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Much-Needed Federal Legislation Introduced To Reduce Inmate Abuse

On December 20, 2009, the ***New York Times*** ran an editorial entitled "*Combating Prisoner Abuse*." I'm taking the liberty of restating the information in the editorial.

In 1996 Congress passed the *Prison Litigation Reform Act*, which was designed to prevent frivolous lawsuits by inmates. The law requires that prisoners had to show a physical injury in order to successfully challenge prison conditions. Instead of accomplishing that goal, however, it has instead resulted in "insulate[ing] prisons from a large number of very worthy lawsuits, and allow[ing] abusive and cruel mistreatment of inmates to go unpunished."

Prisons throughout the country have used the provisions of the act to get lawsuits against them dismissed. The article references the following cases that were brought but were dismissed by courts under the law:

- A prisoner was forced to stand naked for 10 hours;
- Revealing to other inmates that a prisoner was H.I.V.-positive which is a violation of patient confidentiality even when the patient is a prisoner;
- The strip-searching of female prisoners by male guards, in violation of well established Correctional Protocols.

Strip searches are only supposed to be performed by guards who are of the same sex. This well-thought-out protocol accomplishes several things at once, reducing instances of the possibility of sexual harassment and rape, as well as false allegations thereof, while also preserving human dignity. The most extreme example was when a lawsuit brought by Mississippi prisoners alleging that they had been sodomized by a staff member was dismissed, because a sexual assault allegation did not, the court ruled, constitute a physical injury.

Congressman Robert Scott, a Democrat from Virginia, has introduced legislation entitled *The Prison Abuse Remedies Act* that would undo "the worst parts of that law." It would remove the physical injury requirement, and would allow the prisoners to succeed if they met the same requirements as plaintiffs who are not prisoners. It would also change the 1996 law's 'exhaustion' requirement that prisoners first file a grievance in the prison before being allowed to sue in court.

The article states, "A carefully drawn exhaustion requirement could help resolve problems locally, and avoid unnecessary litigation. But the one in the current law lets prisons put up procedural hurdles that make it difficult, or impossible, for prisoners to navigate the bureaucracy and get their complaints heard in court." The bill would remove the 1996 requirements for lawsuits filed by prisoners who are under 18, as this class of prisoners rarely brings frivolous lawsuits.

Some Thoughts On The Matter

Given the combination of having been incarcerated at age 16 for some 16 years, experiencing and witnessing many wrongful activities, combined with the studying and research that I have engaged in since being released, I believe creates a unique perspective on this subject, and it is through this lens that I reflect on the above mentioned editorial.

I want to start off by giving Congressman Scott credit for caring enough about prison abuse to do something about it by offering legislation. Championing prisoners' rights is not a politically popular thing to do. Offering this legislation in no way means that Scott is soft on crime. It merely means that he is in favor of human rights and prisoners' rights against abuse. Prisoners are denied their freedom by being sent to prison as punishment, not for the purpose of further punishment. It's supposed to be about the loss of freedom, not about being mistreated.

As a prisoner, I was always aware that the guards were in control, and that if they chose to abuse in any way, they would get away with it. Other guards would neither intervene nor report abuse to their superiors, lest they be perceived as not being in solidarity with their co-workers, a perception which could result in their co-workers not helping them in some future dangerous situation.

Supervisors would also look the other way and not intervene, even when things were brought to their attention. The prison administration was of the same mentality, and the prison grievance system was a seldom used remedy, because it was known the administration would never rule in behalf of a prisoner against the guards or civilian staff. Furthermore, filing a grievance could, and sometimes did, result in retaliation. A favorite *catchall phrase* that the Grievance Committee would turn to was "insufficient evidence", no matter what kind of physical evidence there was, or how many prisoners saw a particular incident. It was a maddening double standard because the word of a prison informant would be accepted if they gave negative information about another prisoner.

The Commissioner of Corrections and his designees were not any better when it came to allegations, appeals, and paperwork reaching them about vari-

ous abuses or complaints, even if they were justified.

In terms of the court system, when prisoners did file lawsuits, they frequently lost in court, often without receiving a trial or a full and fair hearing with regard to their allegations. All of the above mentioned factors, in combination, had the impact of creating an environment in which the correction officers and staff knew if they wanted to be abusive, they could do so and get away with it.

Prisoners, for their part, were also aware of the unofficial looking the other way, leading to a feeling of helplessness. As a survival mechanism prisoners learned that if they were abused on any level- physically, mentally, or even sexually, the best thing for them to do was to be quiet, lest they invite retaliation.

In combination, prison abuse became part of the general environment. Prison abuse becomes the everyday norm and is encouraged when abuses, whether carried out by guards or civilian staff, are allowed with impunity. This legislation is a step in the right direction towards breaking that pattern and changing that environment.

It will not change it all by itself. I believe that lawsuits would need to be brought and won in order to bring about change in the prison system, but this legislation can help build the bridge to that ultimate goal.

I think that it is ridiculous that prisoners are required to demonstrate physical injury. Instead, they should be able to succeed if they can meet the same requirements as any plaintiff in any other life circumstance. After all, is abuse more acceptable if it is carried out on a prisoner? If anything, abusing a prisoner should be considered to be more egregious because inmate populations are particularly vulnerable and unable to defend themselves, and the abuse is being carried out by those who are placed in positions of public trust to uphold the law.

A law which allows prisons to defend their otherwise indefensible conduct, sends the wrong message both to the prison population and to those who work there, not to mention citizens of other countries, that in the United States it is considered okay to abuse prisoners. That conclusion has frequently been arrived at because even when a meritorious lawsuit is brought, the system covers up for itself by dismissing it, thus, demeaning respect for the law, and going a long way towards undermining the moral authority of the court system.

Prison administrations share culpability, as I see it, whenever abuse can be proven, for failing to provide oversight, for looking the other way, and for not controlling their employees, when incidents occur.

Another reason that the law requiring a physical injury should be changed is that physical injuries are not the only type of injuries. As I see it, every injury is worthy of relief, scrutiny, and adjudication. To suggest anything less is to give official sanction to injuring of prisoners.

With respect to the particular Mississippi case, in which a court dismissed allegations of sexual abuse, I find that ruling to be shocking to the conscience. How could the judge who made that ruling sleep at night? There was no possible way that the judge in that case thought that that was the right ruling; and, that their ruling would further the ends of justice. In truth the judge, in effect, was an example of the system covering up for the system, because the law, as bad as it is, did not require that ruling. But the new legislation, should it be passed in the Senate and the House, will also prevent outrageous rulings such as that one.

I think that removing the exhaustation requirement makes a lot of sense, for several reasons: Firstly, many prisoners, fearful of retaliation, are afraid to exhaust their remedies by filing grievances; retaliations that guards are more hesitant to carry out under the bright light of scrutiny that litigation brings. It is therefore a good thing to remove this obstacle.

Secondly, forcing prisoners to file grievances is a waste of time because lawsuits often seek not only injunctive relief but monetary damages for pain and suffering, which a grievance is incapable of awarding.

Thirdly, it is a waste of time because the grievance system in prison is an idea that sounds good in theory but which in practice is a joke, because in just about every instance, the committee will not make objective decisions and instead will view itself as needing to stand in solidarity with their fellow employees against the grieving prisoner.

So, how do we reduce frivolous lawsuits brought by prisoners? I am not sure; but having laws which serve to limit access to the courts, such as the laws mentioned above, and other impediments such as charging prisoners money to file lawsuits, are clearly not the answer.

The answer may simply be that within the process of filing a lawsuit itself, as the system is presently constructed, a case goes through before being allowed to get to a jury, that case is scrutinized, and judges are allowed to dismiss cases having no merit, stating no claim, or having no evidence.

Prisoners are recognized by the American Psychological Association as being a protected population. This is due to their vulnerability by reason of their being in captivity and dependant on others, and being less able to defend themselves, and make objective, uncoerced decisions. It does not say much for us as a society if, in our courts, which are supposed to function as halls of justice, we do not take their lawsuits seriously, give them a fair hearing and, if their allegation prove to be correct, rule in their behalf.

Therefore, this bill should be passed by the House where it has been introduced; the Senate may then pass its own version, and then, upon reconciliation, a bill should be signed into law as soon as possible. Anything less would be shameful. ■

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