PRISONERS HUMAN RIGHTS MOVEMENT
PRESENTS...

LEARN TO PROTECT YOUR RIGHTS

YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Most of all, YOU HAVE
A RIGHT TO BE HUMAN!
AND TO BE TREATED WITH
DIGNITY AND RESPECT.

This Human Right is re - cognized and guaranteed by International, State, and Federal laws: (Read United Nation's DECLARATION OF HUMAN RIGHTS: & CONVENTION AGAINST TORTURE; U.S. CONSTITUION'S "PREAMBLE": CALIFORNIA'S CONSTITUTION, Article 1, Section 1)

STOP THE TORTURE...

END LONG TERM SOLITARY CONFINEMENT...

Support our Class Lawsuit at the up-coming Trial (For more info go to: prisonerhungerstrikesolidarity.wordpress.com

Appendix #9 (A)

Why I care about prisoner rights

Posted By David L. Hudson Jr. On May 25, 2011 @ 10:43 am In First Amendment Commentary | 1 Comment

A friend recently asked: "Why do you care and write so much about prisoner rights? After all, they're convicted criminals." The question came after the U.S. Supreme Court's ruling this week in *Brown v. Plata* that dealt with overcrowded prisons and terrible medical and mental care in California prisons.

I've fielded similar queries in the past. The questions reflect a mentality shared by many: Why care about the rights of those who didn't care about the rights of their victims?

The question deserves a response.

First, prisoners file an inordinate amount of litigation alleging deprivation of their constitutional rights. Some studies have shown that prisoner litigation makes up more than 20% of the federal court docket. It would be negligent not to report on at least some of these pleadings — even if many prisoner complaints leave much to be desired in terms of form and validity.

Second, much deprivation of constitutional rights occurs in prisons. One attorney described prisons to me years ago as "constitutional black holes." Think about it. Prisoners are under the control of government officials 24/7 — there are bound to be many rights violations.

Third, principles from prisoner free-expression cases often seep out and affect other areas of First Amendment law. The classic example occurred with two U.S. Supreme Court cases that arose out of Missouri. In *Turner v. Safley* (1987), the Court rejected inmate Leonard Safley's claim that he had a First Amendment right to send letters to his girlfriend — later his wife — who was an inmate at another prison (though the Court did uphold his right to marry her). The Court created a standard for prisoner constitutional claims — that prison officials do not violate inmates' constitutional rights if their actions are "reasonably related to legitimate penological concerns."

Just a year later, the Supreme Court rejected the First Amendment claims of three young female student journalists in *Hazelwood School District v. Kuhlmeier.* In that decision, the Court ruled that school officials could censor student speech if their actions were "reasonably related to legitimate pedagogical concerns." The Court simply substituted the word "pedagogical" for "penological." When I lecture on this substitution to student groups, there normally is a collective gasp.

Fourth, prisoners — whatever they have done — are still human beings worthy of some level of respect. I've quoted many times the words of Justice Thurgood Marshall from his concurring opinion in *Procunier v. Martinez* (1974):

"When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded."

Justice Anthony Kennedy said it even more succinctly in *Brown v. Plata*: "Prisoners retain the essence of human dignity inherent in all persons."

Finally, we all know the First Amendment and its free-exercise clause protects our right to religious belief and some religiously motivated conduct. As a Christian, I believe strongly in the Bible verse Hebrews 13:3 "Remember the prisoners as if chained with them."

******INTRODUCTION TO HUMAN RIGHTS******
RE: PHRM EDUCATION MATERIAL ON HUMAN RIGHTS

Universal Declaration of Human Rights

Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.
All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.
Everyone has the right to life, liberty and security of person.

Article 4.
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law.

Article 7.
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.
(1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.
(1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

Article 18.
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.
(1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

Article 21.
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.
(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.
(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.
(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

A Sources of Legal Support

Sources of Legal Support

Below is a short list of other organizations working on prison issues, mainly with a legal focus. When writing to these groups, please remember a few things:

- Write simply and specifically, but don't try and write like you think a lawyer would. Be direct in explaining yourself and what you are looking for.
- It is best not to send any legal documents unless they are requested. If or when you do send legal documents, **only send copies**. Hold on to your original paperwork.
- Because of rulings like the PLRA and limited funding, many organizations are small, have limited resources and volunteer staff. It may take some time for them to answer your letters. But always keep writing.

Please note: The contact information for these resources is current as of the printing of this Handbook in 2011.

Do not send money for publications unless you have verified the address of the organization first.

Aid to Children of Imprisoned Mothers, Inc.
906 Ralph David Abernathy Blvd. SW
Atlanta, GA 30310
Information for incarcerated mothers.

American Civil Liberties Union National Office
125 Broad Street, 18th Floor, New York, NY 10004
The biggest civil liberties organization in the country. They have a National Prison Project and a Reproductive Freedom Project, which might be helpful to women prisoners. Write them for information about individual chapters. See Appendix J for some of their publications for people in prison.

American Friends Service Committee Criminal Justice Program – National
1501 Cherry Street, Philadelphia PA, 19102
Human and civil rights issues, research/analysis, women prisoners, prisoner support.

California Prison Focus
1904 Franklin St., Suite 507, Oakland, CA 94612
Publish a quarterly magazine, *Prison Focus*, and other publications. Focuses organizing efforts on CA and on SHU conditions.

Center for Constitutional Rights
666 Broadway, 7th floor, New York, NY 10012
Legal organization that brings impact cases around prison conditions, co-publisher of this handbook.

Criminal Justice Policy Coalition
15 Barbara St., Jamaica Plain, MA 02130
Involved in policy work around numerous prison issues.

Critical Resistance, National Office
1904 Franklin St., Suite 504, Oakland, CA 94612
Uniting people in prison, former prisoners, and family members to lead a movement to abolish prisons, policing, surveillance, and other forms of control.

Family and Corrections Network
32 Oak Grove Road, Palmyra, VA 22963

Federal Resource Center for Children of Prisoners
Child Welfare League of America
1726 M St. NW, Suite 500, Washington, DC, 20036

Friends and Families of Incarcerated Persons
PO Box 93601, Las Vegas, NV, 89193
Legal resources for friends and families of prisoners.

Human Rights Watch Prison Project
350 5th Ave. 34th Floor New York NY 10118-3299
National organization dedicated to research, analysis, and publicizing human rights violations, and working towards stopping them.

Immigration Equality, Inc. *(only for lesbian, gay, bisexual, transgender, and HIV + immigrants)*
40 Exchange Place, 17th Floor, New York, NY 10005

Lambda Legal (only for gay, lesbian, bisexual, transgender, & HIV+ people)
120 Wall Street, Suite 1500, New York, NY 10005-3904
English, Spanish

Legal Publications in Spanish, Inc.
Publicaciones Legales en Espanol, Inc.
PO Box 623, Palisades Park, NJ 07650
Legal resources in Spanish, focusing mostly on criminal defense and federal courts.

Legal Services for Prisoners with Children
1540 Market St., Suite 490, San Francisco, CA 94102
Legal resources and issues around women in prison, including guides and manuals for people in prison with children.

National Center for Lesbian Rights *(only for gay, lesbian, bisexual, and transgender people)*
870 Market St. Ste. 370, San Francisco, CA 94102
English, Spanish

National Clearinghouse for the
Defense of Battered Women
125 South 9th Street #302, Philadelphia PA 19107
Legal and other assistance for battered women.

The below is the introductory section from the website of Charles Carbone: Parole and Prison Rights Attorney.

UNDERSTANDING PRISON LAW AND THE RIGHTS OF PRISONERS

I believe firmly in the right of prisoners and their families to know the law. All too often, lawyers, judges and prosecutors mystify the law to preserve their privilege and status. This shielding of the law is particularly obnoxious given that the impact of the law is most felt by those who are shut out from knowing the law.

In the classic example of this mystifying of the law, I hear countless stories first hand of young men who have accepted life sentences from lawyers who gave little or no legal advice, or even worse have lied to secure a plea agreement and conviction.

I believe that those most impacted by the law have the greatest right to understanding how it works. Here is my attempt to help prisoners, their families, and their supporters know the legal rights of prisoners.

I. Overall Rights of Prisoners:

The last 30 years in prisoner and constitutional law has been the erosion, rather than an expansion, of legal, civil, and political freedoms for inmates. Prisoners have lost more rights than they have gained. Despite this, prisoners have retained some rights in the courts which can be defended and advanced. The most basic prisoner rights can be divided into two categories:

1. the right to challenge a criminal conviction and
2. the rights which affect the conditions of a prisoner's confinement

Let's deal with the first - namely, the right to challenge a criminal conviction.

(a) The right to challenge a criminal conviction

Here's the truth on how criminal appeals work: A person is convicted in state court by either a plea agreement or by a jury. If a plea is accepted, the prisoner has fewer recourses for challenging the conviction. There is no right to appeal a plea agreement, and accordingly, prisoners who accept a plea are not given appointed counsel to appeal the plea in the California Court of Appeals. All too often, prisoners who accept a plea based on faulty, inaccurate, or misleading information realize after arriving in prison that they made a terrible mistake. Undoing the plea, however, is no easy task.

When a prisoner petitions the court to reverse or undue a plea agreement, courts will generally examine whether the plea was made in a "knowing" and "intelligent" manner. The evidentiary standard for reviewing the legality of a plea agreement is to assess whether the plea was made in a "voluntary and intelligent" manner. On the topic of "voluntary," an appellate court may review whether the accused entered into the contract freely. In other words, was the accused threatened, coerced, or under undue duress in entering his plea? Obviously, being scared of going of trial does not constitute sufficient duress. A plea becomes involuntary when an accused is threatened or abused or a confession or plea is coerced, Unless those characteristics are present, an appellate court will assume that the plea was voluntary.

An appellate court will review whether a plea was intelligent by gauging whether the accused was properly informed of the rights he waived; knows the consequences of the plea (time to be served); and knows that

the government is otherwise prepared to proceed to trial, etc. There is an equally difficult bar to establish that a plea was not made in an intelligent manner.

If a prisoner has been convicted by a jury, it is easier -- although it's still hard -- to challenge the conviction. Here's how this appeals process works: A person is convicted in the trial court or what is called the "California Superior Court for the County of ____." Once the jury convicts, the convicted is given one appeal as a matter of right. This means that the convicted is given a free-of-charge appellate attorney to file an appeal in the California Court of Appeals. These attorneys handle too many appeals and consequently have limited time to investigate and attack the conviction in a thorough manner. Many appellate attorneys don't even visit their clients in prison. If the Court of Appeals affirms the conviction, the prisoner must on their own or through a hired lawyer bring their appeal before the California Supreme Court. It is critical for a prisoner to bring their appeal before the California Supreme Court because according to a federal law passed in 1996 called the Antiterrorism and Effective Death Penalty Act, prisoners must have the California Supreme Court hear an appeal before one is reviewed by the federal courts. This means that prisoners may never get into federal court unless they file an appeal before the California Supreme Court. All too often, prisoners who want their convictions heard in federal court are precluded from doing so because they haven't filed a timely appeal in the California Supreme Court. This bad outcome underscores the absolute importance of having, if available, a good and knowledgeable appeals attorney who can file a thorough appeal in the California Supreme Court which will provide the foundation for an appeal in federal court.

Some common pitfalls and traps of prisoners occur when prisoners fail to file a timely appeal in the California Supreme Court. In this instance, the prisoner is forced to file what is known as "Collateral Attack" or "Collateral Appeal." This legal instrument is an appeal filed when the statute of limitations (amount of time to file) has expired on a direct appeal. Courts are leery to accept Collateral Attacks because they consider such appeals to be late. Prying open the court house door is only allowed on two grounds. A prisoner must first prove to the court the existence of either:

1. new court precedence which due to its retroactive application would render the conviction unlawful; and/or
2. that newly discovered evidence exists which could not have been reasonably discovered earlier and upon which the prisoner did not delay in presenting the court.

Let me try to make sense of these two requirements for you. On the first, a prisoner would have to show that a new controlling court decision has been issued that would call into question the legitimacy or legality of the conviction. Moreover, this new court decision(s) must apply on a retroactive basis -- meaning that the decision applies to criminal cases which were decided in the past as well as to new cases. This retroactive requirement is difficult to meet because while new cases are decided all the time it is rare that the court decides that a new case has retroactive application because the court system hates to unravel old decisions. The court system frowns on such retroactive application because it makes more work for judges and brings uncertainty into the law.

Often the sole ability to get back into court once the statute of limitations has expired rests on the grounds of establishing newly discovered evidence. This requirement can be tricky so it's important to understand how it works. The newly discovered evidence requirement has several components. One, that the evidence could not have been discovered without a reasonable degree of diligence (effort); two, that the evidence is not cumulative (meaning merely echoing other evidence which was already heard); three, that the convicted brought such evidence to the court's attention within a reasonable period of time; and four,

that if the evidence is assumed true that such evidence would serious undermine the conviction. Now be careful because many prisoners and their families mistake this requirement as a license to raise issues that were known at trial (like a particular fact wasn't raised by the defense attorney). Newly discovered evidence means just that -- it was not known at trial and was recently discovered.

(b) The Rights of Prisoners In Their Conditions of Confinement

Almost all rights of prisoners is judged against what is called the "Turner" test. This "Turner" test refers to a 1987 U.S. Supreme Court case where the high court established a four part test for deciding whether a prison rule or regulation is constitutional. There are 4 criteria that any court will apply when reviewing the constitutionality of a prison regulation. The court will consider:

1. whether there is a valid and rational connection between the prison regulation or practice and the legitimate governmental interest that justifies it;
2. whether there are alternative means of exercising the right that remain open to prison inmates;
3. the impact accommodation of the constitutional right in question will have on guards and other prisoners, and on the allocation of prison resources generally;
4. whether there are readily available alternatives that fully accommodate the prisoner's rights at de minimis cost to valid penological interests.

Once known, it becomes clear how easy it is for prison administrators to meet the low threshold in the "Turner" test for constitutionality, and we begin to see why prison wardens and other correctional staff exude such great confidence in enacting any rule or regulation regardless of its intelligence or harm to prisoners because the courts are not likely to overturn or declare the rule unconstitutional.

Apart from prison rules and regulations, courts are even more deferential to the decisions of prison staff under a different standard known as the "some evidence" standard. Under this criteria -- established in another U.S. Supreme Court case known as Superintendent v. Hill -- the "some evidence" standard only requires that prison staff refer to minimal evidence to support their conclusion or decisions. For example, when deciding whether a prisoner has broken the prison's rules (e.g. attacking another inmate or having contraband), the prison staff has to merely refer to "some evidence" or proof that the prisoner has broken the rules. As long as the prison staff can refer to some evidence or proof, courts of law are precluded from looking further into whether the evidence actually supports the claims of the prison's staff. This highly deferential standards basically allows prison staff a "free-ride" to make any decision regardless of its merit as long as they can offer some proof or evidence that they considered.

Chapter How to Protect Your Freedom to Take Legal Action

Just like people on the outside, prisoners have a fundamental constitutional right to use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, you have the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, you have a right to "due process of law." Put together, these provisions mean that you must have the opportunity to go to court if you think your rights have been violated. Unfortunately, doing legal work in prison can be dangerous, as well as difficult, so it is important to **KNOW YOUR RIGHTS**!

A terrible but common consequence of prisoner activism is harassment by prison officials. Officials have been known to block the preparation and filing of lawsuits, refuse to mail legal papers, take away legal research materials, and deny access to law books, all in an attempt to stop the public from knowing about prisoner issues and complaints. Officials in these situations are worried about any actions that threaten to change conditions within the prison walls or limit their power. In particular, officials may seek to punish those who have gained legal skills and try to help their fellow prisoners with legal matters. Prisoners with legal skills can be particularly threatening to prison management who would like to limit the education and political training of prisoners. Some jailhouse lawyers report that officials have taken away their possessions, put them in solitary confinement on false charges, denied them parole, or transferred them to other facilities where they were no longer able to communicate with the prisoners they had been helping.

With this in mind, it is very important for those of you who are interested in both legal and political activism to keep in contact with people in the outside world. One way to do this is by making contact with people and organizations in the outside community who do prisoners' rights or other civil rights work. You can also try to find and contact reporters who may be sensitive to, and interested in, prison issues. These can include print newspapers and newsletters, broadcast television and radio shows, and online sites. It is always possible that organizing from the outside aimed at the correct pressure points within prison management can have a dramatic effect on conditions for you on the inside.

Certain court decisions that have established a standard for prisoner legal rights can be powerful weapons in your activism efforts. These decisions can act as strong evidence to persuade others that your complaints are legitimate and reasonable, and most of all, can win in a court of law. It is sometimes possible to use favorable court rulings to support your position in non-legal challenges, such as negotiations with prison officials or in administrative requests for protective orders, as well as providing a basis for a lawsuit when other methods may not achieve your desired goals.

This Chapter explains your rights regarding access to the courts. This includes your right to:

(1) File legal papers, and to communicate freely about legal matters with courts, lawyers, and media;

(2) Reasonable access to law books;

(3) Obtain legal help from other prisoners or help other prisoners; and

(4) Be free from retaliation based on legal activity.

A. THE RIGHT TO FILE PAPERS AND COMMUNICATE WITH COURTS, LAWYERS, LEGAL WORKERS, AND THE MEDIA

In 1977, the Supreme Court held in a case called *Bounds v. Smith*, 430 U.S. 817 (1977), that prisoners have a fundamental constitutional right of access to the courts. This right of access requires prison authorities to help prisoners prepare and file meaningful legal papers in one of two ways. They can give you access to a decent law library **OR** they can hire people to help you with your cases. The prison gets to choose which way they want to do it. However, that ruling was changed by a later Supreme Court case, *Lewis v. Casey*, 518 US. 343 (1996), which held that prisoners have to show an "actual injury" and the existence of a "non-frivolous legal claim" to win an access to the courts case. In other words, even if your prison isn't allowing you to use the law library and isn't giving you legal help, you still can't necessarily win a lawsuit about it. To win, you would also have to show that you have a real case that you lost or had problems with because of your lack of access to the law library or legal assistance. Courts do not agree on exactly what constitutes "actual injury" and it is not yet clear whether you need to show actual injury if prison officials have actively interfered with your right of access, like by stopping you from mailing a complaint.

For a few different takes on these questions, compare *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) and *Tourscher v. McCollough*, 184 F.3d 236, 242 (3d Cir. 1999).

The "actual injury" requirement in *Lewis v. Casey* also applies if you are seeking damages for a past injury. In another recent Supreme Court case, *Christopher v. Harbury*, 536 U.S. 403 (2002), a woman who wasn't a prisoner claimed that she had been denied access to the court because the U.S. government had withheld information from her about her husband's torture by Guatemalan military officers in the pay of the CIA. The Court dismissed her claim because she still had a way to get damages. The Court explained that to get damages for a past denial of court access the plaintiff must identify a remedy that is presently unavailable.

- **IMPORTANT:** Keep the *Lewis v. Casey* "actual injury" requirement in mind as you read the rest of this chapter. It may or may not apply to *all* of the following rights related to access to the courts, and it means that many of the cases cited in this chapter from before 1996 are of somewhat limited usefulness. For this reason, it is very important for you to find out how the courts in your circuit interpret *Lewis v. Casey*.

1. Attorney and Legal Worker Visits

Your right of access to the courts includes the right to try to get an attorney and then to meet with him or her. For pretrial detainees, the Sixth Amendment right to counsel protects your right to see your attorney. However, even prisoners without pending criminal cases have a due process right to meet with a lawyer. In a case called *Procunier v. Martinez*, 416 U.S. 396 (1974), the Supreme Court explained that not only do you have a right to meet with your attorney, but you also have a right to meet with law students or legal paraprofessionals who work for your attorney.

However, you should be aware that prisons can impose reasonable restrictions on timing, length, and conditions of attorney visits. For example, the right to meet with legal workers and lawyers does not necessarily mean that you have a right to meet them in a contact visit. Most courts have held that you do have the right to a contact visit with your attorney. On the other hand, other courts have held that a prison may be able to keep you from getting a contact visit if there is a legitimate security reason. For more about contact visits with attorneys, compare: *Ching v. Lewis*, 895 F.2d 608 (9th Cir. 1990) and *Casey v. Lewis*, 4 F.3d 1516 (9th Cir. 1993).

2. Legal Mail

Mail that is sent to you from attorneys, courts, and government officials is protected by the First and Sixth Amendments. This means that prison officials are not allowed to read or censor this type of incoming mail. However, they can open it and inspect it for contraband as long as they do it in front of you. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Mail you send to attorneys and courts is also privileged and may not be opened unless prison officials have a special security interest that must meet certain Fourth Amendment requirements. *Washington v. James,* 782 F.2d 1134 (2d Cir. 1986); *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976).

3. Media Mail

Mail to and from reporters is treated much the same way. Mail you send to reporters usually may not be opened or read. Incoming mail from the press can be inspected for contraband, but only in front of you. *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976). However, requests from news media for face-to-face interviews can be denied, since the press does not have a special constitutional right of access to jails and prisons any more than the average person does. *Pell v. Procunier,* 417 U.S. 817 (1974).

4. The Prison Law Library

If your prison decides to have a law library to fulfill their requirements under *Bounds*, you can then ask the question: Is the law library adequate? A law library should have the books that prisoners are likely to need, but remember, under *Lewis v. Casey*, you probably can't sue over an inadequate law library unless it has hurt your non-frivolous lawsuit. The lower courts have established some guidelines as to what books should be in the library.

Books Required to be Available in Law Libraries:

- Relevant state and federal statutes
- State and federal law reporters from the past few decades
- **Shepards** citations
- Basic treatises on habeas corpus, prisoners' civil rights, and criminal law

For more detailed information on what must be available, you may want to read some of the following cases: *Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991); *Corgain v. Miller,* 708 F.2d 1241 (7th Cir. 1983); *Cruz v. Hauck*, 627 F.2d 710 (5th Cir. 1980) or take a look at the American Association of Law Libraries list of recommended books for prison libraries. This list is reprinted in the *Columbia Human Rights Law Review Jailhouse Lawyers' Manual*. Ordering information for the Columbia Manual is in Appendix E. However, you need to keep in mind the fact that these cases and lists have limited value today, and must be understood in connection to *Lewis v. Casey*.

Federal courts have also required that prisons libraries provide tables and chairs, be of adequate size, and be open for inmates to use for a reasonable amount of time. This does not mean that inmates get immediate access, or unlimited research time. Some cases that explore these issues are: *Shango v. Jurich*, 965 F.2d 289 (7th Cir. 1992); *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851 (9th Cir. 1985); *Cepulonis v. Fair*, 732 F.2d 1 (1st Cir. 1984).

Inmates who cannot visit the law library because they are in disciplinary segregation or other extra-restrictive conditions must have meaningful access some other way. Some prisons use a system where prisoners request a specific book and that book is delivered to the prisoner's cell. This system makes research very hard and time-consuming, and some courts have held that, without additional measures, such systems violate a prisoner's right to access the courts. See, for example, *Marange v. Fontenot*, 879 F. Supp. 679 (E.D. Tex. 1995).

What if I don't have a law library?

Many prisons have either closed their law library or not re-stocked it with new material in years. If this is the case in your law library and you or someone you know on the outside has access to a lawyer, you can try and bring suit against the prison for not complying with *Bounds*. If not, you could try publicizing the fact that your prison is failing to comply with a Supreme Court ruling by sending press releases to various media outlets, like newspapers, television, and the internet.

5. Getting Help from a Jailhouse Lawyer

You have a limited constitutional right to talk with other prisoners about legal concerns. You have a right to get legal help from other prisoners unless the prison "provides some reasonable alternative to assist inmates in the preparation of petitions." *Johnson v. Avery*, 393 U.S. 483, 490 (1969). This means that if you have no other way to work on your lawsuit, you can insist on getting help from another prisoner. In *Johnson,* the Supreme Court held that the prison could not stop prisoners from helping each other write legal documents because no other legal resources were available.

If you have other ways to access the court, like a law library or a paralegal program, the state can restrict communications between prisoners under the *Turner* test if "the regulation… is reasonably related to legitimate penological interests." *Turner v. Safley,* 482 U.S. 78, 89 (1987). The Supreme Court has held that jailhouse lawyers do not receive any additional First Amendment protection, and the *Turner* test applies even for legal communications. Therefore, if prison officials have a "legitimate penological interest," they can regulate communications between jailhouse lawyers and other prisoners. *Shaw v. Murphy*, 532 U.S. 223, 228 (2001).

Courts vary in what they consider a "reasonable" regulation. *Johnson* itself states that "limitations on the time and location" of jailhouse lawyers' activities are permissible. The Sixth Circuit Court of Appeals said that it was OK to ban meetings in a prisoner's cell and require a jailhouse lawyer to only meet with prisoner-clients in the library. *Bellamy v. Bradley,* 729 F.2d 417 (6th Cir. 1984). The Eighth Circuit Court of Appeals upheld a ban on communication when, due to a transfer, a jailhouse lawyer is separated from his prisoner-client. *Goff v. Nix*, 113 F.3d 887 (8th Cir. 1997). However, the *Goff* court did require state officials to allow jailhouse lawyers to return a prisoner's legal documents after the transfer. *Id.* at 892.

6. Your Right to Be a Jailhouse Lawyer

The right to counsel is a right that belongs to the person in need of legal services. It does not mean that you have a right to be a jailhouse lawyer or **provide** legal services. *Gibbs v. Hopkins*, 10 F.3d 373 (6th Cir. 1993); *Tighe v. Wall*, 100 F.3d 41, 43 (5th Cir. 1996). Since jailhouse lawyers are usually not licensed lawyers they *generally* do not have the right to represent prisoners in court or file legal documents with the court, and the conversations between jailhouse lawyers and the prisoner-clients are not usually privileged. *Bonacci v. Kindt,* 868 F.2d 1442 (5th Cir. 1989); *Storseth v. Spellman* 654 F.2d 1349, 1355-56 (9th Cir. 1981). Furthermore, the right to counsel does not give a prisoner the right to choose whom he wants

as a lawyer. *Gometz v. Henman*, 807 F.2d 113, 116 (7th Cir. 1986).

Some courts require a jailhouse lawyer to get permission from prison officials before helping another prisoner. For example, a New York state court held that the prison could punish a prisoner for helping another prisoner by writing to the FBI without first getting permission. *Rivera v. Coughlin,* 620 N.Y.S.2d 505, 210 A.D. 2d 543 (App. Div. 1994).

Nor will being a jailhouse lawyer protect you from transfer, although the transfer may be unconstitutional if it hurts the case of the prisoner you are helping. For more on this, compare *Buise v. Hudkins*, 584 F.2d 223 (7th Cir. 1978) with *Adams v. James*, 784 F.2d 1077, 1086 (11th Cir. 1986). The prison may reasonably limit the number of law books you are allowed to have in your cell. Finally, jailhouse lawyers have no right to receive payment for their assistance. *Johnson v. Avery*, 393 U.S. 483, 490 (1969).

Do Other Prisoners Have a Right to Have You as Their Jailhouse Lawyer?

In some parts of the country, jailhouse lawyers do not have a "right" to help others. However, if the other prisoner can't possibly file a claim without you, the **he or she may have a right to your assistance**, *Gibbs v. Hopkins*, 10 F.3d 373, 378 (6th Cir. 1993). Prisoners are guaranteed "meaningful" access to the courts, so if the person you are helping can't file their claim because he or she doesn't speak English or is locked in administrative segregation without access to the law library, their rights may be being violated.

B. DEALING WITH RETALIATION

If you file a civil rights claim against the warden, a particular guard, or some other prison official, there is a chance that they will try to threaten you or scare you away from continuing with your suit. Retaliation can take many forms. In the past, prisoners have been placed in administrative segregation without cause, denied proper food or hygiene materials, transferred to another prison, and had their legal papers intercepted. Some have been physically assaulted. Most forms of retaliation are illegal, and you may be able to sue to get relief.

In many states, you may be transferred to another correctional facility for any or no reason at all. *Olim v. Wakinekona*, 103 S.Ct. 1741 (1983). However, <u>you cannot be put into administrative segregation solely to punish you for filing suit</u>, *Cleggett v. Pate*, 229 F. Supp. 818 (N.D. Ill. 1964). Nor can you be transferred to punish you for filing a lawsuit. Of course, there are other, more subtle things that officers can do to harass you. Perhaps your mail will be lost, your food served cold, or your turn in the exercise yard forgotten. One of these small events may not be enough to make a claim of retaliation, but if it keeps happening, it may be enough to make a claim of a "campaign of harassment." *Bart v. Telford*, 677 F.2d 622 (7th Cir. 1982).

To prove that the warden or a correctional officer has illegally retaliated against you for filing a lawsuit, you must show three things:

(1) You were doing something you had a constitutional right to do, which is called "protected conduct." Filing a Section 1983 claim is an example of "protected conduct."

(2) What the prison official(s) did to you, which is called an "adverse action," was so bad that it would stop an "average person" from continuing with their suit, and

(3) There is a "causal connection." That means the officer did what he did because of what you were doing. Or, in legal terms: The prison official's **adverse action** was directly related to your **protected conduct**.

If you show these three things, the officer will have to show that he would have taken the same action against you regardless of your lawsuit.

- **<u>Example:</u>** An officer learns that you have filed suit against the warden and throws you into administrative segregation to keep you away from law books or other prisoners who might help you in your suit. The "protected action" is you filing a lawsuit against the warden; the "adverse action" is you being placed in the hole. You would have a valid claim of retaliation unless the officer had some other reason for putting you in the hole, like you had just gotten into a fight with another prisoner.

It is possible -- but not easy -- to get a preliminary injunction to keep correctional officers from threatening or harming you or any of your witnesses in an upcoming trial, *Valvano v. McGrath,* 325 F. Supp. 408 (E.D.N.Y. 1970).

Here are some of the most common Eighth Amendment challenges to prison conditions:

- **Food:** Prisons are required to serve food that is nutritious and prepared under clean conditions. *Robles v. Coughlin*, 725 F.2d 12 (2d Cir. 1983). As long as the prison diet meets nutritional standards, prisons can serve pretty much whatever they want. They must, however, provide a special diet for prisoners whose health requires it and for prisoners whose religion requires it. See Part 2 of this section, on religious freedom.

- **Exercise:** Prisons must provide prisoners with opportunities for exercise outside of their cells. *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996); *Delaney v. DeTella*, 256 F.3d 679 (7th Cir. 2001). Courts have not agreed upon the minimum amount of time for exercise required, and it may be different depending on whether you are in the general population or segregation. One court has considered three hours per week adequate, *Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir. 1996), while another has approved of just one hour per week for a maximum security prisoner. *Bailey v. Shillinger*, 828 F.2d 651 (10th Cir. 1987). Some circuits have determined that prisoners cannot be deprived of *outdoor* exercise for long periods of time. *LeMaire v. Maass*, 12 F.3d 1444 (9th Cir. 1993). Prisons must provide adequate space and equipment for exercise, but again, there is not clear standard for this. It is generally acceptable to limit exercise opportunities for a short time or during emergencies.

- **Air Quality and Temperature:** Prisoners have successfully challenged air quality when it posed a serious danger to their health, particularly in cases of secondhand smoke, *Reilly v. Grayson*, 310 F.3d 519 (6th Cir. 2002), *Alvarado v. Litscher*, 267 F.3d 648 (7th Cir. 2001) and asbestos, *LaBounty v. Coughlin*, 137 F.3d 68 (2d Cir. 1998). While you are not entitled to a specific air temperature, you should not be subjected to extreme hot or cold, and should be given bedding and clothing appropriate for the temperature. *Gaston v. Coughlin*, 249 F.3d 156 (2d Cir. 2001).

- **Sanitation and Personal Hygiene:** Prisoners are entitled to sanitary toilet facilities, *DeSpain v. Uphoff*, 264 F.3d 965 (10th Cir. 2001), proper trash procedures, and basic supplies such as toothbrushes, toothpaste, soap, sanitary napkins, razors, and cleaning products.

- **Overcrowding:** Although overcrowding is one of the most common problems in U.S. prisons, it is not considered unconstitutional on its own. *Rhodes v. Chapman*, 452 U.S. 337 (1981); *C.H. v. Sullivan*, 920 F.2d 483 (8th Cir. 1990). If you wish to challenge overcrowding, you must show that it has caused a serious deprivation of basic human needs such as food, safety, or sanitation. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985); *Toussaint v. Yockey*, 722 F.2d 1490 (9th Cir. 1984).

- **Rehabilitative Programs:** In general, prisons are not required to provide counseling services like drug or alcohol rehabilitation to prisoners unless they are juveniles, mentally ill, or received rehabilitative services as part of their sentence. *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia*, 93 F.3d 910, 927. (D.C. Cir. 1996).

- **Other Conditions:** Prisoners have also successfully challenged problems with lighting, *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985), fire safety, *Id.* at 784, furnishings, *Brown v. Bargery*, 207 F.3d 863 (6th Cir. 2000), accommodation of physical disabilities, *Bradley v. Puckett*, 157 F.3d 1022, (5th Cir. 1998), and unsafe work requirements. *Fruit v. Norris*, 905 F.2d 1147 (8th Cir. 1990), as well as other inadequate or inhumane conditions.

Instead of challenging a particular condition, you may also bring an Eighth Amendment suit on a "totality of the conditions" theory, either on your own or as part of a class action lawsuit. Using this theory, you can argue that even though certain conditions might not be unconstitutional on their own, they add up to create an overall effect that is unconstitutional. *Palmer v. Johnson*, 193 F.3d 346, (5th Cir. 1999). The Supreme Court has limited this argument to cases where multiple conditions add up to create a single, identifiable harm. *Wilson*, 501 U.S. at 305, but the courts are in disagreement as to what exactly that means.

9. Your Right to Medical Care

The Basics: The prison must provide you with medical care if you need it, but the Eighth Amendment does not protect you from medical malpractice.

The Eighth Amendment also protects your right to medical care. The Constitution guarantees prisoners this right, even though it does not guarantee medical care to individuals outside of prison because, as one court explained, "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

If you feel that your right to adequate medical care has been violated, the Constitution is not the only source of your legal rights. You can bring claims under your state constitution or state statutes relating to medical care or the treatment of prisoners or bring a medical malpractice suit in state courts. You might also bring a claim in federal court under the Federal Tort Claims Act or a federal statute such as the Americans With Disabilities Act. This section, however, will focus exclusively on your rights to medical care under the U.S. Constitution.

Unfortunately, the Eighth Amendment does not guarantee you the same level of medical care you might choose if you were not in prison. To succeed in an Eighth Amendment challenge to the medical care in your prison, you must show that:

(a) You had a serious medical need;

(b) Prison officials showed "deliberate indifference" to your serious medical need; and

(c) This deliberate indifference caused your injury.

Estelle v. Gamble, 429 U.S. 97 (1976). These requirements are described in more detail below.

(a) Serious Medical Need

Under the Eighth Amendment, you are only entitled to medical care for "serious medical needs." Courts do not all agree on what is or isn't a serious medical need; you should research the standard for a serious medical need in your circuit before filing a suit.

Some courts have held that a serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.,* 40 F.3d 1176, 1187 (11th Cir. 1994). Courts usually agree that the medical need must be "one that, if left unattended, 'pos[es] a substantial risk of serious harm.'" *Taylor v. Adams,* 221 F.3d 1254, 1258 (11th Cir. 2000). In other words, if a doctor says you need treatment, or your need is obvious, than it is probably "serious."

SUMMARY OF DISCIPLINARY PROCEDURES AND INMATE RIGHTS
(See Title 15, California Code of Regulations, for details)

A. **HEARING** — A serious rule violation may result in the loss of credits. A hearing will normally be held within thirty (30) days but not less than 24 hours, from the date you receive a copy of the Rules Violation Report. An exception is provided in the Californiant Code of Regulations when a case has been referred for possible prosecution and you have requested, in writing, and been granted, a postponement pending the outcome of such referral. Failure of staff to meet time constraints will usually act as a bar against denial or forfeiture of time credits, but will not bar against other authorized disciplinary actions. *(CCR 3320)*

B. **INVESTIGATIVE EMPLOYEE/STAFF ASSISTANCE** —

1. *General Information* — You may request to have an investigative employee and/or a staff assistant assigned to assist you in the investigation, preparation, or presentation of your defense at the disciplinary hearing if it is determined by staff that (1) you are illiterate, or (2) the complexity of the issues, or (3) your confinement status makes it unlikely that you will be able to collect and present the evidence necessary for an adequate comprehension of your case. *(CCR 3315–3318)*

2. *Staff Assistant* — A staff member will be assigned to assist you in the disciplinary process if you are deemed to be incapable of representing yourself. The assigned staff will assist you in preparing for the hearing and assist you at the hearing. The staff assistant will maintain any confidence you request about your past conduct. *(CCR 3318)*

3. *Investigative Employee* — An investigative employee, if assigned, will gather information, question staff and inmates, screen witnesses, and complete and submit a written, non-confidential report to the disciplinary hearing officer. You have the right to receive a copy of the investigative employee's report 24 hours before a hearing is held. *(CCR 3315)*

4. *Witnesses* — You may request the presence of witnesses at the hearing who can present facts related to the charges against you. You may also request the presence of the reporting employee and the investigative employee. You may, under the direction of the hearing officer, question any witness present at the hearing. The hearing officer may deny the presence of witnesses when specific reasons exist. *(CCR 3315)*

5. *Personal Appearance* — A hearing of the charges will not normally be held without your presence, unless you refuse to attend. *(CCR 3320)*

C. **REFERRAL FOR PROSECUTION** — Referrals for prosecution will not delay a disciplinary hearing unless you submit a request in writing for postponement of the hearing pending the outcome of such referral. You may revoke such request in writing at any time prior to the filing of accusatory pleadings by the prosecuting authority. A disciplinary hearing will be held within 30 days of staff receiving your written revocation of your request to postpone the hearing or within 30 days of receiving a response from the prosecuting authority. *(CCR 3316–3320)*

You have the right to remain silent at a disciplinary hearing and no inference of guilt or innocence will be drawn from your silence. Any statements you do make may be used against you in criminal proceedings.

D. **DISPOSITION** — At the end of the hearing, you will be advised of the findings and disposition of the charge. Within five working days, following review of the CDC 115 and CDC 115-A by the Chief Disciplinary Officer, you will be given a copy of the completed rule violation report, which will contain a statement of the findings and disposition and the evidence relied upon to support the conclusions reached. *(CCR 3320)*

E. **APPEAL** — If you are dissatisfied with the process, findings or disposition, you may submit an inmate appeal, form CDC 602, within fifteen days following receipt of the finalized copy of the CDC 115/CDC 115-A. When filing your appeal, be sure to attach a copy of the finalized CDC 115/CDC 115-A, if applicable; and any other pertinent documentation. *(CCR 3003)*

F. **ABBREVIATIONS** — HO-Hearing Officer; SC Sub Committee; FC-Full Committee; SHO-Senior Hearing Officer; BPT-Board of Prison Terms.

The Right of Legal Access

Just because the Prison Gates slam on you doesn't mean that you forfeit numerous substantive rights as guaranteed by the Constitution. Some of these are: the right to receive political publications, to engage in political writing including writings which are critical of the Gulag Administration, right to correspond with press, attorneys and other officers of the court, right to engage in political discussions with other prisoners. These are but a few of many rights you should be aware of. The one area of "Prisoners Rights" this article will focus on is access to the courts. The right of access to the courts is based upon the First and Fourteenth Amendments (right to petition all branches of the government for redress). Fifth and Fourteenth Amendments (guarantee of due process). Sixth and Fourteenth Amendments (right to counsel). This right of access to the courts is probably the most violated and or curtailed.

NUTS AND BOLTS

Let's examine a little more carefully this substantive right of "access". In *Bounds v Smith* 430 U .S. 817. 97 S.Ct 1491 (1977), the Supreme Court firmly established your Constitutional right to access to the courts and that access has to be adequate, effective, and meaningful. Any regulation or policy that obstructs any aspect of that right to access is held invalid. Basically the Gulag overseers can create all the rules they want regarding the law library, but under careful examination they may be held invalid. Before running OK to kite the Warden there are a few other things you should know. Right of access involves access to a law library, necessary materials (postage, paper, pens). legal assistance either provided by the State or other prisoners. Confidential communication with the courts, attorneys, and public officials. Finally the right to exercise any of these without fear of retaliation.

THE PIT FALLS

Now at this point you may be thinking about suing the Warden. Because of the fact that claims of denial of access have been brought as both individual claims and as class action suits. Without citing a lot of case law, you should know that generally individual cases require you suffered actual harm i.e. having a case dismissed. In class actions you have the burden to prove that the system can't provide access to all without having to establish harm to an individual(s). *see Williams V Leeke,* 584 F. 2nd 1336 (4th Cir.1975).

LAW LIBRARY

So lets say you want to find out if the Warden can shut off the T.V. 15 minutes early, or if he can AD-SEG you for no reason You should start your research by reviewing the regs and then paying a visit to the Law Library. Prisoners have a right of access to an adequate law library or adequate assistance from persons trained in the law so that you may have an adequate opportunity to present claimed violations of your right to a court. But its an either or situation. Courts have held that if the state provides adequate legal assistance it doesn't have to provide you with a law library. Basically if there's a legal assistance program serving your prison, a court may decide that you have no right to a law library unless:

* You've been rejected by the program.
* The program doesn't cover full range or prisoner's legal needs.
* Programs resources are inadequate to serve the population

ADEQUATE

So far we've thrown the term adequate around quite a bit but what doesn't it mean? We could find out by looking in Webster Dictionary for a neat definition. but it wouldn't give us a factual basis on which to present a case. Courts have issued various conclusions about what a law library should contain. For example some courts have said the American Association of Law Libraries Services for Prisoner's List is what they should contain. Basically it just takes a bit of common sense to know that once law dictionary for a population of 100 just isn't adequate. But of course the courts may rule differently. It'll take some research on you part to see if there exists any case law that is similar in fact to yours. Access to law libraries likewise must be adequate. While prison authorities can restrict reasonable access in terms of time, manner, and place, the courts have condemned schedules that didn't provide enough time for meaningful research, actual physical access to the library, and other types of restrictions. If you're in segregation the courts have approved a cell delivery system. *Wajtczak v Cuyler* 180 F.Supp. 1288 (E.D. PA 1979), held that a protective custody prisoner must have at least the equivalent of the opportunity [to do legal research] that is available to an inmate who is permitted to go personally to the prison library. By looking at the end of this article you will find legal cites concerning how courts have interpreted what is adequate vs. inadequate. Always remember to Shepardize each cite fully and to its very end. Not doing so will jeopardize your case.

SUMMARY

Everybody wants to get out of the cage. By limiting your legal work to this long term goal, you won't get jacked by the Warden. Oh the T.V. may get turned off 15 minutes early, dinner might be a bit cold. but other than that you'll be left alone. It's only when you demand that your rights be respected will they play you close. Remember it is illegal for them to retaliate against you for exercising your rights. It doesn't matter if its official policy or not if you

if you can prove retaliation, you have several remedies available to you including suing for monetary damages. If you're serious about exercising your rights and helping others to do the same, expect to get harassed. One of the things you should be considering now is "How do I protect myself from getting thrown in the hole:'" defending yourself from petty prisoncrats is handled best by organizing on two levels. On the inside by hooking up with other "Rights Conscious" prisoners and forming a club or organization. You can call it Gulag Committee to Safeguard Prisoner's Rights or whatever. Parallel to this is to organize a second level that of an outside support group. There are many such groups already in place doing prisoner support work. Hooking up with "Free World" allies is an excellent point of leverage arbitrary harassment.

The role of the support group is just that, to support your efforts through publicizing your issues, research, material support, etc. Your outside supporters can be considered your lifeline. No matter what happens, they're there. If you happen to find yourself in an uncomfortable relationship with support people, express your concerns in an open, honest, and fair manner. Resolve the situation as quickly as possible. If resolution isn't happening then cut these folks loose quickly. I hope this has helped you at least think about what your rights are. There are a lot of additional resources to help you along and some are listed after the case cite. Take care, good luck.
THE STRUGGLE DOES NOT STOP AT THE PRISON GATES.

NOTE: *This article was written by a lay person. The reference used is Prisoner's Self-Help Litigation Manual copyright 1983 Daniel E. Manville. Special thanks for Prison Legal News for their invaluable assistance and Prison Law Office for sending us all their material.*

CASE CITES

Law Library

Cruz v Hauk, 627 F.2d 710. 720 (5th Cir. 1978), two or three hours a week might be inadequate.

Walker v Johnson, 544 F. Supp.345 (E.D. Mich. 1982), four and a half hours a week required.

Ramos v Lamm, 485 E Supp. 122,I66 (D. Colo.1979) aff'd in part and rev'd in part 639 F.2d 559 (10th Cir. 1980). cert denied S. Ct 1759 (1981), three hours every four to six weeks inadequate.

Retaliation/Interference

Millhouse v Carlson, 652 F 2nd 371 (3rd Cir. 1981), conspiratorially planned disciplinary actions.

Ferrari v Moran, 618 F 2nd 888 (1st Cir. 1980), denial of transfer and medical care.

Cruz v Beto, 603 F.2d 1178 (5th Cir. 1979), placement of attorney's clients in segregated unit.

Hudspeth v Figgins, 584 F.2d 1345 (4th Cir. 1978), death threat. Carter v Newburg Police Dept., 523 F Supp.16 (S.D.N.Y. 1980), threats and beatings.

McDaniel v Rhodes, 512 F. Supp 117 (S.D. Ohio l98l), threats of adverse parole action.

LEGAL RESOURCES

ACLU HANDBOOK: THE RIGHTS OF PRISONERS
ACLU 132 W. 43rd St. New York, NY 10036
A guide to the legal rights of prisoners, parolees, and pre-trial detainees. Contains citations. $5 to prisoners.

BLACKSTONE SCHOOL OF LAW
P.O. Box 790906 Dallas, TX 75379-0906 Low cost paralegal course by mail. Covers principles of civil and criminal law.

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE
660 J Street, #200, Sacramento, CA 95814
Attn: Melissa Nappan

CRIMINAL PROCEDURE PROJECT
Georgetown Law Journal 600 New Jersey Ave. NW, Washington D.C. 20001 Information on criminal procedure, habeus corpus relief, and prisoners rights. $5 Ask about free copies of their special issue of the Georgetown Law Journal.

D.C. PRISONERS LEGAL SERVICES PROJECT
1400 20th NW Suite 117 Washington, D.C. 20036

EQUAL JUSTICE U.S.A.
P.O. Box 5206 Hyattsville, MD 20782
Legal support. Involved heavily in Mumia's case.

FREEDOM
P.O. Box 819 Winnie, TX 77665
Legal information, self-help project.

HENRY GEORGE INSTITUTE
121 East 30th St. New York, NY 10016 Check it out, they may have legal stuff. Definitely has a home study course in economics. Small charge for materials. No tuition cost.

JAILHOUSE LAWYER'S MANUAL
Colombia Human Right Law Review, West 116th Street, Box 25, NY, NY 10027 With such a cool and nifty name how can you go wrong. What a shame the thing costs $13 for prisoners.

LEGAL BULLETINS
Lewisburg Prison Project, Box 128, Lewisburg, PA 17837
Write for FREE catalog of federal prisoner's rights.

UNCONSTITUTIONALITY of CDCR'S STG/SDP

TABLE OF CONTENTS

INTRODUCTION

Since completing my last article entitled, "Dismantling CDCR's STG Step-Down Program," I have done extensive research on the applicable law and standards we would have to meet in order to prevail. I am happy to report with confidence that the law is firmly on our side and with you assistance we can improve one of the most objectionable parts of the Step-Down Program (SDP).

While class counsel has just filed a Supplemental Complaint, we are not precluded from following tat up with another directed at challenging the constitutionality of the SDP (adopted October 17, 2014). In fact, it is clear from the language in the recent filings that class counsel is preparing to do just that. I begin this article by addressing this procedural hurdle that we must overcome.

What follows is a detailed application of the law to the facts of this case. I had hoped to obtain, and attach as exhibits, the "Reports, Studies, and Documents Relied Upon" by CDCR in the adoption of the SDP, but unfortunately I have been unable to obtain them. If you have these documents or related materials, please send me a copy as my work on these issues and my goal to have them presented in both the state and federal court will continue.

It is my hope that class counsel will utilize this article to oppose any attempt by CDCR to have the due process claims dismissed as moot in light of the implementation of the SDP. As set forth in both of my articles, the SDP itself contains due process violations.

1.

AN AMENDED OR SUPPLEMENTED COMPLAINT SHOULD BE CONSIDERED IN ORDER TO ENSURE THAT THE MERITS OF THE CHALLENGES TO THE STEP DOWN PROGRAM ARE HEARD

I found it pretty bold for the deputy attorney general to write, "The reality that Plaintiffs' due process claim soon will become moot does not render it ripe for early resolution." Def's. Opp'n Pls' Admin. Mot. at Page 2 (COURT DOCKET No. 337)

The attorney general seems to be operating on the false presumption that the new SDP is constitutional, but the "reality" is that it is not. Therefore, there is nothing moot about our due process claims. Fortunately, the

procedural posture of the case makes a supplemental complaint challenging the constitutionality of the SDP ripe for submission.

CDCR'S SDP HAS BEEN CONSTANTLY CHANGING AND HAS ONLY RECENTLY BEEN PERMANENTLY ADOPTED

The attorney general will surely mount a strong opposition to any proposed amendments or supplements to the complaint, but the fact is CDCR's SDP has been a "moving target" since its inception. It began with the 2007 study "Security Threat Group Identification and Management"[1] In March 2012, CDCR made more changes and distributed the "CDCR STG Prevention, Identification and Management Strategy," March 1, 2012 (3/01-version 5.5) [2] Then in October 2012, CDCR made more changes and implemented the "STG Pilot Program (see Cal. Code of Regs. Title 15 §3999.13):

> "This pilot program will remain in effect for a 24-month period from the date it is filed with the Secretary of State, at which time it will lapse by operation of law or will promulgated through the Administrative Procedure Act." at p.4

The pilot program was enacted in accordance with Cal. Penal Code §5058.1 (a) which states:

> "(a) For the purpose of this section, 'pilot program' means a program implemented on a temporary and limited basis in order to test and evaluate the effectiveness of the program, develop new techniques, or gather information." (emphasis added)

As expected from the above language two more sets of amendments were made to the pilot program followed by CDCR's formal Notice of Change to Regulations No.14-02 (January 31, 2014), the final text incorporated yet more changes and were adopted on October 17, 2014 which are available at: http://www.cdcr.ca.gov/Regulations/AdultOperations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf .

It is also worth noting that while all these changes were taking place, the California State Legislature held hearings on CDCR's use of long-term solitary confinement. I believe class counsel Anne Butterfield Weills and Charles Carbone took part in these hearings wherein the Security Threat Group (STG) Step-Down Program (SDP) was discussed. These hearings led to California Assembly Bill 1652 and California Senate Bill 892, both of which proposed substantive changes to the STG SDP and created a reasonable expectation that yet more changes to the STG SDP would occur.

1 The 2007 study is available at: http://s3.documentcloud.org/documents/240261/final-draft-policy-statements-14-2.pdf

2 Available at: https://www.prisonlegalnews.org/media/publications/cdcr_gang_management_report_2012.pdf

Clearly, any meaningful challenge to the SDP prior to this point would have been premature as the STG SDP has been a "moving target." Surely the attorney general would have argued that until the regulations were promulgated, they are temporary and just a pilot program.

The language in class counsel's recent filings only supports a motion for leave to amend or supplement the complaint and operates as notice to the defendants' that a challenge to the STG SDP was forthcoming. For example:

> "According to CDCR regulations, progression from step-to-step requires 'participation in program activities' including 'completion of all required components/curriculums SC ¶190. Yet the various programs, components and curriculums required for successful completion of the Step Down Program are not enumerated in the regulations nor listed in any public CDCR policy statements, and many do not yet exist. *Id.* ¶191."

Pltfs' Motion for Leave to File Supp. Compl. at p.17 lines 14-18 (Court Docket No. 345), see also *Id*. at p.11 lines 2-3; pp.15-16 lines 23-24; Pltfs' Supp. Compl. at ¶¶177, 190, 191, 192, and 221 (c).

As noted in the motion for leave "Although newly alleged matters 'need not arise out of the same transaction or occurrence as the allegations contained in the original complaint,' they must bear 'some relationship' to the subject matter of the complaint to be supplemented." Pltfs' Motion for Leave at p.12 lines 23-26 (Court Docket No.345) (citations omitted).

For all the reasons cited about, class counsel should consider filing an amended or supplemented complaint to ensure that the merits of the challenges to the SDP are fully heard by the court and not subject to exclusion in the event of an appeal on some technical grounds.

2.

MEMORANDUM OF POINTS & AUTHORITIES ON THE UNCONSTITUTIONALITY OF CDCR'S SECURITY THREAT GROUP STEP-DOWN PROGRAM

A. Applicable Law

The liberty inquiry here is controlled by the Supreme Court's decision in Vitek v Jones, 665 U.S. 480 (1980), in which the court held that Nebraska prison officials violated a state prisoner's due process rights by classifying him mentally ill and transferring him to a mental hospital for mandatory behavior modification treatment without having provided the prisoner with a prior hearing. *Id.* at 491-94. These actions by prison officials implicated both a state-created liberty interest as well as a liberty arising from the Due Process Clause itself. 445 U.S. at 490-91.

The Due Process Clause protects certain fundamental rights, one of which is the right to be free from unjustified bodily and mental intrusions. Washington v. Harper, 494 U.S. 210, 221 (1990) (prisoner possesses a significant liberty interest in avoiding unwanted administration of psychotropic drugs); Youngberg v. Romeo, 457 U.S. 307 (1982)(freedom from bodily restraint recognized as "core" of liberty interest protected by the due process clause); Vitek, 445 U.S. at 492-93 (involuntary transfer of inmate to mental institution where he would receive compelled behavior modification treatment implicates liberty interest). Based on the combination of stigma and compelled behavior modification treatment, the Vitek court held the inmate had been deprived of a protected liberty interest. Id. at 494.

As recognized by the Fifth Circuit, the principles of Vitek apply to different contexts that involve "materially indistinguishable fact." Coleman v. Dretke, 409 F.3d 665, 669 (5th Cir. 2005)("Vitek imposed an obligation on the states to provide process before imposing stigmatizing classifications and concomitant behavior modification therapy on individuals in their custody."); Coleman v. Dretke, 395 F.3d 216, 223 fn.30 ("Certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." (quoting Yarborough v. Alvarado, 124 S.Ct. 2140, 2151 (2004)); Michael C. v. Gresback, 526 F.3d 1008, 1017 (7th Cir. 2008)("[A] general constitutional rule already identified may apply wit obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful.").

The federal District and Circuit Courts of Appeals have since applied Vitek to a number of different contexts that involve materially indistinguishable facts as those present in Vitek v. Jones, including STG Gang Classifications. S*ee* e.g. Farr v. Rodriguez, 255 Fed. Appx. 925, 926 (5th Cir. 2007) (STG Classification); Jiminez v. Cox, 2008 U.S. Dist. LEXIS 88079 *28-29 (D. Nev. Feb. 15, 2008) (STG Validation); Knowlin v. Wurl-Koth, 2010 U.S. Dist. LEXIS 102495 *12-13 (W.D. Wis. Sept. 9, 2010) (Substance Abuse Programs), affn' 420 Fed. Appx. 593 (7th Cir. 2011); Canterino v. Wilson, 546 F. Supp. 174, 208 (W.D.Ky. 1982), vacated and remanded on other grounds, 869 F. 2d 948 (6th Cir. 1989) (inmate classification).

By far the most instructive cases on applying the framework of Vitek to new contexts comes from the arena of sex-offender treatment programs. *See* Neal v. Shimoda, 131 F. 3d 818 (9th Cir. 1997); Renchenski v. Williams, 622 F. 3d315, 325-331 (3d. Cir. 2010) (collecting cases on whether stigma of sex-offender label affects a liberty interest and concluding that the label, coupled with compelled therapy, does affect such an interest); Coleman v. Dretke, 395 F. 3d 216 (5th Cir. 2004), reh'g en banc denied, 409 F. 3d 665 (5th Cir. 2005)(per curiam); Kirby v. Siegelman, 195 F. 3d 1237 (10th Cir. 2000) (relying in part on Vitek v. Jones).

In the Ninth Circuit, Neal v. Shimoda is the precedential case on the application of the Vitek framework. *See* Cooper v. Garcia, 55 F. Supp. 2D 1090, 1100-1102 (S.D. Cal. 1999) (following Neal v. Shimoda's framework for applying Vitek); Putzer v. Whorton, 2010 U.S. Dist. LEXIS 100264 *18-21 (D. Nev. Aug. 9, 2010) (same).

Just as in the cases cited above, the class members/STG SDP inmates meet the Vitek framework based n the SDP's combination of stigma and compelled behavior modification treatment.

B. THE STIGMA REQUIREMENT

Vitek does not require publication to establish stigma. In fact, the plaintiff in Vitek had not been required to register the fact of his classification as mentally ill, and the Court nowhere indicated that his treatment providers would not keep his records confidential. *See* Vitek, 445 U.S. at 483-86 & 492. The Court nevertheless found it "indisputable" that commitment to the mental hospital alone could cause "adverse social consequences to the individual" and stated that "whether we level this phenomena 'stigma' or choose to call it something else[,] we recognize that it can occur and that it can have a very significant impact on the individual." *Id.* at 492 (internal quotation marks omitted).

"Disclosure of one's designation as a person in need of sex offender treatment – even to other persons similarly situated – casts stigma on the prisoner or parolee. "Chandler v. U.S. Parole Comm'n, 2014 U.S. Dist. LEXIS 109395 *35; Renchenski, 622 F. 3d at 328 n.9 (rejecting state's argument that prisoner's "claim of stigmatization falls short," and relying on the fact that because the prisoner's "weekly therapy sessions, are group therapy sessions, which comprise as many as fifteen inmates...his categorization as a sex offender would surely be known to the prison population"); *see* also Doe v. U.S. Parole Comm'n, 958 F. Supp. 2D 254, 267 (D.D.C. 2013) ("Even if [Doe's classification as a sex offender] is not made public...Doe himself is fully aware of it and may well feel a stigma because of it.").

In Neal v. Shimoda, the Ninth Circuit reasoned that because Hawaii's "regulations render the inmate *completely ineligible for parole* if the [sex offender treatment program] is not satisfactorily completed, the attachment of the 'sex offender' label to the targeted inmate has a practical and inevitable coercive effect on the inmate's conduct." Neal, 131 F. 3d at 829 (emphasis added). The Neal court concluded that the "coercive competent" of the [SOTP] was "functionally equivalent to the psychiatric treatment required by the statute at issue in Vitek that followed inexorably from the inmate being labelled as mentally ill." *Id.* At 829.

In this case, the stigma or "stigmatizing consequences" comes from being labeled both mentally ill and a STG member or associate.

Obviously, we are afforded procedural due process prior to being labeled STG members or associates and while those procedures may be sufficient to classify an inmate as STG, they in no way address CDCR's authority to force of compel STG inmates to undergo at least 3 years of psychotherapy as a pre-condition to release from solitary confinement, credit earning, and the long list of other deprivations. (I've compiled the list below). As the Supreme Court in Vitek concluded, an inmate's criminal conviction and sentence:

> "...do not authorize the State to classify him mentally ill and to subject him to involuntary psychiatric treatment without affording him additional due process protections." (emphasis added)

Vitek, 445 U.S. at 494; Neal, 131 F. 3D at 828.

Nor do they address the other constitutional issues such as the State's interest in forcing psychotherapy over the inmates' right to refuse such treatment (see PART 3-B-2), or the fact that the mandated psychotherapy bears virtually no "reasonable relation" to suppressing STG activity but instead is designed to instill (by "evidence-based psychotherapeutic treatment") government prescribed morals, values, and social skills through "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills. This program [is] designed fro small groups and [will] address the cognitive, social, and emotional needs of the inmate population." (Cal. Code of Regs. Title 15 §3999.13 at section 700.2 "Step Down Program Components"); see attached EXHIBIT 1. That is a very troubling description of the SDP, it is unconstitutional. While I fully address this issue in PART 4. I cannot help but quote Justice STEVENS dissenting opinion in Beard v. Banks:

> "What is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control. The State may not 'invade the sphere of intellect and spirit which is the purpose of the First Amendment to out Constitution to reserve from all official control.'"

Beard v. Banks, 548 U.S. 521, 552 (2006) (Stevens, J., dissenting) (citing cases).

In this case we indeed have a 'state-sponsored effort at mind control' and we must invoke the protection of the Constitution or we will be doing a great disservice to all those thousands of inmates who will find themselves stuck in the SDP.

These are all valid constitutional questions that are in no way addressed through the current STG process. To assume that any inmate labeled STG automatically requires mental health treatment in the form of at least 3 years of involuntary psychotherapy without a prior hearing to determine whether there is a need for such treatment is as clear a constitutional violation as will ever be seen.

Later in this article, I address the Matthew v. Eldridge factors that clearly call for more procedural protections prior to compelling STG inmates to complete behavior modification therapy. See PART 3.

The stigma of mental illness attaches to STG inmates as a result of in effect being classified mentally ill and being subjected to at least 3 years of intrusive psychotherapy that includes intensive cognitive behavioral therapy such as progressively enhanced cognitive instruction and weekly group therapy sessions just as the inmates in Renchenski cited above. *See* CDCR Form 128-B SDP4 (Rev.06/14); C.C.R. Title 15 §3999.13 section 700.

CDCR does not deny that STG inmates are required to undergo enhanced psychotherapy, nor can they. *See* attached EXHIBIT 1. Just as in the cases cited about, STG inmates are stigmatized mentally ill by virtue of being required to submit to the therapy. That STG inmates are not required to register as mentally ill or be formally enrolled in CDCR's Mental Health Delivery System does not lessen or diminish the stigma of mental illness. In Chandler v. U.S. Parole Comm'n, 2014 U.S. Dist. LEXIS 109395 *32-33 (D.D.C. Aug. 8, 2014) analyzed this exact situation and held:

> "Whether or not the parolee must now list his name on an official sex offender roster, by requiring him to attend sex offender therapy, the state labelled him a sex offender – a label that strongly implies that he has been convicted of a sex offense and which can undoubtedly cause adverse social consequences... "Even if Doe's classification as sex offender is not made public...Doe himself is fully aware of it and may well feel a stigma because of it.'
>
> Likewise, Chandler's assignment to supervision by CSOSA's sex Offender Unit v. Colorado D.O.C., 205 F. 3D at 1242, regardless of whether he was formally 'labeled' as such, or required to register as a sex offender, or forced to disclose his status as a supervisee of the Unit [citation]; see also Wills v. U.S. Parole Comm'n, 882 F. Supp. 2D 60, 76 (D.D.C. 2012 (concluding, in case involving imposition of Special Sex Offender Aftercare Condition on D.C. Supervised releasee, that 'USPC essentially classified the plaintiff as a sex offender and CSOSA complied with that classification,' although release was not required to register as a sex offender.)"

See also Knowlin, 2010 U.S. Dist. LEXIS 10249523; Doe, 958 F. Supp. 2D at 267 & 272 (citing Jennings v. Owens, 602 F. 652, 659 (5th Cir. 2010)).

The following is a list of the "stigmatizing consequence" which attach to an inmate who is classified as an STG member or associate:

* Placement on non-credit earning status. C.C.R. Title 15 §3042.4(b), 3044(b)(7);
* Placement in a Behavioral Management Unit. C.C.R. Title 15 §3334(b)(3);
* Placement in Security Housing Unit for indeterminate term. C.C.R. Title 15 §3341.5(c)(5) (includes long list of restricted conditions already recognized as constituting a "significant and atypical hardship");

* Placement on "High Control" parole conditions (very restrictive). C.C.R. Title 15 §3504(a)(1) (includes Parole Officer engaging in "collateral contacts" i.e. speaking to family, friend, neighbors, job contacts. *See* §3504(a)(5));

* Exclusion from numerous parole programs. C.C.R. Title 15 §§3505(a)(6), 3521.1(c)(8), 3521.2(d)(8);

* Placement on "Continuous Electronic Monitoring Technology." C.C.R. Title 15 §§3540, 3545(c)(5);

* Placement on "Global Positioning System (GPS) technology. C.C.R. Title 15 §§3560, 3561(b)(2);

* Requirement to Register as a Gang Offender with attendant restrictions. Cal. Penal Code §186.30, C.C.R. Title 15 §36519b)(2).

All of these stigmatizing consequences are also recognized as "collateral consequences" relevant to any due process claim. *See* Wolff v. McDonnell, 418 U.S. 539, 565 (1974) (recognizing "collateral consequences" as relevant to due process analysis).

C. THE BEHAVIOR MODIFICATION REQUIREMENT

The second element to the Vitek standard is proving that the stigma is "coupled with the subjection of the prisoner to mandatory behavior modification as a treatment." Vitek, 445 U.S. At 494; Neal, 131 F.3D at 1101-02; Chandler, 2014 U.S. Dist. LEXIS 109395*37 ("whether Chandler actually began receiving the treatment to which he was assigned is immaterial to resolution of his procedural due process claim.").

The courts have consistently recognized that an inmate satisfies the behavior modification requirement when prison officials require successful completion of behavior modification as a precondition to parole eligibility or credits. In Neal v. Shimoda, the Ninth Circuit reasoned that because Hawaii's "regulations render the inmate completely ineligible for parole if the [SOTP] is not satisfactorily completed, the attachment of the 'sex offender' label to the targeted inmate has a practical and inevitable coercive effect on the inmate's conduct." *Id.* at 829. The Neal court concluded that the "coercive component" of the SOTP was "functionally equivalent to the psychiatric treatment required by the statute at issue in Vitek..." Id. at 829; *See* also Cooper, 55 F. Supp. 2D at 1102; Knowlin, 2010 U.S. Dist. LEXIS 102495 *26-27; Chandler at *37; Kirby, 195 F.3D at 1288; Coleman, 395 F. 3D at 223.

In this case, once placed in the SDP it is mandatory that an inmate successfully complete long-term cognitive behavioral therapy. *See* C.C.R. Tiltle 15 §3378.3(a)(3) (2014); attached EXHIBIT 1 (collecting CDCR references to cognitive behavioral therapy as part of SDP). Failure to participate results in, inter alia, non-credit earning status and indeterminate SHU confinement. These preconditions alone are materially indistinguishable from those present in Neal v. Shimoda wherein the Ninth Circuit held that similar preconditions has "a practical

and inevitable coercive effect" which was "functionally equivalent to the psychiatric treatment required [in Vitek]. Neal at 829; Knowlin as *26 ("Whether a prisoner has a 'right' to something does not necessarily affect its power to coerce. To the extent withholding parole compels a prisoner to accept treatment, it would likely make little difference to the prisoner whether he was being denied 'discretionary' or 'mandatory' parole.").

With regard to establishing behavior modification "treatment" or "therapy," the relevant cases, beginning with Vitek itself, all involved situations where the complaining prisoner or parolee had been assigned to undergo treatment whose aim was behavior modification. *See* e.g. Chandler at *42 ("...[the] [] treatment program to which a [parolee] would be assigned has as its primary aim the modification of the offender's sexual thinking and behavior."); Doe, 958 F. Supp. 2D at 266-67 ("'Treatment' connotes an active step -- doing something to 'treat' or remedy an identified problem"... "the assessment condition here does not require Doe to admit his need for treatment, undergo any treatment or therapy, or otherwise change his behavior in anyway.").

In this case, it is clear that the cognitive behavioral therapy component of the SDP has "as its primary aim the modification of the offender's [STG] thinking and behavior." *See* e.g. C.C.R. Title 15 §§3000 ("Step Down Program" definition), 3378.3; STG Notice of Change of Regulations, No. 14-02 ("Initial Statement of Reasons"), §3000 ("Step Down Program" definitions), see also the section of this document entitled "SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(B)(1)" sections: 3000, 3044(g)(1), 3341.5(c)(5), 3376.1(d)(3), 3378.3(b)(2), 3378.3(b)(3); STG Pilot Program C.C. R. Title 15 §3999.13 section 700.2 (Step Down Program Components).

Likewise, the requirement that STG inmates successfully complete the SDP "connotes an active stop -- to 'treat' or remedy an identified problem." *See all the authorities cited Id.*

3.

STG SDP INMATES ARE CLEARLY ENTITLED TO ADDITIONAL PROCEDURAL PROTECTIONS UNDER THE MATTHEW V. ELDRIDGE BALANCING TEST

A. APPLICABLE LAW

In addressing a procedural due process challenge, the Court must first determine whether the plaintiff(s) has been deprived of a protected liberty interest. See Gen. Elec. Co. V. Jackson, 610 F.3d 110, 117 (D.C. Cir. 2010). Only after finding the deprivation of a protected interest does the Court apply the Matthew v. Eldridge balancing test to determine whether the government's procedures satisfied due process. "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. "Matthew v. Eldridge,

424 U.S. 319, 333 (internal quotation marks omitted). Due process, however, is not "a technical conception with a fixed content unrelated to time, place and circumstances," but rather is "flexible" and will call for different procedural protections depending on the particular situation at hand. Id. at 334 (internal quotation marks omitted). To determine the kind of notice and hearing required in this case, the Court must balance (1) the significance of the private party's protected interest; (2) the government's interest; and (3) the risk of erroneous deprivation and the probable value, if any, of additional or substitute procedural safeguards. Matthews, 424 U.S. 319, 335 (1976).

B. THE PROTECTED LIBERTY INTERESTS

In this case, the private interests at stake are of great substance. CDCR's actions infringe on significant liberty interest held by STG inmates including (1) avoiding the stigma of being labeled mentally ill or an STG member or associate; and (2) the right to refuse unwanted mental health treatment.

Protected liberty interest can be created by (1) the Due Process Clause of its own force; (2) a court order; or (3) state statutes or regulations. Sandin v. Connor, 515 U.S. 472, 484 (1995) (Liberty interest from Due Process Clause); Smith v. Sumner, 944 F.2d 1401, 1406 (9th Cir. 1993) (Liberty interest created from consent decree); Sandin 515 U.S. at 483-84; *See* also Wilkinson v. Austin, 545 U.S. 209, 223-224 (2005) (Liberty interest in state laws and regulations).

1. AVOIDING THE STIGMA OF BEING LABELLED STG OR MENTALLY ILL

This liberty interest has been fully briefed above. *See* PART 2 of this Article.

2. THE RIGHT TO REFUSE MENTAL HEALTH TREATMENT

In this case, STG SDP inmates have a significant liberty interest in the right to refuse treatment under both federal and state law.

(a) FEDERAL RIGHT TO REFUSE TREATMENT

A mentally competent adult has a right under both the common law and the Fourteenth Amendment to refuse medical treatment. Cruzan by Cruzan v. Director Mo. Dep't. Of Health, 497 U.S. 261, 277-78 (1990). The right to refuse treatment extends to prisoners. The Supreme Court, in finding that there is a right to refuse treatment in the Cruzan case, 497 U.S. at 277, relied on two prison cases: Washington v. Harper, 494 U.S. 210, 221 (1989) (holding that prisoners have "a significant liberty interest in avoiding the unwanted administration of anti psychotic drugs") and Vitek v. Jones, 445 U.S. at 494 (holding that transfer to a mental hospital coupled with mandatory behavior modification treatment implicated a constitutional liberty interest); See also Youngberg v. Romero, 457 U.S. 307, 316 (1982) (freedom from bodily restraint recognized as "core" of liberty interest protected by the Due Process clause); Ingraham v. Wright, 430 U.S. 651, 673 (1977) ("The due process clause of the Fourteenth Amendment substantively protects certain fundamental rights. Among these are the right to be free

from unjustified intrusions into the body"); White v. Napoleon, 897 F.2d 103, 113 (3d Cir. 1990) (prisoners retain limited right to refuse treatment); Runnels v. Rosendale, 499 F.2d 733, 735 (9th Cir. 1974) (allegation of surgery without consent stated a constitutional claim); Clarkson v. Coughlin, 898 F. Supp. 1019, 1049 (S.D.N.Y. 1995) (lack of sign language interpreters denied deaf prisoner the right to refuse treatment); Rennie v. Klein, 653 F. 2d 836, 844 (3d Cir., 1981); Russell v. Richards, 384 F.3d 444, 447 (7th Cor. 2004) (the court framed the right as one to "refus[e] unwanted medical treatment" and "assume[d] without deciding" that "instructing new inmates to use a delousing shampoo amounts to involuntary medical treatment.").

(b) STATE-CREATED LIBERTY INTEREST IN RIGHT TO REFUSE TREATMENT

A prisoner claiming deprivation of a state-created liberty interest must specify which regulation of statue created the interest. *See* Sandin v. Connor, 515 U.S. 472, 48-485; *See* also Cruz V. Gomez, 202 F. 3d 593, 597 (2d Cir. 2000) (due process claim failed because prisoner did not identify state law creating liberty interest). The alleged state-created liberty interest should be afforded due process protection only if its restriction or deprivation either (1) creates an "atypical and significant hardship" by subjecting the prisoner to conditions much different from those ordinarily experienced by large numbers of inmates serving their sentences in the customary fashion. Sandin, 515 U.S. at 484; Hydrick v. Hunter, 499 F.3d 978, 999 (9th Cir. 2006) (atypical and significant hardships in forced medication in nonemergency situations and in reducing inmates' privileges or altering classifications without hearing) (emphasis added); See also Richardson v. Rumnels, 594 F.3d 666, 672 (9th Cir. 2010). Or (2) inevitably effects the duration of the prisoner's sentence. Sandin, 515 U.S. at 487; Myron v. Terhune, 476 F. 3d 716, 718 (9th Cir. 2007); *See* also Wilson v. Jones, 430 F.3d 1113, 1121 (10th Cir. 2005) (duration of sentence inevitable affected by misconduct conviction resulting in prisoner's demotion to non-credit earning status).

In this case, the policy, regulation, and statues which create the interest are (1) PBSP Health Care Services, Mental Health Policies and Procedures, Volume 1-Chapter 28 ("Refusal of Mental Health Evaluation And/Or Treatment"); (2) C.C.R. Title 15 §3363; and (3) California Probate Code §4650 (a) and California Penal Code §3508:

* PBSP HCS MHP&P, Vol.1 Chapter 28 states in part:

I. POLICY

Mental Health evaluation and/or treatment shall not be forced over the objections of a mentally competent Inmate/Patient (I/P) unless; the I/P ha current Involuntary Medication court order (Penal Code 2602), the I/P is under Medical Conservatorship pursuant to Probate Code 3200, or the I/P is unable to make an informed decision due to a medical emergency. In cases of a medical emergency, all immediate necessary actions shall be taken.

An emergency exists when there is a sudden, marked change in the I/P's condition so action is immediately necessary for the preservation of life or the prevention of seriouly bodily harm to the I/P or others, and it is impractical to first obtain consent.

II. PURPOSE

To ensure and I/P's right to refuse mental health treatment is observed and appropriate documentation and clinical follow up is completed by mental health clinicians.

III. PROCEDURES

Any I/P who is mentally competent may refuse mental health clinical contacts, including group therapy. Such refusals shall be documented on a CDCR 7225, Refusal of Examination and/or Treatment, and in the treating clinician's CDC 7230-A, Mental Health Progress Notes, pertaining to the attempted clinician contact.

* California Code of Regs. Title 15 §3363 states in part:

Right to Refuse Treatment

Inmates/Parolees shall be informed any time they are the object of particular mental health diagnosis or treatment procedures. Such persons shall have the right to assignment to such a program of diagnosis or treatment without being subject to discipline or other deprivation...

(emphasis added)

* California Probate Code §4650 states in part:

THE LEGISLATURE FINDS THE FOLLOWING:

(a) In recognition of the dignity and privacy a person has a right to expect , the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.

* California Penal Code §3508 states in part:

BEHAVIORAL MODIFICATION TECHNIQUES

Behavioral Modification Techniques

Behavioral modification techniques shall be used only if such techniques are medically and socially acceptable means by which to modify behavior and if such techniques do not inflict permanent physical or psychological injury.

Depriving an inmate of his right to refuse unwanted mental health treatment and requiring him to undergo long-term cognitive behavioral therapy creates an “atypical and significant hardship” that is much different from that ordinarily experienced by the rest of California state prisoners who enjoy these rights. I think the Ninth

Circuit case Hydrick v. Hunter, cited above, may on point although I have not read it yet.

The mandatory language in the sourced of liberty interests cited about "grants a prisoner a right or expectation that adverse action will not be taken against him except upon the occurrence of specified behavior[.]" Vitek , 445 U.S. at 493-94. As such the above sources of liberty interests meet the criteria to quality as liberty interests under both the Due Process Clause and the standards for state-created liberty interests.

Finally, it is worth quoting the California Supreme Court who, in In re Conservatorship of Wendland, 26 Cal. 4th 519, 530-32 (Cal. 2001), held:

> " One relatively certain principle is that a competent adult has the right to refuse medical treatment, even treatment necessary to sustain life. The Legislature has cited this principle to justify legislation governing medical care decisions ([Probate Code] §4650), and courts have invoked it as a starting point for analysis...That a competent person has the right to refuse treatment is a statement both of common law and of state constitutional law.
>
> In Thor v. Superior Court, 5 Cal. 4th 725 (1993), as mentioned, we based our conclusion that a prisoner had a right to refuse life-sustaining treatment solely on the common law without also considering whether the state Constitution provided similar protection. But Thor does not reject the state Constitution as a basis for the right. More importantly, we have since Thor determined that the privacy clause does protect the fundamental interest in personal autonomy. "
>
> (citing cases).

C. THE GOVERNMENT'S INTEREST

CDCR will surely claim that their actions serve their interest in suppressing STG related activity, which is legitimate. That is not in question.

The real question is what legitimate interest does CDCR have in subjecting SDP inmates to long-term psychotherapy, specifically Cognitive Behavioral Therapy (see attached EXHIBIT 1), against their will? Moreover, why does the mandated psychotherapy bear virtually no reasonable relation to suppressing STG activity? Instead, it is designed to instill (by "evidence-based psychotherapeutic treatment") government prescribed morals, values and social skills through

> "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills. This program [is] designed for small groups and [will] address the cognitive, social, and emotional needs of the inmate population." C.C.R. Title 15 §3999.13 at section 700.2; *See* also EXHIBIT 1.

In order to establish a legitimate" interest in imposing this specific 3-4 year treatment plan of progressively intense cognitive behavioral therapy, that is unrelated to suppressing STG related activity, CDCR must first demonstrate an individual need for treatment that outweighs the inmates; "significant liberty interest."

It has been held that subjection of all prisoners to a behavior modification program without a showing of individual need was an arbitrary action that denied due process. Canterino v. Wilson, 546 F. Supp. 174, 208-09 (W.D.Ky. 1982), *vacated and remanded on other grounds,* 869 F. 2d 948 (6th Cir. 1989); *See* also Doe, 958 F. Supp. 2D at 263 ("The nature of any special condition imposed is certainly relevant to whether that condition is reasonably related to a defendant's history and characteristics... it would be unreasonable to mandate treatment without any determination that there is a current need for it. To require such a determination be made, on the other hand, is not inherently unreasonable."); U.S. v. Thomas, 212 Fed. Appx at 487-88 (finding "a greater deprivation of liberty than we reasonably necessary"); Knowlin, 2010 U.S. Dist. LEXIS at *17-18 (finding that prison officials' "documents do not demonstrate the reasonable of treatment because none of them explain why Knowlin needed treatment." (emphasis added)).

D. THE RISK OF ERRONEOUS DEPRIVATION AND THE VALUE OF ADDITIONAL PROCEDURAL SAFEGUARDS

1. THE RISK OF ERRONEOUS DEPRIVATION IS GREAT

Currently, inmates who have absolutely no diagnosis of mental health issues or need for psychotherapy are being forced to participate in long-term cognitive behavioral therapy against their will, without "informed consent." and without any showing of individual need.

In light of the "significant liberty interest[s]" at stake, this "one size fits all" approach to mandatory behavior modification involves too great a risk of erroneous deprivation to comport with even the flexible demands of due process.

While the current STG procedural due process may be sufficient to classify an inmate an an STG member or associate that requires segregation, they in no way protect the inmate's liberty interest in avoiding erroneous deprivation of their right to refuse unnecessary and unwanted psychotherapy, for a condition that CDCR has not even proven exists!! Indeed, the current SGT process involves absolutely no assessment or mental health consultation to determine the need for treatment. Nor are there any Mental Health staff involved in the current STG Process.

STG inmates are entitled to a hearing wherein they can challenge CDCR's requirement that they satisfactorily complete long-psychotherapy (against their will) as a precondition to release from solitary confinement. *See* Neal, 131 F.3d at 831 ("Neal did not receive the minimum due process protections required under Wolff. Neal has never been convicted of a sex offense and has never had an opportunity to formally challenge the imposition of the 'sex offender' label in an adversarial setting. He must be afforded that opportunity." (emphasis added)); Conn. Dep't of Pub Safety v. Doe, 538 U.S. 1, 9 (2003) ("The] convicted offender has already had a procedurally safeguarded opportunity to contest." and at 9 (Scalia, J., concurring) (noting that" a convicted sex offender has no right to additional 'process' enabling him to establish that he is not dangerous"); Foucha v. La, 504 U.S. 71, 78-79 (1992) ("keeping Foucha against his will in a mental institution is improper absent a determination in a civil commitment proceeding of current mental illness and dangerousness."); Lappe v. Loeffelhotz, 815 F.2d 1173 (8th Cir. 1986) (First hearing was a "full Vitek type hearing" therefore no need for second hearing); Wills, 882 F. Supp. 2D at 77 ("Neither party disputes that the [sex offender condition] 'required' that the plaintiff, who was not a sex offender, 'undergo sex offender treatment.'"), and at 78 (finding process inadequate where plaintiff "was provided no notice of any sort of prior to the Commission's initial imposition of the condition"); *See* also Jennings v. Owens, 602 F.3d 652, 659-59 (5th Cir. 2010) ("The conclusion that the sex offender therapy condition stigmatized Coleman rested heavily upon the fact that he had never been convicted of a sex offense – therefore, the label 'sex offender' was false as supplied to him." (discussing Coleman v. Dretke, 409 F.3d 665, 668 (5th Cir. 2005) (per curiam)); U.S. v. Brandon, 158 F.3d 947, 953-56 (6th Cir. 1998) (due process violation where pretrial detainee denied hearing prior to being forcibly medicated because detainees have significant interest in avoiding forcible medication and in freedom from bodily intrusion).

2. THE VALUE OF ADDITIONAL PROCEDURAL SAFEGUARDS

In order to avoid erroneous deprivation in this case the court should require CDCR to (1) demonstrate how the long-term psychotherapy component of the SDP is reasonable related to a legitimate penalogical interest; (2) provide STG SDP inmates with a mental health assessment by qualified personnel who can whether there is a need for involuntary treatment; and (3) allow STG SDP inmates the opportunity to challenge, thought appropriate procedures, any determination that involuntary treatment is necessary. Neal, 131 F.3d at 831; Chandler, 2014 U.S. Dist. LEXIS at *51-52.

4.

CDCR'S MANDATORY BEHAVIOR MODIFICATION PROGRAM VIOLATES THE FIRST AMENDMENT BECUASE IT "INVADES THE SPHERE OF INTELLECT AND SPIRIT" BY INTERFERING WITH THE INMATES' FREEDOM OF THOUGHT AND BELIEF

A. CDCR'S MANDATORY BEHAVIOR MODIFICATION PROGRAM

The Step Down Program's intent and stated purpose is to instill, but "evidence-based psychotherapeutic treatment." government prescribed morals, values and social skills through

> "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills, This program [is] designed for small groups and [will] address the cognitive, social, and emotional needs of the inmate population."

C.C.R. Title 15 §3999.13 at section 700.2 ("Step Down Program Components"); *See* also EXHIBIT 1.

As noted in EXHIBIT 1, it really cannot be disputed that the SDP is a progressively intense cognitive behavioral therapy treatment plan that includes weekly sessions of group therapy. This program is materially indistinguishable from other behavior modification programs recognized by the courts to satisfy the Vitek framework.

B. APPLICABLE LAW

The fact that the Court has allowed the government to punish certain categories of speech does not mean that the Court will allow the government to punish individuals because they hold points of view that differ from those of the government. John E. Nowak, Ronald D. Rotund, Principles of Constitutional Law, 4th ed. at p.615 (Thompson Reuters 2010).

All of the clauses of the First Amendment are tied together by the concept of a freedom of belief. Although the freedom of belief or the freedom of thought is not explicitly mentioned in the first Amendment, it is the core value of all of the clauses of the first Amendment. *Id*. at 615. the government may not enter the political marketplace by forcing persons to subscribe or advance favorable messages favorable to the government. Such activity is inconsistent with the fundamental freedom of belief that lies at the core of all First Amendment guarantees. The government should not be able to force a person who objects to a position to endorse that position absent the most unusual and compelling circumstances, none of which have appeared in the cases to date.

For example, in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), the Court prohibited states from requiring children to pledge allegiance to the country at the start of the school day. All students have a First Amendment right to refuse to pledge allegiance to the country or its symbols because of the freedom of though, and belief, that is central to all First Amendment freedoms.

Similarly, in Wooley v. Maynard, 430 U.S. 705(1977), the court held that no private person could be required to broadcast governmental symbols or to endorse governmental position absent the most compelling

circumstances. The Court based its decision on the free speech clause, not the free exercise clause.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." Barnette, 319 U.S. at 642

The holding principles of Barnette have been consistently followed, particularly in the context of religious belief. *See* Torcaso v. Watkins, 367 U.S. 488, 495-96 (1961) (holding unconstitutional a state law that required an individual to affirm a belief in God to obtain a governmental commission).

In Beard v. Banks, 548 U.S. 521 (2006), the court concluded, with no majority opinion, that prison officials could deny newspapers, magazines and photographs to some inmates in order to influence the behavior of those prisoners. It is worth noting that this was a relatively small number of prisoners (as opposed to CDCR's thousands of SDP participants), and the inmates in Beard were not subjected to involuntary psychotherapy as a method of behavioral modification, but instead, suffered extreme deprivation of property and privileges. The court, applying the Turner standard, ruled in favor of prison officials but not without strong and well articulated dissension from Justices STEVENS and GINSBERG:

> "The State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom inquiry, freedom of thought...Plainly, the rule at issue in this case strikes at the core of the First Amendment rights to receive, to read, to think."

Beard, 548 U.S. at 543 (J. STEVENS, dissenting)(citations omitted).

> "What is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control. The State may not 'invade the sphere of intellect and spirit which is the purpose of the First Amendment to our Constitution to reserve from all official control.'" Wooley v. Maynard, 430 U.S. 705, 715 (1977) (quoting West Virginia Bd. Of Ed. v. Barnette, 319 U.S. 624-642 (1943)

Id. at 552.

Surely, if this case made it to the Supreme Court, we would have at least two Justices on our side! I understand this is an ambitious argument to make, but even the most skeptical person would recognize that in this case, the State is indeed "com[ing] perilously close to (if not accomplishing) a state-sponsored effort at mind control."

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EXHIBIT 1

As demonstrated in the next section, CDCR declares openly and often that one of the central components of the SDP is progressively intense cognitive behavioral therapy (See Next Section). CDCR defines Cognitive Behavioral Therapy as follows:

> " Cognitive Behavioral Therapy is evidence-based psycho-therapeutic treatment which addresses dysfunctional emotions, maladaptive behaviors, and cognitive processes, using incremental monitoring and assessment of progress in all three ares to reach prescribed goals."

Cal. Code of Regs. Title 15 §3000 Definitions.

The California Business & Professions Code §2903 defines "Psychotherapy" as follows:

> "Psychotherapy means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive."

(quoted from California Ass'n of Psychology Providers v. Rank, 214 Cal. 3D 1207 (Cal. App. 2nd Dist. 1988)

The "Diagnostic and Statistical Manual, 4th edition" ("DSM-IV") is published by the American Psychiatric Association and provides the nomenclature and standard criteria for the classification of mental disorders. The DSM-IV organizes each mental health diagnosis into five dimensions as follows:

Axis I – clinical disorders, including major disorders (such as schizophrenia, bipolar, depression and anxiety disorders);

Axis II – personality disorders and intellectual disabilities;

Axis III – physical disorders which may or may not impact on psychological conditions

Axis IV – psychosocial and environmental factors that contribute to the disorder or impact on functioning;

Axis V – the global assessment of functioning or GAF score.

See also Indiana Protection & Advoc. Serv. Comm'n v. Indiana D.O.C., 2012 U.S. Dist. LEXIS 182974 *19-20 (same)

"Courts have used the term 'mental disorder' to characterize 'organic functional psychoses, neuroses, personality disorders, alcoholism, drug dependence, behavior disorders, and mental retardation." Indiana, 2012 U.S. Dist. LEXIS at *19 (citing Ruiz v. Estelle, 503 F. Supp.1265,1332 n. 140 (S.D.Tex. 1980), aff'd in part & reversed in part, 679 F. 2d 1115 (5th Cir. 1982)).

Of course, I am no expert but I believe the cognitive behavioral therapy component of CDCR's SDP qualifies as treatment for psychosocial disorder for constitutional purposes under C.C.R. Title 15 §3000; Cal. Bus. & Prof. Code §2903; and the DSM-IV Axis IV.

KEY WORD INDEX OF ALL STG DOCUMENTS

The following is an index of all the references to cognitive behavioral therapy that CDCR makes in describing and/or adopting the Step Down Program and it's components.

COGNITIVE BEHAVIOR CHANGING COMPONENTS:

* C.C.R. TITLE 15 §3999.13 STG Pilot Program (Pilot Program) at §700

COGNITIVE BEHAVIOR CHANGE PROGRAM:

* Pilot Program at §700.2(a)

COGNITIVE RESTRUCTURING:

* Pilot Program at §700.2(a)

COGNITIVE SKILLED BASED PROGRAMMING:

* Pilot Program at §700

*CDCR STG Prevention, Identification and Management Strategy" (March 1, 2012)(herein after "CDCR STG Strategy March 2012") at p.32

MANDATED COGNITIVE INSTRUCTION (including Self-Directed Journals:

* NCR STG Regs Proposed Text (hereinafter "Proposed Text") (1014014) at CDCR Form 128-b SDP1 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP2 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP3 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP4 (Rev. 11/13)

* Pilot Program CDCR Form 128B SDP1 (10/12)

* Pilot Program CDCR Form 128B SDP2 (10/12)

EXHIBIT 1 (continued)

* Pilot Program CDCR Form 128B SDP3 (10/12)

* Pilot Program CDCR Form 128B SDP4 (10/12)

ENHANCED PROGRAMS:

* Pilot Program at section entitled "PURPOSE"

* CDCR STG Strategy March 2012 at p.32

* NCR Specific Purpose at §§3000 (defining SDP), 3341.5 (c)(5), 3376.1(d)(3)

PROGRESSIVE PROGRAMS:

* NCR Proposed Text at §3378.3(a)(2)

* Final STG Adopted Regulations (hereinafter "STG Adopted Regs") (9-2-14) at §3378.3 (a)(3)

* Pilot Program at §§700,700.2(a)

* NCR Specific Purpose at §3378.3(a)

TREATMENT FOR VALIDATED STG MEMBERS:

* Pilot Program at section entitled "BACKGROUND"

* CDCR STG Strategy March 2012 at section entitled "PREFACE"

INDIVIDUAL THERAPEUTIC TREATMENT:

* CDCR STG Strategy March 2012 at p.32

COMPLETION OF ALL REQUIRED COMPONENETS/CURRICULUM:

* NCR Proposed Text at §§3378.3(b)(1), (2), (3)

* STG Adopted Text at §§3378.3(b)(1), (2), (3)

* Pilot Program at §700

* NCR Specific Purpose at §3378.3(b)(2), (3)

NOTICE OF EXPECTATIONS REQUIRING COMPLETION OF ALL SDP COMPONENTS:

*NCR Proposed Text at §§3378.3(a)(1), 3378.3(b)(2), (3)

EXHIBIT 1 (continued)

* STG Adopted Text at CDCR Form 128-B SDP1 (Rev. 6/14)

CDCR Form 128-B SDP2 (Rev. 6/14)

CDCR Form 128-B SDP3 (Rev. 6/14)

CDCR Form 128-B SDP4 (Rev. 6/14)

* NCR Proposed Text at CDCR Form 128-B SDP1 (Rev. 11/13)

CDCR Form 128-B SDP2 (Rev. 11/13)

CDCR Form 128-B SDP3 (Rev. 11/13)

CDCR Form 128-B SDP4 (Rev. 11/13)

*Pilot Program at section entitled "PLACEMENT OF OFFENDERS IN THE STG PILOT PROGRAM"

* NCR Specific Purpose at §3378.3

THINKING FOR A CHANGE:

* CDCR STG Strategy March 2012 at pp. 26 & 32

NOTE: This is a cognitive behavioral therapy program that CDCR stands behind (along with other programs) The court in Erickson v. Magnuson, 2013 U.S. Dist. LEXIS 82347 *17-18 (D.Maine 2013) noted:

> " Thinking For A Change is a cognitive behavioral modification program for offenders developed by and through the National Corrections Institute of the United States Department of Justice; a description of the program is available at the Institute's website, http://nicic.gov/T4C.... It is based upon psychological principles of cognitive behavioral modification."

*CDCR cites numerous CBT programs that are apart of the SDP including:

- The Change Companies
- Interactive Journaling®

In fact these programs are the actual programs being forced on SDP inmates as the so-called Journals are trademarked with these names.

Finally in the STG Notice of Change to Regulations CDCR lists a number of behavior modification programs and Reports, Studies, and Articles relied upon and the works are all based on cognitive behavioral therapy. See e.g. * Vohryzek-Bolden, Miki, Recommendations to the [CDCR] to Address Violence in Male Prisons, California State Univ., Sacramento, Division of Criminal Justice, June 2011 at Table No. 1 (Recommending CDCR incorporate CBT into the Pilot Program (which they of course did), see also p.3 of this document.