

NORTH CAROLINA PRISONER LEGAL SERVICES: A MODEL FOR OTHER STATES?

North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in North Carolina. NCPLS addresses matters involving inhumane conditions of confinement or illegal criminal convictions and sentences. Providing North Carolina inmates with information about their legal rights and responsibilities, NCPLS works to reduce frivolous litigation and to resolve legitimate problems through administrative channels. When serious problems cannot be resolved administratively, NCPLS offers legal representation in all State and Federal courts throughout North Carolina, and beyond.

A BRIEF HISTORY OF THE PROGRAM

In a 1977 case, the United States Supreme Court concluded that the states may not interfere with prisoners' attempts to take certain legal matters into court. The Court found that incarceration makes it difficult for inmates to raise legitimate legal concerns. For that reason, the Court held that states have an affirmative duty to help inmates by providing them access either to law libraries and persons trained in the law, or to lawyers. *Smith v. Bounds*, 430 U.S. 817 (1977).

In 1978, Professor Barry Nakell, counsel for the plaintiff class in the *Bounds* case, worked with others to establish North Carolina Prisoner Legal Services with a grant from the Law Enforcement Assistance Administration (LEAA). NCPLS was chartered as a North Carolina non-profit corporation in January of that year. The program was created to provide legal assistance to inmates in North Carolina jails and prisons. NCPLS initially represented inmates challenging conditions of confinement and assisted prisoners in challenging unfair convictions and illegal sentences.

In 1981, NCPLS became affiliated with Legal Services of North Carolina, a grantee of the Legal Services Corporation. LEAA funding was discontinued, and LSC regulations required that the program redefine its service priorities. Representation in post-conviction cases was not permitted under those regulations, so the focus of NCPLS shifted to providing assistance to prisoners in civil matters. The program set specific priorities to eliminate the physical abuse of prisoners, to improve the conditions of confinement for North Carolina inmates, to ensure prisoners' access to appropriate health care, and to establish a fair procedure for administrative decision-making and grievance resolution. In accordance with these priorities, NCPLS represented prisoners in actions involving assaults by prison officers, failure to protect inmates from violence, inadequacy of medical treatment, injuries suffered on prison jobs, inhumane living conditions, and numerous other matters.

In 1986, the United States District Court for the Eastern District of North Carolina ruled that the State of North Carolina had not satisfied its *Bounds* obligation to provide inmates meaningful access to the courts and required the State to enter into a contract with NCPLS to provide the services of attorneys to fulfill that obligation. *Smith v. Bounds*, 657 F.Supp. 1322 (E.D.N.C. 1986), *aff'd*, 813 F.2d 1299 (4th Cir. 1987), *aff'd on reh'g*, 841 F.2d 77 (4th Cir. 1988), *aff'd*, 488 U.S. 869 (1988). That order was implemented in 1989 through a contractual agreement between the North Carolina Department of Correction and Legal Services of North Carolina, to "provide professional [legal] advice and assistance to North Carolina inmates . . ." in

post-conviction proceedings, detainers, claims relating to conditions of confinement, and cases brought under 42 U.S.C. § 1983. North Carolina Prisoner Legal Services, then a subsidiary of Legal Services of North Carolina, undertook the performance of the contract.

In January 1996, NCPLS ended its 15-year relationship with Legal Services of North Carolina – and relinquished all Legal Services funding – in anticipation of federal legislation prohibiting the expenditure of any federal or private funds received by a grantee agency for the representation of prisoners. In April 1996, Congress enacted that legislation in the omnibus spending bill.

In 1998, the federal injunction that required DOC to contract with NCPLS was dissolved, but DOC has voluntarily continued to rely upon NCPLS for its experience and expertise in meeting its constitutional obligation to provide inmates with access to the courts.

NCPLS LITIGATION & ACTIVITIES

Today, NCPLS provides a range of services, including legal assistance in both civil and post-conviction matters. The program has a staff of 37, which includes 17 lawyers and 12 paralegals to serve a prison population of about 34,000, and a jail population of about 14,000 (with annual admissions of about 250,000). The services we provide far exceed those minimally required under *Lewis v. Casey*, 518 U.S. 343 (1996).

For example, in *State v. Hearst*, 356 N.C. 132, 567 S.E. 2d 124 (N.C. 2002), NCPLS attorneys argued that inmates who participate in a mandatory boot camp program (the Intensive Motivational Program of Alternative Correctional Treatment - IMPACT) were entitled to credit against their sentences pursuant to State law. Ultimately, the North Carolina Supreme Court held in favor of the inmate-plaintiffs. With help from the North Carolina Department of Correction (DOC) in identifying affected prisoners, NCPLS advocates have obtained more than 22,000 days of credit for more than 300 inmates (70 of whom were entitled to immediate release). As a result of this case and other work performed by NCPLS advocates to correct illegal sentences and improper sentence calculations over the past two years, our clients enjoyed more than 500 years of freedom, saving North Carolina taxpayers more than \$12 million (\$65.29 per inmate day, according to the Office of State Budget and Management).

In civil litigation, a class of women confined at Women's Correctional Institution in Raleigh, NC, alleged that a systemic failure to provide timely medical evaluations, diagnoses, and treatment for serious medical conditions resulted in deaths, miscarriages, and other serious injuries. *Thebaud v. Jarvis*, 5:97-CT-463-BO(3)(EDNC 1997). Those allegations were hotly contested, but after extensive discovery and a series of ameliorative measures implemented by the Defendants, the parties agreed to a novel resolution of the case – an expert was jointly hired by the parties to assess the delivery of health care services at the prison. The expert's recommendations were not binding on the parties, but the Defendants agreed to act in good faith to implement those proposals they considered feasible and well-founded. Virtually all of those recommendations were addressed by the Defendants, and after five years of litigation and substantial improvements in most aspects of the health care delivery system, the parties entered into a "Joint Resolution," under which Plaintiffs would monitor compliance for a one-year period. The Federal District Court approved the Joint Resolution on 8 July 2002, and Plaintiffs took a dismissal on 8 July 2003.

In other recent litigation, literally hundreds of inmates have been represented by NCPLS attorneys. Significant victories include *Hamilton, et al. v. Beck, et al.*, COA00-1470 (NC Ct.App. 2002)(class action which reversed DOC's practice and required sentences to be recorded as specifically stated in the judgment and commitment); *Bates v. Jackson*, 5:98-HC-915-BR(2) (October 19, 2000), *Fields v. Chavis*, 5:00-HC-9-BR(3) (January 29, 2001) and *Milligan v. McDade*, 5:00-HC-8-H (February 15, 2001)(individual habeas corpus actions finding violations of the Double Jeopardy Clause, resulting in the immediate release of all three clients); and *In re: Bullis*, 00 J 139 (3 October 2001)(gaining and enforcing client's right of visitation with minor child).

Over the years, NCPLS has been involved in other significant litigation, including *Small v. Martin*, 85-987-CRT (EDNC 1985)(class action challenging conditions at 48 of the State's "road camp" prison units; settlement resulted in legislation that "capped" the prison population, leading to Structured Sentencing); *Law, et al., v. Britt*, No. 93-300-CT-BR (EDNC 1993)(class action lawsuit challenging the conditions in the State-run juvenile detention centers); *Anthony D., et al., v. Freeman, et al.*, 5:95-CV-1053-BR(1)(EDNC 1995)(special education); and *West v. Atkins*, 487 U.S. 42 (1988)(private physician who provided orthopedic services to inmates under a contract with the North Carolina Department of Correction was "state actor.")

NCPLS is also involved in other activities to improve the criminal justice system. For example, in late 1996 and early 1997, NCPLS convened the *North Carolina Prisoner Litigation Conference* to open a dialogue about prisoner litigation in the Eastern District of North Carolina, and to explore ways to increase efficiency, consistently with the interests of justice and the rights of the litigants. In attendance were representatives of the United States District Court, the U.S. Marshal, the Department of Correction, the Inmate Grievance Resolution Board, and the Office of the Attorney General.

NCPLS advocates are also involved in activities to improve the justice system. State Senator and Staff Attorney Ellie Kinnaird is leading an effort to create the *Prison Nursery Project*. The Project will provide incarcerated mothers intense pre-natal services, drug addiction treatment, personal dysfunction therapy, and parenting skills. Senior Attorney Linda B. Weisel serves as a member of the Carolina Justice Policy Center's Board of Directors. The Center is a well regarded "think tank" that has successfully advocated the use of community punishment as an alternative to incarceration. Senior Attorney Letitia C. Echols is a member of the American Bar Association's Corrections and Sentencing Committee, a body that studies the justice system and recommends reform. Billy Sanders, employed by NCPLS as a Certified Legal Assistant Specialist, serves as a Commissioner on the North Carolina Sentencing and Policy Advisory Commission. As a Commissioner, Sanders has been actively involved in refining policies regarding criminal justice and sentencing structure. Sharon G. Robertson, also a Certified Legal Assistant Specialist, has chaired the Legal Assistants Division of the Bar Association, the NC Paralegal Association, and presently serves the National Association of Legal Assistants as Region II Director.

GOVERNANCE & FUNDING

NCPLS is governed by a 14-member Board of Directors. The dean of the law schools at the University of North Carolina, Wake Forest, Duke and Campbell universities, each designates a director to the Board. Other Board members are designated by the North Carolina Bar Association, the North Carolina Civil Liberties Union, the Southern Prisoners' Defense

Committee, the North Carolina Association of Black Attorneys, and the North Carolina Association of Women Attorneys. The remaining members are elected by the Board to include a member of the General Assembly, a former judge, two former inmates, and others.

About 98% of the program's funding is derived from the contract with the North Carolina Department of Correction. NCPLS receives additional funding from a variety of sources, including grants from the North Carolina State Bar's IOLTA Program (Interest on Lawyers' Trust Accounts), grants from private foundations, attorney fee awards in cases won by NCPLS attorneys, and donations from private individuals and organizations.

COMMENTARY

It is now well established that states have an affirmative duty to assist inmates in challenging illegal convictions, sentences, or inhumane conditions of confinement. *Bounds v. Smith*, 430 U.S. 817 (1977); *Lewis v. Casey*, 518 U.S. 343 (1996)(the Constitution requires only that inmates be able to *file* lawsuits "to attack their sentences, directly or collaterally, and . . . to challenge the conditions of their confinement;" it does not require that they be able to litigate those claims effectively). Although the *Lewis* Case permits the states to take a minimalist view of that duty, it is neither wise nor cost-effective for them to do so. Notwithstanding the obstacles and constraints placed upon inmate-litigants by the *Prison Litigation Reform Act*, Pub.L. 104-134 (1996), serious legal issues continue to arise in the correctional setting and prisoner litigation continues to impose significant burdens on correctional officials and the courts.

The existence of an organization that can help inmates to understand the law and their legal rights can help stem the flow of frivolous litigation. In meritorious cases, prisoner advocates can inform their clients to help them develop reasonable expectations and can assist in reaching a resolution of the problem. When legitimate disputes cannot be resolved administratively, prisoner advocates can assist in the presentation of legal claims that sharply define the issues, increase the chances of settlement, and ensure a professional presentation of the matter in dispute. These services promote efficiency and economy, both for the parties and for the courts. And even when lawsuits cannot be settled but must proceed to judgment, correctional officials gain the benefit of a legal decision that provides guidance in correcting problems, or vindication in a court of law. Of course, reasonable minds could differ in assessing the value of such services.

I cannot speak for the North Carolina Department of Correction, but I believe DOC maintains its partnership with NCPLS out of a strong commitment to meet its legal obligations, and because it derives a financial benefit from the arrangement. As previously discussed, NCPLS activities in a single practice area, our post-conviction work, saved DOC \$12 million during the last contract period (1 October 2000 through 31 September 2002). [Obviously, neither the Department of Correction nor the taxpayers of North Carolina have any desire to incur the expense of incarcerating people longer than the law requires.] That sum was more than twice the cost of the contract. In other words, the contract between DOC and NCPLS more than paid for itself. In short, our partnership with DOC benefits both our clients, the DOC, and the citizens of North Carolina.

CONCLUSION

The North Carolina Department of Correction has adopted a unique approach to ensuring that people in its custody are afforded meaningful access to the courts. Through a personal services contract, the DOC funds a program of attorneys and paralegals to provide legal advice and assistance to prisoners. Although DOC contracts for legal services that far exceed the requirements of governing law, the arrangement actually saves money and produces material, measurable benefits for the Department, the citizens of North Carolina, and prisoners in this State.

In most respects, North Carolina's justice system is comparable to those in other states. It seems likely that a similar approach to ensuring that inmates have meaningful access to the courts could be replicated in other jurisdictions, with similar results. During a time of financial hardship for state governments across the nation, a program that can achieve substantial savings in the administration of justice should be of special interest to legislators, and especially to correctional professionals.



About the author: Michael S. Hamden has practiced law for 18 years, first as an attorney with NORTH CAROLINA PRISONER LEGAL SERVICES, INC., and beginning in 1995, as the Executive Director of that organization. Hamden, who serves as the prisoner advocate on the Institutional Review Board for the Protection of Human Subjects at RESEARCH TRIANGLE INSTITUTE, has authored a number of articles and publications, including “Special Providers’ Offer Assistance to the Poor,” THE NORTH CAROLINA STATE BAR JOURNAL, Summer 1998, and a self-help manual for pro se prisoner litigants, “Tort Claims Before the North Carolina Industrial Commission.” Hamden has delivered presentations to a host of organizations and associations, including the Society of Correctional Physicians (Atlanta, GA); the NC Association of County Commissioners, the NC Sheriffs’ Association, and Sedgwick James of the Carolinas Insurance Company; the NC County Attorneys’ Conference; and the School for Sheriffs, Deputies and Jailers (North Carolina Institute of Government, Chapel Hill, NC). A long-standing member of the American Bar Association, Hamden serves as a member of the ABA’s Corrections and Sentencing Committee, and as the ABA’s liaison to the American Correctional Association, where he served two terms on the Standards Committee (promulgating standards which reflect “best practices” for all types of correctional facilities), and is in his second term as a Commissioner of Accreditation (ruling on applications for ACA accreditation and enforcing operational standards nationwide).