

EXHIBIT A

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EDUCATION

Columbia University Graduate School of Journalism, New York, NY

M.S. in Journalism, 2008; Fellow with honors in the Stabile Center for Investigative Journalism

University of Houston (Central Campus), Houston, TX

B.A. History, B.A. Psychology, summa cum laude, 1997

WORK EXPERIENCE

Television

Senior Producer, *Democracy Now!*, January 2011-present

Print

Contributing Reporter, *The American Prospect*, Spring 2009-present

Contributing Reporter, *The Texas Observer*, Fall 2008-present

Contributing Reporter, *Huffington Post*, Fall 2008-present

Researcher & Reporter, *New York Times* Investigative Unit, Fall 2008 – Spring 2009

Contributing Reporter, *Columbia Journalism Review*, Fall 2008

Radio

Reporter, *Free Speech Radio News* (Pacifica Radio's nightly newscast), 2001-present

News Director, KPFT-FM, Pacifica Radio, Houston, TX, 2002-2006

Video

Freelance video reporter, *Motherjones.com*, *The New Republic*, *Current.com*, May 2008 – present

Web

Co-producer, DeportationNation.org, June 2010 – present

Contributing Web Reporter, PBS Need to Know, July 2010 – present

Multimedia Producer, PBS Wide Angle, May 2009 – June 2010

AWARDS

- Soros Justice Media Fellowship, 2010
- The Nation Institute Investigative Fund Grant Recipient, 2009
- Finalist, Webby Awards, 2009
- Carnegie-Knight News21 Fellow, 2008
- Melvin Mencher Award for Superior Reporting, 2008
- James A. Wechsler Memorial Award for National Reporting, 2008
- Molly Ivins Scholar, 2007-2008
- Best Radio News award from Houston Press editors and readers, 2004

LIST OF PUBLICATIONS (PRINT)

See www.ReneeFeltz.org for complete list of print, video, radio and multimedia publications

Double Standard on Racial Profiling (October 2010 – *The American Prospect*)

Guard's arrest highlights sexual assault of immigrant detainees (August 2010 – *PBS Need to Know*)

Justice Department tries to block Arizona's immigration law, as states take note (July 2010 – *PBS Need to Know*)

A Piece of the Dream (July, 2010 – *The American Prospect*)

The Anti-Arizona: As states get tough on immigration, D.C. bucks the trend (June 2010 – *The American Prospect*)

Women's Group Works for Peace in Bosnia, Finds Itself on Terrorist List (April 2010 – *PBS WIDE ANGLE*)

Cracked: Despite a U.S. Supreme Court ban, Texas has continued to send mentally retarded criminals to death row. Will a Mexican immigrant's case correct this injustice? (January 2010 – *The Texas Observer*)

One Woman's Brave Struggle to Expose Honor Killings (July 2009 – *PBS Wide Angle/Huffington Post*)

Maternal Mortality Gets Obama Spotlight While Aid Dollars Decline (July 2009 – *PBS Wide Angle/Huffington Post*)

"Africa's Turn" for Economic Growth May Continue Amid Global Economic Crisis (July 2009 – *PBS Wide Angle*)

Detention Retention (June 2009 – *The American Prospect*)

Hunger Strike at Port Isabel (April 2009 – *The Texas Observer*)

Grand Old Social Networking Party (January 2009 – *Huffington Post*)

Once Trusted Mortgage Pioneers, Now Scrutinized (December 2008 – *The New York Times*)

A New Migration Policy: Producing Felons for Profit (Nov./Dec. 2009 – *NACLA Report on the Americas*)

Life's a Snitch: Austin activist infiltrated RNC protest group (December 2009 – *The Texas Observer*)

Group's Tally of New Voters Was Vastly Overstated (November 2008 – *The New York Times*)

Blogged Down in the Past (October 2008 - *Columbia Journalism Review*)

EXHIBIT B

A Double Standard on Racial Profiling

Critics of Arizona's immigration-enforcement law have praised the federal government for stepping in, but racial profiling already happens under its watch.

RENEE FELTZ | October 6, 2010 | web only



Angel Castro at the scene of his arrest for a traffic infraction. The original charges were dismissed, but Castro still faces deportation. (Courtesy of Erik S. Lesser/Southern Poverty Law Center)

Georgia, and was pulled over for "failure to yield to traffic." The officers noted in their arrest report that they had stopped Castro after observing his race, and their questions focused on his immigration status instead of the alleged traffic infraction. Castro said he gave his name, age, and birthday, but the officers refused to let him go. In the course of his arrest, he suffered a fractured left eye socket and broken nose.

Castro was charged with two counts of obstructing an officer and spent four months at the Cobb County jail waiting to prove his innocence. In August, the Southern Poverty Law Center (SPLC) took on his case, which a judge dismissed after the arresting officers ignored subpoenas to testify. But despite the questionable circumstances surrounding his arrest and detention, Castro still faces deportation because deputies at the jail are enrolled in 287(g) and reported his immigration status to Immigration and Customs Enforcement (ICE).

"The federal government likes to say, 'We aren't profiling in any way with 287(g). How could we? All

Come Nov. 1, the Department of Justice will once again spar with Gov. Jan Brewer of Arizona over her state's controversial immigration-enforcement law, SB 1070 -- this time before the 9th Circuit Court of Appeals. A three-judge panel is set to decide whether to lift a lower court's block on key parts of SB 1070, including a requirement that police officers check the immigration status of anyone they have "reasonable suspicion" is here unlawfully. Critics, who say the provision could lead to racial profiling, have applauded the federal government for stepping in to defend civil liberties and asserting its constitutional authority to regulate immigration.

This show of authority, however, vanishes when it comes to addressing abuses that occur under the feds' existing partnership with local police. The 287(g) program, named after a section of law passed in 1996, currently deputizes local law-enforcement agencies to enforce federal immigration law, including more than 1,100 officers in 26 states. While the program provides training to avoid racial profiling, in practice poor federal oversight has led to just the types of racially targeted interrogations and arrests immigrant-rights advocates fear SB 1070 will encourage.

Stories like [Angel Castro](#)'s are common. In March, Castro rode his bicycle past a police cruiser at a red light in Cobb County, Georgia, and was pulled over for "failure to yield to traffic." The officers noted in their arrest report that they had stopped Castro after observing his race, and their questions focused on his immigration status instead of the alleged traffic infraction. Castro said he gave his name, age, and birthday, but the officers refused to let him go. In the course of his arrest, he suffered a fractured left eye socket and broken nose.

we're doing is processing people presented to us in the jail," says Sam Brooke, an SPLC attorney representing Castro. "That's fine, but you're ignoring what happens on the street level. They saw Castro's race and ethnicity; they suspected they could try to get him into the immigration system if the opportunity presented itself."

The ACLU has **documented** 10 similar cases in Cobb County alone, but civil-rights activists say the majority of abuses go unreported. "You're dealing with a population who is afraid to come forward for obvious reasons, if they haven't been deported already," says Azadeh Shahshahani, director of the Georgia American Civil Liberties Union and co-author of its October 2009 report, *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety*.

Indeed, even **internal reviews** of 287(g) have found the program is fraught with problems. In March, the Department of Homeland Security's Office of Inspector General found that ICE, which administers the program, had failed to "address concerns regarding arrests of individuals for minor offenses being used as a guise to initiate removal proceedings." It also noted that ICE "did not retain information regarding allegations and investigations of 287(g) personnel" or other police officers who engaged in questionable conduct. To date, the agency has no system for monitoring whether immigrants who are reported under 287(g) are ultimately convicted of the original crime for which they were stopped. This makes it impossible for the agency to document and address the problem of racially targeted arrests.

Even when advocacy organizations step in to pick up the slack and file complaints, they're met with a pass-the-buck approach from federal authorities. Complaints about 287(g) are supposed to be directed to DHS' Office of Civil Rights and Civil Liberties (CRCL). But in Castro's case, a complaint wasn't even filed because, says Castro's lawyer, Brooke, DHS washes its hands of the problem if the arresting officers are not themselves enrolled in the program. "DHS has made clear to our organization in the past that they will not investigate a situation when officers are not directly under 287(g)," Brooke says.

In July, DHS explicitly **refused** to handle SPLC's complaint about an immigrant in Charlotte-Mecklenburg, North Carolina, who was arrested for reporting a city police officer who fondled his girlfriend during a traffic stop. The man was taken to the county jail where he was identified as undocumented, and he now faces deportation even though his charges were dropped and the arresting officer was fired. "Although DHS delegated certain immigration authority to the Mecklenburg County Sheriff's Office ... there is no delegation to the Charlotte Police Department," DHS said in a reply to SPLC's complaint. "In short, the conduct of the Charlotte police officer on patrol is outside the scope of the CRCL's review authority," it responded.

The only other recourse is the Department of Justice's Civil Rights Division, but so far, it has launched just two investigations of law-enforcement agencies enrolled in 287(g). One in Alamance County, North Carolina, concerns "allegations of discriminatory policing and unconstitutional search and seizure." The other is in Arizona's Maricopa County, home to Sheriff Joe Arpaio and the hard-to-ignore "crime suppression sweeps" that have helped his office account for a quarter of all immigrants deported through 287(g). In short, there is as little redress as there is oversight.

Meanwhile, the Justice Department continues to pursue its lawsuit to block Arizona's SB 1070, which supporters like Amnesty International have welcomed as a "signal that the U.S. will not run roughshod over immigrant rights simply because someone is brown or in the wrong place at the wrong time." The

signal, though, is meaningless if the federal government lets local law-enforcement agencies enrolled in 287(g) get away with racial profiling while enforcing federal immigration law.



Renee Feltz is co-author of the award-winning investigative project **The Business of Detention** and a co-producer of **DeportationNation.org**.

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A New Migration Policy: Producing Felons for Profit

Inside an ICE detention facility in Taylor, Texas, run by CCA, the largest private U.S. prison company. "We've never seen the wind behind our back like it is today," the company's CEO told investors in 2006.

By Renee Feltz

HUNDREDS OF IMMIGRANTS WHO CROSSED the Rio Grande River into Texas over Labor Day weekend found themselves in a Laredo courtroom the following week. They faced criminal charges for illegally entering the United States.

"We might need to squeeze," said U.S. Magistrate Judge Adriana Arce-Flores, as a group of men and women shuffled into her courtroom, some of them with dirt still caked on their T-shirts and tennis shoes from their journey across the border.

They stopped to stand shoulder to shoulder before her in rows of 12. Once the rows were three deep, a guard directed another dozen to an area normally reserved for members of the jury. After they raised their right hands to be sworn in, a Spanish interpreter had to instruct them to lower them. They clasped their hands behind their back, furrowed their brows, and listened intently as the judge explained that they were charged with a misdemeanor crime and faced up to six months in jail.

"How do you plead?" the judge asked each one individually. "*Culpable*," they replied, echoed by a "guilty" from the interpreter.

This continued for the rest of the morning,

yielding about 100 misdemeanor convictions. About as many people would be convicted each day for the rest of the week.

Judge Arce-Flores paused to issue a stern warning before she sentenced each group of newly minted criminals.

"I want you to know that from now on, every one of you is subject to a felony for reentry," she said. "So keep that in mind, and stay home."

Her warning reflected immigration policy in the era of Homeland Security: Immigration officials have teamed up with the U.S. Department of Justice and federal judges to send a message to people who lack the documents to live and work in the United States.

As Homeland Security Secretary Michael Chertoff said in a June speech: "These illegal migrants come to realize that violating the law will not simply send them back to try over again, but will require them to actually serve some short period of time in a jail or prison setting—and will brand them as having been violators of the law."

As a result of this merger of immigration and criminal policy, undocumented immigrants now face jail time before they are placed in detention pending their immigration hearing in civil court. Their criminal record makes them less likely to be

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approved for any legal path to citizenship that might be developed in the future. This crackdown has been made possible by the nation's largest private prison company, which has devoted close to half of its resources to the business of detaining immigrants.

FEDERAL LAW ENFORCEMENT AGENCIES BEGAN OPERATION Streamline in the Del Rio, Texas border sector in late 2005. Since then, the program has expanded to Laredo, the Rio Grande Valley, and parts of the Arizona border. "It has become standard operating procedure for us," said Eugenio Rodriguez Jr., spokesman for the Laredo Sector of the U.S. Border Patrol.

Streamline is based on two main misdemeanor charges—"entry of an alien at improper time or place" and "reentry of a deported alien."¹ Before Streamline, prosecutors reserved these charges for the worst offenders. The shift in policy means almost every immigrant arrested where the program is in place now faces prosecution on one of these charges.

First-time offenders often receive time served, and those convicted of reentry face up to 180 days in jail depending on their criminal history and prior apprehensions. After their conviction they are turned over to the U.S. Marshals Service to serve their prison sentence.

The resulting surge in prosecutions is staggering: The U.S. Justice Department predicts 60,000 immigrants will face charges in fiscal year 2008, mostly in border districts of Texas and Arizona. This is almost twice the number as in fiscal year 2007.²

Many migrants charged with reentry in Laredo were arrested while trying to return to lives they had established in the United States.

"The only thing I want to do is return to support my family," said one man who had spent 13 years living in Dallas. His children are still there, and so is his job. He had five prior apprehensions. When he told his story to the judge, her response was one of zero tolerance.

"Even if your daughters are here, you really should stay home," Judge Arce-Flores told him. "If you return you're facing a significant amount of jail time." She sentenced him to 60 days in jail. "Next time you're not going to get the same break," she said.

While the majority of Streamline cases are misdemeanors heard in U.S. Magistrate Court, the program is generating a dramatic increase in the number of felony cases heard in U.S. District Court. In March, reentry of a deported alien accounted for more than the other top nine charges combined in the district of Laredo.³

Immigrants convicted of felony reentry face up to 20 years in prison and are permanently barred from reentering the country. Those convicted of misdemeanors are barred

for five years. If they return before then, prosecutors can pursue the felony charge.

Border Patrol officials emphasize that the convictions will go on the immigrant's criminal record and be used to determine if he or she is eligible for any legal path to citizenship that becomes available. "If something happens in the future, they'll have that record and that would affect their chances," Rodriguez said.

Despite the introduction of jail time for illegally crossing, there is a strong incentive for immigrants to plea guilty. "I'd like to apologize," one man told Judge Arce-Flores. "I want to go back to my home as soon as possible." Anyone who fights their charges faces months in detention while their case is handled and more time if convicted at trial.

ASIMILAR DYNAMIC UNFOLDED IN MAY WHEN THE Immigration and Customs Enforcement (ICE) agency raided the Agriprocessors meatpacking plant in Postville, Iowa, and charged close to 300 undocumented workers there with felony "aggravated identity theft," which carries a mandatory minimum sentence of two years in prison for knowingly using "a means of identification of another person with the intent to commit any unlawful activity or felony."

ICE agents found that only one of the 697 employees at the plant was using a Social Security number that coincided with a reported identity theft. A more accurate charge of possessing false Social Security numbers carries a lesser penalty. But as court interpreter Erik Camayd-Freixas, who worked on the cases, observed in a statement before an Iowa U.S. District Court: "By handing down the inflated charge of aggravated identity theft . . . the government forced the defendants into pleading guilty to the lesser charge and accepting five months in jail."⁴

A plea bargain was offered to the defendants, but it was good for only seven days. It required the workers to waive their right to an immigration hearing and agree to immediate deportation pending completion of their prison sentence. Almost everyone pleaded guilty.

"Through the day, the procession continued, ten by ten, hour after hour, the same charges, the same recitation from the magistrates, the same faces, chains and shackles, on the defendants," Camayd-Freixas said. "Occasionally, as though to break the monotony, one would dare to speak for the others and beg to be deported quickly so that they could feed their families back home."

Most of the defendants arrested at Agriprocessors are serving their time in federal detention centers in Florida and Louisiana. Prosecution for "fraud and misuse of visas and permits" has increased by 223% since last year.⁵

"It is no secret that the Postville ICE raid was a pilot operation, to be replicated elsewhere, with kinks ironed

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out after lessons learned,” Camayd-Freixas said. “Next time, ‘fast-tracking’ will be even more relentless.”

UNLIKE IMMIGRANTS FACING CIVIL CHARGES, defendants in a criminal case have a right to court-appointed counsel. The Laredo Public Defender’s office devotes three lawyers to handle the heavy load of misdemeanor illegal-entry cases. “We used to go through peaks and valleys,” said Supervisory Assistant Attorney Marissa Perez-Garcia of the Laredo office, referring to the number of illegal-reentry cases her office handles. “Now it’s just peaks all the time.”

Court-appointed counsel is crucial for immigrants facing felony reentry convictions, such as a mother of two children, both of them U.S. citizens, who appeared with shackles around her wrists and ankles before Federal District Judge Micaela Alvarez.

“This is someone who—besides from working in the U.S. without documents—has never done anything to harm anyone,” Perez-Garcia reminded the judge. The woman was given a relatively light sentence of 135 days.

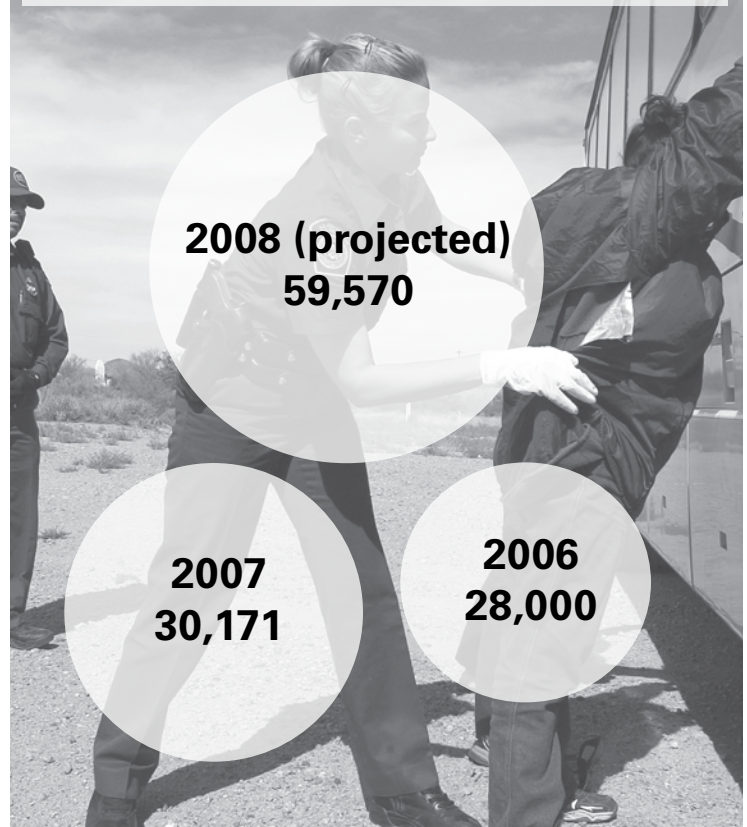
Public defenders can also ask the judge to sideline the cases of clients who want to pursue an immigration claim that would allow them to legally remain in the country, “but it might mean that person stays in custody for as long as it takes to investigate it,” Perez-Garcia said. “Since we’re not immigration lawyers, all we can do is say you may want to get that followed up on by someone else.”

Many of the immigrants may still not realize they have committed a crime. “Most of them look at it as if, ‘I’m not hurting anybody. It’s not a crime of violence. I’m not sneaking drugs across the border. I’m just trying to reunite with my family,’” explained Jose Tellez, a longtime immigration attorney in Laredo.

Part of the reason for the confusion is that immigrants are first processed by civil immigration authorities, not by criminal courts. This raises questions of fairness about how prosecutors gain access to information for their cases. “During the civil procedure they’re asked for a statement,” Tellez said. “They tell them, ‘We’re just gathering information and we don’t read you your rights until we decide to file a criminal charge.’ Well, at what point do you decide to go criminal? When you have all the facts.”

Tellez believes the surge in prosecutions will continue to grow but that authorities will become overwhelmed when they run out of detention space. However, the partnership

Criminal prosecutions of undocumented immigrants in the last three years



between private prison companies and the federal government means more space can be made available for a price.

IN OCTOBER, MANY IMMIGRANTS PROCESSED IN THE Laredo area began serving their time in a new 1,500-bed detention center on the outskirts of town. Geo Group, the nation’s second-largest private prison company, built the facility for the U.S. Marshals Service in anticipation of increased demand for space as a result of Operation Streamline. It is less than a mile away from a 480-bed USMS detention center owned and operated by Corrections Corporation of America (CCA).

Nearly 80% of CCA’s immigrant inmates come from ICE, a division of the Department of Homeland Security, and the U.S. Marshals Service.⁶ In all, CCA facilities house more than half of the immigrants currently detained in private facilities. Its competitors, Geo Group, Cornell Company, and Avalon Correctional Services, share the rest of the business, along with several other smaller companies.

When the Bush administration first began its crackdown on immigrants in 2003, it lacked enough prison space to

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detain those issued deportation orders. As a result it often allowed immigrants to remain free pending their hearing, a policy critics call “catch and release.” In 2005, after companies like CCA and Geo Group had been contracted to provide detention facilities, the policy shifted to “catch and return.” Now a yearly average of about 300,000 immigrants are detained until being deported.⁷

“We’re here to take care of the product they deliver to us,” said Michael Davis, who doubles as the chaplain and spokesman for CCA’s Houston Processing Center. CCA has had its eye on privatizing the entire immigrant detention system since 2004, when it proposed taking over detention operations and building even more facilities in anticipation of rising demand.

INVESTORS RECOGNIZE THAT CCA’S INVENTORY OF PRISON beds means the company is best suited to meet a flood of demand, and by March, the company’s stock value had more than doubled since 2004, reaching \$26.86.

“Certainly, the forces of supply and demand are working in the company’s favor,” observed Bank of America analyst T.C. Robillard. CCA relies on contracts with ICE and the U.S. Marshals Service for about 40% of its total revenue. Five of the company’s lucrative contracts to detain immigrants have no end date. Several of its other contracts contain “take or pay” clauses that guarantee a certain amount of revenue regardless of occupancy rates, as well as periodic rate increases. The company’s contract renewal rate is almost 95%, and any cost savings it may reap are kept for the company, not passed on to the taxpayers.

“At the federal level there is such a demand for beds, and private operators are able to do it cheaper and build the facility at half the cost of the federal government because they don’t have to go through procurement red tape. And the government tends to go with who they built with before,” said Gregg Klein, a corrections analyst with BNP Paribas, a Paris-based bank.

“We’ve never seen the wind at our back like it is today,” CCA’s president and CEO, John D. Ferguson, said during a May 2006 conference call with investors, referring to the company’s \$1.3 billion in revenue that year. By March 2008 Ferguson had his eye on Operation Streamline as the next opportunity for a growth spurt in detention beds.

“The intent now is to detain everyone that’s apprehended at the border and charge them initially with something called ‘entry without inspection,’ ” Ferguson explained to investors. “That will be a misdemeanor, requiring somewhere between 15 and 30 days of detention . . . someone who [has] then committed misdemeanor will face a felony charge, which could lead to six months to two years of

detention or incarceration.”

Later in the call, Ferguson optimistically eyed the president’s fiscal year 2009 budget.

“We see that the budget supports the detention population of 33,000 inmate detainee beds—that’s up from 27,500 the previous year and quite above what the president’s original budget was,” Ferguson said. “What I am most encouraged about is, everything we are hearing says 33,000 is still not enough.”

In fact, CCA’s confidence in future demand is so great that the company is already slated to develop 10,700 new beds by 2009.

DESPITE INTERNATIONAL CRITICISM, EVEN CHILDREN are included in plans to expand detention. The Department of Homeland Security solicited proposals in April for three new family detention centers that will hold as many as 600 parents and their children and double the space currently available for such detainees.⁸

“I look at ICE’s current strategy as ‘show no mercy,’ ” said Michelle Brane of the Women’s Commission for Refugee Women and Children. “They make the entire process difficult and traumatic for people, and one central piece of that is detaining families.” Her organization has called on ICE to halt the growth of family detention, citing lawsuits that allege conditions in facilities like CCA’s T. Don Hutto Residential Center, where immigrant families are held, violate minimum standards of care for minors in federal custody. Brane argues that private-facility standards are based almost wholly on adult correctional standards and that families should instead be held in a residential setting.

When she outlined her concerns in a letter, ICE policy director Susan Cullen replied that the agency routinely evaluates its needs for family detention space, its overall bed space needs, and the appropriateness of each facility regarding its intended use. “We determined there is a possibility that there may be a need for the facilities as described, and issued the Request for Proposal,” Cullen said in a letter to the commission.

It seems unlikely that a change in administration will decrease the demand for detention beds from ICE and the U.S. Marshals Service working in collaboration with Border Patrol agents. Even if a compromise is reached on immigration reform, “there are still going to be folks that are going to be defined as needing to be detained,” CCA’s Ferguson observed while speaking with investors in June, “and you will also continue to have folks who will still try to enter the United States, and they will not be getting any benefits from the new legislation.” **□**

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Building the Homeland Security State

1. This article is a revised, updated version of "One Raid at a Time: How Immigrant Crackdowns Build the National Security State," which appeared on publiceye.org, the website of Political Research Associates, in March.
2. "Special Report: Homeland Security Appropriations for FY 2005 (House & Senate) and California Implications," The California Institute for Federal Policy Research, September 16, 2004.
3. Alec MacGillis, "Minutemen Assail Amnesty Idea," *The Washington Post*, May 13, 2006.
4. "Militarizing the Border: Bush Calls for 6,000 National Guard Troops to Deploy to U.S.-Mexican Border," *Democracy Now*, May 16, 2006.
5. David Bacon, "The Real Political Purpose of the ICE Raids," *Dollars & Sense*, January/February 2007.
6. "The American Dream Survey 2006," Lake Partners Research, August 28, 2006.
7. John Morton Smith, "President John Adams, Thomas Cooper, and Sedition: A Case Study in Suppression," *The Mississippi Valley Historical Review* 42, no. 3 (December 1955): 438–65.
8. Todd J. Pfannestiel, *Rethinking the Red Scare: The Lusk Committee and New York's Crusade Against Radicalism, 1919–1923* (Routledge, 2003).
9. John A. Noakes, "Enforcing Domestic Tranquility: State Building and the Origin of the FBI," *Qualitative Sociology* 18, no. 2 (June 1995): 271–86.
10. Martie Cencki, "At Technology's Front Line," Air Force Outreach Program Office, *Outreach Prospective* 5, no. 4 (Fall–Winter 2006): 10–11.
11. Alexandra Walker, "Sensenbrenner: Immigration Profiteer," The Real Costs of Prison weblog, October 5, 2006.
12. Roberto Lovato, "Sensenbrenner Under Fire—Does Congressman Profit From Undocumented Labor?" New America Media, October 6, 2006.

Barricading the Border

1. Agence France Presse, "U.S. Races to Erect Controversial Steel Fence on Mexican Border," August 5, 2008.
2. See the description of SBLnet from the Department of Customs and Border Protection available at www.cbp.gov.
3. Associated Press, "\$57 Million Border Fence Is Going Up Near San Diego," August 16, 2008.
4. Blas Nuñez-Neto and Michael John Garcia, "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, report updated January 8, 2008.
5. See Kent Paterson, "Cross Border Activists Escalate Fight Against 'The Wall of Death,'" Americas Policy Program Report, September 12, 2008, available at americas.irc-online.org/am/5530.
6. See Melissa Del Bosque, "Holes in the Wall," *The Texas Observer*, February 22, 2008, available at www.texasobserver.org.
7. Louie Gilot, "El Pasoans Say Border Fence 'Not Solution,'" *El Paso Times*, October 26, 2006.
8. See reports and statistics assembled by the Latin American Working Group on its "US Border Security and Migration" page, at www.lawg.org.
9. Wayne Cornelius, "Introduction: Does Border Enforcement Deter Unauthorized Immigration?" and Jezmin Fuentes, Henry L'Esperance, Raúl Pérez, and Caitlin White, "Impacts of U.S. Immigration Policies on Migration Behavior," in Wayne A. Cornelius and Jessa M. Lewis, eds., *Impacts of Border Enforcement on Mexican Migration: The View From Sending Communities*, (Center for Comparative Immigration Studies, University of California, San Diego, 2007), 1–15, 53–73.
10. See Douglas S. Masse, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (Russell Sage Foundation, 2002).
11. Ibid.

A New Migration Policy

1. United States Code, Title 8, Section 1325 ("Improper entry by alien") and Section 1326 ("Reentry of removed aliens").
2. According to "Prosecutions for 2008," an analysis of U.S. Justice Department

data by the Transactional Records Access Clearinghouse (TRAC), available at trac.syr.edu.

3. According to "Surge in Immigration Prosecutions Continues," an analysis of U.S. Justice Department data by TRAC, available at trac.syr.edu.
4. See "Statement of Dr. Erik Camayd-Freixas, Federally Certified Interpreter at the District Court for the Northern District of Iowa," available at judiciary.house.gov.
5. See "Surge in Immigration Prosecutions Continues."
6. See CCA's 2007 Annual Report, available at investor.shareholder.com.
7. See "U.S. Immigration and Customs Enforcement Fact Sheet for Accomplishments FY07," available at www.ice.gov.
8. See "ICE Budget Fact Sheet—Fiscal Year 2008," available at www.ice.gov.
9. See solicitation number hscedm-08-r-0005 at www.fedbizopps.gov.

Panic Attack

1. I draw the term *sex panic* from work by Jeffrey Weeks and Gayle Rubin: Jeffrey Weeks, *Sex, Politics, and Society: The Regulation of Sexuality Since 1800* (London: Longman, 1981), and Gayle Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in Henry Abelove, Michèle Aina Barale, and David M. Halperin, eds., *The Lesbian and Gay Studies Reader* (Routledge, 1993), 3–44.
2. The Pew Center on the States, "One in 100: Behind Bars in America 2008," February 2008, available at www.pewcenteronthestates.org.
3. Solomon Moore, "Using Muscle to Improve Health Care for Prisoners," *The New York Times*, August 27, 2007.
4. Al Gore, *The Assault on Reason* (Penguin, 2007), 3–4.
5. With apologies to Giorgio Agamben, whose title, *The State of Exception* (University of Chicago Press, 2004), is blended here with Gillian Rose's, *Mourning Becomes the Law: Philosophy and Representation* (Cambridge University Press, 1996). I am greatly indebted to these two slim volumes.
6. See Michelangelo Signorile, "The Mohamed Atta Files," *Newsweek* web exclusive, October 31, 2001.
7. Daniel M. Filler, "Terrorism, Panic, and Pedophilia," *Virginia Journal of Social Policy and the Law* 10, no. 3 (2003): 345–82, esp. 345, 356.
8. Frank James, "Immigrant Sex Offenders Targeted," *Chicago Tribune*, February 25, 2005.
9. I echo part of the argument laid out by Paul Craig Roberts and Lawrence M. Stratton in *The Tyranny of Good Intentions: How Prosecutors and Bureaucrats Are Trampling the Constitution in the Name of Justice* (Prima Publishing, 2000). I also echo something of Hannah Arendt's suspicion of compassion and pity in politics; see *On Revolution* (Viking Press, 1965), 74–75, 80–82.
10. See Samuel R. Gross, Kristin Jacoby, Daniel J. Matheson, Nicholas Montgomery, and Sujata Patil, "Exonerations in the United States, 1989 through 2003," *Journal of Criminal Law and Criminology* 95 no. 2 (2005): 523–60.

Containing Multitudes

1. This is a revised, updated version of an essay that appeared in *CounterPunch* 14, no. 1 (January 2007). It relies very heavily on the pioneering work of Deborah and Rodrick Wallace, *A Plague on Your Houses: How New York Was Burned Down and National Public Health Crumbled* (Verso, 1998); Christian Parenti, *Lockdown America: Policing and Prisons in the Age of Crisis* (Verso, 1999); and Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (The New Press, 2000). For data on Bushwick, see the profile for Community District 4 from the mayor's office (www.nyc.gov) and at NYU's Furman Center for Real Estate and Urban Policy (furmancenter.nyu.edu).
2. Roger Starr, *Urban Choices: The City and Its Critics* (Penguin, 1969), 43.
3. Parenti, *Lockdown America*, 18.
4. Peter Marcuse, "Migration and Urban Spatial Structure in a Globalizing World: A Comparative Look," paper, Conference on African Migration in Comparative Perspective, Johannesburg, South Africa, June 4–7, 2003.
5. Mike Davis, *Planet of Slums* (Verso, 2007), 13, 16–17; idem, "The New Industrial Peonage," *Dead Cities: And Other Tales* (The New Press, 2002), 191–204.
6. Deborah and Rodrick Wallace, *A Plague on Your Houses*, 114.



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Cracked

Despite a U.S. Supreme Court ban, Texas has continued to send mentally retarded criminals to death row. Will a Mexican immigrant's case correct this injustice?

by Renée Feltz

Published on: Tuesday, January 05, 2010

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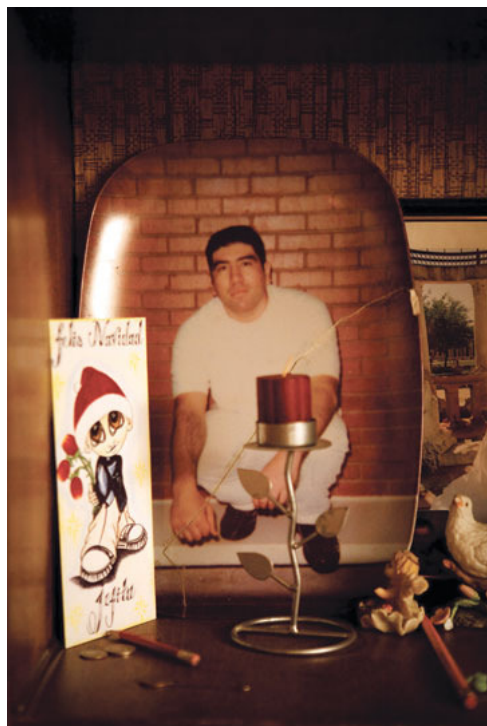


EDITOR'S NOTE: In the print and earlier Web editions of this story, the *Observer* mistakenly reported that Judge Mark Kent Ellis was a federal judge. He is a state judge who presides over the 351st District Court.

Floresbinda Plata hadn't seen a doctor during her entire pregnancy in the desolate village of Angoa in Michoacan, Mexico. But after four hours of painful labor, she sought help at the nearest clinic, an hour away by dirt road. After Plata arrived, Dr. Luis Zapien recalls, "We pulled [the baby] out and he was born completely flaccid and purple."

Floresbinda heard the doctor say that her son was dead before he untwined the umbilical cord that was wrapped twice around the baby's neck and began mouth-to-mouth resuscitation. After several minutes, though, her son began breathing. But the lack of oxygen had already damaged his brain. A nurse checked off a simple behavioral checklist—did he cry, did he respond appropriately?—and gave him two points out of 10, a score for a newborn with profound cognitive defects. Just an hour into his life, and 20 years before he would be sentenced to die in Texas, Daniel Plata was already being tested for mental retardation.

By the time he was 3, Daniel could say "Mama" and "Papa," but not much else. His grandmother grew frustrated when, as he got a little older, he couldn't seem to run simple errands. "If I sent him for lard he would lose the money," says Cynthia Hernandez. "If I sent him for peppers he would bring back tomatoes." In school, Daniel stood out as a slow learner. His first-grade teacher, Eleazar Herrera Solis, "tried to get him to be the same as the rest," but "the child could barely read." His violent father complicated matters. Several times a week he would come home drunk and attack Floresbinda. As the oldest child, Daniel would try to protect his mother and two brothers from Isidro's fists, belt and occasionally his machete. In the process he became the target of his father's rage.



Photograph of Daniel Plata on a bookshelf in Plata's living room. photos by Michael Stravato

In 1986,

Floresbinda fled with her sons to the United States, hoping for safety and a better life. She found work as a janitor in Houston. When the boys registered for school, Daniel—

Primary Sources

Original and reconciled test scores Denkowski gave Michael Richard.
(920 Download)

SBEP Complaint Against Denkowski
(1032 Download)

Dr. Denkowski's Affidavit
(1536 Download)

Video



Dr. Denkowski asks Daniel Plata to read the court order instructing him to conduct a mental retardation evaluation, and asks Plata what mental retardation means.



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then 10—was put in first grade. His friend Nasario Vasquez remembers him as "the kid who got picked last" for basketball. "For Daniel the games had no rules," Vasquez says. "He would just run down the court and throw up a crazy shot with no coordination."

When Daniel was 15, he was socially promoted to the ninth grade. He acted up in class and was sent to an alternative learning center. He was flagged as "extremely low" performing by his teacher, Terry Rizzo, in a note to the school counselor. At first Rizzo assumed Daniel was having trouble understanding English, but after studying his behavior, she thought he might be learning disabled. She urged the school to test Daniel to see if he should be placed in special classes. But he was never tested and before his ninth-grade year was halfway over, he dropped out.

Daniel started working as a busboy at Luby's to help support the family. He took to carrying his mother's gun around as a way to look tough. Then one night in March 1995, Daniel brought the gun along when he and some friends went to rob a nearby Stop'n Go.

He had drunk about 20 beers and smoked PCP-laced marijuana, he later testified, so his memory of the night is hazy. But the store's security camera shows Daniel pointing his gun at the clerk, Murlidhar Mahubani, and yelling, "Give me the money!" His two friends jumped over the counter and emptied the cash register of about \$50. Then Daniel bent over the counter and shot Mahubani several times in the back.

The store's surveillance system clearly videotaped his face. It also showed him, on the way out, using his shirt to wipe his fingerprints off the door.

Within 30 hours, police had Daniel in custody. He confessed to Mahubani's murder soon afterward.

During his trial in 1996, prosecutors repeatedly played the videotape showing Daniel ruthlessly killing Mahubani. The guilty verdict was a foregone conclusion. During the penalty phase of the trial, Daniel's mother and stepfather testified that he was a good son, and his attorney argued that he was "passive, docile. For one minute and a half, he just lost it." In the prosecutor's closing statement, he urged a death sentence: "This was a shocking crime, and it deserves a shocking punishment." The jury agreed. Daniel Plata was sentenced to die by lethal injection.

Within four years, Plata's appeal had wound its way through the courts and ended in failure. His mother sought help from several lawyers in Mexico; her inability to speak English made it hard for her to find legal assistance in the United States. "I would sleep and wake up with the same thought about each day passing ... that he was one day closer to death," she says.

Two more years passed before officials from the Mexican Consulate in Houston called her and said a lawyer wanted to ask about Daniel's history of being slow. The lawyer thought it might save his life.

In 2002, six years after Daniel Plata landed on Death Row, the U.S. Supreme Court ruled in a case called *Atkins v. Virginia* that "executions of mentally retarded criminals are cruel and unusual." Even though mentally disabled people can understand the difference between right and wrong, the court reasoned that they are less able to control impulsive behavior or learn from mistakes. The court supported its decision by pointing to bans on executing the mentally retarded in 17 states and in federal cases as "evolving standards of decency."

Like most of the states that had already passed bans, the justices used a clinical definition to establish the level of mental retardation that would exempt Daryl Atkins, the Virginia defendant, from death: below-average intellectual abilities defined by an IQ score of 70 or below and "deficits in adaptive behavior" such as practical and social skills. Both of these limitations, the court ruled, had to be present before the age of 18.

But the court left it up to the states to choose their own definitions of mental retardation. Since 2002, eight more states have passed laws that use the clinical definition cited in *Atkins*. Texas is not one of them. With bipartisan support, the Texas Legislature passed a law in 2001 mandating a life sentence for mentally retarded people convicted of capital crimes. But Gov. Rick Perry vetoed the measure, agreeing with critics that it was a "backdoor attempt to ban the death penalty." Bans on executing the mentally retarded have been floated in every legislative session since but have never again come up for a vote.

In 2004, a Texas death row inmate named Jose Briseño contended that he was mentally retarded and shouldn't be executed for murdering a Dimmit County sheriff. In the absence of legislative guidelines, the Texas Court of Criminal Appeals wrote "temporary judicial guidelines" that have guided Texas courts ever since. In its Briseño decision, the court called clinical definitions of mental retardation, like those used by the U.S. Supreme Court, "exceedingly subjective." Texas added its own set of additional criteria in the form of seven questions, including: "Did the commission of that offense require forethought, planning and complex execution of purpose?" If a defendant didn't address these questions to the court's satisfaction, he could be eligible for execution even if his test scores showed he was mentally disabled.

Most of Texas' questions emphasize the events of a crime in deciding whether a defendant meets a legal definition of mental retardation. "I think much of that emphasis is inappropriate because it embodies the stereotype of mentally retarded people as unable to do anything," says Sheri Lynn Johnson, a professor at Cornell Law School and co-director of its Death Penalty Project. In Texas, under the Briseño standard, if you're capable of committing a murder, it's difficult to establish that you're also mentally retarded.

In other states, evidence of mental retardation is heard in pretrial hearings that decide whether a person is even eligible for a death sentence. In Texas, prosecutors have fought successfully to hold off evidence of mental retardation to the penalty phase of a trial, meaning that jurors consider it only after they have convicted a defendant of murder. Keith Hampton, legislative director of the Texas Criminal Defense Lawyers



Association, says "the gamesmanship is this: I can make you hate this guy so much that you won't care if he's mentally retarded."

Since 2002, Texas has removed just 13 men from Death Row after they were found to have the mental and emotional development of 12-year-olds. In contrast to a 40 percent success rate for *Atkins* appeals nationally, just 28 percent have been successful in Texas. "I suppose you could imagine that Texas Death Row inmates are smarter than everyone else," says Johnson, "but I'd be surprised."

During Daniel Plata's original trial, prosecutors had portrayed him as a sophisticated criminal who'd tried to hide his identity and erase his fingerprints after murdering Murlidhar Mahbubani. But attorney Kathryn Kase figured that Plata's accomplices, who made no such attempts, had realized the store's security camera had captured their faces and didn't bother. If anything, she thought the crime showed how Plata was prone to act impulsively, as mentally retarded people are known to do. And when she interviewed Floresbinda Plata, she learned that there was a family history of retardation: Daniel's younger brother, Jesus, and his Aunt Celianel had both been diagnosed as mentally retarded. His cousin, Rosalba, had Down syndrome.

To prove that Daniel Plata should be exempt from the death penalty, Kase had to start by showing that he had an IQ of 70 or below. She hired Antonin Llorente, a neuropsychologist who had designed intelligence tests and was a native Spanish speaker—important because it would allow him to test Plata in the language he understood best.

In May 2003, Llorente spent about five hours with Plata in a small visiting room at the Polunsky Unit in Livingston, where men on Death Row are housed. He began by asking Plata if he felt he was mentally retarded. Plata vehemently denied it. When Llorente asked him to draw his family, the 28-year-old man "drew stick figures," which Llorente noted in his report were "appropriate for children, not mature adults." Then he measured Plata's intellectual ability through puzzles and math questions that are part of a test called the Wechsler Adult Intelligence Scale.

Llorente reported that Plata's IQ score was 65. Even in Texas courts, it's generally accepted that IQ scores include a "standard error of measurement" of five points up or down. This means a person's IQ score falls within a range; a person who tests at 75 could still be considered retarded. Plata's 65 was a strong indication that his intellectual abilities were below average and met the U.S. Supreme Court's standard for mental retardation.

The next psychologist to evaluate Plata was Texas prosecutors' favorite tester, George Denkowski of Fort Worth. Denkowski's career stretched back 30 years to when he directed a 15-bed group home for mildly retarded adolescent offenders in Houston, teaching them adaptive skills that would improve their behavior. He'd also been the chief psychologist at the Fort Worth State School, a 365-bed facility for people with all ranges of mental retardation. Since 1989 he'd been in private practice conducting psychological evaluations. Denkowski had also directed a national study of mentally retarded people in state prisons.

After the *Atkins* decision in 2002, Denkowski became the first choice for Texas prosecutors. He would ultimately testify in 29 cases—nearly two-thirds of such appeals in Texas to date. In one of the first cases he worked on, Denkowski found James Clark, a man accused of raping and killing two teenagers in Denton, mentally retarded. The state dismissed him after that finding and hired another expert who disagreed. Denkowski's opinion was presented by the defense to no avail, and Clark was executed.

In 29 cases, Denkowski has found defendants retarded only eight times. By 2006, when he tested Plata, Denkowski had garnered an "almost Dr. Death status" among defense lawyers, according to attorney Robert Morrow. Morrow represented Alfred DeWayne Brown during his 2004 trial for killing a clerk and a security guard at a Houston check-cashing store. Morrow said "Denkowski pretty much thought that if you had engaged in criminal behavior you were not retarded," Morrow says. Brown remains on Death Row.

The work was lucrative. Denkowski charged prosecutors hourly rates of \$180 for evaluations, and \$250 for court testimony. Most of the cases he worked on were in Harris County, which until 2009 pursued more death-penalty sentences than any other county in Texas. Between 2003 and 2009, Harris County paid him \$303,084 for his services, according to the Harris County Auditor.


Denkowski did not respond to repeated interview requests for this story.

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10 Comments

 **Jan**
@ 6:00PM on 01.20.10
[Comment Link](#)
I was a nurse for 25 years-now, a fraud investigator, formerly with Channel 11 in Dallas's Call 4 Action Committee... I WORKED @ THE FACILITY MENTIONED IN THIS ARTICLE_ "THE FT. WORTH STATE SCHOOL" as a nurse and was FIRED and told I was making many medication errors...however, the director refused to show me the evidence, and according to my staff, this same thing had been done to caregivers in the past who were sensitive to the needs of the mentally challenged... I did report this incident to the proper authorities, which had a domino effect of state audits on health


care as well as financial... I definitely remember the news story about the physical abuse inclusive of sexual misconduct, but I can't remember if there was a state funds misappropriation issue as well. I do remember the RUMORS on the FLOOR about the EXCESSIVELY HIGH SALARIES of the DIRECTOR and other higher ups as well. It was after hearing this and discussing the validity of this allegation that I was told the news of my sudden departure. Due to the allegations from other members of the staff, I immediately insisted on a personal visit with the DIRECTOR of NURSES to voice my opinion of the rumors of cruelty, abuse, and neglect to innocent children and their families...some who never had any visitors at all due to the painfulness and shamefulness of their situation. This story deserves more attention and follow-up re: the Fort Worth State School.

 **Yvette Holden**
@ 6:00PM on 01.19.10
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It never ceases to amaze me that 'normal law abiding citizens' think its ok to torture and punish prisoners especially deathrow inmates. Yes we all know they have committed the worse offense but they will pay the ultimate price, so why is it deemed ok to treat these people so badly? If we are a civilized society we should not be torturing prisoners, we shouldn't be killing them but that's a whole new debate! If we are showing prisoners what's right and wrong surely bad treatment just reinforces violence. Probably people don't care because they are DR inmates but what about innocents and what about the mentally disabled that really are sick. We have made a world where we just want to kill those that don't fit in, that I do not find civilized at all.

 **6th Amendment Fan**
@ 6:00PM on 01.15.10
[Comment Link](#)


I am continually confounded and depressed when confronted with my fellow citizens' belief that police and prosecutors are always right and should never be questioned. If a case is so "open and shut," why would prosecutors need to resort to a charlatan's expert testimony to get the results they want?

 **Temple**
@ 6:00PM on 01.13.10
[Comment Link](#)


One very small paragraph says it all: "The store's surveillance system clearly videotaped his face. It also showed him, on the way out, using his shirt to wipe his fingerprints off the door." That say he knew exactly what he was doing and no amount of "junk science" by any defense attorney or defense psychologist is going to be able to explain that away if they are the slightest bit honest.

 **South Texan**
@ 6:00PM on 01.12.10
[Comment Link](#)


I am still amused and amazed at people that even want to talk about death row prisoners' living conditions. What I just wrote sums it up-- living conditions-- their victims are not. Get a clue.

 **South Texan**
@ 6:00PM on 01.11.10
[Comment Link](#)


Good insight Travis - from somebody who is an actual witness to the supposed mentally disabled. As I read this story, the first thought that came to my mind is that the opposing Dr. Brown /et al. has/have some type of personal vendetta to play out against Denkowski. Professional jealousy?

 **Jerry Woodall**
@ 6:00PM on 01.11.10
[Comment Link](#)


Junk journalism!

 **Fighting4Freedom**
@ 6:00PM on 01.11.10
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Thank you for highlighting this important issue! It is a crime that Texas still puts people with mental disabilities on Death Row. There are few stories that get out regarding this issue. Rob Will, who is an innocent man on Death Row housed in the Polunsky Unit, has written about this issue and the conditions surrounding prisoners housed at Polunsky. He has also organized to gain better conditions for prisoners on Death Row including those with disabilities who often end up on Level because they are unable to do the simple things required like shaving or even sometimes eating their food. This is a blog entry I think you all might be interested in:
<http://freerobwill.blogspot.com/2009/10/cognitive-capability-and-death-penalty.html>

 **TravisMaximus**
@ 6:00PM on 01.09.10
[Comment Link](#)

I happen to work at a Mental Health facility in Mexia, Texas. I work on a dorm that is populated entirely by criminal offenders and I think this is a really tricky issue. Some of the guys know exactly what they did and they are bad people who should be punished to the full limit of the law, but some of them really wouldn't have committed their crimes if it wasn't for the disability. Theres really no way to tell if they are guilty or not unless you get to know these people

 **Thomas Oakland**
@ 6:00PM on 01.07.10
[Comment Link](#)

Two additional psychologists lodged an ethics complaint against Denkowski in addition to Dr. Brown. I was one of them.

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