



# Prison Legal News

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*Dedicated to Protecting Human Rights*

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## Chronic Punishment: The Unmet Health Needs of People in State Prisons

by Leah Wang

OVER 1 MILLION PEOPLE SIT IN U.S. state prisons on any given day. These individuals are overwhelmingly poor, disproportionately Black, Native, Hispanic, and/or LGBTQ, and often targeted by law enforcement from a young age, as we detailed recently in our report *Beyond the Count*. And all too often, they are also suffering from physical and mental illnesses, or navigating prison life with disabilities or even pregnancy. In this, the second installment of our analysis of a unique, large-scale survey of people in state prisons, we add to the existing research showing that state prisons fall far short of their constitutional duty to meet the essential health needs of

people in their custody. As a result, people in state prison are kept in a constant state of illness and despair.

Instead of “rehabilitating” people in prison (physically, mentally or otherwise), or at the very least, serving as a de facto health system for people failed by other parts of the U.S. social safety net, data from the most recent national *Survey of Prison Inmates* show that state prisons are full of ill and neglected people. Paired with the fact that almost all of these individuals are eventually released, bad prison policy is an issue for all of us — not just those who are behind bars.

have changed, or remained stagnant.

Readers may already be asking how the data look by state, or when we’ll have more current data. Unfortunately, these survey data are not available state-by-state, and we estimate it may be another several years before the survey is fielded again (this survey has not been on a regular publication schedule since 2004, with 12 years between the two most recent data collections). But the information presented here is a powerful supplement to other state-specific incarceration data, creating a strong foundation for advocacy and sound policymaking.

### Physical Health Problems: Chronic Conditions and Infectious Disease

THE 2016 SURVEY DATA SHOW THAT HUGE proportions of people in state prisons are impacted by disease, disability, and/or mental illness. As we detail below, incarcerated people have higher rates of certain chronic conditions and infectious diseases compared to the general U.S. population in many, but not all, cases. In cases where rates of illness are not higher, we must consider that rates of undiagnosed conditions and disease among incarcerated people are likely to be higher due to inadequate screening before and during prison. In addition, people in prison rely on — and are burdened by — having to request medical appointments through correctional staff, and having to pay unaffordable fees (“copays”) for care.

It’s important to remember that these comparisons are not intended to show that prisons are “good” or “bad” at managing particular conditions, but rather to show the

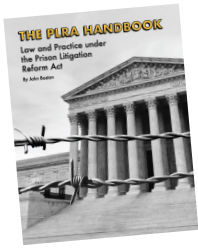
### About the Unique Data Used in This Report

THIS REPORT OFFERS A DETAILED VIEW OF the people in state prisons nationwide, using the most recent self-reported, nationally representative data available, the Bureau of Justice Statistics’ 2016 Survey of Prison Inmates. Though correctional populations are in constant flux, the Survey data released just over a year ago are essential to understanding incarceration today.

While the Bureau of Justice Statistics, the federal agency that collected the data, has published its own series of reports based on its findings, we designed this report to include many details overlooked in the government’s reports. We surface important details about identity, life experiences, health, and more. Where we can, we compare the data to those collected in decades prior or to measures of the general U.S. population, to get a sense of how prison populations compare and how state policies

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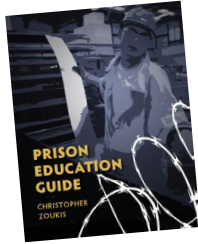
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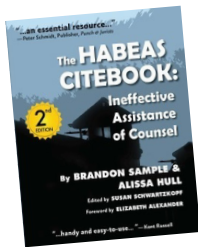
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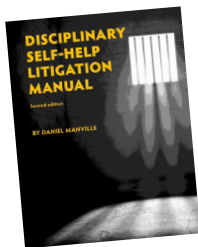
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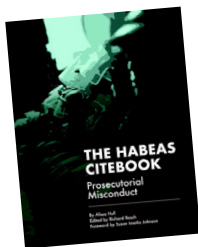
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## Chronic Punishment (cont.)

overall frequency of illness in prisons, and question the uniquely American policy of locking up so many infirm and high-need people. Instead of asking, “should cancer prevalence be higher or lower in prisons?” a better question is, “why should a 70-year-old with cancer and heart disease be locked up at all?”

While an incarcerated individual’s health issues may begin before arrest, incarceration often exacerbates problems or creates new ones. Being locked up in and of itself causes lasting damage to one’s health and to loved ones’ health, including children born to justice-involved parents. People in prison have a constitutional right to basic healthcare, but that care tends to be reactionary, designed to treat acute health care problems rather than to prevent or effectively treat chronic disease. When it comes to some of the major public health breakthroughs of recent history — like gold-standard substance use treatment — incarcerated people have largely been left behind.

Many basic health-related findings from the Survey have been reported by the Bureau of Justice Statistics, but here we offer further demographic breakdowns by gender, race and ethnicity, and age, wherever we find notable differences. In some cases, we find that people in state prisons have much higher rates of illness compared to the general public:

More than 1 in 6 (17%), and the same percentage of older people (here, defined as people 55 and older), reports being diagnosed with asthma, compared to just 8% of U.S. adults who currently have it. Asthma, like mass incarceration, is a burden that falls disproportionately upon particular communities; the highest rates in the Survey belong to Black (18%), Native (18%), and multiracial people (20%). And considering that asthma can be triggered by mold, dust mites, air pollution, and pests — all things found in poorly maintained, harmfully sited prisons — asthma is a serious problem for incarcerated people.

Half (49%) of people in state prisons (but 59% of women) met the criteria for a substance use disorder in the 12 months before entering prison. This represents a decrease from 59% in the previous (2004) survey, but 49% is still an enormous proportion, compared to the 7.5% of U.S. adults

that struggled with substance use disorder in 2016. Native people have the highest rates (62%) of substance use disorder, but white and multiracial people also have rates over 50% each. Prisons have an opportunity to provide high-quality, effective drug treatment to those who opt in, yet few actually do this. Instead, drugs and substance use disorder are incredibly common in prisons, and the likelihood of overdose death skyrockets upon release.

One in 10 (9.5%) people in state prison — including 16% of women and 21% of people over 55 — has been diagnosed with hepatitis C at some point, which is more than five times the estimated rate of U.S. adults with the viral infection. This is no coincidence: Hepatitis C risk is elevated among people who use drugs, and drug use is a common thread for people leading up to, and sometimes during, their prison sentence. Modern treatment for hepatitis C has a high cure rate, yet 80% of people in state prison who had ever been diagnosed with it still have it — reflecting the unwillingness of state prison systems to provide appropriate treatment, even at the expense of public health.

Including those with hepatitis C, 17% of people in state prisons have contracted an infectious disease at some point, and like hepatitis C, rates tend to be higher as compared to the general U.S. population. About 1.2% of people report ever having hepatitis B, compared to less than 0.5% of the U.S. population who have a chronic case of the infection. And 1.1% have a history of HIV/AIDS, compared to less than 0.5% of people in the U.S. over age 13. Infectious diseases spread more easily throughout congregate settings like prisons and can then spread to other facilities and communities through staff and transfers; in this way, mass incarceration was a key contributor to the high COVID-19 caseloads in certain communities in 2020.

While the prevalence of infectious disease has come down significantly since the last version of the Survey in 2004 (again, the most recent Survey was conducted pre-COVID), rates of many current medical problems reported by people in prison have increased.

For some other medical conditions, rates are comparable between incarcerated and non-incarcerated people, as we discuss in the findings below. But this is not to say that these conditions are “not problems”

## Chronic Punishment (cont.)

in prisons. Because people in state prisons face challenges to their physical and mental health on a daily basis, they need at least the same level of care as they might on the outside, which we know is not their reality. Finally, rates of medical problems are always much higher for older people (again, here defined as those ages 55 and older), painting a bleak picture of what it's like to age in prison.

Our analysis shows that, among people in state prisons:

About 7% (and 23% of older people, ages 55+) have been diagnosed with heart disease at some point in their life. While heart disease is a leading cause of death both inside and outside of prison, the carceral environment makes it difficult for people inside to pursue a lifestyle and diet that staves off these problems.

About 29% (and 62% of older people) have been diagnosed with hypertension (high blood pressure), rates similar to those seen in the general population in 2016. However, literature on undiagnosed hypertension in the “noninstitutionalized” U.S. population (a regrettable example of carceral exclusion from public health research) shows that over 1 in 6 people with hypertension are unaware of their condition. This suggests that actual rates are far higher than diagnosed rates of hypertension, even among non-incarcerated populations.

About 8% (and 23% of older people) have been diagnosed with diabetes, another common condition nationwide that prisons and other correctional facilities frequently fail to treat. Diabetes requires careful management of blood sugar levels, and several lawsuits show outright neglect

of life-or-death situations when diabetic incarcerated people needed timely food, insulin, or medical equipment. Both diabetes and hypertension are known risk factors for heart disease and stroke.

About 18% (and 45% of older people) have been diagnosed with arthritis or other rheumatic diseases like rheumatoid arthritis, gout, fibromyalgia, or lupus, which cause pain and inflammation, among other symptoms. Some of these are autoimmune diseases which can be brought on by exposure to stress; we know stressful situations like violence occur in prison regularly, but people in prison often experience trauma well before incarceration, such as parental incarceration and early contact with law enforcement.

About one-fourth (26%) have a body mass index considered normal or underweight, as in the U.S. more broadly. Almost half (46%) are categorized as “overweight” and the remaining 28% are considered obese. This actually represents a slightly lower obesity rate than among all U.S. adults, but prison diets hardly promote public health: Incarcerated people are forced to eat what the public has been specifically “advised to avoid for decades,” but in insufficient quantities, forcing often unhealthy commissary purchases for those who can afford it. As a result, both weight gain and weight loss can happen in prison.

### Access to Healthcare: People Who Go to State Prison Disproportionately Lack Health Insurance Before Incarceration

THE NUMBER OF HEALTH PROBLEMS reported by incarcerated people may be partially explained by their difficulty accessing healthcare before incarceration: half (50%) of people in state prisons lacked

health insurance at the time of their arrest. That's a devastating rate of uninsured people compared to the overall population: Between 2008 and 2016, the highest rate of uninsured people in the U.S. was just 15.5%. Those in state prison with insurance before arrest generally received it from either an employer (39% of the insured) or through Medicaid (32%). This high level of participation in Medicaid, a program serving those who cannot afford healthcare premiums, tracks with our previous finding that people in prison are far poorer, on average, than their non-incarcerated peers.

For some people, then, prison actually improves access to healthcare: Over one-fourth (27%) of people in state and federal prisons who came to prison with a chronic condition were first diagnosed with it while incarcerated. This sounds like a victory in terms of prison healthcare, but it speaks more to the utter failure of the U.S. healthcare system to serve everyone, especially the most marginalized. Moreover, prison healthcare falls short of the constitutional duty to care for those in custody. While most (81%) people in state prison report having seen a healthcare provider at least once since admission, that leaves nearly 1 in 5 (19%) who have gone without a single health-related visit since entering prison.

And as a result of such inadequate healthcare, many people in prison end up worse off upon release, or dying prematurely, realities that aren't covered in the Survey data. Cancer, for example, is more deadly in prison than on the outside, and people recently released from prison have a higher risk of hospitalization and death from heart disease than the average person. In the first two weeks after release from prison, individuals face a risk of death that is more than 12 times higher than for non-

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incarcerated individuals.

### Rates of Mental Illness Are Exceptionally High Among Incarcerated People, But Prisons Fail to Meet the Demand for Help

THE SURVEY DATA CONFIRM THAT THE long-standing mental health crisis in prisons is as serious as ever: Over half of people in state prisons reported some indication of a mental health problem. Women and Native people in prison are suffering from mental illness at even higher rates. The data reveal policy failures that begin in our communities: governments have chipped away at the social safety net and accessible community-based treatment for years, while spending on the carceral system has increased. As law enforcement and courts respond to mental illness like it's a crime, prisons and jails fill up with people who have serious mental health needs — which these systems are not designed to accommodate. And the longer they are in prison, certain people are likely to develop worsening mental health symptoms, especially those who are sent to solitary confinement.

The mental health crisis in prisons is only partially captured by the Survey, but

the data reveal that:

More than half (56%) of people in state prison had some indication of a mental health problem, whether recent (14% report serious psychological distress in the past month) or previously diagnosed (43% report any history of one or more mental health conditions). Yet only about one-fourth of the total population (26%) have received professional help for their mental health since entering prison. Less than 1 in 3 (30%) people experiencing serious psychological distress in the past 30 days reported currently receiving professional help.

The prevalence of every single mental health condition is higher for women: Rates of post-traumatic stress disorder are almost three times as high in women as in men (34% of women versus 13% of men). Rates of manic depression, bipolar disorder, and/or mania (reported by 44% of women), as well as depressive disorders (49% of women) are double the rate compared to men.


State prisons allow too many in their custody to remain in a constant state of distress: In the 30 days before the survey was administered, one-sixth (16%) of respondents felt “nervousness” all or most of the time; 12% felt hopeless all or most of

the time; 11% said they felt depressed all or most of the time. Almost one-fourth (23%) felt like “everything was an effort.” Native incarcerated people report these concerning symptoms at the highest rates across the board.

Mental health diagnoses in state prisons are most prevalent among multiracial people (56% report one or more), white people (53%), and Native people (52%), compared to Hispanic (36%), Black (33%), or Asian (32%) people. These figures track closely with how people of different racial and ethnic groups utilize mental health services outside of prison.

A staggering half (50%) of people in state prisons who have a history of substance use disorder treatment also have a history of one or more mental health conditions. This is disproportionate overlap: According to the National Institute on Drug Abuse, 38% of U.S. adults with substance use disorder also had one or more mental health disorders.

Some mental health diagnoses reported by people in prison may have been brought on by incarceration, which is itself a traumatizing experience. Other data tell us that well before that, when someone is



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## Chronic Punishment (cont.)

arrested, the odds of them having serious mental illness or psychological distress are even greater, reflecting the practice of sweeping people experiencing mental health crises into the criminal legal system instead of redirecting them to community-based services. Despite how ill-suited these facilities are for providing these services, prisons and jails have become some of our nation's largest de facto mental health care providers since the deinstitutionalization of public psychiatric hospitals beginning in the 1950s. State policy decisions, then, led directly to the profound overlap of mental illness and mass incarceration that we see today.

### Disabilities: Incarcerated People Report Disabilities at Much Higher Rates Than the Broader U.S. Population

SIMILAR TO THOSE WHO NEED TREATMENT, people with disabilities are failed by the criminal legal system time and time again. After disproportionate contact with law enforcement, unaccommodating courts, and unequipped jails, almost half a million people with disabilities end up locked up in state prisons on a given day — accounting for 40% of state prison populations nationwide, and 50% of women's state prison populations.

From vision-related (12%) to hearing (10%) and ambulatory (12%) disabilities, incarcerated people have much higher rates of disability compared to the general U.S. adult population, where an estimated 15%

have any disability. Furthermore, a higher percentage of people in state prison in every age group report having a disability compared to the general population. Along racial and ethnic lines, multiracial and Native people in state prisons had higher rates of nearly every type of disability, followed by white people. Black, Hispanic, and Asian incarcerated people reported lower-than-average rates of disabilities.

Unsurprisingly, older people are the most likely to report a disability, with almost 6 in 10 (57%) of those age 55 to 64, and 7 in 10 (70%) of those 65 or older, reporting at least one disability. Between disability, other chronic conditions and excessive security costs, it's twice as expensive to incarcerate someone age 50 or older compared to a younger, healthier person. Considering the nationwide aging of the state prison population — a record 13% are age 55 or older at this point — turning prisons into “makeshift nursing homes” is one of the nation's most wasteful, morally bankrupt experiments to date.

Cognitive disabilities, those that lead to serious difficulty concentrating, remembering, or making decisions, impact about one-fourth (24%) of people in state prisons. Similarly, one-fourth (26%) have been told that they have attention deficit or hyperactivity disorder, compared to just 9.4% of children under 18, and about 4.4% of U.S. adults. And while 25% of people across state prisons have a history of taking special education classes, only half (54%) of all adult correctional facilities in the U.S. offered special education classes as of 2019 — another example of the wide gap

between what incarcerated people need and what state prisons provide.

People in prison who have disabilities are susceptible to bullying and worse: Deaf people, for example, may miss instructions or announcements for medication deliveries, and are sometimes placed in solitary confinement as a depraved substitute for providing hearing aids. In general, people with cognitive

or other disabilities in prison are highly vulnerable to excessive use of force and abuse by both correctional staff and other incarcerated people.

### Pregnancy and Reproductive Health: Expectant Mothers are Underserved in Prison

WHILE NOT A HEALTH “PROBLEM,” pregnancy presents specific medical needs for many people entering the criminal legal system, and prisons and jails are among the worst places to be during such a high-need time. Excluding transgender women, about 4% of people (or 3,500) in women's prisons — disproportionately women of color — report that they were pregnant at admission, and therefore had to navigate the challenges and impacts of carceral pregnancy.

In the 1991 equivalent of the Survey, a slightly higher percentage (6%) of women in state prisons reported being pregnant upon their admission, but the number of women in state prisons more than doubled by 2016, expanding the total scale of prison pregnancy. Most women who were pregnant at admission (68%) did not have health insurance at the time of their arrest, setting them up for possible undiscovered complications. Further, most of these women also spent time in jail before admission; one-fourth (26%) spent 6 months or more facing horrendous conditions in local jails before being transferred to prison.

Troublingly, 1 in 10 women (9%) who were pregnant at admission had not had an obstetric exam, an important check of both maternal and fetal well-being, and only half (50%) had received prenatal care in the form of special testing, dietary changes, or childcare instruction. As we found previously, pregnancy nutrition standards, in particular, are largely missing from most state department of corrections policies.

In a previous study, we found that state prisons lack many other formal policies that would ensure the health and safety of both the parent-to-be and their child. Besides meager progress in addressing the inhumane practice of shackling pregnant people, many states fail to screen for high-risk pregnancies, or to make hospital arrangements for delivery, forcing some to give birth in the horrid confines of their cell. Thanks to researchers focused on reproductive justice in correctional settings, we now have an idea of how this systematic neglect

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of pregnant people plays out: In some state prison systems, miscarriages, premature births, and C-section births are much higher than national rates. Meanwhile, some of the same states make breastfeeding (or lactation) difficult or impossible, and keep opioid use disorder treatment out of reach for expecting or new parents, showing a clear disregard for their lives.

### How Do We Begin to Address the Unmet Needs of People in State Prisons?

TO BE CLEAR, FINDINGS FROM THE 2016 *Survey of Prison Inmates* only confirm what research has shown for years: that incarcerated people face enormous obstacles to achieving and maintaining good health. The ongoing lack of care and compassion (as well as years of deeply problematic, non-consensual medical experimentation) behind bars has led to a deep sense of distrust in correctional healthcare to keep people in good health, or even to “do no harm.”

And while it’s easy to blame “the prison system” or private healthcare companies for these dangerous conditions, each of these trying aspects of prison life is the result of state policy: harsh policy that was implemented and remains unchanged,

or — in the case of more humane standards — policy that exists on paper, but is often not enforced at the facility level. As we’ve asserted time and time again, state policy drives mass incarceration and defines day-to-day life for most people directly impacted by incarceration, including over 1 million people in state prisons, over half a million more in local jails, their children, and countless other loved ones.

State lawmakers must be aware of forces before incarceration that may lead to poor or declining health: Namely, the concentration of poverty, trauma, and disadvantage among people before they enter state prison, including the clear gap in health insurance coverage for those who can’t afford market-rate premiums or obtain a job offering health benefits. State policy must also reflect the reality that releasing someone from prison with no plan for continuing their healthcare regimen is a public health failure, considering the disproportionate nature of illness and disability behind bars. As organizations like Community Oriented Correctional Health Services have been saying for years, there must be coordination between correctional facilities and community providers to minimize disruptions in treatment and insurance coverage.

For those currently behind bars, there are myriad ways to begin addressing the egregious conditions of state prison confinement. Below, we offer further exploration of the topics discussed in this report and a non-exhaustive list of policy solutions.

### Improve Access to Health Services Inside Prisons and Upon Release

ELIMINATE FEES FOR MEDICAL CARE (OFTEN misleadingly called “co-pays” in policy), which would reduce financial barriers to needed health visits and limit the spread of disease;

Hold private healthcare contractors accountable for cost-avoiding, negligent practices that leave incarcerated people without necessary care;

Ensure that medical and mental health providers — whether they are state-managed or privately run — take a trauma-informed approach to care, which can be achieved through policy review, training, or hiring trained staff;

Counteract the federal “exclusion” policy of terminating Medicaid upon incarceration by expanding Medicaid coverage, which results in suspension instead; assist individuals in custody in pre-enrolling months before release to ensure coverage immediately upon returning to their com-

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munity; and

Require prisons to coordinate follow-up appointments and ensure that people leave custody with several weeks' worth of prescription medication.

### **Acknowledge Specific Areas of Health Need and Types of Chronic Disease:**

IMPROVE REPRODUCTIVE CARE IN PRISONS: Offer pregnancy testing, comprehensive prenatal care, and offer voluntary, cost-free reversible contraception and abortion services;

Require testing and modern treatment for conditions like hepatitis B, hepatitis C, heart disease risk factors, and traumatic brain injury;

Ensure that people who were on treatment regimens pre-incarceration do not experience disruption in (or denial of) treatment, which greatly increases the chance of relapse and/or overdose death;

Accommodate all people with disabilities with appropriate equipment and modifications in built environment, communications, daily routines, and programming; and

When people with mental health issues, substance use disorders, and co-occurring disorders cannot be released right away, increase the availability of

counselors and clinicians.

### **Ensure That Prisons Are Habitable Spaces:**

IMPROVE FAILING (OR NONEXISTENT) infrastructure in prisons that makes people sicker, like undrinkable water and lack of air conditioning;

Overhaul prison food such that it provides nourishing and filling meals, which will decrease physical and mental health problems and reduce reliance on expensive commissary items;

Require emergency response plans for state prisons to respond to various situations, including outbreaks of infectious diseases;

Immediately reduce, and eventually eliminate, the use of solitary confinement, euphemistically known in some states as "restrictive housing" or "segregation," which can cause permanent psychological damage and increase risk of premature death after release; and

Create robust, external oversight mechanisms for conditions of confinement, such as an ombudsperson's office.

### **Move Older and Ailing People Out of Prisons Permanently:**

EXPAND AND ACCELERATE MEDICAL parole (also known as compassionate release),

allowing very ill people to receive care at home among loved ones; and

Expand and accelerate parole eligibility for those who are above a certain age, otherwise known as geriatric parole, and ensure that no parole processes are subject to "carveouts" (such as excluding those incarcerated for violent or sexual offenses).

Of course, many people in state prisons should not be behind bars at all, much less for the excessively long sentences they are often serving. The above reforms should go hand-in-hand with meaningful decarceration efforts guided by state policy: greasing the wheels of discretionary and presumptive parole, expanding earned good time, retroactive sentencing reform, and others.

And finally, while this should be obvious, addressing bad policy and creating better prison policies must not come at the expense of non-carceral, community-based solutions. States must curtail their reliance on police, jails, courts, and prisons as solutions to social and public health problems. 🦋

*This article was originally published by Prison Policy Initiative in June 2022. It is reprinted here with permission. View the original article, including graphs and charts, at <https://www.prisonpolicy.org/reports/chronicpunishment.html>.*

## **Prisoners Caught in Ukraine War Crossfire**

*by Chuck Sharman*

**D**URING UKRAINE'S SUCCESSFUL offensive to liberate the southern city of Kherson in October 2022, retreating Russian forces took 2,500 Ukrainian prisoners with them. What followed was a Kafka-esque journey through five countries, at the end of which the same Russian army that led the prisoners out of jail detained them again – this time for violating immigration laws.

"They asked me, 'How did you enter Russia?'" said Ruslan Osadchy, one of the Kherson prisoners. "You brought me here," he recalled replying, "under the muzzles of automatic guns!"

Curiously, the Ukrainian convicts were passed over by recruiters from the Wagner Group, a private mercenary army partially drawn from Russian lockups. Instead, as another Ukrainian prisoner recalled, they "were received with shouts, beatings, [and] humiliations" upon arrival at a Russian-controlled prison.

"Face to the ground," recounted Olek-

sandr Fedorenko, 47, "don't look, don't speak, and blows, blows, blows."

Russian officials have not publicly acknowledged the transfer of Kherson prisoners into Russia, which would violate international law prohibiting the forced removal of non-combatants from an occupied zone. The prisoners suffering this haphazard treatment, many convicted of murder, kidnapping and rape, had also been left behind by Ukrainian forces retreating from Russian's initial advance.

"There was a war going on," explained former Ukrainian human rights chief Ludmila Denisova. "Who had time for inmates?"

When the Russians first took control, the prisoners said, they were largely left alone. Then as Ukrainian forces pushed back into Kherson, the group was moved to Russian-controlled Crimea. From there they were sent to the Russian mainland, with some then shipped to Latvia. But

when Latvia wouldn't take them, part of that group headed for Georgia. Eventually, a remnant passed through Moldova to return home. Ukrainian officials greeted them skeptically, suspecting they were Russian collaborators. But after lengthy interrogation and a lie detector test, they were finally let in. Those whose sentences had expired were released.

Meanwhile, the Wagner Group has focused recruitment efforts on prisoners already in Russia. Founded by Yevgeny Prigozhin, an ally of Russian President Vladimir Putin, the group promised a pardon if prisoners agreed to fight in Ukraine for six months. Some of those who signed up – including convicted murderers, thieves and even a self-declared "Satanist" – said they were personally recruited by Prigozhin.

The Wagner Group has been widely criticized for poorly training and mistreating prisoner recruits – including executions for desertion. The new fighters received just



two or three weeks of training before being sent to the front. Though conducted by former members of Russia's special forces, the curriculum was probably too broad for such a short timeframe, covering not only shooting and physical training but also tactics, mining and demining.

Prisoners with the most military experience were appointed squad commanders. Many others have died or been injured. Among those who survived, some were bitter; one called the campaign in Ukraine's eastern Bakhmut region "utter hell." But others said it was an adrenaline rush. Even some of the injured hoped to recover and re-enroll as contract mercenaries, perhaps with other Wagner Group operations in Libya, Syria or the Central African Republic.

Dmitry Yermakov, 38, had four years left of 14-year kidnapping sentence when he joined the Wagner Group. He said limited prospects in Russia's civilian economy pushed him to remain in the mercenary army and "definitely be able to earn 150,000 rubles (\$2,000) a month."

"People work hard without days off for 12-14 hours a day," he said of his non-mercenary countrymen, "and at best they earn 50-60,000 rubles (\$672-\$806) a month."

Using prisoners to fight wars is not new. Russia has a long history of using

convict soldiers. It was freed prisoners who burned Moscow during Napoleon's invasion of Russia in 1812, depriving the French forces of shelter which forced their retreat and ultimate defeat. Russian and Soviet forces in both world wars used penal battalions.

The tactics employed then were similar to those now used: Sent with little training or equipment to the most dangerous posts, conscripts were barricaded there by heavily armed "anti-retreat detachments," operating under Stalin's infamous Order No. 227, dictating "Not one step back!" To replenish the numerous casualties that followed, malingering regular army soldiers were arrested and sentenced – providing the state another bonus if they were killed and their families were no longer owed survivor benefits.

In an eerie echo from 80 years ago, a Wagner Group escapee, Andrei Medvedev, 26, accused Russian army leaders of mis-categorizing many killed soldiers as "missing," in order to avoid paying their families a benefit equivalent to about \$71,250 USD.

"Nobody wants to pay that kind of money," said Medvedev.

The Pentagon estimated that Russia lost 20,000 soldiers from December 2022 to April 2023, half from the Wagner

Group. However, the Ukrainian war is not a death sentence for all the mercenaries. Many have survived their six-month tour of duty and returned to the communities that convicted them fully pardoned. Perhaps not surprisingly, those most likely to volunteer for service are those convicted of the most serious crimes and serving the longest sentences. Presumably at least some are enlisting for patriotic reasons as well. A number of Wagner prisoner recruits are also foreign-born, with many from Africa and Asia who have volunteered for duty among those either killed or surviving long enough to be pardoned.

Prior to the Ukraine conflict, Russia's prisoner population had been reduced by criminal justice reforms in the late 1990s and early 2000s from over a million to just 433,000 in January 2023. It remains to be seen if the war effort significantly reduces the prison population further.

Meanwhile, many prisoner recruits have expressed great admiration and loyalty toward Prigozhin, Wagner's chief, for giving them a second chance. In a video clip, Prigozhin addressed a group of battle-wounded former prisoners, some missing limbs, saying: "You were an offender, now you're a war hero." 🇷🇺

Sources: *New York Times*, *Reuters*

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## From the Editor

By Paul Wright

ONE THING THAT HAS REMAINED A constant in the past 33 years of publishing *PLN* has been the woefully inadequate medical care that prisoners receive around the country. A significant portion of our coverage involves reporting on healthcare that ranges from nonexistent to barbaric and it drives a significant part of detention facility litigation. This month's cover story from the Prison Policy Initiative gives a good national overview of where things stand which tends to confirm what prisoners and everyone else involved with the criminal justice system already knows: American prisons and jails are not the place to get sick.

Readers have been complaining about delays in receiving their subscriptions to both *PLN* and *Criminal Legal News*. One thing that used to work half way well and seems to be disintegrating before our eyes is the US postal system. Since Covid started in 2020 we have seen a steady decline in mail delivery times and services. Our printer is located in Oregon and our magazines are mailed from Portland. Since 2005 we have used the same printer and normally issues mailed would be delivered on the west coast within a week and to the East coast within 2 weeks at most. Those times have now doubled. This also applies to first class mail going to and from our Florida offices.

We have pushed up our production schedule a bit to try to make up for this but the post office is not getting any better. When subscribers receive renewal letters, please renew your subscription as soon possible to avoid missing any issues. Do not assume we will receive your renewal within a few days if mailed as it used to. It may literally take weeks. Currently all the government is promising is more expensive postal rates and declines in service and efficiency and they are delivering on both.

The saddest duty I have as editor is reporting on the passing of HRDC's many friends and supporters. The downside of being around as long as we have is that inevitably more people die. David Zuckerman was a Seattle criminal defense attorney who specialized in post-conviction relief and was one of our earliest supporters. He wrote a number of articles and columns for *PLN* and also represented HRDC on various matters pro bono. He died in April

at the age of 63 from complications related to Posterior Cortical Atrophy, an illness related to Alzheimer's.

In his many years as an attorney David successfully represented a number of prisoners on death row in Washington state and non-capital prisoners in both state and federal court. He also litigated cases on behalf of the Washington ACLU around various civil liberties issues. David was exceptionally brilliant and dedicated to serving his clients and the cause of justice alike. He will be sorely missed and everyone at HRDC extends our condolences to his family.

Our reporting on verdicts and settlements continues to be an important part of our news coverage. If you win or settle a lawsuit against a law enforcement agency please send a copy of the complaint and the settlement or verdict to *PLN* so we can report it in an upcoming issue. Older cases, more than 18 months old, we will post to our online database. This is only for cases that have been won, we cannot report on cases until they have been resolved on the merits.

Enjoy this issue of *PLN* and encourage others to subscribe! 📖

## Over \$3.5 Million Paid to Incontinent Colorado Prisoner Offered Diapers Instead of Dining Priority Pass

by David M. Reutter

ON DECEMBER 16, 2022, A JURY IN FEDERAL court for the District of Colorado awarded \$3.5 million to state prisoner Jason Brooks, whose complaint alleged simply that the "offer of adult diapers was not a reasonable accommodation" of his disability by the state Department of Corrections (DOC).

The same district court had earlier dismissed Brooks' claim under the Americans with Disabilities Act (ADA), 42 U.S.C. ch. 126 § 12101 et seq. But the U.S. Court of Appeals for the Tenth Circuit reversed that decision, reasoning that "having to sit in soiled diapers among other inmates in the dining hall" left Brooks "at risk of assault." [See: *PLN*, May 2022, p. 50.]

Brooks, who was sentenced for securities fraud, suffers from ulcerative colitis, a chronic and incurable disease causing frequent bowel movements that are "urgent, loose, watery, and often bloody," according to his complaint. The condition is incurable. After a transfer to Fremont Correctional Facility (FCF) in February 2012, he was granted a pass to skip to the head of the chow line at mealtimes so that he could better manage his incontinence. But the pass expired after 30 days, and prison officials refused to renew it. Instead they offered Brooks adult diapers to wear to meals.

A year later, Brooks still had no pass,

and prison officials were still pointing fingers at one another when asked why. With his weight dropping alarmingly – 50 pounds below normal – Brooks filed the *pro se* suit that the district court dismissed. After the Tenth Circuit reinstated it, the case proceeded to trial, where Brooks was appointed pro bono counsel from Grand Junction attorney Daniel J. Shaffer. The jury then found DOC violated Title II of the ADA by failing to accommodate Brooks' disability.

In addition to the \$3.5 million award, Brooks won post-judgment interest at the rate of 4.8% and costs of \$11,282.80. He has also filed for attorney fees totaling \$152,573.50, and *PLN* will report developments as they are available. In addition to Shaffer, representation for Brooks was provided by attorneys Kevin D. Homiak of Wheeler Trigg O'Donnell LLP in Denver and Athul K. Acharya of Public Accountability in Portland, Oregon. See: *Brooks v. Colo. Dep't of Corr.*, USDC (D. Col.), Case No. 1:13-cv-02894. 📖

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# Sing Sing Prisoners File Suit Against New York State Alleging Vicious Beating by Guards

by Keith Sanders

ON JANUARY 31, 2023, A GROUP OF 26 prisoners housed in New York's notorious Sing Sing maximum-security prison brought suit against the state for an assault on them by guards during a two-day prison-wide search in November 2022. The suit, filed for the prisoners in state Court of Claims by attorney Alexander Klein of Barket Epstein Kearon Aldea and LoTurco LLP, accuses guards and supervisors of battery, intentional infliction of emotional distress, negligence and failure to intervene, and it accuses the state of negligent hiring, training, discipline and retention of guards at the 198-year-old prison. Klein is seeking \$500,000 in compensatory damages and another \$500,000 in punitive damages for each prisoner claimant.

The incident unfolded on November 9, 2022, when Sing Sing and its 1,400 prisoners saw the arrival of a special Corrections Emergency Response Team (CERT) from the state Department of Corrections and

Community Services (DOCCS) to conduct a two-day facility search. DOCCS maintains 21 CERT teams, which are notorious for violent tactics and disregard for policies and procedures under the guise of "security" to conduct their searches. When their operation began at Sing Sing, they were decked out in full "black tactical gear with visors," according to affidavits.

One of the prisoner claimants, Anthony McNaughty, described what happened next. After dragging his mattress out of his cell so that it could be searched for contraband, he was sent back inside and told to "strip down to his boxers and slippers, place his hands above his head, and face the wall." McNaughty complied without "any hesitation or resistance," he said, but a CERT squad and other guards entered his cell and "immediately placed him in a chokehold." He was then subjected to a savage beating as guards threw McNaughty to his bunk and kned him in the back. At

one-point McNaughty alleges he couldn't breathe because of the tremendous "pressure on his neck."

The brutal assaults left at least seven prisoners in the hospital with another 20, including McNaughty, transferred to a medical unit for their injuries.

"This was nothing short of a planned attack on incarcerated men by correction officers," declared attorney Bruce Barket, whose firm is representing the prisoners. He added that the assault was "approved of and overseen by high-ranking officials in prison" who "engaged in criminal conduct and should be held accountable." See: *Bowden v. N.Y.*, N.Y. Ct. of Claims, Claim No. 138757.

Barket also indicated that the FBI was conducting an investigation into the incident with the U.S. Attorney's Office for the Southern District of New York. 🗞️

Additional source: *New York Times*

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# Eighth Circuit Lets Public Defender Withdraw from BOP Prisoner's "Frivolous" Appeal

by Matt Clarke

ON JULY 11, 2022, THE U.S. COURT OF Appeals for the Eighth Circuit granted a motion to withdraw from an attorney appointed to represent a federal prisoner in Missouri appealing his civil commitment. Though allowing the appeal was "frivolous," the Court denied a companion motion to keep the withdrawal under seal, calling that request overbroad. The case is instructive for prisoners with reluctant appointed counsel, demonstrating the current limits of the U.S. Supreme Court's ruling governing their withdrawal in *Anders v. California*, 386 U.S. 738 (1967).

The government petitioned to determine whether federal prisoner David Garner's present mental condition justified involuntary commitment for psychiatric treatment, pursuant to 18 U.S.C. § 4245(a). "After a hearing," the Court recalled, "the district court ordered Garner committed to the custody of the Attorney General for

treatment of a mental disease or defect at the Federal Medical Center in Springfield, Missouri."

Garner filed a notice of appeal *pro se*, and the Eighth Circuit appointed counsel from the Federal Public Defender's Office for the Western District of Missouri. But that attorney said he was unable to find a non-frivolous issue for appeal, leaving him "ethically obligated to withdraw." However, he moved to keep his withdrawal under seal to protect Garner's psychological reports that had been used in the motion.

The Court denied the motion to seal, finding no need to shield the entire nine-page motion just to protect two paragraphs referring to Garner's reports. Besides, the Court added, "public records not infre-

quently include otherwise private medical information."

But the motion to withdraw was granted, even though the attorney had not filed a brief outlining his reasons, as laid out in *Anders*. Acknowledging a circuit split, the Court decided no *Anders* brief is required in civil commitment cases, since there is no constitutional right to an attorney in such cases. It also left open the option for counsel to file a narrower motion to seal. *See: United States v. Garner*, 39 F.4th 1023 (8th Cir. 2022).

Garner asked the full Eighth Circuit to rehear his appeal *en banc*, but he was denied on October 5, 2022. *See: United States v. Garner*, 2022 U.S. App. LEXIS 27836 (8th Cir.).

## No More Naps for Massachusetts Guards

By Eike Blohm, MD

AFTER TWO YEARS OF NEGOTIATIONS between the federal Department of Justice (DOJ) and the Massachusetts Department of Correction (DOC), an agreement was reached on December 20, 2022, to fix atrocious mental health care in state prisons, which the Feds consider so "cruel and unusual" that it violates the Eighth Amendment rights of state prisoners.

On November 17, 2020, at the conclusion of a two-year investigation by its Civil Rights Division, DOJ issued a notice finding DOC in violation

of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997, by allegedly failing to provide constitutionally adequate supervision and care of prisoners in mental health crisis. [See: *PLN*, May 2021, p.29.]

While state prison officials denied any wrongdoing, they entered negotiations with DOJ to avoid litigation. The agreement reached grants DOC 18 months to rewrite its policies and train staff accordingly, as well as hire additional guards and mental health staff.

Specifically, the agreement requires DOC to hire sufficient guards to ensure prisoners in mental health crisis can still get escorted to out-of-cell activities such as recreation and therapy.

Importantly – incredibly even – the agreement also spells out that guards must not sleep while providing observation to suicidal prisoners.

Moreover, mental health staff must be available to guards by phone on nights and weekends. Mental health staff – not guards – will also make determinations whether those in crisis can participate in activities, including exercise or taking a shower.

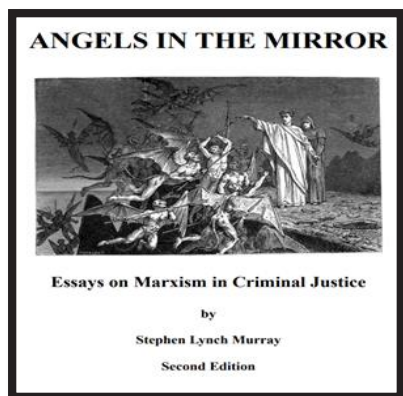
Mental health workers will evaluate any prisoner in crisis within an hour – or

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the next business day on weekends – and prisoners will no longer get punished for asking to see mental health. In fact, rather than putting prisoners into observation cells naked or in a safety smock – also known as a “turtle tuxedo” – staff must let prisoners keep their clothes, unless they use clothing to harm themselves.

The agreement also says that books must be made available within 24 hours of

request, that lights must be turned down for sleep, and that showers must be offered every two days. Even individuals on constant observation can go outside accompanied by a guard.

Rather than placing prisoners in crisis in solitary confinement, DOC agreed to create Intensive Stabilization Units where prisoners can de-escalate and receive therapy three times a day, as well as engaging

in group activities.

Implementation of these changes will be supervised by Dr. Reena Kapoor, associate professor at Yale University. However, the agreement expires after four years, carrying the risk that things then will regress to the current sorry state of affairs. See: *Agreement Between U.S. and Mass. Dep't of Corr.* 📖

Additional source: *WBUR*

## Michigan Supreme Court Justice Caves to Criticism, Accepts Resignation of Formerly Incarcerated Clerk

by Kevin W. Bliss

ON JANUARY 5, 2023, NEW MICHIGAN Supreme Court Justice Kyra Bolden announced she had accepted the resignation of her formerly incarcerated clerk, Pete Martel. In doing so, the justice bowed to complaints that Martel, who served 14 years for shooting at police during a 1994 robbery, had too much access at the court to sensitive material concerning the cops.

Martel was released from prison in 2008 after serving time for armed robbery and assault during a Genesee County convenience store robbery that ended in a shootout with cops. Once released, he became an advocate for improving prison conditions while working as a mitigation specialist, helping convicted felons with legal matters for the State Appellate Defenders Office in Lansing.

“He should use his experience in an advocacy role to try to make a difference,” declared Justice Richard Bernstein, whose criticism of Bolden for her choice of clerk led to Martel’s resignation. “That’s the crucial thing here: He can do great things as an advocate, but this court should not be advocates.”

These are extreme arguments. Bernstein said because someone once shot at a cop – even though he served his time for the crime – he doesn’t deserve to work at the state’s highest court. He also said because that person now advocates for others still in prison, he doesn’t deserve to work at the state’s highest court. As if to make sure no one missed his condescension, the justice added: “I wish him only the best in his future endeavors.”

Michigan held elections in November 2022 to fill two seats on the state’s Supreme Court. Bolden ran on the Democratic ticket for one seat against Republican Brian K. Zahra but lost. Later that month, however, Gov. Gretchen Whitmer (D) appointed the also-ran to a seat opened by the retirement of Chief Justice Bridget McCormack.

For her part, McCormack said it was a mistake to let Martel resign. She was his instructor in a 2017-18 access to justice class

at the University of Michigan’s Gerald R. Ford School of Public Policy, and she said that “[h]e’s been open about his past and his regrets about it, and how he’s eager to be an example for others, to show them that you don’t have to be defined by your past ... I honestly can’t think of anything in a justice system that we value more – we should support people who succeed at redemption.”

Unfortunately, Bolden couldn’t muster as much courage. She accepted Martel’s resignation on January 5, 2023, saying: “I respect his decision and do not intend to comment further.”

Bernstein, who is also a Democrat, became the court’s first blind justice when he was first elected in 2014. On April 18, 2023, he announced that he would miss oral arguments while he sought treatment for an unspecified mental health problem. 📖

Sources: *The Detroit News, Michigan Bridge*



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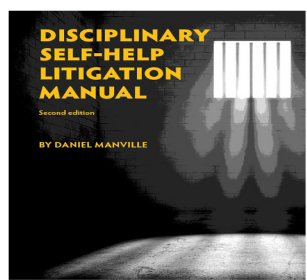
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# Massachusetts Settles One of Three Suits Alleging Retaliation by Prison Guards for Assault on One of Their Own

by Harold Hempstead

ON FEBRUARY 17, 2023, AN ASSISTANT to Massachusetts Attorney General Maura Healey (D) signed a settlement with a group of state prisoners, resolving claims they were subjected to retaliation after a January 2020 melee at Souza-Baranowski Correctional Center (SBCC) that sent three guards to the hospital.

The suit is one of three filed by prisoners since the incident. In their complaint, Carl Larocque, Robert Silva-Prentice and Tamik Kirkland, along with the Massachusetts Association of Criminal Defense Lawyers (ACDL) and the Committee for Public Counsel Services (CPCS), detailed for Suffolk County Superior Court how guards denied them and other SBCC prisoners “attorney visits and phone calls for almost three weeks” in retaliation for the incident.

“If you put hands on an officer,” the complaint quoted one guard, “you will all pay.”

The court granted the prisoners a preliminary injunction in February 2020, halting policies of the state Department of Correction (DOC) that restricted them from keeping legal paperwork in their cells and limited opportunities for attorney phone calls and visits, even during business hours. [See: *PLN*, Apr. 2020, p.26.]

Under the settlement that was reached, SBCC prisoners whose property is seized must get it back in three business days. After that, they have another three business days “to review returned legal property following a cell search, and to

convey any issue(s) regarding returned legal property in writing to the SBCC Deputy Superintendent of Operations.”

The volume of legal material permitted in any prisoner’s cell may not exceed one cubic foot without special permission from the prison Superintendent. New legal mail must be delivered to prisoners within three business days. Guards also have that long to transfer material belonging to a prisoner who is moving from one cell to another – and five days when moving from one prison to another.

Prisoners must also be allowed to place calls at their discretion to their attorneys. A “loss of telephone privileges does not include access to attorney calls,” the agreement notes, though in that case there is a limit of two calls per week. That is also the number of attorney calls permitted prisoners held in a Behavior Assessment Unit or Secure Adjustment Unit

DOC agreed “to post a notice on its website of the discontinuance of attorney video calls at SBCC at least ten (10) business days in advance,” also sending notice to ACDL and CPCS. Email communication with attorneys is not to be impeded, though that is not privileged communication. Contact visits must be permitted with attorneys, and if there is no visiting room available when an attorney shows up to see a prisoner, he or she must be allowed to shift to a “non-contact visit.”

Lockdowns may not disrupt attorney-client communication, though they may cause a permissible delay up to

three business days. After that, “prisoners shall have access to grievance and informal complaint forms upon request,” according to the agreement, which also provided that prison staff must be trained in the new details. See: *Larocque v. Turco*, Mass. Super. (Suffolk Cty.), Case No. 2084CV00295.

## Two More Suits Still Pending

IN ADDITION TO THAT SUIT SETTLED IN state court, two more were filed by prisoners after the incident in federal court for the District of Massachusetts.

Silva-Prentice is also a plaintiff in one, along with fellow prisoner Dionisio Paulino. In their complaint, they alleged that “a squad of at least six (6) armed officers wearing paramilitary uniforms and body armor snuck up on and violently entered the Plaintiffs’ cell,” where they “restrained the Plaintiffs, then proceeded to terrorize, beat, taser, and kick them, pull out their hair, and slam them into concrete walls and a metal doorway while hurling racial, ethnic, and sexual slurs.”

One guard, Cmdr. Mark O’Reilly, reportedly ordered a DOC K-9 to attack Paulino, who was handcuffed and not resisting. The dog bit him repeatedly, tearing out a chunk of the prisoner’s upper thigh. He and Silva-Prentice claimed the guards assaulted them in a spot known as “C-15,” out of range of surveillance cameras.

After filing grievances and the lawsuit over access to legal mail and attorneys, Paulino and Silva-Prentice were

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allegedly issued bogus disciplinary reports. Both were found guilty and placed in confinement for months – allegedly for nothing more than being non-white, like the prisoners who earlier attacked the guards.

“The Defendants’ true goal,” the complaint concludes, “was to terrorize and beat the Plaintiffs as payback for the acts of other Latino and Black prisoners and to create an atmosphere of terror.”

Plaintiffs survived a motion to dismiss by Defendants on April 11, 2022. The case has not been scheduled for trial, and *PLN* will report updates as they are available. Plaintiffs are represented by attorneys from Sibbison, DeJuneas & Allen, LLP and Markham Read Zerner LLC, both in Boston. See: *Silva-Prentice v. Turco*, USDC (D. Ma.), Case No. 1:21-cv-11580.

The other suit outstanding was filed in the Court by prisoners Dwayne Diggs, Demetrius Goshen, James Jacks, David Jackson, Raphael Rebollo, Luis Saldana, Davongie Stone, Xavier Valentin-Soto and Danavian Daniel. They also claim that guards engaged in “weeks of unprovoked, retaliatory violence,” during which “more

than 100 prisoners” suffered “beating and kicking ... gouging eyes; grabbing testicles; smashing faces into the ground or wall; deploying Taser guns, pepper ball guns, and other chemical agents; ordering K9s to menace and bite prisoners; and excessively tightening handcuffs and forcing prisoners’ arms into unnatural and painful positions, among other positional torture tactics.”

A guard allegedly stomped Jackson’s head and struck it with a shield at least two times, while the prisoner lay face down on the floor not resisting. The guards also placed him in unnecessarily tight handcuffs, he said, after which they forced him and the other prisoners, who were also cuffed and shackled, “to face the wall and kneel without sitting back on their feet, or resting their head against the wall,” maintaining this “stress position” for “several hours.”

The Court has given Plaintiffs until October 12, 2023, to move for class certification of their suit; *PLN* will report developments as they unfold. The prisoners are represented by attorneys from Prisoners’ Legal Services of Massachusetts (PLS) and global law firm Hogan

Lovells. See: *Diggs v. Micci*, USDC (D. Ma.), Case No. 4:22-cv-40003.

PLS said its data regularly show more staff-on-prisoner assaults at SBCC than any other jail or prison in the state. It added that the “brutality is not perpetuated by a few ‘bad apples’ but a broken system that not only fails to rehabilitate prisoners, but actively harms them physically and psychologically.”

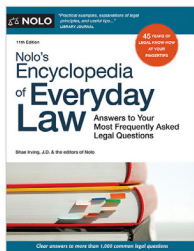
### “Over My Dead Body”

AFTER THE EARLY 2020 VIOLENCE AT SBCC, then-Gov. Charlie Baker (R) presented state lawmakers a budget that included a \$1 million request for a pilot program to outfit SBCC guards with body cameras. The response was fierce and swift.

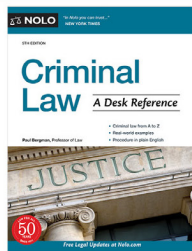
“Over my dead body will this anti-labor proposal be implemented during my tenure,” vowed Kevin Flanagan, legislative representative for the state Correction Officers Federated Union.

However, he was apparently still breathing when 50 of SBCC’s 450 guards donned cameras to implement the pilot program in November 2022. DOC Commissioner Carol Mici defended the

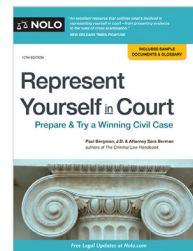
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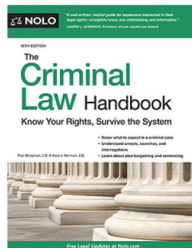
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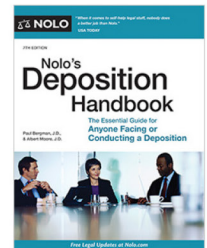
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technology, which she said “has been shown to improve safety, provide valuable documentation for evidentiary purposes, resolve officer-involved incidents, and offer a useful training tool for the Department and its officers.”

Meanwhile, filings made in Silva-Prentice’s suit in May 2023 revealed that the federal Department of Justice has investigated the incident at SBCC and taken its findings to a grand jury – so there may be criminal charges for some prison officials if probable cause is found.

“My client testified and I know other

prisoners who testified,” said Patty DeJuncas, one of the attorneys for Plaintiffs in the case. “So I feel pretty confident that at least what happened to my client is under investigation.”

The filing was made in motion accusing Defendants of foot-dragging in discovery. But the state countered that the lawsuit has already produced the

largest volume of discovery material that “DOC has ever handled,” with “22,000 pages of documents and 49 investigations containing approximately 214 recorded interviews.”

Additional source: *WBUR*

## “All Signals Blinking Red” at Federal Prison in West Virginia After DOJ Releases Report on Killing of Mobster “Whitey” Bulger

by Casey J. Bastian and Benjamin Tschirhart

CITING “BUREAUCRATIC INCOMPETENCE,” as well as “flawed, confusing and insufficient” policies and procedures, a December 2022 report by a federal government watchdog attempted to answer the question: How did a notorious but elderly criminal end up transferred by the federal Bureau of Prisons (BOP) to a new prison where he was murdered within 12 hours?

Yet mystery shrouds James “Whitey” Bulger’s death at the U.S. Penitentiary (USP) in Hazelton, West Virginia. The former Irish Mafia mob boss and leader of Boston’s “Winter Hill Gang” gained his nickname for his thick platinum hair and his notoriety for over 16 years spent as a fugitive on the FBI “most wanted” list. After his 2011 capture, Bulger was given two life sentences for crimes that included 11 murders.

In 2014, he was stabbed by another prisoner at USP Tucson. By 2018, he was 89 and confined at USP Coleman in Florida. His health seriously degraded in a series of cardiac events brought on by atrial fibrillation. After multiple hospital trips, he was left in a wheelchair, requiring frequent nursing care and daily medication. BOP classified him as Care Level Three on a four-level scale.

An altercation with a nurse ended with Bulger making threatening statements toward her, and staff placed him in segregation. Eight months passed. Bulger’s mental health suffered in isolation, and he reportedly lost his will to live. Staff began pushing for his transfer more urgently, but he was somehow improperly downgraded to Care Level Two.

That made him eligible for transfer

to the more violent and dangerous USP Hazelton. Plagued with staffing shortages and violence among prisoners, the West Virginia lockup already housed multiple organized crime members. In another glaring error, BOP failed to note that Bulger was a member of an organized crime family, and that he had testified in court against former associates, making him a target for anyone affiliated with those organizations. Despite multiple books and films inspired by the mobster’s life and criminal career, BOP staff claimed to have no idea he faced increased risk.

Bulger arrived at USP Hazelton on October 29, 2018, and he was dead by 9:04 the next morning. Two other prisoners had entered Bulger’s cell at 6:19 a.m., after Bulger’s cellmate left. At 6:26 a.m., the two prisoners then left the cell, too. One hour later, the cellmate made a brief return to grab some property before exiting again. Staff then discovered Bulger, who’d been fatally beaten.

Three prisoners were charged in the killing. Fotios “Freddy” Geas, 56, and Paul J. DeCologero, 49, allegedly carried out the fatal beating. Geas’ cellmate, Sean McKinnon, 37, is accused of acting as lookout for the pair – who were also organized crime members from Boston, like Bulger.

The report by the Office of the Inspector General (OIG) for the federal Department of Justice dryly noted “serious job performance and management failures at multiple levels within the BOP.” But no staffers were implicated in any criminal behavior.

Bulger was placed in Unit F-1 at the specific request of the unit manager. Dur-



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ing the OIG investigation, that manager claimed he made the request because “his staff was best suited to handle Bulger.” Incredibly, he also said he was unaware that Bulger had “rivals” in the unit – even though it housed “at least one” other prisoner with ties to Massachusetts organized crime. The unit manager shrugged that off, saying he was not a “gang expert.”

OIG admitted that Bulger’s death was “suspicious” and “raised concerns” about BOP’s handling of his transfer from USP Coleman. As an initial observation, the transfer to USP Hazelton “appeared unusual” because Bulger was old, infirm, and a notorious FBI informant. Also, Hazelton has an extensive “record of violence.” One interviewed prisoner said, “What would you think would happen to him?” Another said, “Seems he shouldn’t have walked the yard.” No staff admitted concerns. Hazelton’s Case Manager Coordinator, a top position in the transfer and intake processes at every facility, was quoted saying: “You know, how could we...have known?”

Bulger himself insisted on going into general population, staff said, adding that the 89-year-old was “eager” to do so. But staffers did not insist on protective custody

for Bulger, who stated he did not want to go back to segregation again. During intake, Bulger ominously told Hazelton staff: “I got two life sentences. I want to go to the yard.” To the Correctional System Officer taking his photograph the prisoner added, “Who knows, this might be my last picture?”

The implication Bulger wanted to die suggests he wanted to take control of his incarceration. Or maybe it was a last effort to force BOP to answer for its deficiencies. If so, the consequences for BOP generally, or Hazelton staff specifically, appear nearly non-existent.

A second concern for OIG was the number of staff notified of Bulger’s transfer, which included “well over 100 BOP employees.” News outlets were also reporting Bulger’s movements. OIG said this made it impossible to determine how other prisoners had such knowledge of Bulger’s pendency.

The investigation reviewed multiple phone calls and emails from Hazelton prisoners. Most indicated that the whole prison population had gotten a “heads up” to Bulger’s arrival and believed the facility would be locked down soon after. Some prisoners were taking bets on how long

Bulger would last in general population. Staff, too, “spoke openly” about whether Bulger could “stay alive at Hazelton.” A technician with Special Investigative Services – the internal police at a BOP lockup – said he was “sure the inmates knew because they know when everybody’s coming.” Conveniently, the same technician claimed it is impossible to figure out how prisoners acquire such information.

OIG noted it was unusual that Bulger’s care level was reduced just in time for transfer to a facility with less medical interventions available. At Care Level Three, Bulger “required clinical interventions” more than once per month. Care Level Two dictates interventions only once every “1 to 6 months.” Considering Bulger was not getting healthier as time passed, it begs the question how his care level was downgraded before he was sent to Hazelton.

The report also contained 11 recommendations to address operational deficiencies that were identified. BOP promised to update its policies and procedures in several areas.

One recommendation was to improve the “medical care level” policy. OIG noted that an update to the Medical Care Level

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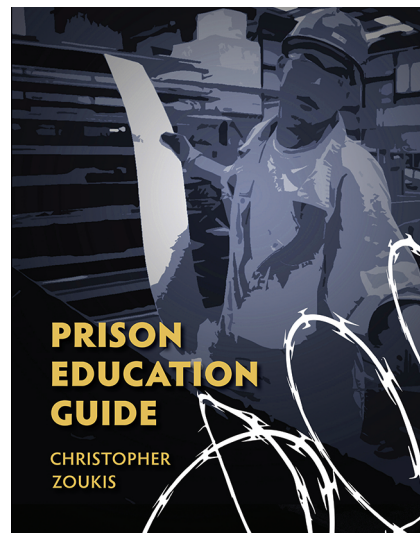
by Christopher Zoukis

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Guidelines and the Medical Classification Algorithm is necessary. Also, Bulger's non-compliance with medical interventions allowed BOP to consider a decrease in care level – in other words, he was able to lower his own assessment by refusing some treatment. OIG advised that a policy update should take this into consideration.

BOP also said the number of employees with knowledge of a pending inmate transfer would be reduced, or at least standards of confidentiality would be improved. It was also recommended that prior to a unit manager's request to supervise or house a high-profile prisoner such as Bulger,

a higher-level administrator's approval should be required.

A BOP spokesperson said the agency "appreciates the important work of the OIG and will be working closely with the office on future action and implementation efforts." See: *Investigation and Review of the Federal Bureau of Prisons' Handling of the transfer of Inmate James "Whitey" Bulger*, OIG (2022).

By January 2023, USP Hazelton had 72 vacant guard posts – 16% of the total – the most of any BOP prison. On a single shift on January 12, 2023, guards recovered 30 homemade knives from prisoners. An-

other dozen were found days later, along with body armor fashioned from rolled magazines.

"It's now about self-preservation," said guard Justin Tarovsky, President of Local 420 of the guards' union, the American Federation of Government Employees. "Officers are calling in sick just to get a day off. When you add in this surge in weapons, all signals are blinking red." 🗞️

Additional sources: *ABC News, CNN, NBC News, USA Today, WV News*

## Eleventh Circuit Won't Force Condemned Alabama Prisoner to Die by Method He Didn't Choose

by David M. Reutter

ONCE IT BEGINS A LETHAL INJECTION, the Alabama Department of Corrections (DOC) "will attempt to carry out the execution and not stop until it becomes clear that they are likely to run out of time under the death warrant, and during that time, will do anything to obtain intravenous access, without regard to its own lethal injection protocol or the constitutional rights of the condemned."

That explosive allegation was made in a lawsuit brought by death-row prisoner Kenneth Eugene Smith, 57. He and fellow condemned Alabama prisoner Alan Eugene Miller, also 57, are the only two living people in the U.S. to survive an execution attempt.

On September 22, 2022, DOC executioners poked, prodded, and punctured Miller in the arms, hands, and feet for over two hours before they finally threw in the towel. After that, the state settled with

Miller on November 28, 2022, agreeing not to try to kill him again except by nitrogen hypoxia. His chosen method, it became a legally available option five years ago, though DOC still hasn't developed a protocol for it. [See: *PLN*, Mar. 2023, p.50.]

But first, without taking steps to review what went wrong at Miller's unsuccessful execution, DOC officials moved forward on November 17, 2022, with preparations to execute Smith. Then the U.S. Court of Appeals for the Eleventh Circuit Court of Appeals issued a stay order at 7:59 p.m., finding Smith stated a viable claim that his execution via lethal injection would violate the Eighth Amendment's prohibition on cruel and unusual punishment. Smith also wanted to be killed by nitrogen hypoxia, and the state still had no protocol ready. To which the Eleventh Circuit said, "If a State adopts a particular method of ... execution ... it thereby concedes that the method of

execution is available to its inmates." See: *Smith v. Comm'r Ala. Dept. of Corr.*, 2022 U.S. App Lexis 31789 (11th Cir. 2022).

Notwithstanding that order, DOC officials strapped Smith to a gurney in the death chamber and gave him no notice of the stay. "At around 10:00 p.m., an IV team entered the execution chamber and began repeatedly jabbing Mr. Smith's arms and hands with needles, well past the point at which the executioners should have known it was not reasonably possible to access a vein," Smith's attorneys alleged in their court filing. He "was then tilted in an inverse crucifixion position while strapped to the gurney and left there for several minutes while the IV team left the room."

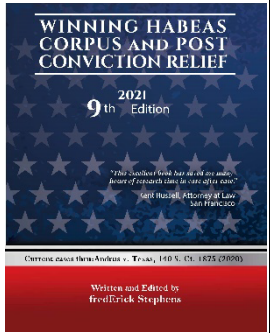
In a prior lawsuit filed by Smith, DOC represented that it "does not deliver intermuscular injections as part of the execution." The federal court for the Middle District of Alabama also entered an order prohibiting DOC from using "intermuscular sedation" during Smith's execution. However, when the IV team returned to the execution chamber, Smith was injected with an unknown substance, which was believed to be some sort of sedative or anesthetic.

After that, a person of unknown medical credentials wearing a face shield repeatedly jabbed Smith's collarbone area with a large needle, trying to begin a central IV line in his subclavian vein. Smith's cries of pain during the ordeal went ignored. By 11:20 p.m., rumors swirled among media observers that the execution had been called off. Around midnight the attempted execution stopped.

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Allen and him, as well as the troubled July 2022 killing of Joe Nathan James – which took three hours and involved a cut down procedure that left him unresponsive when the death chamber curtain was opened – all demonstrated that DOC’s execution protocol “is, in practice at least, entirely illusory,” leaving executions to be carried out “by individuals who are either unable or unwilling to follow the Protocol,” the complaint alleged.


After the Eleventh Circuit issued its stay, Defendant state officials asked the U.S. Supreme Court for a writ of certiorari to hear an appeal. That request was denied on May 15, 2023, over the objections of two justices, Clarence Thomas and Samuel Alito, who didn’t want to force the state to provide the alternative execution method it already approved. *See: Hamm v. Smith*, 2023 U.S. LEXIS 2047.

Apparently Thomas and Alito would let states devise any number of execution methods they have no intention of using. Meanwhile Smith’s case is returning to the district court, and *PLN* will report developments as they are available.

Smith and co-defendant John Forrest Parker were convicted of the 1988 contract killing of Elizabeth Sennett, 45, for which each was reportedly paid \$1,000 by her husband, Rev. Charles Sennett, also 45. The pastor of Westside Church of Christ in Sheffield was having an affair and deeply in debt. He had also taken out a life insurance policy on his wife. He committed suicide a week after her killing, as investigators closed in. For introducing him to the killers, a tenant, Billy Gray Williams, got a life sentence. Smith was also given a life sentence by a jury, but the judge overrode that decision and condemned him in 1989. Parker was sentenced to death and executed

in 2010 at age 42.

Smith is represented in his suit by attorney Andrew B. Johnson of Bradley Arant Boult Cummings LLP in Birmingham, with co-counsel from Arnold & Porter LLP;

Angelique A. Ciliberti of Washington, DC; and David A. Kerschner, Jeffrey H. Horowitz and Robert M. Grass of New York City. *See: Smith v. Hamm*, USDC (M.D. Ala.), Case No. 2:22-cv-00497. 

## Corizon Bankruptcy Threatens \$6.4 Million Award to Family of Michigan Prisoner Whose Five-Day Jail Term Turned Into Death Sentence

by Jacob Barrett

ON DECEMBER 5, 2022, A JURY IN federal court for the Western District of Michigan awarded \$6.4 million to the estate of Wade Jones, 40, who was left to die from untreated alcohol withdrawal in his cell at Michigan’s Kent County Correctional Facility (KCCF) by guards and staff with Corizon Health, Inc., the jail’s privately contracted healthcare provider. However, the award has been jeopardized by the pending bankruptcy of Corizon Health’s corporate descendant. [See: *PLN*, Mar. 2023, p.56.]

Jones was detained and given a misdemeanor citation for shoplifting and retail fraud after stealing several bottles of liquor on April 13, 2018. He appeared for his arraignment 15 days later, and the trial judge directed Jones to speak with probation officer Deven Bonham prior to sentencing. He then consented to a portable breath test (PBT) which registered his Blood Alcohol Content at 0.159 the first time and 0.145 ten minutes later – well in excess of the 0.08 limit. Jones admitted he had “a couple drinks” before the hearing. Bonham informed the court that she was shocked

at Jones’ PBT because he seemed functional. The trial judge also noted Jones had a “developed tolerance.” The court subsequently sentenced Jones to five days in jail. Jones was shocked at Jones’ PBT because he seemed functional. The trial judge also noted Jones had a “developed tolerance.” The court subsequently sentenced Jones to five days in jail. Jones was shocked

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at Jones’ PBT because he seemed functional. The trial judge also noted Jones had a “developed tolerance.” The court subsequently sentenced Jones to five days in jail. Jones was shocked



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Charles Jones was appointed representative of his son's estate and filed suit in the Court under 42 U.S.C. § 1983, accusing jail and medical staff of deliberate indifference to Jones' serious medical need, in violation of his Eighth Amendment guarantee of freedom from cruel and unusual punishment.

Corizon Health moved to dismiss the suit for failure to state a claim, arguing that state-law claims of medical malpractice and ordinary and gross negligence were barred by Mich. Comp. Laws § 600.2955a, which allows an absolute defense in an action where death was the result of "impaired ability to function" due to alcohol intoxication.

The Court rejected that argument. It distinguished Jones' case from *Harbour v. Corr. Med. Servs. Inc.*, 266 Mich. App. 452 (2005), in which the decedent was found partially liable for his death because "his alcohol related impairment caused the acute withdrawal that was the 'most immediate, efficient, and direct cause' of his death."

Evidence at Jones' sentencing, on the other hand, demonstrated he "was able to function at a fairly high level even with an elevated blood alcohol content." Thus, contrary to Corizon Health's argument, Jones did not have an "impaired ability to function."

The Court also rejected the argument that Jones was 50% or more the "cause" of his own death. While he was responsible for the "event" – that is, "alcohol withdrawal resulting from his own chronic alcohol abuse that precipitated his death" – that's not what matters under state law, the Court said. "Mich. Comp. Laws §600.2925a speaks in terms of 'the cause,' not 'the proximate cause,' and the Michigan Supreme Court indicated that such interpretation is error," the Court wrote, citing *Beebe v. Hartman*, 290 Mich. App 512 (2010).

So Jones' ordinary negligence claims were allowed to proceed. But his gross negligence claims were dismissed "because Michigan law does not recognize an independent cause of action for gross negligence," the Court said, citing *Johnson v. Williams*, 2017 U.S. Dist. LEXIS 156149 (E.D. Mich.).

The Court further granted Corizon Health's motion to dismiss Jones' deliberate indifference claim, finding that while the actions of nurse Terri Byrne might have

amounted to negligence, Plaintiff "fail[ed] to show that Defendant Byrne was subjectively aware that Jones was intoxicated and at risk of Jones's condition."

Finally, the Court rejected Corizon Health's arguments that Jones's claim should be dismissed for failure to show the firm was liable for its employees' actions, as laid out in *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). "Plaintiff," the Court wrote, "has sufficiently identified the alleged Corizon policies and connected them to Jones's constitutional injury."

The parties then proceeded to trial on the remaining claims, after which the jury entered its verdict. In an amended judgment entered on January 4, 2023, the Court specified that \$3 million of the award was for Wade Jones' pain and suffering, while \$400,000 was for his heirs' loss of his society to date and the remaining \$3 million for the future loss of his society. Charles

Jones was represented by attorneys Jennifer G. Damico and Sarah L. Gorski with the Buckfire Law Firm in Southfield.

Corizon Health took its contracts with jails and prison systems to create a new firm, YesCare, in 2022. [See: *PLN*, Oct. 2022, p.22.] Its liabilities were spun off into another new firm, Tehum Care Services, Inc. – which promptly filed for bankruptcy protection. See: *In Re: Tehum Care Services, Inc.*, USDC (S.D. Tex.), Case No. 23-90086. The firm then successfully moved the Western District of Michigan to stay proceedings for 90 days in Jones' case on March 6, 2023, giving its bankruptcy case time to see whether the jury award might be included in it. *PLN* will continue to update developments as they are available. See: *Jones v. Corizon Health, Inc.*, USDC (W.D. Mich.), Case No. 1:20-cv-00036. 📖

## California Easing Housing Hurdles for Released Prisoners

by Ed Lyon

**A**S RETRIBUTIVE MINDED STATES LIKE Texas pursue ever more draconian measures and policies to deny housing to released prisoners (*PLN*, May 2021, pp. 34-35), California is beginning to enact measures and policies to assist released prisoners in obtaining housing.

Easing housing restrictions for the formerly incarcerated began in 2020, with "Fair Chance" ordinances that prohibited landlords from performing criminal background checks on rental housing applicants in Berkeley and Oakland. As a result, a full 33% of applicants surveyed reported they have been able to reunite with family or secure their own housing because of those new ordinances, according to Margaretta Wan-Ling Lin, a University of California researcher and Executive Director of the nonprofit Just Cities.

Since then, the Alameda County Board of Supervisors passed its own Fair Chance on December 20, 2022 – the first county in the U.S. to protect formerly incarcerated citizens from housing discrimination. The county is home to over 5,000 former prisoners and detainees, who are hugely overrepresented in its homeless population; a 2022 survey found that at least 30% of 9,700 homeless people had interactions with the criminal justice system,

and 7% pointed the finger directly at their criminal record for the cause of their current homelessness.

The law is not perfect: In barring landlords from performing criminal background checks, it makes an exception for sex offenders, allowing landlords to access the sex offender registry for housing applicants. This Fair Chance law became effective at the end of April 2023, when the county's pandemic eviction moratorium expired.

About 20% of Californians – roughly 8 million citizens – have criminal records. That means they risk living in the elements at any time as a result of housing restrictions.

San Francisco county and city also passed a Fair Chance law. But the ordinance is restricted to affordable housing. It also permits landlords to take into consideration convictions connected to property safety.

Portland and Seattle have also passed Fair Chance laws, along with a limited version adopted in Illinois' Cook County.

"I committed a crime and went to prison, and I paid my debt," said Lee Bonner, of the California housing advocacy group All of Us or None. "So why punish my family?" 📖

Source: *The Guardian*

# Federal Prisoner in Pennsylvania Gets Sentence Reduction After Guard Rapes Her

by Casey J. Bastian

ON DECEMBER 15, 2022, THE U.S. District Court for the Eastern District of Pennsylvania reduced Rashidah Brice's sentence by 30 months. Brice had filed a motion for compassionate release under 18 U.S.C. § 3582(c) and presented three circumstances that might constitute extraordinary and compelling reasons to grant the request. The Court found that her sexual assault by a guard and cooperating in his prosecution warranted a limited sentence reduction instead.

Brice was sentenced to 185 months in prison on August 20, 2013, after she pleaded guilty to three counts under 18 U.S.C. § 1591 for sex-trafficking three victims, one of whom was a minor. The Court recalled the "heinous" and "horrifying" details of her crime, in which she and her co-defendant, Christian Dior "Gucci Prada" Womack – who is also the father of her two minor children – extorted and coerced two women and a 17-year-old girl to have sex with strangers for money and also with them, filming the encounters and forcing them to take cocaine to stay awake, as well as threatening them with guns.

When Brice returned to the court with a motion for compassionate release, she asserted three grounds: a sexual assault by a federal Bureau of Prisons (BOP) guard; her cooperation in his prosecution; and that both parents of her children were incarcerated – their father, Womack, for life. Brice requested a reduction to time served and moved for immediate release.

The court first considered Brice's criminal history and characteristics, noting that

sentencing guidelines ranged from 292-365 months but on government motion was previously reduced to 168-210 months.

The analysis then turned to Brice's assault, cooperation, and conduct in prison. The Court first noted that under § 3582, a defendant must show "extraordinary and compelling reasons" to warrant a departure, and the analysis must also turn on the sentencing factors laid out in 18 U.S.C. §3553(a), "to the extent they are applicable." The Court added that it has "broad discretion" to consider "all relevant information" and is "bound only when Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence," citing *Concepcion v. United States*, 142 S. Ct. 2389 (2022).

Brice argued that her assault made her experience in prison "more than what was intended to punish her for her crimes." The government argued that, while tragic, it did not rise to an extraordinary or compelling reason to reduce Brice's sentence.

The Court turned to *United States v. Mateo*, 299 F. Supp. 2d 201 (S.D.N.Y. 2004), in which the defendant was forced to undress in front of a male prison guard and give birth without medical attention; even then, the decision allowed that "derelictions on the part of prison officials [are] to be expected as an incidence of the usual hardships associated with prison," but what Brice endured was "far beyond" ordinary "derelictions," the Court said.

The Court also looked to *United States v. Rodriguez*, 213 F. Supp 2d 1298 (M.D. Ala. 2002), in which the defendant was

raped by a guard while awaiting sentencing, and the sentencing court granted a downward departure. Though cooperation cannot be the sole basis for a sentence reduction in the Third Circuit, the Court allowed, Brice's cooperation ended "not [just] an isolated incident but a pattern of misconduct"; therefore it constituted an "extraordinary and compelling reason" warranting a reduction.

Lastly, the Court noted, Brice's conduct in prison was marred by "numerous disciplinary infractions." However, most were minor, and only one involved a fight with another prisoner. Brice was also not the leader in her crimes, though "an active participant."

"[J]ust as the sexual assault Brice suffered from in prison cannot be undone," the Court said, "the harm inflicted on Brice's victims cannot be undone." So immediate release would not be appropriate. Instead the Court reduced Brice's sentence from 185 to 155 months. See: *United States v. Brice*, 2022 U.S. Dist. LEXIS 225732 (E.D. Pa.).

The docket for Brice's case does not name the BOP guard who raped her and other prisoners in her lockup. But there are many possibilities, given the number of convictions against BOP staff for multiple sexual assaults of prisoners. [See: *PLN*, Mar. 2023, p.1.]

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# Hawaii Guard One of Four Convicted in Smuggling Scheme at Honolulu Prison

by Chuck Sharman

**A** GUARD AND A PRISONER AT OAHU Community Correctional Center in Honolulu were among four people convicted on federal conspiracy charges in a drug-and-gun-smuggling scheme at the lockup. All but the guard were sentenced in February and May 2023.

On February 10, 2023, prisoner Robert S. Gibson, 38, had 100 months added to his sentence for masterminding a plan to smuggle the contraband into the lockup. He was being held there for kidnapping, robbery and impersonating a law enforcement during a home invasion committed after walking off a work furlough in 2015.

Two days earlier, on February 8, 2023, his girlfriend, Ceceliacharity Hilo, a/k/a Cece Adams, was convicted of buying the meth for him and passing it to co-conspirators. For that she was sentenced to 27 months of time she had served plus two years of supervised release and a \$100 special assessment.

Gibson's stepsister, Keicha K.W. Brunn-Kekuewa, 30, pleaded guilty to setting up calls between the two in late 2019 and early 2020, as well as accepting the meth Hilo obtained. For that she got a 20-month prison term on May 10, 2023,

plus two years of supervised release. She also lost her job as a high school softball coach at Sacred Hearts Academy, where as a student she played catcher on the team that won the state Division II championship in 2007.

The guard to whom passed the contraband – in a transaction captured on surveillance video at a local convenience

store – was a 20-year veteran of the state Department of Corrections. Richard Ascencio pleaded guilty on September 21, 2022, and he is scheduled for sentencing on July 27, 2023. See: *USA v. Hilo*, USDC (D. Haw.), Case No. 1:21-cr-00010. 📄

Additional source: *Honolulu Star-Advertiser*

## New York Finding Closed Prisons a Tough Sell

by Chuck Sharman

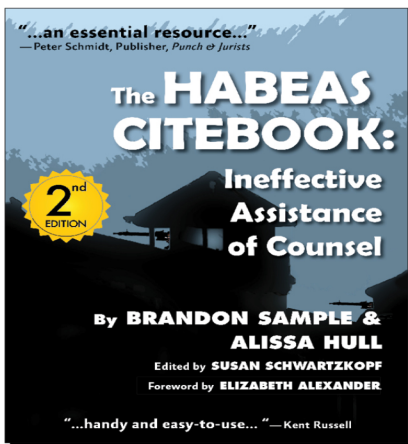
**S**INCE ITS PEAK NEARLY TWO DECADES ago, New York's prisoner population has fallen by half. Added to the millions of dollars it cost the state Department of Corrections and Community Services (DOCCS) to build the prisons are millions more to shutter them. Some closed properties were sold at auction, but in most cases the state recovered only a fraction of its initial investment. The remaining former prisons, often located in remote rural areas, have proven impossible to sell, leaving the state with white elephants.

Or maybe it's better to call them chickens, hatched from mass incarceration, clucking loudly as they come home to roost.

DOCCS has closed more than two

dozen state prisons over the past 15 years, six since the beginning of 2022 closed by Gov. Kathy Hochul (D). In some instances, investors purchased the properties but failed to find buyers who wanted to redevelop them. More often, it's the state left holding the bag.

A rural prison creates its own mini-economy, with hotels and restaurants and convenience stores for those visiting prisoners, along with housing and services for those who staff them. All of that slowly goes dark when the prison closes. Hoping to revitalize these local economies, Hochul formed a Prison Redevelopment Commission in 2022 to jump-start the redevelopment process. Co-chaired by



## The Habeas Citebook (2nd edition)

by Brandon Sample and Alissa Hull

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Empire State Development President Hope Knight and Ford Foundation President Darren Walker, the commission's goal is to transform these eyesores into productive assets that generate jobs and contribute to local tax rolls.

Lawmakers who have been raising concerns about the blighted facilities welcome the initiative but believe it should have been launched years ago. Assemblyman Billy Jones (D-Plattbrug), who used to work as a guard at one of the closed lockups, expressed his frustration that so many empty prisons "have been sitting around for years."

"In the climate I live in, with our harsh

winters, if you don't take care of your property it has a huge negative impact on your buildings," Jones said.

Assemblyman Chris Tague (R-Schoharie) is working with Ostego County officials to help the new owner of the former Camp Summit to find a developer. The "shock" incarceration facility closed in 2008. Its program – regimented discipline and physical activity combined with confrontational drug counseling – proved an ineffective approach to rehabilitation that was often abusive and had no effect on recidivism. [See: *PLN*, Oct. 2022, p.45.]

Tague envisions the site still being used

for substance abuse treatment programs. But finding an operator willing to run it has proven challenging, as well as a race against time before the site falls further into disrepair. Concerned about closing prisons without a clear vision for their future, he and fellow lawmakers sponsored legislation to guide redevelopment of sold properties, but their proposals did not gain traction.

"This is another example of the state putting the cart before the horse," Tague said. 🐾

Source: *Oneonta Daily Star*

## Ninth Circuit Says Arizona DOC Policy Cannot Be Used to Censor Prisoner's Free Expression

**A**N ARIZONA PRISONER'S CIVIL RIGHTS claim is headed to trial in June 2023, after the U.S. Court of Appeals for the Ninth Circuit reinstated it, saying his prison's policy on material he is allowed cannot be applied inconsistently without trampling his First Amendment liberties.

The suit was brought in federal court for the District of Arizona by Edward Lee Jones, Jr., a prisoner at Arizona State Prison in Eyman. In late 2017 and early 2018, Jones ordered two Nation of Islam books by Elijah Muhammad: *Message to the Black Man in America* (1965) and *The Fall of America* (1973). He also ordered six hip-hop and R&B CDs by Kendrick Lamar, The Weeknd and Snoop Dogg, among others.

Prison officials determined these items were contraband and confiscated them under Department Order (DO) 914.07. The CDs violated rules prohibiting depiction or promotion of violence, sexual excitement, gangs and drugs, they said, also citing a catchall for items that "may otherwise be detrimental to the safe, secure, and orderly operation of the institution." The two religious texts were taken for allegedly promoting racism or the superiority of one group.

Jones filed suit *pro se* in June 2018 under 42 U.S.C. § 1983, alleging both the rule and the way it was applied violated the free speech and free exercise clauses of the First Amendment, as well as the due process clause of the Fourteenth Amendment. He also alleged a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. The district court granted Defendants summary judgment on all claims, and Jones appealed.

On January 24, 2022, the Ninth Circuit reversed that decision. Beginning with the free speech claims relating to the CDs, the Court found that DO 914 is not unconstitutional on its face; accepting prison official's arguments, it found the rule is rationally related to a legitimate penological interest, as required under *Turner v. Safley*, 482 U.S. 78 (1987).

But "Jones has proffered sufficient evidence of inconsistent application of DO 914 to preclude summary judgment," the Court added. In addition to his own affidavit, Jones submitted affidavits from two other prisoners that detailed specific


instances in which content that violates the order was allowed in the prison.

The Court emphasized that "variations in the enforcement of a policy will not always rise to the level of inconsistent application." Jones claimed that DO 914 was consistently applied to ban rap music but inconsistently applied to other music genres and media. Based upon that pleading, the Court found a material question of fact whether the policy is selectively enforced against a disfavored expression – in this case, rap and R&B musical genres. Thus it said the district court should not have granted summary judgment.

Next the Court turned to the claims relating to the texts. Jones asserted his "right to read his Nation of Islam texts during Ramadan, as he normally does every year." But the district court assessed whether Jones was able to "successfully observe Ramadan without the books he requested." The Court said that wasn't the issue, though, and the lower court erred by recharacterizing Jones' religious obligations at that "higher level of generality."

The district court also decided that RLUIPA required Jones to show his religious exercise was either required by his faith or consistent with his past observance. But the Ninth Circuit disagreed. What is important, the Court said, is whether the religious texts are a "sincere component of Jones' religious practice, without reference to whether Jones, or other members of the Nation of Islam consider the practice mandatory."

"[T]here is no legal basis to fault Jones




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for not adding the study of Elijah Mohamed's texts during Ramadan to his religious practice sooner," the Court said. "[He did not waive his rights by not studying these texts in the past."

For the same reasons, the Court found the district court's analysis "does not hold up under the free exercise clause." The constitution "does not require plaintiffs to prove the centrality or consistency of their religious practice," the Court noted, citing *Hernandez v. Comm'r*, 490 U.S. 680 (1989).

Finding a genuine issue of fact as to whether denying the texts burdened Jones' religious exercise, the district court's order was reversed, with direction on remand to determine if DO 914 meets the "exceptionally demanding" least-restrictive-means standard. Defendants requested rehearing before the full Ninth Circuit, but that was denied on March 31, 2022. See: *Jones v. Slade*, 23 F.4th 1124 (9th Cir. 2022); and U.S. App. LEXIS 8647 (9th Cir.).

This was Jones' second suit filed over confiscated items; five days before filing it, he brought a separate *pro se* suit against DOC and then-Director David Shinn over the denial of five other texts, including four more Nation of Islam texts. The district court also granted Defendants summary judgment in that case, which the Ninth

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Circuit reversed on appeal on December 14, 2022 – liberally citing its own earlier decision in Jones' other case. See: *Jones v. Shinn*, 2022 U.S. App. LEXIS 34447 (9th Cir.).

Meanwhile, a settlement conference failed to produce an agreement on November 28, 2022. The district court then consolidated the two cases on February 9, 2023. Four days later, Jones picked up representation from attorneys Brandon T. Delgado, David B. Rosenbaum and Heather A. Robles of Osborn Maledon PA in Phoenix. Trial was set for June 20, 2023, and *PLN* will report updates as they are available. See: *Jones v. Shinn*, USDC (D. Ariz.), Case No. 2:18-cv-01972. 📰

## "Night of Terror" in Indiana Jail Sees Detainees Assaulted by Fellow Prisoners Who Purchased Cell Keys From Guard

by Kevin W. Bliss

**A**N INDIANA JAIL GUARD AND A JAIL detainee are headed to trial in the summer of 2023 on charges that the guard sold the detainee access to keys that he used to unlock the female housing area to a group of male detainees. But officials at the Clark County Jail insist the women who filed lawsuits alleging they were sexually assaulted are exaggerating those attacks.

"In fact, the surveillance footage shows male and female inmates talking in open areas and casually walking back and forth," former Sheriff Jamey Noel posted on a now-defunct website, clarkfacts.com, which he created to counter rumors about the incident.

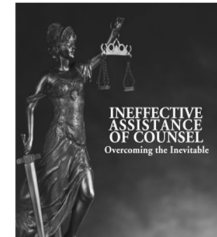
On the night of October 23-24, 2021, two pods holding female detainees were overrun by male prisoners who stole access

keys from a control module and allegedly paid off guard David J. Lowe to look the other way. Lowe was quickly fired, arrested and charged with felony criminal escape and official misconduct, after reportedly admitting he sold access to the keys for a \$1,000 bribe. [See: *PLN*, Dec. 2021, p.62.]

In suits filed in federal court for the Southern District of Indiana in July 2022, a group of women detained at the jail that night claim they were harassed, abused, and sexually assaulted for hours by the invading detainees, who attempted to hide their identity by wearing masks. The men allegedly threatened to kill the victims if they called for help. The women said they were attacked in their beds, in the bathrooms, and in the dark corners of the pods where they hid. Two claimed they were raped.

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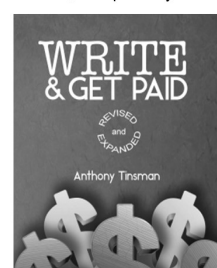
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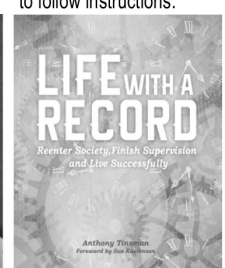
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Sometime around 2:00 a.m., one woman was able to hit the emergency call button and scream for help. The male prisoners fled, and guards showed up. But instead of investigating the intrusion, they blamed the women for the outburst. As punishment, they decided the women had lost their “dark” privileges and turned on all the lights. The women were locked in their cells. The following day their personal property was confiscated, including bedding and hygiene items.

By July 2022, 28 women had come forward with allegations, and two lawsuits had been filed against Lowe, Sheriff Noel, and other unnamed guards at the jail. The victims said that not only did guards fail to protect them but also they sat and watched on video monitors while the abuse transpired.

Filed by attorneys Bart Betteau, Wil-

liam McCall III, Stephen Wagner and Laura Swafford, the suits accused Sheriff Noel of failing to train, supervise, and discipline guards, blaming policies, practices, and procedures of the jail for perpetuating the environment that allowed the attacks to occur. The victims claimed injuries including physical and emotional abuse and psychological trauma. One said she contracted genital herpes during the incident.

A month after the suits were filed, former jail detainee Jordan Parker Sykes was charged with theft after he reportedly admitted stealing the keys from a control pod after paying off Lowe to look the other way. His trial is scheduled in Clark County Circuit Court 1 on August 24, 2023. *See: Indiana v. Sykes*, Ind. Cir. 1 (Clark Cty.), Case No. 10C03-2208-F6-001120. Lowe’s case is scheduled for trial in the same court on September 5, 2023. *See: Indiana v. Lowe*,

Ind. Cir. 1 (Clark Cty.), Case No. 10C01-2110-F5-000262.

The two civil cases filed by the alleged victims were consolidated by the Southern District of Indiana on February 17, 2023. That was after the Court denied a request for a gag order from Lowe, who is proceeding *pro se*, on February 9, 2023. *See: Coomer v. Noel*, USDC (S.D. Ind.), Case No: 4:22-cv-00079.

*PLN* will report updates in these cases as they are available. Meanwhile, Noel was term-limited from seeking re-election and stepped down at the end of 2022. Newly elected Sheriff Scottie Maples, who was Chief Deputy at the time of the incident, took office at the beginning of 2023, appointing Noel to the rank of major in the department. 📰

Additional source: *Jeffersonville News and Tribune*

## Minnesota Supreme Court: Prisoner Abused with Overtight Handcuffs Need Only Show Deliberate Indifference, Not Malicious Intent

by Matthew Clark

ON DECEMBER 14, 2022, THE MINNESOTA Supreme Court took up a state prisoner’s claim that he was left with permanent nerve damage from restraints guards misused during a routine medical transport. The Court held that the proper standard to apply is whether the allegations show deliberate indifference, not intent to cause harm.

Christopher Welters was being transported from the Minnesota Correctional Facility (MCF) at Stillwater to MCF Oak Park Heights for scheduled outpatient medical clinic appointments on July 31, 2017. Guards Cornelius Emily and Ernest Rhoney put him in full restraints for the trip, per policy of the state Department of Corrections (DOC). But Welters noticed right away that his handcuffs were too tight.

“Oh, it’s only a 15-minute drive,” Rhoney allegedly told him, “it’ll be all right.”

But it wasn’t “all right.” In fact, as Welters entered the transport van, he felt the restraints “click” even tighter – meaning the device was not double-locked, in violation of DOC policy. When he complained, Rhoney pushed on the handcuff to check, and it clicked tighter again. He agreed the

device was not double-locked. But he did nothing to fix the problem.

By the time he arrived at the clinic, Welters hands were numb. Both he and a nurse asked clinic guards to loosen the cuffs. In response they went looking for the Stillwater guards who transported Welters. Meanwhile, he was given anesthesia and underwent endoscopy. When he awoke, Welters couldn’t feel his hands at all. By the time he was back at Stillwater – after 3-1/2 hours in overtight restraints – his hands were blue.

As he lost function in his hands, Welters “struggled to hold a toothbrush,” according to the complaint he later filed. He was forced “on medical leave from prison work.” Ultimately, he “required carpal tunnel surgery in both wrists.”

Welters filed suit against DOC and its guards in state court for Washington County. Proceeding under 42 U.S.C. § 1983, he accused them of deliberate indifference to his serious medical need, in violation of his Eighth Amendment guarantee of freedom from cruel and unusual punishment. Defendants argued that was the wrong standard – that Welters needed to prove the guards acted with malicious

intent. Alternatively, they claimed qualified immunity (QI) – presumably because there was no case law specifically stating that a prisoner had a right not to be transported in restraints so tight that he was left with injuries requiring surgery.

The district court never got to the issue of QI; it agreed with Defendants that Welters needed but failed to show malicious intent, pointing to *Hudson v. McMillan*, 503 U.S. 1 (1992). So Defendants were granted summary judgment. The Court of Appeals reversed that decision. Quoting *Hope v. Pelzer*, 536 U.S. 730 (2002), it said that the guards subjected Welters “to a substantial risk of physical harm” and “unnecessary pain.” The appeals court also said they were not entitled to QI because case law clearly established that the constitution “forbids the inhumane use of restraints that cause injury to prisoners.”

On appeal, Minneapolis attorney Zorislav R. Leyderman represented Welters before the state Supreme Court, which began with the question: Which standard properly applies, malicious intent or deliberate indifference? Whereas *Hudson* is the proper standard to apply when guards attempt to restore order during prison dis-

ruptions, the Court allowed, both guards testified that the prison transport was routine. Failing to double-lock restraints and keeping a compliant prisoner in restraints after arrival violated prison policy, too. Therefore, the proper standard was the one laid out in *Hope*: deliberate indifference.

The Court went on to add, pursuant to *Farmer v. Brennan*, 511 U.S. 825 (1994), that the guards were not entitled to QI because they had actual knowledge of an objective and substantial risk to Walters's health or safety and disregarded it. Moreover, *Hope* had already established a prisoner's right

not to be subjected to pain and injury using improper restraint devices – further defeating their QI claims. Therefore, the appellate court decision was affirmed. *See: Walters v. Minn. Dep't of Corr.*, 982 N.W.2d 457 (Minn. 2022). 📖

## Study Shows COVID-19 Drove Prison Death Rates 50% Higher

by Keith Sanders

THE COVID-19 PANDEMIC IS OVER BUT not forgotten. Highlighting the virus's deadly toll on American prisoners, an analysis published by the *New York Times* on February 19, 2023, tracked the impact of the disease during its first year. The data reveal significantly higher rates of infection and mortality inside state and federal prisons, underscoring how they were unprepared and unequipped to effectively

maintain the health and safety of those they incarcerated.

According to the report, 2020 was the deadliest year for prisoners. COVID-19 accounted for a 50% increase in prisoner deaths

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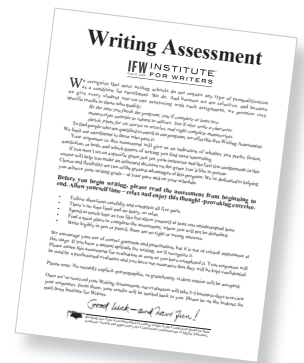
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nationally that year, with six states showing a 200% increase. Overall, death rates from COVID-19 in America's prisons were twice as high as the national average, as well. Roughly 6,180 prisoners died from the disease in 2020 alone, compared to just 4,240 prison deaths in 2019 from all causes.

That happened despite a decrease in America's prisoner population by over 100,000, as lockdowns shuttered courts and slowed the inflow of newly convicted prisoners to a trickle.

An August 2022 report by the federal Bureau of Justice Statistics (BJS) counted over 1.6 million prisoners at risk of contracting COVID-19 when the pandemic hit: 181,300 in custody of the federal Bureau of Prisons (BOP) and the remainder held by state prison systems. An aging prison population, deplorable conditions, staffing issues, official indifference and neglect, along with inadequate or nonexistent health care – all played a role in the high

COVID-19 mortality rate of American prisoners.

The rate in 2020 totaled 15 deaths per 10,000 prisoners. Michigan had a rate over twice as high: 32 deaths per 10,000. Alabama, Arkansas, South Carolina and West Virginia also notched high COVID-19 death rates in 2020, but they also have a long history of leading the nation in prisoner deaths overall. In West Virginia alone, 46 prisoners died in 2020, an eye-popping rate of 96 deaths per 10,000 prisoners. Of those 42 were over 50 years old, six in their 80s. This reflects an overall aging trend inside American jails and prisons: Roughly 10% of all prisoners in 2009 were 50 or older, while a decade later that figure had climbed to 21%

Aaron Littman, an assistant professor at U.C.L.A. and the acting director of its Law Behind Bars Data Project, said "the pandemic is the story, but it is just part of the story." The disease's deadly toll on

prisoners was exacerbated by the dismal quality of health care in American lockups.

One common problem: Providers and other medical staff typically view prisoners with suspicion rather than as patients. As noted by Andrea Armstrong, a law professor at Loyola University in New Orleans, "providers will think a patient is malingering or somehow exaggerating their symptoms." Lack of treatment options, or providing no treatment at all for geriatric and chronic illnesses, also contributed to high COVID-19 death rates.

The startlingly high mortality rates were reached despite widespread lockdowns in prisons and jails, along with visitation suspensions and a dip in the detained population. The root problem that the highly contagious virus exploited is the systemic failure of U.S. carceral facilities to protect those in their care. 📖

Source: *New York Times*

## Wellpath Subsidiary Out of Australian Women's Prison After Indigenous Prisoner's Death

ON JANUARY 19, 2023, CORRECTIONS Minister Enver Erdogan announced that the Australian state of Victoria is booting the private healthcare contractor from the Dame Phyllis Frost Centre (DPFC). Effective July 1, 2023, Wellpath subsidiary Correct Care Australasia (CCA) will be replaced by the state-owned Western Health to provide healthcare. The change

will affect not only the 538 women held at the prison but as many as 78 more held at the minimum-security Tarrengower prison, also in Victoria.

The announcement came just over three years after an indigenous prisoner was found dead in her cell at DPFC. Veronica Nelson died on January 2, 2020, after calling for help on the prison intercom system 49 times as she suffered from an undiagnosed medical condition and heroin withdrawal. After staff finally answered, a CCA doctor refused to send Nelson to a hospital, according to testimony from prison nurse Stephanie Hills.

Nelson was arrested on shoplifting and bail violation charges on December 30, 2019. An outside investigation conducted after her death found that no one checked on her as her symptoms worsened. A prison guard lied to Nelson "several times about calling for a nurse on her behalf," the investigation found. Guards also did not report many of her symptoms to medical staff, "highlighting dangerous gaps in communication and protocol."

"Veronica's death was preventable," Victorian coroner Simon McGregor declared.

CCA has a dismal track record providing medical services to Australian prisoners.

In 2017, 65% of prisoners surveyed rated healthcare at DPFC "very bad" with a further 20% declaring it "bad." A report put out the same year by the Victorian Ombudsman noted extremely long wait times to see a doctor. In Nelson's case, the nurse on duty the night she died never read her file put together by medical staff.

CCA's \$700 million contract, which covered all 13 prisons in Victoria, began in 2012 and was set to end in 2023 – so Erdogan's announcement means the contract will simply not be renewed. Also ending is a \$50 million contract the firm has with Victoria's youth justice centers. Healthcare at men's prisons will be provided under a new contract with GEO Group, Inc., a Wellpath competitor.

Contributing to Nelson's death was Victoria's onerous bail law, which limits input from police officers who used to have wider discretion in minor offenses. Courts now determine bail amounts, and as a result people detained for crimes like Nelson's needlessly languish in long-term facilities awaiting a bail decision.

Since her death, four other women have died at DPFC. 📖

Sources: *ABC News, The Age, The Guardian*

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# Bureau of Justice Statistics Releases Latest First Step Act Data

by Casey J. Bastian

**T**HE FIRST STEP ACT OF 2018 (FSA) was signed into law in December 2018. Among other hoped-for benefits was that the legislation would help reduce recidivism and decrease the overall prison population. However, data compiled by the Justice Department's Bureau of Justice Statistics (BJS) for the calendar year 2021 reflected that the prisoner population of the federal Bureau of Prisons (BOP) actually increased more than three percent year over year.

FSA mandated that BJS collect and collate data from 26 points through its National Prisoner Statistics (NPS) program. The 2021 data was compiled by the Office of Research and Evaluation and provided to the BJS, which supplemented this data from the 2016 Survey of Prison Inmates (SPI) and NPS's Summary of Sentenced Population Movement. The counts in the 2021 BJS report encompass BOP prisoner populations in all 122 federal prisons. However, the number excluded all privately operated federal detention centers.

The data is revealing, and several of

the demographic statistics are particularly noteworthy. First there is the increase in BOP's prisoner population, which swelled by three percent, up from 151,283 in 2020 to 156,542 in 2021. Citizenship statistics reveal that 15% of all federal prisoners are not U.S. citizens, closely reflecting the 14% share of all U.S. residents who are not citizens.

But the statistics also revealed that prisoners were more likely to have dependent children than the average American and nearly four times as likely to lack basic educational attainment. Some 49.4% of all prisoners, or 77,404, have a child that is 20 years old or younger. For the total U.S. population, just over 40% of households have a child 18 or younger at home. In 2021, there were 2,005 prisoners who received a GED or equivalent certificate while incarcerated, an increase from 1,368 in 2020. But this still left 49,982 federal prisoners – nearly one-third of the total – without a high school diploma or equivalent. For the U.S. population as a whole, less than 9% had

such low educational attainment in 2021, according to the Census Bureau.

Drilling deeper into family statistics found that there were 74 prisoner pregnancies in 2021, down from 171 in 2018. Of these, 49 resulted in live births. Another 20 had unknown results due to release of the prisoner mother. The remaining five pregnancies ended with either miscarriage (2), abortion (1), ectopic pregnancy (1) or still birth (1). Leg and hand restraints on incarcerated new mothers were used in two circumstances during post-partum recovery.

Information pertaining to healthcare access and treatment was quite limited. However, all of BOP's 122 prisons were operating with at least one clinical nurse, certified paramedic, or licensed physician on-site. BOP has implemented a medication-assisted treatment (MAT) program approved by the U.S. Food and Drug Administration to treat substance abuse disorders. Prior to admission to BOP, 378 prisoners were using MAT. The number was 1,127 while in-custody. The

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three approved MAT medications, used in conjunction with counseling and behavioral therapies, are methadone, buprenorphine and naltrexone. There were 17,252 federal prisoners participating in a non-residential drug abuse program and another 10,919 in a residential drug treatment program

One concerning observation: BOP refuses to acknowledge the existence of “solitary confinement,” preferring instead the more benign-sounding “segregated housing.” Yet no matter what it’s called, solitary confinement continued to be used at levels only slightly below the previous year, with 9,261 prisoners placed in a Special Housing Unit, another 824 in a Special Management Unit and 348 others in Administrative Maximum (ADX).


There were 1,118 reported prisoner-on-staff assaults, but no record of staff-on-prisoner assaults. However, the numbers from fiscal year 2020 provided by the Justice Department’s Office of Internal Affairs (OIA) tell a different tale. According to OIA, 3,732 matters became a “complaint for disposition” arising from prisoner-initiated complaints against staff. This reflects a disturbing ratio of prisoner complaints about staff abuse to staff complaints about prisoner assaults – more than 3 to 1 – yet the FSA report does not mention it.

BOP has agreements with 1,038 external groups to provide recidivism reduction programming at 101 of its prisons. A total of 8,605 volunteers were counted. Of these, 1,954 were Level I volunteers on-site less than four days per year, who receive no badge and little training. Another 6,651 were Level II volunteers on-site more than five days per year, who receive a badge and also mentor/volunteer training.

FSA was intended to increase participation in evidenced-based recidivism reduction (EBRR) programs and Productive Activities (PA) programs, of which BOP offers more than 80. These programs are designed to meet various prisoner needs, including anti-social behavior, anger management, substance abuse, parenting skills and dyslexia. There were 87,341 prisoners enrolled in EBRR/PA programming. A total of 108,301 fully completed some programming during the year 2021. *See: Federal Prisoner Statistics Collected under the First Step Act, 2022, BJS (Dec. 2022).*

Using its Prisoner Assessment Tool Targeting Estimated Risks and Needs (PATTERN), BOP says it can calculate

“the risk of a person currently in prison of recidivating in the future,” defining recidivism as a “return to BOP custody or rearrest within 3 years.” Statistics indicate varying percentages of prisoners classified with either non-violent or violent assessments at minimum (15.2%), low (31.2%), medium (19.3%) and high (34.3)% risk levels.

For those who wish to ensure that BOP is correctly calculating their risk scores, the current PATTERN scoring sheets are available at: <https://www.bop.gov/inmates/fsa/pattern.jsp>.

Additional source: U.S. Census Bureau

## “Abdication of Responsibility”: Heads Roll in Tennessee DOC Over Botched Execution Protocols

by Kevin W. Bliss

**A** DAY BEFORE RELEASING A SCATHING report on the state’s execution procedures, Tennessee Governor Bill Lee (R) fired the deputy commissioner of the Department of Corrections (DOC), Debbi Inglis, along with Inspector General Kelly Young. The last day of work for both was December 27, 2022.

Lee halted executions in May 2022, just before Interim DOC Commissioner Lisa Helton admitted in an explosive court filing that the state hadn’t followed its own protocol for testing execution drugs. Lee then tapped former U.S. Attorney Ed Stanton to investigate. [See *PLN* Nov. 2022, p.44.]

Stanton’s report, which the governor released on December 28, 2022, blasted DOC for not following its own lethal injection protocol. The compounding pharmacy tasked with mixing the drugs didn’t even have a copy. And the only DOC employee who received whatever testing reports were provided lacked the training to understand what they meant – a misalignment of duties and authority the report called an “abdication of responsibility” by DOC.


“The fact of the matter is not one [DOC] employee made it their duty to understand the current Protocol’s testing requirements and ensure compliance,” the report stated.

Tennessee utilizes a three-drug combination for lethal injections: midazolam to induce unconsciousness, vecuronium bromide to instill paralysis, and potassium chloride to stop the heart. Regulations required drug testing prior to each execution, even if the execution was by electrocution and the drugs were just on-hand in case a condemned prisoner changed his mind.

But Stanton found DOC had fol-

lowed testing procedures for endotoxins only once since the 2018 updated protocols, and then in a test run, not an actual execution. Moreover, testing for endotoxins is only one of three testing required procedures. The report concluded that DOC leadership “viewed the lethal injection process through a tunnel-vision, result-oriented lens rather than provide the necessary guidance and counsel to ensure that Tennessee’s lethal injection protocol was thorough, consistent, and followed.” *See: Tennessee Lethal Injection Protocol Investigation Report and Findings, Butler-Snow LLP (2022).*

After Young and Inglis were asked to surrender their government IDs, they were placed on paid leave until their termination January 10, 2023. To replace Inglis as deputy commissioner, Lee then appointed Frank Strada, a veteran of the Arizona DOC, which has suffered its own problems with executions. [See: *PLN*, Feb. 2023, p.40.]

Robert Dunham, executive director of the Death Penalty Information Center, said that firing a prison system official for violations of execution protocols was extremely rare; usually they are allowed to retire early instead.

Additional sources: *AP News, WTVF, WZTV*

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# Federal Courts Throw Out Smart Communications' Mail-Scanning Patent

by K. Robert Schaeffer

ON OCTOBER 7, 2022, THE U.S. DISTRICT COURT for the Middle District of Tennessee granted judgment on the pleadings to Rutherford County and VendEngine, Inc., the contractor that digitizes prisoner mail in its jail, in a suit filed by Smart Communications that alleged infringement of its patented rival digitization service, MailGuard. In its decision, the Court found the MailGuard patent “invalid because it is not directed to patent-eligible subject matter.” See: *HLFIP Holding, Inc. v. Rutherford Cty.*, 2022 U.S. Dist. LEXIS 184056 (M.D. Tenn.).

The decision mirrors an earlier ruling by the federal court for the Middle District of Pennsylvania, which also decided that MailGuard was “patent ineligible” on April 22, 2022. In that case, Smart Communications sued the York County Prison for engaging rival mail-scanning service TextBehind, claiming its service infringed on the MailGuard patent.

Smart Communications, founded and run by CEO Jon Logan, emerged on the prison industrial landscape in 2009 primarily as a provider of electronic messaging to county jails. Since then it has expanded its communications service offerings to include phone calls, virtual visits, tablets, kiosks, digital media – and scanning incoming mail, ostensibly to prevent the introduction of contraband.

The company gained prominence in 2018 when it signed an emergency, no-bid, \$13.536 million three-year contract to scan prisoner mail for the Pennsylvania Department of Corrections (DOC), after fewer than 60 prison staffers throughout the state claimed they were sickened by exposure to synthetic cannabinoids over a five-month period. [See: *PLN*, Sep. 2019, p.60.]

Despite reporting that debunked the risk from incidental exposure to these drugs, along with DOC's failure to provide any evidence they ever originated from incoming mail, Smart Communications was tapped as a solution to this manufactured emergency, promising that MailGuard would cut off “the last conduits of drugs and undocumented inmate communications with the outside world.”

Though repeated assurances of “turn-key” service were made in marketing materials, the transition was a widely-publicized mess, resulting in low-grade and incomplete scans, weeks-long delays, and mail that was often returned to sender, misdelivered, or lost completely.

Smart Communications first filed a patent application for its MailGuard system in May 2016. The “correctional postal mail contraband elimination system” routes all incoming prisoner mail through a centralized processing facility in Tampa, where it is scanned into an electronic file that is returned to the prison. At that point, it is printed for the prisoner or made available electronically via tablets and kiosks. All original mail is destroyed.

The U.S. Patent and Trademark Office approved the application in May 2019. But numerous competitors appeared in what the company dubbed the “corrections mail elimination marketplace.” One of these, TextBehind, secured state-level mail-scanning contracts with prison systems in North Carolina and Wisconsin in late 2021. When it was then hired by York County Prison, Smart Communications filed a patent infringement suit against the lockup.

On August 25, 2020, as settlement negotiations began, Smart Communications became aware that the prison's telephone service contract with industry giant Global Tel\*Link (GTL) was due to expire at year end. The very next day,

Logan forwarded prison Warden Clair Doll marketing materials describing his company's communication services. The day after that, the two had a conference call, and Doll invited Logan to meet and discuss a resolution to the patent suit, as well as to hear a formal pitch for Smart Communications' services.

Over the next several months, while the patent infringement litigation was stayed amid settlement talks, the parties engaged in “extensive contract negotiations.” When GTL got wind, it offered to indemnify and assist the prison in its patent litigation with Smart Communications. The ploy worked; the prison renewed its contract with GTL, and by January 2021, GTL attorneys had been added to the patent litigation.

On October 6, 2021, Smart Communications filed a complaint against GTL and York County Prison, calling GTL's

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meddling in the patent suit a violation of the Sherman anti-trust act. But the federal court for the Middle District of Pennsylvania decided that Smart Communications' blatant opportunism in using its patent litigation as a pretense for soliciting business away from GTL had "baited" the company into forming an interest in the case.

Meanwhile, the same court scrutinized the MailGuard system under *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014). The prison and GTL argued that the patent was invalid because MailGuard comprises "an ineligible method of organizing human activity," namely "receiving, sorting, reviewing, logging, screening and distributing inmate postal mail using generic computer components like scanners, terminals, servers and kiosks and generic computer processes like generating

text-searchable documents and tagging electronic files."

Historically, systems that merely "automate manual processes" have been classified as abstract ideas that are ineligible for patent. As the prison and GTL argued, "the purported invention" of MailGuard "is simply to computerize a process that ... correctional facilities have carried out manually for years." The court agreed, finding nothing in the MailGuard system that "does anything more than perform this task [of screening incoming mail for contraband] faster and more accurately than humans have been doing for years." Without the inventive application necessary for a valid patent, MailGuard was patent ineligible, the court said. *See: HLFIP Holding, Inc. v. York Cty.*, 600 F. Supp. 3d 526 (M.D. Pa. 2022).

According to a recent report by Prison

Policy Initiative, at least 23 other state-level DOCs, as well as many individual federal facilities, are now scanning incoming prisoner mail. With its MailGuard patent quashed, Smart Communications has no choice but to appeal these two decisions to protect its small slice of this pie. But if the decisions stand, expect more firms to pop up and stake a claim in one of the last aspects of prison life not yet fully monetized: letters from home, holiday cards, photos of family gatherings and loved ones, and finger-paintings by children. 🎨

Additional sources: *New York Times*, *Philadelphia Inquirer*, *Slate*

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# \$775,000 Paid for Mentally Ill California Jail Detainee Who Compulsively Drank Water Until He Died

by Casey J. Bastian

ON NOVEMBER 2, 2022, CALIFORNIA'S Monterey County agreed to pay \$775,000 to settle a lawsuit brought by the estate of Rafael Ramirez Lara, a mentally ill detainee allegedly ignored in the county jail while he compulsively drank water until he died.

An undisclosed portion of the payout was covered by Wellpath, the privately contracted healthcare provider at the Monterey County Jail (MCJ). Wellpath is one of the nation's largest private providers of healthcare behind bars, with contracts in 394 county jails and community facilities and more than 140 state and federal prisons in 36 states. The firm has held the contract

to provide healthcare at MCJ since it was given to a corporate ancestor, California Forensic Medical Group (CFMG), in 1984.

MCJ and CFMG settled an earlier class-action suit in 2015 with an agreement to address issues of poor medical and mental healthcare, inadequate staffing, accommodations for disabled prisoners and serious safety problems. [See: *PLN*, Apr. 2016, p.18.]

That agreement also included a \$4.8 million payment by Defendants for class attorney fees. But that couldn't keep the parties from returning to the federal court for the Northern District of California, which ordered Defendants to pay another \$150,000 for failing to live up to the agreement and appointed special monitors to enforce it in July 2019. [See: *PLN*, Oct. 2019, p.39.]

Under an "Implementation Plan" filed with the Court in that suit, MCJ was supposed to adopt new policies that included language interpreters, mental health screening during intake, continuation of medications begun prior to incarceration and monitoring of health conditions, among other improvements. The events surrounding Lara's death suggest that those changes were not effectively implemented.

After the first of three arrests in April 2018, just 20 months passed before Lara, 57, died on December 22, 2019. He spent nearly eight of those months in MCJ. Jail records note that Lara "engaged in multiple self-harming activities" at MCJ in June 2018: banging his head against a wall and breaking his hand punching a window. After these incidents, Lara was taken to Natividad Medical Center (NMC), where staff noted "bizarre behavior" and a "history of schizophrenia." Lara was given a prescription for the anti-psychotic medication Haldol by NMC staff. But the prescription was never renewed by Wellpath or MCJ staff. Records also indicate Lara was never evaluated again while confined at the MCJ.

During the next several months, Lara's mental health continued to decline, according to the complaint later filed on his behalf. He became convinced that neither he nor his family was safe even in their family

home. Family members were attempting to have him held for a 72-hour psychiatric evaluation under Cal. Welf. & Inst. Code § 5150, when Lara was arrested again on September 1, 2019.

The jail had previously recorded that Lara required a Spanish translator, but one was not provided, the complaint noted. The jail also knew he suffered from schizophrenia, but he was not referred to mental health services. He even admitted using alcohol the day of his arrest, but he wasn't directed to withdrawal services, either.

On September 3, 2019, Lara's family called MCJ, advising staffers that they "should not wait for Mr. Lara to seek help." In response, jail staff stated that Lara "can seek help if he wants to." Meanwhile, a Wellpath therapist documented seeing Lara "cell front" two times during September, but there was no evaluation nor any direct contact with Lara. He was left "without any further mental health contact, intervention, or medication for the next thirty days," the complaint also recalled.

On October 23, 2019, Lara got into a fight with his cellmate, accusing him of raping Lara while he slept. Lara was taken to NMC with "blood all over his face and clothing." But he was discharged the next day. MCJ provided Lara with no medical or mental health support, and no Prison Rape Elimination Act investigation was opened.

On the day Lara died, the sound of his toilet flushing "over and over could be heard from the dayroom of the unit," the complaint noted. Lara could be heard coughing and vomiting as well. Witnesses stated that water was running under the cell door. MCJ staff noted the water, but no one made a welfare check on Lara. At approximately 12:12 p.m., he was discovered "face-down and unresponsive on the floor of his cell in a pool of fluid and blood." Lara was taken to the NMC and pronounced dead.


As it turned out, Lara had died of hyponatremia – low sodium – due to "acute water intoxication." Sheriff and coroner Steve Bernal blamed the death on Psychogenic Polydipsia – compulsive water drinking – arising from Lara's schizophrenia, noting in the autopsy report that

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this is “most often associated with mental health disorders, and may result in water intoxication.” When enough water flushes too much sodium from the body, the patient lapses into hyponatremia, suffering “nausea and vomiting, confusion, severe changes in mental state, psychotic symptoms and can

lead to seizures, coma, and death.”

Lara’s untreated schizophrenia caused him to compulsively drink water until his sodium levels fell fatally low, and he drowned in his own vomit – a disturbing and preventable death in the custody and care of MCJ and Wellpath staff. The

settlement included a check for \$310,000 made payable directly to Oakland’s Rifkin Law Office, which represented the estate in its suit. *See: Est. of Ramirez Lara v. Cty. of Monterey*, USDC (N.D. Cal.), Case No. 4:21-cv-02409. 📄

Additional source: *Voices of Monterey*

## Dying for Being Deadbeat Dad in Missouri Jail

by Chuck Sharman

ON JANUARY 23, 2023, JUST 10 DAYS AFTER Ryan Everson was put in Missouri’s Clay County Jail, the 42-year-old was found dead in his cell. That his three children no longer had a father is cruelly ironic, since Everson was behind bars for failure to pay \$50 in child support.

The office of Sheriff Will Akin said the cause of death was suicide. But Everson’s family questioned why he was left alone in his cell despite having seizures. Moreover, they argue, jailing him was never going to help his children, ages 17, 19 and 20.

Instead it added to the growing number of deaths in the jail, the third in 21 months. With an average daily population of 313 detainees, according to Inside Prison,

the jail’s annual death rate now stands at 548 per 100,000 – over three times higher than the U.S. average of 167 per 100,000 reported most recently by the federal Bureau of Justice Statistics.

Statistics on the number of parents jailed for nonpayment of child support are spottier. The federal Office of Child Support Enforcement in 2010 counted 662,000 incarcerated parents who owed child support, but the vast majority were behind bars for offenses unrelated to their support obligations. [See: *PLN*, Sep. 2016, p.1.]

Even when they don’t owe child support, incarcerated parents are often penalized twice for being poor – once when they can’t make bail and again when the state bills them for the costs of foster care

for their kids while they are held in pre-trial detention. This is legal in 12 states, where a poor parent can face an enormous debt – up to \$4,500. [See: *PLN*, Mar. 2023, p.57.]

Like too many detainees in U.S. jails, Everson’s real crime was poverty, often entwined with addiction problems like those he suffered, too. But while many Missouri counties have transitioned to pursuing child support through civil processes – the number of related felony charges in the state has dropped by over 71% in the past decade – Clay County prosecutors continue to use the criminal courts to go after

deadbeat parents. County Assistant Prosecutor Alexander Higginbotham claimed his office seeks incarceration only as a “last resort,” but it filed 99 criminal child support cases in 2022, mostly felonies, and sent 109 people to jail.

Everson’s original child support order was issued in Alaska in 2008 for \$458 monthly. That was modified to \$50 in 2013, as his income shriveled. When he followed his ex-wife and children to Missouri, his obligation trailed along. Clay County said he owed over \$30,000 in Alaska and was \$600 behind in payments over the previous year – a Class E felony punishable by four years in prison.

Yet that wasn’t the only penalty Everson faced for his thin wallet. The state’s overloaded public defense system meant there was no attorney on hand to argue that sentencing guidelines are meant to release nonviolent defendants from jail with lower or zero cash bonds. Clay County Judge Louis Angles set Everson’s bond at \$10,000, an amount he couldn’t afford, which put him in the jail where he died.

Experts and advocates argue that the criminal justice system should focus on providing treatment and support to those struggling with addiction and financial difficulties instead of resorting to incarceration. No study has ever shown that imprisoning someone for failing to pay child support makes him a better parent. Instead, access to drug treatment and assistance with finding employment and stable housing would be far more effective.

Ryan Everson was remembered by his brothers, his children and even his ex-wife as a loving father who struggled with addiction but deeply cared for his kids. His death highlights the need for systemic changes to provide support for those dealing with poverty and addiction, rather than exacerbating their difficulties through incarceration. 📄

Sources: Bureau of Justice Statistics Inside Prison, *Kansas City Star*

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# Report Reveals Extent of Federal Pretrial Detention Crisis

by Casey J. Bastian

A REPORT ON THE FIRST INVESTIGATION into federal pretrial detention on a national level was released in October 2022 by the Federal Criminal Justice Clinic (FCJC) of the University of Chicago Law School. Combing through data from over 600 detention hearings across four federal districts over a two-year period, the report found that federal courts “have allowed misguided and entrenched practice norms to overshadow the law,” resulting in “skyrocketing” pretrial detention rates.

The report, *Freedom Denied*, attempted to “identify why the federal system has abandoned the norm of liberty.” Back in 1984, Congress passed the Bail Reform Act to emphasize the “presumption of release,” placing the burden on prosecutors to establish a true need for pretrial detention. In *United States v Salerno*, 481 U.S. 739 (1987), the U.S. Supreme Court found the law constitutional, noting its provisions “protect pretrial liberty and render pretrial detention” the “carefully limited exception.”

Now it appears those time-honored

safeguards have collapsed. In 1983, only 23.8% of those charged were detained while awaiting trial, for an average period of two months. By 2019, 74.8% were detained for an average of nearly nine months.

Pretrial detention places a significant burden on individuals, their families, and society – especially for minorities, the poor, and other marginalized groups. Locked up in jail, people lose their jobs. Without an income, they lose their homes and cars. If there is no one to take care of their children, they lose custody of them, too.

The practice is also criminogenic; those detained are more likely to be convicted, receive a lengthier sentence, and they are 25% more likely to recidivate upon release.

One of the most important parameters of the bail reform law is found in 18 U.S.C. § 3142(f), which outlines factors that a prosecutor must meet at a defendant’s initial appearance before a detention hearing can be held. If the charged offense doesn’t satisfy the factors, release is required. But judges apparently have come to believe

that jailing defendants pretrial protects the public. Statistics prove that just isn’t true. Moreover, it undermines the Constitution’s emphasis on a presumption of innocence. Yet prosecutors play on these judges’ misguided beliefs and often request a detention hearing without raising a single §3142(f) factor.

The report found that many times a person is not appointed counsel prior to his initial appearance. Unsurprisingly, when that happens, he or she is detained 100% of the time. When release is contingent on bond, bail conditions are often set beyond the financial means of the defendant – allowing poverty to become a de facto detention order. The report describes this as “an indisputable violation” of the Bail Reform Act.

It recommends that §3142(f) factors become a legal standard followed by judges at every initial appearance. Everyone must have an attorney at every stage of the proceedings. Judges must begin to “adhere to the low standard” for detention’s rebuttable

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presumption and “never treat the presumption as a mandate for detention.” Finally, imposed financial conditions must not be unduly burdensome.

Most importantly, the report notes, courthouse custom cannot be allowed

to override the intent of the law. “We’ve always done it that way,” isn’t acceptable. It’s up to those in charge to correct these serious deficiencies in the pretrial process. As Justice John Paul Stevens observed: “It is confidence in the men and women

who administer the judicial system that is the true backbone of the rule of law.” Our collective confidence is rightfully shaken today. 🗞️

Additional source: *USA Today*

## Eighth Circuit Requires Source-of-Funds Finding Before Allowing BOP to Raid Account of Federal Prisoner in Missouri

by David M. Reutter

**I**N A DECISION REACHED ON AUGUST 10, 2022, the U.S. Court of Appeals for the Eighth Circuit stayed the hand that the federal Bureau of Prisons (BOP) had reached into the pocket of a federal prisoner in Missouri. Though ultimately Anthony Robinson lost nearly all of the funds in his inmate trust account to make restitution to his victims, the ruling reinforces a similar Court decision reached earlier in the year, putting the burden on courts to determine the source of a prisoner’s funds before deciding whether they can be confiscated. [See: *PLN*, Dec. 2022, p.60.]

When the U.S. District Court for the Eastern District of Missouri sentenced Robinson to life imprisonment in 2013 for murder in aid of racketeering and conspiracy to commit racketeering, it ordered him to pay \$14,186.17 in restitution, owed jointly and severally with two co-defendants. The judgment stated that all “criminal monetary penalties are due in full immediately.” However, if that were not possible, “then the defendant shall make payments under” a “minimum payment schedule ... at the rate of 50% of funds available to the defendant.”

In May 2021, the government discovered Robinson had \$2,753.21 in his inmate trust account and moved the district court to have the federal Bureau of Prisons (BOP) turn it all over to make payment towards \$12,151.77 still owed in restitution.

The motion asserted that \$1,400 of those funds were from a COVID-19 stimulus payment. It was accompanied by a BOP printout of Robinson’s account activity that listed several “inside” payments of \$25 each and two outside payments in the amounts of \$250 and \$1,420.43, respectively. There was no evidence that he received a \$1,400 stimulus payment.

Nevertheless, without holding a hearing or taking other evidence, the district court ordered BOP to turn over all funds

in Robinson’s account to the clerk of court. Robinson appealed.

Taking up the case, the Eighth Circuit began by noting that the district court needed a statutory authority to enter its order, as laid out in *United States v. Balentine*, 569 F.3d 801 (8th Cir. 2009). The government argued the restitution order was an enforceable lien under 18 U.S.C. § 3613(c), the same law that the district court cited for the proposition that Robinson’s funds were not exempt from enforcement of the restitution order.

But the Eighth Circuit said that analysis was incomplete. The district court did not assert that the statute is a self-executing means to enforce a lien, nor did it rely on the law as authority for its order. Rather, it relied on 18 U.S.C. § 3664(k). That law provides that if a defendant experiences “any material change” in economic circumstances “that might affect the defendant’s ability to pay restitution,” then the district court may “adjust the payment schedule, or require immediate payment in full, as the interests of justice require.”

The district court’s order, however, did not adjust the payment schedule or require full payment. It simply ordered BOP to release all available funds. The district court also relied on 18 U.S.C. § 3664(n), which requires that when a person who owes restitution or fines “receives substantial resources from any source,” then he “shall be required to apply such sources to any restitution or fine still owed.”

In *United States v. Kidd*, 23 F.4th 781 (8th Cir. 2022), the Court held that resources affected by § 3664(n) are not limited to “windfalls or sudden financial injections,” yet it also declared that the provision “does not apply to prison wages.” What matters is the source of the funds. Here, as in that case, the district court erred by failing to make fact findings about the source of all

funds in Robinson’s prisoner trust account.

Therefore, the district court’s order was vacated, and the case remanded for additional findings of fact regarding the application of § 3664(n). Robinson was represented by Federal Public Defender (FPD) Nancy McCarthy and Assistant FPD William T. Marsh. See: *United States v. Robinson*, 44 F.4th 758 (8th Cir. 2022).

The case then returned to the district court, where the parties reached an agreement on November 30, 2022. Judgment was entered the next day refunding \$250 to Robinson’s inmate trust account, while the remaining \$2,503.21 was released to the clerk of the court to make payment toward his restitution obligation. See: *United States v. Robinson*, USDC (E.D. Mo.), Case No. 4:11-cr-00246.

BOP published a proposed rule change in the Federal Register on January 10, 2023, which would take a portion of prison wages to make restitution – 50% of wages earned in UNICOR jobs and 25% of other wages. Moreover, BOP also wants 75% of *any* deposits into a prisoner’s trust account, including those made by family and friends for commissary purchases and telephone calls. Having already shifted many costs of incarceration to prisoners’ families with inflated phone charges and limited food service that forces supplemental purchases at jacked-up commissary prices, BOP now wants to force families to make a prisoner’s restitution payments, too.

The proposed rule would affect only prisoners enrolled in BOP’s Inmate Financial Responsibility Program. But those who don’t enroll are ineligible for programming that leads to sentence credits – leaving impoverished prisoners with a stark choice: Stick their families with their restitution tab or sit in prison longer. See: 88 FR 1331. 🗞️

Additional source: *NPR*

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# Arizona Prison Forcibly Induced Labor for Pregnant Prisoners

by Eike Blohm, MD

**A**FTER A 2019 INCIDENT DURING WHICH A prisoner gave birth in her cell – delivering a baby into the toilet while guards ignored her cries for help – Arizona’s Perryville Prison in Buckeye started inducing labor for pregnant prisoners.

Inducing labor involves intravenous administration of drugs that cause uterine contractions. These contractions can be more painful than those of spontaneous labor and carry a higher risk of soft tissue tears. Naph-Care, the Alabama-based private firm that holds the contract to provide healthcare for the state Department of Corrections (DOC), told the *Arizona Republic* it had no such policy. So this apparently happened before DOC dropped its former private healthcare contractor, Centurion, at the end of September 2022. [See: *PLN*, Dec. 2022, p.1]

An investigation by the news outlet revealed that three women were induced against their will at Perryville. While the procedure is generally safe for mother and baby at full term – typically 40 weeks – doing so before 38 weeks is reserved for high-risk pregnancies, such as when a woman suffers from diabetes or pre-eclampsia. Yet two of the deliveries at Perryville were induced at 37 weeks, both in the absence of medical indications.

The state passed its Dignity for Incarcerated Women Act in 2021, which bans shackles during birth and allows an imprisoned mother to spend at least 72 hours with her newborn. But apparently it does not protect against forced inductions.

That may reflect the simple fact that inducing labor allows the prison to schedule childbirth at the most convenient time for the system – perhaps certain times when staffing models allow for a hospital trip. It also avoids a repeat of the horrible 2019 incident. In fact, there may be prisoners who wish to be induced for fear they might otherwise deliver in their cells without any anesthesia.

Meanwhile the state continues to punish women for their sex, prisoners say, denying them breast pads post-partum, providing nothing more for a pre-natal diet than an extra serving of milk every day. Two imprisoned new mothers said that DOC billed them for labor services.

But forcing women to induce labor violates the bodily autonomy of prisoners. Except when ordered by a court, no prisoner can be

forced to take medication against her will, even if it’s relatively safe. In the same way, some women prefer to give birth naturally when their body and the baby determine it is time, not when it best suits prison staffing needs.

“It’s another example of how medical practices are dictated by the lack of health care and custody staff,” offered American Civil Liberties Union National Prison Project attorney

Corene Kendrick. “If they had enough nurses and custody officers on-site 24/7, they could implement best practices.”

As state prisoner Stephanie Pearson argued, “Just because I made some bad choices in my life, they shouldn’t be allowed to make bad health choices for me and my baby.”

Source: *Arizona Republic*, *Reason*

## Senators Rail at DOJ Failure to Report In-Custody Deaths

by Jayson Hawkins

**C**ONGRESS HAS YET TO DEMAND SYSTEMIC changes that could seriously reduce deaths in custody of law enforcement. This reluctance may stem in part from the fact that the U.S. Department of Justice (DOJ) fails to accurately count the number of people who die in custody, despite being ordered by Congress to do so.

Congressional action on deaths in custody traces to passage of the Death in Custody Reporting Act (DCRA) of 2000. That law required DOJ to collect in-custody death data including gender, race, age, location and circumstances. States were compelled to comply if they wanted Violent Offender or Truth in Sentencing grant funding, which all states did. DOJ assigned the collection and compilation duties to its Bureau of Justice Statistics (BJS), and within a year, the first DCRA reports were issued. Even after the act expired in 2006, BJS continued this work.

In 2014, Congress reauthorized DCRA and expanded its mandates to include more detailed reports and the ability of the U.S. Attorney General to withhold Justice Assistance Grants from states that did not fully comply with data collection efforts. This last aspect of the revised law ran afoul of the BJS mandate to operate outside any other aspect of DOJ operations, so in 2016 data collection was reassigned to the Bureau of Justice Assistance (BJA).

Once the DCRA project was moved to BJA, effective implementation essentially stopped. Failed government bureaucracies often evade public notice for years, and it was not until 2022 that the DCRA debacle came to the attention of interested, and frustrated, members of Congress. The Senate Homeland

Security and Governmental Affairs Committee held hearings on the failed implementation of DCRA on September 22, 2022. There, in a rare show of bipartisanship, both Democrats and Republicans vented their fury.

The committee found that DOJ was six years late in publishing the reports mandated by DCRA. Moreover, BJA had undercounted deaths in custody by at least 990 for 2020, and what data the agency had collected was tarnished by the fact that roughly 70% of the recorded deaths were missing at least one statutorily required piece of information.

Sen. Jon Ossoff (D-GA) was deeply critical of DOJ’s lapses. “This failure undermines efforts to address the urgent humanitarian crisis ongoing behind bars across the country,” he said. Wisconsin Republican Sen. Ron Johnson was equally frustrated, telling DOJ: “You’ve utterly failed. This isn’t that hard.” He added that in only a few months the Government Accounting Office “got us better statistics than the DOJ did over a period of years.”

The committee issued a detailed report outlining the flawed implementation of DCRA and connected these failures to DOJ’s continued inability to successfully assist local police agencies in lowering rates of deaths in custody. The report did not contain specific recommendations on how DOJ could get in compliance. See: *Uncounted Deaths in America’s Prisons and Jails: How The Department of Justice Failed to Implement the Death in Custody Reporting Act*, U.S. Senate Homeland Security Committee, Permanent Subcommittee on Investigations (2022).

Additional sources: *Washington Post*

# \$17.675 Million Paid for New Yorker's Wrongful Conviction

by Jacob Barrett

JOHNNY HINCAPIE SPENT MORE THAN 25 years in prison for a crime he did not commit. On December 7, 2022, New York City agreed to pay Hincapie \$12.875 million for his wrongful conviction, one of the largest such settlements in city history. A separate claim had previously been settled with the state of New York for \$4.8 million in October 2022, according to Hincapie's attorneys, Barea N. Fett and Gabriel P. Harvis of Elefterakis, Elefterakis & Panek.

Hincapie, who was originally born in Columbia, was 18 years old in 1990 when he and several other youths were accused of fatally stabbing Utah tourist Brian Watkins, 22, on a subway platform. Under pressure from police, Hincapie was coerced into falsely confessing to the murder. He later recanted, and exculpatory evidence verified he was not guilty – but not before he served 25 years, three months and eight days behind bars.

Hincapie's forced confession was not unusual for the New York Police Department (NYPD) at the time. The year before his arrest, the "Central Park Five" were also wrongly convicted of brutally raping jogger Trisha Meili, after they were forced to falsely confess to the crime. Former Pres. Donald J. Trump (R), then still a businessman making bad bets on Atlantic City casinos, took out a full-page ad in the *New York Times* urging state lawmakers to bring back the death penalty – which he also wanted extended to crimes less than murder, like Meili's rape. By the time the five were exonerated and released, they had spent seven to 13 years in prison. The city paid \$41 million to settle with them in 2016. [See: *PLN*, Mar. 2016, p.58.]

The detective who forced confessions from the Central Park Five, Carlos Gonzalez, also coerced Hincapie to confess. According to the complaint Hincapie filed, Gonzalez and detective Donald Casey used similar tactics, ignoring other defendants who were arrested for the crime when they stated that Hincapie was not involved because "the detectives were not interested in the truth."

Each of the suspects in Hincapie's case reported being threatened, punched and kicked by detectives during the

interrogation. The detectives and the prosecution colluded to withhold evidence, including an eyewitness who was ready to testify that Hincapie was not even on the subway platform when Watkins was killed.

There was even a 1990 report by the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of NYPD that found "perjury and falsification of official records" was "a serious problem facing" NYPD, which the complaint says was the primary reason for Hincapie's wrongful conviction.

As the complaint concluded, "[t]he city of New York systemically failed adequately to train its police officers, detectives and investigators to conduct constitutionally adequate investigations; not to lie about their conduct; to accurately document the manner in which investigations were conducted" and maliciously prosecuted innocent defendants.

The terms of the settlement included costs and fees for Hincapie's attorneys. City spokesman Nick Paolucci called the settlement "fair." But Harvis, one of the attorneys who represented Hincapie, noted that his client suffered irreparable emotional and mental anguish and injury for crimes he had no part in. See: *Hincapie*

*v. City of New York*, USDC (S.D.N.Y.), Case No. 1:18-cv-03432.

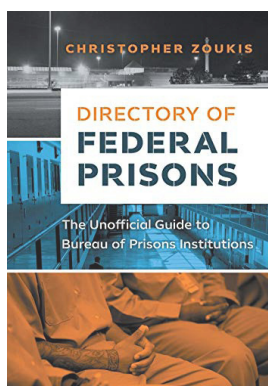
After a state judge tossed his conviction in 2015, Hincapie was released from prison. Manhattan's then-District Attorney Cyrus Vance announced in 2017 that Hincapie would not be retried. Behind bars at Sing Sing State Prison, Hincapie pursued his education, earning a G.E.D. and ultimately a master's degree in theology.

"What happened to Brian Watkins was tragic and I have never forgotten the loss his family suffered," said Hincapie, now 50. "I am fortunate that once again, my innocence has finally been acknowledged by my city, my state, and I look forward to the next chapter of my life with my family." ❧

Additional sources: *ABC News*, *AP News*, *New York Times*

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# Sixth Circuit: “Minimal Findings Necessary” Before Garnishing Funds From Federal Prisoner in Ohio

by Casey J. Bastian

ON DECEMBER 16, 2022, THE U.S. Court of Appeals for the Sixth Circuit reversed a district court order permitting the government to seize nearly \$3,737.89 from the inmate trust fund account of federal prisoner Adam Carson, 40. As the lower court failed to make necessary findings necessary and cited no authority to do so, the Court vacated the decision and remanded the case.

Carson had already served a two-year sentence for a 2008 robbery of a bank in Youngstown when he was arrested and charged with robbing two more Ohio banks in 2012. It’s unclear how he was then released, but he robbed another bank in Cleveland in 2016, this time sending his girlfriend to a teller with a note claiming she’d been kidnapped and had a bomb strapped to her back.

Sentenced to 20 years in federal prison in 2018, Carson was ordered to “immediately begin paying \$5,590 in restitution” to

the victim banks. Carson agreed to participate in the Inmate Financial Responsibility Program (IFRP) of the federal Bureau of Prisons (BOP), which began taking 25% of Carson’s gross monthly income to apply towards the restitution amount. Carson remained in full compliance with his IFRP contract.

When the government learned that Carson had \$4,037.89 in his inmate trust fund account, it asked the federal court for the Northern District of Ohio to order BOP to turn over all but \$300 to satisfy Carson’s IFRP obligation, citing 18 U.S.C. § 3664(n) to lay claim to the defendant’s “substantial resources from any source, including inheritance, settlement, or other judgment.” The motion was granted without a hearing. Carson appealed.

At the Sixth Circuit, Carson was appointed counsel from Federal Public Defender Kevin M. Schad, who argued that the defendant was compliant with

his IFPR contract and denied due process under 18 U.S.C. § 3613, 3664(k), and 3664(n). The district court’s order covered “the full amount of the non-exempt funds,” presumably referring to 18 U.S.C. § 3613(a) (1) exemptions from seizure provided for clothing, gas, furnishings, books, unemployment benefits, undelivered mail, “certain annuity and pension payments,” workmen’s compensation, child support or “assistance under [the] Job Training Partnership Act.” Carson objected that the funds had been seized without a hearing to determine what part might be exempted by this statute.

As an initial matter, the Sixth Circuit declared that “mere compliance with his judgement and payment agreement does not bar garnishment.” Next, under § 3664(n), a court must determine if “substantial resources” exist to warrant garnishment. Accumulated prison wages do not constitute “substantial resources” and are exempt, but the district court failed to determine

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the source of the funds and whether they are actually “substantial.” Under § 3664(k), a district court is also allowed to modify a restitution order “as the interests of justice require,” but the district court did not make any “interest-of-justice findings.”

For the first time, the government argued that the majority of the money in Carson’s trust account was from federal COVID-19 stimulus payments, which were subject to lien under § 3613 to satisfy a restitution obligation. However, this has two limits, the Court said. First, a notice of lien must be filed in accordance with

the Internal Revenue Code (IRC) of 1986. Also, liens filed under § 3626 are subject to the Consumer Credit Protection Act (CCPA), which limits what may be garnished. Nothing in the district court’s record indicated it made a compliance determination by the government with either IRC or CCPA.

As the district court “failed to make minimal findings necessary to determine whether Carson’s funds fell within these statutes,” the Sixth Circuit said it “need not address what more – if anything – the constitutional guarantee of due process

requires.” Accordingly, the district court’s order was vacated and the case remanded for the missing findings. *See: United States v. Carson*, 55 F.4th 1053 (6th Cir. 2022).

The case has now returned to the district court, which appointed Carson representation from the Federal Public Defender’s office on January 11, 2023. *PLN* will report updates as they are available. *See: United States v. Carson*, USDC (N.D. Oh.), Case No. 1:17-cr-00008. 📖

Additional source: *Ashtabula Star Beacon*

## Prisoner Health Update: Tuberculosis

by Eike Blohm, MD

**T**UBERCULOSIS (TB) IS AN ILLNESS caused by a mycobacterium, a class of bacteria that is hard to see under the microscope, difficult to grow in culture, and has the audacity to live in the very immune cells (macrophages) that are tasked with hunting and killing bacteria. TB affects only humans, and traces of the disease can be identified by archeologists in the oldest mummified human remains.

### How is TB transmitted?

THE BACTERIUM TRAVELS IN THE microscopic droplets that get expelled when an infected person coughs. These droplets can be so small that they travel right through the holes in cloth masks, and only N95 masks offer protection. Fortunately, inhalation of a single droplet does not suffice to transmit the infection. Exposure in close quarters – such as prison – is usually needed to facilitate the spread of TB.

### What happens when a person gets exposed?

THERE ARE THREE POSSIBLE OUTCOMES after exposure. The body’s immune system may kill all TB bacteria, and the infection is cleared. Or the TB bacteria may overpower the body’s defenses, and the person develops ACTIVE tuberculosis. It’s also possible that a stalemate ensues – a situation known as LATENT tuberculosis. A person with latent TB often has few symptoms but continues to carry the bacteria in their lungs. At any time, latent TB can revert to active TB and the person then develops symptoms and can

infect others.

### What are symptoms of active TB infections?

TUBERCULOSIS USED TO BE CALLED “consumption” because it slowly kills the host. In the 18th century, artists purposefully sought to get infected because they believed the slow dying process would enhance their artistic ability (turns out it didn’t). Chronic cough, often with blood-streaked sputum, low-grade fevers, night sweats, and weight loss are the hallmarks of infection. However, TB can escape the lungs and cause disease in other parts of the body. It has a proclivity to infect the bones of the spine, cause bleeding in the adrenal glands, or cause an effusion around the heart.

### How do doctors test for TB?

ALL PRISONERS SHOULD GET A PPD TEST once a year. A protein from the TB bacterium is injected under the skin, and if the immune system has previously seen it, a pronounced reaction occurs within 48-72 hours, in which the area becomes red and indurated (rubbery). This does not mean a person has tuberculosis, only that they have been previously exposed (or vaccinated, although TB vaccination is not routine in the US). A blood test, called interferon-gold, is also available but more expensive.

A positive PPD test requires that a patient then gets a chest x-ray. The radiograph looks for scarring, hilar lymphadenopathy (swollen lymph nodes

around the heart), granulomata (calcified areas of infection), or a radiographic sign called a “Gohn complex.” Any of those indicate the possibility of latent or active tuberculosis. Analysis of the person’s sputum under the microscope with an acid-fast stain establishes active TB if the bacteria can be seen.

### How is TB treated?

LATENT TB INFECTION IS TREATED WITH isoniazid. This medication can interfere with the production of a neurotransmitter called gamma-aminobutyric acid (GABA), but this is typically only a problem in overdosed or malnourished individuals. Yet without GABA, a person will have intractable seizures. As prison diets are seldom healthy, a person on isoniazid should discuss with their prescriber supplementation with vitamin B6 (pyridoxine), a precursor to GABA that mitigates the toxicity of isoniazid.

Active TB requires a negative pressure room to prevent the spread of infection to others. In addition, patients need to take a drug-cocktail based on local resistance patterns. Over the last decade, a strain of drug-resistant tuberculosis has emerged, but fortunately it is still rare in the United States. 📖

*Disclaimer: This column aims to educate prisoners about common health concerns but does not constitute medical advice. It is no substitute for evaluation by a trained medical professional.*

# Four Escape Troubled Mississippi Jail After Fifth Circuit Postpones Federal Receivership

by Keith Sanders

TWO OF FOUR DETAINEES HAVE BEEN recaptured after escaping from jail in Mississippi's Hinds County on April 29, 2023. The other two are dead. Meanwhile control of the Raymond Detention Center (RDC) remains in limbo after the U.S. Court of Appeals to the Fifth Circuit granted a last-minute injunction in December 2022 halting a federal takeover of the troubled lockup.

The four escapees got out through the jail's roof, Sheriff Tyree Jones said. Dylan Arrington, 22, was then killed in a shootout with Leake County deputies, who found him inside a flaming Carthage home as it burned to the ground. He had been held at RDC on carjacking and weapons charges. After escape, on April 24, 2023, he is suspected of another carjacking during which Rev. Anthony Watts, 61, was fatally shot.

The corpse of a second escapee, Casey Grayson, 34, was found inside a pickup by a security guard at a New Orleans truck stop on April 30, 2023. Sheriff Jones indicated the death was a likely drug overdose. Grayson had been held at RDC since February 2022 on theft and drug charges.

A third escapee, Jerry Raynes, 51, was located on April 27, 2023, at a hospital in Houston where he was receiving unspecified treatment. He waived his right to fight extradition, but he will not be held at RDC when he returns to Hinds County, Sheriff Jones said.

U.S. Marshals arrested the last escapee, Corey Harrison, 22, along with a female acquaintance allegedly hiding him at a home in Crystal Springs on May 4, 2023. Harrison had been detained at RDC since early April on suspicion of fencing stolen goods.

After a series of riots and deaths, RDC had operated under a consent decree with the federal government since 2016. But with control of the jail still largely ceded to gangs, the federal court for the Southern District of Mississippi enjoined the County from continuing its operation and placed RDC under federal receivership in July 2022. [See: *PLN*, Sep. 2022, p.18.]

However, on December 28, 2022, the Fifth Circuit granted the County a stay to that injunction, putting off receivership until conclusion of the appeals process. But the Court granted in part the federal government's motion to remand the case on a limited basis.

Specifically, the Court decided to allow the lower court to "rule on the motions to clarify and for reconsideration, and...to conduct additional proceedings concerning Section K" of the consent decree, a previously terminated part of the agreement mandating that juveniles charged as adults must be held in the county's Henley-Young Juvenile Justice Center and not RDC. See: *United States v. Hinds Cty. Bd. of Supervisors*, USCA (5th Cir.), Case No. 22-60332 (2022).

On January 30, 2023, U.S. District Judge Carlton Reeves then granted the federal government's motion for reconsideration, reinstating Section K's provisions, and also

clarifying that his other orders had been subjected to a "need-narrowness-intrusiveness" analysis that comports with the requirements of the Prison Litigation Reform Act, 42 U.S.C. § 1997e. See: *United States v. Hinds Cty. Bd. of Supervisors*, USDC (S.D. Miss.), Case No. 3:16-cv-00489.

Sheriff Jones and the County Board of Supervisors immediately appealed those rulings to the Fifth Circuit, and *PLN* will update developments as they are available. 📰

Additional sources: *ABC News*, *Mississippi Today*, *WAPT*

## U.S. Prisoner Numbers Slowly Declining

by Ed Lyon

NEW DATA RELEASED IN DECEMBER 2022 by the federal Department of Justice's Bureau of Justice Statistics (BJS) showed a steady decline in prison population from 2011 to 2021 – nearly 25% overall. The number of people imprisoned today – 1,163,665 – reflects the largest slice of U.S. mass incarceration, but it is only a slice; over a half-million other Americans are locked up in local jails, and 100,000 more have been involuntarily committed to state hospitals or are being held in immigration and juvenile detention centers.

According to the BJS report, *Prisoners in 2021*, the number of Americans imprisoned in December 2021 was 1,163,665 – about the same as 25 years earlier. Since the total population has grown by 23% since then, that means incarceration rates today are lower. However, with 350 of every 100,000 citizens in prison, the U.S. rate remains higher than in any other country.

Prison numbers peaked in 2009 at 1,553,574 and by 2011 stood at 1,538,874. Over half of the decline since 2011 was recorded just between 2019 and 2020, when the COVID-19 pandemic hit. This strongly suggests that falling prison population numbers do not reflect a dip in arrests nor an increase in releases. Rather the drop-off is largely due to reduced intakes caused by court slowdowns during the pandemic. Other surveys indicate that 2021's low number was already on the rise again as the pandemic recedes. [See: *PLN*, June 2022, p.44.]

The federal Bureau of Prisons remained the nation's top incarcerator, with 157,314 prisoners. The top three states by numbers of incarcerated individuals were Texas, with 133,772 prisoners; California, with 101,441 prisoners; and Florida, with 80,417 prisoners. Well below were Georgia and Ohio, with 47,010 and 45,029 prisoners, respectively.

Rounding out the top ten, another five states each held over 30,000 prisoners: Pennsylvania, with 37,194; Arizona, with 33,914; Michigan, with 32,186; Virginia, with 30,357; and New York, with 30,338.

California's prison system recorded the biggest drop over the decade, shedding 48,128 prisoners, or just over 32% of its 2011 total. The percentage drop in New York was even higher at over 45%.

"Imprisonment rates declined for both sexes and for all racial or ethnic groups from yearend 2020 to yearend 2021," the report noted. However, Black Americans continue to experience a much higher incidence of incarceration than other races – about 901 of every 100,000 people, compared to just 101 of every 100,000 whites.

Private prisons held about 96,700 people, just 8.3% of the total imprisoned in the U.S. That number was also down from the previous year. 📰

Additional source: *Mass Incarceration: The Whole Pie 2023*, Prison Policy Initiative (2023)

# No Charges for Georgia Guards Who Allegedly Abetted Attack That Left Prisoner Dead

ON SEPTEMBER 30, 2022, NINETEEN-year-old Quafabian McBride was fatally stabbed in the heart during a fight between rival gangs at Georgia's Phillips State Prison. McBride and fellow "Rolax Bloods" member Dejuan Cannon, 22, allegedly attempted to attack another prisoner, "Crips" member Antavious Simon, also 19. But Simon got to McBride first.

A third prisoner, Joseph Williams, claimed he watched as guard Jarvis Jones led McBride into the building where Simon's cell was located and opened another cell nearby, releasing Cannon and another member of Simon's gang. Williams said the guard "[made] it possible for McBride and two other inmates to attack a rival gang member" by "unbolting the cell door."

But Simon was on alert because another guard, Sgt. Geramy Brown, had removed Simon's cellmate just before the attack and left that cell door unlocked, too. Brown was fired three days later "for violating employee standards of conduct, staff misconduct, and failure to comply with an

investigation." Jones was suspended with pay, along with fellow guard Sara Patterson, "pending the outcome of investigations into violations of employee standards of conduct," according to personnel records. Patterson was reinstated in January 2023, the same month Jones was fired for illegal drug use, the records show.

No charges have been filed against any of the guards, despite claims by the new Commissioner of the state Department of Corrections (DOC), Tyrone Oliver, that he has "zero tolerance for compromised staff or staff cutting corners to allow inmates to attack one another or kill one another."

Although the prison is a close security facility, its 800 men have violent histories and are deemed escape risks, so it sees more than its share of violence. McBride was one of five prisoners killed at the lockup in 2022, four just since the July 1 arrival of Warden Deshawn Jones. Three of the deaths occurred in a dorm reserved for prisoners tagged "Level IV" – meaning they are "severely mentally impaired."

One prisoner, Jacob Daniels, 18, was fatally brutalized by fellow prisoners Cody Matthew Brock and James Ellis Collins. The two allegedly broke Danies' wrists and feet, cutting him with an ink pen and a broken lightbulb before stuffing a shredded mattress down his throat. They face charges of malice murder, aggravated assault and false imprisonment.

According to the *Atlanta Journal-Constitution*, only one killing was reported at the prison in 2021 and zero in 2020. The uptick comes amid allegations of widespread corruption in DOC and a federal investigation into lack of mental health care. [See: *PLN*, Sep. 2022, p.1.] Over half of Phillips' population is on the mental health caseload, Oliver said.

Before Sgt. Brown was fired, he was demoted from Lieutenant in 2020 for "failure to follow policy." His file also contained three written reprimands, including one for leaving a handcuffed prisoner in a cell with another prisoner who was unrestrained. Unsurprisingly, the cuffed prisoner was

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then beaten. When asked about his firing, Brown said that video showed prisoners in his unit wandering in and out of their cells. He blamed the problem on faulty locks.

Williams, who was also a victim of a prison stabbing, claims he has been retaliated against for filing suit in Gwinnett County Superior Court over the “lazy and callous disregard” guards show for his safety.

He also made two whistleblower claims with state Department of Administrative Services.

“The prison staff has retaliated against me since July 12th [2022] by keeping me in administrative segregation for being a stabbing victim who had the audacity to blow the whistle on staff’s involvement and failures to follow established procedures,”

Williams said.

Simon is facing felony rioting and contraband charges for the fatal attack on McBride. He claims he acted in self-defense against the attack by McBride and Cannon, who is charged with felony murder because his companion died during the attack that he allegedly precipitated. 🗞️

Source: *Atlanta Journal-Constitution*

## Condemned Tennessee Prisoner Wins Fight Against Autopsy

by Harold Hempstead

ON APRIL 20, 2022, THE FEDERAL COURT for the Middle District of Tennessee issued a highly unusual order enjoining the Davidson County medical examiner from performing an autopsy or collecting bodily fluids from a prisoner following his execution by lethal injection.

Oscar Franklin Smith filed his complaint seeking injunctive relief under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc, on April 14, 2022. Explaining that his sincerely held Christian belief teaches “that his body is a temple of God,” he said “that it is OK to accept medical treatment to prolong life, but that it is not OK to alter the body in any other way.” Therefore, performing an autopsy or other invasive procedure on his body postmortem would violate his beliefs.

County Medical Examiner Dr. Feng Li said he would not perform the autopsy “provided no extraordinary information comes to light during or following the execution.” However, he intended “to collect samples of... Smith’s blood, urine, and vitreous fluids” postmortem. Li further contended that Tennessee has a compelling interest in the samples for the purpose of “assessing the efficacy and potential secondary effects of the lethal injection process,” and that collection of the samples was the least invasive means of furthering that compelling interest.

The Court held that Smith presented “ample evidence of the sincerity of his beliefs.” Moreover, it acknowledged “that subjecting his body to invasive procedures, including the withdrawal of bodily fluids and, potentially, an autopsy, would impose a substantial burden on Smith’s exercise of his religion,” citing similar challenges to autopsy successfully mounted by prisoners in two cases, including *Workman v. Levy*, 136 F.Supp.2d 899 (M.D. Tenn. 2001).

In reaching its decision, the Court rejected Li’s arguments, explaining that Tennessee had access to information from other executions – including those in other states – that were performed with the same lethal injection protocol. Moreover, a wealth of information could be obtained from visually observing Smith prior to and after he was administered the lethal injection drugs, for the purpose of assessing the effects of the protocol. In addition, the fact that Tennessee law does not mandate an autopsy, nor even make reference to collecting bodily fluids, further supported Plaintiff’s argument that the state lacked a compelling interest, the Court said.

Finally, the Court held that cases addressing similar issues supported Smith’s argument that he would suffer “irreparable harm” were an injunction not issued. That, together with the fact that the “balance of equities and the public interest favored his requested relief,” meant Smith “is likely to succeed on the merits” in his case, the Court said, citing the four criteria for a preliminary injunction, most recently spelled out in *Ramirez v. Collier*, 142 S.Ct. 1264 (2022).

Accordingly, the Court issued an order enjoining Li from performing an autopsy, collecting body fluids, or performing any other invasive procedure on Smith postmortem. Smith was represented by Katherine Dix of the Federal Public Defender’s Office for the Middle District of Tennessee. See: *Smith v. Li*, 599 F. Supp. 3d 706 (M.D. Tenn. 2022).

Smith, 72, is the oldest prisoner on the state’s death row, where he has been since convicted of fatally stabbing his estranged wife and her two teenage sons at their Nashville home in 1989. A “technical oversight” led the state to abort his execution just an hour before it was scheduled on April 21, 2022. Gov. Bill Lee (R) then “paused” all executions in the state for an

independent investigation. [See: *PLN*, Nov. 2022, p.44.]

The investigation report released on December 28, 2022, criticized the state Department of Corrections (DOC) for failing to follow its own protocol requiring execution drugs to be tested for endotoxins. Though not likely to cause a problem by themselves, the presence of endotoxins would point to problems in the manufacturing process affecting the efficacy of the drugs used. See: *Tennessee Lethal Injection Protocol Investigation Report and Findings* (Dec. 13, 2022).

The day before the report was released, on December 27, 2022, Lee fired DOC Deputy Commissioner and General Counsel Debra Inglis, along with Inspector General Kelly Young. On January 9, 2023, interim DOC Director Lisa Helton stepped back into her prior role as assistant commissioner, when she was relieved by new DOC chief Frank Strada, the former deputy director of the Arizona DOC – which has had its own difficulties executing prisoners. [See: *PLN*, Feb. 2023, p.40.]

Meanwhile, House Bill 1245 and Senate Bill 1152, which would return electrocution to the list of available executions method, were both amended in February 2023 to include death by firing squad, as well. However, as noted by state Rep. Gloria Johnson (D-Knoxville), attempts to counterbalance problems in lethal injection protocol with these methods have not survived court challenges in other states, such as South Carolina. [See: *PLN*, Nov. 2022, p.20.]

“I feel like this is a move backward for Tennessee,” Johnson said. “And if you read the descriptions of death by electric chair, or by firing squad, it’s horrendous.” 🗞️

Additional sources: *The Guardian*, *Nashville Scene*, *Newsweek*, *WBIR*

# Seventh Circuit Allows Illinois Prisoner to Prove Administrative Remedy Was “Unavailable” in Double-Celling Complaint

by David M. Reutter

ON DECEMBER 14, 2022, THE U.S. COURT of Appeals for the Seventh Circuit took up the latest in a “slew” of cases by Illinois prisoners alleging they are “housed like cattle” at Menard Correctional Center (MCC), “where cells meant for one person are routinely used to house two,” the Court recalled, “in a policy that Plaintiffs call ‘double-celling.’”

The problem traces back at least to 1980, when the federal court for the Southern District of Illinois found the amount of cell space for each prisoner – 18 to 32 square feet – was inadequate, and it issued injunctive relief. *See: Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980). But “[w]hatever the staying power of that injunctive relief may have been,” the Seventh Circuit noted, “by 2010, inmates began filing double-celling suits against Menard once again.”

In a civil rights action filed on behalf of themselves and a putative class of fellow MCC prisoners on August 27, 2018, Corrie Wallace and Rafeal Santos “explain that these tightly packed quarters impact everything from ventilation in the cells, to inmates’ freedom to exercise, to their ability to perform legal research,” the Court continued. However, it added, “this appeal does not consider the merits of these double-celling claims.”

Rather, Wallace and Santos appealed when the district court granted defendant prison officials summary judgment on their claim that Plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. Specifically, Defendants

argued and the district court agreed that “Santos never properly filed a grievance about double-celling” and that neither he “nor Wallace exhausted administrative remedies” for claims made against a quartet of staffers who weren’t even working at the prison in the sixty days before they submitted grievances – which is the statutory time limit in Illinois.


Santos claimed to file grievances that Defendants said he hadn’t, and the district court sided with Defendants on those because they presented logs that didn’t reflect any filed grievances. Finding Santos’ claim incredible based on that was not error, the Court said.

But Plaintiffs also argued that other prisoners complained about double-celling with no response, so they had no reasonable expectation that their grievance would be weighed on its merits. That gets to the heart of whether a remedy is “available,” the Court said. Granted, showing a remedy to be a

“dead-end” is a tall task, but Plaintiff must be given the opportunity, so the matter was remanded for limited discovery on the issue.

Thus the district court’s order was affirmed except as to the finding that administrative remedies were available to Plaintiffs, and the case was remanded for a determination on that. Plaintiffs were represented by Maryville attorney Christian G. Montroy. *See: Wallace v. Baldwin*, 55 F.4th 535 (7th Cir. 2022).

Plaintiffs asked for a rehearing before the full Seventh Circuit *en banc* and were denied on February 2, 2023. *See: Wallace v. Baldwin*, 2023 U.S. App. LEXIS 2913 (7th Cir.).

The case has returned to the district court, where discovery must be completed by July 10, 2023, which is Defendants’ deadline to renew their summary judgment motion. *PLN* will report developments as they are available. *See: Wallace v. Raumer*, USDC (S.D. Ill.), Case No. 3:18-cv-01513. 

## 70 Months for Former Warden of BOP ‘Rape Club’ in California

by Benjamin Tschirhart

RAY GARCIA WAS WARDEN FOR THE Bureau of Prisons (BOP) at the Federal Correctional Institution (FCI) in Dublin, California. He served as supervisor at the lockup for regular audits conducted under the Prison Rape Elimination Act (PREA). But after his sentencing before U.S. District Judge Yvonne Gonzalez Rogers on March 23, 2023, Garcia is now a felon, sex offender and a prisoner himself. Before putting him

behind bars for 70 months, Judge Gonzalez Rogers chided the disgraced prison official:

“You entered a cesspool and did nothing about it. You just went along for the ride and enjoyed the cesspool yourself... You should have done something about it.”

In December 2022, Garcia, 55, became the fourth FCI-Dublin staffer convicted out of five charged with sexually abusing prisoners. Former chaplain James Theo-

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dore Highhouse, 49, began a seven-year federal prison term on November 2, 2022. A 20-month prison sentence was handed to former prison cook Enrique Chavez, 49, on February 9, 2023. See: *USA v. Chavez*, USDC (N.D. Calif.), Case No. 4:22-cr-00104. That same month, former technician Ross Klinger, 37, pleaded guilty. [See: *PLN*, Feb. 2023, p.62.] He is expected to be sentenced in June 2023. See: *USA v. Klinger*, USDC (N.D. Calif.), Case No. 4:22-cr-00031.

Garcia told Judge Gonzalez Rogers and her federal court for the Northern

District of California that he “could not be more ashamed...more sorry” for abusing prisoners for whom he was responsible. He said that he “cannot imagine the pain, fear and shame they’ve gone through as a result of [his] actions.”

But how hollow these statements ring, coming after his attempts to dodge responsibility by lying to federal investigators and blaming his victims for their own abuse. During trial, Garcia shamelessly told the Court that when he forced female prisoners to strip naked and pose for pictures in their cells, he was merely trying to “document” that the women were violating prison policy by “standing around naked.”

“I sentence hundreds of people,” Judge Gonzalez Rogers told Garcia. “I expect and they should be able to expect that when they go into federal custody, they won’t be abused. And you abused them.”

Garcia was in charge of educating new staff on BOP sexual misconduct policies, even as he repeatedly subjected three prisoners to sexual exploitation and rape. Along the way, he was promoted from associate warden to warden. One of his victims appeared at his sentencing to tell him, “You are a predator and a pervert. You are a disgrace to the federal government...I can assure you my sentence did not come with a clause to be sexually abused by prison staffers.”

In addition to his prison term, Garcia was ordered to pay a \$15,000 fine and serve 15 years under post-release supervision. Still he received far better treatment

than many federal convicts – his sentence is just a fraction of the maximum 53-year term that he faced. Even after sentencing, Garcia was not immediately remanded into custody. Judge Gonzalez Rogers allowed him to go home to celebrate his son’s 16th birthday before he reports to prison. See: *USA v. Garcia*, USDC (N.D. Calif.), Case No. 21-cr-00429.

Still awaiting trial is John Russell Bellhouse, 39, another technician who was Klinger’s former boss. Bellhouse is charged with shaking down three prisoners for sex, currying their favor with earrings and use of his office phone. He has been free on \$50,000 bond since shortly after his November 2021 arrest. See: *USA v. Bellhouse*, USDC (N.D. Calif.), Case No. 4:22-cr-00066.

Three civil suits filed by sex assault victims at the prison were stayed by Judge Gonzalez Rogers in March 2023. See: *M.R. v. Fed. Corr. Inst. Dublin*, USDC (N.D. Cal.), Case No. 5:22-cv-05137; and *M.S. v. Fed. Corr. Inst. Dublin*, USDC (N.D. Cal.), Case No. 4:22-cv-08924; and *Preciado v. Bellhouse*, USDC (N.D. Cal.), Case No. 4:22-cv-09096. Attorneys with the Pride Law Firm in San Diego are representing plaintiffs in the first two cases, while Preciado is represented by attorneys with McLane Bednarski & Litt, LLP in Pasadena. *PLN* will report developments in all three cases as they are available. 📰

Additional sources: *CBS News*, *The Guardian*, *KTVU*, *Los Angeles Times*

### Are Phone Companies Taking Money from You and Your Loved Ones?

HRDC and PLN are gathering information about the business practices of telephone companies that connect prisoners with their friends and family members on the outside.

Does the phone company at a jail or prison at which you have been incarcerated overcharge by disconnecting calls? Do they charge excessive fees to fund accounts? Do they take money left over in the account if it is not used within a certain period of time?

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# Illinois Makes Abortion Care Free for State Prisoners

by Chuck Sharman

**A**FTER A MEDIA INVESTIGATION FOUND Illinois prisoners were forced to pay for abortion procedures – even covering the wages of guard escorts to and from medical providers – Gov. J.B. Pritzker (D) ordered the state Department of Corrections (DOC) to change its policy.

As a result, DOC spokesperson Naomi Puzello announced on November 2, 2022, that incarcerated women would no longer have to cover these expenses, and those who previously paid for them could get reimbursed.

That's especially important to a woman working a prison job, which in Illinois pays an hourly wage that tops out at 89 cents. Covering just one hour of the \$47,508 starting salary for a state prison guard would require her to work four days or more.

Advocates for abortion rights expressed surprise and elation at the decision. Emily Hirsch, a legal fellow at the American Civil Liberties Union of Illinois,

emphasized the importance of ensuring unfettered access to critical healthcare, including abortion, for every person in need.

"We applaud the Governor's Office for taking an important step toward that goal," she said.

Puzello confirmed that the new guidelines had been implemented and that DOC's privately contracted healthcare provider, Wexford Health Sources, was in the loop. However, specific details were not provided on how access would be ensured, how reimbursements would be provided or how pregnant prisoners would be made aware of their rights.

Illinois joins states like California, New Jersey and Oregon in making abortion more accessible to prisoners. California covers the cost of abortion in prisons and jails. New Jersey law requires the state DOC to arrange for abortions "without undue delay." Oregon's policy ensures no-cost abortion services for prisoners that are also "provided in a non-

judgmental fashion." In contrast, states like Utah and Missouri do not offer abortions for prisoners nor cover related expenses, including transportation.

WBEZ in Chicago produced the investigation that sparked the change. After it was announced, Alicia Hurtado from the Chicago Abortion Fund expressed optimism about expanding access to care and minimizing the impact of the criminal legal system on healthcare outcomes.

"I am hopeful that this will help a lot of people access care in ways that was previously impossible, or previously extremely detrimental or traumatizing," she said.

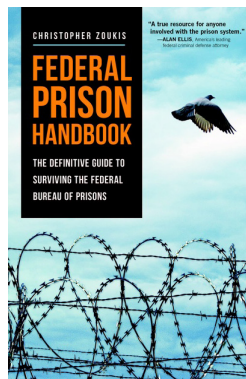
The DOC announcement also included an apology from the Pritzker administration for the state's previous treatment of pregnant prisoners seeking abortion services, acknowledging the additional trauma caused and expressing regret for harm inflicted. 📖

Source: WBEZ

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: ) Chapter 11  
TEHUM CARE SERVICES, INC.,<sup>1</sup> ) Case No.  
Debtor. ) 23-90086 (CML)

**NOTICE OF DEADLINES FOR THE FILING OF  
PROOFS OF CLAIM**

**THE CLAIMS BAR DATE IS AUGUST 14, 2023**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**Deadlines for Filing Proofs of Claim.** On May 2, 2023, the United States Bankruptcy Court for the Southern District of Texas (the "Court") entered an order [Docket No. 499] (the "Bar Date Order") establishing certain deadlines for the filing of proofs of claim ("Proofs of Claim") in the chapter 11 case of Tehum Care Services, Inc. f/k/a Corizon Health, Inc. (the "Debtor").

**The Bar Dates.** Pursuant to the Bar Date Order, all entities (including governmental units), including individuals, partnerships, estates, and trusts that have a claim or potential claim against the Debtor that arose prior to February 13, 2023, no matter how remote or contingent such right to payment or equitable remedy may be, MUST FILE A PROOF OF CLAIM on or before **August 14, 2023 (the "Claims Bar Date")**. All entities holding claims arising from the Debtor's rejection of executory contracts and unexpired leases are required to file Proofs of Claim by **the date that is (a) the later of the Claims Bar Date, and (b) the date that is thirty (30) days following entry of the order approving the Debtor's rejection of the applicable executory contract or unexpired lease (the "Rejection Damages Bar Date")**. All entities holding claims affected by an amendment to the Debtor's Schedules are required to file Proofs of Claim by **the later of (a) the Claims Bar Date, and (b) the date that is thirty (30) days from the date on which the Debtor mails notice of the amendment to the Schedules (the "Amended Schedules Bar Date")**.

**ANY PERSON OR ENTITY WHO FAILS TO FILE A PROOF OF CLAIM ON OR BEFORE THE CLAIMS BAR DATE SHALL NOT BE TREATED AS A CREDITOR WITH RESPECT TO SUCH CLAIM FOR THE PURPOSES OF VOTING AND DISTRIBUTION ON ANY CHAPTER 11 PLAN.**

**Filing a Proof of Claim.** Each Proof of Claim must be filed, including supporting documentation, by either (i) electronic submission through PACER (Public Access to Court Electronic Records at <http://ecf.txsb.uscourts.gov>), (ii) electronic submission using the interface available on the Claims and Noticing Agent's website at [www.kccllc.net/tehum](http://www.kccllc.net/tehum) or (iii) if submitted through non-electronic means, by U.S. Mail or other hand delivery system, so as to be **actually received** by the Claims and Noticing Agent on or before the Claims Bar Date, or any other applicable Bar Date, at the following addresses:  
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**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR  
ELECTRONIC MAIL WILL NOT BE ACCEPTED.**

**Contents of Proofs of Claim.** Each Proof of Claim must: (1) be written in legible English; (2) include a claim amount denominated in United States dollars; (3) clearly identify the Debtor against which the claim is asserted (4) conform substantially with the Proof of Claim form provided by the Debtor or Official Form 410; (5) be signed by the claimant or by an authorized agent or legal representative of the claimant on behalf of the claimant, whether such signature is an electronic signature or is ink; and (6) include as attachments any and all supporting documentation on which the claim is based.

**Electronic Signatures Permitted.** Proofs of Claim signed electronically by the claimant or an authorized agent or legal representative of the claimant may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim, or Proofs of Claim sent by facsimile or electronic mail will not be accepted.

**Additional Information.** If you have any questions regarding the claims process and/or you wish to obtain a copy of the Bar Date Notice, a proof of claim form or related documents you may do so by: (i) calling the Debtor's restructuring hotline at (866) 967-0491 (Toll-Free) or (310) 751-2691 (International); or (ii) visiting the Debtor's restructuring website at: [www.kccllc.net/tehum](http://www.kccllc.net/tehum).

<sup>1</sup> The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

## Almost \$42,500 Awarded to Illinois Prisoner for Denial of Physical Therapy by Wellpath Nurse

by Casey J. Bastian

ON MAY 31, 2022, THE U.S. DISTRICT Court for the Central District of Illinois awarded attorney's fees and costs totaling \$17,449.90 to a state prisoner who earlier convinced a jury that a prison nurse's dilly-dallying deprived him of prescribed physical therapy. For unnecessary pain and suffering that resulted, the jury had awarded Andrew D. Coe a total of \$25,000 in damages on March 2, 2022.

Coe was housed at the Danville Correctional Center (DCC) operated by the Illinois Department of Corrections (DOC) in 2017. On June 27, 2017, Coe was to be provided three months of physical therapy for treatment of a back injury sustained in an automobile accident prior to incarceration.

Dr. Justin Young prescribed the treatment and directed a nurse to provide Coe with a "10-day medical permit card for physical therapy for Monday's, Wednesday's, and Friday's at 4:00 p.m." Immediately thereafter, nurse Elicia Pearson assumed control of issuing Coe's medical permit card. Pearson instructed Coe to wait in the healthcare unit waiting area to allow her time to prepare and issue the card.

Approximately 30 minutes later, Pearson stated to Coe that she was too busy right then to process the card, but she would "send it by a correctional officer." Coe returned to his housing without the medical permit card.

When he still had no card two weeks later, Coe filed an emergency grievance concerning Pearson's omission. The prison warden deemed this an appropriately filed emergency grievance. However, no action was taken by Pearson or any other DCC medical staff.

During July and August 2017, Coe contacted Pearson directly more than once to remind her of the failure to issue the medical card. Coe repeatedly advised Pearson that this was delaying his treatment and causing him unnecessary pain as a result. Pearson again promised the medical card would be issued promptly. To facilitate the process, Coe asked if he needed again to sign up for sick call; Pearson issued an unequivocal "no."

During the entire three-month period beginning on June 27, 2017, Coe was never provided the prescribed medical permit card. Nor was he ever provided the physical therapy


care prescribed by Dr. Young. Another nurse told Coe that Pearson had completed the card, but "forgot to give it to" Coe. Without the pass, Coe was unable to leave his cellhouse or enter the DCC healthcare unit to receive the prescribed physical therapy.

Coe eventually filed suit in the Court on November 28, 2017. Proceeding under 42 U.S.C. § 1983, he accused Pearson and her employer, DOC healthcare contractor Wexford Health Services, of interfering with a doctor's order and delaying his medical treatment, thereby demonstrating deliberate indifference to his serious medical need in violation of his Eighth Amendment guarantee of freedom from cruel and unusual punishment. Coe's complaint also included a request for relief and monetary damages under the Americans with Disabilities Act, 42 U.S.C. ch. 126, §12101, et seq., and the Rehabilitation Act.

Coe alleged that Pearson's interference caused him to experience a variety of excess pains. According to the complaint, more than five months had elapsed since the permit was supposed to be issued. Meanwhile Coe was suffering from lower back pain and stiffness that rendered him unable to walk, stand, or sleep.

The case went to trial, by which point Wexford Health Services had been dropped as a defendant. The jury then found Pearson liable for Coe's injuries and awarded \$15,000 for physical injury and \$5,000 for mental and emotional pain, plus punitive damages of \$5,000.

The Court originally granted Plaintiff's motion for attorney fees totaling \$23,349.90 under 42 U.S.C. § 1988(b). On a motion by the defendant, however, the Court lowered that amount to \$17,099.90 because the Prison Litigation Reform Act, 42 U.S.C. § 1997e, requires that Plaintiffs pay a share of attorney's fees up to 25% of any judgment awarded. In this case, that reduced Coe's \$25,000 award by \$6,250.

As a result, Coe was awarded a total of \$25,000 in damages, plus \$17,099.90 in fees and \$350 in costs for his attorney, Thomas J. Pliura of Leroy. See: *Coe v Pearson*, USDC (C.D. Ill.), Case No. 2:17-cv-02291. 



# THE PLRA HANDBOOK

**Law and Practice under the Prison Litigation Reform**

By John Boston

Edited by Richard Resch

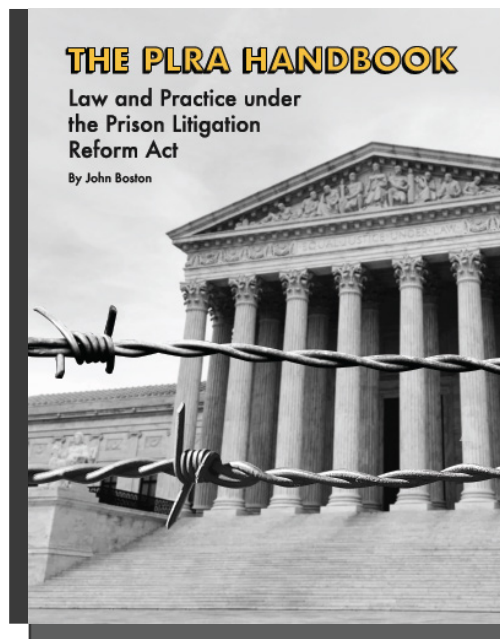
*The PLRA Handbook* is the best and most thorough guide to the PLRA in existence and provides an invaluable roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims.

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**— Daniel E. Manville, Director, Civil Rights Clinic**



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# State Prison Systems Failing to Provide Meaningful Programming

By Casey J. Bastian

THERE ARE AROUND 1.25 MILLION prisoners in state prison systems. Prior to incarceration, most were poor, uneducated, disadvantaged or marginalized. But wait-lists for prison education and other programming indicate prisoners desire to better themselves. Yet prison systems are failing to provide the tools needed for post-incarceration success. Instead, prisoner labor is exploited to run the lockups that cage and keep operating costs down.

That is the takeaway from a report released on September 2, 2022, by the Prison Policy Initiative. Using data from the federal Bureau of Justice Statistics *2016 Survey of Prison Inmates*, the report reveals how little state prison systems focus on setting prisoners up to succeed upon release. For that, prisoners need education and relevant job skills or vocational training. But prisons fail to offer these in any meaningful way. While prisoners want to be productive in prison, they are not allowed to choose “relevant, stimulating, and/or safe work assignments,” the study concludes.

Prisoners are given a choice: Provide menial labor to keep the prison running or face discipline. Worse, the average pay for prisoner labor is typically pennies per hour – if there is any pay at all. A prison work assignment is the most common “programming” in state prison systems, the report notes. Nearly 58% of prisoners have one. Of those, 71% took the assignment only because they were required to. Most are menial jobs in janitorial or food service, groundskeeping, maintenance, or similar duties. These assignments are not designed to provide job skills or personal development.

But this is not what prisoners value. Of those who chose to work, the “very important” reasons include learning new skills (71%), earning money (54%), relieving boredom (51%), or earning good time towards early release (45%).

Most of these very important reasons aren’t realized. The work is not likely to provide new skills. Even when there is a national prison industries program, such as

Prison Industry Enhancement Certification Program (“PIECP”), less than 5,400 prisoners nationwide participated as of 2021. Only one-third of the 1.25 million state prisoners reported participation in job training and one in five “were prematurely cut off from their program before finishing.”

While a prisoner might earn local prevailing wages at a PIECP job, most prison industries pay around \$1 per hour, still better than regular prison job assignments, which pay \$.13 to \$.52 per hour, except in Alabama, Arkansas, Florida, Georgia, South Carolina and Texas; there is no pay at all in those six states, which together housed 30% of all state prisoners in the U.S. This is allowed because the 13th Amendment’s prohibition against slavery has an “exception clause” that exempts those confined for punishment.

The problem extends beyond prison walls to the 1.25 million families of those state prisoners. Prior to incarceration, more than 61% were their household’s primary wage earner. From any paltry prison wages are deducted court fees, restitution and child support. This leaves nothing for “basic necessities like medical visits, hygiene items, and phone calls,” much less sending money home, the report notes. Quite often, child support obligations accumulate while incarcerated, imposing a greater burden upon release.

Practices like these leave prisoners without the experience of earning a decent wage, paying bills, and saving money while incarcerated – experiences that could only be beneficial when they are released.

Concerning education provided by state prison systems, the report found only 43% of prisoners had participated in educational programming. Nearly 125,000 prisoners said they “have never been offered the chance.” Another 11% said they weren’t qualified or allowed to attend educational programming. More than 7% said they could not get into a program at all or were wait-listed.

Worse, prisoners face “frequent, excessive, and often arbitrary punishment” for alleged violations of rules like those mandating forced labor. These disciplinary actions can result in a form of “triple jeopardy”: The prison discipline committee puts

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the prisoner in segregation, where he then loses good-time credit, and the disciplinary action can later be used against him at parole hearings. More than 53% of all prisoners were written up or found guilty of such a rule violation in 2016. Many were sent to solitary confinement for even minor infractions, a practice the U.N. considers torture if, as often happens, it lasts longer than 15 days.

The report is quite clear that programs offered by prisons which increase skills, confidence, and mental health “reduce recidivism by increasing the op-

portunity cost of committing crimes.” In other words, you have to give people something to lose when they re-enter society, else they have no stake in playing by society’s rules.

Costs associated with educating a prisoner are much less than the cost of incarcerating him. If our prison systems continue to turn people back to the streets without giving them tools for success, we shouldn’t be surprised if they recidivate. See: *The State Prison Experience: Too Much Drudgery, Not Enough Opportunity*, Prison Policy Initiative (2022). 📖

## Eighth Circuit Greenlights Arkansas Execution Protocol

by Jacob Barrett

**D**ESPITE FINDING A “PAUCITY OF RELIABLE scientific evidence concerning the effect of large doses of midazolam on humans,” the U.S. Court of Appeals for the Eighth Circuit didn’t halt its use in Arkansas’s three-drug execution protocol. To the contrary, it found the lack evidence of means that midazolam is fine to use. The decision, reached on August 16, 2022, affirmed a district court’s finding that the protocol does not violate the Eighth Amendment’s prohibition against “cruel and unusual punishment,” denying Plaintiffs’ request for a new trial.

Nine Arkansas prisoners on the state’s death row sued then-Gov. Asa Hutchinson (R) and the director of the state Department of Corrections (DOC) in March 2017. That was a month before Hutchinson had scheduled eight executions over 11 days, racing to beat the expiration date on the state’s supply of midazolam, one of the three drugs in its execution protocol. Four executions were carried out before the drugs expired. [See: *PLN*, Feb. 2018, p.24.]

Plaintiffs marshalled evidence to support their argument that the drug has a “ceiling effect” – a maximally effective dosage, “after which increasing the dosage does not produce greater sedative effect,” the Court later recalled. That means the drug may not prevent a prisoner from feeling the pain associated with the protocol’s two lethal drugs. The federal court for the Eastern District of Arkansas granted a preliminary injunction. But the Eighth Circuit vacated that, and the case proceeded to trial. See: *McGehee v. Hutchinson*, 854 F.3d 488 (8th Cir 2017).

After a bench trial, the district court agreed with Plaintiffs on May 31, 2020, holding that DOC’s refusal to let their attorneys into the viewing chamber for other executions violated their First Amendment right to access the courts. But otherwise the ruling went in favor of the governor and DOC.

“Even if there is general medical consensus,” the district court said, “that midazolam has a ceiling effect, there is no such consensus on the dose of midazolam at which a ceiling effect is exhibited.” The district court also rejected alternative execution methods that Plaintiffs offered, such as a firing squad, saying they failed to “show that a feasible implemented alternative would significantly reduce a risk of severe pain.”

On appeal at the Eighth Circuit, Plaintiffs borrowed from a challenge to Ohio’s execution protocol, which though ultimately not successful nevertheless convinced the federal court for the Southern District of Ohio that “the dose of midazolam intended to be used will not render [the prisoner] sufficiently unconscious as to prevent him from suffering the severe pain caused by injection of the paralytic drug or potassium chloride.” See: *Heness (In re Ohio Execution Protocol Litig.)*, 2019 U.S. Dist. LEXIS 8200 (S.D. Ohio).

The Eighth Circuit, though, brushed that ruling aside, along with the evidence Plaintiffs presented. Finding in it “no scientific consensus,” along with a “paucity” of scientific evidence on large doses of midazolam, the Court said that “the district court did not clearly err in finding that the prisoners failed to demonstrate that Arkansas’ execution protocol is sure or very

### If You Write to *Prison Legal News*

We receive many, many letters from prisoners – around 1,000 a month, every month. If you contact us, please note that we are unable to respond to the vast majority of letters we receive.

In almost all cases we cannot help find an attorney, intervene in criminal or civil cases, contact prison officials regarding grievances or disciplinary issues, etc. We cannot assist with wrongful convictions, and recommend contacting organizations that specialize in such cases – see the resource list on page 68 (though we can help obtain compensation *after* a wrongful conviction has been reversed based on innocence claims).

Please do not send us documents that you need to have returned. Although we welcome copies of verdicts and settlements, do not send copies of complaints or lawsuits that have not yet resulted in a favorable outcome.

Also, if you contact us, please ensure letters are legible and to the point – we regularly receive 10- to 15-page letters, and do not have the staff time or resources to review lengthy correspondence. If we need more information, we will write back.

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likely to cause severe pain.”

Plaintiffs had also moved for a new trial to weigh new evidence about “the availability of pentobarbital” as an alternative. The district court denied the motion, calling it “cumulative and unlikely to produce a different result.” The Eighth Circuit found no error in that, either. Because the prisoners “failed to establish that the State’s existing method was sure or very likely to cause needless suffering,” the Court held, “the State was not required to consider alternative methods.”

Thus the district court’s judgment was affirmed. In a concurring opinion, Judge Jane L. Kelly acceded to the majority, but she called out its demand “that prisoners present overwhelm-

ing ‘scientific evidence’ and show a ‘scientific consensus’ about the effect of drug dosages” – a drug “that will never ethically be tested on humans” – calling that “an insurmountable task.”

Plaintiffs were represented by attorneys Kenton W. Freeman and Joseph Warden with Fish & Richardson in Washington, DC and Wilmington, DE, respectively, as well as Assistant Federal Public Defender John C. Williams of the Eastern District of Arkansas. See: *Johnson v. Hutchinson*, 44 F.4th 1116 (8th Cir. 2022).

Kelly, an Obama appointee, was taking a not-so-subtle swipe at U.S. Supreme Court Justice Samuel Alito, who wrote in his concurrence with *Baze v. Rees*, 533 U.S. 35 (2008), that “an inmate challenging a method of execution

should point to a well-established scientific consensus.” At least Kelly is unwilling to play doctor, unlike some of her colleagues on the bench.

Arkansas has not carried out an execution in the five years since its Midazolam supply expired. But new Gov. Sarah Sanders (R) may change that. Signing HB 1456 into law on April 16, 2023, she extended the death penalty to drug dealers whose clients die from using anything the dealer sells them. The same day the governor also signed SB 495, curtailing parole and funding construction of new prison space to hold all those who won’t be released. 🏠

Additional sources: *Balls and Strikes*, *Jurist*, *KATV*, *KTHV*

## Second Circuit Upholds Connecticut Prison Porn Ban, Sets Up Circuit Split Over “Vagueness” Test

by Jacob Barrett

ON OCTOBER 3, 2022, THE U.S. SUPREME COURT declined to issue a writ of certiorari to hear an appeal by a group of Connecticut prisoners, who lost a challenge to the prohibition on sexually explicit material by the state Department of Corrections (DOC). See: *Reynolds v. Quiros*, 143 S. Ct. 199 (2022). That left to stand a decision reached by the U.S. Court of Appeals for the Second Circuit on February 3, 2022, affirming that the prisoners have no First Amendment right to possess such material.

Importantly, that ruling found DOC’s ban on the material passed the four-factor test for reasonableness in restricting First Amendment rights laid out in *Turner v. Safely*, 482 US 78 (1987). The Second Circuit also said that the prisoners’ primary challenge to the ban – that it is unconstitutionally vague – involves a separate analysis, but one that is applicable only to disciplinary sanctions. In that, the Court acknowledged it was siding with the Third and Ninth Circuits while rejecting different conclusions reached in other circuits.

The case was filed by seven DOC prisoners in federal court for the District of Connecticut: Richard Reynolds, John Vivo, Kenya Brown, Dwight G. Pink, Andres R. Sosa, Akov Ortiz and Victor Smalls. They challenged DOC policy strictly limiting a prisoner’s ability to possess and access sexually explicit material. The prisoners claimed a violation of their First Amendment rights because the only portion of the policy allowing sexually explicit material – that which is

“literary, artistic, educational or scientific in nature” – was unconstitutionally vague and failed to provide notice of the “scope of the prohibited material.”

After a five-day bench trial, the district court found for Defendants on March 9, 2020. Aided by attorneys with Day Pitney LLP in Stamford, Plaintiffs appealed.

The Second Circuit began by evaluating the policy under *Turner*. Was it rationally related to a legitimate penological interest? Yes, the Court said, agreeing that DOC had an interest in “promoting a non-hostile work environment for corrections staff, enhancing the safety and security of DOC facilities, and facilitating the rehabilitation of sex offenders.”

So were there alternative avenues of expression? Or, as the Court put it, given “that the propensity for violence is increased by the possession of such photos,” were there other avenues “available for the exercise of inmate-on-inmate sexual violence”? The question answers itself. So the Court moved on to the third *Turner* factor.

That is “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally.” Here, the Court looked to DOC’s previous, less restrictive policy, accepting prison officials’ assertion that it “resulted in sexually explicit pictorial materials being rampantly displayed and possessed by inmates, which had a ‘ripple effect’ on staff in terms of the work environment, as well as on staff and inmates as it related to safety and security concerns in the

prison facilities and the rehabilitation of sex offender inmates.”

Finally, the Court considered the last factor, whether the policy represented the least restrictive means of accomplishing the prison’s goals. Here, the prisoners offered an alternative – allowing them to possess depictions of nudity but not hard-core pornography. However, the Court said that “this and other alternatives were explicitly considered and rejected by the DOC committee after ‘[s]ubstantial thought and discussion’ (including a review of two-tiered approaches by other states) that led to the conclusion that ‘any form of a divided policy’ was not a viable alternative.”

The Court then turned to the vagueness challenge. The prisoners argued that even if it passed the *Turner* test, the policy was still unconstitutional for encouraging “arbitrary and erratic behavior on the part of officials charged with enforcing the rule.” But DOC waived aside that argument, insisting the vagueness test applied only to criminal statutes, or in prisons to disciplinary rules. While noting that other circuits had rejected this idea, the Court agreed, adding that both the Third and Ninth Circuits had adopted similar views.

“[A]lthough we recognize that there may be some overlap between the inquiry under the *Turner* test and aspects of a vagueness analysis,” the Court concluded, “it is nonetheless possible to imagine a situation where a prison regulation could be found to withstand a First Amendment challenge under the *Turner* factors, but still run afoul

of the Due Process Clause because one or more of its terms is unconstitutionally vague.”

Just to be sure, though, the Court examined the language of DOC’s policy and found it sufficiently clear for an ordinary person to understand. Anyway, perfect clarity is not a requirement, the Court added, even in the case the seven prisoners presented – with no disciplinary charges involved and prisoners required to seek prior approval for material before having it sent in. Accordingly, the district court’s judgment was affirmed. See: *Reynolds v. Quiros*, 25 F4th 72 (2nd Cir. 2022).

# Louisiana Sheriff Coughs Up \$2.75 Million After Falsely Claiming Detainee Died From Accidental Fall

by Jacob Barrett

ON OCTOBER 18, 2022, OFFICIALS IN Louisiana’s Bossier Parish agreed to pay \$2.75 million to settle a federal suit filed over the 2017 death of a detainee in the parish jail. Collin James Fletcher, 24, died five days after arrest for minor drug possession charges. The cause was his untreated drug withdrawal in custody, though the Bossier Police Department (BPD) originally claimed – falsely – that Fletcher died from an “accidental fall.”

On September 7, 2017, Fletcher was traveling from New York to Texas to assist in recovery from Hurricane Harvey when he was stopped by BPD officers, who found over 200 Xanax bars on him. Fletcher had struggled for several years with addiction to the powerful sedative. Because withdrawal can cause fatal seizures, the U.S. Department of Health Substance Abuse and Mental Health Services Administration (SAMHSA) recommends hospitalization.

Moreover, SAMHSA guidelines provide that Hydroxyzine should not be used to treat Xanax withdrawal symptoms.

After Fletcher’s arrest, he was booked into the Bossier Maximum-Security Facility, (BMSF) Intake records indicated that Fletcher suffered from psychiatric problems and was taking both Zoloft and Xanax nightly. He informed processing nurse Katrina O. Chandler that he also suffered from a seizure disorder, adding that he was afraid he would suffer withdrawal symptoms due to the amount of Xanax he consumed daily.

While awaiting video arraignment, Fletcher stood up, screamed and clenched his body, falling backwards and striking his head on a rail before going into a seizure. Despite the need for immediate emergency medical treatment, no medical evaluation or treatment was provided. Rather, Fletcher was taken in a wheelchair to the jail’s medical department. There Dr. Russell W.

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Roberts prescribed Hydroxyzine to treat Fletcher.

Fletcher was then taken back to his video arraignment, where he appeared “lethargic and drowsy” in his wheelchair, according to the complaint later filed on his behalf. He was then returned to a cell with a surveillance camera for “medical watch.”

Surveillance video showed Fletcher began acting abnormally, throwing himself against the wall and floor. BMSF guards entered the cell and restrained Fletcher, who was screaming incoherently and spitting. Rather than being treated, he was placed in a restraint chair with a spit mask over his head and moved to a padded cell with another surveillance camera.

For the next several hours video showed Fletcher lying on the floor, vomiting into a drain, acting like he was swimming or running. Rather than treatment, Fletcher was given a higher dose of Hydroxyzine. But he wasn’t watched closely; guard Jared Vicenta admitted he gave Fletcher the Hydroxyzine without opening the detainee’s cell door.

Late on September 7, 2017, video showed Fletcher crawling on his knees toward the cell door, where he collapsed and hit his head. He attempted to stand up, stumbled and fell, striking his head again. Fletcher then had a seizure and ceased moving.

Guard Matthew D. Creamer looked into the cell but did not render medical aid. A few moments later Fletcher started to move but again collapsed. Video showed Fletcher did not move again or make any noise after 11 :45 pm on September 7, 2017. However, guards Jeff Smith and Cody Collicoatte both falsely wrote in review logs that Fletcher was seen moving and making noise at 1 :45 p.m. on September 8, 2017.

A few hours after that, Fletcher was

found unresponsive in his cell and pronounced dead. An autopsy revealed that he died of a brain bleed from head injuries, and his body was covered in untreated abrasions from thrashing in the cell.

Fletcher’s parents filed a suit in federal court for the Western District of Louisiana in September 2018. Proceeding under 42 U.S.C. § 1983, they accused Bossier Parish Sheriff Julian Whittington and his jailers and medical staff of denying Fletcher medical care, in violation of his civil rights. They also made state-law claims for negligence and wrongful death.

Between August 17 and August 23, 2022, the suit was narrowed to denial of medical care claims and claims for negligence and wrongful death against the jail doctor and nurses, as well as vicarious liability claims against Sheriff Whittington. See: *Fletcher v. Whittington*, 2022 U.S. Dist. LEXIS 147424 (W.D. La.); 2022 U.S. Dist.

LEXIS 149366 (W.D. La.); and 2022 U.S. Dist. LEXIS 151493 (W.D. La.).

The parties then proceeded to reach their settlement agreement, which included fees and costs for Plaintiffs’ attorneys, Sarah R. Giglio of Gilmer & Giglio in Shreveport and Devon M. Jacob of Jacob Litigation in Mechanicsburg, Pennsylvania. The terms also included an agreement to implement medical policies at the jail guiding treatment for drug withdrawals and head injuries. See: *Fletcher v. Whittington*, USDC (W.D. La.), Case No. 5:18-cv-01153.

In local media at the time, Fletcher’s death was blamed on an “accidental fall.” But calling his fatal fall an accident is incorrect; he died due to mistreated withdrawal from a powerful prescription drug – something far too common in U.S. jails. 🐼

Additional sources: *KSLA*, *KTBS*, *Shreveport Times*

## Nevada Pays Over \$568,000 for Denying Prisoner Cataract Surgery, Ends “One Good Eye” Policy

by Jacob Barrett

ON JULY 15, 2022, THE FEDERAL COURT for the District of Nevada awarded \$560,587.50 in fees to attorneys representing a state prisoner who earlier settled his medical neglect claim against the state Department of Corrections (DOC) for \$7,500. In addition, DOC agreed to amend its policy effectively denying surgery to any future prisoner left with “one good eye.”

Clifford Miller shot himself in the head in 1999, losing sight in both eyes. One eye recovered before he was incarcerated by DOC in 2001. But repeated requests to see an eye surgeon for the other went ignored for nearly two decades before DOC finally relented, and Miller had the surgery in June 2020. Sadly, it was not successful.

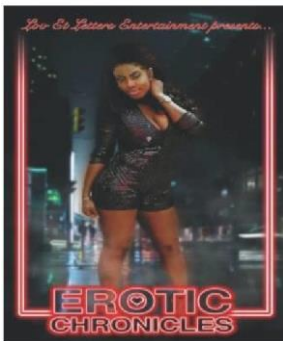
By that time he also had a three-year-old suit in the Court filed pursuant to 42 U.S.C. § 1983, accusing DOC Dr. Romeo Aranas of deliberate indifference to Miller’s serious medical

need, in violation of his Eighth Amendment guarantee of freedom from cruel and unusual punishment.

After Miller filed his suit *pro se* in 2017, he picked up counsel from Reno attorney Terri Keyser-Cooper. With her help, he amended his complaint to include a claim under the Americans with Disabilities Act, (ADA) 42 U.S.C. ch. 126, § 12101, et seq.

Miller’s original prison complaint mentioned only the Eighth Amendment claim that he later made in his suit, after DOC denied his grievances. To comply with the requirement that prisoners exhaust administrative remedies laid out in the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, he was thus obliged to file a separate grievance mentioning the ADA claim.

But DOC had a policy preventing prisoners from filing two grievances over the same complaint – a policy backed up with a disciplinary sanction. Miller filed his second grievance anyway, as required by PLRA. In return, DOC sanctioned him. So his amended complaint included not only his ADA claim but also a claim that prison officials retaliated against him for making it. As his attorney argued, “Miller was in



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an impossible Catch-22 position, damned if he filed an ADA grievance and damned if he didn't." On December 7, 2021, just before trial was set to begin, Miller's request for injunctive relief was amended to include a provision forcing DOC to align its grievance and disciplinary policies with PLRA. See: *Miller v. Aranas*, 2021 U.S. Dist. LEXIS 235842 (D. Nev.).

On March 4, 2022, the parties notified the Court that they had reached a settlement. Under its terms, DOC agreed to pay Miller \$7,500 and strike the disciplinary action from his prison record. DOC also agreed to bring its policies in conformance with an earlier Ninth Circuit ruling in *Colwell v. Bannister*, 763 F.3d 1060 (9th Cir. 2014), when the appellate court determined that deliberate indifference could be demonstrated by the "one good eye" policy.

Having sight reduced to one eye only "is not a trifling matter," the Ninth Circuit said then. [See: *PLN*, June 2015, p.40.]

So DOC vowed not to exclude prisoners from consideration for eye surgery because they have one good eye left. Following the Ninth Circuit's reasoning in *Colwell*, though, DOC carved out exceptions: if the surgery "is not medically indicated"; if the "condition is misdiagnosed"; if "surgery would not help"; or in the case of a "genuine difference of opinion" between prisoner and doctor or between doctors.

When the Court later considered attorney's fees and costs, the PLRA once again became an issue. DOC argued that the law limited Miller to \$11,250. Miller argued that *Armstrong v. Davis*, 318 F3d 965 (9th Cir 2003), held the PLRA did not apply to prisoners with ADA claims,

since that case relied on a section of the ADA providing a court in its discretion may order reasonable attorney fees to the prevailing party.

The Court agreed with Miller, calculating a total award of \$562,535.62 using the lodestar method set out in *Kerr v. Screen Guild Extras, Inc.*, 526 F2d 67 (9th Cir. 1975). Of that, its July 2022 ruling ordered DOC to pay \$449,872.50 in fees and \$1,518.22 in costs to Keyser-Cooper; \$98,560 in fees for her fellow attorney Diane K. Vaillancourt of Santa Cruz, California; and \$12,155 for Miller's other attorney, Peter C. Weatherall of Henderson. The remaining \$429.90 from the award went to Plaintiff to reimburse his litigation costs. See: *Miller v. Aranas*, USDC (D. Nev.), Case No. 3:17-cv-00068. 📄

## Four Michigan Jail Guards Guilty in Detainee Death, Family Paid \$2.4 Million

by Matt Clarke

**J**UST WEEKS BEFORE THEIR TRIAL WAS TO begin on charges of involuntary manslaughter in a detainee's death, four guards at Michigan's Mus-

kegon County Jail pleaded guilty to a lesser charge of Willful Neglect of Duty on April 20, 2023.

That means Crystal Grove, Jamal Lane, Jeffery Patterson and David Vanderlaan will not face jail time; instead each was immediately fined \$1,000 and sentenced to 100 hours of community service. All four are still employed at the lockup. A nurse formerly employed by Wellpath, the jail's privately contracted healthcare provider, escaped charges earlier in the case.

Their victim, Paul Bulthouse, 39, died on April 4, 2019, after suffering what surveillance video showed to be 18 seizures in just over four hours. The first five seizures were fairly evenly spaced over two hours, while the last 13 came at intervals of about 15 minutes. All the while Bulthouse lay naked and unconscious on the

bunk in his cell.

He had been arrested for probation violation on March 22, 2019, and taken to the jail. There he was placed on suicide watch, which requires guards to check on him every 15 minutes. But even though the guards could observe Bulthouse on a video monitor, surveillance video showed they ignored his distress, despite sitting just a few feet from his cell. They apparently made lightning-fast round trips to his cell, attempting to satisfy the requirement for every-15-minute checks, yet they still did nothing to help him. In fact, video showed the third seizure occurred in a different observation cell, where Bulthouse's unconscious body was apparently moved while a custodian mopped up his urine from the first two seizures.

Nurse Aubrey Schotts wrote progress notes saying she checked on Bulthouse around the time of his third seizure and that he was lying on his stomach and had stable vital signs. After a lengthy hearing in October 2021, the four deputies were bound over for trial, but Schotts was not. Unlike them, she is no longer employed at the jail.

A press release by Sheriff Michael Poulin said the jail's observation cells were designed to allow continuous monitoring by staff. Undersheriff Ken Sanford testified in the 2021 hearing that checks every 15 minutes were required when prisoners are

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in observation cells. He also said that staff is required to perform lifesaving measures on prisoners in distress, rather than waiting on medical staff as the four guards did with Bulthouse. Nevertheless, all four remain on the job, despite the negligent death of the detainee and a settlement reached in the complaint his family filed over it.

That lawsuit accused jailers and the nurse of ignoring the detainee's "hallucinations and vocal outbursts [that] were becoming more frequent and disturbing other inmates" as his withdrawal symptoms worsened. It further alleged that a Wellpath doctor made a note in Bulthouse's medical file that accused him of faking symptoms. [See: *PLN*, Mar. 2022, p.1.]

The Bulthouse family reached a settlement with Muskegon County on October 22, 2021, for \$2.4 million. Their attorney, Marcel Benavides of Royal Oak, received \$791,381.73 in legal fees and another \$25,854.81 in costs. Three surviving family members divided the remainder in equal shares of \$527,587.82 each. They also reached a separate settlement with Wellpath, the details of which were sealed.

Both agreements were approved by the federal court for the Western District of Michigan on May 27, 2022. See: *Bulthouse v. Cty. of Muskegon*, USDC (W.D. Mich.), Case No. 1:21-cv-00281.

Since he died, the jail has instituted several new policies regarding medical care and observation. It also fired Wellpath, replacing the firm with a competitor, Kansas-based Vital Core Health Strategies, under a \$1.95-million contract that is \$500,000 higher. Sheriff Poulin also now issues jail guards body-worn cameras with microphones, which they must activate. 📺

Additional sources: *MLive Media Group*, *WOOD*, *WXMI*, *WZZM*

## Former Mississippi Sheriff Indicted for Bribery After Allegedly Allowing Detainee Rape at County Jail

by Jordan Arizmendi

**T**HREE YEARS AFTER RETIRING, AND 16 years after the first rape allegations surfaced at Mississippi's Noxubee County Jail (NCJ), former Sheriff Terry Grassaree has been indicted on federal charges. On October 5, 2022, Grassaree and a former deputy were accused of bribing a detainee with a cellphone to send nude selfies with it, and then lying when questioned about it by federal agents.

NCJ staff has faced allegations of sexual misconduct with detainees since Grassaree was a deputy. That's also something he was accused of turning a blind eye toward during an eight-year term as Sheriff that began in 2011. Whenever an allegation surfaced that led to a lawsuit, the Noxubee County insurer paid to settle the claim, and NCJ staffers escaped any charges.

When Grassaree was promoted to Chief Deputy in the 1990s, the jail reportedly was already a free-for-all spot with few rules. Detainees roamed the building without having to log in and with practically no supervision. One detainee even showed up at a court hearing without a deputy; he had driven from the jail by himself, according to the district attorney at the time.

Detainees and prisoners allegedly had such freedom at the jail that men would just walk into the woman's ward. One woman claimed that, on one day, three different prisoners got keys to enter her locked cell and raped her and her cellmate. The two women even passed a lie detector test. The three alleged rapists refused to take one. The

woman, Jessie Levette Douglas, filed a lawsuit that the county settled in 2009. According to the *Macon Beacon*, she was paid \$375,000.

But the horrors continued, other detainees said. Women made startling accusations about the jail. Those were settled with payouts. One victim claimed that Grassaree pressured her to sign a false statement that exonerated jail staff. Then when state agents investigated, Grassaree just presented the signed statement, claiming that everything was consensual.

However, the FBI began investigating after former detainee Elizabeth Layne Reed filed suit in 2020, accusing Deputies Vance Phillips and Damon Clark of raping her at the jail. After the investigation, bribery charges were filed against Phillips and Grassaree, but not Clark. The FBI said that the deputy gave Reed a contraband cellphone, but when Grassaree found out, he did not discipline Clark. Instead, the Sheriff allegedly demanded that Reed use the phone to send nude selfies. Then, when the FBI questioned him about it, he lied in response, investigators said.

According to 2018 Department of Justice guidance, law enforcement officers cannot be federally prosecuted for violating a person's civil rights if the person received something in exchange – like a cellphone. But in Reed's case, the phone "was the vehicle by which more abuse could be directed towards her," explained Loyola University law professor Andrea Armstrong. So when

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she used it to send the nude shots, those were “not freewill choices.”

State law also protected Grassaree and his alleged crimes against those he swore to protect. No state regulator in Mississippi has authority to fine a sheriff for harming those in custody, nor can he be fined for failing to train the staff running the jail. In other words, Grassaree was untouch-

able – almost.

Both the former Sheriff and his deputy are now charged with “using facilities in interstate commerce, namely, the internet and cellular phone, for the purpose of committing the offense of bribery.” If convicted, Phillips faces up to five years in prison, and Grassaree up to ten years. Trial is set for June 2023, and *PLN* will continue to

report developments in the case. See: *USA v. Grassaree*, USDC (S.D. Miss.), Case No. 3:22-cr-00109. 📖

Additional sources: *New York Times*, *Raw Story*

## \$3,000 Awarded to Ohio Prisoner for Denied Public Records

by David M. Reutter

**T**HE SUPREME COURT OF OHIO ISSUED a writ of mandamus to a state prisoner on December 15, 2022, awarding \$3,000 in statutory damages for records he was denied in violation of the state Public Records Act (PRA) by the Ohio Department of Rehabilitation and Correction (DRC).

Kimani Ware, a prisoner at the Trumbull Correctional Institution (TCI), sent a prison kite to staffer Waylon Wine on June 18, 2021, requesting “a copy of the B-Unit staff schedule.” Wine responded it was posted in Ware’s unit, and no documentation was provided. Then on June 21, 2021, Ware sent two separate public records requests to TCI’s recreation department by prison kite. Another staff member, Tracy Ventura, responded that the recreational schedule was posted “in the blocks” earlier that day, and no documentation was provided.

Ware also sent two kites to Deputy Warden Anthony Davis requesting a copy of the June 17, 2021, memo that was sent to all TCI staff. Davis responded that Ware needed to contact another staff member, Mr. Booth, and no documentation was disclosed. Finally, on June 22, 2022, Ware

sent a kite to Wine requesting “a copy of the housing unit split range schedules for 14 east in [J]une and [J]uly 2021.” Wine did not provide documentation and replied the record was “posted on the unit information board.”

Ware then filed his writ of mandamus on December 7, 2021. The Ohio Supreme Court began its analysis by stating that PRA, R.C. 149.43, requires a public official to make copies of public records upon request within a reasonable time. A “public record” is a record “kept by a public office.” The Court counted four requests Ware made by way of six messages. But it said not all of them were denied.

In response to the request for the June 17 memo, Ware failed to establish that Davis was the custodian of the record in question. In fact Davis sent Ware to Booth for the record, and there was no evidence that Ware followed that guidance. Referring a requestor to a different employee or office does not constitute a denial, the Court said.

Thus, relief was denied as to that request.

As to the remaining three requests,

TCI conceded it received and denied them, but it argued that Ware’s opportunity to see the posted documents satisfied PRA. The Court disagreed. PRA obligates TCI to provide Ware with copies of the requested records, it said, and TCI breached that duty. Mandamus relief to compel disclosure was thus appropriate.

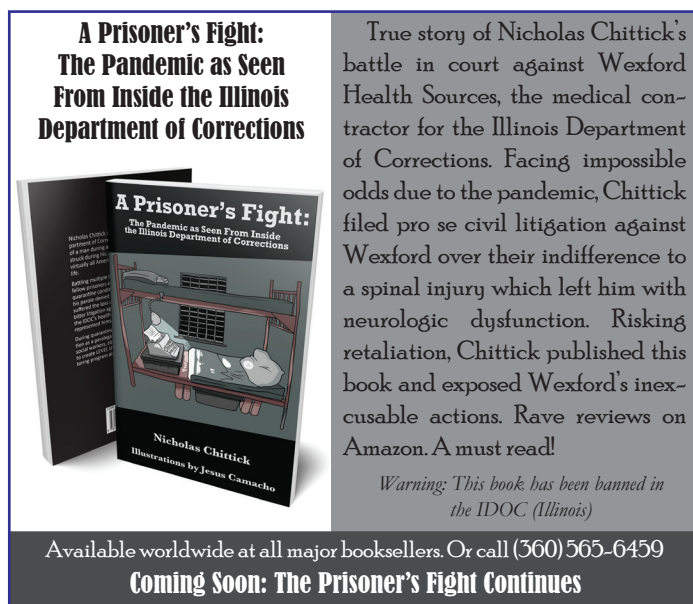
Having granted the writ, the Court turned to the issue of statutory damages. PRA provides for damages “at the rate of \$100 for every business day the public office or person responsible for the requested public records has failed to comply with an obligation under R.C. 149.43(B), starting from the date of filing the complaint in mandamus, with a maximum of \$1,000.” Ware reached the maximum, so the Court awarded him \$1,000 for each of the three violations, for a total of \$3,000. It also awarded him the cost of filing the action. See: *State ex. rel. Ware v. Wine*, 2022-Ohio-4472. 📖



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# BOP Hits Back Hard After Federal Prisoner in Arizona Brandishes Gun

by Benjamin Tschirhart

AS OF MID-JANUARY 2023, ALMOST 100 minimum-security prisoners from the Federal Prison Camp (FPC) in Tucson were still being held in segregation at the nearby U.S. Penitentiary (USP) in Tucson, six weeks after a fellow prisoner somehow got a gun and attempted to shoot his wife when she visited him.

The shooting attempt unfolded on November 12, 2022, in the visiting area at FPC-Tucson. Despite a guard pat-down before entering, a prisoner identified only as “Jaime” produced a gun and aimed it at his wife, pulling the trigger. The gun jammed four times. The prisoner dropped it and fled the building. Guards cornered and captured him in a maintenance shed a short time later. He was taken to the nearby USP-Tucson and placed in isolation.

Amid the many BOP lockups notorious for violence, camps like FPC-Tucson seem like peaceful oases. They were originally established near penitentiaries – like this one near USP-Tucson – to ease the comings and goings of low-security prisoners assigned to work details in the higher-security lockups nearby. With few fences and plentiful work-release programming, the worst problem is contraband, prisoners say. Not gunfire.

But if the incident left the federal Bureau of Prisons (BOP) with a black eye, its apparent over-reaction has bruised the other one. In the aftermath of the shooting, the other 95 prisoners at FPC-Tucson were zip-tied at their wrists and left sitting outdoors in the sun for hours with no food, water, medication or access to toilets. Some of the older ones passed out. They were all interrogated – without legal counsel – to uncover any knowledge they might have of the attempted shooting, and to find out whether any of them helped Jamie in the attempt.

They were then moved USP-Tucson, where they were placed in tiny segregation cells normally reserved for disciplinary problems. There they remained locked inside for 23 hours a day or more, with a cold shower three times a week. There were no reading materials, no letters or phones, and no contact with friends or family.

While minimum security prisoners were unfamiliar with this treatment, it's just normal daily life for over 50,000 prisoners nationwide. [See: *PLN*, Feb. 2023, p.42.]. The United Nations has declared these conditions violate human rights, but the U.S. continues to distinguish itself among developed nations with its persistent use of

isolation and segregation, both as punishment for rule violations as well as a place to wait out an investigation – often, as in this case, with no proof of wrongdoing required.

The episode also illustrates another pernicious aspect of U.S. carceral culture: Mistakes by staff – like the guard who botched Jaime’s pat-down – are followed by

## CLASS ACTION LAWSUIT CHALLENGING THE HIGH PRICES OF PHONE CALLS WITH INCARCERATED PEOPLE

Several family members of incarcerated individuals have filed an important class action lawsuit in Maryland. The lawsuit alleges that three large corporations – GTL, Securus, and 3CI – have overcharged thousands of families for making phone calls to incarcerated loved ones. Specifically, the lawsuit alleges that the three companies secretly fixed the prices of those phone calls and, as a result, charged family members a whopping \$14.99 or \$9.99 per call. The lawsuit seeks to recover money for those who overpaid for phone calls with incarcerated loved ones.

**If you paid \$14.99 or \$9.99 for a phone call with an incarcerated individual, you may be eligible to participate in this ongoing lawsuit.**

Notably, you would not have to pay any money or expenses to participate in this important lawsuit. The law firms litigating this case—including the Human Rights Defense Center—will only be compensated if the case is successful and that compensation will come solely from monies obtained from the defendants.

If you are interested in joining or learning more about this case, please contact the Human Rights Defense Center at (561)-360-2523 or [info@humanrightsdefensecenter.org](mailto:info@humanrightsdefensecenter.org).

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savage retaliatory punishment of prisoners.

Since then, USP-Tucson lost a prisoner in a fight with another on May 13, 2023. Ruben Valle, 51, died from injuries sustained in the altercation with the unnamed other prisoner. Valle had arrived at

the prison on February 17, 2023, to serve 33 years and five months for convictions on drug and murder charges.

On August 24, 2022, the penitentiary also became home to Derek Chauvin, a former Minneapolis cop convicted of the

May 2020 killing of George Floyd that touched off nationwide protests against police brutality. ❏

Sources: *AP News, Arizona Daily Star, Arizona Republic, Forbes, KGUN, KVOA*

## Prisoner Counselors **STORMING** California Prisons to Aid in Addiction Recovery

by Kevin W. Bliss

**O**N OCTOBER 28, 2022, THE FIRST graduates of the Offender Mentor Certification Program (OMCP) at California State Prison (CSP) in Lancaster received their certificates. The new class of 29 will offer peer-to-peer drug abuse recovery and counseling to prisoners across the state. Upon release they can work toward state certification to continue counseling addicts outside.

Participants collectively refer to themselves as **STORMING** Cohorts, an acronym for a Scarred Team of Recovering Men Inspiring New Generations – alluding to the psychological storms they pull themselves through, as well as those they assist.

OMCP first began at Solano County State Prison in 2009. It has since expanded to Central California Women's Facility and Valley State Prison, both in Chowchilla. The one-year program culminates in certification as an addiction treatment counselor by the state Department of Corrections and Rehabilitation (CDCR).

Enrollment requires two CDCR staff references and an interview. Candidates can have no serious disciplinary infractions and must submit a 500-word essay outlining how they maintain their recovery

and could help others do the same. They must also have at least five years left on their sentences after graduation. Participants receive 350 hours of masters-degree-level curriculum in neurobiology, pharmacology, treatment ethics, counseling law and protocol, family dynamics and relapse prevention. They also get 250 hours in sessions with licensed counselors.

After graduation, participants can become paid mentors in the California prison system, also using any time worked toward internship hours required for state certification as alcohol and drug counselors upon release.

CDCR recorded nearly 300 fatal prisoner overdoses between 2012 and

2020. Division of Rehabilitation Programs Director Brent Choate told CSP graduates they can reduce that number. "There are so many people that are incarcerated in California that need help," he said. "We can't get to everybody. And then you step in. And you're part of our answer. That's how important you are."

Al Sasser, an early graduate of the program dubbed the "First 50," called recovery a process beneficial to both addict and counselor. "The more I work on me, the better everybody else gets," he stated. ❏

Sources: *KXTV, Los Angeles Times, Victorville Reporter*

## It's Official: BOP Prisoners on Expanded COVID-19 Home Confinement Staying Put

by Jordan Arizmendi

**I**N ITS FINAL RULE THAT TOOK EFFECT ON May 4, 2023, the federal Department of Justice (DOJ) declared that prisoners placed on home confinement by the federal Bureau of Prisons (BOP) under eligibility criteria expanded by Congress in response to the COVID-19 pandemic would not have to

return to prison, now that the pandemic has ended.

In March 2020, Congress passed the Coronavirus Aid, Relief and Economic Security (CARES) Act. The law considered incarcerated individuals highly vulnerable to COVID-19 because the federal Centers for Disease Control and Preven-

tion (CDC) said that those in close contact with an infected person – less than six feet – are likely to get infected with the novel coronavirus that causes the disease. As a result, spending a night in a crowded prison cell could turn any term into a death sentence.

The CARES Act expanded eligibility for home confinement under 18 U.S.C. § 3624(c)(2). Previously, it was available only to federal prisoners with no longer left to serve than "the lesser of ten percent of a prisoner's sentence or six months."

However, the expansion lasted only "for the period of the covered emergency." As a result, in January 2021, former Attorney General William P. Barr estimated that at least 2,830 prisoners then on expanded home confinement would have to return to BOP custody when the pandemic ended. [See: *PLN*, June 2022, p.28.]

Under current Attorney General Mer-



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rick Garland, DOJ allowed BOP to expand eligibility for home confinement in May 2021 to prisoners who have “completed at least twenty-five percent of their sentences and have less than eighteen months left, or who have completed fifty percent of their sentence.” BOP was also given flexibility to analyze prisoners more closely for specific COVID-19 vulnerabilities.

Importantly, this expanded eligibility came along with a promise that “under regular circumstances, inmates who have made this transition to home confinement would not be returned to a secure facility, unless there is disciplinary reason to do so.”

Home confinement is not like release from prison. There are regular drug and alcohol tests. There is no leaving home, except for certain activities, like work or therapy. It is also not supposed to be used “for re-entry purposes,” as DOJ acknowledged in its new rule. But it “conclude[d] that the best use of [BOP] resources and the best outcome for affected offenders is to allow the agency to make individualized assessments of CARES Act placements, with a focus on supporting inmates’ eventual reentry into the community.” See: 88 FR 19830.

Since the CARES Act was passed,

more than 12,000 BOP prisoners have transferred to home confinement. As of September 2022, just 17 had committed

new crimes. 

Additional source: *Washington Post*

## Fifth South Carolina Prisoner Sentenced in “Sextortion” Scams Targeting Military Members

by Chuck Sharman

ON APRIL 21, 2023, SOUTH CAROLINA prisoner Dexter Lawrence, 27, was sentenced to 70 months in federal prison and three years of supervised release for his role in a “sextortion” scam that targeted U.S. military personnel. Two co-conspirators also previously received federal sentences for money-laundering. Two other prisoners were sentenced for blackmail in a similar scheme that led a young soldier to commit suicide. All must complete sentences they are already serving with the state Department of Corrections (DOC) before they begin their new terms.

The prisoners ran the scam from their cells from 2015 to 2017, and it worked like this: Using contraband cellphones to access

the internet, they created fake accounts on dating sites, pretending to be females as they targeted on-duty U.S. military personnel and enticed them to request nude photos. It’s unclear whose photos the prisoners sent. But after they did so, an accomplice phoned the recipients, pretending to be an irate father claiming the photos were of his underage daughter. Of course, the “dad” was not so angry that he couldn’t be bought off. [See: *PLN*, Apr. 2019, p.63.]

Threatened with arrest and dishonorable discharge on child pornography charges, some 25 servicemen ponied up a total of \$60,004.09 to Lawrence, prosecutors said. Another conviction was secured in May 2021 for one of Lawrence’s co-

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conspirators, Wendell Wilkins, 32; he got a 66-month sentence for ripping off another 25 victims of \$74,000. A third prisoner who played the role of the “father” in the scheme, Jimmy Dunbar, Jr., 37, was sentenced to a 46-month term in April 2019, after taking \$29,598 from 17 victims. Sentenced along with him were Andreika Mouzon, 29, and Flossie Brockington, 29, two un-incarcerated “mules” who collected \$34,886.73 from 19 service members successfully targeted in the scam.

In addition to the three prisoners

sentenced on federal money-laundering charges, two others involved in an identical scam were convicted in state court of black-mailing Jared Johns. The U.S. Army veteran and father of two committed suicide in September 2018, moments after receiving a demand for \$1,189 from the two incarcerated scammers. John Dobbins, 63, pleaded guilty in May 2022 and was sentenced to a seven-year term. Carl Smith, Jr., 47, pleaded guilty the same month and was sentenced to four years in August 2022.

In all, more than 350 military men lost

some \$350,000 in the scams, according to investigators from the Naval Criminal Investigative Service, the Internal Revenue Service, the Defense Criminal Investigative Service, the Air Force Office of Special Investigations, the U.S. Army Criminal Investigations Command and the U. S. Marshals Service, as well as the state DOC and the South Carolina Law Enforcement Division. 📰

Sources: *WSPA, WXLT*

## Imprisoned Former Head of New York City Jails Guards’ Union Granted Release

by Matt Clarke

**O**N FEBRUARY 23, 2023, A FEDERAL judge who had earlier refused to reduce the sentence of the former head of the New York City jail guards’ union convicted in a costly bribery scheme, instead granted compassionate release to Norman Seabrook, 63.

The former president of the city’s powerful Correctional Officers’ Benevolent Association (COBA), Seabrook had by then served 21 months of his 58-month sentence. He remains subject to a three-year term of supervised release set in his original sentence.

Based largely on the testimony of real estate developer Jona Rechnitz, who served as bagman to deliver a \$60,000 bribe, Seabrook was sentenced in February 2019 for taking the payoff to invest \$20 million of COBA funds in a risky hedge fund that went bankrupt, resulting in a loss of \$19 million from jail guards’ retirement accounts. [See: *PLN*, May 2019, p.46.]

In April 2022, the U.S. District Court for the Southern District of New York

noted that Seabrook, who is Black, ended up with a harsher sentence than his White co-conspirator; defunct Platinum Partners co-founder Murray Huberfeld initially received a 30-month sentence for paying the bribe, but his sentence was reduced to 13 months, after the U.S. Court of Appeals for the Second Circuit held he was liable for financial damages no higher than the \$60,000 he took to pay Seabrook’s bribe, rather than the \$19 million in COBA losses that the district court used. The same appellate court upheld Seabrook’s conviction.

In denying Seabrook’s habeas corpus petition, the district court reserved judgment on the racial disparity in his sentencing. But in August 2022, U.S. District Judge Alvin K. Hellerstein declined to grant a sentence reduction on that basis. However, he suggested that Seabrook was a good candidate for compassionate release under 18 U.S.C. Sec. 3582(c)(1)(A), as expanded by the First Step Act (FSA) of 2018. [See: *PLN*, Feb. 2023, p.53.]

Taking that advice, Seabrook petitioned for compassionate release. Overruling the government’s objections, Judge Hellerstein found the “unjust disparity between Huberfeld’s and Seabrook’s sentences,” though insufficient to justify a sentence reduction, instead satisfied the FSA’s “extraordinary and compelling circumstance justifying his release.”

That accomplished much the same thing for Seabrook; his sentence was reduced to time served, and he was freed on March 6, 2023. In addition to his term of supervised release, he remains subject to a \$19 million restitution order, at 10% of his annual income. He was represented by attorneys from the New York firms of Bracewell LLP, Levitt & Kaizer, and Roger B. Adler, P.C. See: *United States v. Seabrook*, 2023 U.S. Dist. LEXIS 30691 (S.D.N.Y.). 📰

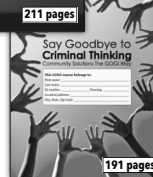
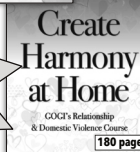
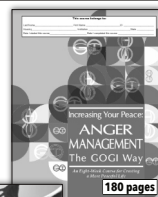
Additional source: *New York Times*

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## News in Brief

**Arizona:** A private prison guard in Arizona was picked up on drug charges in California on April 18, 2023, as he made his way back from Mexico with his wife and kids – along with almost 53 pounds of meth and heroin stashed in the gas tank. The *Arizona Republic* reported that when the California Highway Patrol stopped Fernando Urrutiaguillen, 34, on I-5 in Irving, troopers became suspicious and ordered a K-9 search of the vehicle, finding and seizing the drugs. The Orange County District Attorney's Office charged the young father with eight felony counts related to the drug seizure. Officials do not believe Urrutiaguillen's family knew of his smuggling activities, nor were they involved. Urrutiaguillen pleaded not guilty and was booked in the Orange County Jail in lieu of \$3 million bail. The Army National Guardsman faces a possible 21-year prison sentence.

**Arkansas:** On April 22, 2023, the *Arkansas Democrat-Gazette* reported that a former Dallas County Jail guard was sentenced for smuggling cellphones and vaping devices wrapped in a blanket to a federal detainee at the lockup. A federal judge sentenced Carah Bizzle, 37, of Bearden, to time served and three years of supervised release. Bizzle was also ordered to pay a \$100 mandatory special assessment. According to the plea agreement, the closed-circuit security video revealed Bizzle trading and handing various objects to detainees, including cellphones and vaping devices. The vaping devices later tested positive for THC, the active ingredient in marijuana. The plea agreement also stated Bizzle smuggled a cell phone to detainee "K.L." prior to August 30, 2020, which was then used to contact people outside the jail. In a September 2020 surveillance video, Bizzle retrieved what was believed to be a cellphone from another detainee, "J.W." After investigators obtained Cash App records that confirmed payments to her from detainees held in the jail, she then confessed her involvement in the smuggling scheme.

**Australia:** According to a report by *Nine News* on April 14, 2023, two Australian prisoners had their sentences lengthened for assaulting a pair of guards in 2020, taking one of them hostage to extort buprenorphine. "DM," 22, the leader of the ambush, was serving a 35-year sentence for murder at the time of the

assault. On December 19, 2020, DM and co-conspirator Noel Barrett, 25, rushed Nathan Fuller as he and another guard unlocked a door. The other guard escaped, but DM pressed a shiv against Fuller's neck and forced him to kneel, yelling, "I want my bupe injection" and threatening to kill the guard. DM and Barrett were not on the list to receive buprenorphine, however. The two prisoners tortured Fuller for hours "spitting on him, stabbing him with a shiv, punching him until he lost vision, dousing him with cleaning fluids which caused severe chemical burns, and spraying him with insect repellent before threatening to set him alight." The judge sentenced DM to another 13 years and Barrett to 10 years. Acknowledging they had endured horrible childhoods, he stated DM and Barrett showed gratuitous cruelty towards Fuller, who now suffers from post-traumatic stress disorder and other physical and mental ailments.

**California:** With a no-contest plea on April 3, 2023, a Yuba County Jail detainee was convicted of fatally poisoning a fellow detainee with fentanyl. The local *Appeal-Democrat* reported that Aaron Charles Henning, 45, of Marysville, had been charged with involuntary manslaughter for the in-custody death of Matthew Perez in November 2022 and was also implicated in the near-fatal poisoning of two other detainees just one day after Perez died. The Yuba-Sutter Narcotic and Gang Enforcement Team arrested Henning for possessing fentanyl for sale on October 26, 2022, reportedly seizing over an ounce of fentanyl. Henning was booked into the Yuba County Jail. According to the District Attorney's Office, Henning concealed an additional half-ounce of fentanyl and smuggled it into the jail after his booking. Henning admitted to bringing fentanyl into the lockup but told detectives he used it all himself. In an ironic twist, Henning told investigators he worried about family members using drugs and called fentanyl the "gray death." His sentencing was scheduled for May 1, 2023, when Henning faces an agreed-upon sentence of 12 years and four months in state prison.

**Canada:** At a sentencing hearing on March 31, 2023, prosecutors pushed for a jail term for a guard convicting of assaulting three subdued prisoners at Calgary

Remand Centre in February 2019. The *Calgary Herald* reported that the lawyer for Heera Singh Chahal, 32, contends there is no precedent in Canada for the proposed nine-to-twelve-month jail term. Defense counsel provided a list of cases to the judge in which peace officers who had assaulted prisoners received only discharges up to conditional sentences. Prosecutor for the Crown Martha O'Connor said aggravating factors made Chahal's conduct worse than that of cases supplied by his attorney. O'Connor mentioned the three victims and three assaults and pointed out that Chahal made a deliberate decision to kick the prisoners while they were subdued on the ground. Judge Allan Fradsham convicted Chahal of two counts of assault and one of assault causing bodily harm as result of the altercation in the northwest Calgary jail. On May 9, 2023, Chahal was sentenced to 180 days in jail plus one year of probation.

**Connecticut:** A Connecticut prison guard fired for a racist Facebook post in 2021 has been reinstated, according to a report by *AP News* on April 6, 2023. Former Garner Correctional Institution guard Anthony Marlak was fired on May 26, 2021, for a post picturing hanged Muslim men over the caption "Islamic wind chimes." [See: *PLN*, Aug. 2021, p.62.] But an arbitrator found that the response by the state Department of Corrections (DOC) was excessive. Marlak's sanction was reduced to a 25-day suspension, and DOC was ordered to let him resume his 14-year career, along with back pay and lost benefits.

**Florida:** On April 6, 2023, a guard employed by the federal Bureau of Prisons (BOP) in Florida was indicted for sexually abusing a prisoner, *WPLG* in Miami reported. A federal grand jury in North Florida charged Lenton Jerome Hatten, 54, of Tallahassee, with one count of sexual abuse of an individual in federal custody. Hatten was employed as a sports specialist with BOP when he allegedly engaged in sexual acts with a prisoner between October 2021 and August 2022. The trial is scheduled for June 15, 2023, at the U.S. Courthouse in Tallahassee before the Honorable Senior U.S. District Judge Robert L. Hinkle. Hatten faces up to 15 years in federal prison, five years to life on supervised release and a \$250,000 fine if convicted.

**Florida:** A guard fired from the

Putnam County Jail in January 2023 for assaulting both a detainee and a fellow employee was arrested three months later on suspicion of conspiring to smuggle Ecstasy, pot and cigarettes into the lockup, according to a report by *WCWJ* in Jacksonville on April 4, 2023. David Garcia, 25, a well-known boxer turned sheriff's deputy, fell under the influence of Latin Kings member Francisco Arroyo, 29, after he began working in the jail in October 2022. Garcia's involvement in the smuggling scheme was uncovered by the guard who was hired to replace him in January 2023. Arroyo attempted to bribe the new guard to take Garcia's place in the contraband conspiracy, but the new hire informed his superiors after refusing to participate. The new guard then helped detectives by going undercover for several months resulting in Arroyo being transferred to another Florida lockup where he did not know prisoners or guards. As part of the same investigation, Garcia is now facing charges of introducing contraband into his former workplace along with the battery on a prisoner that led to his termination in January. After Garcia turned himself in, he posted a \$100,000 bond.

**Florida:** A detainee found covered in blood at the Sarasota County Jail on April 16, 2023, has been accused of murdering his 80-year-old cellmate, according to a report by *WFLA* in Tampa. Court records show that Zachary K. Ellis, 21, and his twin brother were charged with domestic battery in August 2022. The deputies on call noted that the brothers were drinking beer at the time. After being booked and placed in a cell with the elderly detainee, Ellis at some point before 3:39 a.m. bludgeoned his cellmate so viciously with his fist that the walls and ceiling were splattered with blood, and Ellis' face, arms and hands were soaked with blood. The elderly prisoner sustained significant wounds to his face and head, including a large cut along his jawline exposing bone. First responders were unable to revive the 80-year-old. Ellis will be charged with second-degree murder as a result of the initial investigation, according to the Sarasota County Sheriff's Office.

**Florida:** A former guard at a recorded making sexually explicit phone calls to a prisoner at a federal lockup in central Florida was convicted of sexual abuse on April 12, 2023, *WFLA* in Tampa reported. Fiona Eyana Palmer, 39, of Wesley Chapel, engaged in sexual acts with a prisoner at the

Coleman Federal Correctional Complex, a low-security prison located 50 miles northwest of Orlando. Two recorded phone calls between the guard and the prisoner provided the evidence to convict Palmer. During the calls the two discussed sexual acts with Palmer offering to send money to a relative of her prisoner paramour. The sentencing is scheduled for a later date, when Palmer faces 15 years in federal prison.

**Georgia:** Not much punishment was announced on April 6, 2023, for a Camden County Jail guard caught on video assaulting a detainee the month before. For the beat-down of Zyaire Ratliff, the guard identified as "J. Anderson" received a one-day suspension without pay, his boss told *WJAX* in Jacksonville, Florida. But jail administrator Maj. Rob Mastroianna also promised that Anderson "learned from it." Apparently, he didn't learn when three guards were earlier fired from the jail in 2022 after they were caught on video beating a detainee in his cell and ripping out his dreadlocks. [See: *PLN*, Dec. 2022, p.63.] Anderson's ire was ignited when Ratliff, a Muslim detainee fasting for Ramadan, got into a food service line to ask about visitation and refused an order to leave.

**Georgia:** On April 15, 2023, the U.S. Attorney's Office (USAO) for the Southern District of Georgia announced a guilty plea to federal drug charges by a former state DOC guard, one of 76 defendants indicted after a massive January 2023 drug sweep dubbed "Operation Ghost Busted" for the white supremacist prisoners who led the conspiracy. Desiree M. Briley, 26, of McRae-Helena, held the rank of sergeant in the DOC and was training to be a K-9 handler at the time of her arrest in January 2023. Briley conspired with James D. NeSmith, 25, a lifer at Telfair State Prison in the town of McRae-Helena. The two, along with 74 other coconspirators, worked inside and outside state prisons to move drugs and guns in at least ten South Georgia counties. The white supremacist street gang known as the Ghost Face Gangsters masterminded the criminal enterprise. The Organized Crime Drug Enforcement Task Forces investigated for over two years to bring the indictment. Briley faces up to 20 years in prison.

**Guam:** A guard with the territorial DOC of Guam was arrested on April 23, 2023, on charges he smuggled meth and other contraband into the lockup in

Mangilao, *Pacific Daily News* reported. The island – which is barely three times the size of Washington, D.C. and located 3,300 miles west of Hawaii – is home to guard Travis William Francis Venus, 30, who faces drug and misconduct charges. Venus told police he was delivering food to a prisoner and "did not know there was anything other than food in the bag," according to the magistrate's complaint filed in Superior Court. The day of his arrest officials found four baggies of chewing tobacco, two vape pens, two baggies of suspected methamphetamine and a glass pipe with a bulbous end in Venus' bag at the prison. DOC launched an internal investigation and released a statement saying, "when and if he is released by the court, the officer will be placed on administrative leave pending the outcome of the internal investigation." Venus is being held on \$25,000 cash bail and faces a 36-year sentence if convicted of all charges. according to the Office of the Attorney General.

**Iowa:** A Tama County Jail guard who was fired for having sex with a detainee avoided jail time when she pleaded guilty on April 6, 2023, *KCRG* in Cedar Rapids reported. Kayla Mae Bergom, 27, of Vinton, engaged in sexual acts with a prisoner at the Tama County Jail on multiple occasions between September 2022 and April 2021. Bergom was charged with three counts of sexual misconduct with a prisoner in April 2022 after the Iowa Division of Criminal Investigation completed its work a month after learning of the accusations. Christopher Lee Cungtion, Jr., 30, filed suit against Tama County and other county employees in November 2022 alleging physical and mental distress resulting from Bergom's abuse. In the complaint Cungtion states that Bergom used her cellphone to record the jail surveillance cameras showing him performing sex acts. He also stated that the relationship increased his anxiety and actually caused a fight between himself and other inmates. The jury trial is scheduled for September 2023.

**Illinois:** Three Cook County Jail guards were arrested in separate incidents over one week in late April 2023, according to reports by *CBS News*. On April 18, 2023, the network reported that Richard Smith, 44, was charged in the September 2022 beating of a prisoner who was handcuffed to a wall in the residential treatment unit for medical and mental health issues. Smith



was de-deputized after the incident and the sheriff's office sought to suspend him without pay and fire him. He was charged with aggravated battery and official misconduct. The day after that report, on April 19, 2023, Reginald Roberson, 52, was accused of roughing up a prisoner in December 2021, grabbing his shirt and shoving him back into the bullpen when he requested a medical evaluation. Roberson then took a handcuff, wrapped it around his fist like brass knuckles and punched the 29-year-old prisoner to the ground, lacerating his ear and face. The injuries required stitches. Roberson was also de-deputized after the incident. He turned himself in before his first court appearance, and his bond was set at \$20,000. Finally, on April 25, 2023, Alan Kettina, 25, was arrested and charged with murder in a fatal shooting outside a Niles nightclub two days earlier. *WLS* reported that Kettina shot 22-year-old Mark Asber in the back after Asber allegedly threatened to harm Kettina and his family if the guard did not smuggle contraband into the jail. Kettina, who was hired in November 2021, was de-deputized immediately. His bail was set at \$400,000.

**Kentucky:** On April 7, 2023, a guard

fired from the Kenton County Detention Center was charged with smuggling drugs to detainees, according to a report by *WXLX* in Cincinnati, Ohio. Curtis Malik Edwards, 26, was receiving money from people outside the jail to deliver drugs to prisoners. Edwards allegedly also used a gun to transport the drugs into the facility. After the jail found evidence pointing to an employee smuggling drugs, the Northern Kentucky Drug Strike Force began its investigation. Agents were able to catch Edwards red-handed when he went to his car to retrieve a batch of drugs after a lunch break. Court documents claim Edwards was carrying marijuana, and Kenton County Commonwealth Attorney Rob Sanders says the strike force agents believe two balloons found on Edwards were full of fentanyl. Sanders also said they believed Edwards was not acting alone and schemed with different prisoners to introduce contraband into the lockup. More charges could be filed against Edwards and his co-conspirators when the case goes before the Kenton County Grand Jury. The former guard faces 25 years.

**Kentucky:** *WHAS* in Louisville reported that a former guard with Metro Corrections Department (MCD) surrendered on April 12, 2023, to an arrest warrant issued the day before on suspicion she conspired to smuggle drugs into the MCD lockup. When MCD suspected Cynthia Kosman, 29, of potentially working with Louisville Metro Detention Center (LMDC) detainees and people on the outside to smuggle contraband into the facility, they tipped off the Louisville Metro Police Department Public Integrity Unit. Detectives investigated and confirmed the conspiracy which led to Kosman's suspension, then resignation in February 2023, and arrest the following month. Kosman was charged with official misconduct, promoting contraband, and con-

spiracy to promote contraband. She is being held on a \$5,000 bond. Co-conspirators Gary Burns and Trinity Barnett, who are prisoners at LMDC, and Marjon Watson, who allegedly conspired from the outside, were all issued arrest warrants.

**Louisiana:** After just six months on the job with the state DOC – and a month after her arrest on suspicion of smuggling contraband – a guard was fired from the state penitentiary in Angola on April 6, 2023. *WAFB* in Baton Rouge reported that Sarah Irwin, 31, of Angola, was found with drugs, alcohol and 16 cell phones when she was arrested on March 27, 2023. Irwin was booked by the West Feliciana Parish Sheriff's Office on charges including introduction of contraband, possession with intent to distribute and malfeasance in office.

**Louisiana:** On April 14, 2023, a St. Tammany Parish jail guard was fired and arrested after a fellow guard discovered "suspicious correspondence" that implicated her in a smuggling operation at the lockup. The *New Orleans Times-Picayune* reported that Breanna Sparrow, 31, "was assisting individuals inside and outside the facility to facilitate bringing illegal narcotics into the jail." The young woman had less than a year on the job when she started conspiring to introduce contraband into the jail. The Sheriff's Office, however, did not reveal any evidence linking her to the crime. Sparrow was charged with three counts of malfeasance, three counts of introducing contraband into a penal institution, possession with intent to distribute drugs and possession of a gun in the presence of drugs.

**Michigan:** A former guard with the state DOC was sentenced on April 20, 2023, for sending nude selfies to a 13-year-old girl, the *Detroit News* reported. Shawn Francis, 35, who lives in Ohio but worked at the Gus Harrison Correctional Facility in Adrian, Michigan, began sending the inappropriate text messages and photos to the niece of long-time family friends in June of 2022. He also requested nude photos from the victim and an in-person meeting, which is suspected to have taken place in Monroe, Michigan. The teen's mother found the communications and contacted police. Prosecutors then charged Francis in July 2022 with enticing a minor for immoral purposes. Francis received a sentence of two to twenty years for sexually abusive activity involving children, according to court docu-

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ments, after pleading no contest in March to the charge.

**Mississippi:** On April 7, 2023, the *Vicksburg Daily News* reported the arrest of a Central Mississippi Correctional Facility guard after state DOC investigators searching her vehicle found drugs and cellphones allegedly ready to smuggle to prisoners. Jasmeshia Kharae Wilkins, 32, of Mendenhall, had been employed as a guard only since November 2022 when she was booked into the Rankin County Detention Center. DOC's Criminal Investigation Division found several bags of what was believed to be marijuana, edible gummies containing THC and three cellphones in her parked car at the lockup in Pearl. Wilkins was handed one count of possession of controlled substances with intent to distribute; one count of Introduction of Contraband into a Correctional facility; and one count of Conspiracy. Bond was set at \$142,500.

**Missouri:** The recapture of a detainee who escaped the Ray County Jail on March 28, 2023, became a talking point for Sheriff Scott Childers' pitch to construct a new lockup, according to a report by *KSN* in Kansas City on April 7, 2023. Prisoners

Justin Robinson and Liam Olinger were able to escape from the jail in Henrietta by stabbing a guard in the neck with a shank fashioned from a piece of metal pried off the wall of the rusty and deteriorating pod where they were housed. Robinson, in jail for stabbing his pregnant girlfriend in the stomach in January 2023, was considered the more dangerous of the two. Olinger, being held for identity theft, was recaptured quickly after the escape. Robinson was on the lam for a week until law enforcement was tipped off that he was heading for Texas and picked him up at a bus station in Tulsa, Oklahoma. The pair will face new charges stemming from the attack on the guard who survived and their subsequent escape. Sheriff Childers informed the public that he had taken measures at the jail to ensure that other detainees would not escape the way Robinson and Olinger did.

**Missouri:** A former guard accused of assaulting a handcuffed detainee at the St. Louis City Justice Center pleaded guilty on April 3, 2023, local station *KMOV* reported. Edward Lamar Barber, 42, was processing prisoners at the center in July 2019 when prisoner "M.J." struck another clerk. A guard pepper sprayed M.J. and placed him on the floor. Barber and another guard then escorted M.J. to a cell. According to

Barber's plea agreement, M.J. entered the cell without injuries. But once in the cell, Barber forced him to the ground, and M.J. suffered fractures to his nose and orbital wall. Barber pleaded guilty to a civil rights charge, one felony count of deprivation of rights under color of law. He admitted to violating M.J.'s right to be free from unreasonable force. Sentencing is scheduled for July 6, 2023, and carries a possible 10-year sentence, a \$250,000 fine, or both.

**Missouri:** On April 11, 2023, a federal prisoner in Missouri was indicted for punching a BOP warden in the face. *KOLR* in Springfield reported that Omar Romero-Morales, 36, was charged by a federal grand jury in Springfield with assaulting the warden at the U.S. Medical Center for Federal Prisoners. The FBI and BOP investigated the case, which is being prosecuted by Assistant U.S. Attorney Patrick Carney.

**New York:** A guard at BOP's Metropolitan Detention Center (MDC) in Brooklyn pleaded guilty on April 19, 2023, to taking bribes in exchange for smuggling contraband into the lockup, the *Brooklyn Eagle* reported. Quandelle Joseph, 32, began smuggling soon after starting the job in May 2020 and took tens of thousands



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of dollars in bribes from MDC prisoners over the last three years. Prosecutors accused Joseph of passing drugs, cigarettes, and phones to at least three inmates. He began by charging \$8,000 for his smuggling services but eventually raised his fee to \$12,000, one of those prisoners told investigators. They first learned of Joseph's activities in December 2020 when staff searched the cell of a racketeering suspect after smelling marijuana. During the search a cellphone was found with a video showing Joseph carrying in a bedroll and leaving it with the cell's occupant when Joseph was supposed to be working elsewhere in the jail. That search resulted in the prisoner confessing he was trafficking in contraband with the help of Joseph and another guard, Jeremy Monk. On April 18 Joseph was released on \$50,000 bond after appearing in federal court. Monk pleaded guilty in March 2023 to taking a \$10,000 bribe to smuggle marijuana to prisoners the year before. [See: *PLN*, May 2022, p.63.] Three other former guards are already serving sentences for sexually assaulting prisoners

at the lockup. [See: *PLN*, Mar. 2023, p.40.]

**New York:** A former guard at the Rockland County Jail pleaded guilty on April 24, 2023, to first-degree unlawful imprisonment, as well as to forcible touching, which is a misdemeanor, the *Lower Hudson Valley Journal News* reported. John Kesek, 36, was accused by the unnamed victim in 2021, when he and a former fellow guard, Christopher Taggart, were already facing charges of sexually assaulting a detainee at the jail in 2019. [See: *PLN*, Feb. 2021, p.62.] Taggart, who was also charged with smuggling contraband to the victim, struck a deal and resigned in April 2022, when he was sentenced to two years of probation for official misconduct. Kesek pleaded guilty in December 2022 to exposing himself to the detainee and falsifying daily log entries to cover up his contact with her. In exchange, he accepted a five-year probated sentence. For his latest conviction, Kesek is set to receive another five years of probation at sentencing in July 2023.

**Ohio:** A former Erie County Jail guard

pleaded guilty on April 12, 2023, to federal charges that he choked a detainee while attempting to secure her in a restraint chair, "causing her vision to pixelate" and leaving "lasting bruising," the *Sandusky Register* reported. Adam Bess, 35, of Sandusky, pleaded guilty to one count of deprivation of rights stemming from an incident in the booking room of the jail on October 31, 2021. Surveillance video captured Bess placing his hand on the throat of Tiffany Banks when he and other officers were struggling to place hers in a restraint chair to take her mug shot. Banks said repeatedly that she couldn't breathe while cursing and voicing other complaints, according to Sheriff Paul Sigsworth. The sheriff also said that Bess could be heard swearing at the woman. A press release from the office of Assistant U.S. Attorney Michelle M. Baeppler stated that during the altercation the

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detainee “can be heard yelling, ‘He’s about to kill me, he’s about to kill me.’” Bess’ law enforcement record shows no previous use of violence, but he could be sentenced to 10 years in federal prison on the charge.

**Pennsylvania:** On March 29, 2023, a former state DOC guard was sentenced to almost two years in prison and ordered to register as a sex offender for the “indecent” assault of a prisoner at the State Correctional Institution (SCI) in Cambridge Springs. The *Sharon Herald* reported that Alexius D. Castro, 24, of Hermitage, was a guard at the women’s prison for about 18 months before being fired on April 11, 2022. Castro pleaded guilty in December 2022 to indecent assault without the consent of another person in authority, a second-degree misdemeanor. A plea deal allowed Castro to avoid the felony charge of institutional sexual assault. According to court documents Castro had kissed and sexually touched a female prisoner in January 2022. In August 2022 the Pennsylvania State Police charged Castro with one count of institutional sexual assault, the charge that was eventually dropped in the plea. The Pennsylvania Sexual Offenders Assessment Board determined Castro was not a sexually violent predator but required her to register as a Tier 1 sexual offender for 15 years. Castro told the judge at her sentencing, “I apologize for my actions — I won’t be back.”

**Pennsylvania:** *WNEP* in Scranton reported that a state DOC guard was accused on March 23, 2023, of sexually assaulting two fellow employees at SCI-Dallas. David Andrew Hoover, 41, of Larksville, used vulgar language and groped both women in November 2022. Hoover allegedly made lewd comments to the first victim about her sexual preferences and what he wished to do with her, even inviting her to his truck for oral sex. He crossed the line with victim number one when he groped her buttocks from behind without warning on the third day of harassment. He told her he took the brazen action “because you have a cute face, butt, and big titties.” Hoover then turned his unwanted attention to a second female employee after being rebuffed by the first one. Investigating officers reported that Hoover made inappropriate comments to the second victim and, on the same day, groped her chest. In another incident Hoover forced his hand down the second victim’s shirt and grabbed her breasts while the two were in a security room. When she

told him to stop Hoover laughed and said no one cares. Investigators recorded several incidents of sexual assault involving Hoover and the two victims as they worked the case. Hoover is charged with making terroristic threats and indecent assault.

**Pennsylvania:** Police in Pottsville arrested a detainee at the Schuylkill County Prison for punching a guard on April 21, 2023. The local *Republican & Herald* reported that a homeless man, Brad Eiler, 41, started the incident by using the toilet to flood his cell. Two guards told Eiler repeatedly to clean up the water and when he refused, they entered the cell to do the job themselves. According to the police report, when they entered the cell Eiler began shouting at them and then charged. The ensuing scuffle spilled out into the walkway and Eiler struck one of the guards with his closed fist, next to the guard’s eye. Reinforcements arrived, and guards succeeded in handcuffing the homeless man. Eiler was charged with aggravated assault and simple assault and arraigned by Orwigsburg Magisterial District Judge Andrew J. Serina.

**South Carolina:** On April 25, 2023, the *Daily Mail* reported that documents filed in the controversial early release of convicted murderer Jeroid Price, 43, revealed he was in a relationship with a former state prison guard when she reported that Price had saved the life of a co-worker. Asia Love left the state DOC in 2011, but a year later she applied to visit Price at his prison, falsely claiming to be his sister. That request was denied when the lie was found out. Then in a 2019 affidavit to the sentencing court, Love said that in 2010 Price saved the life of another guard threatened with a broomstick by a prisoner whom Price tackled. That testimony may have played a part in the decision by Richland County Judge Casey Manning to release Price in March 2023 – 16 years before the end of his original 35-year prison term for killing Carl Smalls at a Columbia nightclub in 2002. Manning retired the day after granting the release, apparently without getting a chief judge’s sign-off, as required by law. Price’s attorney insisted that Love’s affidavit carried less weight in his early release than help Price provided in identifying and recapturing another prisoner in 2017. But state Attorney General Alan Wilson (R) successfully petitioned the state Supreme Court to return Price to prison on April 26, 2023. See: *State v. Price*, S.C., Case No.

2023-000614.

**Washington:** When a detainee slept through the call for his release from the Cowlitz County Jail on April 17, 2023, his cellmate answered – and then faked his way to a two-day escape. *KOIN* in Portland reported that Brian Francisco Roman, 26, was asleep in a cell with two other detainees when staff called for one to be released. Roman woke up and took the sleeping man’s place. Jail staff noted that Roman and the other detainee resembled each other before conducting the release process with Roman, who forged his cellmate’s signature on release papers and accepted the other man’s wallet, keys, clothes, ID, and a debit card. Guards became aware of their mistake when the detainee who was impersonated asked about his released. The Cowlitz County Sheriff’s Office used Facebook to request help in finding Roman. It is not clear whether Facebook tips aided in the search, but he was recaptured on April 19, 2023, in Scappoose, Oregon. The escapee will face charges of second-degree escape, first-degree criminal impersonation, forgery, second-degree theft and third-degree theft. 📰



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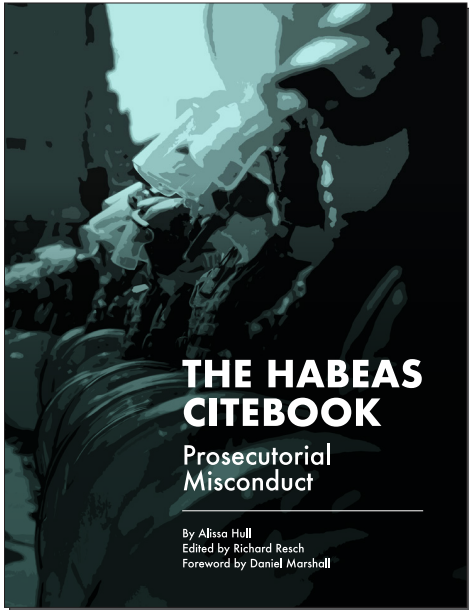
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By Alissa Hull

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