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liability. Plaintiff recovered the value of his car, \$500 for the violation of his constitutional rights, and costs.

## PRISONS

### Court Sanctions Prison Transfer: Minimum Due Process Protections Afforded

**11,359. Croom v. Manson**, No. H-163 (D. Conn., Nov. 14, 1973). Plaintiff represented by Richard Cramer, Legal Assistance to Prisoners, 340 Capital Ave., Hartford, Conn. 06115. (203) 566-2030. [Here reported: 11,359A Complaint (7 pp.); 11,359B Brief (11 pp.); 11,359C Decision (14 pp.).]

Upon notification of an impending transfer to an out-of-state federal prison, plaintiff filed suit for declaratory and injunctive relief asserting a breach of due process and equal protection requirements. Plaintiff contended that failure to provide him with a proper hearing constituted a violation of due process, and he argued that, since a transfer would place him in a position analogous to inmate segregation, failure to provide him with the remedies available to prisoners who are placed in segregation amounted to a violation of equal protection.

Plaintiff also alleged that a statute which allows the state commissioner of corrections to enter into contracts with the United States for the removal of inmates to federal correctional institutions was violated since statutory criteria, including the commissioner's opinion that the inmate needs particular treatment, or that special facilities are available at the federal correctional institution, or that such a transfer is in the best interests of the state, have not been met. In addition to a due process hearing with right to counsel and an impartial tribunal, plaintiff sought the court's injunction prohibiting transfer unless the correctional authorities guaranteed his return for parole hearings and court appearances and his return for conferences with counsel on pending court cases in preparation of legal proceedings, and unless the authorities showed to him that an investigation of the federal facilities has been completed showing that there are adequate treatment and rehabilitative programs there which do not exist in Connecticut.

The court held that under the circumstances of the case the plaintiff had been afforded the minimum requirements of due process. His hearing procedure complied with *Sostre v. McGinnis*; he was assured of return for appeal or parole hearings; and his long history of violence justified expeditious transfer.

### Inmates Held Entitled to Notice and Hearing on Out-of-State Transfers

**11,184 Hoitt v. Vitek**, No. 73-55 (D. N.H., Aug. 1, 1973). Plaintiffs represented by New Hampshire Legal Assistance, 88 Hanover St., Manchester, N.H. 03101, (603) 688-2900. [Here reported: 11,184C Opinion (33 pp.).]

In this Section 1983 class action the court ruled that officials of the New Hampshire State Prison are permanently enjoined from involuntarily transferring any inmates to a state or federal prison in another state without first giving

the inmate three days written notice of the charge or basis upon which recommendation to transfer is being made. The court ruled that the inmate must be allowed the assistance of a lay advocate in preparation for the hearing and at the time of the hearing before an impartial tribunal of three persons, at least one of whom is not a prison official.

On the other allegations, the court ruled: (1) that the general lockup ordered by the warden without any probable cause findings, and challenged by plaintiffs as violating the eighth amendment and various other constitutional rights, does not state a cause of action upon which relief can be granted, since the court refused to second-guess the warden's reasonable belief that an emergency existed; (2) that the involuntary out-of-state transfer of an inmate does not in and of itself constitute cruel and unusual punishment, but that because of the punitive effect it has on a prisoner's status, it violates due process when made without procedural safeguards; and (3) that the transferred prisoners, all of whom have since been returned, must be treated as if they were never transferred, and all disciplinary reports and charges which formed the basis of the transfer at the time of the lockup must be expunged from the inmates' records. The court also ruled that the search and seizure of inmates' personal belongings during the lockup did not violate their rights since the cellblock is not a constitutionally protected area, and requirements of security dictate a limitation upon prisoners' rights under the fourth amendment.

The court ordered compensatory damages to the nine plaintiffs who were transferred, in the amount of seventy-five cents per day for the monetary benefits they would have earned at the prison after the lockup ended. It denied punitive damages and awarded costs and attorney's fees to plaintiffs.

### Preliminary Injunction Granted in Prisoners' Rights Suit

**11,478. Kinale v. Dowe**, No. 73-374-GT (S.D. Cal., Oct. 29, 1973). Plaintiffs represented by Ronald Albu, Barbara Fix, Bruce Greene and William Lamb, California Indian Legal Services, 1860 S. Escondido Blvd., Box 1868, Escondido, Cal. 92025, (714) 746-8941; John Echohawk and Roy Haber, Native American Rights Fund, 1506 Broadway, Boulder, Colo. 80302, (303) 447-8760. [Here reported: 11,478C Preliminary Injunction (9 pp.). Also available: 11,478A Complaint (15 pp.); 11,478B Points and Authorities in Support of Preliminary Injunction (31 pp.).]

A preliminary injunction was granted to the plaintiff class of prison inmates, restraining defendant prison officials from interfering in any way with mail to and from inmates unless the defendants could prove to the court that the mails have been used in furtherance of escape attempts or the smuggling of contraband. The defendants were unable to offer any proof on the issue even though mail has been inspected and read by the jailer for at least seven years. Also, before the imposition of discipline, whether major or minor, defendants were required to ensure due process protections, including written notice, an impartial hearing, confrontation and cross-examination, the right to

present witnesses in defense, and counsel-substitutes, who may be another inmate. The court rejected the use of sheriff's deputies as counsel-substitutes as well as the use of retained counsel.

In addition, the court ordered segregation of pre-trial detainees as required by California statute with exceptions only for extreme emergencies, although this may force turning away federal prisoners due to overcrowded conditions and the loss of revenue under a federal contract. Finally, the court granted plaintiffs' attorneys permission to interview all inmates in private within reasonable guidelines and to inspect and photograph jail facilities in the conduct of the suit.

#### **Court Enjoins Prison Transfer Without Hearing**

**11,349. *Newkirk v. Butler***, No. 2851 (S.D. N.Y., Oct. 9, 1973). Plaintiffs represented by William E. Hellerstein, Daniel Pochoda, Majorie Smith and Joel Berger, The Legal Aid Society, Prisoners' Rights Project, 119 Fifth Avenue, New York, N.Y. 10003, (212) 677-4224. [Here reported: 11,349A Opinion (17 pp.).]

This civil rights action challenged the transfer of New York State inmates from a medium security prison, the Wallkill Correctional Facility, to various maximum security prisons as a result of their efforts to circulate petitions forming a prisoners' labor union at Wallkill. The court held that the transfers violated due process of law in that 1) plaintiffs had not been accorded a hearing with notice of the charges and an opportunity to be heard; and 2) state correctional officials had failed to promulgate rules at Wallkill governing inmate behavior and the range of sanctions that may be imposed for different infractions. The court rejected the state's contention that the transfers had been purely "administrative," noting that Wallkill is a very desirable location for inmates and that transfer to maximum security prisons is therefore used as a disciplinary device.

The court found that the threat of transfer at the present time was not sufficiently great to warrant injunctive relief; that it is sufficient to require that the prison authorities make known to plaintiffs the scope of permissible behavior and the circumstances which in their judgment would warrant transfer; and that there was no need to order the expungement of record of transfer from the records since the authorities had placed explanatory notes in the individual files.

#### **Medical Panel Convened to Examine Care of Diabetic Inmates**

**10,373. *Pryor v. Twomey***, No. 73C 1358 (N.D. Ill., filed Oct. 4, 1973). Plaintiffs represented by Richard A. Seltzer and Ronald G. Zamamin, One First National Plaza, Chicago, Ill. 60670, (312) 329-5400; Michael E. Deutsch, 2156 N. Halsted St., Chicago, Ill. 60614, (312) 929-1880. Of counsel, Max R. Naiman, 5140 N. Central Park, Chicago, Ill. 60604; William J. McNally, 53 W. Jackson Blvd., Chicago, Ill. 60604; T. Laddie Lushin, law student, and Robert K. Downs, Prison Service Project, Foundation for

the New Business Ethic, 33 N. Dearborn St., Chicago, Ill. 60602. [Here reported: 10,373B Motion for Discovery (3 pp.); 10,373C Response to Discovery Motion (6 pp.); 10,373D Memo Order (3 pp.). Previously reported at 7 CLEARINGHOUSE REV. 231. (October 1973).]

A discovery order has been granted to the plaintiffs in this class action, state prisoners suffering from diabetes, pursuant to allegations that the defendant state officials and employees are denying their essential medical needs in violation of equal protection and the prohibition against cruel and unusual punishment.

The order permits the convening of a panel of four licensed physicians with expertise and knowledge in the area of diabetes and approved by the court, to enter the state institution for the purpose of reviewing all relevant reports and documents relating to the medical facilities, personnel and procedures of the prison hospital; reviewing all records and documents relating to the prison kitchen and preparation and service of food to the diabetics; and physically examining the named plaintiffs and other diabetic inmates to determine the nature and extent of the physical conditions in controversy. The panel may review and inspect all medical records and documents of past and present diabetic inmates at the prison provided that prior inmate authorization is obtained.

The order also permits counsel for plaintiffs to enter the prison with the medical personnel and to inspect and copy all relevant documents and records. Counsel for plaintiffs may also bring with them a photographer for purposes of inspecting and photographing any medical facilities at the prison hospital, any hospital detention facilities, and any facilities and equipment for food preparation, storage and service.

#### **Prisoner's Suit Challenges Federal Correctional Officials' Failure to Fully Implement Rehabilitative Programs**

**11,471. *Small v. Bork*** (D. D.C., filed Oct. 29, 1973). Plaintiff Arthur E. Small, appears pro se, U.S. Penitentiary, P.O. Box 1000, Leavenworth, Kan. 66048. [Here reported: 11,471A Complaint (4 pp.).]

Plaintiff brings this suit on behalf of himself and all federal prisoners against the U.S. Attorney General, the director of the Bureau of Prisons, the Secretary of Labor and the federal Board of Parole alleging that respondents have deliberately and effectively deprived all federal prisoners of their statutory and constitutional right to correction. Plaintiff requests that the court direct respondents to provide and maintain a comprehensive system of treatment, rehabilitation and correction. In particular, plaintiff urges the court to order defendants to actively improve rehabilitative measures, including vocational training, inmate councils and revised parole procedures.

#### **Suit Alleges Sex Discrimination and Violation of Civil Rights in Treatment of Female Inmates**

**11,545. *Barefield v. Leach***, No. 10282 (D. N.M., filed Aug. 15, 1973). Plaintiffs represented by Joan Friedland and Morton Simon, New Mexico Civil Liberties Union Prison