

Safety Concerns of a Prisoner Rights Lawyer

By Jane Kahn

As part of the small talk that happens during holiday gatherings and at other events during the year, people ask me what I do. My work involves representing California prisoners with severe mental illness. I am frequently asked whether I feel safe going inside of the prisons. Sometimes, I am asked how I dress to meet with my clients. Images of Attica seem to hover over the conversations. Since I am at a party, I give the quick answer. I explain that I feel safe because I am visiting my clients and the prisons are well-guarded. If someone insists, I might tell a story. But I keep it simple. It is not simple.

Many of the attorneys and paralegals in our office have traveled regularly to see our clients housed in the 33 California prisons scattered around the state. The attorneys also conduct monitoring tours of the prisons. The risk of harm to advocates entering California prisons to see their clients is primarily the risk of continued exposure to the horrific conditions of confinement that our clients must endure every day. The severe overcrowding in the California prisons, which was declared a state of emergency by Gov. Arnold Schwarzenegger in 2006, has created extreme conditions that are degrading, dangerous, and inhumane. Touring prisons and observing the conditions which our clients must endure, while remaining incapable of remedying these conditions, or rescuing our clients from their suffering, can be painful and intolerable.

It is especially difficult for plaintiffs' counsel if the particular shocking prison practice or condition is routine and acceptable to prison officials and fully defended by defense counsel. For example, the widespread use of cages to hold prisoners waiting for admission to suicide watch units, a practice initiated system-wide due to overcrowding and bed shortages, is often not even noticed by local clinicians who have become inured to the practice. Similarly, the observation of patients on suicide watch sleeping naked on the floor is jarring unless you are a psychiatrist or psychologist working within the California prison system where this is now standard practice. I recall a prison visit where I observed suicidal prisoners meeting with their treatment team in the mental health crisis unit. One patient after another was brought into the small room wearing nothing but a blanket wrapped around his naked body. When the first patient, who was sitting within inches of me, kept his eyes averted during the "interview," he was finally asked why he would not look up, and he haltingly replied: "I am naked, I'm embarrassed to sit here like this." No one responded, and when he left, the next naked prisoner was brought into the treatment session. Obviously, any harm to advocates observing these conditions pales in comparison to the harm suffered by our clients as a result of these practices and conditions.

There is a body of literature that discusses “secondary trauma,” which can occur among disaster relief workers, firefighters, and mental health professionals who provide assistance to those who have experienced trauma. Although “secondary trauma” is accepted as a risk to those working in these fields, advocates such as attorneys and paralegals can also experience secondary trauma responses and symptoms of burnout. (Andrew P. Levin and Scott Greisberg, [“Vicarious Trauma in Attorneys,”] 24 Pace L. Rev. 245 (2003), available at: <http://digitalcommons.pace.edu/plr/vol24/iss1/11>). When the advocates in our office repeatedly tour the prisons and talk with our clients about their lives inside, and then observe the conditions of confinement (triple bunks in crowded gymnasiums where prisoners are jammed with little personal space; cages in hallways where prisoners waiting for a bed are placed; or suicide watch cells where patients are forced to sleep naked on the floor, in locked down housing units with no programming), and then return to work to read letters from other prisons detailing the same or worse problems, the impact can be overwhelming.

In our office, we have experimented with various strategies for addressing the stress that the prison tours and prisoner mail has on the attorneys and paralegals. We have assigned mentors to new attorneys to check in with them after a prison visit. We have encouraged advocates leaving a prison to call a “buddy” after the visit to discuss anything that comes to mind in a version of “downloading” images. We have held several meetings where advocates can talk about their feelings around the prison tours. And finally, in the midst of the preparation for the overcrowding trial (we recently conducted extensive prison inspections with expert mental health witnesses as part of the discovery phase in the federal overcrowding trial. [*Coleman/Plata v. Schwarzenegger*], N.D. Cal./E.D. Cal.) when the tours and visits were extensive, we had a psychiatric expert provide training for the trial team on mental health issues, on spotting suicidal ideation in our clients during visits, and on coping with prison tours. Most importantly, we stress to all staff that entering California prisons is not to be taken lightly. Simply by acknowledging the impact of these tours and the prisoner mail helps attorneys and paralegals know that there is an open door if they need to talk. Sometimes family and friends simply cannot or do not want to hear the actual details of these prison visits or mail, but colleagues involved in similar work can provide significant support.

At the social events when I am asked whether I feel safe in my work, the simple answer is yes because correctional officers accompany me inside the prison, and because the prisoners know that I am their advocate. I rarely, if ever, talk about what makes me feel unsafe: the shocking images that remain with me from my many prison visits. No, then I would have to discuss the real risk of this prison reform work, and it would take all night.

Jane Kahn is of counsel at Rosen, Bien & Galvan LLP, a San Francisco civil litigation firm that is also class counsel in several prison civil rights actions. Photos of California prison conditions introduced as evidence in the overcrowding trial are available at <http://tinyurl.com/Coleman-Trial>.