, without providing them the quantum of procedural due process required by the Constitution.

2.
Amount of Process Required
by the Due Process Clause

The Supreme Court has twice addressed the amount of due process that the Constitution affords inmates with protected liberty interests. In *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963 (1974), the Court considered the process required before a prison official can punish an inmate for serious misconduct after incarceration. Although the specific sanction at issue was denial of "good-time" credits, *Wolff* applies equally where the sanction is disciplinary segregation in a security housing unit such as the Pelican Bay SHU. Id. at 571, n. 19, 94 S.Ct. at 2982, n.19; Conner, 994 F.2d at 1410-13; *Toussaint IV*, 801 F.2d at 1099.

After balancing the competing interests at stake, the Court held that the inmate in *Wolff* was entitled to the following due process protections: (1) advance written notice of the disciplinary charges, (2) an opportunity to call witnesses and present evidence if doing so would not unduly jeopardize institutional safety or correctional goals, (3) assistance from another inmate or prison staff if the inmate is illiterate or the complexity of the issues makes it difficult to collect and present the evidence necessary for an adequate comprehension of the case, and (4) a written decision and summary of the evidence relied on. Wolff, 418 U.S. at 563-70, 94 S.Ct. at 2978-82. The prison was not, however, required to permit the cross-examination of witnesses or the participation of counsel. Id. at 567-69, 94 S.Ct. at 2979-81. In Hewitt, 459 U.S. 460, 103 S.Ct 864, the Supreme Court considered the amount of process required before the state can transfer an inmate to a security housing unit for "administrative" reasons. This type of "administrative segregation" is not utilized to punish the inmate for specific misconduct, as was the case in *Wolff*, but to further some legitimate need of the prison. Taylor v. Koon, 682 F. Supp. 475, 477 (D.Nev. 1988). Thus, administrative segregation may properly be used to protect the prisoner's safety, to protect other inmates from a particular prisoner, to break up potentially disruptive groups of inmates or to await completion of an investigation into misconduct charges. *Hewitt*, 459 U.S. at 468, 103 S.Ct. at 869-70, 874; *Toussaint IV*, 801 F.2d at 1098.

The Court held that the amount of process required in cases of administrative segregation is substantially less than that required in *Wolff*-type proceedings. *Hewitt*, 459 U.S. at 473-476, 103 S.Ct. at 872-874. As the Ninth Circuit recently summarized:

Due process, in the administrative context, merely requires that the prison officials provide the inmate with some notice of the charges against him and an opportunity to present [the inmate's] views to the prison official charged with deciding whether to transfer [the inmate] to administrative segregation.

Barnett v. Centoni, 31 F.3d 813, 815 (9th Cir. 1994)(internal quotations omitted). These requirements must be satisfied within "a reasonable time after the prisoner is segregated." *Toussaint IV*, 801 F.2d at 1100. Due process does not require "detailed written notice of charges, representation by counsel or counsel-substitute, an opportunity to present witnesses, or a written decision describing the reasons for placing the prisoner in administrative segregation." *Toussaint IV*, 801 F.2d at 1100-01.

Thus, under *Wolff* and *Hewitt*, the amount of process due depends, in significant part, on whether the prisoner's transfer to the SHU is characterized as disciplinary or administrative. Neither case, however, examines whether transferring an inmate to an indeterminate term in the SHU for gang affiliation is administrative or disciplinary. In Toussaint v. Rowland (*Toussaint V*), 711 F. Supp. 536 (N.D. Cal. 1989), the district court assumed, without deciding, that segregation of prison gang members in a security housing unit falls under the ambit of administrative segregation. See *id.* at 539, n. 9. See also *Toussaint VI*, 926 F.2d at 804 (Wiggins, J., concurring). The court concluded, however, in affirming a report submitted by the court-appointed Monitor, that "difficulties engendered by determining prison gang membership may create a need for special due process procedures to ensure compliance with constitutional requirements." *Toussaint V*, 711

F. Supp. at 541.[288] The court also affirmed the Monitor's finding that inmates subject to indeterminate segregation have a more significant liberty interest than was present in *Hewitt*, which only involved a temporary transfer to administrative segregation pending investigation into misconduct charges. *Id.* at 541-42. See *Mims v. Shapp*, 744 F.2d 946, 953-54 (3rd Cir. 1984).

Accordingly, the district court held that due process required the following procedures with respect to inmates suspected of gang affiliation: (1) the prisoner should be afforded the opportunity to present his views to the CAC [Criminal Activities Coordinator, now referred to as the IGI] prior to any decision to retain the prisoner in segregation for an indeterminate period,[289] (2) the CAC must designate the prisoner as being a current active member of a prison gang prior to any ICC decision to retain the prisoner in segregation for an indeterminate period, and (3) the CAC must reevaluate his determination regarding gang membership of the prisoner every 90 days. *Toussaint V*, 711 F. Supp. at 540, 541-42, n.15, 543; Monitor's Report at ¶ 47. On appeal, the Ninth Circuit expressly affirmed that inmates must be allowed to present their views to the CAC, but held that it was within defendants' discretion to hold reviews of administrative segregation decisions every 120 days, rather than every 90 days. *Toussaint VI*, 926 F.2d at 803.

In addition to purely procedural protections, due process also requires prison officials to have an evidentiary basis for their decisions to confine an inmate to a security housing unit, whether the purpose of that segregation is disciplinary or administrative. *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774 (1985). In particular, due process requires that such decisions be supported by "some evidence." *Id.; Toussaint IV*, 801 F.2d at 1103-06. This standard is only "minimally stringent." *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987). The relevant inquiry is whether there is any evidence in the record that could support the conclusion reached by the prison decision-makers. *Id.*

The Ninth Circuit has also held, in the context of prison disciplinary proceedings, that the information relied upon must have at least "some indicia of reliability." *Cato*, 824 F.2d at 705 (citing *Mendoza v. Miller*, 779 F.2d 1287, 1295 (7th Cir. 1985)), *cert. denied*, 476 U.S. 1142 (1986). When this information includes statements from confidential informants, as is often the case, the record must contain "some factual information from which the committee can reasonably conclude that the information was reliable." *Zimmerlee v. Keeney*, 831 F.2d 183, 186 (9th Cir. 1987), *cert. denied*, 487 U.S. 1207 (1988). The record must also contain "a prison official's affirmative statement that safety considerations prevent the disclosure of the informant's name." *Id.*

In *Toussaint IV*, the Ninth Circuit confirmed that in administrative segregation proceedings due process does not require disclosure of the identity of confidential informants, 801 F.2d at 1101, but it has yet to squarely address whether the "indicia of reliability" standards applied in the context of disciplinary hearings also apply when inmates are placed in administrative segregation.

The district court in *Toussaint* did, however, conclude that "defendants have the burden [of showing] some evidence in the record to support a [administrative] segregation decision, and that evidence must have some indicia of reliability." *Toussaint V*, 711 F. Supp. at 542 (internal quotations omitted). We agree that the evidence relied upon to confine an inmate to the SHU for gang affiliation must have "some indicia of reliability" to satisfy due process requirements.

The "touchstone of due process is protection of the individual against arbitrary action of government." *Wolff*, 418 U.S. at 558, 94 S.Ct at 2976. Allowing prisons to consign an inmate to the SHU for an indeterminate term, without ascertaining whether the information relied upon has "some indicia of reliability," fails to protect against such arbitrary action. This is particularly so given the realities of prison life. As one court observed:

In a prison environment, where authorities must depend heavily upon informers to report violations of regulations, an inmate can seek to harm a disliked fellow inmate by accusing that inmate of wrongdoing. Since the accuser is usually protected by a veil of confidentiality that will not be pierced through confrontation and cross-examination, an accuser may easily concoct the allegations of wrongdoing. Without a bona fide evaluation of the credibility and reliability of the evidence presented, a prison committee's hearing would thus be reduced to a sham which would improperly subject an inmate accused of wrongdoing to an arbitrary determination. *Kyle v. Hanberry*, 677 F.2d 1386, 1390 (11th Cir. 1982).

Nor can we ignore that the information relied upon may often be obtained, at least in part, from "debriefings." While some effort is made to assess the accuracy of such information, the clear incentive to fabricate or exaggerate information in order to gain release from the SHU significantly heightens the risk that false information will be relied upon.[290]

Not only is the risk of false information high, but the consequences of an improper validation—confinement in the SHU for an indeterminate term, with all its attendant restrictions and adverse impacts on parole —are severe. Moreover, inmates improperly validated as gang members have little chance of rectifying such an error or otherwise obtaining release from the SHU. Such inmates will be unable to "debrief," since, never having been gang members, they will not have acquired gang information that can be divulged; nor are they likely to posses any means of affirmatively proving that the information relied upon is false. Finally, we note that defendants have not asserted that applying a "reliability" standard in administrative segregation proceedings would unduly hinder those proceedings or otherwise jeopardize institutional security.

Accordingly, it is our conclusion that, in order to

satisfy due process, an inmate may not be confined to the SHU for gang affiliation unless the record contains "some factual information" from which the IGI and classification committee "can reasonably conclude that the information was reliable." *Zimmerlee*, 831 F.2d at 186. Such a requirement will "help prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens." *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774.

3.

PLAINTIFFS' SPECIFIC OBJECTIONS

Having in the mind the above guidance, we now turn to plaintiffs' specific objections regarding the amount of process afforded to Pelican Bay inmates transferred to the SHU based on their membership or association with a prison gang.

a.

FAILURE TO PROVIDE WOLFF PROTECTIONS

Under current policy, prison gang members and associates are assigned to administrative segregation for indeterminate terms on the ground that they pose a risk to the security of the prison. Plaintiffs contend that although defendants invoke the rubric of administrative segregation, their policy of confining gang affiliates in the SHU is in fact designed to punish and deter rather than to advance legitimate administrative purposes. Thus, they urge the Court to require the more stringent due process safeguards required by Wolff. There is no dispute that such safeguards are not currently provided.

We begin with the premise that prison gang membership and association is a threat to institutional security, and that therefore such members and associates are properly subject to administrative segregation. Cf. *Toussaint VI*, 926 F.2d at 804 (Wiggins, J., concurring); *Toussaint V*, 711 F. Supp. at 540-43. Plaintiffs ask us to find, however, that the harsh conditions in the Pelican Bay SHU render such segregation disciplinary rather than administrative.

As plaintiffs point out, the conditions imposed on gang members in the SHU are the same conditions imposed on inmates who are transferred to the SHU for set terms as punishment for specific misconduct pursuant to *Wolff* proceedings. Nor is there any disputing that the conditions in the SHU, described more fully in section II(D)(1), *supra*, are severe.

Indeed, there is little doubt that the SHU's decidedly harsh regimen contains an element of punishment and creates a deterrent effect. As one gang investigator agreed, the policy of sending gang members to the Pelican Bay SHU "send[s] a message to other prisoners, that if you join a gang you're going to get sent to Pelican Bay and life's going to be tough." Hawkes Depo. at 530-531; see also *Gomez Tr.* at 28-4461 (acknowledging deterrent effect). However, this is largely an inevitable byproduct of the fact that inmates in segregation are typically subject to restrictions that are substantially more onerous than those imposed on the general population. This fact alone, however, does not justify greater procedural protections than would otherwise be required in cases of administrative segregation. See *Toussaint IV*, 801 F.2d at 1099-1100 (fact that conditions in administrative segregation may involve "severe hardships" including denial of access to vocational, educational, recreational, and rehabilitative programs, restrictions on exercise, and confinement to one's cell for lengthy periods, does not justify a heightened level of due process).

Nor are conditions in the SHU, when taken as a whole, so extreme in relation to defendants' stated administrative purposes that we must infer that their actual primary purpose is to "punish" or discipline gang members. Prison gang members rely on communication networks and opportunities for interaction to maintain the organization and carry out gang activities. For the most part, the conditions in the SHU serve to undermine these networks and opportunities by separating gang members from one another, and others, through a regimen of social isolation.[291] Thus, the nature of the conditions, by itself, does not persuade us that prison gang members are transferred to the SHU primarily as discipline for specific misconduct. Accordingly, we decline to find that Wolff governs the segregation of prison gang members and associates at Pelican Bay.[292]

b.

FAILURE TO PERMIT HEARING BEFORE SSU AGENTS

As set forth in the findings of fact, inmates are given an opportunity to present their views to the IGI before the IGI submits a validation package to the Special Services Unit ("SSU") in Sacramento. They are also given an opportunity to present their views to the Institutional Classification Committee ("ICC") prior to being assigned to the SHU for an indeterminate term for gang affiliation. They are not, however, permitted to present their views to the SSU agent who actually validates the inmate as a prison gang member after reviewing the validation package submitted by the IGI.

As *Hewitt* makes clear, inmates assigned to administrative segregation are entitled to an informal hearing where they can present their views to the official "charged with deciding whether to transfer [the inmate] to administrative segregation." *Hewitt*, 459 U.S. at 476, 103 S.Ct. at 874. As plaintiffs emphasize, only SSU agents can formally validate an inmate as a gang member or associate. Moreover, such a validation is usually the functional equivalent of deciding that the inmate will be transferred to the SHU for gang affiliation. Therefore, plaintiffs argue, defendants must afford inmates an opportunity to present their views to the SSU agent charged with reviewing the validation package submitted by the IGI.

While plaintiffs' argument has superficial appeal, it promotes form over substance. Although the SSU agent formally validates the inmate, it is clear that the critical "decisionmaker" in the process is still the IGI. As detailed

in the factual findings, the SSU plays a technically important but substantively nominal role in the process. Nor are we persuaded that IGIs are unaware of the significance of their role. Given that inmates have an opportunity to present their views to the IGI and the ICC, the failure to provide a hearing before the SSU officer does not violate due process.[293]

c.

FAILURE TO PROVIDE FOR MEANINGFUL HEARINGS

Plaintiffs contend that the hearings that are provided before the IGI and ICC are perfunctory formalities because prison officials have already made up their minds before meeting with the inmate. As such, the hearings violate the fundamental tenet of due process that opportunities to be heard must be granted "in a meaningful manner." *Parratt v. Taylor*, 451 U.S. 527, 540, 101 S.Ct. 1908, 1915, (1981), overruled on other grounds in *Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662 (1986); see also *Toussaint IV*, 801 F.2d at 1102 (affirming district court's imposition of substantive criteria to "assure that plaintiffs' due process rights are not meaningless gestures").

While the potential for hollow gestures can not be denied, plaintiffs have not presented evidence that hearings before the IGI are meaningless as matter of course so as to establish liability on a classwide basis. Plaintiffs rely on a deposition excerpt from IGI Briddle in which he admits that his mind had already been "made up" with respect to a particular inmate. Briddle Depo. at 335-36.[294] However, we can not infer from this particular example a systematic failure to provide meaningful hearings. Indeed, Briddle also testified that the inmate's views can impact the process. See *Briddle* Depo. at 347 ("If after discussing the case with the inmate I have concerns or problems with pursuing the case as far as the validation goes, the opportunity would be that the validation package would not be sent. And we've actually gone back and we bring the inmates back and some interaction does occur.").

With respect to the ICC, it is clear that the Committee is predisposed to transfer any validated inmate to the SHU. However, this simply reflects prison policy regarding prison gangs and underscores the importance of the hearing with the IGI, particularly in light of the Court's finding that the IGI, and not the SSU, is the critical decision-maker. When we consider the opportunities for hearing before the IGI and the ICC together, and the record as a whole, we decline to find that the process provided to the class is no more than a meaningless gesture.

d.

RELIABILITY DETERMINATIONS FOR CONFIDENTIAL INFORMANTS

Under California regulations, prison officials may conclude that the information provided by a confidential informant is "reliable" if one of five criteria is met: (1) the confidential informant ("CI") has previously given information which has proved to be true, (2) other confidential sources have independently provided the same information, (3) the information provided by the CI is self-incriminating, (4) part of the information provided is proven true, or (5) the confidential source is the victim. Cal. Code Regs. tit. 15 § 3321(c).

The Monitor in *Toussaint* considered the first four criteria (apparently the fifth criterion is a subsequent development) and found that they "may be appropriate safeguards of the reliability of confidential information, *provided that they are not applied in a rote fashion without regard to the realities of the particular informant report under consideration.* However, the ultimate judgement as to whether an ICC has sufficient indicia of the reliability of confidential information to use that information as the basis for segregating a prisoner must always be made by each ICC on a case-by-case basis." Monitor's Report at ¶ 58 (emphasis added). This aspect of the Monitor's report was adopted by the district court. *Toussaint V*, 711 F. Supp. at 543.

Plaintiffs now challenge the fifth criterion on the ground that a status of "victim" does not imbue the informant with any reliability, and that, in fact, such a person may well harbor ulterior motives to retaliate against the aggressor. Such potential undoubtedly exists. However, we conclude that, like the other criteria, it may be an appropriate safeguard of reliability *so long as* it is "not applied in a rote fashion without regard to the realities of the particular informant report under consideration." Monitor's Report at ¶ 58.

Plaintiffs also assert that defendants ignore this important caveat and routinely apply all five criteria in a "rote fashion." The evidence in the record, however, is too sparse to draw allow us to draw such a conclusion. This does not, of course, preclude any individual inmate who believes he was wrongfully validated from challenging his validation on the ground that the record lacks "some indicia of reliability" with respect to the confidential information relied upon. In such a case, the prison must do more than simply invoke "in a rote fashion" one of the five criteria. It must also show that the "realities of the particular informant report" were taken into consideration.

e.

RELIANCE ON HEARSAY

Plaintiffs also assert, citing Cato, 824 F.2d at 704-06, that defendants violate the evidentiary standards discussed above because IGIs rely on hearsay statements. Cato, however, did not preclude the use of hearsay per se. See also Hewitt v. Helms, 655 F.2d 487, 502 (3rd. Cir. 1981), rev'd on other grounds, 459 U.S. 460 (1983)("We realize that in prison disciplinary proceedings hearsay may serve a useful purpose and we do not preclude it"). Rather, Cato held that where the only evidence in the record is a single, uncorroborated, hearsay statement, this does not constitute "some evidence" that has "some

indicia of reliability." Cato, 824 F.2d at 705. Plaintiffs have not demonstrated that defendants are failing to comply with the holding in Cato.

f.

INADEQUACY OF PERIODIC REVIEWS

(i)

Timing of Reviews

Administrative segregation can not be used as a "pretext for indefinite commitment of an inmate." *Hewitt*, 459 U.S. at 477 n.9, 103 S.Ct. at 874 n.9. Thus, prison officials must conduct some sort of periodic review of the confinement of prisoners in administrative segregation. *Id.*; *Toussaint IV*, 801 F.2d at 1101.

California regulations provide that inmates confined to the SHU for indeterminate terms must be reviewed by a classification committee every 180 days for consideration of release to the general inmate population. Cal. Code Regs. tit. 15, § 3341.5(c). Plaintiffs contend that a 180-day timetable violates constitutional requirements. See *Toussaint VI*, 926 F.2d at 803 (finding 120-day schedule permissible without deciding whether 120 days represents outer constitutional limit). We conclude, however, that this issue is not ripe for review. Despite the 180-day allowance in the regulations, the record reflects that defendants actually conduct reviews at Pelican Bay every 120 days; plaintiffs have identified no class member that has been required to wait 180 days for a classification review. Nor have plaintiffs submitted any evidence indicating that the current 120-day schedule is likely to be extended to 180 days in the future.

(ii)

FAILURE TO CONSIDER LACK OF GANG ACTIVITY OR "EXCULPATORY EVIDENCE"

As discussed above, due process requires that there be "some evidence" with "some indicia of reliability" to support an inmate's placement in administrative segregation. *Toussaint IV*, 801 F.2d at 1103-06. This same standard applies to subsequent periodic reviews conducted every 120 days by the UCC, and annually by the ICC. Under current policy, an inmate is considered to be a security threat so long as the inmate is validated as a gang affiliate and has not yet debriefed. Thus, a validated inmate will continue to be retained in the SHU, absent a successful debriefing, even if the inmate has, for some period of time "remained clean" — i.e., there is no evidence of continued commitment to the gang, as reflected by participation in gang activity or association with other gang members. For example, an inmate who was validated in 1979, but has not engaged in any gang activity or otherwise associated with gang members since then, will still be retained in the SHU in 1994, fifteen years later, absent a successful debriefing. The lack of continuing evidence of gang membership or activity is simply considered irrelevant since the justification for administration segregation is the fact of gang membership itself, not any particular behavior or activity.

Plaintiffs contend that this policy improperly fails to consider "exculpatory" evidence. What plaintiffs are essentially arguing, however, is that, at some point, there is no longer "some evidence" to retain an inmate in the SHU, despite the absence of a debriefing, where the inmate has not engaged in any prison gang activity and there is no new evidence confirming the inmate's continued association with the prison gang.

Plaintiffs' objection must fail in light of our factual findings. As set forth in section II(F), *supra*, the record supports defendants' position that gang members and associates are threats to prison security, and that inmates who join such gangs join "for life." As such, the fact that the inmate may not have affirmatively engaged in gang activity after confinement in the SHU does not, in and of itself, vitiate the inmate's gang membership. Therefore, the premise for finding that the inmate is a security risk—gang membership or association—is not affected by the lack of subsequent gang activity. We also note that opportunities for such activity in the SHU are extremely limited, see section II(D)(1), *supra*, although, as defendants acknowledge, a few inmates have nonetheless managed to continue some limited gang activity from the SHU. Accordingly, defendants do not violate due process by failing to give persuasive value to the fact that an inmate's record reflects an absence of gang-related activity or association over some period of time.[295]

(iii)

RELIANCE ON EVIDENCE PREVIOUSLY REJECTE

As set forth in the factual findings, the SSU may reject any number of items submitted in a validation package and still validate an inmate, so long as there are at least three independent source items that the SSU does not reject. The rejection of such items, however, is not recorded in the inmate's record. This practice creates a disturbing likelihood that the UCC or ICC, as assisted by the IGI, will improperly determine that there is still "some evidence" that an inmate is gang affiliated, in those cases where some of the items initially relied upon to validate the inmate are later called into doubt.

The following example illustrates this point. A validation package, containing five items of evidence, is submitted to the SSU. Rejecting two of the items, the SSU validates the inmate based on the remaining three. Two of these three items are later discredited based on subsequent information showing that the informants who provided the information are no longer considered reliable. This leaves only one circumstantial item of evidence supporting the validation which, standing alone, fails to satisfy the "some evidence" standard. However, the prison officials involved in the inmate's periodic review will erroneously conclude that there is "some evidence" to support the continued validation and segregation of the inmate because they will be unaware that the SSU has already determined that two of the remaining three items

can not be relied upon. This flaw can not simply be dismissed as a matter of internal management. The very purpose of the "some evidence" requirement is to protect inmates from confinement in the SHU on arbitrary or baseless grounds. Yet, under defendants' procedures, this minimum safeguard against arbitrary deprivations may be undermined in those very instances where the need for careful periodic review is needed most. If the "some evidence" requirement is to have meaning, then the decision-makers applying that standard can not be allowed to unknowingly rely on evidence previously rejected by the SSU. Accordingly, we conclude that due process requires that, when the SSU rejects an item of evidence, this fact must be included in the inmate's central file so that it will be made available to those participating in the inmate's periodic review.

IV
SUMMARY

Throughout these proceedings, we have been acutely sensitive to the fact that our role in Eighth Amendment litigation is a limited one. Federal courts are not instruments for prison reform, and federal judges are not prison administrators. We must be careful not to stray into matters that our system of federalism reserves for the discretion of state officials. At the same time, we have no duty more important than that of enforcing constitutional rights, no matter how unpopular the cause or powerless the plaintiff. The challenge, then, in prison condition cases, is to uphold the Constitution in such a manner that respects the state's unique interest in managing its prison population. It is a challenge that requires us to draw constitutional lines when necessary, yet minimize any intrusion into state affairs. It was with these principles in mind that we studied the voluminous record in this case and rendered our findings of fact and conclusions of law set forth above. And it is these principles that have compelled us to conclude that defendants have unmistakably crossed the constitutional line with respect to some of the claims raised by this action. In particular, defendants have failed to provide inmates at Pelican Bay with constitutionally adequate medical and mental health care, and have permitted and condoned a pattern of using excessive force, all in conscious disregard of the serious harm that these practices inflict. With respect to the SHU, defendants cross the constitutional line when they force certain subgroups of the prison population, including the mentally ill, to endure the conditions in the SHU, despite knowing that the likely consequence for such inmates is serious injury to their mental health, and despite the fact that certain conditions in the SHU have a relationship to legitimate security interests that is tangential at best.

As to the above matters, defendants have subjected plaintiffs to "unnecessary and wanton infliction of pain" in violation of the Eighth Amendment of the United States Constitution. We observe that while this simple phrase articulates the legal standard, dry words on paper can not adequately capture the senseless suffering and sometimes wretched misery that defendants' unconstitutional practices leave in their wake. The anguish of descending into serious mental illness, the pain of physical abuse, or the torment of having serious medical needs that simply go unmet is profoundly difficult, if not impossible, to fully fathom, no matter how long or detailed the trial record may be.

The record does not, however, sustain other allegations advanced by plaintiffs. Conditions in the SHU may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time. They do not, however, violate exacting Eighth Amendment standards, except for the specific population subgroups identified in this opinion. We have also found for defendants with respect to plaintiffs' allegations regarding the use of force between inmates. Finally, with the exception of one issue, we have rejected plaintiffs' challenges to the procedures governing the assignment of prison gang members to the SHU for indeterminate terms.[296]

V
APPROPRIATE RELIEF AND FURTHER PROCEEDINGS

Once constitutional violations have been found, federal courts have broad equitable powers to formulate appropriate relief. *Stone v. City and County of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992), *cert. denied*, 113 S.Ct. 1050 (1993); *Hoptowit*, 682 F.2d at 1245. We should only exercise, however, the least power necessary to accomplish this goal. Courts must "'fashion a remedy that does no more and no less than correct [the] particular constitutional violation.'" *Doty*, 37 F.3d at 543; Toussaint IV, 801 F.2d at 1086 ("Injunctive relief against a state agency or official must be no broader than necessary to remedy the constitutional violation"). Such a remedy may include relief that the Constitution would not of its own force initially require, but only "if such relief is necessary to remedy a constitutional violation." *Toussaint IV*, 801 F.2d at 1087; *Gluth v. Kangas*, 951 F.2d 1504, 1510 n.4 (9th Cir. 1991).

To facilitate a remedy that both cures the constitutional deficiencies and minimizes intrusion into prison management, most district courts require the development and implementation of a remedial plan that is narrowly tailored to correct the specific constitutional violations at issue. See, e.g., *Casey*, 834 F. Supp. at 1552-53; *Lightfoot*, 486 F. Supp. at 527-528. We see no reason to deviate from this approach in the case at bar. Injunctive or equitable relief is appropriate, and indeed necessary, where there is a "contemporary violation of a nature likely to continue." See *Farmer*, 114 S.Ct. at 1983 (internal quotation omitted); *Williams v. Lane*, 851 F.2d 867, 885 (7th Cir. 1988), *cert. denied*, 488 U.S. 1047 (1989)("District courts may order appropriate injunctive relief to prevent any continuing deprivation of an inmate's constitutional

rights"). We are firmly convinced that the constitutional violations identified above will not be fully redressed absent intervention by this Court.

In reaching this conclusion we have heeded the United States Supreme Court's recent admonition that, where injunctive relief is sought, the plaintiff must show not only that defendants possess the subjective state of mind necessary to establish Eighth Amendment liability, but that this state of mind will persist beyond the instant litigation. *Farmer*, 114 S.Ct. at 1983. We must thus evaluate defendants "attitudes and conduct" not only as of the time the suit was filed, but also during the litigation and "into the future." *Farmer*, 114 S.Ct. at 1983.

Our assessment of defendants' current attitudes and conduct only reinforces our view that injunctive relief is not only appropriate in this case, but perhaps "indispensable, if constitutional dictates — not to mention considerations of basic humanity — are to be observed in the prison[]." Stone, 968 F.2d at 861. Throughout this litigation, defendants have shown no indication that they are committed to finding permanent solutions to problems of serious constitutional dimension. On the contrary, defendants have expended most of their energies attempting to deny or explain away the evidence of such problems. Even when defendants modify certain policies (as they have done in the use-of-force area), they do not argue that such changes evidence an intent to address the problems raised by this complaint; rather, defendants typically assert that they were precipitated by unrelated matters.[297]

In short, we glean no serious or genuine commitment to significantly improving the delivery of health care services, correcting the pattern of excessive force, or otherwise remedying the constitutional violations found herein which have caused, and continue to cause, significant harm to the plaintiffs. Indeed, the Court is left with the opinion that, even given the evidence presented at trial, defendants would still deny that any condition or practice at Pelican Bay raises any cause for concern, much less concern of a constitutional dimension.

Nor are we confident, given the history of other prison litigation, that defendants will promptly rectify constitutional deficiencies absent intervention by this Court. See, e.g., *Thompson v. Enomoto*, 915 F.2d 1383, 1387 (9th Cir. 1990), *cert. denied*, 112 S.Ct. 965 (1992)(Court Monitor reports showed that state prison officials had not complied with decree governing conditions for death row inmates in 1988 and 1989); *Gates v. Deukmejian*, No. Civ. S-87-1636 LKK (October 27, 1994 Order at 8)(finding state prison officials in contempt of decree after "four-year pattern of delay and obstruction regarding the planning and implementation of a satisfactory OPP [Outpatient Psychiatric Program]"). The Office of Legislative Analyst has also observed that defendants have failed over the years to undertake adequate planning to address the medical needs of inmates in California prisons. See *Trial* Exh. P-3958 at 32 ("Our review indicates that, although the CDC has made some improvements in administration of its medical programs, the programs are too often characterized by a lack of adequate long-term planning, and 'crisis management,' often brought about by litigation. The lack of long-term planning has been apparent over the years.").

Considering all of the above, we conclude that injunctive relief is both necessary and appropriate to ensure an effective remedy of the constitutional violations at issue here. We also believe, given the above, that the participation of counsel for both parties, as well as a Special Master experienced in prison administration, will be essential to the formulation of a remedy that is both effective and narrowly tailored.

The appointment of a Special Master, with appropriately defined powers, is within both the inherent equitable powers of the court and the provisions of Rule 53 of the Federal Rules of Civil Procedure. *Ruiz*, 679 F.2d at 1159-62.

In this case, the assistance of a Special Master is clearly appropriate. Developing a comprehensive remedy in this case will be a complex undertaking involving issues of a technical and highly charged nature. The Court strongly believes that the participation of a well-qualified and impartial Special Master will greatly assist the Court in developing an appropriate remedy. The assistance of a Special Master will also be necessary to properly monitor the implementation of any remedy that this Court may order. Such a task will require a substantial expenditure of time and the expertise of someone experienced in prison administration. See *Stone*, 968 F.2d at 859 n. 18 (noting that federal courts "repeatedly have approved the use of Special Masters to monitor compliance with court orders and consent decrees") (citations omitted); *Williams*, 851 F.2d at 885 (appointment of a "knowledgeable and impartial special master to implement a just remedy consistent with the needs of prison security and legitimate penological goals should assure compliance with the court's ultimate decision"); *Ruiz*, 679 F.2d at 1159-62, 1165; *Mercer v. Mitchell*, 908 F.2d 763, 785 (11th Cir. 1990)(district court appointed temporary Special Master to recommend remedial measures); *Armstrong v. O'Connell*, 416 F. Supp. 1325, 1340 (E.D. Wis 1976)(Special Master to assist in developing remedy in school desegregation case). We note that the court is "not required to await the failure or refusal of [prison officials] to comply with [a] decree before appointing an agent [under Rule 53] to implement it." *Ruiz*, 679 F.2d at 1161.

In addressing the scope and substance of the remedial plan, the parties and Special Master are reminded that "federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the states." *Toussaint IV*, 801 F.2d. at 1087. However, it is also the duty and responsibility of this Court to ensure that constitutional rights are fully vindicated. Thus, the parties and Special Master should keep in mind that any equitable remedy must "strike a balance . . . that will both

redress the constitutional violations found and yet accord appropriate deference to the defendants' interests in running their own institution." *Fisher*, 692 F. Supp. at 1567. This requires that any remedial plan be minimally intrusive and accord substantial deference to defendants' legitimate interest in managing a correctional facility. *Toussaint IV*, 801 F.2d at 1087 (court has duty to fashion least intrusive remedy that is still effective). Accordingly, defendants' policy preferences *must* be given deference unless doing so would preclude an effective remedy. See *Hoptowit*, 682 F.2d at 1254 (remedy "should permit, if possible within constitutional restraints, the prison officials to use the general approach that they find most effective and efficient").

Accordingly, and good cause appearing, it is HEREBY ORDERED that:

1. Defendants' February 11, 1994 Renewed Motion for Partial Judgment under Fed. R. Civ. P. 52(c), and to Strike Declarations of Grassian and Start, is denied.

2. The Court appoints Mr. Thomas F. Lonergan[298] to serve as a neutral Special Master, pursuant to Fed. R. Civ. P. 53 and the inherent powers of the Court, for the purpose of assisting the Court to fulfill its obligation to fashion an appropriate remedy and to monitor the implementation of that remedy. The specific duties and powers of the Monitor, along with other terms of his appointment, shall be governed by a separate order of reference to be issued forthwith.

3. As soon as practicable, counsel for plaintiffs and defendants shall begin working together jointly and in good faith, with the Special Master, to develop a satisfactory remedial plan that addresses the constitutional violations set forth in the accompanying conclusions of law.[299] The parties shall submit their proposed remedial plan to the Court within 120 days from the date of this order. The Special Master shall provide a progress report to the Court every 30 days and may recommend, for good cause, an extension of time beyond the 120 day deadline.

4. The Court fully anticipates that an appropriate remedial plan can be fashioned through the above process. In the event, however, that the parties are unable to develop a mutually acceptable remedial plan within the 120 day deadline (or such later deadline as the Court may allow by way of extension), the parties shall, no later than 7 days after such deadline, jointly submit to the Court any part(s) of such a plan that have been agreed to, or a statement that the parties were unable to agree on any aspect of a remedial plan. The Special Master shall then make recommendations to the Court with respect to any remaining areas of disagreement, after giving consideration to the input and concerns of both parties. Any such recommendations shall be consistent with the principles set forth above, and shall be filed and served no later than 30 days after the parties have jointly submitted any part(s) of the plan that have been agreed to (or a statement that no such agreement was possible). The parties shall have an opportunity to file any objections to the Special Master's recommendations within 10 days after such recommendations have been served and filed with the Court.

5. This Court shall retain jurisdiction over this action until such time as the Court is satisfied that all constitutional violations found herein have been fully and effectively remedied.

IT IS SO ORDERED.

Date _____ January 1995

Thelton E. Henderson, Chief Judge United States District Court

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Editor's Note: Class action order of June 15, 1995 in re *Madrid* suit.

The Court is in receipt of the "Request for Extension of Time," submitted by the Special Master on May 8, 1995. The request outlines the progress of the remedial phase to date and reccommends an extension of the 120-day time limit for submission of the Remedial Plan by the parties.

Specifically, the Special Master recommends that an additional period of not more than 120 days be granted with the descretion vested in the special Master to determione special time frames within that limit for submission of remedial plans to the Court.

Having carefully considered the Special Master's request, it is HEREBY GRANTED. The 120-deadline set forth in this Court's January 10, 1995 decision and order for submission of the Remedial Plan shall be extended an additional 120 days with discretion vested in the Special Master to determine specific time frames within that limit for submission of remedial plans to the Court. It is clear that various aspects of the of the Remedial Plan dealing with discrete subject areas can, and should be, finalized on an earlier schedule.

The Court also stresses that by granting the extension of time it is not inviting counsel to slow the pace of the remedial process; rather, the Court expects counsel to complete their work on the Remedial Plan in an expeditious and diligent fashion. While excellent progress has been made in certain areas, substantial work still needs to occur in others. The Court also notes that it fully supports the Special Master's conclusions regarding the deficiencies identified in the plans regarding Use of Force and Prison Gang File Contents, [See Request at 7-8].

It goes without saying that the Court expects that all counsel and parties will fully cooperate with the Special Master and the experts hired by the Special Master. In this regard the Court is pleased that the Special Masters report states that defendants have been cooperative and given assistance in all areas requested [see Request at 5]; it is, however, concerned thta he also reports that, in some areas [specified later in the Request], defendants have been "less than forthright" with the Special Master. He states that " it is not clear if this was deliberate or the confusion caused by the multi-layered bureaucracy involved in the process." [*Id.*] To the extent that the "bu-

reaucracy" is hampering candor, defendants should be making every effort to streamline matters so that such problems do not reoccur; to extent that the Special Master finds any evidence of deliberate lack of candor, it will be delt with promptly and severely by the Court.

Accordingly, the Court underscores the importance of the Special Master's stated intent to closely monitior the good faith of all parties and to immediately notify the Court if such good faith is not apparent so that appropriate actions can be taken [See Request at 12].

IT IS SO ORDERED. Thelton E. Henderson, US District Court Judge.

Dated: 5/15/95

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[256]The CDC defines gangs as "any ongoing formal or informal organization, association or group of three (3) or more persons, which has a common name or identifying sign or symbol whose members and/or associates engage or have engaged, on behalf of that organization, association or group, in two or more activities which include planning, organizing, threatening, financing, soliciting, or committing unlawful acts or acts of misconduct classified as serious . . . ." CDC DOM § 55070.16. Pertinent portions of the DOM are contained in Trial Exh. D-37 or P-3515.

[257]The sections of title 15 that are referred to herein are contained in Trial Exh. P-4824.

[258]In this opinion, the term "gang affiliation" refers to inmates who have become either members or associates of a prison gang pursuant to DOM § 55070.19.2 and .3.

[259]This policy, however, is not absolute. A small but unspecified number of gang members or associates are permitted to remain in the general population at the discretion of prison officials.

[260]IGIs were previously known as Criminal Activity Coordinators or "CACs."

[261]At least one of the three sources must be a direct link to a validated member, such as "a validated member or former member identifying the inmate/parolee as an associate; correspondence with a validated member; photographed with a validated member; staff or informant observations of being in company with a validated member; identified as an associate by a validated associate who has a documented direct link; etc." DOM § 55070.19.3.

[262]Pending the SSU's review of the package, the inmate may be transferred to temporary administrative segregation in the SHU. If the inmate is retained in administrative segregation for ten days or more, he is entitled to a hearing before either a classification committee or a classification officer. Cal. Code Regs. tit. 15, § 3338(a), (b); Trial Exh. P-789 at 18059. Retaining an inmate in temporary administrative segregation for more than thirty days requires the approval of a Classification Staff Representative. Cal. Code Regs. tit. 15, § 3335(c)(1).

[263]This is not an uncommon occurrence. For example, SSU Agent Addison testified that packages frequently include items that are actually duplicative, and thus do not count as independent items: "[S]elf-admissions are a common example of that, where whoever is submitting the package will use self-admission on more than one occasion. It will show up like in a probation officer's report, this individual admits to the probation officer that, Yeah, I'm this. Then they get to the institution and he admits to the counselor. And that will frequently be submitted to us as two separate self-admissions and used as two separate pieces of documentation. So we'll count that once." Addison Depo. 153-54. Another example of a non-acceptable item of evidence is when "somebody's identified somebody as an EME sympathizer . . . . This inmate says this inmate is an EME sympathizer, and I believe what everybody says, but we don't allow that kind of designation to help us in validating somebody. 'Sympathizer' is not a term we'll use." Addison Depo. 155.

[264]An inmate who has completed the debriefing process must be formally validated by the SSU as a "drop out." The SSU is also empowered to change an inmate's validation status to "delete," which means that there is no longer a sufficient basis for concluding the inmate is a member or associate of a prison gang.

[265]California regulations allow for additional procedural protections, but these are not usually followed, at least in cases involving validated gang members. See Cal. Code Regs. tit. 15, §§ 3336(b), 3341, 3318 (providing that inmate should be permitted the help of a staff assistant or investigative employee if inmate is illiterate or the complexity of the issues impairs the inmate's ability to collect and present evidence in support of his case); Cal Code Regs. tit. 15, §3338(h)(permitting inmate to present evidence and call witnesses, if doing so will not "be unduly hazardous to the institution safety or correctional goals").

[266]Although California regulations provide that this review may occur every 180 days, see Cal. Code Regs. tit. 15 § 3341.5, the evidence in the record indicates that the routine practice is to conduct UCC reviews every 120 days. There was no evidence that reviews were delayed for 180 days.

[267]In addition to the UCC and ICC reviews, an inmate is entitled to appeal the decision to segregate him in the SHU through the prison grievance process. See Cal. Code Regs. tit. 15. §§ 3084.1, 3084.5.

[268]We note that plaintiffs have not mounted a constitutional challenge to defendants' debriefing policy. Thus, the Court has not considered or addressed this issue.

[269]The amount of process due in any given case presents a question of law for the Court to decide. *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985).

[270]State "law" may include statutes, codes, and regulations, including prison regulations, official policies and customs. See, e.g., *Toussaint IV*, 801 F.2d at 1097; *Clark v. Brewer*, 776 F.2d 226, 230 (8th Cir. 1985); *Hayward v.*

Procunier, 629 F.2d 599, 601 (9th Cir. 1980), *cert. denied*, 451 U.S. 937 (1981).

[271]The full text of section 3341.5(c)(3) reads as follows: "Release from SHU. An inmate shall not be retained in SHU beyond the expiration of a determinate term or beyond 11 months, unless the classification committee has determined before such time that continuance in the SHU is required for one of the following reasons: (A) The inmate has an unexpired MERD from SHU. (B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct. (C) The inmate has voluntarily requested continued retention in segregation."

[272]In his Third Special Report, the Monitor noted that "gang membership . . . is inherently virtually impossible to ascertain or discover with precision. The gang's only tangible existence is in the minds of the prisoners and prison officials. It is quite unlikely that any two individuals would independently list the same set of persons as members of the group." Third Special Report of the Monitor at ¶ 33 ("Monitor's Report").

[273]As the *Toussaint* Monitor observed, the ICCs "rely heavily upon any conclusion which the CAC has reached concerning the relationship between the prisoner and a gang . . . . Since at least 1984, the policy . . . has been to segregate all 'known' prison gang members. Therefore, the CAC's determination that a prisoner belongs to a prison gang carries with it the virtually inevitable consequence that the ICC will decide that the prisoner must remain in [segregation] . . . " Monitor's Report at ¶ 39.

[274]See also *McCollum v. Miller*, 695 F.2d 1044, 1049 (7th Cir. 1982)("not all prison inmates who inform on other inmates are telling the truth; some are enacting their own schemes of revenge"); *Baker v. Lyles*, 904 F.2d 925, 934 (4th Cir. 1990) (Sprouse, J., dissenting)("Well-known is the harshness of inprison 'justice' administered by prisoners against each other, including infamous means for the settling of scores based on jealousies, gang loyalties, and petty grievances. Unfortunately, there also still may be discrete instances wherein guards seek to retaliate against prisoners if they perceive that regular prison procedures will not adequately redress their grievances").

[275]We would agree, however, as stated in section III(D)(1), *supra*, that certain conditions in the SHU appear tenuously related to the risks posed by prison gangs. For example, the particularly severe sterility of the environment, the absence of any outside view, and the refusal to provide any recreational equipment in the exercise pen, when combined with the other restrictions imposed in the SHU, appear more punitive than security related. However, as stated above, we can not say that the conditions in the SHU, when taken as a whole, are so extreme in relation to their asserted administrative purpose that we must infer that they are, in fact, imposed primarily for purposes of punishment, with respect to prison gang members.

[276]Given our conclusion that gang affiliates are transferred to the SHU for primarily administrative, rather than punitive, reasons for purposes of fourteenth amendment due process analysis, we do not reach plaintiffs' First Amendment and Eighth Amendment proportionality claims. Of course, the conditions in the SHU must still comport with Eighth Amendment requirements governing conditions of confinement. Plaintiffs' claim regarding the constitution- ality of SHU conditions under the Eighth Amendment is addressed in section III(D), supra.

[277]In the *Toussaint* litigation, the Ninth Circuit held that suspected gang affiliates must have an opportunity to present their views to the prison's Criminal Activities Coordinator (now referred to as the IGI). See *Toussaint VI*, 926 F.2d at 803, 804-05 (Wiggins, J., concurring). This holding was based on the determination that it was the CAC who "effectively determine[d]" gang affiliation. Id. at 805. We note, however, that the *Toussaint* decisions make no mention of the SSU, thus leaving its role, if any, in that case unclear. In any event, neither the district court nor the Ninth Circuit appear to have considered the necessity of a hearing before the SSU.

[278]According to IGI Briddle, this particular inmate had "104 documents in [his] file saying that he's an EME member. He's been validated as an EME associate for 15 years. We certainly believe that it's safe to come to the conclusion prior to interviewing the inmate, especially since we know he has EME tattoos on his body, that he is an EME member. And, therefore, in that circumstance, all the documentation was prepared prior to coming into my office."

[279]Plaintiffs also complain that prison officials do not affirmatively document in an inmate's file when there is an absence of new evidence of gang involvement over some period of time. However, given our ruling above, we are not convinced that this practice has constitutional significance. Moreover, this practice does not mean that prison officials are unaware that an inmate has remained "clean" for some period. Since it is defendants' consistent practice to add any new evidence of gang activity or association to an inmate's file, the lack thereof necessarily demonstrates that the inmate has a "clean" record for this period.

[280]Plaintiffs have also alleged that defendants have denied inmates the constitutional right of meaningful access to the courts set out in *Bounds v. Smith*, 430 U.S. 817, 821 (1977). We defer issuing a decision on this claim so that we can better consider recent Ninth Circuit case law on the subject, including *VanDelft v. Moses*, 31 F.3d 794 (9th Cir. 1994), and *Casey v. Lewis*, No. 93-17169 (9th Cir. Dec. 27, 1994).

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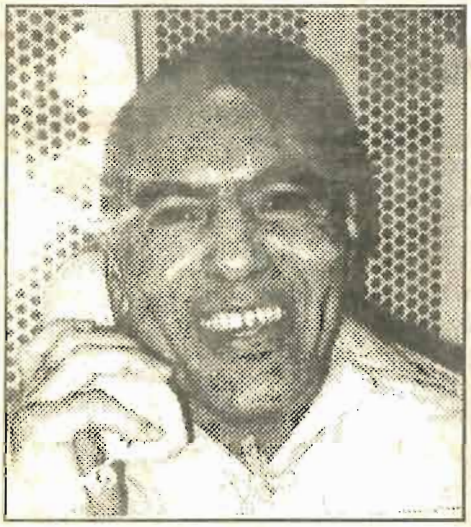

Longest Held U.S. Prisoner

ONE OF THE LONGEST HELD and least known of political prisoners in the United States is a Nicaraguan citizen and revolutionary-minded prisoner named Hugo Antonio Pinell, who was born in the province of Chinandega in 1944 and at age 12 immigrated to the USA with his family. He settled in San Francisco from where he was sent to prison in 1965 at a relatively young age for assaultive behavior committed by another Latino involved. Inside prison he developed a revolutionary consciousness based on the hostile environment in which he was kept. During his imprisonment he led many work strikes and protests against exploitative and degrading prison conditions. He was a close comrade of prison revolutionary George Jackson who was assassinated at San Quentin Prison in 1971 in a prison uprising.

Hugo's sentence has been extended time and again by the vengeful prison system, and he has been kept in relative isolation for over 25 years. He is now going on his 30th year of continuous imprisonment and is presently kept in one of America's worst prison facilities at Pelican Bay, considered by many as a torture installation where 86% of the prisoners are people of color. Please support this courageous and dedicated prisoner. Write to: Hugo Antonio Pinell, #A 88401, PBSP-SHU, Box 7500, Crescent City, CA 95532. Venceremos.

PELICAN BAY INFORMATION PROJECT

THE PELICAN BAY INFORMATION PROJECT is an independent citizens group that was formed during 1991 in response to prisoners' complaints about Pelican Bay State Prison. The group is made up of family members and visitors of prisoners, ex-prisoners, human rights advocates, and lawyers. We have sponsored four investigative visits to Crescent City and Pelican Bay State Prison (PBSP), which included more than 200 in-depth interviews with prisoners and visitors. Those site visits, our continuing communications with Pelican Bay prisoners, and our long collective experience with the California Department of Corrections provide the basis of for our knowledge about the harsh realities of life at PBSP and its torturous Security Housing Unit (SHU).

The PBIP works to monitor the situation at Pelican Bay and to educate the community about conditions there. Our four goals are:

1. An end to the human rights abuses in the Pelican Bay SHU.
2. An end to the use of long-term solitary confinement in California prisons.
3. Rehabilitation of prisoners held in the SHU as survivors of torture.
4. The closing of the Pelican Bay SHU.

PELICAN BAY PRISON EXPRESS

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