

The Newsletter of North Carolina Prisoner Legal Services, Inc.

NCPLS ACCESS

Serving North Carolina's Inmates

Volume X, Issue 1, November 2010

Issues with North Carolina's SBI Crime Lab

Mary S. Pollard, NCPLS Executive Director

Many inmates have written NCPLS in recent months asking whether issues raised in recent news reports about problems with the State Bureau of Investigation ("SBI") crime lab can help them get relief from their convictions.

While defense attorneys have raised questions about the quality of work coming out of the SBI crime lab for many years, the February 2010 exoneration of Greg Taylor by the North Carolina Innocence Inquiry Commission brought public attention to the lab and its policies and procedures.

During Mr. Taylor's 1993 trial for first-degree murder, the jury heard testimony about an SBI report that stated that a substance on Mr. Taylor's truck tested positive for the presence of blood. During Mr. Taylor's hearing before the Commission, SBI agent Duane Deaver testified that he had failed to report the results of further confirmatory testing done

by the SBI that proved that the substance found on Mr. Taylor's truck was not blood. He further testified that this type of reporting complied with SBI policy.

After a public outcry surrounding Greg Taylor's exoneration, North Carolina Attorney General Roy Cooper commissioned an audit of the serology section of the SBI lab. The serology section was responsible for analysis of blood and bodily fluids. The audit report was released in late August and was highly critical of the operations in the serology section.

The auditors reviewed cases handled in the section between 1997 and 2003, and reported 230 cases where they discovered problems with reporting of results on suspected bloodstains. This included a number of cases where testing that confirmed that no blood was present on an object was

reported as finding that blood was, in fact, present.

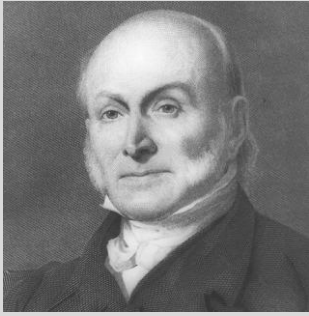
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North Carolina
Prisoner Legal Services, Inc.



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This issue is dedicated to John Quincy Adams, the sixth President of the United States of America. A staunch abolitionist and outstanding attorney of the highest order, he fearlessly (and successfully) represented the defendants in *U.S. v. Amistad Africans* before the United States Supreme Court, thus winning the freedom for the mutinying slaves. John Quincy Adams believed that the rule of law applied to every human being regardless of contemporary public opinion.

NCPLS *Access* is a publication of North Carolina Prisoner Legal Services, Inc.

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Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors whose members are designated by various organizations and institution, including the North Carolina Bar Association, the North Carolina Advocates for Justice, the ACLU of North Carolina, and the Office of Indigent Defense Services.

NCPLS serves a population of more than 41,000 prisoners and 14,000 pretrial detainees (with about 250,000 annual admissions), providing information, advice, and representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

Articles, ideas, and suggestions are welcome. Email us at ncpls@ncpls.org or write to:

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The auditors cited a number of causes for the problems, including poorly crafted policy, lack of objectivity, and ineffective management.

Also in August, the Raleigh News & Observer printed a series of articles that were highly critical of SBI lab practices and SBI agent training. The News & Observer series highlighted several cases involving scientifically suspect testimony about ballistics and blood stain pattern analysis.

In the aftermath of the audit and the News & Observer series, the Attorney General replaced the director of the SBI, reassigned the head of the SBI crime lab, and suspended the work in the bloodstain pattern analysis unit of the lab.

SBI crime lab analysts testify about many types of forensic testing, including but not limited to DNA, ballistics, blood stain pattern analysis, and fingerprints. Attorneys throughout the state, including a task force of representatives from the North Carolina Advocates for Justice, are asking for a broader independent audit of all sections of the lab. A committee of the state legislature is studying the problems. A nationwide search is underway for a new lab director.

Evidence that the scientific testimony presented at trial was flawed can, in some circumstances, support a request for a new trial. However, not every inmate whose conviction may have involved

testimony about flawed science will receive relief in the courts. It is not likely that an inmate will receive a new trial based on flawed scientific evidence unless the court is convinced that the scientific evidence contributed to the jury's decision to render a guilty verdict. If the scientific testimony was offered in addition to other significant testimony of a defendant's guilt, the conviction will likely stand. On the other hand, if the scientific evidence was used to bolster what was otherwise a weak case for the prosecution, a reviewing court might grant a new trial.

NCPLS attorneys keep informed about developments in forensic science. Even before the recent press about the SBI crime lab, NCPLS attorneys were involved in investigating and litigating cases where the improper use of questionable forensic science – such as bullet lead analysis – may have led to wrongful convictions. If you believe that tainted science was an important part of a jury's decision to convict you, please write to tell us about it.



Outside but Still Looking In

*Glen Edward Chapman, North Carolina's 7th Exonerated Death Row Inmate
Pamela Laughon, Ph.D., Mitigation Investigator for State v. Glen Edward Chapman*

On April 2, 2008, Glen Edward Chapman, a native of Hickory, NC, was released from Death Row after spending 4887 days for two murders he did not commit. During his 14 years in NC-DOC, he lost his mother and wife, the chance to raise two young sons, and eventually his dignity as a man. He spent his days like many of you: eating the same nutra-loaf at chow time, listening to the same maddening sounds, desperately waiting for letters or cards, wondering why his "loved ones" had not visited, learning to sleep with the lights on, and cursing attorneys who seemed invisible. He blamed others, he blamed himself, and he "cried like a baby", for the first three years. He was on the inside looking out, in despair and without a plan for change.

I know Ed's story vividly because I was his mitigation investigator, which means it was my job to know and understand every detail of Ed's life, from his birth until the day we met. It would be my job to save Ed's life, if he ever found himself in a trial or hearing at which his sentence was at stake. I first met Ed in 2002, eight years into two death sentences and a long, dry spell with no outside contact. I rehearsed carefully my apology speech on the drive down to Central Prison, and I wondered what kind of man I would meet. Would he be angry and uncooperative, or would he welcome my assistance, no matter

what he thought of those who came before me?

Having met with over 100 capital murder defendants before Ed, I know that inmates come in a couple of basic forms: a) a happy and receptive group, who are eager to talk, answer questions, and are grateful for any help; and b) an angry and sullen group, who talk rarely and most often in negative terms, and are suspicious and mistrusting of almost everyone. I was prepared to meet either.

I walked into the visitation booth, where Ed displayed one of his best character traits, and one that may have ultimately saved his life: His impressive ability to request and accept help, when it is needed. I met a man who was warm, friendly, frustrated but hopeful, and asking for help in a positive and trusting way. I would later learn that Ed's metamorphosis from hopelessness to proactivity began in his fourth year of incarceration, when he began to study his case, seek out the counsel of wise inmates, and write anyone who might be able to help. He built an emotional support network on the Row, wrote in his journal to organize and clear his thoughts, and responded positively to anyone who reached out to him. He persisted in the face of no encouragement, and occasionally it paid off. In short, he learned how to ask for help with dignity and style, and he was able

to kindly accept help when it was offered.

Over the two years since his release, Ed has become a fully functioning and productive citizen of this state. His positive spirit is contagious, and his kindness has been met by the kindness of others, many times over. He does not think of himself as a victim of an unjust system but rather as a survivor, and he has forgiven completely those who transgressed against him, in favor of moving on in life. He has a special message for you in his own words to follow, but I want to stress once again the lesson shown by his character: Learn how to seek, receive, and appreciate the help that is offered to you. If you can do that one thing, you may suddenly find that more help comes your way.

In Edward Chapman's words:

I come to you with knowledge, wisdom, and understanding, having been where you are. I too was lost in a dream world created by thinking that I knew it all. I foolishly continued down the road of destruction, blinded by my own ignorance and tendency to blame others. I put myself at risk for the situation I later found myself in, by running the streets, keeping company with less than reputable folks, and not valuing myself as a person who could do better than that in life.

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I have been free now for over two years, and my life is filled with many blessings from the lessons I learned as an incarcerated inmate. I made life-long friendships on death row, and I think of those men as my family even today. During the first few months of my freedom, I had a hard time sleeping and living with the everyday sounds of life. I slept with a tennis racket and a broom nearby out of fear, and I felt that someone was going to try and ruin this – my new beginning. I stayed ready to defend myself, the result of many years of having to maintain this state of hyper-vigilance while in prison.

It was an uphill battle to regain my freedom, and now that I'm out from behind bars, I am striving to be my best to make a contribution

to society, and to myself. See, there was something within me that kept me from truly seeing and believing in my own self-worth. Now we can stand here and blame it on society, our parents, or others, but in doing so, we short-change and invalidate ourselves. Maybe we can blame the system for how it mentally destroys a human being. I lived for 14 years with folks telling me I was in prison to be put to death – I know the damage that can do.

But when we are thinking more clearly, we have to know we can be better. Our betterment comes from loving ourselves, and being willing to examine those gray, uncertain areas where we can still hear reverberations of negative mantras that held us back and down. It comes from reaching out to those who can and want to help us, and from accepting their help

with grace and a measure of appreciation. It doesn't pay to close doors – help can arrive from the least likely of sources. Treat others with respect, and you too shall be respected in return.

I may be on the outside now, but I'm still looking in on my brothers and sisters inside. And I want to share one big lesson that my life has taught me so far: This world doesn't owe you anything, and that attitude will get you nowhere. Each of us owes something to this world, and there are people out there who can and will help, if you can't figure it out on your own. You may have to reach out more than once, but it will pay off over time. In short, you are only alone if you choose to be. There is a future even in the darkest moments – I'm living proof.

No Life without Parole for Minors Who Do Not Commit Murder

Hoang Lam, NCPLS Staff Attorney

On May 17, 2010, in *Graham v. Florida*, the United States Supreme Court held that an offender who was under 18 years old and did not commit murder may not be sentenced to life without parole.

The Court noted that these minors do not have maturity and can easily be influenced by outside pressures. So they are less guilty and less deserving of a serious punishment such as life without parole. Also, life without parole



for a young offender whose character is still being formed does not serve the government's interests for punishment and for preventing other minors from committing crimes, nor does it

leave the minor with any chance to become reformed and rejoin society.

The Court then said that although the government is not required to guarantee such an offender eventual release, it must give him "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

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In light of this U.S. Supreme Court decision, NCPLS is currently evaluating the sentences in two types of cases from: 1)

defendants did not commit murder, were under 18 at the time, and received long overall sentence similar to life without parole; and 2) defendants who were convicted of felony murder and were under

18 at the time of the crimes. Please let us know if you or someone you know has a case in either category.

ACCESS TO THE COURTS IN NORTH CAROLINA: Satisfying a Prisoner's Constitutional Right

Tod Leaven, NCPLS Staff Attorney

The United States Supreme Court has stated that “[b]ecause a prisoner ordinarily is divested of the privilege to vote, the right to file a court action might be said to be his remaining most fundamental political right, because preservative of all rights.”¹ The Supreme Court of the United States jealously protects the right of access to the courts and has cited five independent sources in the Constitution of the United States which protect this right: the Privileges and Immunities Clause of Article IV, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, and the Fourteenth Amendment Due Process Clause.² North Carolina Courts hold that the North Carolina Constitution independently protects this access.³ For prisoners, this access must be “adequate, effective, and

meaningful.”⁴ In further defining this, the Supreme Court of the United States held that “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”⁵



Prisoner legal services programs were noted as a preferred method by state corrections commissioners, prison wardens, and treatment directors.⁶ Prisoner

legal services is also more beneficial to illiterate and non-English speaking inmates as well as to inmates housed on a more controlled custody classification.⁷ Regarding legal services, neither North Carolina's expenditure of funds to appoint counsel in some post-conviction proceedings nor North Carolina's Inmate Grievance Commission answered this constitutional requirement.⁸ This is why North Carolina provides funding to North Carolina Prisoner Legal Services ("NCPLS").⁹ (continued on page 6)

discipline or security or increase hostility toward the institution. Rather, over 80% felt legal services provide a safety valve for inmate grievances, reduce inmate power structures, and tensions from unresolved legal problems, and contribute to rehabilitation by providing a positive experience with the legal system.).

⁷ See *Lewis v. Casey*, 518 U.S. 343, 348 (1996) (stating that though prisoner legal services would be beneficial for illiterate inmates, non-English speaking inmates, and inmates on lock-down, a systemic injunction is not proper when the injury from this deprivation is not also systemic).

⁸ *Bounds*, 430 U.S. at 828 n.17.

⁹ Maureen Berner & Joe Gavrillovich, *Evaluation of North Carolina Prisoner Legal Services 3* (April 27, 2007), <http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/ncpls%20final%20report%20may%202007.pdf> (stating

⁴ *Bounds v. Smith*, 430 U.S. 817, 822 (1977).

⁵ *Id.* at 828.

⁶ *Id.* at 830 n.18 (Nearly 95% of the state corrections commissioners, prison wardens, and treatment directors responding to a national survey supported creation and expansion of prison legal services Almost 85% believe that the programs would not adversely affect

¹ *McCarty v. Madigan*, 503 U.S. 140, 153 (1992) (Quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)) (internal quotations omitted).

² *Christopher v. Hardbury*, 536 U.S. 403, 415 n.12 (2002).

³ *Smith v. Beck*, 195 N.C.App. 785, 2009 WL 677918, 5-6 (2009).

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Though the Court has since defined some thresholds an inmate must cross before filing a claim for inadequate court access,¹⁰ it has continually held that the States are constitutionally mandated to provide assistance to inmates in the preparation and filing of legal papers.¹¹ As stated above, this can be satisfied by either providing access to an adequate legal library or providing adequate assistance from persons trained in the law.

In 1989, North Carolina stopped providing law libraries and relied solely upon NCPLS to

that though North Carolina has financed NCPLS through various agencies, its purpose is to provide legal assistance and advice to the North Carolina prison population, pursuant to *Bounds v. Smith*, 430 U.S. 817 (1977), which established the constitutional right of all prisoners to have meaningful access to the courts.). The purpose clause of the contract between the North Carolina Office of Indigent Defense Services and NCPLS states:

This contract is entered into this 24th day of February 2006 between the North Carolina Office of Indigent Defense Services (hereinafter referred to as "IDS") and North Carolina Prisoner Legal Services, Inc. (hereinafter referred to as "NCPLS"), for the purpose of providing legal services to inmates in the custody of the North Carolina Department of Correction (hereinafter referred to as "DOC") in accordance with the constitutional principles set forth in *Bounds v. Smith*, 430 U.S. 817 (1977), and *Lewis v. Casey*, 518 U.S. 343 (1996).

¹⁰ *Lewis v. Casey*, 518 U.S. 343, 351-53 (1996) (holding that an inmate must show that he was, or is, suffering actual injury by being frustrated or impeded in bringing a non-frivolous claim about his criminal conviction or sentence or the conditions of his confinement).

¹¹ *Id.* at 351.

satisfy prisoners' constitutional rights of access to the court.¹² Both federal and state courts have found that NCPLS fulfills this constitutional mandate in North Carolina for both prisons and jails.¹³ The North Carolina Department of Correction even refers friends and families of inmates, as well as inmates themselves, to NCPLS for legal services and access to the courts.¹⁴

The three basic claims inmates assert are right to assistance, interference, and retaliation.

As explained above, the right to assistance is satisfied in North Carolina by Prisoner Legal Services, Inc. In bringing a right to assistance claim, an inmate must show an actual injury. This means "that a nonfrivolous legal claim had been frustrated or was being impeded."¹⁵ The United States Supreme Court gave us two examples of what this means in *Lewis v. Casey*:

[A showing] that a complaint [an inmate] prepared was dismissed for failure to satisfy some technical

¹² *Smith v. Beck*, 195 N.C.App. 785, 2009 WL 677918, 1 (2009).

¹³ *See, e.g., Fowler v. Lee*, 18 Fed.Appx. 164, 166 (4th Cir. 2001); *Mims v. Williams*, 2009 WL 454598, 1 (W.D.N.C.,2009); *Coil v. Peterkin*, 2009 WL 3247848, 10 (M.D.N.C.,2009); *Wrenn v. Freeman*, 894 F.Supp. 244 (E.D.N.C. 1995); *Beck*, 195 N.C.App. 785 at 2-6.

¹⁴ North Carolina Department of Correction, Division of Prisons, Handbook for Family and Friends of Inmates 25-6 (2010), available at: <http://www.doc.state.nc.us/Publications/2010handbook.pdf>.

¹⁵ *Lewis v. Casey*, 518 U.S. 343, 351-53 (1996).

requirement which, because of deficiencies in the prison's legal assistance facilities, he could not have know. Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.¹⁶

Regarding interference claims, the United States Supreme Court holds that "[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid."¹⁷ What is important here is that prison restrictions will be upheld if they have a reasonable relationship to legitimate penological goals.¹⁸ This includes limiting the amount of legal paperwork prisoners possess. The destruction of legal paperwork outside of legitimate penological goals may be actionable.¹⁹

The Supreme Court of the United States has said that "retaliation offends the Constitution [because] it threatens to inhibit exercise of the protected right."²⁰ The problem here is proving that the action was indeed retaliatory. You must produce evidence and, even then, courts are very suspicious.²¹

¹⁶ *Lewis*, 518 U.S. at 351.

¹⁷ *Procunier v. Martinez*, 416 U.S. 396, 419 (1974).

¹⁸ *Lewis*, 518 U.S. at 361-62.

¹⁹ *Carter v. Hutto*, 781 F.2d 1028, 1032 (4th Cir. 1986).

²⁰ *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998).

²¹ *Dawes v. Walker*, 239 F.3d 489, 491 (2nd Cir. 2001) (courts must approach prisoner claims of retaliation with skepticism and particular care).

Deportation of Potential Victim of Torture Stopped

Hoang Lam, NCPLS Staff Attorney

In 2009, the Immigration and Customs Enforcement (ICE) initiated deportation proceedings against P.R., who had completed a sentence of forty-four months for several North Carolina offenses. These criminal offenses, arising out of his lack of understanding of U.S. culture and law, are aggravated felonies under immigration law and restricted several reliefs that would otherwise have been available to him. P.R. wrote to NCPLS seeking immigration assistance.

P.R. is an ethnic minority from Vietnam who came to the United States as a refugee. While in Vietnam, P.R. smuggled food and



clothing to the protestors who had gone in to hiding following the Vietnamese government's crackdown on their demonstrations for equality and land rights for the indigenous minorities. Eventually, P.R. joined them in fleeing from

the country when he feared that the government had discovered his action.

Two NCPLS attorneys and a law school student represented P.R. in the immigration court. We presented evidence, including an expert's testimony, showing the Vietnamese government's persecution of ethnic minorities and the likelihood that P.R. would be tortured if returned to Vietnam. The immigration judge was persuaded and stopped the deportation. Subsequently, P.R. was released from immigration detention.

NCPLS Files Class Action Lawsuit on Behalf of Disabled Inmates

Emily Coward and Ann Ferrari, NCPLS Staff Attorneys

On September 17, 2010, NCPLS filed a federal lawsuit alleging that disabled inmates within the DOC are discriminated against in accessing sentence reduction credit programs which allow non-disabled inmates to work, take classes or participate in programs, and thereby reduce their term of incarceration towards their minimum sentence. In *Bumgarner, et al. v. North Carolina Department of Correction, et al.*, NCPLS represents a group of disabled plaintiffs claiming that this

discrimination violates federal laws protecting the rights of the disabled and seeking (1) a declaration that the DOC is currently in violation of the Americans with Disabilities Act and the Rehabilitation Act; and (2) an order requiring the DOC to provide disabled inmates with the opportunity to access the sentence reduction credits currently available to non-disabled inmates. NCPLS also filed a Motion for Class Certification with the Complaint, requesting permission from the Court to represent not just

the named plaintiffs, but also all present and future disabled inmates within the DOC who face or may face these problems. NCPLS hopes that a successful resolution of this lawsuit will benefit all disabled prisoners within the DOC.

Plaintiffs Claim that DOC's Policies and Practices Force them to Serve Longer Sentences Because of Their Disabilities

As most Access readers know, under the Structured Sentencing
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Act, defendants are sentenced to a range of months. In order to promote good behavior in prison, and to help inmates learn skills that will increase their chances of successfully returning to society upon release, inmates are supposed to be able to work their way toward their minimum sentence. Non-disabled inmates earn time off their sentences through “gain time” or “earned time” programs, which provide them access to jobs, classes, and other programs. For disabled inmates, it is another story. Most are prevented from accessing these programs by restrictions placed on their activities by prison medical staff.

Although the DOC has a specific program for “medically unfit” offenders, this program is only open to the most severely disabled individuals, those that it determines are “unable to engage in any available work or programs or other assignments”. Even those offenders who are so disabled that they are eligible for this special program are discriminated against in that they earn days off at two-thirds the rate available to non-disabled inmates. At this rate, many disabled inmates can never achieve their minimum sentences. In addition, regardless of how disabled an inmate might be, certain prison facilities simply do not make this special medical program available to their residents.

On top of that, for the large number of disabled inmates who

are not considered “medically unfit” but only “limited for some but not all work or program activities”, the DOC policies specify that each will be “given an available assignment appropriate to his or her medical/mental health condition and physical disability.” However, the reality often is that the DOC simply makes no such assignments available for such inmates. Disabled inmates in this situation, regardless of their otherwise good behavior, simply cannot earn days off their sentence.



This holds true even for those inmates who are unfortunate enough to become severely ill in prison, such as those battling cancer. Such inmates, regardless of whether they were playing by the rules and earning days off their sentences when they were healthy, are often removed from their assignments because of medical treatment needs. For these inmates, getting sick means not just dealing with the illness, but also serving more time as a result of their disability.

The circumstances of the named plaintiffs in this lawsuit

represent a variety of challenges experienced by disabled inmates seeking to access sentence reduction credit programs within the DOC. For this reason, NCPLS does not seek to add additional named plaintiffs to the lawsuit at this time. However, NCPLS would like to continue to provide assistance while this lawsuit is pending to disabled inmates attempting to access the existing sentence reduction credit programs (to the extent currently possible). In addition, as disabled inmates are members of the class NCPLS seeks to represent, NCPLS hopes you will write to us about your situation. The more information NCPLS can gather about these violations, the better NCPLS can advocate for disabled inmates. Further, NCPLS would like to hear from anyone considering filing such a claim on their own, in the hopes of addressing concerns and eliminating the need for separate and potentially conflicting lawsuits regarding the same issues.

Based on the correspondence received from North Carolina inmates over the years, NCPLS knows that discrimination in sentence reduction credit programs is a major source of frustration for disabled inmates. NCPLS filed this lawsuit because we believe that no one should be serving more time in prison simply because he or she has a disability. NCPLS will litigate this case with the best interests of disabled inmates in mind, and sincerely hopes that it will bring relief to all disabled inmates within the DOC.

MAR Won for Client Who Was Convicted Based on Deputies' Misconduct

Hoang Lam, NCPLS Staff Attorney

In 2001, in Robeson County, North Carolina, D.C. and his attorney unsuccessfully argued that the contraband seized from D.C.'s home should be suppressed because the sheriff's deputies had provided false information to the magistrate in order to get a search warrant. In 2002, D.C. pled guilty to several felonies and received an

active sentence of 200 months minimum. In pleading guilty, D.C. intended to preserve for appeal the trial court's denial of his motion to suppress, but his attorney failed to do so.

NCPLS attorneys filed a motion for appropriate relief (MAR) asking that his convictions

be set aside. At a hearing this year, the State consented to the MAR and further worked out a new plea agreement with D.C. Under this new plea agreement, D.C. received a reduced sentence of 95 months and probation. D.C. completed the active sentence in September, 2010, and was released.

Bowden Litigation Update

Sarah Jessica Parker, NCPLS Staff Attorney

Inmates Alford Jones and Faye Brown lost their cases in the North Carolina Supreme Court, but the fight for their freedom is not over.²²

Mr. Jones and Ms. Brown are two of the 27 people that should have been released last October following the North Carolina Supreme Court's decision in *State v. Bowden*.²³

State v. Bowden and *Jones and Brown* all involve persons sentenced to "life" imprisonment

for crimes committed between April 4, 1974 and June 30, 1978. During that time frame, "life" was defined by statute as 80 years, not as the span of one's natural life.²⁴ Last October, it appeared that these folks were going to be released because their sentences had expired, but they were not released. NCPLS filed Petitions for Writs of Habeas Corpus to ask the Department of Correction to release Alford Jones and Faye Brown in November.



NC Supreme Court Chamber

In December, NCPLS attorneys Emily Coward, Sarah Jessica Farber, and Mary Pollard as well as Glenn Barfield, an attorney in private practice with Haitchcock, Barfield, Hulse & Kinsey, PLLC, won those petitions in the Wayne and Wake County Superior Courts. However, the Department of Correction asked the North Carolina Supreme Court to review the cases, and the Superior Court decisions were stayed pending the North Carolina Supreme Court's review. Several attorneys from the Office of the Appellate Defender, including Ms. Katherine Jane Allen and Appellate Defender Staples Hughes, represented Mr. Jones and Ms. Brown at the Supreme Court level. At the end of August, the North Carolina Supreme Court issued an opinion that ultimately meant that Mr. Jones and Ms. Brown would not be released.

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²² *Jones v. Keller*, No. 518PA09 (N.C. August 27, 2010); *Brown v. N.C. Dep't of Correction*, __ N.C. __, 637 S.E.2d 327 (2010).

²³ 193 N.C. App. 597, 668 S.E.2d 107 (2008), *disc. rev. improvidently allowed*, 363 N.C. 621, 683 S.E.2d 208 (2009) (holding that N.C. G.S. § 14-2 (1974) defined a sentence of life imprisonment as a sentence of 80 years incarceration for all purposes of sentencing and punishment, including the determination of unconditional release dates).

²⁴ N.C.G.S. § 14-2 (1974).

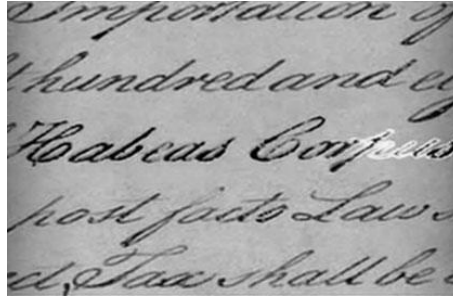
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Today, Mr. Jones and Ms. Browns are continuing to fight their cases in the federal courts. In addition, NCPLS attorneys Vernetta Alston and Sarah Jessica Farber have filed more than two dozen habeas corpus petitions for a group of other inmates who the DOC has previously acknowledged have completed their sentences in various courts across the state. Inmates who believe they are serving what the DOC now calls “Statutory Life” or “SL-80” sentences who have not yet contacted NCPLS are encouraged to do so.

What is a Writ of Habeas Corpus?

Habeas corpus is a Latin phrase dating back hundreds of years in the legal field. Literally translated, it means, You may have

the body. In practice, *habeas corpus* describes the legal action or writ by which a prisoner may challenge the lawfulness of his or her detention.



The United States Constitution provides that it “shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it,” U.S. Const. Art. I, § 9, cl. 2, and Chapter 17 of North Carolina’s General Statutes describe its uses in the state’s courts. When the United States was first organized, there was no federal habeas review

for state prisoners. That did not become available until after the Civil War, and is now codified at 28 U.S.C. § 2241 *et seq.*

It is important not to file any *Habeas corpus* proceeding lightly. The statute governing state *habeas corpus* petitions imply that an inmate is only able to file a *habeas* proceeding once. Federal *habeas* litigation is more complicated and requires that any federal Constitutional issues raised in the petition have first been brought before a state court. In addition to reviewing the cases of inmates who believe they were wrongfully convicted or sentenced, NCPLS provides a manual and forms, upon request, to inmates who wish to challenge their convictions through post-conviction litigation, including writs of *habeas corpus*.

Free Legal Information Clinic for Formerly Incarcerated People

April Giancola, NCPLS Post Conviction Managing Attorney

Since April of 2008, NCPLS, with the help of several community partners, has been hosting a quarterly Free Legal Information Clinic advertised to the Formerly Incarcerated Community. Its genesis began with the efforts at the North Carolina Bar Association. In 2008 then president Janet Ward Black made a call to arms to the legal community to give back, and dedicated her year as president to encouraging service among the Bar members.

She spearheaded the effort of Justice 4ALL, which included a statewide service day - and recruited thousands of volunteer attorneys across the State to participate in an *ask a lawyer day* where people could call a number and talk with an attorney about their legal problem. Ms. Black also called upon the NC Bar Committees to think of their own service project to compliment the Bar's efforts.

At the time, former NCPLS Staff Attorney Ken Butler was the Chair of the Professionalism Committee. He decided to create a walk-in legal clinic for formerly incarcerated people where individuals could come in and talk with an attorney for free about their civil legal issue. Our first clinic was held in April 2008, and NCPLS has held the clinic on a quarterly basis ever since.

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In the twelve (12) clinics held, we have serviced 72 customers with the help of 80 volunteer attorneys, law students and paralegals.

The clinic is hosted between Durham and Raleigh on a rotating basis. In Durham, the clinic is Co-Sponsored by the Durham Prisoner Resource Roundtable and is held at the Durham Public Library - Stanford L. Warren Branch.



In 2009, NCPLS partnered with Campbell University Law School and is now utilizing Campbell's brand new building in

downtown Raleigh for all Raleigh clinics.

We are extremely lucky and appreciative of our clinic partners, who without them we would not be able to continue hosting the clinic and serving the community.

Our next session will be held in Raleigh on January 22, 2011 from 10 a.m. to Noon. If you have questions, please feel free to write to April Giancola at NCPLS.

Survey for Women Inmates

Professor Carrie Basas, University of North Carolina School of Law

Professor Carrie Basas at the University of North Carolina School of Law is conducting a survey of women inmates in North Carolina. She would like to know more about your experiences before being in prison, as well as what your life in prison has been like. The survey has questions that touch on those subjects and will help her get a better picture of what some of your shared concerns might be. The survey is multiple-choice and quick to complete. It is confidential and anonymous. If you are a woman interested in

receiving a copy of the survey, please send your mailing information to:

Professor Carrie Basas
ATTN: Prison Survey Project
UNC School of Law
160 Ridge Rd., CB 3380,
Chapel Hill, NC 27599.

She will send you a copy of the survey. The best way to have your voice heard about the issues raised in the survey is to answer the questions in it to the extent you feel comfortable. Unfortunately,

any letters that are received outside of the survey questions can't be incorporated into the final data because of confidentiality concerns. Thanks so much for considering this opportunity and for sharing it with other women inmates in North Carolina who might be interested. Research from the survey will be used to not only understand the women's population better, but to also make some recommendations about how to improve services for this community.

What is the North Carolina Innocence Inquiry Commission?

Sarah Jessica Farber, NCPLS Staff Attorney

After Gregory Taylor was exonerated by the Innocence Inquiry Commission, NCPLS received many letters asking about the Commission. The North Carolina Innocence Inquiry

Commission is a state agency. It was created by an act of the legislature in August of 2006. The Commission has eight members, appointed by the Chief Justice of the North Carolina Supreme Court

and the Chief Judge of the Court of Appeals. The statutes dictate that the members of the Commission include a Superior Court judge, a prosecuting attorney, a defense

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attorney, a victim advocate, a member of the public, a sheriff, and two discretionary members.

North Carolina Prisoner Legal Services, Inc. is not part of or affiliated with the North Carolina Innocence Inquiry Commission

NCPLS is an independent, non-profit law firm whose core mission is to protect inmates' constitutional rights by challenging illegal convictions and sentences and by ensuring safe and humane conditions of confinement. NCPLS's mission is much broader than the Commission's mission.

If you write to the Commission and return their questionnaire, they will begin working on your case. The Commission is only interested in cases of actual innocence and

only examines new evidence that was not considered at trial. If the Commission grants you a formal inquiry, you would then have a right to counsel. However, in order to take advantage of the inquiry, you must waive all privileges, including attorney-client confidentiality, spousal immunity, and the right against self-incrimination. You might face criminal prosecution if the Commission's investigation reveals criminal acts for which the you have not been charged. There are three reasons the Commission requires the waiver: (1) the idea that an innocent person has nothing to hide; (2) that the Commission needs full cooperation from both

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the claimant and the State in order to fully investigate the claim; and (3) that the requirement will deter false claims of innocence.

In deciding whether to apply for a claim of innocence, NCPLS urges you to strongly consider the Commission's promise that it will turn over evidence of any other crime, such as a more serious offense. On the other hand, if the Inquiry finds evidence in your favor, that evidence will be turned over to you and you may be able to use it in drafting a Motion for Appropriate Relief (MAR).

Finally, please keep in mind that NCPLS is interested in helping inmates who are actually innocent. NCPLS does not require a waiver and will not turn over evidence of any other crimes to a law enforcement agency. NCPLS welcomes letters from inmates who are actually innocent and would like NCPLS to review their cases.

Report on New Legislation in North Carolina

Allison Standard, NCPLS Staff Attorney

NCPLS receives many letters from inmates who ask about new legislation and how it might affect their sentences. There are many rumors that frequently circulate in the prison system concerning changes in the laws. Some of the more frequent ones that we hear are:

- North Carolina is going back to the "65% law" and/or will be reinstating felony parole.
- A law has been passed which will reduce the prison terms of inmates

convicted of "non-violent" offenses.

- There have been changes in the laws concerning habitual felon sentencing which will lead to sentence reductions.

Please be aware that none of these rumors are true.

However, there was some legislation passed during the General Assembly's session adjourning on July 10, 2010 that may be of interest to inmates. The

following is a brief summary²⁵ of some laws passed during this session. For a more complete report, please write to NCPLS and request a legislative update.



²⁵ Legislative summary adapted from materials from the UNC School of Government.

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DWI parole

Inmates imprisoned for impaired driving can, in certain circumstances, be paroled. In 1997 (S.L. 1997-379) the General Assembly amended G.S. 20-179(p) to provide that an inmate could not be paroled until he or she completed any recommended treatment or training program, unless he or she was paroled into a residential treatment program (that is, DART Cherry). The provision allowing an inmate to be paroled to a residential treatment program was stricken from the law in 2007 (S.L. 2007-493). This year, it was added back to the law by S.L. 2010-97 (S 1242) in precisely the same form that it first appeared in 1997, effective July 20, 2010.

Sex offender registration

Provisions near the end of S.L. 2010-174 (H 726), which is primarily devoted to making technical and conforming changes to the expunction legislation passed in 2009, broaden the effective-date coverage of North Carolina's registration requirement for offenders with reportable convictions from other jurisdictions. Section 16(a) of the law modifies the effective date in Section 19 of S.L. 2006-247 (H 1896), which amended G.S. 14-208.6(4)b to provide that a "reportable conviction" includes "a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state." The 2006 legislation made this change applicable to offenses committed and to individuals who move into North Carolina on or after

December 1, 2006. The new law amends the effective-date language to make the change applicable to offenses committed and to individuals who move into North Carolina "prior to," as well as on or after, December 1, 2006.

However, this amendment to the effective date of the 2006 legislation has an effective date of its own: it is "effective October 1, 2010, and applies to any person required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes, any person serving an active sentence or on supervised probation, parole, or post-release supervision, for any offense, on or after that date, and any person convicted of a felony offense on or after that date." Under that language, the change only applies to offenders who (1) are already registered in North Carolina for another crime; (2) are still in contact with the North Carolina criminal justice system by virtue of being incarcerated or under community supervision; or (3) come back into contact with the criminal justice system by virtue of a subsequent felony offense.

DNA samples at time of arrest

North Carolina passed S.L. 2010-94 (H 1403). That law amends the DNA collection statutes to provide that on arrest for certain offenses—mostly felonies, but some misdemeanors—a defendant must provide a DNA sample. The sample is to be a cheek swab unless a court order authorizes that a DNA blood sample be obtained. The law adds a new G.S. 15A-502A to require that the

sample be obtained at the time of arrest, and it amends the pretrial release statutes (G.S. 15A-534(a)) to provide that if a defendant is required to provide fingerprints or a DNA sample and has refused to do so, the pretrial release must include a condition requiring that the person arrested provide the sample or prints.



Until June 1, 2012, the person arrested must petition the prosecutor to request expunction if no charges are filed or three years pass with no action in the case. After June 1, 2012, the prosecutor is responsible for seeking expunction without a request from the person arrested. If there is a dismissal, acquittal, or conviction of a lesser-included offense, the prosecutor must initiate steps to expunge the sample. The court is not involved except to sign verification forms if the person is acquitted or the charge is dismissed. The person arrested may file a motion to compel the prosecutor to act or to contest a prosecutor's decision not to act. Any identification, warrant, probable cause to arrest, or arrest based on a DNA match that occurs after the statutory period for expunction is invalid and inadmissible in the prosecution of the person for any criminal offense.

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The offenses covered by the new arrest sampling provisions are murder, homicide, rape and sex offenses, specified assaults (G.S. 14-32, 14-32.4(a), 14-34.2, 14-34.5, 14-34.6, and 14-34.7), kidnappings or human trafficking offenses, burglary offenses, arson, armed robbery, sex offenses requiring registration, cyberstalking, and stalking, as well as attempts, solicitations, or aiding and abetting any of the covered offenses.

The law is effective February 1, 2011.

Felon firearm rights

With several recent federal and state cases as a backdrop, the legislature decided to weigh in on which felons it thought should be entitled to possess firearms. S.L. 2010-108 (H 1260) amends various statutes, described below, to allow people convicted of certain felonies to petition for restoration of the right to possess firearms and to create an exception from firearms restrictions for certain white collar criminal convictions. The new statute gives the responsibility for hearing restoration petitions to the district court in the district where the person resides.

The initial prerequisite for restoration is that the person must have no more than one conviction for a “nonviolent felony,” which is defined as not including any Class A, B1, or B2 felony or any Class C through I felony that (1) includes an assault as an essential element; (2) includes possession or use of a firearm or deadly weapon as an

essential or nonessential element; (3) was an offense for which the offender was armed with or used a firearm or other deadly weapon; or (4) requires registration as a sex offender. For the purposes of the new law, multiple nonviolent felony convictions arising out of the same event and consolidated for sentencing count as one felony. A person is ineligible for restoration for various reasons listed in the statute, including having been adjudicated guilty of or having received a prayer for judgment continued or a suspended sentence for one or more misdemeanor crimes of violence or other listed misdemeanors.



To obtain restoration, the person must have had his or her civil rights restored (which, in North Carolina, typically occurs automatically under G.S. 13-1 following a person’s completion of all incidents of his or her sentence) for at least 20 years. The new statute also states that a person who was convicted of a nonviolent felony in another jurisdiction is eligible for restoration if his or her civil rights, including the right to possess a firearm, have been restored for at least 20 years in the other jurisdiction. The provision apparently requiring that the person’s firearm rights already have been restored for 20 years in the other state may make the waiting period for restoration of

firearm rights in North Carolina considerably longer for people with convictions from other jurisdictions. New G.S. 14-415.4 establishes other criteria a person must satisfy to obtain restoration of firearm rights, such as a one-year period of residency in North Carolina.

The effective date for the new firearm right restoration procedure is not entirely clear. The law states that it is effective February 1, 2011, and applicable to offenses committed on or after that date. A literal reading of that provision might suggest that only felons who *committed* their offenses on or after that date could eventually (that is, after serving their sentence, having their rights restored, and allowing 20 years to pass) petition to have their firearms rights restored. A more likely interpretation of the legislature’s intent is that the “offenses committed” language was meant to apply only to violations of the new Class 1 misdemeanor created by the law, and that the petition procedure generally takes effect February 1, 2011, and applies to eligible persons regardless of the date they committed their felony.

Fees

To cope with a tight (and tightening) budget, the General Assembly increased a number of court- and corrections-related costs and fees. S.L. 2010-31 increases the supervision fee for probation (G.S. 15A-1343(c1)), post-release supervision (G.S. 15A-1368.4(f), and parole (G.S. 15A-1374(c)) from \$30 to \$40 per month, effective October 1, 2010, but also applicable to supervisees placed on

supervision prior to that date. The same law increases the community service supervision fee under G.S. 143B-262.4 from \$225 to \$250. Under a technical correction in S.L. 2010-123 (S 1202), that change is effective October 1, 2010, and applicable only to persons ordered to perform community service on or after that date. G.S. 143B-262.4 was further amended by S.L. 2010-96 (S 1165) (effective July 20, 2010) to provide that offenders participating in the community service program as a condition of parole will pay their fees to the clerk in the county of conviction, not the county into which they were released on parole (as required under a change made to the law in 2009).

Inmate medical cost control

As the prison population grows—and, in response to determinate sentences without the possibility of parole, grows older—medical costs are becoming an increasing percentage of the state corrections budget. A 2010 report from the Office of the State Auditor indicated that DOC pays

far more for some outside medical services than would be allowed under the State Health Plan or Medicaid. Under S.L. 2010-31, DOC may, as of July 1, 2010, reimburse providers of inmate medical services at a rate not to exceed 70 percent of usual and customary charges in effect for all other patients. The limitation does not apply to reimbursement rates set in contracts already in effect before that date.



The same law also directs DOC to make every effort to control costs by: (1) using its own health care facilities to provide inmate medical services when possible; (2) limiting admissions to outside hospitals; (3) giving preference to hospitals in the same county (or an adjoining county) as the

correctional facility where an inmate requiring care is incarcerated; and (4) consulting with the Department of Health and Human Services about seeking Medicaid waivers for inmates whose Medicaid eligibility has been suspended on account of their incarceration. The law requires DOC to study the impact to inmate medical costs resulting from these cost-control measures and report its findings to the legislature by March 1, 2011. The law also encourages the Department to explore other options, such as contracting with a private third party to manage inmate medical services, treating inmates at federal correctional hospitals, and purchasing a fixed number of beds at a hospital. DOC must also report by October 1, 2010, on the anticipated effects on inmate medical care as a result of the new hospital at Central Prison and the updated facilities at the North Carolina Correctional Institute for Women.

Reminder about the PRLA and the Grievance System

The Prison Litigation Reform Act of 1996 (“PRLA”) has made it significantly harder for inmates to successfully bring suit in federal court in many ways. This reminder only briefly touches upon the exhaustion of administrative remedies requirement. The PRLA states that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). This means if you do not utilize and complete the facilities inmate grievance process, usually a form DC-410A, your lawsuit can get dismissed from court. Even if you are suing for remedies not available under the facility’s grievance system, like monetary damages, you must exhaust the inmate grievance system.

You must be able to show the court that you did absolutely everything you could to comply with the inmate grievance system.

Ways you do this include:

1. Keep your grievances simple and to the point. A grievance can be dismissed on the grounds that it raises complaints about more than one incident. Therefore, you should try to *clearly, legibly, and simply* set forth the facts relating to your specific complaint. In addition, a grievance may be dismissed if you use profane, threatening, or abusive language. A simple statement of the facts as you observed them is the best approach to airing your concern.
2. Remember that you cannot file a grievance if you have a previous grievance that has not completed Step Two of the appeal process.
3. If you file a grievance and do not receive a response, try to appeal it. You can always claim that a non-response is the same as a denial of the grievance.
4. If you receive a denial or a response that does not properly address your concern, appeal it.

It is important to remember that even when grievance responses are not decided in your favor, they often contain information that helps NCPLS understand the Department of Correction’s position, which better enables our attorneys to evaluate your request for assistance.