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BUSINESS AS USUAL'; THE CONTINUED KILLING OF ONE PRISONER EVERY EIGHT DAYS BY THE MEDICAL SERVICES OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

by Dave Harrison

Richard D. Bess was sentenced to one-hundred-five-years-to- life, to be served within the California Department of Corrections and Rehabilitation ("CDCR"). Despite his lengthy sentence, Richard expected one day to be released into the loving arms of his family. As a result of the gross lack of treatment, delays in treatment and mistreatment of his medical condition by CDCR doctors, staff and other personnel, Richard was released from his sentence much earlier than expected, albeit not into the loving arms of his family, but into the eternal embrace of a pine box. This is a true story of the CDCR's continued killing of one prisoner every eight days.

The CDCR's medical services have been under the control of a federal receive for years. Indeed, federal judges found that the CDCR's medical care of its prisoners to be so deficient as to offend the Eighth Amendment of the United States Constitution; finding, e.g., that the CDCR kills one prisoner every eight days as a result of inadequate medical care (defined as lack of treatment, delays of treatment and/or mistreatment of the serious medical needs of prisoners). In 2010, after years of contentious litigation, a three-judge panel of federal judges ordered the CDCR to reduce its massively overcrowded prisoner population to a level where adequate medical care could be provided (at one point the CDCR's prisoner population topped 200% of design capacity). Throughout the years of litigation the CDCR ignored (the federal judges allowed the CDCR to ignore) over seventy orders to upgrade and repair its inadequate medical services, her lawyers arguing that one killing every eight days did not offend the Constitution and was a perfectly acceptable rate of loss. Not surprisingly, the CDCR appealed the three- judge panel's ruling to the United States Supreme Court. In 2011, the Supreme Court affirmed the panel's reduction ruling. Nonetheless, the CDCR's killing of prisoners continues unabated.

Richard was an African-American, 57-years of age, with a family history of cancer; all risk factors his doctors were fully cognizant of. The first sign of trouble; blood in his urine, was noticed by Richard on 3 March, 2010. Richard immediately sought medical attention. Absent trauma, which there was none in this case, blood in the urine indicates either infection, cancer or both. Richard was seen by CDCR Doctor, D. Ralston, who did not order any tests or other diagnostic procedure to determine the cause of the blood in Richard's urine. Importantly, no cytology (microscopic evaluation of urine that detects cancer cells) was ordered. In standard CDCR medical practice -- no tests or diagnostic procedure conducted -- Doctor Ralston summarily dismissed the bloody urine as merely an infection, at any rate "not emergent." In the months following, in which Richard's urine continued to be more blood than urine (think 90-weight motor oil), CDCR Doctors, T. Campbell, C. Barber, G. Hori and Ralston, each and every one, ignored the obvious signs of cancer; extant risk factors, incessant bloody urine, antibiotics having no curative effect, wildly fluctuating (both high and low out of range) red and white blood cell counts. No doctor during those months bothered to order a single test or diagnostic procedure to determine the actual cause of Richard's bloody urine.

Not until September, 2010, six months since the first sign of trouble, did Doctor Ralston wonder, perhaps as an afterthought, whether Richard might have some affliction other than an infection. Doctor Ralston put in an "urgent" (in CDCR parlance, "urgent" means treatment within fourteen days) referral that Richard be seen by a urologist. On 15 September, 2010, having reviewed tomography scans taken of Richard's bladder, Doctor Hori put in an "urgent" referral for a cystoscopy (visual inspection of the bladder and urethra by looking through a flexible viewing tube). Doctor Hori did not get around to performing the cystoscopy until 14 October, 2010. Thereafter, Doctor Hori informed Richard that cancerous tumors inside his bladder were the cause of the bleeding; a diagnosis that came seven months after the first

sign of trouble. Doctor Hori scheduled surgery to remove the cancerous tumors. The surgery, was once canceled/delayed then performed on 5 November, 2010. Tumor samples were taken and tested, establishing the cancer to be high grade and aggressive. Six weeks later, on 12 December, 2010, another surgery was performed and additional tumors removed. Not until 2 February, 2011, was Richard scheduled for six treatments, one treatment per week, of Bacillus Calmette-Guerin ("BCG") (a substance that stimulates the body's immune system). Due to myriad delays and other hindrances by prison staff, the final treatment was not provided until 13 April, 2011, thus rendering the entire BOG treatment virtually worthless. Bloody urine continued, along with related pains and suffering. Yet another cystoscopy was scheduled, but then canceled/delayed by medical staff so they could conduct an "inventory" in the medical department. Eight days later, Richard arrived for his rescheduled appointment, only to be turned away due to another so-called "inventory." Not until 9 June, 2011, did Doctor Hori conduct the scheduled-re-scheduled cystoscopy, then finding cancerous tumors in six locations within the bladder. The cancer was progressing unhindered. On 17 June, 2011, Doctor Roni conducted surgery to remove cancerous tumors. On 22 June, 2011, the cancer was established, as before, to be high grade and aggressive, and now suspicious for invasion of the bladder muscle. Doctor Hori acknowledged that it was critical to Richard's life that the cancer not be given time to penetrate through the bladder muscle, to wit, escape the bladder and metastasize throughout the body.

Followup evaluations by various doctors reaffirmed the life and death nature of Richard's condition, hence the need for an immediate cystectomy (removal of the bladder). Months came and went, until September, 2011, when (unknown) personnel of the CDCR arranged for surgery -- incredibly, not for the necessary cystectomy -- but an agonizing and totally useless transurethral resection of bladder tumors (scrapping of the bladder walls to remove tumors, as Doctor Hori had twice done), a procedure that does nothing to slow the cancer's progress through the bladder muscle (the procedure did, however, much to the delight of the cancer, delay the cystectomy, thus allowing the cancer additional time to escape the bladder, as well as generating hefty fees for the doctors and supporting medical staff). Month after month, the reports and notes of every doctor stated in the most emphatic terms the life and death urgency that the cystectomy be performed immediately -- before the cancer escaped the bladder. From June, when the cystectomy was approved, through July, through August, through September, through October, through November and into December -- no cystectomy. The cancer was not idle all those months, but continued its work boring through the bladder muscle. On 4 January, 2012, Doctor Hon's notes stated the obvious: "bladder CA, muscle invasion, needs cystectomy. This has been delayed." Doctor Hon's notes of 20 January, 2012, stated the same, as did his notes of 17 February, 2012. The doctors all knew, as did the (unknown) personnel of the CDCR tasked with arranging the cystectomy, that delay of that surgery would directly result in Richard's death. They all knew, yet continued to delay, to deny Richard the surgery necessary to save his life. Their decisions were thought out. Inaction would lead to Richard's death. They chose inaction deliberately. In a court of law, that is called premeditation.

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Initially, in March of 2010, Richard's risk of death from the cancer in five years was a mere 15 to 20%. As a result of the decisions and failures of CDCR doctors D. Ralston, T. Campbell, C. Barber and G. Hori to conduct rudimentary tests or other diagnostic procedures to determine the cause of the blood in Richard's urine, and as a direct result of the years of delays by those doctors, staff and other (unknown) CDCR personnel that provided the luxury of time so that the high

grade and aggressive cancer could escape the bladder, Richard's five year risk of death rocketed to 80%. Indeed, after the colostomy was performed, Richard was informed that there was nothing more the doctors could do (it might be suggested that the doctors had done enough (damage) already). Richard was told he had six months to live. Richard died on 12 March, 2013.

The doctors named herein, staff and other (unknown) CDCR personnel, were not simply negligent. They knew that blood in urine meant either infection, cancer or both. Once the cancer was discovered to be boring through the bladder muscle they knew that the need for a cystectomy was immediate and life-determinate. But they did not care about Richard, a prisoner whose life was merely a statistic (one prisoner every eight days killed by CDCR medical services). They simply didn't care beyond putting in their eight hours and collecting their three-hundred-thousand dollars a year. All the risk factors were present. The symptoms obvious and life threatening. Richard was persistent, although always courteous and amiable, in seeking medical care. But those doctors did nothing to determine the cause of Richard's bleeding, and once the high grade and aggressive cancer was discovered, they embarked on a course of cancellations and delays, with added mistreatments. It was June, 2011, when the cancer was discovered to have invaded the bladder muscle, thus the realization that Richard's life was hanging by a thread to an immediate cystectomy. Incredibly, it would be another eight months before CDCR medical services could be bothered enough to schedule that surgery. Way too long for Richard. They knew, yet chose not to act. The choice not to act amounts to premeditated murder or, if you are a federal judge or receiver, the unnecessary death of one prisoner every eight days or, if you are an employee of the CDCR (or one of her lawyers) you express the killing of Richard as not offending the Eighth Amendment of the United States Constitution, perfectly acceptable, just business as usual.

As all prisoners within the CDCR know from daily observance, experience and suffering, nothing at all has changed within the CDCR's medical services, the CDCR continues to purposefully kill (at least) one prisoner every eight days as a result of inadequate medical care.

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