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Prison Right Abused

Inmates Clog Courts With 'Frivolous' Suits

By DAVID LOWERY

A State Penitentiary inmate recently filed a lawsuit seeking private sex therapy for a groin injury he said he suffered in prison.

The inmate said he was injured during a prison basketball game and in his suit in U.S. District Court here demanded a transfer to the Medical College of Virginia for special treatment by female doctors and nurses only.

It was the 30th lawsuit the prisoner had filed in federal district court. And it was one too many.

Federal Judge Albert V. Bryan denied the suit and stripped the inmate of the privilege afforded every Virginia prisoner, the right to file a lawsuit without paying a fee.

PRIVILEGE 'ABUSED'

That privilege, which the judge said the inmate had abused, results in about 900 prisoner suits a year in the U.S. District Court for the Eastern District alone. That's about 25 or 30 per cent of all the civil cases the court receives.

The inmate's transfer request dramatizes what state and federal officials say is the problem inherent in that privilege: The vast majority of the hundreds of inmate suits are frivolous complaints that do not belong in federal court.

Some prisoners in state institutions are renowned as "writ writers," prisoners who file numerous actions on their own behalf and for other prisoners.

"We have some very bright jailhouse lawyers," said Patrick O'Hare, an assistant attorney general whose three-lawyer office defends state officials in court actions. "Many just do it for harassment."

No one knows how much the inmate litigation costs the state each year, but it is considerable.

The paper and legal forms are free to inmates and no filing fee is charged by the courts. In addition, assistant attorneys general have to defend state officials in the complaints and the state also pays private lawyers to represent the inmates who are suing the state through its officers.

ATTORNEYS HIRED

Before the flood of prisoner suits began in the late 1960s, Virginia hired private attorneys to defend state officials named in the litigation. If the state still did that, one assistant attorney general estimated it would cost more than $1,000 per case, or about $1 million a year.

But the real rub for lawyers and judges is not the expense but the feeling that 90 per cent of those suits are trivial complaints without basis in law.

"I've read maybe 120 or 130 petitions or complaints (in two months) and I'd say 80 or 90 per cent are frivolous," said Joseph Vasapoli, clerk in U.S. District Court here.

Vasapoli, one of a handful of federal court clerks in the country who review only prisoner suits, said most of the gripes belong within the prison grievance procedure, not court.

The Department of Corrections has a grievance procedure that theoretically reaches

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from the complaining inmate to the department director if necessary. And last spring the department created an ombudsman office to deal with inmate gripes that have not been satisfied by the grievance system.

Despite the agreement that most inmate cases are insignificant, state and federal lawyers defend the practice of allowing inmates liberal access to the courts.

"You should give a prisoner every advantage," Vasapoli said. "He's in a very vulnerable position. He's at the mercy of the prison system; he has no money, no attorney."

'CRUEL AND UNUSUAL'

Prisoners usually contend in the suits that their confinement violates constitutional guarantees against cruel and unusual punishment. But inmates also file an equal number of habeas corpus petitions charging that they are held illegally, that they are not guilty of any crime.

Several hundred inmates also appeal their convictions in state courts each year.

Few of the constitutional and habeas corpus suits ever reach trial. But the constitutional cases often scratch sensitive official nerves and some have been pursued successfully, although they are but a trickle in the stream of inmate litigation.

"It's one thing to say the Virginia penal system is bad," commented Vasapoli, "and another to say it constitutes cruel and unusual punishment.

'ABOUT 1 IN 100'

"As far as any of these cases actually getting into the courtroom, it's about one in 100."

About 60 per cent of the suits now inundating Vasapoli's office are from the State Penitentiary and the new maximum security prison in Mecklenburg County, which has much stricter regulations than other penal institutions.

Elizabeth Adams, prison investigator for the attorney general's office, said the Mecklenburg cases concern the procedures there.

"Very few specific allegations have been filed," she said. "It's mainly 'Why did I come here? Why are things different here?'"

Despite the proliferation of "nuisance" suits, there is an occasional valid petition, a legitimate complaint. Landman vs. Royster was one.

FORCED OVERHAUL

Robert Jewell Landman, now 56, was a convicted armed robber whose persistent complaints about the Virginia prisons — in the form of litigation — gained him years of solitary confinement but eventually forced an overhaul of Virginia's system of inmate discipline.

Landman was the leading plaintiff in an American Civil Liberties Union lawsuit against Virginia's prison officials in 1968 (Royster was M.L. Royster, then superintendent at the State Farm).

In his decision on the case in 1971, Judge Robert R. Merhige Jr. wrote: "The court finds at least certain of the (prison) practices...were of such shocking nature that no reasonable man could have believed they were constitutional."

LIST OF ABUSES

The list of abuses detailed in the judge's court order reads like tales from a chamber of horrors. Inmates were given only bread and water for months at a time; taped, chained or handcuffed to cell bars for punishment; given months of solitary confinement for infractions as minor as pointing at a guard; and forced to sleep naked on concrete floors in hot, roach-infested cells.

The resulting federal court order forced corrections officials to establish due process procedures before confining an inmate to solitary.

An Inmate Adjustment Committee was established to hear arguments on both sides of each discipline problem, and a Central Classification Board became the authority for changing a prisoner's security status.

The order also ended the torture of confining men in cells without clothes or bedding, chaining them to bars and similar abuses colored as fitting punishment.

OPENED DOORS

But the Landman case had another aspect. It opened wide the doors to the federal courts, and shortly after the Landman case made headlines, a tide of writs and petitions came rushing into federal court.

"Many cases now are filed in the Eastern District because of the access to Judge Merhige," said John W. MacIlroy, assistant attorney general in corrections. "It's a preference dating back to Landman."

Another assistant attorney general, Guy Horsley, said the classification system and the discipline procedure are directly attributable to the famous case.

"I think in the long run the Landman case had a positive effect," Horsley said.

Another suit in the Western District federal court in Abingdon may have an effect as dramatic as Landman if it goes in favor of the prisoners.

INMATE AT BLAND

Earl Wilkins, an inmate at the Bland Correctional Center, is the plaintiff and Gov. Mills E. Godwin and W.D. Blankenship, superintendent at Bland, are the defendants.

Wilkins has complained that the living conditions at Bland are "shocking" and that inmate life is dangerous because of the many stabbings and assaults there. The complaint lists numerous grievances from bad food and poor recreational facilities to improper medical care and an inadequate library.

Also, Wilkins asked the court to rule that the lack of state funding does not excuse the existence of unconstitutional conditions at Bland or elsewhere.

The case is still under consideration, but if Wilkins wins, it could mean drastic changes — and big expenses — for Virginia prisons.

But for every Landman or Wilkins case based on an intolerable reality, there are hundreds that are not.

'GRIEVANCE BOARD'

"They (inmates) are using the federal courts as a grievance board," Vasapoli complained. "And that's not what was intended."

The dilemma is obvious: the vast majority of suits are frivolous and cost the state hundreds of thousands of dollars; yet the courts must be available to all confined. As Landman proved, there have been constitutional violations in the past and may well be again.

The answer may be a program like the one Vasapoli represents. He receives all the prisoner complaints and weeds out the nuisance suits while sending the legitimate ones forward for action.

Investigator Adams has another answer: "The courts should force inmates to go through the prison grievance procedure first. Leave only those of constitutional dimensions to the courts."

FEE POSED

Another possibility that Vasapoli posed, based on a Missouri case, is to charge inmates a percentage of whatever funds they have to file a suit.

Horsley says such alternatives are being studied in an effort to relieve the burden on the state and the courts without infringing on the rights of the prisoners.

"The inmates are hurting themselves collectively," he said. "The more they file, the more the chance that the good case will be ignored."