Silence Is Brutal

Texas “solves” its prison problems by restricting contact with the media

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In late March, a jailer at an Arlington, Texas, prison confessed that he helped another jailer rape a female inmate the previous evening. Israel Mouton, a prison employee since 2002, told police that he watched his colleague commit the assault from the jail control room. From there, he could alert his associate if anyone approached. According to both Mouton and the inmate, who was questioned later by investigators, Mouton afterward told the victim via the cell's intercom, “Don’t say nothing. You don’t know nothing.”

A few hours after the inmate confirmed the detailed confession, Mouton and his colleague were arrested. But unlike the inmate whom they had violated, both jailers were able to make bail. In fact, they were released the same evening. And despite the fact that one perpetrator voluntarily confessed to a second-degree felony, neither man was immediately fired; instead, they were placed on paid administrative leave.

The next day, news services picked up the story, which ran in every major newspaper in Texas. Coincidentally, the Texas Board of Criminal Justice (TBCJ) was set to meet in Austin a few days later to vote on several proposed prison policies. Given that the corrections system had just been hit with a rather disturbing scandal, one might have expected the TBCJ to adopt some new regulation ensuring inmates a reliable means of reporting staff abuse to a third party. But to think that, one would have to be ignorant about Texas in general, its cultural climate, and the increasingly disturbing manner in which the nation’s largest state prison system is being administered.

CENSORING THE MAIL

During a two-day meeting at Austin’s Hyatt Regency, rather than pass any new reporting policies to help prevent coverups, the TBCJ instead did the opposite. On April 2, members of Criminal Justice Executive Director Gary Johnson pointed out that his office strives for “a more positive and safer environment for both staff and offenders,” adding that “the elimination of sexually explicit material helps us move in that direction.”

Because it dealt with such reader-friendly issues as sexuality, the new “porn ban” received nearly all the media coverage. An Associated Press article devoted all but two sentences to the “Playboy Policy.” The other two sentences described, in passing, Board Policy 03.91:

“Outgoing special or media correspondence will be opened in cases where there have been known problems (‘special correspondence’ is defined as any official of any federal, state or local law enforcement agency, including offices of inspector general). The intent is to prohibit offenders from sending correspondence that seeks to threaten, harass or intimidate in any way (including anthrax hoaxes).”

In other words, Texas prison officials are now permitted to read mail written by inmates to journalists, but only “in cases where there have been known problems.” Unfortunately, the term “known problems” isn’t defined. This is particularly interesting, since the board went to great lengths in defining the female breast in the porn ban policy. But the criteria by which media correspondence may be read by officials are left to the imagination of prison staff. “Known problems” might very well include instances in which prisoners have spoken to the press about prison conditions or other issues of legitimate public interest.

In fact, this has already proven to be the case. In one of the few articles that actually focused on the board’s new outgoing mail censorship provision, Houston Chronicle staffer Polly Ross Hughes described the case of William Bryan Sorens, a convicted rapist whose sentence was extended by one year after it was discovered he had sold Penthouse an article detailing his prison experiences. (Texas prisoners must get permission before accepting any payment for work they undertake while incarcerated.) While researching her article, Hughes asked TDCJ spokeswoman Michelle Lyons about this incident. Lyons confirmed that Sorens’ mail would most likely be tagged for automatic inspection under the new policy.

But aside from deterring the extremely small percentage of Texas inmates who run freelance writing businesses from their cells, the other major purpose of the policy, according to Lyons, is to protect media personnel from inmate threats and harassment. And how do journalists feel about being thus protected? Not surprisingly, they’re almost unanimously against it.

All Texas newspaper staffers I contacted regarding the case said they would prefer that inmate correspondence to journalists be privileged, in the same way that legal correspondence is (or at least used to be). Another provision passed by the board during its April meeting dictates that “incoming special, legal
and media correspondence will be searched for contraband and only in the presence of the offender.” This includes letters from lawyers.

Speaking on condition of anonymity, one staffer with a major Texas newspaper pointed out that, among journalists who cover the prison system, mail is used as something of a barometer. Although reporters rarely reply to individual inmate letters or even take their assertions at face value, a large volume of mail detailing a specific problem often serves as the only indication that something might be awry in the state’s prisons. After all, Texas inmates are among the most elaborately muffled prisoners in the US. In nearly every other state, inmates can make phone calls whenever they please at their own expense. Texas inmates get only one five-minute call every 60 days. And Policy 03.91 comes just a few months after another new policy that prevents journalists from speaking to inmates unless they’re working on a specific deadline. This leaves writers working on books without any in-person access to prisoners.

LACK OF CONCERN

The “no deadline, no meetings” policy is part of the reason why few of the journalists I contacted were surprised by the passage of 03.91. Among those who report on the state’s prisons, it’s common knowledge that institutional procedure has undergone major changes in the last few years. As older corrections officials retire, they’re replaced by younger people with very different views on the rights of prisoners and the media. The overriding philosophy of the new breed is that the best way to deal with a crack in the wall is to apply a fresh coat of paint.

Indeed, 03.91 and similar new policies would hardly seem as threatening were it not for the fact that the Texas prison system is notorious for its cracks. Nationwide, the state is perhaps most famous for the often haphazard manner in which people are tried and executed. Perhaps the most damming account in recent years involved a man found guilty of murder and sentenced to death during a trial in which his court-appointed attorney fell asleep several times.

Much of the criticism has come from progressive watchdog organizations. But some of the most serious warnings have come from the federal government itself. In 1998, the US House of Representatives asked the General Accounting Office (GAO) for a report on staff-on-inmate sexual misconduct in four of the nation’s female prison jurisdictions, including Texas. When the investigation ended in 1999, the result document didn’t do much to help the state’s already-tarnished image.

If Texas prison officials really strived for “a more positive and safer environment for both staff and offenders,” as asserted by Johnson, they would compile data on the subject to inform recommendations for further action. But this hasn’t happened. In fact, while conducting research for its 1999 report, the GAO found that Texas, like the other three jurisdictions investigated, didn’t have “readily available, comprehensive data or reports on the number, nature, and outcomes of staff-on-inmate sexual misconduct.”

Additionally, if Texas prison officials were actually concerned with preventing inmate abuse, they might consider cracking down harder on prison guards who have “known problems” with sexual misconduct. But that hasn’t happened, either. Many staff members who sexually abused inmates during the four-year GAO survey were simply suspended. In other words, they were forced to take a leave of absence, but returned to work in the same capacity at a later date — and often supervised the same inmates they abused in the first place.

Today, the Texas Department of Criminal Justice supervises about 150,000 prisoners. Of these, nearly half have been incarcerated for non-violent offenses ranging from possession of marijuana to writing bad checks. Their safety and well being depends upon the good will and competence of prison guards. But some of them have proven to be criminals themselves. And those who run the Texas prison system, although aware of such facts, have done nearly everything possible to ensure that these prisoners are unable to protect themselves or freely communicate with the world beyond their prison walls.

SUPREME REJECT PELTIER APPEAL

WASHINGTON, DC — The US Supreme Court has rejected an appeal seeking parole for American Indian activist Leonard Peltier, convicted of the 1975 killings of two FBI agents. Without comment, the justices let stand an appeals court ruling denying his bid for parole hearing and release.

Peltier is serving two consecutive life sentences for slayings agents on the Sioux’s Pine Ridge Indian Reservation in South Dakota. Four people were charged: two were acquitted, and the government dropped its case against a third.

Peltier has brought several appeals challenging his conviction and sentence. The most recent was over a US Parole Commission decision that he is ineligible until December 31, 2008, because he allegedly ambushed the agents. A US appeals court upheld that decision last year. Peltier’s lawyers appealed, arguing that the court “erroneously” affirmed the commission’s decision and charging government misconduct during the original trial, including withholding evidence and coercing witnesses to testify falsely.

Because of the commission’s decision, Peltier may serve at least double the sentence he would have received under federal guidelines. His lawyers say he should have been eligible for parole after 16 years in prison.

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