



GIC TIP JOURNAL



Transgendered In Prisons

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“Support, education, outreach and advocacy for the transgender community”

PBS FILM DOCUMENTARY PLANNED



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The opinions expressed in the *GIC TIP Journal* are the opinions of the author and do not necessarily represent the opinions or the official policy of the GIC, its board members or officers, or that of the *GIC TIP Journal* and its editors.

Janet Baus, an award-winning filmmaker and editor for PBS, cable television, and various other independent productions, has written to the *GIC TIP Journal* for help in contacting some transgender prisoners for a PBS documentary that she is producing on the subject.

Ms. Baus and her associates are trying to gather a representative set of stories from current and former transgender prisoners that will help illustrate the problems associated with the placement, care and treatment of gender variant prisoners in facilities that are, almost exclusively, based on traditional male and female gender stereotypes.

They also hope to find out the kinds of obstacles some transgender people face in their lives that can lead to “survival crimes” and arrest and jail or prison time. In other words, how their gender dysphoria, their inability to get treatment and society’s prejudices against transgender people might have contributed to their troubles with the law.

Other areas that will be explored include the unique health and treatment issues transgender people face while incarcerated, HIV/AIDS issues, the vulnerability of gender variant prisoners to physical and sexual violence and the various kinds of coping mechanisms they might use in dealing with the latter, such as forming alliances with other individuals and groups within the inmate population or asking to be placed in protective custody and what that is like.

It is the human rights angle and the human side of the story that most interests them. This approach will also be much more likely to attract a wide audience and bring more compassion and understanding to these issues.

Need your help - In addition to those who are still serving time, they are also interested in people who might be released within the next year, so that they can follow them after they get out.

Need FTM trans-prisoner subjects - Ms. Baus specifically asked for our help in locating some female to male transgender people in prison. Most, if not all, of their contacts so far are transgender women. They anticipate that FTM issues are likely to be significantly different, but at this point, it is only speculation. Your help and cooperation will be greatly appreciated.

Ms. Baus can be contacted at:

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The Producer - Janet Baus is a producer and editor for PBS, cable television, and independent productions. Most recently she was co-editor of the Lifetime documentary, “Our Heroes, Ourselves” to be aired this May. She was editor and supervising editor on the 2000 and 2001 seasons of “Trauma: Life in the ER” for New York Times Television, broadcast on *The Learning Channel*. She was recently hired as Series Editor for the 2002 Trauma season. Previously, she was co-producer with John Scagliotti and Dan Hunt, for the PBS documentary, “After Stonewall: From the Riots to the Millennium”, which was broadcast nationally in June of 1999. From 1993 to 2000, Baus was a producer and editor for the award-winning PBS series, “In The Life”, producing more than 30 segments. In 1998, she was co-producer and editor of the documentary, “Some Ground To Stand On”, which was awarded the National Educational Media Bronze Apple, and the Director’s Choice Award in the Black Maria Festival, and aired on several public television stations. She is currently in production on an independent documentary about lesbian collectives in the early 1970s, “The Furies”.

Prison Rape and Violence **Prisoners' Legal Rights and Remedies** by Stephen Donaldson [written for prisoners]

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[Editor's Note: The author, Stephen Donaldson, was himself a victim of a prisoner rape. As a result of the rape, Stephen was infected with HIV/AIDS, which eventually cost him his life.

However, Stephen was much more than just a victim. To those who knew him or knew his story, he was also an inspiration. Up until the time of his death, Stephen served as the executive director of Stop Prisoner Rape, and it was during his tenure at SPR that Stephen wrote this article.

Some of the legal references might not be entirely up to date, but it still provides an excellent review of the underlying principles upon which subsequent case law is based, as well as the remedies that are available to the victims and those that are at risk of prisoner rape and violence.

Our thanks to SPR for allowing us to reprint this and the following article about recently passed federal legislation aimed at reducing prison rape.]

You have a well-established constitutional right to be protected from sexual assault by other prisoners as well as by staff. We believe you also have a right to treatment for the emotional injuries caused by rape if you are a victim. However, there is a big gap between having these rights in the abstract and getting the courts to enforce them.

Following the recent unanimous U.S. Supreme Court decision in *Farmer v. Brennan*, a historic case which has established the state of the law in this area at the highest level, Stop Prisoner Rape (SPR) believes that legal action is one of the most hopeful means of achieving changes which would lessen the frequency of prisoner rape and improve conditions for those who have already been victimized but are still behind bars. We are actively looking for prisoners who would like to participate in class

action suits to change conditions in their institution or their whole system through court-ordered injunctions, and we support prisoners seeking to collect money damages from institutions for "failure to protect" them against prisoner rape or sexual assault on the part of officials. At this point, though growing, SPR is still too small an organization to have its own staff of lawyers, but we can provide advice, information and legal referrals to litigants and expert testimony at trial. We have intervened at the Supreme Court level and may, if resources become available in the future, be able to do so at the Court of Appeals level.

We can't do your legal research for you or write your documents, but we hope that this summary of the law will give you a good start.

The state of the law with regard to the legal obligations of confinement institutions to prevent sexual assault of prisoners is changing.

Since 1979 prisoner victims have been winning some substantial **money damages** (\$380,000 in one case) from institutions being sued for violation of prisoners' federal civil rights under the "cruel and unusual punishment" clause of the Eighth Amendment to the U.S. Constitution. These suits are based upon a "failure to protect" together with "deliberate indifference" on the part of institution officials. This standard was first upheld for sexual assaults by the U.S. Supreme Court in *Smith v. Wade* (1983) and was further elaborated in *Farmer*. The number of such awards has slowly but steadily increased, buttressed by successes in a number of state courts using state laws; we expect they will rise considerably, along with successful requests for injunctive relief, in the wake of *Farmer*.

The case was brought by Dee Farmer, a transsexual federal prisoner, all the way to the Supreme Court *pro se*. The National Prison Project of the American Civil Liberties Union (ACLU) was appointed to represent Farmer after the Supreme Court agreed to hear the case; SPR entered a lengthy *amicus* brief in the case as a "friend of the court;" this brief had a major impact on the decision. The Court remanded the suit, which had been dismissed by the district and appellate courts, back to the district court for

trial. Justice David Souter's opinion is a complex one and requires considerable analysis.

In its general discussion, the Court squarely affirmed that "Being violently assaulted in prison is simply not 'part of the penalty'" and that "gratuitously allowing the beating or rape of one prisoner by another serves no 'legitimate penological objective.'"

Moving onto new ground, the Court implied an obligation by confinement officials to take positive action "to protect prisoners from violence at the hands of other prisoners" by stating "*the government and its officials are not free to let the state of nature take its course.*"

[All emphasis inside quotations is added.] The implications of that phrase will no doubt be debated in numerous lower courts before the Supreme Court speaks again. "For a claim (like the one here) based on a failure to prevent harm," the Court said, "the inmate must show that he is incarcerated *under conditions posing a substantial risk of serious harm.*" Most important here is the setting of the legally actionable risk threshold as merely "substantial" rather than a more difficult standard like "high" or "impending." Though Souter did not further define "substantial," in later paraphrases he substituted the phrases "significant risk," "serious risk," and "excessive risk."

Injunctive Relief

Farmer was mainly suing for damages, and although neither the plaintiff nor the ACLU paid much attention to injunctive relief, SPR's brief was focused on that area, and the Court responded by going out of its way to encourage class actions, saying "*it does not matter whether the risk comes from a single source or multiple sources*, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because *all prisoners in his situation face such a risk.*" (This statement also applies to suits for damages). The Court went on to suggest that "a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he *belongs to an identifiable group of prisoners who are frequently singled out for violent attack by*

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other inmates."^m

In other words, if a prisoner can plausibly claim that he belongs to an "identifiable group" which faces an "excessive risk", he has standing to sue for court-ordered injunctive relief to change prison or jail policy or practice, *whether he himself is personally in danger or not*. Based on published studies, such "identifiable groups" include the *survivors of previous rapes, the young (23 or under), the small in size, the white, the first-timer, the nonviolent offender, the homosexual or bisexual, the misdemeanor, and possibly the middle-class and the "unstreetwise."*

The Court also explicitly linked its decision in *Farmer* to its 1993 ruling in *Helling v. McKinney* upholding injunctive relief to change conditions which expose a prisoner to "risk of serious damage to his future health." In light of the known effects of Rape Trauma Syndrome (RTS) on the health (both physical and mental) of rape survivors, this is significant. It becomes even more so in light of the risk of infection with the AIDS virus as a result of anal rape.

The Court summarized the **requirements for an injunction** as follows: "An inmate seeking an injunction on the ground that there is 'a contemporary violation of a nature likely to continue' [cite omitted] must adequately plead such a violation; to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so."

The Supreme Court did very strongly encourage plaintiffs to first seek relief through "adequate" **grievance procedures** or administrative remedies, and allowed lower courts to require it, but did not make it an absolute mandate. We recommend that prisoners ask for all the changes listed below through such procedures, and get written responses, before filing suit.

Justice Blackmun, in his concurring opinion, said the Court in *Farmer* "sends a clear message to prison officials that

their affirmative duty under the Constitution to provide for the safety of inmates is not to be taken lightly."

Souter's opinion did not go into the question of what kinds of injunctive relief would be "reasonable" and appropriate, leaving this tricky matter for lower courts to explore. SPR encourages plaintiffs to ask for wide-ranging **remedies** such as are listed in our *amicus* brief and our Action Program, including realistic orientation programs; realistic institution-wide staff training on sexual assault issues; access to psychological treatment for RTS from counselors trained to provide it; classification of all prisoners according to vulnerability to sexual assault and appropriate housing placement and assignment to institutions; establishment of protocols for rape intervention, follow-up, and investigation; major changes in "protective custody" conditions so as to make p.c. non-punitive and safer; ending of staff discrimination against and stigmatization of rape survivors and the mislabeling of heterosexual survivors as homosexual; provision of condoms to survivors involved in "protective pairing" for their own survival; ending involuntary segregation of homosexuals from the general population; ending disciplinary penalties for defending oneself against sexual aggression or for engaging in non-assaultive sexual acts; and free and confidential access by trained rape counselors from outside organizations.

Prior to the *Farmer* decision, the question of injunctive relief had already gained an affirmative answer from a unanimous 11th Circuit U.S. Court of Appeals in *LaMarca v. Turner*, where Chief Judge Tjoflat's opinion (a binding precedent in Alabama, Florida and Georgia and a strong precedent elsewhere) upheld injunctions against Glades Correctional Institution in Belle Glade, Florida, to "(1) provide training to all prison guards in the handling of rape complaints, (2) require special training for the staff psychiatrist and the staff psychologist, and (3) promulgate an official referral procedure for all rape victims to the resident psychiatrist or psychologist for evaluation." The appeals court also suggested that conditions in p.c. that were "punitive in nature" could justify injunctions. Judge James C. Paine's deci-

sion in the district court is well worth reading. (A judgment of \$178,000 against the warden on behalf of eight prisoners was remanded for retrial on technical grounds.) The question of treatment for RTS as a constitutionally required provision of medical care has not, so far, been decided in the courts, but we hope it soon will be, and we encourage survivors to demand it.

The same lawsuit can ask for both injunctive relief and money damages.

Money Damages

Most of Souter's opinion in *Farmer* is directed at the question of monetary damages for past victims; here the compromises necessary to secure a unanimous opinion are evident, and can lead to much confusion. The questions of law involved have a long and complicated history. The *Farmer* court was asked to clarify the meaning of the phrase "deliberate indifference" as relevant to "cruel and unusual punishment." The Court held that the prisoner plaintiff, in order to succeed, must prove that there was a *subjective state of mind* which is "culpable" (liable, "guilty" in the civil law sense) on the part of the official (or his institution) being sued. In other words, the official, to be successfully sued, has to have known of the risk to the prisoner's safety and intentionally disregarded it. This was an apparent victory for the government, since the ACLU had asked for an easier, objective standard. (This requirement in practice tends to fall away with injunctive suits, since the suit itself and accompanying documents notify the defendant official of the risk, which is set in the future rather than the past.)

However, the Court then went on to provide a number of avenues by which the prisoner plaintiff could seek to convince a jury to **infer** "by any relevant evidence" that such a subjectively culpable state of mind actually existed. These include "a risk's *obviousness*," "circumstantial evidence" and "evidence showing that a substantial risk of inmate attacks was *longstanding, pervasive, well-documented*, or expressly *noted* by prison officials in the past." These loopholes are big enough to drive a convoy of trucks through.

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The practical effect, concluded *Corrections Forum*, was to make it **more difficult to dismiss prisoner lawsuits** "early in the litigation process." Translation: it will be easier to survive the government's motion for summary dismissal. Why? Because the question as to whether the evidence the prisoner wants to bring into court is sufficient to infer "deliberate indifference" by the defendant official will be a matter for the **jury** to decide as a matter of fact after trial, not for the judge to find as a matter of law (unless a jury trial is waived, making the judge the finder of facts—something we wouldn't usually recommend).

There are still more implications. The Court's loopholes open up a wide-ranging area for the **discovery** process to work for the plaintiff, searching for any "relevant" data or evidence that would support "obviousness" or a "longstanding" risk (and not to the individual plaintiff necessarily, but to anyone in his situation) or the "pervasiveness" of the risk or whether or not it is "well-documented" (which may make published literature on the risk to various groups admissible) or "expressly noted" (which is tantamount to a search of the prison's files). We can foresee a lot of sparring over the scope of discovery in the light of these provisions.

In drafting complaints, prisoners should wherever possible assert that the risk to themselves or to anyone "in their situation" was obvious, longstanding, pervasive, and well-documented, citing *Farmer* and pleading specific facts showing that officials had actual knowledge, wherever possible, or facts that support the inference from "obviousness" etc., so that discovery can go into these matters, rather than have the judge rule that no claim has been made that there is evidence to show the official's culpable state of mind.

We also recommend that plaintiffs include the warden and the commissioner of corrections as defendants in their official capacity so that evidence can be obtained showing the systematic nature of the risk and how institution-wide and system-wide practices contribute to it. If you can get together with other prisoners in your joint and establish a pattern of sexual assault there,

your chances for success will be greatly improved.

Since federal judges are very reluctant to conduct complex trials without lawyers, a prisoner plaintiff who files *pro se* and then survives summary dismissal is likely to end up with a **court-appointed lawyer**. As the lack of attorney assistance is the chief reason why more prisoner plaintiffs have not been winning damages for sexual assault, this in itself is a major advance. Furthermore, with discovery being so open, the *pro se* litigant can make a persuasive argument to the judge to appoint counsel early in the case to help with the discovery process and in obtaining expert witnesses. SPR can help you locate expert witnesses.

Once you get to trial, the question becomes one of persuading the jury that the defendant official was deliberately indifferent. The jury as a result of *Farmer* will get very complex instructions from the judge on how to determine if the official had a culpable state of mind. They will find these confusing and hard to understand. On the other hand, the horror stories you have brought into evidence through *Farmer's* loopholes will stick in their mind and sway their emotions. Jurors being human, outrage may well guide their decision more than the fine points of the law on culpable official states of mind.

All these aspects considered, then, the Supreme Court has **in practice**, we believe, handed the prisoner rape victim seeking damages a major victory.

Lower Court Decisions

Many of the lower court decisions in prisoner rape cases have been made obsolete by the *Farmer* decision, since the Supreme Court takes precedence over all other courts once it has spoken.

However, prior lower court decisions can be important in areas where Souter's opinion is silent or ambiguous, and the litigator should try to become familiar with them. Thus, the Ninth Circuit in *Redman v. County of San Diego* (Dec. 1991) found the sheriff and captain both liable if they "acquiesced in a deficient policy that was a moving force behind" the rape "and repudiated Redman's constitutional right to personal security." The policies in question related to housing procedures, but the 8-3 decision

clearly opens up the area of "deficient" administrative policy with regard to sexual assault as cause for liability. Other appellate courts, such as the Eighth Circuit in *Vosburg v. Solem* (1988), have held that a general failure to respond to particular and persistent patterns of assault in the institution such as to present a "pervasive risk of harm" may constitute "deliberate indifference" and is therefore legally actionable; the targets of such patterns can be a particular, identifiable group, such as younger prisoners or new admissions, rather than just the general population.

The Third Circuit even found in *Riley v. Jeffes* (1985) that a constant threat of sexual assault is actionable without an actual assault. Prisoners have been successful using state and federal **tort laws** to obtain damages based on official "negligence" (which requires a less difficult standard of proof than "deliberate indifference") if they fail to exercise "reasonable" or "ordinary" care to protect prisoners from assault. See, for example, *Finkelstein v. District of Columbia*, holding staff failure to intervene in group sexual activity negligent. You should research state law as well as federal law if you are in state or local custody.

A reading of the numerous cases in the legal literature makes it clear that the two most vulnerable policy areas for institutional liability are the housing classification of prisoners and absence of staff training. Procedures and loss of privileges relating to protective custody rank third.

Several courts have urged that particular attention be given to educating new prisoners to the dangers of sexual assault, thus in *Van Horn v. Lukhard* a federal district court remarked that prison officials may have a greater duty towards "new inmates" because they "will often be unfamiliar with the realities of prison life and will, therefore, be less adept at avoiding situations which could lead to sexual assault." The Eighth Circuit specifically cited the absence from the Farmington Correctional Center's orientation program of any "component relating to sexual abuse of prisoners." Some other cases you may want to look at are: *Berry v. City of Mus-*

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kogee, Butler v. Dowd, Martin v. White, Wilson v. Seiter, Young v. Quinlan.

SPR does not believe that keeping jailhouse rapists in jail for additional years so they can claim more victims is a solution to the problem of prisoner rape, and therefore we do not encourage *criminal* prosecutions of other prisoners who commit rape in confinement. Criminal prosecutions of officials for rape of prisoners may be assisted.

If you are in danger of being sexually assaulted and you want to have a good legal case for damages in case your fears should prove well-founded, it is to your advantage to notify the warden in writing of the risk to you and to others "in your situation" and to keep a copy of that notification and, if possible, evidence that the warden received it, as well as his response. This will help prove "deliberate indifference" if he does nothing to help you and you go to court. However, you should be prepared to find yourself offered "protective custody" or some other form of segregation. You do **not** have to provide specific names or become an informer, though officials may try to tell you otherwise. Of course, if you are trying to get out of a double cell assignment, this can be tricky. See SPR's flyer, "Dealing With Staff."

We are not in a position to give you technical advice on how to go about filing an individual lawsuit, which court to go to, and how to get a lawyer; we recommend that you find this out from people in your law library or jailhouse lawyers or (if your case is still open) ask your criminal defense counsel. We can provide referrals to outside sources of legal assistance, but no guarantee that they will be able to help. In order to bring a damage suit successfully, it may be necessary for you to identify yourself as a rape victim in legal papers which are open to the public, so there is some risk that you may be publicly identified, especially if your case goes to trial rather than being dismissed or settled out of court. Unless you deliberately look to publicize the case the odds are, however, that your hometown press will never mention it. However, prisoners may also be "John Doe" complaints. This means you file the original complaint (with names) under seal together with a

motion and order directing the parties to refer to the plaintiff(s) as John Doe, etc.

However, if you bring a class action with our help, we at SPR may want to use the case to focus public attention on the problem of prisoner rape, so we may request that you accept some publicity. We will, however, be guided by your decision.

Summary

1. Detained and imprisoned persons have an absolute right to protection from sexual assault and sexual harassment.

2. Failure to protect detained persons from sexual assault constitutes a violation of their civil rights including the 8th and 13th Amendments of the U.S. Constitution. It also violates their basic human rights.

3. Detained and imprisoned persons have a right to be guarded by persons of the same gender. Placing male guards in women's facilities and women guards in men's facilities is a violation of the spirit of equal employment opportunity.

4. Any sexual contact between custodial staff and the detained or imprisoned person is presumed to be non-consensual on the part of the detained or imprisoned person.

[*Farmer v. Brennan and a Circuit by Circuit Survey of Its Progeny, including case citations and summaries of the facts and the findings, can be found at Stop Prisoner Rape's web site. Look under "law" at <http://www.spr.org>. Ed.]*

Prison Rape Elimination Act Becomes Federal Law

*SPR Hails Historic Move Toward
Safer, More Humane Detention*

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September 4, 2003 WASHINGTON D.C. – President George W. Bush signed into law the Prison Rape Elimination Act of 2003 today, marking the first time the U.S. government has ever passed a law to deal with sexual assault behind bars.

"The passage of this law is a major milestone, finally bringing prisoner rape out of the shadows," said Lara Stemple, executive director of Stop Prisoner Rape (SPR), a national human rights organization that has worked on the issue for more than two decades.

The law calls for the gathering of national statistics about the problem; the

development of guidelines for states about how to address prisoner rape; the creation of a review panel to hold annual hearings; and the provision of grants to states to combat the problem.

"We hope this bill will be the beginning of real reform," Stemple said. "And, progress will also require improved mental health services for survivors, lawsuits aimed at reform, and greater sympathy on the part of the public."

The president signed the bill this morning at an Oval Office ceremony attended by two survivors of prisoner rape, Tom Cahill and Hope Hernandez. Cahill serves as president of the Board of Directors SPR, and Hope Hernandez is a member of the group's Board of Advisors.

"We know we've come a long way when survivors of prisoner rape are invited to the White House with dignity rather than marginalized and ignored," Stemple said.

In 1968, Cahill was beaten and gang-raped in San Antonio, Texas after being arrested for civil disobedience.

Hernandez, also a nonviolent offender, was repeatedly raped by a corrections officer in 1997 in a privately run facility adjacent to the Washington D.C. jail.

One in five men in prison has been sexually abused, often by other inmates. Rates for women, who are most likely to be abused by male staff, reach as high as one in four in some facilities.

GIC TIP Journal Survey

The incidence of prison rape among transgendered inmates is just one of the issues we are studying in our *GIC TIP Journal Survey*, which we began circulating in the summer of 2002.

Need more participants - Many of you were kind enough to participate, but we need many more to follow their example before we reach a statistically significant sample, which could take several more years. The rule of thumb is the larger the sample, the more accurate and credible the results will be.

The survey specifically targets transgendered inmates, but because the distinctions between sex and gender orien-

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(Continued from page 5) TIP Survey tation are often blurred in most people's perceptions, it can also apply to gay and lesbian inmates or any others who, for whatever reason, do not conform to traditional male or female gender stereotypes.

If you or someone you know would like to participate in our survey, please let us know and we will send you one.

Caryl

Interrogated about Survey

I completed and placed in the mail the survey on TS/TG's in prison, sending it to the California address for Gianna E. Israel that was indicated on the survey's cover.

To my surprise, the day after I mailed it, I was called in by prison officials and questioned about it.

Frankly admitting that they had intercepted it and opened it, they seemed upset about me airing their dirty laundry in public about the way TS/TG prisoners are treated in here.

After the interrogation, I was never able to find out for certain if they were going to allow the survey to be forwarded to Ms. Israel.

I would like to know if, in fact, my survey was received. If not, would it be possible to send me another, or is it too late?

[The survey represents an ongoing study and, as such, has no cut off date.

If we find that your survey was not received, or if there remains any doubt about it, we will send you another.

If there are others who have had similar problems with either the survey or the "GIC TIP Journal", we would like to know about it. Ed.]

Jamie Raye Barnhill #760738

Washington CI
4455 Sam Mitchell Dr.
Chipley, FL 32428

I received the Fall 2003 GIC TIP Journal. It was my first, and I very much enjoyed it. I would really like to keep on getting it, if that is possible. I am indigent, so I won't be able to contribute to the cost.

[It is free. Donations are appreciated but are, in no way whatsoever, required. Ed.]

I found the Trans Prisoner Survey very interesting. Based on some of the questions in the survey and what they imply, I almost feel lucky to be in a Florida prison facility. Here transsexuals are pretty much treated like everyone else. Admittedly, we might be harassed a little more than others, but it is still tolerable. Anything that you might call real physical abuse is kept to a minimum.

I just filed a civil suit seeking continuation of my hormone therapy. I feel very confident that I will win, and I will be sure to let you know how that comes out.

NY Success Story

Mark L. Brooks
AKA Jessica Maria Lewis
90A6426 Clinton CF
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Danemora, NY 12929

I am a pre-op TS prisoner of New York state, where I have been incarcerated since 1989. I have devoted most of the past 15 years to researching and preparing a lawsuit that will help me and other trans-prisoners in the NY DOC obtain necessary medical treatment.

I filed a §1983 lawsuit in Federal Court in September of 2000. The defendants filed a motion for summary judgment to have the case dismissed, which was ultimately denied. On August 15, 2003, in denying the motion for summary judgment, US District Court Judge for the Northern District, the Honorable Lawrence E. Kahn, ruled that:

...consistent with other courts that have made determinations on the issue, that Gender Identity Disorder (GID) is a serious medical need and that inmates with GID must receive some form of treatment. Id., at 309-10. In their memorandum, Defendants now candidly acknowledge that Plaintiff is entitled to this treatment. They now state that "the [Department of Correctional Services] policy does not prevent an inmate who first manifests a Gender Dysphoria condition or Gender Identity

Disorder while incarcerated from being evaluated or provided with potential treatment modalities."

*(Defendants' Memorandum at 11) (emphasis added). Defendants have also submitted the affidavit of Lester Wright, Deputy [*3] Commissioner/Chief Medical Officer for the New York State Department of Correctional Services, which states that "in the normal course of events, if an inmate for the first time while incarcerated claims to have [Gender Identity Disorder], a referral should be made to the appropriate clinician with [the Office of Mental Health] for evaluation." See Affidavit of Lester Wright, M.D., dated July 24, 2003 P 8. He goes on to state that "Gender Identity Disorder is described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders," and that therefore "a referral to an OMH clinician is the appropriate course of action." Id. Defendants thus for the first time before this Court admit that Plaintiff is entitled to medical treatment for his GID.*

[For complete opinion, see Brooks v. Berg, 270 F. Supp.3d 302 (N.D.N.Y. 2003) Also see "Trans Inmate Entitled to Care" from the Fall 2003 issue. Ed.]

The decision became news in most every paper in the nation, was mentioned by Jay Leno during one of his monologues and resulted in requests by various networks to interview me, including Fox News, ABC's 20/20 and, of course, the Jerry Springer Show.

The defendants are now appealing the decision and have filed another motion with Judge Kahn, asking him to vacate his August 2003 decision. The odds appear to be on my side, and I remain cautiously optimistic.

I am litigating this case *pro se*, partly out of necessity and partly because I don't have a lot of faith in attorneys. I think I will do a better job.

Needs reference material

However, there are a couple of things where I could use some help.

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For one, would like to obtain a copy of the Canadian Human Rights tribunal ruling that Canada's correctional service must provide sex reassignment surgery to transsexuals in prison in appropriate cases, and then to house them in the facility of their new gender. If I could get a copy of the opinions, the case citations or stories in the news about them, I would be very grateful.

I would also like to know if there is any instance of that happening in the US, either through litigation or by whatever means.

M.K. Condit #53124

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Thank you for the Fall 2003 issue of the *GIC TIP Journal*. It was powerful.

I noticed that one of the articles was from Miss Kitty. I wanted to ask you if she is at the FCF unit of the Colorado DOC.

The reason I ask is that I wanted to get in touch with her and give her a heads up about filing a civil action in the US 10th Circuit Court. I believe this court is tainted, and she won't get a fair hearing.

The other thing I wanted to do is to let people know about my prison ministry mission, which I run with the help of volunteers on the outside, some TS and TG and one with legal and law enforcement training. The address is:

The Royal Pilgrim Ministry Mission
PO Box 4067
Visalia, CA 93278-4067

When I get my copy of the *TIP Journal*, I send it to my staff out in California to make copies to send out to our mailing list, which has grown to about 80 inmates from all over the US and Canada.

We have also been doing this with the survey you have been circulating. Gianna has probably noticed quite few coming in from the ministry's address.

My ministry address is also another sure way that Kitty and other people can get in contact with me, when they need to.

Thank you and God bless. Mary Kay

Myqy (Sounds like Miki)

I was introduced to this magazine/newsletter through a friend of mine here in the Texas Department of Criminal justice (TDCJ). "She" didn't have the mailing address anymore, and I couldn't find it in the Winter 2002 issue that I had either. Tina Bird ended up sending it to me, allowing me to finally get in touch with you. Thank God for caring people like her!

Like most transgendered people in prison, I have suffered my share of abuse. For example, the last one who attacked me gave me two black eyes, a broken nose, a split lip, a lacerated knee and a bruised tailbone that hurt for over a month. It did not help that it happened just 5 days before my 33rd birthday.

To add insult to injury, the prison administrators moved me from minimum to maximum security, put me on single cell restriction (no cell mates), took away 90 days of good time and gave me 45 days of commissary, recreation and cell restrictions. My assailant got 20 days commissary restrictions, period!

It just goes to show that, here in the TDCJ, the "girls" are not well received.

About 90% of the girls in here - at least the ones with any significant breast development - are in segregation. I expect that, before too long, I will be there too.

I have made every attempt to avoid trouble, but when you have red hair, rather prominent breasts (actually due to a medical condition called gynecomastia and not hormones) and a naturally high voice, it is virtually impossible.

I have attempted suicide four times since I arrived here in August 2002, not to mention the compulsive self-mutilation that has been going on in between times. At one time, I counted 167 of these self-inflicted wounds just on my arms, which the examining physician passed off as "minor scratches".

I have just about resigned myself to dying in here, even though I am only facing a four year sentence. I think the guards have it in for me, and they are looking for ways to add to my sentence.

Trying to buck the system is what got me put into prison in the first place. I crossed paths with a homophobic police

officer in an Austin hospital and got into a knife fight with him, after he called me an obscene name.

At the trial, when I explained the situation to the judge, she was sympathetic, but she still gave me 4 years for bringing a knife into a hospital. Maybe I shouldn't complain. The prosecutor wanted to give me 65 years!

As far as my family goes, none of them are willing to write to me, so it seems that I will have to rely on my sisters in here, if I am going to have any hope at all of getting through this, which I don't.

Once, for about three months, I thought I had found someone. He seemed like a really nice man. He gave me just about everything I could ask for, but the most lasting thing he gave me was HIV!

How could any human being do that to anyone, especially to someone they supposedly loved?

He was not the only one who knew about his condition, and still no one spoke up.

That was back in March.

Evidently, the strain of HIV he gave is a real vicious monster, because tomorrow morning I am doing a video conference with the Chronic Illness Department Head. That only means one thing, it has probably progressed to full blown AIDS.

I have pretty much made up my mind to do without the meds and just let Nature take its course. I have finally had enough.

Debbie

Beloved sisters and friends at *GIC TIP*:

I am a 57 year old MTF transsexual condemned (in 1974) to spend the rest of my life in an overcrowded prison filled with men far more dysfunctional than I.

Every day is a challenge, a never-ending struggle for survival. Without hope to hold on to, there are times when I wonder if it is worth the struggle.

I am successful only because I got wise many years ago and shoved my flamboyant femininity back into that deep, dark closet where all "faggots" and "fairies" supposedly belong.

(Continued on page 8)

(Continued from page 7) **Debbie**

The story of my struggles began long before I was incarcerated. Truly, it has been a fight for survival since the day I was born.

My story is a little different from most transsexuals. Actually, I was born inter-sexed. The genes and chromosomes that normally determine your sex were all mixed up in me, so I ended up with sex characteristics of both genders. For example, I began to grow breasts naturally at the age of 12, and I did not have any facial hair to speak of until I turned 33.

I never knew who my real parents were. They left me in a trash dumpster in Muskogee, Oklahoma, when I was 5 months old. I nearly died from starvation before someone finally found me. I was made a ward of the state and placed in foster care.

My earliest memories, going back to when I was around three or four, were of being female, and that was how my foster family at that time were raising me.

However, after I was removed from that home, it was decided, against my wishes, that I was not a girl, but a boy.

At age five, I was adopted by a childless couple, who turned out to be extremely abusive.

I was also misunderstood and abused by my classmates at school.

Eventually, I learned to fight back, seriously injuring one of my assailants while I was yet in the fourth grade.

Several years later, while still an adolescent, I got into a relationship with a world famous professional wrestler, who taught me more about self-defense. Since then, I sincerely believe it has saved my life several times.

When I was thirteen, four boys tried to force me to perform oral sex. Again I fought back, putting two in the hospital.

For this, I was expelled from school and also kicked out of my home by my adoptive parents.

Ever since then, I have been searching to find my place in life, and I am here to tell you, my friends, that it most certainly is not to be found behind these prison walls for the rest of my miserable life.

S. Rachael Leigh

I am yet another pre-op MTF transsexual in the Colorado DOC who is being denied proper medical care.

Instead of the care I should be getting, I am subjected to constant discrimination and harassment. I have also been denied program opportunities afforded to most other prisoners that could help in my rehabilitation.

I was examined by the Colorado DOC's specialist at the State Hospital in Pueblo, who said that I was a transsexual and recommended hormone therapy. Rather than follow his recommendations, they subsequently convened their own committee, whose sole purpose was apparently to find a pretext to deny it, which they did. They said it is their policy that hormones should not be initiated in prison.

I cited *Kosilek v. Malony*, 221 F.Supp.2d 156 (D. Mass. 2002) as well as many other decisions that contravene the Colorado DOC's current policy.

[Actually, the *Brooks v. Berg*, 270 F. Supp.3d 302 (N.D.N.Y. 2003) is more recent and perhaps more relevant. In his ruling, Judge Kahn roundly rejects a prison policy of refusing to provide treatment to persons whose GID was not diagnosed prior to incarceration.

"Prison officials cannot deny transsexual inmates all medical treatment simply by referring to a prison policy which makes a seemingly arbitrary distinction between inmates who were and were not diagnosed with GID prior to incarceration," Kahn observed, pointing out that prison officials would hardly contend that they could deny treatment for diabetes, schizophrenia, or any other "serious medical need" simply because it had not been diagnosed before the inmate entered the prison system.

See lead story in Fall 2003 GIC TIP Journal, as well as the indented, italicized text on page 6 of this issue, under the heading "NY Success Story." Ed.]

In addition to denial of treatment, they gave my a "P" rating of 4, which is a kind of psychiatric rating that carries a negative connotation, disqualifies me from progression to a lower security facility and prevents my consideration for many programs that would benefit me and aid in my rehabilitation.

The DOC wants it both ways. They want to label me as abnormal, but they do not want to provide me treatment for my disorder. When I insist, I am often subject to reprisals from the staff, some subtle and some not so subtle.

The "counseling" I do receive is a sham and only intended to protect them from liability for civil damages, not to provide effective treatment. Since transsexuals represent such a small and marginalized percentage of the population, I guess they figure they can get away with it

Costs and safety are their two favorite excuses.

[The costs associated with GID counseling and hormone therapy for transsexuals are relatively minor. In and of itself, cost should not be a valid defense for withholding treatment for any "serious medical need", up to and including some organ transplants." Ed.]

If safety is their concern, they need to look to their own people first. The prison staff is where most of my threats come from.

Recently, as I was leaving the chow hall, a guard decided to make an example of me in front of the other inmates. He screamed at me to stop, made me remove my glasses and had me close my eyes so he could he could see if was wearing eyeliner. The whole time he was standing about 15 inches away from my face and screaming so loud he could be heard over 100 yards away. The only reason he was doing this was to intimidate me and the other "queens".

This was not an isolated incident. This kind of thing goes on almost everyday.

Pen Pals, etc.

Jessie Shafer

I am seriously considering discontinuing the Pen Pal section, because so many of you are forbidden from corresponding with other inmates. As a result of these policies, some of the institutions are now starting to refuse to deliver the newsletter.

In a couple of instances, Florida and Washington, the ban extends to printing any prisoner contact information, other than a name, anywhere in the newsletter at all, such as I often include in the headings of articles.

I have spoken to the Florida and Washington DOC's and have agreed to remove that information from any newsletters sent to those institutions. They, in turn, have agreed resume their delivery. Let's hope that will be the end of the problem.

**Happy Third Birthday
GIC TIP Journal**