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Criminal Justice Issues and Prisoners' Rights

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by Solitary Watch Guest Author | July 10, 2010

Editors Note: Weve written before about two laws from the 1990s that make it close to impossible for prisoners to challenge any injustices and abuses they encounter in various part of the American criminal justice systemwhether in the courts or in prison itself. This guest post on the subject comes from a reader who has served time himself and also lost family members to the prison system, and can envision what it must be like to endure what is effectively a prisoners Catch-22. Alan provided us with the following biography:

> *Life on the mean streets of neighborhoods such as Hunters Point, San Francisco, or Pacoima, California is not conducive for raising a child and the proof of this is I ended up a ward of the state in the California Youth Authority system at the age of 12 and 16.*
>
> *I do not claim innocence nor do I seek sympathy for my life experiences. It is what it is; I have run their cruel gauntlet and reemerged to find relative success in life. It helps me to daily remind myself of Booker T. Washingtons words: Success is to be measured not so much by the position that one has reached in life as by the obstacles which he has overcome.*
>
> *However, I have not forgotten those that I left behind.*
>
> *For as Solomon Burke sings None of us are free if one of us is chained.*

In her book *The New Jim Crow,* Michelle Alexander writes: The entrance to a new caste system can be found at the prison gate, because that is when you are branded a felon. Your life as you knew it before is over. All the forms of discrimination that is illegal for the rest of the country can then be practiced against you with impunity. This impunity has always existed, in one form or another. But it has been extended and codified by two laws, both of them passed in the last 15 years.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996 requires that prisoners who wish to appeal their convictions by state courts must petition the federal courts within one year. In addition, inmates must make all their claims for relief at one time. Its not difficult to see why these rules would run counter to the interests of real justice in many cases.

Imagine entering the horrifying new environment of prison, and still being forced to file these appeals immediately. That is assuming you are aware of the time-limit, know the law, and realize that your rights have been violated and your original convictioncan be challenged. Even in this case, I think your immediate survival might be a higher priority.

State prisoners who are unaware of the one-year limitation simply lose their right of appeal. So do any prisoners who realize that their rights have been violated only after the year has been passed. This is a very likely scenario, since newly arriving prisoners rarely have the legal advice or background to understand these complex issues.

Compounding this problem is the fact that prisoners seeking federal review generally have no right to a lawyer and few have the funds to hire one independently. Consequentially, even those prisoners who are conscious of the time limit often file inadequate petitions of their own. If their efforts fail and they subsequently manage to come up with the money to hire a lawyerby then its often too late.

But the obstacles to seeking justice do not end there. In the case of a Constitutional rights violation by a state court, its ruling can only be reversed if the state courts application of the law was not just incorrect, but unreasonable. Even if the Supreme Court has spoken clearly about the rights existence and nature, and the state appellate court misunderstood the law, if the states incorrect interpretation was reasonable, then its decision stands.

So your constitutional rights can be violated during your trial, then the state appellate court can compound this error by incorrectly reaffirming your convictionbut if the federal courts can still rule that the mistake was reasonable, you will not get a new trial.

In other words: Rank-and-file prisoners, who are statistically likely to be both impoverished and undereducated and are operating from behind bars, must know the law well enough to file their appeals quickly and correctly. But state appellate judges are not expected to know the law well enough to accurately interpret the rulings of the United States Supreme Court.

All of this is, of course, especially sad if it is a death penalty case. (But after all, this is exactly the motivation for the law in the first

place: Theres a reason why its called the Effective Death Penalty Act.) Never mind that, as NYU Law professor Bryan Stevenson told Bill Moyers in a recent interview, For every eight people who have been executed, weve identified one innocent person. If we will tolerate that kind of error rate in the death penalty context, it reveals a whole lot about the rest of our criminal justice system and about the rest of our society.

Knowing all this can only deepen the prisoners distrust of the American justice system, and his anger will grow day by the day and with every humiliation and abuse that he endures. The rage that he feels is shared by many others, and together their voices ultimately lead to a confrontation with the men running these prisons. When the frustrated prisoners act out, even more draconian measures can be deployed against them. And if prisoners wish to challenge these harsh measures, another law waits to thwart all their efforts: The Prison Litigation Reform Act (PLRA), also passed in 1996.

Many guards have no doubt been emboldened by the PLRAs restrictive rules to further violate the human rights of inmates in their care. Yes, some prisoners, like some non-prisoners, do file frivolous law suits. But the PLRA has resulted in the dismissal of claims that no reasonable person would characterize as frivolous. That is because the law imposes filing procedures and requires hard-to-come-by documentation, combined with strict time restraintsall of which are so technically incomprehensible to the inmates that even constitutionally meritorious cases are often thrown out of court.

Is it right that persons who have been seriously abused should be denied legal recourse because others have filed frivolous cases? When they choose to seek justice, should they have to navigate a system obviously geared to make it next to impossible to havetheir grievance heard? A bedrock principle of international human rights law is the equality of all persons before the law. But in reviewing this act, Human Rights Watch has said that it is not aware of any other country in which national legislation singles out prisoners for a unique set of barriers to vindicating their legal rights in court. This is all the more alarming because the monitoring of conditions in prisons, jails, and juvenile facilities, in the U.S. is primarily left up to the federal courts.

The result of the PLRA is that fewer law suits have been filed by prisoners, and of those filed, fewer are being won. Many acts that would be treated as serious crimes if perpetrated upon those of us in the free world can legally be perpetrated upon prisoners under the tenets of this act. This includes any act that is deemed to produce only mental or emotional injury. Thus, the internationally recognized harm that is done to inmates in long-term solitary confinement is sanctioned and ignored, as is the emotional distress caused by the rape of inmates, whether by other prisoners or by guards.

All of this is of course exponentially more difficult for juveniles to manage. But sadly they, too, must navigate this maze of bureaucratic red tape, even as they struggle just to survive another day in adult prison.

In sum: The AEDPAgives prisoners little recourse if they fail to receive justice in the courts. And to complete the trap from which they are caught, the PLRA denies them recourse if theysuffer injustice inside the prison walls.

[youtube=http://www.youtube.com/watch?v=4hv6sQXI1WY]

If you dont say its wrong then that says it right.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by Juan Moreno Haines

October 25, 2022

by Solitary Watch Guest Author

October 13, 2022

by Vaidya Gullapalli

September 29, 2022

Solitary Watch encouragescomments and welcomes a range of ideas, opinions, debates, and respectful disagreement. We do not allow name-calling, bullying, cursing, or personal attacks of any kind. Any embedded links should be to information relevant to the conversation. Commentsthat violate these guidelines will be removed, and repeat offenders will be blocked. Thank you for your cooperation.

The evolution of the Supermax via the War on Drugs observe the Gates of the Abyss Are Open Wider

From the 1950s up until the mid-1960s the corrections philosophy had been one of rehabilitation, and after this false premise was dropped inmates found themselves facing longer, harsher sentences beginning in 1970.

In 1970 the Comprehensive Drug Abuse Prevention and Control Act set the legal foundation for the governments War on Drugs, first declared by President Richard Nixon, but which had actually begun under President LBJ with the passing of the Omnibus Crime Control and Safe Street Act of 1968.

The Edward Byrne Memorial Justice Assistant Grant Program which grew out of the Omnibus Act has since become the cornerstone of a massive federal justice assistance program to wage this war.

The resulting flood of cash from these grants has inadvertently created huge incentives for those receiving the funds to increase arrests, prosecutions, and incarceration.

Congress followed these Acts with the Sentencing Reform Act of 1984.

This Act under President Reagan established the United States Sentencing Commission which in turn established guidelines enacted in 1987 to alleviate sentencing disparities. These guidelines provided for determinate sentencing at the time that the sentence was imposed, as opposed to indeterminate sentencing, which would later be determined by a parole commission after the prisoner had already started serving his or her sentence.

As part of the guidelines, Federal parole was abolished.

The Sentencing Reform Act was followed by the Anti-Drug Abuse Act of 1986, which set mandatory minimum sentences for drugs, including marijuana. Under this act the same mandated minimum sentence of 5 years without parole was established for the possession of 5 grams of crack cocaine as for 500 grams of powder cocaine. Crack cocaine was primarily consumed by Blacks and powder cocaine by Whites.

(This 100:1 disparity was later reduced to 18:1 by the Fair Sentencing Act of 2010.)

The first President George Bush maintained President Reagans hard line, when he created the First National Drug Control Strategy to establish policies, priorities, and objectives to eradicate illicit drugs issued by the Office of National Drug Control in 1989.

With a National War on Drugs Strategy firmly in place lets take a look at the evolution of changes designed to weaken the prisoners chance of mounting an effective defense.

In 1963 the Supreme Courts ruling on Gideon v. Wainwright established the constitutional right of criminal defendants to an attorney, even if they had no money to pay for one. When Gideon v. Wainwright was decided, fewer than half of all defendants were poor currently over 80 percent are. In the 1969, there were less than 200,000 people in prisons.

Today, we have 2.3 million people in jails and prisons so our need for lawyers is much greater. But this increased need is not being met so we find that over 90% of all cases in this country are being resolved by a plea deal.

Twenty years after Gideon, Strickland v. Washington created minimal standards for a lawyers conduct; weve discovered over time that they had been set too low.

We all know the result; the gates of the abyss opened wider and the prison population grew ever faster with many suffering the duel consequences of longer sentencing and harsher prison conditions.

Unable to pay for proper legal representation the jail house lawyers were their only hope of salvation. Appeals written by such inmates increased along with the incarcerated population with many an inmate filing frivolous shot in the dark appeals.

So in 1996 the Anti-Terrorism and Effective Death Penalty Act was passed. This act required that prisoners who wish to appeal their convictions under state courts must petition the federal courts within one year. In addition, inmates must make all their claims for relief at one time. Impoverished, and under-educated, rank-and-file prisoners operating from behind bars, were henceforth required to file their appeals quickly and correctly.

All of these conditions have deepened the distrust of the American justice system, and this attitude is made worst by the racial imbalance in prisons and with each humiliation and abuse that prisoners endure.

The rage against the system that had begun during the 1960s, was by 1970 frequently leading to confrontations with the men running these prisons. With so many losing hope of ever reentering civil society, the number of violent incidents increased dramatically in the 1970s, with much of this violence fueled by Marxist revolutionary rhetoric and a virulent, unadulterated racial hatred leading to ever more draconian measures deployed against inmates.

In response to this rise of institutional violence, the Control Unit was created at the United States Penitentiary in Marion, Illinois in 1973. Marion was designed as the place where prisons across the nation could send their most radicalized inmates and violent gang members.

As Marions Control Unit received more and more, of the worst of the worst, Marions security deteriorated to the point where violence became the new norm. Marions warden may have indeed been seeking an excuse to lock down the whole population at the institution when in October 1983 Thomas Edward Silverstein and Clayton Fountain supplied him with a politically correct excuse to do so.

The Supermax Prison model was thus born.

@thecreatordeems

Troy Davis reported on SW in an article titled.

The Torture of Troy Davis

September 21, 2011 By Jean Casella and James Ridgeway

Use the title in SWs search engine to find the article.

Here are the articles on N.C. they have also written.

There is good reason to be leery of confronting the system especially in a Southern state like N.C. Understanding my own limitations is not turning my back on you.

Good Luck.

http://solitarywatch.com/?s=North+Carolina

I see that Troy Davis was wrongfully executed due to a judge who was allowed to keep this covered up to protect whomever was at fault. Is there no end to the injustice? To whom do we write, when this is going to be allowed in our free country?

Hi, Renees blog is no longer at that address. The next link goes to the home page of change.org. I cannot see how to research from there to get to your story of Troy Davis, so I will google the name.

http://billmoyers.com/episode/full-show-and-justice-for-some/

Gideons Trumpet an account of the Supreme Courts Gideon v. Wainwright ruling in 1963 that established the constitutional right of criminal defendants to an attorney, even if they had no money to pay for one.

But fifty years later that system is floundering. When Gideon v. Wainwright was decided, fewer than half of all defendants were poor. Now, over 80 percent are.

BRYAN STEVENSON: Everything has been aggravated by mass incarceration. As you point out in the 1960s, there were 200,000 people in jails, in prisons. The number of people who were poor facing confinement was a very small percentage, or half. Today, we have 2.2 million people in jails and prisons, nearly five million people on probation and parole.

And so our appetite for punishment, for incarceration, for condemnation has made the demand, the need for lawyers much greater than weve been able to comply with, weve been able to meet. And so I think quite sadly, the situation for poor people in the criminal justice system is much, much worse today than it was in 1963, largely as a function of numbers.

About 94 percent of all cases in this country are resolved by a plea.

Twenty years after Gideon, the court in case called Strickland v. Washington was asked to decide what are the reasonable, minimal standards for effective lawyering. And they created the standard very, very low. And so today, even in death penalty cases, we see lawyers that are drunk in court, asleep during the trial, who are disbarred and suspended at percentages way higher than what we see in other kinds of cases. And because the court has tolerated this kind of lawyering, the political system has had no constitutional compunction, no institutional imperative, to invest in the kind of system that we really need.

Read the rest on line it is a real eye opener!

will definetly take the time to read your article(s) posted here..

I found this article after the ruling.

I call it Strategy for Dodging Skinner v Switzer:

Eighteen months ago, Texas Governor Rick Perry appointed Williamson County DA John Bradley to head up the Texas Forensic Science Commission.

Bradleys attitude toward the use of science was demonstrated back in 2002 when, on an Internet bulletin board for Texas prosecutors, he responded to a prosecutor who wanted a suspect to waive any further DNA testing as a condition of a plea bargain.

A better approach might be to get a written agreement that all the evidence can be destroyed after the conviction and sentencing. Then, there is nothing left to retest.

The reason it should be destroyed is that if the defendant later shows evidence he is innocent, he might get his earlier agreement set aside.

Innocence, though, has proven to trump most anything, Bradley wrote, as if this is a problem.

I asked him what interest the state has in destroying evidence, especially when scores of Texas convicts have been found innocent based on DNA testing after serving years in prison.

He said we need finality and painted a picture of thousands of inmates filing endless appeals.

Thats an arguable rationale for a district attorney, but it is an untenable philosophy for the chairman of the Forensic Science Commission.

http://friendsofjustice.wordpress.com/2011/03/08/rick-perrys-atheist-pope/

The Skinner v. Switzer Supreme Court decision on March 7, 2011 opens new path to DNA testing. Here is the decision:

http://www.supremecourt.gov/opinions/10pdf/09-9000.pdf

This is one conclusion drawn in the Texas Observer Newspaper

http://www.texasobserver.org/contrarian/the-wider-implications-of-the-skinner-ruling

The Supreme Court has ruled that inmates can pursue claims for DNA evidence with habeas petitions and under federal civil rights law.

That clears the legal barriers for Skinner to pursue his innocence claims. But it also opens a path for many other inmates who, for whatever reason, cant file habeas petitions.

In short, many prisoners will have access to DNA testing that will confirm or overturn their guilt. Its another way to catch mistakes in the system. And that cant be a bad thing.

I read the following quote in a self help book on writing. If you dont make the best case for the other sides position, you will sorely challenge your best readers to do so.

So when I came across this article I decided that it makes the case for the law.

Excerpts from: http://eglibraryreferences.blogspot.com/2008/04/confession-of-underground-think-tank.html

Confession of an Underground Think Tank Strategist
By Eddie Griffin

Tuesday, April 22, 2008

The other means of attack consisted of creating a paper-jam in the grievance filing process, and consuming incalculable hours of government legal scholars time. We made a pact: File long drawn-out complaints, a minimum of 25 pages each. About 20 prisoners pledged to file on daily complaints, 25 pages or more per clip, knowing beforehand that the warden and his staff would rubber stamp our redress petition DENIED.

We then appealed up the pyramid, to the appellate level, at a 50-page clip, to be DENIED again, on up the line to Washington, this time at about 100 pages per 20 inmates. Like day-in and day-out clockwork, the grievance poured out, until the system was jammed.

At the time, I had unlimited access to a class of law student at Southern Illinois University Law School, just outside the prison. To break the logjam, the courts and Congress instituted the Informal Resolution formula to put one more step in the process before we could go to courts. It was designed for prison officials and inmates to settle their problems at the institutional level, informally.

Our objective was not so much a resolution, but to generation tons and tons of paperwork. Therefore, most of the complaints were duds that covered for the real legal complaint that would make its way to court. While the warden was busy rubber-stamping prisoners complaints, some good cases sneaked through the cracks and got to court.

There, we had them again. This time in court, against the formidable Peoples Law Office in Chicago, and at least a dozen outstanding and zealous civil rights lawyers.

Okay, I admit, Eddie Griffin was one of those trouble-making masterminds that wardens liked to keep out of circulation. Per capita, prisoners like us cost the government millions per day. Incarceration was not supposed to be so cheap. And, legitimate grievances can be even costlier. My estimated cost was at least a million dollars per day.

I was the Marion Brother who wrote the petition and hand-delivered it to the warden on the morning of the hunger strike. He turned red, as red as any Redman I had ever seen, and I imagined smoke coming off the top of his cranium.

That was it: The Scatter Gun Strategy in a nutshell, and I was the sacrificial lamb. The prison administration was fighting on multiple fronts, in the courts, in the media, and against outside protesters, carrying signs and shouting slogans. It got worse worse for the warden and worse for me.

Now the Congress got into the act with an investigation

Warden Fenny had his hands full with inquiries. He literally said as much, when he deposited me into the safe keepings of solitary strip cell, refrigerated by the open winter skies. I was put on No-Human-Contact status, known as boogey men in the federal prison system

Now the warden had an international controversy on his hand. US prisoners on a hunger strike against an oppressive all-white prison regime, staffed with a crew of doctors working in secret on mind control techniques, with CIA and undercover FBI agents involved behind the scene. The US media broke the allegation open when Dr. Edgar Schein, esteemed MIT pioneer in brainwashing research admitted to the behavioral research.

All of these developments exceeded my wildest dream. It started out as a power struggle between prisoners and prison officials over humane treatment. But the strategy was Overkill.

The complete link to the article The Gutted Writ: On Habeas-Corpus is:

http://www.thenation.com/article/157299/gutted-writ-habeas-corpus

I would like to add this t the list of relative articles.

Condensed excerpts from this article are posted below:

The Nation

http://www.thenation.com)

The Gutted Writ: On Habeas Corpus

Robert Perkinson | December 22, 2010

In the war on crime, the war on terror and the new war against undocumented immigration, the Great Writ is being gutted.

Over the course of centuries, habeas has extended state power as well as constricted it, facilitated empire as well as regulated its reach, and how, in periods of crisis and demagoguery, princes and parliamentarians have muffled the sighs of prisoners despite the venerable writs promise to hear them.

Although habeas corpus is embedded in the Constitution and has been suspended by Congress only once, during a case of genuine rebellion in 1863, it faced epic challenges in the wake of September 11, when the Bush administration asserted unprecedented powers to unilaterally declare people enemy combatants and detain them at will, indefinitely and without independent review of any kind. The White House had ample, if selective and legally dubious, precedent for its aggressive posture.

The history of habeas corpus traces an ongoing tension between the logic of detention and the persistent judge. By 2004 it seemed the judge might again be gaining the upper hand.

The Supreme Court condemned the Bush administrations unchecked system of detention and breathed new life into habeas corpus. Narrow majorities ruled on a number of key issues: citizens and aliens alike retain their habeas rights, even if they are declared enemy combatants; the executives war powers do not insulate it from judicial review; and writs of habeas corpus have the power to reach any jailer anywhere who is subject to US law. As Justice OConnor famously commented,

A state of war is not a blank check for the President.

Habeas corpus may have triumphed over the Bush administrations war of fear, but on the ground the logic of detention continues to unfold.

In conventional criminal law, the United States is unique in using habeas corpus primarily as a postconviction remedy. Invoking the writ successfully has never been easy. Nevertheless, postconviction habeas developed into an important alternative to direct appeals and as a mechanism of equity relief, especially in death penalty and civil rights cases.

During the divisive crime debates of the 1990s, however, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), which put habeas petitions beyond the reach of all but the most capably represented and egregiously wronged criminal detainees.

Extending legalistic restrictions already imposed by the Rehnquist Court, the law requires prisoners to exhaust all state remedies before turning to federal court, limits the ability of federal judges to question the decisions of trial courts and imposes various administrative burdens on petitioners, including strict deadlines for initial filingsall of which add up to insurmountable barriers for most inmates, who tend to be indigent, poorly educated and unrepresented by counsel.

AEDPA has been awful for criminal defendants; Its onerous, lawyerly demands and blanket restrictions have created a morass of litigation and severely curtailed the reach of the Great Writ.

Even as Americas prison population has swollen to an unparalleled size, a key conduit for release has thus been shut off, in effect rendering the countrys first civil right an inaccessible right. Lawmakers in the United States have bound the judge and muffled the prisoners sighs.

The idea of habeas corpusthat no person shall be detained except by due process of lawhas been more powerful outside of courtrooms than inside them. In the twenty-first century, habeas corpus can be as vital for the protection of individual liberties as it was in the seventeenth, but courageous judges will have to make it so.

http://www.hrw.org/en/node/12252/section/3

Human Rights Watch also urges Congress to amend or repeal the Prison Litigation Reform Act (PLRA) which severely hinders prisoners in their efforts to remedy unconstitutional conditions in state correctional facilities.

We urge Congress to:

1) modify the excessively stringent exhaustion requirement in the PLRA that requires prisoners to comply with all internal prison grievance procedures and appeals before being allowed to bring a federal lawsuit which frustrates the prosecution of many meritorious prisoner lawsuits;

2) repeal the requirement that judicially enforceable consent decrees contain findings of federal law violations;

3) repeal the requirement that all judicial orders automatically terminate two years after they are issued; and 4) restore special masters and attorneys fees to reasonable levels.

I would like to share this article which defines an actual case of injustice under this system.

http://criminaljustice.change.org/blog/view/for_death_row_prisoner_troy_davis_innocence_might_not_matter

Thanks for the opportunity to give a voice, however small, to those that endure this!

I would also like to add to my list of the unprepared inmates to file appeals the mentally ill. How in the world can they possibly advocate for themselves?
And thank you Renee and Fannie for your kind comments.

All tyranny needs to gain a foothold is for people of good conscience to remain silent. Thomas Jefferson
People must speak learn to write a letter to their officials with respect to their office and bring attention to all these issues I have always gotten a reply to my letters, maybe nothing changes but maybe they will. Love it Alan Im proud to know you.
My blog has the formula and outline of how to write a respectful effective letter.

Allan, Ive asked myself what is it this freedom, and just how does any of us achieve it. Its simple but also very complex. I think its those perpetual negative atittudes that surrounds us in our family life, in communities and in our Country.

Allan, you and many others here are opening doors, and in position to help us in solving these problems that stem not only from family & communities but the ugly roots of our penal system.

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