

The Safe and Humane Jails Project

By Michael S. Hamden

[*Editor's Note:* This essay was awarded first prize in the legal services writing competition that the Access to Justice Project of the Brennan Center for Justice sponsored in 1999. The goal of the writing competition was to work closely with advocates to raise the favorable public profile of civil legal aid for low-income individuals and families. See the sidebars for more information on the competition and the Brennan Center for Justice. Reprinted in CLEARINGHOUSE REVIEW, Vol. 35, Nos. 11-12, p. 785 (March-April 2002)(a publication of the National Center on Poverty Law).]

Prologue

In North Carolina, a person who is accused of committing a crime and is unable to post bail is confined in the county jail, pending trial. There are about 100 county jails and municipal lockups in North Carolina, incarcerating a changing population of about 10,000 people on any given day. Most of the folks in jail are incarcerated, not because they have been convicted of committing a crime, but because they are poor and unable to pay even a modest bail. In North Carolina, a disproportionate number are members of minority populations—about 60 percent. Many inmates suffer serious physical and mental illnesses. The crowded conditions of many county jails can produce inhumane living conditions and breed violence among the inmate population that results in serious physical injury.

Cash bonds, burgeoning criminal dockets, and limited judicial resources mean that the average jail stay can be weeks or months in duration. All too often, people spend more time in jail waiting for trial than they would spend in prison if they were convicted. The threat of such an extended stay can be an effective tool in coercing a guilty plea in exchange for “time served.” In fact, where convictions are not expected to result at trial, a zealous prosecutor can delay the case to extract some measure of punishment before dismissing the charges.

North Carolina Prisoner Legal Services Inc. (NCPLS) is a nonprofit, public service organization that provides legal advice and assistance to people incarcerated in the State of North Carolina. Information about jail conditions across the State comes to NCPLS from five main sources: the complaints of prisoners, inquiries from family members, contacts from officials within a given community, press accounts, and information compiled by the Jail and Detention Office of the State Division of Facility Services. From these sources, patterns of mismanagement and other deficiencies can be identified. Once a problem has been identified, NCPLS initiates a more thorough investigation which often includes interviews with witnesses and local officials, a tour of

the facility, a comprehensive review of relevant records and documents, and an inquiry into whether a plan exists to implement remedial measures. NCPLS staff advocates analyze all available information and determine whether and to what extent NCPLS's involvement is warranted.

Recently a number of inquiries and a host of complaints drew the program's attention to a particular jail in the eastern part of North Carolina. A review of records and interviews with people in the community confirmed the existence of crowded conditions in the jail, so our investigators decide to tour the facility.

The Jail Tour

The scent of institutional disinfectant fills the cool March air as we walk into the dark, cluttered hallway of the jail. Huddled against a wall is the barely discernible outline of a body covered in blankets. A closer inspection reveals a crumpled man nestled under a woolen blanket. Next to the tiled wall are two dog-eared paperbacks, some loose papers, and a Bible. Face to the wall, the man emanates a barrier of disinterest or apprehension that is almost palpable. A metallic glint on his wrist is the terminus of a two-foot chain that secures him to a barred gate.

At first somewhat distrustful, the man introduces himself to us as Matthew.¹ He is on a mat in the hallway, rather than in a cell, because, as he puts it, "Well, there's not enough room. It's packed up here. I'm not one to question it, I'm just an inmate here, so I'm doing what I do so I can hurry up and get out of here. I've been [chained to the bars in this common hallway] a good three weeks—three weeks and a few days, whatever. First five days I was here, I was in a cell so crowded, had to sleep standing up, it was just so crowded, so packed in there."

"When we need to go to the bathroom, whatever, take a shower, or somethin'," Matthew reports, "we'll catch one of the officers walkin' by here that works this hallway, tell him I [need to] go over to [cellblock] 5B or 4B, whatever. I go over there and take a shower."

But it's sometimes difficult to get an officer's attention. "Well, they're busy—some days they're busy, and some days they have some crazy people come in here and they be fightin' up and down the halls with the, like I say, the people they bring in—'cause they're so drunk and so disoriented and everything like that. They have their work cut out for 'em."

As we move further down the hall, the sickly sweet smell of disinfectant mixes

* To protect their privacy, fictitious names have been used for the prisoners mentioned in this essay.

with a more acrid, pungent odor that wafts out of the cellblock we are approaching, weighing heavily on the chill, damp air. Arriving at the barred cellblock, we discern the origin of that awful stench—the plumbing “facilities,” which consist of a one-piece stainless-steel unit that combines a sink and a toilet in a utilitarian fixture. Its surface is cold against bare skin. The fixture is located in an open alcove, without a door or a curtain, accessible to everyone in the cellblock, and visible to anyone who passes through the hall.

Above the unit is a square of polished metal that serves as a mirror. It casts a dim and distorted reflection of the imprisoned gazer—a surreal reminder of his circumstance.

In this cellblock another inmate is willing to speak with us. The cold steel bars cast a heavy shadow across Mark’s face as he describes the cell in which he is housed: “It’s approximately 18, 19 people in a six-man cell—the cell was designed to hold six people. But there are 18 of us in here right now, ya’ know. We’ve had 24.” But the cell contains only six beds, one shower, and the toilet. “So if you want to use the rest room or the bathroom, people back there—they’re already sleepin’ *in* the bathroom.”

One of Mark’s 18 cellmates elaborates: “Yeah, when I first got here, I slept on the floor about 15 days.” Another adds, “You got about this much space [indicating approximately six inches] between mats. You could only walk over there where the shower’s at [referring to a small space of about two square feet in front of the shower stall].”

Mark continues, “People with frustration builds up, and animosity, and stuff like that, so a lot of fights and stuff occur behind these conditions, ya’ know. We had one inmate get stabbed a couple of weeks [ago] with a ink pen in his stomach by a federal inmate, and he was a pretrial detainee, and the federal inmate was already sentenced and had served approximately five years in prison, and they brung him here to testify against somebody else. And he took an ink pen and stabbed the man up, ya’ know. It got started because I think one bumped into the other one, or something, but due to the overcrowdedness.”

As we walk on, our footsteps reverberate off the walls, forecasting our arrival into the next tension-filled cellblock. Conditions here are much the same, according to John. His arms outstretched, hands resting against the bars, he responds to our question. Leaning forward, he says, “It’s 15 in the bunks . . . and five people on the floor. But earlier, when I first came here, there was about 13 people on the floor, everywhere. Ya’ know, and it was like, I had to crawl over people just to get a little space on the floor. . . . [A] lot of people, they get *violent*, ya’ know. And the guards, they take so long to come, if somebody get hurt or seriously injured, they not gonna’ be ’round to protect ’em.”

According to another inmate, “The only way we have to get in touch with the guards, they call it ‘beatin’ the flap.” The cell door has a small metal trapdoor covering a slot designed to pass food trays from the hallway into the cellblock. Opening and then

slamming the trap produces a loud metallic clang that can be heard down the hallway. “You have to go over there and beat that flap ’til somebody comes and rescues you out [of] the cell, when you get jumped on by, say, five or 10 guys,” he tells us.

Officers are supposed to patrol the corridors and supervise inmate conduct to protect against predatory and violent prisoners. But Mark and others say that simply doesn’t happen as often as it should. “Maybe once every two or three hours, you know, dependin’ on what shift is workin’ and how busy they are, ya’ know, ’cause ya’ know, you be bangin’ for hours and some of ’em don’t come, ya’ know. D’en you may have some ’dat come by every 30 minutes, dependin’ on what shift d’ey workin’ and how busy d’ey is, ya’ know.”

As we hear from these inmates, violence is a prevalent, predictable result of confining too many people in close, cramped quarters without adequate supervision. According to Luke, his six-man cellblock, 5B, houses “usually 14 to 16 people, 8 to 10 on the floor—we’ve had like three, side-by-side here [pointing to a corner of the cellblock walkway], all the way down. You couldn’t walk to get to the toilet at night, anything. You’re just walkin’ on top of people. It causes a lot of fights in here.”

Luke continues, “We’ve had people in here that haven’t had baths for two weeks at a time, ’cause they were scared to get in the shower, so many people in here, they were gonna’ get hurt.”

The crowded conditions of 5B were made worse because “they bring people—there’s people all over the walls, chained to the walls, to the bars out in the halls—they bring them in to use the rest room and to use the toilet. And, like I say, sometimes there’s 10 on the floor in here, and they bring 10 more out [of the hallways] at a time and leave ’em in here to use the toilets and stuff.”

Luke explains that tensions mount until bottled-up frustrations finally explode: “These guys got into an altercation here Friday afternoon. I mean it was bad. It went on for quite some time before the guards could even come in. Half of ’em wouldn’t even *come* in. They stood out in the hall. One guard came in and tried to break it up hisself.”

Luke recalled the aftermath: “Blood everywhere. We had blood on the floor, goin’ into the cells, ’cause they were goin’ in and out of every cell, fightin’. There’s still some of it on the wall.” Stepping back, we can see crusty dried blood directly in front of us, brown against the smooth ivory-colored paint of the cell bars. “We cleaned most of it up this mornin’, Monday mornin’. It took us this long to get gloves and stuff to clean this blood up with.”

Sour expressions greet our arrival in another part of the jail where, among a group of distrustful, young adult inmates, one aggressive youth is candid: “Ain’t gonna’ lie. Yeah, I be messin’ up in here. I’m fightin’ a lot, know what I’m sayin’, so they put us in here [a holding cell with no beds, that presently houses three inmates].” One of his two

cellmates elaborates: “Yeah. We sleep on the bench. It’s supposed to be a holding cell, but they use it like a cellblock.” Two wooden benches, anchored to the cold cement floor, run down the sides of the eight-foot room.

Further on, a door opens into a shoe-box-sized room containing no fixtures other than four metal tables and benches that are bolted to the concrete floor. Here the floor is covered with a green indoor/outdoor carpet that shows the wear of long, heavy use. A passing officer advises that the room is being used to house inmates who present a suicide risk and those who have requested protection from other inmates. But there is no direct line of vision from the nearest duty post; officers observe those within the room only when they walk down the corridor and pass in front of the door. Inside the room are four inmates lying on the floor, each shackled by a two-foot chain to one of the four tables.

“Swanny,” one of the inmates on suicide watch, explains that he earned his nickname in an act of desperation by diving head-first into the floor. Reportedly, officers would not respond to his repeated requests for protection, refused to transfer him out of his old cellblock, and he could think of no other means to get their attention. His “swan dive” caused a significant head injury, but it produced the desired result—a transfer to this shoe-box room. The episode was apparently a source of pride, and he relished the nickname.

“Swanny” gives some detail about the “catch-22” circumstances from which he was attempting to extricate himself. “I think sometimes, that ah, we mix things up, and ah, ya’ know, we end up gettin’ people in a situation where they have no other way to go but fight, ya’ know. And then, if they have to protect themselves, ya’ know, they get themselves a [criminal] charge, which keeps them in another 45 days and doesn’t help the system at all.”

Paul, who is beneath another table, can’t move beyond the two-foot length of chain. He reports that he will “turn 17 [on] the 20th.” Asked how officers respond when he asks to use the bathroom, he replies, “Oh, they wait, for — they be waitin’. It’s like, we gotta’ go through like several officers, just to get to the baf’ room.”

The women’s cellblock is equipped with beds, toilets, and showers. But conditions there are equally crowded. Georgette tells us, “Well, we have 16 people can come in here, but we had up to 23 in the whole cellblock, and we was steppin’ over people as we go about, ’cause there ain’t no room in here, as you can see.”

We climb stairs to another floor of the jail, where a young inmate, Ringo, has been housed about four months. He complains, “I don’t [get to exercise]. I mean, we’re supposed to go out on the roof. You go out on the roof, you get a little bit of exercise walkin’ around. They won’t even let us go out there.” This is reminiscent of something Mark told us, “I’ve been here six months, myself, since October the 14th, I think, and I’ve only been outside once.”

This complaint echoes from virtually every cell and along the corridors as we make our way through the jail. This is despite the existence of minimum standards promulgated by the State of North Carolina that require, among other things, that inmates be allowed an opportunity for out-of-cell exercise, at least three times a week. For people living elbow-to-elbow, and especially for those restricted in their movement to the length of a two-foot chain, such an opportunity is of fundamental importance. But a lack of adequate staffing has meant that inmates in this county jail are being deprived of even this basic human need.

Moving on, we come to the control room, the center of communications for the jail. Three of its four walls consist of windows which permit observation down the corridors of the jail. In the control room, we find a flurry of activity coordinated by the shift supervisor, a correctional sergeant. There is barely enough room in the center to allow us entrance, but we manage to squeeze in. To fill the sudden silence that falls over the room when we enter, we explain that we do not wish to be disruptive; we are here simply to observe operations. Apparently reassured, the officers return to their duties. But the flow of traffic inside the center and the bustle in such close quarters soon make it clear that our presence *is* disruptive. As we make our way out, we inquire about the three inmates who are chained to bunks in the hall, immediately outside and visible from the center. We are informed that these inmates are quartered in the hall because they require constant supervision due to their propensity to attempt suicide or otherwise harm themselves. There is no other space in the jail where these inmates can be constantly monitored.

Institutional cooking is a common source of complaint, and jail food can be particularly disappointing. But in this jail there has been little grumbling. From the control center, we walk to the kitchen. As we open the swinging door, a rush of warm air heralds modest fare. The aroma of nourishment draws our attention to metal trays laden with equal portions of pork 'n' beans, corn, and apple sauce, embellished with two slices of plain white bread. Along with a cup of Kool-Aid, this meal will be no epicurean delight, but it will be gratefully received by a captive population. Even here, the space is cramped. The four corners provide the only available storage area, and all are stacked to the ceiling with boxes. Laboring in earnest are perhaps a half dozen people, all working frantically to prepare and serve lunch for 250 inmates.

Returning to the cellblocks, we continue to speak with inmates and staff. It becomes clear that the problem of greatest concern to the inmate population, and to many of the officers, as well, involves medical care. Earlier in our tour, we recall that Luke had complained of the \$10 medical copayment required of inmates, a fee which is assessed even when the inmate seeks aspirin or other nonprescription products. Luke voiced the opinion of many inmates: "Medical care is really the worst thing right now going on in here."

Another inmate echoes Luke's comments and elaborates: "They'll examine you,

but you have to be here 30 days before they do ah, what they call . . . a ‘physical’ is what they call it. But you have to be here 30 days. So, if somebody comes in with tuberculosis, or whatever, anything, ya’ know, they’re not medically [screened], ya’ know, unless they take the initiative on themselves, ya’ know, to fill out a sick call [request], they won’t be seen for 30 days. That leaves everybody in here exposed to whatever they got.”

Summarizing the sentiments of a great many, one inmate observed that conditions in the jail are so bad that they wanted to be convicted and sentenced to prison: “People want to get out of here. They *want* to go to DOC [the North Carolina Department of Correction, where convicted inmates are housed]. They’d rather be in DOC for two or three years than to stay here for three months.”

After six backbreaking hours on our feet, we’ve been through the whole jail. We’ve spoken with dozens of inmates and officers, and we’ve observed the physical plant. Although there are literally hundreds of stories we haven’t heard, we’re tired and numb. We’ve learned what we need to know, and we’re ready to leave these squalid environs.

Epilogue

People confined in detention facilities can’t do much about inadequate medical services, substandard or dangerous living conditions, or threats to physical health and safety. Even in jails that treat inmate grievances seriously, complaints often stem from insufficient capital resources; problems often beyond the control of the sheriff or jail administrator. That was the case in this jail. The sheriff and the jail administration were hamstrung by unreasonable bail-bonding practices, a pretrial release program that boasted ridiculously high standards for the release of people accused of even minor crimes, a criminal justice system that failed to give priority to the cases of people who were already incarcerated, and county politics that equated the allocation of adequate funding for jail operations with “coddling criminals.”

The law provides precious few protections for inmates, and it is difficult to find lawyers who will champion the rights of those who are incarcerated. Most court-appointed attorneys limit their involvement to defending criminal charges, both because they are not compensated to provide representation concerning complaints about conditions of confinement, and because they do not want to risk challenging the power structure upon which they depend for their livelihood. But even those few attorneys who may be inclined to assist their clients with efforts to improve deplorable conditions are often unable to do so because they lack knowledge about prisoner civil rights law.

The problem has been exacerbated by congressional action which prohibits the expenditure of Legal Services Corporation funds on the representation of prisoners. That prohibition means that federally funded legal services programs that traditionally provided limited services to inmates are no longer able to do so. **[SIDEBAR 3 here: In**

1996, Congress forbade lawyers receiving any federal funding . . .]

Fortunately, other funding sources have been more farsighted and more deeply committed to equal justice under law. With modest funding from the North Carolina State Bar through the Interest on Lawyers' Trust Accounts (IOLTA) Program, NCPLS has been able to operate the *Safe & Humane Jails Project*.

The *Safe & Humane Jails Project* expended substantial resources working with county officials to ameliorate inhumane conditions in the jail described above. In that jail, prolonged, severe overcrowding had caused a deterioration of the physical plant, a lapse in safety procedures, the degradation of programs and services, and the development of inhumane and illegal practices. For example, our investigators confirmed that crowding had reached such levels that inmates on suicide watch were housed in common corridors and chained to their beds. Other inmates were even less fortunate, relegated to mats placed on hallway floors and handcuffed to bars or tables. Because there was an insufficient number of officers to handle the population, inmates were rarely afforded exercise or any opportunity to move beyond the length of the chains and bars that restrained them. With literally hundreds of people crammed into poorly ventilated, dark cells and hallways, sleeping on the floor next to toilets; with a lack of adequate staff to supervise and care for the inmates; and given the absence of a meaningful health screening of inmates upon admission, the potential for profound catastrophe was real and immediate.

While there are still significant problems at the jail, NCPLS advocates worked with county officials to revamp the pretrial release program, to reexamine bonding practices, and to implement other measures which reduced the population by about 30 percent. Additionally, attention was given to fire safety and evacuation procedures, a tuberculosis screening protocol was developed and implemented, and other improvements have been made.

Acting on behalf of our clients, NCPLS representatives have often been successful in working on a cooperative basis with counties across the state to correct problems that threaten the health and safety of people in jail. But when officials were unwilling to work cooperatively to improve substandard jail conditions, NCPLS achieved meaningful relief for our clients through litigation. In the last decade, NCPLS represented jail inmates in class action lawsuits in more than a dozen North Carolina counties. For example, NCPLS litigation recently resulted in the construction of new or refurbished jail facilities in four different North Carolina counties. The result has been greater safety and more humane conditions for people confined in those counties, benefitting literally thousands of North Carolinians.

Regrettably, NCPLS has limited resources to administer the *Safe & Humane Jails Project*, despite an almost overwhelming demand for assistance. But although the task is daunting, we believe the *Safe & Humane Jails Project* provides a genuine service to our

clients and the people of North Carolina. This is true, not only in the narrow and abstract sense that every citizen in a civilized society has an interest in the humane treatment of prisoners. It is also true because people who are detained pending trial are themselves citizens and members of the larger community to which they eventually return. Unsafe or unsanitary conditions of confinement, coupled with overcrowding, pose a heightened risk of contagion and threaten the health and well being of prisoners, as well as those who work in a detention facility. The health of the broader community is threatened when those who have been directly exposed to unhealthy jail conditions return to family and friends, either after the disposition of criminal charges or at the conclusion of each shift.

Postscript

Efforts to ameliorate conditions in the jail described here began in March 1999. Today, almost three years later, the problems still have not been fully remedied and probably cannot be. The conditions in which inmates are confined have been improved through efforts to control crowding, to increase funding, to employ a greater number of correctional staff, and to improve programs and services. Still, the old facility was poorly designed, and, after years of crowding and neglect, the physical plant is dilapidated.

Plans to build a new jail are well under way, but costs are projected to exceed \$47 million. Part of the reason for the exorbitant expense is what seems to be an irresistible political impetus to overbuild. In a county that has for three years maintained an average incarcerated population of 318 people (including those housed at facilities outside the county), plans call for the construction of a facility designed to house 648. Suggestions that public funds could be utilized more efficiently by coordinating court calendaring, pretrial release services, and bonding procedures have proven accurate during the past three years. Yet, even with dramatic decreases in crime, those same measures are rejected as unsustainable over the long term.

Such an approach might not be so disturbing if incarceration were not so destructive of the lives of inmates and their families, or if prisoners returned to free society better prepared to lead productive, law-abiding lives. Regrettably, that is not often enough the case.

Public policy decisions about crime and punishment will better serve our citizens and our society when they are based upon solid, factual information, when they are informed by the knowledge and experience of correctional professionals, and when we realize (or remember) that people who serve time in jails or prisons are part of our communities and our families. Each of us has a responsibility to bring that perspective to bear on the political process through which we govern ourselves, promulgate and maintain laws, and conceive and implement enforcement measures. When enough of us do, our system of justice will be worthy of the name.

***About the author:** Michael S. Hamden has practiced law for 15 years, first as an attorney with NCPLS, 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 several 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 holds positions as a Commissioner of Accreditation (ruling on applications for ACA accreditation and enforcing operational standards nationwide) and as a member of the Standards Committee (promulgating standards which reflect “best practices” for all types of correctional facilities).*