

UNITED STATES

Government policies adopted after the terrorist attacks of September 11, 2001 profoundly altered the human rights landscape in 2002. Although United States citizens continued to enjoy a broad range of civil liberties and government leaders at all levels responded promptly and often effectively to the wave of anti-Arab and anti-Muslim hate crimes that immediately followed the attacks, 2002 was marked by significant steps backward on human rights. The arbitrary detention of non-citizens, secret deportation hearings for persons suspected of connections to terrorism, the authorization of military commissions to try non-citizen terrorists, the failure to abide by the Geneva Conventions in the treatment of detainees held by the United States in Cuba, and the military detention without charge or access to counsel of U.S. citizens designated as “enemy combatants,” were among the U.S. actions that indicated the failure of the Bush administration to respect human rights and humanitarian law in its anti-terrorist campaign. These measures primarily affected non-citizens, eroding their basic rights and due process protections. Longstanding human rights problems in the United States continued as well, including police abuse, application of the death penalty, overincarceration of low-level offenders, primarily African-Americans and the poor, and the treatment of prisoners.

ANTI-TERRORISM CAMPAIGN

On the anniversary of the September 11 attacks, President George W. Bush asserted, as he had throughout the year, that the United States campaign against al-Qaeda was a fight for freedom, the rule of law and human dignity. Nevertheless, many of the steps taken by the U.S government to protect the country against terrorism belied the very principles the president pledged to defend. Over the past year, the country witnessed a persistent erosion of basic rights, including the right to liberty. The executive branch sought to circumvent legal restraints imposed by international human rights law and the Geneva Conventions, as well as the U.S. Constitution. It sought to shield its conduct from public scrutiny, disdaining democratic principles of public transparency and accountability, and to deny the courts any meaningful role in protecting citizens and non-citizens alike from arbitrary detention.

The United States government detained three discrete groups of people in the

aftermath of September 11. At least twelve hundred non-citizens were detained in connection with the terrorist investigation in the United States. The second group consisted of almost six hundred captured combatants and other non-citizens held at a U.S. military base in Guantánamo Bay, Cuba. The third group consisted of two U.S. citizens, whom the Bush administration labeled as “enemy combatants,” who were being held by the U.S. military.

Post-September 11 Detainees

Some twelve hundred non-citizens, mostly from the Middle East or South Asia, some of whom were legal permanent residents, were arrested in connection with the investigation of the September 11 attacks, although the government has never disclosed the exact number. At least 752 were held on immigration charges; the others were held on criminal charges or as material witnesses. Four have been indicted for terrorism-related crimes.

Although immigration detention and proceedings have traditionally been public in the United States, the Department of Justice extended a cloak of secrecy over the “special interest” detainees—non-citizens held on immigration charges in connection with the September 11 investigation. It refused to reveal the names of those detainees as well as those held as material witnesses, their place of incarceration, and whether they had attorneys, arguing the release of such information might aid terrorists attempting to interfere with the post-September 11 investigation and threaten national security. The government also insisted that deportation proceedings against the “special interest” detainees be conducted in secret—as of June, over six-hundred proceedings had been held which were closed to the detainees’ family, friends, the press, and the public at large.

On August 2, a federal district court called secret arrests “odious to a democratic society,” and ordered the disclosure of the identities of the “special interest” detainees. The Department of Justice appealed this decision. On August 26, a federal appeals court ruled that deportation proceedings should be presumptively open to the public, pointing out that “democracy dies behind closed doors.” The court affirmed constitutional protection for “the people’s right to know that their government acts fairly, lawfully, and accurately in deportation proceedings.” In a subsequent case, a federal district court also asserted that secret proceedings violated the constitutional due process rights of non-citizens absent a particularized showing of the need for denying the public access on a case-by-case basis. On October 8, 2002, however, another federal appeals court reached the opposite conclusion, accepting the government’s argument that blanket secrecy protected national security interests. On September 28, 2002, the Inter-American Commission on Human Rights adopted precautionary measures, asking the United States to take urgent steps to protect the fundamental rights of detainees who had been ordered deported or granted voluntary departure but who had been kept in detention beyond the maximum time period allowed under existing law to effectuate their removal from the United States.

Human Rights Watch documented the mistreatment of non-citizens swept up in the September 11 investigation, including: custodial interrogations without

access to counsel, prolonged detention without charges, overriding judicial orders to release detainees on bond during immigration proceedings, and the unnecessarily restrictive conditions—including solitary confinement—under which some “special interest” detainees were confined. Some detainees were physically and verbally abused because of their national origin or religion.

By arresting persons of interest to the September 11 investigation on immigration charges, such as overstaying a visa, the Department of Justice was able to keep them incarcerated while it continued investigating and interrogating them about possible criminal activities. In so doing, the Department of Justice circumvented the greater safeguards in the criminal law—including the requirement of probable cause for arrest, the right to a court-appointed attorney and the right to be brought before a judge within forty-eight hours of arrest. The Department of Justice also instituted new immigration policies that weakened existing protections against arbitrary detention. For example, it issued a new rule allowing it to keep detainees in jail despite immigration judges’ orders that they be released on bond. Turning the presumption of innocence on its head, the Department of Justice kept “special-interest” detainees incarcerated on immigration charges until it decided they did not have links to or knowledge of terrorism. Most were ultimately removed from the United States.

Guantánamo Bay Detainees

As of this writing, the United States was holding approximately 625 prisoners in legal limbo at the United States naval base at Guantánamo Bay, Cuba. Most of the prisoners had been captured during the fighting in Afghanistan and were, according to the U.S. government, combatants from the Taliban armed forces or al-Qaeda. Originally held in makeshift open-air facilities with chain-link walls, the Guantánamo detainees were moved to a newly constructed prison on April 28. According to press reports, the detainees spend twenty-four hours a day in small single-person cells, except for two fifteen minute periods of solitary exercise a week, as well as interrogation sessions. Most of the cells had three walls of steel mesh, which allowed the detainees to talk with each other. About eighty of the prisoners, however, were held in special high security cells with steel walls that prevented them from communicating with other prisoners. Apart from the International Committee of the Red Cross—which does not report publicly on its findings or concerns—no independent groups or the press have been permitted to talk with detainees or go inside the prison. The Department of Defense has not responded to a request from Human Rights Watch for access to the facilities.

On February 7, the White House announced that the U.S. government would apply the “principles” of the Third Geneva Convention to captured members of the Taliban, but would not consider any of them to be prisoners-of-war (POWs) under that convention. It also stated the United States government considered the Geneva Conventions inapplicable to captured members of al-Qaeda, although it insisted it would treat them humanely. As Human Rights Watch pointed out in a detailed letter to Secretary of Defense Donald Rumsfeld, the United States position failed to comply with the requirements of the Geneva Conventions. The United States

should have granted POW status to all captured Taliban soldiers who were members of Afghanistan's armed forces and to members of an identifiable militia attached to these forces. Where there was doubt as to status, the United States should have convened a "competent tribunal" provided for by the Geneva Conventions to determine on a case-by-case basis which individuals did not qualify as POWs, and it should have treated them as POWs until such a tribunal determined otherwise.

In asserting that the Geneva Conventions did not apply to alleged members of al-Qaeda, the Bush administration undercut any legal basis for holding al-Qaeda suspects without trial. If al-Qaeda combatants are mere common criminals, as the administration contended, then under international human rights law they should have been charged with a criminal offense and prosecuted as well as given the opportunity to challenge the legality of their detention. The United States had not given clear indication that it planned to prosecute any of the Guantánamo detainees.

At the end of October, the U.S. released four detainees—three Afghans and one Pakistani—from Guantánamo amid reports that six more of the fifty-five or so remaining Pakistani detainees would also soon be repatriated. U.S. officials said they planned to continue freeing small groups of detainees after determining they have no intelligence value and do not pose a terrorist danger. Pakistani officials asserted that some of the Pakistani detainees may have been innocent bystanders swept up in mass arrests near the Afghan-Pakistan border.

As of this writing, although the armed conflict with the former Taliban government appeared to be nearing a conclusion, the United States had not announced any commitment to release all Taliban combatants upon the end of "active hostilities" as required by the Geneva Conventions. Instead, statements by administration officials suggested the possibility that at least some detainees might be held indefinitely without trial until such time as the "war against terrorism" had ended.

A federal judge ruled on July 30 that U.S. federal courts do not have jurisdiction to hear constitutional claims brought by aliens held by the United States outside U.S. sovereign territory. The case involved a habeas corpus petition filed on behalf of a group of Guantánamo detainees who challenged the constitutionality of their detention without charges and without access to counsel. As no other court had recognized jurisdiction over the detainees (the United States would be unlikely to honor any decision by a Cuban court if such court asserted jurisdiction), the detainees remained without a legal forum in which they could challenge their detention. Human Rights Watch joined an amicus brief filed in the detainees' appeal of the court's decision, arguing that the United States was bound by international law to respect the fundamental rights of all persons under its control, regardless of their physical location, and that detention outside of the United States alone should not be a bar to the jurisdiction of U.S. courts. The United States rejected the March 12 request of the Inter-American Commission on Human Rights that a lawful tribunal or court—as opposed to a political authority—determine the legal status of the Guantánamo Bay detainees.

Enemy Combatants

President Bush designated two U.S. citizens as "enemy combatants" and asserted the authority to hold them incommunicado, without charges, and without access to attorneys. One man, Yaser Esam Hamdi, was captured in Afghanistan, transferred to Guantánamo Bay, Cuba, and in April was transferred to a U.S. Navy brig in Norfolk, Virginia. The other man, Jose Padilla, a.k.a. Abdullah al-Mujahir, was arrested at the Chicago international airport and initially held as a material witness pursuant to a federal court order. In June, the president signed an order designating him as an enemy combatant. Padilla was removed from the criminal justice system, and incarcerated in a military base in South Carolina. U.S. officials claimed that Padilla had met with al-Qaeda representatives overseas, that he had engaged in conduct in preparation for acts of international terrorism, and that he had returned to the United States to advance plans to explode a radioactive "dirty bomb" in the United States.

In legal proceedings challenging the legality of Hamdi's detention, the U.S. government took the position that a citizen alleged to be an enemy combatant can be detained indefinitely without charges or access to counsel, and that judicial review of such detention should be limited to accepting the allegations provided in a two-page memorandum by a Department of Defense official—without providing Hamdi the opportunity to contest those facts in court or even to meet with his attorney. A federal district court ordered the government to produce additional evidence, arguing that to do otherwise would in effect "be abdicating any semblance of the most minimal level of judicial review," and that the court would be "acting as little more than a rubber stamp." The government appealed the court's decision. The government also sought a dismissal of a motion for habeas corpus brought by Padilla's attorney, asserting that the judiciary owes great deference to the executive branch in matters of national security and military affairs, and that there was no basis to "second-guess" the president's conclusion that Padilla was an enemy combatant. By early November, the court had not ruled on Padilla's habeas petition.

The government argued that the laws of war authorized its treatment of Hamdi and Padilla as enemy combatants. But, as Human Rights Watch pointed out in public statements, if suspects are apprehended outside areas of armed conflict and have no direct connection to the conflict, the laws of war are inapplicable. The use of the "enemy combatant" designation appeared to be intended to circumvent the U.S. criminal justice system and its safeguard of basic rights.

Military Commissions

On November 13, 2001, President Bush issued an order authorizing the military detention and trial of suspected terrorists who were not U.S. citizens. Under the express terms of the order, any foreign national designated by the president as a suspected terrorist, or as aiding terrorists, could be detained, tried, convicted, and even executed without a public trial, without adequate access to counsel, without the presumption of innocence—or even proof of guilt beyond reasonable doubt—and without the right of appeal. Human Rights Watch and other organizations and legal

experts strongly criticized the proposed special military commissions and urged the Department of Defense to develop rules and procedures for them that would honor the fair trial guarantees mandated by international human rights law.

In March, the Department of Defense issued rules for the military commissions. The rules contained important due process protections, including the requirement that commission proceedings be public, requiring proof beyond reasonable doubt for conviction, providing access to defense attorneys, and permitting the accused to see the evidence against him or her and to cross-examine witnesses. In other regards, the rules failed to meet core human rights requirements. The rules limit appellate review of the commissions to a specially created military panel appointed by the secretary of defense, thereby denying any person tried by the commissions the right to appellate review by an independent and impartial court outside the military chain of command. The rules also left intact the overbroad assertion of military jurisdiction contained in President Bush's order. Under the order, the president may unilaterally subject to trial by military commission any non-U.S. citizen suspected of being a terrorist, including non-combatants detained in the United States and accused of criminal offenses which would otherwise be subject to the jurisdiction of civilian courts. In a letter to the Department of Defense, Human Rights Watch insisted that such military jurisdiction over civilians would violate the right of the accused to a hearing by a competent, independent, and impartial tribunal.

The Bush administration stated that the rules were to go into effect immediately, without any period of public comment, citing the need to act quickly in the ongoing war against terrorism. As of September, no one had been prosecuted before the military commissions.

DEATH PENALTY

By early October, the United States had carried out fifty-six executions during 2002—over half of which took place in Texas. The number of men and women on death row was 3,718. Four death row inmates were exonerated in 2002, bringing to 102 the number of persons released from death row since 1973 because of evidence of their innocence. In September, a Mississippi death row inmate convicted of raping and murdering a three-year-old girl in 1995 had his sentence overturned and was granted a new trial after a judge reviewed new DNA evidence exonerating him of the crime.

The growing number of persons released from death row because of wrongful convictions contributed to the continued erosion of public confidence in the fairness and reliability of capital punishment. In April, a bi-partisan commission appointed by Governor George Ryan of Illinois released the findings of its two-year study of the death penalty system in Illinois. The commission recommended dozens of reforms to the state's criminal justice system that would reduce the scope and arbitrariness of capital punishment and lower the risk of wrongful convictions and executions. The commission was unanimous in concluding that no system, given human nature and frailties, could ever guarantee absolutely that no innocent

person would be sentenced to death. A majority of the commission favored abolishing capital punishment entirely. As of September, the moratorium on executions that Governor Ryan enacted in 2000 remained in effect, and the governor was considering commuting the sentences of all Illinois' death row inmates to life imprisonment. In May, Governor Paris Glendening imposed a moratorium on executions in Maryland pending the completion of a study on racial bias in application of the death penalty in Maryland. Eleven of the seventeen death row defendants in Maryland were African-American, and all but one were convicted of murdering white victims, even though the vast majority of murder victims in Maryland are African-American.

In June, the Supreme Court issued a landmark decision in *Atkins v. Virginia*, holding that the execution of people with mental retardation violated the Eighth Amendment's ban on cruel and unusual punishment. An estimated 5 percent of death row inmates were believed to be mentally retarded. At the time of the decision, eighteen of the thirty-eight states with the death penalty and the federal government barred such executions, twenty states permitted them, and twelve states banned the death penalty entirely. The court pointed to state legislation as well as public opinion polls to support its conclusions that a national consensus existed that executing the mentally retarded was inconsistent with the country's evolving standards of decency. The majority opinion also pointed to the diminished culpability of mentally retarded offenders and questioned whether the death penalty served the goals of retribution or deterrence when applied to the mentally retarded. Two weeks later, the Supreme Court ruled in *Ring v. Arizona* that the constitution's requirement of trial by jury was violated when judges—instead of juries—made crucial factual findings required to sentence a defendant to death. The court's decision invalidated death penalty laws in five states, and cast doubt on the laws of four others. The decision could affect nearly eight hundred of the country's death row inmates. While heartened by these two court decisions, opponents of the death penalty were dismayed by a March decision in which the Supreme Court ruled that a death row inmate's right to counsel had not been violated even though the lawyer appointed to represent him had previously represented the youth he was charged with killing.

Two federal district courts ruled the federal death penalty law was unconstitutional. In September, a federal judge held the law violated a defendant's right to due process by allowing evidence that could not be used at trial to be used in sentencing. In July, a judge had ruled the right to due process was violated because the increasing number of exonerations of death row inmates through DNA and other evidence made the death penalty "tantamount to foreseeable, state-sponsored murder of innocent human beings." Federal prosecutors appealed the decision.

In Congress, bipartisan support grew for the Innocence Protection Act (IPA), legislation that would raise the standards for adequate representation in death penalty cases and provide greater access to post-conviction DNA testing.

The United States remained virtually alone in the world in imposing death sentences on those who were juvenile offenders—under the age of eighteen—at the time they committed their crimes. Only the United States, Congo, and Iran have executed juvenile offenders in the past three years. Twenty-two U.S. states contin-

ued to allow the death penalty to be imposed on juvenile offenders; eighty-three—thirty-nine of whom were black—were on death row as of July 1, 2002.

The state of Texas executed three juvenile offenders in 2002. Napoleon Beazley was put to death on May 28; T.J. Jones, on August 8; and Toronto Patterson, on August 28. Each was seventeen years of age at the time he was convicted. The executions secured Texas's unenviable position as national leader in the execution of juvenile offenders. Of the twenty-one juvenile offenders put to death nationwide since 1976, thirteen were from Texas.

Public support for the abolition of the death penalty for juvenile offenders increased, as reflected in the growing number of states prohibiting such executions. Indiana abolished the death penalty for juvenile offenders in 2002, bringing to sixteen the number of states which set eighteen as the minimum age for the death penalty. During 2002, legislative measures to prevent the execution of juvenile offenders were considered in at least ten other states, including Texas.

Many legal experts believed the issue of executions of offenders who committed their crimes as juveniles would be the focus of the court's next major death penalty case. Four justices dissented on October 21 from the Supreme Court's decision not to hear the case of Kevin Nigel Stanford, who received the death penalty for a murder he committed in 1981 at the age of seventeen, and who sought a court ruling that the execution of juvenile offenders was unconstitutional. The four dissenting justices wrote that execution of juvenile offenders was "a relic of the past," and concluded, "We should put an end to this shameful practice."

In 2002, one foreign national and one dual citizen were executed. Tracey Housel, a dual citizen of the United States and the United Kingdom, was executed in Georgia in March, despite pleas for clemency from Prime Minister Tony Blair, Foreign Minister Jack Straw, and the European Union and the Council of Europe. In August, Javier Suarez Medina, a Mexican citizen, was executed in Texas. According to reports, Mr. Suarez had not been informed of his right under the Vienna Convention to seek assistance from the Mexican consulate. Mexican President Vicente Fox, who had called President Bush asking for clemency for Medina, cancelled a scheduled trip to Texas following the execution. According to Amnesty International, approximately one hundred death row defendants who were foreign nationals had also been denied their rights under the Vienna Convention.

The United States' continued use of the death penalty drew repeated criticism from its European allies. The European Union condemned the executions of juvenile offenders and foreign nationals in the United States, and the Council of Europe continued to call for the abolition of capital punishment in the United States. European opposition to capital punishment complicated U.S. efforts to extradite terrorism suspects from Europe. In November 2001, Spain said that it would not extradite terror suspects to the United States if they would be subject to the death penalty—the European Convention on Human Rights bans signatories from extraditing suspects to countries with capital punishment. France urged that Zacarias Moussaoui—a French citizen arrested in the United States for his alleged link to the September 11 attacks—not be subject to the death penalty. German authorities expressed reluctance to turn over evidence they had concerning Moussaoui and his ties to the September 11 hijackers because of concerns regarding his possible exe-

cution. In September, Germany also said that differences with the United States over the death penalty would probably prevent German authorities from providing evidence to the U. S. Department of Justice in the case of Ramzi Binalshibh—an al-Qaeda suspect arrested in Pakistan who had lived in Hamburg and was seen by U.S. officials as a key figure behind the September 11 attacks.

POLICE BRUTALITY

There were thousands of allegations of police abuse during 2002, including unjustified shootings, beatings, chokings, and rough treatment, yet overwhelming barriers to accountability remained, enabling officers responsible for human rights violations to escape punishment. Victims seeking redress faced obstacles that ranged from overt intimidation to the reluctance of local and federal prosecutors to take on police brutality cases. Officials in many cities failed to acknowledge police brutality and undertake reforms to improve training, supervision, and accountability until high profile police scandals emerged.

During the fiscal year that ended on September 30, 2001 (the last year for which statistics were available), more than twelve thousand civil rights complaints, most alleging abuses by law enforcement officials, were submitted to the U.S. Department of Justice. Federal prosecutions of accused officers were rare. During that same period, only fifty-six officers were either convicted or pled guilty to crimes under the civil rights statute. As in past years, federal civil rights prosecutions of accused officers were rare due to inadequate resources, insufficient efforts to collect and review cases, and the evidentiary hurdle of having to prove a "specific intent" by the defendant to deprive the victim of his or her civil rights. Federal prosecutors also faced some of the same problems as local prosecutors in pursuing such cases, including unsympathetic victims and the public's predisposition to believe police officers.

Videotaped incidents of police violence graphically displayed the problem of police abuse. In July, police in Inglewood, California (in the Los Angeles metropolitan area) were caught on videotape beating a black sixteen-year-old who was not armed. The tape showed one officer slamming the teen's head onto the hood of his patrol car and punching him in the face. The police department dismissed him in October. A Los Angeles County grand jury indicted him on state assault charges, and the U.S. Justice Department announced that it was reviewing the case as well. Two weeks before the videotaped encounter, the same officer had administered a chokehold and hit a man with his baton, leading to the man's hospitalization for three days.

In August, a bystander videotaped a New York City police officer who appeared to hit a handcuffed man in the face with his police radio. Another officer then sprayed him in the face with pepper spray. Neither officer reported the incident. The videotape was sent to the police commissioner who suspended one of the involved officers; prosecutors subsequently filed assault charges against the officer.

In 1994, Congress authorized the Justice Department to investigate city police departments alleged to have engaged in a pattern or practice of civil rights viola-

tions. In cases in which investigators concluded that changes are necessary to protect residents, the Justice Department has authority to either negotiate an agreement with the city to implement reforms or file a lawsuit against the city to force improvements. As of September, the department had secured eight settlement agreements or consent decrees addressing police department practices. Five of the agreements were reached since the Bush administration took office.

In June 2002, the Department of Justice began inquiries into the Miami police department. Two Miami-Dade special unit police officers pled guilty and a dozen more faced federal civil rights charges in cases arising out of a series of incidents in the mid-1990s in which officers planted weapons on the bodies of unarmed people they had just shot to justify the shootings. A *Miami Herald* investigation found that the fourteen officers had been the subject of 293 allegations of misconduct during their careers—a complaint rate far out of proportion with the rest of the force. The newspaper also found the officers were usually cleared of any wrongdoing or, if found responsible, escaped meaningful discipline. The Department of Justice also began an investigation of the police department in Prince George's County, Maryland following years of reports of questionable shootings, deaths caused by restraint techniques, and use of police dogs to attack suspects who had already surrendered.

In 2002, the Department of Justice reached agreements with Cincinnati, Ohio and Buffalo, New York. The Cincinnati investigation began after the April 2001 shooting of an unarmed African-American man, Timothy Thomas, that led to protests and rioting. The agreement with the Cincinnati police department required the department to improve complaint procedures, training, use-of-force policies, and supervision. The agreement with the Buffalo police department required it to address its improper use of pepper spray, and inadequate complaint procedures, training, and use-of-force reporting procedures.

INCARCERATION

The absolute number of prison inmates in the United States continued to grow—with 2.1 million persons incarcerated at the end of 2001—although the rate of growth declined to its lowest level since 1972. According to the Department of Justice, the rate of incarceration was 686 inmates per one hundred thousand residents, the highest in the world, and many times higher than the rate of most industrialized democratic countries. One in every 146 adults was incarcerated.

Dramatic racial disparities continued to characterize the correctional population. Although blacks accounted for only 13 percent of the United States population, more than 43 percent of all sentenced inmates were black men. Nationwide, one in ten black men aged twenty-five to twenty-nine was incarcerated; in some states one in ten of all black men was behind bars.

The continued growth in the prison population, despite falling crime rates, reflected the impact of public policies that lengthened sentences, imposed mandatory prison terms even for minor nonviolent drug crimes, and restricted opportunities for early release. 51 percent of state prisoners were sentenced for nonviolent

offenses, including drug, property, and public order crimes. The war on drugs continued to have a dramatic impact on the rates of incarceration in the United States. About 25 percent of state prisoners and 57 percent of federal inmates were convicted of a drug crime. Of those prisoners, 58 percent have no history of violence or high level of drug dealing activity. According to the United States Sentencing Commission, low-level offenders—e.g., street level dealers, mules, and other expendable minions in the drug trade—constituted the preponderance of federal drug convictions. The concentration of anti-drug law enforcement efforts in heavily minority neighborhoods contributed to the dramatic racial disparity in drug incarceration: blacks accounted for 56 percent and Hispanics 23 percent of state inmates sentenced for drug offenses.

Federal sentencing laws imposed disproportionately harsh sentences on these offenders: The average federal sentence for a street level dealer of crack cocaine was 103.5 months. The most disproportionate sentences arose under laws that enhanced sentences for recidivists. The U.S. Supreme Court in April agreed to hear in tandem two cases raising the question of whether life sentences under California's "three strikes" law, when imposed for minor offenses, violated the constitutional prohibition against cruel and unusual punishment. In one case, Gary Ewing received a life sentence for shoplifting three golf clubs. Because Ewing had four prior felony convictions for burglary and robbery, he was sentenced under the three strikes law to life with no possibility of parole until he had served twenty-five years. In the second case, Leandro Andrade received a life sentence for shoplifting \$153 worth of videotapes from two stores. Because he had three prior felony convictions arising from residential burglaries committed thirteen years earlier, he was sentenced to life with no possibility of parole for fifty years.

Prison Conditions

Contracting budgets, lack of political will, and public antipathy made it even harder for correctional systems to provide safe, humane, and productive conditions of confinement. Correctional officials lacked the funds to recruit, properly train, and retain adequate numbers of staff to provide work, training, or educational programs for inmates in order to keep them occupied and to support their eventual reintegration into society. Adequate levels of substance abuse treatment or other rehabilitative activities were not present in the majority of correctional facilities. Most prisons were overcrowded, impoverished facilities; many were rife with inmate-on-inmate violence (including rape), and in some cases, inmates suffered physical and sexual abuse by correctional staff. The deliberate indifference of many prison officials to complaints of rape was a major contributing factor to the perpetuation of this devastating human rights abuse.

Death row inmates in Mississippi, who were locked in their cells twenty-three to twenty-four hours a day, brought a lawsuit challenging the conditions under which they were confined, "including profound social isolation, unrelieved idleness and monotony, lack of exercise, intolerable stench and pervasive filth, grossly malfunctioning plumbing, constant exposure to human excrement, dangerously high ambient cell temperatures and humidity, grossly inadequate ventilation, constant

exposure to mosquitoes, gnats, horseflies, and other insects, deprivation of basic medical, dental and mental health care, and constant exposure night and day to the screams, ravings, and hallucinations of severely mentally ill inmates in adjoining cells.”

The failure of correctional systems to provide appropriate conditions of confinement and treatment for mentally ill inmates—whose numbers among prison populations appeared to be growing—prompted at least two major class action lawsuits. In February, mentally ill inmates challenged conditions in a Georgia prison as unconstitutionally cruel, claiming they were victims of a “brutal regime of physical force, mental abuse, intimidation and excessive use of involuntary medication.” Negligence, lack of training, and staff indifference resulted in the death of at least two mentally ill inmates at the hands of other prisoners in the last year. In New York, a lawsuit claimed that the Department of Corrections and the state Office of Mental Health had allocated inadequate physical and human resources to provide even minimally adequate care for the estimated sixteen thousand prison inmates estimated to be suffering from serious mental illness. In addition, the suit claimed inmates were punished for behavior related to their illness and confined under punitive high security conditions that aggravated their illness.

Inmate claims of abusive or unnecessary use of force by correctional staff rarely resulted in criminal prosecutions; and those prosecutions that did go forward rarely led to convictions. The difficult hurdles that must be overcome to obtain convictions were exemplified by the acquittal in May of three prison guards accused of the 1999 killing of a Florida death row inmate, Frank Valdez. Valdez died with twenty broken ribs, bootmarks on his body, and fractured sternum, vertebrae, nose and jaw. The state prosecutor dropped charges against five other corrections officers implicated in Valdez’ death because of lack of evidence and the difficulty of seeking an impartial jury in a county with four prisons where a high percentage of adults work for or are connected to someone who works for the state corrections system.

There were two important and successful court challenges to conditions in so-called super-maximum security (“supermax”) prisons where inmates spend twenty-three to twenty four hours a day in small sealed cells with scant opportunity to relieve the isolation, tedium, and harsh security restrictions.

In Wisconsin, plaintiff inmates challenged as cruel and unusual the conditions at the state’s supermax prison in Boscobel. Conditions at Boscobel were similar to the conditions in most of the country’s supermax prisons. Inmates in the most restrictive Boscobel unit spent day and night confined to single-person cells sealed with a solid door that opened onto an empty vestibule with another steel door. The cells were illuminated twenty-four hours a day, and only a little natural light entered the cells through a small strip of glass at the top of the cell wall. Inmates were allowed four hours of exercise per week in an empty cell that was slightly bigger than a regular cell, contained no windows or equipment, and was too small for jogging. Prisoners had no access to outdoor exercise facilities. Their personal possessions were severely restricted. They were allowed only one six-minute telephone call a month, and were not allowed to participate in any prison programs. Mentally ill prisoners were included among the prisoners confined under these conditions.

In February, a federal district court issued a preliminary injunction against

prison officials ordering them to transfer mentally ill prisoners out of the Boscobel supermax facility and to undertake a rigorous mental health screening of other prisoners. The court noted that, “rather than being supplied the programming, human contact and psychiatric support that seriously mentally ill inmates needed to prevent their illnesses from escalating, inmates at supermax are kept isolated from all other humans, whether guards, other inmates or family members. Many of the severe conditions serve no legitimate penological interest; they can only be considered punishment for punishment’s sake.” The court identified some of the super-maximum features that were particularly damaging to inmates with serious mental illnesses, including the almost total and relentless isolation and sensory deprivation as well as the lack of programming. It noted that one of the plaintiff’s experts considered the conditions at the supermax so restrictive and debilitating that they “border on barbarism.” It concluded that the public interest was “not served by housing seriously mentally ill inmates at supermax under conditions in which they risk irreparable emotional damage and, in some cases, a risk of death by suicide.”

The exclusion of mentally ill inmates from the Boscobel supermax prison was incorporated into a subsequent court-approved settlement of the lawsuit. In addition, Wisconsin correctional authorities agreed to undertake a number of steps to ameliorate conditions at the prison, including to improve the heating and cooling of the cells, to permit additional reading material and access to some video programs, to reduce the brightness of the cell lights left on at night, to provide cells with calendar clocks so inmates know what day and time it is, to increase the amount of time inmates would be allowed outside their cells, and to permit slots in the solid steel doors to remain open so prisoners could see out into the hallways. The Wisconsin authorities also agreed to construct an outdoor recreation area.

A class action lawsuit by prisoners in Ohio’s supermax prison also yielded significant improvements. The state agreed to exclude mentally ill inmates from the prison, to build an open-air recreation area (inmates currently must exercise in a small barren indoor room with vents), to improve the prison’s health care, and to allow independent medical staff to examine prisoners for two years as a way of monitoring prisoner mental health and to ensure that the mentally ill were not confined at the prison. The state refused, however, to accept any limitations on its power to determine who gets sent to the supermax facility or how long they are kept there. In February, after a trial, the federal district court ruled that supermax placement decisions affect inmates’ liberty interests and that the state must therefore provide adequate notice, hearings, and appeal opportunities to inmates that the state intends to send to the supermax. The judge also restricted the ability of the state to send men to the supermax for dealing small amounts of drugs or simply for being gang members. Ohio’s appeal of the ruling was pending as of this writing.

In most supermax prisons, inmates are isolated in their cells. Inmates in the Secure Housing Unit (SHU) of California’s Corcoran State Prison, however, are held two to a cell. In 2001, three men confined in the SHU were killed by their cellmates, the most recent dying on December 16 after a fatal beating by his cellmate.

In August 2002, a U.S. Department of Justice investigation found that conditions in the Baltimore City Detention Center violated inmates’ civil rights. In a strongly

worded forty-page letter sent to state officials on August 13, the department concluded that the jail was unsafe, provided inadequate medical and mental health care, and failed to protect juvenile and adult detainees from harm. Human Rights Watch had identified these and other violations in a 1999 report on conditions for children in Maryland jails. That report helped prompt the federal investigation.

ABSTINENCE-ONLY PROGRAMS

Human Rights Watch work in 2002 included a study of federally funded sex education programs that threatened adolescent health by censoring basic information about how to prevent HIV/AIDS and by failing to present accurate information on the efficacy of condoms to prevent HIV/AIDS.

The programs limited high school students' access to experts on HIV/AIDS and suggested condoms do not work as a means of HIV/AIDS protection, despite the broad scientific consensus that condoms, when used correctly, in fact are highly effective in preventing the transmission of HIV. In Texas, which received a substantial share of federal abstinence-only funds, one abstinence-only program sponsored a "Truth for Youth" advertisement campaign that suggested that parents who advise their children to use condoms may be threatening their children's lives. By portraying sex outside of heterosexual marriage as psychologically and physically harmful, these programs also discriminated against gay and lesbian youth.

Since 1997, Congress had spent more than \$350 million on "abstinence-only" programs. In 2002, the Bush administration lobbied for a 33 percent increase in funding for such programs, even though federal public health agencies had repeatedly emphasized the importance of providing comprehensive information to youth about how to protect themselves from HIV infection, including information about condom use.

RELEVANT HUMAN RIGHTS WATCH REPORTS:

We Are Not the Enemy: Hate Crimes Against Arabs, Muslims and Those Perceived to be Arab or Muslim after September 11, 11/02

Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States, 9/02

Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees

Collateral Casualties: Children of Incarcerated Drug Offenders in New York, 06/02

Growing Problem Of Guantanamo Detainees: Human Rights Watch Letter to Donald Rumsfeld, 5/02

Human Rights Watch Presentation to the United States Sentencing Commission on Proportionality and Federal Crack Sentences, 03/02

Race and Incarceration in the United States: Human Rights Watch Press Backgrounder, 02/02

Background Paper on Geneva Conventions and Persons Held by U.S. Forces: Human Rights Watch Press Backgrounder, 01/02