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## The Invisible Punishment of Prisoners With Disabilities

**For inmates with disabilities who are routinely denied their mental or physical needs, incarceration can be a nightmarish fight for survival.**

Toshio Meronek

July 23, 201

As he has every year since taking office, President Obama will likely mark the July 26 anniversary of the Americans with Disabilities Act with a public statement supporting the act, while acknowledging that its aim of equality is far from realized. Last year, he said that “despite the gains we have made, independence and freedom from discrimination remain out of reach for too many individuals with disabilities.” Possibly no group of people understands this so deeply as prisoners.

### About the Author

#### Toshio Meronek

Toshio Meronek is an independent journalist who has covered disability, prisons, and LGBT/queer issues for The Advocate...

At the Santa Rita jail in Alameda County, California, 49-year-old Ricky Thomas was one of about 100 people with mental disabilities who was earlier this year housed in the psychiatric wing, known as Unit 9. Prisoners there wear special white and green uniforms—but that’s not all

that sets them apart. “We don’t get no programs, no school, no church, no outside,” Thomas said. “We come out of our cells for two hours a day, sometimes. It’s not every day we come out.”

Thomas began complaining about the jail’s conditions in 2011. He says that as a result of his complaints, a prison doctor took away his walker. With spine issues from a car crash and a diabetes-induced nerve disorder, not having a walker meant Thomas couldn’t travel the distance to get his daily insulin shot for two weeks, until the jail’s physical therapist re-prescribed the walker. Other men in Unit 9 are afraid to speak out, he said, fearing similar retaliation. “Every time you voice your opinion...you’ll be lying on the ground, by force.”

Thomas’s story is not unique. Five years have passed since the American Civil Liberties Union (ACLU) and others started working on a class action lawsuit to force the Los Angeles County Sheriff’s Department into compliance with the Americans with Disabilities Act. Last last year, a judge finally granted class-action status to the case; meanwhile, prisoners in jails across the county have continued to say that they have to crawl on the ground for lack of mobility devices. ACLU lawyer Jessica Price is frustrated by the County’s inaction. “Each person who has to crawl around on the floor is, to me, an emergency, and it’s just not being treated that way,” she says.

The emergency spans well beyond Louisiana and includes mistreatment of prisoners with different medical issues. In Alabama, HIV-positive prisoners, who wear white armbands identifying them as “infected,” live in a dorm where they can’t participate in substance abuse, work-release, or other programs. A federal judge deemed the practice discriminatory in December 2012. The only other state to segregate its HIV-positive inmates, South Carolina, announced on July 10 that it would stop its practice of segregating all HIV-positive prisoners; currently, even those with sentences as short as ninety days are sent to maximum-security facilities. Meanwhile, a pending lawsuit in Maryland targets the lack of assistive devices for deaf inmates, without which prisoners cannot effectively communicate with guards or use the phone to call people on the outside. Three more accessibility-related lawsuits involve corrections departments in Arizona, Montana and Pennsylvania.

For all these scattered lawsuits, there could easily be more. ACLU spokesperson David Fathi points out that the 1996 Prison Litigation Reform Act limited the scope of prisoner-initiated lawsuits, making it more difficult to challenge poor conditions. “Congress has quite deliberately made it harder for prisoners to enforce their rights in court,” he says. Given the scale of mass incarceration in this country, it would be impossible to sue all states into compliance—and court orders don’t consistently result in material changes. So prisoners with disabilities and their allies are beginning to push for alternatives. Rather than litigate a solution, one would be to simply incarcerate fewer disabled people. As states across the country seek to rein in spending on incarceration, healthcare for prisoners with disabilities is particularly costly. The Federal Bureau of Prisons initiated a “compassionate release” program for people experiencing terminal illnesses or incapacitation as early as 1984, and at least twenty-seven states offer some form of geriatric release, but these programs are rarely utilized because of narrow eligibility criteria and daunting restrictions. According to Human Rights Watch, the only ground the Federal Bureau accepts for compassionate release is a terminal illness with up to a year of life expectancy, and the bureau has to petition on a prisoner’s behalf; the prisoner can’t petition on their own. The Vera Institute

explains the reasons for so few geriatric releases include “political considerations and public opinion; narrow eligibility criteria; procedures that discourage inmates from applying for release; and complicated and lengthy referral and review processes.”

Of course, the biggest difference could be made by decriminalizing the poverty experienced by many (ordinances targeting panhandling and loitering disproportionately affect disabled people, for example), as well as decriminalizing certain drugs.

In the absence of such meaningful changes, prisoners with disabilities will continue to be subject to some of the prison system’s worse excesses, for example, punitive solitary confinement. At the Los Angeles County jail, Columbus Grigsby, a Vietnam veteran diagnosed with PTSD, suffered two strokes that paralyzed the left side of his body in 2008. Apparently noticing that his right leg worked fine, jail administrators planned to take away Grigsby’s wheelchair and put the 55-year-old in the general population, which scared him, since he would have a hard time defending himself against any attacks by non-disabled prisoners. But prison staff also had a reputation for violence. Grigsby had witnessed another disabled man experience painful retribution for refusing to allow his wheelchair to be taken away. “They dumped a guy out of his wheelchair [onto the ground], and the deputy dragged him to his cell,” he said.

Grigsby nonetheless decided to resist. For his refusal to give up the wheelchair, Grigsby says he was punished with weeks of solitary confinement and denied contact with the outside world, which aggravated his PTSD. Even though doctors had concluded that a wheelchair was medically necessary for him, the guards seemed convinced that men such as Grigsby might be faking their disabilities in order to be placed in a potentially less-violent, all-disabled dorm. Because prisoners with disabilities often cannot access the “good time” programs available to others—and which are known to reduce recidivism—ACLU attorney Jessica Price calls it “particularly egregious where people have disabilities as a result of their service to this country, who are now incarcerated and unable to access the [imprisoned veterans’] programs that are designed for them, just because of their disability.”

Of course, the healthcare needs of disabled prisoners are not seen as a problem for those private companies that thrive off lucrative government contracts to provide healthcare. Correctional Healthcare Companies, for example, provides services for more than 70,000 inmates in twenty-seven states. In 2009, California—whose prison healthcare crisis led to a Supreme Court ruling ordering it to reduce its prisoner population—spent \$845 million on privately contracted healthcare for prisoners. “This is the logic of the prison industrial complex,” says Eric A. Stanley, co-editor of the book *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. Stanley and other activists are wary of the idea that reforms will bring major change. “The system isn’t broken” for companies like Correctional Healthcare, or for the many other corporations that benefit from mass incarceration.

As long as men like Grigsby or Ricky Thomas remain behind bars, they will depend on nonprofit organizations like Disability Rights Advocates, one of the organizations suing the Alameda County Sheriff’s Department on behalf of the Santa Rita jail’s prisoners with disabilities, to fight for basic things like accessible toilets and a grievance process. Thomas has another idea for how

to improve conditions: holding abusive guards accountable. “In (Unit 9),” he said, “they need to install cameras to protect us. It’s supposed to be a safe haven for us, and it’s not.”