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ENVIRONMENTAL INJUSTICE BEHIND BARS: TOXIC IMPRISONMENT IN AMERICA



**THE GLOBAL
ENVIRONMENTAL
JUSTICE PROJECT**





ENVIRONMENTAL INJUSTICE BEHIND BARS: TOXIC IMPRISONMENT IN AMERICA

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UCSB'S PRISON ENVIRONMENTAL JUSTICE PROJECT,
AN INITIATIVE OF UCSB'S GLOBAL ENVIRONMENTAL
JUSTICE PROJECT

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TABLE OF CONTENTS



I. AUTHOR BIOGRAPHIES

II. INTRODUCTION

III. SUMMARY

IV. CASE STUDY CHAPTERS

- 11 Black Liberation Political Prisoners and Environmental Justice
- 25 Environmental Justice Violations in America's Immigration System
- 44 Fatal Effects of Heat Subjugation in U.S. Prisons
- 51 Hungry, Sick, and Malnourished: Prison Food as Cruel and Unusual Punishment
- 64 Pepper Spray as Violence Suppression (and Violent Repression) in California's Juvenile Detention Facilities
- 73 Prison Labor: Disproportionate Exposure to Environmental Hazards
- 85 Water Quality at Massachusetts Correctional Institution at Norfolk

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He has published a number of works on environmental justice issues in communities of color in the U.S. and globally. His books include: *What is Critical Environmental Justice?* (Polity Press, 2017); *Keywords for Environmental Studies* (editor, with Joni Adamson and William Gleason, New York University Press, 2016); *Total Liberation: The Power and Promise of Animal Rights and the Radical Earth Movement* (University of Minnesota Press, 2014); *The Slums of Aspen: Immigrants vs. the Environment in America's Eden* (with Lisa Sun-Hee Park, New York University Press, 2011); *The Treadmill of Production: Injustice and Unsustainability in the Global Economy* (with Kenneth Gould and Allan Schnaiberg, Paradigm Press, 2008); *Resisting Global Toxics: Transnational Movements for Environmental Justice* (MIT Press, 2007); *The Silicon Valley of Dreams: Environmental Injustice, Immigrant Workers, and the High-Tech Global Economy* (with Lisa Sun-Hee Park, New York University Press, 2002); *Garbage Wars: The Struggle for Environmental Justice in Chicago* (MIT Press, 2002); *Urban Recycling and the Search for Sustainable Community Development* (with Adam Weinberg and Allan Schnaiberg, Princeton University Press, 2000); *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement* (editor, with Robert J. Brulle, MIT Press, 2005); and *Challenging the Chip: Labor Rights and Environmental Justice in the Global Electronics Industry* (co-editor, with Ted Smith, David Sonnenfeld, and Leslie Byster, Temple University Press, 2006).

He has served on the Boards of Directors of several community-based, national, and international organizations that are dedicated to improving the living and working environments for people of color, immigrants, indigenous peoples, and working-class communities, including the Global Action Research Center, the Center for Urban Transformation, the Santa Clara Center for Occupational Safety and Health, Global Response, Greenpeace USA, and International Rivers. He earned his B.A. in Sociology and Religious Studies at the University of Tennessee, Knoxville in 1992. He earned his M.A. and Ph.D. in Sociology from Northwestern University in 1998.

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Jasmine Vazin

Jasmine Vazin, a second-year master's student at the Bren School of Environmental Science, graduated from the University of Tennessee, Knoxville with a Bachelor of Science in Ecology and Evolutionary Biology and a minor in Philosophy in 2014. Jasmine won a Eureka award and is published in *Aquatic Ecology* for her research, which involved enzyme kinetics in freshwater systems. She later received grants through the University to study parental care heritability in African cichlids and endemic salamander speciation in Tennessee. After four years of research experience in academia, Jasmine moved into the private sector. She worked at Green Source Organics as a regulatory manager in charge of locating sustainable and fairly traded food products for wholesale worldwide. She petitioned to have excess food stores donated to foodbanks around Los Angeles, and launched a retail line to offer healthy food options to consumers at an accessible price. While specializing in Conservation Planning in graduate school she is also conducting research with the Global Environmental Justice Project to quantify environmental justice violations within the United States. She is interested in food justice, ecotoxicology, and policy.

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Harrison Ashby is an undergraduate student in the Environmental Studies department at UCSB. She has been working on the Prison Environmental Justice Project since April of 2018. She is an organizer for Liberation Santa Barbara, which focuses on animal rights, and for Food Not Bombs Isla Vista, which focuses on food justice. Her interests include environmental justice, climate justice, and climate change policy.

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Michaela Anastasia Austin is a fourth year Environmental Studies and Sociology double major. With a focus in environmental justice, she is especially interested in how toxic materials and climate change cumulatively and disproportionately affect marginalized communities. She has served as a research assistant for the Prison Environmental Justice Project since March 2017, documenting the many environmental injustices and human rights abuses embedded in the U.S. prison industrial complex. Her research has ranged from the sterilization of incarcerated women to unregulated medical testing in prisons, to the systematic malnourishment of inmates. Michaela is currently fulfilling her passion for EJ as a Greenaction for Health and Environmental Justice Intern where

she has gained invaluable knowledge and skills from frontline communities in the San Francisco Bay Area. Michaela enjoys cooperative-style living as a member of the Santa Barbara Student Housing Cooperatives. She resides in Biko, the People of Color house, which is an intentional space actively seeking to spread awareness about racial equality, social justice, and anti-oppression.

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Sage Kime is a recent UCSB graduate with a B.A. in Environmental Studies. With an emphasis on human-environmental interaction and an interest in environmental justice, her studies mainly focused on the ways in which environmental risks/impacts disproportionately affect marginalized communities. Sage previously worked as the Staff Food Security Coordinator for UCSB Sustainability, where she researched best practices and opportunities for improved policies regarding food security within staff at UCSB. Now researching the intersections between environmental injustice and prison labor, she has enjoyed working on the Global Environmental Justice Project.

Shannon McAlpine

Shannon McAlpine is a fourth-year undergraduate researcher for the Prison Environmental Justice Project. She has been working on the project since August 2017 and is pursuing an Environmental Studies B.A. degree at UC Santa Barbara. Shannon is interested in issues concerning health problems that arise from environmental injustices, such as exposure to contaminated water and living in close proximity to toxic sites. She believes it is important for the public to become aware of these issues and hopes she can help spread awareness. Shannon hopes to pursue a career in public health as a social epidemiologist.

Yue (Rachel) Shen

Yue Shen graduated from UCSB with a B.A. in Environmental Studies in 2017. She started working on the Prison Environmental Justice Project in 2015 as a student research assistant and continued on as a project coordinator after she graduated. Her research interest lies in studying how environmental injustice often mingles with social justice issues and disproportionately affects disadvantaged groups in urban settings. She will be pursuing her master's degree in Urban Planning starting this Fall at UCLA.



INTRODUCTION

By David Pellow

THE WORLDS LARGEST JAILER*

The United States of America has the largest prison system of any nation on earth, the largest number of prisoners of any country, and one of the highest percentages of imprisoned persons of any nation (Walmsley 2015). Since 1970, the U.S. has seen a 700% increase in people imprisoned (Travis, Western, and Redburn 2014), a result of the growth in city police departments, a “get tough on crime” and “war on drugs” punitive approach to criminal justice, and a concerted effort to control and minimize the power of social movements and other forms of resistance from within communities of color (Alexander 2012). The United States holds fully 25% of the world’s prison population but has only 5% of the world’s people. As of this writing, there are more than 2.3 million people incarcerated in federal and state prisons, jails, immigrant prisons and other correctional facilities in the United States; if all of those prisoners were housed in one location, it would constitute the fourth largest city in the nation. Some scholars refer to the U.S. prison system as a “second country” (Rhodes 2001).

THE USA HOUSES
25%
OF THE GLOBAL
PRISON POPULATION

EXECUTIVE SUMMARY

By David Pellow and Jasmine Vazin

PRISONS AND ENVIRONMENTAL JUSTICE ARE INEXTRICABLY LINKED*

Environmental injustice is a term used to describe the fact that environmental threats in general, and climate disruptions in particular, affect communities, nations, and regions of the globe differently and unevenly, with low income and global south communities, people of color communities, and indigenous communities being hit the hardest (Bullard and Wright 2012; Ciptet, Roberts, and Khan 2015). Prisons and jails in the United States have been increasingly found to be associated with environmental impacts on the lands upon which they are built and on the inmates that they house, and are a new focus for the environmental justice movement (Dannenberg 2007). Rampant toxics exposure, water contamination, inadequate medical care, rancid food, extreme heat, poor air quality, chemical attacks by authorities, and in some cases the very facilities being built on contaminated superfund sites directly impact the health of those who are incarcerated and work in these spaces (Anderson 2018). Legally, many of these incidents directly violate the Eighth Amendment prohibition against cruel and unusual punishment, and given the disproportionately high number of members of minority groups in the prison system, constitute environmental justice, civil rights, and human rights violations as well (GPO 2002, CA Civ Code § 51.2 and 51.7, Pellow 2017).



Over 580 US prions are within 3 miles of a superfund site



40% of inmates suffer from chronic conditions such as cancer



Private Prisons and prison labor are multibillion dollar industries



EXECUTIVE SUMMARY

By David Pellow and Jasmine Vazin

THERE IS SYSTEMATIC POISONING OF PRISONERS IN THE UNITED STATES*

This report details the research conducted by the UCSB Prison Environmental Justice Project (an initiative of the Global Environmental Justice Project) that investigates the links between prisons, jails, immigrant prisons, and environmental justice concerns in the United States. Through our research we have found clear and compelling evidence of environmental injustice in a multitude of carceral facilities around the country- from state and federal prisons, to juvenile detention centers to immigrant prisons, and we call for immediate congressional action to bring about swift remediation of these issues. All over the nation, juveniles, citizens, immigrants, and legal asylum seekers are being held captive in institutions that are poisoning them against their will and knowledge. Currently, these abuses and indiscretions against prisoners and their wellbeing are well documented, blatantly ignored, and face no repercussions for the entities involved. We strongly recommend further research into these institutions, legal action, and grassroots resistance to bring about new practices prioritizing compassionate rehabilitation, public health, and environmental justice. We are heartened to see the many actions taken by prisoners and their allies to bring attention to these concerns and to fight back against the predatory, cruel, and genocidal policies and practices of the U.S. prison system. These include lawsuits, petitions, health surveys, sit-ins, hunger strikes, spoken and written words shared with mass media and NGOs, and artistry depicting these struggles and visions of a better world. We support these nonviolent, peaceful efforts and hope that this report will be received as an affirmation by those persons engaging in such acts and as an inspiration to those who have yet to join the movement.



BLACK LIBERATION POLITICAL PRISONERS AND ENVIRONMENTAL JUSTICE

By David Pellow

Black Liberation Political Prisoners and Environmental Justice

David N. Pellow



The Black Panther party march in protest of the trial of co-founder Huey P. Newton in Oakland, California.

BETTMAN / GETTY IMAGES

Introduction

This chapter considers the intersections of environmental justice concerns with the U.S. prison system through the experiences of political prisoners from Black Liberation movements, including the Black Panther Party and the Black Liberation Army. These movements (primarily of the late 20th century) sought to empower Black communities across America in response to rampant social inequalities and injustices associated with police brutality, inadequate housing, healthcare, and education. They also were frustrated with the slow progress and limited vision of the Civil Rights Movement, and were inspired by revolutionary movements throughout Africa, Latin America, and Asia that were securing independence for nations previously under European colonial control. Activists from these movements were jailed and imprisoned by law enforcement under the FBI's Counter Intelligence Program (COINTELPRO), which was denounced by the US Congress in 1976 (Churchill and Vanderwall 2001). I contend that these movements have a clear environmental justice-related approach to their vision and practice because among their primary concerns are combatting state and corporate power, racism, colonialism, and militarism against people of color and indigenous peoples in favor of community-based solutions that would result in peoples

exercising democratic control over land, territory, and space. Moreover, imprisoned activists from these movements have demonstrated an abiding concern with the overwhelming evidence of environmental health risks associated with the prison system. These movements have not been typically framed as part of the environmental justice struggle, so this chapter is an effort to offer that critical intervention. And just as Dan Berger (2017) has argued that prisons and jails were important sites of political formation for the civil rights movement, I argue that prisons and jails serve a similar function for the environmental justice movement.

Prisoners' Stories

The U.S. prison system is overwhelmingly made up of people who are poor and nonwhite (Walmsley 2015). One in three African American men is at risk of being sentenced to at least one year in prison during his life time (Sentencing Project 2013), and the rate of incarceration for African Americans is five times that of White Americans. The rate for Latinx folk is nearly twice that of Whites. Another way of putting this is that White Americans are highly *underrepresented* in every one of the 50 U.S. states' prison populations while Black and Brown people are *overrepresented* (Sakala 2014). All of these groups face great risks to human health due to a range of threats inside prisons. The political consequences of this unequal policing are profound and dire: in many states, one in four black men cannot vote because they have a past or present felony conviction that disqualifies them from participation in that most basic act of citizenship (Manza and Uggen 2008). The U.S. prison system has been castigated by international human rights organizations and the United Nations as a site of routine human rights abuses associated with these vast racial disparities (Amnesty International 2016). These trends are almost guaranteed to produce resentment and resistance by people of color, a dynamic compounded by the fact that there is clear evidence that mass incarceration developed in part as an effort to contain the revolutionary movements and rebellious political activity occurring within black communities in the 1960s and afterward (Alexander 2012). I argue that Black liberation movements have been focused on environmental justice-related themes and that these activities are seen as a threat by the U.S. government. The stories of Safiya Bukhari and Assata Shakur are illustrative.

Safiya Bukhari was born in the Bronx in 1950 and while in college was radicalized and joined the Black Panthers out of concerns about police brutality. "It wasn't the Panthers that made me join the Black Panther Party....It was the police." (Whitehorn 2010, p. xxiv). While Bukhari is not considered a major figure in the history

of the BPP, she invested as much labor in the movement as anyone else. As her biographer and former political prisoner Laura Whitehorn writes, “from 1969, she was in the Harlem office of the Black Panther Party, working on all its projects—the Free Breakfast for Children Program, political education and outreach, and a health clinic to screen for sickle-cell anemia and other medical problems—and, of course, selling the Panther newspaper” (Whitehorn 2010, p. xxv). She also joined the Republic of New Afrika. As I and others have noted elsewhere, police brutality can be framed as an EJ issue because it is an example of how racist state violence is experienced and embodied within particular spaces and particular bodies and populations, resulting in harm and control over those spaces and bodies—key aspects of environmental injustice (Dillon and Sze 2016; Pellow 2016, 2017). Thus, the BPP’s campaigns against police brutality are, in my view, clearly within the broader ambit of environmental justice. I would argue that the BPP’s work to provide free health care and health information to marginalized communities was also EJ-related activism for the same reason—it was about countering the effects of racist state and institutional violence and the long-term effects of racism and environmental racism that results in higher rates of hypertension, asthma, lead poisoning, and other illnesses. Moreover, the Free Breakfast for Children Program can be firmly placed within a long history of food justice movements, a social formation that a number of scholars have argued is firmly within the realm of environmental justice (Alkon and Agyeman 2011).

Assata Shakur was involved in student government in college, working with students for Democratic Society (SDS) in favor of supporting Black Studies programs, and increased hiring of African American faculty. “We began to talk about an education that was relevant to us as Black people.” (Shakur 1987, p. 186). Like Bukhari, Shakur soon joined the Black Panther Party in New York and was working with the medical cadre, which “was responsible for the health care of the Panthers. We made medical and dental appointments for them and taught them basic first aid so that they could help the people in emergencies. Periodically, we set up a table on the street corner and gave free TB tests or gave out information on sickle-cell anemia. It was also my job to work with the Black medical students and doctors who we were counting on to help us set up a free clinic in Harlem....Working on the free breakfast program turned out to be an absolute delight. The work was so fulfilling. The Harlem branch had breakfast programs in three different churches, and I rotated among all three.” (Shakur 1987, pp. 217- 219).

Shakur was active in multiple social causes in the New York area, including rent strikes and sit ins demanding justice for people of color throughout the city. Both Safiya Bukhari and Assata Shakur worked with the BPP's key social programs, expanding access to health care, food, and fair housing for marginalized communities. Both went to prison and continued their struggles for justice on the inside. And while both escaped from prison, only Shakur's escape was successful and she remains in exile in Cuba today. The following sections of this chapter focus on the struggles for environmental justice inside prisons, after black liberation activists were apprehended by law enforcement and incarcerated.

Water

If water is life, then the widespread contamination of that most basic element provides clear evidence of the ecologically violent nature of prison life. Mumia Abu-Jamal has been serving time in prison for decades and is perhaps the world's most famous political prisoner. He is a former member of the Black Panther Party, an internationally renowned journalist and activist who is on death row at SCI Frackville in Pennsylvania, for the alleged murder of a police officer, Daniel Faulkner—a case that international human rights organizations have called one of glaring inconsistencies, gaps, and based on questionable evidence. In 1989, during the early days of the Environmental Justice movement, Abu-Jamal wrote an essay about contaminated water in the prison he was in (SCI Huntingdon). He noted that the water had a "gaseous odor" and left "a dark oily ring" that stained the cups inmates drank from. He then articulated a socioecological framing of the problem that reflected the borderless reality of pollution:

"It appears that this water problem is more than prisonwide; civilian communities, sharing the same water source, are also affected.... Despite the legal illusions erected by the system to divide and separate life, we, the caged share air, water, and hope with you, the not-yet-caged. We share your same breath. How many housewives in the surrounding township met sunrise this morning with sleep in their eyes, filled the pot with water for coffee, caught a whiff of gasoline rising from the cup, and gagged? The earth is but one great ball. The borders, the barriers, the cages, the cells, the prisons of our lives, all originate in the false imagination of the minds of men." (Abu-Jamal 1995/1989: 50-52).

Nearly three decades later, in February 2017, Abu-Jamal filed a formal grievance at SCI Frackville, Pennsylvania, where he was serving time, regarding the visibly discolored water coming out of the pipes in that facility. Part of that grievance reads:

“Over the last several months, I have repeatedly complained of dirty, brackish, turbid, even black water in the infirmary’s tub...I’ve received several responses from my prior grievances, which I believe are misleading, incorrect and untrue....When I reported for my medically prescribed bath today... I found the water, upon running, dark, turbid and quite discolored....I let the water run; for five minutes; for 10 minutes; for 15 minutes; for 20 minutes—and not only didn’t it clear up—it got worse! While the water appeared like tea in the beginning, it looked more like coffee after a 20-minute run” (Abu-Jamal 2017).

Food

If clean, drinkable water is essential for life, so is healthy food. Unfortunately, the U.S. prison, jail, and detention system is legendary for its unappetizing, unhealthy, and often dangerous food, which should be viewed as an issue of food injustice and environmental injustice since it reflects the power dynamics that link the undemocratic control that the state and a small group of corporations exercises over our food systems with policies and practices that tend to contribute to poor public health outcomes among vulnerable populations and harms to ecosystems through chemical-intensive industrial agriculture (Gottlieb and Joshi 2013; Sbicca 2018).

Assata Shakur was born and raised in New York, where she became an activist while in college, participating in student protests in favor of greater investments in Black Studies in higher education. She joined the Black Panther Party and became a leading member of its Harlem branch, where she coordinated a free breakfast program for school children there. She later left the BPP for the Black Liberation Army, an even more radical, underground organization committed to securing the independence and self-determination of African Americans through armed struggle and the allocation of land. She was eventually convicted of the murder of a police officer—Werner Foerster—and several other felonies. She later escaped from prison and fled to Cuba, where she was granted asylum. Shakur had served time in a workhouse prison during the 1970s. She later recalled how awful the food was and how it sparked resistance among the inmates:

“The food in the workhouse was horrible. Actually, it was disgusting....I would sit and wait for lunch or dinner, hungry as hell, and they would bring me some greenish-brown iridescent chunks floating around in a water liquid (liver stew, they called it) or some lamb fat floating around in some water which was supposed to be lamb stew. And that nasty-looking, foul-smelling stuff tasted much worse than it looked. The place was infested with flies and so was the food. The only thing edible was eggs, when they had them, and mashed potatoes. I lived off the nuts and candy I bought from the commissary and the fruit my family brought on visits. Every single day for one whole week they brought us this nasty stuff that was supposed to be ravioli. Well, that was the last straw. We all decided to go on a food strike. I wrote a petition which everybody signed and we sent it down to the warden’s office....The food was better for a few days, and then it reverted to the same old nasty slop” (Shakur 1987, p. 56).

Access to nutritious, affordable, safe, and culturally appropriate food is a cornerstone demand of the food justice movement (Gottlieb and Joshi 2013; Sbicca 2018). When prison officials perpetrate food injustice against prisoners by serving substandard food or withholding food altogether, prisoners have risen up and fought back through hunger strikes, issuing petitions and public demands for improved food, writing essays and giving interviews, and outright rebellion.

Inadequate Medical Care

There seems to be an overwhelming consensus that medical care in the U.S. prison system is deplorable, and given the widespread evidence of poor quality and contaminated food, water, and the absence of natural light and fresh air, the combination of these factors routinely produces public health crises for prisoners. Assata Shakur also commented on other troubling aspects of the environment in the Middlesex county jail in New Jersey:

“At the time, the health situation was horrible. Women came in off the street and were given no physical exam, no tests, no nothing. They had trouble seeing gynecologists and having their most basic needs met,

medical or otherwise. Since we were a tiny minority of the prison population, our needs were ignored. The women got together and wrote complaints to the warden. Charlie was one of the women who worked the hardest to get better medical conditions. It's kind of ironic when I think about it now. A little more than a year later, I heard over the prison grapevine that Charlene had died from undiagnosed cancer of the uterus." (Shakur 1987, p. 210).

Safiya Bukhari was a political prisoner who began her activist career in the Black Panther Party and as a commander of an armed Black Liberation Army unit. She was given a forty-year sentence after surviving a shoot-out with police in Norfolk, Virginia. In 1979 she was in the Virginia Correctional Center for Women at Goochland, and wrote about the horrors of inadequate medical care in the prison system and how that motivated her to escape because she had been repeatedly denied medical care for her ovarian tumors:

"The 'medical treatment' for women prisoners here in Virginia has got to be an all-time low...In December 1976 I started hemorrhaging and went to the clinic for help. No help of any consequence was given, so I escaped. Two months later I was recaptured....I decided to use the lack of medical care as my defense for the escape and by doing so do two things: (1) expose the level of medical care at the prison and (2) put pressure on them to give me the care I needed. I finally got to the hospital in June of 1978. By that time it was too late. I was so messed up inside that everything but one ovary had to go....I was forced to have a hysterectomy." (Whitehorn 2010, p. 9).

Resistance and Survival

Herman Bell was a Black Panther Party and Black Liberation Army activist for many years and, in 1973, was convicted (along with Jalil Muntaqim and Albert "Nuh" Washington) of killing two New York City police officers—Waverly Jones and Joseph A. Piagentini—two years earlier. Bell served four decades of a life sentence and was granted parole at age 70 in 2018 (Baker 2018). From within the prison system, Bell did extraordinary things. While serving time at the Clinton Correctional Facility in Dannemora, New York, he wrote numerous articles in support of Black liberation and

taught Black history classes. In 1995, he co-founded a food justice project based outside of the prison. He wrote:

“some friends from Athens, Maine and I organized a food project called: Victory Gardens. We grow organic produce and what we grow we distribute free through our relationship with community based groups. We are self-sufficient and tax-exempt, and we rely on fundraisers, donations, and foundation grants to finance our operations. Our supporters from across the country provide us with the labor. We think of this program as our urban/rural connection. It is not about ‘give-aways’ but is about ‘self-help’, and we encourage people to visit us in Athens, where we teach how to grow and can food. We grow about five tons annually, and the spring of 2001 will mark our fifth year of operation. The Victory Gardens Project is an adaptation from the Black Panther Party’s food program that it successfully operated in the Black community during the 60s. The Struggle Goes On!!! Free All Political Prisoners!” (CEML 2002, p. 96).

Jalil Muntaqim is one of Herman Bell’s co-defendants and has also been heavily involved in the Victory Gardens project. Their colleagues who do the primary work on the ground are farmers in Athens, Maine. According to the activist group Committee to End the Marion Lockdown,

“This project enjoins folks from the cities, especially the youth, to come to Maine to work in the gardens—learning skills to grow their own food, helping with the harvest, and participating in the distribution of tons of free fresh produce back to their communities, along with information about the amnesty campaign for our most honored community activists, the U.S. political prisoners and POWs. With the skills they’ll learn in Maine, folks from the communities can start their own victory gardens in/on the outskirts of the cities, rooftops, anywhere there’s a piece of available ground to grow on. This Victory Gardens Project...has proved to be a wonderful model of self-determination for disenfranchised people.” (CEML 2002, pp. 139-140).

These food and environmental justice projects offer a powerful testament to the ways in which the prison walls are unable to sever the social ties between political prisoners and their allies and partners on the outside. It is also extraordinary that prisoners who are confronted with daily horrendous food injustices inside carceral facilities are organizing to ensure that people on the outside have access to fresh, healthy, nutritious food.



Charles Bursey hands a plate of food to a child seated at a Black Panther Free Breakfast Program.

PHOTOGRAPH COURTESY OF PIRKLE JONES AND RUTH-MARION BARUCH

Conclusion

Black Liberation political prisoners have faced environmental injustices while incarcerated since the 1970s, and given the fact that health hazards in U.S. prisons and jails more generally are widespread and endemic (see other chapters in this annual report), this is a problem facing thousands of prisoners across the nation, regardless of their political status. The fact that political prisoners face environmental injustices is particularly ironic because they come from social movements that were fighting for environmental justice in the first place. These prisoners were activists before their incarceration and continued that work during their imprisonment, advocating for better conditions for themselves and others, both inside and outside of prison.

I would argue that since, according to the 13th Amendment to the U.S. Constitution, prisoners are legally enslaved people, then the existence of the prison Environmental Justice movement means that this part of the broader Environmental Justice movement is, in fact, a slave rebellion. This also means that the Environmental Justice movement can now be thought of more properly as part of the broader abolitionist movement because prisoners fighting for environmental justice are also fighting for their freedom and for the abolition of slavery, as we see in the nationwide prison strikes occurring each August against prison slavery. In his book, *Blood and Earth*, Kevin Bales (2016) demonstrates that in today's global economy enslavement and ecocide go hand in hand, as some of the world's most vulnerable peoples are enslaved and forced to work in some of the most ecologically destructive industries. What this means is that the Environmental Justice movement can now be directly linked to the long historical and ongoing global movement to abolish slavery as well.

Critics may rightly raise a crucial question as to whether my linking paramilitary revolutionary activities to environmental justice amounts to or implies an embrace of armed struggle and violent means of achieving social change. I do not. However, I would refer the reader to the following statement by Diane Fujino, reflecting a longstanding consensus in the international legal community:

"International law has repeatedly affirmed the right of colonized people to fight against colonialism and racism by any means necessary, including armed struggle. The 1970 UN resolution 2621 'reaffirms the inherent right of colonial peoples to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and independence.' A 1973 UN resolution declared: 'The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions.' Thus, 'any attempt to suppress the struggle against colonial and alien domination and racist regimes is incompatible with the Charter of the United Nations.' In 1977, the United Nations went even further in 'demand[ing] the release of all individuals detained or imprisoned as a result of their struggle against apartheid, racism and racial discrimination, colonialism, aggression and foreign occupation and for self-determination, independence and social progress for their people.'" (Fujino, 2005, p. 207)

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CHAPTER 2

The Cost of Freedom; Environmental Justice Violations in America's Immigration System



BY JASMINE VAZIN

The Cost of Freedom; Environmental Justice Violations in America's Immigration System

Jasmine Vazin



Protestors March from Freedom Plaza to demand the end of criminalizing efforts of asylum seekers and immigrants in Washington, DC, June 2018.

PHOTO BY WIN MCNAMEE/GETTY IMAGES

Immigrant Internment in the United States

Monetary Motivations

The United States has a long history of immigrant detention and selectively closing its borders to certain ethnic groups- this is nothing new, but the sheer scale of immigrant detention seen currently is unprecedented.¹ With over forty thousand immigrant detainees, ICE is currently detaining the largest non citizen population in the world (Freedom For Immigrants (FFI) 2018). The motivations behind the recent political shift leading to this magnitude of incarceration are centered around monetary gain for private prison corporations. Specifically, CoreCivic and The GEO Group corporations have contracts for a majority of immigrant detention operations in the

United States and have a history of lobbying heavily in Washington, D.C. to ensure the criminalization of immigrants continues (ACLU 2014). From 1990-2009, private prisons in the United States grew by 1600%. From 2000-2012 these two corporations spent more than \$32 million on federal lobbying and campaign contributions (ACLU 2014). These entities have a direct vested interest in the increased internment initiatives seen under the Trump regime, as evidenced by an excerpt from CoreCivic's 2012 Internal Annual Report:

"Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. *The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.*"

(Corrections Corporation of America (Now CoreCivic), 2012, pg. 28)

This statement of reliance on immigrant detention and criminalization for CoreCivic business solvency is now truer than ever. In 2016, Attorney General Sally Yates released a memo stating that the DOJ would not renew any federal contracts with private prison corporations in the future, causing CoreCivic and The GEO Group stocks to plummet (Johnson 2016; FFI 2018). The Trump regime reversed that decision, and in January 2018, Donald Trump released a memo promising an increase in detained immigrant beds from 45,700 up to 80,000, all of which would be contracted to CoreCivic and The GEO Group- effectively ensuring these companies' survival (E.O. 13768 2017).

¹ See Freedom For Immigrants: [Immigrant Detention Timeline](#)

Legal Background

The immigrants and asylum seekers being detained by ICE are not being held for criminal offenses, but rather are awaiting *civil trials*- yet the conditions subjected upon them during their internment are equivalent to criminal detention (Detention Watch Network (DWN) 2010). It is not illegal in the United States to seek asylum, yet the zero tolerance policy under the Trump regime has dictated mandatory detentions and prosecutions for both legal asylum seekers and civilly charged immigrants crossing the border (Landgrave 2018). Being granted asylum at all is now more difficult under this administration as well, as per a memo released by Attorney General Jeff Sessions in April 2018, effectively changing the definition of "Credible Fear" (Credible or Reasonable Fear must be proved, to be granted Asylum into the U.S.) to no longer include domestic or gang violence, putting thousands of migrant women and children at risk who are fleeing these dangers in their home countries (Time 2018). In the past the immigration process consisted of families or individual immigrants being detained briefly, sent back immediately, quickly granted asylum, or paroled into the country (Arnold 2018). With this new zero tolerance policy, thousands are being detained indefinitely while awaiting trial, without being charged due to the massive influx of detainees and cases flooding the courts from this policy change, effectively gridlocking the entire process.

Legally, the indefinite detention of legal asylum seekers is a violation of the Constitution, United States law, international law, and the Department of Homeland Security's own written policy (U.S. Constitution Amendments 5, 6, and 8; Public Law 96-212; United Nations Treaty Series vol. 189 p. 137; USCIS 2011). These laws and policies all state that those who meet the criteria for asylum shall be allowed entry into the United States, will not be held indefinitely without trial, and will not be subjected to cruel or unusual punishment. The unprecedented internment of those who meet the stringent requirements for asylum, and in some cases have even been granted asylum yet are still detained, is a blatant degradation of the U.S. federal justice system (ACLU 2018).

An Alarming Trajectory

Outside of the corporate or legal scope, the diversionary, racially demonizing, fear mongering rhetoric currently seen in the American political sphere is a shocking repeat of histories we have seen play out again and again. Dr. Gregory Stanton,

curator of the Genocide Watch Network, has studied the stages of genocide, and in his published work delineating the ten stages of genocide, he argues that the current treatment of Hispanics and migrants in the United States suggests that the nation has descended to the sixth stage of this well studied trajectory.² There is no easy way to come to terms with one's country of residence evolving into a potentially genocidal state, but if the citizens of the United States fail to use their political power to demand a halt of this progression, our political atmosphere could devolve into something rarely before seen in our nation's history. Immigrants being detained without charge on American soil are being subjected to inhumane and cruel conditions that are severely affecting their mental and physical health, and this mistreatment has resulted in death in some cases (Human Rights Watch (HRW) 2018). This report defines and details the environmental justice atrocities seen in immigrant detention facilities across the country, focusing on the withholding of medical care, the use of chemical warfare, deplorable food conditions, forced labor, inhumane building conditions, and sexual abuse.

²See ["Ten Steps to Genocide" brief \(Stanton 2016\)](#)

Documented Abuses in These Facilities

Denial of Medical Care

The deliberate denial of medical care to immigrant detainees in privately run facilities is pervasive- almost every lawsuit, news report, inspection result, and testimony in 2018 has cited little or no access to medical care for those detained by CoreCivic and The GEO Group across the nation (HRF 2018; HRW 2018; OIG 2017). This practice has led to multiple avoidable deaths from 2015-2017; half of the 16 deaths reported in these facilities were cited as a direct result of medical care denied or withheld (HRW 2018). This trend coincides with reports of subhuman treatment of detainees, understaffing, and extreme budget cutting measures by the corporations running these facilities (Grinberg 2018; Human Rights First 2018; Killelea 2018; OIG 2017; Ramos 2018). Medical understaffing is rampant across the board in detention facilities. For example, one detention center was found to have only one physician responsible for over two thousand detainees (ACLU 2014).

The mass incarceration of a non-citizen, majority Hispanic population and subjecting this group to inadequate medical care leading to long lasting harm or death is within the definition of articles (b) and (c) of the 1948 U.N. Genocide Convention:

“...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

*...(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part....”*

A Human Rights Watch collaborative report found that deaths linked to inadequate medical care were resultant from unreasonable delays, poor practitioner and nursing care, botched emergency response, and mismanaged care of the mentally ill (HRW 2018). This is a stark example of the dehumanizing treatment of these detainees who have not been charged, and have not committed any criminal acts- but rather their mistreatment is resulting purely based on their categorization as “other” or “alien.” The flagrant abuse of asylum seekers and immigrants is morally abhorrent, and is a direct result of the resurgence of racially motivated animosity toward non-white persons in America (Alexander 2012; Escobar 2016).

Selected Cases of Fatal Medical Neglect

- **Jose Azurdia** ultimately died of a heart attack at the Adelanto Detention Facility in California (HRW 2018). On the morning of his death, a corrections officer reported that Mr. Azurdia was ill and vomiting uncontrollably. The nurse on staff told the officer “she did not want to see Azurdia because she did not want to get sick.” This led to a chain reaction of horrendous delays in medical care for Mr. Azurdia, which resulted in his death due to a heart attack.
- **Thongchay Saengsiri** languished away while suffering from congestive heart failure for 15 months, leading to his death at the LaSalle Detention Facility in Louisiana (HRW 2018). Mr. Saengsiri suffered from fainting, swelling, anemia, coughing, and shortness of breath- for which a nurse on staff only recommended

he increase his fluid intake, which likely compounded his risk of heart failure with his condition. Instead of properly diagnosing and treating these classic symptoms of heart failure, Mr. Saengsiri was ignored and ultimately died while in detention.

- **Rafael Barcenas Padilla** died from bronchopneumonia while being detained at the Otero County Processing Center in New Mexico (HRW 2018). His death from this condition was a direct result of a delay in transferring him to the hospital after nurses recorded his dangerously low oxygen levels over the course of three days. These test results should have prompted immediate hospitalization that could have saved his life.

Waging Chemical Warfare Against Minors

A class-action lawsuit has been filed against the Attorney General Jeff Sessions and the Office of Refugee Resettlement's juvenile detention facilities, citing gross over-prescription of psychotropic medication disguised as vitamins as a means of sedating minors held by the agency (*Flores v. Sessions* 2018). This case details how minors were forced to take up to ten pills in the morning and nine in the evening; gaining as much as 45 pounds in a few weeks as a result (*Flores v. Sessions* 2018). Minors in two facilities cited that refusal to take the medication resulted in being forcibly injected with a sedative that immediately put them to sleep (*Flores v. Sessions* 2018). Mentally, these children report feeling depressed, constantly tired and sluggish, suffering rapid weight gain (up to 100 pounds), and feelings of emptiness as a result of these medications (Durkee 2018). Teachers at the Shiloh Detention Center in Manvel, Texas stated that the children were so heavily sedated they could not stay awake for their classes, sleeping for hours in class every day during instruction (Goldstein 2018). These lawsuits delineate seven of the specific psychotropic drugs administered to these minors (Clonazepam, Duloxetine, Guanfacine, Geodon, Olanzapine, Latuda and Divalproex)³, but others as well as the injections used in the facilities are currently unknown (*Flores v. Sessions* 2018).

These drugs can invoke serious side effects with normal dosing, but the mixing and overuse of these drugs seen at these locations could cause irreversible effects on these children's still developing minds and bodies.³ Also the rapid weight gain induced by these drugs puts these minors at risk for heart disease, high blood pressure,

diabetes, gallbladder disease, cancer, breathing problems, and stroke (Mayo Clinic 2015). This is a case of purposeful poisoning of children by ICE and the Federal government, and also constitutes violation of articles (b) and (c) of the Genocide Convention. Constant chemical overloading of these minors is directly causing a plethora of immediate health effects, but the long term mental and physical effects of long-term use and multi-drug interactions are not known; thus the health (not to mention mental wellbeing) of these youths could be forever damaged at the hands of the United States.



A two-year-old toddler sobs as her mother is detained by ICE.

JOHN MOORE/GETTY IMAGES

³ See Appendix II for highlighted drug side effects

Abusive Food Practices

In December 2017, The Department of the Inspector General released a report on inspections at five separate immigrant detention facilities contracted by ICE, and found “potentially unsafe and unhealthy detention conditions,” specifically citing unsanitary food handling practices at these locations (OIG 2017). This governmental document uses reserved rhetoric, but the admission of inadequate food conditions is clear- and corroborates other reports and detainee testimonies from these prisons. Inmates have reported being served maggot-infested food, raw meat, moldy and expired foods, as well as limited food rations in multiple facilities across the country (Grinberg 2018; Human Rights First 2018; Killelea 2018).

The physical symptoms from this kind of diet, such as hunger, weight loss, and sickness as a direct result of poor food quality have also been reported by detainees (Grinberg 2018; HRW 2018; Ramos 2018). The effects of an unhealthy diet are numerous and take a severe toll on the body, and can result in foodborne illnesses that can cause lifelong ailments (Golan et. al. 2010). For example, infections from *Salmonella* (*Campylobacter jejuni*) from undercooked poultry products, milk, and contaminated water can cause chronic arthritis, heart infections, blood infections, and chronic irritable bowel syndrome (IBS) (Golan et. al. 2010). Infections from *E.Coli* bacterium from the consumption of undercooked beef, spoiled milk and juice, and contaminated produce in immunocompromised patients can lead to hemolytic uremic syndrome- the long term effects of HUS can be permanent, causing end-stage kidney disease, neurological complications, and diabetes (Golan et. al. 2010). *Listeria monocytogenes* infections from mis-stored deli meats, dairy products, and seafoods can cause infections of the brain and spinal cord- leading to severe neurological dysfunctions such as seizures and paralysis or death (Golan et. al. 2010). Many reports from these facilities also document enforced hunger through the provision of minimal food rations to detainees, which poses a host of other health issues for this population. Long term meal deficits can lead to glucose intolerance and insulin resistance, resulting in type II diabetes, mental changes, immune system dysfunction, ketosis, organ failure, and death (Carlson 2007). The knowing provision of spoiled, contaminated food, and the withholding of food to immigrant detainees by private prison corporations is a form of medical warfare, that can irreversibly harm detainees’ bodily function well beyond their internment in these spaces.

Forced Labor

Multiple lawsuits have been filed in 2018 against ICE for the illegal enforced labor of immigrant detainees (Levy 2018; Ortega 2018). This is a direct violation of the Eighth Amendment, which only allows enforced labor of *criminally convicted inmates*, not civilly held immigrants or asylum seekers (U.S. Constitution Amendment 8). Detainees report that they are being forced to work in the culinary, custodial, maintenance, laundry, and plumbing outfits at the centers where they are being held, for no pay or as little as \$1 a day (Ramos 2018; Ortega 2018). Testimonies from filed cases report punishment if detainees refuse to work, typically by placing inmates in indefinite solitary confinement (Levy 2018; Ortega 2018). This practice is the definition of human trafficking, and is a violation of U.S. and international law (TVPR 2003; UN Document A/71/L.65)

"Labor trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery" (22 USC § 7102)

These detainees are being received at the border, shipped across the nation to various detention centers, and being forced to work to increase the profits of CoreCivic and The GEO Group by forcing a majority of their on-site labor to be conducted by detainees at a fraction of the cost of hiring workers at minimum wage requirements (Levy 2018). This is a highly illegal practice and is an example of modern day slavery.

Inhumane Building Conditions

Reports from the Department of Inspector General, The ACLU, Human Rights Watch, Human Rights First, and testimonies from filed lawsuits all report on the unsanitary and extreme conditions detainees are subjected to while being held in ICE custody. Rat infestation, sewage spills, maggots in showers, bug infestations, and contaminated water have all been reported (ACLU 2014; HRW 2018; Human Rights First 2018; OIG 2017). Freezing cold holding cells without any provided blankets is a well-known practice at processing centers at the border, and officers and detainees alike refer to these cells as "*hieleras*," or freezers (HRW 2018). Minors at juvenile

detention centers in Texas and Arizona have reported being held without air conditioning in the blistering summer heat (Anapol 2018; Ellis 2018). Tent cities have been proposed to house the influx of immigrant detainees on superfund sites and old military bases with known water contamination (Elliot 2018; Miroff & Sonne 2018).

The World Health Organization states that unsanitary and extreme living conditions have been linked to respiratory and cardiovascular diseases from indoor air pollution; illness and deaths from temperature extremes; and the spread of communicable diseases (WHO 2010). The unsanitary and dangerous conditions within CoreCivic and The GEO Group's detention centers is a violation of the Eighth Amendment rights against cruel and unusual punishment that all persons in the U.S. (regardless of citizenship) are guaranteed (Human Rights Clinic 2014; Ball v. LeBlanc 2015). To an even further degree, the fact that these detainees are not being held for any crime, but rather just waiting for a civil court hearing, is a shameless mistreatment of human beings on the sole basis of their country of origin.

Sexual Abuse

Internal documentation from ICE records states that, from fiscal years 2012-2018, immigrant detainees filed 1,448 sexual abuse allegations (ICE 2018). Numerous testimonies and investigative reports also document the systematic prevalence of sexual assault and the lack of means to report it within these facilities, meaning that this number is likely a severe undercount of the actual abuse occurring (FFI 2017; Speri 2018). In the general population, the National Research Council's comprehensive sexual assault study estimates that at least 80 percent of assault cases go unreported (Kruttschnitt et al. 2014). When considering that detainees are: 1) a highly vulnerable population being held by those with the power to deport them, 2) people who many times have a language barrier, and 3) living in extreme fear for their own safety and the safety of their families - it is likely that the number of unreported incidents in detention facilities is even higher. The Freedom For Immigrants organization conducted investigative research on the sources of these complaints and found that the five facilities with the highest number of reported incidents reported to the Office of the Inspector General were all privately run. They are:

1. Jena/Lasalle Detention Facility, Louisiana - operated by The GEO Group
 2. Houston Contract Detention Facility, Texas - operated by CoreCivic
 3. Adelanto Correctional Facility, California - operated by The GEO Group
 4. Northwest Detention Center, Washington - operated by The GEO Group
 5. San Diego Contract Detention Facility, California - operated by CoreCivic
- Freedom For Immigrants 2017

These reports detail horrendous abuses, from violent gang rapes to verbal assaults, and these are only the reports that are documented (FFI 2017; Speri 2018). Time and time again detainee testimonies shed light on authorities' deliberate inaction in response to detainee complaints, often times never being filed by ICE officers as a complaint at all (OIG 2018). This is a direct violation of the Constitutional mandate against cruel and unusual punishment, and rulings that incarceration officials must "take reasonable measures to guarantee the safety of inmates in their custody" (*Farmer v. Brennan* 1994). For prisoners in the United States to prove cruel and unusual punishment under the Eighth Amendment, they must prove "deliberate indifference" on the part of the officers to substantiate harm. In order to prove this, plaintiffs must show (1) "[s]he is incarcerated under conditions posing a substantial risk of serious harm," and (2) "the defendant prison officials possessed sufficient culpable intent." (*Hayes v. New York* 1996). It has also been previously ruled that "a corrections officer's intentional contact with an inmate's genitalia or other intimate area, which serves no penological purpose and is undertaken with the intent to gratify the officer's sexual desire or to humiliate the inmate, violates the Eighth Amendment" (*Crawford v. Cuomo* 2015).

These laws and court rulings are clear: ICE and the private companies it contracts are in direct violation of the U.S. Constitution and common laws by permitting rampant sexual assault within their facilities for over two decades. Individual and class action lawsuits have been filed and won against these corporations and ICE, but these incidents are still ongoing with horrifying regularity (OIG 2018). Short of a complete restructuring of the deplorable immigrant detention system, at the very least a widespread restructuring of the process by which detainees can achieve justice for these abuses is necessary to ensure their rights.

Conclusion

The current system of mandatory immigrant detention currently in place in the United States is violating Constitutional, U.S., and International Law due to multiple cases of abuse. This entire system routinely exposes thousands of detainees to environmental hazards that directly harm their short term—and likely long term—health. These detainees are awaiting civil trials and are costing American taxpayers \$159 per day each, to be held by ICE, while alternatives to detention such as ankle monitors cost as little as 70 cents per day (Burnett 2018). Given the multi-tiered abusive entity that is the current ICE detention scheme, we highly recommend swift implementation of alternatives to detention, the immediate halt of human rights abuses at these facilities, and a restructuring of immigration policies that abolishes mandatory detention.

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CHAPTER 3

**FATAL
EFFECTS OF
HEAT
SUBJUGATION
IN U.S.
PRISONS**

BY YUE (RACHEL) SHEN

Fatal Effects of Heat Subjugation in U.S. Prisons

Yue (Rachel) Shen



Summers in North America increasingly break temperature records every year- and inmates are having to bear the heat. GETTY IMAGES

Extreme temperatures in prisons have received far less attention in comparison to other environmental justice threats within the prison system, such as water contamination. Exposure to extreme heat in many U.S. prisons has been found to constitute cruel and unusual punishment, and will only increase in severity with predicted intensification of climate change (Human Rights Clinic 2014; Mera 2015). An exemplary case that is indicative of common practices in the U.S. prison system is that of Marcia Powell, a prisoner at Arizona State Prison-Perryville who died of complications from heat exposure in 2009 (Hunter 2010; Lemons 2010). Powell was left in an outdoor, unshaded cage for at least four hours when the highest temperature hit 107°F the afternoon of May 20th, 2009 (Lemons 2010). She was transferred to a hospital after being found unconscious, and she was later pronounced dead. Her core body temperature reached 108 °F and she had burns and blisters from the extreme sun exposure (Hunter 2010). Powell's death is one of many striking examples of how extreme heat is a deadly threat to inmates in the United States. When major media outlets reported that the weather was too hot for planes to take

off in Phoenix, Arizona (Wang 2017), prisoners at Arizona state prisons that are not equipped with air conditioners were forced to endure the same hot weather. These inmates could only rely on fans, swamp coolers, and water to cool themselves down. Alarming it has been reported that authorities may have fabricated false temperature logs to cover up the extremely hot conditions, with prison staff at Perryville allegedly falsifying low temperature logs for days in advance (Baptiste 2017). These heat conditions are not only taking a toll on inmates' health; they also affect employees at these facilities, with reports of employees suffering from dehydration and heat-related illness from working in extremely hot environments in Arizona prisons (Baptiste 2017).

The issue of extreme heat is not unique to prisons in Arizona, and is an increasing threat in many southwestern states in the face of climate change (Mera 2015). Temperatures in Texas prisons were between 109 and 111°F throughout the summer of 2012. Only 21 out of 111 state prisons in Texas are fully air-conditioned (Fernandez 2012). Without air conditioning, ice water was the only relief that inmates could seek and even that was not guaranteed at all times (Flynn 2017). In 2014, a lawsuit was filed against the Texas Department of Criminal Justice (TDCJ) regarding the inhumane conditions of extreme temperatures at the Wallace Pack Unit in Texas ("unit" is the term the TDCJ uses for its prisons). According to the lawsuit, at least 12 prisoners died of heat stroke between 2011 and 2014 under TDCJ care. Moreover, TDCJ deliberately ignored the fatal conditions caused by the extreme temperatures and refused to lower the temperature inside the housing units (*Cole et al. v. Livingston et al.* 2014). The heat index record showed that in 2016, there were 13 days of temperatures that exceeded 100°F and another 55 days that exceeded 90°F (Chavez 2017). In 2017, a judge ruled that the condition at Wallace Pack Unit was "cruel and unusual," and ordered TDCJ to provide air conditioning for the 1,400 inmates housed there. About 1000 inmates who are considered to be heat-sensitive were temporarily transferred to other prisons under the court order (Blakinger and Banks 2018).

In Louisiana, three inmates on the Angola Prison death row sued the Louisiana Department of Corrections (DOC) in 2013, alleging that the conditions caused by the extreme heat violated the Eighth Amendment mandate against cruel and unusual punishment of inmates (*Ball et al. v. LeBlanc et al.* 2015). The new facility that houses death row inmates was constructed in 2006 by the state, consisting of four housing

wings, none of which were equipped with air conditioning. The only mechanisms for heat alleviation are windows on the exterior walls and ice chests on each housing tier. Different from most prisoners, inmates on death row at Angola spend 23 hours a day in their cells. They only have one hour out of each day to access the ice chest themselves and it is often broken or does not have enough ice (Ball et al. v. LeBlanc et al. 2015). Prior to the lawsuit, all three inmates filed administrative complaints requesting air conditioning, but all requests were denied. Thus, the inmates sued the Louisiana DOC and the court issued an injunction that the state must keep the temperature below 88°F. The state failed to comply with the injunction during the court-appointed monitoring a month later (Ball et al. v. LeBlanc et al. 2015). In addition to the unbearable temperatures, many inmates suffer from medical conditions that could be exacerbated by the heat. Extreme heat disproportionately affects the elderly, people on certain medications, and people with certain chronic diseases (CDC 2017). All three plaintiffs in this case have hypertension and studies have shown that individuals with hypertension are prone to heat-related health complications (Fonseca et al. 2015).

“The national weather service states that heat kills more people annually than floods, lightening, hurricanes, and tornados combined- but disadvantaged groups within the prison system are suffering severely disproportionate death rates due to forced subjection to these conditions.”

The national weather service states that heat kills more people annually than floods, lightening, hurricanes, and tornados combined- but disadvantaged groups within the prison system are suffering severely disproportionate death rates due to forced subjection to these conditions (Edwards and Medlock 2016). Although the majority of prisons in the states that have been discussed above do not provide air conditioning in the housing units, the office area for correctional officers is typically equipped with air conditioning. In fact, a female inmate at Perryville prison in Arizona who hanged herself was left unnoticed for hours because correctional officers were

inside the air-conditioned command center instead of patrolling in the sweltering weather (Hayden 2016). A similar incident occurred again in a prison in Florence, Arizona (Hayden 2016). Given the high rate of mental illness among the incarcerated population in the U.S. (Swanson 2015), extreme heat can act as a trigger for psychological distress leading to higher rates of suicide. Inmates who suffer from mental illness face a higher incidence of reported behavioral issues, resulting in solitary confinement punishment, which in and of itself causes irreparable psychological damage regardless of the temperature. Solitary confinement typically entails being held in minute cells, excluding inmates from all outside communication and human interaction. Prisoners who are detained under solitary confinement conditions do not have access to visitation or recreational time and are only allotted two or three hours of time out of their cell per day at most (McGaughy 2013). A cramped, isolated solitary confinement cell that is also extremely hot meets the definition of torture delineated by the U.N. (1465 U.N.T.S. 85).

As cities in the US increasingly report record-breaking high temperatures every summer in the face of climate change, air conditioning is at least making the seemingly endless heat waves more bearable. However, air conditioning should not be a privilege for people in the free world, but a basic human right for everyone when extreme temperatures are threatening peoples' lives. Marcia Powell's case exemplifies multiple facets of this issue: the unconstitutional living conditions in prisons, the neglectful and inhumane administration of these facilities, and the distributional effects of climate change on inmates in the U.S. criminal justice system. Letting prisoners suffocate in extreme heat conditions is the very definition of cruel and unusual punishment, and is a direct violation of the Eighth Amendment. This is an environmental justice, human rights, and constitutional issue that is a direct call to action for immediate change, and must be prioritized within the criminal justice movement and the environmental justice movement.

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CHAPTER 4



COMMUNITY ALLIANCE FOR GLOBAL JUSTICE / JIM COOKE

HUNGRY, SICK, AND MALNOURISHED: PRISON FOOD AS CRUEL AND UNUSUAL PUNISHMENT

BY MICHAELA A. AUSTIN

Hungry, Sick, and Malnourished: Prison Food as Cruel and Unusual Punishment

Michaela A. Austin



A typical meal in Gordon County Jail, Georgia. Inmates in this facility are only served two meals a day, at breakfast and dinner.

PHOTO FROM THE MARSHALL PROJECT

Legal Failure to Address Food-Related Human Rights Abuses

As of now, there is no official legislation regulating prison food standards. Instead, prison food law is composed of a compilation of federal and county laws, as well as rulings from lawsuits and court cases. The Eighth Amendment entitles inmates to adequate food, and is the primary avenue for legal action against inhumane food conditions in prisons (Naim 2005). The pivotal setback prisoners have had in filing Eighth Amendment lawsuits is the requirement for correctional officers and/or prison officials to be *deliberately indifferent* in order to constitute cruel and unusual punishment (Naim 2005). In *Wilson vs. Seiter* (1991), the Supreme Court ruled that prison officials and employees cannot be held liable for inadequate prison conditions in the absence of showing "deliberate indifference" to prisoners' rights. In order to substantiate a viable claim, *Hayes v. New York* (1996) requires inmates to clearly

indicate prison officials' culpable intent or that incarceration conditions are posing a substantial risk of serious harm. This requirement of showing deliberate indifference applies regardless of whether the prison conditions at issue are "short-term"/"one-time" or "continuing"/"systemic" (Farber 2007). The Prison Litigation Reform Act of 1995 further restrains prisoners from arguing food-related human rights abuse in several ways. Notably, prisoner lawsuits must be narrowly tailored to directly address Constitutional harm. Yet, most prison food lawsuits are extremely complex, and to truly address them would necessitate the reversal of several systemic problems- i.e. overcrowding, privatization, budget cuts, food as punishment, prisoner dehumanization, preexisting health conditions, lack of medical attention, etc. (Naim 2005). Cumulatively, current legislation has created more protections for the prison industrial complex and contracted food corporations instead of valuing the health of prisoners. In *The Americans for Effective Law Enforcement (AELE) Monthly Law Journal*, Farber (2007) has provided examples of how legislation has acted as gridlock:

- In *Gardner v. Ellis* (1991), a prisoner complained that he was only given two meals a day, with an 18-hour gap between them, in violation of the corrections department's own policies. The court rejected his claim against the warden of the facility, finding both that the prisoner suffered only "mental" damages, and that the warden had not acted with a culpable state of mind.
- In *Jacobs v. Frank* (2007), an inmate's claim that he did not receive enough food and had lost nearly 60 pounds since his incarceration was not considered a violation of his civil rights since there was no evidence that his current weight of 190 pounds was detrimental to his health.
- In *Islam v. Jackson* (1992), the court ruled that serving one maggot infested meal provided by a vendor was not cruel and unusual punishment because missing one meal was not critical.
- In *Johnson v. Bruce* (1991), a court found that serving "undercooked" chicken to prisoners was not due to any deliberate indifference by prison officials, but rather was an "isolated" incident.

By categorizing countless food-related injustices as “isolated events”, the courts have strategically manipulated the Eighth Amendment to conceal the importance of cumulative impact. The impact of a maggot-infested meal, rodent-contaminated cake, weak immunity due to overcrowded prisons, insufficient meal portions, and patterns of delayed medical attention must all be considered when assessing an inmate’s “substantial risk of serious harm”. Poor food quality is especially dangerous in prison and jail settings because ineffective health care throughout the system exacerbates the severity of both short-term (i.e. food poisoning; constipation) and chronic (i.e. heart disease; obesity) food-related diseases. Prisons throughout the United States are renowned for having inadequate health care services from poorly trained staff, to improper distribution of medication, to delaying or disregarding prisoners’ requests for medical attention (Dober 2014). Corizon, the largest for-profit prison health care contractor in the U.S., has had countless lawsuits and reports of medical neglect filed against them, including instances where inmates’ cancerous lumps were treated with Tylenol and warm compresses (Clarke 2017; Reutter 2017). The story of Kevin Lee McLaughlin at San Luis Obispo County Jail highlights the importance of timely medical care and consideration of chronic health conditions. On April 13, 2017, McLaughlin woke up feeling ill, and told the jail nurse at 2:30am that he needed to go to the hospital. The 60-year old inmate reported symptoms of numbness, tingling, clamminess, and pain in his left shoulder and arm. These symptoms are the most common indicators of a heart attack (American Heart Association 2016). McLaughlin’s medical record indicated he was being treated for hypertension, yet he was prescribed 1000 mg of Tylenol and told to go to bed. At 3:18am, a correctional officer found the inmate unresponsive in his jail bed. McLaughlin’s cause of death was a heart attack, the result of chronic heart disease (McGuinness 2017).

In addition to blatant medical neglect, the specific demographic makeup of prisons and jails in the United States is a population that is especially vulnerable to poor health conditions. Further, the vast majority of those incarcerated are poor, African-American, and/or Latinx. Poverty often prevents individuals from receiving consistent access to health services (U.S. Department of Health & Human Services 2011; Torpy et al. 2007) and African-Americans are known to be especially at risk of hypertension and other heart diseases (Armani & Ferdinand 2007; Saab et al. 2014; American Heart Association 2015). All in all, evidence suggests there is currently a

systematic, intentional degradation of prisoner health, which begins with poor food quality and ends with inadequate medical care. This report will highlight the undeniable harm that prison food has inflicted upon incarcerated peoples' health.

Maximizing Profit is Valued Over Prisoners' Health

Food quality is directly correlated with prison budgets, to the extent that food in prisons is considered more of an economic concern than a health concern. *Prison Legal News* has characterized the extreme measures U.S. prisons are taking to save money as nearly a competition between facilities to see who can maintain the smallest food budget (Reutter 2010). This competition is due to the extraordinarily large prison and jail population in the United States, currently at 2.2 million, which is putting pressure on correctional facility operators to cut costs, and leading to some inmates being fed for less than \$1 per day (Neate 2016). Private food service companies, which are a popular food budget-cutting tool, get paid per meal to fund ingredients, kitchen equipment, and staff. This business arrangement encourages the companies to decrease meal size in order to pocket the leftover money (Brown and Fassler 2017). Two egregious examples of substandard prison food are sheriffs reducing food budgets to increase their personal income, and Aramark and other private food service corporations' blatant disregard for sanitation and health. For example, Etowah County Sheriff Todd Entrekin pocketed \$750,000 of the funds allocated to feed Alabama jail inmates (Domonoske 2018). Similarly, Sheriff Greg Bartlett of Morgan County Jail deposited over \$200,000 into his own bank account from the funds budgeted for prison food by the State of Alabama and the federal government (Privett 2009; *Maynor vs. Morgan County Alabama* 2009). The sheriff admitted that he could double the food portions served to Morgan County jail inmates without significantly increasing his food costs. During the time of his money laundering, fruit was served to inmates only three or four times a year, in canned form. Breakfast had consisted of half an egg or less, one slice of white bread and a small serving of unsweetened oatmeal or grits (*Maynor vs. Morgan County Alabama* 2009). U.S. District Judge U.W. Clemon, the judge overseeing the case, concluded, "I find by clear and convincing evidence there's been an inadequate diet" (Privett 2009). This case emphasizes the complete disregard many jails and prisons have for inmates.

Additionally, this trend highlights the need for targeted food regulation to be established for correctional facilities.

Aside from quantity of food, the other major issue is quality of food. Aramark, the private food contractor, has received major criticism recently, as their dedication to saving money has come at the expense of health and sanitation. For example, on June 2, 2015, at the G. Robert Cotton Correctional Facility in Michigan, an inmate observed maggots on the vegetable food processor and food preparation table. The inmate was instructed to clean the appliances with vinegar in the sink. Similarly, at St. Louis Correctional Facility in Michigan, an inmate kitchen staff was ordered to serve cake that had been partially eaten by rats. The Aramark staff had instructed the inmate to simply cut the bitten portion off and re-frost the cake (Felton 2015). In April 2011, the Massachusetts Department of Education transferred 11,000 cases of expired cheese, blueberries, frozen chicken and other food items to prison kitchens after an investigation discovered the out-of-date food was being served to Boston school children. As Leslie Walker, executive director of Prison Legal News emphasized, if food is deemed unsuitable for one group of human beings, the food should be considered unfit for any human to consume (Zoukis 2011). The issue of food marked “not for human consumption” being served in prison chow halls is also prevalent throughout the nation. For example, inmates in an East Texas jail were fed dog food, after the Federal Bureau of Prisons purchased “meat trimmings” meant for animals in place of fajita meat (Culp-Ressler 2012). These examples emphasize that it is unacceptable to wait until food quality and quantity in prisons reaches a “cruel and unusual” level. Human beings deserve access to nutritious foods, and, as the Center for Disease Control and Prevention highlights, incarcerated populations are reliant on prisons for this basic necessity (Ramanathan, Gunn, & Levings 2012).

The Dangerous Combination of Insufficient Prison Menus, Chronic Health Conditions, & Poor Medical Care

Researchers throughout the nation are beginning to analyze correctional facilities’ prison food menus, and their findings are extremely important to the food justice movement, which advocates for marginalized communities’ access to nutritious foods. These studies have clearly indicated the lack of daily recommended nutrients that incarcerated populations are deprived of. Some of the main findings of prison

meal analysis have been extremely high levels of cholesterol and sodium, and a lack of fresh produce, whole grains, and important vitamins and minerals (Cook, et al. 2015; Collins and Thompson 2012). Dietary Approaches to Stop Hypertension (DASH) is a well-known diet for lowering blood pressure, recommended by the American Heart Association and National Cancer Institute. DASH suggests eating twice the recommended daily amount of fruits, vegetables, and cutting out foods high in cholesterol, saturated fat and sodium (Bazzano, Green, Harrison, & Reynolds 2013). Prison menus that deviate from the recommended nutrients for hypertension are a direct threat to incarcerated African-Americans who are especially at risk of heart disease. As Cook et al. (2015) and Collins and Thompson (2012) highlight, diets high in saturated fat and cholesterol can increase heart disease risk, and high-sodium diets can worsen hypertension. A comprehensive prison menu diet analysis conducted in a Georgia county jail found the average daily cholesterol values to be 467 mg (156% of the recommended value) and daily sodium levels reaching 4,542 mg (303% of recommended values). Inmates only received 6% of the daily recommended value for Vitamin D, an important vitamin that researchers have found can reduce the risk of heart disease (Cook, et al. 2015; Collins and Thompson 2012).

Many prisons compensate for poor food quality with supplements. Barbara Waken, owner and operator of Correctional Nutrition Consultants, describes the popular method of meeting calorie and nutrient requirements without spending more money: "We have all these wonderful fortified things, we've got fortified beverages, there's fortified cake mixes and baking powders" (Neate 2016). The problem with synthetic supplements and fortified minerals added to foods is that they are difficult for the body to absorb since they are not in their natural form (Cranston 2015). So, even if a prison claims they are providing adequate daily nutrients, it is likely that inmates are not actually absorbing the synthetic nutrients listed on prison menus. The insufficient menus are paired with highly processed commissary foods, which offer more of the harmful ingredients already overloaded in prison menus, especially sodium and cholesterol.

The vast majority of commissary items are listed as 'Avoid' in several healthy nutrition recommendations for vending machines (Sawyer 2017). Recently, researchers and journalists have shed light on the rampant consumption of ramen noodles in prisons, a very popular commissary purchase. According to the American Sociological Association, this surge in ramen popularity was out of necessity- inmates are often

regularly hungry due to food budget cuts. This coerced reliance on ramen noodles is said to be an example of prisons poisoning their dependents (Bozelko 2016). The researchers' findings of poor quality and slim quantities of food are validated by both inmates themselves, and even correctional officers. The Incarcerated Workers Organizing Committee and Research|Action Cooperative (2018) released A National Prisoner Survey of Prison Food and Health Care Quality, which recorded the following inmate responses:

69% rated their facilities' food as poor quality

40% only received fresh fruits and vegetables on occasion or never

65% served food that made them sick during the past year

66% served food not intended for humans, food with bugs, or moldy/spoiled food

80% had been denied meals or given too little food in the past year

79% reported having a chronic health condition – about half of whom reported not receiving adequate medical treatment

The University of Michigan's Institute for Research on Labor, Employment and the Economy collected testimonies of correctional officers who have worked in the kitchen or chow halls, in order to understand the effect of privatizing food services. Participating correctional officers unanimously agreed that food quality and sanitation declined and that dietary standards were not met after privatization. Officers reported the contractors' popular method of watering down food to ration meals, stretching recipes meant to serve 900 people with water in order to serve 1,100 inmates (Zullo 2016). Officers also reported Aramark employees switching the dates of expired food to avoid throwing it out (Zullo 2016). As discussed previously, Eighth Amendment claims require clear indication that incarceration conditions are posing a substantial risk of serious harm or that the prison officials had culpable intent. Records of insufficient diets paired with the knowledge that many prisoners have medical conditions that are exacerbated by these diets indicate prisons' undeniable culpable

intent. Additionally, cumulative impact must be considered when assessing an inmate's substantial risk of serious harm. Specifically, serving poor quality food to inmates who have historically received inadequate medical care throughout United States correctional facilities continually puts inmates at risk of serious harm.

“Isolated Instances” of Food-Related Illnesses and Death has Evolved into Systematic Malnourishment

The issue of food in prisons is multi-faceted, but ultimately an issue of basic human rights. This report details countless food concerns, including meager portions, maggot-infested meals, and inadequate daily nutrients, all of which has endangered at-risk inmates, increasing their vulnerabilities to various health conditions. In fact, correctional inmates are 6.4 times more likely to get sick from food-related illnesses than members of the general public (Brown and Fassler 2017). The dehumanization of incarcerated populations has allowed the government and private contractors to serve inmates foods that are pest-infested, expired, improperly stored, in insufficient portions, and/or “not fit for human consumption”. Ample research, surveys, and mass media reports conclude that current prison meals are leaving inmates hungry and ill, yet the courts continually deem these occurrences as “isolated instances.” This manipulation of Eighth Amendment legislation is malnourishing prisoners, a population that is completely dependent on their correctional facility's food- either prepared food in chow halls or purchased foods in the commissary. In effect, inadequate diet followed by inadequate medical care is systematically degrading the health of predominantly low-income, Latinx, and/ or African-Americans behind bars.

The current food situation in prisons is pertinent to the wider food justice movement. Further, the broader implications of injustices in prisons are outlined in Angela Davis' book, *Are Prisons Obsolete?*, “The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers”(16). In this case, prisons are a microcosm of food insecurity throughout the United States. Whether it is low-income neighborhoods in the free world, or correctional facilities, it is predominantly poor, Latinx, and/ or African-Americans living in food deserts with limited access to wholesome foods. From commissaries to liquor stores and chow halls to fast food

restaurants, the most affordable and accessible foods often provide limited nutrition. In order to fully address the complexities of incarceration and food justice, public health must be considered in the fight against structural oppression.

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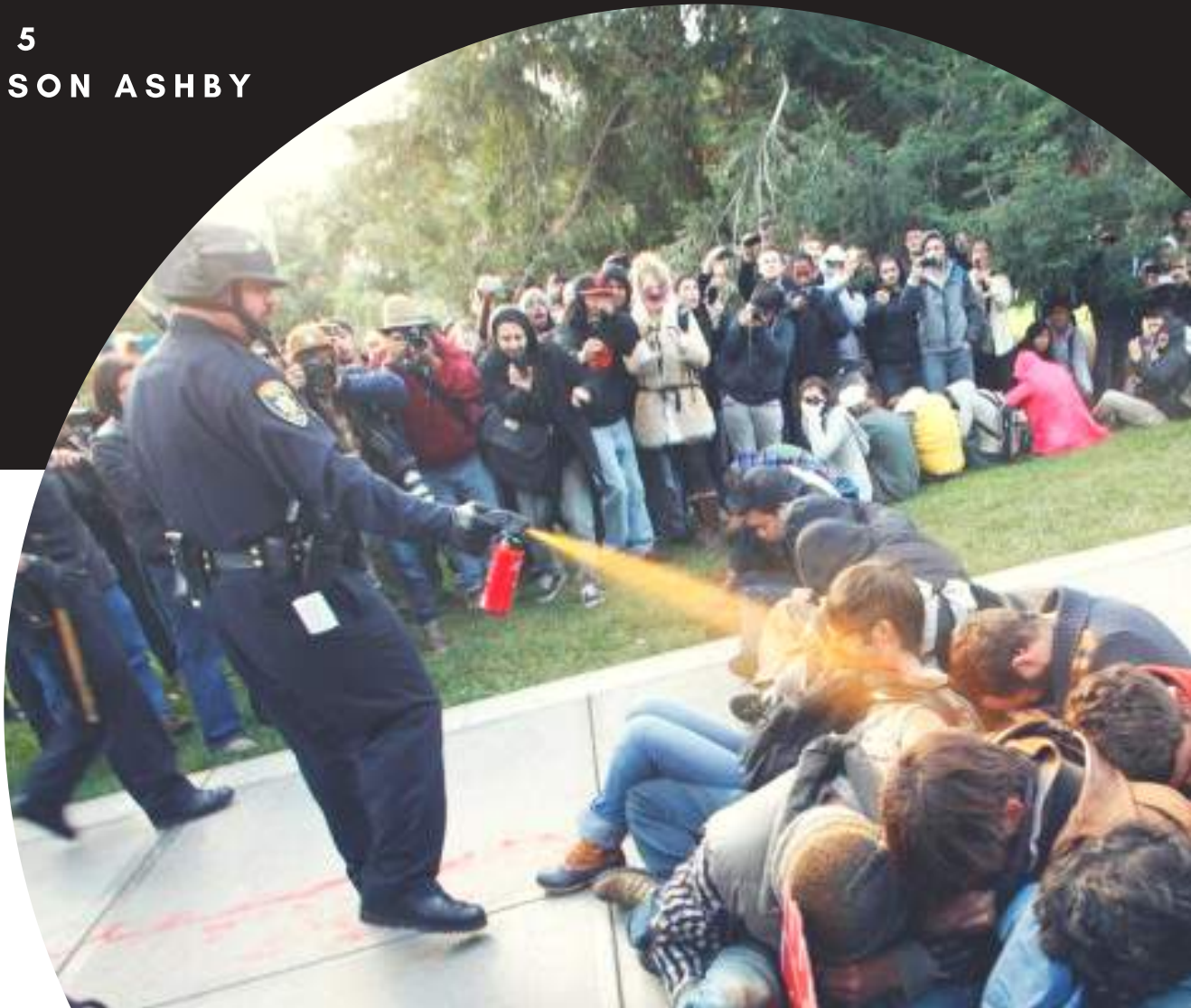
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PEPPER SPRAY AS VIOLENCE SUPPRESSION (AND VIOLENT REPRESSION) IN CALIFORNIA'S JUVENILE DETENTION FACILITIES

CHAPTER 5
BY HARRISON ASHBY



Pepper Spray as Violence Suppression (and Violent Repression) in California's Juvenile Detention Facilities

Harrison Ashby



Milk being used to sooth a protestor sprayed by pepper spray, Baltimore 2015.

CHIP SOMODEVILLA/GETTY IMAGES

Despite extensive attempts at juvenile justice reform during the early twenty-first century, California remains one of only five U.S. states that allows staff at its juvenile detention facilities to carry pepper spray (Cate 2016). Officials in state-run facilities (governed by the Division of Juvenile Justice), as well as those in the county-run facilities, are legally allowed to use pepper spray on minors. Pepper spray, or Oleoresin Capsicum (O.C.) spray, is made from capsaicinoids (Santa Clara County Juvenile Justice Commission 2014) taken from the resin of chili peppers (British Columbia Drug and Poison Information Centre 2010) and has been widely used by U.S. law enforcement since the 1980s (Broadstock 2002). In order to better understand the possible consequences of pepper spray's health impacts, this report will examine the rampant overuse of pepper spray in California's juvenile detention facilities.

The California Board of State and Community Corrections, which sets minimum standards for county juvenile facilities, prohibits the use of force (defined to include chemical agents) "as punishment, discipline, or treatment" in such facilities. While state law allows for the use of O.C. spray in county-run facilities in order to prevent injury due to violence, some counties have opted to ban its use. In 2015, after a year-

long pepper spray pilot program, Santa Clara County chose to discontinue use of O.C. spray in its juvenile facility in favor of a cognitive behavioral program (Goldstein 2018). This was in part due to worries about “the physical and emotional harm caused by using pepper spray” (Youth Law Center 2015). These concerns, as well as others, have made the use of the chemical in juvenile detention facilities controversial. In February of 2018, Assembly member Ed Chau introduced California Assembly Bill 2010, which would have made it illegal for staff to possess pepper spray while in state or county juvenile facilities (Assembly Bill No. 2010 2018). The chemical agent’s use would have still been permitted only “as a last resort” (Assembly Bill No. 2010 2018). As of April 2018, the bill is stalled in committee (California Legislative Information 2018). Thirty-six states have chosen to completely remove pepper spray from their juvenile facilities (Cate 2016). Officials in California suggest that limiting the chemical’s use by correctional officers would be ill-advised in their state – they claim that pepper spray is necessary to prevent injury to youth inmates and staff (Tiano 2018). While the position of California’s influential prison guard union on pepper spray in youth facilities is unknown, the union has historically been opposed to reform (Los Angeles Times 2004). The frequency with which pepper spray is used in juvenile facilities, as well as the claim that it is necessary to quell violent youths, suggests that there are stunning levels of violence in these facilities.

People exposed to pepper spray feel the effects immediately – these can include dermal, ocular, gastrointestinal, and respiratory impacts (Kearney, Hiatt, Birdsall, & Smollin 2014). Some of the common symptoms are rashes, blisters, eye pain, photophobia, shortness of breath, and wheezing (Kearney et al. 2014). Additionally, the long-term health consequences of Oleoresin Capsicum are unknown (Broadstock 2002). While studies are inconclusive, some have suggested carcinogenic and/ or mutagenic effects (Yeung & Tang 2015). This uncertainty indicates that there should be consideration of the precautionary principle, in which the state would choose not to employ pepper spray until scientists can ensure that the chemical’s use is safe. Despite this, the state of California has sanctioned the chemical’s use on children, whose bodies are still developing and many of whom have experienced prior trauma and abuse (Disability Rights California 2018). Some of California’s juvenile facilities, including those in San Diego County, do not have proper protocols to prevent exposure to youths with medical conditions (asthma, use of psychotropic medications, skin conditions, etc.) for whom pepper spray is especially

dangerous (Youth Law Center 2014). Additionally, the confined spaces and lack of ventilation that characterize juvenile facilities may compound the negative effects of pepper spray exposure (Youth Law Center 2014).



A protestor gets pepper sprayed in the face during a peaceful protest, Portland 2011.

RANDY L. RASMUSSEN/THE OREGONIAN

California officials attempt to justify the use of pepper spray on children by saying that it is a less-than-lethal way to prevent violence perpetrated by youth inmates. However, the chemical spray is clearly being used even in situations in which no one's physical wellbeing is threatened. Reports on San Diego County's three juvenile facilities have found that staff use pepper spray on youth inmates when these inmates do not follow directions (Youth Law Center 2014). Additionally, youth inmates in these facilities are often exposed due to "overspray" – they are not sprayed directly, but are still vulnerable due to their proximity to the event (Youth Law Center 2014). Officers at N.A. Chaderjian Youth Correctional Facility, a state-run juvenile detention center, used chemical restraints 284 times during a four-month

period in 2003 (Krisberg 2003). Officers at Heman G. Stark Youth Correctional Facility, a state run center that closed in February of 2010, used chemical restraints 535 times during this same period (Krisberg 2003). These included instances of room extractions (when a youth inmate refuses to exit their cell), the use of pepper spray as punishment (rather than to prevent further violence), and instances in which youth were already physically restrained (*ibid*).

In both 2004 and 2008, the U.S. Department of Justice cited Los Angeles County's juvenile probation department due to "excessive and inappropriate use of pepper spray on youth" (Loudenback 2018). However, in the two years following the end of DOJ monitoring, the number of incidents involving pepper spray increased by 338% at L.A. County's Central Juvenile Hall and by more than 190% at each of the county's two other facilities (Loudenback 2018). According to a 2018 report, a pregnant youth was pepper sprayed at a probation camp run by Los Angeles County (Loudenback 2018). At San Diego's Kearny Mesa facility, staff have frequently used more than eight ounces of pepper spray at once, and in some cases have used more than a pound (Youth Law Center 2014). A 2018 report found that, in the Kern County Juvenile Correctional Facility, youth with disabilities are disproportionately affected by pepper spray exposure (Disability Rights California) and that pepper spray is used in efforts to stop situations of self-harm and suicide attempts (Disability Rights California). While the use of pepper spray may be effective in ending an incident of self-harm, it is clearly not the only option and may, in the long run, cause more harm to the child. Similarly, a 2015 report found that staff at the state-run Ventura Youth Correctional Facility used pepper spray on youths with mental health conditions and in situations that involved neither violence nor threats of violence (Mendel 2015).

In many of California's juvenile facilities, including the Fresno County Juvenile Justice Campus, correctional officers' attempts to decontaminate youth following exposure to pepper spray have been unsuccessful (Ressler-Moyer, Bird, Ramiu, & Corrigan 2018). Youth are sprayed off, sometimes using warm or hot water (Boyd, 2003), and sent back to their cells (Ressler-Moyer et al. 2018). According to some experts, these practices are insufficient (Ressler-Moyer et al. 2018) and may even worsen the symptoms of pepper spray exposure (Boyd 2003). Instead, these experts claim, youths should be allowed to use soap, shampoo, tea, or other products that may quickly relieve pain caused by O.C. exposure (McConachie 2004). Other studies, including scientific randomized trials of different treatment regimens, have found that

time is the most important factor in reducing the pain from O.C. exposure (Barry, Hennessy, and McManus 2009)

The use of pepper spray in California's juvenile correctional facilities, especially as punishment, is not in line with the mission statements or standards of the facilities. Within its Institutions and Welfare Code, California's Youth Bill of Rights guarantees youths confined by the Department of Juvenile Justice the rights "to live in a safe, healthy, and clean environment conducive to treatment and rehabilitation and where they are treated with dignity and respect" and "to be free from...abuse" (§224.71 2017). These facilities are required to "ensure the safety and dignity of all youth in their care" (§224.71 2017). The state's Welfare and Institutions Code also forbids the use of county juvenile halls for penal activities, stating that they "shall be safe and supportive homelike environment[s]" (§851 2017) and must promote the welfare of youth inmates (§1004 2017).

The use of pepper spray on children in these facilities decreases possibilities for rehabilitation by creating a lack of trust between youths and facility staff (Associated Press 2018). Additionally, the use of pepper spray in juvenile justice facilities is clearly an instance of social injustice. As with the U.S. justice system in general, black youths in California are more likely to end up incarcerated than their white peers. During the 2011-2012 Fiscal Year, 36.4% of the people released from the Division of Juvenile Justice were black (California Evidence-Based Corrections 2017). However, only about 5.3% of California's children are black (kidsdata.org 2016). Therefore, as a black child is more likely than a white child to be funneled into California's juvenile justice system, they are also more likely than the average white child to be exposed to the dangerous effects of pepper spray at the hands of prison guards. Medically, asthma is 40% more prevalent among African Americans than among Caucasians in California (Chapman 2013), making black children particularly vulnerable to severe side effects when exposed to O.C. spray. California's Ralph Civil Rights Act states that "all persons within the jurisdiction of the state have the right to be free from any violence ...committed against their persons" because of their race (§51 1872; §5.17 1872). It is clear that the decision to allow the use of pepper spray on youths in California's juvenile justice system is neither fairly applied due to racial bias nor beneficial to the rehabilitation possibilities of children.

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A black and white photograph of three construction workers. They are wearing hard hats and safety vests. The worker in the center is looking up and smiling, while the others are focused on their work. They are pulling on thick, twisted steel cables. The background is a bright, overexposed sky.

CHAPTER 6

PRISON LABOR: DISPROPORTIONATE EXPOSURE TO ENVIRONMENTAL HAZARDS

BY SAGE KIME

Prison Labor: Disproportionate Exposure to Environmental Hazards

Sage Kime



Prisoners walking to work at Angola Prison, Louisiana 2004.

CHANDRA MCCORMICK

A large portion of prison jobs have disproportionately high exposures to environmental toxics, which can lead to serious health effects. Ranging from oil spill clean-up crews to asbestos abatement programs, inmates across the country frequently work in extremely hazardous occupations (Young 2010; Wilson 2016). In combination with a lack of worker protections, the nature of these work details has proven to directly affect the inmates' health and wellbeing (Prison Legal News 1996; Rigby 2005). Forcing inmates to take some of the country's dirtiest, most dangerous jobs for little to no pay is nothing more than slave labor under the guise of rehabilitation. Exempting prisoners from labor protections, occupational health and safety standards, and other workplace regulations is blatantly acting as if their lives

and their health are worth less than the average person. Prison labor has consistently been a legalized form of slavery throughout history and today is no exception; this report details cases in which inmates have been coerced into dangerous and unsanitary working conditions in various hazardous occupations, and the ways in which they have been denied basic labor protections.

Prison labor refers to the longstanding practice of inmates being forced to work while they are incarcerated. These individuals are often working long hours for little to no pay, sometimes only being compensated with the false promise of shortened sentences. Prisoners can legally be forced to work for no pay, a practice that has been upheld in various courts under the premise of the Thirteenth Amendment (*Ali v. Johnson*, 259 F.3d 317, 318 (5th Cir. 2001); *Mikeska v. Collins*, 900 F.2d 833 (5 Cir. 1990); *Wendt v. Lynaugh* 841 F.2d 619 (5th Cir. 1988)). This amendment states that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States...” (U.S. Const. amend. XIII). This clause in the U.S. Constitution explicitly permits the enslavement of incarcerated individuals. Historically, the Thirteenth Amendment has been viewed as a positive document, one that, in the popular imagination, outlawed any form of slavery following the Civil War. In reality, it just shifted the slavery to another form of free labor – prison labor.

Faced with an extreme shortage of labor on plantations and farms, wealthy landowners turned to a new, legal option of slavery: ‘convict leasing’ from local jails and state prisons (Mancini 1978). Arguably even more inhumane than the original slavery system in the U.S., convict leasing was a brutal form of prison labor that often led to the death of inmates (Mancini 1978). Convict leasing was the practice of state prisons leasing out their inmates to do manual labor for private parties at an extremely low price (Mancini 1996). Working on anything from railroad construction to dangerous mining jobs, convict leasing was the cheapest option for labor. Because of the lack of economic incentive to keep these workers alive, there were high rates of mortality within the inmate crews leased out (Mancini 1996). The brutal conditions of slavery were continued and amplified through this system of convict leasing. Ultimately, the practice was stopped due to political pressure from labor unions whose leaders argued that convict leasing was unfairly competing with the free labor market.

It is important to understand the connection between slavery in the U.S. and the subsequent convict leasing and modern prison labor. Each system has exploited African-Americans by using them as a cheap, expendable workforce. Each system has emphasized the idea that these people are second-rate citizens, not worthy of protections and rights granted to the broader public. The issue of slavery has not been overcome; it has been transformed to an issue of prison labor with inhumane, unsanitary, and unsafe conditions for inmate workers.

Asbestos Abatement

Asbestos Abatement is one of the inherently dangerous work programs offered throughout various prison facilities in the U.S. Asbestos is a known carcinogen, and it poses a serious health risk when improperly handled (OSHA). Asbestos abatement, in particular, is associated with significant occupational and environmental hazards (Chrostowski, Foster, & Anderson 1991). It is easy to inhale asbestos fibers while working to remove damaged asbestos from buildings, so it is crucial to take every precaution possible. Exposure to asbestos via inhalation of fibers has long been proven to produce asbestosis and mesothelioma, as well as an increased risk of lung cancer (Lippmann 1987). Asbestosis is a chronic lung disease that results from prolonged exposure to asbestos and makes breathing progressively more difficult with time, and mesothelioma is a rare cancer caused by the inhalation or ingestion of asbestos fibers, with occupational exposure being one of the highest risk factors for contracting the diseases (United States EPA). As a prison work program, asbestos abatement endangers the health of inmates by putting them at a higher risk of contracting these diseases. In 1996, a court ruled that exposing prisoners to asbestos violates the Eighth Amendment (Prison Legal News 1996). In the case *Wallis v. Baldwin*, a prison work crew was ordered to remove asbestos hanging from pipes without adequate protective gear or any prior asbestos abatement training. An inmate began to feel sick, had pain in his lungs, and experienced other health problems afterwards, and a medical expert declared that the 45 hours of unprotected exposure to asbestos was medically serious (Prison Legal News 1996). By documenting the deliberate indifference of prison officials, the plaintiff was able to prove a violation of the Eighth Amendment.

In light of that ruling, it would make sense for prisons to avoid the continuation of asbestos abatement programs for inmates. Unfortunately, there has only been a pattern of similar mistreatment of inmate workers in terms of asbestos exposure. In 2008, prisoners from the Arizona Department of Corrections (ADC) filed a lawsuit after they were forced to clean a 22-acre landfill owned by ADC as part of their work detail (Prison Legal News 2009). Inmates claimed that necessary precautions were not taken to protect the inmate workers from the asbestos contamination in the landfill (Prison Legal News 2009). The Washington Department of Corrections (WDOC) had been using prisoner workers in asbestos removal since 1990, claiming to have properly trained and certified them (Wilson 2016). Yet there have been multiple instances of the WDOC receiving citations for negligent work practices relating to the asbestos abatement program. McNeil Island Prison in Washington was fined \$28,400 by the Department of Labor & Industries for hazardous asbestos removal practices in 2008 (Prison Legal News 2009). The violations included using uncertified prisoners as removal laborers and failure to use respirators, among many more (Prison Legal News 2009). In 2013, the Washington Department of Labor & Industries cited the WDOC for seven separate code violations within one of the abatement projects (Wilson 2016). The violations included inmates not wearing protective gear at all times and improper work practices that potentially led to prisoners inhaling asbestos dust, directly endangering their health. The WDOC was issued a \$141,000 fine and terminated the program shortly after.

These asbestos abatement programs have repeatedly endangered the health of participating inmates, yet there is still at least one in existence. The Utah Correctional Industries' (UCI) website lists 'Asbestos Abatement' as one of its main business operations, in place since 1987 (Prison Legal News 2016). The program claims to have the lowest recidivism rates of all inmates in UCI programs, yet it fails to mention the increased exposure to environmental hazards the participants experience. It is very likely that the inmates in UCI's asbestos abatement programs are facing the same risks and/or working conditions that have been documented in numerous other prisons in the U.S., and it is possible that the inmates do not understand the implications of asbestos exposure. The prisoners permitted to work in these dangerous positions are often times serving short sentences for nonviolent crimes, yet they are leaving prison in a much worse state than they arrived – with exponentially higher risks of contracting mesothelioma or lung cancer later in life. This is not only an issue of the morality of prison labor, it is a human rights and environmental issue.



Incarcerated men leaving work in the fields, Louisiana State Penitentiary, 2011.

AP PHOTO/GERALD HERBERT, FILE

Elmore's Recycling Facility

One of the main work programs at Elmore Correctional Facility in Alabama is a recycling operation that serves the local area. The recycling center has been documented to be more of a garbage separation facility than a recycling operation, and is characterized by hazardous waste handling and unsafe working conditions (Dannenberg 2003; Rigby 2005). The Alabama DOC has reached at least two settlements with inmates due to the unsanitary and unsafe practices in the recycling facility, yet the facility remains in operation. The first was a class-action complaint in 2002 filed on behalf of 200 inmates who were forced to work without pay at the facility in extremely dangerous and unsanitary conditions (Dannenberg 2003). The lawsuit alleged that inmates were forced to hand sort hazardous waste materials, including human feces, laboratory and medical wastes, used hypodermic and intravenous needles, razors, industrial and household chemicals, blood-soaked gauze and bandages, etc. (Dannenberg 2003). In addition to these extreme health hazards, the prisoners were denied protective clothing and were not given any safety training (Dannenberg 2003). Elmore did not have a health code permit or the necessary recycling center permit, although it was required to. Alabama DOC reached a settlement within two months after the filing of the class-action lawsuit, most likely due

to the overwhelming evidence the plaintiffs gathered, detailing the inhumane working conditions at the Elmore recycling facility.

The first settlement was not enough to protect subsequent inmates from the dangerous working conditions at Elmore. In 2004, Alabama DOC reached another settlement with former prisoner Brian Dodd. Mr. Dodd was a Gulf War veteran serving a short sentence and assigned to Elmore's recycling center. Shortly after beginning his position he requested safety goggles from his supervisor; his request was refused, and he was threatened with disciplinary action if he did not return to work (Rigby 2005). Days later, Dodd was hit by a shard of glass in his eye while working at the recycling center. He was sent to the prison infirmary and then referred to a specialist who removed the glass debris and prescribed medicated eye drops (Rigby 2005). Mr. Dodd suffered severe and permanent injury, including persistent irritation, light sensitivity, a blind spot, and blurry vision, all because of Elmore's unsafe working conditions and refusal to comply with safety precautions. The ADOC attempted to deny Dodd's injury by claiming they had no records of the event, but they eventually reached a settlement when the former inmate presented medical records to prove his case. Both of these instances at Elmore's recycling facility are blatant violations of human rights as well as constitutional rights. Under the Eighth Amendment, cruel and unusual punishment is prohibited, and courts have upheld that exposing prisoners to human waste and deprivation of basic sanitation are both constituted as cruel and unusual punishment (*Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006); *DeSpain v. Uphoff*, 264 F.3d 965, 977 (10th Cir. 2001)).

Lack of Regulations and Protection

With jobs as dangerous as asbestos abatement and sorting hazardous waste, one would hope that these inmates are given at least basic labor protections. However, prisoners have been told they are not considered employees despite their extremely hard labor for almost no pay and therefore are not eligible for regulated workplace standards. Prisoners are constantly denied the very same protections that we imagine all workers to be entitled to, such as minimum wage and occupational safety regulations. This is effectively devaluing the lives and health of inmates, perpetuating a cycle of unjust treatment in the prison system.

Inmate workers are not considered employees under the Fair Labor Standards Act (FLSA), meaning they are not entitled to the minimum wage (*Hale v. Arizona*, 993 F.2d 1387 (9th Cir. 1993)). This has led to some states refusing to pay prisoners anything at all, but in most cases, inmates are making less than a dollar per hour of work (Sawyer 2017). In cases that involved prisoners seeking minimum wage for their labor, courts have upheld that inmates are not employees due to the lack of an economic relationship between prisoners and the prison industries (Wright 1997). These rulings that exclude inmates from being ‘employees’ under the FLSA have been used as precedent for numerous court decisions that have denied inmates basic labor protections. Every person should be entitled to certain labor standards, yet inmates have continuously been legally excluded from these statutes for decades.

Inmates are also not protected by workplace health and safety regulations set by the Occupational Safety and Health Administration (OSHA). Many inmates have written letters to OSHA voicing their concern over dangerous or unsanitary working conditions, only to receive a response stating OSHA does not have jurisdiction over inmates; this response often comes with a recommendation to reach out to the prison officials in charge of health and safety for the DOC (OSHA 1992; OSHA 2005). Without having an outside agency holding the prison system accountable, inmates’ occupational safety is often overlooked or deliberately ignored by the prison officials who are tasked with their care. Exemptions from these protective statutes lead to inherently worse working conditions for inmates, putting them at a higher risk for experiencing occupational and environmental hazards.

Courts have ruled that inmates do not have the right to refuse work, allowing prisons to place inmates in disciplinary confinement for doing so (*Mikeska v. Collins*, 900 F.2d 833 (5 Cir. 1990)). Without the ability to refuse work, inmates should at the very least be able to ensure their working conditions are healthy and safe; however, they are denied this right as well. When inmates have brought attention to unsafe working conditions, they have been forcibly silenced or punished with disciplinary action from prison officials.

When an inmate at a federal prison in Oklahoma reported toxic environmental hazards at his workplace to the U.S. Department of Labor, he was punished by the prison and banned from his only potential source of income. Douglas Coupar had reported that the Federal Prison Industries (FPI), commonly known as UNICOR, was improperly storing toxic chemicals and dumping raw sewage into a nearby river

(Wright 1997). In response, Coupar was transferred to another prison and prohibited from being able to request a new job because of his complaints against FPI. Coupar attempted to resist this unfair discrimination by claiming employee protection under the Clean Air Act and the Toxic Substances Control Act; both have provisions that prohibit retaliation against employees that report environmental hazards relating to the enforcement of the Acts. However, the court interpreted that Coupar was not an 'employee' within the meaning of the whistleblower provisions of the Clean Air Act and the Toxic Substances Control Act (*Coupar v. United States Department of Labor*, 105 F.3d 1263 (9th Cir. 1997)). The court used *Hale v. Arizona* as precedent, claiming that inmates cannot be considered 'employees' due to the nature of the relationship between prison and prisoner: "it is penological, not pecuniary" (*Coupar v. United States Department of Labor*, 105 F.3d 1263 (9th Cir. 1997)). Mr. Coupar brought attention to an extreme issue of environmental hazards and workplace negligence that harms not only the people within the prison walls, but the residents of the local community as well. He was awarded with retaliation from FPI, and a court ruling that did not acknowledge the environmental injustice, only the fact that he was not entitled to any legal protections in this matter.

Conclusion

These cases of workplace environmental injustice in prison are not extreme or unusual in that there are similar occurrences happening in prisons across the entire country every day. In both state and federal prisons, public and private, prison laborers face immoral and inhumane conditions; without any workers' rights or safety protections, these inmates aren't given any choice about the injustices they are facing. Inmates are continuously forced to labor in dangerous and unhealthy working conditions, and if they attempt to bring attention to environmental hazards they are punished. This type of labor coercion is illegal in any other setting, so why is it accepted within prison industries? Prisoners are being treated as second rate citizens, undeserving of the basic rights and protections granted in the U.S. Constitution. This pattern of neglect of prison laborers transcends individual facilities, as it is seen throughout the U.S. and throughout various work programs. The evolution from slavery to convict leasing to modern day prison labor makes one thing clear: prison labor is just another way of exploiting disadvantaged communities to use as a cheap workforce without regard to safety or human rights.



An inmate firefighter pauses during a firing operation in Redding, Calif., on July 27, 2018.

JOSH EDELSON/AFP/GETTY IMAGES

Inmates are already a vulnerable population, and they are forced to endure higher levels of environmental and occupational hazards than the average worker due to a lack of workplace safety and labor protections. By forcing workers to face higher risks of developing chronic disease such as mesothelioma or lung cancer, the prison industry is effectively poisoning those held in its care and subjecting them to health effects that will last long beyond their sentences. With the U.S. having the highest rate of incarceration in world – a large portion being convicted for nonviolent offenses and a disproportionate amount being black men – these dynamics reflect the larger issue of the prison industrial complex targeting people of color and disadvantaged communities. This is an issue of racial injustice as well because the inmates being exposed to these environmental and occupational hazards are mostly minorities, likely in prison due to the inequalities that are rampant in American society.

Deliberately forcing inmates to work in these dangerous and unsanitary conditions with exposure to hazardous waste and other safety hazards is unconstitutional and a violation of human rights. The United Nations specialized

agency, the International Labour Organization, has set forth fundamental principles of occupational safety and health to protect workers from sickness, disease, and injury arising from their employment. There are also specific standards such as the Asbestos Convention (No. 162), the Occupational Cancer Convention (No. 139), and the Chemicals Convention (No.170) that directly relate to the cases of inmate labor injustices mentioned in this report (International Labour Organization). These labor rights have routinely been violated by the U.S prison system, putting the health and lives of inmates at risk every day. This cannot be written off as “paying a debt to society” as prison labor often is — it is an environmental injustice that cannot be tolerated.

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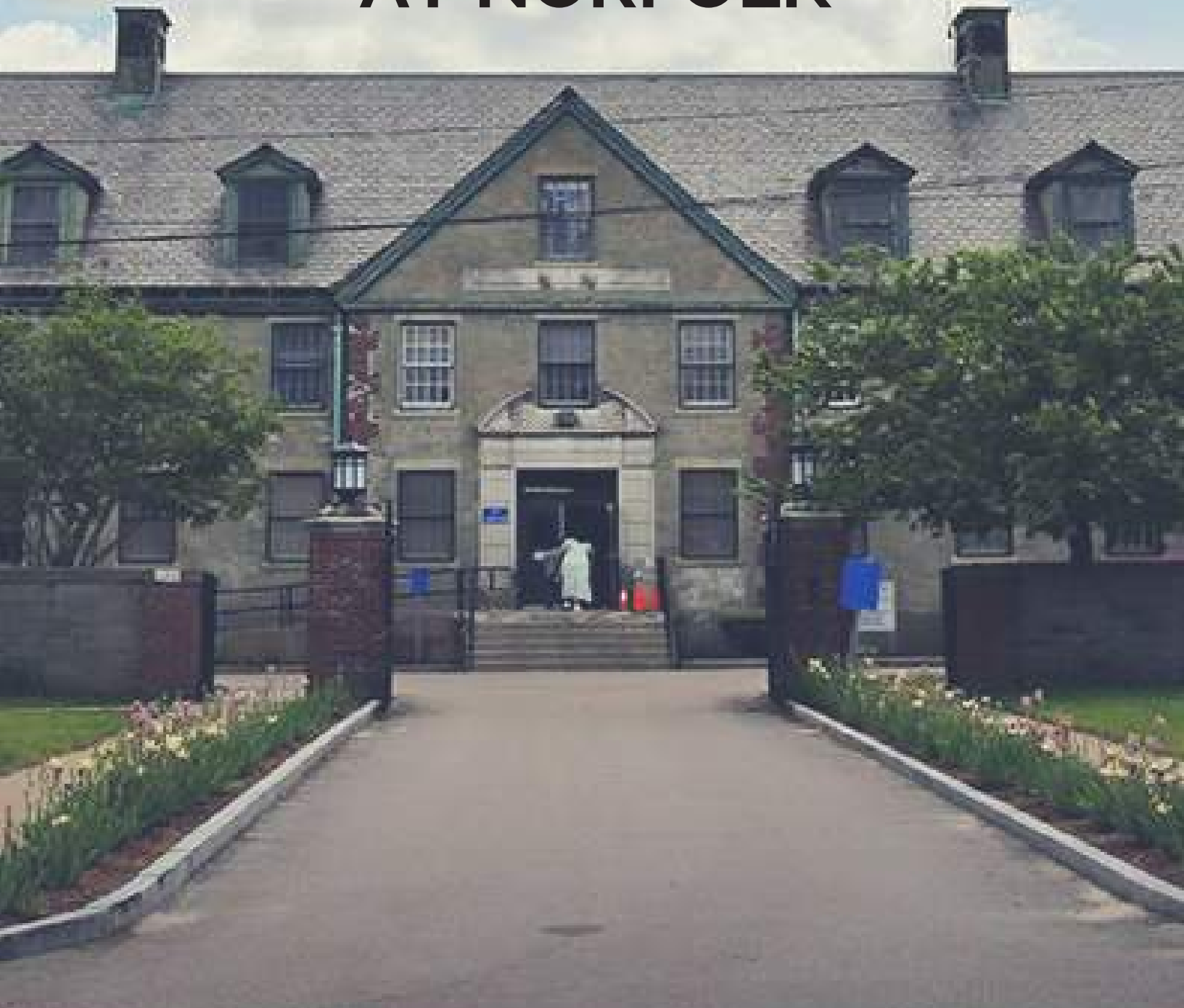
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CHAPTER 7

WATER QUALITY AT MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK



BY SHANNON MCALPINE

Water Quality at Massachusetts Correctional Institution Norfolk

Shannon McAlpine



Water Contaminated with Manganese.

PHOTO FROM THE WATER PROJECT

At Massachusetts Correctional Institution at Norfolk (MCI-Norfolk), the prisoners have given the water they use to drink and bathe the nickname "Norfolk Coffee." At times, the water turns black due to the amount of sediment present, making it difficult to see through (Phillips 2017). This same water has been found to have dangerously elevated levels of manganese, which can lead to health problems when consumed in high levels and over prolonged periods (Williams, Todds, & Roney 2012). Despite prisoners' attempts to bring this issue to the attention of staff inside the prison, little has been done to improve the water quality (Abel 2017). However, some of their attempts to get attention on the outside have proven successful and have led to media exposure and the creation of DeeperThanWater, a coalition dedicated to improving the harsh conditions inside the prison (DeeperThanWater 2018). Prisoners at MCI-Norfolk are facing human rights and environmental justice violations by being forced to drink contaminated water indefinitely, and are also facing

social injustices due to the neglect, mistreatment, and retaliation they receive from prison officials at this facility (Jess 2018). Despite these abuses, both prisoners inside the prison and organizations on the outside continue to fight for justice (DeeperThanWater 2018).

History

MCI-Norfolk was founded in 1927 by sociologist and penologist Howard Belding Gill as the first “community-based” prison in the country (Boston’s Hidden Sacred Spaces 2018). The facility is the largest medium security prison in the state of Massachusetts, consisting of eighteen dormitory units (Boston’s Hidden Sacred Spaces, 2018). MCI-Norfolk houses roughly 1,500 adult males and is mainly comprised of Caucasian (42 percent), African American (30 percent), and Hispanic (24 percent) inmates (MA DOC 2017). Located less than two miles away from two other prisons, MCI-Cedar Junction (formerly MCI-Walpole) and Pondville Correctional Center, MCI-Norfolk receives its water from locally sourced wells operated by the Department of Corrections (DeeperThanWater 2018).

Starting in the early 1990s, the prisoners at MCI-Norfolk began reporting that their drinking water smelled strongly of chlorine (DeeperThanWater 2018). The smell was so overbearing that a glass of the water would make some prisoners recoil and activate their gag reflexes. Other prisoners compared drinking the water to trying to drink from a swimming pool. Over time, prisoners have observed the water’s color change from clear, to beige, to brown, and now black (DeeperThanWater 2018). Prisoners also report that the water clogs the communal sink filters with sediment (Tsolkas 2018).

In 2012, the Massachusetts Department of Environmental Protection (MA DEP) issued an Administrative Consent Order to the Massachusetts Department of Corrections (MA DOC). The MA DEP found that two of the water supply sources the MA DOC used for their facilities exceeded the secondary maximum contaminant level for iron and manganese (DeeperThanWater 2018). Secondary maximum contaminant levels are guidelines established by the United States Environmental Protection Agency (U.S. EPA) to assist public water systems in managing their drinking water for aesthetic reasons, such as odor, color, and taste (U.S. EPA 2017). MA DEP also discovered that the MA DOC did not have a treatment method in place to remove the high levels of iron and manganese from the water. As a result, the MA DEP ordered

the MA DOC to activate a new filtration system capable of handling iron and manganese by November 1, 2015. Despite the immediate need and the MA DEP's order, the MA DOC has yet to fully comply (DeeperThanWater 2018). The \$5 million system was supposed to begin operating in May 2018, but prison officials claimed there was a series of contract delays due to a lack of funds in the department's budget (Tsolkas 2018). To date, prisoners have decreasingly safe water and have reported the water remains worse than it has ever been (DeeperThanWater 2018). The MA DEP has threatened to fine the MA DOC for the delays (Tsolkas 2018). Contaminated water has been a long-term issue at MCI-Norfolk despite prisoners' complaints and orders from the state to improve operations. Ignoring prisoner complaints and failing to resolve issues in a timely manner reveals the prison staff's negligence towards the prisoners. Prison staff displayed a lack of concern for the prisoners' well-being by dismissing their complaints and significantly delaying construction of the new filtration system.

Water and Health Report

In December of 2016, a prisoner-led group called the Norfolk Inmate Council, conducted a survey among their fellow inmates on health-related problems (Muisse 2017). The council compiled the data into a Water and Health report and presented it to the administration (DeeperThanWater 2018). Their report found that almost two-thirds of the prisoners they surveyed said they suffered from rashes and other skin ailments. Almost half of the prisoners surveyed said they had intestinal issues. The council's report also noted problems with water sampling results at the prison. Instead of collecting water from the taps inside the prison, samples were collected from the source. This is problematic because the tests may have missed dangers, such as sediment, from the prison's corroded pipes. The council also reported great frustration because when the tap water turned brown, the service dogs were given bottled water while the prisoners were assured the brown water was safe to drink (Muisse 2017). This is an issue because prison staff were willing to risk prisoners' health with the discolored water, displaying a devaluation of prisoners' health. Additionally, most prisoners cannot afford to buy the bottled water sold at the prison's canteen (Muisse 2017).

The Water and Health report displays sufficient evidence that MCI-Norfolk prisoners' human right to water has been violated. The human right to water states that everyone is entitled to safe, sufficient, affordable, and physically accessible water for personal uses (Gorsboth & Wolf 2008). In Texas, Judge Keith Ellison ruled prisoners at the Wallace Pack Unit were experiencing cruel and unusual conditions (McCullough 2018), such as extreme heat and drinking water containing unsafe levels of arsenic. Ellison noted that the Eighth Amendment imposes the duty to provide humane conditions of confinement on prison officials and concluded it is the duty of prison officials to provide safe drinking water to the prisoners (Gilna 2016). Additionally, in Michigan, over 90 prisoners have filed a lawsuit against prison officials (Baptiste 2018) stating that their failure to provide safe drinking water and to do so in a timely manner constitutes cruel and unusual punishment in violation of the prisoners' Eighth Amendment rights (Benedetto 2018). For prisoners at MCI-Norfolk, the discolored water is unsafe for their personal health and they are unable to access clean, bottled water because they cannot afford it. Providing bottled water to the service dogs, but depriving the prisoners of bottled water displays how the prisoners are viewed as less than human.

Current Water Issue

In June of 2017, David Abel of The Boston Globe published an exposé based on information from the Norfolk Inmate Council's 2016 report. In the exposé, Abel described reports from prisoners detailing how the MA DOC instructed guards at the prison not to drink the tap water and instead supplied them with bottled water (DeeperThanWater 2018).

The Boston Globe reviewed state records and found that 43 percent of all the water samples collected at MCI-Norfolk since 2011 indicated dangerously elevated levels of manganese, a main component of the sediment found in the wells (Abel, 2017). Although manganese is a naturally occurring mineral, in high levels, such as at MCI-Norfolk, it can cause neurological disorders that resemble Parkinson's disease. Recent studies have shown that manganese can contribute to poor academic performance, decreased verbal function, and other cognitive problems (Williams, Todds, & Roney 2012). Research demonstrates that chronic overexposure to manganese can result in a progressive, permanent neurodegenerative disorder that has no cure and few options for treatment (Crossgrove & Zheng 2004). Additionally,

prisoners are potentially more susceptible to the damaging effects of manganese because many of them have struggled with addiction and other health issues, resulting in metabolic changes and liver problems that impair their body's ability to absorb and excrete manganese (O'Neal & Zheng 2015). This news has concerned Wayland Coleman, an active prisoner and member of the Norfolk Inmate Council, who is among the roughly 750 prisoners serving life sentences (Tsolkas 2018).

Since these prisoners are serving life sentences, they are faced with long-term exposure to the contaminated water. If the water contamination is not addressed, the prisoners serving life sentences will likely suffer from neural dysfunction or other health problems. The prisoners serving decades to life sentences at MCI-Norfolk have no way of protecting themselves from developing a manganese induced disease since most of them cannot afford or access clean water.

Wayland Coleman

Wayland Coleman is an important prisoner activist at MCI-Norfolk who has attempted to fight for his rights and for his fellow prisoners. Coleman was responsible for sending the Norfolk Inmate Council report to the Boston Globe. As a result of his actions, Coleman was placed in solitary confinement in February 2017 and remained there for a month. Once Coleman was released from solitary confinement, he worked to gain more support from advocates on the outside and generated a plan to distribute bottled water among his fellow prisoners (Tsolkas 2018).

However, on March 21, 2018, Coleman was placed back in solitary confinement. The day before, he was threatened by Captain Andrew Rego who directed Coleman to cancel his weekly canteen order of bottled water. Captain Rego stated the reason for his threat was because Coleman already had too much bottled water in his cell. Coleman refused to cancel his canteen order, stating that he purchased the water legally from the canteen and that they had already taken the money out of his account. The next morning, another corrections officer, DeOliveira, also threatened Coleman. Again, Coleman refused to cancel his order, which angered DeOliveira. While Coleman was walking away, DeOliveira called for a response team of about fifteen officers who became very rough and aggressive with Coleman despite the fact that he was not resisting. The officers then placed Coleman back in solitary confinement. On March 22, 2018, Coleman was issued a disciplinary report for

possessing fourteen cases of water in his cell, which was considered contraband (Jess 2018).

In the U.S. Code, contraband is defined as weapons, controlled substances, currency, phones, or any object that threatens the safety of an individual or the prison (Office of the Law Revision Counsel 2010). By this definition, Coleman's water cases should not have been considered contraband because the water did not threaten the safety of an individual or the prison. The water was intended to be given to fellow prisoners as a safe alternative to the contaminated water. Coleman was attempting to provide his fellow prisoners with clean water, which was something they had been deprived of, but that they should have been entitled to under their human right to water. Additionally, placing Coleman in solitary confinement for possessing the water he bought legally from the canteen is a violation of the Eight Amendment, as he was punished for attempting to protect his body health and well-being when this was being directly threatened by the prison housing him.

Similar to Coleman, there are many prisoners across the United States who are resisting the mistreatment they face in the prison system. These resisters have risked their lives in order to enact change and bring awareness to the threats they are facing. Some forms of resistance include refusing orders and interfering with the prison's regular operations, such as hunger strikes and sit-ins (Prisoner Support n.d.). Some of these resistance fights have proven successful, such as in Alabama where resisters and the Free Alabama Movement have exposed the retaliation they face, leading to federal investigators being brought in and prison guards refusing to come into work (Prisoner Support 2016). Despite possible retaliation from prison staff, Coleman continues to fight for his rights and the rights of his fellow prisoners in an attempt to enact change and bring awareness to those on the outside.

DeeperThanWater

While Coleman has fought for prisoners on the inside, the coalition DeeperThanWater is fighting for these prisoners from the outside. DeeperThanWater is a multi-generational, multi-racial coalition of currently and formerly incarcerated organizers, abolitionists, and allies. The coalition aims to bring awareness to the stories of incarceration in the United States, hold the state accountable for the toxic water crisis, and provide all prisoners in Massachusetts with safe, clean water (DeeperThanWater 2018). In June 2017, the coalition was formed as a result of

the discovery of the chronic water problems, as reported in the Boston Globe's exposé and a desire to support the efforts of the prisoners at MCI-Norfolk (DeeperThanWater 2018).

Earlier this year, DeeperThanWater started to raise money for prisoners inside MCI-Norfolk so that they would be able to purchase cases of bottled water that they could distribute to fellow prisoners. However, Coleman was placed into solitary for purchasing this water. When questioned about the reason for Coleman's punishment, Christopher Fallon, a spokesman for the MA DOC, stated that DeeperThanWater should have worked with prison officials instead of prisoners to provide bottled water. However, DeeperThanWater felt they could not trust the prison officials with providing bottled water because the prison officials had been ignoring the reports of water contamination at the prison for years (Tsolkas 2018).

Having organizations and coalitions such as DeeperThanWater joining in the fight for environmental justice in prisons is important because they are helping to give voice to those incarcerated. Many prisoners, such as those at MCI-Norfolk, are unable to resolve the issues they are facing due to their lack of power. They are often ignored by prison staff and retaliated against for attempting to speak out on the issues they are facing. Since prison officials use their power to prevent these issues from reaching the outside, organizations and coalitions are needed to bring attention to these matters. Additionally, these organizations and coalitions have greater access to resources than prisoners, which grants them more opportunities to raise awareness and enact change. Without the help from the coalition DeeperThanWater, prisoners at MCI-Norfolk would have struggled to bring awareness and change to their current situation.

Human Rights and Constitutional Violations

MCI-Norfolk prisoners' lack of access to clean, drinkable water is a direct violation of their Eighth Amendment rights (ACLU National Prison Project 2010). Under the Eighth Amendment, prisoners have the right to be free of "cruel and unusual" punishment while imprisoned. Prison staff at MCI-Norfolk acted with deliberate indifference to the prisoners' Eighth Amendment rights by failing to resolve the water issues for decades despite being aware of the harms the water could have

on the prisoners (FindLaw 2018). The persistently contaminated water at MCI Norfolk also violates the Safe Drinking Water Act. The Safe Drinking Water Act authorizes the U.S. EPA to set national health-based standards for drinking water to protect against naturally-occurring contaminants that may be found in drinking water (U.S. EPA 2004). Some water samples taken from MCI-Norfolk contain dangerously elevated levels of manganese that exceed the national health-based standards set by the U.S. EPA (Abel 2017).

Prisoners at MCI-Norfolk are being forced to drink contaminated water with little opportunity to protect themselves and fellow prisoners. Many prisoners are concerned and fearful of the water because they are unsure of what effects it will have on their health. Despite prisoner complaints and a consent order issued by the MA DEP, the prison staff and the MA DOC have done little to address these concerns. Additionally, the water contamination at the prison has violated both a federal law and prisoners' rights. The struggle at MCI-Norfolk serves as a prime example of both an environmental and social injustice because prisoners are forced to drink water that exceeds federal contaminant standards and are mistreated and silenced by prison staff when trying to bring attention to the issue. With help from prisoners on the inside, such as Wayland Coleman, and coalitions on the outside, such as DeeperThanWater, there is hope to inspire real change and finally provide the prisoners at MCI-Norfolk with clean drinking water.

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APPENDIX I

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APPENDIX II

Highlighted Side Effects of Drugs Used on Minors in Detention (Mayo Clinic 2018)

Clonazepam

- **Common Side Effects:** Body aches and pains, difficulty breathing, discouragement, feeling sad or empty, fever, headaches, irritability, loss of interest or pleasure, loss of voice, poor coordination, sleepiness or unusual drowsiness, trouble concentrating
- **Less Common Side Effects:** feeling of discomfort or illness, joint pain, nausea, nervousness, urinary problems, sore throat, vomiting, chest pain, confusion, excessive dreaming, falling, fast and irregular heartbeat, anger, feeling of unreality

Olanzapine

- **Common Side Effects:** bloating or swelling of the face, arms, and body, blurred vision, change in walking and balance, difficulty speaking, inability to sit still, muscle trembling, rapid weight gain, slowed movements, slurred speech, uncontrolled movements, change in personality, loss of interest or pleasure
- **Less Common Side Effects:** Bladder pain, bruising, difficulty breathing, chest pain, headache, inability to move the eyes, lack of coordination, large flat blue patches on the skin, loss of bladder control, loss of memory, fast and irregular heartbeat, tightness in chest, uncontrolled movement, weakness in body

Deutetrabenazine

- **Common Side Effects:** Body aches and pains, chills, diarrhea, difficulty breathing and swallowing, discouragement, drowsiness, fever, fear, feeling sad or empty, irritability, loss of interest or pleasure, restlessness, nervousness, sleepiness and unusual drowsiness, slow movement, stiffness in body, trouble concentrating, trouble sleeping, trouble with balance
- **Less Common Side Effects:** Agitation, dizziness, confusion, mood and mental changes, nausea, hallucinations

Guanfacine

- **Common Side Effects:** blurred vision, confusion, sweating, unusual tiredness or weakness, sluggishness, upper abdominal pain, weight gain, vomiting
- **Less Common Side Effects:** chest pain or discomfort, difficulty breathing, mental depression, pounding heartbeat, faintness, severe weakness, loss of strength, stomach discomfort

Duloxetine

- **Common Side Effects:** rash, blindness, blistering skin, change in consciousness, chills, cold sweats, confusion, difficulty swallowing, eye pain, fainting, fast heartbeat, hives, increased thirst, muscle pain, swelling of the face, sores in mouth, tearing, tightness in chest, vomiting of blood, yellow eyes and skin, sore throat, weight loss
- **Less Common:** Change in taste, heartburn, joint pain, loss in sexual ability, muscle pains or stiffness, shakiness in legs, arms, hands, or feet, swollen joints, trembling

Latuda

- **Common Side Effects:** Anxiety, drowsiness, hyperventilation, irritability, stomach pain, trouble sleeping, unusually deep sleep, unusually long duration of sleep, loss of balance control, need to keep moving/restlessness, slurred speech, trembling, uncontrolled movements
- **Less Common:** Abnormal dreams, back pain, blurred vision, burning feeling in chest, decreased appetite, feeling of constant movement of self or surroundings, itching, skin rash, drooling, loss in sexual ability, convulsions, lockjaw, inability to speak, dizziness, seizures, loss of bladder control, trouble breathing, unusual bleeding and bruising

Divalproex

- **Common Side Effects:** Dementia, delusions, crying, euphoria, fever, general feeling of illness, nervousness, bloating of the body, paranoia, rapid weight gain, sleepiness or unusual drowsiness, sore throat, vomiting, acid or sour stomach, change in vision, body aches, ringing in ears, hair loss, hearing loss, loss of strength, trouble swallowing, voice changes
- **Less Common:** Absent menstrual period, back pain, change in taste, lesions on skin, cramps, dry skin, ear and eye pain, full feeling, itching, loss of bowel control, neck pain, sensation of spinning, change in personality, change in walking and balance, cold sweats, chills, degenerative disease of the joints, difficulty moving, feeling of warmth or heat, problems with muscle control or coordination