



Branch of state government from adopting policies and appropriating money to address grossly deficient prison conditions.

Any good prison administrator should not fear the involvement of the courts. From my experience over the last 30 years as a corrections official, I have come to understand the importance of court oversight. The courts have been especially crucial during recent years, as California's prison population has exploded, and prison officials have been faced with the daunting task of running outdated and severely overcrowded facilities. It would be impossible for the CDCR to accomplish its mandates without court oversight. Right now, virtually every aspect of California's prison system is under court oversight—this is true for medical care, mental healthcare, dental care, prison overcrowding, conditions for youth, due process for parolees, due process for parole lifer hearings, and the list goes on. The California Department of Corrections and Rehabilitation also has been subject to Federal Court intervention to address such issues as employee investigations, employee discipline, and the code of silence that was responsible for hiding the wrongdoings of some staff in their actions against prisoners. All of this court intervention has been necessary because of my state's unwillingness to provide the Department with the resources it requires. These lawsuits have helped the state make dramatic improvements to its deeply flawed prison system.

The PLRA allows states to move to terminate consent decrees after two years, and then prisoners have to fight their way back into court to prove ongoing constitutional violations. This process can cause major disruption to, or even halt, progress being made

through useful consent decrees. The *Thompson* Consent Decree, which deals with conditions of confinement for death row prisoners at San Quentin State Prison, is one example of a case where improvements were interrupted because of the prospective relief provision of the PLRA. More time was spent litigating about *whether* the decree was in effect than remedying the inadequate conditions on San Quentin's death row. And death row prisoners are a perfect example of where court intervention may be absolutely necessary. Some of the most difficult conversations I have had have been with the family

absurd to expect prisoners to file grievances within the prison system under *any* circumstances without *ever* making a mistake.

For those prison officials who fear the courts, the PLRA provides an incentive to make their grievance procedures more complicated than necessary. As a result, prisoners and prison officials are likely to get tied up in a game of “gotcha” rather than spending that time resolving a prisoner’s complaint.

In the California prison system, it normally takes up to a year to exhaust administrative remedies through every level of appeal. But because of the serious overcrowding and understaffing problems now faced by the California prison system, it frequently takes even longer than that. What is a prisoner to do if he is not receiving adequate medical treatment for a serious heart condition? Because of the PLRA, that prisoner may be forced to suffer for over a year while he completes the exceedingly complex, and forever delayed California CDCR grievance process before he can even file a lawsuit. I do not think that the PLRA was intended to cause such harm, but it undoubtedly has, and needs to be fixed.

There also exist countless reasons why prisoners may be unable to complete the grievances process. For instance, prisoners may be transferred from one institution to another or paroled before they are able to fulfill each level of appeal. Grievances may be rejected because the prisoner could not clearly articulate his complaint, or for a minor problem such as using handwriting that is too small. Many of these prisoners are

mentally ill or barely literate. I also know of a least one state that will screen out appeals if they are not signed in blue ink and yet another state that charges prisoners to file an appeal.

The physical injury requirement of the PLRA is unnecessary and harmful. Prisoners should not have to prove a physical injury in order to obtain compensatory damages if their constitutional rights have been violated. As a prison administrator, I do not want my budget spent on damages due to lawsuits because my staff fails to do their job.

The physical injury requirement also makes it extremely difficult for prisoners to find attorneys to represent them if they suffer a constitutional violation that is not physical in nature. Under the physical injury requirement, a prisoner who is forced to stand naked in

