

statute “tries to cram a fourth branch of government into our three-branch system,” and he called the result “constitutionally dubious.”

During the question period, Sen. Arlen Specter (R-Pa.) told Starr: “I’m a little surprised at the forcefulness of your denunciation of the independent counsel statute: ‘structurally unsound,’ ‘constitutionally dubious,’ ‘overstating the degree of institutional independence,’ ‘disingenuous.’ ”

Specter, a proponent of modifying and retaining the law, then said that he wanted to “ask you about your status to continue as independent counsel, in light of your condemnatorial language of the statute you operate under.” (In other words: Why are you still here?)

Starr responded: “Well, Congress frequently passes laws,

the wisdom of which individuals may question. But their duty as law officers is to live up to their legal obligations.” After babbling on for a while, Starr added: “But it is the law. And, Senator, so long as it is the law, we are dutybound as law officers to faithfully enforce it and as cheerfully as we can. That doesn’t mean we like it.”

“Well, if it’s as bad as you say it is, maybe we ought to abrogate it now,” Specter retorted. Starr suggested that that would be “unwise.”

One reason that Starr undoubtedly believes it “unwise” to abrogate the law right now, has to do with his answer to Specter’s other question—which was whether Starr believes he has the jurisdiction to criminally prosecute President Clinton after the President leaves office. Starr averred that he does.

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# Judge rules that Texas prisons are unconstitutionally cruel

by Marianna Wertz

While the British-American-Commonwealth crowd in the United States fulminates about human rights violations in China’s prisons, a Texas judge ruled recently that the entire Texas prison system is still—after more than 27 years under Federal jurisdiction—in violation of the U.S. Constitution’s prohibition against the use of “cruel and unusual punishment.” On March 1, U.S. District Judge William Wayne Justice issued a judgment in the continuing litigation over conditions in the Texas prison system, denying a defense motion to allow Texas to re-take jurisdiction over its prisons, jurisdiction which was removed by Judge Justice in 1972 in the civil action *David Ruiz, et al., Plaintiffs, v. Gary Johnson, Director, Texas Criminal Justice System—Institutional Division (TDCJ-ID), et al.*

Judge Justice is Senior United States District Judge, Southern District of Texas, Houston Division. He found that the state’s administrative segregation units—modern-day dungeons where inmates are deprived of virtually all human contact—are in violation of the Constitutional protections against cruel and unusual punishment. These “supermax” prisons are springing up all over the country. For example, Virginia’s Gov. James Gilmore (R) recently announced the opening of the Commonwealth’s second “state-of-the-art” supermax prison, Wallens Ridge, in southwest Virginia’s Wise County; this, he said, will mean 400 jobs and a \$13.5 million payroll for the depressed county, formerly a coal-mining center.

Judge Justice also found that the Texas prison system as

a whole continues to allow inmates to be raped, beaten, owned, and sold by more powerful ones. Finally, he found a prevalence of use of unnecessary and excessive force and intimidation of inmates by correctional officers in their day-to-day interaction.

The evidence presented by plaintiffs, on which Judge Justice’s ruling was based, included expert testimony on medical and use of force cases. Prison cardiac cases “viewed collectively, identify a consistent problem in multiple medical encounters of failure to adequately evaluate significant and serious disease processes,” the judge said. Expert witness Dr. Robertson concluded, “This review of deaths presents a troubling pattern of systemic problems in the health care delivery to inmates in the Texas Department of Criminal Justice. Of a total of 59 charts reviewed, 20 (34%) were found to have received poor to very poor medical care. . . . Of particular concern was the finding that 16 of the deaths (27%) could be deemed as ‘preventable.’ ”

Expert witness Dr. Breed found in Texas more use of excessive force, in quantity and degree, than in any other state system he has seen. Breed testified that, in forming his opinions about use of force in TDCJ, he found a high proportion of excessive or unnecessary force among the hundreds of use of force instances he reviewed.

On April 8, Republican Presidential candidate and Texas Gov. George W. Bush said that China should “adopt more humanitarian measures.” Maybe Bush ought to be reminded of his own state’s prisons’ need for such measures.

Judge Justice's ruling is a call to action to stop such human rights violations in the United States. Texas prisons may be among the most brutal, but they are not unique. We reprint excerpts here from Judge Justice's March 1 Memorandum Opinion, as published in *The Texas Observer* on April 2. Subheads have been added:

### **Violation of constitutional rights**

Couched in two motions to terminate its jurisdiction in this civil action, this court has before it, once again, questions of the Texas prison system's constitutionality. . . . [T]he court has . . . found the Texas prison system continues to violate inmates' constitutional rights.

It is determined that TDCJ's medical and psychiatric care systems, while at times plagued by negligent and inadequate treatment of members of the plaintiff class, are not so deliberately indifferent to inmates' physical and mental health needs as to be unconstitutional. The extreme deprivations and repressive conditions of confinement of Texas' administrative segregation units, however, have been found to violate the Constitution of the United States' prohibition against cruel and unusual punishment, both as to the plaintiff class generally and to the subclass of mentally ill inmates housed in such confinement. Furthermore, members of the plaintiff class still live under conditions allowing a substantial risk of physical and sexual abuse from other inmates, as well as malicious and sadistic use of force by correctional officers. Despite its institutional awareness of these conditions, TDCJ has failed to take reasonable measures to protect vulnerable inmates from other, predatory prisoners and overzealous, physically aggressive state employees.

### **Mentally ill: despair and desperation**

It is found by a preponderance of the evidence that inmates in administrative segregation, particularly those in Levels II and III, are deprived of even the most basic psychological needs. More than mere deprivation, however, these inmates suffer actual psychological harm from their almost total deprivation of human contact, mental stimulus, personal property, and human dignity. The scene revealed by the plaintiffs' experts, one largely unrefuted by defendants' emphasis on policies and procedures, is one of a frenzied and frantic state of human despair and desperation. Furthermore, plaintiffs submitted credible evidence of a pattern in TDCJ of housing mentally ill inmates in administrative segregation—inmates who, to be treated, would have to be removed to inpatient care. These inmates, obviously in need of medical help, are instead inappropriately managed merely as miscreants. It is determined that TDCJ officials are well aware of both these conditions and these inmates' ensuing pain and suffering. . . . TDCJ has knowingly turned its back on this most needy segment of its population.

It is deplorable and outrageous that this state's prisons appear to have become a repository for a great number of its

mentally ill citizens. Persons who, with psychiatric care, could fit well into society, are instead locked away, to become wards of the state's penal system. Then, in a tragically ironic twist, they may be confined in conditions that nurture, rather than abate, their psychoses. The United States Constitution cannot abide such a perverse and unconscionable system of punishment. As to mentally ill inmates in TDCJ-ID, the severe and psychologically harmful deprivations of its administrative segregation units are, by our evolving and maturing society's standards of humanity and decency, found to be cruel and unusual punishment.

### **Rapes, beatings, and servitude**

The evidence before this court revealed a prison underworld in which rapes, beatings, and servitude are the currency of power. Inmates who refuse to join race-based gangs may be physically or sexually assaulted. To preserve their physical safety, some vulnerable inmates simply subject [themselves] to being bought and sold among groups of prison predators, providing their oppressors with commissary goods, domestic services, or sexual favors. The lucky are those who are allowed to pay money for their protection. Other abused inmates find that violating prison rules, so that they may be locked away in single cells in administrative segregation, is a rational means of self-protection, despite the loss of good time that comes with their "punishment." To expect such a world to rehabilitate wrong-doers is absurd. To allow such a world to exist is unconstitutional.

### **Conclusion**

It has been over three decades since the matter of Texas prisons' constitutionality first came before this court. In light of the egregiousness of the violations of the Constitution found in 1980, the Texas Department of Criminal Justice, through the sometimes strained partnership with the representatives of the inmate plaintiffs in this civil action, has dramatically overhauled its prison system. The imposition of extensive policies and the formation of a bureaucracy do not, however, immunize the system from constitutional challenge. The measure of a prison system's constitutionality, as always, is not its production of policies, but its treatment of inmates.

Texas prison inmates continue to live in fear—a fear that is incomprehensible to most of the state's free world citizens. More vulnerable inmates are raped, beaten, owned, and sold by more powerful ones. Despite their pleas to prison officials, they are often refused protection. Instead, they pay for protection, in money, services, or sex. Correctional officers continue to rely on the physical control of excessive force to enforce order. Those inmates locked away in administrative segregation, especially those with mental illnesses, are subjected to extreme deprivations and daily psychological harm. Such practices and conditions cannot stand in our society, under our Constitution.