

Hepatitis C and the California Prisoner *Eugene Alexander Dey*

The Hepatitis C virus (HCV) has surpassed AIDS as the next health epidemic. No demographic has been hit harder by HCV than California prisoners, who have an unimaginable infection rate of 40 per cent (California Department of Corrections and Rehabilitation, 2006). A disease of slow progression, 85 per cent are expected to develop chronic HCV over a period of 10 to 40 years (Cowley, 2003). These conditions are fueling a health crisis of monumental proportions because correctional health care administrators are unable to provide even basic medical treatment, falling well below the bare minimum constitutional requisites.

According to Judge Thelton Henderson, this silent killer is concentrated in a system responsible for roughly 60 preventable deaths a year (Plata, 2005). After officials in charge of the California Department of Corrections and Rehabilitation (CDCR) failed in every attempt to enact a myriad of medical reforms, the judge found “incompetence and indifference” were so “deeply entrenched” he appointed a correctional medical receiver answerable only to him (Plata, 2006). Together they will try to bring the CDCR out of the penological Dark Ages, in which most prisoners are oblivious to the realities of their situation.

When Steve Silvera from Vallejo came to prison with a five year sentence for drug possession in late 2003, he knew little about HCV. When confronted with the veracity of the outbreak, Silvera, 41, literally could not believe that every other prisoner has the virus. “I had no idea so many had it [HCV]. I thought it was a rare occurrence,” said Silvera, who has lived in the North Bay area since the early 1990s. “Plus, on the streets, I never knew anyone to have it.”¹

Silvera’s revelation did not have anything to do with a hepatitis awareness campaign. Instead, the death of Robert “Freddy” Hagenson brought it to his attention. Hagenson had chronic HCV that led to his death in December, 2005, at age 54, when his liver failed due to advanced cirrhosis. Many at the California Correctional Center in Susanville witnessed Hagenson’s excruciating demise.

It scares me that this disease can destroy a human being like it did to Freddy. But on the same token, preventative measures can be taken. One foolish decision in prison, like injecting drugs or a dirty tattoo needle, can end up a death sentence. Luckily, I’ve done neither.²

Hepatitis C is a blood borne pathogen and can spread quickly in a community of intravenous drug users. High risk behaviour like tattooing and unprotected sex can lead to transmission. The fact that two-thirds of prisoners have histories of substance abuse - and continue to share tainted needles while incarcerated - explains why HCV is transmitted so efficiently in correctional facilities. By concentrating so many drug addicts together without substance abuse management or education about the dangers of contagious diseases, the death of prisoners like Hagenson will grow in frequency as the natural progression of the liver disorder takes its toll on the afflicted. Silvera said:

It was a shock to see him [Hagenson] deteriorate that fast. That was the first time I ever seen [sic] someone die in prison and I didn't like it. I feel like I am serving two sentences: one the judge gave me, and the death sentence the CDCR might or might not have given me by surrounding me with so many with the disease.³

Silvera, whose drug of choice was methamphetamine, is dismayed by the relaxed attitude about the affliction even though nearly "everyone in here has it [HCV]". With a June release date, and plans to go back to work with the roofers' union, Silvera is just trying to make it through some very deadly territory. He said:

Three months to the finish line, but it only takes one microscopic virus to beat me there; it's like I'm running for my life. Freddy's death made me feel like I'm walking through a mine field, and I only have three months to make it to the other side safely.⁴

One of the land mines to which Silvera refers is Larry Gilmore from the San Jose area. Serving a life sentence for armed robbery, the 60 year old Gilmore contracted HCV many years ago. Since being diagnosed with this fatal ailment, Gilmore has had no choice but to prolong the inevitable through diet and exercise.

Right now I am being refused treatment. It is the CDCR's policy not to treat a patient until his liver has sustained considerable damage from the virus. Instead of early treatment, when a patient

is healthy and able to tolerate the interferon and riboviron, they insist on waiting until the liver is malfunctioning.⁵

Due to his age and that his viral load counts are within an acceptable range, Gilmore is barred from treatment under the guidelines. Hepatitis C protocols implemented by the CDCR in 2005 automatically exclude anyone over 60 from receiving the combination drug therapy that costs at least \$10,000 a year (California Department of Corrections, 2005). Gilmore believes prison officials implemented these exclusions not to save lives, but to save money. "I believe that a person should be treated upon request. We are not talking about heroic measures here. We are talking about an easily available drug treatment therapy", said Gilmore.⁶

Hepatitis C is considered an incurable disease (Cowley, 2003). However, if the combination of interferon and riboviron is administered before severe cirrhosis develops and damages the liver beyond repair, 50 per cent to 60 per cent of patients respond favourably and clear the virus (California Department of Corrections and Rehabilitation, 2006). Yet, since the CDCR's medical is plagued by "incompetence and indifference", negligence is automatically suspected by Gilmore in the death of Hagenson. These horrible conditions justifiably worry him.

It really shook me up because Freddy had been pressing medical for treatment for a year or more before he died. Freddy told me that all he got was the run-around; lost blood tests, months and months of... first they treat him and then they wouldn't. While all this was going on his liver worsened to the point of total failure. I can't help but wonder if I will meet the same end in here.⁷

With no other recourse, Gilmore is challenging his exclusion from combination therapy by filing an administrative appeal, a likely precursor to a lawsuit. Gilmore endeavors to force the CDCR to abandon their protocols that deny him based solely on age. In the statistical likelihood his condition develops into chronic HCV, he would be denied treatment under the new protocols and allowed to die.⁸

Henderson recently appointed Robert Sillen as the court's receiver. For prisoners like Gilmore, Sillen's success is a matter of life and death. The judge gave the receiver, a respected health care manager, six months to

implement life-saving measures. Already considered a national disgrace, the recent resignation of two corrections secretaries in a 60 day period has sent the beleaguered agency into an unprecedented downward spiral.⁹ Some experts suggest the Governor should appoint an outsider with the political clout and wherewithal to transcend decades of bureaucratic ineptitude. Others want Henderson to place the entire agency under federal control. Gilmore just wants the CDCR to abandon their current protocols and provide treatment for those afflicted with this deadly disease. Gilmore added:

If the politicians and voters think it is such a great idea to build this huge, over- bloated prison system and pass out life sentences like candy, then they should be willing to pay the price of decent health care. HCV care is an example of short- term thinking. There will come a day when there will be an aging prison population, half of which will be HCV infected. Treatment now will be far cheaper than down the road, when thousands will require more expensive measures in the end stages of liver disease.¹⁰

AFTERWORD

Inhumane conditions which made the expeditious death of Freddy possible have now brought another friend, Thomas Wallen, to death's door. Due to a rare Hepatitis B and D mutation, Wallen has lost nearly 100 pounds because of an inexcusable misdiagnosis. Unlike Freddy,¹¹ Wallen has managed to hold off the grim reaper. Still, I am encouraged by the fact that the medical receivership is beginning to show signs of improvement. While medical is making slow but steady progress as of the spring of 2007, it appears genuine correctional reform just might come in the form of a huge state agency being completely taken over by the federal judiciary.

ENDNOTES

¹ Face-to-face interview with Steve Silvera. California Correctional Centre. January, 2006.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

- ⁵ Face-to-face interview with Larry Gilmore. California Correctional Centre. January, 2006.
- ⁶ *Ibid.*
- ⁷ *Ibid.*
- ⁸ *Ibid.*
- ⁹ The California justice system hit a critical mass when Rod Hickman and Jeanne Woodford both resigned as agency heads over a two month period (*Madrid*, 2006, p. 28–31). Constant interference by prison industrial lobbyists who keep the California Department of Corrections and Rehabilitation in a perpetual state of dysfunction led both to resign rather than maintain the status quo of institutionalized incompetence. Numerous media outlets kept this alarming development in the news until the judge in one of the ongoing class actions determined to conduct yet another round of hearings (*Madrid*, 2006), with the threat of a total federal takeover looming larger.
- ¹⁰ Face-to-face interview with Larry Gilmore. *Op. cit.*
- ¹¹ Robert “Freddy” Hagenson’s story, *A Requiem for Freddy*, was recognized by P.E.N. in 2007 with an Honourable Mention.

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ABOUT THE AUTHOR

Eugene Alexander Dey is an inside reporter for the *North Bay Bohemian*, a weekly newspaper. He regularly writes for *Fortune News*, *Prison Focus*, and *MIM Notes*. His memoir, “A Three Strikes Sojourn”, won Honourable

Mention by P.E.N. America in 2006. His article, "The Pendulum of Change and California's Three Strikes Law" was published in the *Journal of Prisoners on Prisons*, Volume 15:1, 2006. He is currently serving a life sentence.

Write to Eugene Dey, P-37864, California Correctional Centre, CCC-III / L3-129, P.O. Box 2210, Susanville, CA 96127, U.S.A.